DRAFTING, PLEADINGS AND APPEARANCES

JUDICIAL AND ADMINISTRATIVE FRAMEWORK

Legislative Functions Of Administration

- In view of the multifarious activities of a welfare state, the legislature cannot work out all the details to fit the varying aspects of complex situations.
- **It must necessarily delegate the working out of details to the executive or any other agency.**
- Therefore, one of the most significant developments of the present century is the growth in the legislative powers of the executives.
- **There is no such general power granted to the executive to make law, it only supplements the law under the authority of legislature.**
- **This supplementary legislation is known as 'delegated legislation' or 'subordinate legislation'.**

Necessity and Constitutionality

The Parliament **cannot supply the necessary quantity and quality legislation** for effectively running the country. Some of the limitation of the law making role of the Parliament are:

i) The Parliament sits only for a limited period of time whereas the complexity of modern administration requires that there must be a law-making body available on tap.

ii) The bulk of the business of the Parliament has increased and it has no time for the consideration of complicated and technical matters.

iii) Certain matters covered by delegated legislation are of technical nature which require handling by experts.

iv) Parliament while deciding upon a certain course of action cannot foresee the difficulties, which may be encountered in its execution. Accordingly various statutes contain a '**removal of difficulty clause'** empowering the administration to remove such difficulties by exercising the powers of making rules and regulations.

v) The practice of delegated legislation introduces **flexibility in the law**. The rules and regulations, if found to be defective, can be modified quickly. Experiments can be made and experience can be profitability utilized.

Constitutionality

Under the Constitution of India, Articles 245 and 246 provide that the legislative powers shall be discharged by the Parliament and State legislature. The power of Legislature to delegate its legislative power is not prohibited in the Constitution.

Delegation is permissible so long as the Legislature does not abdicate its law making role in favour of the executive. When a legislature is given plenary power to legislate on a particular subject, there must also be an implied power to make laws incidental to the exercise of such power.

There are various types of delegation of legislative power:

1. **Skeleton delegation:** In this type of delegation of legislative power, the enabling statutes set out broad principles and empowers the executive authority to make rules for **carrying out the purposes of the Act.**

2. **Machinery type:** This is the most common type of delegation of legislative power, in which the Act is supplemented by machinery provisions, that is, the power is conferred on the concerned department of the Government to prescribe:
   - **i) The kind of forms**
   - **ii) The method of publication**
   - **iii) The manner of making returns, and**
   - **iv) Other administrative details**

Another form of delegated legislation is the '**removal or difficulty clause'** in any Act itself.

Requirements

The following requirements are made necessary for the exercise of the delegated authority under different statutes:

i. Prior consultation of interests **likely to be affected** by proposed delegated legislation. Legislatures while delegating powers abstain from laying down elaborate procedure to be followed by the delegates but certain Acts do however provide that interested bodies must be consulted before the formulation and application of rules and regulations.

ii. **Prior publicity of proposed rules and regulations:** Another method is antecedent publicity of statutory rules to inform those likely to be affected by the proposed rules and regulations so as to enable them to make representation for consideration of the rule-making authority.

iii. **Publication of Delegated Legislation:** Adequate publicity of delegated legislation is absolutely necessary to ensure that law may be ascertained with reasonable certainty by the affected persons.

iv. Laying: After delegation is sanctioned in an Act, the exercise of this power by the authority concerned receives the attention of the House of the Parliament. Indeed, it is this later stage of parliamentary scrutiny of the delegated authority and the rules as framed in its exercise that is more important.

****

Modes of control over delegated legislation

The practice of conferring legislative powers upon administrative authorities though beneficial and necessary is also dangerous because of the possibility of abuse of powers

and other attendant evils. There is consensus of opinion that proper precautions must be taken for ensuring proper exercise of such powers.

The control of delegated legislation may be one or more of the following types:

1) **Procedural**

Control of delegated legislation by procedure:

- From the citizen's point of view the most beneficial safeguard against the dangers of the misuse of delegated legislation is the **development of a procedure to be followed by the delegates while formulating rules and regulations.**
- The Acts of Parliament delegating legislative powers to other bodies or authorities often provide **certain procedural requirements to be complied** with by such authorities while making rules and regulations etc.
- These formalities may consist of consultation with interested bodies, publication of draft rules and regulations, hearing of objections, considerations of representations etc.
- **If the formal requirements are mandatory in nature and are disregarded by the said authorities then the rules etc. so made by these authorities would be invalidated by the Judiciary.**
- **In short, subordinate legislation in contravention of mandatory procedural requirements would be invalidated by the court as being ultra vires the parent statute.**

2) **Parliamentary**

Parliamentary control in India over delegation:

- Discretion as to the formulation of the legislative policy is prerogative and function the legislature and it **cannot be delegated** to the executive.
- **Discretion to make notifications and alterations in an Act while extending it and to effect amendments or repeals in the existing laws is subject to the condition precedent that essential legislative functions cannot be delegated.**

Parliamentary control of delegated legislation is exercised:

A) Through Parliamentary debate on the provisions of a Bill providing for delegation. During such debates the issue of necessity of delegation and the contents of the provisions providing for delegation can be taken up.

The Bills tabled in the Parliament are generally accompanied with Memoranda of Delegated Legislation in which;

i) full purpose and effect of the delegation of power to the subordinate authorities,
ii) the points which may be covered by the rules,
iii)the particulars of the subordinate authorities or the persons who are to exercise the delegated power, and

B) By getting them scrutinized by **Parliamentary Committee** of the Rules, Regulations, Bye-laws and Orders. Under the Rule of Procedure and Conduct of Business of the Lok

Sabha, provision has been made for a Committee which is called 'Committee on Subordinate Legislation'. It is usually presided over by a Member of the Opposition.

The Committee examines whether:-

i) the statutory rules, orders, bye-laws, etc. made by any-making authority, and reports to the House whether the delegated power is being properly exercised within the limits of the delegated authority, whether under the Constitution or an Act of Parliament.

ii) the Subordinate legislation is in accord with the general objects of the Constitution or the Act pursuant to which it is made;

iii) it contains matter which should more properly be dealt within an Act of Parliament;

iv) it contains imposition of any tax;

v) it, directly or indirectly, ousts the jurisdiction of the courts of law;

vi) it gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly confer any such power;

vii) it is constitutional and valid;

viii) it involves expenditure from the Consolidated Fund of India or the Public Revenues;

ix) its form or purpose requires any elucidation for any reason;

x) it appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made; and

there appears to have been unjustifiable delay in its publication on its laying before the Parliament.

C) By the Laying requirement (discussed above). The members are informed of such laying in the daily agenda of the House.

The advantage of this procedure is that Members of both the Houses have such chances as to –

i) modify or repeal the enactment under which obnoxious rules and orders are made, or
ii) revoke rules and orders themselves.

3) Judicial

Judicial control over delegated legislature can be exercised at the following two levels :-

1) Delegation may be challenged as unconstitutional; that is the delegation can be challenged in the courts of law as being unconstitutional, excessive or arbitrary or
2) That the Statutory power has been improperly exercised.

****

Tribunals

Tribunals in India are a part of the **Executive branch of the Government** which are assigned with the powers and duties to act in judicial capacity for settlement of disputes.

Part XIV of the Constitution of India makes provisions for establishment and functioning of the Tribunals in India. They are quasi-judicial bodies that are less formal, less expensive and enable speedy disposal of cases.

Some of the important Tribunals are as follows:

1. Debt Recovery Tribunal (DRT)

The Debt Recovery Tribunals have been constituted under Section 3 of the Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993. The original aim of the Debts Recovery Tribunal was to receive claim applications from Banks and Financial Institutions against their defaulting borrowers. (DRT) was established for expeditious adjudication and recovery of debts due to banks and financial institutions in order to reduce the non-performing assets of the Banks and Financial Institutions.

2. National Company Law Tribunal

National Company Law Tribunal (NCLT) is a quasi-judicial body exercising equitable jurisdiction, which was earlier being exercised by the High Court or the Central Government.

It has been established by the Central government under section 408 of the Companies Act, 2013 with effect from 1st June 2016. The Tribunal has powers to regulate its own procedures.

The establishment of the National Company Law Tribunal (NCLT) consolidates the corporate jurisdiction of the following authorities:

i) Company Law Board
ii) Board for Industrial and Financial Reconstruction.
iii) The Appellate Authority for Industrial and Financial Reconstruction
iv) Jurisdiction and powers relating to winding up restructuring and other such provisions, vested in the High Courts.

3. Consumer Forum

To protect the rights of the consumers in India and establish a mechanism for settlement of consumer disputes, a three-tier redressal forum containing District, State and National level consumer forums has been set up.

- The District Consumer Forum deals with consumer disputes involving a value of upto Rupees twenty lakh.
- State Commission has jurisdiction in consumer disputes having a value of upto Rs.1 crore.
- The National Commission deals in consumer disputes above Rs.1 crores, in respect of defects in goods and or deficiency in service.

It is important to note that consumer courts do not entertain complaints for alleged deficiency in any service that is rendered free of charge or under a contract of personal service.

4. Motor Accident Claims Tribunal (MACT)
The Motor Accidents Claims Tribunal deals with matters related to compensation of motor accidents victims or their next of kin. Victims of motor accident or legal heirs of motor accident victims or a representing Advocate can file claims relating to loss of life/property and injury cases resulting from Motor Accidents. Motor Accident Claims Tribunal are presided over by Judicial Officers from the State Higher Judicial Service and are under direct supervision of the Hon'ble High Court of the respective state.

5. Central Administrative Tribunal (CAT)
Central administrative Tribunal is a multi-member body to hear on cases filed by the staff members alleging non-observation of their terms of service or any other related matters and to pass judgments on those cases. This Tribunal established in pursuance of the amendment of Constitution of India by Articles 323A.

6. National Green Tribunal (NGT)
National Green Tribunal was established for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation of damages to persons and property and for related matters.

****

Types of Courts
Broadly speaking there are two types of courts - **civil and criminal**. The civil courts deal with matters of **civil nature** whereas the criminal courts deal with **criminal matters**. Then there are Constitutional Courts.

In India, we have courts at various levels – different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them.

They form a hierarchy with:

- the Supreme Court of India at the top, followed by
- High Courts of respective states with
    - District and Sessions Judges sitting in District Courts and
    - Magistrates of Second Class and Civil Judge (Junior Division) at the bottom.

Supreme Court of India
Supreme Court of India is the highest level of court of Indian juridical system which is established as per Part V, Chapter IV of the Constitution of India. **It plays the role of the guardian of the Constitution of India.**

The Supreme Court exercises original jurisdiction exclusively to hear the cases of disputes between the Central Government and the State Governments or between the States. The Supreme Court has original but not exclusive jurisdiction for enforcement of Fundamental Rights as per the provision of Constitution of India through the way of writs. **This court is also an appellate court.**

Supreme Court has the power to withdraw or transfer any case from any High Court. The Supreme Court has the authority to review any verdict ordered. **The order of Supreme Court is binding on all courts across India.**

Advisory jurisdiction: The Supreme Court has the option to report its opinion to the President about any questions raised of public importance referred to it by the President.

High Courts of India
Article 226 of Constitution of India has given the power to the High Courts to issue different writs for the enforcement of Fundamental Rights guaranteed under the Constitution. High Courts also hear appeals against the orders of lower courts.

All the High Courts have the power to pronounce punishment for contempt of court. The High Courts are confined to the jurisdiction of State, group of States or Union Territory. The subordinate courts are covered by the administrative power of the High Courts under which they function.

Lower Courts of India
The District Court in India are established by the respective State Government in India for every district or more than one district taking into account the number of cases, population distribution in the district.

These courts are under administrative control of the High Court of the State to which the district concerned belongs.

The court at the district level has a **dual structure** that runs parallel:

- one for the civil side and
- one for the criminal side.

The **civil side** is simply called the **District Court** and is headed by the **district judge**. There are additional district judges and assistant district judges who are there **to share the additional load of the proceedings of District Courts.** These additional district judges have equal power like the district judges for the jurisdiction area of any city which has got the status of metropolitan area as conferred by the state government.

These district courts have the additional jurisdictional authority of appeal handling over the subordinate courts in their jurisdiction. The subordinate courts covering the civil cases, in this aspect are considered as Junior Civil Judge Court, Principal Junior and Senior Civil Judge Court, which are also known as **Subordinate Courts**. All these courts are treated with ascending orders.

The **criminal court** at the **district level** is headed by the **Sessions Judge**. Usually there are Additional Sessions Judges as well in the Court **to share the workload of the Sessions Judge.** The subordinate courts covering the criminal cases are Second Class Judicial Magistrate Court,

First Class Judicial Magistrate Court, and Chief Judicial Magistrate Court along with family courts which are established to deal with the issues related to disputes of matrimonial issues only. The status of Principal Judge of family court is at par with the District Judge.

The court of the district judges is the highest civil court in a district. It exercises both judicial and administrative powers.

Revenue Courts

There is a government apparatus to deal with **revenue matters**. These are 'courts' but are not a part of Judiciary because they come under the **administration of the State governments. Revenue courts deal with matters pertaining to stamp duty, registration etc.**

At the lowest level, we have the 'Tehsildar' or Assistant Tehsildar. Above it is the office of the 'Sub-Divisional Officer' (SDO). Then comes the office of District Collector and above it is the 'Board of Revenue'. The Board of Revenue is the highest decision making body at the State level.

****

Procedural aspects of working of CIVIL COURTS

1. Jurisdiction

The Civil Procedure Code,1908 stipulates that the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which cognizance is either expressly or impliedly barred.

The inherent lack of jurisdiction cannot be cured even by consent of parties, which means if the court does not have any jurisdiction at all; the parties cannot subsequently confer it by an agreement. The onus of proving that the court does not have jurisdiction lies on the party who disputes the jurisdiction.

The jurisdiction is basically of three types.

(a) Pecuniary
(b) Territorial: The purpose of territorial jurisdiction is to ensure smooth and speedy trial of the matter with least inconvenience to the affected parties.

Hence the suit cannot be filed at any place depending on wish of the party. The court concern should have territorial jurisdiction. The territorial jurisdiction is conferred on a court by following factors:-

(i) By virtue of the fact of residence of the Defendant
(ii) By virtue of location of subject matter within jurisdiction of the court.
(iii)By virtue of cause of action arising within jurisdiction of such court.

(c) As to subject matter: For example, Motor Vehicles Act provides for special tribunal for matters under it. Similarly disputes relating to terms of service of government servants go to Administrative Tribunals.

The first and fundamental rule governing jurisdiction is that suit shall be instituted in the court of lowest grade competent to try it.

2. Stay

With the object of preventing courts of concurrent jurisdiction simultaneously trying two parallel suit in respect of the same matter in issue, Civil Procedure Code has vested inherent power in the court to stay the suit.

The pendency of a suit in Foreign Court does not preclude the courts in India for trying a suit founded on same cause of action. The application for stay of suit is maintainable at any stage of the suit. The court does not have option to refuse on ground of delay.

3. Res Judicata and bar to further Suits

The principle of res judicata aims at bringing finality to the litigation. The basic principle is that a final judgement rendered by a court of competent jurisdiction is conclusive on merits as to rights of the parties and constitutes an absolute bar against subsequent action involving the same claim.

4. Plaint

The entire legal machinery under the Civil Law is set in motion by filing of plaint and hence plaint is the actual starting point of all pleadings in a case. Though the law has not laid down any tight jacket formats for plaints, its minimum contents have been prescribed.

The Plaintiff is required to annex list of documents which the Plaintiff has produced alongwith the plaint and shall also submit additional copies as may be required. Where the Plaintiff sues upon a document in his possession or power he shall produce it in the court when plaint is presented.

If the document is not in his possession, the Plaintiff will state in whose possession it is.

If after submitting the plaint the court finds that it should be submitted before some other court the plaint is returned, and intimation thereof is given to the Plaintiff.

The court has power to reject the plaint on following grounds:

(i) Where it does not disclose the cause of action.

(ii) Where the relief claimed is undervalued and Plaintiff fails to correct the valuation within the time fixed.
(iii) If the relief is properly valued but insufficient court fee / stamp is paid and the Plaintiff fails to make good such amount.
(iv) Where the suit appears to be barred by any law, from the statements in the plaint.

The rejection of plaint on aforesaid grounds does not of its own force bar the Plaintiff from presenting a fresh plaint.

5. Summons
When the suit is duly instituted summons may be issued to Defendant to appear and answer the claim.

Summons is an instrument used by the court to commence a civil action or proceedings and is a means to acquire jurisdiction over party. It is a process directed to a proper officer requiring him to notify the person named, that an action has been commenced against him, in the court from where process is issued and that he is required to appear, on a day named and answer the claim in such action.

Defendant to whom a summons has been issued may appear in person or by a pleader duly instructed or by a pleader accompanied by some person who is able to answer all questions. To expedite the filing of reply and adjudication of claim, the court may direct filing of written statement on date of appearance and issue suitable summons for that purpose. Failure to do so may result in Ex-parte judgement.

6. Appearance of Parties
On the day fixed in the summons the Defendant is required to appear and answer and the parties shall attend the court unless the hearing is adjourned to a future day fixed by the court.

If the Defendant is absent court may proceed **ex-parte.** Where on the day so fixed it is found that summons has not been served upon Defendant as consequence of failure of Plaintiff to pay the court fee or postal charges the court may dismiss the suit.

Where neither the Plaintiff nor the Defendant appears the court may dismiss the suit. Such dismissal does not bar fresh suit in respect of same cause of action.

If the Defendant appears and Plaintiff does not appear and the Defendant does not admit the Plaintiff's claim wholly or partly, court shall pass order dismissing the suit.

It Defendant appears and admits part or whole of the claim the decree will be passed accordingly. If the Plaintiff shows sufficient cause reopening of the matter is mandatory.

7. Adjournments
Courts have the power to adjourn a case and take it up on a future date. Adjournments frequently sought by the parties contribute significantly to the delays caused in deciding the

matters. The granting of adjournments is at the discretion of the court. The rules governing adjournments are considerably strict if applied in their true spirit.

8. Ex-parte Decrees

A decree against the Defendant without hearing him or in his absence/in absence of his defence can be passed under the following circumstances:-

(i) Where any party from whom a written statement is required fails to present the same within the time permitted or fixed by the court, as the case may be the court shall pronounce judgement against him, or make such order in relation to the suit as it thinks fit and on pronouncement of such judgement a decree shall be drawn up.

(ii) Where Defendant has not filed a pleading, it shall be lawful for the court to pronounce judgement on the basis of facts contained in the plaint, except against person with disability.

(iii) Where the Plaintiff appears and Defendant does not appear when suit is called up for hearing and summons is property served the court may make an order that suit will be heard ex parte.

If an exparte decree is passed and the Defendant satisfies that he was prevented by sufficient cause then he has the following remedies open:

(i) Prefer appeal against decree.
(ii) Apply for Review.
(iii)Apply for setting aside the Ex-parte Decree.

The words "Sufficient Cause" has not been defined and it will depend on facts and circumstances of each case.

9. Interlocutory Proceedings

The period involved between initiation and disposal of litigation is substantially long. The intervention of the court may sometimes be required to maintain the position as it prevailed on the date of litigation. In legal parlance it is known as **"status quo".**

10. Written Statement

The Defendant is required to file a written statement of his defence at or before the first hearing or such time as may be allowed along with the list of documents relied upon by him.

If Defendant disputes maintainability of the suit or takes the plea that the transaction is void it must be specifically stated. A general denial of grounds alleged in the plaint is not sufficient and denial has to be specific. The denial should not be an evasive denial but it must be on point of substance. Every allegation of fact in the plaint if not denied specifically or by necessary implication or stated to be not admitted in the pleading shall be deemed to be admitted.

11. Examination of Parties

Examination of parties is an important stage after appearance. At first hearing of the suit the court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement. Such admissions and denials shall be recorded. The examination may be an oral examination.

12. Production of documents
The parties or their pleaders shall produce at or before the settlement of issues, all documentary evidence of every description in their possession or power, on which they intend to rely, and which has not been filed in the court or ordered to be produced.

No documentary evidence in the possession or power of any party, which should have been but has not been produced in accordance with the aforesaid requirements, shall be subsequently admissible.

13. Framing of Issues
The court shall at first hearing, after reading the plaint and written statement ascertain upon what material propositions of facts or law parties are at variance.
Court is required to pronounce judgement on all the issues. Issues may be framed from allegations made on oath by the parties or in answer to interrogatories or from contents of documents produced by either party.

14. Summoning and Attendance of Witnesses
On the date appointed by the court and not later than 15 days after the date on which issues are settled parties shall present in court a list of witnesses whom they propose to call either to give evidence or to produce documents.

A witness may be examined on commission also. If signature of witness is not taken on any part of deposition or correction it does not make deposition invalid. The court may at any stage of a suit inspect any property or thing concerning which any question may arise.

The court also has the power to recall any witness who is already called earlier and put such questions as deemed fit. Court is also having suo moto powers.

Where a person to whom summons has been issued either to attend or to give evidence or production of any documents and his deposition or production is material and person has failed to attend without lawful excuse, court may issue orders for arrest either with or without bail. If the witness appears such orders may be withdrawn.

15. Affidavits
The court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit or affidavit of any witness may be read at hearing, on such condition, as court thinks reasonable.

Affidavit shall contain only such facts as the deponent is able of his own knowledge to prove except on interlocutory applications on which statement of belief may be admitted

provided grounds are stated. The affidavits have to be properly verified to avoid any dispute at a later stage.

16. Final Argument
Once the documents have been exhibited in the court and the witness(es) of both the sides examined and cross-examined, the stage is set for 'final arguments'.

It allows both the sides to present its case after taking into account the submissions made by the witnesses of the other party and the documents produced by it. It can, therefore, be said to be an opportunity for both the sides to present a summary of their case or defence, as the case may be.

17. Judgement
Judgement means the statement given by the judge on ground of which a decree is passed. The court after the case has been heard shall pronounce judgement in open court either within one month of completion of arguments or as soon thereafter as may be practicable, and when the judgement is to be pronounced judge shall fix a day in advance for that purpose.

Where judgement is not pronounced within 30 days from the date on which hearing of case was concluded, the court shall record the reasons for such delay.

18. Decree And Execution
After the decree is passed the process of execution which involves actual implementation of the order of the court through the process of the court starts the entire process of executing of decree.

****

Procedural aspects of working of <u>CRIMINAL COURTS:</u>
Code of Criminal Procedure (CrPC), 1973 is the procedural law for conducting a criminal trial in India. The procedure includes the manner for collection of evidence, examination of witnesses, interrogation of accused, arrests, safeguards and procedure to be adopted by police and courts, bail, the process of criminal trial, a method of conviction, and the rights of the accused of a fair trial by principles of natural justice.

A criminal court is usually set in motion with the registration on a First Information Report (FIR) under the CrPC. Indian Penal Code (IPC) is the primary penal law of India, which applies to all offences. Indian Evidence Act is a comprehensive, treatise on the law of evidence, which is used in the trial, the manner of production of the evidence in a trial, and the evidentiary value which can be attached to such evidence.

TYPES OF CRIMINAL TRIAL

According to the Code of Criminal Procedure, **a criminal trial is of three types**. Depending upon the type of criminal trial the different stages of a criminal trial are discussed below.

1. Warrant Cases

According to Section 2(x) of Code of Criminal Procedure, 1973 a warrant case is one which relates to **offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years.**

The trial in warrant cases starts either by the filing of FIR in a police station or by filing a complaint before a Magistrate. Later, if the Magistrate is satisfied that the offence is punishable for more than two years, he sends the case to the Sessions court for trial. The process of sending it to Sessions court is called "committing it to Sessions court".

Important features of a warrant case are:

- **Charges must be mentioned in a warrant case**
- **Personal appearance of accused is mandatory**
- **A warrant case cannot be converted into a summons case**
- **The accused can examine and cross-examine the witnesses more than once.**
- **The Magistrate should ensure that the provisions of Section 207 are complied with. Section 207 of Cr. P.C. 1973, include the supply of copies such as police report, FIR, statements recorded or any other relevant document to the accused.**

The stages of trial in warrant cases are given from Section 238 to Section 250 of the Code of Criminal Procedure, 1973.

A. Different Stages of Criminal Trial in a Warrant Case when instituted by the police report

a. **First Information Report:** Under Section 154 of the Code of Criminal Procedure, an FIR or First Information Report is registered by any person. FIR puts the case into motion. An FIR is information given by someone (aggrieved) to the police relating to the commitment of an offense.
b. **Investigation:** The next step after the filing of FIR is the investigation by the investigating officer. A conclusion is made by the investigating officer by examining facts and circumstances, collecting evidence, examining various persons and taking their statements in writing and all the other steps necessary for completing the investigation and then that conclusion is filed to the Magistrate as a police report.
c. **Charges:** If after considering the police report and other important documents the accused is not discharged then the court frames charges under which he is to be tried. In a warrant case, the charges should be framed in writing.

d. **Plea of guilty:** Section 241 of the Code of Criminal Procedure, 1973 talks about the plea of guilty. After framing of the charges the accused is given an opportunity to plead guilty, and the responsibility lies with the judge to ensure that the plea of guilt was voluntarily made. The judge may upon its discretion convict the accused.
e. **Prosecution evidence:** After the charges are framed, and the accused pleads not guilty, then the court requires the prosecution to produce evidence to prove the guilt of the accused. The prosecution is required to support their evidence with statements from its witnesses. This process is called "examination in chief". The magistrate has the power to issue summons to any person as a witness or orders him to produce any document.
f. **Statement of the accused:** Section 313 of the Criminal Procedure Code gives an opportunity to the accused to be heard and explain the facts and circumstances of the case. The statements of accused are not recorded under oath and can be used against him in the trial.
g. **Defence evidence:** An opportunity is given to the accused to produce evidence so as to defend his case. The defense can produce both oral and documentary evidence.
h. **Judgement:** The final decision of the court with reasons given in support of the acquittal or conviction of the accused is known as judgement. In case the accused is acquitted, the prosecution is given time to appeal against the order of the court. When the person is convicted, then both sides are invited to give arguments on the punishment which is to be awarded. This is usually done when the person is convicted of an offence whose punishment is life imprisonment or capital punishment.

B. Stages of Criminal Trial in a Warrant Case when Private Complaint institutes case

It may sometimes happen that the police refuses to register an FIR.

In such cases one can directly approach the criminal court under Section 156 of CrPC.
On the filing of the complaint, the court will examine the complainant and its witnesses to decide whether any offence is made against the accused person or not.

After examination of the complainant, the Magistrate may order an inquiry into the matter by the police and to get him submit a report for the same.

- After examination of the complaint and the investigation report, the court may come to a conclusion whether the complaint is genuine or whether the prosecution has sufficient evidence against the accused or not.
- If the court does not find any sufficient material through which he can convict the accused, then the court will dismiss the complaint and record its reason for dismissal.
- After examination of the complaint and the inquiry report, if the court thinks that the prosecution has a genuine case and there are sufficient material and evidence with the prosecution to charge the accused then the Magistrate may issue a warrant or a summon depending on the facts and circumstances.

2. Summons Cases

According to Section 2(w) of Code of Criminal Procedure, 1973, those cases in **which an offence is punishable with an imprisonment of fewer than two years is a summons case.**

A summons case doesn't require the method of preparing the evidence. Nevertheless, a summons case can be converted into a warrant case by the Magistrate if after looking into the case he thinks that the case is not a summon case.

Important points about summons case

- **A summons case can be converted into a warrant case.**
- **The person accused need not be present personally.**
- **The person accused should be informed about the charges orally. No need for framing the charges in writing.**
- **The accused gets only one opportunity to cross-examine the witnesses.**

The different stages of criminal trial in a summon case are given from Section 251 to Section 259 of the Code of Criminal procedure.

Stages of Criminal Trial in a Summons Case

- **Pre-trial:** In the pre-trial stage, the process such as filing of FIR and investigation is conducted.
- **Charges:** In summons trials, charges are not framed in writing. The accused appears before the court or is brought before the court then the Magistrate would orally state the facts of the offense he is answerable.
- **Plea of guilty:** The Magistrate after stating the facts of the offence will ask the accused if he pleads guilty or has any defense to support his case. If the accused pleads guilty, the Magistrate records the statement in the words of the accused as far as possible and may convict him on his discretion.
- **Plea of guilty and absence of the accused:** In cases of petty offences, where the accused wants to plead guilty without appearing in the court, the accused should send a letter containing an acceptance of guilt and the amount of fine provided in the summons. The Magistrate can on his discretion convict the accused.
- **Prosecution and defense evidence:** In summons case, the procedure followed is very simple and elaborate procedures are eliminated. If the accused does not plead guilty, then the process of trial starts. The prosecution and the defense are asked to present evidence in support of their cases. The Magistrate is also empowered to take the statement of the accused.
- **Judgement:** When the sentence is pronounced in a summons case, the parties need not argue on the quantum of punishment given. The sentence is the sole discretion of the judge. If the accused is acquitted, the prosecution has the right to appeal. This right to appeal is also extended to the accused.

3. Summary Trial

Cases which generally take only one or two hearings to decide the matter comes under this category. The summary trials are **reserved for small offences to reduce the burden on courts and to save time and money.**

Those cases in which an offence is punishable with **an imprisonment of not more than six months can be tried in a summary way**. The point worth noting is that, if the case is being tried in a summary way, a person cannot be awarded a punishment of imprisonment for more than three months.

The trial procedure is provided from Section 260 to Section 265 of the Code of Criminal Procedure, 1973.

Stages of Criminal Trial in Summary Cases

- The procedure followed in the summary trial is similar to summons-case.
- Imprisonment up to three months can be passed.
- In the judgement of a summary trial, the judge should record the substance of the evidence and a brief statement of the finding of the court with reasons.

****

Appellate Forum

Any society that claims to uphold the supremacy of law will definitely have an elaborate provision for appeal under its various laws. This is because the majesty of judiciary notwithstanding, at the end of the day, judges are human beings and they can also be at fault just like any other individual.

Under the Civil Procedure Code, an appeal may be an appeal from order or an appeal from decree. All orders are not appealable and complete description of the appellable orders has been given in Order 43 of the Code of Civil Procedure . The appeal has to be preferred within prescribed limitation period before the appellate court. The limitation period for appeal to High Court is 90 days and appeal to District Court is 30 days. If the period of limitation is expired, then application for condonation of delay also is required to be moved.

The Code of Criminal Procedure, 1973 also contains elaborate provisions on appeals against a judgment or order of the criminal courts. Appeals to the Sessions Court and to the High Court are largely governed by the same set of rules and procedure. But the High Court being the highest appellate court within a state, has been given primacy in many cases where appeal is permissible.

Thus, District and Sessions Court and High Courts are the most common appellate forums.

The Supreme Court is the appellate court of last resort and enjoys very wide plenary and discretionary powers in the matters of appeal. Under Article 136 of the Constitution, the Supreme Court also enjoys a plenary jurisdiction in matters of appeal. However, Article 136 is not a regular forum of appeal at all. It is a residual provision which enables the Supreme Court to interfere with the judgment or order of any court or tribunal in India in its discretion.

Indian laws that have constituted Tribunals for dispute settlement or grievance redressal have constituted appellate forum. For example, under the Companies Act, 2013 the appellate forum is National Companies Law Appellate Tribunal (NCLAT) if one wants to challenge the order of National Company law Tribunal. Similarly, the appellate tribunal for SEBI is Securities Appellate Tribunal (SAT) and for Debt Recovery Tribunal is Debt Recovery Appellate Tribunal (DRAT). Some of the laws like the Companies Act provide that matters from appellate tribunal (NCLAT) will go directly to the Supreme Court and not to the High Courts.

As appeal by itself shall not operate as stay of proceedings under the decree or order, except when directed otherwise by the appellate court, the execution of decree passed by the lower court also shall not be stayed for the mere reason that appeal is preferred.

****

Reference and Revision under CRIMINAL PROCEDURE CODE

Reference
Section 395 of Code of Criminal Procedure, 1973 (Cr.P.C.) empowers a Court subordinate to the High Court to make a reference to the High Court under sub-section (1) if following conditions exist: –

(1) The case pending before it must involve a question as to validity of any Act, Ordinance or Regulation.
(2) Secondly, the Court should be of the opinion that such Act, Ordinance Regulation, as the case may be, is invalid or inoperative but has not been so declared by High Court or by the Supreme Court.
(3) While making a reference to the High Court, the Court shall refer to the case setting out its opinion and reasons for making a reference.

Revision
Sections 397 to 401 of the Code deal with the revisional jurisdiction of the High Court and the Sessions Court. Revision lies both in pending and decided cases and it can be filed before a High Court or a Court of Session. Very wide discretionary powers have been conferred on the Sessions Court and the High Court.

The purpose of revision is to enable the revision court to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of the inferior criminal court.

****

Reference, Review and Revision under CIVIL PROCEDURE CODE

References
Reference under Section 113 and Order XLVI, Civil Procedure Code –

(a) A reference to the High Court by a District Judge or Judge of a Court of Small Causes, under the provisions of Section 113 and Order XLVI, Rule I of the Code of Civil Procedure, should be made only when the presiding Judge entertains a reasonable doubt on the point of law or usage having the force of law referred, and not merely on the importunity of pleaders.
(b) A proviso has been added to Section 113 of the Code by the Codes of Civil Procedure and Criminal Procedure (Amendment) Act, 1951 (No. XXIV of 1951). Now where a Court finds that it is necessary for the disposal of a case to decide a question about the validity of any Act, Ordinance or Regulation and the Court is of the opinion that the Act, Ordinance of Regulation is invalid or inoperative but has not been so declared by the High Court of that State or the Supreme Court, the Court shall refer the matter in the manner laid down for the opinion of the High Court.

Review: Section 114 of Code of Civil Procedure 1908

Review means re-examination or re-consideration of its own decision by the very same court. An application for review may be necessitated by way of invoking the doctrine '*actus curiae neminem gravabit*' which means an act of the court shall prejudice no man. The other maxim is, '*lex non cogit ad impossibillia*' which means the law does not compel a man to do that what he cannot possibly perform.

Section 114 of the Code of Civil Procedure provides for a substantive power of review by a civil court and consequently by the appellate courts. Section 114 of the code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47, Rule 1 of the CPC.

The section is worded as follows:
114. Review- Subject as aforesaid, any person considering himself aggrieved –
(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,
(b) by a decree or order from which no appeal is allowed by, this Code, or
(c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

Condition precedent:

The conditions to invoke Section 114 have been dealt with in Order XLVII Rule 1 of the CPC. They are:

1. Discovery of new and important matter or evidence:

An application for review on the ground of discovery of new evidence should show that: (i) such evidence was available and of undoubted character; (ii) that the evidence was so material that its absence might cause a miscarriage of justice; and (iii) that it could not with reasonable care and diligence have been brought forward at the time of the decree. The applicant has, however, to satisfy that there was no remissness on his part.

2. Mistake or error apparent on the face of the record:
Whether there is a mistake or error apparent on the face of record in a case depends on individual facts. However, it must be borne in mind, that in order to come to the conclusion that there is a mistake or error apparent on the face of record, it must be one which is manifest on the face of record.

3. Any other sufficient reason:
The phrase "any other sufficient reason" means a reason at least analogous to those specified in the rule immediately previously, namely, excusable failure to bring to the notice of the court new and important matter or evidence or mistake or error apparent on the face of the record.

****

Difference between Appeal and Review:
It is well-settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, C.P.C. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate Court.

Scope of an application for review is much more restricted than that of an appeal. The Supreme Court in Lily Thomas vs. Union of India, AIR 2000 SC 1650**,** has held that the power of review can only be exercised for correction of a mistake and not to substitute a view and that the power of review could only be exercised within the limits of the statute dealing with the exercise of such power. <u>The review cannot be treated like an appeal in disguise.</u>

Where an appeal has been preferred a review application does not lie. But an appeal may be filed after an application for review.

Revision - Section 115 of Code of Civil Procedure 1908
The section reads as follows:
(1) The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears-

(a) To have exercised a jurisdiction not vested in it by law, or
(b) To have failed to exercise a jurisdiction so vested, or
(c) To have acted in the exercise of its jurisdiction illegality or with material irregularity,

the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto.
(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

Explanation: In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.

****

GENERAL PRINCIPLES OF DRAFTING AND RELEVANT SUBSTANTIVE RULES

Importance of drafting and conveyancing for the **Company Secretaries** could be well imagined as the company has to enter into various types of agreements with different parties and have to execute various types of documents in favor of its clients, banks, financial institutions, employees and other constituents.

The importance of the knowledge about drafting and conveyancing has been felt particularly for the three reasons:

- **For obtaining legal consultations**
  With the knowledge of drafting and conveyancing, better interaction could be had by the Company Secretaries while seeking legal advice from the legal experts before drafting the various kinds of documents.

- **For carrying out documentation departmentally**
  Knowledge of drafting and conveyancing for the Company Secretaries is also essential for doing documentation departmentally. A Company Secretary can make a better document with all facts known and judging the relevance and importance of all aspects to be covered therein.

- **For interpretation of the documents**
  A number of documents are required to be studied and interpreted by the Company Secretaries.

MEANING OF DRAFTING

Drafting may be defined as the synthesis of **law and fact** in a language form. Drafting, in legal sense, means an **act** of preparing the legal documents like agreements, contracts, deeds, will, power of attorney etc.

The process of drafting operates in two planes: **the conceptual and the verbal**. Besides seeking the right words, the draftsman seeks the right concepts. **Drafting, therefore, is first thinking and second composing.**

A proper understanding of drafting cannot be realized unless the nexus between the law, the facts, and the language is fully understood and accepted.

Drafting of legal documents requires, as a pre-requisite:

- the skills of a draftsman,
- the knowledge of facts and law so as to give a correct presentation of legal status, privileges, rights and duties of the parties, and obligations arising out of mutual understanding, terms and conditions, breaches and remedies etc.
- To collect, consolidate and co-ordinate the above facts in the form of a document,

GENERAL PRINCIPLES OF GOOD DRAFTING

1. A draftsman, before commencing the draft should conceive the whole design of it. In the first instance, must ascertain the names, description and addresses of the parties to the instrument. He must obtain particulars about all necessary matters which are required to form part of the instrument.

2. A draftsman should therefore begin by satisfying himself that he appreciates what he means to say, what he does not mean to say and what he need not say.

3. Document should be clear. Simple words should be used in drafting document.

4. The draft as such must be readily intelligible to layman. It is the duty of draftsman to try to imagine every possible combination of circumstances to which the words might apply, every conceivable misinterpretation that might be put on them and to take precaution accordingly.

5. The words, terms and expressions should be used consistently. The same words, terms or expressions should not be used in more than one sense.

6. Legal language should be to the utmost possible extent, precise and accurate.

7. There should be logical arrangement in the document and further the document should be divided into paragraphs as and when required.

8. Legal requirements should be complied with while drafting a document. The statements of negatives should generally be avoided. The order of the draft should be strictly logical. Legal language should be, to the utmost possible extent, precise and accurate.

9. The document should be concise and brief. The draftsman should express himself in clear and understandable words. The unduly lengthy document should be re-examined.

10. **Before finally passing a draft, the draftsman should reconsider it.** He must satisfy himself, before it is too late, that the draft means what he intends, and that its terms are clear and definite, that it does not say anything more or less than what is intended, that it takes into account all the circumstances that ought to be contemplated and that the requirements of the law have been properly observed.

In addition to above facts, following rules should also be followed while drafting the documents:

FOWLERS' FIVE RULES OF DRAFTING

According to Fowler, "anyone who wishes to become a good writer should endeavour, before he allows himself to be tempted by more showy qualities, to be direct, simple, brief, vigorous and lucid."

The principle referred to above may be translated into general in the domain of vocabulary as follows:

- Prefer the familiar word to the far fetched (familiar words are readily understood).
- Prefer the concrete word to the abstract (concrete words make meaning more clear and precise).
- Prefer the single word to the circumlocution (single word gives direct meaning avoiding adverb and adjective).
- Prefer the short word to the long (short word is easily grasped).
- Prefer the Saxon word to the Roman (use of Roman words may create complications to convey proper sense to an ordinary person to understand).
- Always prefer active voice to the passive voice in the drafting of documents.

Sketch or scheme of the draft document

It is always advisable to sketch or outline the contents of a document before taking up its drafting.

- "The first rule on which a draftsman must act is this-that before his draft is commenced, the whole design of it should be conceived;
- If he proceeds without any settled design, his draft will be confused and incoherent;
- He will be puzzled at every step of his progress in determining what ought to be inserted and what is to guide him in his decision because he does not know what his own object is.

Skelton draft and its self-appraisal:

- ❖ After the general scheme of the draft has been conceived, the draftsman should note down briefly the matters or points which he intends to incorporate in his intended draft.
- ❖ In the draft of the document is ready, the draftsman should appraise it with reference to the available facts, the law applicable in the case, logical presentation of the facts, use of simple language intelligible to layman, avoidance of repetition and conceivable mis-interpretation, elimination of ambiguity of facts, and adherence to the use of Fowlers' Rules of drafting so as to satisfy himself about its contents.

Special attention to be given to certain documents: Certain documents require extra care before taking up the drafting.

- ❖ For example, it must be ensured that contractual obligations are not contrary to the law in the document, where the facts so warrant to ensure.

- ❖ Further, in all the documents where transfer of immovable property is involved through any of the prescribed legal modes, it is necessary to ensure the perfect title of the transferor by causing investigation and searches in relation to such title

Expert's opinion: If the draft document has been prepared for the first time to be used again and again it should be got vetted by the experts to ensure its suitability and legal fitness.

SOME DO'S

The following things should be taken care while drafting the documents:

1. Reduce the group of words to single word and accordingly write shorter sentences;
2. Use simple verb for a group of words;
3. Choose the right word and avoid round-about construction;
4. Express the ideas in fewer words and avoid unnecessary repetition;
5. Prefer active to the passive voice sentences;
6. Know exactly the meaning of the words and sentences you are writing and constructing; and
7. Put yourself in the place of reader, read the document and satisfy yourself about the content, interpretation and the sense it carries.

SOME DONTS

The following things should be avoided while drafting the documents;

1. Avoid the use of words of same sound. For example, the words 'Employer' and 'Employee'. Donor, Donee, lessor, lessee, mortgagor, mortgagee
2. When the clause in the document is numbered, it is convenient to refer to any one clause by using single number for it.

3. Negative in successive phrases would be very carefully employed.

   (As restriction on rewetting of property by lessee)

4. Draftsman should avoid the use of words like “less than” or “more than”, instead, it is desirable to use “not exceeding”.

5. If the draftsman has provided for each of the two positions to happen without each other and also happen without, “either” will not be sufficient. In such situation, he should write “either or both” or express the meaning of the two in other clauses.

6. In writing and typing the following mistakes always occur which should be avoided:
   "And" and "or";
   "Any" and "my";
   "Know" and "now";
   "Appointed" and "Applied";
   "Present" and "Past" tense.

****

MEANING OF CONVEYANCING

Conveyancing is the art of drafting of deeds and documents whereby land or interest in land **i.e. immovable property**, is transferred by one person to another; but the drafting of commercial and other documents is also commonly understood to be included in the expression.

"Conveyance", as defined in clause 10 of Section 2 of the **Indian Stamp Act, 1899**, includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred ***inter*** **vivos**. **It does not include a will**. **Inter vivos means living persons.**

Thus, conveyance is an act of conveyancing or transferring any property whether movable or immovable from one person to another permitted by customs, conventions and law within the legal structure of the country.

Will is not a **inter vivos** transfer so it does not come in conveyancing

****

DISTINCTION BETWEEN DRAFTING AND CONVEYANCING

DRAFTING		CONVEYANCING
1. It is the way and manner of preparation of a document.	1.	It is also the way and manner of preparation of a document but more particularly related to the transfer of property.
2. It relates to every document as mentioned in General Clauses Act, 1897, Sale of Goods Act, 1930 and the Companies Act, 1956.	2.	It relates to the term 'Conveyance' as defined in Indian Stamp Act, 1899 and this conveyance is used for an instrument by which the property in question is transferred from one person to another.
3. It has wider meaning inclusive of preparation of every document. Ex – Summons, Noticed, Requisitions	3.	It is strictly related to the documents concerned with the transfer of property. Ex - Sale deed, Mortgage Deed etc.

CONTRACT

Section 2 (h) of Indian Contract Act, 1872 defines contract as an agreement enforceable by law. It is an agreement creating and defining obligations between the parties. As per Section 10 of Indian Contract act, 1872, all agreements are contracts if they are made by the free consent of parties for a lawful consideration and with a lawful object provided parties are competent to contract and such agreements have not been declared to be void.

DISTINCTION BETWEEN CONTRACT AND CONVEYANCE

CONTRACT		CONVEYANCE
1. There is an obligation of performance of the terms and conditions.	1.	Transaction is completed in case mortgage. There is no such obligation of performance m related to lease deed except in some cases. (is related to lease deed)
2. It consists of reciprocal promises and each party to the contract is bound to perform the promise made by him.	2.	There is no such promise and the title in respect to the property in question passes in favor of the vendee.
3. It creates right of action.	3.	It does not create any right of action but at the same time it alters the existing right.
4. In case of breach of contract, the aggrieved party may claim specific performance and compensation.	4.	There is no such eventuality.
5. It is governed by Indian Contract Act, 1872.	5.	It is governed by the Transfer of Property Act, 1882-

****

GUIDELINES FOR USE OF PARTICULAR WORDS AND PHRASES FOR DRAFTING AND CONVEYANCING

- There cannot be any clear cut rule which can be laid down as guideline for using the particular words and phrases in the conveyancing.

- However, the draftsman must be cautious about the appropriate use of the words and should be clear of its meaning.

- For general words refer to ordinary dictionary for ascertaining the meaning of the words.

- For legal terms refer to legal dictionary like Wharton's Law Lexicon or other dictionary (ies) is quite sufficient to meet the requirements of draftsman.

- As far as possible current meaning of the words should be used and if necessary, case law, where such words or phrases have been discussed, could be quoted in reference.

- Technical words may be used after ascertaining their full meaning

- The choice of the words and phrases should be made to convey the intention of the executor to the readers in the same sense he wishes to do.

****

Legal Implications and Requirements

Drafting of documents is very important part of legal documentation. Documents are subject to interpretation when no clear meaning could be inferred by a simple reading of the documents. The legal implications of drafting, therefore, may be observed as under:

- Double and doubtful meaning of the intentions given shape in the document.
- Inherent ambiguity and difficulties in interpretation of the documents.
- Difficulties in implementation of the objectives desired in the documents.
- Increased litigation and loss of time, money and human resources.
- Misinterpretation of facts leading to wrongful judgment.
- Causing harm to innocent persons.

The above implications could be avoided if drafting principles are fully adhered to by the draftsman as discussed above.

****

Having understood, the meaning of drafting and conveyancing it is necessary to familiarize with various terms such as:

- ❖ Deeds
- ❖ Documents
- ❖ Indentures
- ❖ Deed poll etc.

These terms are frequently used in legal parlance in connection with drafting and conveyancing.

DOCUMENT

"Document" as defined in Section 31(18) of General Clauses Act, 1894 means:

- any matter
- expressed or described upon any substance by means of letters, figures or marks, or by the more than one of those means,
- intended to be used, or which may be used, for the purpose of recording that matter.

Illustration:

- ➢ Writing is a document.
- ➢ Words printed, lithographed or photographed are documents.
- ➢ A map or plan is a document.
- ➢ An inscription on a metal plate or stone is a document.
- ➢ A caricature is a document.

Document is a paper or other material thing affording information, proof or evidence of anything.

All deeds are documents. But it is not always that all documents are deeds.

INSTRUMENT

Section 2 (14) of Indian Stamp Act, 1899 defines 'Instrument' as under:

"Instrument includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded. e.g: Indemnity Bond, Promissory Note, Lease deed, will etc.

"Instrument" includes awards made by Industrial Courts. "Instrument" does not include Acts of Parliament unless there is a statutory definition to that effect in any Act.

A will is an instrument. The word "instrument" in Section 1 of the Interest Act is wide enough to cover a decree.

****

DEED

There is no statutory definition of Deed. It is an instrument executed for the purpose of creating, transferring, limiting, extending, extinguishing of some right, title or interest of non-testamentary character.

Deed is the term normally used to describe all the instruments by which:

- two or more persons
- agree to affect any right or liability.

For example: Gift Deed, Sale Deed, Deed of Partition, Partnership Deed, Deed of Family Settlement, Lease Deed, Mortgage Deed and so on. Even a power of Attorney has been held in old English cases to be a deed. A bond is also included in the wide campass of the term deed.

A deed may be defined as a formal writing of a **non-testamentary** character which purports or operates to create, declare, confirm, assign, limit or extinguish some right, title, or interest.

The most suitable and comprehensive definition has been given by Norten on 'Deeds' as follows:

A deed is writing:

- on paper, vallum or parchment,
- sealed, and
- delivered, whereby an interest, right or property passes, or an obligation binding on some persons is created

In Halsbury's Laws of England, a deed has been defined as:

- an instrument
- written on parchment or paper
- expressing the intention or consent of some person or corporation named therein
- to make, confirm or concur in some assurance of some interest in property or of some legal or equitable right, title or claim, or to undertake or enter into some obligation, duty or agreement enforceable at law or in equity.

- A deed is a present grant rather than a mere promise to be performed in the future.
- Deeds are in writing, signed, sealed and delivered.
- Deeds are instruments, but all instruments are not deeds.

****

VARIOUS KINDS OF DEEDS

- A **good deed** is one which conveys a good title, not one which is good merely in form.
- A **good and sufficient deed** is marketable deed; one that will pass a good title to the land it purports to convey.

- An **inclusive deed** is one which contains within the designated boundaries lands which are expected from the operation of the deed.
- A **latent deed** is a deed kept for 20 years or more in man's strong box.
- A **lawful deed** is a deed conveying a good or lawful title.
- A **pretended deed** is a deed apparently or prima facie valid.
- A **voluntary deed** is one given without any "valuable consideration".
- A **warranty deed** is a deed containing a covenant of warranty.
- A **special warranty** deed which is in terms a general warranty deed, but warrants title only against those claiming by, through, or under the grantor, conveys the described land itself, and the limited warranty does not, of itself, carry notice of title defects.

****

SOME TERMS CONNECTED WITH DEEDS

Deed Pool
A deed between two or more parties where as many copies are made as there are parties, so that each may be in a possession of a copy. This arrangement is known as deed pool.

Deed Poll
A deed made and executed by a single party e.g. power of attorney, is called a deed poll. It is generally used for the purpose of granting powers of attorney and for exercising powers of appointment or setting out an arbitrator's award.

Indenture
Indentures are those deeds in which there are two or more parties. It was written in duplicate upon one piece of parchment and two parts were severed so as to leave an indented or vary edge, forging being then, rendered very difficult.

Cyrographum
This was another type of indenture in **olden times**. The word "Cyrographum" was written between two or more copies of the document and the parchment was cut in a jugged line through this word. The idea was that the difficulty of so cutting another piece of parchment that it would fit exactly into this cutting and writing constituted a safeguard against the fraudulent substitution of a different writing for one of the parts of the original.

This practice of indenting deeds also has ceased long ago and indentures are really now obsolete but the practice of calling a deed executed by more than one party as an "indenture" still continues in England.

Deed Escrow like conditional deed certain conditions are mentioned
A deed **signed by one party** will be delivered to another as an "escrow" for it is not a perfect deed. It is only a mere writing **unless** signed by all the parties and dated when the last party signs it.

Escrow means a simple writing not to become the deed until some condition should have been performed.

****

COMPONENTS OF DEEDS –most important
It is now appropriate to know more about drafting of Deed as a document.

Out of various types of deeds, **Deeds of Transfer of Property** is the most common one. Deeds of Transfer include Deed of Sale, Deed of Mortgage, Deed of Lease, Deed of Gift etc. These deeds effect a transfer of property or interest.

A deed is divided into different paragraphs. Under each part relevant and related information is put in paragraph in simple and intelligible language as explained in the earlier chapter.

If a particular part is not applicable in a particular case that part is omitted from the document.

The usual parts or components or clauses of deeds in general are mentioned as follows:

1. Description of the Deed Title

The deed should contain the correct title such as:

- "This Deed of Sale",
- "This Deed of Mortgage",
- "This Deed of Lease",
- "This Deed of Conveyance",
- "This Deed of Exchange",
- "This Deed of Gift" etc.

THIS PARTNERSHIP DEED
These words should be written in **capital letters** in the beginning of document.

Where it is difficult to locate the complete transaction out of number of transactions covered under the deed, it may not be possible to give single name to the deed like 'Deed of Gift' and as such it would be better to describe the deed as "This Deed" written in capital letters like **"THIS DEED".**

Partnership deed

This partnership deed

This part hints the nature of the deed and gives a signal to the reader about the contents of the Deed.

Sometimes a question may arise whether a particular instrument or document is a deed of conveyance of transfer. To ascertain the nature of the document it becomes necessary to read the language of the document and locate the intention of the parties which is the sole determining factor.

Consideration may be paid initially or may be agreed to be paid in future also. However, in those cases where any condition is stipulated as precedent to the title being passed on to the purchaser

2. Place and Date of Execution of a Deed

THIS PARTNERSHIP DEED is executed on 21st Day of May, 2020 or 21.05.2020 or May 21, 2020 (Twenty First day of May Two Thousand and Twenty) at New Delhi.

The date on which the document is executed comes immediately **after** the description of the deed.

For example, "This Deed of Mortgage made on the first day of January, 1986".

It is the date of execution which is material in a document for the purpose of application of law of limitation, maturity of period, registration of the document and passing on the title to the property as described in the document. Thus, the "date" of the document is important.

Date of execution of document is inscribed on the deed. The date is not strictly speaking an essential part of the deed. A deed is perfectly valid if it is undated or the date given is an impossible one, e.g. 30th day of February.

If no date is given oral evidence will always be admissible to prove the date of execution only it leaves necessary to prove it.

In order to avoid mistake and risk of forgery, the date be written in words and in figures.

The place determines the territorial and legal jurisdiction of a document as to its registration and for claiming legal remedies for breaches committed by either parties to the document and also for stamping the document, as the stamp duty payable on document differs from State to State.

An Illustration of this part follows:
"This Deed of Lease made at New Delhi on the First day of December One Thousand Nine Hundred and Eighty Eight (1.12.1988)" etc.

3. Description of Parties

This sale deed / teaching agreement / collaboration agreement is executed on 21st May, 2020 at New Delhi between:

Mr. Vishhal Arorah s/o Sh……R/o ……(address) aged about 26 years having PAN……a Company Secretary in Practice and a member of ICSI having registration Number……

AND

Mr. X……

The basic rule is that all the proper parties to the deed should be properly described in the document. While describing the parties, the transferor should be mentioned first and then the transferee. Full description of the parties should be given to prevent difficulty in identification.

Description must be given in the following order:

- Name comes first,
- then the surname and
- thereafter the address followed by other description such as s/o, w/o, d/o, etc.

It is **customary** to mention in India caste and occupation of the parties before their residential address. However, presently mention of caste is not considered necessary.

But to identify the parties if required under the circumstances, it may be necessary to mention the profession or occupation of a person/party to the deed. E.g.: Medical Practitioner, Chartered Accountant, Company Secretary or Advocate or likewise.

In the case of juridical persons like companies or registered societies it is necessary that after their names their registered office and the particular Act under which the company or society was incorporated should be mentioned.

e.g.: "XYZ Limited, the company registered under the Companies Act, 1956 and having its registered office at 1, Parliament Street, New Delhi".

THIS SALE DEED (hereinafter referred to this Deed) is executed on 21.5.2020 at New Delhi between:

M/s ABC Limited, a Company registered under the Companies Act, 2013 having CIN:…… and having its registered office at……(Address)……...**acting through** / **represented by** Mr. Vishhal, S/o Sh……..Director (DIN……) / Company Secretary (Membership No……)/ CFO / CEO (PAN…….) duly authorised by Board by passing a resolution in the Board Meeting held in 20.05.2020 (hereinafter referred to as / known as SELLER or FIRST PARTY)

AND

Mr. Vishhal ……(hereinafter referred to as BUYER or SECOND PARTY)

In the case of persons under disability like minor, lunatic, etc. who cannot enter into a contract except through a guardian or a ward, in certain cases through guardian with the permission of the court where necessary, full particulars of the same should be given with the authority from whom a guardian draws power.

e.g.: "Mohan, a minor, acting through Ramdev as guardian appointed by Civil Judge Class I, Delhi by order on… passed under Section… of… Act or

"Mohan, Minor acting through his father and natural guardian Ramdev etc."

Reference **label** of parties are put in Parenthesis against the name and description of each party to avoid repetition of their full names and addresses at subsequent places.

Labeling is very important
The parties are then prepared to by their respective lables e.g. "lesser" and "lessee" in a lease deed.

The form is illustrated as under:

"This lease deed at New Delhi on the……..…. day of……..……., 2002 between Shri Vinod resident of…… (Hereinafter called lessor) of the one part and Shri Dinov resident of…….. (hereinafter called lessee) of the other part.

It is also necessary that reference of heirs, executors, assigns liquidators, successors etc. should be made against each party's name after putting lables. It shall safeguard the interest of the parties.

Likewise illustrating this.
Between…….. called the lessor.

(which term shall mean and unless, it be repugnant to the context or meaning thereof mean and include the heirs, legal representative or assigns of one part)

AND
……. called the lessee (which term shall unless it be repugnant to the context or meaning thereof mean and include the heirs, legal representative or assigns (or in case of a company the liquidator or assigns).

…….after labeling which term shall, unless contrary is proved, mean legal heirs……..

IMP:

In this agreement the seller and buyer shall individually be known as such and collectively known as the Parties.

4. Recitals

Recitals contain the short story of the property / matter **up to its vesting into its transferors.** Care should be taken that recitals are short and intelligible.

Recitals may be of two types.

One, narrative recitals which relates to the **past history** of the property transferred and sets out the facts and instrument necessary to show the title and relation to the party to the subject matter of the deed. The extent of interest and the title of the person should be recited. **It should be written in chronological order i.e. in order of occurrence**.

Introductory recitals are placed after narrative recitals. The basic objective of doing so is to put the events relating to change of hand in the property.
Recitals should be inserted with great caution because they precede the **operative part** and as a matter of fact contain the explanation to the operative part of the deed.

Recitals carry evidentiary importance in the deed. It is an evidence against the parties to the instrument.

Recital generally begins with the words **"Whereas"** and when there are several recitals instead of repeating the words "Whereas" before each and every one of them, it is better to divide the recitals into numbered paragraphs for example, "Whereas" —
(1)
(2)
(3)
etc.

WHERE AS:
1.
2.

1. WHERE AS
2. WHERE AS
3. WHERE AS

5. Testatum
This is the "witnessing" clause.

The witnessing clause usually begins with the words **"Now This Deed Witnesses"**.

Now this deed / agreement witnesses as follow:

OR

Now this sale deed / teaching agreement

Where there are more than one observations to be put in the clause the words, "Now This Deed Witnesses as Follows" are put in the beginning and then paragraphs are numbered.

6. Consideration
Consideration is very important in a document and must be expressed. Mention of consideration is necessary otherwise also, for example, for ascertaining stamp duty payable on the deed under the Indian Stamp Act, 1899.

In the absence of mention of consideration the evidentiary value of document is reduced that the document may not be adequately stamped and would attract penalty under the Stamp Act.

7. Receipt
Closely connected with consideration is the acknowledgement of the consideration amount by the transferor, who is supposed to acknowledge the receipt of the amount.

An illustration follows:
"Now this Deed witnesses that in pursuance of the aforesaid agreement and in consideration of sum of Rs. 100,000/- (Rupees One Lakh Only) paid by the transferor to the transferee before the execution thereof (receipt of which the transferee does hereby acknowledge)".

8. Operative clause
This is followed by the real operative words which vary according to the nature of the property and transaction involved therein. The words used in operative parts will differ from transaction to transaction.

For example, in the case of mortgage the usual words to be used are "Transfer by way of simple mortgage" (usual mortgage) etc.

9. Description of Property

Registration laws in India require that full description of the property be given in the document which is presented for registration under Registration Act.

Full description of the property is advantageous to the extent that it becomes easier to locate the property in the Government records and verify if it is free from encumbrances.

If the description of the property is short, it shall be included in the body of the document itself and if it is lengthy a schedule could be appended to the deed. It usually contains area, measurements of sides, location, permitted use, survey number etc. of the property.

10. Parcels Clause

This is a **technical expression** meaning methodical description of the property. It is necessary that in case of non-testamentary document containing a map or plan of the property shall not be accepted unless it is accompanied by the True Copy.

11. Exceptions and Reservations Clause

It refers to admission of certain rights to be enjoyed by the transferor over the property to be agreed to by the transferee.

All exceptions and reservations out of the property transferred should follow the parcels and operative words. It is the contractual right of the parties to the contract or to the document to provide exceptions and reservations which should not be uncertain, repugnant or contrary to the spirit of law applicable to a particular document or circumstances.

For example, Section 8 of the Transfer of Property Act, 1882 provides for transfer of all the interest to the transferee in the property and any condition opposing the provisions of law will be void.

The clause generally is signified by the use of words “subject to” in deeds, where it is mentioned, it is advisable that both the parties sign, to denote specific understanding and consenting to this aspect.

12.Premises and Habendum

Habendum is a part of deed which states the interest, the purchaser is to take in the property. Habendum clause starts with the words "**THE HAVE AND TO HOLD**".

In India such phrases as “to have and to hold” or such an expression as “to the use of the purchaser” can very well be avoided as in cases except those of voluntary transfers such an expression is superfluous.

13. Reddendum **related to the lease deed**

It is peculiar to a deed of lease. Here is mentioned the mode and time fixed for payment of rent. It begins with the word “rendering or paying” with reference to the rent. Thus it is a reserving clause in a deed, especially the clause in a lease that specifies the amount of the rent and when it should be paid.

HW:. DRAFT AN AGREEMENT OF Your choice up to recitals only.

(M) 98911 00718
vishhal@legumamicuss.com

14. Covenants and Undertaking **IMP PART OF AN AGREEMENT**

The term “covenant” has been defined as an agreement, whereby parties stipulate for the truth of certain facts. Covenants may be expressed or implied. In case of Transfer by way of Sale or Mortgage, the absolute owner of the property i.e., the Vendor generally covenants as under:

- Covenant for title, -
- Covenant against encumbrances, - free from any charge (Mortgage)
- Covenant for Peaceful possession; and
- Covenant for further assurances.

This clause of covenant also includes undertaking in some cases. This undertaking is a promise, or stipulation in the transaction in question. It is used in the special sense of promise and as such special bearing in the transaction between the parties.

15. Testimonium Clause

Testimonium is the clause in the **last part** of the deed. Testimonium signifies that the parties to the document have signed the deed. This clause marks the close of the deed and is an essential part of the deed.

The usual form of testimonium clause is as under:

"In witness whereof, parties hereto have hereunto set their respective hands and seals the date and year first above written". This is the usual English form of testimonium clause.

In India, except in the case of companies and corporations seals are not used and in those cases testimonium clause reads as under:

"In witness whereof the parties hereto have signed this day on the date above written".

16. Signature and Attestation Clause

After attestation clause, signatures of the executants of the documents and their witnesses attesting their signatures follow.

If the executant is not competent enough to contract or is juristic person, deed must be signed by the person competent to contract on its behalf.

For example, if the deed is executed by the company then the person authorised in this behalf by and under the articles of association or by resolution as the case may be should sign the document and seal of the company should be so affixed, thereto by mentioning the same.

Attestation is necessary in the case of some transfers, for example, mortgage, gift, sale, and revocation of will.

In other cases, though it is not necessary, it is always safe to have the signatures of the executant attested.

Attestation should be done by at least two witnesses who should have seen the executant signing the deed or should have received from the executant personal acknowledgement to his signatures.

17. Endorsements and Supplemental Deeds

Endorsement means to write on the back or on the face of a document where it is necessary in relation to the contents of that document or instrument.

Supplemental deed is a document which is entered into between the parties on the same subject on which there is a prior document existing and operative for adding new facts to the document on which the parties to the document have agreed which otherwise cannot be done by way of endorsement.

When after the execution of a deed some addition or alteration to a deed are required to be made, the same can be done either by endorsement on the deed or by a supplemental deed.

If writing is short, it can be done by endorsement on the deed. When the Writing is not small, the supplemental deeds are executed.

18. Annexures and Schedules

A deed remains incomplete unless particulars as required under registration law about the land or property are given in the Schedule to be appended to the deed. It supplements information given in the parcels. A Site Plan or Map Plan showing exact location with revenue no. Mutation No., Munipal No., Survey No., Street No., Ward Sector/Village/Panchayat/Taluka/District etc……. Plot No., etc. so that the demised property could be traced easily.

****

ENGROSSMENT AND STAMPING OF A DEED

The draft of document is required to be approved by the parties. In case of companies it is approved by Board of Directors in their meeting or by a duly constituted committee of the board for this purpose by passing requisite resolution approving and authorizing of its execution.

The document after approval is engrossed i.e. copied fair on the non-judicial stamp-paper of appropriate value as may be chargeable as per Stamp Act. In case document is drafted on plain paper but approved without any changes, it can be lodged with Collector of Stamps for adjudication of stamp duty, who will endorse certificate recording the payment of stamp duty on the face of document and it will become ready for execution.

If a document is not properly stamped, it is rendered inadmissible in evidence nor it will be registered with Registrar of Assurances.

****

REGISTRATION OF DOCUMENTS

Registration Act, 1908 provides for the registration of few documents.

PURPOSE:

1. To give notice to the all persons that the documents has been registered and to serve as a source of information regarding the execution of the documents and existence.

2. To prevent fraud and forgery with the purpose of providing good evidence of the genuineness of the written document and

3. to secure the interest of the person dealing with any immovable property where such dealing requires registration

COMPULSORY REGISTRATION – SECITON 17

Section 17 of the Registration Act, 1908 establishes the necessity for registration with regard to following documents:

1. The document relating to gift of immoveable property;

2. Non-testamentary documents pertaining to transfer, declaration, lease in respect to an immovable property of the value of Rs. 100/- and upwards;

3. The document pertaining to lease of an immoveable property:
   - from year to year basis or
   - for any period exceeding one year or
   - lease which reserve yearly rent

4. The documents relating to the transfer or assignment of a decree, order of a court or any award pertaining to immoveable property which has got a value of Rs. 100/- and upwards.

OPTIONAL REGISTRATION – SECTION 18

Section 18 provides for the following documents of which registration is optional:

1. Will

2. The document creating, declaring, assigning or extinguishing any right, title or interest in respect to immoveable property where value of such property is less than Rs. 100;

3. The document relating to a lease of immovable property for a period not exceeding one year;

4. The document relating to creation, declaration, assignment of any right in moveable

property;

5. The document not required by Section 17 to be registered.

TIME FOR PRESENTING DOCUMENT

IF DOCUMENTS EXECUTED IN INDIA

1. **Section 23** provides for a period of 4 months for a document to be presented for registration before the Registrar. However, a will may be presented at any time for registration (Section 27).

2. This period is to be calculated from the date of the execution of such document.

3. **Section 24** provides that a document executed by several persons at different times may be presented for registration and re-registration within four months from the date of each execution.

4. **Section 25** gives a further period of 4 months where such delay was unavoidable.

IF DOCUMENTS EXECUTED OUTSIDE INDIA

Section 26 of the Act deals with the documents executed out of India and empowers the Registrar to register a document even in a case where such document was not presented within the aforesaid prescribed period as provided in Sections 23 and 25, but for this purpose the Registering Officer must be satisfied:

1. That the instrument was so executed out of India &

2. That it has been presented for registration within four months after its arrival in India.

3. Section 27 provides that a Will may at any time be presented for registration.

PLACE OF REGISTRATION

Documents related to immovable property – Section 28

As per **Section 28**, the document relating to immoveable property must be presented for registration in the office of a Sub-Registrar within whose Sub-District the whole or some portion of the property to which such documents relate is situate.

Documents related to other property – Section 29

As per **Section 29**, the documents related to any property, other than immovable property, may be presented for registration in the office of sub-registrar in whose Sub-District the document was executed or in the office of any other sub-registrar under state government at

which all person executing and claiming under the document desired the same to be registered.

EFFECTS OF REGISTRATION AND NON-REGISTRATION

1. As per **section 47**, a document so long as it remains unregistered may not be valid, yet as soon as it has been registered it takes effect from the date of its execution. The transaction is thereby given a retrospective effect.

2. **Section 49** provides that no document required to be registered under Section 17 of the Act shall affect any immovable property. Moreover, such document shall not be received as evidence of any transaction affecting such property unless such document has been registered. However, such a document may be received as an evidence of a contract in suit of specific performance or as an evidence as part performance of a contract as per section 53A of Transfer of Property Act.

****

LAW RELATING TO STAMPING OF DOCUMENTS INDIAN STAMP ACT, 1899

DULY STAMPED

1. Section 2 (11) of Indian Stamp Act, 1899 defines this term.

2. It means that the instrument bears adhesive or impressed stamp not below the amount required by law and further not in contravention to the manner prescribed by law. The amount of stamp to be used is governed by the provisions and schedule to the Stamp Act.

3. In general, stamp duty is state subject. However, in certain cases, Parliament has exclusive powers to fix the stamp duty like Bills of Exchange, Promissory Notes, Share Transfer Deeds, Instrument of proxy, Letter of Credit, Insurance Policies etc.

INSTRUMENT CHARGEABLE WITH DUTY

1. **Section 3** provides that the instruments as mentioned in the schedule shall be chargeable with duty of the amount indicated therein.

2. Wills are not subject to duty because there is no mention of them in the schedule.

3. However, no duty shall be chargeable in respect of any instrument executed by or on behalf of or in favor of the Government, in cases where the Government would be liable to pay the duty chargeable in respect of such instrument.

MODE OF PAYMENT OF STAMP DUTY OR MODE OF STAMPING

There are two methods of stamping:

1. Adhesive stamps
2. Impressed stamps

CANCELLATION OF ADHESIVE STAMP – SECTION 12

1. An adhesive stamp should be cancelled at the time of execution so that it cannot be used again.

2. Where the adhesive stamp affixed to a document is not cancelled, the document is deemed to be unstamped and is not admissible in evidence.

3. The writing of the name or initial of the executant with the date of his so writing or in other effectual manner is sufficient cancellation.

TIMING OF STAMPING

1. Instrument executed in India must be stamped before or at the time of execution – Section 17

2. Instrument executed outside India can be stamped within 3 months after it is first received in India – Section 18

3. However, in case of Bills of Exchange or Promissory Notes made outside India, it should be stamped by the first holder in India before he presents for payment or endorses or negotiates in India – Section 19.

IMPOUNDING OF INSTRUMENTS

1. Section 33 lays down provisions regarding ineffective impounding of instruments.

2. Under this provision an instrument which is not duly stamped can be impounded by that person who is either authorized to receive evidence or a person in charge of a public office and such document has been produced before him.

3. This provision makes it obligatory for the Courts, Arbitrators and the Public Officers to examine the instrument as produced before them in order to ascertain whether it is properly stamped.

4. However, authority of a police of is excluded from impounding a document.

EVIDENTIARY VALUE OF AN INSTRUMENT NOT DULY STAMPED

1. Section 35 **prohibits** admission in evidence of instruments chargeable with duty unless such instruments are 'duty stamped'.

2. An objection as to an instrument not being duly stamped must be taken at the trial when the instrument if first tendered in evidence.

3. it is the duty of the court to refuse to admit an instrument not duly stamped, whether or not parties object to its admission.

4. However, to this rule there are certain exceptions as under :

5. Section 36 provide that where an instrument has been admitted in evidence such an admission shall not be questioned at any stage of the same suit and proceeding on the ground that the instrument has not been duty stamped.

INSTRUMENT NOT DULY STAMPED

1. Section 41 provides for collection of the deficit duty only without penalty if a person voluntarily produces an instrument offering to pay the deficit duty within one year from the day of execution, and the Collector is satisfied that the omission to stamp was due to accident, mistake or urgent necessity.

2. The parties are not liable to be prosecuted. The proviso to Section 43 clarifies that no prosecution shall be instituted in case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of proper duty.

****

SECRETARIAL PRACTICE IN DRAFTING NOTICE, AGENDA AND MINUTES OF THE COMPANY'S MEETINGS

A company is an artificial judicial person created by law having its own distinct entity form and capable of entering into contracts.

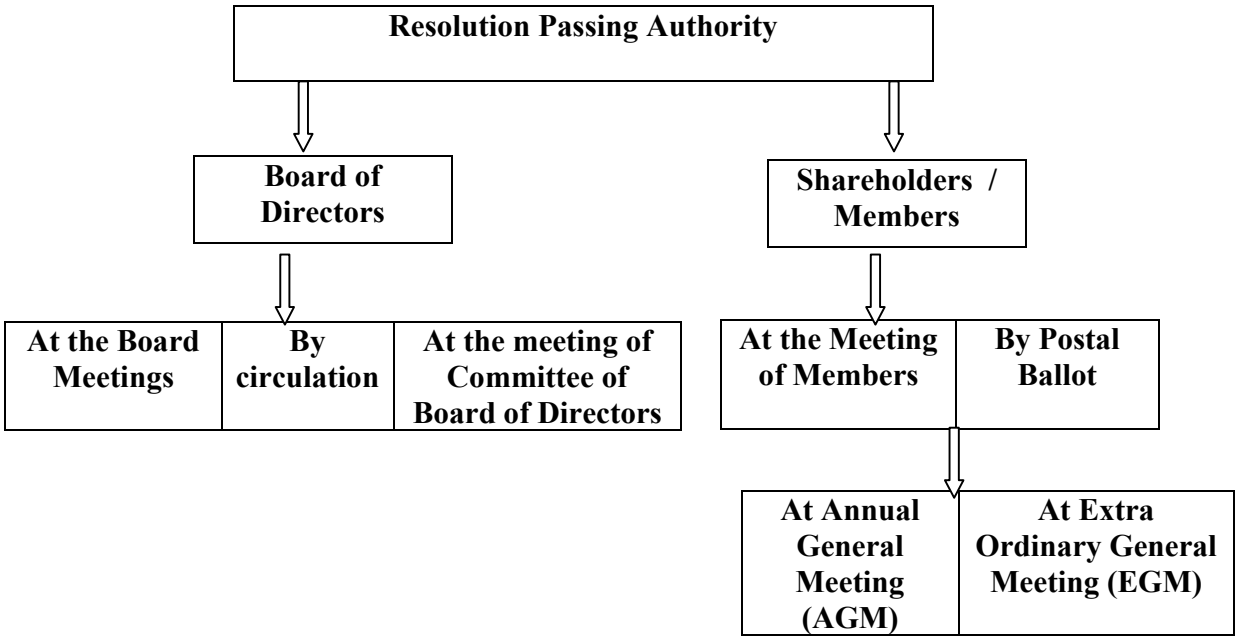
Though company is bestowed with the characteristic of separate legal entity but it cannot take decision on its own. It is capable of acting in its own name, entering into contracts. It is capable of owning and holding property in its own name, sue others and to be sued by others in its name.

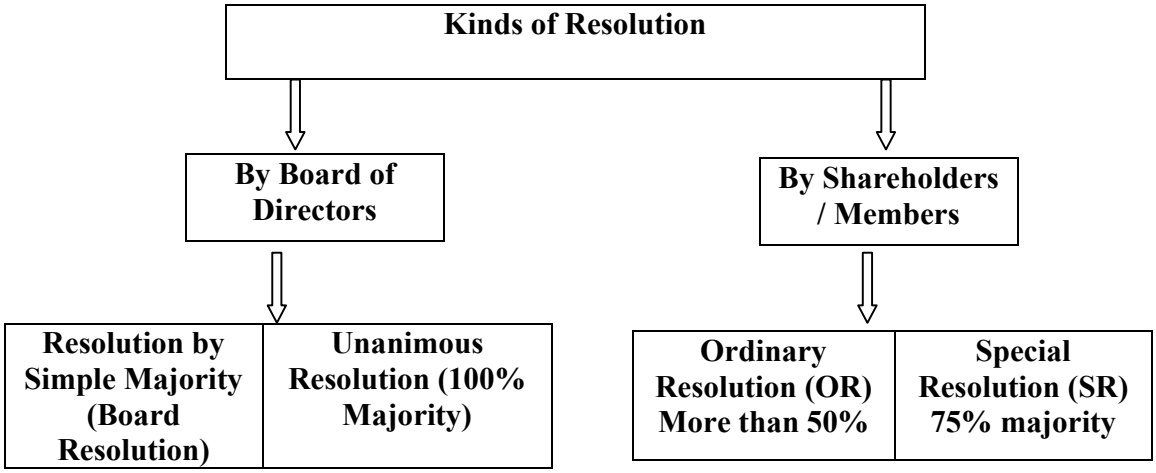
Despite all these powers, since it is not a natural person, it expresses its will or takes its decisions through natural persons (i.e. directors or members) collectively which is known as "**resolutions**."

There are two collective bodies in the company which take decision through resolutions:

(i) Board of Directors – who manage, control and direct the business of the company

(ii) General body of members (Shareholders) – who ultimately own the company.




Kinds of Resolution
By Board of Directors
By Shareholders / Members
Resolution by Simple Majority (Board Resolution)
Unanimous Resolution (100% Majority)
Ordinary Resolution (OR) More than 50%
Special Resolution (SR) 75% majority

Points to be noted for drafting resolution:

- The resolution making process includes e-voting and video-conferencing also.
- The powers relating to the affairs of a company are divided between the Board and shareholders of the company.
- Approval of transactions which are ultra vires the directors but intra- vires the company:
    - A transaction by the directors which is beyond their own powers but within the powers of the company can be ratified by a resolution of the company in a general meeting,
    - provided that the shareholders have knowledge of the facts relating to the transaction to be ratified or the means of knowledge are available to them and a company may by a resolution at a subsequent meeting ratify business.
    - But a transaction which is ultra vires the company cannot be ratified even if agree by all the members of the company.
- The usual meetings of a company under the Companies Act, 2013 can be classified as under:
    4. Meetings of the Directors and their Committees
    5. Meetings of Members:
        (a) Annual General Meetings (AGM)
        (b) Extraordinary General Meetings (EGM)
        (c) Class Meetings.

- There are other meetings too like meeting of debenture/ bond holders, meeting of creditors , contributories, Court convened meeting etc. but they do not take place in conducting general business of company in routine.
- Board of directors take decision by passing resolution as follows:
        (i) Resolution by majority ($\geq$ 50%)
        (ii) Unanimous resolution (100%)
- Resolution by general body of members take place in following two modes:

(i) Ordinary resolution:

An Ordinary resolution is one which is passed in the company's general meeting by a simple majority of votes i.e. more than 50%. Intention to pass Ordinary Resolution is not required to be given in the notice of General Meeting. All matters relating to the company's business, except those which need to be settled by a special resolution, are settled by an ordinary resolution.

(ii) Special resolution

The votes cast in favour of the resolution, whether in person or by proxy, are not less than three times the votes cast against the resolution by members so entitled. Intention to pass Special Resolution needs to be given in the notice of the General Meeting of the company. A special resolution is meant to make decisions in important matters and protect the rights of company's members.

If law requires a resolution to be passed by special majority, then it shall be a Special Resolution but otherwise where it is not specifically provided, the resolution will be an ordinary resolution.

****

PRACTICAL ASPECTS OF DRAFTING RESOLUTIONS

Resolutions

All resolutions, no matter how simple they are, should be drafted in clear and distinct terms since resolutions embody the decisions of the meetings.

The following points should be remembered while drafting resolutions, both for Board and general meetings:

(a) All essential facts are included in the resolution - e.g., the resolution for re-appointment of a managing director should indicate that the re-appointment is subject to the approval of the Central Government if approval of the Central Government is required and should also cover the period of appointment, terms and conditions of such appointment.

(b) Surplus and meaningless words or phrases should not be included in resolutions.

(c) Reference to documents approved at a meeting should be clearly identified, e.g., the re-appointment of a managing director should indicate that such appointment is on the terms and conditions contained in the draft agreement, a copy of which was placed before the meeting and initialled by the chairman for the purpose of identification.

(d) Resolutions must indicate the relevant provisions or sections of the Act and the Rules pursuant to which they are being passed.

(e) If a resolution is one which requires the approval of the Central Government or confirmation of the National Company Law Tribunal/Court, this must be stated in the resolution.

(f) A resolution must indicate when it will become effective.

(g) A resolution must confine itself to one subject matter and two distinct matters should not be covered in one resolution.

(h) A resolution should be crisp, concise and precise and should be flexible enough to take care of eventualities.

(i) Where lengthy resolutions have to be approved, they should be divided into paragraphs and should be arranged in their logical order having regard to the subject matter of the resolution.

(j) A resolution must be so drafted that anybody not present at the meeting or anybody referring to it at a later date will know clearly what the decision was at that meeting without referring to any other document.

How to draft a resolution? (Points to be remembered)

- Resolution use to be closed within "……." (inverted quomas)
- It use to begin with "**RESOLVED THAT…….**
- Mention the sections of Companies Act 2013, rules made thereunder or provisions of any other law pursuant to which decision is made. E.g. RESOLVED THAT pursuant to the provisions of section 161 of the Companies Act,2013 and rules thereunder, and other applicable provisions of law for the time being in force,……
- If resolution further requires approval of Central Govt or general meeting or any other authority, it shall specifically specify the authority whose approval is required e.g. **RESOLVED THAT** subject to approval of Central Govt under sec…. of Companies Act 2013 or rules made thereunder or any other law for the time being in force, …….
- In case of resolution passed at general meeting, it shall be specifically mentioned in the notice convening the meeting that whether it is Ordinary resolution or Special resolution.
- For filing forms with RoC and other authorities, authorize a person e.g. FURTHER **RESOLVED THAT** Mr……, director (DIN..) is authorized to execute, sign and do all other acts and deeds as may be required to give effect to this resolution.

****

DRAFTING OF A RESOLUTION:
Purpose: appointment of an additional director
Section: 161 (1)
Which reso. Is required: BR

"RESOLVED THAT pursuant to or as per the provisions of Section 161(1) of the Companies Act, 2013 (pursuant to the applicable provisions of the Companies Act, 2013) read with the respective rules / applicable rules and pursuant to Article No. 43 of the AOA of the Company, Mr. A having DIN.....**be and is hereby** appointed as an additional director of the Co. w.e.f. 23.05.2020 to hols office upto the date of next AGM of the co.

RESOLVED FURTHER THAT Mr. B, Director / CS / any director of the Co. be and is hereby authorised to file e-form No. DIR -12 with ROC and to do all such other acts and deeds as may be required to give effect to this resolution."

OR
"Resolved that Mr. A having DIN.....be and is hereby appointed as additional director of the co." WORST DRAFTING

RESO for Name Change:
Kind of Reso.? SR
Meeting? GM
Section ? 13

BR:

"RESOLVED THAT pursuant to the provisions of Section 13 of the Cos. Act, 2013 and all other applicable provisions, if any, read with the applicable rules and subject to the approval of the members of the Co. in the GM and subject to the approval of ROC, the approval of the Board be and is hereby accorded / given to change the name of the Co. from .....to .....

RESOLVED FURTHER THAT as per the provisions of Sec 13 of the CA, 2013, the name clause of the MOA of the Co. i.e. clause No. 1 be and is hereby substituted/ replaced with the following clause:

1. **The name of the Co. is .....**

FURTHER RESOLVED THAT the name .....(Old name) wherever is appearing in MOA and AOA of the co. and on all the letterheads of the Co. be replaced with .....(New name).

RESOLVED FURTHER THAT Mr. X, CS of the Co. be and is hereby authorised to take all such action as may be required and to do all acts and deed that is required to give effect to this resolution."

SR:

"RESOLVED THAT pursuant to the provisions of Section 13 of the Cos. Act, 2013 and all other applicable provisions, if any, read with the applicable rules and subject to the approval of ROC, the approval of the members of the CO. be and is hereby accorded / given to change the name of the Co. from .....to .....

RESOLVED FURTHER THAT as per the provisions of Sec 13 of the CA, 2013, the name clause of the MOA of the Co. i.e. clause No. 1 be and is hereby substituted/ replaced with the following clause:

1. **The name of the Co. is .....**

FURTHER RESOLVED THAT the name .....(Old name) wherever is appearing in MOA and AOA of the co. and on all the letterheads of the Co. be replaced with .....(New name).

RESOLVED FURTHER THAT the BOD of the Co. . be and are hereby authorised to take all such actions as may be required and to do all acts and deed that is required to give effect to this resolution."

****

SECRETARIAL STANDARDS

Introduction:

Section 118(10) of the Companies Act, 2013, provides that every company shall observe Secretarial Standards with respect to general and board meeting specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved as such by the Central Government.

The Ministry of Corporate Affairs on 10th April, 2015 accorded the approval of the Central Government to the Secretarial Standards (SS) namely

(i) SS-1; Meetings of the Board of Directors and

(ii) SS-2 General Meetings

In terms of section 205(1)(6), it is the function of the Company Secretary to ensure that the company complies with the applicable Secretarial Standards.

The scope of secretarial standards as laid down in SS-1 and SS-2 is as under:

"This Standard is in conformity with the provisions of the Act. However, if due to subsequent changes in the Act, a particular Standard or any part thereof becomes inconsistent with the Act, the provisions of the Act shall prevail."

Secretarial Standard on meetings of the Board of Directors: SS – 1
(Relevant extract for drafting notice, agenda and minutes of Meeting of Board of Directors/ Committee thereof)

- The first version of SS-1 was applicable to Meetings of the Board of Directors and its Committees, in respect of which Notices were issued during 1st July, 2015 to 30th September, 2017.
- The revised version of SS-1 applies to Meetings of the Board of Directors and its Committees, in respect of which Notices are issued on or after 1st October, 2017.

- SS-1 prescribes a set of principles for convening and conducting Meetings of the Board of Directors and matters related thereto.
- Guidance Note sets out the explanations, procedures and practical aspects in respect of the provisions contained in revised SS-1 (effective from 1st October, 2017) to facilitate compliance thereof by the stakeholders.

Section 179 of Companies Act, 2013 describes the scope of the powers of the Board of Directors as it states "The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do."

The powers of the Board are however, subject to the provisions contained in that behalf in the Act, other statutes, as well as the Memorandum and Articles of Association of the company or any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in General Meeting (Section179ofthe Act).

All the powers vested in Directors are exercisable by them collectively, acting together, unless such powers have been delegated to one or more Directors by the Board.

Subject to the provisions of the Act, all powers which the company is authorised to exercise and do can be exercised by the Directors

(i) at a Meeting [Section 173] or
(ii) by Resolutions passed by circulation [Section175] or
(iii) by delegating the same to Committees or to the Managing Director or other principal officers [Proviso to 179(3)] or others in accordance with the provisions of the Act and the Articles.

Powers to be exercised at Board Meetings
The Board of Directors of a company shall exercise certain powers on behalf of the company only by means of Resolutions passed at a Meeting of the Board and not by a Resolution passed by circulation.

Powers to be exercised by unanimous consent
Certain powers of the Board shall be exercised by Resolutions passed at Meetings, with the consent of all the Directors present at the Meeting.

Powers to be exercised subject to passing of Special Resolution
Certain powers of the Board are exercisable by the Directors only with the consent of the company by way of a Special Resolution passed in a General Meeting or through Postal Ballot.

Powers to be exercised subject to other approvals
There are several powers in the realm of day-to-day management of the company which the Board should exercise subject to the approval at the General Meeting or by the Central

Government or by the National Company Law Tribunal (NCLT) or subject to the requirements of other Statutory Authorities and/or Regulators.

Delegation of Powers
The Board may, by a Resolution passed at a Meeting, delegate certain powers to any Committee of Directors, the Managing Director, the Manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, on such conditions as it may specify. [First Proviso to sub-section (3) of Section 179 of the Act]

For delegation of powers, a board resolution must be passed at meeting of Board of Directors.
Subject to the provisions of the Articles of the company, the Board may delegate any of its powers to Committees with or without such restrictions and limits as may be imposed

APPLICABILTY OF SS-1
In terms of sub-section (10) of Section 118 of the Act, every company is required to observe SS-1 except:

(i) One Person Companies (OPC) having **only one** Director on its Board and
(ii) Such other class or class of companies which are exempted by Central Government through Notification e.g. companies licensed under Section 8 of the Companies Act, 2013.

Note: Exemptions shall be applicable to a Section 8 company provided it has not committed a default in filing its Financial Statements or Annual Return with the Registrar of Companies.

However, Section 8 companies need to comply with the applicable provisions of the Act relating to Board Meetings.

Applicability to Meetings of the Committees
SS-1 is also applicable to the Meetings of Committee(s) of the Board constituted in compliance with the requirements of the Act.

At present, the Act provides for the constitution of following committees of the Board:
• Audit Committee
• Nomination and Remuneration Committee
• Corporate Social Responsibility (CSR) Committee
• Stakeholders Relationship Committee

In case **any other committee** of the Board is constituted voluntarily or pursuant to any other statute or regulations etc., the **company may comply** with SS-1 with respect to meetings of such committee(s) as a good governance practice.

Some important definitions:

"Invitee" means a person, other than a Director and Company Secretary, who attends a particular Meeting by invitation.
"Minutes" means a formal written record, in physical or electronic form, of the proceedings of a Meeting.
"Minutes Book" means a Book maintained in physical or in electronic form for the purpose of recording of Minutes.

GUIDANCE ON THE PROVISIONS OF SS-1

Convening a Meeting

Authority means **who can** convene meeting i.e. who shall sign notice of board meeting?

Subject to Articles of Association of a company, Board meeting may be convened by

- Any Director of a company
- The Company Secretary or where there is no Company Secretary, any person authorized by the Board in this behalf , on the requisition of a Director.
- The Company Secretary cannot summon a Meeting on his own, **unless** authorized by the Board of Directors or the Articles to do so.

Manner of conducting requisitioned Meeting

Where any Meeting of the Board is called and held on the basis of a requisition by a Director, the provisions of the Act and SS-1 relating to Notice, Agenda, Notes on Agenda, length of Notice and manner of service of Notice and all other applicable provisions have to be complied with.

1. DAY, TIME, PLACE, MODE AND SERIAL NUMBER OF MEETING

It is mandatory for every meeting to have a **serial number** for ease of reference.

Serial number of the original Meeting and the adjourned Meeting should be the same. For e.g.: In case the serial number of the original Meeting is 12th Meeting, the serial number of the adjourned Meeting should be 12th Meeting (Adjourned).

Illustrations

(i) Serially numbering on Calendar Year basis as follows: "1/2015", "2/2015", "3/2015" and so on…. In the next year, numbering would be "1/2016", "2/2016", "3/2016" and so on.

(ii) Serially numbering on financial year basis as follows: "1/2015-16", "2/2015-16", "3/2015-16" and so on….or 1/15-16, 2/15-16, 3/15-16 and so on.....

(iii) Continuous serially numbering across years: 120th Meeting, 121st Meeting, 122nd Meeting and so on ……

A company may choose to either count and give continuous numbering from its incorporation or give continuous numbering from Meetings held on or after 1st July, 2015, this being the date from which SS-1 became effective.

In any case, the company should follow a uniform and consistent system.

Day of meeting:
Now, Board of Director's meeting can be convened even on Sunday and national holiday too. Even a meeting of Board of Director's adjourned for want of quorum can be held on national holiday.

Notice of the meeting
Venue of the meeting: Notice of the Meeting shall clearly mention a venue, whether registered office or otherwise, to be the venue of the Meeting and all the recordings of the proceedings of the Meeting, if conducted through Electronic Mode, shall be deemed to be made at such place.

Communication by a Director of his intention to participate through Electronic Mode:
A Director intending to participate through Electronic Mode should communicate his intention to the Chairman or the Company Secretary of the company.

He should give prior intimation to that effect sufficiently in advance so that the company is able to make suitable arrangements in this behalf [Rule 3(3)(d) of the Companies (Meetings of Board and its Powers) Rules, 2014].

Directors shall not participate through electronic mode in the discussion on certain restricted items. (Earlier, they could do so with express permission of Chairman).

After giving the aforesaid intimation, if the Director decides to participate by being present physically at a particular Meeting, he may so participate after communicating the same to the Company.

Meetings through Electronic Mode: There is no restriction on a company to hold all its Meetings through Electronic Mode provided the company ensures presence of physical Quorum during consideration of any of the restricted items of business and comply with the applicable legal provisions.

Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 requires that restricted items shall not be dealt with in a Meeting through Electronic Mode.

In other words, the requisite Quorum should be present physically in such Meeting.

Delivery of Notice : Notice in writing of every Meeting shall be given to every Director by hand or by speed post or by registered post or by facsimile or by e-mail or by any other electronic means.

Where a director specifies a particular means of delivery of notice, the notice shall be given to him by such means. But, in case of a meeting conducted at a shorter notice, the company may choose an expedient mode of sending notice.

Form of Notice:

- The Notice should preferably be sent on the letter-head of the company.
- Where it is not sent on the letter-head or where it is sent by e-mail or any other electronic means, there should be specified, whether as a header or footer,
  - (i) the name of the company and
  - (ii) complete address of its registered office together with all its particulars such as
    a. Corporate Identity Number (CIN) as required under Section 12 of the Act,
    b. date of Notice,
    c. authority and name and designation of the person who is issuing the Notice, and
    d. preferably the phone number of the Company Secretary or any other designated officer of the company who could be contacted by the Directors for any clarifications or arrangements.

Authority to sign Notice: Notice should be signed by the Company Secretary. If there is no Company Secretary, the Notice should be signed by any Director or any other person who is authorised by the Board to issue Notice.

Essentials of Notice:

(1) The Notice shall specify the serial number, day, date, time and full address of the venue of the Meeting.
(2) The Notice should specify the serial number given to the Meeting, as required under paragraph 1.2.1 of SS-1.
(3) Day and date specified in the Notice should be as per the Gregorian calendar.

The time specified in the Notice should be the time of commencement of the Meeting.

Notice of Requisitioned Meeting: In the case of a requisitioned Meeting, it is advisable to mention in the Notice the fact that the Meeting is being convened on the requisition of a Director.

Intimation to Directors for availability of option to participate through Electronic Mode: The Notice shall inform the Directors about the option available to them to participate through Electronic Mode and provide them all the necessary information.

The Notice shall also contain the contact number or e-mail address(es) of the Chairman or the Company Secretary or any other person authorized by the Board, to whom the Director shall confirm in this regard.

If a Director intends to participate through electronic mode, he shall give sufficient prior intimation to the Chairman or to the Company Secretary to enable them to make suitable arrangements in this behalf.

The Director may intimate his intention of participation through electronic mode at the beginning of the Calendar year also, which shall be valid for such calendar year.

Notice is mandatory: The Notice of a Meeting shall be given even if meetings are held on pre-determined dates or at pre-determined intervals.

Time period for giving Notice: Notice convening a Meeting shall be given at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.

Illustration
If the Meeting is proposed to be held on 14th November, the last date for giving the Notice would be 7th November.

Adequate Notice should be given : Adequate Notice of the Meeting should be given so that Directors can plan their schedule so as to attend and participate in the Meeting.

Participation in Meetings is central to the discharge of a Director's responsibilities. Unless Directors attend Meetings and participate in discussions with other members of the Board, they are not likely to be fully aware of the affairs of the company and may not be able to exercise the care and diligence that is expected of them.

Notice period in the Articles: The company may prescribe a longer Notice period through its Articles, in which case the Articles should be complied with.

However, the statutory Notice period of seven days cannot be reduced by the company in its Articles. The only exception to this is situations where the Articles provide for giving Notice at a shorter period of time in terms of paragraph 1.3.11 of SS-1.

Notice to contain detailed note of each item of business: Each item of business requiring approval at the Meeting shall be supported by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal and the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed.

However, any other decision taken at the meeting may also be recorded in the Minutes in the form of Resolution.

Draft Resolution: Where approval by means of a Resolution is required, the draft of such Resolution shall be either set out in the note or placed at the Meeting.

Resolutions drafted and circulated to Directors in advance, along with the Agenda saves time at the Meeting, clarifies the subject matter, facilitates discussion, simplifies preparation of Minutes of the Meeting and enables issuance of certified copies of Resolution, wherever required, after the Meeting and before the Minutes thereof are finalised.

Specimen Agenda and items of business

The items of business that are required by the Act or any other applicable law to be considered at a Meeting of the Board shall be placed before the Board at its Meeting.

Illustrative list of items of business which shall not be passed by circulation and shall be placed before the Board at its Meeting

General Business Items

- Noting Minutes of Meetings of Audit Committee and other Committees.
- Approving financial statements and the Board's Report.
- Considering the Compliance Certificate to ensure compliance with the provisions of all the laws applicable to the company.
- Specifying list of laws applicable specifically to the company.
- Appointment of Secretarial Auditors and Internal Auditors.

Specific Items

- Borrowing money otherwise than by issue of debentures.
- Investing the funds of the company.
- Granting loans or giving guarantee or providing security in respect of loans.
- Making political contributions.
- Making calls on shareholders in respect of money unpaid on their shares.
- Approving Remuneration of Managing Director, Whole-time Director and Manager.
- Appointment or Removal of Key Managerial Personnel.
- Appointment of a person as a Managing Director / Manager in more than one company.
- In case of a public company, the appointment of Director(s) in casual vacancy subject to the provisions in the Articles of the company.
- According sanction for related party transactions which are not in the ordinary course of business or which are not on arm's length basis.
- Sale of subsidiaries
- Purchase and Sale of material tangible/intangible assets not in the ordinary course of business.
- Approve Payment to Director for loss of office.
- Items arising out of separate Meeting of the Independent Directors if so decided by the Independent Directors.

Corporate Actions

- Authorise Buy Back of securities
- Issue of securities, including debentures, whether in or outside India.
- Approving amalgamation, merger or reconstruction.
- Diversify the business.
- Takeover another company or acquiring controlling or substantial stake in another company.

Additional list of items in case of listed companies

- Noting minutes of Board Meetings of the unlisted subsidiary.
- Quarterly, half-yearly and annual financial results for the listed company.

- Recruitment and remuneration of senior officers just below the level of the Board of Directors.
- Agreement by the company with existing share transfer agent/ the new share transfer agent in the manner as specified by the Board from time to time.
- Statement of all significant transactions and arrangements entered into by the unlisted subsidiary.
- Approving Annual operating plans and budgets.
- Capital budgets and any updates.
- Information on remuneration of Key Managerial Personnel.
- Show cause, demand, prosecution notices and penalty notices which are materially important.
- Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
- Any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company.
- Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.
- Details of any joint venture or collaboration agreement.
- Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
- Significant labour problems and their proposed solutions. Any significant development in Human Resources/ Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
- Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
- Non-compliance of any regulatory, statutory or listing requirements and shareholder services such as non-payment of dividend, delay in share transfer etc.

Drafting an Agenda:

An item for some business which may arise before the Meeting, may be included while circulating the Agenda by adding the words "if any" after the said item. **For e.g.:** To review the status of legal cases, if any; if there is no update on the legal cases at all, a nil report may be given.

If during the course of a Board Meeting, any Agenda item containing a proposal is deferred for consideration to a subsequent Meeting and there is any change in the said proposal, the Notes on Agenda of the new proposal should explain the modifications in the proposal since the Board was already provided with the Agenda of the earlier Meeting and has been informed of the earlier proposal.

Numbering of each item of business:

Each item of business to be taken up at the Meeting shall be serially numbered.

Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting.

Shorter Notice for notice and agenda: To transact urgent business, the Notice, Agenda and Notes on Agenda may be given at shorter period of time than stated above, if at least one Independent Director, if any, shall be present at such Meeting. (Paragraph 1.3.11 of SS-1)

Additional content in such shorter notice issued for conducting "urgent business:

- The fact that the Meeting is being held at a shorter Notice shall be stated in the Notice.
- Holding a Meeting at shorter Notice is deviating from the conventional practice.
- Hence, this fact should be brought out in the Notice convening the Meeting.
- As a good governance practice, the reasons for convening the Meeting at shorter Notice may also be stated in the Notice.

Presence of Independent Director or ratification of decisions

If none of the Independent Directors are present at the Meeting held on shorter Notice and on the subsequent circulation of Minutes, none of the decisions or any of the decisions taken at such Meeting is disapproved or not ratified by at least one Independent Director, if any, such decisions of the Board in respect of such items fail.

The company should, therefore not implement decisions taken at such Board Meeting until they are ratified by at least one Independent Director, if any.

In case the company does not have an Independent Director, ratification of the decisions taken at such Meeting should be done by the majority of Directors of the company.

However, such ratification by majority is not required where the item was approved at the Meeting itself by a majority of Directors of the company.

2. FREQUENCY OF MEETINGS

Meetings of the Board: The company shall hold at least four Meetings of its Board in each Calendar Year with a maximum interval of one hundred and twenty days between any two consecutive Meetings.

Now, the stricter requirement of holding Board Meeting in every quarter has gone away with.

As a good governance practice, the Board may approve in advance, a calendar of dates for Meetings to be held in a year.

Provisions for One Person Company, Small Company and Dormant Company:

Further, it shall be sufficient if a One Person Company, Small Company or Dormant Company holds one Meeting of the Board in each half of a calendar year and the gap between the two Meetings of the Board is not less than ninety days.

If a One Person Company, Small Company or Dormant Company holds only two Meetings in a year, then the gap between the two such Meetings should be minimum 90 days.

If more than two Meetings are held in a year where the gap between the first and the last Meeting in a year exceeds 90 days then it would be sufficient compliance of the requirement.

The above provision is equally applicable in case of a private "start-up Company". (MCA Notification G.S.R. 583(E) dated 13 th June, 2017)
The term "start-up company" means a private company incorporated under the Act and recognised as start-up in accordance with the notification issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.

Meetings of Committees
Committees shall meet as often as necessary subject to the minimum number and frequency prescribed by any law or any authority or as stipulated by the Board.

For example, the Audit Committee of equity listed company should meet at least four times in a year and not more than one hundred and twenty days should elapse between two Meetings.

Also, the Audit Committee of equity listed company may invite the finance director or head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives to be present at the meetings of the committee.

Occasionally the audit committee may meet without the presence of any executives of the company.

Meeting of Independent Directors
Where a company is required to appoint Independent Directors under the Act, such Independent Directors shall meet at least once in a Calendar Year.

However, the MCA vide Notification dated 5th July, 2017 has clarified that the Independent Directors are required to meet at least once in a financial year.

The independent directors of the company shall hold at least one meeting in a financial year without the attendance of non-independent directors and members of management; [Clause VII(1) of Schedule IV to the Act].

The meeting shall be held to review the performance of Non-Independent Directors and the Board as a whole; to review the performance of the Chairman and to assess the quality, quantity and timeliness of flow of information between the company management and the

Board and its members that is necessary for the Board to effectively and reasonably perform their duties.

A Meeting of Independent Directors is not a Meeting of the Board or of a Committee of the Board.

Therefore, provisions of SS-1 shall not be applicable to such Meetings. A record of the proceedings of such a Meeting may be kept.

The Company Secretary, wherever appointed, shall facilitate convening and holding of such meeting, if so desired by the Independent Directors.

Invitees in meeting of independent directors:
In order to seek some clarification, opinion, views, etc., the Independent Directors may invite the Company Secretary or the Managing Director or any other officer of the company or a Company Secretary in Practice or any other expert to attend such a Meeting or a part thereof.

If so invited, the Company Secretary or the Managing Director or any other officer of the company or a Company Secretary in Practice or any other expert may attend such Meeting or any part thereof.

3. QUORUM

The Quorum for a Meeting is the minimum number of Directors whose presence is required to constitute a valid Meeting and who are competent to transact business and vote thereon.

Quorum shall be present throughout the Meeting: In order that a Meeting may be properly constituted and the business be validly transacted, Quorum should be present.

Interested Director not to participate in Quorum: An Interested Director should neither participate nor vote in respect of an item in which he is interested, nor such Director be counted for Quorum in respect of such item.

However, such Director may be present in the Meeting during discussions on such item.

However, in case of a private company, a Director shall be entitled to participate in respect of such item after disclosure of his interest.

If the item of business is a related party transaction, then he shall not be present at the meeting, physically or through electronic mode, during discussions and voting on such item.

In case of a private company, MCA Notification dated 5th June, 2015 states that sub-section (2) of Section 184 of the Act shall apply with the exception that the Interested Director may participate at such Board Meeting after disclosure of his interest.

For the purpose of Quorum, as per Explanation to sub-section (3) of Section 174 of the Act, an Interested Director means a Director covered under sub-section (2) of Section 184 of the Act which in turn provides for disclosure of interest by an Interested Director and prohibits his participation in an item in which he is interested. [In line with MCA Notification No. G.S.R. 464(E) dated June 5th, 2015]

MCA Notification G.S.R. 583(E) dated 13th June, 2017 specifically provides that in case of a private company, an Interested Director may also be counted towards quorum after disclosure of his interest pursuant to Section 184.

Related Party Transaction

If the item of business is a related party transaction, then the interested director shall not be present at the Meeting, whether physically or through Electronic Mode, during discussions and voting on such item.

As per Rule 15(2) of the Companies (Meetings of Board and its Powers) Rules, 2014, an Interested Director shall not be present during discussions and voting on the item in which he is interested, if the item happens to be a related party transaction.

Disclosure of interest by Interested Director

As stated, any Director of the company who is interested in a matter being considered at the Meeting should disclose his interest.

Every Director should, at the first Meeting of the Board in which he participates as a Director and thereafter at the first Meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board Meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals, which should include his shareholding [Sub-section (1) of Section 184 of the Act read with Rule 9 of the Companies (Meetings of Board and its Powers) Rules, 2014].

An Interested Director should also disclose the nature of his concern or interest at the Meeting of the Board where the contract or arrangement in which he is interested as above is discussed.

Disclosure of interest, should be made by him, even if he himself, or he along with other Directors holds less than two percent of the paid-up share capital of that body corporate. This is required for the purpose of reckoning the limit of two percent shareholding by all the Directors.

Quroum w.r.t. Directors participating through Electronic Mode:

Directors participating through Electronic Mode in a Meeting shall be counted for the purpose of Quorum, unless they are to be excluded for any items of business under the provisions of the Act or any other law.

Quorum for Meetings of the Board:
The Quorum for a Meeting of the Board shall be one-third of the total strength of the Board, or two Directors, whichever is higher.

Quorum for Meetings of Committees: Unless otherwise stipulated in the Act or the Articles or under any other law, the Quorum for Meetings of any Committee constituted by the Board shall be as specified by the Board.

If no such Quorum is specified, the presence of all the members of any such Committee is necessary to form the Quorum.

4. ATTENDANCE AT MEETINGS

(i) Attendance register: Every company shall maintain attendance register for the Meetings of the Board and Meetings of the Committee. The pages of the attendance register shall be serially numbered.

Here ,a company may choose either count and give continuous numbering to the attendance register from its incorporation or from the Meetings held on or after1st July,2015,this being the date from which SS-1 became effective.

(ii) Manner of maintaining attendance register: Attendance may be recorded on separate attendance sheets or in a bound book or register. If an attendance register is maintained in loose-leaf form, it shall be bound periodically, at least once in every three years.

(iii) Particulars of attendance register: The attendance register shall contain the following particulars:

- serial number and date of the Meeting;
- in case of a Committee Meeting name of the Committee;
- place of the Meeting;
- time of the Meeting;
- names and signatures of the Directors,
- the Company Secretary and
- persons attending the Meeting by invitation and their mode of presence, if participating through Electronic Mode.

The attendance register should also contain the capacity in which an Invitee attends the Meeting and where applicable, the name of the entity such Invitee represents, and the relation, if any, of that entity to the company. This would enable recording of the same in the Minutes as required in paragraph 7.2.1.2 of SS-1.

This paragraph of SS-1 also clearly classifies the persons "present", "in attendance" and "Invitees" for the purpose of the Meeting.

It is duty of the Company Secretary to facilitate the convening and attend the Meetings of the Board and its Committees [Rule 10(2) of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014].

The Act does not mandate as a part of his duty, any KMP other than the Company Secretary, to facilitate the convening and attend the Meetings of the Board or its Committees.

Thus, the main participants of the Meeting i.e. **Directors should be treated as "present**"; the **Company Secretary,** who is the person responsible for facilitating, convening the Meeting and attend the same as a part of his duty **should be treated as "in attendance"** and any **other person other than the above two categories, including KMPs, should be treated as "Invitees"** at the Meeting, for all purposes.

In case an Institution has appointed a Nominee Director on the Board of the company and such Nominee Director is unable to attend the Meeting, another person may be sent by the Institution to attend the specific Meeting. At times, foreign collaborators of the company may be invited to attend Meetings. All such persons attending the Meeting by invitation should be treated as "Invitees".

Persons who are present in a Meeting merely to provide administrative assistance to an Invitee or Director or Company Secretary should neither be treated as "Invitees" nor as "in Attendance". The Chairman may use his discretion in recording the presence of such persons.

If a Committee deems it necessary, it may invite any other Director, who is not a member of the Committee, to attend the Meeting of the Committee for specific purpose. Such Director should then be treated as an "Invitee" at the Meeting for all purposes.

Signing of Attendance Register:

The attendance register shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded in the attendance register and authenticated by the Company Secretary or where there is no Company Secretary, by the Chairman or by any other Director present at the Meeting, if so authorised by the Chairman and the fact of such participation is also recorded in the Minutes.

In terms of this paragraph SS-1, the attendance of any of the Directors participating through Electronic Mode in a Meeting is required to be recorded in the attendance register and authenticated by the Chairman or the Company Secretary. Such authentication may also be done by any other director present at the meeting, if so authorised by the Chairman. This is provided to facilitate the authentication process in the absence of Company Secretary.

(iv) Place of maintaining attendance register:

The attendance register shall be maintained at the Registered Office of the company or such other place as may be approved by the Board. The attendance register is open for inspection by the Directors. Even after a person ceases to be a Director, he shall be entitled to inspect the attendance register of the Meetings held during the period of his Directorship.

Roll call for Directors participating through Electronic Mode

In case of Directors participating through Electronic Mode, the Chairman shall confirm the attendance of such Directors.

For this purpose, at the commencement of the Meeting, the Chairman shall take a roll call. The Chairman or the Company Secretary shall request the Director participating through Electronic Mode to state his full name and location from where he is participating and shall record the same in the Minutes.

The requirement for roll call is in line with the requirement under Rule 3(4) and Rule 3(5) of the Companies (Meetings of Board and its Powers) Rules, 2014.

During the roll call, every Director participating through Electronic Mode should state, for the record, the following namely:
(a) name;
(b) the location from where he is participating;
(c) that he has received the Agenda and all the relevant material for the Meeting; and
(d) that no one other than the concerned Director is attending or having access to the proceedings of the Meeting at the location mentioned in (b) above. [Rule 3(4) of the Companies (Meetings of Board and its Powers) Rules, 2014]
The proceedings of such Meetings shall be recorded through any electronic recording mechanism and the details of the venue, date and time shall be mentioned.

The attendance register shall be preserved for at least eight financial years from the date of last entry made therein and may be destroyed thereafter with the approval of the Board.

Leave of absence:

Leave of absence shall be granted to a Director only when a request for such leave has been communicated to the Company Secretary or to the Chairman or to any other person authorised by the Board to issue Notice of the Meeting.

Request for leave of absence may be either oral or written. Any such request received should be mentioned at the Meeting and should be recorded in the Minutes of the Meeting.

The Minutes of the Meeting should clearly mention the names of the Directors present at the Meeting and those who have been granted leave of absence.

Vacation of office of Director: The office of a Director shall become vacant in case the Director absents himself from all the Meetings of the Board held during a period of twelve months with or without seeking leave of absence of the Board.

For the purpose of counting of Board Meetings held in the preceding twelve months, **the counting should commence from the date of the first Board Meeting held immediately after the Meeting which the Director concerned last attended.**

A Board Resolution need not be passed to show that office of Director has been vacated by a particular Director. Vacation of office is automatic as soon as a Director is found to have incurred disability as contemplated by clause (b) of sub-section (1) of Section 167 of the Act) [Bharat Bhushan v. H.B. Portfolio Leasing Ltd. (1992)].

As a matter of good governance, due intimation of such vacation should be sent to such Director forthwith and the Board may take note of such vacation at its next Meeting.

Proxies cannot be appointed to attend Board Meetings:
The Act does not contain any provision conferring on the Directors the right to appoint a proxy to attend Board Meetings.

4. CHAIRMAN

Meetings of the Board
The Chairman of the company shall be the Chairman of the Board. If the company does not have a Chairman, the Directors may elect one of themselves to be the Chairman of the Board.
The procedure for appointment and powers and duties of a Chairman may be prescribed in the Articles of the company.

Appointment of Chairman: For a Meeting to be properly constituted, the Chairman of the Board or a validly elected person should be in the chair.

The Act does not provide for appointment of a Chairman of the Meeting but the Model Articles provide that the Board may elect a Chairman of its Meetings and determine the period for which he is to hold office [Regulation 70 (i) of Table F of Schedule I to the Act].

While appointing such person, the Board may stipulate a time period for the person to continue as Chairman of the Board. At the end of such period, the Board may either re-appoint the person or appoint any other Director as Chairman of the Board.

It is considered a good practice for every company to have a Chairman who would be the Chairman for Meetings of the Board of Directors as well as general meetings of the company. Normally, the Directors elect one amongst themselves to be the Chairman of the Board and he continues to act as such until he ceases to be a Director or until another Director is appointed as the Chairman.

Election of Chairman in the absence of elected chairman: The Chairman of the Board shall conduct the Meetings of the Board. If no such Chairman is elected or if the Chairman

is unable to attend the Meeting, the Directors present at the Meeting shall elect one of themselves to chair and conduct the Meeting, unless otherwise provided in the Articles.

If no Chairman is elected by the Board, or if at any Meeting, the Chairman is not present within five minutes after the time appointed for holding the Meeting, the Directors present may choose one of their number to be Chairman of the Meeting [Regulation 70 of Table F of Schedule I to the Act].

Role of Chairman: The Chairman shall ensure that the required Quorum is present throughout the meeting and at the end of discussion on each agenda item, the Chairman shall announce the summary of the decision taken thereon.

The main function of the Chairman is to preside over and conduct the Meeting in an orderly manner.

Interested Chairman should vacate the Chair: If the Chairman is interested in an item of business, he shall entrust the conduct of the proceedings in respect of such item to any Non-Interested Director with the consent of the majority of Directors present and resume the Chair after that item of business has been transacted.

However, in case of a private company, the Chairman may continue to chair and participate in the Meeting after disclosure of his interest.

If the item of business is a related party transaction, the Chairman shall not be present at the Meeting, whether physically or through Electronic Mode, during discussions and voting on such item.

Meetings of Committees

(i) Chairman of Committee Meeting: A member of the Committee appointed by the Board or elected by the Committee as Chairman of the Committee, in accordance with the Act or any other law or the Articles, shall conduct the Meetings of the Committee.

If no Chairman has been so elected or if the elected Chairman is unable to attend the Meeting, the Committee shall elect one of its members present to chair and conduct the Meeting of the Committee, unless otherwise provided in the Articles.

The Board may appoint a Chairman for a Committee at the time of the constitution of the Committee.

If the Board has not appointed the Chairman, the Committee may elect a Chairman of its Meetings and if no such Chairman is elected, or if at any Meeting the Chairman is not present within five minutes after the time appointed for holding the Meeting, the members present may choose one of their members to be Chairman of the Meeting unless otherwise provided in the Articles (Regulation 72 of Table F of Schedule I to the Act).

(ii) Secretary of Committee Meeting: The Company Secretary should be the Secretary to the Committee. It is the duty of the Company Secretary to facilitate the convening of Meetings of the Board and its Committees [Rule 10 (2) of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014].

(iii) Provisions of Board meeting applicable to Committee's meeting: The provisions relating to Meetings of Committees are generally the same as those applicable to Board Meetings. For example, proper Notice of the Meeting should be given, Quorum should be present, there should be a Chairman, issues should be decided by simple majority and, in case of equality of votes, the Chairman should have a second or casting vote, unless otherwise provided in the Articles.

(iv) Appraisal of the Board: The Chairman of a Committee or any other person authorised by him should apprise the Board of the decisions taken at the Meetings of the Committee.

5. PASSING OF RESOLUTION BY CIRCULATION

The Act requires certain business to be approved only at Meetings of the Board. However, other business that requires urgent decisions can be approved by means of Resolutions passed by circulation. Resolutions passed by circulation are deemed to be passed at a duly convened Meeting of the Board and have equal authority.

Authority for resolution by circulation: The Chairman of the Board or in his absence, the Managing Director or in their absence, any Director other than an Interested Director, shall decide, before the draft Resolution is circulated to all the Directors, whether the approval of the Board for a particular business shall be obtained by means of a Resolution by circulation.

For the purpose of this paragraph of SS-1, in case of a private company, an Interested Director may also decide, before the draft Resolution is circulated to all the Directors, whether the approval of the Board for a particular business should be obtained by means of a Resolution by circulation.

When does Resolution by circulation fails: Where not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting, the Chairman shall put the Resolution for consideration at a Meeting of the Board.

Procedure for passing of resolution by circulation:
(i) ***Despatch of circular resolution:*** A Resolution proposed to be passed by circulation shall be sent in draft, together with the necessary papers, to all the Directors including Interested Directors on the same day.

(ii) ***Mode of delivery of circular resolution:*** The draft of the Resolution to be passed and the necessary papers shall be circulated amongst the Directors by hand, or by speed post or by registered post or by courier, or by e-mail or by any other recognised electronic means.

An additional two days should be added for the service of the draft Resolution, as in case the same has been sent by the company by speed post or by registered post or by courier, while computing the date of circulation of the draft of the Resolution given to the Directors to respond in case of Resolution by circulation.

A time period of minimum three years from the date of meeting has been prescribed for preserving proof of sending and delivery of the draft of the Resolution and the necessary papers.

(iii) ***Essentials of circular resolution:*** Each business proposed to be passed by way of Resolution by circulation shall be explained by a note setting out

- the details of the proposal,
- relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal,
- the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed and
- the draft of the Resolution proposed.

The note shall also indicate how a Director shall signify assent or dissent to the Resolution proposed and the date by which the Director shall respond.

Notice and Agenda are not necessary for passing of a Resolution by circulation. However, necessary papers which explain the purpose of the Resolution should be sent along with the draft Resolution to all the Directors, or in the case of a Committee, to all the members of the Committee.

It would be advisable to also explain the reasons as to why approval is sought by circulation.

Each Resolution shall be separately explained. The decision of the Directors shall be sought for each Resolution separately.

A single note containing more than one Resolution may be circulated but the note should enable the signifying of the decision by a Director on each Resolution separately.

Approval of circular resolution: The Resolution is passed when it is approved by a majority of the Directors entitled to vote on the Resolution, unless not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting.

For a Resolution under circulation to be passed, it should be approved by a majority of dis-interested Directors, who are entitled to vote.

***Requisite Majority*:** If any special majority or the affirmative vote of any particular Director or Directors is specified in the Articles, the Resolution shall be passed only with the assent of such special majority or such affirmative vote.

Numbering of Resolutions: Every such Resolution shall carry a serial number. During e-filing, companies are required to quote Resolution numbers in certain cases. Numbering would facilitate the above and also enable ease of reference.
The company may choose to follow its existing system of numbering, if any or any new system of numbering, which should be distinct and enable ease of reference or cross-reference.

The Resolution, if passed, shall be deemed to have been passed on the earlier of:

(a) the last date specified for signifying assent or dissent by the Directors; or

(b) the date on which assent has been received from the required majority, provided that on that date the number of Directors, who have not yet responded on the resolution under circulation, along with the Directors who have expressed their desire that the resolution under circulation be decided at a Meeting of the Board, shall not be one third or more of the total number of Directors; and shall be effective from that date, if no other effective date is specified in such Resolution.

Recording:
Resolutions passed by circulation shall be noted at a subsequent Meeting of the Board and the text thereof with dissent or abstention, if any, shall be recorded in the Minutes of such Meeting.

This is in line with sub-section (2) of Section 175 of the Act, which requires a Resolution passed by circulation to be noted at a subsequent Meeting of the Board or the Committee thereof, as the case may be, and recorded in the Minutes of such Meeting.

The text of the Resolution along with details of dissent and abstention should be recorded and taken note of in the next Meeting and should be recorded in the Minutes of such Meeting.

As a matter of good governance, if a Resolution by circulation is not passed due to lack of majority, or if it has to be taken up at a Meeting of the Board due to one-third of the directors requiring the same, this fact should be appropriately recorded in the Minutes of the next Meeting.

Now there is no need for recording in Minutes the fact that the Interested Director did not vote on the Resolution.

6. MINUTES

Minutes' are the official recording of the proceedings of the Meeting and the business transacted at the Meeting.

Every company shall keep Minutes of all Board and Committee Meetings in a Minutes Book. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. There is no restriction in law on the language of recording Minutes.

Maintenance of Minutes:

- Minutes shall be recorded in books maintained for that purpose.
- A distinct Minutes Book shall be maintained for Meetings of the Board and each of its Committees.
- A company may maintain its Minutes in physical or in electronic form. Minutes may be maintained in electronic form in such manner as prescribed under the Act and as may be decided by the Board. Minutes in electronic form shall be maintained with Timestamp.
- Every listed company or a company having not less than one thousand shareholders, debenture holders and other security holders, may maintain its records in electronic form [Rule 27 of the Companies (Management and Administration) Rules, 2014).

Consistency in the form of maintaining Minutes:

- A company shall however follow a uniform and consistent form of maintaining the Minutes.
- Any deviation in such form of maintenance shall be authorised by the Board. Companies should maintain the Minutes of all Meetings either in physical form or in electronic form.
- In other words, companies should not maintain Minutes of a few Meetings in physical form and of a few Meetings in electronic form.

The pages of the Minutes Books shall be consecutively numbered:

- This shall be followed irrespective of a break in the Book arising out of periodical binding in case the Minutes are maintained in physical form so as to facilitate easy retrieval of any decision/Resolution and additionally to safeguard the integrity of the Minutes.
- Thus, where a Minutes Book is full and a new Minutes Book is prepared, the numbering should continue from the number appearing on the last page of the previous Minutes Book.
- This should also be followed irrespective of the number or year of Meeting.
- For the purpose of this paragraph of SS-1, a company may choose to give consecutive numbering from Meetings held on or after 1st July, 2015, this being the date from which SS-1 became effective.
- In the event any page or part thereof in the Minutes Book is left blank, it shall be scored out and initialled by the Chairman who signs the Minutes.
- This shall be equally applicable for maintenance of Minutes Book in electronic form with Timestamp.

No attachment or pasting is allowed in Minutes: Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner.

Contents of Minutes:

(i) **General Contents**

(a) Minutes should state at the beginning the following:

1. The name of the company
2. The type of Meeting (Board Meeting, Committee Meeting, etc.
3. The serial number, day, date and venue of the Meeting
4. The time of commencement of the Meeting

The time of conclusion of the meeting should also be recorded in the Minutes either at the beginning or at the end of the Minutes.

The requirement of recording the time of conclusion of the Meeting is relevant for listed companies in the light of the requirements under the Listing Regulations.

Since SS-1 promotes good corporate practices, this requirement has been extended to other companies as well. This would also help the Minutes to be complete in all aspects.

In respect of a Meeting adjourned for want of Quorum, a statement to that effect by the Chairman or in his absence, by any other Director present at the Meeting shall be recorded in the Minutes.

The Minutes of the adjourned Meeting should be prepared separately and in the same manner as the Minutes of the original Meeting and the fact that the Meeting is an adjourned Meeting should be specified in such Minutes.

For the purpose of recording the time of conclusion of the Meeting which has been adjourned, the time at which such Meeting was adjourned should be recorded.

Recording in the Minutes:

(i) General Contents:

Minutes should record the names of the following:

2. The Directors present, physically or through electronic mode.

- The Minutes should disclose the particulars of the Directors who attended the Meeting through Electronic Mode [Sub-Rule 11(b) of Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014].
- The names of the Directors shall be listed in alphabetical order or in any other logical manner, but in either case starting with the name of the person in the Chair.
- The term "any other logical manner" should be liberally construed as the manner in which the company deems it appropriate to record the names of Directors present with some logic behind e.g. designation, seniority, etc. of the directors.

2. The Company Secretary, if any, in attendance, and
3. The Invitees, if any, including Invitees for specific items.

The capacity in which an Invitee attends the Meeting and where applicable, the name of the entity such Invitee represents and the relation, if any, of that entity to the company shall also be recorded.
If an Invitee is present only during the discussion on a particular item of business, such fact should also be mentioned in the Minutes.

Any officer of the company who attends the Meeting, other than the Company Secretary, should be treated as an Invitee to the Meeting and the name of such person should be included in the Minutes.

Additional recording in the Minutes: Besides the above, the Minutes should also record the following:

1. The name of the Director who took the Chair.
2. The precise nature of actual business transacted and what was formally proposed and ultimately decided upon.
3. Vote of thanks.

Record of all appointments made at the Meeting: Minutes shall record all appointments approved by the Board. For example: Appointment of Directors, KMPs, etc.

But now there is no specific requirement of noting by Board of all appointments made at one level below Key Managerial Personnel.

Specific Contents: Minutes shall *inter-alia* contain:

(a) The name(s) of Directors present and their mode of attendance, if through Electronic Mode: In case all Directors are present physically, the Minutes need not specially record the mode of attendance. However, the Minutes should record the same in respect of Directors who participated in the Meeting through Electronic Mode.

(b) In case of a Director participating through Electronic Mode, his particulars, the location from where he participated and wherever required, his consent to sign the statutory registers placed at the Meeting.

Minutes should record the location from where the Directors participating through Electronic Mode participated in the Meeting.

(c) The name of Company Secretary who is in attendance and Invitees, if any, for specific items and mode of their attendance if through Electronic Mode.

(d) Record of election, if any, of the Chairman of the Meeting.

The election, if any, of the Chairman of the Meeting, as provided in paragraph 5 of SS-1,should be recorded in the Minutes.

(e) Record of presence of Quorum: If at the commencement of the Meeting, Quorum is present, but subsequently any Director leaves before the close of the Meeting due to which the Quorum requirement is not met for businesses taken up thereafter, then the Meeting should be adjourned and a statement to that effect should be recorded in the Minutes.

(f) The names of Directors who sought and were granted leave of absence.

(g) Noting of the Minutes of the preceding Meeting.
Minutes of the preceding Meeting, including any adjourned Meeting, should be noted.

(h) Noting the Minutes of the Meetings of the Committees.
Minutes of a Board Meeting should contain a noting of the Minutes of the Meetings of all its Committees which have been entered in the Minutes Book of the respective Committees and which have not yet been noted by the Board.

T
his is a good governance practice which would ensure that the Board remains intimated about the deliberations and discussions that have taken place at Committee Meetings.

(i) The text of the Resolution(s) passed by circulation since the last Meeting, including dissent or abstention, if any.
If any Director on the Board dissents or abstains from voting on any of the Resolution passed by circulation, then such dissent or abstention should be recorded in the Minutes.

(j) The fact that an Interested Director did not participate in the discussions and did not vote on item of business in which he was interested and in case of related party transaction such director was not present in the Meeting during discussions and voting on such item. (Earlier this was specifically provided to be recorded but now in revised SS-1, there is no such specific requirement)
In case of a private company, the Minutes should record the fact that an interested Director after disclosure of his interest participated in the discussion and voted thereat (In line with MCA Notification No. G.S.R. 464(E) dated June 5, 2015)

(k) The views of the Directors particularly the Independent Director, if specifically insisted upon by such Directors, provided these, in the opinion of the Chairman, are not defamatory of any person, not irrelevant or immaterial to the proceedings or not detrimental to the interests of the company.

(l) If any Director has participated only for a part of the Meeting, the Agenda items in which he did not participate:
In the event, a particular Director leaves the Meeting early, the fact of his so leaving should be incorporated in the Minutes. Likewise, if a particular Director joins the Meeting after its commencement, this fact should also be recorded in the Minutes.

(m) The fact of the dissent and the name of the Director who dissented from the Resolution or abstained from voting thereon.
Names of Directors who abstained from voting and names of those dissenting should also be mentioned in the Minutes.

(n) Ratification by Independent Director or majority of Directors, as the case may be, in case of Meetings held at a shorter Notice.
If the Independent Director does not ratify the decision taken at the Meeting held at a shorter Notice or if he abstains from such ratification, a statement to that effect should be recorded in the Minutes.

(o) Consideration of any item other than those included in the Agenda with the consent of majority of the Directors present at the Meeting and ratification of the decision taken in respect of such item by a majority of Directors of the company.

Minutes should state that items which were not included in the Agenda were taken up with the consent of the Chairman and majority of the Directors present at the Meeting. Minutes should also state that the decision taken in respect of such item has been approved / ratified by the majority of the Directors of the company.

(p) The time of commencement and conclusion of the Meeting.

The Minutes should record the time when the Meeting commenced and concluded.

In addition to what is stated above, the following should also be recorded in the Minutes, to the extent applicable:

(a) the fact that the Notices given by Directors disclosing their Directorships and shareholding in other companies, bodies corporate, firms, or other association of individuals as per Section 184 of the Act and their shareholdings in the company/holding/subsidiary/associate company as per Section 170 of the Act, were read and noted;

(b) the fact of unanimity of decisions of dis-interested directors as contemplated by Sections 203 and 186 of the Act and listed out in Annexure IC ;

(c) the fact that the register of contracts with related parties and contracts and bodies etc. in which Directors are interested was placed before the Meeting and was signed by all the Directors present thereat (Section 189 of the Act);

(d) Noting of declaration of independence by Independent Directors [Sub-section (7) of Section 149 of the Act];

(e) Noting of declaration that none of the Directors are disqualified to be appointed / continuing as a Director of the company or are disqualified to act as a Director on the basis of non-compliance by other companies on the Board(s) of which they are Directors, in terms of the provisions of sub-section (2) of Section 164 of the Act;

(f) In case of demise or resignation or disqualification of any Director, details of such Director and noting of vacation of his office.

(g) In case a Resolution placed before the Board is rejected or withdrawn, the fact of it so having been rejected or withdrawn.

If a Meeting has been called in pursuance of a request by a Director, such fact should also be recorded in the Minutes.

Apart from the Resolution or the decision, Minutes shall mention the brief background of all proposals and summarise the deliberations thereof. In case of major decisions, the rationale thereof shall also be mentioned.

Recording of Minutes:

Companies follow diverse practices with respect to recording of Minutes. Some companies record only the decisions while few companies record only the Resolutions that capture the decisions taken and some companies record the entire proceedings in the form of almost an exact transcript of what had transpired at the Meeting.

SS-1 seeks to harmonise such divergent practices by providing principles for recording of Minutes. The Minutes should be recorded in such a way that it enables any reader to understand what had transpired in the Meeting.

Minutes shall contain a fair and correct summary of the proceedings of the Meeting:
Minutes are not an exhaustive record of everything said at a Meeting. Minutes should record the decisions of the Board, with a narrative to put them in context.

They should not attempt to record all reasons for decisions taken, i.e. all arguments put forth for and against a particular Resolution. There is also no need to record the details of voting.

Since the Notes on Agenda contain the background of the proposal in detail, the Minutes should contain only the summary of the proposal. It is not required that whatever is contained in the Notes on Agenda be reproduced verbatim; however, the crux of the matter should be captured in the Minutes.

The Company Secretary shall record the proceedings of the Meetings. Where there is no Company Secretary, any other person duly authorised by the Board or by the Chairman in this behalf shall record the proceedings.

In case a Company Secretary is unable to attend a Meeting, or in the absence of the Company Secretary, any other person duly authorised by the Board or by the Chairman may attend and record the proceedings of the Meeting.

The Chairman shall ensure that the proceedings of the Meeting are correctly recorded.

Chairman's discretion:
The Chairman has absolute discretion to exclude from the Minutes, matters which in his opinion are or could reasonably be regarded as defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the interests of the company.

The Chairman has the responsibility to ensure that the Minutes contain a fair and accurate summary of the proceedings at the Meeting. The word "fair" signifies the need to record matters as transpired at the Meeting without any bias. While doing so, he has absolute discretion to exclude matters of the nature as specified above.

Minutes shall be written in clear, concise and plain language:

- Minutes need not be an exact transcript of the proceedings at the Meeting.
- Minutes should be written in simple language and should contain a brief synopsis of the discussions along with the decisions taken at the Meeting.
- Minutes should record the essential elements of the discussion and the complete text of the Resolutions passed at the Meeting.
- In case any Director requires his views or opinion on a particular item to be recorded verbatim in the Minutes, the decision of the Chairman whether or not to do so shall be final.
- Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense.
- There is no restriction in law on the language in which the Minutes are recorded.

Recording of unsigned documents which where not part of the Notes on Agenda: Wherever the decision of the Board is based on any unsigned documents including reports or notes or presentations tabled or presented at the Meeting, which were not part of the Notes on Agenda and are referred to in the Minutes, shall be identified by initialling of such documents by the Company Secretary or the Chairman.

Recording of supersession or modification of earlier resolution: Where any earlier Resolution(s) or decision is superseded or modified, Minutes shall contain a specific reference to such earlier Resolution(s) or decision or state that the Resolution is in supersession of all earlier Resolutions passed in that regard.

Noting of minutes of preceding Meeting: Minutes of the preceding Meeting shall be noted at a Meeting of the Board held immediately following the date of entry of such Minutes in the Minutes Book.

Noting of minutes of Committee Meeting: Minutes of the Meetings of any Committee shall be noted at a Meeting of the Board held immediately following the date of entry of such Minutes in the Minutes Book.

Finalisation of Minutes:

- Within fifteen days from the date of the conclusion of the Meeting of the Board or the Committee, the draft Minutes thereof shall be circulated by hand or by speed post or by registered post or by courier or by e-mail or by any other recognised electronic means to all the members of the Board or the Committee, as on the date of the Meeting, for their comments.
- The above requirement has been introduced in line with Rule 3(12) of the Companies (Meetings of Board and its Powers) Rules, 2014, which requires the draft Minutes of the Meetings held through Electronic Mode to be circulated to the Directors within fifteen days. This requirement has been extended to physical Meetings also since it is a good practice.
- A minimum period of three years from the date of meeting has been prescribed for maintaining proof of sending draft minutes and its delivery.
- Only if Chairman is authorized by the Board, he has discretionary power to consider the comments of any director received after expiry of seven days from the date of dispatch of draft minutes to them.

Entry in the Minutes Book

- Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.
- The date of entry of the Minutes in the Minutes Book shall be recorded by the Company Secretary.
- Where there is no Company Secretary, it shall be entered by any other person duly authorised by the Board or by the Chairman.
- The date of entry of the Minutes should be recorded on the last page of the respective Minutes. If the Minutes are maintained in electronic form, the date of entry should be captured in Timestamp.

Alteration in the minutes once entered in the Minutes Book:

- Minutes, once entered in the Minutes Book, shall not be altered.
- Any alteration in the Minutes as entered shall be made only by way of express approval of the Board at its subsequent Meeting at which the Minutes are noted by the Board and the fact of such alteration shall be recorded in the Minutes of such subsequent Meeting.
- Any corrections or modifications in the text of Minutes, duly entered in the Minutes Book and signed by the Chairman, would tantamount to alteration of Minutes.

Modification of Resolutions passed by the Board

A Resolution passed by the Board cannot be subsequently modified or altered, unless the Resolution is superseded, modified or altered by the Board by means of another Resolution duly passed.

Signing and Dating of Minutes

- Minutes of the Meeting of the Board shall be signed and dated by the Chairman of the Meeting or by the Chairman of the next Meeting.
- The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which and the place where he has signed the Minutes.
- The place for this purpose should be the city where the Minutes are being signed. The date on which the Minutes are signed should be appended to the signature.
- Any blank space in a page between the conclusion of the Minutes and signature of the Chairman shall be scored out.
- The Minutes should be recorded on consecutive pages of the Minutes Book. No blank space should be left in between the Minutes.
- If the Minutes are maintained in electronic form, the Chairman shall sign the Minutes digitally.
- Scanned signature of the Chairman cannot be affixed on the Minutes.

Minutes, once signed by the Chairman, shall not be altered, save as mentioned in this Standard

As SS-1 specifically provides for that any alteration in the Minutes, as entered, should be made only by way of an express approval of the Board at its subsequent Meeting at which the Minutes are noted by the Board and the fact of such alteration shall be recorded in the Minutes of such subsequent Meeting.

Within 15 days of signing of the Minutes, a copy of the said signed Minutes certified by the Company Secretary or if there is no Secretary then by any of the director authorized by the Board, shall be circulated to all the directors as on the date of meeting and appointed thereafter. But if any Director has waived right of receiving the said copy of signed Minutes either in writing or his waiver is recorded in Minutes then there is no need of sending him such copy.

Inspection and Extracts of Minutes:

- Extracts of the Minutes shall be given only after the Minutes have been duly entered in the Minutes Book.
- However, without waiting for these formalities, certified copies of the Resolutions can be issued even earlier, once a Resolution is passed.
- Provided, certified copies of Resolutions can be given only when the text of a Resolution proposed to be passed at a Meeting had been placed before the Meeting.
- Many a times, it might be necessary to furnish certified copies of Resolutions or file the same with authorities for various purposes.
- Therefore, when the Notes on Agenda are prepared, if an item is of such nature as would require a certified copy to be given to third parties immediately after the passing of the Resolution, the text of the Resolution should be included in the Notes on Agenda or tabled at the Meeting so that certified copies can be issued at any time after the Resolution is passed.

Such situations may arise in the case of Resolutions passed for opening of bank accounts, taking loans from financial institutions, etc. where the bank account cannot be opened/operated or the financial assistance cannot be availed of without furnishing a certified copy of the Resolution.

A company can implement Resolutions passed at Meetings of the Board or Committee thereof without waiting for noting of the concerned Minutes at the next Meeting of the Board or the Committee, as the case may be.

A copy of the Board Resolution may be certified by the Company Secretary or the Chairman or by any Director.

There is no restriction on the certification of a Board Resolution by a Director who was not present at the Meeting where such a Resolution was passed. Such Director should however ensure that what he certifies is based on his knowledge of what had transpired at the Meeting.

8. DISCLOSURE

The Annual Report and Annual Return of a company shall disclose the number and dates of Meetings of the Board and Committees held during the financial year indicating the number of Meetings attended by each Director.

The Report of the Board of Director's shall include a statement on compliance of applicable Secretarial Standards.

The above statement may be given as under:
"The Directors have devised proper systems to ensure compliance with the provisions of all applicable Secretarial Standards and that such systems are adequate and operating effectively".

The above statement is intended to align the disclosure requirement with the provisions of Section 134(5)(f) of the Act, which requires the Directors to state in the Directors Responsibility Statement that the Directors have devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems are adequate and operating effectively.

****

Secretarial Standard on General Meetings: (SS-2)
The first version of SS-2 was applicable to General Meetings, in respect of which Notices were issued during 1st July, 2015 to 30th September, 2017. The revised version of SS-2 applies to General Meetings, in respect of which Notices are issued on or after 1st October, 2017. This Standard seeks to prescribe a set of principles for the convening and conducting of General Meetings and matters related thereto. This Standard also deals with conduct of e-voting and postal ballot.

SCOPE
This Standard is applicable to all types of General Meetings of all companies incorporated under the Act **except**
(i) One Person Company (OPC) and
(ii) A company licensed under Section 8 of the Companies Act, 2013 or corresponding provisions of any previous enactment thereof.

However, Section 8 companies need to comply with the applicable provisions of the Act relating to General Meetings.

****

SECRETARIAL STANDARD (SS-2)

(1) Convening a Meeting
Authority to convene General Meetings: A General Meeting shall be convened by or on the authority of the Board.

Notice of General Meeting:

- Notice of general meeting shall be in writing.
- Notice shall specify the day, date, time and full address of the venue of the Meeting.
- Notice of Annual General Meeting shall also specify the serial number of the Meeting.
- Notice shall contain complete particulars of the venue of the Meeting including route map and prominent land mark, if any, for easy location, except in case of :
  (i) a company in which only its directors and their relatives are members;
  (ii) a wholly owned subsidiary.
- Notice and accompanying documents shall be given at least twenty-one clear days in advance of the Meeting

Delivery of Notice:
Notice in writing of every Meeting shall be given to

- Every Member of the company at the address registered with the company or depository.
- The Directors and
- Auditors of the company,
- the Secretarial Auditor,
- Debenture Trustees, if any, and,
- Wherever applicable or so required, to other specified persons.

Mode of delivery of Notice:

- Notice shall be sent by hand or by ordinary post or by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means.
- 'Electronic means' means any communication sent by a company through its authorised and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the Member.
- The company shall ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the Notice has been sent and copy of such record and any Notices of any failed transmissions and subsequent re-sending shall be retained by or on behalf of the company as "proof of sending" for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.
- Notice shall be sent to Members by registered post or speed post or courier or e-mail and not by ordinary post in the following cases:
    (a) if the company provides the facility of e-voting ;
    (b) if the item of business is being transacted through postal ballot.
- If a particular mode of delivery is specified by member, notice shall be sent by that mode at the expense of the member as may be prescribed by the company.
- Notice shall be sent to Members by registered post or speed post or e-mail if the Meeting is called by the requisitionists themselves where the Board had not proceeded to call the Meeting.
- In case of companies having a website, the Notice shall simultaneously be hosted on the website till the conclusion of the Meeting.
- In case of a private company, the Notice shall be hosted on the website of the company, if any, unless otherwise provided in the Articles.

Day and Time of conducting Annual General Meeting:
An Annual General Meeting and a Meeting called by the requisitionists shall be called during business hours, i.e., between 9 a.m. and 6 p.m., on a day that is not a National Holiday.

Venue of Annual General Meeting:

- Annual General Meetings shall be held either
    (i) at the registered office of the company or

(ii) at some other place within the city, town or village in which the registered office of the company is situated, whereas other General Meetings may be held at any place within India.

- A Meeting called by the requisitionists shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.
- In case of a Government company, the Annual General Meeting shall be held at its registered office or any other place with the approval of the Central Government, as may be required in this behalf.

Notice to contain information about Proxy:

- Notice of a company which has a share capital or the Articles of which provide for voting at a Meeting by Proxy, shall prominently contain a statement that a **Member entitled to attend and vote is entitled to appoint a Proxy, or where that is allowed, one or more Proxies, to attend and vote instead of himself and that a Proxy need not be a Member.**
- In case of a private company, the Notice shall specify the entitlement of a member to appoint Proxy in accordance with this para, unless otherwise provided in the Articles.

Notice shall clearly specify the nature of the Meeting and the business to be transacted thereat:

- In respect of items of Special Business, each such item shall be in the form of a Resolution and shall be accompanied by an explanatory statement which shall set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon.
- In respect of items of Ordinary Business, Resolutions are not required to be stated in the Notice.

Contents of explanatory statement:

- The nature of the concern or interest (financial or otherwise), if any, of the following persons, in any special item of business or in a proposed Resolution, shall be disclosed in the explanatory statement:
  (a) Directors and Manager;
  (b) Other Key Managerial Personnel; and
  (c) Relatives of the persons mentioned above.
- In case any item of Special Business to be transacted at a Meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every Promoter, Director, Manager and of every other Key Managerial Personnel of the first mentioned company shall, if the extent of such shareholding is not less than two percent of the paid-up share capital of that company, also be stated in the explanatory statement.
- Where reference is made to any document, contract, agreement, the memorandum of Association or Articles of Association, the relevant explanatory statement shall state that such documents are available for inspection and such documents shall be so made available for inspection in physical or in electronic form during specified business

hours at the Registered Office of the company and copies thereof shall also be made available for inspection in physical or electronic form at the Head Office as well as Corporate Office of the company, if any, if such office is situated elsewhere, and also at the Meeting.

- In case of a private company, explanatory statement shall comply with the above requirements, unless otherwise provided in the Articles.
- In all cases relating to the appointment or re-appointment and/or fixation of remuneration of Directors including Managing Director or Executive Director or Whole - time Director or of Manager or variation of the terms of remuneration, details of each such Director or Manager, including age, qualifications, experience, terms and conditions of appointment or re-appointment along with details of remuneration sought to be paid and the remuneration last drawn by such person, if applicable, date of first appointment on the Board, shareholding in the company, relationship with other Directors, Manager and other Key Managerial Personnel of the company, the number of Meetings of the Board attended during the year and other Directorships, Membership/ Chairmanship of Committees of other Boards shall be given in the explanatory statement.
- In case of appointment of Independent Directors, the justification for choosing the appointees for appointment as Independent Directors shall be disclosed and in case of re-appointment of Independent Directors, performance evaluation report of such Director or summary thereof shall be included in the explanatory statement.

Attendance slip and Proxy Form:
Notice shall be accompanied, by an attendance slip and a Proxy form with clear instructions for filling, stamping, signing and/or depositing the Proxy form.

Importance of adherence to SS-2:
No business shall be transacted at a Meeting if Notice in accordance with this Standard has not been given except accidental omission.

Business to be transacted at the General Meeting:
A Resolution shall be valid only if it is passed in respect of an item of business contained in the Notice convening the Meeting or it is specifically permitted under the Act.

Items specifically permitted under the Act which may be taken up for consideration at the Meeting are:
(a) Proposed Resolutions, the Notice of which has been given by Members;
(b) Resolutions requiring special Notice, if received with the intention to move;
(c) Candidature for Directorship, if any such Notice has been received.

Where special Notice is required of any Resolution and Notice of the intention to move such Resolution is received by the company from the prescribed number of Members, such item of business shall be placed for consideration at the Meeting after giving Notice of the Resolution to Members in the manner prescribed under the Act.

Any amendment to the Notice, including the addition of any item of business, can be made provided the Notice of amendment is given to all persons entitled to receive the Notice of the Meeting at least twenty-one clear days before the Meeting.

Postponement or cancellation of meeting:
If, for reasons beyond the control of the Board, a Meeting cannot be held on the date originally fixed, the Board may reconvene the Meeting, to transact the same business as specified in the original Notice, after giving not less than three days intimation to the Members. The intimation shall be either sent individually in the manner stated in this Standard or published in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.

(2) Frequency of Meetings:
(i) Annual General Meeting
Every company shall, in each Calendar Year, hold a General Meeting called the Annual General Meeting.

(ii) Extra-Ordinary General Meeting
It may be held as and when required between two consecutive Annual General Meetings. Items of business other than Ordinary Business may be considered at an Extra-Ordinary General Meeting or by means of a postal ballot, if thought fit by the Board.

(3) Quorum:
- Quorum shall be present throughout the Meeting (from the commencement as well as when the business is transacted).
- Members need to be personally present at a Meeting to constitute the Quorum.
- Proxies shall be excluded for determining the Quorum.

(4) Presence of Directors and Auditors
(i) Directors
- If any Director is unable to attend the Meeting, the Chairman shall explain such absence at the Meeting.
- Directors who attend General Meetings of the company and the Company Secretary shall be seated with the Chairman.

(ii) Auditors
The Auditors, unless exempted by the company, shall, either by themselves or through their authorised representative, attend the General Meetings of the company and shall have the right to be heard at such Meetings on that part of the business which concerns them as Auditors.

(iii) Secretarial Auditor
The Secretarial Auditor, unless exempted by the company shall, either by himself or through his authorised representative, attend the Annual General Meeting and shall have the

right to be heard at such Meeting on that part of the business which concerns him as Secretarial Auditor.

5. Chairman

(i) Appointment

- The Chairman of the Board shall take the Chair and conduct the Meeting.
- If the Chairman is not present within fifteen minutes after the time appointed for holding the Meeting, or if he is unwilling to act as Chairman of the Meeting, or if no Director has been so designated, the Directors present at the Meeting shall elect one of themselves to be the Chairman of the Meeting.
- If no Director is present within fifteen Minutes after the time appointed for holding the Meeting, or if no Director is willing to take the Chair, the Members present shall elect, on a show of hands, one of themselves to be the Chairman of the Meeting, unless otherwise provided in the Articles.
- If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of the Act.
- In case of a private company, appointment of the Chairman shall be in accordance with this para, unless otherwise provided in the Articles.

(ii) Role of Chairman:

The Chairman shall explain the objective and implications of the Resolutions before they are put to vote at the Meeting.

In case of public companies, the Chairman shall not propose any Resolution in which he is deemed to be concerned or interested nor shall he conduct the proceedings for that item of business.

6. Proxies

(i) Right to Appoint

- A Member entitled to attend and vote is entitled to appoint a Proxy, or where that is allowed, one or more Proxies, to attend and vote instead of himself and a Proxy need not be a Member.
- A Proxy can act on behalf of Members not exceeding fifty and holding in the aggregate not more than ten percent of the total share capital of the company carrying Voting Rights.
- This statement shall be stated with prominence in Notice calling the meeting and Notice shall be accompanied with Proxy Form as prescribed.
- Deposit of Proxies and Authorisations: This shall also be stated in the Notice with equal prominence that Proxies shall be deposited with the company either in person or through post not later than forty-eight hours before the commencement of the Meeting in relation to which they are deposited.

Form of Proxy:

- An instrument appointing a Proxy shall be in the Form prescribed under the Act.
- An instrument of Proxy duly filled, stamped and signed, is valid only for the Meeting to which it relates including any adjournment thereof.

- Stamping of Proxies: An instrument of Proxy is valid only if it is properly stamped as per the applicable law. Unstamped or inadequately stamped Proxies or Proxies upon which the stamps have not been cancelled are invalid.
- A Proxy form which does not state the name of the Proxy shall not be considered valid.
- Undated Proxy shall not be considered valid.
- A Proxy later in date revokes any Proxy/Proxies dated prior to such Proxy.

(ii) Record of Proxies

- All Proxies received by the company shall be recorded chronologically in a register kept for that purpose.
- In case any Proxy entered in the register is rejected, the reasons therefor shall be entered in the remarks column.

7. Voting

(i) Proposing a Resolution at a Meeting

Every Resolution, except a Resolution which has been put to vote through Remote e-Voting or on which a poll has been demanded, shall be proposed by a Member and seconded by another Member. The fact of who proposes and who seconded the resolution shall be recorder in the minutes of the resolution.

(ii) Method of Voting:

(1) E-voting: Every company having its equity shares listed on a recognized stock exchange other than companies whose equity shares are listed on SME Exchange or on the Institutional Trading Platform and other companies as prescribed shall provide e-voting facility to their Members to exercise their Voting Rights. Every company, which has provided e-voting facility to its Members, shall also put every Resolution to vote through a ballot process at the Meeting.

(2) Show of Hands: Every company shall, at the Meeting, put every Resolution, except a Resolution which has been put to Remote e-voting, to vote on a show of hands at the first instance, unless a poll is validly demanded.

(3) Poll: The Chairman shall order a poll upon receipt of a valid demand for poll either before or on the declaration of the result of the voting on any Resolution on show of hands.

8. Conduct of e-voting

- Every company that is required or opts to provide e-voting facility to its Members shall comply with the provisions in this regard.
- Every company providing e-voting facility shall offer such facility to all Members, irrespective of whether they hold shares in physical form or in dematerialised form.
- The facility for Remote e-voting shall remain open for not less than three days.
- The voting period shall close at 5 p.m. on the day preceding the date of the General Meeting.
- Board Approval: The Board shall:
  (a) appoint one or more scrutinisers for e-voting or the ballot process;
  (b) appoint an Agency;

(c) decide the cut-off date for the purpose of reckoning the names of Members who are entitled to Voting Rights;
(d) Notice:

(i) ***Mode of delivery of notice:*** Notice of the Meeting, wherein the facility of e-voting is provided, shall be sent either by registered post or speed post or by courier or by e-mail or by any other electronic means.

(ii) ***Advertisement:*** An advertisement containing prescribed details shall be published, immediately on completion of despatch of Notices for Meeting but atleast twenty one days before the date of the General Meeting, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and having a wide circulation in that district and at least once in English language in an English newspaper, having country-wide circulation, and specifying therein, inter-alia the following matters, namely:

(a) A statement to the effect that the business may be transacted by e-voting;
(b) The date and time of commencement of Remote e-voting;
(c) The date and time of end of Remote e-voting;
(d) The cut-off date as on which the right of voting of the Members shall be reckoned;
(e) The manner in which persons who have acquired shares and become Members after the despatch of Notice may obtain the login ID and password;
(f) The manner in which company shall provide for voting by Members present at the Meeting;
(g) The statement that :
- Remote e-voting shall not be allowed beyond the said date and time;
- a Member may participate in the General Meeting even after exercising his right to vote through Remote e-voting but shall not be entitled to vote again; and
- a Member as on the cut-off date shall only be entitled for availing the Remote e-voting facility or vote, as the case may be, in the General Meeting;

(h) Website address of the company, in case of companies having a website and Agency where Notice is displayed; and
(i) Name, designation, address, e-mail ID and phone number of the person responsible to address the grievances connected with the e-voting.

Advertisement shall simultaneously be placed on the website of the company till the conclusion of Meeting, in case of companies having a website and of the Agency.
(iii) ***Notice on website:*** Notice shall simultaneously be placed on the website of the company, in case of companies having a website, and of the Agency. Such Notice shall remain on the website till the date of General Meeting.

(iv) ***Contents of the Notice:***
- Notice shall inform the Members about procedure of Remote e-voting, availability of such facility and provide necessary information thereof to enable them to access such facility.

- Notice shall clearly state that the company is providing e-voting facility and that the business may be transacted through such voting.
- Notice shall describe clearly the Remote e-voting procedure and the procedure of voting at the General Meeting by Members who do not vote by Remote e-voting.
- Notice shall also clearly specify the date and time of commencement and end of Remote e-voting and contain a statement that at the end of Remote e-voting period, the facility shall forthwith be blocked.
- Notice shall also contain contact details of the official responsible to address the grievances connected with voting by electronic means.
- Notice shall clearly specify that any Member, who has voted by Remote e-voting, cannot vote at the Meeting.
- Notice shall also specify the mode of declaration of the results of e-voting.
- Notice shall also clearly mention the cut-off date as on which the right of voting of the members shall be reckoned and state that a person who is not a Member as on the cut- off date should treat this Notice for information purposes only.
- Notice shall provide the details about the login ID and the process and manner for generating or receiving the password and for casting of vote in a secure manner.

9. Conduct of Poll

- When a poll is demanded on any Resolution, the Chairman shall get the validity of the demand verified and, if the demand is valid, shall order the poll forthwith if it is demanded on the question of appointment of the Chairman or adjournment of the Meeting and, in any other case, within forty-eight hours of the demand for poll.
- In the case of a poll, which is not taken forthwith, the Chairman shall announce the date, venue and time of taking the poll to enable Members to have adequate and convenient opportunity to exercise their vote.
- The Chairman may permit any Member who so desires to be present at the time of counting of votes.
- If the date, venue and time of taking the poll cannot be announced at the Meeting, the Chairman shall inform the Members, the modes and the time of such communication, which shall in any case be within twenty four hours of closure of the Meeting.
- Each Resolution put to vote by poll shall be put to vote separately. One ballot paper may be used for more than one item.
- Declaration of results: The scrutiniser(s) shall submit his report within seven days from the last date of the poll to the Chairman who shall countersign the same and declare the result of the poll within two days of the submission of report by the scrutiniser, with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not.

In case Chairman is not available, for such purpose, the report by the scrutiniser shall be submitted to a person authorised by the Chairman to receive such report, who shall countersign the scrutiniser's report on behalf of the Chairman.

The result shall be announced by the Chairman or any other person authorised by the Chairman in writing for this purpose.

The Chairman of the Meeting shall have the power to regulate the manner in which the poll shall be taken and shall ensure that the poll is scrutinised in the manner prescribed under the Act.

In case of a private company, the declaration of result of poll shall be in accordance with this para, unless otherwise provided in the Articles.

The result of the poll with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not shall be displayed for at least three days on the Notice Board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere, and in case of companies having a website, shall also be placed on the website.

10. Prohibition on Withdrawal of Resolutions

Following resolutions cannot be withdrawn:

(i) Resolutions for items of business which are likely to affect the market price of the securities of the company shall not be withdrawn.

(ii) Any resolution proposed for consideration through e-voting shall not be withdrawn.

11. Rescinding of Resolutions

A Resolution passed at a Meeting shall not be rescinded otherwise than by a Resolution passed at a subsequent Meeting.

12. Modifications to Resolutions

Modifications to any Resolution which do not change the purpose of the Resolution materially may be proposed, seconded and adopted by the requisite majority at the Meeting and, thereafter, the modified Resolution shall be duly proposed, seconded and put to vote.

13. Reading of Reports

- Auditor's Report: The qualifications, observations or comments or other remarks, if any, mentioned in the Auditor's Report on the financial transactions, which have any adverse effect on the functioning of the company shall be read at the Annual General Meeting and attention of the Members present shall be drawn to the explanations / comments given by the Board of Directors in their report.
- Secretarial Audit Report: The qualifications, observations or comments or other remarks if any, mentioned in the Secretarial Audit Report issued by the Company Secretary in Practice, which have any material adverse effect on the functioning of the company, shall be read at the Annual General Meeting and attention of Members present shall be drawn to the explanations / comments given by the Board of Directors in their report.

14. Adjournment of Meetings

(i) Notice of adjourned Meeting:

- If a Meeting is adjourned sine-die or for a period of thirty days or more, a Notice of the adjourned Meeting shall be given in accordance with the provisions contained hereinabove relating to Notice.
- If a Meeting is adjourned for a period of less than thirty days, the company shall give not less than three days' Notice specifying the day, date, time and venue of the Meeting, to the Members either individually or by publishing an advertisement in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.
- However, if a Meeting is adjourned for a period not exceeding three days and where an announcement of adjournment has been made at the Meeting itself, giving in the details of day, date, time, venue and business to be transacted at the adjourned Meeting, the company may also opt to give Notice of such adjourned Meeting either individually or by publishing an advertisement, as stated above.**120** PP-DP&A

(ii) Any Resolution passed at an adjourned Meeting would be deemed to have been passed on the date of the adjourned Meeting and not on any earlier date.

15. Passing of Resolutions by postal ballot

- Every company, except a company having less than or equal to two hundred Members, shall transact items of business as prescribed, only by means of postal ballot instead of transacting such business at a General Meeting.
- The list of items of businesses requiring to be transacted only by means of a postal ballot is given at Annexure.
- The Board may however opt to transact any other item of special business, not being any business in respect of which Directors or Auditors have a right to be heard at the Meeting, by means of postal ballot.
- Ordinary Business shall not be transacted by means of a postal ballot.
- Every company having its equity shares listed on a recognised stock exchange other than companies whose equity shares are listed on SME Exchange or on the Institutional Trading Platform and other companies which are required to provide e-voting facility shall provide such facility to its Members in respect of those items, which are required to be transacted through postal ballot.
- Other companies presently prescribed are companies having not less than one thousand Members. Nidhis are not required to provide e-voting facility to their Members.

Board Approval

The Board shall:

(a) identify the businesses to be transacted through postal ballot;
(b) approve the Notice of postal ballot incorporating proposed Resolution(s) and explanatory statement thereto;
(c) authorise the Company Secretary or where there is no Company Secretary, any Director of the company to conduct postal ballot process and sign and send the Notice along with other documents;

(d) appoint one scrutiniser for the postal ballot; Prior consent to act as a scrutiniser shall be obtained from the scrutiniser and placed before the Board for noting.
(e) appoint an Agency in respect of e-voting for the postal ballot;
(f) decide the cut-off date for reckoning Voting Rights and ascertaining those Members to whom the Notice and postal ballot forms shall be sent.

Only Members as on the cut-off date shall be entitled to vote on the proposed Resolution by postal ballot.

Notice

- Notice of the postal ballot shall be given in writing to every Member of the company. Such Notice shall be sent either by registered post or speed post, or by courier or by e-mail or by any other electronic means at the address registered with the company.
- The Notice shall be accompanied by the postal ballot form with the necessary instructions for filling, signing and returning the same.
- In case the Notice and accompanying documents are sent to Members by e-mail, these shall be sent to the Members' e-mail addresses, registered with the company or provided by the depository, in the manner prescribed under the Act.
- Such Notice shall also be given to the Directors and Auditors of the company, to the Secretarial Auditor, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified recipients.
- An advertisement containing prescribed details shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having dispatched the Notice and the ballot papers.
- In case of companies having a website, Notice of the postal ballot shall simultaneously be placed on the website.
- Notice shall specify the day, date, time and venue where the results of the voting by postal ballot will be announced and the link of the website where such results will be displayed.
- Notice shall also specify the mode of declaration of the results of the voting by postal ballot.
- Notice of the postal ballot shall inform the Members about availability of e-voting facility, if any, and provide necessary information thereof to enable them to access such facility.
- In case the facility of e-voting has been made available, the provisions relating to conduct of e-voting shall apply, mutatis mutandis, as far as applicable.
- Notice shall describe clearly the e-voting procedure.
- Notice shall also clearly specify the date and time of commencement and end of e-voting, if any and contain a statement that voting shall not be allowed beyond the said date and time. Notice shall also contain contact details of the official responsible to address the grievances connected with the e-voting for postal ballot.
- Notice shall clearly specify that any Member cannot vote both by post and e-voting and if he votes both by post and e-voting, his vote by post shall be treated as invalid.

Contents of the advertisement:
The advertisement shall, inter alia, state the following matters:

(a) a statement to the effect that the business is to be transacted by postal ballot which may include voting by electronic means;
(b) the date of completion of dispatch of Notices;
(c) the date of commencement of voting (postal and e-voting);
(d) the date of end of voting (postal and e-voting);
(e) the statement that any postal ballot form received from the Member after thirty days from the date of dispatch of Notice will not be valid;
(f) a statement to the effect that Member who has not received postal ballot form may apply to the company and obtain a duplicate thereof;
(g) contact details of the person responsible to address the queries/ grievances connected with the voting by postal ballot including voting by electronic means, if any; and
(h) day, date, time and venue of declaration of results and the link of the website where such results will be displayed.

Notice and the advertisement shall clearly mention the cut-off date as on which the right of voting of the Members shall be reckoned and state that a person who is not a Member as on the cut-off date should treat this Notice for information purposes only.

Format of item proposed to be passed through postal ballot:
Each item proposed to be passed through postal ballot shall be in the form of a Resolution and shall be accompanied by an explanatory statement which shall set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon.

Postal ballot forms

- The postal ballot form shall be accompanied by a postage prepaid reply envelope addressed to the scrutiniser.
- A single postal ballot form may provide for multiple items of business to be transacted.
- The postal ballot form shall contain instructions as to the manner in which the form is to be completed, assent or dissent is to be recorded and its return to the scrutiniser.
- The postal ballot form may specify instances in which such form shall be treated as invalid or rejected and procedure for issue of duplicate postal ballot forms.
- A postal ballot form shall be considered invalid if:
  (a) A form other than one issued by the company has been used;
  (b) It has not been signed by or on behalf of the Member;
  (c) Signature on the postal ballot form doesn't match the specimen signatures with the company;
  (d) It is not possible to determine without any doubt the assent or dissent of the Member;
  (e) Neither assent nor dissent is mentioned;
  (f) Any competent authority has given directions in writing to the company to freeze the Voting Rights of the Member;

(g) The envelope containing the postal ballot form is received after the last date prescribed;
(h) The postal ballot form, signed in a representative capacity, is not accompanied by a certified copy of the relevant specific authority;
(i) It is received from a Member who is in arrears of payment of calls;
(j) It is defaced or mutilated in such a way that its identity as a genuine form cannot be established;
(k) Member has made any amendment to the Resolution or imposed any condition while exercising his vote.

A postal ballot form which is otherwise complete in all respects and is lodged within the prescribed time limit but is undated shall be considered valid.

Declaration of results

- The scrutiniser shall submit his report within seven days from the last date of receipt of postal ballot forms to the Chairman or a person authorised by him, who shall countersign the same and declare the result of the postal ballot on the date, time and venue specified in the Notice, with details of the number of votes cast for and against the Resolution, invalid votes and the final result as to whether the Resolution has been carried or not.
- The result of the voting with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not, along with the scrutiniser's report shall be displayed for at least three days on the Notice Board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere, and also be placed on the website of the company, in case of companies having a website.
- The Resolution, if passed by requisite majority, shall be deemed to have been passed on the last date specified by the company for receipt of duly completed postal ballot forms or e-voting.

Rescinding the Resolution

A Resolution passed by postal ballot shall not be rescinded otherwise than by a Resolution passed subsequently through postal ballot.

Modification to the Resolution

No amendment or modification shall be made to any Resolution circulated to the Members for passing by means of postal ballot.

16. Minutes

Every company shall keep Minutes of all Meetings. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

(i) Maintenance of Minutes

- Minutes shall be recorded in books maintained for that purpose.

- A distinct Minutes Book shall be maintained for Meetings of the Members of the company, creditors and others as may be required under the Act.
- Resolutions passed by postal ballot shall be recorded in the Minutes book of General Meetings.
- Minutes may be maintained in electronic form in such manner as prescribed under the Act and as may be decided by the Board. Minutes in electronic form shall be maintained with Time stamp.
- A company shall, however, follow a uniform and consistent form of maintaining the Minutes. Any deviation in such form of maintenance shall be authorised by the Board.
- The pages of the Minutes Books shall be consecutively numbered.
- This shall be followed irrespective of a break in the Book arising out of periodical binding in case the Minutes are maintained in physical form.
- This shall be equally applicable for maintenance of Minutes Book in electronic form with Time stamp.In the event any page or part thereof in the Minutes Book is left blank, it shall be scored out and initialled by the Chairman who signs the Minutes.
- Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner.

(ii) Contents of Minutes

(a) General Contents

- Minutes shall state, at the beginning the Meeting, name of the company, day, date, venue and time of commencement of the Meeting.
- Minutes of Annual General Meeting shall also state the serial number of the Meeting.
- In case a Meeting is adjourned, the Minutes shall be entered in respect of the original Meeting as well as the adjourned Meeting.
- In respect of a Meeting convened but adjourned for want of Quorum a statement to that effect shall be recorded by the Chairman or any Director present at the Meeting in the Minutes.
- Minutes shall record the names of the Directors and the Company Secretary present at the Meeting.
- The names of the Directors shall be listed in alphabetical order or in any other logical manner, but in either case starting with the name of the person in the Chair.

(b) Specific Contents

Minutes shall, inter alia, contain:

- The Record of election, if any, of the Chairman of the Meeting.
- The fact that certain registers, documents, the Auditor's Report and Secretarial Audit Report, as prescribed under the Act were available for inspection.
- The Record of presence of Quorum.
- The number of Members present in person including representatives.
- The number of Proxies and the number of shares represented by them.
- The presence of the Chairmen of the Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee or their authorised representatives.

- The presence if any, of the Secretarial Auditor, the Auditors, or their authorised representatives, the Court/ Tribunal appointed observers or scrutinisers.
- Summary of the opening remarks of the Chairman.
- Reading of qualifications, observations or comments or other remarks on the financial transactions, which have any adverse effect on the functioning of the company, as mentioned in the report of the Auditors.
- Reading of qualifications, observations or comments or other remarks, which have any material adverse effect on the functioning of the company, as mentioned in the report of the Secretarial Auditor.
- Summary of the clarifications provided on various Agenda Items.
- In respect of each Resolution, the type of the Resolution, the names of the persons who proposed and seconded and the majority with which such Resolution was passed.
- Where a motion is moved to modify a proposed Resolution, the result of voting on such motion shall be mentioned.
- If a Resolution proposed undergoes modification pursuant to a motion by shareholders, the Minutes shall contain the details of voting for the modified Resolution.
- In the case of poll, the names of scrutinisers appointed and the number of votes cast in favour and against the Resolution and invalid votes.
- If the Chairman vacates the Chair in respect of any specific item, the fact that he did so and in his place some other Director or Member took the Chair.
- The time of commencement and conclusion of the Meeting.

(c) In respect of Resolutions passed by e-voting or postal ballot:
Following shall be recorded in the Minutes Book and signed by the Chairman or in the event of death or inability of the Chairman, by any Director duly authorised by the Board for the purpose, within thirty days from the date of passing of Resolution by e-voting or postal ballot:

- a brief report on the e-voting or postal ballot conducted including the Resolution proposed,
- the result of the voting thereon and the summary of the scrutiniser's report

(d) Recording of Minutes
Minutes shall contain a fair and correct summary of the proceedings of the Meeting.

The Company Secretary shall record the proceedings of the Meetings. Where there is no Company Secretary, any other person authorised by the Board or by the Chairman in this behalf shall record the proceedings.

The Chairman shall ensure that the proceedings of the Meeting are correctly recorded.

The Chairman has absolute discretion to exclude from the Minutes, matters which in his opinion are or could reasonably be regarded as defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the interests of the company.

(e) Minutes shall be written in clear, concise and plain language.

Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense.

Minutes need not be an exact transcript of the proceedings at the Meeting.

(f) Each item of business taken up at the Meeting shall be numbered: Numbering shall be in a manner which would enable ease of reference or cross-reference.

(g) Entry in the Minutes Book

- Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.
- In case a Meeting is adjourned, the Minutes in respect of the original Meeting as well as the adjourned Meeting shall be entered in the Minutes Book within thirty days from the date of the respective Meetings.
- The date of entry of the Minutes in the Minutes Book shall be recorded by the Company Secretary.
- Where there is no Company Secretary, it shall be entered by any other person authorised by the Board or the Chairman.
- Minutes, once entered in the Minutes Book, shall not be altered.

(h) Signing and Dating of Minutes

- Minutes of a General Meeting shall be signed and dated by the Chairman of the Meeting or in the event of death or inability of that Chairman, by any Director who was present in the Meeting and duly authorised by the Board for the purpose, within thirty days of the General Meeting.
- The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which and the place where he has signed the Minutes.
- Any blank space in a page between the conclusion of the Minutes and signature of the Chairman shall be scored out.
- If the Minutes are maintained in electronic form, the Chairman shall sign the Minutes digitally.

17. Report on Annual General Meeting

Every listed public company shall prepare a report on Annual General Meeting in the prescribed form, including a confirmation that the Meeting was convened, held and conducted as per the provisions of the Act.

Such report which shall be a fair and correct summary of the proceedings of the Meeting shall contain:

(a) the day, date, time and venue of the Annual General Meeting;
(b) confirmation with respect to appointment of Chairman of the Meeting;
(c) number of Members attending the Meeting;
(d) confirmation of Quorum;

(e) confirmation with respect to compliance of the Act and Standards with respect to calling, convening and conducting the Meeting;
(f) business transacted at the Meeting and result thereof with a brief summary of the discussions;
(g) particulars with respect to any adjournment, postponement of Meeting, change in venue; and
(h) any other points relevant for inclusion in the report.

Such report shall be filed with the Registrar of Companies within thirty days of the conclusion of the Annual General Meeting.

18. Disclosure

The Annual Return of a company shall disclose the date of Annual General Meeting held during the financial year.

In addition, Form No. MGT-7 (Format of Annual Return) prescribed by MCA for this purpose requires all companies to disclose the dates of all General Meetings held during the financial year, total number of Members entitled to attend the Meeting, and number of Members who attended the Meeting along with their total shareholding.

****

SOME DRAFTS

Specimen Notice of a Board Meeting

Name of the Company .....
Registered Address .....
CIN - ..... Email- ..... Telephone: .....
Website: .....

NOTICE OF ..... (SERIAL NUMBER OF MEETING) BOARD MEETING

Mr. .....
Director,
New Delhi.
Dear Sir,

NOTICE is hereby given that the ..... (serial number of Meeting) Meeting of the Board of Directors of the company will be held on ..... (day of the week), the ..... (date) ..... (month) ..... (year) at ..... (a.m./p.m.) at ..... (Venue)

The Agenda of the business to be transacted at the Meeting is enclosed/will follow

You may attend the Meeting through Electronic Mode, the details of which are enclosed. In case you desire to participate through such mode, please send a confirmation in this regard to ..... (Name of Company Secretary/ Chairman/other Authorised Person), email ....., Tel No. ..... within ..... days (time frame) to enable making necessary arrangements.

Kindly make it convenient to attend the Meeting.

Yours faithfully,
For……..Limited/Pvt Limited

(Signature)
(Name)
(Designation)

****

NOTES ON AGENDA FOR THE FIRST BOARD MEETING

Item No. 1 : To appoint chairman of the meeting:
In terms of Article..... of the Articles of Association of the Company, the Directors to select one of them as Chairman of the meeting.

Item No. 2: To note the certificate of incorporation of the company, issued by the Registrar of Companies.
Original Certificate of Incorporation No. ..... dated ..... received from the Registrar of Companies together with a copy of the Memorandum and Articles of Association will be placed before the meeting.

Item No. 3: To take note of Memorandum and Articles of Association of Company, as registered.
Printed copies of the Memorandum and Articles of Association as registered with the Registrar of Companies will be placed before the meeting.

Item No. 4: To note the situation of the registered office of the company.
The Board may kindly take note of the situation of the registered office of the company as intimated to the Registrar of Companies.

Item No. 5: To note the appointment of the first directors of the Company
Mr ..... and Mr. ..... are the first directors as stated in Article ..... of the Articles of Association of the company and as intimated to the Registrar of Companies.

Item No. 6: To read and record the notices of disclosure of interest given by the Director
The Board may kindly record the notices of disclosure of interest given by Directors of the Company.

Item No. 7:To elect chairman, appoint Managing Director and Secretary
Article ..... of the Articles of Association of the company relating to the Chairman of the Board be referred to the Board. The Board may kindly appoint a managing director and a secretary of the company.

Item No. 8:To consider the appointment of first auditors of the company.
Certificate in writing received from the proposed Auditors will be placed before the meeting for appointment of the first Auditors of the company.

Item No. 9: To approve preliminary expenses and preliminary contracts.
Statement of preliminary expenses and preliminary contracts incurred will be placed before the meeting.

Item No. 10:To adopt the common seal of the company.

Common Seal of the company will be placed before the meeting for approval, adoption and safe custody.

Item No. 11:To authorise printing of the Share Certificate form.
Design sample of Share Certificate will be placed before the meeting for approval and printing.

Item No. 12:To place draft statement in lieu of prospectus.
Draft statement in lieu of Prospectus will be placed before the meeting.

Item No. 13:To consider plan of action for commencement of business.
Board be informed that Certificate of Commencement of Business is essential for commencement of business by a public company.

Item No. 14: To place copies of agreements entered into prior to incorporation.
Copy of the Memorandum of Understanding entered into between Mr..... Chairman of the company and M/s..... be placed before the Board.

Item No. 15:To appoint bankers and to open bank account of the Company.
Board be informed about the bankers of the company and the opening of the Company's Bank Account with ..... Bank.

Item No. 16:To decide payment of sitting fees
Board be informed about payment of sitting fees to the Directors in accordance with Article..... of Articles of Association of the Company.

Item No. 17:To consider any other matter with the permission of the chair.
Board may discuss any other item apart from notified items of business with the permission of the chair.

****

Resolution by circulation

Resolution No. _____
..... (NAME OF COMPANY)
Mr. ..... (Director)
Dear Sir,

Sub: Resolution by circulation

The following Resolution is intended to be passed by circulation as per the provisions of Section 175 of the Companies Act, 2013. A note explaining the urgency and necessity for passing the said Resolution by circulation and the supporting papers (if any) are enclosed.

" RESOLVED THAT .....

(Resolution intended to be passed is to be reproduced)"

None of the Directors are deemed to be concerned or interested in the Resolution.

*Assent / Dissent / Require Meeting

Signature
Name
Date

Kindly indicate your response to the aforesaid Resolution, by appending your signature and the date of signing in the space provided beneath the Resolution and return one copy to the undersigned or by e-mail at the address mentioned below so as to reach us on or before .....

Yours faithfully,

For ..... (Name of Company).
Company Secretary
e-mail id:
Address:
Contact No:
*Strike off whichever is not applicable

****

Specimen Minutes of the first Board Meeting

Minutes of the first Board Meeting of ..... (Company Name), held on ..... (Day), ... (Date, Month and Year) at ..... (Venue) from ..... (Time of Commencement) till…….(Time of conclusion)

Present:

1. ……. (in the Chair)
2. …….
3. …….
4. …….

In attendance:
…… Company Secretary

1. Chairman for the Meeting
Mr…….. ……..was elected as the Chairman for the Meeting.

2. Quorum
The business before the Meeting was taken up after having established that the requisite Quorum was present.

3. Leave of absence
Leave of absence was granted to Mr./ Ms. X who expressed his inability to attend the Meeting owing to his pre-occupation.

4. Certificate of Incorporation of the company
The Board was informed that the company has been incorporated on …….. and the Directors noted the Certificate of Incorporation No…… of……, dated …….. issued by the Registrar of Companies,……

5. Memorandum and Articles of Association
A printed copy of the Memorandum and Articles of Association of the company as registered with the Registrar of Companies, ……was placed before the Meeting and noted by the Board.

6. Registered Office
The Board noted that the Registered Office of the company will be at …….., the intimation of which has already been given to the Registrar of Companies,…….

7. First Directors
The Board noted that in terms of Article ..... of the Articles of Association of the company, Mr…….., Mr……. and Mr……. are the first Directors of the company.

8. Notices of disclosure of interest by the Directors
Notices of interest under Section 184(1) of the Companies Act, 2013 received from Mr……, Mr……. and Mr……, Directors of the company, on ……, were tabled and the contents thereof were read and noted by the Board.

9. Appointment of Additional Directors
Reference was made to Mr. ……’s note dated …….. on the subject, as circulated. The Chairman proposed that Mr. ……..…. having DIN …….. and Mr…….. having DIN …… be appointed Additional Directors of the company in terms of Section 161 of the Companies Act, 2013. Brief profiles of Mr. ……..…. and Mr…….. along with their consents to act as Directors, if appointed, were tabled.

The Board agreed with the same and passed the following Resolutions:

(a) " **RESOLVED THAT** , pursuant to the provisions of Section 161 of the Companies Act,2013 and Companies (Appointment and Qualification of Directors) Rules, 2014 and any other applicable provisions read with Article _____ of the Articles of Association of the company, Mr.……....be and is hereby appointed as Additional Director of the company to hold office from the date of this Meeting till the first Annual General Meeting of the company.

RESOLVED FURTHER THAT ……., Director/Company Secretary be and is hereby authorised to sign and file necessary forms/ documents with the Registrar of Companies and make entries, as appropriate, in the registers of the company."

(b) "**RESOLVED THAT**, pursuant to the provisions of Section 161 of the Companies Act,2013 and Companies (Appointment and Qualification of Directors) Rules, 2014, and any other applicable provisions read with Article _____ of the Articles of Association of the company, Mr.……..... be and is hereby appointed as Additional Director of the company to hold office from the date of this Meeting till the first Annual General Meeting of the company.

RESOLVED FURTHER THAT ……., Director/Company Secretary be and is hereby authorised to sign and file necessary forms/ documents with the Registrar of Companies and make entries, as appropriate, in the registers of the company."

10. Chairman and Vice-Chairman of the Board
Reference was made to Mr. …….'s note dated …….. on the subject, as circulated. The Board, after discussion, decided that Mr. ……. be appointed as Chairman of the Board, who would be the Chairman for all Meetings of the Board as also for general meetings of the company. The Board also decided that Mr. ……. be appointed as Vice-Chairman of the Board.

The Board thereafter passed the following Resolution:

"**RESOLVED THAT** until otherwise decided by the Board, Mr.…… be and is hereby elected as the Chairman of the Board of Directors of the company.

RESOLVED FURTHER THAT , until otherwise decided by the Board, Mr.…… be and is hereby elected as the Vice-Chairman of the Board of Directors of the company."

11. Board Committees
Reference was made to Mr. …….'s note dated …….. on the subject, as circulated. The Board approved constitution of the following Board Committees, as required in terms of Sections 177 and 178 of the Companies Act, 2013, with the members as detailed below:

(a) Audit Committee
……

(b) Nomination and Remuneration Committee
……
(c) Stakeholders Relationship Committee
…….
(d) Corporate Social Responsibility (CSR) Committee
……

The Board also approved the Terms of Reference of the Audit Committee, the Nomination and Remuneration Committee, the Stakeholders Relationship Committee and the CSR Committee, as tabled, copies of which were initialled by the Chairman for the purpose of identification.

12. Appointment of First Auditors
Reference was made to Mr. ……'s note dated …….. on the subject, as circulated. The Chairman stated that pursuant to Section 139 of the Companies Act, 2013, First Auditors are to be appointed within thirty days from the registration of the company.

For this purpose, M/s. ……....., Chartered Accountants,……....., had been approached to act as the first Auditors of the company. A letter received from M/s.……....., conveying their consent was placed before the Directors.

The Board, after discussion passed the following Resolution:

"**RESOLVED THAT** M/s. ....., Chartered Accountants, …., ..., be and are hereby appointed pursuant to Section 139(6) of the Companies Act, 2013, as the first Auditors of the company at such remuneration as may be fixed by the Board in consultation with the Auditors to hold office from the date of this Meeting till the conclusion of the first Annual General Meeting of the company.

RESOLVED FURTHER THAT the Director/Company Secretary be and is hereby authorised to make the necessary filings with the Statutory Authorities".

13. Common Seal of the company, if any (not mandatory)
The Chairman tabled a Seal bearing the company's name, CIN and the address of the registered office to be adopted as the Common Seal of the company, and the following Resolution was passed:

"**RESOLVED THAT** the Common Seal of the company, the impression of which appears in the margin against this Resolution, be and is hereby adopted as the Common Seal of the company."

14. Appointment of Chief Executive Officer of the company
Reference was made to Mr. ……'s note dated …….. on the subject, as circulated.

The Chairman informed the Board that for promotion, development and expansion of the company's business, it is necessary to appoint a whole – time Chief Executive Officer. He

advised the Board that it is proposed to appoint Mr. ..... who has vast industry experience as the Chief Executive Officer of the company; Mr……. has given his consent to act as Chief Executive Officer, if appointed.

The Board agreed with the same and passed the following Resolution:

"RESOLVED THAT pursuant to Section 203 of the Companies Act, 2013, Mr..... be and is hereby appointed as the Chief Executive Officer of the company, on the terms and conditions set out in the draft agreement/ appointment letter, placed on the table, a copy of which was initialled by the Chairman for the purpose of identification.

RESOLVED FURTHER THAT Mr. ……., Chief Executive Officer, do perform such functions and duties specified in the agreement/ appointment letter and as assigned to him by the Board from time to time.

RESOLVED FURTHER THAT _____, Director/Company Secretary be and is hereby authorised to sign and file the necessary forms/documents with the Registrar of Companies and make entries, as appropriate, in the registers of the company."

15. Appointment of Company Secretary

Reference was made to Mr. ……'s note dated …….. on the subject, as circulated. The Chairman advised the Board that it is proposed to appoint Mr. ……., who holds the prescribed qualifications as Company Secretary of the company; Mr……. has given his consent to act as Company Secretary, if appointed.

The Board agreed with the same and passed the following Resolution:

"**RESOLVED THAT** pursuant to Section 203 of the Companies Act, 2013, Mr……., holding the prescribed qualification under Section 2(24) of the Companies Act, 2013, be and is hereby appointed as Company Secretary of the company, on the terms specified in the draft agreement/ appointment letter, placed on the table, a copy of which was initialled by the Chairman for the purpose of identification.

RESOLVED FURTHER THAT Mr. ……, Company Secretary, do perform the duties which are required to be performed by a secretary under the Companies Act, 2013 and any other duties assigned to him by the Board or the Chief Executive Officer.

RESOLVED FURTHER THAT ……., Director be and is hereby authorised to sign and file the necessary forms/documents with the Registrar of companies and make entries, as appropriate, in the registers of the company."

16. Appointment of Chief Financial Officer

Reference was made to Mr. ……'s note dated …….. on the subject, as circulated. The Chairman advised the Board that it is proposed to appoint Mr..... who is a …… (Qualification) as the Chief Financial Officer of the company; Mr……. has given his consent to act as Chief Financial Officer, if appointed.

The Board agreed with the same and passed the following Resolution:

"RESOLVED THAT pursuant to Section 203 of the Companies Act, 2013, and related Rules and Regulations framed thereunder, Mr. ..... be and is hereby appointed as Chief Financial Officer of the company, on the terms specified in the draft agreement/ appointment letter, placed on the table, a copy of which was initialled by the Chairman for the purpose of identification.

RESOLVED FURTHER THAT Mr. ……., Chief Financial Officer, do perform the functions which are required to be performed by a Chief Financial Officer under the Companies Act, 2013 and any other duties assigned to him by the Board or the Chief Executive Officer.

RESOLVED FURTHER THAT …….., Director/Company Secretary be and is hereby authorised to sign and file the necessary forms/documents with the Registrar of Companies and make entries, as appropriate, in the registers of the company."

17. Appointment of bankers and opening Bank A/c with ….. Bank

The Chairman informed the Board that it is proposed to open a current account in the name of the company with .....Bank.

The Board agreed with the same and passed the following Resolution:

"RESOLVED THAT a current account be opened in the name of …….. Limited with the …..... Bank, ……..., and that the Bank be instructed to honor all cheques, bills of exchange, promissory notes or other orders which may be drawn by/ accepted/ made on behalf of the company and to act on any instructions so given relating to the account, whether the same be overdrawn or not, relating to the transactions of the company and that any two of the following Directors/officers of the company, jointly, namely:

1. Mr...Director
2. Mr...Director
3. Mr ...Chief Financial Officer
4. Mr ...Company Secretary

be and are hereby authorised to sign on behalf of the company, cheques or any other instruments/ documents drawn on or in relation to the said account and the said signatures shall be sufficient authority and shall bind the company in all transactions between the Bank and the company."

18. Printing of Share Certificates

Reference was made to Mr. ……'s note dated …….. on the subject, as circulated. The Chairman informed the Board that it would be necessary to print share certificates for allotment of shares to the subscribers to the

Memorandum of Association as well as for any further issue of capital. A format of the share certificate in Form SH-1 in terms of Rule 5 of the Companies (Share Capital and Debentures) Rules, 2014 was placed on the table and the Board passed the following resolution:

"RESOLVED THAT 1,00,000 equity share certificates of the company be printed, in the format placed before the Meeting and initialled by the Chairman for the purpose of identification, and that the certificates bear serial Nos. 1 to 1,00,000.

RESOLVED FURTHER THAT the aforesaid blank share certificates be kept in safe custody with Mr……, Company Secretary."

19. Issue of Share Certificates to the subscribers

Reference was made to Mr. ……'s note dated …….. on the subject, as circulated. The Chairman informed the Board that Mr.……., Mr…….... and Mr. ……..., who are subscribers to the Memorandum of Association of the company, had each agreed to take and have taken_ _ _ _ _ _ (_____) equity shares in the company. He further informed the Board that pursuant to Section 2(55) of the Companies Act, 2013, the names of the said subscribers to the Memorandum of Association have been entered in the Register of Members and that equity share certificates are required to be issued to them.

The Board agreed with the same and passed the following Resolution:

"RESOLVED THAT Mr. ……., Mr. ……. and Mr. ……., the subscribers to the Memorandum of Association of the company who had agreed to take and have taken _____ (_____) equity shares each of the company, be issued equity share certificates and that Mr.……. and Mr.……..., Directors of the company, and Mr.……..., Company Secretary, be and are hereby authorised to sign the said certificates."

20. Statement of Preliminary Expenses and Preliminary Agreements

The Chairman placed before the Meeting a statement of expenses incurred in connection with the formation of the company and a copy of agreements entered into before the formation of the company. The Board approved the same and passed the following Resolution:

"RESOLVED THAT preliminary expenses of Rs……incurred in connection with the incorporation of the company and the preliminary agreements entered be and are hereby approved and confirmed as per the statement submitted by the Chairman.

RESOLVED FURTHER THAT the preliminary expenses of Rs…….. incurred by Mr……..., Director of the company, be reimbursed to the said Mr……. out of the funds of the company."

21. Authorisation to sign returns, forms, documents etc. filed with various regulatory authorities

Various returns, forms, documents etc. are required to be filed with various regulatory authorities including the Ministry of Corporate Affairs by the company from time-to-time. The Board passed the following resolution in this regard:

"RESOLVED THAT ……. and …….. Director of the company be and is hereby authorised to sign on behalf of the company, various documents, forms, returns, etc. required to be filed with various regulatory authorities under the relevant statutory provisions."

22. Next Board Meeting

It was decided to hold the next Board Meeting at……..... a.m./ p.m. on……. (Day), …….. (Date, Month and Year) at…….. (Venue).

23. Conclusion of the Meeting

There being no other business, the Meeting concluded at .... (Time) with a vote of thanks to the Chair.

Place..... ....…… Chairman (DIN)
Date .....

Entered on

****

NOTICE OF THE MEETING:
Points to be taken care of:

1. **notice to be given as per sec 101 of the Act and SS-2.**
2. **Notice to be given on the letter head of the Co.**
3. **Notice to mention Day date time and place**
4. **Notice to mention the agenda of the meeting serially numbered**
5. **In case of SR to be passed, the intention to pass SR to be mentioned clearly.**
6. **In case of special business, Exp State to be attached as per Sec 102.**
7. **In case of special business, draft reso shall also be given in the notice**

Specimen Notice of Annual General Meeting

Name of the Company ..... LETTER HEAD OF THE CO
Registered Address .....
CIN - ..... Email- ..... Telephone: .....
Website: .....

NOTICE OF ..... 10th AGM (Meeting Number) ANNUAL GENERAL MEETING

NOTICE is hereby given that the ..... (Meeting Number) Annual General Meeting of the Members of ..... (Name of the Company) will be held on ..... (day), the ..... (date), 20....., at ..... am/ p.m. at ..... (address) to transact the following business:

Ordinary Business:

1.To receive, consider and adopt the standalone and consolidated Financial Statements of the Company for the financial year ended 31st March, ... and the Reports of the Board of Directors and the Auditors.
2.To declare dividend for the financial year ended 31st March, ...
3.To appoint a Director in place of Mr. ..... (DIN .....), who retires by rotation and being eligible, offers himself for reappointment.
4.To appoint a Director in place of Mr. ..... (DIN .....), who retires by rotation and being eligible, offers himself for reappointment.
5. To appoint Statutory Auditors and to determine their remuneration. For this purpose, to consider and if deemed fit, to pass, with or without modification, the following Resolution as an Ordinary Resolution:

"RESOLVED THAT pursuant to the provisions of Section 139 and other applicable provisions if any, of the Companies Act, 2013 and the Rules framed thereunder, as amended from time to time, M/s. ....., Chartered Accountants, (Firm Registration No.....) be and are hereby appointed as Auditors of the Company to hold office from the conclusion of this Annual General Meeting till the conclusion of the ..... Annual General Meeting of the Company, at a remuneration of Rs. ...../- (Rupees ..... only) for the year ..... and Rs. ...../ - (Rupees ..... only) per year for the subsequent ..... years plus reimbursement of out of pocket expenses and service tax, as applicable.

RESOLVED FURTHER THAT the Board of Directors of the Company (including a Committee thereof), be and is hereby authorised to do all such acts, deeds, matters and things as may be considered necessary, desirable or expedient to give effect to this Resolution."

Special Business:

6. To appoint Mr. ..... as Director.

To consider, and if thought fit, to pass, with or without modification, the following Resolution as an Ordinary Resolution:

"**RESOLVED THAT** pursuant to the provisions of Section 152 and other applicable provisions of the Companies Act, 2013 read with the Companies (Appointment and Qualification of Directors) Rules, 2014, Mr. ..... (DIN .....), who was appointed as an Additional Director of the Company with effect from ....., 20..... by the Board of Directors of the Company pursuant to Section 161(1) of the Companies Act, 2013 and the Articles of Association of the Company and who holds office upto the date of this Annual General Meeting, and being eligible, offer himself for appointment and in respect of whom the Company has received a notice in writing under Section 160 of the Companies Act, 2013 from a member signifying his intention to propose the candidature of Mr. ..... for the office of Director, be and is hereby appointed with effect from the date of this Meeting as a Director of the Company, liable to retire by rotation."

By Order of the Board of Directors
For .....
.....(Signature)
Place : ....(Name)
Date : .....20.... Director/ Company Secretary
DIN/ACS/FCS No.

Notes :

1. The explanatory statement setting out the material facts pursuant to Section 102 of the Companies Act, 2013, relating to special business to be transacted at the Meeting is annexed.
2. A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company.
3. Proxies, in order to be effective, must be received in the enclosed Proxy Form at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.
4. A person can act as a proxy on behalf of Members not exceeding 50 and holding in the aggregate not more than ten percent of the total share capital of the Company carrying voting rights. A Member holding more than ten percent of total share capital of the Company carrying voting rights may appoint a single person as proxy and such person shall not act as a proxy for any other person or shareholder.
5. A Corporate Member intending to send its authorised representatives to attend the Meeting in terms of Section 113 of the Companies Act, 2013 is requested to send to the Company a certified copy of the Board Resolution authorizing such representative to attend and vote on its behalf at the Meeting.
6. Members/Proxies/Authorised Representatives are requested to bring the attendance slips duly filled in for attending the Meeting. Members who hold shares in dematerialised form are requested to write their client ID and DP ID numbers and those who hold shares in physical form are requested to write their Folio Number in the attendance slip for attending the Meeting.

7. During the period beginning 24 hours before the time fixed for the commencement of Meeting and ending with the conclusion of the Meeting, a Member would be entitled to inspect the proxies lodged at any time during the business hours of the Company. All documents referred to in the Notice and accompanying explanatory statement are open for inspection at the Registered Office of the Company on all working days of the Company between 11:00 a.m. and 1:00 p.m. upto the date of the Annual General Meeting and at the venue of the Meeting for the duration of the Meeting.
8. Route-map to the venue of the Meeting is provided at the end of the Notice / Page no. ..... of the Annual Report. - requirement of SS-2
9. The Register of Members and the Share Transfer Books of the Company will remain closed from ..... to ..... (both days inclusive).
10. The dividend on shares as recommended by the Board, if approved at the Annual General Meeting, will be paid within thirty days from the date of declaration to those Members or their mandates whose names appear:
    (a) as Members in the Register of Members of the Company on ..... , and
    (b) as beneficial owners on that date as per the lists to be furnished by ..... in respect of shares held in electronic form.

11. Electronic copy of the Annual Report is being sent to all the Members whose email IDs are registered with the Company/Depository Participant(s) for communication purposes unless any Member has requested for a hard copy of the same.
12. For Members who have not registered their email address, physical copy of the Annual Report is being sent in the permitted mode. In case you wish to get a physical copy of the Annual Report, you may send your request to ..... (email) mentioning your folio/DP ID and Client ID.
13. Annual Reports is also available in the Financials section on the website of the Company at .....
14. Any query relating to financial statements must be sent to the Company's Registered Office at least seven days before the date of the Meeting.

****

Explanatory Statement: Sec 102

1. **Giving an explanation to the SHs for passing the Reso. / reason for doing it.**
2. **Mentioning of the section under which approval of SHs is required**
3. **Recommendation by BoD to pass the attached reso.**
4. **Interest of the Directors in the reso.**
5. **In case of a document is altered, the place where the altered document shall be available for the inspection of members.**

EXPLANATORY STATEMENT

As required by Section 102 of the Companies Act, 2013, the following explanatory statement sets out all material facts relating to the business mentioned under Item No. 6 of the accompanying Notice dated .....

Item No. 6
Mr. ..... who was appointed as an Additional Director of the Company under Section 161(1) of the Companies Act, 2013 effective ....., ... holds office up to the date of this Annual General Meeting, and is eligible for appointment as Director of the Company.

The Company has received notice under Section 160 of the Companies Act, 2013 from a Member signifying her intention to propose the candidature of Mr. ..... for the office of Director.

A brief profile of Mr. ....., as required to be given pursuant to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and secretarial standards, has been annexed to this Notice.

Mr. ..... is not a Director of any other public limited company in India. He is a Member of the Audit Committee and the Investment Committee of ..... He does not hold any share in the Company and is not related to any Director or Key Managerial Personnel of the Company in any way.

The Board of Directors considers it in the interest of the Company to appoint Mr. ..... as a Director.

By Order of the Board of Directors
For .....

.....(Signature)

Place : ....(Name)
Date : .....20.... Director/ Company Secretary
DIN/ACS/FCS No.

****

Specimen Notice of Extra-Ordinary General Meeting

Name of the Company .....
Registered Address .....
CIN - ..... Email- ..... Telephone: .....
Website: .....

NOTICE OF EXTRA-ORDINARY GENERAL MEETING

NOTICE is hereby given that an Extra-Ordinary General Meeting of the Members of ..... (name of Company) will be held on..... (day), ... (date) at .....a.m./p.m. at ..... (address) to transact the following **special business**:

1. Shifting of Registered Office
To consider and, if thought fit, to pass the following Resolution as a **Special Resolution**:

"RESOLVED THAT pursuant to Section 13 and other applicable provisions, if any, of the Companies Act, 2013, and subject to the approval of the Regional Director, the Registered Office of the Company be shifted from the ..... (Name of State) to the ..... (Name of State).

RESOLVED FURTHER THAT Clause - II of the Memorandum of Association of the Company be altered by substitution of the words ..... in place of the words .....

RESOLVED FURTHER THAT the Board of Directors of the Company be and is hereby authorised to file the necessary petition(s) before the Regional Director, ... Region for confirmation of the alteration of Clause - II of the Memorandum of Association of the Company as aforesaid and to carry out all other acts and deeds as are necessary in connection therewith, including compliance of directions, if any, of the concerned authorities."

By Order of the Board of Directors
For .....
.....(Signature)

Place : ....(Name)
Date : .....20.... Director/ Company Secretary

DIN/ACS/FCS No.

Notes :

6. The explanatory statement setting out the material facts pursuant to Section 102 of the Companies Act, 2013, relating to special business to be transacted at the Meeting is annexed.
7. A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company.
8. Other .....same as in case of AGM except those pointed specifically related to AGM.

EXPLANATORY STATEMENT

As required by Section 102 of the Companies Act, 2013, the explanatory statement sets out all material facts relating to the business mentioned under Item Nos. 1 & 2 of the accompanying Notice dated .....

Item No. 1

The Registered Office of the Company has been situated in .....since the incorporation of the Company.

The business of the Company has increased manifold since incorporation and it is expected that such growth trends will be maintained in future.

The employee strength of the Company has also increased manifold and the Company needs an area of around 50,000 square feet to accommodate the entire staff and to carry out its growing business activities efficiently.

However, expansion at the present location is not possible and prevailing rents in..... render it unviable to look for additional premises in the vicinity of the Registered Office.

The Board of Directors has identified suitable premises at .....in the State of ....., not very far from the present Registered Office. Acquiring such premises, situated close to ....., is advantageous for the Company to carry on its business more conveniently, economically and efficiently.

In view of these advantages, the Board of Directors has decided to shift the Registered Office of the Company from ..... (Name of State) to the ..... (Name of State) subject to necessary approvals.

In terms of Section 13 of the Companies Act, 2013, approval of the shareholders and the Regional Director is required for the purpose of shifting the registered office of the Company from one state to another state.

A copy of the Memorandum of Association is available for inspection at the Registered Office of the Company on all working days of the Company between 11:00 a.m. and 1:00 p.m. upto the date of the Meeting and at the venue of the Meeting for the duration of the Meeting.

The Board commends the passing of the Resolution at Item No.1 as a Special Resolution.

None of the Directors and Key Managerial Personnel of the Company or their relatives is concerned or interested in the proposed Resolution.

By Order of the Board of Directors

For .....

.....(Signature)
Place : ....(Name)
Date : .....20.... Director/ Company Secretary
DIN/ACS/FCS No

****

Specimen Minutes of Extra-Ordinary General Meeting

MINUTES OF THE PROCEEDINGS OF THE EXTRA-ORDINARY GENERAL MEETING OF ..... (Name of the Company) HELD ON ..... (day), ... (date) 20 ..... AT .....(address)

The following were present:
1. Mr. A (in the Chair)
2. Mr. B (Director and Member)
3. Mr. C (Director)
4. Mr. F (Company Secretary)
5. ..... (Members present in person) {state number}
6. ..... (Members present by Proxy) {state number}
7. Mr. G, Partner of M/s....., Chartered Accountants, Auditors of the Company, was present.

CHAIRMAN
In accordance with Article ..... of the Articles of Association, Mr. A, Chairman of the Board of Directors, took the Chair.

{OR:
Mr. B was elected Chairman of the Meeting, in terms of Article ..... of the Articles of Association of the Company}

The Chairman welcomed the Members and introduced the Directors seated on the Dias.
The Chairman stated that Mr. .....…. and Mr. ……Directors, could not attend the Meeting due to…… (explain the reason for absence).

Quorum was present at the commencement of the Meeting as well as at the time of consideration of each item of business.

With the consent of the Members present, the Notice convening the ExtraOrdinary General Meeting of the Company was taken as read.

The business of the Meeting, as per the Notice thereof, was thereafter taken up item-wise.

SPECIAL BUSINESS
1. **Shifting of the Registered Office**

Proposed by : Mr. .....
Seconded by : Mr. .....

The following resolution has been proposed and seconded by the aforementioned two Members was put to vote as a **Special Resolution**:

"RESOLVED THAT pursuant to Section 13 and other applicable provisions, if any, of the Companies Act, 2013, and subject to the approval of the Regional Director, the Registered Office of the Company be shifted from the ..... (Name of State) to the ..... (Name of State).

RESOLVED FURTHER THAT Clause - II of the Memorandum of Association of the Company be altered by substitution of the word.....

RESOLVED FURTHER THAT the Board of Directors of the Company be and is hereby authorised to file the necessary petition(s) before the Regional Director, ... Region for confirmation of the alteration of Clause - II of the Memorandum of Association of the Company as aforesaid and to carry out all other acts and deeds as are necessary in connection therewith, including compliance of directions, if any, of the concerned authorities."

The Chairman enquired if there were any clarifications required on the same. Since none of the Members required any clarification, the Special Resolution was put to vote and on a show of hands declared carried by the requisite majority.

VOTE OF THANKS
There being no other business to transact the Meeting closed with a vote of thanks to the Chair.

Date : ....
Place: .....

CHAIRMAN
(DIN…..)

****

Specimen Notice in Newspapers of Annual General Meeting

Name of the Company .....
Registered Address .....
CIN - ..... Email- ..... Telephone: .....
Website: .....

NOTICE is hereby given that the ..... (number) Annual General Meeting of the Company is scheduled to be held on .....(day) ..... (date) at ..... a.m. /p.m. at the registered office of the company situated at .....(address).

Notice of the Meeting setting out the Resolutions proposed to be transacted thereat and the Audited financial statements for the year ended at March 31, 201....., Auditors' Report and Report of the Board of Directors for the year ended on that date, have also been dispatched to the Members.

Notice and the said documents are available at the Company's website ..... and copies of said documents are also available for inspection at the registered office of the Company on all working days during the business hours up to the date of Annual General Meeting.

The Company has completed dispatch of Annual Report on ....., 201....

Pursuant to the provisions of Section 108 of the Companies Act, 2013 read with Rule 20 of the Companies (Management and Administration) Rules, 2014, your Company is pleased to provide remote e-voting facility to its Members to exercise their right to vote on the Resolutions proposed to be transacted at the ..... (Number) Annual General Meeting. The Company has arranged remote e-voting facility through .....(agency) at ..... (website) Notice of the Annual General Meeting is also available at the ..... (agency's) website.

A Member whose name appears in the register of members as on cutoff date i.e. ....., 201... only shall be entitled to avail the facility of remote e-voting as well as voting through physical ballot at the Meeting. Members who cast their vote through remote e-voting may attend the Meeting but shall not be entitled to cast their vote again.

Any person who becomes Member of the Company after dispatch of the Notice of the Meeting and holding shares on ....., 201..., if already registered with ..... (agency), can use his/her existing user ID and password otherwise follow the detailed procedure mentioned in Notice of Meeting available at Company's website www.....com or may obtain the login ID and password by sending a request at ..... (email ID of agency) or to the Company's Registrar, M/s ..... at .....@.....com latest by ..... p.m. of ....., 201....

Remote e-voting facility shall commence on ...., 201..... at 10:00 hrs. and will end on ...., 201... at 17:00 hrs. The remote e-voting will be disabled by ..... (agency) after the said date and time.

The Company has appointed Mr. ....., Practising Company Secretary as the scrutiniser to scrutinise the e-voting process in fair and transparent manner.

In case of any queries/grievances relating to e-voting process, the Members may contact at ..... (email ID of agency), Tel: .....or M/s.

.....RTA address) at .....@.....com, Tel: 011..... or at the .....@.....com , Tel: +91 ....

Please keep your most updated email ID registered with the company/your Depository Participant to receive timely communications.

By Order of the Board of Directors
For .....

.....(Signature)
Place : ....(Name)
Date : .....20.... .

Company Secretary
(ACS/FCS No……)

****

DRAFTING AND CONVEYANCING RELATING TO VARIOUS DEEDS AND DOCUMENTS - I

Agreement
An agreement which is enforceable at law is called a contract. Generally when a contract is reduced to writing, the document itself is called an agreement.

Drafting of an Agreement

- An agreement between the parties is an instrument whereby the parties freely agree to perform certain acts or refrain from doing sometimes.

- The purpose of the instrument is to bind the parties to the terms and conditions agreed upon.

- While preparing agreements it is necessary and important that the intention of the parties should be set forth explicitly so as the leave no room for doubt or future controversy.

- The language should be simple and the words used should be definite and precise; the use of loose expression such as "proper", "reasonable", should, as far as possible, be avoided.

- The provisions of the Indian Contract Act, 1872 about the essential incident and legality of agreements should be studied and nothing should be introduced or left out which would make the agreement void.

- An agreement can be split into same parts as any other document viz. Title, Date, Parties, Recitals, Testatum, Operating Clause, Schedule (if necessary), Exceptions and Reservations (if any), Habendum, Covenants (if any) and Testimonium.

- Arbitration Clause – important clause

- Clause for Services of Communication: important "Any notice may be sent through the post to the last known place of abode or business of the party to whom it is given, and if so sent under a certificate of posting shall be taken to be sufficient service thereof."
- If it is desired that each party should have a copy of the agreement, it should be executed in duplicate.

- Attestation, Registration and Stamp Duty
  - **Attestation:** It is not necessary for an agreement to be attested by any witness. But agreements are usually attested by one witness. Where registration is desired the agreement should be attested by two witnesses.

- **Registration:** Agreements not relating to immovable property and agreements not creating an interest in immovable property are not compulsorily registrable. Only agreements creating an interest in immovable property worth more than Rs. 100 are required by law to be registered.

- **Stamp Duty:** For the purpose of stamp duty, agreements are covered by Article 5 of Schedule I to the Indian Stamp Act, 1899. The stamp duty for different kinds of agreements varies from State to State. While drafting an agreement the draftsman should ascertain the proper stamp duty having regard to the changes made in the Stamp Act in the State where the agreement is executed.

****

CONTRACT

Section 2 (h) of the Indian Contract Act, 1872 defines contract as an agreement enforceable by law. All such agreements which further satisfy the conditions mentioned in Section 10 of the Act are contracts

Section 11 provides that every person is competent to contract who is of the age of majority and having a sound mind and further not disqualified from contracting as per law.

There are following essential elements to constitute a valid contract:

1. Legal obligations to have been created through offer and acceptance.

2. An agreement to be enforceable by law must be supported by consideration.

3. The parties to the agreement must be competent to enter into a valid contract.

4. There must be free consent of the parties to the agreement.

- There is no particular form prescribed for contracts, except that they must fulfill all the essential requirements of a valid contract under the law applicable to the contract.

- If the law requires any particular category of contracts to be in writing or to be registered, these formalities must be complied with.

- A contract may be hand written, type written or printed. It may be as brief or as detailed as per the requirement.

****

Important points in regard to drafting of Contracts

Description of Parties to the Contract:

1. Parties to the contract should properly be defined by giving their names, status and address.

2. In case of an individual, father's name and in case of a company, the place where registered office is situated be also given.

3. In case of firms and companies the particulars of persons representing them to be given.

Legal Nature of the Contract: TITLE of the DEED

In the title or in the introductory part of the contract, the parties should clearly indicate the legal nature of the contract as to whether it is a sale / purchase contract or a commercial agency contract etc. so as to avoid any doubt as regards the nature of the contract.

Licences and Permits:

It is desirable to provide particularly in **international trade** contracts as to which party would be responsible for obtaining export / import licenses and the effects of delay, refusal or withdrawal of a license by Government authority, etc.

Taxes, Duties and Charges:

A provision regarding the responsibility for payment of taxes, duties and other charges, if any, may also be included in the contract.

In international contracts, it is generally provided that the seller would be responsible for taxes, duties and charges levied in the country of export and the buyer with such charges levied in the country of import.

Quality, Quantity and Inspection of Goods:

- Quality of the goods is very important to the buyer in a sale-purchase contract and it is necessary to include a suitable provision relating to the description and inspection of the quality and quantity of the goods in the contract.

- Inspection of the goods may be provided either in the seller's country before shipment or in the buyer's country after delivery of the goods.

Packing:

- Proper packing is very important, particularly in the case of goods which have to be set over a long voyage.
- Sometimes goods are spoiled during the transit because of poor packing and dispute may arise regarding the responsibility for damage to the merchandise during the transit.
- Therefore, a proper stipulation regarding packaging of the goods according to the nature of the merchandise should be included in the contract.

Shipment of the Goods:
It is desirable to stipulate precise particulars regarding the rights and duties of the parties towards shipment of the goods, i.e., the time, date and port of shipment, name of the ship and other ship particulars.

Insurance:
- A provision regarding insurance of the merchandise is also made in the contract.
- The insurance provision will state as to which party will be responsible for taking out insurance and what type of insurance cover has to be taken.

Documentation:
- In modern business transactions, it is sometimes necessary for the seller to supply detailed specifications, literature, etc. relating to the goods particularly.
- In such cases, it is usual to provide in the contract as to whether the technical documentation supplied by the seller will become the property of the buyer or it has to be returned to the seller after a stipulated time.

Guarantee:
- Sometimes the goods sold are of such a nature that the buyer insists for guarantee regarding their use and performance for a particular period.
- Under a guarantee clause, the seller is held responsible for the defects appearing in the goods during the period of the guarantee.

Passing of the Property and Passing of the Risks:
- It is very important to provide for the exact point of time when the title or the property in the goods and the risk will pass from the seller to the buyer.
- This is important to ascertain as to whether the seller or the buyer will be responsible for the damage or loss to the goods during transit at a particular point of time.

Amount, Mode and Currency of Payment:
It is useful to provide for the amount, mode and currency in which the price for the goods has to be paid.

Force Majaure: IMP.
- Another very important provision witnessed in modern commercial contracts relates to **force majaure or excuses for non-performance**.
- This provision defines as to what particular circumstances or events beyond the control of the seller would entitle him to delay or refuse the performance of the contract, without incurring liability for damage.
- It is usual to list the exact circumstances or events, like strike, lockout, riot, civil commotion, Government prohibition, etc. which would provide an excuse to the seller to delay or refuse the performance.

Proper Law of Contract:

- When both the parties to a contract are resident in the same country, the contract is governed by the laws of the same country.
- However, in international contracts, the parties are subject to different legal systems and, therefore, they have to choose a legal system which will govern the rights and duties of the parties. IMP.

Settlement of Disputes and Arbitration:

- The last but not least important is the provision regarding settlement of disputes under the contract by arbitration or otherwise.
- It is usual to provide for an arbitration clause in the contract, particularly under the auspices of an arbitral institution.
- A suitable arbitration clause may be provided by the parties by mutual agreement.

****

ADDITIONAL GUIDELINES REGARDING AGREEMENT TO SELL / PURCHASE

In an agreement to sell / purchase, the following details must be incorporated:

- ❖ names and descriptions of the contracting parties;
- ❖ consideration and earnest money if paid;
- ❖ subject-matter of the agreement;
- ❖ time within which the agreement is to be performed; and
- ❖ special terms agreed upon between the parties.

Contracting Parties

- The vendor and the purchaser must be sufficiently described, irrespective of the fact that the parties know each other.

- There must be reciprocity of interest between the person who wants to enforce the agreement and the person against whom it is sought to be enforced.

- A stranger to the agreement has no enforceable claim and as such no court shall entertain his claim for specific performance.
- Legal representatives of parties have a right to require specific performance of a contract or are bound by the promise to perform the contract in the absence of a contrary intention.

Consideration

- Price is the essence of an agreement of sale / purchase and unless the price is clearly disclosed in the agreement, there is no enforceable contract between the parties.

- Price may not necessarily be in the form of money, it may be any other consideration.

- The word "price" is comprehensive enough to include any other lawful consideration.

Subject Matter

- Property of any kind subject to the provisions of the Transfer of Property Act, 1882, and those of any other applicable law or custom may be sold / purchased.

- Transferability is the general rule and the right to property includes the right to transfer the property to another person.

- The property, subject-matter of the agreement, must be described in detail giving its precise situation and the extent of interest agreed to be conveyed therein should be clearly stated.

- If the property is subject to certain charges, easements, encumbrances, restrictions, covenants etc., the same should be clearly stated.

- The vendor should not conceal any material particular with regard to the property he is selling, which the purchaser has a right to know.

Time for Performance

- If the time for performance is the essence of the agreement, the same should be clearly stipulated and the consequences of non-performance within the stipulated time should also be clearly and precisely declared.

****

TERMS AND CONDITIONS IN THE AGREEMENT TO SELL/PURCHASE

The usual conditions in an agreement to sell / purchase are:

1. The vendor has a marketable title in the property agreed to be sold / purchased

2. If the property agreed to be sold is a part of a larger property, an agreement as to retention of a particular or all the title deeds to the property by a party should be arrived at and incorporated in the agreement to sell/purchase.

3. If the property is subject to any prior charge or encumbrance, the parties must agree that the sale is to be subject to such encumbrance or price payable under the agreement included the sum due under the encumbrance and is required to be paid to the charge holder at the time of registration or thereafter.

4. The mode of payment of the price or the balance thereof, if some earnest money or deposit has been paid, should also be stipulated in the agreement.

5. It should also be clearly stated whether the vendor or the purchaser shall be liable to pay rates, rents, taxes or other imposts for the period commencing from the date of execution of the agreement to sell/purchase till the execution of the conveyance deed.

6. It should also be stated in the agreement that interest at a particular rate shall be payable by the vendor on the earnest money paid in the event of his delaying the execution of the conveyance deed

7. The parties should agree as to the point of time when possession of the property should be handed over by the vendor to the purchaser.

8. The parties should also agree as to who shall bear the cost and expense of execution and registration of the sale deed and if both the parties have to bear the same, in what precise proportions they shall bear.

9. If any broker is involved in the transaction, the agreement should clearly spell out if any brokerage is payable and by whom and at what rate, and at what point of time.

10. The agreement must incorporate if there are any other particular conditions attached to the transaction of sale/purchase so that the document is complete and self-contained and nothing is left to draw inferences or to presume intentions of the parties.

****

A Specimen Agreement of Sale of House Property

THIS AGREEMENT OF SALE of property / house property executed on the…….. day of…….. 2014, between AB S/o ……..…….…... residing at……..……..., ……..... hereinafter called the vendor / seller of the one part

And

CD s/o …….…….……..... resident at……..……..., …….…….……..... hereinafter called the VENDEE / purchaser of the other part,

(The expressions "vendor" and "purchaser" wherever they occur in these presents, shall unless the context otherwise admits, also mean and include their respective heirs, executors, administrators, legal representatives and assigns).

WHEREAS the vendor is the sole and absolute owner of the property more fully set out in the Schedule hereunder(brief description of the property can also be mentioned here)

AND WHEREAS it is agreed that the vendor shall sell and the purchaser shall purchase the said property for a sum of Rs……..……... (Rupees…….…….……....) free of all encumbrances
We can have more points…like any token money and receipt thereof etc…….

NOW THIS AGREEMENT OF SALE OR AGREEMENT TO SELL WITNESSETH AS UNDER:

PRICE OF THE PROP. (heading of the points is not required)

1. The price of the property more fully set out in the Schedule hereunder is fixed at Rs…….. (Rupees…….……...) free of all encumbrances. (FREE OF CHARGE)

2. The purchaser has paid to the vendor this day, a sum of Rs…….. (Rupees…….……...) by way of earnest money/TOKEN MONEY for the due performance of the agreement, the receipt whereof the vendor doth hereby admit and acknowledge.

3. The time for performance of the agreement shall be 4 …….. months from the date hereof and it is agreed that the time fixed herein for performance shall be of the essence of this agreement.

4. It is hereby agreed by the purchaser that OR the Purchaser agrees that he shall pay to the vendor the balance sale price of Rs……. (Rupees…….……...) before registration of the conveyance deed.

Where we need to mention both the parties in a para, the we can write…..it is hereby agreed between the parties OR the parties hereby agree that……..

5. The vendor agrees that he will deliver vacant possession of the property to the purchaser before registration of the conveyance deed. Or alternatively, the vendor agrees that he will put the purchaser in constructive possession of the property by causing the tenants in occupation of the property to attorn their tenancy to the purchaser.

6. The vendor agrees that he vendor shall execute the conveyance deed in favour of the purchaser or his nominee as the purchaser may require.

7. The vendor shall hand over all the title deeds of the property to the purchaser or an advocate nominated by him within…….. days from the date of this agreement for scrutiny of title.

8. If the vendor's title to the property is not approved by the purchaser, the vendor shall refund the purchaser the earnest money received by him under the agreement and on failure of the vendor to refund the same within…… days, he shall be liable to repay the same with interest thereon at the rate of…….. per cent per annum.

9. If the purchaser commits a breach of the agreement, he shall forfeit the earnest amount of Rs…….. (Rupees…….……...) paid by him to the vendor.

10. If the vendor commits a breach of the agreement, the vendor shall not only refund to the purchaser the sum of Rs……..... (Rupees…….……...) received by him as earnest money, but shall also pay to the purchaser an equal sum by way of liquidated damages.

11. Nothing contained in paras 9 and 10 above shall prejudice the rights of the parties hereto specific performance of this agreement of sale/purchase.

Schedule of Property

House No…….……... situated in……..…….……...
On itsNorth is…….…….…….....
South is…….…….……....
East is…….…….……...
West is…….…….……....

IN WITNESS WHEREOF the vendor and the purchaser have set their respective hands to the agreement of sale/purchase on the day, month and the year above written, in the presence of the following witnesses:

Witnesses:
(1) Name:
Father's Name:
Address:
Signature: Vendor / SELLER
(2) Name:
Father's Name:
Address:
Signature: Purchaser / VENDEE

****

BUILDING CONTRACTS

1. Building contracts, being legal documents, have to be drawn in accordance with the provisions of the Indian Contract Act.
2. Such an agreement or contract must be drawn in accordance with the provisions of the Indian Contract Act, 1872.
3. All the essential ingredients of a contract, such as, a proposal, its acceptance, its due communication to the proposer, lawful consideration, lawful purpose and competence of parties to the contract etc. must be duly satisfied and ensured while drafting such contracts.

4. It is essential to ascertain not only the legal position or condition of each of the parties to the contract, e.g. an individual, a firm or partnership, a company, or as the case may be, but also that each person signing the document has capacity to contract.
5. The contract should clearly state the full names, addresses (The addresses being that to which all communications, including notices and judicial processes, should be sent), and capacities of each of the contracting parties and, in the case of firm, partnership or company, the name or complete style of the firm, partnership or company, its legal status, the date and place of its incorporation, Registered office, and so on.

****

DEALERSHIP CONTRACT

- Manufacturers, barring a very few, do not have their own retail sale outlets.

- They sell their products through a network of sole selling agents, selling agents, distributors dealers, co-operative stores, super bazars, fair price shops etc.

- In this chain of sellers and distributors, dealer is a very important link.

- He is not an agent to the manufacturer as he functions in his own independent capacity and not as an agent or a representative of the manufacturer. IMP.

- He purchases goods either against specific orders from the prospective ultimate users or consumers or keeps stocks of goods of one or more manufacturers in anticipation of the sale orders.

- Both the manufacturer and the dealer enter into an agreement known as **Dealership Agreement**, which incorporates the important terms and conditions of their relationship so as to avoid any ambiguity and resultant dispute.

Ingredients of a Dealership Contract

- Such an agreement or contract must be drawn in accordance with the provisions of the Indian Contract Act, 1872.

- All the essential ingredients of a contract, such as, a proposal, its acceptance, its due communication to the proposer, lawful consideration, lawful purpose and competence of parties to the contract etc. must be duly satisfied.

- It is essential to ascertain not only the legal position or condition of each of the parties to the contract, e.g. an individual, a firm or partnership, a company, or as the case may be, **but** also that each person signing the document has capacity to contract.

- The contract should clearly state the full names, addresses and capacities of each of the contracting parties and,

- In the case of firm, partnership or company, the name or complete style of the firm, partnership or company, its legal status, the date and place of its incorporation, registered office, and so on.

- In the title (or introductory part) of the contract, care should be taken clearly to state that it is a commercial agency or dealership contract, so as to avoid any doubt.

- While drawing dealership contract, special care has to be taken that if the contract attracts provisions of the **Competition Act, 2002.**

****

A Specimen of a Dealership Contract

THIS AGREEMENT is made on the……... day of…..…… Two Thousand Two between ABC Ltd. a company incorporated under the Companies Act, 1956 and having its Registered Office at…….... and its Manufacturing unit at…..……... its Company Secretary, (hereinafter called "the company", which expression shall include its representatives) of the one part **AND** M/s ……..……...……... a partnership firm comprising Mr…..……..., Mr…..……... and Mr…….... partners, having its main business place at…..……..., ……..……...……...and branches at…..……..., ……...and ……... (hereinafter called "the firm" which expression shall include the partners, their heirs, executors, administrators, representatives and assigns of the other part).

WHEREAS the company is manufacturing of CARS (brand name, style, description of the product etc……..…..…….

AND WHEREAS the firm has its own marketing network and is selling goods of various branches and is desirous of selling the goods of the company at a new sales outlet recently taken on rent by it for the purpose and has communicated the same to the company;

AND WHEREAS the company, after having considered the proposal of the firm, has agreed to appoint the firm as its dealer on the terms and conditions as contained in this agreement.

NOW THIS AGREEMENT WITNESSETH as under:

1. That the company hereby appoints the firm as its dealer to sell its products, more specifically defined in the Schedule to this agreement, in the areas also clearly defined in the said Schedule.

2. The agreement shall remain in force for one year commencing from…… and shall be renewable for similar periods on the agreed terms and conditions.
3. The firm shall keep a minimum stock of…….. pieces each of the company's products to meet the demand of the ultimate users/consumers, which quantity shall be reviewed every quarter in the light of the sales during the previous quarter and the market trends.
4. The company shall supply to the firm its products on fifteen days credit from the date of the invoice and if payments are not made within the credit period shall charge interest at the rate of…….. per cent per annum from the sixteenth day of the invoice till payment.
5. The company shall supply to the firm sufficient quantities of publicity and advertisement material for display at the firm's sales outlet and for distribution in its area of operation.
6. The company shall bear 50% of the cost of maintaining the sales outlet of the firm including rent thereof subject to a maximum of 5% of the invoice value of the firm of all the products of the company, which amount shall be credited to the firm's running account in the books of the company at the end of each quarter.
7. The company and the firm shall settle their accounts every six months and the balance credit/debit shall be squared by making payment by the party owing to the other.
8. The firm shall make all efforts to promote the sale of the company's products and in the event of the company forming an opinion on the basis of sale records that the firm is not properly performing its duty as dealer, the company shall be at liberty to terminate this agreement by giving the firm one month's notice in writing and at the end of the notice period, this agreement shall stand terminated and the parties shall settle their accounts within seven days of such termination.
9. The company agrees and undertake to supply to the firm its products as per the firm's orders and in the event of the company failing to supply the ordered goods within fifteen days of receipt of each purchase order, the firm shall be entitled to terminate the agreement by giving the company one month's notice in writing and at the end of the notice period, this agreement shall stand terminated and the parties shall settle their accounts within seven days of such termination.
10. The firm shall not sell any product of the company at a price higher than the one indicated by the company from time to time.
11. The firm shall be at liberty to appoint sub-dealers, salesmen, commission agents or other sales personnel on salary, commission or any other basis, so long as they function in accordance with the provisions of this agreement and do not do anything which is detrimental to the interest of the company, or the firm and the collective interest of both.

Note: Any additional terms and conditions of the appointment may be incorporated.

Jurisdiction in case of dispute
Arbitration
Service of communication
Etc etc etc……

IN WITNESS THEREOF the parties aforementioned have signed this agreement in the presence of the witnesses:

SCHEDULE OF PRODUCTS
1. ……..…….3. ……..…….
2. ……..…….4. ……..…….

Witnesses:
(1) Name: for ABC Ltd.
Father's Name:
Address :(……..…….)
Signature: Company Secretary

(2) Name: Mr……..…….
Father's Name: Mr……..…….
Address: Mr……..…….
Signature: Partners
Messrs……..…….

****

COMMERCIAL AGENCY CONTRACTS

- Sometimes business is conducted by traders not directly with their counterparts but through the agency of independent agents.

- Such agents would locate customers for the principal's goods and in certain conditions would have an implied authority to deal with the goods of the principal, allow credit terms to customers and receive payment from the customers on behalf of the principal.

- The rights and duties of the principal and his agent abroad would be governed by the contract of agency (Commercial agency contracts) concluded between them.

- A commercial agency contract should inter alia include provisions regarding:
  - the date of commencement and of termination of the agency,
  - the goods or products to be covered by the agency,
  - the contractual territory,
  - the nature of the agency, e.g. sole or exclusive agency, etc.
  - the rate and basis of commission payable to the agent should also be clearly indicated.
  - the conditions regarding the reimbursement of expenses incurred by the agent;
  - payment of commission on orders received

- In drawing up Commercial Agency Contracts between parties residing in different countries, it is essential to ensure that nothing contained in such a contract shall be repugnant to imperative provisions of the law of any country in which such a contract or any part thereof has to be carried into effect.

- The contract should clearly define the territory or territories (including or excluding any other country which may be associated with any such territory) in which the agent is entitled to act.

- If the agent is to have the sole and exclusive right to represent the principal within contractual territory, the parties should agree to what extent, if any, the principal may nevertheless reserve the right to operate in the territory, either himself or by means of his employees, with or without, as the case may be, the assistance of the agent.

- In addition, it may be expedient in certain cases to append to the contract a list showing the customers of the principal in the contractual territory to whom the contractual goods or any of them had been sold before the coming into force of contract, and the quantities and value of goods so sold during that twelve months (or as the case may be) last preceding such time.

- The parties should always insert a suitably worded clause at the end of their contract to the effect that there are no other agreements in existence between the parties and that the whole of the terms between the parties are set out in the contract.

****

Del Credere Agency

- There is a special type of agency, which **combines agency with guarantee.** This is known as del credere agency.

- A del credere agent is one who, for an extra remuneration undertakes the liability to guarantee the due performance of the contract by the buyer.

- By reason of his charging a del credere commission he assumes responsibility for the solvency and performance of the contract by the vendee and thus indemnifies his principal against loss.

Ingredients of an Agency Contract

- The contract of agency is governed by the Contract Act, 1872.

- The basic features of contract of agency are:
  - Authority should be given either expressly or impliedly to bind his principal.
  - While the principal should not be a minor, an agent could be a minor.
  - Consideration is not necessary for an agency contract.
  - For the acts of the agent, the principal is liable unless the principal has exceeded his authority.

- The authority of an agent extends to the doing of all that is necessary and collateral to the doing of the main act.

****

A Specimen of an Agency Contract

An agreement made this……..…… day of……..…..……. between……..…..……. (principal) (hereinafter called "the principal") of the one part and……..…..……. (agent) (hereinafter called "the agent") of the other part.

Whereby it is agreed between the parties as follows:

1. That the agent is hereby appointed the sole agent of the principal for the town……..…..……. (in the district of) (hereinafter called "the agency town") for the purpose of making sales of the principal's goods for a term of……..…..……. years commencing from the date hereof on the terms and conditions set forth hereunder.
2. That the agent shall not, while selling the principal's goods make any representation in the trade or give any warranty other than those contained in the principal's printed price list.
3. That the agent shall be allowed to deduct and retain as his agency commission with himself……..… per cent of the list price of all goods sold on behalf of the principal.
4. The agent shall keep a record of all sales and shall regularly remit to the principal on each Saturday all sums received by the agent in respect of such sales less……..…. per cent his agency commission.
5. That the agent shall not make purchases on behalf of nor in any manner pledge the credit of the principal without the consent in writing of the principal.
6. That the agent shall, at the expense of the principal, take on rent and occupy for the purpose of the agency, suitable premises with prior approval of the principal and shall keep insured for full value against all available risks, all the goods entrusted to his custody by the principal.
7. That the agent, while selling to persons in the trade, shall obtain the purchaser's signature to an agreement to the following effect:
    i. That the said principal's goods shall not directly or indirectly be re-sold outside the agency district.
    ii. That the said principal's goods shall not be re-sold to the public below the list price for the time being.
8. That the agent shall, in all his commercial dealings and on documents and on the name-plate or letter-head indicating his place of business, describe himself as selling agent for the principal.
9. That the principal shall keep with the agent a stock of his goods free of all expenses of delivery to the value of Rs……. according to the principal's current price list and the principal further undertakes to replenish such stock on the close of each month so as to keep it at the agreed value.

10. That the agent shall not sell the goods of the principal to any purchaser except at current price list of the principal conveyed by him from time to time. The agent may, however, allow a discount or rebate of…… per cent.
11. That in the event of any dispute arising between the agent and a purchaser of the principal's goods, the agent shall immediately inform the principal of the same and shall not without the principal's approval or consent in writing take any legal proceedings in respect of or compromise such dispute or grant a release to any purchaser of the principal's goods.
12. That either party may terminate this agreement at his option at any time after the expiration of..…. years by giving the other one month's notice in writing.
13. That the benefits under this agreement shall not be assignable to any other person.
14. That the agent shall always, during the existence of this agreement, devote his whole business time and energy for pushing the sale of the principal's goods and shall in all such dealings act honestly and faithfully to the principal and shall carry out orders and instructions and shall not engage or be interested either directly or indirectly as agent or servant in any other business or trade without the prior consent in writing of the principal.
15. That on the termination of his agreement for any reason whatsoever, the agent shall not for the period of one year solicit trade orders from the persons who had been purchasers of the goods of the principal any time within……..…. years immediately preceding the date of such termination.
16. That all goods shall be sold by the agent for delivery at agent's place or business but the agent shall, at his own expense, have the right to deliver goods to purchasers at their places of business.
17. That without prejudice to any other remedy he may have against the agent for any breach or non-performance of any part of this agreement, the principal shall have the right summarily to terminate this agreement:
    - on the agent being found guilty of a breach of its provisions or being guilty of misconduct or negligence of his duties; or
    - on the agent absenting himself from his business duties entrusted to him under this agreement for……..…. days without the principal's prior permission in writing;
    - or on the agent committing an act of bankruptcy.
18. That in the event of any dispute arising out of or in relation to or touching upon the agreement, the same shall be decided by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996.
19. That the principal shall be entitled to terminate this agreement by one month's notice in writing to the agent in the event of his ceasing to carry on the said business of the principal.
20. That on the termination of this agreement for whatever reason, the agent shall forthwith deliver to the principal all the unsold stock of goods and shall pay to the principal for the shortages of deficiency of stock at list price less commission and rebate allowable to the agent.
21. The agent shall also deliver to the charge of the principal all books of account and documents of the agency, cash, cheques, bills of exchange or other securities he may have received during the normal course as a result of sales of the principal's goods and

shall transfer, assign or negotiate in favour of the principal all such securities on demand.

IN WITNESS WHEREOF the parties have signed this deed.

Witness: Principal

Witness: Agent

****

COLLABORATION AGREEMENTS

- When two parties join hands for exchange of technical know-how, technical designs and drawings; training of technical personnel they are said to be collaborating in a desired venture.

- The word "collaboration" has, however, acquired a specific meaning, which refers to cooperation between a party within India and a party abroad.

- The agreements drawn and executed between such collaborating parties are known as "foreign collaboration agreements".

- A large number of Indian industrialists have entered into long and short-term collaboration arrangements with foreign companies, firms etc.

- In order to ensure quick processing of the proposed collaboration arrangements and on a uniform basis, the Central Government has issued guidelines for prospective collaborators so that they submit their proposals in accordance with those guidelines.

GUIDELINES FOR ENTERING INTO FOREIGN COLLABORATION AGREEMENTS

1. **Investment:** Where in a foreign collaboration agreement, equity participation if involved, the value of the shares to be acquired about be brought in cash.
2. **Lump sum payment:** The amount agreed to be paid by an Indian party to a foreign collaborator for technology transfer **should be** paid in three installments as follows:
   i. one-third to be paid after the agreement has been approved by the Central Government; (Department for promotion of Industry and internal trade)
   ii. one-third on transfer of the technical documents; and
   iii. one-third on the commencement of commercial production.
3. **Royalty:** Royalty payable to a foreign collaborator has to be calculated on the basis of net ex-factory selling price of the product less excise duties and cost of imported components. The normal rate of royalty may be 3% to 5 %. This rate will depend upon the nature and extent of the technology involved. Payment of a fixed royalty is preferred

by the Government in certain cases. There should be no provision for payment of a minimum guaranteed royalty, regardless of the quantum and value of production.

4. **Duration of agreement:** Normal period of a foreign collaboration agreement is 8 years subject to maximum of 10 years. The period is approved by the Government usually for 5 years from the date of the agreement in the first instance or 5 years from the date of commencement of commercial production; the total period, however, not exceeding 8 years from the date of the agreement.
5. **Renewal or extension of agreement:** The Central Government may consider an application for renewal of a foreign collaboration agreement or for extension of its period on merit.
6. **Remittances:** Remittances to foreign collaborators are allowed only on the basis of the prevailing exchange rates.
7. **Sub-licensing:** An agreement shall not normally impose any restriction on the sub-licensing of the technical know-how to other Indian parties. The terms of such sub-licensing will be as mutually agreed to between all the concerned parties including the foreign collaborator. Sub-licensing is, however, subject to the Central Government's approval.
8. **Exports:** No foreign collaboration agreement shall be allowed to contain any restriction on the free export to all countries, except in a case where the foreign collaborator has licensing arrangements in which case the countries concerned shall be specified.
9. **Procurement of capital goods etc.:** There should be no restriction on procurement of capital goods, components, spares, raw materials etc. by the Indian party. The Indian collaborator must be free to have control over pricing facility and selling arrangements.
10. **Technicians:** The number terms of service, remuneration etc. of technicians to be deputed on either side are subject to approval of the Reserve Bank of India.
11. **Training:** Provision shall be made in the agreement for adequate facilities for training of Indian technicians for research and development.
12. **Exploitation of Indian patents:** Where any item of manufacture is patented in India, the payment of royalty or lump sum to the foreign collaborator should make provision for compensation for use of such patent until its expiry. There should also be provision for manufacture by the Indian company of the said item even after the expiry of the collaboration agreement without making any additional payment.
13. **Consultancy:** If the necessity for any consultancy arises, it should be obtained from an Indian company. If, however, in the special circumstances foreign consultancy becomes essential, even then the prime consultant should be an Indian company.
14. **Brand Name:** There should be no insistence on the use of foreign brand names on products for sale in India. There can, however, be no objection for use of foreign brand name on products to be exported to other countries.
15. **Indian Laws:** All collaboration agreements shall be subject to Indian laws.
16. **Approval of Central Government:** Every foreign collaboration agreement shall be approved by the Central Government.

****

A Specimen Collaboration Agreement

Agreement executed this……..……day of……..……between M/s……..……., a Foreign Company incorporated in the United Kingdom and having

its registered office at……..…….. hereinafter called the U.K. Company of the ONE PART.

AND

M/s…….…… a company incorporated in India and having its registered office at……..…. hereinafter called the Indian company of the OTHER PART:

WHEREAS the Indian company has been incorporated having for its object the manufacture and production of……..…..…….;

WHEREAS the Indian company has already constructed factory buildings, installed plant and machinery and commenced manufacture and production of…….……..,;

WHEREAS the Indian company with a view to improve still further the quality of the commodities manufactured and to increase production are desirous of procuring the latest technique and know-how relates to the manufacture of the above said commodities;

WHEREAS the Indian company therefore approached the U.K. company who have considerable experience in the line of manufacture engaged in by the Indian company, and requested them to extend to them necessary technical assistance in that behalf; AND

WHEREAS the U.K. company has agreed to extend technical assistance and to furnish to the Indian company for improvement of their business the requisite know-how in the form of designs, plans, engineering drawings, technical advice and also to supply technicians to advice for improvement of the existing factories, machineries and plant and also to provide to the Indian personnel necessary technical training to enable them to successfully handle and exploit the technical know-how to be imparted to the Indian company subject to the terms and conditions set out hereunder:

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1. In consideration of the remuneration paid by the Indian company to the U.K. company as described hereinafter the U.K. company shall supply to the Indian company:
   a) technical advice and know-how for the purpose of improving or adding to the existing factories and installing additional plant and machineries if necessary for the manufacture of……..…..…….;
   b) further the necessary plans, factory-design and layouts, charts and drawings, documentation and other forms of technical know-how for the said purpose;
   c) render advice in the matter of purchase of the further plant and machinery suitable and necessary for the factory;
   d) lend the services of their technicians to assist the Indian company in carrying out the improvement to the factories and for installing additional plants and machinery;
   e) provide technicians from their own staff to attend at the Indian company's factory in India whenever necessary;

f) impart technical training to selected Indian personnel at their works in England or in their associated companies, to enable them to operate the machinery and plant to be installed and to exploit the imported technical know-how to the best advantage;
g) advise the Indian company, promptly and to the best of their ability, in connection with any technical or manufacturing problems or difficulties which may be referred to it by the Indian company during the continuance of this agreement.

2. For technical know-how and data supplied by the U.K. company to the Indian company as above, the Indian company shall make a lump sum payment of Rs……..…… to the U.K. company phased as follows:
   a) one-third on approval of the agreement by the Central Government;
   b) one-third, on the U.K. company supplying the Indian company necessary charts, plans, engineering drawings, documentation and other technical data and know-how, which shall be done within 15 days from the date of approval, of this agreement by the Central Government;
   c) the balance one-third in three equal annual installments thereafter after commencement of production.

3. This Agreement shall be in force for a period of 5 years at the first instance, subject to extension for a further period of 5 years by mutual agreement and subject to approval by the Central Government.
4. The Indian company may but not bound to use foreign brand names on their products for internal sale or on products to be exported.
5. There shall be no restriction on the Indian company exporting their products to foreign countries.
6. The Indian company shall not have the right to pledge, mortgage or assign or to sub-licence the technical know-how, data, engineering designs, layouts etc. to other parties, without the consent in writing of the U.K. Company.
7. There shall be no restraint on the Indian company having their own arrangements for procurement of raw materials, purchase of spares and components and for pricing their products and the sale thereof.
8. Technicians who may be deputed by the U.K. Company to the Indian company to advise and assist the Indian company under this agreement shall be paid their salary, traveling expenses and boarding and lodging by the Indian company.
9. The Indian company shall likewise bear all the expenses of the persons sent by them to the U.K. Company for training in their works under clause 1(f) supra.
10. The parties hereto mutually agree that they will each inform the other of any new development in design or methods of manufacture which they respectively may discover during the continuance of this Agreement in so far as such new developments are applicable to the products manufactured by the Indian company.
11. The Indian company shall maintain the utmost secrecy in connection with any technical data supplied by the U.K. Company under this Agreement, and in particular shall keep all data concerned with the manufacturing processes under lock and key.
12. It is agreed that the payment made to the U.K. company shall include the compensation for use of the patent rights for the period of its duration and that the Indian company

shall have the right for the period of its duration and that the Indian company shall have the right to manufacture their products even after the expiry of this Agreement.

13. The Indian company shall not during the continuance of the Agreement refer any technical or manufacturing problems or difficulties to any one other than the U.K. company but shall regard and use the U.K. company as its sole technical consultant.
14. On the expiry of the period prescribed herein or of extended period provided in clause 3 (supra) or upon the termination of this agreement for any reason the Indian company shall return to the U.K. company all copies of information data or material sent to it by the U.K. company under this Agreement and then in its possession and shall expressly refrain from communicating any such information, technical data or material received by it hereunder to any person, firm or company whatsoever.

IN WITNESS WHEREOF the parties hereto have signed this Agreement this……..…..……..….. day of……..…..……. 2007 in the presence of the following:

WITNESSES:

1.

2.

****

ARBITRATION AGREEMENTS

Meaning of Arbitration

The 'arbitration agreement' under the Arbitration and Conciliation Act, 1996 means an agreement by the parties **to submit to arbitration** all or certain disputes which have arisen or which may arise between them in respect of defined relationship whether contractual or not.

- It may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- It has to be in writing.
- It is in writing if it is contained in a document signed by the parties, or in an exchange of letters, telex telegrams or other means of telecommunication which provide a record of the agreement.
- The important ingredient of the arbitration agreement is the consent in writing to submit dispute to arbitration.
- An arbitration agreement stands on the same footing as any other agreement. It is binding upon the parties unless it is tainted with fraud, undue influence etc., in which case it can be avoided like any other agreement.
- An arbitration rests on mutual voluntary agreement of the parties to submit their differences to selected persons whose determination is to be accepted as a substitute for the judgment of a court.
- The object of arbitration is the final determination of differences between parties in a comparatively less expensive, more expeditious and less formal manner than is available in ordinary court proceedings.

Pre-requisites of Arbitration IMP…….

Every arbitration must have the following three pre-requisites:

- ❖ a dispute between parties to an agreement, requiring a settlement;
- ❖ its submission for a settlement to a third person; and
- ❖ a decision by such third person according to his own judgment based on the facts and circumstances of the dispute, which is binding on both the parties.

Submission of Dispute to Arbitration

- ❖ A submission is an agreement between two contracting parties to take decision from a third mutually-agreed party, to whom they refer the dispute.
- ❖ The arbitration presupposes that the arbitrator must accept the office of arbitrator to perfect his appointment.

Aim of Arbitration

- ❖ Civil litigation takes years and years to settle simple disputes.
- ❖ Arbitration is a means devised to quick and economical settlement of a dispute between two contracting parties, who also agree as part of the main agreement to refer dispute to a third person to give his judgment, which shall be binding on both the parties.
- ❖ Where the decision of a person is binding on only one of the parties and not on all the parties to the dispute, it cannot be said that the function, which the person giving the decision is exercising, is arbitral in character.

Methods of Arbitration

- The parties to the dispute will enter into an agreement to refer the dispute to arbitration and will agree on the terms of reference.
- An arbitrator is not bound by the strict rules of evidence of courts of law.
- However, he does follow the practice of presentation and conduct of a case in a court of law.
- Most of the evidence is in writing.
- The party adducing evidence has to be present before the arbitrator so that he may be cross-examined on his written evidence.
- After hearing the evidence of both the parties, the arbitrator makes his award.

Imp…….Requisites of an Award decision of the arbitrator…….

The general requisites of an award are:

a) it must be consistent with the submission;
b) it must be certain;
c) it must be fair to the parties;
d) it must be final;
e) its implementation must be possible.

****

Specimen of Arbitration Agreement (Common Arbitrator)

THIS AGREEMENT is made at……..... this……..... day of…… between Mr. X……. of……..…….. residing at…….... hereinafter referred to as the Party of the First Part and Mr. Y…..…… of……... residing at……..…… hereinafter referred to as the Party of the Second Part.

IMP please go through the same……..

WHEREAS by an Agreement (Building contract / said agreement) dated…….. 2007 entered into between the parties hereto, the Party of the First Part entrusted the work of constructing a building on his plot of land situated at..... to the Party of the Second Part on the terms and conditions therein mentioned.

AND WHEREAS the Party of the Second Part has commenced the construction of the building according to the plans sanctioned by the..... Municipal Corporation and has completed the construction to the extent of the 1st floor level.

AND WHEREAS the Party of First Part has made certain payments to the Party of the Second Part on account but the Party of the Second Part is pressing for more payments which according to the Party of the First Part he is not bound to pay and, therefore the work has come to a standstill.

AND WHEREAS disputes have therefore arisen between the parties hereto regarding the interpretation of certain provisions of the said agreement and also regarding the quality of construction and delay in the work.

AND WHEREAS the said agreement provides that in the event of any dispute or difference arising between the parties the same shall be referred to arbitration of a common arbitrator if agreed upon or otherwise to two Arbitrators and the Arbitration shall be governed by the provisions of the Arbitration & Conciliation Act, 1996.

AND WHEREAS the parties have agreed to refer all the disputes regarding the said contract to Mr……..... Architect, as common Arbitrator and have proposed to enter into this Agreement for reference of the disputes to the sole arbitration of the said Mr……..…….

NOW IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. That the following points of dispute arising out of the said agreement dated... are hereby referred to the sole arbitration of the said Mr..... for his decision and award.

   The points of dispute are:
   a) Whether the Party of the Second Part has carried out the work according to the sanctioned plans and specifications.
   b) Whether the Party of the Second Part has delayed the construction.
   c) Whether the Party of the Second Part is overpaid for the work done up to now.
   d) Whether Party of the First Part is bound to make any further payment over and above the payments made up to now for the work actually done.
   e) All other claims of one party against the other party arising out of the said contract up to now.

2. The said Arbitrator shall allow the parties to file their respective claims and contentions and to file documents relied upon by them within such reasonable time as the Arbitrator may direct.
3. The said Arbitrator shall give hearing to the parties either personally or through their respective Advocates but the Arbitrator will not be bound to take any oral evidence including cross examination of any party or person.
4. The said Arbitrator shall make his Award within a period of four months from the date of service of a copy of this agreement on him by any of the parties hereto provided that, the Arbitrator will have power to extend the said period from time to time with the consent of both the parties.
5. The Arbitrator will not make any interim award.
6. The award given by the Arbitrator will be binding on the parties hereto.
7. The Arbitrator will have full power to award or not to award payment of such costs of and incidental to this arbitration by one party to the other as he may think fit.
8. The Arbitration shall be governed by the provisions of the Arbitration & Conciliation Act, 1996.

IN WITNESS WHEREOF the parties herein under have set their hands the day and year hereinabove mentioned.

Signed by the within named
Mr. X..… in the presence of

Signed by the within named
Mr. Y..… in the presence of

****

Specimen of Arbitral Award

ARBITRAL AWARD **IMP……..**

In the matter of the Arbitration and Conciliation Act, 1996 and the in the matter of an Arbitration Agreement dated……between……S/o……R/o and ……..S/o…….R/o……

This is the award of the Arbitral Tribunal made this……..

WHEREAS in pursuance of an agreement and / or submission in writing dated the …….day of…….and made between the above named parties, the said ……and ……..referred to us and award the matters in disputes and difference between them (state the matter in difference). – here need to mention the dispute / points of the differences……

Now we have heard and examined the parties and considered the pleadings and all allegations and counter allegations made by them against each other and also all books, papers, writings and other evidence produced before us.

Now, we have duly considered the matter referred to us, do hereby make our reward as follows;
We award:

1. That……..
2. That……

Dated the……..day of…… Arbitrator

****

GUARANTEES: COUNTER GUARANTEE, FIDELITY GUARANTEE, PERFORMANCE GUARANTEE, BANK GUARANTEE

Contract of Guarantee

- A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default.
- The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor"; and the person to whom the guarantee is given is called the "creditor".
- A guarantee may be either oral or written.

Continuing Guarantee

Section 129 of the Act lays down that a guarantee which extends to a series of transactions is called a continuing guarantee, and according to Section 130, a continuing guarantee may be revoked by the surety at any time as to future transactions, by notice to the creditor.

Fidelity Guarantee

A guarantee, guaranteeing an employer against the misconduct of an employee or to answer for the debt or default of another, is called a "fidelity guarantee".

Counter-Guarantee

A guarantee given by the principal debtor to the surety providing him continuing indemnity against any loss or damage that the surety may suffer on account of default on the part of the principal debtor, is called "counter-guarantee".

Performance Guarantee

A guarantee which ensures the contracted performance of another person and under which the surety undertakes to compensate the person in whose favour the guarantee is given, in the event of failure on the part of the person on whose behalf the guarantee is given, is known as "performance guarantee".

Bank guarantee

A "bank guarantee" is a guarantee given by a bank on behalf of its client or account-holder to another person with whom the client has entered into a contract to perform some job or to do and call upon the bank to pay the guaranteed amount in the event of the contingency, mentioned in the guarantee, happening or not happening, as the case may be.

Form of a Guarantee

- ❖ The law does not require a contract of guarantee to be necessarily in writing.
- ❖ It may be either oral or in writing.
- ❖ It may be express or it may even be implied. It might be even inferred from the course of conduct of the parties concerned.
- ❖ However, whatever may be the form of the contract, it must be satisfactorily proved.
- ❖ Like any other contract, a contract of guarantee must be supported by consideration.

- It is, however, not necessary that the consideration should flow from the creditor and be received by the surety. Consideration between the creditor and the principal debtor is a valid and good consideration for the guarantee given by the surety.

****

Specimen Deed of Guarantee by a Bank on behalf of a Company for the Performance of a Contract in favour of State Government

THIS DEED OF GUARANTEE / contract of guarantee / guarantee agreement made this..…. day of…..…. Two Thousand...…. between the (Bank) ……..…. (hereinafter called "the Bank") of the one part and the State of……..…. represented by the Governor, Shri…….……..…. (hereinafter called "the State") of the other part.

WHEREAS by Acceptance of Tender No…..…. dated……..…. made between……..…. Ltd., a company incorporated under the Companies Act, 1956 having its Registered Office at agreed by the Company with the State for the supply of plant, machinery and equipment in accordance with the terms, specifications and conditions therein contained which inter alia to……..% of the total value of the contract price, such payment to be secured by a Bank guarantee;

AND WHEREAS the bank has, at the request of the Company, agreed to stand surety for and guarantee refund of the said advance in case the plant, machinery and equipment of the value of Rs……..…. aforesaid is not delivered to the State in accordance with the terms and conditions of the said agreement, and the State agreed to make the said advance on such bank guarantee as aforesaid:

NOW THIS DEED WITNESSES AS FOLLOWS:

3. In consideration of the State of……..…. having agreed to advance a sum of Rs……..…. to the Company, through the Bank, for the purpose hereinafter indicated, the bank, does hereby guarantee that in case the Company shall fail and/or neglect to supply the State, the plant, machinery and equipment of the value of Rs……..…. in accordance with the terms, specifications and conditions contained in the Acceptance of Tender dated the……..…. subject to any amendments or modifications thereof, if any, when made, the bank shall repay to the State such amount or amounts as the bank may be called upon to pay subject to the maximum limit of Rs……..….
4. This guarantee of the Bank shall be effective immediately upon receipt of the sum of……..…. from the State for and on behalf of the Company and shall continue in force until the supply of plant, machinery and equipment of the value of Rs……..…. aforesaid is fully effected.
5. The guarantee hereinbefore contained shall not be affected by any change in the constitution of the bank or of the Company nor in the event of any winding up being made against the Company.

IN WITNESS WHEREOF the parties hereto have set and subscribed their respective hands and seals the day, month and year first above-written.

For and on behalf of the State of
1……..…….
2 for and on behalf of the State of
……..…….

****

Specimen Deed of Guarantee for the Performance of a Contract

THIS DEED OF GUARANTEE made this …..……. day of …..……. between Shri …..……,son of Shri……..……resident of……..…….(hereinafter called "the Guarantor"), which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns etc. of the one part

and

Shri……..…,son of……..……. resident of ……..……..……. (hereinafter called "the Principal), which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns etc., of the other part.

WHEREAS BY AN AGREEMENT DATED……..……. made between Shri…..……. son of Shri…..……. resident of……..…….. etc., therein referred to as "the Contractor", of the one part and the said..……. Shri……..……. herein referred to as "the Principal", of the other part, it was inter alia agreed by and between the parties as follows:

(***Here state the nature of the work to be done by the Contractor***);

AND WHEREAS the said work was entrusted to the Contractor upon the Guarantor having agreed with the Principal as to its guarantee of performance by the Contractor and to indemnify and keep indemnified the Principal against all losses, damages, costs, charges and expenses arising out of performance or non-performance thereof.

Now it is agreed and declared by and between the parties as follows:

1. The Guarantor will see that the Contractor (unless relieved from the performance by operation of any clause of the contract or by statute or by virtue of the decision of any tribunal or court of competent jurisdiction) shall carry out, execute and perform the contract without any exception or reservation and in case he commits any breach thereof, the Guarantor will indemnify and keep indemnified the Principal and his estate against all losses, damages, costs, expenses or otherwise which he may suffer or otherwise incur by reason of any act, negligence, default or error in judgement on the part of the Contractor in performing or non-performing the contract.

2. In case of any dispute or difference as regards the quantum of such losses, damages, costs, charges or expenses, the same shall be decided by reference to arbitration of one architect or engineer if the parties so agree or otherwise to two architects or engineers, one to be appointed by each, whose decision shall be final and binding on all parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set and subscribed their respective hands and seals the day, month and the year first above-written.

Signed, sealed and delivered in the presence of:

1.

Guarantor

2. Principal

****

SERVICE AGREEMENTS

Contents of a Service Contract

- Service contracts are drafted in the same way as other agreements.
- The terms of employment should be definitely fixed and clearly expressed and nothing should be left to presumptions.
- They are required to be both affirmative (describing the acts and duties to be performed) as well as negative (putting restrictions on the acts of the employee during and/or after the term of employment).
- It is therefore necessary to make provision for
  - the time or period of employment;
  - the remuneration and other perquisites, if any, including pay, allowances, commission, rent-free house, conveyance, etc.;
  - duties of employment;
  - powers of the employee;
  - leave and the terms on which it will be granted;
  - modes and grounds of determining the employment during the term; and
  - restrictive covenants, if any.

- As the employer and the employee may not be conversant with law, the terms of a service contract should be as explicit as possible and should be easily intelligible to a lay man.
- Unlike other agreements and legal documents which need not contain matters presumed or implied by law, it is better in such an agreement to specify even such matters and all other matters so as to make it a complete code, embodying the rights and duties of each party.
- In respect of Government service, normally no formal contract is executed and only an appointment order is issued and the terms of service are thereafter governed by statutory rules and Government order. The same is the position of statutory corporations as employers.

****

Specimen Agreement of Employment of Manager of a Business Concern

AN AGREEMENT made on this…… day of…… BETWEEN AB, etc. (hereinafter called the "employer") of the one part AND CD, etc, (hereinafter called the "manager") of the other part.

WHEREAS

1. The employer wants to appoint a suitable person to work as manager for his business concern; and

2. CD, the party of the other part, has agreed to serve as manager of the employer for his business concern.

NOW THIS AGREEMENT WITNESSES as follows:

1. The manager shall work as such for a term of…… years from the day of…… at…… or any other place as desired by the employer.
2. The manager shall give his whole time and attention to the said business and shall use his best endeavor to improve and expand the same and shall in all respects diligently and faithfully obey and observe all lawful orders and instructions of the employer in relation to the conduct of the said business and shall not without his consent divulge any secrets or dealing thereto.
3. The manager shall keep at the place of business at…… proper books of account showing all goods and moneys received and delivered and disbursed by him with necessary particulars of all such transactions and shall duly account for all moneys belonging to the employer and coming into the hands or power of the manager and shall forthwith pay the same to the employer or his bankers for the time being except only such moneys as the manager shall be authorised by the employer to retain for immediate requirements of the said business.
4. The employer shall pay to the manager during the continuance of his engagements and provided he shall duly observe and perform the agreement herein on his part contained the salary of Rs…… per mensem on the first day of every calender month commencing from the first day of…… without any deduction except such as he will be bound to make under the Income-tax law for the time being in force, and shall also pay the manager at the end of each year during the aforesaid period a further sum equal to 5 per cent on the gross sale return for the said year (or on the net profits of the said business for the said year (if any) after making such deductions as are properly made according to the usual custom of the said business in the estimation of net profits) provided always that upon the death or termination of the engagement of the manager before the expiration of the said period of …… years/ the employer shall forthwith pay to him or his heirs, executors, administrators or other legal representatives, as the case may be, in respect of the services of the manager of the whole or any part of the current month a due proportion of the salary of Rs…… per mensem together with such further sum in lieu of such percentage as aforesaid as shall bear the same proportion to the estimated gross return (net profits) for the then current year as the part of the said year during which he has served, shall bear to the whole year, the gross return (net profits) being calculated on average of the past three years.
5. The employer shall during the continuance of the manager's engagement provide him with a suitable furnished house for residence free of rent, rates and taxes (except the charges for electricity consumed by him or of extra water used by him) and the manager shall reside in the said house.
6. The manager shall make such tour as may be necessary in the interest of the said business or as he may be directed by the employer to make and the employer shall pay him all reasonable expense actually incurred in undertaking such tours (or a travelling allowance at per mile for all journey by road and first class fare for journeys performed

by rail and a halting allowance of Rs…… per diem when a halt of not less than 8 hours is made at one place).

7. The manager shall be entitled during his engagement to leave on full pay for a period equal to I/IIth of the period of service rendered and to a further leave on half pay in case of illness or in capacity to be proved to the satisfaction of the employer for a period of 15 days in one year.
8. Either party hereto may terminate the engagement of the manager at any time before the expiration of the said term of……years on giving or sending by registered post to the other party three calendar months, notice in writing, such notice to be given or sent in the case of the employer to his house at …… and in case of the manager to his place of business or residence provided by the employer and on the expiration of the said three months from the date of giving or posting such notice, the said engagement shall terminate provided that the employer may terminate the said engagement at any time on payment of three months' pay in advance in lieu of such notice as aforesaid.
9. If the manager at any time willfully neglects or refuses or from illness or other cause becomes or is unable to perform any of the duties under this agreement, the employer may suspend his salary (and sum by way of percentage) during such neglect, negligence or inability as aforesaid and may further immediately terminate the engagement of the manager without giving any such notice or making such payment or salary in advance as hereinbefore provided.
10. The manager will at his own expense find and provide two respectable sureties to the amount of Rs…… each for his good conduct and for the due performance by him of this engagement and if he fails to do so for a period of three months from this date, the employer may terminate his services forthwith.

IN WITNESS WHEREOF, etc.

****

ELECTRONIC CONTRACTS (E-CONTRACTS)

- Due to the immoderate advancement of technology E-Commerce has become a part of human daily life.
- E-Commerce is the selling and purchasing of goods and services using technology.
- E-Contracts are basically the contracts analyzed with E-Commerce and other transactions taking place in the digital environment.
- E-contract (contract that is not paper based but rather in electronic form) is any kind of contract formed in the course of e-commerce by the interaction of two or more individuals using electronic means, such as e-mail, the interaction of an individual with an electronic agent, such as a computer program, or the interaction of at least two electronic agents that are programmed to recognize the existence of a contract.
- Traditional contract principles and remedies also apply to e-contracts. This is also known as electronic contract.

Need for E-contracts:

- Electronic contracts are born out of the need for speed, convenience and efficiency.
- Imagine a contract that an Indian exporter and an American importer wish to enter into.
- One option would be that one party first draws up two copies of the contract, signs them and couriers them to the other, who in turn signs both copies and couriers one copy back.
- The other option is that the two parties meet somewhere and sign the contract.
- In the electronic age, the whole transaction can be completed in seconds, with both parties simply affixing their digital signatures to an electronic copy of the contract.
- There is no need for delayed couriers and additional travelling costs in such a scenario.
- The contracts formed through electronic media are treated as the general contracts and their formation and acceptance are governed as per the Indian Contract Act, 1872.
- The Indian Evidence Act, 1872 deals with the presumption as to e-records. Providing the electronic records as evidence in the disputed matter [Sections: 85A, 85B, 88A, 85C].

Essentials of E-Contract

As per the Indian Contract Act, the essentials of a contract are:

(i) An offer or proposal by one party and acceptance of that offer by another party resulting in an agreement consensus-ad- idem.
(ii) An intention to create legal relations or an intent to have legal consequences.
(iii) The agreement is supported by lawful consideration.
(iv) The parties to contract are legally capable of contracting.
(v) Genuine consent between the parties.
(vi) The object and consideration of the contract is legal and is not opposed to public policy.
(vii) The terms of the contract are certain.
(viii) The agreement is capable of being performed i.e., it is not impossible of being performed.

Types of E-Contracts IMP……

Generally the basic forms of e-contracts are:

1. The Click-wrap or Web-wrap Agreements.
2. The Shrink-wrap Agreements.
3. The Electronic Data Interchange or (EDI).

Click-wrap or Web-wrap Agreements

- These are the agreements which we generally come across while surfing internet such as "I AGREE" to the terms or "I DISAGREE" to the above conditions.
- A click-wrap agreement is mostly found as part of the installation process of software packages.
- It is also called a "click through" agreement or click-wrap license.

Click-wrap agreements can be of the following types:

1. **Type and Click** where the user must type "I accept" or other specified words in an on-screen box and then click a "Submit" or similar button. This displays acceptance of the terms of the contract. A user cannot proceed to download or view the target information without following these steps.

2. **Icon Clicking** where the user must click on an "OK" or "I agree" button on a dialog box or pop-up window. A user indicates rejection by clicking "Cancel" or closing the window. Upon rejection, the user can no longer use or purchase the product or service. A click wrap contract is a "take-it-or-leave-it" type of contract that lacks bargaining power.

The Shrink-wrap Agreements

- Shrink wrap contracts are license agreements or other terms and conditions which can only be read and accepted by the consumer after opening the product like CD ROM of software.
- The terms and conditions are printed on the cover of CD ROM.
- Sometimes additional terms are imposed when in such licenses appear on the screen when the CD is downloaded to the computer.
- The user has right to return if the new terms and conditions are not to his liking.

Electronic Data Interchange or (EDI)

- These contracts used in trade transactions which enables the transfer of data from one computer to another in such a way that each transaction in the trading cycle (for example, commencing from the receipt of an order from an overseas buyer, through the preparation and lodgment of export and other official documents, leading eventually to the shipment of the goods) can be processed with virtually no paperwork.
- Here unlike the other two, there is exchange of information and completion of contracts between two computers and not an individual and a computer.

On-Line Shopping Agreement

- Suppose Kerry Ltd. wants to offer online shopping services to its customers.
- Kerry would tie-up with manufacturers of books, toys, clothes etc and offer their products for sale through its website.
- Some of the products could be stocked in Noodle's warehouses while others could be stocked with the manufacturers.
- Additionally visitors can post reviews, comments, photos etc on the Kerry website.
- Kerry would need to enter into a contract with all its potential customers "before" they place an order for a product using Kerry services.

This contract must serve the following purposes:

1. Outline the scope of services provided by Kerry Ltd.
2. Restrict Kerry's liabilities in case there is any defect in the products sold through the Kerry website.
3. Outline the duties and obligations of the customer.
4. Grant suitable licence to the customer to use the Kerry website.
5. Restrict Noodle's liabilities in case of loss or damage suffered by the customer as a direct or indirect result of the Kerry website.

****

LEAVE AND LICENSE AGREEMENT

- Leave and Licence Agreements are preferred by the parties to get out of the rigours of landlord-tenant relationship.
- Many types of agreements are made for the occupation of property like lease deeds, lease or tenancy agreements, rental agreements etc.
- Despite these agreements, most owners prefer to give their premises on leave and license basis rather than tenancy or lease basis.
- The word "leave" has many meanings. In Leave and Licence Agreements, it is used to indicate "permission". The occupancy is in essence a permission granted by the landlord or owner to use and occupy the property concerned.

Lease, Licence and Rental Agreements
The licence is not a lease. The lease and the license both are different.

The word **"licence"** under Section 52 of the Indian Easement Act, 1882 is a grant by one person to another or to a definite number of persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful.

A **lease** of immovable property as per Section 105 of the Transfer of Property Act is a transfer of a right to enjoy such property. It may be for a specified period, express or implied. The price or payment of money is usually referred to as the "rent".

In a Leave and Licence Agreement, the **juridical possession** of the premises is deemed to remain with the licensor and the licensee is said to be in **constructive possession** of the said premises.

Thus a leave and licence does not create any interest in the premises in favour of the licensee but gives the licensee the mere right to use and occupy the premises for a temporary period.

From the judgments of various Courts, it appears that the main factors to decide whether the agreement is a lease or a license are:

(i) the intention of the parties and
(ii) whether the agreement creates an interest in the property.

If the premises are given under the Leave and License Agreement, the same can be terminated as per the terms of the agreement or otherwise and the licensor can demand possession, back from the licensee. The termination is easy in the Leave and License Agreement and therefore Leave and License Agreements are preferred by the parties.

****

A Specimen of Leave and License Agreement

THIS AGREEMENT is made at..... this..... day of …….....,, 2007, between Mr. A hereinafter referred to as 'the Licensor' of the One Part and Mr. B of …… hereinafter referred to as the 'Licensee' of the Other Part, as follows;

WHEREAS the Licensor is the owner of a piece of land at……... bearing Survey No ... with a building consisting of ……. floor ..... having built up area of about ..... square feet.

AND WHEREAS the Licensee has approached the licensor with a request to allow the Licensee to temporarily occupy and use a portion of the..... floor of the said building, admeasuring about ..... square feet for carrying on his ..... business, on leave and license basis until the Licensee gets other more suitable accommodation.

AND WHEREAS the Licensor has agreed to grant leave and license to the Licensee to occupy and use the said ground floor portion of the said building and which portion is shown on the plan hereto annexed by red boundary line on the following terms and conditions agreed to between the parties hereto;

NOW IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. The Licensor hereby grants leave and license to the Licensee to occupy and use the said portion of the ground floor/..... floor of the said building of the Licensor (hereinafter referred to as the Licensed Premises) for a period of eleven months from ..... The Licensee agrees to vacate the said premises even earlier if the Licensee secures any other accommodation in the locality where the said premises are situated.
2. The Licensee shall pay to the Licensor a sum of Rs……..... per month (calculated at the rate of Rs……..... per square foot) as License fee or compensation to be paid in advance for each month on or before the..... day of each month.
3. All the Municipal taxes and other taxes and levies in respect of the licensed premises will be paid by the Licensor alone.
4. The electric charges and water charges for electric and water consumption in the said licensed premises will be paid by the Licensee to the authorities concerned and the Licensor will not be responsible for the same. For the sake of convenience a separate electric and water meter if possible will be provided in the said premises.
5. The Licensee will be allowed to use the open space near the entrance to the Licensed premises and shown on the said plan by green wash for parking cars during working hours of the Licensee and not for any other time and no car or other vehicle will be parked on any other part of the said plot.
6. The licensed premises will be used only for carrying on business and for no other purpose.
7. The licensed premises have normal electricity fittings and fixtures. If the Licensee desires to have any additional fittings and fixtures, the Licensee may do so at his cost and in compliance with the rules. The Licensee shall remove such fittings and fixtures on the termination of the license failing which they shall be deemed to be the property of the Licensor.

8. The licensed premises are given to the Licensee on personal basis and the Licensee will not be entitled to transfer the benefit of this agreement to anybody else or will not be entitled to allow anybody else to occupy the premises or any part thereof. Nothing in this agreement shall be deemed to grant a lease and the licensee agrees and undertakes that no such contention shall be taken up by the Licensee at any time.
9. The Licensee shall not be deemed to be in the exclusive occupation of the licensed premises and the Licensor will have the right to enter upon the premises at any time during working hours to inspect the premises.
10. The Licensee shall maintain the licensed premises in good condition and will not cause any damage thereto. If any damage is caused to the premises or any part thereof by the Licensee or his employees, servants or agents the same will be made good by the Licensee at the cost of the Licensee either by rectifying the damage or by paying cash compensation as may be determined by the Licensor's Architect.
11. The Licensee shall not carry out any work of structural repairs or additions or alterations to the said premises. Only such alterations or additions as are not of structural type or of permanent nature may be allowed to be made by the Licensee inside the premises with the previous permission of the Licensor.
12. The Licensee shall not cause any nuisance or annoyance to the people-in the neighbourhood or store any hazardous goods on the premises.
13. If the Licensee commits a breach of any term of this agreement then notwithstanding anything herein contained the Licensor will be entitled to terminate this agreement by fifteen days' prior notice to the Licensee.
14. On the expiration of the said term or period of the License or earlier termination thereof, the Licensee shall hand over vacant and peaceful possession of the Licensed premises to the Licensor in the same condition in which the premises now exist subject to normal wear and tear. The Licensee's occupation of the premises after such termination will be deemed to be that of a trespasser.

IN WITNESS WHEREOF the parties hereto have put their hands the day and year first hereinabove written.

Signed by the within named Licensor Shri .....
in the presence of .....

Signed by the within named Licensee Shri .....
in the presence of .....

****

OUTSOURCING AGREEMENTS

- Outsourcing is the contracting out of a company's non-core, non-revenue producing activities to specialists.
- It differs from contracting in that outsourcing is a strategic management tool that involves the restructuring of an organization around what it does best - its core competencies.
- Two common types of outsourcing are Information Technology (IT) outsourcing and Business Process Outsourcing (BPO).
- BPO includes outsourcing related to accounting, human resources, benefits, payroll, and finance functions and activities.
- Knowledge Process outsourcing (KPO) includes outsourcing related to legal, paralegal, and other highly skilled activities.
- A good outsourcing agreement is one which provides a comprehensive road map of the duties and obligations of both the parties - outsourcer and service provider.

Before signing an outsourcing agreement, the following factors must be properly addressed:

1. Duties and obligations of Outsourcer – who is outsourcing
2. Duties and obligations of service provider – to whom it is outsourced.
3. Security and confidentiality
4. Legal compliance
5. Fees and payment terms
6. Proprietary rights
7. Auditing rights
8. Applicable law to outsourcing agreement
9. Term of the Agreement
10. Events of Defaults and Addressing
11. Dispute Resolution Mechanism
12. Time limits
13. Location of Arbitration
14. Number of Arbitrators
15. Interim measures/Provisional Remedies
16. Privacy Agreement
17. Non-compete Agreement
18. Confidentiality Agreement
19. Rules Applicable
20. Appeal & Enforcement
21. Be aware of local peculiarities
22. Survival terms after the termination of the outsourcing agreement.

****

A Specimen of Outsourcing Agreement for Converting Hard Copies of a Book in a Compact Disc (CD)

This Agreement for the conversion of the book titled Intellectual Property Protection in India is executed in ……. on ……2007 by and between The Golden Law Publishing Co. Pvt. Ltd. having their Office at……. represented by Mr. …….. Manager, Golden Law Publishing Co. Pvt. Ltd. (hereinafter referred to as 'the GLP Pvt. Ltd.)

AND

M/s Bluetec Web Services Pvt. Ltd, a Company registered under the Companies Act having their office at ……and represented by Mr. …… Director, M/s Bluetec Web Services Pvt. Ltd, (hereinafter referred to as the M/s Bluetec Pvt. Ltd.)

WHEREAS the GLP Pvt. Ltd. has published the book Intellectual Property Protection in India it has decided to convert the hard copies of above mentioned book into a soft copy version by getting the book digitized and thereafter put the contents of the book in a CD (Compact Disc) along with a Search Engine. The GLP Pvt. Ltd. floated a tender for this book vide tender document with closing date ……2007 and after evaluating the bids of various parties, the GLP Pvt. Ltd. has decided to award the project to M/s Bluetec Pvt. Ltd. on the following terms and conditions:

1. M/s Bluetec Pvt. Ltd. would perform the job of digitisation (of the relevant portions marked for digitization) of the book including Data punching / Scanning, OCR Validation, Proof-reading (at an accuracy level of 99.9 %), Tagging according to search parameters, Linking, Indexing etc.
2. M/s Bluetec Pvt. Ltd. would be developing a search engine as per the GLP's requirement. The search engine would be licensed to the GLP Pvt.Ltd. for its perpetual use. The institute would further be free to use this Search Engine for any purpose and would not be liable to pay to M/s Bluetec Pvt. Ltd. any additional amount for such usage.
3. The copyright of the contents of the CD, marketing rights and all other rights pertaining to the said CD would solely vest with the GLP Pvt. Ltd.
4. M/s Bluetec Pvt. Ltd. undertakes to complete the assignment within a period of 100 days from the date of execution of this agreement.
5. After the completion of the job M/s Bluetec Pvt. Ltd. would give sufficient training including technical aspects (relating to the features of the search engine developed by the M/s Bluetec Pvt. Ltd. to the people deputed by the GLP Pvt. Ltd. to facilitate to use the search engine independently. The training must be up to the satisfaction of the GLP Pvt. Ltd. in all aspects.
6. M/s Bluetec Pvt. Ltd. would hand over the digitized contents of the magazine to the GLP Pvt. Ltd. after the completion of the job.
7. The total project cost to be paid to M/s Bluetec Pvt. Ltd. would be as follows.
   - Cost of developing the Search Engine – Rs. 50,000/- (Rupees fifty thousand only)
   - Digitization cost for each page (in hard copy) – Rs. 12/- per page
   - Conversion cost for each page (in soft copy) – Rs. 10/- per page
   - Total cost of each CD including the manual, jewel case, packing, printing and security features – Rs. 85/- per CD

- It is to be noted that the original CD lot would be of 750 CDs only.
- For the purpose of page count, 50% or more coverage would be treated as one full page and less than 50% would be ignored and would not be taken in counting.

8. M/s Bluetec Pvt. Ltd. would not be paid any advance money for undertaking the job. M/s Bluetec Web Services Pvt. Ltd. would however be paid 25% of the total project cost after the stage of completion of the Master CD and subject to the satisfaction of the GLP Pvt. Ltd.
9. M/s Bluetec Pvt. Ltd. agrees to keep the hard copies of the book given for digitization in good shape. M/s Bluetec Pvt. Ltd. has however been allowed to mark the relevant portions required for search taggings with special marks.
10. Both the parties i.e. The GLP Pvt. Ltd. and M/s Bluetec Pvt. Ltd. agrees to abide by all remaining terms and conditions of the original tender document floated by the GLP Pvt. Ltd. for the said job.
11. Any notice or request or communication given or required to be given under this contract shall be given to:

    In case of M/s Bluetec to:
    Mr. ……., Director, M/s Bluetec Web Services Pvt. Ltd.
    (Give Address)……..
    In case of GLP Pvt. Ltd. to:
    Mr.……., Manager, Golden Law Publishing Co. Pvt. Ltd.
    (Give Address)…….

12. M/S BLUETEC PRIVATE LIMITED HEREBY FURTHER COVENANTS AND AGREES to indemnify and keep at all times indemnified the GLP Pvt. Ltd. against any loss or damage that the GLP may sustain as a result of the failure or neglect of M/s Bluetec to faithfully carry out its obligations under this agreement and further to pay for all losses, damages, costs, charges and expenses which the GLP Pvt. Ltd. may reasonably incur or suffer and to indemnify and keep indemnified the GLP Pvt. Ltd. in all respects.
13. This Agreement can be terminated by the GLP Pvt. Ltd. by giving three month's notice in writing in the event of failure of M/s Bluetec Pvt. Ltd. for adhering to time schedules / unsatisfactory execution of the conversion of the book or quality of output or requisite training not given to the people deputed by the GLP Pvt. Ltd or for any other reasonable cause and under such notice period, the performance of the project shall continue in operation by both the parties.
14. All disputes, claims and demands arising under or pursuant to or concerning this contract shall be referred to the sole Arbitrator to be appointed by the Chief Manager, GLP Pvt. Ltd. The award of the sole Arbitrator shall be final and binding on both the parties. The arbitration proceedings shall be held under the provisions of the Arbitration and Conciliation Act, 1996 as amended till date. The place of arbitration shall be ……..

IN WITNESS WHEREOF the parties hereto have set their respective hands to the agreement on the day, month and the year mentioned herein above.

Signed and Delivered By:

On behalf of M/s Bluetec Web Services Pvt. Ltd.
Name:
Designation:
Place:

On behalf of GLP Pvt. Ltd.
Name:
Designation:
Place:
In the presence of witnesses:

****

WILL

- 'Will' means the legal declaration of the intention of a testator with respect to his property, which he desires to be carried into effect after his death [Section 2(h) of Indian Succession Act, 1925].
- A Will is, therefore, the legal declaration of a man's intention which he wills to be performed after his death or an instrument by which a person makes a disposition of his property to take effect after his death.
- 'Will' as per General Clause Act, 1897 shall include a Codicil and every writing making a voluntary posthumous disposition of property – Section 3(64).
- 'Codicil' means an instrument made in relation to Will and explaining, altering or adding to its dispositions and is deemed to form part of the Will – Section 2(d) of Indian Succession Act, 1925.

Essential characteristics of will are:

(a) The document must be in accordance with the requirements laid down under section 63 of Indian Succession Act, 1925; i.e., executed by a person competent to make Will and attested as required under the Act.
(b) The declaration should relate to the properties of the testator, which he wishes to bequeath.
(c) The declaration must be to the effect that it operates after the death of Testator.
(d) It is revocable during the life time of the testator. As per section 62 of the Indian Succession Act, 1925 a Will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will. Any clause in a Will that the testator cannot revoke, it will render the Will void.
(e) It is of an ambulatory nature which can be modified or altered at any time by the testator.
(f) After the Indian Succession Act, 1925, Wills (except made by Mohammedans) should be made in writing.

Who can make a Will?

- Section 59 of the Indian Succession Act, provides for the persons capable of making wills. Accordingly, every person of sound mind not being a minor may dispose of his property by will.
- A married woman may dispose by will of any property which she could alienate by her own act during her life.
- Even persons who are deaf or dumb or blind can make Will provided they are able to know what they do by it.
- Further, a person who is ordinarily insane, may make his Will during the interval in which he is of sound mind.
- However no person can make a Will while he is in a state of mind arising from intoxication or from illness or from any other cause such that he does not know what he is doing.
- The testamentary capacity is recognized only in a sound disposing state of mind.

- Soundness of mind denotes the mental capacity of the testator as to what he is doing, his capability of understanding his extent of his property, the person who is the object of his bounty and the persons who are thereby excluded.
- Testamentary disposition is personal, it cannot be delegated to any other person.
- A testator cannot confide to another the right to make a will for him.

Types of Wills

Under the Indian Succession Act, Will can be Privileged Will or Unprivileged Will.

Privileged Will

- Any soldier being employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a Wills made in the manner provided in Section 66. Such Wills are called privileged Wills.
- Privileged Wills may be made orally and may not always be in writing.
- If written in handwriting of testator, it need not be signed or attested.
- It is governed by sections 65 & 66 of the Indian Succession Act.

Unprivileged Will

- Wills made by the persons other than stated above are Unprivileged Will. Such Wills are required to be in writing, signed by testator and attested by the two witnesses (except those made by Mohammedans).
- It is governed by section 63 of the Indian Succession Act.

Language, Stamp Duty & Registration

Preparation of a Will does not require any specific legal language. Any form of writing printing or type writing may be employed. However, the language should be as simple as possible and free from technical words and easily intelligible to a layman.

A Will does not require any stamp duty.

- Registration of Will is not mandatory. It is optional. (Section 18(c) Registration Act,1908)
- However a registered Will has certain advantages.
- Any testator may, either personally or by duly authorized agent deposit with any Registrar his Will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document as per Section 42 of Registration Act, 1908.
- The testator, or after his death any person claiming as executor or otherwise under a Will, may present it to any Registrar or Sub-Registrar for registration under section 40 of the Registration Act, 1908.

Attestation
The Will must be attested by two or more witnesses by complying with the following requirements:

(i) Each of them must have seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or
(ii) Each witness has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and
(iii)Each witness must sign the Will in the presence of the testator.

However it is not necessary that more than one witness must be present at the same time, and no particular form of attestation is necessary.

Construction of Wills
There are two cardinal principles in the construction of Wills, deeds and other documents.

The first is that clear and unambiguous dispositive words are not to be controlled or qualified by any general expression or intention.

The second is, to use Lord Denham's language, that technical word or words of known legal import must have their legal effect even though the testator uses inconsistent words, unless those inconsistent words are of such a nature as to make it perfectly clear that the testator did not mean to use the technical terms in their proper sense.

(i) ***Cardinal maxim*****:** The cardinal maxim to be observed in construing a Will is to endeavour to ascertain the intentions of the testator. This intention has to be primarily gathered from the document which is to be read as a whole without indulging in any conjecture or speculation as to what the testator would have done, if he had been better informed or better advised.

(ii) ***Relevant considerations*****:** In construing the language of a Will, the courts are entitled and bound to bear in mind other matters than merely the words used. They must consider the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense and many other things which are often summed up in somewhat picturesque figure. The court is entitled to put itself into the testator's arm chair.

(iii) ***Avoidance of intestacy*****:** If two constructions are reasonably possible and one of them avoids intestacy while the other involves it, the court would certainly be justified in preferring that construction which avoids intestacy. It is settled law that words in a Will must be construed in their ordinary grammatical sense unless it is shown that a clear intention to use them in a different sense exists and is so proved.

(iv) ***Effect should be given to every disposition*****:** It is one of the cardinal principles of construction of Will that to the extent that it is legally possible, effect should be given to every disposition contained in the Will unless the law prevents effect being given to it. The intention of the testator should be gathered by giving a harmonious interpretation to the various terms of the Will as a whole.

(v) ***Later part or last words to prevail in case parts irreconcilable or there is repugnancy*****:** If the several parts of the Will are absolutely irreconcilable, the part that is later has to prevail. In case of repugnancy, the last word in the Will shall prevail.

Probate

Probate is a certificate granted under the seal of Competent Court, certifying the Will (a copy whereof is annexure thereto) as the Will of the testator and granting the administration of the estate of the deceased in accordance with that Will to the executor named under the Will.

Letters of Administration

A letter of administration can be obtained from the Court of competent jurisdiction in cases where the testator has failed to appoint an executor under a will or where the executor appointed under a will refuses to act or where he has died before or after proving the Will but before administration of the estate. Letter of Administration is always necessary where a person (governed by the Indian Succession Act) dies intestate.

Broad Outlines

A Will is a most solemn document. It is also a sacred one as by it a dead man entrusts to the living the carrying out of his wishes and desire. The preparation of a will is an intelligent work on the part of the draftsman. He should, therefore, study carefully laws relating to Real Properties and the provisions of Part VI sections 57 to 120 of the Indian Succession Act and also Hindu Succession Act, Hindu Adoptions and Maintenance Act before drafting the Will.

The following broad outlines should be followed while drafting a Will:

- Mention the name and address of the testator;
- Mention of the fact that the testator is making the will voluntarily and in sound disposing state of mind;
- The necessity or urgency, if any, for exclusion of the will;
- Enumeration of testators relatives who would be entitled to his properties on intestacy and to whom the bequests are proposed to be made;
- Details of procedure of making bequests;
- Use of clear and unambiguous language;
- Avoidance of conflict with the rule of law. For eg., rule against perpetuity(in this connection, the provisions of sections 112-118 of the Indian Succession Act must be borne in mind)
- Appointment of executor
- Schedule of properties bequeathed;

- Attestation of will by atleast two witnesses;
- Provisions relating to bequest and trusts created by the will should be complete
- Interest conveyed by will should be clearly defined. A will or bequest not expressive of any definite intention is void for uncertainty.

****

Specimen Forms

Short Form of a Will

This is the last Will of mine, *AB, etc.,* made this the ..... day of ..... at ..... which cancels my will dated ..... made in favour of..... now deceased.

WHEREAS I had made a Will on ..... bequeathing all my property in favour of ....., my ..... (state relationship).

AND WHEREAS the said ..... died on ..... leaving behind .....

NOW I declare that:

1. I hereby revoke my former Will dated, ... in favour of ..... aforesaid.
2. I bequeath all my properties to ..... my ..... (state relationship) absolutely.
3. I bequeath the following annuities to commence from the date of my death and to be paid in monthly instalments :
   (i) To my daughter CD, etc., an annuity of Rs..... to be paid during her life ;
   (ii) To my nephew EF, etc., an annuity of Rs..... for his life.
   (iii) To my old servant *GH,* etc., an annuity of Rs..... during his life.

IN WITNESS WHEREOF I the said *AB* have signed this Will here under the day and year first written above.

(Sd.).....

(AB)

Signed by the above-named *AB* in our presence at the same time and each of us has in the presence of the testator signed his name hereunder as an attesting witness.

1.....
2.....

****

Relinquishment Deed

- A release or relinquishment deed is an instrument whereby a person renounces a claim upon another or against any specified property which he is or may be entitled to enforce.
- It may be deed poll or as a deed to which both the releaser as well as the person in whose favour the release is made are made parties.
- A release is sometimes called relinquishment.
- When considered from the point of view of the person in whose favour the transaction operates, it is "release" as it releases him or his property from an obligation or liability.
- When considered from the point of view of the releaser, it may be said to be a "relinquishment" as the releaser relinquishes a certain right which he has, or may be entitled to enforce.
- A release must be in writing signed by all the releasers.
- It can be drafted as a deed poll or as a deed.
- If it is drafted as a deed then all releasers and all persons having an interest in the claim or property should be made parties.
- If the release is of a claim under an instrument then it would require attestation, if the instrument required attestation.
- If the release is required to be registered it should be attested by at least two witnesses. In other cases it may be attested by one witness.
- If the subject matter of the release is an immovable property the amount of value of which exceeds Rs.100, it is compulsorily registrable.
- The release deed should contain the recitals regarding the origin of the claim, acknowledgement of the releaser about the claim and words and expressions sufficiently clear to covey the intention of the releaser to discharge the claim.
- Under Article 55, Schedule I of the Indian Stamp Act, 1899 a simple release deed is chargeable to stamp duty.
- The duty is the same as bond (Article 15) for such amount or value as set forth in the release. A release or discharge of an instrument mentioned in Section 23A(1) of the Stamp Act is chargeable to the same stamp duty as the instrument. Such an instrument is chargeable to duty as an agreement or memorandum of agreement under article 5(c) of the Stamp Act.

****

GIFT

- Gift has been defined under Section 122 of the Transfer of Property Act, 1882.
- Section 122 states that 'Gift' is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. IMP…..acceptance is mandatory
- Such acceptance must be made during the life time of the donor and while he is still capable of giving. - - IMP……..

- If the donee dies before acceptance, this gift is void.
- For the purpose of making gift of immovable property, the transfer must be affected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses.
- For the purpose of making gift of movable property, the transfer may be affected either by a registered instrument signed as aforesaid or by delivery.
- Such delivery may be made in the same way as goods sold may be delivered.
- Gift should be made only for the existing property as gift of future property is void under Section 124 of the Transfer of Property Act, 1882.
- Because gift of future property is mere promise and cannot be enforced.
- Section 125 provides that the gift of a thing to two or more donees of whom one does not accept it, is void as to the interest which he would have taken had he accepted.
- The intention conveyed under this Section is that a gift is personal to the donee and therefore if a gift made to two persons jointly and one of them does not accept it, the other cannot accept the whole.
- Section 126 of T.P. Act, 1882 prescribes the circumstances when a gift may be suspended or revoked.
- As per Section 126, the donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked, but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void, wholly or in part as the case may be.
- A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract it might be rescinded.
- Save as aforesaid a gift cannot be revoked. Gift in India are regulated by personal law, usages and customs.
- Under Hindu Law a gift once completed is binding upon the donor and it cannot be revoked by him unless it was obtained by fraud or undue influence [*Ganga Baksh* v. *Jagat Bahadure*.
- But the rules of Muslim Law are different. Section 126 of T.P. Act, 1882 for revocation of gift cannot be applied to Muslims.
- A Muslim can revoke a gift even after delivery of possession except in following cases:
    - when the gift is made by a husband to his wife or by a wife to her husband;
    - when the donee is related to the donor within the prohibited degrees;
    - when the gift is *Sadaka* (made to a charity or for a religious cause);
    - when the donee is dead;
    - when the thing given has passed out of the donees' possession by sale, gift or otherwise;
    - when the thing given is lost or destroyed;
    - when the thing given has increased in value;
    - when the thing given is so changed that it cannot be identified;
    - when the donor has received some thing in exchange for the gift.

Deed of Gift - How Made

The gift deed should be drafted as a deed of transfer with recitals if necessary. There is no consideration involved in gift as such no mention is required to be made of the same in the gift deed.

However, the words **"natural love and affection"** is generally expressed in all cases of gift to relations, and "**consideration of esteem and regard"** is expressed when the gift is in favour of same person for whom the donor has regard e.g. when the donee is his religious preceptor.

But for a Company these intra-personal characteristic may be necessary. A Company may make gift to honour a person for his outstanding achievements in social life if so authorised under its memorandum and articles.

Stamp Duty and Registration

- The value of the property gifted must be set forth in the deed of gift.
- Stamp Duty is payable on gift deed as on the conveyance as per amount of value of the property as mentioned in the deed or as per market value of such property whichever is greater as per Article 23 of the Indian Stamp Act, 1899.
- If the value of the property is intentionally omitted or under-valued with a view to defraud the revenue, prosecution may be invited under Section 64 of Indian Stamp Act
- Further, penalty provisions under Gift-tax Act may also be attracted.
- Gift deed of immovable property is compulsorily registrable as per Section 123 of the Transfer of Property Act and Section 17(i)(a) of the Registration Act, 1908, whatever may be the values.

****

Deed of Gift for Love and Affection

THIS GIFT is made on the……. day of……. BETWEEN

AB, etc. (caled "the donor")
AND

CD, etc. (called "the donee").

WHEREAS the donor is owner of the property described in the Schedule and out of his paternal affection for his daughter, the donee, is desirous of making a gift of the said property to the donee at the time of her marriage.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. In consideration of the natural love and affection of the donor for the donee, the donor transfers to the done free from encumbrances ALL the property described in the Schedule TO HOLD the same to the donee absolutely forever.

2. The donee accepts the transfers.

IN WITNESS WHEREOF, etc.,

The Schedule above referred to

Signed, sealed and delivered

AB

CD

****

DRAFTING AND CONVEYANCING RELATING TO VARIOUS DEEDS AND DOCUMENTS - II

PROMISSORY NOTE

Promissory note is one of the negotiable instruments recognized under the Negotiable Instruments Act, 1881. A "promissory note" is defined by Section 4 of the Negotiable Instruments Act, 1881 as "an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument".

Illustrations:

A signs an instrument in the following terms:

(a) "I promise to pay B or order Rs.500." this is a PN

(b) I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand for values received." This is PN

(c) "Mr. B, I.O.U. (I owe you) Rs. 500" this is not a PN

(d) "I have taken from you Rs. 100, whenever you ask for it have to pay". This is not a PN.

The instruments marked (a) and (b) are promissory notes. The instruments respectively marked (c) and (d) are not promissory notes.

Parties to a Promissory Note

(a) ***The maker:*** the person who makes or executes the note promising to pay the amount stated therein.

(b) ***The payee:*** one to whom the note is payable.

(c) ***The holder:*** is either the payee or some other person to whom he may have endorsed the note.

(d) **The endorser.**

(e) **The endorsee.**

Essentials of a Promissory Note

To be a promissory note, an instrument must possess the following essentials:

(a) It must be in writing. An oral promise to pay will not do.

(b) It must contain an express promise or clear undertaking to pay. A promise to pay cannot be inferred. A mere acknowledgement of debt is not sufficient. If A writes to B "I owe you (I.O.U.) Rs. 500", there is no promise to pay and the instrument is not a promissory note.

(c) The promise or undertaking to pay must be unconditional. A promise to pay "when able", or "as soon as possible", or "after your marriage to D", is conditional. But a promise to pay after a specific time or on the happening of an event which must happen, is not conditional, e.g. "I promise to pay Rs. 1,000 ten days after the death of B", is unconditional.

(d) The maker must sign the promissory note in token of an undertaking to pay to the payee or his order.

(e) The maker must be a certain person, i.e., the note must show clearly who is the person engaging himself to pay.

(f) The payee must be certain. The promissory note must contain a promise to pay to some person or persons ascertained by name or designation or to their order.
(g) The sum payable must be certain and the amount must not be capable of contingent additions or subtractions. If A promises to pay Rs. 100 and all other sums which shall become due to him, the instrument is not a promissory note.
(h) Payment must be in legal money of the country. Thus, a promise to pay Rs. 500 and deliver 10 quintals of rice is not a promissory note.
(i) It must be properly stamped in accordance with the provisions of the Indian Stamp Act. Each stamp must be duly cancelled by maker's signature or initials.
(j) It must contain the name of place, number and the date on which it is made. However, their omission will not render the instrument invalid, e.g. if it is undated, it is deemed to be dated on the date of delivery.

Note: A promissory note cannot be made payable or issued to bearer, no matter whether it is payable on demand or after a certain time (Section 31 of the RBI Act).

Specimen Forms of Promissory Note

Promissory Note Payable on Demand

On Demand we, A.B., aged about …… years, son of Shri ……Resident of …….. AND C.D., aged about ……. Years, son of Shri ……. Resident of …….. jointly and severally promise to pay to E.F., aged about …….. years, son of Shri …….. resident of ……. Or order the sum of Rupees …….. (Rs. …….) only, with interest at the rate of …….% per annum until repayment for value received.

DATED AND DELIVERED at …… this the ……..day of …… 2013.

Sd. A.B.

Sd. C.D.

Promissory Note in Consideration of Loan

Allahabad,
June 20, 2013

Rs……..

In consideration of the loan of Rs……. advanced by CD etc. to me, I hereby promise to repay the said loan of Rs……. (in words) with interest at …… per cent per annum to the said CD or order.

(Signed)……..

****

DEED OF POWER OF ATTORNEY

- Section 1A of the Powers of Attorney Act, 1882 defines 'Power of the Attorney' to include any instrument empowering a specified person to act for and in the name of the person executing it.
- A Power of Attorney is always revocable at the instance of the executant.
- However, it can be irrevocable where the donee or the agent as the case may be is personally interested in the subject matter of such power of attorney.
- Stamp duty on Power of Attorney is governed by Article 48 of the Schedule to the Indian Stamp Act, 1899. The State has been given power to fix the stamp duty payable on documents and as such this duty varies from State to State.
- The authorization to a person by a shareholder to attend the meeting of a company as a proxy u/s 176 of the Companies Act, 1956 is another instance of a Power of Attorney and this authorization requires the payment of 30 paise as stamp duty payable throughout India. However, it does not require any registration.
- Wharton in his *Law Lexicon* (1953), page 784 defines a power of attorney as "a writing given and made by one person authorizing another, who, in such case, is called the attorney of the person (or donee of the power), appointing him to do any lawful act instead of that person, as to receive rents, debts, to make appearance and application in court, before an officer of registration and the like.
- It may be either general or special, i.e., to do all acts or to do some particular act".

Special and General Power of Attorney

- A power of attorney executed for the purpose of a specific act is called a "special power of attorney".
- It is also called a "particular power of attorney".
- A specific act is meant to imply either a specific act or acts related to each other as to form one judicial transaction, such as all the acts necessary to perfect a mortgage or a sale of a particular property.
- A power of attorney executed for the purpose of generally representing another person, or for performing more than one act, is called a 'general power of attorney'.
- A power of attorney can be executed in favour of more than one person.
- If a power of attorney is executed in favour of more than one person it would be desirable to provide whether such donees will act jointly or severally.
- In the absence of such an express provision authorising them to act severally, they will be entitled to act only jointly.

Who can Execute Power of Attorney

- A power of attorney can be executed by any person, who can enter into a contract i.e. a person of sound mind who has attained majority.

- A power of attorney can be executed only in favour of a major.

Authentication of Power of Attorney

- A power of attorney need not be attested.
- However, it would be advisable to execute the power of attorney before and have it authenticated by a Notary Public or any Court Judge/Magistrate, Indian Consul or Vice-Consul or representatives of the Central Government.

Duration of Power of Attorney

- Unless expressly or impliedly limited for a particular period, a general power of attorney will continue to be in force until expressly revoked or determined by the death of either party.
- In the case of a company, the power of attorney executed by the directors ceases to be operative as soon as an order for winding up is made as the directors cease to function.
- A special power of attorney to do an act is determined when the act is done.
- In case it is desired that the power should continue for a particular period or until a certain event happens, an express provision to that effect should be made in the deed itself.

Stamp Duty on Power of Attorney

- Power of attorney is liable to stamp duty under the provisions of the Indian Stamp Act, 1889.
- Duty varies from State to State.
- The exact amount of the duty will depend upon the State in which the power of attorney is executed.
- Further, if a power of attorney executed in one State has to be sent to another State where the stamp duty payable is higher, for use, then the power of attorney should be stamped with the difference in the duty before it is so used.
- Otherwise, the power of attorney could be impounded.
- If a power of attorney is executed in a foreign country, it should be stamped within three months of its being received in India.
- If it is not so stamped within the period of three months of its being brought to India, then the same will be deemed to be unstamped and cannot be acted upon.

Revocable and Irrevocable Power of Attorney

- A power of attorney executed in favour of a person can always, at the discretion of the donor thereof, be revoked.
- As we have seen earlier, the donee of a power of attorney is an agent of the donor.
- If a donee himself has an interest in the matters covered by the power of attorney, which forms the subject matter thereof, the power of attorney in the absence of express contract cannot be terminated to the prejudice of such interest.
- In other words, agency coupled with interest cannot be terminated without the consent of the other party (Section 202 of the Indian Contract Act, 1872).
- Therefore, a power of attorney executed, in which the donee himself has an interest, is irrevocable.

- Such irrevocable powers of attorney are executed in favour of the financial institutions by a company who offer financial assistance to the latter.
- Through such irrevocable powers of attorney, powers are given to the financial institutions for executing a security document for securing the financial assistance in the event of a company failing to execute such a document by a certain date.

Registration of Power of Attorney

- Registration of a power of attorney is not compulsory.
- Section 4 of the Powers-of-Attorney Act, 1882 provides that it may be deposited in the High Court or District Court within the local limits of whose jurisdiction the instrument is with an affidavit verifying its execution, and a copy may be presented at the office and stamped as the certified copy and it will then be sufficient evidence of the contents of the deed.
- In certain cases, registration of power of attorney may become compulsory under Section 17 of the Indian Registration Act, 1908.
- Thus, a power which authorises the donee to recover rents of immovable property belonging to the donor for the donee's own benefit is an assignment and requires registration.
- Similarly, a power of attorney which creates a charge on the immovable property referred to therein in favour of the donee of the power requires registration.

Letters of Authority

Letters of authority is nothing but a power of attorney. They are executed on plain paper and not on stamp paper. Letters of authority are usually issued for collecting some documents or papers, dividend interest etc. on behalf of another. By and large, the law relating to the powers of attorney will apply to letters of authority.

****

SPECIMEN FORMS OF SPECIAL POWER-OF-ATTORNEY

Power-of-Attorney to Present Document for Registration

BY THIS POWER OF ATTORNEY I, AB of etc., do hereby appoint CD of, etc., my attorney for me and on my behalf to appear for and represent me before the Sub-Registrar of…… of all times as may be necessary and to present before him for registration the…… deed dated the…… day of…… made between, etc., to admit the execution of the said deed by me *(if necessary to admit the receipt of consideration)*, to do any act, deed or thing as may be necessary to complete the registration of the said deed in the manner required by law and when it has been returned to him after being duly registered, to give proper receipt and discharge for the same.

And I, the said AB, do hereby agree and declare that all acts, deeds and things done, executed or performed by the said CD shall be valid and binding on me to all intents and

purposes as if done by me personally which I undertake to ratify and confirm whenever required.

Signed, sealed and delivered

Witnesses

AB

****

FAMILY SETTLEMENT DEEDS

Concept of Family Arrangement
Halsbury's Laws of England, 4th Edn. Vol. 18 at 135, Para 301 mentions:

"A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour."

- Family arrangements are governed by principles which are not applicable to dealings between strangers.
- When deciding the rights of parties under a family arrangement or a claim to upset such an arrangement, the Court considers what in the broadest view of the matter is most in the interest of the family, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account.
- The concept of family arrangement in England has been accepted by Courts in India, adopting the concept to suit the family set up in our country.
- The Supreme Court has generally taken a broad view of the matter and leaned heavily in favour of upholding any such arrangement.
- According to the Supreme Court, a family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of few, is undoubtedly a milestone in the administration of social justice.
- The object of such arrangement is to protect the family from long drawn litigation or perpetual strife's which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family.

In *Kale v. Dy. Director of Consolidation, AIR* 1976 SC 807 the Supreme Court has laid down the following propositions to put the binding effect and the essentials of a family settlement in a concretised form:

1. The family settlement must be a *bona fide* one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family.
2. The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence.
2. The family arrangement may be even oral in which case no registration is necessary.
3. It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing.
4. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation.
5. The members who may be parties to the family arrangement must have some antecedent title, claim or interest or even a possible claim in the property which is acknwoledged by the parties to the settlement.
6. Even if one of the parties of the settlement has no title but, under the arrangement, the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same.
7. Even in *bona fide* disputes, present or possible, which may not involve legal claims are settled by a *bona fide* family arrangement which is fair and equitable, the family arrangement is final and binding on the parties to the settlement

Family Arrangement When Enforceable?

No doubt, a family arrangement, which is for the benefit of the family generally, can be enforced in a court of law. But before the court would do so, it must be shown that there was an occasion for effecting a family arrangement and that it was acted upon. *[Lakshmi Perumallu v. Krishnavenarnma, AIR 1965 SC 825 : 1965 (1) SCR 261.}*

****

SPECIMEN FORM

Settlement of Family Business

This Deed of Family Arrangement is executed on this ..... in the year 2017 between : *A B* S/o *MN* aged ..... years, occupation ..... R/o ..... (hereinafter called as the first party)

and

CD S/o *XM* aged ..... years, occupation and R/o ..... (hereinafter called as the second party)

WHEREAS

(1) The first party has started and carried out the business and undertaking described in Schedule 'C' by his own initiative and efforts with his own capital and funds.

(2) The second party, who is son of the pre-deceased son of the first party and residing with him under the care and parentage of the first party and assisting him in conduct of the aforesaid business for which he was being paid share in profit. The second party thus having contributed his labour and skill for the development of the business rendered valuable services for the same and rendered himself entitled for an equal share in the said business. It has been settled and decided to distribute the business amongst the parties so also the properties. The first party shall hold the share in business and properties described in Schedule 'D' and the second party shall hold the share in business and properties described in Schedule 'E'.

(3) The movable and immovable properties, which is also described in Schedule 'C' have been acquired by the first party out of the funds of the said business in his name and for his use and benefits.

NOW THIS DEED WITNESSETH AS FOLLOWS :

1. The second party shall hold, own and possess as full and absolute owner of the business and properties described in Schedule 'E' without any demand or claim by the first party any account whatsoever for which, he has expressly granted, conveyed, transferred and assigned by the first party.
2. The business and properties have been distributed amongst the parties to this deed. It is hereby decided and declared that the first party hereinafter shall hold, own and possess as full and absolute owner of the business and properties described in Schedule 'D' and the second party shall not interfere in the same and he has relinquished his rights in the said part of business and properties described in Schedule 'D'.**254** PP-DP&A

IN WITNESS WHEREOF the parties to this DEED have put and subscribed their respective hands in presence of witnesses on this ..... day of ..... in the year ..... at .....

Witnesses

1.

2.

Signatures

First Party

Second Party

Schedule 'C'

Schedule 'D'

Schedule 'E'

****

DRAFTING AND CONVEYANCING RELATING TO VARIOUS DEEDS AND DOCUMENTS -III

Deeds of Sale of Land and Building

Sale of immovable property is governed by the provisions of Transfer of Property Act, 1882. Chapter-III of the said Act deals with the sale of immovable property exclusively.

Essential Requirements of Sale of Immovable Property

1. Transfer of ownership in exchange of price paid or promised or part paid or part promised.
2. Parties to transaction of sale are known as seller and buyer.
3. Subject-matter of sale is immovable property which is sold by seller and purchased by buyer.
4. Delivery of possession of property to the buyer by seller may be made as under:
5. Sale of immovable property attracts stamp duty under the Indian Stamp Act, 1899.

Rights and Liabilities of Buyer and Seller

As per Section 55 of the Act the rights and liabilities of buyer and seller can be modified by the parties to a contract by mutual consent and contract to the contrary of these provisions.

The seller is bound to:

(a) disclose to the buyer any material defect in the property or in his title
(b) to give title documents to buyer for investigation of sellers
(c) to answer the question put to him by the buyer
(d) to execute the conveyance document on payment of consideration money
(e) pay all public dues on the property till the date of conveyance.

The buyer is also bound:

(a) to disclose to seller the interest of the seller in the property of which he is aware and believes that the seller is not aware and this information is likely to affect the price of the property
(b) to pay or tender the purchase money to the seller
(c) where the ownership of property has passed to buyer he has to bear the full responsibility including any loss to the property etc.,
(d) to pay public dues from the date of transfer of ownership of the property.

Seller is entitled to following benefits:

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;
(b) where the property has passed to the buyer before payment of the whole of the purchase moneys the seller is entitled to a charge upon the property in the hands of the buyer.
(c) He is also entitled for the interest on the amount of unpaid consideration money for the property.

Buyer is entitled to the following benefits:

(a) where the ownership of the property has passed to him, to the benefit of any improvement in it which may be in any shape of increase in value of the property or its rent or profit;

(b) he is entitled to charge upon the property to the extent of entitlement etc.

****

Documentation

Usually a transaction of a sale of immovable property involves two documents:

1. Agreement to sell and
2. The Conveyance Deed i.e. sale deed.

But with only a Sale Deed the transaction of sale can be completed.

****

Drafting of Deed of Sale of Immovable Property

- Before drafting the conveyance or Sale Deed for the immovable property, it is necessary that the title of the property be investigated.
- Investigation of title should be done by an experienced person, solicitor or advocate or professional consultant.

****

Some of the important conditions as contained in the said Act which a draftsman should bear in mind while drafting a Sale Deed are very precisely noted below:

Lawful Consideration and Object

1. The property must be purchased as a part of legal transaction having paid the consideration as required under the provisions of the Indian Contract Act, 1872.
2. The objectives for which the property is being purchased by the company should be lawful i.e., not forbidden by law, not to defeat the provisions of any law, not to be fraudulent, not to involve or impart injury to the person or property of another and should not be regarded by the court of law as immoral or opposed to public policy.

Competence of Person to Transfer

(a) For a company: the test of competence to enter into a transaction of sale or purchase is that its Board of Directors should authorize a person under the resolution passed in their meeting as per its MOA and AOA.

(b) For an individual: such individual should be considered competent to transfer if it fulfils the necessary conditions

(i) should be of the age of majority;

(ii) be of sound mind;

(iii) not be disqualified from contracting by any law

(iv) a minor though incompetent to enter into a transaction under the Law of Contract but becomes competent if the procedure laid down under the Law of Minority and Guardianship is followed i.e. through the natural guardian or ward the minor can lawfully enter into the transaction of transfer of immovable property with the company.

Transfer of All Interest - in the Property
All interests which a transferor is capable of passing in the property should be explained n the document.

Absolute Transfer
The transfer should be free of any conditions or limitations which may inhibit the other party to make full use of the property in exercise of legal rights.

Property to be Free from Conditions
The property being transferred should be free from any rights or obligations which a third person can enforce legally against transferee for enjoying any benefits.

Absolute Interest in the Property
The interest being transferred in the property should not be conditional which may restrict full enjoyment of the property by the transferee.

Justification for Transfer
Cogent reasons for the transfer be given so as to establish bona fide base for the transaction and to avoid eventualities of fraud and multiple litigation therefrom.

Protection of Creditors' Interest
Law protects creditors' interest in the transferred property. In drafting of Sale Deed this point should be accommodated if the circumstances so warrant.

Transfer in Good Faith and with Full Authority
Where the property is transferred by a person not to be the real owner, it is necessary to make such transfer valid for the transferor should have the authority to transfer and he must exercise this authority in good faith.

Protection for Defective Title
Law protects the transferee who acquires the immovable property under good faith and for bona fide consideration but by any circumstance unknown to him is rendered to have defective title, Section 51 of the Transfer of Property Act, provides such protection to bona fide transferees acquiring properties in good faith.

Precautions
(a) The draftsman should know beforehand that the property under transfer is free from encumbrances and no litigation questioning such property or rights or interest connected therewith is pending in any court.

(b) To avoid fraudulent transfers, the draftsman should ensure that the title to such property has been investigated by competent advocate and he has certified the title free from any encumbrance whatsoever.
(c) In the case of a company, it must be ensured that the Board of Directors have requisite powers under Section 293(1)(a) of Companies Act, 1956 to sell, lease or otherwise dispose of the property of company.

****

An Agreement of Sale of Immovable Property

THIS AGREEMENT OF SALE executed on the……. day of……. 2014 between S son of SF, resident of……., hereinafter called vendor of the one part

and

P son of PF resident of……. hereinafter called the purchaser of the other part.

(The expression "Vendor" and "Purchaser" wherever they occur in these presents, shall also mean and include their respective heirs, executors, administrator, legal representatives and assigns).

WHEREAS the vendor is the sole and absolute owner of the property more fully set out in the Schedule hereunder:

AND WHEREAS it is agreed that the vendor shall sell and the purchaser shall purchase the said property for the sum of Rs……. (Rupees in words) free of all encumbrances.

NOW THIS AGREEMENT OF SALE WITNESSES AS FOLLOWS:

1. The price of the property more fully set out in the Schedule is fixed at Rs……. (Rupees…….) free of all encumbrances.
2. The purchaser has paid to the vendor this day the sum of Rs……. (Rupees…….) by way of earnest money for the due performance of the agreement, the receipt of which the vendor doth hereby admit and acknowledge.
3. The time for performance of the agreement shall be……. months from this date, and it is agreed that time fixed herein for performance shall be the essence of this contract.
4. The purchaser shall pay to the vendor the balance sale price of Rs……. (Rupees……..…….) before registration of the sale deed.
5. The vendor agrees that he will deliver vacant possession of the property to the purchaser before registration of the sale deed.

Alternatively

The vendor agrees that he will put the purchaser in constructive possession (if vacant possession is not possible) of the property by causing the tenant in occupation of it to attorn their tenancy to the purchaser.

6. The vendor shall execute the sale deed in favour of the purchaser or his nominee or nominees as purchaser may require.
7. The vendor shall hand over all the title deeds of the property to the purchaser or his advocate nominated by him within……. days from the date of this Agreement for scrutiny of title and the opinion of the vendor's Advocate regarding title of the property shall be final and conclusive. The purchaser shall duly intimate the vendor about the approval of the title within……. days after delivering the title deeds to him or his Advocate.
8. If the vendor's title to the property is not approved by the purchaser, the vendor shall refund to the purchaser the earnest money received by him under this Agreement and on failure of the vendor to refund the earnest money within……. days he shall be liable to repay the same with interest thereon at……. per cent per annum.
9. If the purchaser commits a breach of the Agreement, he shall forfeit the earnest amount of Rs……. (Rupees……..) paid by him to the vendor.
10. If the vendor commits a breach of the Agreement, the vendor shall not only refund to the purchaser the sum of Rs……. (Rupees……..) received by him as earnest money, but shall also pay to the purchaser an equal sum by way of liquidated damages.
11. Nothing contained in paras 9 and 10 supra shall prejudice the rights of the parties hereto, to specific performance of this Agreement of sale.

(Schedule of Property)

IN WITNESS WHEREOF the vendor and the purchaser have set their hands to the Agreement of sale the……. of……. 2007 in the presence of the witnesses:

Witness Vendor

Witness Purchaser

Specimen Schedule of the Property

1. Municipal No./Ward No./Plot No./Khasra No.:
2. Location: Street No.:
   Street Name:
3. Place/Area North:

South:
East:
West:

4. Sub-District Hqrs. / Tehsil / Taluka:
5. Police Station:
6. District/State:
7. Exact Measurement:

Total Area:	Measurement of all sides:
Plinth area/floor area:	Sketch/plan:
Carpet area:	

8. Fixtures & Fittings:
9. Any other items to be covered in sale deed.
10. Permitted use of the land/building:

In case of agricultural land, the schedule may be modified to include the Khasra Nos./Plot Nos. with area and location as per the revenue records supplied by the Patwari or revenue office of the Sub-District/Tehsil / Taluka.

It is also a requirement that a survey is done as to ascertain the exact measurement of area and compare it with what is mentioned in the title deed. Buyer can make sure that he is buying a property of a particular measurement.

****

Sale by Liquidator of a Company in Voluntary Liquidation

- Liquidation means winding of the company and Liquidator is the officer appointed to conduct the winding up of a company.
- Winding up is a proceeding by means of which the dissolution of a company is brought about and in the course of which its assets are collected and realised and applied in payment of its debts.

A Specimen of Deed of Sale by Liquidator of a Company in Voluntary Liquidation

THIS SALE DEED is made on the…….. day of…….. by voluntary liquidator of…..…….. Co. Ltd., (in voluntary liquidation) (hereinafter called "the vendor") of the one part, **in favour of** Shri…..……., S/o Shri…..……., Occupation…..……., R/o …..…….. (hereinafter called "the purchaser") of the other part, under the terms and conditions mentioned below:

WHEREAS by a special resolution passed by the shareholders of…..…….. Co. Ltd., at an Extraordinary General Meeting held on…… it was resolved that the company be wound up voluntarily;

WHEREAS the said vendor was appointed its voluntary liquidator on…..…… the notice whereof was duly submitted to the Registrar of Companies…..…….. as prescribed by law, on the…..…….. day of…..……..;

AND WHEREAS in a meeting of the shareholders of the said company, it was resolved that the properties mentioned in the Schedule annexed hereto be sold by the vendor after publishing a notice for sale in…..…….. and…..……..., daily newspapers twice within a period of a fortnight, and pursuant to such resolution, the vendor had duly advertised the sale of the said properties in the issues of…..…….. dated…..…….. respectively and issues of…..…….. dated…..…….. respectively and pursuant thereto have received offers, the highest whereof was that of the said purchaser;

AND WHEREAS the said vendor agreed to sell and the said purchaser agreed to purchase the said properties on the terms and conditions mentioned herein and incorporated in an agreement to sell dated…..…….. between the said vendor and the said purchaser.

NOW THIS DEED OF SALE WITNESSES AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

That pursuant to the agreement dated…..…….. aforementioned and in consideration of the sum of Rs…..…….. (Rupees…..……..) paid by the purchaser before the Sub-Registrar, …..…….. on presentation of this Deed of sale for registration thereof (the receipt whereof the vendor hereby acknowledges) the vendor hereby transfers by way of sale and conveys on behalf of the said company all those items of the property mentioned more particularly in the Schedule attached hereto, unto the said purchaser, his heirs and assigns to have and to hold the same absolutely and forever.

IN WITNESS WHEREOF the parties aforementioned have signed this Deed of Sale on the date, month and the year aforementioned.

Witness: Vendor
Witness: Purchaser

Schedule:

****

Sale of Business and Assignment of Goodwill

Wharton's Law lexicon defines goodwill as the advantage or benefit which is required by a business, beyond mere value of the capital stock, funds or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers.

Supreme Court of India in **Khushall Khengar Shah v. Khorshedbanu**, had opined goodwill of a business as an intangible asset being the whole advantage of the reputation and connections formed with the customers together with the circumstances which make the connections durable. It is that component of the total value of the undertaking which is attributable to the ability of the concern to earn profits over a course of years because of its reputation, location and other features.

****

A Specimen of Deed of Sale of a Business and Assignment of Goodwill

THIS INDENTURE made the..…….. day of…..…..…….. BETWEEN AB of, etc. (vendor), of the one part, and CD of, etc. (purchaser) of the other part.

WHEREAS the said AB has been carrying on the trade and business of, etc. etc., at premises No…..…….. under the name and style of…..……..

AND WHEREAS the said AB has contracted with the said CD for the sale to him of all his stock-in-trade and other assets and goodwill of the said trade of and the business in entirety as a going concern together with all book debts and other debts and all rights and benefits of all pending contracts, orders, securities, etc., full particulars whereof are contained in the books of the said business and all money due and payable to the said AB on account therefor whether adjusted or unadjusted subject however to all contracts, orders and engagements which are still to be executed or for which the said AB is otherwise liable; at and for the sum of Rs…..…….. upon the terms hereinafter mentioned;

AND WHEREAS the said AB has delivered to the said CD the books of account and other books relating to the said business containing full particulars of the debts, respectively due and owing to and from the said AB and also the particulars of the contracts and engagements to which he is liable in respect of the said business.

NOW THIS DEED OF SALE WITNESSES that in pursuance of the said agreement and in consideration of the sum of Rupees…..…….. paid by the said CD to the said AB (the receipt whereof the said AB hereby admits and acknowleges), and also in consideration of the covenants and conditions thereunder contained to be observed and performed on the part of the said CD the said AB do hereby and hereunder grant, convey, sell, transfer, assign and assure unto and to the use of the said CD all that the trade or business carried under the name and style of…….. at premises No…….. with ALL beneficial interest and goodwill of the said AB, in the said trade and business of, etc., so carried on by him as aforesaid, and also all the books and other debts now due and owing to him on account of the said trade and the business and all securities for the same, and also all contracts and engagements and benefits and advantages thereof which have been entered into with the said AB and also all the stock-in-trade goods, fixtures, articles and things which, at the date of this deed, belong to the said AB on account of the said trade and business, and all the rights, title and interest of the said AB to and in the said premises; TO HAVE AND TO HOLD the same to the said CD absolutely.

AND THAT THE SAID AB does hereby covenant with the said CD that he, the said AB, will not at any time hereafter, either by himself or in collaboration with any other person or persons, or as a partner or as a director of any limited company carry on the said trade and business of, etc., within a radius of..…….. miles of, etc.

AND that the amount and particulars of the debts respectively due and owing to and from the said AB on account of the said trade and business and the particulars of the contracts and engagements to which he is liable with respect to the said trade and business, are correctly stated in the books of account and other books delivered by the said AB to the said CD.

AND further that the said AB will pay or cause to be paid all and every sum to the said trade and business in excess of the amount or amounts which by the said books appear to be so due and owing.

AND furthermore that the said AB has good right, full power, absolute authority and title to grant, convey, sell, transfer, assign and assure the trade or business of "….." unto and to the use of the said CD in the manner hereunder indicated together with the benefit of the tenancy according to the nature and tenure of the contract.

AND THIS INDENTURE ALSO WITNESSES that in pursuance of the said agreement in this behalf and in consideration of the premises, the said CD do hereby agree with the said AB that he, the said CD, shall and will from time to time and at all times hereafter execute and perform all outstanding contracts and orders and engagements and/or otherwise save harmless, indemnify and keep indemnified the said AB and his estate and effects against all losses, claims, demands, costs, charges and expenses as against the several sums of money which by the said books appear to be due and owing from the said AB in respect or the said trade and business, and also from and against the contracts and engagements to which by the said books the said AB appears to be now liable and or performance or non-performance thereof.

AND THIS INDENTURE ALSO WITNESSES that the said AB do hereby irrevocably nominate, appoint and constitute the said CD as his attorney for him and in his name to do, execute and perform all acts, deeds, and things as shall be necessary or requisite to carry on the said business as his successor and for that purpose to represent him before all appropriate authorities and in all courts of law and to sue for, recover, realise and to give good valid discharges for all moneys due and payable to him on account of or in connection with the said trade or business hereby assigned and appropriate the same for his use and purposes.

IT IS FURTHER AGREED that the names of the parties hereto shall, unless inconsistent with the context, include as well the heirs, administrators or assigns of the respective parties as the parties themselves.

IN WITNESS, etc.

Signed, sealed and deliveredAB
CD

****

DEEDS OF MORTGAGES, LICENCE AND LEASE

MORTGAGE

- A mortgage is a transfer of interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of a loan, existing or future debt or the performance of an acknowledgement, which may give rise to pecuniary liabilities (Section 58 of the Transfer of Property Act, 1882).
- The Transfer of Property Act, 1882 deals with the mortgage of immovable property alone.
- It does not deal with movable at all.
- The transferor in the case of a mortgage is called a 'mortgagor' and the transferee as 'mortgagee', the principal money and interest of which payment is secured for the time being are called the 'mortgage money' and the instrument, if any, by which a transfer is effected is called a "mortgage deed".

Types of the Mortgages

The following are different kinds of mortgages in effect in India:

Simple Mortgage

In a simple mortgage, the mortgagor without delivering possession of the mortgaged property binds himself personally to pay the mortgage money and agrees expressly or impliedly that if he fails to pay the debt and interest in terms of the mortgage deed, the property will be sold and the proceeds applied in payment of the mortgaged money.

Mortgage by Conditional Sale

In a mortgage by conditional sale, the property is sold subject to the condition that on default in payment of the mortgaged money on a certain date the sale shall become absolute or that on such payment the sale shall become void or on such payment the buyer shall transfer the property to the seller. Possession of the property shall be with the mortgagee.

Usufructuary Mortgage

- In this mortgage, the mortgagor delivers possession of the mortgaged property to the mortgagee who retains the possession until the satisfaction of the debt.
- The mortgagee will take the usufruct in lieu of the interest or part payment of the principal or partly in payment of interest or partly in part payment of the principal.
- The mortgagor is not personally liable to pay the debt and the mortgagee is not entitled during the term of the mortgage to demand his mortgage money.

English Mortgage

In an English mortgage, a mortgagor binds himself to repay the mortgaged money on certain date and transfers the mortgaged property absolutely to the mortgagee subject to the proviso that he will re-transfer it to the mortgagor upon payment of the mortgaged money as agreed.

Mortgage by Deposit of Title Deeds

Mortgage by deposit of title deeds is called in English law as equitable mortgage. It is an oral transaction and no documents like Deed of Mortgage is required to be executed. No written acknowledgement is required for creating this mortgage.

Anomalous Mortgage

Anomalous Mortgage is a combination of any of the above forms of mortgage or any mortgage other than those set out above.

Who can be Mortgagor and Mortgagee?

- Any living person, company, or association or body of individuals, who has an interest on immovable property, can mortgage that interest.
- In the case of a company mortgage of the property should be duly authorised by 'Object Clause' of the Memorandum of Association and approved by a resolution of the Board of directors.
- Any person capable of holding property may take a mortgage unless he is dis-qualified by any special law from doing so.
- A minor may be a mortgagee but as he cannot enter into a contract, the mortgage should not involve any covenants by him.

Rights of Mortgagee

- Right to sell, if borrower fails to return the loan in time then the mortgagee has the right to sell the property of the mortgagor, but the same can only be sold through auction subject to approval from the Court.
- Right to Recover Shortfall, in case the amount to be recovered falls short after selling the property, mortgagee shall have the right to recover the balance due.
- Refusal of Debt: Mortgagee shall have the right to get a foreclosure decree from the court.

Liabilities of Mortgagee

- Property should be protected to the best possible extent.
- No alteration to the property.
- Proper Insurance Cover against the Property.
- All taxes, revenues levied by government should be paid.

Rights and Liabilities of Mortgagor

- Right to redeem the Property on payment of dues.
- Right to Claim Damages in case the Property is damaged in the custody of Mortgagee.
- Right to lease the property in case the property is in possession of Mortgagor.
- Liability to pay taxes, revenues levied by government in case the property is in custody of Mortgagor.

****

DISTINCTION BETWEEN PLEDGE, MORTGAGE AND HYPOTHECATION

S.NO.	PLEDGE	MORTGAGE	HYPOTHECATION
1.	Pledge is the bailment of the goods as security for payment of debt. (Section 172 of Indian Contract Act)	It is the transfer of an interest-in specific immovable property for the purpose of securing the payment of money. (Section 58 of Transfer of Property Act)	Hypothecation as such has not been referred either in the Transfer of Property Act or in Indian Contract Act.
2.	There must be delivery of goods.	Delivery of property is always not the condition.	Possession of the goods remains with the hypothecator/borrower.
3.	Pledge is not possible where the goods are in the custody of a third party.	There can be mortgage even when the property is in possession of a third party.	It is possible even by a simple letter of hypothecation.
4.	It relates to moveable property.	It relates to immovable property.	It is basically related to moveable property.

****

Drafting of Deed of Mortgage

- A deed of mortgage may be drafted either as a Deed Poll on behalf of the mortgagor in favour of the mortgagee or as a deed between the mortgagor and mortgagee as parties.
- The following points should be borne in mind while drafting a Deed of Mortgage:

Parties: There should be two parties, the mortgagor and the mortgagee.

Recitals: These are of two kinds.

Firstly, recital as to the title of the mortgagor, such as "Whereas the borrower is the absolute owner of the property hereby mortgaged free from encumbrances".

The second form of recital is as to the agreement for loan, such as: "And Whereas the mortgagee has agreed with the borrower to lend him the sum of Rs……. upon having the re-payment thereof with interest hereinafter mentioned secured in manner hereinafter appearing".

Mortgage clause: This clause describes the property mortgaged.

(i) **Covenants by the mortgagor**: To repair the mortgaged property, in default the mortgagee is given power to enter into possession without being liable as a mortgagee in possession, with a view to effect repairs. Mortgagee's expenses for this purpose are considered properly incurred.

(ii) **Covenant to insure**: The mortgagor covenants to insure the mortgage property in the name of the mortgagee of an insurance office approved by the mortgagee.

(iii) **Covenant not to grant leases or accept surrender thereof**: It often happens that the mortgagor while in possession grants long term leases to the detriment of the mortgagee. To guard against such a contingency, it is agreed that the mortgagor shall not grant leases of mortgaged property for a period exceeding one year without the written permission of the mortgagee or accept surrender of existing leases without like permission. (See Section 65A of the Transfer of Property Act)

(iv) **Covenant to pay outgoings:** The borrower undertakes to pay and discharge and indemnify the mortgagee against all rates, taxes, duties, charges, assessments, outgoings, whatever.

(v) **Period fixed for the mortgage:** Under this clause, the parties enter into a covenant by which mortgagor is debarred from redeeming the security before lapse of a certain period. This should not be unnecessarily a long period, as otherwise the Court might hold it as clogging equity of redemption and unenforceable.

The mortgagee may also enter into a covenant not to call in his money before the lapse of certain period provided that:

Power of sale: Under this clause, the mortgagee is entitled to recover his dues by sale of the mortgaged property, and if the sale proceeds are insufficient, to recover the balance from the person and other property of the mortgagor.

Power to appoint Receiver: Under this clause, the mortgagee is given power to appoint a Receiver of the mortgaged property in case the payment of interest for two or more instalments is in arrear under Section 69A of Transfer of Property Act.

Power to sell given to mortgagor with the consent of the mortgagee: The mortgagor is authorised to sell the whole or part of the mortgaged property with the consent of the mortgagee provided the sale proceeds are paid to the credit of the mortgage account.

Proviso for redemption: Under this clause, the mortgagee covenants and declares that on payment of his dues, he shall re-transfer the mortgaged property to the mortgagor or his nominee at his expense. (See Section 60A of the Transfer of Property Act)

Possession: In English mortgage, the mortgagee has a right to take possession of the property. In usufractuary mortgage, the possession of the property is given to the mortgagee.

Attestation & Execution: Attestation is compulsory in every mortgage. In case where the mortgagor does not know the language, deed must be explained to him by some competent person. Registration & Stamp duty is compulsory in case of mortgage value of Rs.100/- and above.

Release and Reconveyance of Mortgaged Assets
Release of any of the mortgaged assets or reconveyance of the mortgaged property could be done by a registered document in case the mortgage has been created in the form other than equitable mortgage by deposit of title deeds by a registered deed of mortgage.

****

Deed of Simple Mortgage

THIS DEED of Mortgage made the…….. day of…….. 2007, BETWEEN 'AB' of…….. etc. (hereinafter called "the Mortgagor"), of the One Part and 'CD' of, etc. (hereinafter called the "Mortgagee"), of the Other Part.
WHEREAS the Mortgagor is absolutely seized and possessed of or otherwise is well and sufficiently entitled the property intended to be hereby mortgaged which is free from all encumbrances and attachments.

AND WHEREAS the Mortgagee has agreed to lend and advance a sum of Rs…….. to the Mortgagor at his request upon having the repayment thereof, with interest at the rate hereunder stated and secured in the manner hereinafter expressed.

NOW THIS DEED WITNESSES, that in pursuance of the said agreement and in consideration of the sum of Rs. …….. paid to the Mortgagor by the Mortgagee simultaneously with the execution of these presents the receipt whereof the Mortgagor do hereby admit, acknowledge and confirm, the Mortgagor do hereby agree with the Mortgagee that the Mortgagor will on or before the…….. day of……..…….. 2007, pay or cause to be paid to the Mortgagee the sum of Rs…….. with interest for the same in the meantime at the rate of Rs…….. per cent, per annum, such interest to be paid monthly and every month on the 7th of each following month without any delay or default.

AND THIS DEED FURTHER WITNESSETH that as a security for the repayment of the said loan with interest, the said 'AB' do hereby charge, assure and mortgage, by way of simple mortgage, upto and in favour of the said 'CD' all property specifically described in the Schedule hereto annexed, and charge and assure the same by way of security for the repayment of the said sum of Rs. …….. together with interest thereon at the rate of…….. per cent, per annum;

AND THE Mortgagor does hereby agree and covenant with the Mortgagee that he will pay or cause to be paid to the Mortgagor the principal sum aforesaid, together with the interest then due, on or before the…….. day of…….. 2007, without delay or default;

AND THE INDENTURE FURTHER WITNESSETH and it is hereby agreed and declared by and between the parties that in case the said sum of Rs…….. with interest thereon at the stipulated rate is not paid within the time and in the manner as aforesaid, it shall be lawful for the Mortgagee to enforce this mortgage and to cause the property or any portion sold and appropriate the proceeds towards satisfaction of the mortgage debt provided, however, that in the event of any short-fall or deficiency, i.e. should the claim be not then satisfied, the Mortgagee shall be entitled to recover the balance personally as against the Mortgagor who shall be entitled to redeem the said mortgage at his option by payment of the amount of mortgage debt inclusive of interest at any time before the…….. day of…….. 2007.

AND THIS INDENTURE FURTHER WITNESSETH that the Mortgagor do hereby covenant with the Mortgagee that notwithstanding any act, deed or thing herebefore done, executed, performed or suffered to the contrary, the Mortgagor has good title, full power and absolute authority to charge, assure and mortgage the said property in the manner hereunder effected and that the same is free from all encumbrances and attachments.
The Schedule above referred to

IN WITNESS WHEREOF the parties herein under have set their hands on the day and year hereinabove mentioned.
Witnesses:
1.MORTGAGOR
2.MORTGAGEE

****

Deed of Redemption or Reconveyance of Mortgaged Property by the Mortgagee in favour of the Mortgagor

THIS DEED is made the…….. day of…….. 2007 between 'A' of etc. (hereinafter called "the mortgagee") of the One Part and 'B' of etc. (hereinafter called "the mortgagor") of the Other Part.

WHEREBY by a mortgage deed dated…….. the property mentioned in that deed was mortgaged by the said 'B' in favour of the said 'A' to secure payment of the amount of Rs…….. with interest @…….. per cent per annum.

NOW THIS DEED OF RECONVEYANCE WITNESSETH:

That in consideration of all principal moneys and interest secured by the said mortgage deed dated…….. having been paid, the receipt whereof the said 'A' hereby acknowledges.

The said 'A' as mortgagee hereby redeems or reconveys unto the said 'B' all the property comprised in the said mortgage deed to hold the same upto and to the use of the said 'B' as absolute owner discharged from all principal money and interest secured by and from all claims and demands under the aforesaid mortgage deed.

****

LEASE

Section 105 defines 'lease' as a transfer of a right to enjoy an immoveable property made for a certain time or in perpetuity. There are following essentials of a lease:

1. It is a transfer of a right to enjoy immoveable property;
2. Such transfer is for a certain time or perpetuity;
3. It is made for consideration which is either premium or rent or both;
4. The possession of the property has been given to the transferee.

A sub lease may also arise when the lessee creates further lease of leased premises in favour of another person for a lessor period to the period to which the lessee was himself entitled to provided the lessor has not specifically restrained lessee in this regard.

DRAFTING OF A LEASE

A deed of lease should be drafted as a deed between the landlord and the tenant. They should be called "the lessor" and "the lessee" as these are the terms used in the Transfer of Property Act, 1882. While drafting a lease, following points may be noted and considered:

1. Recitals are not generally necessary and material facts are to be mentioned in the operative part.
2. Consideration i.e. rent, reserved rent including premium etc., should be mentioned in the beginning of the Testatum.
3. Operative Part should show clearly the lessor divesting himself of possession and the lessee coming into possession.
4. Habendum Part should specify the nature of the lease, commencement and duration of the lease in question.
5. Reddendum Part remains peculiar to a deed of lease. Here is mentioned the mode and time fixed for payment of rent. It begins with the word rendering or paying with reference to the rent. Rent is payable during the term of the lease. In this part, place is to be mentioned where rent is payable. If there is apportionment of rent, that is also to be specifically mentioned here in this part.
6. Covenants relating to the terms and conditions are mentioned in several paragraphs. The usual covenants are to be found in Section 108 of the Transfer of Property Act, 1882; other important covenants generally refer to payment of taxes, repairs, insurance, subletting, purpose of the lease, e.g. residential purpose, renewal, forfeiture.

Sub-Lease

- A sub-lease is demise by a lessee for lesser term than he himself has.
- Every lessee, however short his term may be, make a sub-lease unless he is refrained by the contract of the tenancy from subletting.
- If the demise is for the whole term or for a period beyond the term, it amounts to assignment.
- If the lessee divests himself he becomes a stranger to the demised property and he has no right to have possession delivered up to him. It is true that a covenant against subletting will restrain the assignment, but a mere covenant against subletting does not prohibit underletting a part of the premises.

- As long as the lessee remains in possession he may permit another person to use the demised premises without committing a breach of covenant, namely not to assign, underlet or part with the possession of the demised premises.

Registration and Stamp Duty
Section 107 of the Transfer of Property Act, 1882 and Section 17(1)(d) of the Registration Act, 1908 require that all leases from year to year, or for a term exceeding a year, or reserving a yearly rent must be registered. Other leases, if governed by the Transfer of Property Act, must be registered except that Local Government may direct them to be made by unregistered instruments. (Proviso to Section 107)

For the stamp duty of a lease, including an under-lease or sub-lease and agreement to let or sub-let, Article 35 of the Indian Stamp Act, 1899 is to be followed.

****

Lease Agreement for a House (Premises)

THIS LEASE made on…… day of…… between AB…… (hereinafter called "the lessor") (the expression shall include the owner for the time being of the lessors' interest in demised premises) of the One Part and CD…… (hereinafter called "the lessee") (the expression shall include his heirs, executors, administrators and permitted assigns) of the other.

THE DEED THEREFORE WITNESSETH AS FOLLOWS:

The lessor hereby demises to the lessee all that dwelling house with the land fully described in the Schedule hereto together with all out houses, wells, motor garage, kitchen, pathways, passage, garden and other appurtenances thereof situate at…… to hold the same to the lessee form the…… day of…… for the term of…… years (or year to year) paying therefor during the said term the monthly rent of Rs…… (Rupees……) payable on the first day of the month succeeding that for which the rent is due.

Lessee's obligation:
1. The lessee hereby agrees that he will, during the said term (tenancy), pay all rents, taxes and other charges excluding the house tax which now are or may hereafter become payable in respect of the demised property;
2. Pay Municipal charges including water bills and electric bills, etc.
3. That he will not without the previous consent in writing of the lessor transfer or sublet or otherwise part with possession of the demised premises.
4. That he will, without the consent in writing of the lessor, use the demised premises for residential purposes and for no other purpose.

Lessor's obligations:

1. That he will during the said term (tenancy) maintain the demised premises in good and habitable condition and shall execute all necessary repairs including annual white-washing and colour washing, plastering, painting, etc. and shall renew all broken panes, fittings, bolts, etc. and on lessee's giving the lessor notice in writing of any decay, defects, disorders, will, within one calendar month from the receipt of such notice, repair and amend the same.
2. That he will, during the said term (tenancy), maintain the electric installation in the said premises and supply at his own expense such electric fans as may be required by the lessee.
3. That he will carry out all immediate necessary repairs to the said premises to the entire satisfaction of the lessee.
4. That the lessor shall repair, when necessary, the well, the passages, pathways and the road connecting the public road with the bungalow hereby demised.

Provided always and it is hereby agreed as follows:

1. That whenever any part of the rent hereby reserved shall be in arrears for…… months after due date or there shall be a breach of any of the covenants by the lessee hereincontained, the lessor may re-enter on the demised premises and determine this lease.
2. That the tenancy hereby created shall be determinable at the option of the lessor/lessee (or either party) by giving to the lessor/lessee (or the other party) …… calendar months notice in writing.

IN WITNESS WHEREOF the parties hereto have hereunder signed this deed on the dates mentioned against their respective signatures.

Signed, sealed and delivered
AB
CD

****

Deed of Sub-Lease

THIS LEASE made this ..... day of ..... 2007 between AB of, etc. (hereinafter called "the sub-lessor"), of the one part, and CD of, etc. (hereinafter called "the sub-lessee"), of the other part.

WHEREAS By a lease (hereinafter referred to as "the original lease") dated..... the day of ..... and made between XY as owner and AB as lessee and registered in Book I, Vol. ..... pages ..... to being No ..... for the year ..... in the Office of Sub-Registrar of ..... etc., the premises (or, etc.) described in the original lease were demised to the said original lessee for a period of ..... years

with effect from the ..... day of..... on a yearly rent and subject to the covenants and conditions to be performed and observed as therein contained.

AND WHEREAS the original lessee has agreed to grant and the sub-lessee has agreed to accept a sub-lease of the premises (or, etc.) hereinafter described upon the conditions hereinafter contained:

NOW THIS DEED WITNESSES that in consideration of the rent hereinafter reserved and the covenants by the sub-lessee hereinafter contained, the original lessee do hereby grant to the sub-lessee a lease of ALL THAT premises (or, etc.) known by the name of, etc., and situate at, etc., together with the appurtenances; TO HOLD the same unto and to use of the sub-lessee for the period of ..... years, commencing with effect from the ..... day of ..... at the monthly rent of Rupees ..... SUBJECT to the following conditions:

The sub-lessee hereby agrees with and covenants with its lessor, viz., the lessee as follows:

1. To pay the said rent, clear of all deductions, on the..... day of..... every current month in advance during the term of the lease.
2. To pay all taxes and outgoings now payable or hereafter to become payable in respect of the leased premises (or, etc.).
3. To keep the said premises (or, etc.) in good and tenantable repair, and not to make any alteration therein without the written consent of the landlord.
4. To perform all the covenants, conditions and stipulations contained in the original lease affecting the property hereby leased and to be observed and performed by the original lessee except payment of rent and not to do, execute or perform any act, deed or thing or suffer anything to the contrary whereby or by reason or means whereof the original lease may be avoided or forfeited and to allow the original lessee to enter upon the leased premises (or, etc.) for the purpose of inspection of the premises and performing any of such terms of agreement contained in the original lease, which may be necessary to prevent its forfeiture.
5. To keep the original lessee indemnified against all actions, claims, demands and expenses on account of performance or non-performance by the sub-lessee (of any of the terms, conditions and stipulations of this agreements).

The original lessee does agree and covenant with the sub-lessee as follows:

1. That upon the sub-lessee paying the rent hereby reserved and observing and performing the conditions and covenants herein contained, shall quietly and peacefully possess and enjoy the property, without any interruption and disturbance by the original lessee or any person claiming under
2. provided that in case of any breach of any of the conditions and covenants to be observed and performed by the sub-lessee, the lease shall, at the option of the original lessee, stand determined who shall be entitled to repossess the property as his former estate without prejudice to his right to recover all arrears of rent and/or any damages for breach of such conditions or covenants.

3. The original lessee shall duly and punctually pay the rent reserved, observe and perform all the covenants and conditions contained in the original lease, and keep the same alive and in full force and virtue and will further, ... times, keep the sub-lessee and his estate indemnified against all actions, claims, proceedings and demands on account of any breach of any of the conditions and covenants contained in the original lease.
4. The original lessee acknowledges the right of the sub-lessee as to production of the original lease and to delivery of copies thereof and undertakes for the safe custody thereof.

It is further agreed that the terms "the original lessee" and "sub-lessee" used herein shall, unless inconsistent with the context, include as well their respective successors and assigns.

IN WITNESS, etc.,

Signed, sealed and delivered
AB
CD

****

Deed of Surrender of Lease

THIS DEED OF SURRENDER OF LEASE made the…… day of…… BETWEEN AB of, etc. (the lessee), of the one part and CD of, etc. (the lessor) of the other part.

WHEREAS by an Indenture dated…… made between the parties hereto and registered in…… it was witnessed that the said CD, did in consideration of the rent thereby and thereunder reserved and of the covenants and conditions to be observed and performed on the part of the said AB as therein contained granted and demised by way of lease the property fully mentioned and described in the schedule hereto for a term of…… years.

AND WHEREAS such lease is in full force and virtue and all rents and conditions reserved by and contained thereunder on the part of the lessee to be paid, observed and performed by the said AB upto the date of these presents.

AND WHEREAS the lessee was at all material times and is presently in possession of the property since the execution of the lease.

AND WHEREAS for personal reasons and consideration, the said AB having desired to be relieved from any further payment of such rent and performance of the covenants and conditions approached the said CD for a surrender of the said lease and delivery of the possession of the property.

AND WHEREAS the said CD has agreed to accept from the said AB a surrender of the aforesaid lease of the said premises.

NOW THE DEED WITNESSES that in pursuance of the said agreement and in consideration of a sum of Rs…… being the token consideration paid by the said CD to AB, the said AB as beneficial user of the said property do hereby give up and relinquish all his leasehold estate and interest in and surrender and deliver possession to the said CD of the premises (or, etc.) comprised in and by the said deed of lease TO HOLD the same as before execution of the lease by the said CD TO HOLD THE INTENT and object that the same shall stand determined to all intents and purposes and that the residue of the said term of…… years created by the said deed of lease, and all other rights and interests of the said AB in the said premises (or, etc.) under or by virtue of the said deed shall stand extinguished and merged in the reversion freehold and inheritance of the premises with immediate effect as if the said lease was never granted nor intended.

AND THIS INDENTURE further witnesses that in consideration of the surrender of the lease which is accepted by the lessor he the said CD do hereby release and discharge the lessee AB, his successor and estate from all claims, demands and liabilities on account of future rent and or arising out of performance or non-performance or hereinbefore recited Indenture of lease.

IN WITNESS WHEREOF the parties above named have put their signatures the day and year above.

Signed, sealed and delivered
AB
CD

****

LICENCE

- Section 52 of the Indian Easement Act, 1882 defines a licence.
- It says that when one person grants to another a right to do or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property.
- A licence may be gratuitous, or non-gratuitous, i.e., for a consideration. It is granted in respect of a mere right to live in or to enjoy anything.

REGISTRATION OF LICENSE

Section 17 (1) (d) of the Registration Act, 1908 provides for the compulsory registration of documents relating to lease of immoveable property from year to year or for any term exceeding one year or reserving a yearly rent.

Section 107 of Transfer of Property Act, 1882 further provides that a lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

Licence when Transferable

- A licence ordinarily carries with it the incident of non-transferability.
- A licence cannot be transferred by the licensee or exercised by his servants or agents.
- The only exception to this rule is that, unless a different intention is expressed or necessarily implied, a licence to attend a place of public entertainment may be transferred by the licencee. (Section 56 of the Act)

Revocation of Licence

- The revocation of licence may be expressed or implied.
- The general rule is that subject to the agreement between the parties, all licences are revocable at the will of the licencer.
- However, following are two exceptions to this rule:
  (1) a licence which is coupled with a transfer of property and such transfer is in force, and
  (2) a licence acting upon which the licensee has executed a work of permanent character and incurred expenses in the execution cannot be revoked.

Deemed Revocation: Section 62 of the Act provides that a licence is deemed to be revoked:

- when, for a cause proceeding the grant of it, the grantor ceases to have an interest in the property affected by the licence;
- the licensee releases it, expressly or impliedly, to the grantor or his representative;
- where it has been granted for a limited period or acquired on condition that it shall become void on performance or non-performance of a specified act, and the period expires, or the condition is fulfilled;
- where the property affected by the licence is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right;
- where the licensee becomes entitled to the absolute ownership of the property affected by the licence;
- where the licence is granted for a specified purpose and the purpose is attained or abandoned, or becomes impracticable;
- where the licence is granted to the licensee as holding a particular office, employment or character, and such office, employment or character ceases to exist;
- where the licence totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between grantor and the licensee;
- in the case of an accessory licence, when the interest or right to which it is accessory ceases to exist (Section 62).

STAMPING OF LICENCE

Article 35 of the Indian Stamp Act, 1899 governs the stamp duty payable for a lease, a sublease, agreement to let or sublet etc.

The document granting License does not require any registration unless such document creates declares, assigns, limits or extinguishes any right in immoveable property of the value of Rs. 100/- or more is created. Section 17 of the Registration Act, 1908 will govern such documents. Stamp duty payable for a separate License Deed is same as that of an agreement under Article 5 of the Indian Stamp Act, 1899 (Schedule I)

DIFFERENCE BETWEEN LEASE AND LICENCE

	LEASE	**LICENCE**
1.	**A lease is a transfer of interest in land**	**A licence is merely a personal right and does not amount to any interest in immoveable property.**
2.	**Exclusive possession of the property in question, is given to the transferee**	**No such exclusive possession is given to the transferee.**
3.	**A lessee has to be served with notice to quit before eviction.**	**A licencee is not entitled to any such notice.**
4.	**A lease is generally not revocable**	**A licence is always revocable**
5.	**A lease is unaffected if the lessor transfers the property.**	**A licence is determined on account of the transfer of the property in question**
6.	**A Lease does not get terminated on account of the death of the lessor.**	**A licence gets terminated on account of the death of the grantor.**
7.	**There can be sub-lease after assigning the rights in favour of third party unless refrained in this regard.**	**There is no such eventuality.**

8.	**The document-creating lease generally requires registration.**	**The document granting licence, does not require any registration**

The Supreme Court in **Associated Hotel of India V. R.N. Kapoor,** has laid down that the intention of parties is the real test to determine whether a particular document creates lease or license. If the document creates an interest in the property it is a lease, but if it only permits another to make use of the property of which the legal possession continues with the owner, it is a licence.

****

Form of Deed of Licence

- No special form of grant is prescribed.
- It may be granted orally or by an agreement in writing or by a covenant contained in any other deed, e.g. lease, sale, etc.
- If it is granted in writing, the writing should be in the form of a deed or agreement or in the simple form of a deed poll.

****

Specimen Agreement of Licence for use of a House Property to a Company for Office Accommodation

AN AGREEMENT MADE this…… day of…..…… 2007 BETWEEN AB son of…… by faith…… by occupation……. herein after referred to as the "owner" of the ONE PART AND CD represented ..... by its secretary being signatory to this agreement having its principal office at present at No..... hereinafter referred to as "occupiers" of the OTHER PART.

WHEREAS the occupiers approached the owner for permission for using a portion of his property, viz. premises No. ..... fully mentioned and described in the Schedule hereto for a period not exceeding eleven months only from the date of signing of this agreement which the owner has agreed to grant reserving for himself the care, maintenance and services to property and on the basis of leave and licence only (which will stand ipso facto revoked on the expiry of the said term).

Now, it is hereby expressly agreed and declared by and between the parties as follows:

1. This writing shall never be construed as any tenancy agreement or lease nor otherwise creating any other right or interest in the property in favour of the occupiers which is not at all the intention of the parties but on the contrary merely a temporary agreement or arrangement simply to allow the occupiers to use and occupy portion of the premises for their office accommodation under the control and supervision of the owner for which purpose the owner shall retain ..... rooms, viz., one in the ground floor and another

in the first floor. The owner shall have his own staff in the said rooms for the care and supervision and maintenance of and services to the property.

2. The occupiers shall, in consideration of such accommodation as hereunder provided, pay to the owner a fixed sum of Rs. ..... as charges for such temporary occupation for the period of ..... months which sum will be paid at the rate of ..... per month on the ..... of every current month without delay or default and a further sum of Rs. ..... for service charges and also use of fittings and fixtures making thus a sum total of Rs..... per month. The two last mentioned amounts shall also be paid on the..... of every current month.
3. The occupiers shall also pay to the owner on account of Corporation of Calcutta all existing and future occupiers' share of rate and taxes of the property and also the enhancement in the owner's share, if any, during the period of their occupation and shall otherwise keep the owner and his estate indemnified as against any loss, if any, arising out of such non-payment or non-observance of any of the covenants herein contained.
4. The occupiers have as security deposit for such payments and observance of the covenants hereunder contained, kept with the owner a sum of Rs..... to be repaid without interest on revocation of licence and surrender and deliver the possession of the said portion of the property subject to such deductions as the owner shall be entitled as against the occupiers. e.g., arrears of charges provided in Clause 2, unpaid taxes, electric bills, etc., as hereunder provided or otherwise permitted in law.
5. The occupiers shall on expiry of the period of……..... and licence hereunder granted or earlier revocation thereof, surrender the property and deliver the same to the owner when and in such an event he will be entitled to the refund of Rs..... subject to deductions provided in Clause 4 hereof.
6. The occupiers shall have no right to make any addition or alteration to the property except temporary removable walls by way of adjustments but shall be entitled to make interior decorations only by temporary wooden partitions which they shall remove at their own costs at the time of surrender of the said portion of the property on expiry of the term of the licence hereby granted or earlier revocation thereof and repairs all the damages, if any caused to the property.

IN WITNESS WHEREOF the parties have executed this Agreement this..... day of 2007

Signed, sealed and delivered at Calcutta

In the presence of
(1)
(2)

****

DRAFTING AND CONVEYANCING RELATING TO VARIOUS DEEDS AND AGREEMENTS-IV

ASSIGNMENT- TRANSFER

An assignment is an act by which one person transfers or conveys to another or cause to rest in another his right or title to something.

Assignment of Actionable claim:

- Actionable claim means any unsecured debt or any interest in movable property not in possession of the claimant.
- As actionable claim is transferable by the execution of an instrument in writing, signed by the transferor with or without consideration in favour of the transferee.

The term assignment is, however, of wider import. It is well settled that a transfer of property clearly contemplates that the transferor has an interest in the property which is sought to be conveyed. Section 130 of the Transfer of Property Act, 1882 lays down the mode of transfer of actionable claim.

- The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, and
- shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not;

ASSIGNMENT OF BUSINESS DEBT

- A sum due is the same thing as a debt due.
- It may be now payable or will become payable in future by reason of a present obligation.
- There must be an existing obligation to pay a sum of money now or in future.
- It includes book debts, debts due on a bond, provident fund, arrears of rent, amount due on settlement of account between principal and agent, master and servant, wages which have accrued due, money due under an insurance policy, claim to money deposited for the due performance of a duty, surplus left with the vendee of property, etc.
- A debt is property.
- It is an actionable claim and is heritable and assignable and it is treated as property under the Transfer of Property Act, 1882 and is known as "actionable claim".

Consideration for Assignment

- A debtor cannot claim or take advantage of non-payment of consideration for assignment.
- Section 130 of the Transfer of Property Act, 1882 specifically lays down that an assignment of an actionable claim may be with or without consideration.

- Passing of the property in the assigned property does not depend on the payment of consideration.
- The question of payment of consideration is in fact one between the assignor and the assignee.

Liability of Transferee of an actionable claim
Section 132 of Transfer of Property Act provides that the transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transfer was subject in respect thereof at the date of transfer.

Warranty of Solvency of a Debtor
Section 133 of Transfer of Property Act provides that solvency of the debtor at the time of transfer is to be taken into account for purposes of warranty by the transferor. In case the transfer has been made for consideration, the warranty is limited to the amount or value of such consideration.

****

A Specimen of Deed of Assignment of Business Debts

THIS DEED OF ASSIGNMENT made this…… day of…… between…… son of…… resident of…… (hereinafter called "the Assignor") of the one part, and……, son of……, resident of……, (hereinafter called "the Assignee") of the other part.

WHEREAS the assignor has, for some time been carrying on the business of……, in the course whereof the several persons whose names, addresses and occupations are mentioned in the Schedule appended hereto, have become lawfully debtors to him and so for the several sums of money set opposite to their respective names;
AND WHEREAS the assignor has contracted with the assignee for the absolute sale to him of the said business debts at…… and for the sum of Rs…… (Rupees……)

NOW THIS DEED WITNESSES that in consideration of the sum of Rs…… (Rupees……) now paid to the assignor by the assignee (the receipt whereof the assignor hereby acknowledges), the said assignor, as beneficial owner, does hereby transfer, sell and assign unto and to the use of the said assignee, all the several said debts, and sums of money specified in the said Schedule which are now due and owing to the assignor to have and to receive them for his absolute use and benefit with absolute power, authority and liberty to enforce payment thereof by suit or otherwise and that the assignor does hereby covenant with the assignee that all the several debts are lawfully due to him and the parties by whom they are payable are alive, and further that he has not entered into any arrangement with any of them and that the assignor

shall at all times hereafter do, execute and perform all such and other acts, deeds, things, or writings as may be reasonably required for realization of the said debts, and further and better and more effectively transferring and/or assuring them or any of them in favour of the assignee.

Schedule above referred to

IN WITNESS WHEREOF the assignor and the assignee do hereto affix their signatures on the day, month and the year above mentioned at…… (place).
Witness:(Assignor)
Witness:(Assignee)

****

ASSIGNMENT OF SHARES IN A COMPANY

- Section 82 of the Companies Act, 1956 defines the nature of property in the shares of a company.
- It lays down: "The shares or other interest of any member in a company shall be moveable property, transferable in the manner provided in the articles of the company."
- The definition of "goods" in the Sale of Goods Act, 1930, specifically includes stocks and shares.
- Hence, it is necessary to provide by the articles the manner in which transfer of shares are to be affected. Where the articles of a company do not provide for the transfer of shares, and also expressly exclude the application of the regulations in Table "A" in Schedule I to the Companies Act, 1956, the general law relating to transfer of moveable property will govern.
- A "share" in a company is a right to a specified amount of the share capital of the company, carrying with it certain rights and liabilities, while the company is a going concern and in the winding up. It represents the interest of the holder measured for purposes of liability and dividend by a sum of a money.
- A company cannot refuse to transfer shares except as provided by its articles
- Section 108 of the Companies Act, 1956, however, lays down that a company shall not register a transfer of shares in the company, unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee and specifying the name, address and occupation, if any, of the transferee, has been delivered to the company along with the certificate relating to the shares, or if no such certificate is in existence, along with the letter of allotment of the shares.
- Sub-section (1-A) of Section 108 of the Companies Act, 1956 lays down that every instrument of transfer of shares shall be in such form as may be prescribed. The Companies (Central Government's) General Rules and Forms, 1956 have prescribed Form No. 7-B as the Share Transfer Form to be presented to the company duly filled in and executed for registration of transfer of shares.

A Specimen of Deed of Assignment of Shares in a Company

THIS ASSIGNMENT is made this…… day of…… between AB, son of……, resident of…… (hereinafter called "the Assignor") of the one part, and CD, son of……, resident of…… (hereinafter called "the Assignee") of the other part.

THE DEED WITNESSES:
That in consideration of the sum of Rs…… (Rupees……) paid by the assignee to the assignor, the receipt whereof the assignor hereby acknowledges, the said AB hereby assigns, sells and transfers to the said CD…… Equity Shares of Rs…… each, fully paid up, bearing consecutive Nos…… to…… (inclusive), which stand in the name of the assignor in the Register of Members of…… Co. Ltd. TO HOLD the same to the assignee absolutely, subject nevertheless to the conditions on which the assignor held the same up to date.

AND the assignee hereby agrees to take the said Equity Shares subject to such conditions.

IN WITNESS WHEREOF the assignor and the assignee do hereto affix their respective signatures on the day, month and the year stated above.
Witness:(Assignor)
Witness:(Assignee)

****

ASSIGNMENT OF POLICIES OF INSURANCE

Policies of insurance are principally of two types

(1) insuring risk to life of a person. Under this, a sum of money is secured to be paid on the death of the person whose life is insured.

(2) covering various risks relating to goods. Under this an insurer undertakes to indemnify the assured, his nominees, assigns, heirs and legal representatives against the loss of and/or damage to goods.

- Insurable interest in the subject-matter insured is a pre-requisite of a contract of insurance and for the success of an insurance claim the assured or the claimant, as the case may be, must be interested in the subject-matter insured at the time of the loss.
- An insurable interest in the subject-matter insured is a right which is capable of assignment.
- An insurance policy may be transferred by assignment unless it contains terms expressly prohibiting assignment.
- It must be assigned before death in the case of a life insurance policy and it may be assigned either before or after loss in the case of a marine or good policy.
- The assignee can sue on the policy of insurance in his own name and can defend an action on any ground available to the assignor.

- An assured who has no insurable interest in the subject-matter insured cannot assign.
- Where an assured who has lost interest in the subject matter by transfer and has not, before or at the time of transferring the subject matter, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative.

****

A Specimen of Deed of Assignment of Policy of Life Assurance

THIS ASSIGNMENT made this…… day of…… between AB, son of……, resident of…… (hereinafter known as "the assignor") of the one part and CD, son of…… resident of…… (hereinafter known as "the assignee") of the other part.

WHEREAS a policy of assurance being No…… for Rs…… (Rupees……) was issued by the Life Insurance Corporation of India on the life of the assignor on the…… day of…… to be paid to the assignor or to his executors, administrators or assigns after his death, subject to the annual premium of Rs……;
AND WHEREAS the said AB has agreed to transfer and assign to the said CD the said policy of assurance of a sum of Rs…… (Rupees……); THIS DEED WITNESSES that in consideration of the sum of Rs…… (Rupees……) the receipt whereof the said AB hereby acknowledges, the said AB as beneficial owner, hereby transfers and assigns unto and to the use and for the benefit of CD the hereinbefore recited policy of assurance, and the sum of Rs…… (Rupees……) hereby assured and all the other moneys, benefits and advantages to be had, recovered or obtained under or by virtue of the said policy:

TO HOLD the same unto and to the use of the said CD absolutely, subject to the conditions as to payment of future premiums and otherwise to be henceforth observed in receipt of the said policy:

AND the said AB hereby covenants with the said CD that he, the said AB, shall not do, or knowingly suffer anything to be done, whereby the said policy may be rendered void or voidable or the said CD or his heirs, executors, administrators or assigns may be prevented from receiving the said sum of Rs…… (Rupees……) or any benefit thereunder.

IN WITNESS WHEREOF the assignor and the assignee do hereto affix their respective signatures on the day, month and the year stated above.
Witness:(Assignor)
Witness:(Assignee)

****

ASSIGNMENT OF PATENTS

- Patent is a right, granted by the Government under the Patents Act, 1970 to the grantee, of exclusive privileges of making or selling a new invention or process protected under the patent.
- The Act confers upon the patentee the right to safeguard his property in the patent and sue the person who infringes upon his patent right.
- Sections 68 to 70 of the Patents Act, 1970 deal with the assignment of patent.
- As per **Section 68**, an assignment of a patent shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations; and
- that the application for registration of such document is filed in the prescribed manner with the Controller within 6 months from the execution of the document, or within such further period not exceeding 6 months in the aggregate as the Controller on application made in the prescribed manner allows.
- However, such document shall, when registered, have effect from the date of its execution.
- As per **Section 69**, where any person becomes entitled by assignment to a patent or otherwise to any other interest in a patent, he shall apply in writing in the prescribed manner to the Controller for the registration of his title.
- As per **Section 70**, the person or persons registered as grantee or proprietor of a patent shall have power to assign, grant licences under, or otherwise deal with, the patent and to give effectual receipts for any consideration for any such assignment, licence or dealing.

****

A Specimen of Deed of Assignment of a Patent

THIS DEED OF ASSIGNMENT is made on this…… day of…… between AB son……, resident of…… (hereinafter called the "assignor", which term shall include his heirs, executors and assigns) of the one part and CD, son of…… resident of…… (OR IN THE ALTERNATIVE IF THE PATENTEE ASSIGNEE IS A COMPANY)…… and…… Co. Ltd. (hereinafter called the "assignee"/"company" incorporated under the Companies Act, 1956 having its Registered Office at……) of the other part under the terms and conditions set hereunder:

WHEREAS the assignor has invented a process for the manufacture of…… which was duly registered and entered in the Register of Patents bearing No…… dated…… and duly sealed in the Patent Office:
AND WHEREAS the company is a company limited by shares incorporated under the Companies Act, 1956 on…… with an Authorised Share Capital of Rs…… divided into…… Equity Shares of Rs…… each;

AND WHEREAS it had been agreed between the parties to this Deed that in consideration of the assignment to be made by the assignor of his rights under the said Patent to the Company in the terms mentioned hereunder, for the sum of Rs…… (Rupees……) to be satisfied by allotment of…… Equity Shares to the assignor and/or his nominees as fully paid up:
AND WHEREAS the directors of the Company in part-performance of the said agreement resolved in a Board meeting held on the…… to allot the requisite number of Equity Shares at the direction of the assignor as specified in the Schedule attached hereto:

NOW THIS DEED OF ASSIGNMENT WITNESSES:

That in consideration of the premises and in accordance with the agreement aforementioned and on payment of the sum of Rs…… (Rupees……) satisfied by the allotment of…… Equity Shares in the Company as specified in the Schedule attached hereto at the direction of the assignor by the Company, each Share being credited as fully paid up (the allotment of which shares credited as aforesaid the assignor hereby acknowledges) the assignor, as beneficial and sole owner, hereby assigns unto the Company his title to the said patent and all benefits and advantages accruing therefrom and all rights and privileges attached thereto to hold unto the Company absolutely.

The assignor covenants with the Company that he has not assigned or otherwise dealt with the said patent and that his title to the said patent subsists and that he has done nothing to prejudice the rights of the Company as transferee thereof to use the said patent exclusively.

The assignor further covenants with the Company that he shall join the Company in applying to the Central Government or other authority at the expenses of the Company, for extension of the said patent and shall do his utmost in obtaining such extension to ensure for the benefit of the Company and shall do nothing to prevent the Company from securing the extension and user of the patent in the manner prescribed by law, without the payment of any further consideration by the Company to the assignor.

IN WITNESS WHEREOF the parties aforesaid have set their respective hands in the presence of the witnesses hereunder.
Witness:Assignor
Witness:Assignee/Company

****

ASSIGNMENT OF TRADE MARKS

- A trade mark is visual symbol in the form of a word, a device or a label applied to articles of commerce with a view to indicate to the purchasing public that the goods manufactured or otherwise dealt in by a particular person are distinguished from similar goods manufactured or dealt in by other persons.
- Sections 37 to 39 of the Trade Marks Act, 1999 deal with the assignment of a trade mark.

- As per **Section 37**, the person for the time being entered in the register as proprietor of a trade mark shall have the power to assign the trade mark, and to give effectual receipts for any consideration for such assignment.
- As per **Sections 38**, a registered trademark shall be assignable and transmissible, whether with or without the goodwill of the business concerned.
- As per **Section 39**, an unregistered trade mark may also be assigned or transmitted with or without the goodwill of the business concerned.

****

A Specimen of Deed of Assignment of a Registered Trade Mark

THIS DEED OF ASSIGNMENT made between AB, son of……, resident of…… (hereinafter called the "assignor") of the one part and CD, son of…… resident of…… (hereinafter called the "assignee") of the other part.

WHEREAS the said AB is the owner of a Trade Mark Number…… duly registered in the Register of Trade Mark maintained by the Trade Marks Registration Office at……;

AND WHEREAS the said AB has made actual and bona fide use of the said Trade Mark in India in relation to the toiletry goods manufactured by him at his factory in……

NOW THIS DEED OF ASSIGNMENT WITNESSES that in pursuance of the said agreement and in consideration of the said sum of Rs…… (Rupees……) paid by the said CD to AB, the receipt whereof the said AB hereby admits/acknowledges and confirms, he the assignor AB do hereby grant, transfer and assign upon the terms hereinafter mentioned, the exclusive use and all benefits of the aforesaid Trade Mark in relation to the goods of toiletry manufactured by him at his factory at……

AND the said assignor hereby covenants with the assignee that he will not infringe nor use a mark identical with the Trade Mark hereby assigned nor use another Trade Mark nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to the goods in respect of which it is registered and in a manner as to render the use of this Trade Mark likely to be taken either as being a use of the said Trade Mark or to import a reference to the assignor.

AND the assignor further covenants that he, the assignor shall, at the cost of CD or any person claiming through him, do or cause to be done any other act, deed or thing as may be required for more perfectly assuring the aforesaid assignment.

IN WITNESS WHEREOF the parties aforesaid have set their respective hands in the presence of the witnesses hereunder.

Witness:Assignor

Witness:Assignee

****

ASSIGNMENT OF COPYRIGHTS

- Section 14 of the Copyright Act, 1957 defines "copyright" as an exclusive right subject to the provisions of the Act to do or authorise the doing of any of the acts stated thereunder in respect of a work or any substantial part thereof with regard to original literary dramatic, musical and artistic works; the cinematograph films and sound recording.
- The rights granted under Section 14 of the Act relate to reproduction, publication, performance, production, translation, making film or sound recording, selling or giving on hire film or sound recording, communicate film or sound recording to public and to make adaptation of the copyright work.
- Sections 18 & 19 of the Copyright Act, 1957 deal with the assignment of copyright.
- As per **Section 18**, the owner of the copyright in an existing work, or the prospective owner of the copyright in a future work , may assign to any person the copyright for the whole term of the copyright or any part thereof.
- However, in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.
- This provision further provides that where the assignee or a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly; and that the expression "assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.
- As per **Section 19**, no assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorised agent.

****

A Specimen of Deed of Assignment of Copyright of a Book

THIS DEED OF ASSIGNMENT made this…… day of…… between…… (hereinafter called the "author") of the first part and Messrs…… carrying on the business of publishers at…… (hereinafter called the "publishers") of the second part.

WHEREAS the author is entitled to the copyright of the book known as……;
AND WHEREAS the publishers approached the author for assignment thereof, which the author has agreed to do on the terms and conditions hereunder contained.

NOW THIS DEED OF ASSIGNMENT WITNESSES as follows:

1. In consideration of an subject to the covenants on the part of the publishers as hereinafter contained, the author does hereby grant, convey, transfer, sell, assign and assure unto and to the use of the publishers all that copyright as defined in Section 14 of the Copyright Act, 1957, of the book entitled…… on the subject of…… to have and hold the same as absolute owners thereof for the full term of copyright as prescribed by law.
2. The publishers shall so long as the said work or any adaptation, modification or translation thereof is published and sold, submit to the author twice every year once during the month of January and the other during the month of June, a statement of account showing details of copies printed, published, held in stock and sold or disposed of (Except otherwise by sale of damaged or destroyed copies) and of the profits, if any, earned thereunder.
3. The publishers shall pay or cause to be paid to the author or his nominee or nominees a royalty at the rate of…… per cent on the sale proceeds of the copies of the work or adaptations or translations thereof that may be actually published and as disclosed in the statement of account referred to in clause (2). No royalty shall be payable on any copies of the work that may be damaged or destroyed or disposed of otherwise than by regular sale.
4. That the author has delivered (or shall deliver within a period of……) the manuscript of the said work to the publishers.
5. That the author does hereby declare that the work of which the copyright is being hereunder assigned is entirely the original work of the author and that the same does not in any manner whatsoever violate or infringe any existing copyright or any other right of any other person or other persons; and further that it does not contain anything which may be considered as obscene, libellous, scandalous or defamatory.
6. The author hereby agrees to indemnify and keep the publishers indemnified against all claims, demands, suits and other actions and proceedings, if any, that may be instituted or taken and also against all damages, costs, charges, expenses which the publishers shall or may suffer, on account of printing, publication or sale of the said work or any part thereof, or by reason of such printing, publication and/or sale being an infringement of some other person's copyright or other rights in the work or by reason of its containing anything which may in any sense be obscene, libellous, scandalous or defamatory.
7. The publishers shall print and publish the work or cause the same to be printed and published as soon as practicable within a period of twelve months from the date of this contract, and in default thereof, the author may, by a notice in writing, call upon the publishers to print and publish the work within two months of the receipt of the said notice; and if the publishers shall still fail and/or neglect to print and/or publish the work within the said period, save and except in so far as they are prevented from doing so by circumstances beyond their control, the author shall be at liberty to rescind the contract on giving a notice to that effect to the publishers when the copyright shall revert fully to the author and all the rights of publishers shall as from that date stand determined.
8. That in case of a dispute or difference arising between the parties touching the meaning, construction, interpretation, breach or fulfilment or non-fulfilment of the terms of these presents or any clause or condition thereof, the same shall be referred to the decision and arbitration of two arbitrators, one to be nominated by each party and in case of

difference of opinion between the two arbitrators to an umpire to be nominated by the arbitrators before the commencement of the reference; and the award of such arbitrators, as the case may be, shall be final and binding on both the parties and this clause shall be deemed as of submission within the meaning of the Arbitration & Conciliation Act, 1996 and its statutory modification and re-enactment.

representatives, executors, administrators and assigns and successors in business.
IN WITNESS WHEREOF the parties hereto have executed these presents on the date, month and the year hereinbefore mentioned in the presence of the witness.

Witness:Author
Witness:Publisher

****

ASSIGNMENT OF BUSINESS AND GOODWILL AND OTHER RIGHTS AND INTERESTS

- Goodwill is an intangible asset.
- It is easy to describe but difficult to define.
- It represents the value to a business attaching to all the factors, internal and external, which enable it to earn a differential return of profit on the capital employed; that is, a better return than that which arises in other comparable businesses, having regard to the nature, size, location and risk inherent in such a business, and which is capable of being enjoyed by a successor.
- The goodwill of a business is the advantage, whatever it may be, which a person gets by continuing to carry on, and being entitled to represent to the outside world that he is carrying on a business, which has been carried on for some time previously.
- Goodwill is an intangible, but not necessarily a fictitious asset, representing the value.
- Goodwill arises mainly:
    - by personal reputation of the owners;
    - by reputation of the goods dealt in;
    - by site monopoly or advantage;
    - by access to sources of supply, e.g., large quotas;
    - for patent and trade-mark protection;
    - effectiveness of publicity;
    - reputation of the first's goods and methods;
    - relationship between firm and personnel; and
    - growth element.

- The purchaser of goodwill acquires the trade marks, patents, copyrights etc. of the business as well as the benefits of contacts and all the benefits accruing from the location, reputation, connections, organisation and other exceptional features of the business.
- No formula can be laid down for the accurate measurement of the value of goodwill, and in practice a purchaser will be prepared to pay a sum representing a number of years' purchase of recent annual average profits, e.g. three years' purchase, according to the estimated worth to the buyer of the future earning capacity of the business, the risk of the discontinuance or diminution in true profits being duly considered.

****

PARTNERSHIP DEEDS

Partnership - Its Nature and Meaning

- Partnership is an association of two or more like minded persons formed with a common objective to establish a lawful business house of their choice with the idea of earning profits.
- However, in any business enterprise the possibility of its incurring loss cannot be ruled out.
- Therefore, all partners of a firm mutually agree to share all profits and losses of the business amongst them according to their predetermined shares/proportions fixed by them in the partnership agreement.
- Partnership is defined in Section 4 of the Partnership Act, 1932 as a relation between persons who have agreed to share profits of business carried on by all or any one of them acting for all.
- Partnership requires three elements
    (a) an agreement entered into by all persons concerned;
    (b) distribution of the profits of business; and
    (c) management of the business by all or any one or more of them acting for all, i.e., mutual agency.

- Out of these three, the third element, i.e., the element of mutual agency, is most essential and it distinguishes partnership from other type of contractual relationship between the parties.
- If this element is absent the partnership fails. One partner is not only an agent of the firm but also of the other partners and, if so, can bind another.
- A partnership is distinguishable from associations e.g., clubs, societies, co-operative bodies and incorporated companies.
- Persons who have entered into partnership with one another are called individually partners and collectively a firm, and the name under which their business is carried on is called the firm name (Section 4 of the Indian Partnership Act, 1932).
- A partnership agreement usually makes provisions for the duration of the partnership or for its determination. Where no such provision is made the partnership is "partnership at will".

Who can be Partners

- The word "person" in Section 4 of the Indian Partnership Act, 1932 contemplated only natural and legal persons.
- Partnership relation is one of contractual nature.
- Therefore, such persons who are competent to contract can enter into partnership.
- A firm or a Hindu Undivided Family is not a legal person and cannot enter into partnership with any person.
- Two partnership firms cannot enter into partnership as such but its partners can certainly form a new partnership.
- When the Karta of a Joint Hindu Family enters into a partnership with strangers the other members of the family do not ipso facto become partners

Minor as Partner

- A minor cannot be a partner in a firm but, with the consent of all the partners, he can be admitted to the benefits of partnership (Section 30).
- He is entitled to share in the profits and his share is liable for the acts of the firm, but he is not personally liable.
- He cannot be made liable for the losses of the firm.
- Within six months of attaining majority or obtaining knowledge of his admission, whichever is later, the minor may elect to become or not to become a partner in the firm.

A person may be an active partner in the firm or he or she may choose to remain a dormant or a sleeping partner only. It all depends on the contract between the parties.

Number of Partners

- Any two or more persons can join together for creating partnership.
- Section 11 of the Companies Act, 1956 imposes a limit as to maximum number of persons in a partnership. In a partnership for the purpose of carrying on banking business there can be maximum of 10 partners, whereas if the partnership is for carrying on any other business there can be a maximum 20 partners.

Registration of Partnership Firm

- Registration of partnership firm has been made optional under the provisions of Section 58 of the Indian Partnership Act, 1932.
- Consequences of non-registration of a partnership firm are set out in Section 69 of the Partnership Act.
- An unregistered firm cannot enforce a right or claim arising out of a contract against any third party.
- However, if the firm obtains registration on the date of institution of the claim against third person, the said claim or right would be perfectly maintainable.
- Since the blow of the consequences of non-registration is very severe, it is advisable to get the partnership registered under the Partnership Act, 1932 immediately on its incorporation.

Incoming Partners

- Section 31 contains the provision about the 'introduction' of a partner into an already existing partnership firm.
- A new partner can be introduced into a firm in the following ways:
    1. With the consent of all the existing partners;
    2. In accordance with a contract between the partners.

This provision further clarifies that as a general rule the liability of an incoming partner begins from the date of his joining the firm.

Retirement and Expulsion of Partners

- Retirement here means voluntary withdrawal of a partner from the firm, as opposed to

expulsion, when a partner is made to quit.

- It covers such cases where on the withdrawal of a partner from the firm, the firm is not dissolved but the business of the firm is continued with the remaining partners.
- According to Section 32 a partner may retire-
    1. with the consent of all the other partners,
    2. in accordance with an express agreement by the partners, or
    3. where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

- On retirement a partner ceases to be a partner but the other partners can still continue to carry on the business of the firm, and the partnership between the remaining partners can still continue.
- So that the partnership between the remaining partners can continue after the retirement of a partner, it is necessary that after such a retirement there must be at least two remaining partners between whom the partnership is now to continue,
- According to Section 33 the expulsion of a partner is possible, in exceptional cashes, when the following two conditions are satisfied;
    1. The power to expel has been conferred by a contract between the partners, and
    2. Such a power has been exercised in good faith.

Dissolution of Partnership

- Dissolution of partnership means coming to an end of the relation known as partnership, between various partners, When one or more partners cease to be partners but others continue the business in partnership, there is dissolution of partnership between the outgoing partners on the one hand and remaining partners on the other.
- The remaining partners as between themselves still continue as partners.

Dissolution of a Firm

Sections 39 to 44 of the Indian Partnership Act, 1932 deal with the dissolution of the Firm. These provisions are as under:

1. As per Section 39, the dissolution of partnership between all the partners of a firm is called the "dissolution of the firm.
2. As per Section 40, a firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.
3. As per Section 41, there will be compulsory dissolution of a firm in the following circumstances:

    (a) by the adjudication of all the partners or of all the partners but one as insolvent, or
    (b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

4. However, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

5. As per Section 42, subject to contract between the partners, a firm is dissolved on the happening of following contingencies:
    (a) if constituted for a fixed term, by the expiry of that term;
    (b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;
    (c) by the death of a partner; and
    (d) by the adjudication of a partner as an insolvent.
6. As per Section 43, there will be dissolution by notice of partnership at will. There are following rules in this regard:
    (a) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.
    (b) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

7. As per Section 44, the Court may dissolve a firm on any of the following grounds, namely:
    (a) that a partner has become of unsound mind;
    (b) that a partner has become in any way permanently incapable of performing his duties as partner;
    (c) that a partner is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;
    (d) that a partner willfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;
    (e) that a partner has in any way transferred the whole of his interest in the firm to a third party
    (f) that the business of the firm cannot be carried on save at a loss; or
    (g) on any other ground which renders it just and equitable that the firm should be dissolved.

Execution and Attestation: Registration
A deed of partnership, or of dissolution of partnership, must be executed and attested as a bond on a non-judicial stamp paper of proper value, and its registration is not compulsory; but where a deed of dissolution of a firm involves transfer of immovable property worth Rs. 100 or upwards, the deed is compulsorily registrable.

No law requires that a deed of partnership should be attested, but it is desirable that it should be attested by at least two partners. Stamp duty on an instrument of partnership and on a deed of dissolution is payable under Article 46. Schedule I to the Indian Stamp Act, 1899.

****

DEED OF PARTNERSHIP

THIS DEED OF PARTNERSHIP is made at..... on ..... BETWEEN A ..... S/o.....aged yrs. R/o ..... of the FIRST PART AND B ..... S/o.....aged yrs. R/o ..... of the OTHER PART.

WHEREAS the parties hereto have decided and mutually agreed to become partners in business of to be carried out at .., and it is expedient to have a written instrument of partnership.

AND WHEREAS the parties hereto have mutually agreed to share the profits and the losses of the said business in partnership between themselves and they have with that object constituted themselves into a firm of partners under the name and style of M/s

NOW THIS DEED WITNESSES AS UNDER:

1. The partnership business shall be that of and carried on at …… and shall commence on …...and the name of the firm shall be…….

2. The capital of the firm for the time being is fixed at Rs …….. (Rupees ……) only which has been contributed by the partners as follows namely:
   First Party : Second Party :

3. The profit and loss of the firm shall be divided between and born by the partners in equal proportion.

4. The books of account shall be kept properly and shall not be removed from the place of business without the consent of the partners.

5. Each partner shall diligently attend to the business and devote his whole time and attention thereto.

6. Neither partner shall without the consent of the other either directly or indirectly engage in any other business or occupation.

7. The partnership may be determined by either party giving to the other not less than months notice in writing and on the expiration of such notice the partnership shall determine accordingly. The partnership will also determine if any partner becomes physically or mentally unfit to attend to the business of the partnership.

8. Upon the determination of the partnership, a full and general account of valuation shall be taken of the property, assets and liabilities of the partnership; and thereafter, the property and the assets will be put to sale and the debts realized and the creditors paid.

The net proceeds in cash shall be equally divided between the partners and the legal representatives of such partners as the case may be.

9. If at any time any dispute arises between the partners on the construction of these presents, or respecting the accounts, transaction, profits or losses of the business or otherwise in the relation to the partnership, then every such dispute shall be referred to the Arbitrator to be appointed in the manner provided under the Arbitration and Conciliation Act, 1996.

IN WITNESS WHEREOF THE PARTIES HERE TO HAVE SIGNED THIS DEED ON THE DATE FIRST ABOVE WRITTEN

WITNESSES:
Name
Father's name
Address
Signature

Signature I

Signature II

Name
Father's name
Address
Signature

****

TRUST DEEDS

- A trust is defined in Section 3 of the Indian Trusts Act, 1882 as an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him for the benefit of another or of another and the owner.
- The person who reposes or declares the confidence is called the 'author of the trust'. The person who accepts the confidence is called the **'beneficiary**'.
- The subject matter of the trust is called the **'trust property' or the 'trust money'**.
- The person or persons who manages/manage the trust property or trust money is/are called the **'trustee/trustees'** of the trust.
- The author of the trust himself or any other person can be the trustee of the trust.
- The person creating the trust must be legally competent to contract and a trust may be created on behalf of a minor with the permission of the Civil Court of the original jurisdiction. (Section 7)
- Every person capable of holding property may be a trustee. But if the trust involves exercise of discretion then he cannot execute it unless he is competent to contract. (Section 10)

Objects of Trust

- Section 4 of the Indian Trusts Act, 1882 provides that the object of the trust must be lawful.
- The purpose of the trust is lawful unless it is:
  - forbidden by law, or
  - is of such a nature that, if permitted, it would defeat the provisions of any law, or
  - is fraudulent, or
  - involves or implies injury to the person or property of another, or
  - the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

Examples of illegal trust are:

- trust in restraint of marriage,
- Trust to defraud a creditor.
- However, a trust created for the benefit of the debenture holders of a company shall be quite legal under Section 120 of the Companies Act, 1956.

Public and Private Trusts

- In a public trust the beneficiary is the general public or a specified section of it.
- In a private trust the beneficiaries are defined and ascertained individuals.
- In a public trust the beneficial interest is vested in an uncertain and fluctuating body of persons.

- The nature of the trust may be proved by the evidence of dedication or by user and conduct of parties.
- Where a trust is created for the benefit of the members of the settlor's family, it is a private trust and not a public trust.
- Every charitable trust is only a public trust as benefit to the community at large or to a section of the community is of the essence of a valid charitable trust.
- But a religious trust need not necessarily be a public trust as there can be a private religious trust also.

Creation of Trust

- A trust in respect of immovable property can be declared only by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered or
- by the will of the author of the trust or of the trustee.
- A trust in respect of movable property can be made either by a declaration as above or by the transfer of the ownership of the property to the trustee (Section 5 of the Indian Trusts Act, 1882).
- In places where the Indian Trusts Act, 1882 does not apply a trust of immovable property may be created orally if the author of trust is himself the trustee and consequently no transfer of the property is involved, and all that is required is only a declaration of trust (Madanji v. Tribhuwan)

Instrument of Trust: How it is drafted

- An instrument of trust is drafted either as a deed poll or as a regular deed between the author of trust and the trustee.
- Where trustees are strangers and a transfer of property is involved, it is better to draft the deed as a deed between the author of trust and the trustees.
- Where the author is to be the trustee himself and the deed requires a mere declaration of trust, it is drafted as a deed poll.
- No specific words are necessary, but, whatever the words used, the deed should contain with reasonable certainty the matters mentioned under the heading 'Creation of Trust'.
- While drafting a trust deed, it be seen that every clause in the deed is clear in its meaning.
- If there is any reference to any article, documents, rules, statutory Acts etc., the same are properly applied out. In case reference to these is to be repeated in the deed it is better to first define them and use the abbreviation in the deed subsequently.
- The most important and vital part of a trust is the expression of an intention to create a trust which should be expressed in the deed in unequivocal language and with reasonable certainty.

Acceptance of Trust

- Acceptance of trust by trustee may be either express, e.g. by executing the deed of trust or by verbal assent, or inferred from conduct, e.g., by entering into possession of the property and on the duties as trustee.
- But it is always safer to have the deed of trust executed by the trustee also.

Registration and Stamp Duty

- A trust created by will requires neither registration nor stamp duty.
- But a trust in relation to movable or immovable property which is declared by a non-testamentary instrument must be registered, irrespective of the value of the property.
- Deeds of wakf or of religious and charitable endowments must be registered if they relate to immovable property worth Rs. 100 and upwards.
- A trust declared otherwise than by a will is chargeable to stamp duty under Article 64, Schedule I of the Indian Stamp Act, 1899. The stamp duty varies from State to State.

Revocation and Extinction of Trusts

- A trust cannot be revoked unless;
  (1) all the beneficiaries consent;
  (2) a power of revocation has been reserved in the deed; and
  (3) in case of a trust for payment of debts, it has not been communicated to the creditors.
  (4) If the trust property is to be applied for the author's own benefit the trust can be revoked.

A trust is extinguished:

- when its purpose is completely fulfilled; or
- when its purpose becomes unlawful; or
- when the fulfillment of its purpose becomes impossible by destruction of the trust property or otherwise; or
- when the trust, being revocable, is expressly revoked.

Debenture Trust Deed

- Companies in the course of their normal business borrow funds by various modes, one such mode being the issue of debentures.
- An issue of debentures is usually secured by a trust deed, where under movable and immovable properties of the company are mortgaged in favour of the trustee for the benefit of the debenture holders.
- The usual important conditions of debenture trust deeds may be as under:
  - The trust deed usually gives a legal mortgage on block capital and a floating security on the other assets of the company in favour of the trustee on behalf of the debenture holders.
  - The trust deed gives in detail the conditions under which the loan is advanced.
  - The trust deed should specify in some detail the remuneration payable to the trustee, their duties and responsibilities in relation to the trust property incompliance to Section 119 of the Companies Act, 1956.
  - It also gives in detail rights of debenture holders to be exercised through the trustee in case of default by the company in payment of interest and principal as agreed upon.

****

Trust Deeds Constituting Provident Fund, Superannuation Fund, Pension Fund, etc.

- The companies create provident fund, superannuation fund, pension fund, gratuity fund etc. through declaration of trust for the benefit of their employees.
- Such funds will have to be irrevocable and should be drafted, keeping in view the provisions of Schedule IV appended to the Income Tax Act, 1961 and the provisions of the Income Tax Rules, 1962 made thereunder.
- A company cannot create a provident fund trust to cover the employees governed by the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and the Employees provident Fund Scheme, 1952 framed thereunder unless exemption has been obtained from the appropriate Government for establishing such a fund.
- Therefore, the provident fund trust established by the company should ordinarily cover only those employees who are not governed by the Employees Provident Funds and Miscellaneous Provisions Act, 1952.
- Likewise the gratuity fund established by companies should ordinarily cover only those employees who are not governed by the Payment of Gratuity Act, 1972.
- If any company wants to have a gratuity fund covering even employees who are governed by the Payment of Gratuity Act, 1972 then they will have to obtain the approval of the appropriate Government for this purpose.
- The companies so creating the trusts will have to make an application to the Commissioner of Income-tax for recognition of the respective funds.
- Only on receipt of the recognition from the Commissioner of Income-tax the contribution made by a company to these will be allowed as a deduction in its assessment(s).
- It is essential that there should be a clause in the trust deed giving necessary powers to the trustees to make Rules for the smooth functioning of the trust on residuary matters not provided in the trust deed.

****

DRAFT TRUST DEED
(Provident Fund)

DECLARATION OF TRUST is made this…… day of…… 2013, between……. having its registered office at…… (hereinafter called 'the Company') of the One part

and

(1) Shri……, (2) Shri…… and, (3) Shri……
(hereinafter called 'the Trustees') of the Other Part.

WHEREAS THE COMPANY intends to creating a Provident Fund for the benefit of the employees; AND

WHEREAS it is necessary to execute a declaration of trust in respect of the contribution of the company and of the members to the fund.

THIS DEED WITNESSETH AND IT IS HEREBY AGREED AND DECLARED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. That the above-named persons, namely (1) Shri……, (2) Shri…… and, (3) Shri…… are hereby appointed as the first trustees for administering the Provident Fund of the Company and the income thereof as provided in the Provident Fund Rules of the Company (hereinafter called the Rules) in force for the time being.

2. That the trustees shall stand possessed of the existing fund as also all contributions made in future time to time with all accumulation to the said fund upon trust for the benefit of the employees of the company who are covered under the Rules.

3. In these presents, unless there is anything repugnant to the subject or context:
   (a) "The Fund" means the Provident Fund constituted by these presents.
   (b) "Member" means an employee of the company subscribing to the Fund.
   (c) "Subscription" means any sum credited by or on behalf of a member out of his salary to his individual account but does not include any sum credited as interest. The company by way of employer's contribution for credit to the member's account, but does not include any sum credited as interest.
   (d) "The Balance to the Credit of a Member" means the total amount to the credit of a member to the Fund at any time.
   (e) "The Accumulated Balance due to a member" means the balance to the credit of the Member's Provident Fund Account or such portion thereof as may be claimable by him on the day he ceases to be a member of the Fund.
   (f) "Year" means the period of twelve calendar months from the 1st of July to the 30th June or such other period of twelve months as the Company may from time to time adopt for making up its own accounts.
   (g) "Salary" includes dearness allowance and commission, if the terms of employment so provide, but excludes all other allowances and perquisites.

4. That this Trust shall not be revocable except with the consent of all the members to the Fund.

5. That the money for the time being constituting the Fund shall be invested by the Trustees in such manner as may be specified from time to time by the Income-tax Rules, 1962. Provided that in execution of the Trust and in the performance of his duties and powers hereunder conferred no trustee shall be made liable for any loss caused to the trust arising by reason of any improper investment made *bona fide* and in good faith or for the negligence or fraud of any agent employed by them or by reason of any error of judgement or act, default, mistake or omission done in good faith and under *bona fide* relief by any trustee or by reason of any other matter or thing except wilful and individual wrong or fraud on the part of the Trustee or for breach of trust who is sought to be made liable.

6. (i) The number of trustees at all times shall be three.

(ii) One of the trustees shall be nominated by the Board of directors of the company, who may be either a director or an officer of the company. The other two trustees shall be elected from among the members of the Provident Fund.

(iii) The nominees of the Board of directors of the company shall be the Chairman of the Trust. The Trustees other than the nominee of the Board of directors shall be elected by ballot by members hereof and shall hold office as Trustees for 3 years, unless their seat become vacant earlier under Clause 7 hereafter.

(iv) The nominee of the Board of directors of the company shall hold office until a new representative is appointed by the Board of directors to take his place.

7. The place of a trustee shall become vacant if a Trustee (a) dies, or (b) resign his office, or (c) is adjudged an insolvent, or (d) becomes of unsound mind, or (e) is convicted of an offence involving moral turpitude, or (f) in the case of a nominee of the Board of directors of the company ceases to be a director or an officer of the company and in the case of an elected trustee ceases to be a member of the fund, or (g) fails to attend three consecutive meetings of the trustees for any reason which the trustees do not consid er to be satisfactory.

8. (i) Any casual vacancy under Clause 7 above shall also be filled by holding a fresh election, in case the vacancy occurs in a seat held by an elected trustee.

(ii) If a seat of an elected trustee remains vacant for more than one month, the Board of directors of the company may fill the casual vacancy by appointing a trustee from among the members for such period as the election does not take place.

(iii) The person elected or nominated to a casual vacancy shall be a trustee for the residue of the term for which the person whose place he fills would have been a trustee.

9. (i) The trustees may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. The Chairman and an elected trustee shall form a quorum. Questions arising at any meeting shall be decided by a majority of votes and in case of equality of votes the Chairman of the Trust shall have a casting vote.

(ii) A resolution in writing signed by all the trustees for the time being shall be as valid and effectual as if it had been passed at a meeting of the Board of Trustees duly called and constituted.

10. (i) The Board of Trustees shall be authorised to delegate any of their powers to such one or more of themselves as they may think fit, from time to time, and they may vary, alter, or rescind such powers or any of them as they from time to time think fit.

(ii) No act or proceedings of the trustees shall be invalidated merely by reason of the existence of a vacancy among the trustees.

(iii) The trustees shall cause proper minutes to be kept and entered in hand, in a book provided for the purpose, of all their resolutions and proceedings and any such minutes of any meeting of the trustees, if purporting to be signed by the Chairman of the trustees shall be receivable as *prima facie* evidence of the matters stated in such minutes.

11. The Fund shall be exclusively managed and administered by the Trustees in accordance with these rules, and the decision of the trustees upon any question relating to the fund or any rights or benefits in connection therewith or generally upon the interpretation of any provision of these rules shall be absolutely final and binding on all members, their executors, administrators, representatives, widows, or relatives and the employers. The costs, charges and expenses of administering the fund and of the determination of any question arising under these rules or otherwise, including expenses incurred by the trustees in the discharge of their duties shall be charged to the fund and may be properly paid therefrom, from time to time. Any decision of the trustees may be given under the hand of any one or more of them.

12. The trustees shall have power to employ any person or persons (including any one or more of their numbers) to do any secretarial, legal, accountancy or other work which they may consider necessary or expedient in connection with the management of the fund and to pay therefor in addition to all other proper disbursements, all ordinary or reasonable charges out of the fund.

13. (i) Every member shall subscribe to the fund at the rate of 10 per cent of his monthly salary and such percentage shall be deducted from his salary, at the time of payment thereof and shall, as soon as practicable, be paid to the trustees who shall credit the same to the account of the member in the books of the Fund.

    (ii) The monthly contribution payable by the company in respect of each member shall be equal to the subscription payable by each member.

    (iii) It shall be open for members to pay additional subscription to the Fund which shall be a definite proportion of his salary for that year as provided in the "Rules".

14. Subject to the previous approval by the Commissioner of Income tax, the trustees shall, with the approval of the Board of directors, be competent to vary, alter, omit, modify or add to the "Rules" of the Provident Fund.

15. The Trustees shall maintain an account of provident fund for each member of the fund and it shall include the particulars prescribed in sub-rule (2) of Rule 74 of the Income-tax Rules, 1962, and such other particulars as the Trustees hereof may, from time to time, deem necessary and expedient. The Trustees shall furnish a statement of Provident Fund account to each member at such interval, not exceeding 12 months, in such form as the Trustees may prescribe. It shall be the duty of every member to verify the correctness of the statement as and when it is furnished to him and to bring the discrepancy, if any, to the notice of the Trustees. Such a statement shall be signed by the Trustees or by any other person specially authorised by the Trustees in this behalf.

16. The accounts of the Provident Fund Trust shall be made for each year and shall be duly audited by the auditors appointed by the Trustees with the approval of the Board of directors of the company. There shall be an annual meeting of the trustees after the close of the year and at such annual meeting of the trustees the audited accounts of the previous year of the Fund shall be presented and passed.

17. All matters of procedures and other ancillary matters not herein specifically provided for and requiring the framing of rules shall be regulated by such rules as the trustees may, in consultation with the Board of directors of the company, from time to time, make in that behalf. Without prejudice to the general powers conferred or implied in the last preceding sub-clause, the Trustees may, in consultation with the Board of directors of the company make rules:
    (i) regarding the advance of loans to the members,
    (ii) regarding the mode of election of the Trustees, and
    (iii) regarding the conduct of the meetings of the Trustees.

18. The Trustees shall respectively be indemnified for and against all liabilities incurred by them in *bona fide* execution of the Trust hereof.

IN WITNESS WHEREOF the parties hereto have duly executed this Trust on the date, month and year first above written.

The Common Seal of the above named company was, pursuant to the resolution of the Board of Directors of the Company passed in this behalf on……, affixed hereunto in the presence of the authorised director of the company, who has hereunto set his hands in the presence of:

WITNESS: for COMPANY

(DIRECTOR)
SIGNATURE OF TRUSTEES

1.
2.
3.

****

DRAFTING OF AGREEMENTS UNDER COMPANIES ACT, 2013

PROMOTERS

The term "promoter" was not defined in the Companies Act, 1956.

Section 2 (69) of the Companies Act, 2013 defines the term 'promoter' as under:-
"Promoter" means a person:

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

Provided that sub-clause (c) shall not apply to a person who is acting merely in a professional capacity.

By virtue of above definition, persons in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act are also treated as promoters. However, if a person is merely acting in a professional capacity i.e. giving only professional advice to the Board of directors, he shall not be treated as a promoter.

Further, according to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, "promoter" includes:

i. the person or persons who are in control of the issuer;
ii. the person or persons who are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to public;
iii. the person or persons named in the offer document as promoters.

The Act prohibits a person who is an undercharged insolvent from taking part in the promotion of the Company. A promoter may be a natural person or a Company. On the basis of various judgments by the courts we can say the promoter means any individual, syndicate, association or partnership which has taken all the necessary steps to create and mould a Company and set it going. The promoter originates the scheme foe the formation of the Company, gets together the subscribers to the MOA, gets the MOA & AOA prepared, executed, finds the bankers and legal advisors.

****

PRELIMINARY CONTRACTS / PRE-INCORPORATION CONTRACTS

Pre-incorporation are those contracts, which are entered into by agents or promoters or trustee/ and on behalf of a prospective company before it has come into existence. Before existence a Company is non-existent and has no capacity to cont\tract.

Since a company comes into existence from the date of its incorporation, it follows that any act purporting to be performed by it prior to that date is of no effect so far as the company is concerned. It takes effect as a personal contract with the persons who purport to contract on the Company's behalf and in that case they are liable for failure to perform the promises made in the name of the Company.

The Company, before it is incorporated, is not bound by a contract entered into by an agent purporting to act on its behalf. It cannot ratify the contract after incorporation. However, the persons purport to act, as agents on behalf of the company would be personally liable **[Kelner verus Baxter]**. Even if a Company takes some benefits from a contract purported to have been before its formation, the contract is not binding on the Company.

Although, a company cannot ratify a pre-incorporation contract, it may make a new contract after it is incorporated to carry into effect a contract made before it is formed **[Howard versus Patent Ivory Mfg. Co.]**. Since the pre-incorporation contract is a nullity, even the company, cannot sue the vendor of property if he fails to carry out such a contract.

When pre-incorporation contract can be enforce:
In India, as per Section 15 and 19 of the Specific Relief Act, 1963 such contracts may be enforced-

a) Where the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company and such contract is warranted by the terms of incorporation, the company, may, if it has accepted the contract and has communicate such acceptance to the other party to the contract, obtain specific performance of the contract **[section 15 of the Specific Relief Act, 1963]**.
b) Under similar circumstances, the specific performance may be enforced against the company by the other party to the contract **[section 19 of the Specific Relief Act, 1963]**.

****

A Specimen of Promoters' Contract for the Purchase of an Industrial Plot for setting up Industrial Unit of the Proposed Company ABC Ltd.

THE AGREEMENT made on……. day of……. between Mr. A, son of Mr……. resident of……., Mr. B, son of Mr……. resident of……. and Mr. C, son of Mr……., resident of…….' (hereinafter referred to as "promoters") of the one part which expression shall, unless repugnant to the context include their heirs, legal representatives and assigns and Mr. "V" son of Mr……. resident……. (hereinafter referred as "Vendor") of the other part, which expression shall, unless repugnant to the context, include his heirs, legal representatives and assigns.

WHEREAS the promoters have been engaged for quite sometime in the past in promoting and forming a company to be known as ABC Ltd., which name has been made available to the promoters by the Registrar of Companies……., consequent upon which they have filed with the Registrar memorandum of association and articles of asso¬ciation for registration of the company;

AND WHEREAS the memorandum and articles of association of the proposed ABC Ltd., empower the company and its directors to enter into agreements on its incorporation on the lines of the agreement entered into by the promoters for the purchase of land, plant, machinery, equipment and for hiring the services of persons required for and in connection with the formation and incorporation of the company;

AND WHEREAS the Vendor is the absolute owner of industrial plot of land measuring……. and situated at……. and is desirous of selling the same;

AND WHEREAS the promoters and desirous to buy the said plot of land for the proposed company ABC Ltd. to set up an industrial unit on its incorporation.

NOW IT IS AGREED AND DECLARED BETWEEN AND BY THE PARTIES AS FOLLOWS:

1. That the said vendor shall sell and the promoters shall purchase the industrial Plot No……. situated in .the……. Industrial Area, …….bounded on North by……., on South by……,on East by……., and on West by……. in consideration of the payment, by the promoters on the date of this agreement, of the sum of Rs……. and the balance of Rs……. on the date of the appearance of the vendor and the promoters before the Sub-Registrar……. at the time of registration of the deed of sale to this agreement.
2. The vendor shall satisfy the promoters or ABC Ltd., if incorporated by then, about the title of the vendor to the aforesaid piece of land within one month of the execution of this agreement and the promoters or their attorney shall be entitled to ask for such information as may be necessary to ascertain the title of the vendor.

3. The parties shall bear the expenses of sale equally. The purchaser shall pay to the vendor the expenses for purchase of stamp, a fortnight before the expiry of the period fixed for this agreement for completion of the sale.
4. The vendor shall deliver actual possession of the plot of land to the promoters or the company on the date of payment of the balance of the price aforementioned and shall do all other acts that may be necessary or requisite to effectually put the promoters or ABC Ltd., as the case may be, in such possession.
5. In case there found to be any error or mis- description in area or the boundaries or the other specifications of the plot of land agreed to be conveyed to the promoters of ABC Ltd. or ABC Ltd., as the case may be, corresponding decrease or increase in price relating to the area and rectification of mis-description of the specification relating to boundaries etc. shall be permissible, and shall not form any ground for avoiding this agreement for sale of the plot of land.

IN WITNESS WHEREOF the parties aforementioned have signed this deed of acceptance of the terms thereof.

1. Witness — Vendor
2. Witness — Purchasers/Promoters of the Company
ABC Limited, under incorporation.

(Schedule of Land)

****

A Specimen of Agreement entered into by and between ABC Ltd. on its Incorporation and Mr. ……. Vendor of Industrial Plot No……. Situated……. who had earlier entered into an Agreement dated……. for the Sale of the said Plot of land to the Promoters of the Company

THIS AGREEMENT made and entered into the……. day of……. between Mr. 'V' son of Mr……. resident of……. (hereinafter called "the vendor") which expression shall, unless, repugnant to the context, include his heirs, legal representatives and assigns of the one part and ABC Ltd., a company incorporated under the Companies Act, 1956 and having its Registered Office at……. (hereinafter known as "the company") which expression shall, unless repugnant to the context, include its legal representatives, of the other part.

WHEREAS the company was incorporated on……. under the Companies Act, 1956 as a public limited company with a nominal share capital of Rs……. divided into……. equity share of Rs……. each;
AND WHEREAS Mr. A, Mr. B and Mr, C have been engaged for quite sometime in the past in promoting and forming this company;

AND WHEREAS the said promoters of the company, Mr. A, Mr. B and Mr. C had entered into agreement with the vendor on the……., for the purchase of industrial plot of land No……. situate at……., a copy of the plan whereof is annexed hereto as Annexure-I;

AND WHEREAS the memorandum and articles of association of the company empower the company and its directors to enter into agreements with third parties on the terms and conditions of the agreements entered into by and between the promoters and the third parties for the purchase of land, plant, machinery, equipment etc. for the com¬pany;

NOW IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES OF ONE PART AND PARTY OF THE OTHER PART:

1. That the said vendor shall sell and the company shall purchase the industrial plot No……..……. situate in the……..……..……. Industrial Area, …….more precisely described in the Schedule hereto in consideration of payment by the company on the date of this agreement of the sum of Rs……. and the balance of Rs……. on the date of the appearance of the vendor and the company before the Sub-Register, …….at the time of registration of the deed of sale pursuant to this agreement.
2. The company has already satisfied itself with regard to absolute title of the vendor in the said plot of land and has already given to the vendor a draft of the deed of conveyance and the vendor hereby agrees and undertakes to execute the same in favour of the company within a period of a fortnight of the date of execution hereof and present the same for registration within the said period of fortnight.
3. The vendor shall deliver actual possession of the plot of land to the company on the date of payment of price aforementioned and shall do all other acts that may be necessary or requisite to effectually put the company in such possession.

Signed and delivered by within named vendor in presence of:
Witness - 1…….…….

Witness - 2…….Signature of Vendor

Signed, sealed and delivered by within named company (purchaser)
(Name of the Company)

Through its Director

Shri……. Signature…….
In presence of:

Witness - 1…….

Witness - 2…….

(Annexure or Schedule of Land)

****

MEMORANDUM OF ASSOCIATION

Memorandum of Association (MOA) is a document, which sets out the constitution of the Company and defines the scope of Company's activities and its relation with the outside world. According to **Section 2(56)** of the Companies Act, 2013, **'memorandum' means** the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of the Companies Act, 2013. This definition does not describe the document fully.

The memorandum of association is a document, which contains the fundamental provisions of the company's constitution. On these fundamental conditions alone the company can be incorporated. In this respect, **it is company's charter, defining its constitution and scope of the powers with which it has been established under the Act**. It is indeed a vital document and a very foundation on which the whole edifice of the company is built. It defines as well as confines the powers and the area of operation of the company. It not only shows the object of its formation, but also the utmost possible scope of its operation beyond which its actions cannot go.

In the case of *"Ashbury Railway Carriage & Iron Co. Ltd."* it was observed that the MOA of a Company is its charter and defines the limitations of the power of the Company. It contains in it both that which is affirmative and that which is negative.

Purpose of Memorandum

The purpose of the memorandum is **two fold:-**

The **first** is that the intending shareholder who wishes to invest in the capital of the Company shall know the field in, or the purpose for which, it is going to be used and what risk he is taking in making the investment.

The second purpose is that anyone who deals with the company shall know, without reasonable doubt, whether the contractual relation into which he contemplates entering with the company is one relating to a matter within its corporation objects **[Cotman versus Brougham (1918) A. C. 514]**.

Form of Memorandum of Association (Section 4(6))

According to section 4(6) of the Act the MOA of the Company should be in the form of Table A, B, C, D and E of Schedule I of the Act according to the type of the Company.

Table A- Applicable in case of a Company limited by shares

Table B - Applicable in case of a Company limited by guarantee not having share capital
Table C - Applicable in case of a Company limited by guarantee having share capital
Table D - Applicable in case of an unlimited Company not having share Capital
Table E - Applicable in case of an unlimited Company having share Capital

Contents of the Memorandum (Section 4(1))
Section 4(1) of the Act provides that the memorandum of association of every company must contain the following clauses:

1) **The Name Clause**: The name of the company with "Limited" as the last word of the name in this case of a public company and "Private Limited" as the last words of the name in the case of a private limited company.

   A company being a legal entity must have a name of its own to establish its separate identity. The name of the company is a symbol of its independent corporate existence. The first clause in the memorandum of association of the company states the name by which a company is to be known. The company may adopt any suitable name provided it is not undesirable.

   According to 4 of the Act no Company shall be registered with the name, which is in the opinion of the Central Government, is undesirable or is identical with or too nearly resembles the name of the existing Company. Section 16 provides that if by inadvertence or otherwise a name has been registered which is identical to or too nearly resembles the name of an existing company whether registered under this Act or the previous company law, the Central Government may direct the company to change its name. The company shall change its name within a period of 3 months from the issue of the above direction after passing an ordinary resolution for the purpose.

   Publication of Name
   The name of the Company and the address of its registered office must be affixed outside every office or place of business of the Company in English and in the language used in that locality.

   The name must also be engraved on the company's common seal. Further, the name of the company and the address of the registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any must be mentioned in legible characters in all business letters, in all its bill heads, letter papers and in all its notices and other official publications, as well as in all negotiable instruments and other prescribed documents (Section 12)

   However, where a company has changed its name or names during the last two years, it shall paint or display or print, as the case may be, along with its name, the former name or names so changed during the last two years as required above. Further in case of One Person Company, the words ''One Person Company'' shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

2) **Registered Office Clause**: The **State** in which the registered office of the company is to be situated. The exact address in not required to be given in the MOA. A Company must have its registered office within 15 days from the date incorporation and must also furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in Form No. INC.22.

3) **Object Clause**:
Under section 4(1)(c) of the Companies Act, 2013, all companies must state in their memorandum the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

The object clause is of great importance because it defines the purpose of the Company. It specifies the scope and extent of powers of the Company in affirmative and in negative it states that nothing should be done beyond the scope of the Company. Although, the main objects of the Company are necessary but a Company may do anything, which is incidental to the main objects of the Company e.g. power to borrow etc.

4) **Liability Clause**: The declaration that the liability of the members is limited in case the company is limited by shares or by guarantee.

The memorandum of company limited by guarantee must state that each member undertakes to contribute to the assets of the company in the event of its being wound up for the payments of debts/liabilities of the company and cost, charges and expenses of winding up, such amount as may be required, not exceeding a specified amount..

5) **Capital Clause:** In case of a company, **not being unlimited**, having share capital, the amount of the share capital with which the company is to be registered and division thereof in to shares of fixed amount.

The amount of nominal capital is determined having regard to the present as well as future requirement of the Company. If in a Company there are equity and preference share capital then both should be mentioned separately. A Company is not authorised to issue capital beyond its authorised capital.

6) **Association Clause**: this is the last clause of the MOA. This is a **declaration** by the persons subscribing to the memorandum declaring that they desire to be formed into a company and agrees to take shares placed opposite to their respective names (Section 4(1)(e). This is called Association or subscription clause. Each subscriber must take at least one share. One witness must attest the signatures of the subscribers.

****

MEANING OF ARTICLE OF ASSOCIATION:

The provisions regarding Articles of a company are contained in Section 5 of the Companies Act, 2013 and Table F, G, H, I and J in the Schedule I of the Companies Act, 2013. An article of Association is another equally important document for incorporation of a limited company. Articles are rules and regulations for management of internal affairs of the company. It constitutes a contract between the company and its members and members *inter se*. It is framed with the object of carrying out aims and objects of the company as contained in Memorandum and if necessary it may clarify anything contained in Memorandum. The article of a company contains the regulations for management of the company and other such matters, as may be prescribed:

The articles may contain provisions for **entrenchment** to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

However the provisions for entrenchment referred above shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

The articles of a company should be in respective forms specified in Tables, F, G, H, I and J in Schedule I which contains the model articles applicable to such company.

Contents of AOA are:

1) Exclusion of table F (wholly or in part)
2) Share Capital
3) Calls on shares
4) Share Certificates
5) Alteration of Share Capital
6) Transfer of shares
7) Transmission of shares
8) Forfeiture of shares
9) Share warrants
10) General meetings
11) Directors meeting
12) Board of directors and their powers
13) Voting rights and proxies
14) Borrowing powers
15) Remuneration to Directors
16) Dividend and reserves
17) The seal of the Company

18) Accounts and audit
19) Winding up

The AOA constitute a contract between the Company and its members and members inter se defining their rights, duties and liabilities and are binding on all the members of the Company. Usually every Company has its own AOA but if any Company does not have any AOA then Table F of the first schedule to the Act will apply.

A public Company limited by shares can adopt all or any of the regulations contained in the Table F, but a private Company limited by shares, guarantee Company and an unlimited Company must register its own AOA

****

UNDERWRITING AND BROKERAGE AGREEMENTS

- Underwriting is an insurance against risk.
- The expression 'underwriting agreement' means an agreement between a company and an underwriter by which a person agrees to take up shares specified in the underwriting agreement if the public or other persons fail to subscribe for them. The consideration for this contract takes the form of payment of commission, called "underwriting commission".
- When shares or debentures of a company are issued, they are, by and large, underwritten to ensure that all the shares or debentures issued are taken up and thus the required capital is raised.
- Before entering into an underwriting arrangement with a member of any recognized stock exchange, it is the duty of the directors of the concerned company to ensure that the underwriter has sufficient financial resources to meet any obligation which may devolve upon him in the event of the issue not being fully subscribed by public.

Power of a Company to Pay Brokerage/Underwriting Commission

Section 40 of the Companies Act, 2013 permits a company to pay certain commissions and prohibits the payment of all other commissions, discounts etc.

The company may exercise the powers of paying commissions conferred by sub-section (*6*) of section 40, provided that the rate per cent. or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by that section and rules made thereunder.

(i) The rate or amount of the commission shall not exceed the rate or amount prescribed in rules made under sub-section (6) of section 40.
(*ii*) The commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in the one way and partly in the other.

As per Rule 13 of the Company (Prospectus and Allotment of Securities) Rules, 2014 A company may pay commission to any person in connection with the subscription or

procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions, namely:-

(a) The payment of such commission shall be authorized in the company's articles of association;
(b) The commission may be paid out of proceeds of the issue or the profit of the company or both;
(c) The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;
(d) the prospectus of the company shall disclose –
    (i) the name of the underwriters;
    (ii) the rate and amount of the commission payable to the underwriter; and
    (iii) the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.

(e) there shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;
(f) a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

****

Specimen Underwriting Contract

An agreement made the…… day of…… 20…… between…… of…… (hereinafter called the underwriters) of the one part, and ……Ltd. whose registered office is situate at…… (hereinafter called the 'the company') of the other part:

Whereas the company is about to offer for public subscription as issue of…… shares of…… each in accordance with the terms of the draft prospectus a copy of which is annexed hereto, or with such modifications therein as may be mutually agreed upon between the company and the underwriters:

Now it is hereby agreed as follows:

1. If the said…… shares shall on or before the…… day of…… 20……. (or such latter date as shall be mutually agreed upon by the parties hereto not after than the…… day of…… 20…....) be offered by the company for subscription by the public at par on the terms of such prospectus as aforesaid, the underwriters shall on or before the closing of the subscription list apply at par for the said…… shares.

2. If on the closing of the lists under the said prospectus the said…… shares shall be allotted in respect of applications from the public the responsibility of the underwriters is to cease and no allotment is to be made under this agreement but if the said…… shares shall not be allotted to the public but any smaller number of such shares is so allotted, the undertaking of the underwriters is to stand for the difference between the said…… shares and the number of the shares allotted to the public.

3. The company shall pay to the underwriters in cash within…… days from the allotment of the said…… shares a commission at the rate of p.c. on the nominal value of the shares.

4. This agreement is to be irrevocable on the part of the underwriters and is to be sufficient in itself to authorise the company in the event of the underwriters not applying for the said…… shares to cause application to be made for such shares or any part thereof in the name and on behalf of the underwriters in accordance with the terms of the said prospectus and authorise the directors of the company to allot the said…… shares of the company or any part thereof to the underwriters (but subject to the provisions of this agreement) and in the event of the company causing an application to be made for such shares in the name of the underwriters, the underwriters shall hold the company and the said applicants harmless and indemnified in respect of such application.

Signed and delivered by within named Underwriter in presence of:

Witness - 1……..…….
Witness - 2……. Signature of Underwriter

Signed, sealed and delivered by within named company (purchaser)
(Name of the Company)
Through its Director
Shri……. Signature…….
In presence of:
Witness - 1…….
Witness - 2…….

****

Shareholders' agreements

- Shareholders' agreements (SHA) are quite common in business.
- In India shareholder's agreement have gained popularity and currency only lately with bloom in newer forms of businesses. There are numerous situations where such agreements are entered into – family companies, JV companies, venture capital investments, private equity investments, strategic alliances, and so on.

- Shareholders' agreement is a contractual arrangement between the shareholders of a company describing how the company should be operated and the defining inter-se shareholders' rights and obligations. shareholders' agreement.
- SHAs are the result of mutual understanding among the shareholders of a company to which, the company generally becomes a consenting party.
- Such agreements are specifically drafted to provide specific rights, impose definite restrictions over and above those provided by the Companies Act.
- A SHA creates personal obligation between the members signing such agreement however, such agreements do not become a regulation of the company in the way the provisions of Articles are.

Enforceability of the Shareholder's Agreement

- Though the international view is split but to a large extent courts are inclined towards favouring SHA as long as they are not found to be detrimental to the minority stakeholder's rights.
- In the leading case of *Russell* v. *Northern Bank Development Corporation Ltd*, the House of Lords found that though a company cannot deprive itself of its power to alter its constitution, the members of the company could agree in a shareholders' agreement as to how they will exercise their voting rights on a resolution to alter the articles/constitution.
- The US Courts have largely accepted shareholder agreements.
- While shareholders' agreements are enforceable in England regardless of whether they have been incorporated in the articles of association of the company, in India courts have either refused to recognize clauses in shareholders agreements or, even when consistent with company legislation, enforced such clauses only if they have been incorporated in the articles of association of the company.
- There is a series of rulings where the courts have upheld that in case of any conflict between the Articles and the SHA, the former will always prevail.

****

Specimen Shareholders Agreement

THIS AGREEMENT made the ____ day of _____, 2013 BETWEEN MR. A residing at _____ (hereinafter referred to as "A") (which expression shall, unless repugnant to the context or meaning hereof, mean and include his heirs, executors, administrators and assigns) of the First Part.

And

MR. B residing at _____(hereinafter referred to as "B") (which expression shall, unless repugnant to the context or meaning hereof, mean and include his heirs executors, administrators and assigns) of the Second Part.

And

_____ (P) LTD., a Company incorporated under the Companies Act, 2013 and having its registered office at _____ herein represented by its _____ (hereinafter referred to as "XYZ") which expression shall, unless repugnant to the context or meaning hereof, include its successors and assigns) of the Third Part;

WHEREAS:

(A) A and B hereto have agreed to jointly manage a company in India named "XYZ Pvt Ltd.";

(B) A and B have agreed to become Equity Partners by investing in the shares of the Company subject to the condition that they shall enter into a Shareholders Agreement in terms of these presents;

(C) The Company "XYZ PVT. LTD. " has been requested to, and has agreed to, join in the execution of these presents and to take this Agreement on record so that it is aware of the rights and obligations of A AND B, the parties hereto and ensure that they comply with the same;

(D) The parties hereto are desirous of recording the terms and conditions of their Agreement in writing;

NOW IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:-

1. (a) A and B shall jointly invest in the Company which is an existing company limited by shares under the Companies Act, 2013 and known as "XYZ PVT LTD".
   (b) The registered office of the Company shall be situate at _____, or at such other places as may be mutually agreed upon between the parties in writing.
   (c) The Company shall carry on the business of running and managing restaurants and (Description of the business and complete address), either by itself or through other agencies or company industries and may carry on any other business as may be decided by B hereto and shall ensure that no other business activity is undertaken by the Company at any time without the consent of A hereto.

2. The authorised share capital of the Company is Rs._____/- (Rupees _____ only) consisting of _____ (_____) equity shares of Rs.10/- (Rupees ten) each.

3. The subscription by A hereto to the aforesaid authorised share capital of the Company shall be 1,00,000 (One lakh) equity shares of Rs.10/- (Rupees ten only) and the subscription by B to the aforesaid authorised share capital of the Company shall be 1,00,000 (One lakh) equity shares of Rs.10/-(Rupees ten only).

4. There shall be no further issue of capital without the consent of both the parties hereto, and unless otherwise agreed upon in writing further investment shall be as mutually decided by both parties.

5. (a) The Board of Directors of the Company shall consist of A and B
(b) A shall have the right to nominate two (2) Additional Directors onto the Board and B shall have the right to nominate three or more Additional Directors on the Board. Both parties shall be entitled at any time to remove any of the representatives on the Board by written notice to the other party and to appoint another or other/s in their place.
(c) The day to day management of the Company shall be looked after by a Managing Director to be appointed with the consent of B hereto. Any major acquisition of property, substantial expansion of business activities or diversification or matters of policy shall be with the prior consent of B.
(d) It is agreed as between the parties hereto that the position of Chairperson of the Company shall be held by B or a nominee of B. The Chairman of the Board shall also be the Chairman of all general meetings of the Company.

6. A and B hereto jointly and severally shall vote and act as members of the Company and with respect to the shares of the Company held by them, so as to ensure that Directors of the Company are at all times appointed and maintained in office in conformity with the provisions of this Agreement. If at any time the provisions of this Agreement are not fully complied with, A and B jointly and severally agree to promptly take all necessary steps to ensure that the provisions of this Agreement hereof are fully implemented in letter and spirit.

7. (a) The Auditors of the Company shall be M/s._____.
(b) The Auditors of the Company shall not be changed without the prior written consent of both A and B.

8. Any sale or transfer of shares in the Company by either party shall be as provided in Clause 9. If at any time during the continuance of this Agreement either A or B, desire to sell or transfer all or any of their respective shares held by them in the Company, they shall do so strictly in accordance with the provisions hereinafter written.

9. If either A or B desires at any time to sell the whole or part of their shares in the Company, he shall first offer such shares in writing to the other. If the other does not accept

in writing the offer within 15 days of receipt of the offer, the first party shall then be at liberty within 30 days thereafter to sell the shares so offered to any other persons of its choice at the same price and on the same terms and conditions as contained in its written offer to the other party hereto in the first instance, failing which the procedure contained in this sub-clause will have to be repeated by a party desiring to sell his shares.

10. B will bring in further working capital to run an F & B Unit(s) at (Address of registered office). _____ Bank had advanced loans of about Rs. 1,10,00,000/-(Rupees One Crore Ten Lakhs Only) to XYZ which loans have to be repaid by them. B will be bringing further moneys upto Rs.___ (Rupees_____Only) to repay the loan. The Balance Rs. ____/- has been secured with the collateral security provided B. XYZ have entered into aManagement and Royalty Agreement with ———————— (P) Ltd., for the operation and management of the F & B unit(s) of XYZ and are entitled to receive their share of profit. A and B are equally entitled to this share of profit being equal shareholders of XYZ. It is hereby agreed that A shall not be entitled to a percentage of the profit which shall not exceed Rs. ———/-(Rupees _____ Only) per month from XYZ out of his share of profit subject to the terms contained herein and/or in any other document executed by him on behalf of XYZ. The balance money attributable to A shall be utilized to repay the loans and interest outstanding to _____ Bank, and the amount of Rs. _____ /- brought in by B and interest thereon, and towards the working capital brought in by B and interest thereon and any other loans of the XYZ.

This arrangement will continue till the entire sums (liabilities) together with the interest thereon have been repaid. However B will be entitled to withdraw the profit attributable to his share.

11. B will be entitled to interest at the rate of 12% per annum on the sums brought in by him or his Associates / concerns / businesses.

12. A and B agree and undertake not to disclose or divulge directly or indirectly to any third party any trade or business secret or other secret or confidential information pertaining to the business, affairs or transactions of each other or of the Company or of their clients or customers, that may have been disclosed, imparted to or acquired by either of them from the other or from the Company.

13. A and B jointly and severally undertake:-

(a) that they shall ensure that they, their representatives, proxies and agents representing them at general meetings of the shareholders of the Company shall at all times exercise their votes in such manner so as to comply with, and to fully and effectually implement, the provisions of this Agreement.

(b) that if any resolution is proposed contrary to the terms of this Agreement, the parties, their representatives, proxies and agents representing them shall vote against it. If for any reason such a resolution is passed, the parties will, if necessary, join together and convene an extraordinary, general meeting of the Company in pursuance of section 100 of the Companies Act, 2013 for implementing the terms of this Agreement.

14. A and B shall jointly and severally procure and/or ensure that the Director or Directors of its choice on the board of the Company shall at all times fully and effectually implement and comply with (including by exercise of voting rights at meetings of the Board or resolutions by circulation and on resolutions passed at a meeting of any Committee of the Directors) the provisions of this Agreement.

15. If either A or B shall commit a breach of any of the terms or provisions of this Agreement and shall fail to rectify such breach within Sixty (60) days from the receipt of written notice from the party complaining of the breach, then the latter shall be entitled, without prejudice to its other rights and remedies under this Agreement or at law, to terminate the Agreement recorded herein by written notice.

16. No modification of alteration of this Agreement or any of its terms or provisions shall be valid or binding on A and/or B unless made in writing duly signed by both.

17. This Agreement is personal to A and B and shall not be transferred or assigned in whole or in part by either party without the prior written consent of the other.

18. If any dispute or difference shall at any time arise between A and B as to any terms, provisions or matters contained herein on as to their respective rights, claims, duties or liabilities hereunder or otherwise, howsoever in relation to or arising out of or concerning this Agreement, such dispute or difference shall be referred to the arbitration. The venue of such arbitration shall be in Bangalore unless otherwise agreed in writing. Such arbitration shall be held under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

19. This Agreement represents the entire agreement between the parties hereto on the subject matter hereof and cancels and supersedes all prior agreements, arrangements or understandings, if any, whether oral or in writing, between the parties hereto on the subject matter hereof.

IN WITNESS WHEREOF the parties hereto have executed these presents the day and year first hereinabove written.

SIGNED AND DELIVERD by MR. A

in the presence of

.....

SIGNED AND DELIVERD by MR.B

in the presence of

.....

SIGNED AND DELIVERD for and on

behalf of XYZ

By its SHAREHOLDERS AND

AUTHORISED DIRECTORS

MR. A
MR. B
in the presence of
.....

****

Appointment of Managing Director

According to Section 2(54) of the Companies Act, 2013, "managing director" means "a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of directors is entrusted with substantial powers of management of the affairs of the company, and includes a director occupying the position of a managing director, by whatever name called."

While drafting a contract of appointment, the following points have to be taken care of:

- The person who is being appointed as managing director must be a director of the company; and
- He must be entrusted with substantial powers of management.
- Usually the articles of association of companies empower the Board of directors to appoint one or more of the directors as managing director(s) and fix their remuneration subject to the provisions of Sections 196, 197, 198, 199, 200 and other applicable provisions of the Act and Rules make thereunder.
- The Board of directors while appointing a director as managing director, critically examines the draft agreement prepared by the secretary for the appointment of the managing director and after having approved the same with or without any modification, authorizes one of its directors to sign and execute for and on behalf of the company, the agreement for the appointment of the managing director. It should, therefore, be made sure that the person executing the agreement on behalf of the company is duly authorized by the Board of directors in this regard.

Being an agreement, such a contract must have all the other essential ingredients of a contract under the Indian Contract Act, 1872, namely,

(i) free consent of parties;
(ii) competence to contract;
(iii) for a lawful consideration;
(iv) with a lawful object; and
(v) are not expressly declared to be void in the Act (Section 10).

Section 11 of the Contract Act lays down that "every person is competent to contract who is of the age of majority, according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject."

Section 12 of the said Act provides that a person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgement as to its effect upon his interests. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

According to Section 14 of the Contract Act, consent is said to be free when it is not caused by –

– coercion;
– undue influence;
– fraud;
– misrepresentation; or
– mistake**.**

****

Specimen Agreement of Service as a Managing Director / Manager

AN AGREEMENT made this…….. day of…….. between…….. Ltd., a company incorporated under the Companies Act, 2013 and having its Registered Office at……., (hereinafter referred to as the Company, which expression shall, unless repugnant to the context or contrary to the meaning thereof include its legal representatives) of the one part and Mr……., son of Mr……., resident of…….. (hereinafter called the manager) of the other part.

WHEREAS the company intends to appoint a Manager and Mr……., has been considered as a suitable and competent person for the said post;

AND WHEREAS the said Mr…….. has agreed to accept his appointment as the Manager of the Company.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. The said Mr…….. is hereby appointed on the terms and conditions hereinafter provided, as the Manager of the Company for a term of five years commencing…….. on a monthly remuneration of Rs. ... subject to the approval of his appointment by the Central Government under Section 203 of the Companies Act, 2013 and also subject to the approval of his remuneration by the Central Government pursuant to the provisions of the Act.

2. The Manager shall be entitled to other pecuniary benefits which are enjoyable by other employees of the company.
3. The Manager shall be paid travelling allowance for the tours he makes in connection with the, business of the company to perform his duties or to carry out the directions of the Board of Directors of the company.
4. The Manager shall be entitled to bonus in accordance with the provisions of the law.
5. The Manager shall be entitled to annual increment of his remuneration at the rate of Rs…… per annum.
6. The Manager shall be on probation for a period of six months. If his work is found satisfactory, his appointment shall continue for a full term of five years including the period of probation.
7. Either the company or the Manager shall be entitled to terminate this agreement by, giving the other, notice in writing of sixty days but the company may terminate this agreement by paying two months' remuneration to the Manager in lieu of the notice.
8. If the Manager dies during his continuance of service, his salary, remuneration, bonuses, allowances etc. for the current financial year shall be paid to his heirs, legal representatives, executors, administrators in a rateable proportion of what he would have received if he had lived and had continued in the service of the company for the whole of that year.
9. The Manager shall not be entitled to make any claim for damages against the company other than liquidated damages, if his services are determined on account of a reconstruction or amalgamation whether by the winding up of the company or otherwise before the expiration of this agreement.
10. The Manager shall devote the whole of his time and attention to the business of the company during the term of his service with the company and shall work with due diligence and using his abilities to his best. He shall comply with the directions issued by the Board of Directors of the company from time to time. He shall obey the orders issued by the Board of Directors. He shall do his best to promote the interest of the company and shall faithfully serve the company.
11. The Manager shall perform the duties towards the company and exercise the powers assigned to or vested in him by the Articles of Association of the company or by the Board of Directors of the company.
12. The Manager shall not disclose during the term of his service any information obtained by him in relation to the business of the company while attending to his duties and discharging his functions or exercising his powers as the Manager even to such employees of the company as have no concern with the information or to any person not connected with the company.
13. The Manager shall be bound not to do himself or participate or associate in any capacity with others in doing the business in which the company is engaged during the period of his employment with the company and for a period of six years after he has left the services of the company.
14. The Manager shall never make use of the working process used by the company even after he has left the services of the company and he shall not employ any invention relating to the business of the company either made by him during the period of his employment in the company or invention relating to the business of the company made by other employees of the company at any time.

IN WITNESS WHEREOF the parties hereto have set their hands on the day, month and year above written.

Witnesses: For…….. Ltd.
1.

2. Manager

****

Contract of Appointment with Secretary

- The position of Secretary in a company is a very important one.
- He is the person who acts as liaison between the Board of Directors and the shareholders on the one hand, with the Departmental Division heads and with the world at large on the other hand.
- Every information from various departments, divisions, branches, executives, departmental heads, shareholders, creditors, debtors, bankers, financial institutions, Government departments and others concerned with the company converges in his office.
- He gathers all the information, arranges it in a useful manner, furnishes it with explanations etc. on the company's long-term policies and short-term plans as formulated by the Board of directors to the concerned persons.
- He collects, arranges and presents the desired/required information to the Board on the progress in the implementation of the various decisions of the Board so that whenever and wherever some corrective or preventive actions are to be taken, the same be taken in time by the Board.
- The Company Secretary is expected to be expert in all the aspects of corporate management viz., Company Law and Practice Income-tax Law and Practice, Excise, Sales tax, Import and Export and Industrial Licensing Law and Practice, various types of insurance-covers, Patents, Trade Marks, Design and Copyright Law and procedure, Industrial Law, Shops and Commercial Establishments Law and Essential Commodities Act and the Orders issued thereunder, drafting of various corporate documents, reports etc. and, accounts, audit, banking and finance.

Appointment

- The appointment of a Company Secretary is done by the Board of Directors and he functions at the pleasure of the Board.
- He acts under the Board's instructions but at the same time he is adviser to the Board in all corporate matters.
- Therefore, the relationship between the Board and the Company Secretary has to be very cordial and there must be perfect understanding between the two, particularly with the Chairman/Managing director, executive director and other Chief Executive Officers.
- Usually the appointment of a Company Secretary is made by an appointment letter signed and issued by the Chief Executive Officer, who may be the managing director, executive director, whole-time director etc. under specific authority of the Board.

- This letter is an offer by the company to the prospective Company Secretary and when he accepts the same it become a binding contract between him and the company and their relationship is governed by the terms and conditions thereof.
- "Secretary", according to Section 2(45) of the Companies Act, 1956 means any individual possessing the prescribed qualifications appointed to perform the duties which may be performed by a secretary under the Act and any other ministerial or administrative duties.

****

A Specimen of the Letter of Offer to the Prospective Company Secretary

Name and Address of the company.
Ref. No. Date:
Mr…….……...
……..……..

Dear Sir,

I have been directed to advise you that the Board of Directors of the company have decided to appoint you as Secretary of the company and the said assignment is hereby offered to you. You are requested to join the service of the company on or before…….. and contact the undersigned so that you may be introduced to the concerned persons before you start functioning.

1. You will be considered to have been appointed with effect from the day you actually join duty.
2. The company shall pay to you a monthly basic salary of Rs……. in the time scale of pay of Rs…… with other allowances as are applicable to other employees of the company in the same time scale of pay,
3. You will enjoy other benefits like the medical expenses reimbursement, leave travel allowance, bonus etc. as may be permissible under the company's service rules.
4. You shall be allowed casual leave/sick leave/festival holidays, weekly off days and earned leave as per rules of the company.
5. You will be on probation for a period of six months and on your services during the said probation period being found satisfactory the Board of Directors may consider you for confirmation in the said post.
6. During the period of your probation, your services may be terminated by the company without any notice and you may also leave the service of the company at twenty-four hours' notice. On confirmation, however, the contract of' employment may be terminated by either party by giving the other, thirty days' written notice or paying thirty days' salary in lieu thereof.
7. The company may terminate your services even after confirmation without giving you any notice if you are found by the Board of Directors of the company not performing your assigned duties and your statutory duties properly and to the satisfaction of the Board.

8. As Company Secretary you shall be exclusively responsible: (a) for complying with all the provisions of the Companies Act and the various Rules framed thereunder; (b) maintaining all the statutory and non-statutory essential registers, books, files, records, papers etc.; (c) preparing and filing with the Registrar of Companies and other concerned authorities the required reports, returns, documents, papers etc. complete in all respects and within the prescribed periods of time; and (d) for carrying out the instructions, directions and advice of the Board of Directors of the company given to you from time to time.
9. You shall devote your whole time and attention to the work of the company during your tenure as Company Secretary and shall work with due diligence and using your abilities to your best. You shall obey the orders of the Board of Directors of the company. You shall do your best to promote the interest of the company and shall faithfully serve the company.
10. You shall not disclose to any unauthorized person during your employment as Secretary of the company an information obtained by you in relation to the business and corporate policies of the company with special reference to the company's policy regarding the issue of rights shares, bonus shares, time and quantum of payment and/or declaration and payment of dividends from time to time.

Please convey your acceptance of the offer and the terms and conditions attached thereto by signing the carbon copy of this letter and returning the same to the company within a period of seven days from the receipt hereof.

Thanking you.
Yours truly
For……..Ltd.
(……..……..)
Managing Director

I accept the above offer of the post of Company Secretary with all the terms and conditions attached thereto and shall join on……..
(……..……..)
Company Secretary

****

DEEDS OF AMALGAMATION OF COMPANIES: TRANSFER OF UNDERTAKINGS

- An amalgamation may be defined as an arrangement whereby the assets of two companies become vested in, or under the control of one company, which may or may not be one of the original two companies.
- Such a company has as its shareholders all, or substantially all, the shareholders of the two companies.
- An amalgamation is effected by the shareholders of one or both of the amalgamation companies exchanging their shares either voluntarily or as a result of operation of law, for shares in the other or a third company.
- The arrangement is frequently effected by means of a take-over offer by one of the companies for the shares of the other, or of a take-over offer by a third company for the shares of both.

Specimen Agreement between two Companies to Amalgamate by Sale of one to the other

AN AGREEMENT made this…….. day of…….. between…….. Ltd., a company incorporated under the Companies Act, 2013 and having its Registered Office at…….. (hereinafter referred to as the "Vendor", which expression shall, unless repugnant to the context or contrary to the meaning thereof, include its successors and assigns) to the one part and…….. Ltd., a company incorporated under the Companies Act, 2013 and having its Registered Office at…….. (hereinafter referred to as "the company", which term shall, unless repugnant to the context or contrary to the meaning thereof, include its successors or assigns) of the other part.

WHEREAS the vendor was incorporated in the year…….. with an authorised share capital of Rs. ten lakhs divided into one lakh Equity Shares of Rs. ten each and its Memorandum of Association contains a provision that the company shall have the power to sell, transfer or otherwise dispose of the whole or any part of the business and undertaking of the vendor company and to accept in consideration, cash or shares or debentures or debenture stock or other securities of any other company and to distribute among the members in specie or otherwise any surplus assets remaining in the winding-up of the vendor company.

AND WHEREAS the company was incorporated under the Companies Act, 2013 in the year…….. with an authorised share capital of Rs. fifty lakhs divided into five lakh Equity Shares of Rs. ten each and its Memorandum of Association contains a provision that the company may acquire by purchase or otherwise the business and undertaking, in part or whole of any other company or companies having any of the purposes or objects same or similar to those of the company.

IT IS HEREBY AGREED AS FOLLOWS:

1. The vendor shall sell and the company shall purchase the whole of the business undertaking, assets and property of the vendor, benefits of all securities which shall include cheques and bills given to the vendor from time to time in consideration or payment thereof, benefits of subsisting contracts, and debts due to the vendor relating to the business of the vendor as a running concern from the day of…….. The said purchase shall not include the uncalled capital of the vendor.
2. Up to the aforesaid date for the aforesaid purchase the vendor shall continue to carry on the business for the benefit of the company.
3. From the aforesaid date of the aforesaid purchase the company shall be liable for all the debts and liabilities of the vendor and shall be liable to perform all its engagements. The vendor shall be indemnified by the company against all claims and demands. The company shall defend all actions and proceedings against the vendor who shall also be indemnified in respect of such actions and proceedings.
4. The company shall pay to the vendor Rs. seven lakhs as consideration for the aforesaid purchase and out of the aforesaid consideration Rs. five lakhs shall be paid in cash and the balance of Rs. two lakhs shall be paid to the vendor by allotment of twenty thousand Equity Shares of Rs. ten each in the capital of the company credited as fully paid-up shares. For the allotment of the aforesaid shares, the vendor has conveyed its acceptance, vide its letter No…….. dated……..
5. The company shall create and issue five lakh Equity Share of Rs. ten each to increase its shares capital as aforesaid and for the same purpose the company shall pass a resolution in accordance with the Articles of Association of the company and in accordance with the provisions of the Companies Act, 1956.
6. The title deeds to all the immoveable and other properties of the vendor and an abstract of all the properties of the vendor, the sale of which is hereby agreed shall be handed over to the company within thirty days from this day…….. of…….. The company shall accept the same titles sufficient in all respects.
7. On the…….. day of……., the vendor shall be paid Rs. five lakhs in cash and shall be delivered the certificates showing that the company shall have allotted twenty thousand Equity Shares of Rs. 10 each fully paid-up of the share capital of the company.
8. Thereupon, the purchase shall be deemed to have been completed and the vendor shall execute necessary documents and do all things and give assurance as may be necessary and reasonable for the vesting of all the properties, the subject matter of the aforesaid purchase by the company.

IN WITNESS WHEREOF the parties hereto have set their hands and seals.

Signatures and seals of the parties.

****

COMPROMISE, ARRANGEMENTS AND SETTLEMENT

- Section 391 of the Companies Act, 1956 deals with the right of companies to enter into a compromise or arrangement:
    - between itself and its creditors or any class of them,
    - between itself and its members or any class of them.

- Compromise means a settlement of differences by mutual concessions; an agreement by adjustment of conflicting or opposing claims by reciprocal modification of demands.
- Arrangement denotes a final settlement; adjustment by agreement. This compromise or arrangement covers restructuring, merger, demerger by a company.
- The word 'arrangement' has a very wide meaning, and is wider than the word 'compromise'.
- There can be no compromise unless there is first a dispute but a scheme which is not a compromise may nonetheless be an arrangement within section 391.
- The aim of the section is to enable a scheme to be carried out which otherwise could not be effected because of the absence of provisions for varying rights attached to shares or because of the necessary consents.

AMALGAMATION

- Section 394 of the Companies Act, 1956 deals with the provisions for facilitating reconstruction and amalgamation of companies.
- Amalgamation is a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company becoming substantially the shareholders in the company which is to carry on the blended undertakings.
- There may be amalgamation either by the transfer of two or more undertakings to a new company, or by the transfer of one or more undertakings to an existing company.
- The transferor-company merges into or integrates with transferee-company. The former loses its entity.

****

Specimen Scheme of Amalgamation

THIS SCHEME OF AMALGAMATION is presented for the amalgamation of A Ltd., with B Ltd., pursuant to the relevant provision of the Companies Act, 1956.

1. The authorised share capital of A Ltd. is one crore Rupees divided into ten lakh Equity Shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of A Ltd. is eighty lakh rupees divided into eighty, thousand Equity Shares of Rs. 10/- each.
2. The authorised share capital of B Ltd. is ten crore rupees divided into one crore Equity Shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of B Ltd. is eight crore rupees divided into eighty lakh Equity Shares of Rs. 10/- each.

3. With effect from the 1st of July, 2007 (hereinafter called "the Appointed Date"), the properties, investments, rights and assets of every kind of A Ltd. (hereinafter called "the said assets"), without further acts or deeds, be transferred to and vested in and/or deemed to be transferred to and vested in B Ltd. pursuant to Court Order under Section 394 of the Companies Act, 1956.
4. With effect from the Appointed Date, all deeds, liabilities and obligations (hereinafter referred to as "the said liabilities") of A. Ltd., shall, without further acts or deeds, also be transferred to or deemed to have been transferred to B Ltd. so as to become the debts, liabilities and obligations of B Ltd.
5. With effect from the Appointed Date, A Ltd. shall be deemed to have been holding, and shall hold the said assets for and on account of B Ltd. until the Effective Date. A Ltd., hereby undertakes to hold the said assets with utmost prudence until the Effective Date.
6. Between the. Appointed Date and the Effective Date, A Ltd. shall not without the concurrence of B Ltd., alienate charge or otherwise deal with any of the said assets, except in the ordinary course of business.
7. Subject to the provisions of Clause 13 hereof as regards payment of dividend, income accruing to A Ltd. or losses or expenditure arising or incurred by it after the Appointment Date up to the Effective Date shall, for all purposes, be treated as income or losses or expenditure, as the case may be, of B Ltd.
8. Subject to the other provisions of this Scheme, all contracts, deeds, agreements and other instruments to which A Ltd. is a party, subsisting and operative immediately on or before the Effective Date shall be in full force and effect against or in favour of B Ltd., as the case may be, and may be enforced as fully and effectively by it instead of A Ltd. as if B Ltd. had been party thereto.
9. All actions and proceedings by or against A Ltd. pending on the Effective Date shall be continued and enforced and be enforced by or against B Ltd.
10. The transfer of the said assets and the said liabilities of A Ltd. under clauses 4 and 5 hereof to B Ltd. and the continuance of all contracts and proceedings by or against B Ltd. under clause 9 and 10 shall not affect any contracts or proceedings relating to the said assets already concluded by A Ltd. on or after the Appointed Date to the intent that B Ltd. accepts and adopts a acts, deeds, matters and things done and/or executed by A Ltd. in regard thereto as having been done or executed on behalf of B Ltd.
11. Upon the scheme of amalgamation becoming effective in consideration of the transfer in favour of B Ltd. under the foregoing clauses of the said assets of A Ltd., B Ltd., shall, without further application, issue and allot to every shareholder of A Ltd., 80 fully paid Equity Shares of Rs, 10/- each of B Ltd., for 100 fully paid Equity Shares of Rs. 10/- each of A Ltd.
12. The Equity Shares of B Ltd. to be issued and allotted to the shareholders of A Ltd. shall rank pari passu in all respects with the existing Equity Shares of B Ltd. including entitlement to dividend in respect of all dividend declared after the Effective Date. B Ltd. and A Ltd. shall be entitled to declare and pay dividends prior to the Effective Date in respect of their current earnings up to the Effective Date.
13. Until the Effective Date, neither A Ltd. nor B. Ltd. shall issue or allot any Rights Shares or Bonus Shares out of their respective Share Capital for the time being.
14. A Ltd. shall, with all reasonable despatch, apply to the High Court of Judicature at…….., and B Ltd., shall also with reasonable despatch, apply to the High Court

of Judicature at…….. for orders sanctioning the scheme of amalgamation under Section 391 of the Companies Act, 1956 for carrying this scheme into effect and for dissolution without winding up of A Ltd.

15. All subsisting agreements of A Ltd. relating to use of trade marks, patents, designs of copy rights and/or technology shall accrue for the benefit of B Ltd., and proper documentation will be entered into for this purpose.
16. On this scheme finally taking effect as aforesaid—
    - all employees of A Ltd. will become employees of B Ltd. with effect from the Effective Date without any break or interruption in service, and on their existing terms and conditions of services;
    - the undertaking of A Ltd. will continue to function as a "Department A" of B Ltd. and all agreements entered into by A Ltd. with its bankers, distributors, stockists, agents shall continue to be in full force and effect and may be enforced as fully and effectively by B Ltd. instead of A Ltd. as if B Ltd. had been a party thereto. Likewise, the trusts created by A Ltd. for payment of provident fund, superannuation, gratuity etc. will continue to operate in favour of the employees of the "Department A".

This scheme is conditional on and subject to the requisite sanction or approval of the appropriate authorities.

****

SLUMP SALE AGREEMENT

- Slump sale is one of the widely used ways of business acquisitions In simple words, 'slump sale' is nothing but transfer of a whole or part of business concern as a going concern; lock, stock and barrel.
- The concept of 'slump sale' was incorporated in the Income Tax Act, 1961 ("IT Act") by the Finance Act, 1999 with the inclusion of section 2(42C).
- The term 'slump sale' is defined as transfer of one or more undertakings as a result of the sale for a lump-sum consideration without values being assigned to the individual assets and liabilities in such sales.
- For looking at the meaning of word 'undertaking' resort has to be made to Explanation 1 to section 2(19AA).
- Section 2(19AA) defines "demerger" in relation to companies. Explanation 1 to Section 2(19AA) defines "undertaking" to be any part of an undertaking or a unit or division of an undertaking or a business activity taken as a whole but does not include individual assets or liabilities. As per definition of 'undertaking' even any part/ division of an undertaking or business activity as a whole can be considered.
- Explanation 2 to S. 2(42C) clarifies that the determination of value of an asset or liability for the payment of stamp duty, registration fees, similar taxes, etc. shall not be regarded as assignment of values to individual assets and liabilities.
- Thus, if value is assigned to land for stamp duty purposes, the transaction will not cease to be a slump sale.
- The basic condition to be satisfied to qualify as a slump sale is that the transaction relating to transfer of business should be a transfer of undertaking and not transfer of individual assets and liabilities consisting of the business activity.
- This has been expressly provided in the Explanation 1 to Section 2(19AA) stated above.
- In case of transfer of individual assets and liabilities consisting of the business activity, the same would not imply transfer of undertaking [*Duchem Laboratories Ltd*. v. *ACIT, ITA No. 3332/Mum/2004 June 12, 2009*].
- Given the high figures involved in such transactions, taxation is one of the key elements of consideration for both the buyer as well as the seller.
- With increase in slump sale deals, several rulings and judicial precedents have emerged over the years.
- The following is an illustrative list of cases *where sale of an undertaking was held to be a slump sale* :
    - Land development business — *CIT v. Mugneeram Bangur & Co.,*
    - Sale of cement unit, which was transferred as a functional productive unit — *Coromandel Fertilisers v.DCIT*
    - Sale of branch — *CIT v. Narkeshari Prakashan Ltd.*

Slump sale is carried out through following steps:

1. Find Buyer: The seller has to find the potential buyers.

Before opting for slump sale there are various issues that needs to be analyzed especially the impact of capital gain tax to the seller and stamp duty to the buyer in the light of business strategies.

Short listing of buyer: The buyer or transferee companies needs to be shortlisted by refining the business and tax objectives.

Primary Valuation: This valuation enables the seller to get a better idea about value of the business to be sold.

Analyse and Finalise buyer: Analysis of shortlisted buyer should consider objective of the deal, cost and time required for execution and structure of the deal. This helps to get a better idea about the deal before finalization.

2. Sign MoU/Term sheet: Once the buyer company is selected, there is need to sign MoU [Memorandum of Understanding] which helps the buyer company to get access to seller entities information for making due diligence, valuation etc.

3. Make Valuation: Valuation is a process of determining the value of assets and liabilities of business. It is one of the most important aspects of slump sale process, as seller wants maximum valuation for its business whereas buyer wants it at lowest end. Valuation of business is mandatory for listed company.

4. Deal Structuring: A deal should be structured considering agreement between buyer and seller. It should be time, cost and compliance effective. While structuring a deal following factors must be taken into consideration:

Objective of the deal: This includes the core objective set for deal of slump sale. While structuring the deal it must be taken into consideration that objective is getting achieved fully. As post deal factors such as ownership and control, financial impact depends on structuring of the deal.

Transaction cost: Transaction cost under slump sale majorly involve capital gain tax to the seller, stamp duty tax to the buyer and withdrawal of exemption deduction, and allowances, and apart form these professional fees to the consultants. Transaction costs involved in slump sale can go upto 5-10% of deal size.

Discharge of consideration: Lump sum consideration may be discharged by payment in cash or by way of issue of debentures and or both. Consideration being imperative aspect of slump sale should be discharged by taking in to consideration future financial, legal and strategic impact on transacting companies.

5. Slump sale agreement: Deal needs to be executed through agreement, capturing all slump sale clauses, effecting objectives predetermined and executed by both parties. The executed agreement needs to be registered as per applicable Stamp Act.

****

PLEADINGS

The person who files the plaint / petition in the court is known as petitioner / plaintiff……
Against whom the petition is filed is knows as defendant / respondent

After that defendant, files his reply to the petition filed by the petitioner…….the reply filed by defendant is known as WRITTEN STATEMENT

After the defendant has filed the written statement, court may allow the petitioner to filed his reply on the written statement filed by the defendant. The reply or written statement filed by the petitioner is known has rejoiner / replication

PLEADINGS

- Pleadings generally mean either a plaint or a written statement.
- The main objective behind formulating the rules of pleadings is to find out and narrow down the controversy between the parties.
- Provisions relating to pleadings in civil cases are meant to give each side intimation of the case of the other so that it may be met to enable courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular cause of action must take
- The whole object of pleading is that each side may be fully alive to the questions that are about to be argued in order that they may have an opportunity of brining forward such evidence as may be appropriate (**Lakshmi Narayan v. State of Bihar**).

Odgers in his "Pleading and Practice" observes:
The defendant is entitled to know what it is that the plaintiff alleges against him; the plaintiff in his turn is entitled to know what defence will be raised in answer to his claim.

The defendant may dispute every statement made by the plaintiff, or he may be prepared to prove other facts which put a different complexion on the case. He may rely on a point of law, or raise a cross claim of his own.

The object of the pleadings is three fold. They are

a. to define the issues involved between the parties;
b. to provide an opportunity to the opposite party or other side to met up the particular allegation raised against him or her, and
c. to enable the Court to adjudicate the real issue involved between the parties.

The English law of pleadings has got four fundamental rules of pleading upon which Order 6 of the Code of Civil Procedure is based which are set out as under:

1. Every pleading must state facts and not law.

2. It must state all material facts and material facts only.
3. It must state only the facts on which the party's pleading relies and not the evidence by which they are to be proved; and
4. It must state such facts concisely, but precision and certainty.

- Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively each allegation being, so far as is convenient, contained in a separate paragraph.
- Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

"The pleadings are not to be considered as constituting a game of skill between the advocates. The ought to be so framed as not only to assist the party in the statement of his case but the court in its investigation of the truth between the litigants".

The pleading shall contain
(i) facts only, then again, material facts;
(ii) not law;
(iii) not evidence; and
(iv) immaterial facts to be discarded.
(v) deficiency in pleading.

Facts and not Law:

- One of the fundamental rules of pleadings embodied in Order VI Rule 2 is that a pleading shall contain and contain only a statement of facts and not law.
- The duty of the pleader is to set out the facts upon which he relies and not the legal inferences to be drawn from them.
- And it is for the judge to draw such inferences from those facts as are permissible under the law of which he is bound to take judicial notice.
- A judge is bound to apply the correct law and draw correct legal inferences and facts, even if the party has been foolish to make a written statement about the law applicable of those facts.
- If a plaintiff asserts a right in him without showing on what facts his claim of right is funded or asserts that defendant is indebted to him or owes him a duty without alleging the facts out of which indebtedness or duty arises, his pleading is bad.

The rule that every pleading must state facts and not law is subject to the following exceptions:

i. Foreign Law
ii. Customs
iii. Mixed question of law and fact
iv. Legal Pleas
v. Inferences of law

Material Facts

The second fundamental rule of pleading is therefore, that every pleading shall contain and contain only, a statement of the material fact as on which the party pleading relies for his claim or defence. This rule is embodied in Order VI Rule 2 and it requires that:

I. The party pleading must plead all material facts on which he intends to rely for his claim or defence as the case may be; and
II. He must plead material facts only, and that no fact which is not material should be pleaded, nor should the party plead evidence, nor the law of which a Court may take a judicial notice.

What are material facts?
Facts which gave the plaintiff his cause of action or the defendant his defence are, briefly speaking, material facts which he must prove or fail.

It, therefore, stands to reason that facts which are not required to support the plaintiffs or the defendant's case are not material. Whether a fact is material or not depends on the facts and circumstances of each case and can be held so or otherwise only in the context of relevant situation.

Whether a particular fact is material or not will depend upon the circumstances of the case. A fact may not appear to be material at the initial stage but it may turn out to be material at the time of the trial.

Thus if a party is not able to decide whether a fact is material or not, or it he entertains a reasonable double as to the materiality of a particular fact, it would be better to include than to exclude, be better to include than to exclude, because if a party omits to state or plead any material fact, he will not be permitted to adduce evidence to prove such a fact at the trial unless the pleading is amended under Order VI Rule 17.

The general rule is that a party cannot prove a fact which he has pleaded.

Material facts: A pleadings shall contain only material facts. Material facts are the entirety of facts which would be necessary to prove to succeed in the suit. Any fact which is not material should be avoided.

Slackness in pleadings is unfair both to the court in which they are filed and also to the litigants. Material facts should be pleaded concisely. There is hardly any scope for showing literary genius in a pleading.

Absence of material facts will put the party to discomfiture, for no amount of evidence can be taken into consideration or regarded as sufficient in proof of any fact if specific mention of it is not made in the pleadings.

Therefore, if a party omits to state a material fact, he will not be allowed to give evidence of the fact at the trial unless the pleading is amended under O. 6, R. 17, C.P.C. The rule is based mainly on principles that no party should be prejudiced by change in the case

introduced by this method. No relief can be granted on facts and documents not disclosed in the plaint.

Example of Facts not Material

- In a suit on a promissory note, it is not material to state that the plaintiff requested the defendant to make the payment and he refused, because no demand is necessary when the promissory note becomes due and it is payable immediately.
- Similarly in a suit for recovery of money for the goods sold, it is not material to state that the goods belonged to the plaintiff or that the goods were sold to the defendant on the belief that he would honestly make the payment.

Immaterial facts to be discarded: Unnecessary details are the facts which are not material and, therefore, should be discarded.

Not law: In a pleading, there is no scope of pleading a provision of law or conclusion of law. It is the intention of the framers of the Code that a pleading should state facts, and the position as in law shall be inferred if such facts are capable of raising any legal inference. The pleading should present facts in such a way that those would irresistibly and spontaneously draw a legal inference.

Herein lies the art of pleading. To find out the law is the duty of the court. Legal effects are not to be stated by the party. In India, as in England, the duty of a pleader is to set out the facts upon which he relies and not the legal inference to be drawn from them. Likewise the conclusion of law or a mixed question of law and fact should not be pleaded.

Not evidence:

The third fundamental rule of pleadings is that only facts must be stated and not the evidence there of there is a tendency among the litigants to mix up the bare facts with the facts which are in realty the evidence.

At the stage of pleading, the court and the opposite party should be supplied with the facts and such contentions on which the claim is founded; the plaintiff must keep the facts in evidence for a later stage of evidence.

Order VI Rule 2 of C.P.C. enjoins that every pleading shall contain a statement of the material facts on which the party pleading relies for his claim or defence but not the evidence by which they are to be proved.

In like manner evidence has to be avoided in pleadings. We have noticed the wording of the rule of O. 6, R. 2 to wit, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence as the case may be but not the evidence by which they are to be proved. A pleading should not contain facts which are merely evidence to prove the material facts.

Facts to be stated concisely and precisely: Order VI Rule 2 enjoins that every pleading must state the material facts concisely, but with precision and certainty. This rule is that the

material rule is that the material facts should be stated in the pleading in a concise form but with precision and certainty the pleading shall be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figure.

Deficiency in pleading: Parties are related to each other and know everything. No element of surprise has been caused to the other party. Parties understood the case and led evidence accordingly. Deficiency in pleading would not affect case of the plaintiff [*Kailash Chandra* v. *Vinod*, AIR 1994 NOC 267 (MP)].

****

The following points should be kept in mind while drafting a pleading: -

a) The names of persons and places should be accurately given and correctly spelt; spellings adopted at one place should be followed throughout the pleading.
b) Facts should be stated in active and not in the passive voice omitting the nominative.
c) All circumstances and paraphrases should be avoided.
d) 'Terse', 'Short', 'Blunt' sentences should be used as far as possible. All 'its' and 'buts' should be avoided.
e) Pronouns like "he" "she" or "that" should be avoided if possible. Anyway such pronouns when used should clearly denote the person or the thing to which such pronouns refer.
f) The plaintiff and the defendant should be referred not only by their names. It is better to use the word "plaintiff" or "defendant".
g) Things should be mentioned by their correct names and the description of such things should be adhered to throughout.
h) Where an action is founded on some statute, the exact language of the statute should be used.
i) In any pleading, the use of "if", "but" and "that" should be, as far as possible, avoided. Such words tend to take away the "certainty" and can cause ambiguity.
j) Necessary particulars of all facts should be given in the pleading. If such particulars are quite lengthy, then they can be given in the attached schedule, and a clear reference made in the pleading. Repetitions should be avoided in pleadings.
k) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph (Order VI Rule 2).
l) The division of the pleading into paragraphs should be so done as to endure that each paragraph deals with one fact. At the same time, the entire pleading should appear a running and will knit matter, must not look like isolated fact placed together. Inter-relations ships of paragraphs must seem to exist. To factor that should keep in mind is the strict chronological order.
m) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

Pleading must be Signed:

Order VI Rule 14 makes it obligatory that the pleading shall be signed by the party and his pleader (if any). Provided that where a party pleading is, by reason of absence or for other

good cause, unable to sign the pleading it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

Verification of Pleading:

Order VI Rule 15, states every pleading shall be verified at the foot by the by any of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. The person verifying shall specify, by reference to the numbered paragraphs of the pleading what he verifies of his own knowledge and what he verified upon on received and believed to be true

Applications and Petitions

According to their dictionary meanings "applications" and "petitions" are inter changeable terms. But in practice, the expression, "petitions" is normally used to indicate formal applications for seeking a remedy provided by law.

Drafting and Contents of Applications/Petitions

- The general rule of drafting in respect of all the applications and petitions is that they should contain all the particulars required to be alleged by law giving the material facts in support of them.
- They should be precise as well as concise and should not contain any irrelevant matter.
- They should be drafted after looking into the provisions of law so that no relevant detail is omitted.
- In cases where the law does not specify any particulars, the counsel should first find out from the statute what facts he is required to establish.
- As far as possible the grounds on which the application is based should be stated in the words of statute under which the application is made.
- It will not be advisable to use a different language or substitute words used in any provision, though the meaning may be the same.
- A few applications are also required to be verified or supported by an affidavit, or both, so no mistake in this behalf should be committed.
- Every application should contain the name of the court, the number and cause title of the suit or other proceeding, followed by the names of applicant and opposite party and the provision of law under which it is made.

While drafting a petition/application, it should be borne in mind that the pleadings therein should contain:

- facts only, then again material facts;
- not law;
- not evidence; and
- immaterial facts to be discarded.

Thus, while drafting a petition/application, one should ensure that only material facts are incorporated. Material facts are the entirety of facts which would be necessary to prove to succeed in the case. These facts should be pleaded concisely. There is no scope of pleading

a provision of law or conclusion of law. To find out law is the duty of the court. The facts should be presented in such a way that those would irresistibly and spontaneously draw a legal inference. In the like manner facts which are merely evidence to prove the material facts should be avoided and lastly unnecessary details which are immaterial should be discarded.

****

PLEADING CIVIL

1. **Classes of Civil Courts:** Besides the Supreme Court, High Courts there are Civil Courts at District level. Highest among them is Court of District Judge, followed by Additional District Judges. The lower Civil Courts are divided in two forms e.g., one by territorial limits and secondarily pecuniary limit. The territorial limit is by jurisdiction of the court and by pecuniary limit it is divided into Civil Judge (Senior Division), Civil Judge (Junior Division) and Small Cause Court. When a suit is filed, if it is of civil in nature, it is filed by a complaint which is submitted to computerized filing centre of a District.

PLAINT: Particulars to be contained in plaint provided under order VII, Rule 1. According to this rule the plaint shall contain the following particulars:

(a) The name of the Court in which the suit is brought;
(b) The name, description and place of residence of the plaintiff;
(c) The name, description and place of residence of the defendant, so far as they can be ascertained;
(d) Where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
(e) The facts constituting the cause of action and when it arose;
(f) The facts showing that the Court has jurisdiction;
(g) The relief which the plaintiff claims;
(h) Where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and
(i) A statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.

2. **In money suits**: Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed:

   But where the plaintiff sue for manse profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant or for movables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate, the plaint shall state approximately the amount or value sued for.

3. **Where the subject-matter of the suit is immovable property**: where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

4. **When plaintiff sues as representative**: Where the plaintiff sues in a representative character the plaint shall show not only that he has an actual existing interest in the subject- matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.

PLAINT STRUCTURE

1. **Heading and Title**: Name of the court in which the suit is filed indicated at the top of the first page. Heading of the plaint means the court in which the suit is instituted. Therefore the name of the court has to come on the top of the plaint (Order VII, Rule 1(a)). If a court has various jurisdictions, the specific jurisdiction in which the suit is being instituted should be given below the name of the court.

For example:
IN THE COURT OF CIVIL JUDGE (Senior Division), …….
OR
IN THE JUDICATURE OF HIGH COURT …… Original Jurisdiction

Before the heading of the plaint proper space should be left for affixing court-fee stamp. Just below the name of the court, a space should left for the number of the suit. It is as such
Suit No. …….. of ……(Year)to be allotted by the court.....

Thereafter the names of the parties to the suit with all necessary particulars should be given. For example:

AB s/o CD aged……yrs, Resident of..... Plaintiff
Versus

PQ s/o RS aged …….Yrs, Resident of …… Defendant

If there are more plaintiff or defendant than the names of all plaintiffs/and defendant should be given in plaint as plaintiff No. 1/defendant No.1 and so on.

After the names of the parties the title of the suit should be given for ex.
"Suit for specific performance and damages"
Or
"Suit for Recovery of money"
Or
"Suit for damages for malicious prosecution"
Or

"Petition for Judicial Separation u/s 9 of the Hindu Marriage Act, 1955"

Where the plaintiff or defendant is a minor or a person of unsound mind, the fact should be mentioned in the cause-title. At the same time the name and description to the person through whom such person sues or sued should also be given in the cause-title. The forms given at No. 2 in Appendix A to the First Schedule of C.P.C. would be of special assistance in framing cause-titles in particular cases. For example, if plaintiff or defendant is:

1) Individual person - AB S/o……Aged….. Res. of……..
2) Proprietary concern - AB S/o……Aged….. Res. of……..proprietor of MIs XYZ and carrying on business at …….
3) Partnership firm – M/s XYZ, a partnership firm registered under the Indian partnership Act, 1932 with its principal place of business at …….
4) A company - M/s XYZ, Pvt. Ltd. A company incorporated under the companies Act having its registered office at…….
5) Company in Liquidation - M/s XYZ Ltd. In liquidation through liquidator Mr. ABC having office at …….
6) Statutory Corporation - The Life Insurance Corporation of India established and constituted under the Life Insurance Act, having its registered office at …….
7) Municipality – Municipal Corporation of Delhi through its Chairman, Town Hall, Delhi.
8) Minor - AB S/o……Aged….. a minor through his father and natural guardian S/o……Aged….. Res. of……..

2. Body of the Plaint: Then follows the body of the suit/plaint.

The plaintiff acquaints the court and defendant with the case. The statement of facts is divided into paragraphs numbered consecutively. As far as convenient a paragraph should contain only one allegation. Dates, time and numbers should be expressed in figures as well as in words. The body of plaint usually begins thus:

'The above named plaintiff states as follows:
1. That …….
Mogha in 'The Law of Pleadin in India has divided the body of the plaint into two parts (1) Substantive portion and (2) Formal portion.

(1) **Substantive portion** of the body of plaint is devoted to:
(i) statement of all facts constituting the cause of action and
(ii) the facts showing the defendant's interest and liability.

But, as already noted, often it is desirable to start the plaint with certain introductory statements, called 'matters of inducement'.

(2) **Formal portion** of the plaint shall state the following essential particulars:
(i) Date when the cause of action arose;
(ii) Statement of facts pertaining to jurisdiction;

(iii) Statement as to valuation of the suit for the purpose of jurisdiction and court fees and it should be stated that the necessary court fee has been affixed;
(iv) Statement as to minority or insanity of a party or if he is representing some other body then statement as to plaintiff's representative character;
(v) When a suit is filed after the expiry the period of limitation a statement showing the ground or grounds on which he has claimed exemption from Limitation Law;
(vi) Every relief sought for by the plaintiff should be accurately worded.

Rule 7 says that every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for.

And the same rule shall apply to any relief claimed by the defendant in his written statement.

The plaintiff can claim more than one relief, in the suit. He can seek reliefs alternatively. A plaintiff is entitled to claim more than one relief in respect of the same cause of action should sue for all of them because he is debarred from bringing a fresh suit in respect to the omitted relieves except when the omission in the first suit was with the permission of the court [Order 2. Rule 2 (3) of C.P.C.];

(vii) Signature and Verification: The plaint must be signed by the plaintiff through advocate. But if the plaintiff is, by reason of absence or for other good cause, unable to sign the plaint, it must be signed by any person duly authorized by him to sign the same. The verification is done by the plaintiff himself.

Verification
I…….. (Name), S/o Sri..... (Father's name), the aforesaid plaintiff/defendant do hereby verify that the contents of paragraphs …… to …. of the above plaint are true and correct within my personal knowledge and that the contents of paras……..to ……. (mention the paras by their number in the pleading) I believed to be true on information received.
Signed and verified this at ……..(Place) on this …….. (Date) day of month/years.
Sd/- (Plaintiff/Defendant)

Affidavit should also be enclosed with plaint as provided under Order 6 Rule 15 (4) CPC, 1908. All documents on which the plaintiff relies for his claim should be enclosed with a separate List of Documents according to Order 7 Rule 14 (1) CPC, 1908.

****

WRITTEN STATEMENT
- It is incumbent on the defendant to file his defence in writing.
- The defendant's written defence or pleading in India is called written statement.

- It is a statement defences in which the defendant deals with every material fact alleged by the plaintiff in plaint and also sets any facts which tell in his favour.
- In the written statement all possible defences on behalf of the defendant have to be taken.
- After the service of summons upon a defendant in a suit, he has to file a written statement of his defence.
- As a general rule every allegation of fact in the plaint if not denied specifically or by necessary implication, shall be taken to be admitted by the defendant.
- The defendant must raise in his pleading all matter which show that the suit is not maintainable.
- Every written statement must be signed and verified.

Requirement of Written Statement

When the defendant appears and files a written pleading by way of defence, his pleading should conform to all the general rules of pleading laid down in the preceding paras. A subsequent pleading filed by the plaintiff, either in reply to a defendant's claim of set off, or with leave of the court, in answer to defendant's pleas in defence, is also called a "written statement" (also called Replication or Rejoinder). All the rules relating to defendant's written statement apply, *mutatis mutandis* to such written statement of the plaintiff also.

Considerations before Drafting a Written Statement

- Before proceeding to draft a written statement, it is always necessary for a pleader to examine the plaint very carefully and to see whether all the particulars are given in it and whether the whole information that he requires for fully understanding the claim and drawing up the defence is available.
- If any particulars are wanting, he should apply that the plaintiff be required to furnish them before the defendant files his written statement.
- If he cannot make a proper defence without going through such particulars and/or such documents referred to in the plaint, and that the defendant is not in possession of such copies, or the copies do not serve the required purpose, the defendant should call upon the plaintiff to grant him inspection of them and to permit him to take copies, if necessary, or, if he thinks necessary, he may apply for discovery of documents.
- If he thinks any allegation/allegations in the plaint is embarrassing or scandalous, he should apply to have it struck out, so that he may not be required to plead those allegations.
- If there are several defendants, they may file a joint defence, if they have the same defence to the claim. If their defences are different, they should file separate written statements, and if the defences are not only different but also conflicting, it is not proper for the same pleader to file the different written statements.
- For instance, if two defendants, executants of a bond, are sued on the bond, and their plea is one of satisfaction, they can file a joint written statement.
- If the plaintiff claims limitation from the date of certain acknowledgement made by one defendant and contends that the acknowledgement saves limitation against the other also, the defendants may file separate written statements.

- In a suit on a mortagage deed executed by a Hindu father, to which the sons are also made parties on the ground that the mortgage was for a legal necessity, if the sons want to deny the alleged legal necessity, they should not only file a separate defence from their father's but should also preferably engage a separate pleader.

(1) Formal Portion of Written Statement:

A written statement should have the same heading and title as the plaint, except that, if there are several plaintiffs or several defendants, the name of only one may be written with the addition of "and another" or "and others", as the case may be.

The number of the suit should also be mentioned after the name of the court.

After the name of the parties and before the actual statement, there should be added some words to indicate whose statement it is,

e.g., "written statement on behalf of all the defendants" or "written statement on behalf of defendant No. 1", or "written statement on behalf of the plaintiff in reply to defendant's claim for a set off" or "written statement (or replication) on behalf of the plaintiff filed under the order of the court, dated……" or "written statement on behalf of the plaintiff, filed with the leave of the court". The words "The defendant states…….." or

"The defendant states as follows" may be used before the commencement of the various paragraph of the written statement but this is optional.

No relief should be claimed in the written statement, and even statements such as that the claim is liable to be dismissed should be avoided. But when a set off is pleaded or the defendant prefers a counter-claim for any excess amount due to him, a prayer for judgment for that amount in defendant's favour should be made.

(2) Body of the Written Statement:

The rest of the written statement should be confined to the defence.

Forms of Defence: A defence may take the form of

(i) **a "traverse"**, as where a defendant totally and categorically denies the plaint allegation, or that of

(ii) "**a confession and avoidance" or "special defence**", where he admits the allegations but seeks to destroy their effect by alleging affirmatively certain facts of his own, as where he admits the bond in suit but pleads that it has been paid up, or that the claim is barred by limitation, or that of

(iii) **"an objection in point of law"** (which was formerly called in England "a demurrer"), e.g., that the plaint allegations do not disclose a cause of action, or that the special damages claimed are too remote.

Another plea may sometimes be taken which merely delays the trial of a suit on merits, e.g., a plea that the hearing should be stayed under Section 10, C.P.C., or that the suit has not been properly framed, there being some defect in the joinder of parties or cause of action and the case cannot be decided until those defects are removed.

These pleas are called:

(a) "dilatory pleas" in contradistinction to the other pleas which go to the root of the case **and** which are therefore known as

(b) "peremptory pleas" or "pleas in bar". Some dilatory pleas are not permitted in pleadings, but must be taken by separate proceedings. Others may either be taken in the written statement under the heading "Preliminary Objections", or by a separate application filed at the earliest opportunity, as some pleas, such as that of a mis-joinder and non-joinder, cannot be permitted unless taken at the earliest opportunity.

A defendant may adopt one or more of the above forms of defence, and in fact he can take any number of different defences to the same action.

For example, in a suit on a bond he can deny its execution, he can plead that:

- the claim is barred by limitation,
- as no consideration of the bond is mentioned in the plaint,
- the plaint does not disclose any cause of action,
- the bond being stated to be in favour of two persons the plaintiff alone cannot maintain the suit.
- He can as well plead one form of defence to one part of the claim, and another defence to another part of it.

He can take such different defences either jointly or alternatively, even if such defences are inconsistent. But certain inconsistent pleas such as those which depend for their proof, on entirely contradictory facts, are generally not tenable. A ground of defence, which has arisen to the defendant even after the institution of the suit, but before the filing of his written statement, may also be raised (O.8, R.8).

All defences which are permissible should be taken in the first instance, for, if the defendant does not take any plea, he may not be allowed to advance it at a later stage, particularly when it involves a question of fact.

Drafting of Reply/Written Statement – Important Considerations

At the time of drafting the reply or written statement, one has to keep the following points in mind:-

- One has to deny the averment of the plaint/petition which are incorrect, perverse or false.

- In case, averment contained in any para of the plaint are not denied specifically, it is presumed to have been admitted by the other party.
- However, general allegation in the plaint cannot be said to be admitted because of general denial in written statement.
- If the plaint has raised a point/issue which is otherwise not admitted by the opposite party in the correspondence exchanged, it is generally advisable to deny such point/issue and let the onus to prove that point be upon the complainant.
- In reply, one has to submit the facts which are in the nature of defence and to be presented in a concise manner.
- Attach relevant correspondence, invoice, challan, documents, extracts of books of accounts or relevant papers as annexures while reply is drafted to a particular para of the plaint;
- The reply to each of the paras of the plaint be drafted and given in such a manner that no para of the plaint is left unattended.
- After reply, the same is to be signed by the constituted attorney of the opposite party. If the opposite party is an individual, it could be signed by him or his constituted attorney or if the opposite party is a partnership firm, the same should be signed by a partner who is duly authorised under the Partnership Deed, because no partner has an implied authority to sign pleadings on behalf of the partnership firm.
- In case of a body corporate, the same could be signed by any Director, Company Secretary, Vice-President, General Manger or Manager who is duly authorised by the Board of Directors of the company.
- It may be noted that if the plaint or reply is not filed by a duly authorised person, the petition would be liable to be dismissed.
- However, at the time of filing of petition, if the pleadings are signed by a person not authorised, the same could be ratified subsequently.
- The reply/written statement is to be supported by an Affidavit of the opposite party.
- The reply along with all annexures should be duly page numbered and be filed along with authority letter if not previously filed.
- It may be noted that if any of the important points is omitted from being given in the reply, it would be suicidal as there is a limited provision for amendment of pleadings and also the same cannot be raised in the Affidavit-in-Evidence at the time of leading of evidence.
- In every pleading, one must state specifically the relief which the party is claiming from the court or tribunal or forum.
- While framing the prayer clause, one should claim all possible relief as would be permissible under the pleadings and the law.
- The general principle is that the relief if not prayed for, will not be allowed.

****

AFFIDAVIT

- An affidavit is a declaration on oath reduced to writing and sworn before that person who has authority to administer such an oath.
- The following rules and principles should be kept in mind while drawing up an

affidavit:

- An affidavit has to be drawn on a non- judicial stamp paper.
- The person making the affidavit should be described with all his particulars.
- It must be drawn up in the first person. Such person is known as deponent.
- It must be divided into paragraphs as and when required
- The person making the affidavit should generally confine himself to the matters within his personal knowledge.
- It has to be sworn by the deponent in the presence of Oath Commissioner, Notary Public, Magistrate or any other Authority appointed by the Government for this purpose.
- Any alteration in the affidavit must be authenticated by the officer before whom it is sworn.

STAMP DUTY ON AFFIDAVIT

Affidavit is chargeable with stamp duty under the Indian Stamp Act, 1899. No stamp duty is charged for the affidavit to be filed or used in the courts as on such affidavits court fee is being paid.

An affidavit often contains language like this:

"I solemnly swear that the foregoing statements are true and correct to the best of my knowledge and belief".

****

AFFIDAVIT

IN THE HON'BLE SUPREME COURT OF INDIA
IN THE MATTER OF:

……

…Petitioner

Versus

……

…Respondent

AFFIDAVIT

I, ……company through the petitioner in the Special Leave Petition titled as above do hereby solemnly affirm and state as under:

1. That I am the Chairman/Managing Director etc. of the petitioner-company and am fully aware of and conversant with the relevants facts concerning the matter in issue in this petition.
2. That the contents of the accompanying Special Leave Petition are true and correct to the best of my knowledge and belief.
3. That no relevant fact has been concealed or kept back in the S.L.P.

DEPONENT

I, further solemnly affirm at…… (place) this the…… day of…… that the above averments are true and correct. Nothing has been kept back or concealed.

DEPONENT

****

COUNTER AFFIDAVIT

- Pleadings filed by a defendant/respondent in answer to the claims set out by the plaintiff/petitioner, in the form of an affidavit and/or supported by an affidavit are referred to as a counter affidavit.
- It is an affidavit in opposition or contradiction to another's affidavit.
- This counter affidavit is filed by the respondent in response to the facts and the claims set out by the petitioner in his petition against the respondent.
- This nomenclature is generally used by the respondent filing the pleading in response to the pleading of the petitioner in the High Court and various other Tribunals, Commissions and quasi-judicial authorities.
- Filing of a counter affidavit is obligatory when the defendant/respondent is so required by the Court.
- Failure of the defendant/respondent to file a counter affidavit on the day fixed by the Court, will not entitle him, as of right, thereafter to file it.
- It does not mean that the defendant/ respondent will be shut out once for all. He may be permitted by the Court to file it on a later date on sufficient grounds shown for not filing the same in time.

REPLY

- This nomenclature is used for pleading filed by a party in answer to the claims raised by opposite party and generally confined to miscellaneous or interim applications.
- Thus, reply can be filed by the plaintiff, defendant, petitioner or the respondent as the case may be.
- However, certain Tribunals/ Commissions/ Forums use this nomenclature as an answer to the claims set out in the main petitions as well.

REJOINDER

- A written statement/reply of the plaintiff/petitioner by way of defense to pleas' raised in the counter affidavit/written statement from the defendant/respondent, is termed as a rejoinder or replication.
- Leave of the court is essential before any party can present a further pleading after the written statement has been filed.
- The only subsequent pleading that may be filed without the leave of the court is the written statement filed by way of defense to a set-off or a counter-claim.
- It should be borne in mind that while filing a rejoinder/replication, a party cannot be allowed to fill up gaps or lacuna in his pleadings.
- Nor again can a party introduce new material facts or different cause of action except in a case where subsequent to filing of the petition/suit, the petitioner/plaintiff discovers new matters and accordingly seeks leave of the Court to submit such further particulars in his pleadings.

AFFIDAVIT IN EVIDENCE

Evidence
Evidence, as defined in Section 3 of the Evidence Act, 1872 means and includes:

- all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry; such statements are called oral evidence;
- all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence.

Rule of Adverse Inference
It is incumbent upon a party in possession of best evidence on the issue involved, to produce such evidence and if such party fails to produce the same, an adverse inference is liable to be drawn against such party. The Court will be justified in drawing an adverse inference against that party. **[Ms. Shefali Bhargava v. Indraprastha Appollo Hospital & Anr].**

DRAFTING OF AFFIDAVIT IN EVIDENCE—IMPORTANT CONSIDERATIONS

The following must be kept in mind while preparing the affidavit-in-evidence by the parties:

1. The best evidence is that of a person who was personally involved in the whole transaction. In case, that person is not available for any reason, then any other person who has joined in his place to make deposition by way of his affidavit.
2. In case, the petitioner himself was involved in the execution of a contract, he should file affidavit-in-evidence.
3. The allegations or charges or grounds relating to facts should be re-produced duly supported by documentary evidence.
4. In case, the point or issue pertains to engineering, medical, technology, science or other complex or difficult issues, then the evidence of expert is to be filed in the form of his Affidavit.
5. If necessary, the said witness has to appear before the Forum for the purpose of cross-examination by the counsel for the other party. For example, hand-writing or finger print experts etc.
6. Besides the leading evidence on the points raised by the petitioner or by the opposite party in his written statement/reply, if possible, the party who is filing the affidavit-in-evidence should also file documents, papers or books or registers to demolish the defence or case set up by the opposite party.
7. It is also permissible for any party to bring any outside witness (other than the expert witness) in support of his case if the facts and circumstances of the case so warrant and permitted by the Court/Tribunal.
8. At the time of tendering affidavit-in-evidence, the party must bring along with it either the original of papers, documents, books, registers relied upon by it or bring with it the carbon copy of the same.
9. It may be noted that only photocopy of any paper or document (in the absence of its reply, original or carbon copy) can not be relied upon and tendered as an evidence.

****

EXECUTION PETITION
Application for Execution

Execution of decree
Application for execution of a decree shall be made by a holder of a decree who desires to execute it to the appropriate court which passed it or to the officer appointed in this behalf. In case the decree has been sent to another court than the application shall be made to such court or the proper officer thereof.

Application for execution of a decree may be either (1) Oral; or (2) written.

(a) Oral Application:
Where a decree is for payment of money the court may on the oral application of the decreeholder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgement debtor, prior to the preparation of a warrant if he is within precincts of the court.

(b) Written Application:
Every application for the execution of a decree shall be in writing save as otherwise provided sub-rule (1) (above) signed and verified by the applicant or by some other person proved to the satisfaction of the court to be acquinted with the facts of the case, and shall contain in a tabular form the following particulars, namely :

(a) the No. of the suit;
(b) the name of the parties;
(c) the date of the decree;
(d) whether any appeal has been preferred from the decree;
(e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;
(f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;
(g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross decree, whether passed before or after the date of the decree sought to be executed;
(h) the amount of costs (if any) awarded;
(i) the name of the person against whom execution of the decree sought; and
(j) the mode in which the assistance of the court is required,
    i. whether by the delivery of any property specifically decreed;
    ii. by the attachment or by the attainment and sale, or by the sale without attachment, of any property;
    iii. by the arrest and detention in prison of any person;
    iv. by the appointment of a receiver;
    v. otherwise, as the nature of the relief granted may require.

The court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree. Some High Courts in different States have framed additional rules in this regard may also be taken care by the draftsman or the executing lawyer.

****

APPEAL

Although "Appeal" has not been defined in the Code of Civil Procedure, 1908 yet any application by a party to an appellate Court, asking it to set aside or revise a decision of a subordinate Court, is an "appeal". Appeal is a creature of statue or the rules having the force of statute. Right of appeal is not a natural or inherent right attached to litigation. This is a right conferred by law.

The following four kinds of appeal are provided in C.P.C.

1. **Appeal from original decree (Sections 96-99, Order 41)**
   Every decree passed by the court in its original civil jurisdiction is appealable. Appeals from original decrees may be preferred from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court on points of law as well as on facts

2. **Second Appeal (Sections 100-103, Order 42)**
   Second Appeal will lie to the High Court in case of a decree provided a question of law has arisen in such a decree. Second Appeals lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

   In the second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal:
   (a) which has not been determined by the Lower Appellate Court or both by the Court of first instance and the Lower Appellate Court, or
   (b) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred in Section 100 of the Code (Section 103).

3. **Appeal for orders (Sections 104-106, Order 43)**
   An appeal will lie in respect to those orders which are specified in Section 104 and Order 43 C.P.C.

4. **Appeal to Supreme Court (Sections 109 & 112, Order 45)**
   An appeal will lie to the Supreme Court in respect to the judgment passed by the High Court in its original civil jurisdiction.

Section 109 of the Code of Civil Procedure, 1908 provides:

"Subject to the provisions in Chapter IV of Part V of the Constitution and such rules as may, from time to time, be made by the Supreme Court regarding appeals from the Courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court from any judgement, decree or final order in a civil proceeding of a High Court, if the High Court certifies:

(i) that the case involves a substantial question of law of general importance; and

(ii) that in the opinion of the High Court the said question needs to be decided by the Supreme Court."

Order 45 of the Code of Civil Procedure, 1908 provides rules of procedure in appeals to the Supreme Court.

Articles 132 to 135 of the Constitution deal with ordinary appeals to the Supreme Court:

(i) Appeals in Constitutional cases: Clause (1) of the Article 132 of the Constitution provides that an appeal shall lie to the Supreme Court from any judgement, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceedings, if the High Court certifies under Article 134A that the case involves a substantial question of law as to interpretation of the Constitution.

(ii) Appeals in civil cases: Article 133 deals with appeals to the Supreme Court from decisions of High Court in civil proceedings. For an appeal to the Supreme Court the conditions laid down in this article must be fulfilled.

These conditions are:

(a) the decision appealed against must be a "judgement, decree or final order" of a High Court in the territory of India,
(b) such judgement, decree or final order should be given in a civil proceeding, and
(c) a certificate of the High Court to the effect that (i) the case involves a substantial question of law, and (ii) in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(iii) Appeals in criminal cases: A limited criminal appellate jurisdiction is conferred upon the Supreme Court by Article 134. It is limited in the sense that the Supreme Court has been constituted a Court of criminal appeal in exceptional cases where the demand of justice requires interference by the highest Court of the land.

There are two modes by which a criminal appeal from any "judgement, final order or sentence" in a criminal proceeding of a High Court can be brought before the Supreme Court:

(1) Without a certificate of the High Court.
(2) With a certificate of the High Court.

(3) Appeal by Special Leave.

In appeals, as a general rule, the parties to an appeal are not entitled to produce additional evidence, whether oral or documentary, but the Appellate Court has discretion to allow additional evidence in the following circumstances:

i. When the lower Court has refused to admit evidence which ought to have been admitted;
ii. When the party seeking to produce additional evidence establishes that he could not produce it in its trial Court for no fault of his;
iii. The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgement; and
iv. For any other substantial cause.

However, in all such cases the Appellate Court shall record its reasons for admission of additional evidence.

The appellate judgement must include the following essential factors:

(a) the points for determination;
(b) the decision thereon;
(c) the reasons for the decision; and
(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled to.

MEMORANDUM OF APPEAL

The party, who is aggrieved by a decree, or an order of a Court, appeals to the appellate Court by presenting a memorandum of appeal which sets forth the grounds of objection to such decree or order. The grounds are set forth without any argument and are numbered consecutively. The memorandum of appeal consists of the following particulars:

(a) name of the Appellate Court,
(b) appeal number (to be kept blank for use of by Court office),
(c) name and description of the parties,
(d) particulars of the decree, or final order against which the appeal is preferred,
(e) grounds of objection on which the appeal is preferred ,
(f) prayer (relief),
(g) date and place,
(h) signature of appellant.

The memorandum of appeal is accompanied by the certified copy of the judgment appealed from and then it is presented to the concerned officer in the office of the Court of appeal.

.DRAFTING OF APPEALS

An appeal may be divided into three parts:

(1) formal part, known as the memorandum of appeal,

(2) material part, grounds of appeal, and

(3) relief sought for.

The memorandum of appeal should begin with the name of the Court in which it is filed. After the name of the Court, number of the appeal and the year in which it is filed are given. As the number is noted by the officials of the Court, a blank space is left for it. Then follow the names and addresses of the parties to the appeal. The name of the appellant is given first and then that of the respondent.

It should be indicated against the names of the parties as to what character each party had in the lower Court, i.e. whether he was a plaintiff or a defendant, or an applicant or an opposite party, as:

A.B., son of etc. (Plaintiff) Appellant

Versus

C.D., son of etc. (Defendant) Respondent

Or

A.B., son of etc. (Decree-holder) Appellant

Versus

C.D., son of etc. (Judgment-debtor) Respondent

After the names of the parties, an introductory statement giving the particulars of the decree or order appealed from (viz., the number and date, the court which passed it, and the name of the presiding officer), should be written in some such form as:

"The above-named appellant appeals to the Court of…… from the decree of…… Civil Judge at…… in Suit No…… passed on the…… and sets forth the following grounds of objections to the decree appealed from, namely".

Thereafter, the grounds of appeal be given under the heading **"Grounds of Appeal".** The grounds of appeal are the grounds on which the decree or the order appealed from is objected to or attacked.

DRAFTING GROUNDS OF APPEALS

- Grounds of objection should be written distinctly and specifically;
- They should be written concisely;
- They must not be framed in a narrative or argumentative form; and

- Each distinct objection should be stated in a separate ground and the grounds should be numbered consecutively.

These rules are simple but are most important and must be carefully remembered and observed while drafting Grounds of Appeal.

RELIEF SOUGHT IN APPEAL

It is nowhere expressly provided in the Code that the relief sought in appeal should be stated in the memorandum of appeal. The absence of prayer for relief in appeal does not appear to be fatal and the Court is bound to exercise its powers under Section 107 of the Code and to give to the appellant such relief as it thinks proper. However, it is an established practice to mention in the memorandum of appeal, the relief sought by the appellant.

****

Specimen Form of Appeal to the High Court

IN THE HIGH COURT OF…… AT……

CIVIL APPELLATE JURISDICTION

REGULAR CIVIL APPEAL NO…… OF

IN THE MATTER OF:

A.B.C. Company Ltd. a company incorporated under the provisions of the Companies Act and having its registered office……

…Appellant

Versus

M/s…… a partnership concern (or XYZ company Ltd., a company incorporated under the Companies Act and having its registered office at……)

…Respondents

May it please the Hon'ble Chief Justice of the High Court of…… and his Lordship's companion Justices,

The appellant-company MOST RESPECTFULLY SHOWETH:

1. That the appellant herein is a company duly registered under the provisions of the Companies Act and the registered office of the appellant is at…… and the company is engaged in the business of manufacturing……
2. That the respondents who are also doing business of selling goods manufactured by the appellants and other manufacturers approached the appellant for purchasing from the appellant-company the aforesaid manufactured goods. An agreement was reached between the parties which was reducing into writing. The appellant supplied goods worth Rs. 15 lacs over a period of…… months to the respondents. A statement of account regarding the goods so supplied is annexed hereto and marked as ANNEXURE A-1.
3. That the respondents have made a total payment of Rs. 6 lacs on different dates. The statement of the said payments made by the respondents is appended and is marked as ANNEXURE A-2.
4. That the remaining amount has not been paid by the respondent despite repeated demands and issuance of a legal notice by the appellant through advocate.

5. That the appellant filed a suit for recovery of the aforesaid balance amount of Rs. 9 lacs together with interest at the rate of 12% per annum and the cost of the suit. The suit was filed on…… in the court of the learned District Judge.
6. That upon being summoned by the said court the respondents appeared through counsel and filed their written statement to which appellant-plaintiff also filed replication (rejoinder).
7. That the parties led evidence. After hearing the counsel for the parties the learned District Judge has by his judgment and decree passed on…… dismissed the appellant's suit on the ground that the evidence led by the parties does not establish the claim of the appellant-plaintiff. Copies of the judgment and decree of the court below are annexed hereto and are marked as ANNEXURE A-3 AND A-4, respectively.

Aggrieved by the aforesaid judgment and decree of the court below dismissing the suit of the plaintiff this appeal is hereby filed on the following, amongst other,

GROUNDS

1. That the judgment and decree under appeal are erroneous both on facts as well as law.
2. That the learned trial court has failed to properly appreciate the evidence, and has fallen into error in not finding that the preponderance of probability was in favour of the plaintiff-appellant.
3. That there was sufficient evidence led by the plaintiff to prove the issues raised in the suit and the defendant-respondent has failed to effectively rebut the plaintiff's evidence, more particularly the documentary evidence.

In the above facts and circumstances the appellant prays that this appeal be allowed, the judgment and decree under appeal be set aside and the decree prayed for by the appellant in his suit before the court below be passed together with up-to-date interest and costs of both courts.

APPELLANT

VERIFICATION

Verified at…… on this, the…… day of……, 20…. That the contents of the above appeal are correct to the best of my knowledge and belief……

APPELLANT
THROUGH
(……)

****

REVISION AND REVIEW APPLICATIONS

REVIEW: SECTION 114

Section 114 of CPC provides for the review of the case. It means reconsideration and is permitted:

1. Where a party is aggrieved by a decree or order from which an appeal is permissible but no appeal has been preferred.
2. Where the party is aggrieved by a decree or order from which no appeal is permissible.
3. It is to be noted that the application for review of the judgment has to be made to the same court which passed the judgment.

REVISION: SECTION 115

The application for revision can be filed before the High Court when the subordinate court:

1. exercised a jurisdiction not vested in it by law;
2. failed to exercise a jurisdiction vested in it by law;
3. acted in the exercise of jurisdiction illegally or with material irregularity.

SPECIMEN FORM OF REVISION

In the High Court of……
Civil Appellate Jurisdiction
Civil Revision No…… of 20….
IN THE MATTER OF:

ABC S/o…… R/o……

…Petitioner

Versus

XYZ S/o…… R/o……

…Respondent

AND

IN THE MATTER OF:

CIVIL REVISION AGAINST THE ORDER DATED…… PASSED BY THE LEARNED SUB-JUDGE, IST CLASS…… IN THE SUIT ENTITLED ABC -VS.- XYZ (CIVIL SUIT NO. …… OF 20….)

May it please the Hon'ble Chief Justice, High Court of…… and his companion Justices.

The petitioner MOST RESPECTFULLY SHOWETH:

1. That the petitioner named above has filed a suit against the respondents for the recovery of possession of a house situated in……, fully described in the plaint. The suit is pending in the court of Sub-Judge Ist Class…… and the next date of hearing is……
2. That on being summoned the respondent appeared before the court below and filed his written statement wherein he denied the petitioner's title set up in the suit property.
3. That the trial court framed issues on…… and directed the petitioner (plaintiff) to produce evidence, upon which the petitioner promptly furnished to the court below a list of witnesses and also deposited their diet expenses etc., making a request that the witness be summoned by that Court.
4. That on a previous date of hearing that is……, 200…, two witness of the petitioner had appeared and their statements were recorded. However, the learned Presiding Officer of the court below passed an order that the remaining witnesses be produced by the petitioner-plaintiff on his own without seeking the assistance of the court. This order was passed despite a request by the petitioner that at least those witness named in the list who are State employees should be summoned by the court, as they are required to produce and prove some official records.
5. That on the next date of hearing the learned trial court by the order impugned in this revision closed the evidence of the petitioner-plaintiff on the ground that the remaining witnesses were not produced by him.
6. That the impugned order has caused great prejudice to the petitioner and if the same is allowed to stand the petitioner's suit is bound to fail.
7. That the trial court has unjustifiably denied assistance of the court to the petitioner-plaintiff to secure the attendance of his witnesses. The interests of justice demand that he is provided with all legal assistance in this regard.

In the facts and circumstances discussed above the petitioner prays that this Hon'ble Court be pleased to quash and set aside the order under revision and direct the court below to provide assistance of the court for summoning the plaintiff-witnesses.

PETITIONER

****

COMPLAINT

- Complaint under section 2(d) of the Criminal Procedure Code means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but it does not include a police report.
- However, a report made by the police officer in a case which discloses after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint, and the police officer making the report as a complainant.
- In general a complaint into an offence can be filed by any person except in cases of offences relating to marriage, defamation and offences mentioned under Sections 195 and 197.
- A complaint in a criminal case is what a plaint is in a civil case.
- The requisites of a complaint are:
  (i) an oral or a written allegation;
  (ii) some person known or unknown has committed an offence;
  (iii) it must be made to a magistrate; and
  (iv) it must be made with the object that he should take action.

- There is no particular format of a complaint.
- A petition addressed to the Magistrate containing an allegation that an offence has been committed, and ending with a prayer that the culprit be suitably dealt with is a complaint.
- Complaint need not be presented in person.
- A letter to a magistrate stating facts constituting an offence and requesting to take action is a complaint.
- Police report is expressly excluded from the definition of complaint but the explanation to Section 2(d) makes it clear that such report shall be deemed to be a complaint where after investigation it discloses commission of a non-cognizable offence. Police report means a report forwarded by a police officer to a Magistrate under Sub-section (2) of Section 173.

CRIMINAL MISCELLANEOUS PETITION

In any case Civil/Criminal/Writ when any Miscellaneous Petition is moved, the same is registered as Civil Miscellaneous Petition/Criminal Miscellaneous Petition/or as Civil/Criminal Writ Miscellaneous Petition. There is no worrying distinction, all are subject to jurisdiction invoked by the petitioner.

BAIL

Bail means the release of the accused from the custody of the officers of law and entrusting him to the private custody of persons who are sureties to produce the accused to answer the charge at the stipulated time or date.

An *"anticipatory bail"* is granted by the High Court or a Court of Session, to a person who apprehends arrest for having committed a non-bailable offence, but has not yet been

arrested (Section 438). An opportunity of hearing must be given to the opposite party before granting anticipatory bail (*State of Assam* v. *R.K. Krishna Kumar* AIR 1998 SC 144).

Specimen Bail Application before a Magistrate during Police Enquiry under s. 437, Cr.PC 1973

In the Court of..... Magistrate .....

The State .....

Versus

Accused AB son of TZ, Village: .....

Thana: .....

In the matter of petition for bail of accused
AB, during police enquiry

The humble petition of
AB the accused above-named

Most respectfully sheweth:

1. That your petitioner was arrested by the police on 5th March 2013 on mere suspicion. That nearly a month has passed after the arrest but still the Investigating Police Officer has not submitted a charge-sheet.
2. That your petitioner was not identified by any inmate of the house of CM where the burglary is alleged to have taken place, nor any incriminating article was found in his house.
3. That your petitioner has reason to believe that one GS with whom your petitioner is on bad terms and who is looking after the case for complainant has falsely implicated your petitioner in the case out of grudge.
4. That your petitioner shall fully co-operate with the police.
5. That your petitioner is not likely to abscond or leave the country.

Your petitioner prays that your Honour may be pleased to call for police papers and after perusing the same be pleased to direct the release of your petitioner on bail.

And your petitioner, as in duty bound, shall ever pray.

Advocate AB

Verification

I, AB, son of TZ, residing at..... by occupation business, do hereby solemnly affirm and say as follows:

1. I am the petitioner above-named. I know and I have made myself acquainted with the facts and circumstances of the case and I am able to depose thereto.
2. The statements in paragraphs 1 to 5 of the foregoing petition are true and correct to my knowledge and belief.
3. I sign this verification on the 6th day of May 2013.

Solemnly affirmed by the said AB
on 6th May 2013 at the Court

House at..... AB

Before me

Notary/Magistrate.

****

FIRST INFORMATION REPORT (FIR)

Section 154 Cr.P.C 1973 deals with information in cognizable cases. Section 154 reads:

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.
(2) A copy of the information as recorded under Sub-section (1) shall be given forthwith, free of cost, to the informant.
(3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

In *Lallan Chaudhary and Ors. v. State of Bihar, AIR 2006 SC 3376*, the Supreme Court held that section 154 of the Code thus casts a statutory duty upon police officer to register the case, as disclosed in the complaint, and then to proceed with the investigation.

The mandate of Section 154 is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station, such police officer has no other option except to register the case on the basis of such information. The provision of Section 154 is mandatory. Hence, the police officer concerned is duty-bound to

register the case on receiving information disclosing cognizable offence. Genuineness or credibility of the information is not a condition precedent for registration of a case. That can only be considered after registration of the case. [*Ramesh Kumari v. State (NCT of Delhi) and Ors., 2006 Cri.LJ 1622*].

Specimen Form of First Information Report

To
The Officer-in-Charge
———— (Name of the Police Station)

Sir

This is to inform you that my cycle has been stolen from the cycle stand in the daily market last evening.

Last evening, before I went to the market, I placed my green model Hero Cycle in the cycle stand No. 1 as usual.

I had locked the cycle. The cycle bears the No. __ I had bought it only a month ago and it was almost new. The cycle had a full gear case, a carrier and a side basket. When such mishap occurred I was buying vegetables in the market. I asked everybody who were present there about the cycle. It was all in vain.

I request you to kindly register a case of theft and initiate the necessary investigation to recover the stolen cycle.

Yours faithfully,

_____ (Your Name)

****

ART OF WRITING OPINIONS

OPINION WRITING

- An opinion is a professional's written response to client's instructions to advise in writing.
- It follows that it must contain advice.
- Professionals do not advise someone simply by telling them what to do, but supplement it with the basic reasoning behind it.
- Advising is inextricably bound up with and is part of the mental attitude with which professionals approach opinion writing, with the thinking process that precedes the actual writing of the opinion, and with the writing process itself.

Need for a Legal Opinion

- Interpretation of statutes or documents
- Advise a transaction structure
- Opinion for guidance of decision makers in commerce, industry or government
- Opinion to Lenders on enforceability of Finance Documents Opinion for Investors for compliance by Target Companies
- Opinion on Foreign Direct Investment
- Determining provision for contingent liabilities or determination of contingent assets
- Merits or demerits of legal proceedings
- Provision for contingent liabilities or Identification of contingent assets
- Initiating civil or criminal proceedings
- Drafting a pleading
- Preparation for trial of arbitral or legal proceeding
- Ascertain compliance level for issue of securities and identification of risk factors for investors
- Valuation of business

****

CASE FOR OPINION WRITING

An effective and legally sound legal opinion has an immense value. It can show where a party stands in a given factual matrix when looked from a legal perspective and also save time and money spent in futile litigation proceedings.

Business savvy clients do not want to litigate, defend or enter into transactions without obtaining a written opinion from at least one legal expert if not more.

Some of the common purposes for which legal opinion are sought are as follows:

1. **Lawfulness of an action:** Opinion letters are given when one wants to know if an action is lawful.
2. **Legal consequences:** Sometimes a party entering into a transaction obtains legal opinion to ascertain if the action will lead to desired legal consequences.

3. **Answer questions:** A client may be confused about an issue and they want professional guidance in the area. They also address the question raised by other professionals. Legal opinions provide an authoritative basis for reports, opinions, and reports on matters where other professionals lack the professional capability to make judgments. For example, an opinion regarding local law provided to foreign counsel.
4. R**egulatory requirements**: Sometimes legal opinion has to be sought because it is mandated by law to get the opinion of outside legal expert.
5. **Compliance:** A legal opinion can be sought for assessing the requirements of the regulatory regime so that the querist can meet the compliance requirement.
6. **Protective shield:** Clients sometimes desire the protection of an expert's legal opinion to be used as evidence of lack of mens rea in certain proceedings.
7. **Designed to mislead:** Sometimes promoters of unscrupulous schemes obtain as many opinions from different experts as is possible and use the one which is favourable to their scheme of things.
8. **To satisfy contractual requirements**: Sometimes a clause in commercial contracts require the opinion of an expert. E.g.: an opinion given by issuer's counsel to investors in connection with the sale of securities or by borrower's counsel to the lender pursuant to a loan agreement.
9. **Due Diligence:** Lawyers and clients often cite due diligence as the principal reason for requesting opinion letters in business transactions.

****

TYPES OF LEGAL OPINION

1. **Advices on Transaction:** Due diligence is the principal reason for opinion letters in business transactions. An opinion letter may be one component of a party's due diligence, but it is not normally a substitute for due diligence performed by the opinion recipient and its counsel.

2. **Advices on Law:** Sometimes the client would want to know how the law will apply to a given situation. Without in-depth knowledge of law and legal research one cannot give an opinion to the satisfaction of the client. The proper way is to start with the cases and work through to reach a deduction as to the principle of law that covers the situation.

3. **Opinions on Facts:** The third type of opinion is one which is predominantly related to facts. One is given a series of statements and documents and asked whether on that material there are reasonable prospects of prosecuting or defending the claim. The matter may be a simple personal injury case in which the law is well settled. The real question is whether one's side's witnesses will be believed or not.

   The first problem about this sort of opinion is that seldom does one have any real knowledge of what the other side's witnesses are going to say. One often has little idea of the quality of one's own witnesses and none at all of that of the opposition's. Here one has to search relevant material from the material one is provided with and then arrive at the probabilities of success or failure.

4. **Advices on Evidence:** A special type of opinion is a brief to advice on evidence.

   When advising on fact or law one should not be too positive. In relation to advices on quantum of damages one can never be sure so it is advisable to not give a precise figure but a range. Where the law is in a state of flux or doubtful the legal expert should always draw attention to this explaining why one cannot be more positive.

****

FORM AND ELEMENTS OF THE OPINION LETTER

There is no form for a legal opinion prescribed by law or rule. Opinion letters, however, have developed a certain uniformity because of their repeated use.

In general, a legal opinion will cover the following:

1. introductory matters, such as the date, the identity of the opinion recipient, the role of the opinion giver giving the opinion, and the purpose for which the opinion is given;
2. a general or specific recitation of the documents and other factual and legal matters reviewed by the opinion giver, including in some instances a statement of reliance on various factual assumptions;
3. the legal conclusions expressed in the opinion, and any qualifications to the legal conclusions;
4. matters peculiar to the particular opinion, such as matters relative to opinions of local counsel in other jurisdictions and specific limitations on the use of the opinion; and
5. the signature of the opinion giver.

1. **Introductory Matters**

- **a. Title:** It should be entitled OPINION or ADVICE and contain the title of the case in the heading.
- **b. Date**. The opinion speaks as of the date mentioned on the opinion letter and need not state separately the effective date of the opinion. If for some reason a conclusion expressed in the opinion is reached as of a date prior to the delivery of the opinion, the opinion giver may so specify in the opinion letter.
- **c. Addressee**. The opinion is normally addressed to a specified party in an individual capacity, to a party as representative of a larger group, or to an identified class of persons.

  Generally, the only person or persons entitled to rely on an opinion are the person or persons to whom the opinion letter is specifically addressed. As a matter of prudence, however, many lawyers include a sentence at the conclusion of the opinion letter to the following effect:

  The opinions set forth herein are rendered solely for your use in connection with the above transaction and may not be relied upon, delivered to or quoted by any other person or for any other purpose without our prior written consent.

2. **Introduction:**

The first paragraph should serve as an introduction to the legal opinion, laying out the salient facts and what the expert has been asked to advise about.

An opinion must set out the questions on which it is sought very clearly and unambiguously.

If the Querist (which is what we call a person who seeks the opinion) is himself confused, his questions will be equally mindless. It is your duty as a lawyer to unravel his tangled skein of thought, identify the issues that are material and on which the relief he wants depends, and then frame them as questions.

3. **Definitions:**

For purposes of brevity and clarity, it is advisable to define the principal terms used in the opinion. Whenever a term utilized in an opinion letter is derived from statutory law, the opinion customarily uses that term or provides an express definition.

Terms that are defined in the underlying Agreement are most often given the same definitions in the opinion, either by defining each term in the opinion or by a reference to the Agreement, such as:

The terms used in this opinion letter that are defined in the Agreement have the same definitions when used herein, unless otherwise defined herein.

4. **Understanding facts of the case**

The obligation of an opinion giver to exercise diligence in determining the factual and legal bases for an opinion is implicit in every opinion letter.

The first rule is always to commence the opinion by setting out the facts that have been given or have been presumed from the instructions given. Adopting the practice of commencing opinion by outlining the facts upon which one is advising serves another purpose as well.

It crystallises those facts in one's mind, visualises any gaps as to which one may need to take further instructions or make assumptions and, where issues of fact are involved, suggests areas which need attention.

Facts should be stated in a manner which brings out the materials that will become material for answering questions, whether with an "yes" or a "no". The advantage of listing down the facts is that if the ultimate conclusion is wrong, or inapposite, because the facts are wrong, the fault will be that of the client for giving the wrong data or at least the error may be veiled by the failure of the client or solicitor to adapt opinion to the true facts.

The opinion giver must be satisfied that he has reviewed or assumed (expressly or implicitly) sufficient facts to support each of the legal conclusions expressed in the opinion letter.

In case of legal opinion in business transaction, in most instances the opinions in an opinion letter can be supported by an examination of documents, either in their original form or copies identified to the satisfaction of the opinion preparers, or of certificates of public officials or officers of the Company relating to factual matters.

Some opinion givers preface their opinion letters with a reference to a detailed list of the documents and certificates examined, together with either a statement that they have examined such other documents and have made such further legal and factual investigation as they consider necessary for purposes of rendering the opinion or, alternatively, a specific disclaimer to the effect that they have not made any other examination or factual investigation. Other opinion givers prefer to deliver opinion letters that merely set forth language to the following effect:

We have been furnished with and have examined originals or copies, certified or otherwise identified to our satisfaction, of all such records of the Company, agreements and other instruments, certificates of officers and representatives of the Company, certificates of public officials and other documents as we have considered necessary to provide a basis for the opinions hereinafter expressed. We have not independently established the facts stated therein.

a. Reliance on Certificates of Public Officials: Usually opinions include legal conclusions concerning the corporate nature and existence of the Company and its ability to transact business. They also often include legal conclusions concerning the good standing and ability of the Company to transact business in other jurisdictions. These opinions customarily are based on certificates of public officials in the various jurisdictions involved. The principal certificate among them is the *Certified Copy of the Articles of Incorporation, together with Amendments*. This certification represents conclusive evidence of the formation of the corporation and prima facie evidence of its existence for all purposes.

Certain certificates maybe required from various state agencies. For example, in loans backed by mortgage of immovable property, certificates showing the title to the property may be required.

b. Officers' Certificates: In business transactions opinion preparers typically obtain two somewhat analogous types of officers' certificates: (1) certificates verifying the authenticity of referenced documents; and (2) certificates relating to factual matters not readily verifiable by the opinion preparers or only verifiable at considerable cost.

A common example of the first type of certificate is a certificate of the secretary of the Company certifying that, attached to the certificate, is a true copy of the articles, bylaws and corporate minutes or resolutions pertaining to the transaction.

The second type of officers' certificate relates to factual matters not readily verifiable or only verifiable at considerable cost by the opinion giver when preparing the opinion.

These certificates are used as factual support for legal conclusions expressed in the opinion.

c. Documentary Examination Assumptions: Opinion givers customarily assume that the signatures on all documents examined are genuine, that copies of documents examined conform to the originals, and that such documents are binding on the other parties. Opinion givers often state these assumptions expressly, although by customary usage, they are implicit and need not be expressly stated.

5. Research on Relevant Case Laws

After the facts are over the opinion giver may begin his analysis on which the opinion depends. There is no need to set out basic principles of law with which the opinion recipient will be familiar. Otherwise, authorities should be cited to support propositions of laws and when doing so a full citation should be given.

It is important to prioritise the authorities cited in a legal opinion in order of importance to the point being addressed. If a particular case is central to the reasoning, the basis on which the case was decided should be set out fully in the legal opinion.

6. Expression of the Opinion

Once the facts are organised, a legal framework needs to be constructed into which these facts can be logically slotted. A legal opinion in a personal injury action for example will be based on negligence and therefore will usually be structured along the lines of duty, breach, damage, causation, forseeability and contributory negligence.

In a negligence legal opinion it will be vital to assess the level of damages that the client can expect to receive or pay out. This will be at the forefront of the client's mind.

An example of such an introductory statement reads as follows:
Based on the foregoing and upon such further investigation as we have considered necessary, it is our opinion that:

The opinion can be in the form of summary statement of conclusions or, where a series of discrete questions have been asked, precise answers to the particular questions asked. If the argument has been properly conducted these answers may well be monosyllabic. "Yes", "no", or "does not arise". However, when the monosyllabic answers cannot apply, the answers must be kept short and to the point.

7. Qualifications.

In practice, opinions are frequently subject to qualifications that narrow their apparent scope. Some opinions may be qualified by assumptions or exceptions. Opinions also may be qualified as to scope, particularly when the opinion covers a specialized area of the law. Qualifications take various forms, depending upon the opinion giver's preference and the length of the qualification.

If the qualification is short and applies only to one portion of the opinion letter, it often will be included in the operative language of the specific opinion by the reference "subject to _____" or "except _____".

If the qualification pertains to more than one portion of the opinion letter or is lengthy, it will usually appear separately from the operative opinion clauses. Typical clauses introducing such qualifications include the following: "our opinion in paragraph ___ is subject to;" or "we express no opinion on the effect of;" or "in rendering our opinion in paragraph ___ we have assumed that _____."

8. Special Matters

a. Foreign Law and Reliance on Local Counsel: The principal opinion giver for a party in a business transaction typically renders an opinion covering the laws of the state and applicable central laws and sets forth this limitation in the text of the opinion. The opinion giver may also be requested to furnish an opinion on matters governed by the laws of some other country.

The retention of local counsel to furnish an opinion raises different questions with respect to the principal opinion giver's responsibility for the opinions expressed in the local lawyer's opinion. If the principal opinion giver renders an opinion on the same matters as the local lawyer, the opinion giver customarily expresses its reliance on the local counsel's opinion (an example of recommended language is included below) rather than simply restating the local counsel's opinion in the body of its opinion:
In rendering the opinions expressed in paragraphs __, __ and __, we have relied [solely] on the opinion of _____ insofar as such opinions relate to the laws of _____, and we have made no independent examination of the laws of that jurisdiction.

b. Reliance on Opinion of 'Special' Counsel: Considerations similar to those arising in the selection and use of local counsel apply in the retention of special counsel. A lawyer who has no expertise in a specialized matter should not render an opinion in the specialized area, and should refer the matter to a lawyer qualified in that field.

9. Signature
The procedure typically followed by most law firms is for the opinion letter to be manually signed in the name of the firm. Some law firms follow different practices, such as "XY&Z by A, a partner" or "A on behalf of XY&Z."
10. Usual disclaimers:
Disclaimers can save the opinion giver from being reported for malpractice if the opinion is wrong. Under the disclaimer, it is written that the opinions provided are based on the law as per the time of drafting the opinion. Moreover, it is also indicated that the opinion is also based on the documents and facts provided. All the documents that the clients provided for the sake of drafting the legal opinion can also be listed.

****

THINGS TO BE KEPT IN MIND WHILE PREPARING FOR OPINION LETTER

Differences between opinion givers and opinion recipients generally arise over:

1. the time and expense required to render an opinion on a matter that is peripheral to the primary concerns of the opinion recipient,
2. the appropriate scope of a particular opinion,
3. whether the opinion will cover matters that are essentially factual in nature,
4. whether the opinion will cover matters about which there is some recognized legal uncertainty, and
5. requests for what historically were referred to as "comfort opinions" but are more properly referred to as "negative assurances."

1. **Opinions That Are Not Cost-Effective**

Opinion givers are held to certain standards of skill and care in rendering legal opinions. Although the nature and extent of the applicable standards of care are not defined, the opinion giver is obligated to avoid misleading opinion recipients about the scope and depth of any investigation undertaken.

Moreover, lawyers are responsible for conducting customary legal and factual diligence in rendering legal opinions. For this reason, rendering an opinion letter is a costly process, even in the context of a relatively straightforward matter or business transaction.

2. **Inappropriate Scope**

In a business transaction a number of opinions would be considered inappropriate because their scope is not reasonably within the competence of the opinion giver or they are not cost-justified.

Examples of such opinions include the following:

- the client is qualified to do business as a foreign corporation in all jurisdictions in which its property or activities require qualification or in which the failure to qualify would have a material adverse effect on the client;
- the client is not in material violation of any central, state or local law, regulation or administrative ruling; and
- the client is not in material violation of any contract, indenture or undertaking to which it is a party or by which it may be bound.

The common characteristic of these examples is that they are essentially open-ended. Requests for opinions of this sort inherently cast into question whether the party requesting the opinion may be effectively seeking legal "insurance" rather than legal "assurance." an opinion giver may properly refuse to give such opinions.

3. **Confirmations of Fact; Negative Assurance**

Opinion givers should take care that the opinion letter makes a clear distinction between those portions that constitute actual opinions on matters of law and other portions (including confirmations of a purely factual nature) that do not.

Opinion givers generally decline to provide confirmations of purely factual matters. Although often characterized as an opinion, these confirmations in essence ask the opinion giver to express a view not founded on professional competence.

4. **Opinions Regarding Issues of Significant Legal Uncertainty**
A fourth common area of disagreement involves legal issues that, although potentially appropriate for inclusion in an opinion, are subject to significant legal uncertainty.

If the uncertainty extends only to one of the opinions expressed, the question is frequently resolved by a "qualification" to that opinion. The "qualification" may be a statement that the particular opinion does not cover the effect of a certain law or laws or may identify the uncertainty. Such qualifications are usually acceptable if they relate to demonstrable legal uncertainties.

5. **Fraudulent or Misleading Opinions and the Limits of Professional Competence**
A lawyer should not render an opinion that the lawyer knows would be misleading. In addition, a lawyer should not render an opinion based on factual assumptions if the lawyer knows that the assumptions are false or that reliance on those facts is unreasonable.

In addition, a lawyer should not be asked to render opinions on matters that are outside his or her area of professional competence. Where an opinion is appropriate but beyond the competence of the opinion giver, then the opinion giver should associate competent counsel to render the opinion. In no event should a lawyer be asked for opinions that are beyond the professional competence of lawyers generally, such as financial statement analysis or valuation.

6. **The Time to prepare Opinion Letter**
Sometimes one may be faced with the necessity of giving an urgent opinion or one when the time is not available to allow one to perform the depth of research one would wish. This may occur because the matter is truly urgent or more often because either the lawyer or professional client has delayed moving for advice until the last possible moment. In such a case one should qualify the opinion with a disclaimer.

****

STANDARDS APPLICABLE TO PREPARATION OF AN OPINION

1. **Generally:** A lawyer is expected to be well informed and to exercise such skill, prudence and diligence as lawyers of ordinary skill and capacity commonly possess and exercise in the performance of the tasks which they undertake. When a matter falls within a recognized area of legal specialty, such as tax or securities law, it is advisable to take that assignment only if it falls within the competence of the professional.
2. **Customary Practice:** An attorney does not ordinarily guarantee the soundness of his opinions and, accordingly, is not liable for every mistake he may make in his practice. He is expected, however, to possess knowledge of those plain and elementary

principles of law which are commonly known by well informed attorneys, *and to discover those additional rules of law which, although not commonly known, may readily be found by standard research techniques.*

3. **Fraudulent or Misleading Opinions** An opinion giver may be liable for an opinion that constitutes fraudulent misrepresentation. A lawyer owes a duty to non-clients to refrain from fraudulent misrepresentation. It is generally understood that, regardless of compliance with other standards, and even if an opinion is technically correct, a lawyer should not render an opinion that the lawyer recognizes would be misleading to the opinion recipient.
4. **Ethical Issues Relating to the Provision of Opinions to Non-clients** A lawyer delivering an opinion letter to a non-client should also consider ethical principles. For example, rendering an opinion to a non-client may conflict with the opinion giver's ethical obligations to maintain the confidences of its client. He should decline to give legal opinion in such cases.

****

Formulation of a Legal Opinion

Drafting a legal opinion can and should always be split into three processes: The mental attitude, the thinking process and the writing process.

I. The mental attitude

The mental attitude required to write a good opinion, or give good advice, is that of a practitioner as opposed to an academic. The approach required is a practical approach not an academic approach. The practical approach is something to be developed and acquired, and defining it does not necessarily help. But, the four fundamental principles to remember to develop the right mental attitude at all times are:-

(a) You are dealing with a real situation.
(b) The facts are more fundamental than the law.
(c) The law is a means to an end.
(d) Answer the question.

II. The Thinking Process

The next stage in writing an opinion is the thinking process. It involves the following stages:-

(a) *Read and digest your Instructions*: - Find out exactly what your instructions are, what is required of you, what the case is about, what are the basic facts and what your client actually wants to know.
(b) *Answer the primary question*: - You must have a clear idea of what your client wants to know if you are to address your mind the right issues and give proper advice. Your objective is after all, to tell your client what he or she wants to know.
(c) *Digest & organise the facts*: - The first thing to do is to digest and organise the facts. There will be facts in any case which are relevant and pertinent to the case and facts which are not. A legal opinion must focus on the relevant facts, but it may also be

necessary to specifically advise that certain things are not relevant. The first stage will be about organising the facts of the case into these categories. It is a matter of personal preference how this is done, but charts and schedules are often useful and a chronology should be a starting point for every fact marshalling exercise.

(d) *Construct a legal framework*: - Once the facts are at your finger tips, a legal framework needs to be constructed into which these facts can be logically slotted. Different types of cases will involve different legal frameworks, but whatever the legal issue, the legal opinion must be continuously advising on the strength of the client's position in the case. One question which is implicit in every request for a legal opinion is 'what should be done next?' This should be decided at the planning stage and should inform the legal opinion throughout.

(e) *Look at the case as a whole*: - What should also be borne in mind throughout the planning stage is the opponent's case. A legal opinion will be useless if it considers the client's case in isolation. Evidential issues must also be considered. A good legal opinion will always address how a particular factual situation can be proved.

(f) *Consider your advice*: - What your client needs is good practical advice, so you should also consider the practical steps that you advise your client to take.

Note: Before you begin writing a legal opinion, you will know exactly what advice you are going to give, why you are giving it and how you are going to present it.

III. The Writing Process

- Simply knowing your opinion, knowing the answer, does not mean the writing process is a mere formality.
- You have to know how to express yourself in an opinion, how to transfer the thinking process on the paper.
- The legal opinion should be written following a structure.
- It should be entitled OPINION or ADVICE and contain the title of the case in the heading.
- The first paragraphs should serve as an introduction to the legal opinion, laying out the salient facts and what you have been asked to advise about.
- At this point, many legal opinions will set out the main conclusions and advice and the overall opinion.
- This is good practice as it will encourage focus throughout the legal opinion and the reader will be able to read the following paragraphs knowing where they are leading.
- A percentage chance of success can be included in this section if appropriate.
- The subsequent paragraphs should set out your reasons for reaching the legal opinion which you do in the opening paragraphs.
- This is where the legal structure will come in.
- Each issue should be taken in its logical order.
- Each section should include your opinion on that issue and the reasons for it.
- There are certain rules of structure which ought to be followed for the sake of consistency in legal opinions.
- One example of these is that liability should be dealt with before quantum in civil claims.

- If there are two or more defendants take each of the defendant's liability in turn before turning to quantum.
- The concluding paragraph of a legal opinion ought to be a 'Next Step' paragraph advising what needs to be done to strengthen the client's case.

****

WRITS

For enforcement of Fundamental Rights as conferred on the citizens of India and others under the Constitution of India, Article 32 of the Constitution confers on the Supreme Court of India power to issue directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the said rights.

The Constitution also confers power on the High Courts to issue certain writs.

Article 226 of the Constitution lays down:
"Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III (Fundamental Rights) and for any other purpose".

Types of Writs

Habeas Corpus:
'Habeas Corpus' is a Latin term, which literally means, 'You may have the body'. Under this writ, the Supreme Court / High Court orders immediate release of the detained person, if there is no legal justification for his detention.

Mandamus:
- The expression "mandamus" means a command.
- The writ of mandamus is, thus, a command issued to direct any inferior Court or Government authority requiring him to do a particular thing therein specified which pertains to his or their office and is further in the nature of a public duty.
- This writ is used when the inferior tribunal has declined to exercise jurisdiction. Mandamus can be issued against any public authority.
- The applicant must have a legal right to the performance of a legal duty by the person against whom the writ is prayed. Mandamus is not issued if the public authority has a discretion.
- Mandamus can be issued by the Supreme Court and all the High Courts to all authorities.
- However, it does not lie against the President of India or the Governor of a State for the exercise of their duties and powers (Article 360).

Prohibitions:

- The writ of prohibition is issued by the Supreme Court or any High Court to an inferior Court preventing the latter from usurping jurisdiction which is not legally vested in it.
- It compels courts to act within their jurisdiction when a tribunal acts without or in excess of Jurisdiction or in violation of rules or law.

Certiorari:

The writ of certiorari is available to any person whenever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, acts in excess of its legal authority.

The writ removes the proceedings from such body to the High Court in order to quash a decision that goes beyond the jurisdiction of the deciding authority.

Quo warranto:

The writ of quo warranto is prayed for, for an inquiry into the legality of the claim which a person asserts to an office or franchise and to oust him from such position if he is an usurper.

The holder of the office has to show to the Court under what authority he holds the office. This writ is issued when:

- the office is of a public and of a substantive nature;
- the office is created by a Statute or by the Constitution itself; and
- the respondent must have asserted his claim to the office. It can issue even though he has not assumed charge of the office.

****

SPECIMEN FORM OF A WRIT PETITION

In the High Court of…… at……

Civil Original (Extra-ordinary) Jurisdiction

Civil Writ Petition No…… of 200…

In the matter of:

JKL S/o…… R/o…… former employee (Inspector Grade-I) in the Respondent-Company.

…Petitioner

AND

1. XYZ Company Ltd., a company wholly owned by the Govt. of India and having its registered office at…… through its Chairman.

2. Managing Director of the above Company

…Respondent

Civil Writ Petition against the order dated…… passed by the Managing Director, respondent No. 2 herein, by which the services of the petitioner as an employee of the respondent-company have been terminated.

May it please the Hon'ble Chief Justice of the High Court of…… and His Lordship's companion Judges.

The Petitioner MOST RESPECTFULLY SHOWETH:

1. That the petitioner is a citizen of India and is therefore entitled to enjoy all the rights guaranteed by the Constitution of India.
2. That respondent No. 1 is a company registered under the Companies Act, 1956 having its registered office at……
3. The respondent-company is wholly owned by the Government of India and is, thus, an instrumentality of state is given in Annexure 12 of the Constitution.
4. That the petitioner was an employee of the respondent-company, having been appointed as a Sub-Inspector Grade-I on…… 1991 and he continued to work, earning one promotion also.
5. That on…… 20….. respondent No. 2 herein abruptly issued the impugned order dated…… terminating the services of the petitioner and the

petitioner came to be relieved of his duties the same day. A copy of the impugned order is annexed hereto and marked as ANNEXURE-1.

6. That on a bare reading of the impugned order it becomes clear that the order has been issued on the basis of some alleged misconduct on the part of petitioner, but no inquiry under the relevant rules has been held before the passing of the order.
7. That the petitioner has not committed any act that could be termed to be an act constituting misconduct.

The impugned order is being assailed on the following, amongst other,

GROUNDS

1. That the petitioner being a permanent employee of the respondent-company his services could not be terminating without holding an enquiry under the rules applicable to the employees of the company.
2. That the principles of natural justice have been contravened by the respondents in not giving to the petitioner any opportunity of being heard.
3. That the impugned order is otherwise also erroneous and unsustainable, as it does not contain any reason and is a non-speaking order.

PRAYER

In the facts and circumstances stated above the petitioner prays that a direction in the form of a writ of quo warranto and mandamus or any other appropriate writ be issued quashing the impugned order and reinstating the petitioner in service with all consequential benefits including back wages.

It is further prayed that the respondent be burdened with costs.

PETITIONER
THROUGH
COUNSEL
MR.…...…

DATED

The Writ petition must be supported by an affidavit of the petitioner.

****

SPECIAL LEAVE PETITIONS

Article 134A of the Constitution of India lays down that every High Court, passing or making a judgement, decree, final order, or sentence, referred to in Clause (1) of Article 132 or Clause (1) of Article 133 or Clause (1) of Article 134,

(c) may, if it deems fit so to do, on its own motion; and

(d) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgement, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in Clause (1) of Article 132, or Clause (1) of Article 133 or, as the case may be, sub-clause (c) of clause (1) of Article 134, may be given in respect of that case.

Where a High Court refused to issue the required certificate to enable an aggrieved party to appeal to the Supreme Court against the judgment, order or sentence awarded by the High Court, the aggrieved party may file petition to the Supreme Court for grant of special leave to appeal under Article 136 of the Constitution.

Section 112 of the Code of Civil Procedure, 1908 keeps the powers of the Supreme Court under Article 136 of the Constitution to grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India, beyond the scope of the provisions of the Code.

Section 112 lays down:

(1) "Nothing contained in this Code shall be deemed:

a. to affect the powers of the Supreme Court under Articles 136 or any other provision of the Constitution; or
b. to interfere with any rule, made by the Supreme Court, and for the time being in force, for the presentation of appeals to that Court, or their conduct before that Court; ……".

SPECIAL LEAVE PETITION

Under Article 136, the Supreme Court is authorised to grant in its discretion special leave to appeal from any judgment, decree, sentence or order passed or made by any Court or Tribunal in the territory of India.

The exception to this power of the Supreme Court is with regard to any judgment of any court or Tribunal constituted relating to the Armed Forces.

SPECIMEN FORM OF A PETITION FOR SPECIAL LEAVE IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION
IN THE MATTER OF:
Special Leave Petition under Article 136
of the Constitution of India

AND

IN THE MATTER OF:

ABC Company Ltd., a company registered under the Companies Act through…… Chairman/Managing Director, the company having its registered office at……

…Petitioner

Versus

…… S/o…… R/o…… Union of India through the Secretary, Ministry of Corporate Affairs, New Delhi. The Registrar of Companies……

…Respondents

May it please the Hon'ble Chief Justice of India and His Lordship's Companion Judges of the Supreme Court.

The petitioner-appellant-(company) MOST RESPECTFULLY SHOWETH:

1. That the petitioner is a company duly incorporated under the provisions of the Companies Act, having its registered office at…… and is challenging by way of this Special Leave petition the judgment and order of the High Court of…… dated in proceeding under Section…… of the Companies Act.
2. That the questions of law involved in this matter are as follows:

   - Whether the High Court has fallen into error in taking the view that……?
   - Whether it would be a good ground for winding up of the petitioner-company that two of its directors are not an speaking terms and there is, thus, a deadlock in the administration of the affairs of the company.

[Here state any other ground that has been taken by the respondents or any of the respondents seeking the relief of winding up of the company from the High Court or any other relief.……].

3. That respondent No. 1 herein had filed a petition before the Hon'ble High Court of…… seeking the relief…… which petition was contested by the petitioner-company inter alia on the grounds that……
4. That the High Court after hearing the parties through their respective counsel allowed the said petition, holding that sufficient grounds had been made out for winding up of the petitioner-company (or any other relief claimed in the petition before the High Court).
5. That the aforesaid findings and the final judgment/order of the High Court are assailed on the following, amongst, other.

GROUNDS

1. That……
2. That……
3. That……
4. That the petitioner has not filed any appeal or other proceeding relating to this matter in this Hon'ble Court or any other Court.

RELIEF

The petitioner-company accordingly prays that this Hon'ble Court be pleased to grant Special Leave to Appeal in the matter and to allow the appeal, set aside the impugned judgment/order passed by the High Court and dismiss the petition filed by the respondent (No. ……) in the High Court.

PETITIONER

****

APPEARANCES AND ART OF ADVOCACY

RIGHT TO LEGAL REPRESENTATION

A person can be represented before a court only by an Advocate. However, as far as before the quasi-judicial bodies are concerned, a person can be represented by an Advocate, Company Secretaries / Chartered Accountant / Cost Accountant in Practice.

Thus PCS can appear as an authorized representative before CLB / NCLT, CCI, SAT, TRAI etc.

Under the Companies Act

- Section 432 of the Companies Act, 2013 dealing with right to legal representation envisages that the applicant or the appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any officer to present his or its case before the Tribunal or the Appellate Tribunal, as the case may be.
- The expression 'authorised representative' has been defined under Regulation 2(d) as a person authorized in writing by a party under Regulation 19(2) to function before a Bench as the representative of such party.
- Therefore, a person to be authorized must be one of the persons specified in Regulation 19(2) viz. Advocate or Secretary in whole-time practice or a Practising Chartered Accountant, or Practising Cost and Works Accountant.
- However, a company may also appoint and authorize its Director or Company Secretary to appear in its behalf, in any proceeding before the Bench. The Central Government, the Regional Director or the Registrar may authorize an officer to appear on its behalf (Regulation 19).
- Company Secretaries who are in job can appear for and on behalf of Employer Company, by virtue of powers given under a power of attorney while appearing before CLB/NCLT or Authority Letter but preferably Power of Attorney.

Under the TRAI Act

- Section 17 of the Telecom Regulatory Authority of India (TRAI) Act, 1997 (as amended in 2002) authorizes Company Secretaries to present his or its case before the Appellate Tribunal.
- As per the Explanation appended to the Section 'Company Secretary' means a Company Secretary as defined in clause (c) of sub-section (1) of Section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under subsection (1) of Section 6 of that Act.

Under the SEBI Act

- Section 15V of Securities and Exchange Board of India (SEBI) Act, 1992 permits the appellant either to appear in person or authorise one or more of practising Company Secretaries, Chartered Accountants, Cost Accountants or Legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Under the Competition Act

- Sections 35 and 53S of the Competition Act, 2002 (as amended in 2007) authorises Company Secretaries in practice to appear before Competition Commission of India and Competition Appellate Tribunal.
- Besides, there are a number of concepts and terms such as value of assets, turnover, determination of market, relevant market, geographic market which require active professional involvement and advice.
- Further, Competition Act, 2002 provides a number of factors to be considered by the Competition Commission of India in determining appreciable adverse effect on competition.

Under Real Estate (Regulation and Development) Act, 2016

As per Section 56 of the Real Estate (Regulation and Development) Act, 2016 a Company Secretary holding certificate of practice can appear before Appellate Tribunal or a Regulatory Authority or Adjudicating Officer on behalf of applicant or appellant as the case may be.

Hence a Company Secretary holding certificate of practice can:

- Represent a person (promoter) before any real estate regulatory authority for registration of real estate project,
- Represent a person before real estate appellate tribunal.
- Represent a person before Adjudicating Officer.

****

APPELLATE AUTHORITIES

UNDER THE COMPANIES ACT, 2013

Constitution of National Company Law Tribunal

As per Section 408 of the Companies Act, 2013, the Central Government constituted Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under the Act or any other law for the time being in force.

Constitution of Appellate Tribunal

Under Section 410 of the Companies Act, 2013, the Central Government constituted an Appellate Tribunal to be known as the National Company Law Appellate Tribunal consisting of a chairperson and such number of Judicial and Technical Members, not exceeding eleven, as the Central Government may deem fit, to be appointed by it by notification, for hearing appeals against:

(a) the order of the Tribunal under the Act; and

(b) any direction, decision or order referred to in section 53N of the Competition Act, 2002 in accordance with the provisions of that Act.

Appeal from Orders of Tribunal

Section 421 of the Companies Act, 2013 provides that any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

It may be noted that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

On the receipt of an appeal, the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal

Appeal to Supreme Court

As per Section 423 of the Companies Act, 2013 any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order:

It may be noted that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Registrars of Companies

Registrars of Companies (ROCs) appointed under Section 396 of Companies Act, 2013 are vested with the primary duty of registering companies in States and Union Territories and ensuring that such companies comply with statutory requirements under the Act.

These offices function as a registry of records, relating to the companies registered with them. The records are available for inspection by the public on payment of the prescribed fee. The Central Government exercises administrative control over these offices through the respective Regional Directors

Regional Directors
The Regional Directors supervise the working of the offices of the Registrars of Companies and Official Liquidators located in different locations in the country. They also maintain liaison between the respective State Governments and the Central Government on matters relating to the administration of the Companies Act. The Regional Directors have been delegated powers to directly take up work and dispose off certain business under the provisions of Companies Act.

UNDER TRAI ACT

Appeal to the Supreme Court
Section 18 of the TRAI Act (as amended in 2000) provides that notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law, an appeal shall lie against any order, not being an interlocutory order, of the Appellate Tribunal to the Supreme Court on one or more of the grounds specified in Section 100 of that Code.

UNDER SEBI ACT
Appeal to the Securities Appellate Tribunal
Section 15T of the SEBI Act lays down that any person aggrieved:

(a) by an order of SEBI made, under this Act, or the rules or regulations made thereunder; or
(b) by an order made by an adjudicating officer under this Act;

may prefer an appeal to a SAT having jurisdiction in the matter.

No appeal shall lie to the Securities Appellate Tribunals from an order made

- by SEBI;
- by an Adjudicating Officer,

with the consent of the parties.

Every appeal under sub-section (1) shall be filed within a period of 45 days from the date on which a copy of the order made by SEBI or the Adjudicating Officer, is received by him. However, the SAT may entertain an appeal after the expiry of the said period of 45 days if it is satisfied that there was sufficient cause for not filing it within that period.

On receipt of an appeal, the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

Appeal to Supreme Court
Section 15Z lays down that any person aggrieved by any decision or order of the SAT may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of fact or law arising out of such order.

It has been provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

UNDER THE COMPETITION ACT

Appeal to Appellate Tribunal

As per Section 53B of the Act:
The Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in clause (a) of Section 53A may prefer an appeal to the Appellate Tribunal.

Every appeal shall be filed within a period of 60 days from the date on which a copy of the direction or decision or order made by the Commission is received. However, the Appellate Tribunal may entertain an appeal after the expiry of the said period of 60 days if it is satisfied that there was sufficient cause for not filing it within that period.

On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.

Appeal to Supreme Court
Section 53T of the Act provides that the Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order of the Appellate Tribunal to them:

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days.

UNDER THE INCOME-TAX ACT, 1961

- Appeal against the order of the Income-tax Officer lies with the Appellate Assistant Commissioner or the Commissioner (Appeals) or Commissioner of Income-tax. Appeal against the order of the Appellate Assistant Commissioner or the Commissioner (Appeals) can be preferred by the assessee or the income-tax department and such appeal lies with the Appellate Tribunal. Appeal against the order of the Appellate Tribunal by way of reference by the Tribunal can also be preferred by the assessee or the income-tax department and such appeal lies to the High Court.

- The Order of the High Court on the reference can be challenged either by the assessee or by the income-tax department by preferring an appeal to the Supreme Court which is the final appellate authority.

Appeal to Commissioner (Appeals)

- Section 246 A (1) of the Income-tax Act provides that any assessee aggrieved by any order of an Income-tax Officer, as prescribed in the section may appeal to the Commissioner (Appeals) against such order.
- Every appeal against an order specified in sub-section (2) which is pending immediately before the appointed day before a Deputy Commissioner (Appeals) and any matter arising out of or commenced with such appeal and which is so pending shall stand transferred on that day to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day:
- Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be re-opened or that he be re-heard. Such an appeal shall be in the prescribed Form No. 35.

Appeal by Person Denying Liability to Deduct Tax

Section 248 of the Act states that where under an agreement or other arrangement, the tax deductible on any income, other than interest, under section 195 is to be borne by the person by whom the income is payable, and such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income.

Appeals to Appellate Tribunals

According to Section 253 of the Act:

(1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -

(a) an order passed by a Deputy Commissioner (Appeals)before the 1st day of October, 1998 or, as the case may be, a Commissioner (Appeals) under section 154, section 250, section 271, section 271A or section 272A; or

(b) an order passed by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995, but before the 1st day of January, 1997; or

(ba) an order passed by an Assessing Officer under sub-section (1) of section 115VZC; or

(c) an order passed by a Commissioner under section 12AA or under clause (vi) of sub-section (5) of section 80G or under section 263 or under section 271 or under section 272A or an order passed by him under section 154 amending his order under section 263 or an order passed by a Chief Commissioner or a Director General or a Director under section 272A;

(d) an order passed by an Assessing Officer under sub-section (3) of section 143 or section 147 or section 153A or section 153C in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order.

(e) an order passed by an Assessing Officer under sub-section (3) of section 143 or section 147 or section 153A or section 153C with the approval of the Commissioner as referred to in sub-section (12) of section 144BA or an order passed under section 154 or section 155 in respect of such order.

Sub-section (2) of the section allows an Income-tax officer, on the direction of the Commissioner, if he objects to any order passed by a Deputy Commissioner (Appeals) before the 1st day of October, 1998 or, as the case may be, a Commissioner (Appeals) under section 154 or section 250, to appeal to the Appellate Tribunal against the order.

Sub-section 2A lays down that the Commissioner may, if he objects to any direction issued by the Dispute Resolution Panel under sub-section (5) of section 144C in respect of any objection filed on or after the 1st day of July, 2012, by the assessee under sub-section (2) of section 144C in pursuance of which the Assessing Officer has passed an order completing the assessment or reassessment, direct the Assessing Officer to appeal to the Appellate Tribunal against the order.

Sub-section (3) lays down that every such appeal shall be filed within sixty days of the date on which the order sought to be/ appealed against is communicated to the assessee or to the Commissioner, as the case may be.

In accordance with the Sub-section (6) of the Section, an appeal to the Appellate Tribunal shall be in the prescribed form (Form No. 36 and Form 36 A) and shall be verified in the prescribed manner and shall except in the case of an appeal referred to in Sub-section (2) or a memorandum of cross-objections referred to in Sub-section (4) be accompanied by a fee of:-

(a) where the total income of the assessee as computed by the Assessing Officer, in the case to which the appeal relates, is one hundred thousand rupees or less, five hundred rupees,
(b) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than one hundred thousand rupees but not more than two hundred thousand rupees, one thousand five hundred rupees,
(c) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than two hundred thousand rupees, one per cent of the assessed income, subject to a maximum of ten thousand rupees,

(d) where the subject matter of an appeal relates to any matter, other than those specified in clauses (a), (b) and (c), five hundred rupees.

Statement of the Case to the High Court
Section 256(1) of the Act lays down:

"The assessee or the Commissioner may within sixty days of the date upon which he is served with notice of an order under Section 254, by an application in the prescribed form (Form No. 37) accompanied where the application is made by the assessee by a fee of two hundred rupees require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this Section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court.
Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.

Sub-section (2) of the section lays down that if, on an application made under Sub-section (1) the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of such refusal apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly.

Statement of Case to the Supreme Court
Section 257 of the Act makes provisions for reference of a case by the Appellate Tribunal to the Supreme Court.

It lays down: "If, on an application made under Section 256 of the Act, the Appellate Tribunal is of the opinion that, on account of a conflict in the decisions of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through its President direct to the Supreme Court."

Appeal to the Supreme Court
According to Section 261 of the Act, an appeal shall lie in Supreme Court from any judgment of the High Court delivered on a reference made under Section 256 or an appeal made to High Court in respect of an order passed under Section 254 in any case which the High Court certifies to be a fit one for appeal to the Supreme Court.

****

DRESS CODE

INTRODUCTION

- Members of ICSI are in prominent positions in the management of board affairs at high

levels. They are imparted wider knowledge of management functions, major laws applicable to a company as well as of good corporate governance practices and are subject to a strict Professional Code of Conduct under the Company Secretaries Act, 1980.

- Company Secretaries are thus knowledge professional with compliance bent of mind and analytical approach.
- They are not only conversant with the technicalities and provision of the corporate legal areas but are highly specialized professionals in the matters of procedural and practical aspects involves in the compliances enjoined under various statutes and the rules, regulations, bye-laws and guidelines made there under.
- It is equally important that they must possess manners, a professional look as well as while appearing before the tribunals and other quasi judicial bodies.
- So it is important for them to be familiar with dress code norms, professional etiquettes and court craft having value for their career, value for their company, value for them as an individual to achieve success in the professional career.

DRESS CODE

- A dress code is a set of rules governing a certain combination of clothing. Apart from the legal profession, professional dress code standards are established in major business organization.
- In professional life it is important to look presentable because personal appearance counts. How you look can be a major factor in how you are perceived by others. How you look, talk, act and work determines whether you are a professional or an amateur.
- The way you dress, speak volumes about who you are as a person and as a professional.
- Whenever you enter a room for the first time, it takes only a few seconds for people you have never met to form perceptions about you and your abilities,
- Your clothes and body language always speak first. So it is important that your image gives people the right impression.

GUIDELINES FOR PROFESSIONAL DRESS OF COMPANY SECRETARIES

To enhance the visibility and brand building of the profession and ensuring uniformity, the Council of the Institute of Company Secretaries of India has prescribed the following guidelines for professional dress for members while appearing before judicial/quasi-judicial bodies and tribunals:

1. The professional dress for male members will be Navy Blue suit and white shirt with a tie (preferably of the ICSI) or navy blue buttoned-up coat over a pant or a navy blue safari suit.
2. The professional dress for female members will be Sari or any other dress of a sober colour with a Navy Blue jacket.
3. Members in employment may wear the dress/uniform as specified by the employer for all employees or if allowed the aforesaid professional dress.
4. Practicing Company Secretaries appearing before any tribunal or quasi-judicial body should adhere to dress code if any prescribed for appearing before such tribunal or quasi-judicial body or if allowed the aforesaid professional dress.

ROFESSIONAL ETIQUETTES

Etiquette is the fine art of behaving in front of others. It is a set of practices and forms which are followed in a wide variety of situations. Being corporate professional, a Company Secretary must practice some basic etiquettes as that would be necessary for his professional success in the emerging business scenario. These include Dressing Etiquette, Introduction and Greeting Etiquette; Invitation Etiquette; Dining Etiquettes; Communication Etiquettes etc.

COMMUNICATION ETIQUETTES

Communication etiquettes as formulated are equally to be observed and followed by a Company Secretary for their excellence not only in the corporate world but out side to that also. Some of the important points in this regard for consideration are as under:

1. One should speak politely and listen to others attentively. A good listener is always dear to every client.
2. While speaking over telephones, the other person should always be greeted in reasonable terms while starting and ending the call.
3. One should speak only when the other person has finished talking instead of interrupting in between.
4. This etiquette requires to show interest in what other people are doing and make other feel good.
5. One should stand about an arm's length away while talking to others.
6. Question another person in a friendly, not prying manner.
7. There should be eye contact when talking to others.
8. Be polite. Foul language, unkind statements and gossip be avoided.
9. Conversations with the client should be short and to the point.
10. One should maintain his sobriety and politeness even if the client speaks something offensive or rude and avoid replying back in harsh tone/words.

DRESSING ETIQUETTE

With every organization program comes the inevitable question: What do I wear? Knowing what to wear, or how to wear something, is a key to looking great in any event.

- Always wear neat and nicely pressed formal clothes. Choose corporate shades while you are picking up clothes for your office wear.
- Ties for men should compliment.
- Women should avoid wearing exposing dresses and opt for little but natural make-ups. Heels should be of appropriate or modest height.
- Men need to keep their hair (including facial hair) neatly trimmed and set.
- Always polish your shoes.
- Keep your nails clean.
- Wear clothes which you are comfortable in and can carry well. This is very important while you are in a business meeting or client presentation.

HANDSHAKE ETIQUETTE

Etiquette begins with meeting and greeting. A handshake is a big part of making a positive first impression. A firm shake is an indication of being confident and assertive. The following basic rules will help you get ahead in the workplace:

- Always rise when introducing or being introduced to someone.
- Shake hands with your right hand.
- Shake hands firmly (but not with a bone crushing or fish-limp grip), and with only one squeeze.
- Hold it for a few seconds (only as long as it takes to greet the person), and pump up and down only once or twice.
- Make eye contact while shaking hands.

COMMUNICATION ETIQUETTES

- Always speak politely. Listen to others attentively. A good listener is always dear to every client.
- While speaking over telephones, always greet the other person while starting and ending the call.
- Speak only when the other person has finished talking instead of interrupting in between.
- Show interest in what other people are doing and make others feel good.
- Stand about an arm's length away while talking to others.
- Question another person in a friendly, not prying, manner.
- Make eye contact when talking to others.
- Be polite. Avoid foul language, unkind statements, and gossip.
- Keep your conversations short and to the point.
- Maintain your sobriety and politeness even if the client speaks something offensive or rude and avoid replying back in harsh tone/words.

INVITATION ETIQUETTE

How you respond to an invitation says volumes about your social skills. It reflects negatively on your manners if your response (or lack of response) to an invitation costs time or money for your host.

- Reply by the date given in the invitation, so that the host or hostess knows what kind of arrangements to make for the event, food is not wasted, and unnecessary expense is eliminated.
- If an RSVP card is not included, respond by calling or sending a brief note.
- If you cancel after initially accepting an invitation, phone your regrets as soon as possible. Send a note of regret following the phone conversation.
- Don't ask for permission to bring a guest unless the invitation states.
- Arrive at the event promptly, but not too early.
- Mingle and converse with the other guests.
- Don't overstay your welcome.
    - Extend your thanks as you leave.

DINING ETIQUETTES

- Always be courteous while official dinners. Offer the seat to your guest first. If you are the guest, be punctual and thank the host for the dinner.
- Wait until you receive your host's signal.

- Initiate conversations while waiting for the food.
- Never begin eating any course until everyone has been served or the host/hostess has encouraged you to do so.
- Chew quietly; don't speak with your mouth full.
- Avoid pointing the knife or fork towards the other person while eating and speaking.
- Allow your guest to select the menu and wine.
- If something unwanted has gone to your mouth, place the napkin in front of your mouth tactfully and bring it out instead if putting your hand inside the mouth to get rid of it.
- Learn the basic table manners before you go out to dine with a potential client or an important business meet.

COURT CRAFT

Company Secretaries act as an authorized representative before various Tribunals/quasi judicial bodies. It is necessary for them to learn art of advocacy or court craft for effective delivery of results to their clients when they act as an authorized representative before any tribunal or quasi judicial body.

For winning a case, art of advocacy is important which in essence means to convince the judge and others that my position in the case is the proper interpretation. Advocacy/court craft is learned when we enter the practicising side of the profession. The aim of advocacy is to make judge prefer your version of the truth.

Apart from the legal side of the profession, advocacy is often useful and sometimes vital, in client interviewing, in negotiation and in meetings, client seminars and public lectures. It is a valuable and lifelong skill worth mastering.

Technical and legal knowledge about the area in which Company Secretaries are acting is essential. Better their knowledge, the better their advocacy skills and the greater their impact. Good advocacy or negotiating skills will not compensate for lack of appropriate knowledge.

PREPARATORY POINTS

There are certain basic preparatory points which a Company Secretary should bear in mind when contacted by a client.

- Take minute facts from the client;
- Lend your complete ears to all that client has to say;
- Put questions to the client while taking facts so that correct/relevant facts can be known;
- Convey to the client about exact legal position in context of relief sought by the client;
- Give correct picture of judicial view to the problem posed by the client.

DRAFTING OF PLEADINGS

Pleadings could be both written and oral. Mastering both the kinds of pleadings is must for effective delivery of results to the clients. Some of the important factors which may be borne in mind while making written pleadings are as under:

- Quote relevant provisions in the petition and excerpts of observations made by the Courts relevant to the point;
- Draft prayers for interim relief in such a manner which though appears to be innocuous but satisfy your requirements;
- Do not suppress facts;
- Highlight material facts, legal provisions and Court decisions, if any;
- State important points at the outset together with reference to relevant provisions/judgments.

If you are opponent

- File your reply to the petition at the earliest opportunity;
- Take all possible preliminary contentions together with reference to relevant law point and judgments;
- Submit your reply to each paragraph of the petition.

If you are for the petitioner

- File your rejoinder upon receiving the reply at the earliest opportunity;
- Meet clearly with the specific points raised by the opponent in the reply affidavit.

ORAL PLEADINGS

Effective oral pleadings are relevant both at the stage of preparation of the case before actual presentation and also at the stage of actual presenting a case before CLB/NCLT or other tribunals. Following aspects could be relevant at both these stages:

- Preparation before presentation of the case;
- Carefully read your petition, provisions of law and judgments;
- Jot down relevant points on a separate sheet of paper together with relevant pages of the compilation;
- Keep copies of judgments to be relied ready for the Court and for your opponent(s).

While Presenting Your Case

- Submit a list of citations to the Court Master before opening of case; Start your address with humble note;
- Refer to the order sought to be challenged or relief sought to be prayed;
- State brief facts;
- Formulate issues/points, categorize them and address them one by one;
- Take each point, state relevant facts, provisions of law and relevant binding decisions;
- Hand over Xerox copies of binding decisions to the Court Master while placing reliance;
- Refer to relevant pages of the compilation, provisions of law and judgments;
- Complete all points slowly but firmly;
- Conclude your arguments by reiterating your points in brief;
- Permit the opponent counsel uninterruptedly. However, if facts are being completely twisted, interrupt depending upon the relevant circumstances;

- Take instructions from client in advance with respect to alternative relief.

As Regards Advocacy
Company Secretaries should be able to formulate and present a coherent submission based upon facts, general principles and legal authority in a structured, concise and persuasive manner. They should understand the crucial importance of preparation and the best way to undertake it and be able to demonstrate an understanding of the basic skills in the presentation of cases before the tribunals.

They should be able to:
- Identify the client's goals;
- Identify and analyze factual material;
- Identify the legal context in which the factual issue arises;
- Relate the central legal and factual issues to each other;
- State in summary from the strengths and weaknesses of the case from each party's perspective;
- Develop a presentation strategy;
- Outline the facts in simple narrative form;
- Structure and present in simple form the legal framework of the case;
- Structure the submission as a series of propositions based on the evidence;
- Identify, analyse and assess the specific communication skills and techniques;
- Demonstrate an understanding of the purpose, techniques and tactics of examination, cross-examination and re-examination to adduce, rebut and clarify evidence;
- Demonstrate an understanding of the ethics, etiquette and conventions of advocacy.

CONDUCT 30AND ETIQUETTE

DUTY TO THE COURT

1. A Company Secretary shall, during the presentation of his case and while otherwise acting before a Court/Tribunal, conduct himself with dignity and self-respect.
2. A Company Secretary shall maintain towards the Courts a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.
3. A Company Secretary shall not influence the decision of a Court by any illegal or improper means. Private communications with the judge relating to a pending case are forbidden.
4. A Company Secretary shall use his best efforts to restrain and prevent his client from resorting to sharp and unfair practices or from doing anything in relation to the Court, opposing counsel or parties which the Company Secretary himself ought not to do.
5. A Company Secretary shall refuse to represent the client who persists in such improper conduct.
6. He shall not consider himself a mere mouthpiece of the client, and shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in Court.

7. A Company Secretary shall not enter appearance, act, plead or practice in any way before a Court/Tribunal or any other Authority, if the sole or any member thereof is related to the Company Secretary.
8. A Company Secretary shall not appear in or before any Court or Tribunal or any other Authority for or against an organization or an institution, society or corporation, if he is a member of the Executive Committee of such organization or institution or society or corporation.
9. A Company Secretary should not act or plead in any matter in which he is himself pecuniarily interested.

DUTY TO CLIENT

- A Company Secretary shall not ordinarily withdraw from engagements once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client.
- A Company Secretary shall not accept a brief or appear in a case in which he has reason to believe that he will be a witness and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear if he can retire without jeopardizing his client's interest.
- A Company Secretary shall at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosures to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgment in either him or continuing the engagement.
- It shall be the duty of a Company Secretary to fearlessly uphold the interest of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.
- A Company Secretary shall not at any time, be a party to fomenting of litigation. A Company Secretary shall not act on the instructions of any person other than his client or his authorized agent.
- A Company Secretary shall not do anything whereby be abuses or takes advantage of the confidence reposed in him by his client.

DUTY TO OPPONENT

- A Company Secretary shall not in any way communicate or negotiate upon the subject-matter of controversy with any party represented by an Advocate except through that Advocate.
- A Company Secretary shall do his best to carry out the legitimate promise/ promises, made to the opposite-party.

Important Principles:

Some of the important principles of advocacy a Company Secretary should observe include:

- Act in the best interest of the client;
- Act in accordance with the client’s wishes and instructions;
- Keep the client properly informed;
- Carry out instructions with diligence and competence;

- Act impartially and offer frank, independent advice;
- Maintain client confidentiality.

ADVOCACY TIPS

Some of the tips given by legal experts which professionals like Company Secretaries should bear in mind while appearing before Tribunals or other quasi-judicial bodies are given herein below. They say while pleading, a judge in your pleadings looks for:

- Clarity: The judge's time is limited, so make the most of it.
- Credibility: The judge needs to believe that what you are saying is true and that you are on the right side.
- Demeanor: We don't have a phrase "hearing is believing". The human animal which includes the human judge, is far more video than audio. The way we collect most of our information is through our eyesight.
- Eye contact: While pleading, maintain eye contact with your judge.
- Voice modulation: Voice modulation is equally important. Modulating your voice allows you to emphasize the points you want to emphasize. Be very careful about raising your voice. Use your anger strategically. But use is rarely. Always be in control of it.
- Psychology: Understand judge's psychology as your job is to make the judge prefer your version of the truth.
- Be likeable. At least be more likeable than your opponent. If you can convert an unfamiliar Bench into a group of people who are sympathetic to you personally, you perform a wonderful service to your client.
- Learn to listen.
- Entertain your judge. Humor will often bail you out of a tough spot.

****