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**II B.COM**  
**COMPANY LAW**

# COMPANY LAW

## I - UNIT

### Meaning of Company:

A company is a natural legal entity formed by the **association and group of people** to work together towards **achieving a common objective**.

According to the **definition of a company** by the **Indian Act 2013**;

“A registered association which is an artificial legal person, having an independent legal, entity with perpetual succession, a common seal for its signatures, a common capital comprised of transferable shares and carrying limited liability.”

### Features of a Company

**Artificial person:** The law treats the company as a **legal artificial person because it has its name and bank accounts**. It can also own property under its name, file a lawsuit against other companies or personals, or be partnered up with other companies. It performs all of the activities that a person can legally do; a company can do it well. Therefore, it acts as an artificial individual.

**Separate Legal Entity:** When we say legal entity, what it means that it's completely independent of its people who control its operations. In other words, **the company won't be responsible if its members don't pay their debt**. The same goes for the company as well; that the members don't have to pay for the debt of the company, if it's unable to pay to its creditors.

**Incorporated Association:** A company starts its business operations when it is registered by the law and under the ordinance of the companies act. The registration process of a company is lengthy; it should have a **memorandum of association, board of directors, share prices and shareholders, a name, office, phone number, address, and other legal documentation**.

**Limited Liability:** The liability of **shareholders is limited to their share price only; it is in the limited companies by share**. On the other hand, **in the case of limited companies by guarantee**, where the share of contributors is like an asset in

the company; if the company goes bankrupt, then the shareholders have to pay a small amounts to cover up the loss of the company.

**Common Seal:** As we know that a company acts as an artificial legal individual, therefore, it has a stamp or seal with the **name and address** engraved on it. This stamp would be like the signature of the company. The stamp and company's seal is used for the verification and authorization of various documents.

**Perpetual Existence:** Unlike proprietorship, partnership or any other type of business, a company doesn't depend upon its owners, board of directors, shareholders, or employees. **Many people come and go in the company**, but it stays.

### **Types of Companies.**

We can categorize companies based on various types like; liability, taxes, shares members and control.

#### **Classification of Companies based on Liabilities.**

##### **Companies Limited by Shares**

As the name implies, the liability of the company is limited to the **share price of each shareholder. Personal assets** of the shareholders **won't be disturbed**; their responsibilities are limited to their debt of the company up to their share price only.

##### **Companies Limited by Guarantee**

Companies limited by guarantee **doesn't issue shares or have shareholder**. They're usually **non-profit organizations**. If in the case of profit, the company distributes it among its members if it's not a charitable organization. **If the company goes bankrupt, then their liability is limited to the amount they have pre-decided in the memorandum of the company. Guarantors are the members of the companies limited by guarantee.**

##### **Unlimited Companies**

As the name implies the liability of the shareholders is **not limited to the share price they own, it goes beyond**. They may lose **their assets if the company is**

**unable to pay debt to its creditors. We don't see many unlimited companies because it involves a lot of risks.**

## **Classification of Companies based on Members**

### **Private Company**

A private company is a form of company that **doesn't offer its shares to the public like in the public companies. The numbers of shares are limited to the close members only.** However, members can transfer their shares to anyone but they **can't offer it to the general public.**

### **Public Company**

Public companies are those **that advertise their stock and shares to the general public.** People can **freely trade the stock of the public company without any restrictions.** The shares of listed companies are traded in the stock exchange market.

## **Classification of Companies based on Control**

### **Government Companies**

Government companies are those that hold **51% of the share capital of the company.** The remaining **49% of the share,** the company offers it to the **public and private individuals.**

**Mixed Ownership** Company is also the name used for the government companies. Where we see the management and chain of hierarchy of government and technical skill of the private sector, it's a great mixture of both public and private sectors.

### **Holding and Subsidiary Companies**

Where holding is a **parent company** that controls the **business operation** of the **subsidiary company.** By control I mean the holding company has a complete over the **selection and election of board of directors,** it holds all the shareholders of the subsidiary company. The subsidiary company can make **its decision once it's become independent.**

**Subsidiary companies** can be profit or non-profit organizations.

### **Associate Companies**

An associate company is the business valuation firm in which one company **owns a significant voting share of another company**. The voting share usually ranges from 20 to 50%, if it is more than 50%, then it would be subsidiary company. If it's less than 50%, then the owner doesn't have to consolidate the financial statement of associate. If it is more than 50%, then it has to consolidate the financial statement, where the associate would consider the balance sheet as an asset.

### **Company's Incorporation:**

Company's Incorporation means **making a Company a legal person; making its own identity**.

-Basically incorporation means **giving Birth to a Company**.

- i. Shield yourself from liability.
- ii. Establish Perpetual Existence and Transfer of Ownership.
- iii. Gain Tax Advantage
- iv. Enhance the Company's image
- v. Improve ability to manage.

### **Difference between Public Company and Private Company.**

#### **Public Company**

A Public Company is **owned and traded** publicly on Stock Exchange.

Minimum **7 members** must be required to form a Public Company.

There is **no maximum limit of members** forming a Company.

Atleast **3 Directors** are required to form a public Company.

**Public Subscription of Shares** is allowed in Public Companies

**5 members** should be present at AGM.

The **Statutory Meeting** is Compulsory.

It is **mandatory to issue Prospectus** of the Company.

Shares can be **transferred freely** in Public Companies.

It is mandatory to **disclose financial report** quarterly and annually.

### **Private Company.**

A Private Company is **traded privately**.

Minimum **2 members** are required to form a Private Company.

The maximum **limit of members** in a Private Company is **200**.

Atleast **2 Directors** are required in a Private Company.

**Public Subscription of Share is not allowed** in a Private Company.

**2 Members** Should be Present at AGM.

The **Statutory meeting** in a Private Company is **Optional**.

**Transfer of Shares** is restricted in Private Companies.

There is **no obligation** for a Private Company to disclose financial Statement.

## **Memorandum of Association**

The Memorandum of Association or MOA of a company defines the **constitution and the scope of powers of the company**.

In simple words, the MOA is the **foundation on which the company is built**. In this article, we will look at the laws and regulations that govern the MOA. Also, we will understand the contents of the Memorandum of Association of a company.

## **Contents of the MOA**

**Name Clause**

For a public limited company, the name of the company must have the word 'Limited' as the last word.

For the private limited company, the name of the company must have the words 'Private Limited' as the last words.

This is not applicable to companies formed under Section 8 of the Act who must include one of the following words, as applicable:

Foundation, Forum, Association, Federation

Chambers, Confederation, Council, Electoral Trust, etc.

### **Registered Office Clause**

It must specify the State in which the registered office of the company will be situated.

### **Object Clause**

It must specify the objects for which the company is being incorporated. Further, if a company changes its activities which are not reflected in its name, then it can change its name within six months of changing its activities. The company must comply with all name-change provisions.

### **Liability Clause**

It should specify the liability of the members of the company, whether limited or unlimited.

For a company **limited by shares** – it should specify if the liability of its members is limited to any **unpaid amount on the shares that they hold**.

For a company **limited by guarantee** – it should specify the amount undertaken by each member.

### **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.

### **Association Clause**

The MOA must clearly specify the desire of the subscriber to form a company.

### **Alteration of Memorandum in different clauses**

Any alterations in the different clauses of the MOA are described as the Alteration of Memorandum of Association.

#### **Alteration in the Name clause of Memorandum**

If the company itself wants to change its name, then this **alteration in the name clause** of Memorandum will come under clause **Section 13**.

Whereas for any **kind of rectification** in the name of the company, then the alteration will come under clause **section 16** which requires approval from the **Central Government**.

A company can change its name at any time by any of the following procedures:

- By passing a **special resolution**.
- By obtaining the approval of the Central Government.

The Conditions for any such Alteration in the Name:

The change of name shall not be allowed to a company which has defaulted in filing its

- Annual returns
- Financial Statements
- Any document due for filing with Registrar
- repayment of matured deposits or debentures or interest on deposits or debentures.

#### **Alteration of the Registered Office Clause**



In case, the company wants to change its registered office, then this alteration in the registered office clause of Memorandum will come under clause **Section 12**.

Here, the Registrar will register any alteration in the Memorandum with respect to the objects of the company and then certify the **registration** within a **period of 30 days**. Any such change in the Memorandum results in the transfer of the registered office of a **company from one state to another**.

### **Shifting of the registered office from one state or UT to another state**

For the change in the registered office from **one state to another state**, an application under **sub-section (4) of section 13** is filed with the Central Government in Form No. **INC.23** along **with the fee**. The application must be accompanied by the following documents:

- Copy of MOA (Memorandum of Association) with proposed alterations.
- A copy of the details of the general meeting at which the resolution authorizing such alteration was passed. These details give the number of votes cast in the favor or against the resolution.
- A copy of Board Resolution or Power of Attorney.
- A list of creditors and debenture holders is attached to the application, drawn up to the latest date prior to the date of filing of an application by **not more than one month**. It must include:
  - The name and address of the credit and debenture holder of the company.
  - The nature and amounts due to them in respect of debts, claims, or liabilities.

The **company Secretary** has a certain task to look into the company's matter. These are:

To make a complete inquiry into the affairs of the company and decide that the list of creditors is true.

No employee of the company shall be retrenched as a result of the transfer of the registered office from one state to another.

Authenticated copy of the **list of creditors** shall be kept at the registered office of the company and any person who desires to inspect the list of creditors can do so at any time during the working hours of business.

## **Alteration in the Objective Clause of Memorandum**

If the company wants to change the objective of its business, then there is a requirement of **special resolution** that must be passed.

The details of the **objective must be published in the newspaper** that too in different languages (one in English and other in the vernacular language) where the registered office of the company is situated and also on the **website of the company**.

## **Alteration of the Capital Clause**

A company may alter the capital clause only if it is authorized by its articles. Alteration can be for any of the following purposes:

- An increase of its share capital by issue of new shares.
- Consolidation of existing shares into shares of larger amounts.
- Conversion of fully paid shares into stock or vice versa.
- Cancellation of unissued shares.

## **Alteration of the Liability Clause**

The alteration of the Liability Clause restricts the liability of the Directors. The liability clause can be unlimited by passing a **special resolution** which should be filed with the **Registrar within a period of 30 days**.

### **The steps required for Alteration in MOA**

- A Notice of Board meeting is issued at least 7 days before the date of Board meeting.
- In the board meeting, a board resolution is being passed for the alteration in MOA subject to approval of shareholder meeting.
- Fix the date, time and venue for convening the shareholder meeting.
- A notice of Shareholder meeting is issued at least 21 days before the date of shareholder meeting.
- After the shareholder's resolution is being passed, Form MGT-14 is filed within 30 days from passing of the special resolution along with the Explanatory statement, altered copy of MOA.

## **Articles of Association (AOA)**

The Articles of Association (AOA) is a document that defines the **purpose of a company and specifies the rules and regulations for its operations.**

### **Components of the Articles of Association**

The articles of association will usually specify the way a company issues stocks, distributes dividends, and performs financial records. The document is focused on giving the reader information about the methods a company uses to **achieve its daily, monthly, and yearly goals.**

The articles of association are relatively similar in any part of the world, even though the exact terms and items vary across jurisdictions. In general, it includes the following:

- Provisions on the company name
- Purpose of the company
- Share capital
- Organization of the company
- Provisions on shareholder meetings

### **Contents of Articles of Association**

1. Classes of shares, their values and the rights attached to each of them.
2. Calls on shares, transfer of shares, forfeiture, conversion of shares and alteration of capital.
3. Directors, their appointment, powers, duties etc.
4. Meetings and minutes, notices etc.
5. Accounts and Audit
6. Appointment of and remuneration to Auditors.
7. Voting, poll, proxy etc.
8. Dividends and Reserves

9. Procedure for winding up.
10. Borrowing powers of Board of Directors and managers etc.
11. Minimum subscription.
12. Rules regarding use and custody of common seal.
13. Rules and regulations regarding conversion of fully paid shares into stock.
14. Lien on shares.

### **Alteration of Articles of Association**

The alteration of the Articles should not sanction anything illegal. They should be for the benefit of the company. They should not lead to breach of contract with the third parties. The following are the regulations regarding alteration of articles:

A company may alter its Articles with a **special resolution**. Due importance and care should be given to ensure that the alteration of AOA does not conflict with the provisions of the Memorandum of Association or the Companies Act.

A copy of every **special resolution** altering the Articles must be filed with the **Registrar within 30 days** of its passing.

1. The proposed alteration should not contravene the **provisions of the Companies Act**.
2. The proposed alteration should not **contravene the provisions of the Memorandum of Association**.
3. The alteration should not propose anything that is illegal.
4. The alteration should be bonafide for the benefit of the company.
5. The proposed alteration should in no way increase the liability of existing members.
6. Alteration can be made only by a special resolution.
7. Alteration can be done with retrospective effect.

8. The Court does not have any power to order alteration of the Articles of Association.

## Prospectus

**Meaning:** The prospectus is a **legal document**, which outlines the company's financial securities for sale to the investors.

According to the Companies act 2013, there are four types of the prospectus, abridged prospectus, deemed prospectus, red herring prospectus, and shelf prospectus.

### Definition:

The prospectus is a legal document for market participants and investors to pursue, detailing the features, prospects, and promise of a financial product.

### Importance:

- The company provides prospectus with capital raising intention. Prospectus helps the investors to make a **well-informed decision** because of the **prospectus all the required information of the securities** which are offered to the public for sale.
- Whenever the company issues the prospectus, the company must file it with the regulator. The prospectus includes the details of the **company's business, financial statements.**
- To notify the public of the issue
- To put the company on record with regards to the terms of the issue and allotment process
- To establish accountability on the part of the directors and promoters of the company.

## Types of Prospectus

According to **Companies Act 2013**, there are four types of prospectus.

**Deemed Prospectus** – Deemed prospectus has mentioned under **Companies Act, 2013 Section 25 (1)**. When a company allows or agrees to **allot any securities of**

**the company**, the document is considered as a **deemed prospectus** via which the offer is made to investors. Any document which offers the sale of securities to the public is deemed to be a prospectus by implication of law.

**Red Herring Prospectus** – Red herring prospectus **does not contain all information about the prices of securities offered and the number of securities to be issued.** According to the act, the firm should issue this prospectus to the registrar at least three before the opening of the offer and subscription list.

**Shelf prospectus** – Shelf prospectus is stated under **section 31 of the Companies Act, 2013.** Shelf prospectus is issued when a **company or any public financial institution offers one or more securities to the public.** A company shall provide a validity period of the prospectus, which should **not be more than one year.** The validity period starts with the commencement of the first offer. There is no need for a prospectus on further offers. The organization must provide an information memorandum when filing the shelf prospectus.

**Abridged Prospectus** – Abridged prospectus is a memorandum, containing all **salient features of the prospectus as specified by SEBI.** This type of prospectus includes all the information in brief, which gives a summary to the investor to make further decisions. A company cannot issue an application form for the purchase of securities unless an abridged prospectus accompanies such a form.

### **Contents Prospectus**

The prospectus contents are specified in the Companies Act. The prospectus must touch over the following content points:

- Details of the company, such as name, registered office address, and objects.
- Details of signatories to the Memorandum and their shareholding particulars
- Details of the directors
- Details of shares offered and the class of the issue as well as voting rights
- Minimum subscription amount
- The amount payable on application, on allotment, and on further calls
- Underwriters of the issue
- Auditors of the company
- Audited reports regarded profit and losses of the company.

## **Disclosures to be made in a Prospectus.**

**General Information:** The general information contained in a prospectus will be related to the **name and address of the company's head office, officers, company secretary, directors, bankers, legal advisers.** It accounts for the primary **objective and business operated** by the company. It describes the company's **capital structure** in a specified manner.

Further, it contains information about the **issue opening and closing date, procedure and terms for allotment.** It lists out the objective of the public offer and terms and conditions of the issue.

**Financial Information:** The financial information includes reports provided by company's auditors in connection to the profitability, liquidity, assets and liabilities, etc. as well as the report relating to the business in which the capital raised from the public will be utilized.

**Statutory Information:** The prospectus should include an **official declaration** concerning the compliance of the Companies Act and also that the prospectus **does not contain anything which violates the provisions of the law.**

In a nutshell, securities can be offered for sale, by inviting applications from the public at large through the issue of prospectus. The prospectus needs to be filed with ROC and must adhere to the minimum information requirements, as it is the **only genuine source of information** to the investors to know the soundness of the Company.

## **UNIT – II**

### **SHARES**

A share is an indivisible unit of capital, expressing the ownership relationship between the company and the shareholder.

The share capital of a company is divided into a number of subunits that is called as share.

## Types of Shares

**1. Preference shares** typically carry a **right that gives the holder preferential treatment when annual dividends are distributed to shareholders**. Shares in this category receive a **fixed dividend**, which means that a shareholder would not benefit from an increase in the business' profits. However, usually they have rights to their dividend ahead of ordinary shareholders if the business is in trouble. Preference shares carry **no voting rights**.

If the company **enters bankruptcy, preferred stockholders are entitled to be paid from company assets before common stakeholders (equity shareholders)**.

**2. Ordinary shares** are the most common type of shares and are standard shares with **no special rights or restrictions**. They have the potential to give the highest financial gains, but also have the highest risk. Ordinary shareholders are entitled to **voting rights**; however, they are the **last to be paid if the company is wound up**.

## Types of Preference Shares

### Redeemable and irredeemable preference shares:

In the case of redeemable types of shares, the issuing company and such **shareholders agree that the company can redeem or buy-back those shares at a later period**, either after the **lapse of a certain time or on a future date**. Redeemable shares vary based on who can exercise the buy-back provision – the shareholder or the organisation.

An **irredeemable share** is, therefore, the exact opposite of a redeemable stock.

### Convertible and non-convertible preference shares

Another way types of shares can be categorised based on whether they carry the provision of conversion or not. To that effect, holders of **convertible preference stocks can convert their holdings to equity shares upon meeting specific conditions**.



Conversely, holders of **non-convertible preference shares are not entitled to that provision.**

### **Participating and non-participating preference shares**

Holders of participating preference shares have the right to partake in a company's profits once a company allots dividends to ordinary shareholders. Therefore, when a company's **net income is substantially high**, such **shareholders stand to receive** a part of such profits.

On the other hand, holders of **non-participating shares are only entitled to a fixed dividend payment.** The latter is a commoner variant.

### **Cumulative and non-cumulative preference shares**

If a company **does not provide dividends for preference shares in a particular year**, such dividend **entitlement is carried forward to the following year** if it is a cumulative stock.

Conversely, in the case of non-cumulative preference shares, the **dividend amount is not carried forward if an organisation does not pay dividends in a specific year.**

### **Stock vs. Share: Key Differences.**

**Definition:** 'Stock' represents the holder's part-ownership in **one or several companies.**

Meanwhile, 'share' refers to a single unit of ownership in a company. For example, if X has invested in stocks, it could mean that X has a portfolio of shares across different companies. But if X has invested in shares, the next questions should focus on 'shares of which company' or 'how many shares'.

**Ownership:** When an individual owns shares of several companies, you can say that they own stocks.

But if someone bought shares of a specific company, they only own shares.

**Denomination:** Individuals who own stocks have the option to choose **different stocks of different values.**

Those who own shares in a **specific company** can, of course, own multiple shares. But the shares will only be of the **same or equal value**.

**Paid-up value:** Stocks are always **fully paid-up** in nature.

However, **Shares** could be either **partly or fully-paid up**.

**Nominal value:** This value is assigned to each share at the **time the stock is issued**.

It is different from the market value which varies based on **demand for and supply of the shares**.

**Kind of investment:** Stocks particularly refer to **corporate equities and securities** traded on a **stock exchange**.

But shares can refer to a **large group of financial instruments known as securities**. They can include mutual funds, exchange-traded funds (ETFs), limited partnerships, real estate investment trusts, etc.

## **Debentures**

Debentures are **long term debt instruments** that a company issues under its seal. One difference between share and debentures is that debentures become borrowed capital for the company. It is like a loan that a company has taken from the debenture holders which is supposed to pay back with interest in due time.

### **Types of Debentures**

**Registered and Bearer Debentures:** A registered debenture is **registered** in the company and can be transferred by the issuance of a **transfer deed**.

**Bearer debentures**, on the other hand, have no record of them in the company registers and can be transferred by mere delivery.

**Secured and Unsecured Debentures:** Secured debentures have a charge on the company's assets. So secured debenture holders can recover their principal amount or any unpaid interest out of the company's mortgaged assets.

**Unsecured debentures** have no such charge or rights.

**Redeemable and Non-redeemable Debentures:** Redeemable debentures' **principal amount** is paid back in a **fixed amount of time** whereas non-redeemable debentures **cannot be paid** back in the lifetime of the company and only on liquidation.

**First and Second Debentures:** First debentures are those that are repaid before other debentures whereas second debentures are those that are repaid thereafter.

**Convertible and Non-Convertible Debentures:** Convertible debentures are those that can be **converted into shares according to pre-decided terms and conditions**. Non-convertible debentures **cannot be converted into shares**.

### **Difference between Shares and Debentures.**

<b>S. No.</b>	<b>Particulars</b>	<b>Shares</b>	<b>Debentures</b>
1.	Meaning	The shares are the owned funds of the company.	The debentures are the borrowed funds of the company.
2.	What is it?	Shares represent the capital of the company.	Debentures represent the debt of the company.
3.	Holder	The holder of shares is known as shareholder.	The holder of debentures is known as debenture holder.
4.	Status of Holders	Owners	Creditors
5.	Form of Return	Shareholders get the dividend.	Debenture holders get the interest.
6.	Payment of return	Dividend can be paid to shareholders only out of profits.	Interest can be paid to debenture holders even if there is no profit.
7.	Allowable deduction	Dividend is an appropriation of profit	Interest is a business expense and so it is

		and so it is not allowed as deduction.	allowed as deduction from profit.
8.	Security for payment	No	Yes
9.	Voting Rights	The holders of shares have voting rights.	The holders of debentures do not have any voting rights.
10.	Conversion	Shares can never be converted into debentures.	Debentures can be converted into shares.
11.	Repayment in the event of winding up	Shares are repaid after the payment of all the liabilities	Debentures get priority over shares, and so they are repaid before shares.
12.	Quantum	Dividend on shares is an appropriation of profit.	Interest on debentures is a charge against profit.
13.	Trust Deed	No trust deed is executed in case of shares.	When the debentures are issued to the public, trust deed must be executed.

### UNIT --- III

#### Share Certificate

A share certificate is a **written document** signed on behalf of a corporation that serves **as legal proof** of ownership of the **number of shares indicated**. A share certificate is also referred to as a stock certificate.

### **Details to be provided in a share certificate**

Every share certificate issued in India should contain the below mentioned:

- Name of issuing Company
- CIN no. (Corporate Identification Number) of such Company.
- Address of the company's registered office
- Name of owners of such shares
- Folio number of member
- Number of shares which is represented by such share certificate
- An amount which is paid on such shares
- Distinct number of the shares

### **Procedures for issuing share certificates**

#### **Board Meeting & Allotment of shares**

- A board meeting is called for deciding about allotment of shares. The board of directors assigns a committee of directors known as allotment committee. The allotment committee would then decide about allotment of shares.
- Once allotment committee provides its report with respect to allotment of shares, the Board then approves such report and then passes the resolution for allotting shares to the respective applicants.
- Once shares are allotted by the allotment committee, the company secretary sends the letters of allotment to the respective members. The allotment letter refers to a letter that notifies the applicant that the company has allotted a certain number of shares to him. This letter of allotment is considered as the share certificate till issuance of the final certificate.

#### **Register of members**

- The company secretary then prepares a Register of members from the lists of application received and allotment sheets. Register of member provides information about the shareholders and details of the shares which are allotted to them.

### **Preparing and Printing Share Certificates**

- The company secretary must arrange the form of the share certificate according to the form suggested by the Articles of Association. The secretary must get the form printed together with all the required details as per the provisions of the governing law. The secretary needs to fill all the details in share certificate with help of the application register and allotment sheets.
- The secretary also needs to ensure that the share certificate is signed by two directors of the company. The secretary needs to sign the share certificate. The secretary also needs to ensure that the company's seal and revenue stamp is affixed on each of the share certificates. Once certificates are in order, a board meeting is called for passing the resolution for issuing share certificates.

### **Intimation and dispatch of share certificate**

- The company secretary needs to inform all the shareholders that share certificates are ready and would be delivered in exchange of allotment letters and bankers receipt confirming payment of the allotment money. A public notice should be issued for the general information of the members.
- Members who surrender their allotment letters, share certificate are dispatched by the registered post to them. The local shareholders as per their preference can also collect the share certificates personally from company's registered office or from agency appointed for dispatching the share certificates.

### **Penalty for breach**

- Where a company makes any default in complying with provisions relating to issue of share certificates, such company would be punishable with a fine that wouldn't be less than INR 25,000 but could extend to INR 5,00,000 and every defaulting officer of such company would be punishable with a fine that wouldn't be less than INR 10,000 but could extend to INR 1,00,000.

### **Transfer of Shares**

- Transfer of shares is a voluntary act that takes place by way of contract between transferor and transferee.
- Transfer deed is executed in transfer of shares.
- Transfer of shares refers to the transfer of title to shares, voluntarily, by one party to another.
- Adequate consideration is involved under this contract.
- Liabilities of transferor cease on the completion of transfer.
- Stamp duty is involved under transfer and payable on the market value of shares.

### **Persons involved in the transfer**

Subscribers to the memorandum.

Legal Representative, in case of a deceased.

Transferor.

Transferee.

Company (whether listed/ unlisted).

### **Procedure for transfer of shares as per the Companies Act, 2013.**

Firstly, the transfer deed needs to be obtained in the prescribed form i.e. **Form SH-4**, endorsed by the prescribed authority.

**The instrument of transfer may not be in the prescribed form (Form SH-4) in the following cases:-**

- a. Where a director or nominee transfers shares on behalf of another body corporate under section 187 of the Companies Act, 2013;
- b. Where a director or nominee transfers shares on behalf of a corporation owned or controlled by the central or state Government;
- c. Shares transferred by way of deposit as a security for repayment of any loan or advance If they are made with any of the following:-
  - i. State Bank of India; or
  - ii. Any scheduled bank; or
  - iii. Any other banking company; or
  - iv. Financial Institution; or
  - v. Central Government; or
  - vi. State Government; or
  - vii. Any corporation held by the Central or State Government; or
  - viii. Trustees who have filed the declarations.
- d. For transferring debentures, a **standard format** can be used as the instrument of transfer.

### **Transmission of Shares**

– Transmission of shares means the transfer of title to shares by the **operation of law**.

– It is initiated by **legal heir or receiver**.



- **No transfer deed** is involved in transmission of shares.
- **No adequate consideration** is involved under this contract.
- Original liability of **shares continues to exist**.
- No stamp duty is payable.

### **Role of Company Secretary in Transmission of shares**

1) i presume father in law died intestate . Obtain succession certificate from district court in name of the legal heirs for the shares

2) On basis of succession certificate and death certificate apply for transmission of shares in name of legal heirs

**3)Time limit for issue of share certificate on transmission (Section-56(4)):** Every company, unless prohibited by any provision of law or of any order of any Court, Tribunal or other authority, shall, within One month deliver, the certificates of all shares transmitted after the application for the registration of the transmission of any such shares received.

**4. Time Limit for Refusal of registration of Transmission:** Provisions related to Refusal of registration and appeal against refusal is given in Section 58 of the Companies Act, 2013.Power of refusal to register transmission of shares is to be exercised by the company within thirty (30) days from the date on which the intimation of transmission is delivered to the company.

**5. Time Limit for appeal against refusal to register Transmission by Private Company:** As per section 58(3), the person who gave intimation of the transmission by operation of law, may appeal to the Tribunal against the refusal within a period of thirty (30) days from the date of receipt of the notice from the Company or in case no notice has been sent by the company, within a period of sixty (60) days from the date on which the intimation of transmission was delivered to the company.

### **Difference between Transfers of Shares and Transmission of Shares.**

<b>Comparison Basis</b>	<b>Transfer of Shares</b>	<b>Transmission of Shares</b>
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Definition	The share transfer is done voluntarily by one party with another.	Share transmission takes place by law in an instance when the member of the company is not alive or has become insolvent.
Reason for the transfer or transmission	It's a voluntary decision of the members of the company.	In case of insolvency, death or inheritance of the member.
Initiated by	Transferor or Transferee.	Legal heir or receiver.
Liability	The liabilities of transferor cease on the completion of transfer.	Original liability of shares continues to exist.
Consideration	Adequate consideration must be paid.	No consideration.
Stamp duty	Payable on the market value of shares.	No need to pay.
Execution of valid transfer deed.	Yes.	No.