

# MODEL ANSWER TO PAPER CODE AS-2420

Master of Business Administration (Third Semester) Examination, 2014

Paper : Second

## CORPORATE LEGAL FRAMEWORK

### Section – A

**Note: Attempt all the questions. This section contains Ten short answer type questions having 2 Marks each. (10x2 = 20 Marks)**

1. **CONSIDERATION** - Sec.2(d) When at the desire of the promisor the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or to abstain from doing something such act or abstinence or promise is called a consideration for the promise. Every contract consist of two parts – (1) Promise and (2) Consideration for the promise. Consideration is the cause of the promise. It is the most essential element of the contract. As a general rule, agreement without consideration is void. The promise for a promise in return is consideration. The consideration or object of an agreements is unlawful if —
  - (i) it is forbidden by law; or
  - (ii) is of such a nature that, if permitted it would defeat the provisions of any laws
  - (iii) is fraudulent; or
  - (iv) involves or implies injury to the person or property of another
  - (v) the court regards it as immoral or opposed to public policyIn each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void. With exceptions prescribed in Section 25
2. **Damages** may be of Four kinds:
  - (a) Ordinary or General or Compensatory damages ( i.e., damages arising naturally from the breach)
  - (b) Special Damages ( i.e., damages in contemplation of the parties at the time of contract)
  - (c) Exemplary, Punitive or Vindictive damages. ( intention is to punish the guilty party rather than to compensate the loss suffered by the aggrieved party.)
  - (d) Nominal damages ( awarded for the name sake)
3. In case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling. It is the duty of the buyer to satisfy him before buying the goods that the goods will serve the purpose for which they are being bought. If the goods turn out to be defective or do not serve his purpose or if he depends on his own skill or judgment, the buyer cannot hold the seller responsible. The rule of Caveat Emptor is laid down in the Section 16 of the Sales of Goods Act, 1930 which states that, "subject to the provisions of this Act or of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale". The doctrine of Caveat Emptor is, however, subject to the exceptions as prescribed in Sections 15, 16 and 17.
4. **DISHONOUR BY NON-ACCEPTANCE** According to Section 91 a bill of exchange is said to be dishonoured by non-acceptance in the following cases:-
  - (a) When the drawee or one of several drawees (not being partners) does not accept the bill within 48 hours from the time of presentment for acceptance.

- (b) Where the presentment for acceptance is excused and the bill is not accepted, i.e., remains unaccepted.
- (c) Where the drawee is incompetent to contract.
- (d) Where the drawee makes the acceptance qualified.
- (e) If the drawee is a fictitious person or after reasonable search cannot be found (Sec. 61).

It is important to note that where a 'drawee in case of need' is named in a bill of exchange, the bill is not dishonoured until it has been dishonoured by such drawee (sec. 115).

5. Sec2 (1)(c) of the Consumer Protection Act, 1986 has provided certain grounds on which the complaint can be made. Complaint must contain any of the following allegation in writing
- (i) an *unfair trade practice or a restrictive trade practice* has been adopted by any trader or service provider;
  - (ii) the goods bought by him or agreed to be bought by him; suffer from one or more defects;
  - (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
  - (iv) a trader or service provider, as the case may be, has charged for the goods or for the service mentioned in the complaint a price in excess of the price –
    - (a) fixed by or under any law for the time being in force
    - (b) displayed on the goods or any package containing such goods ;
    - (c) displayed on the price list exhibited by him by or under any law for the time being in force;
    - (d) agreed between the parties;
  - (v) Goods which will be hazardous to life and safety when used or being offered for sale to the public,--
    - (A) in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;
    - (B) if the trader could have known with due diligence that the goods so offered are unsafe to the public;
  - (vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety”;
6. **Non Applicability of the IT Act, 2000 [Sec. 1(4)]** The provisions of IT Act, 2000 shall not apply to documents specified in the First schedule of the Act which are as follows:
- (i) Execution of a Negotiable Instrument (other than a cheque) under the Negotiable Instruments, Act,1881.
  - (ii) Execution of a Power of Attorney .under the Powers of Attorney Act, 1882.
  - (iii) Creation of a Trust under Indian Trusts Act, 1882.
  - (iv) Execution of a 'Will' under the Indian Succession Act, 1925 including any other testamentary disposition by whatever name called.
  - (v) Entering into a contract for the sale or conveyance of immovable property or any interest such property.

The reason for excluding the above-mentioned documents from the purview of the Act is that such documents are required to be authenticated only by the handwritten signatures. Moreover; these require special attestation and/or registration formalities, which also explain their exclusion.

7. The term company means a body of individuals associated for some common objects. Where a body of individuals joins together to form a company to form a company with a common capital comprising transferable shares or stock, it is known as a “joint stock company”. This body of individuals may be either incorporate or unincorporated. An incorporated company has such legal entity distant from and independent of its members. An unincorporated company has no such legal entity, and is not

distinguishable from its members. The law relating to companies in India is contained in the companies Act, 1956.

8. A shareholder is one who lawfully holds or possesses or owns or a valid allottee of a share. An ordinary shareholder is entitled to vote on all matters affecting the company [Sec. 87(i)(a)]. His voting right on a poll shall be in proportion to his share of the paid up equity capital [Sec. 87(i)(b)]. Even though the allotment and its communication result in a contract between the company and the allottee; the allottee does not automatically become a member of the company. He will become a member when his name is placed on the register of members.
9. The objects and reasons of FEMA may be enlisted as follows:
  1. **Better course**—The Foreign Exchange Regulation Act, 1973 (FERA) was reviewed in 1993. Reserve Bank of India was accordingly asked to undertake a fresh exercise and suggest new legislation. A Task Force constituted for this purpose submitted its report in 1994, recommending substantial changes in the existing Act.
  2. **Significant developments:** Significant developments have taken place since 1993, such as substantial increase in our foreign exchange reserves, growth in foreign trade, etc.
  3. **Lapse of Bill, 1998**—Taking into consideration the above facts, a Bill to repeal and replace the FERA, 1973 was introduced in the Lok Sabha on 4th August, 1998. Before any decision could be taken the 12th Lok Sabha was dissolved. Owing to the dissolution of the Lok Sabha, the Bill also lapsed.
  4. **Consolidation and amendment of foreign exchange law**—After incorporating certain modifications and suggestions of the Standing Committee on Finance, the Central Government decided to introduce the Foreign Exchange Management Bill and repeal the FERA, 1973.
10. **COMMON MISUNDERSTANDINGS ABOUT THE WTO** Is it a dictatorial tool of the rich and powerful? Does it destroy jobs? Does it ignore the concerns of health, the environment and development? Criticisms of the WTO are often based on fundamental misunderstandings of the way the WTO works. But the reality is as under:
  - (i) The WTO does NOT tell governments what to do
  - (ii) The WTO is NOT for free trade at any cost
  - (iii) The WTO is NOT only concerned about commercial interests. This does NOT take priority over development
  - (iv) In the WTO, commercial interests do NOT take priority over environmental protection
  - (v) The WTO does NOT dictate to governments on issues such as food safety, and human health and safety. Again commercial interests do NOT override
  - (vi) The WTO does NOT destroy jobs or widen the gap between rich and poor
  - (vii) Small countries are NOT powerless in the WTO
  - (viii) The WTO is NOT the tool of powerful lobbies A related misunderstanding is about the WTO's membership. The WTO is an organization of governments.
  - (ix) Weaker countries do have a choice, they are NOT forced to join the WTO
  - (x) The WTO is NOT undemocratic

#### Section-B

**Note: Attempt any five questions. This section contains *Eight* long- answer type questions carrying 10 marks each. (5x10=50 Marks).**

**2. DEFINITION OF PROSPECTUS** According to section 2(36) of the Companies Act, "Prospectus means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or] inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate".

**Offer to the Public:**

Section 67(1) of the Act states that public includes "any section of the public whether elected as members or debenture holders , or as clients of the person issuing the prospectus or in any other manner.

The following points are to be considered carefully in order to constitute a prospectus.

- (a) There must be an invitation to the public,
- (b) The invitation must be made by or on behalf of the company or in relation to an intended company,
- (c) The invitation must relate to shares or debentures or such other instrument.

**Which companies are required to issue prospectus**

- o Every public listed company who intends to offer shares or debentures of the company to the public.
- o Every private company who ceases to be a private company and converts into a public company and intends to offer shares or debentures of the company to the public.

**Dating of prospectus**

A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

**CLASSES OF PROSPECTUS**

- 1. Prospectus issued generally i.e. issued to persons who are not existing members or debenture holders (e.g. prospectus issued to a new company making a public issue on its formation).
- 2. Prospectus issued generally uniform with shares or debentures already quoted on stock exchange.
- 3. Prospectus not issued generally i.e. only to the existing shareholders and debenture holder (e.g. right issue).

**CONTENTS OF PROSPECTUS**

Section 55 provides that a prospectus issued by or on behalf of a company ,or in relation to an intended company shall be dated, and that date must, unless contrary is proved, be taken as the date of the publication of the prospectus.

Section 56 provides that a prospectus must (i) contain the matters specified in part I of schedule II and set out the reports specified in part of schedule II of the Companies Act, 1956 .The Third Part of the schedule is explanatory of Part I and II .

The Government has revised the format of prospectus given in schedule II of the Companies Act, 1956 .The revised format will be effective from 1.11.1991 .

**PART I OF SCHEDULE II**

**I. General Information**

- a) Name and address of registered office of the company.
- b) (i) Consent of the Central Government for the present issue and declaration of the Central Government about non-responsibility for financial soundness or correctness of statements.  
(ii) Letter of Intent/industrial license and declaration of the Central Government about non-responsibility for financial soundness or correctness of statements.
- c) Names of regional stock exchange and other stock exchanges where application is made for listing of present issue.
- d) Provisions of sub-section (1) of section 68A of the Companies Act relating to punishment for fictitious applications.
- e) Statement/Declaration about refund of the issue if minimum subscription of 90 percent is not received within 90 days from closure of the issue.
- f) Declaration about the issue of allotment letters/refunds within a period of 10 weeks and interest in case of any delay in refund at the prescribed rate under of section 73(2)(2A).

- g) Date of opening of the issue. Date of closing of the issue. Date of earliest closing of the issue.
- h) Name and address of auditors and lead managers.
- i) Name and address of trustee under debenture trust deed (in case of debenture issue).
- j) Whether rating from CRISIL or any rating agency has been obtained for the proposed debenture/preference shares issue.
  - If no rating has been obtained, this should be answered 'No'.
  - If yes, the rating should be indicated.

(k) Underwriting of the issue.

(Names and addresses of the underwriters and the amount underwritten by them.)

(Declaration by Board of Directors that the underwriters have sufficient resources to discharge their respective obligation.)

## **II. Capital Structure of the Company**

(a) Authorised, issued, subscribed and paid-up capital.

(b) Size of present issue giving separately reservation for preferential allotment to promoters and others,

(c) Paid-up capital : (i) after the present issue, (ii) after conversion of debentures (if applicable).

## **III. Terms of the present issue**

(a) Terms of payments.

(b) Rights of the instrument holders,

(c) How to apply—availability of forms, prospectus and mode of payment.

(d) Any special tax benefits for company and its shareholders.

## **IV. Particulars of the Issue**

(a) Objects. .

(b) Project cost.

(c) Means of financing (including contribution of promoters).

## **V. Company, Management and Project**

(a) History and main objects and present business of the company.

(b) Subsidiary(ies) of the company, if any (for financial data refer to auditor's report in Part II).

(c) Promoters and their background.

(d) Names, addresses and occupation of manager, managing director and other directors including nominee directors, whole-time directors (giving their directorships in other companies),

(e) Location of project.

(f) Plant and machinery, technology, process, etc.

(g) Collaboration, any performance guarantee or assistance in marketing by the collaborators.

(h) Infrastructure facilities for raw materials and utilities like water, electricity, etc.

(i) Schedule of implementation of the project and progress so far, giving details of land acquisition, civil works, installation of plant and machinery, trial production, commercial production, etc.

(j) The products :

(i) Nature of the product/s consumer/industrial and end users,

(ii) Approach to marketing and proposed marketing set up.

(iii) Export possibilities and export obligations, if any.

(In case of a company providing any 'service' particulars, as applicable, be furnished).

(k) Future prospects—expected capacity utilisation during the first three years from the date of commencement of production and the expected year when the company would be able to cash profits and net profits.

Stock market data for shares/debentures of the company [high/low price in each of the last, three years and monthly high/low during the last six months (where applicable)].

## **VI. Following particulars in regard to the company and other listed companies under the same management within the meaning of section 370 (IB), which made any capital issue during the last three years:**

Name of the company :

Year of issue :

Type of issue :

(Public/Rights/Composite)

Amount of issue :

Date of closure of issue :

Date of completion of delivery of

Share/debenture certificates :

Date of completion of the project :

Where object of the issue was financing of a project :

Rate of dividend paid :

**VII. (a) Outstanding litigation pertaining to : "**

(i) matters likely to affect operation and finances of the company including disputed tax liabilities of any nature; and

(ii) criminal prosecution launched against the company and the directors for alleged offences under the enactments specified in paragraph 1 of Part I of Schedule XIII of the Companies Act, 1956.

(b) Particulars of default, if any, in meeting statutory dues, institutional dues, and towards instrument holders like debentures, fixed deposits and arrears on cumulative preference shares, etc. (Also give the same particulars about the companies promoted by the same private promoters and listed on stock exchanges).

(c). Any material development after the date of the latest balance sheet and its impact on performance and prospects of the company.

**VIII. Management Perception of Risk Factors (e.g., sensitivity to foreign exchange rate fluctuations, difficulty in availability of raw materials or in marketing of product, cost/time over-run, etc.)**

## **PART II OF SCHEDULE II**

### **A. General Information**

1. Consent of directors, auditors, solicitors/advocates, managers to issue, registrar of issue, bankers to the company, bankers to the-issue and experts.

2. Expert opinion obtained,

3. Change, if any, in directors and auditors during the last three years, and reasons thereof.

4. Authority for the issue and details of resolution passed for the issue.

5. Procedure and time schedule for allotment and issue of certificates.

6. Names and addresses of the company secretary, legal adviser, lead managers, co-managers, auditors, bankers to the company, bankers to the issue and brokers to the issue.

### **B. Financial Information**

Reports to be set out

1. A report by the auditors of the company with respect to :

(a) profits and losses and assets and liabilities, in accordance with sub-clauses (2) or (3) of this clause, as the case may require; and

(b) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company for each of the five financial years immediately preceding the issue of the prospectus, giving particulars of each class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares for any of those years;

and, if no accounts have been made up in respect of any part of the period of five years ending on a date, three months before the issue of the prospectus, containing a statement of that fact (and accompanied by a statement of the accounts of the company in respect of that part of the said period up to a date not earlier than six months of the date of issue of prospectus indicating the profit or loss for that period and the assets and liabilities position as at the end of that period together with a certificate from the auditors that such accounts have been examined and found correct by them. The said statement may indicate the nature of provisions or adjustments made or are yet to be made).

2. If the company has no subsidiaries, the report shall :

(a) so far as regards profits and losses, deal with the profits or losses of the company (distinguishing items of a non-recurring nature) for each of the five financial years immediately preceding the issue of the prospectus; and

(b) so far as regards assets and liabilities, deal with assets and liabilities of the company at the last date to which the accounts of the company were made up.

3. If the company has subsidiaries, the report shall :

(a) so far as regards profits and losses, deal separately with the company's profits or losses as provided by sub-clause (2) and in addition deal either :

(i) as a whole with the combined profits or losses of its subsidiaries so far as they concern members of the company; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern members of the company; or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company, and, so far as they concern members of the company, with the combined profits or losses of its subsidiaries; and

(b) so far as regards assets and liabilities, deal separately with the company's assets and liabilities as provided by sub-clause (2) and in addition deal either :

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities, or

(ii) individually with the assets and liabilities of each subsidiary; and shall indicate as respects the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

4. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly Or indirectly :

(i) in the purchase of any business; or

(ii) in the purchase of an interest in any business and by reason of that purchase or, anything to be done in consequence thereof, or in connection therewith; the company will become entitled to an interest in respect either the capital or profits and losses or both, in such business exceeding fifty per cent thereof; a report made by accountants (who shall be named in the prospectus) upon :

(a) the profits or losses of the business for each-of the five financial years immediately preceding the issue of the prospectus; and

(b) the assets and liabilities of the business at the last date to which the accounts of the business were made up, ending a date not more than one hundred and twenty days before the date of the issue of the prospectus.

5. (1)If:

(a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate; and

(b) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith, that body corporate will become a subsidiary of the company;

a report made by accountants (who shall be named in the prospectus) upon :

(i) the profits or losses of the other body corporate for each of the five financial years immediately preceding the issue of the prospectus; and

(ii) the assets and liabilities of the other body corporate at the last date to which its accounts were made up.

(2) The said report shall :

(a) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities, so dealt with for holders of other shares, if the company had at all material times held the shares to be acquired; and

(b) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by sub-clause (2) above in relation to the company and its subsidiaries.

6. Principal terms of loan and assets charged as security. C. Statutory and other **Information**

1. Minimum subscription.

2. Expenses of the issue giving separately fee payable to : -

(a) Advisors. .

(b) Registrars to the issue.

(c) Managers to the issue.

(d) Trustees *for* the debenture holders.vant after the compa3. Underwriting commission and brokerage.

4. Previous issue for cash.

5. Previous public or rights issue, if any (during last live years) :

(a) Date of allotment : Closing date : Date of refunds : Date of listing on the stock exchange :

(b) If the issue(s) .at premium or discount and the amount thereof.

(c) The amount paid or payable by-way of premium, if any, on each share which had been issued within the two years preceding the date of the prospectus or is to be issued, stating the dates or proposed dates of issue and, where some shares have been or are to be issued at a premium arid other shares of the same class at a lower premium, or at par or at a discount, the reason for the differentiation and how any premiums received have been or are to be disposed of.

6. Commission or brokerage on previous issue.

7. Issue of shares otherwise than for cash.

8. .Debentures and redeemable preference shares and other instruments issued by the company outstanding as on the date of prospectus and terms of issue.

9. Option to subscribe.

10. Purchase of property :

(i) As respects any property to which this clause applies :

(a) the names, addresses, descriptions and occupation of the vendors;

(b) the amount paid or payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is sub-purchaser, the amount so paid or payable to each vendor, specifying separately the amount, if any, paid or payable for goodwill;

(c) the nature of the title or interest in such property acquired or to be acquired by the company;

(d) short particulars of every transaction relating to the property completed within the two preceding years, in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter, or a director or proposed director of the company had any interest, direct or indirect, specifying the date of the transaction and the name of such promoter, director or proposed director and stating the amount payable by or to such vendor, promoter, director or proposed, director in respect of the transaction.

(ii) The property to which sub-claused) applies is a property purchased or acquired by the company or proposed to be so purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of issue if the prospectus, other than property :

(a) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or

(b) as respects which the amount of the purchase money is not material, (iii) For the purpose of this clause, where a vendor is a firm, the members of the firm shall not he treated as separate vendors.

(iv) If the company proposes to acquire a business which has been carried on for less than three years, the length of time during which the business hasbeen carried on.



11. (i) Details of directors, proposed directors, whole-time directors, their remuneration, appointment and remuneration of managing directors, interests of directors, their borrowing powers and qualification shares.

Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter or officers and consideration for payment of giving of the benefit.

(ii) The dates, parties to any general nature of:

(a) every contract appointing or fixing the remuneration of a managing director or manager whenever entered into, that is to say, whether within or more than, two years before the date of the prospectus;

(b) every other material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of the prospectus.

A reasonable time and place at which any such contract or a copy there of may be inspected.

(iii) Full particulars of the nature and extent of the interest, if any, of every director or promoter :

(a) in the promotion of the company; or

(b) in any property acquired by the company within two years of the date of the prospectus or proposed to be acquired by it.

Where the interest of such a director or promoter consists in being a member of a firm or company, the nature and extent of the interest of the firm or company, with a statement of all sums paid or agreed to be paid to him or to the firm or company in cash or shares or otherwise by any person either to induce him to become,-or to qualify him as, a director, or otherwise for services rendered by him or the firm Or company, in connection with the promotion or formation of the company :

12. Rights of members regarding voting, dividend, lien on shares and the process for modification of such rights and forfeiture of shares.

13. Restrictions, if any, on transfer and transmission of shares/debentures and on their consolidation/splitting.

14. Revaluation of assets, if any (during last five years).

15. Material contracts and inspection of documents, *e.g.*,

A. Material contracts

B. Documents

C. Time and place at which the contracts together with documents will be available for inspection from the date of prospectus until the date of closing of the subscription list.

### **PART III OF SCHEDULE II**

Part III of the Schedule II consists of provisions applying to Part I & II of the said Schedule. It deals mainly with the interpretation of the expressions used in Parts I & II. These provisions are :

(a) In the case of a company which has been carrying on business for a period of less than five financial years, reference to five financial years ,reference to five financial years means references to that number of financial years for which business has been carried on.

(b) Any report required by Part II of this schedule shall be made only by an accountant who is qualified for appointment as an auditor of the company under the Act and who is not an officer or servant ,or a partner or in the employment of an officer or servant, of the company, or of the company's subsidiary or the company's holding company.For the purpose of this clause ,the expression 'Officer' shall include a proposed director but not an auditor.

(c) Reasonable time and place at which copies of all balance sheets and profit and loss accounts ,if any, on which the report of the auditors is based and material contracts and other documents may be inspected.

Declaration that all relevant provisions of the Companies Act,1956 and the guidelines issued by the Government have been compiled with and no statement made in the prospectus is contrary to the provisions of the Companies Act,1956 and the rules there under.

These requirements are so important that they cannot be waived by the applicant for shares. Even if he has been persuaded to waive thee compliance of the provisions of section 56 ,the waiver would be

void. The statutory safeguards are regarded as such importance that an applicant cannot dispense with them even if he is prepared to do so.

### **3. Meaning of Winding Up**

The winding up is the process of putting an end to the legal personality of a company as a corporate body. During this process the company ceases to carry on its normal business, the assets of the company are sold and the proceeds are utilised in paying off the debts and liabilities. If any surplus is left, it is paid back to the members in proportion to their contribution to the capital of the company. An administrator, called an official liquidator, is appointed and he takes control of the company, collects its assets, pays its debts and distributes the surplus, if any, among the members. Thus, with the winding up, a company ceases to be a going concern, all its operations come to a halt. It may be noted that the process of winding up begins only after the Tribunal passes the order for winding up and till such an order is passed there is no winding up. Further, a company may be unable to pay its debts but it cannot be adjudicated insolvent as the law of insolvency does not apply to companies. Only individuals can be declared insolvent, not a corporate body. In such a case, a company can only be wound up. Besides, even a solvent company may be wound up. The Principle of Reputed Ownership does not apply to companies in winding up.

#### **Modes of Winding Up**

- *Compulsory winding up.*
- *Voluntary winding up.*
- *Voluntary winding up under supervision of court.*

#### **Compulsory winding up**

The winding up of a company by an order of the tribunal is called the compulsory winding up. **Section 433** of the Companies Act contains the cases in which the company may be wound up by the tribunal. The tribunal will make an order for winding up of a company.

There could be various grounds or reasons due to which a company may be wound up. These are as follows:

- A. Special Resolution By Members [Section 433 (A)]
- B. Default In Holding Statutory Meeting Or Delivery Of Statutory Report [Section 433(B)]
- C. Failure To Commence Business or Suspending Business [Section 433(C)]
- D. Reduction In Membership Below Statutory Minimum [Section 433(D)]
- E. Inability To Pay Debt [Section 433(B)]
- F. Just And Equitable To Order Winding Up

#### **Who may petition for compulsory winding up?**

A petition for compulsory winding up of a company, as per **Section 439(1)**, can be made by any of the following:

- Company itself
- Any creditor or creditors, including any contingent or prospective creditor or creditors
- A contributory or contributories
- Any combination of creditors, company, or contributories acting jointly or separately
- Registrar of Companies
- Any person authorized by Central Government in consequence of investigation under **Section 237** of the Act

## **II VOLUNTARY WINDING UP**

Where a company is wound up by the members or creditors, without any interference by the court, it is called voluntary winding up. In voluntary winding up, the company and its creditors are left free to settle their affairs without going to a Court, although they may apply to the Court for directions or orders, if and when necessary (Sec. 518).

#### **Grounds for Voluntary Winding Up**

According to Section 484, a company may be wound up voluntarily under any of the following two circumstances:

- (i) *By passing an ordinary resolution.* A company may resolve by an ordinary resolution to be wound up voluntarily in the following two circumstances:
  - (a) when the period fixed for the duration of the company as mentioned in its articles, has expired; or
  - (b) when the event on the happening of which, the articles provide that the company is to be dissolved, has occurred.
- (ii) *By passing a special resolution.* A company may, at any time, without assigning any reasons, resolve by a special resolution to be wound up voluntarily.

The resolution (whether ordinary or special) when passed, must be advertised within 14 days of the passing of the resolution in the Official Gazette and also in some important newspaper circulating in the district of the registered office of the company (Sec. 485).

Types of voluntary winding up. Under the Act voluntary winding up may be of two types: (1) Members' voluntary winding up; and (2) Creditors' voluntary winding up.

### **Members' Voluntary Winding Up**

A members' voluntary winding up is possible only when the company is solvent and is able to pay its liabilities in full. It requires:

- (a) the filing of a statutory '*Declaration of Solvency*' by the majority of directors of the company with the Registrar; and
- (b) the passing of an ordinary or special resolution, as the case may be, by the members at an extraordinary general meeting and filing a copy thereof, with the Registrar.

**Provisions applicable to creditors' voluntary winding up.** Sections 500 to 509 contain provisions regarding creditors voluntary winding up.

Distinction between Members' and Creditors' Voluntary Winding Up

The main differences between the two types of voluntary winding up are as follows:

1. Members' voluntary winding up is resorted to by solvent companies and requires the filing of a 'declaration of solvency' by the directors of the company with the Registrar. Whereas creditors' voluntary winding up is resorted to by insolvent companies and as such there cannot be made a 'declaration of solvency'.
2. Members' voluntary winding up requires the calling of general meeting of members only. Whereas in the case of creditors' voluntary winding up a meeting of creditors must also be called immediately after the meeting of the members.
  - (1) In the case of members' voluntary winding up the liquidator is appointed by the members in general meeting. Whereas in the case of creditors' voluntary winding up the liquidator is appointed in a different way.
  - (1) In the case of members' voluntary winding up the question of appointing a 'Committee of Inspection' does not arise at all. On the contrary, in the case of creditors' voluntary winding up if the creditors so wish, a 'Committee of Inspection' may be appointed.
  - (1) In the case of members' voluntary winding up, members have the dominating control over the proceedings of the winding up. But in the case of creditors\* voluntary winding up the relevant

control over the proceedings lies with the creditors.

### **III. VOLUNTARY WINDING UP UNDER SUPERVISION OF THE COURT**

This mode of winding up is also called as 'Supervisory Winding Up'. When voluntary winding up of a company is in progress, the liquidator or any creditor or any contributory may apply to the Court, requesting that the winding up be proceeded further under the supervision of the Court on any or all of the following grounds:

- (1) The liquidator is negligent in collecting the assets; or
- (1) The liquidator is partial; or

- (1) The rules relating to winding up are not being observed, *e.g.*, not to give priority in payment to preferential creditors; *etc.*
- (1) The majority is playing a fraud on minority, *etc.*

Under these circumstances, the Court may make an order that the voluntary winding up shall continue, but subject to the supervision of the Court and on the terms and conditions specified by the Court (Sec 522). The most important effect of such an order is that the Court gets the same powers as it has in the case of compulsory winding up under order of the Court [Sec. 526(2)]. The Court may also appoint one or more additional liquidators. The Court has also the power to remove any liquidator and fill vacancy occasioned by the removal or by the death or resignation [Sec. 524(1)(2)]. Section 527 further empowers the Court to pass an order for the compulsory winding up. In case of need, superseding the supervisory winding up. It is to be remembered that in case of supervisory winding up the company cannot be dissolved except by order of the Court, as in the case of compulsory winding up. When the affairs have been completely wound up and the liquidator has made an application to the Court in that behalf, the company is dissolved from the date of the Court's order. It will be seen from the above that this kind of winding up combines the advantages of a voluntary winding up with the advantages of a winding up by the Court.

#### **4. Capacity of parties to contract – Competent parties:**

Sec.10 says Parties must be competent to contract. Competence to contract is defined in Sec.11. as 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.

**Minors:** Indian Majority Act, 1875 – Sec.3 specifies that –

- (1) a minor is a person who has not completed 18 years of age.
- (2) In following cases, a person attains majority on completion of 21 years of age :
  - (a) where guardian appointed for person or property of minor under the Guardians and Wards Act, 1890, or
  - (b) where superintendence of minor's property is under Court of Wards.

**Rules regarding agreements with minors :**

- (1) Agreement with or by minor is void ab initio : minor cannot bind himself by contract - such agreement is inoperative.
- (2) Minor can be promisee or beneficiary - can be beneficiary (payee, endorsee or promisee) – such contracts enforceable at the option of the minor
- (3) His agreement cannot be ratified by him on attaining age of majority
- (4) Minor receives any benefit under a void agreement, he cannot be asked to compensate/pay for it
- (5) No estoppel against minor - Minor can always plead minority – Even if minor mis-represents his age, he cannot be sued.
- (6) No specific performance of agreement – if entered into by minor, no specific performance as void ab initio
- (7) Cannot enter into partnership – but can become a partner in an existing partnership for profits only – cannot be liable for liabilities of the firm.
- (8) Minor cannot be adjudged insolvent
- (9) Liable for 'necessaries' supplied - Minor not personally liable – Only his estate liable for 'necessaries' supplied or necessary services rendered to him
- (10) Minor can be an agent – minor binds the principal by his acts without incurring any personal liability.

**Persons of unsound mind:** Sec.12 – Person 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 forming a rational judgement as to its effect upon his interest. There is a presumption in favour of sanity.

Soundness of mind depends on –

- capacity to understand the contents of business concerned, and
- ability to form a rational judgement as to its effects on own interest.

Person usually of unsound mind, may enter into contract when of sound mind – but person usually of sound mind, may not make a contract when of unsound mind.

Example:

1. Patient in lunatic asylum – 2. Sane man – delirious from fever or drunk –

**Is not disqualified from contracting by any law** : The person must not be disqualified by law to enter into a contract by any means . Thus:

(a) Alien enemies (citizen of a foreign country).

(b) Foreign Sovereigns and ambassadors.

(c) Convict.

(d) Married Women w.r.t. their Husbands Property.

(e) Insolvent

(f) Joint-stock company and corporations incorporated under a special Act ( like LIC, UTI ) outside the powers conferred upon it by its Memorandum of Associations or by the provisions of its special Act and personal in nature like marriage

## 5. QUASI CONTRACT

A quasi contract is created by law. Thus, quasi contracts are strictly not contracts as there is no intention of parties to enter into a contract. There is no offer, no acceptance, no consensus ad idem. It is legal obligation which is imposed on a party who is required to perform it. Duty and not a promise or agreement is the basis of such contracts. A quasi contract is based on the doctrine of unjust enrichment i.e., principle that a person shall not be allowed to enrich himself at the expense of another. Under English law they are known as Constructive Contracts. The Contract Act deals with quasi contractual obligations under Sections 68 to 72 which are as under:

(i) Claim for necessaries supplied to a person incapable of contracting or on his account. ( Section 68)

(ii) Reimbursement of person paying money due by another, in payment of which he is interested. ( Section 69)

(iii) Obligation of person enjoying benefit of non-gratuitous act. ( Section 70)

(iv) Responsibility of finder of goods ( Section 71)

(v) Liability of person to whom money is paid, or thing delivered by mistake or under coercion. ( Section 72)

6. **UNPAID SELLER** According to Section 45(a) of the Sale of Goods Act, 1930, the seller of goods is deemed to be an 'Unpaid Seller' when-

(a) The whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.

(b) A bill of exchange or other negotiable instrument was given as payment, but the same has been dishonored, unless this payment was an absolute, and not a conditional payment.

Any person who is in a position of a seller, is also a seller, and may exercise the rights conferred upon an 'unpaid seller' in above said circumstances. For instance, an agent of the seller, to whom bill of lading has been endorsed, is in the position of seller and may exercise rights of 'unpaid seller'.

### **RIGHTS OF AN UNPAID SELLER**

An unpaid seller has been expressly given the rights against the goods as well as the buyer personally which are discussed as under.

(a) **A rights of an unpaid seller against the goods**: The unpaid seller has the following rights against the goods whether the property in the goods has passed to the buyer or not.

(1) **Rights of lien (Section 47)**: He has a right of lien on the goods for the price while he is in possession, until the payment or tender of the price of such goods. The right of lien can be exercised by him in the following cases only:

where goods have been sold without any stipulation of credit;

where goods have been sold on credit but the term of credit has expired; or

Where the buyer becomes insolvent.

However, the unpaid seller loses his right of lien under the following circumstances:

- (i) When he delivers the goods to a carrier or other Bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.
- (ii) Where the buyer or his agent lawfully obtains possession of the goods.
- (iii) Where seller has waived the right of lien.
- (iv) By Estoppel i.e., where the seller so conducts himself that he leads third parties to believe that the lien does not exist.

(2) **Right of stoppage in transit:** When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right of asking the carrier to return the goods back, or not to deliver the goods to the buyer.

However, the right of stoppage in transit is exercised only when the following conditions are fulfilled:

- The seller must be unpaid.
- He must have parted with the possession of goods
- The goods are in transit.
- The buyer has become insolvent.
- The right is subject to provisions of the Act.

(3) **Right of re-sale:** The unpaid seller can exercise the right to re-sell the goods under the following conditions:

- (i) When the goods are of a perishable nature. In such a case the buyer need not be informed of the intention of re-sale.
- (ii) When he gives notice to the buyer of his intention to re-sell the goods and the buyer does not within a reasonable time pay or tender the price.

(b) **Rights of unpaid seller against the buyer:** An unpaid seller can enforce certain rights against the goods as well as against the buyer personally. The rights of the seller against the buyer personally are called rights in personam and are in addition to his rights against the goods. The right in personam are as follows:

#### 1. **Suit for price (Section 55)**

(a) Where property has passed to the buyer and he wrongfully neglects or refuses to pay for the goods, the seller may sue him for the price of the goods [Section 55(1)].

(b) Where property has not passed under the contract of sale and the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract [Section 55(2)].

2. **Suit for damages for non-acceptance (Section 56):** Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

As regards measure of damages, Section 73 of the Indian Contract Act, 1872, applies.

3. **Repudiation of contract before due date (Section 60):** Where the buyer repudiates the contract before the date of delivery, the seller may treat the contract as rescinded and sue damages for the breach. This is known as the 'rule of anticipatory breach of contract'

4. **Suit for interest [Section 61(2) (d)]:** Where there is specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer. If, however, there is no specific agreement to this effect, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer.

In the absence of a contract to the contrary, the Court may award interest to the seller in a suit by him at such rate as it thinks fit on the amount of the price from the date of the tender of the goods or from the date on which the price was payable [Section 61(2)(a)].

#### **DISTINCTION BETWEEN RIGHT OF LIEN AND RIGHT OF STOPPAGE IN TRANSIT**

The essence of a right of lien is to retain possession whereas the right of stoppage in transit is right to regain possession.

Seller should be in possession of goods under lien while in stoppage in transit (a) seller should have parted with the possession (b) possession should be with a carrier & (c) buyer has not acquired the possession. Right of lien can be exercised even when the buyer is not insolvent but it is not the case with right of stoppage in transit.

Right of stoppage in transit begins when the right of lien ends. Thus the end of the right of lien is the starting point of the right of stoppage in transit.

### **EFFECT OF SUB-SALE OR PLEDGE BY THE BUYER (SECTION 53)**

The unpaid seller's right of lien or stoppage in transit is not affected by any further sale or other disposition of the goods by the buyer.

For example, an oil merchant A sold 100 tins of oil to B without appropriating any particular oil to the contract. B sold 60 tins out of it to C and gave delivery order addressed to A. C lodged the delivery order with A requesting him to "await" his orders. Meanwhile B became insolvent and thus A became the unpaid seller. A claiming his right of lien refused to make delivery to C. It was held that A was entitled to do so.

However, the unpaid seller's above right is subjected to the following two exceptions:

1. When the seller has assented to the sale, mortgage or other disposition of the goods made by the buyer [Sub-Section (1)].
2. When a document of title to goods has been transferred to the buyer and the buyer transfers the documents to a person who has bought goods in good faith and for value (price).
  
7. **Promissory Note or Pro-Note** Section 4 defines a 'promissory note' as an instrument in writing (note being a bank note or 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.

#### **Essential elements of promissory notes:**

1. In writing.
2. A promise or undertaking to pay.
3. Definite and unconditional promise.
4. Signed by the maker.
5. The parties to the promissory note must be certain.
6. The sum payable must be certain.
7. Promise to pay money and money only.
8. Intention and delivery.

**Bill of exchange** Section 5 of the Negotiable Instrument Act defines a 'bill of exchange' as an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument.

**Essentials elements of a bill of exchange:** It has to be noticed that the requisites or fundamental ingredients of a bill of exchange are also the same as those of promissory note and for most purposes, the rules as applied to promissory notes are, in general, applicable to bills of exchange. Thus, the essential requirements of a bill may be summarized as:

1. The bill of exchange must be in writing:
2. The bill of exchange must contain an order to pay:
3. The order must be unconditional:
4. The sum payable must be certain.
5. The bill must contain an order to pay money and money only.
6. The bill must comply with the formalities as regards date, consideration, place attestations, stamp, etc

**Distinction between a bill of exchange and a Promissory Note** The following points of distinction

between a bill and a pro-note may be identified:

**1. Number of parties:** In a pro-note, there are only two parties--maker and payee; whereas in a bill, there are three parties--drawer, drawee and payee. However in a bill of exchange the drawer and payee may be the same person; and in that case there will be only two parties. It may be noted that in a pro-note the maker and payee cannot be the same person.

**2. Promise and order to pay:** In a pro-note, there is an unconditional 'promise to pay' to the payee or his order; while in a bill there is an unconditional 'order to pay' to the payer or his order.

**3. Acceptance:** A pro-note does not require any acceptance of the maker before it is presented for payment because it is signed by the person who is primarily and absolutely liable to pay; but a bill generally requires the acceptance of the drawee before it is presented for payment because the drawee becomes liable to pay only when he accepts the bill. A bill which is payable after a certain period of time must be presented to the drawee for his acceptance.

**4. Payable to Maker:** A promissory note cannot be made payable to the maker himself as he himself is the originator or creator of it and promise to pay on it; while in a bill, the drawer and payee may be one and the same person.

**5. Payable to bearer:** A promissory note cannot be drawn 'payable to bearer'; whereas a bill of exchange can be made 'payable to bearer' though it cannot be made 'payable to bearer on demand'.

**6. Exclusive applicability of certain provisions:** The following provisions relating to bills do, not apply to promissory notes, namely: (i) presentment for acceptance (*Section 61*), (ii) acceptance (*Section 75*), (iii) acceptance for honour (*Section 108*), and (iv) bills in sets (*Section 132*).

**7. Copies:** Only one copy of promissory note is drawn; whereas foreign bills of exchange are drawn in sets of three.

**8. Protest:** No protest is required in case of a pro-note; while foreign bills must be protested for dishonour when such protest is required by the law of the place where the bills are drawn.

**Cheque** Section 6 defines a "cheque" as a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

**Distinction between a Cheque and bill of exchange** Although a cheque is kind of a bill exchanged therefore it must satisfy the essential requirements of a bill, yet the following points of difference between the two may be noted with care:

**1. Drawee:** A cheque is always drawn on a bank and hence only a bank can be a drawee; whereas a bill may be drawn on any person including a bank.

**2. Acceptance:** A cheque does not require any acceptance by the drawee before the demand of the payment. It is presented for payment and not for acceptance. It is intended for immediate payment; while a bill must be accepted by the drawee before he can be made liable to pay upon it.

**3. Payment:** A cheque is always drawn payable on demand; while a bill either can be payable on demand or after the expiry of a certain period after date or sight.

**4. Presentment:** The drawer of a cheque is not discharged from liability if the cheque is not presented to the bank unless he suffers injury or damage by delay in presentment for payment, for example, by the failure of bank (*i.e.*, the insolvency of bank); whereas a bill must be duly presented for payment otherwise the drawer will be completely discharged from liability.

**5. Days of grace:** A cheque is payable immediately on demand without any days of grace being allowed because it is always payable immediately on presentation (demand) for payment; while in the case on a time bill, 3 days of grace are allowed from the due date within which the payment can be made. However, in the case of a bill payable on demand, no days of grace are allowed.

**6. Payable to bearer on demand:** A cheque can be drawn payable to bearer on demand; whereas a bill payable to bearer on demand is absolutely void and illegal under *Section 31* of the Reserve Bank of India Act. 1934.

**7. Notice or dishonour:** If a cheque is dishonoured, no notice of dishonour is required; while notice



of dishonor of a bill is to be given to all the parties liable to pay upon it and if such notice is not given, neither the drawer nor any other party will be liable for payment.

**8. Noting and protest:** In the case of dishonour of a cheque, it is not required to be noted and protested for dishonour; whereas in the case of dishonour of a bill there is a system of noting and protest for dishonour.

**8.** There are no guidelines for issuing bonus shares by the private companies or unlisted public companies has been issued by the SEBI (Disclosure and investor protection) Guidelines, 2000. However, the listed public companies for issuing bonus shares to the shareholders must comply with the guidelines issued by the SEBI (disclosure and Investor Protection) Guidelines, 2000. The requirements of the guidelines of SEBI are given below:-

- a) **Right of FCD/PCD holders:** No company shall pending the conversion of FCDs/PCDs issue any shares by way of bonus unless similar benefit is extended to the holders of FCDs/PCDs, through reservation of shares in proportion to such convertible part of FCDs/PCDs. The shares so reserved may be issued at the time of conversion of such debentures on the same terms on which the rights or bonus issues were made.
- b) **Out of free reserves:** the bonus issue shall be made out of free reserves built out of genuine profits or share premium collected in cash only.
- c) **Revaluation of fixed assets:** reserves created by revaluation of fixed assets should not be capitalised. If assets are subsequently sold and the profits are realized, such profits could be utilised for capitalisation.
- d) **Bonus issue not to be in lieu of dividend:** The declaration of bonus issue, in lieu of dividend, should not be permitted.
- e) **Fully paid shares:** Bonus issue shall not be made, unless the partly paid shares, if any, existing are made fully paid up.
- f) **No default in respect of deposit/debentures:** the company should not have defaulted in payment of any interest or principal in respect its fixed deposits and interest on debentures or redemption of debentures.
- g) **Statutory dues of the employees:** the company should not be defaulted in payment of its statutory dues to the employees such as contribution to PF, gratuity, bonus, minimum wages, workmen's compensation, retrenchment, payment to contract labour etc.
- h) **Implementation of proposal:** the bonus issue shall be implemented within a period of 15 days after the date of approval of the BoD, if it does not require the shareholders' approval for capitalisation of profits or reserves for making bonus issue as per the AoA of the company. However, if the company is required to get the shareholders' approval as per AoA of the company for capitalisation of profits or reserves, the bonus issue shall be implemented within 2 months from the date of the meeting of the BoD.
- i) **Provision in the AoA:** the AoA of the company should provide the provision for the capitalization profits, i.e. it must authorize the bonus issue, if not, and steps should be taken to alter the AoA suitably.
- j) **Authorised capital:** consequent upon bonus issue if the subscribed or paid up capital of the company exceed the authorized capital, then a resolution shall be passed by the company at its GM for increasing its authorized capital to that extent,
- k) **Certificate:** A certificate duly signed by the issuer company and countersigned by the statutory auditor or the company secretary in practice to the effect that the provisions of the guidelines has been complied with shall be forwarded to the SEBI.

**9. CONSUMER PROTECTION COUNCILS** The consumer protection councils are established at Central level, State Level, and District level. These councils work towards the promotion and protection of the rights of the consumers.

**The Central Consumer Protection Council. [Sec-4]—**

(1) The Central Government shall, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council).

(2) The Central Council shall consist of the members not exceeding 150, namely:—

- (a) The Minister in charge of the consumer affairs in the Central Government, who shall be its Chairman, and
- (b) Such number of other official or non-official members representing such interests as may be prescribed.
- (c) Representatives of women.
- (d) Representatives of farmers, trade, industry.

**Procedure for meetings of the Central Council**[Sec-5]- The Central Council shall meet as and when necessary, but at least one meeting of the Council shall be held every year. The Central Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

*Rule 4 of Consumer Protection Rules 1987 provides that the Central Council shall observe the following procedure in regard to the transaction of its business:*

- The meeting of Central Council shall be presided over by the Chairman. In the absence of Chairman, the vice-chairman shall preside over the meeting of the Central Council. In the absence of the Chairman and the Vice- Chairman, the Central Council shall elect a member to preside over the meeting of the Council.
- Each meeting of the Central Council shall be called by giving not less than ten days from the date of issue, notice in writing to every member.
- Every notice of a meeting of the Central Council shall specify the place and the day and hour of the meeting and shall contain statement of business to be transacted thereat.
- No proceeding of the Central Council shall be invalid merely by reasons of existence of any vacancy in or any defect in the constitution of the Council.
- For the purpose of performing its functions, the Central Council may constitute from amongst its members, such working groups as it may deem necessary to perform the assigned functions. The findings of such working groups shall be placed before the Central Council for its consideration.
- The non-official members attending meeting of the Council or its Working Groups shall be entitled to travelling and daily allowance at the specified rates.

**Objects of the Central Council**[sec-6]—The objects of the Central Council shall be to promote and protect the rights of the consumers such as,—

- (a) the right to be protected against the marketing of goods and services which are hazardous to life and property;
- (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be so as to protect the consumer against unfair trade practices;
- (c) the right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
- (d) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums;
- (e) the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
- (f) the right to consumer education.

**The State Consumer Protection Councils.** [sec-7]-The power to establish state council is with the States. Section 7 provided that:

(1) The State Government shall, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Consumer Protection Council.

(2) The State Council shall consist of the following members, namely:—

- (a) the Minister-in-charge of consumer affairs in the State Government who shall be its Chairman;
  - (b) such number of other official or non-official members representing such interests as may be prescribed by the State Government.
  - (c) such number of other official or non-official members, not exceeding ten, as may be nominated by the Central Government.
- (3) The State Council shall meet as and when necessary but not less than two meetings shall be held every year.
- (4) The State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

**Objects of the State Council.** [sec-8] — The objects of every State Council shall be to promote and protect within the State the rights of the consumers laid down in clauses (a) to (f) of section 6.” Thus, the object of the State councils are same as that of the Central council discussed above.