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B.COM HONOURS	SEMESTER 4	CALICUT UNIVERSITY	COURSE CODE: COM4CJ203

CORPORATE REGULATIONS AND GOVERNANCE

EXAM REVISION NOTES

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MODULE I

INTRODUCTION TO COMPANIES ACT 2013

Enhanced Corporate Governance Board Accountability

Institutionalization of Corporate Social Responsibility (CSR)

Meaning, Definition, and Legal Characteristics of a Company: Etymologically, the term "company" is derived from the Latin roots "com" (together) and "panis" (bread), historically denoting an association of merchant guild members who gathered together over meals to negotiate commercial transactions.

- **2. Limited Liability:** In a company limited by shares, the financial liability of a member is strictly confined to the unpaid amount on the shares held by them.
- **3. Perpetual Succession:** An incorporated company enjoys unending statutory existence uninterrupted by the death, insolvency, mental incapacity, bankruptcy, or retirement of its human members.
- **4. Artificial Legal Person:** A company is created by legal fiction.
- **5. Common Seal (Optional Under 2013 Act):** Historically, the common seal served as the official physical signature of the company.

Lifting or Piercing the Corporate Veil: Exceptions to the Rule: While the veil of incorporation serves as a legitimate shield protecting honest enterprise and encouraging capital investment, unscrupulous individuals sometimes abuse this legal fiction to commit fraud, evade taxes, perpetrate illegal acts, or defeat statutory obligations.

- **Misstatements in Prospectus (Sec 34 35):** Misstatements in Prospectus (Sec 34 35): Directors, promoters, and experts who authorize false, misleading statements in a prospectus face unlimited personal civil liability for investor losses, alongside criminal liability under Sec 447.
- **Fraudulent Conduct of Business (Sec 339):** In winding up, if business was carried on with intent to defraud creditors, the Tribunal may declare guilty directors personally liable without limitation for company debts.
- **Fraudulent Application for Company Name Removal (Sec 251):** Directing personal liability on promoters/directors who deceive the ROC during strike-off.
- **Punishment for Fraud (Sec 447):** Imposes imprisonment up to 10 years and fines up to 3 times the fraud amount for any officer abusing the corporate shell.
- **Prevention of Fraud Improper Conduct:** Prevention of Fraud Improper Conduct: Where a company is a mere cloak, device, or sham to evade a legal contract (*Gilford Motor Co.

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MODULE II

FORMATION OF COMPANIES

Promotion and the Legal Status of Promoters: The creation of a corporate body is a multifaceted process that originates long before the Registrar of Companies (ROC) issues a Certificate of Incorporation.

The Four Sequential Stages in the Formation of a Company

Articles of Association (AoA) and the Internal Regulatory Doctrines: The Articles of Association (AoA) constitute the internal rulebook and administrative bye-laws of the company.

- **Legal Hierarchy Nature:** ; Subordinate bye-laws; internal rules governing day-to-day administrative execution.
- **Scope of Regulation:** ; Governs internal relationship between company, directors, and shareholders.
- **Ultra Vires Doctrine:** ; Acts beyond the AoA (but within the MoA) can be ratified by shareholders in general meeting.
- **Alteration Procedure:** ; Flexible: Can be altered by passing a Special Resolution under Section 14.

Prospectus: Public Offering, Types, and Liabilities for Misstatement: When a public company seeks to raise capital from the general public, it issues a Prospectus (Section 2(70)). A prospectus is any document described or issued as a prospectus, including any notice, circular, advertisement, or other document inviting offers from the public for the subscription or purchase of securities.

Deemed Prospectus (Section 25)

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MODULE III

MANAGEMENT OF COMPANIES

Board of Directors: Jurisprudential Conception Legal Status: A company is an incorporeal artificial entity created by statutory fiction. While endowed with separate legal personality and the capacity to own property, incur debt, and sue in its own name, it lacks biological faculties.

Directors as Managing Partners

Director Identification Number (DIN) and Appointment Formalities: To eliminate corporate identity fraud, dummy directorships, and ensure central regulatory tracking, the Companies Act 2013 mandates that every individual seeking directorship must possess a Director Identification Number (DIN) under Section 152(3).

Vacation of Office (Section 167): The office of a director becomes automatically vacant if: (a) they incur any disqualification specified in Section 164; (b) they absent themselves from all Board meetings held during a period of 12 consecutive months, with or without seeking leave of absence; (c) they act in contravention of Section 184 relating to disclosure of interest; (d) they fail to disclose interest in any contract; or (e) they are removed in pursuance of the provisions of the Act.

Operational Rules Governing KMP

- **Individual Holding Single KMP Post:** An individual cannot be appointed as Chairman as well as Managing Director/CEO of the same company simultaneously, unless the Articles provide otherwise, or the company does not carry on multiple businesses.
- **Prohibition on Dual Employment:** A whole-time KMP cannot hold office in more than one company simultaneously, except in its subsidiary company.
- **Casual Vacancy:** Any vacancy in the office of KMP must be filled by the Board within a maximum period of 6 months from the date of such vacancy.

Accountability

Chronological Evolution of Corporate Governance Committees and Regulatory Codes

- **Cadbury Committee Report (1992):** United Kingdom (Committee on Financial Aspects of Corporate Governance); The global fountainhead of modern corporate governance.
- **Kumar Mangalam Birla Committee (1999):** India (SEBI Appointed); Formulated India's first formal corporate governance code, codified as Clause 49 of the Listing Agreement: (i) Mandated optimum combination of executive and non-executive directors; (ii) Qualified, independent Audit Committees; (iii) Mandatory quarterly financial reporting; (iv) Management Discussion and Analysis (MD A) report.
- **Narayana Murthy Committee (2003):** India (SEBI Review); Strengthened Clause 49: (i) Mandatory formal whistle-blower protection policies; (ii) Strict audit committee scrutiny of related-party transactions; (iii) Risk management frameworks; (iv) CEO/CFO certification of financial statements.
- **Naresh Chandra Committee (2002):** India (Ministry of Corporate Affairs); Addressed auditor independence and corporate auditing integrity following global accounting frauds: (i) Mandatory rotation of audit partners; (ii) Prohibition on statutory auditors providing consulting/non-audit services to audit clients; (iii) Strict qualification standards for independent directors.

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MODULE IV

COMPANY MEETINGS AND WINDING UP

Juridical Foundations of Corporate Meetings Internal Democracy: An incorporated company is an artificial legal person that operates under the rule of the majority. Because ownership is severed from management and equity holders are geographically dispersed across capital markets, the collective sovereignty of shareholders must be articulated through formally convened General Meetings.

- **1. Proper Convening Authority:** A meeting must be called by an authorized convening organ.
- **4. Proper Statutory Quorum (Section 103):** Quorum represents the minimum number of members whose personal presence is indispensable to legally constitute a valid meeting.

B. Extraordinary General Meeting (EGM) (Section 100): An Extraordinary General Meeting (EGM) is any general meeting of shareholders convened between two consecutive AGMs to transact urgent, non-routine business that cannot wait until the next AGM.

- **Nature of Business:** An EGM transacts exclusively Special Business.

Classification of Corporate Resolutions

- **Ordinary Resolution(Section 114(1)):** ; Adoption of audited financial accounts; declaration of dividend; appointment of statutory auditors; election of rotational directors; increase of authorized capital; appointment of Managing Director.
- **Special Resolution(Section 114(2)):** ; Alteration of Memorandum of Association (Name, Objects, Registered Office); alteration of Articles of Association; buyback of shares; reduction of share capital; loans to directors; voluntary winding up.
- **Resolution Requiring Special Notice(Section 115):** ; Appointing an auditor other than the retiring auditor; expressly providing that a retiring auditor shall not be re-appointed; removing a director before the expiry of their tenure under Section 169.

Judicial Grounds Under the "Just and Equitable" Clause (Section 271(e)): The "Just and Equitable" ground confers wide equitable discretion upon the Tribunal. Courts exercise this power under established common law principles:

- **2. Loss of Corporate Substratum:** , 1882).
- **3. Oppression of Minority:** Where the majority shareholders adopt a persistent, oppressive course of conduct designed to squeeze out minority investors (Loch v.
- **4. Bubble / Sham Entity:** , 1866).

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