

An aerial, high-angle view of a dense urban skyline, likely New York City, featuring numerous skyscrapers and buildings. The image is in grayscale and has a dark, semi-transparent overlay. The text "Joint stock company" is centered in a white, serif font.

Joint stock company

COMPANY - MEANING

The word company is derived from the latin word Com=with, panies=bread which originally referred to an association of persons who took their meals together

In popular parlance, a company denotes an association of likeminded persons formed for the purpose of carrying on some business or undertaking

DEFINITION



Sec 2(20) of the Companies Act, 2013 defines the term “Company as any company incorporated under this Act or under any previous company law.”

OTHER DEFINITIONS...

According to LORD JUSTICE LINDLEY – “By a company is meant an association of many persons who contribute money or money’s worth to a common stock and employ it in some trade or business, and who share the profit and loss arising therefrom. The common stock so contributed is denoted in money and is the capital of the company. The persons who contribute it, or to whom it belongs, are called members. The proportion of capital to which each member is entitled is his share. Shares are always transferrable although the right to transfer them is often more or less restricted.”

According to CHIEF JUSTICE MARSHALL – “A company is a person, artificial, invisible, intangible and existing only in the eyes of law. Being a mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence.”

According to LORD HENRY – “A company is an incorporated association which is an artificial person created by law, having a separate entity, with a perpetual succession and a common seal.”

CHARACTERISTICS OF A COMPANY



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1. Corporate personality

Being an artificial person, a company is a legal entity different and separate from its promoters, members, directors, and other stake holders. It has its own corporate name and work under that name. It

can hold its assets in its own name,

can sue or be sued in its own name

can borrow/lend funds, open bank accounts, enter into contracts in its own name

Any of its shareholders or directors or other officers cannot be held liable for the acts of the company even if he/it holds the entire share capital. Further, the shareholders or individual directors are not the agents of the company and so they cannot bind company by their personal acts. company means a company incorporated (formed and registered) under this Act or under any of the previous companies laws (like Companies Act, 1956).

2.Limited liability

According to [Section 3\(2\)](#), a company may be

i) a company limited by shares

A [company limited by shares](#) means the liability of the members towards the company is limited to amount unpaid on their shares only.

ii) a company limited guarantee

A [company limited guarantee](#) means the liability of the members towards the company is limited to the amount of guarantee prescribed in the MOA. Further, in such companies the members can be made liable only in the event of winding up of the company.

iii) an unlimited company

An [unlimited company](#) means here the liability of the members is unlimited towards company.

But, in none of the above cases, members can be made liable to anyone else except company for any act of the company or directors.



3. Perpetual Succession

Perpetual Succession means existence forever. According to Section 9, from the date of incorporation mentioned in the certificate of incorporation, every company has perpetual succession. A company is an artificial person created by law; therefore it can be dissolved or wind up by law.

In other words, members may come and go, but company can go forever.

4. Separate Property

A company is separate legal entity having its own corporate name. It can hold properties in its own name. No member can claim himself to be the owner of the company's property during its existence.

In other words, the property of a company is not the property of the individual members.

5. Transferability of Shares

According to Section 44 of Companies Act, 2013 the shares or debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.

According to Section 2(68)(i) of Companies Act, 2013, private company may restricts the right to transfer its shares through its AOA. But a generally, a public company cannot restrict the transfer of its shares.

6. Capacity to sue and be sued

A company is separate legal entity having its own corporate name. Therefore, according to Section 9, company may sue or may be sued in its own name (not in the name of its directors or members).



7. Contractual Rights

A company is an artificial person created by law. Therefore like natural person, it can enter into contract in its own name through its agent (directors or other authorised persons).

8. Demutualization

Demutualization means separation of management and ownership.

Under company form of business, management (directors) is different from owners (members). Members of the company do not get engaged into day-to-day business of the company. Members appoint directors who run company on their behalf. Such directors may or may not be members of the company.

9.Common Seal

On incorporation, a company may have a common seal. Since a company has no physical existence, therefore it has to act through its agents only. To put restriction on the misuse of the powers of those agents, contracts entered into by anyone on behalf of the company may be under the common seal of the company.

Thus common seal acts as official signature of the company.

Now, after [Companies \(Amendment\) Act, 2015](#), it is not compulsory for the company to have common seal. Thus a company may or may not have common seal.



MERITS OF A COMPANY

1. Large Capital:

The outstanding advantage is that it allows vast mobilization of capital which otherwise is not possible to arrange. In a public company, there is no limit to the number of members. A very large number of people acquire interest in the company by purchasing shares. The fact that shares are transferable given an added advantage to the company for attracting greater number of people. No other form of business organisation is so well adopted in raising large amounts of capital as the Joint Stock Company.

2. Vast Scope of Expansion:

The vast capital collected by means of shares coupled with the earnings of the company contribute sufficient scope for its expansion. The company offers an excellent scope of self-generating growth. The managerial talents supported by vast finance leads to huge earnings and to ultimate expansion of the business and growth.

3. Limited Liability:

The liability of the members of the company is limited. Members cannot be called upon to pay anything more than the nominal value of the shares held by them. This encourages people who have little to save to invest money in the company, thus providing ample capital for initial outlay and expansion of the business.

4. Permanent Existence:

The life of the company does not depend on the life of its members. Law creates the company and can dissolve it. The death, insolvency or the transfer of shares of members does not, in any way, affect the existence of the company.

5. Transferability of Shares:

The shares in a company are transferable and members can transfer their shares without the consent of other members of the company. The company is listed with the Stock Exchange and hence company's shares are readily sold and purchased. As shares are freely transferable, a shareholder can convert his holding into cash. This facility coupled with the limited liability has an encouraging investment by general public.

6. Democratization of Ownership:

The fact that relatively small amount of capital can be mobilised and employed collectively results in what Marshall call 'Democratization' of ownership as distinguished from the control of business.

While it permits all types of people, big or small, venturesome or cautious, to become part owners, it permits the use of skill and initiative of the able entrepreneur, his expert knowledge and business ability which would otherwise be lost to the community.

7. Diffused Risk:

The risk of loss is to be shared by the large number of shareholders and the possibility of huge hardship on few persons as in the case of partnership or sole trader does not exist. Moreover, the risk of loss is also limited to the extent of the value of share. There is no need for the wealthy men to bear the burden of the business as large capital can be collected from far and wide, and from rich and poor, controlled under one management.

8. Organized Intelligence:

The power of capital is supplemented by organised intelligence which makes for increased efficiency of direction and management. The skill and flexibility of administration is enhanced as a result of limited liability and entity idea. The wisest and the most skillful directors may be chosen and one found inefficient or indifferent could be removed. The company being independent on any single man, the organized intelligence of the Board of Directors and other top managers is available for sound and bold policies.

9. Tax Relief:

A company pays income-tax as a separate legal person at a flat rate fixed by the Finance Act from year to year. In case of higher incomes, the- rate is lower than that charged in case of sole proprietors and partners.

10. Social Advantage:

The social advantage of company form of organisation is that it affords employment to so many persons, produces articles which otherwise would have been imported and affords opportunity to middle and lower class of people to become members of the company and earn profits.

LIMITATIONS OF A COMPANY

1. Difficulty in Formation:

The legal requirements and formalities required to be completed are so many. The cost involved is quite heavy. It has to approach large number of people for its capital. It cannot start its business unless certificate of incorporation has been obtained. This is granted after a long time when all the formalities are completed.

2. Reckless Speculation Encouraged:

This form of organisation encourages reckless speculation in shares at stock exchanges. This is an evil of great magnitude in our country because in many cases stock exchanges act as 'bush agencies', rather than aid to sound investment or stability. Sometimes the management of Joint Stock Company encourages speculation in shares for its personal gains.

3. Fraudulent Management:

Frauds have been a common feature of many a company. The promoters and directors may indulge in fraudulent practices. The company law has devised various methods to check the fraudulent practices but they have not proved to check them completely.

4. Delay in Decision-Making:

In this form of organisation, decisions are not made by single individual. All important decisions are taken by the Board of Directors. Decision-making process is time-consuming. So many opportunities may be costly because of delay in decision-making. Promptness of decisions which is a common feature of sole tradership and partnership is not found in a company.

5. Monopolistic Powers:

There is, generally, tendency for company organisation to form themselves into combinations exercising monopolistic powers which may react detrimentally to other producers in the same line or to consumers of the commodity produced.

6. Excessive Regulation by Law:

The State that creates the company, minutely watches the activities of the company organisation. A company and the management have to function well within the law and the provisions of Companies Act are quite elaborate and complex.

At every step, it is necessary to comply with its provisions lest the company and the management should be penalised. The penalties are quite heavy and in several cases, officers in default can be punished with imprisonment. This hampers the proper functioning of the company.

7. Conflict of Interests:

The management does not care for the interest of shareholders because the management is not the owner. Actually, the management body is not composed of owners, it is composed of those who have no interest in the business.

It is only the few who govern the way they like. Though, in theory, company is a democracy but in actual practice it is oligarchy. The lack of interest between the company and its management encourages manipulation and speculation.



8. Lack of Secrecy:

The management of companies remains in the hands of many persons. Every important thing is discussed in the meetings of Board of Directors. Hence secrets of the business cannot be maintained. In case of sole proprietorship and partnership forms of organisation, such secrecy is possible because a few persons are involved in the management.

9. Bureaucratic Approach:

The bureaucratic habit of company officials to shirk trouble of some initiative because they get no direct benefit from it; often retard the growth. This leads to classification of social organism and leveling down the character. The company organisation does not enjoy the same flexibility and promptness in the making as other organisations do. The delays in taking the decision affect the growth of the business.

CASE STUDY

FACT OF THE CASE:

Solomon was a leather merchant who converted his business into a Limited Company as Solomon & Co. Limited (the 'company'). The company so formed consisted on Solomon, his wife and five of his children as members. The company purchased the business of Solomon for £39,000; the purchase consideration was paid in terms of £10,000 debentures conferring a charge over the company's assets, £20,000 in fully paid, £1 share each and the balance in cash.

The company in less than one year ran into difficulties and liquidation proceedings commenced. The assets of the company were not even sufficient to discharge the debentures (held entirely by Solomon himself). And nothing was left for unsecured creditors. The liquidator on behalf of unsecured creditors alleged that the company was a sham and mere alias or agent for Salomon.

JUDGEMENT OF THE CASE:

Lord McNaughten stated that, **"The company is at law a different person altogether from the subscribers to the memorandum: and although it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them."**



FORMATION OF A COMPANY

The basic procedure for Incorporation of a Company under Companies Act, 2013:

1. Obtain Digital Signatures

Nowadays various document prescribed under the Companies Act, 2013, are required to be filed with the digital signature of the Managing Director or Director or Manager or Secretary of the Company, therefore, it is compulsorily required to Obtain a Digital Signature Certificate from authorized DSC issuing authority for at least one director to sign the E-forms related to incorporate like form INC.1 and other documents.

2. Obtain Director Identification Number [Section 153]

As per 153 of the Companies Act, 2013, every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number in form DIR.3 to the Central Government in such form and manner and along with such fees as may be prescribed. Therefore, before submission of e-Form INC.1 for availability of name, all the directors of the proposed company must ensure that they are having DIN and if they are not having DIN, it should be first obtained

3. Name availability for proposed company

As per section 4(4) read with Rule-9 of Companies (Incorporation) Rules, 2014, application for the reservation/availability of name shall be in Form no. INC.1 along with prescribed fee of Rs. 1,000/-. In selection of Company name should be in accordance with name guidelines given in Rule-8 of Companies (Incorporation) Rules, 2014.

Validity of Name approved by ROC:

As per section 4(5), maximum time for which name will be available has been prescribed in the law itself under section 4(5). The name will be valid for a period of 60 Days from the date on which the application for Reservation was made.

Note: The applicant cannot start business or enter into any agreement, contract, etc. in the name of the proposed company until and unless a certificate of registration is issued by the registrar of companies as per the provisions of the Companies Act, 2013 and the rules made there under

4. Preparation of the Memorandum of Association (MOA) and Articles of Association (AOA)

Drafting of the MOA and AOA is generally a step subsequent to the availability of name made by the Registrar. It should be noted that the main objects should match with the objects shown in e-Form INC.1. These two documents are basically the charter and internal rules and regulations of the company. Therefore, it must be drafted with utmost care and with the advice of the experts and the other object clause should be drafted in a very broader sense.

As per section 4(6) the memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company.

As per section 5(6) the articles of a company shall be in respective forms specified in Tables F, G, H, I and J in Schedule I as may be applicable to such company.

5. Application for Incorporation of Companies

After obtaining availability of name applicants should file **FormNo. INC-7** for other than OPC and in **Form No. INC-2** (for OPC) with Jurisdictional Registrar of Companies (ROC) along with required information in attachments and along with prescribed fee.

6. Documents to be filed for Incorporation

Section 7 prescribes the various documents and information to be filed with RoC for registration of a new company as under:

- (1) MoA and AoA duly signed and verified
- (2) Declaration by Professionals INC-08
- (3) Declaration from Director, Manager or Secretary
- (4) Affidavit from each subscribers and first directors INC-09
- (5) The address for correspondence
- (6) Complete Details of Subscribers with proof of identity
- (7) Complete Details of first Directors with proof of identity
- (8) Particulars of interest of first directors in other firm/body corporate and NoC

Signing and Witness of Memorandum (MoA) and Articles (AoA)

The Memorandum and Articles of Association of the company should be signed as under:

(1) The MoA and AoA shall be signed by each subscriber to the memorandum, who shall add his name, address, description and occupation in his own handwriting in the presence of at least one witness.

(2) The witness shall attest the signature and shall likewise sign and add his name, address, description and occupation. The witness shall state that:

“I witness to subscriber/subscriber(s), who has/have subscribed and signed in my presence (date and place to be given); further I have verified his or their Identity Details (ID) for their identification and satisfied myself of his/her/their identification particulars as filled in”

(3) If the subscriber is illiterate, he should affix his/her thumb impression or mark which shall be described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark and authenticate it by his own signature and he/she shall also write against the name of the subscriber, the number of shares taken by him/her. Also such person shall also read and explain the contents of the MoA and AoA to the illiterate subscriber and make an endorsement to that effect on the MoA and AoA.

(4) Where the subscriber to the memorandum is a body corporate, the MoA and AoA should be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors of the body corporate and where the subscriber is a Limited Liability Partnership (LLP), it should be signed by a partner of the Limited Liability Partnership, duly authorized by a resolution approved by all the partners of the LLP. However in either case, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of Association.

Declaration by Professionals:

As per section 7(1)(b) a declaration is required to be filed with RoC by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, to the effect that all the requirements of this Act and the rules made there under in respect of registration and matters precedent or incidental thereto have been complied with. The declaration should be in **Form No. INC-8.**

Affidavit from subscribers and first directors:

The affidavit shall state that he/she is not convicted of any offence in connection with the promotion, formation or management of any company or he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company etc. Shall be in **Form No. INC-9.**

Particulars of every subscriber

The particulars of every subscriber to the MoA shall be filed with the Registrar.

7. Particulars of first directors of the company and their consent to act as such:

The particulars of first directors of the company and his interest in other firms or bodies corporate along with his consent (Form DIR.2) to act as director of the company shall be filed in Form No.DIR.12 along with the prescribed fee

8. Notice of Situation of Registered Office:

The particulars of the registered office of the company should be filed in Form No. INC-22.

9. Payment of Fee:

While uploading various documents prescribed fee can be paid online including stamp duty for MoA.

10. DUTY OF REGISTRAR TO SCRUTINISE THE DOCUMENTS:

If after filling the Requisite forms for incorporation with the Registrar of Companies along with fees, ROC is satisfied with the contents of the documents filed, ROC will issue the Certificate of incorporation in Form no.INC 11 as directed by Rule-18 of Companies (Incorporation) Rules, 2014.

11. Commencement of Business etc.:

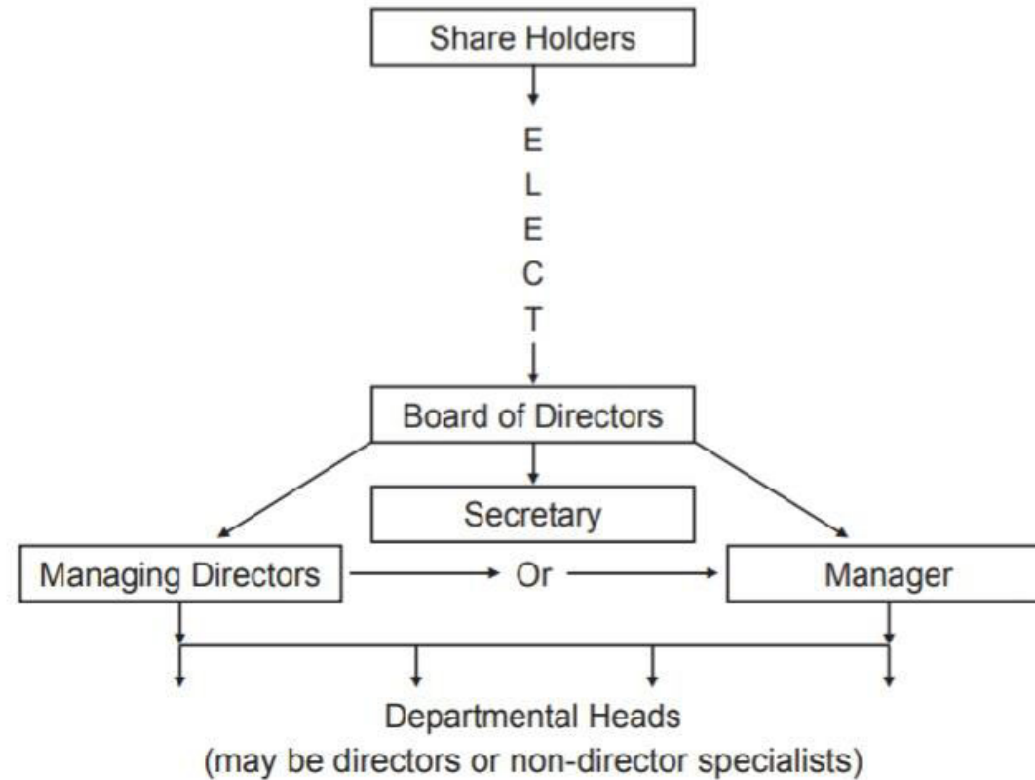
After incorporation, every company before commencing any business or exercising any borrowing powers is required to file declaration INC-21 and INC-22 (if not filed at the time of incorporation)

12. Application for Income Tax PAN or TAN:

As per Income Tax Notification 38/2015 dated 10-04-2015, a company which has not been registered under Cos Act, 2013, Application for allotment of PAN or TAN can be made in **Form INC-7** by quoting Corporate Identity Number (CIN) of the company.

MANAGEMENT OF A COMPANY

STRUCTURE OF THE COMPANY MANAGEMENT



COMPANY MANAGEMENT

Management of the affairs of the company is entrusted to Board of directors who are elected by the shareholders. Though shareholders are the real owners of the company, they cannot take part directly in its management. However, there is indirect participation as it is in the hands of the elected representatives called directors.





Position of Directors

1. Directors as agents

When the directors enter into contract with third parties, sign documents for and on behalf of the company etc. they act as the agent of the company. They bind the company by their acts.

2. Directors as Trustees

They are in the position of trustees, when they manage the assets and properties of the company. Similarly when they exercise the powers entrusted to them they are in the same position. It means that they should safeguard the interest of the company and should never abuse the powers for promoting their personal ends

3. Directors as Officers

Directors also act as officers of the company. When they have to manage the affairs of the company, they are in the position of Chief Executive Officers. Thus the directors combine in themselves the roles of agents, trustees and officers.



Powers of Directors

1. General Powers

The Board of directors of a company is entitled to exercise all such powers and to do all such acts and things as the company is authorised to do. However the Board shall not do any act which is to be done by the company in general meeting.

2. Statutory Powers

By means of resolutions passed at the Board meetings, the following powers can be exercised by the directors:

- i. To make calls
- ii. To issue debentures
- iii. To borrow money otherwise than on debentures
- iv. To invest the funds of the company
- v. To make loans



3. Other Powers to be exercised at Board Meetings

- i. To fill up casual vacancy in the office of directors
- ii. To appoint additional directors, if authorised by the articles
- iii. To appoint an alternate director if authorised by the articles
- iv. To accord sanction to contracts in which any director or his relative is interested
- v. To recommend a certain rate of dividend to be declared at the annual general meeting
- vi. To make investments in the companies in the same group
- vii. To appoint the first auditors of the company
- viii. To fill up the casual vacancy in the office of an auditor not caused by resignation



4. Restrictions on the powers of directors

The following powers cannot be exercised by the Board without the consent of the shareholders in the general meeting.

- i. To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company
- ii. To extend time for repayment of any debt due by a director
- iii. To borrow money where the money to be borrowed together with that already borrowed is in excess of the aggregate of the paid up capital and free reserves
- iv. To contribute to charitable funds in excess of the prescribed limit



Duties of a director

1. General Duties

1. Duty of good faith: They must act bona fide in the interest of the company. They should not make any secret profits.

2. Duty of reasonable care: They must discharge their duties with care and diligence.

3. They must attend the Board meeting regularly.

4. Duty not to delegate: They must perform the duties personally. They can delegate only certain functions as permitted by the articles.

2. Statutory Duties

Some of the important duties laid down in the Companies Act are listed below.

1. To sign a prospectus and deliver it to the Registrar before its issue to the public.
2. To see that all moneys received from applicants for shares are kept in a scheduled bank.
3. Not to allot shares before receiving minimum subscription.
4. To forward a statutory report to all its members at least 21 days before the date of the meeting.
5. To hold the meetings at least once in three months.
6. If a director is interested in a contract, to disclose the nature of his interest.
7. To call for annual general meeting every year.
8. To file all statutory returns with prescribed authorities.
9. To take steps for filing declaration of solvency in the case of voluntary winding up.

MANAGING DIRECTOR

Meaning

Managing Director is a director who is entrusted with substantial powers of management, which would not be otherwise available to him. Routine administrative work is not included in the term “Substantial Powers of Management”. A managing director is appointed

- a) as result of an agreement entered into with the company or
- b) as a result of a provision contained in the memorandum or articles or
- c) in pursuance of a resolution passed either by the Board or by the company in general meeting

MANAGER



Managers and managing directors have similar functions to perform. The important difference between the two is that while a managing director must be a director, a manager need not be a director. Only an individual can be appointed as a manager.

Subject to the superintendence, control and direction of the Board of directors, a manager is entrusted with the management of the whole or substantially the whole of the affairs of the company.

1. A company cannot have more than one manager.
2. The powers of a manager are wider than those of a managing director, because the manager may be entrusted with the management of whole of the affairs of the company.
3. Maximum remuneration payable to a manager cannot exceed 5% of the annual net profit.
4. Manager cannot be appointed for a period exceeding 5 years at a time.



MANAGERIAL REMUNERATION

Managerial remuneration may take the form of monthly payments (salary), or a specified percentage of net profits or a commission, etc. This expression shall include the value of perquisites. The total managerial remuneration payable by a public limited company to its director or manager must not exceed 11% of the net profits of the company for that financial year. Remuneration to a managing director or whole time director may be paid not exceeding 5% of the net profits and if there is more than one such director, 10% for all of them together. In a year of no profits or inadequate profits, such managerial remuneration shall be governed by the provisions of Schedule XIII to the Companies Act.



COMPANY SECRETARY

Definition

According to the Companies Act “ a company secretary means company secretary as defined under the Company Secretaries Act and includes any other individual possessing the prescribed qualifications and appointed to perform the duties by a secretary under this Act or any other ministerial or administrative duties”.

According to the Company Secretaries Act, 1980 a company secretary is a person who is a member of the Institute of Company Secretaries of India.

Functions of a Company Secretary

1. As a head of the Secretarial department, the secretary controls and supervises the activities of the department under his control. As a principal officer of the company, he signs documents requiring authentication. He performs all such acts as authorised by the Board.
2. The secretary arranges for the Board meeting, in consultation with the chairman of the Board, fixes a day, place and time of the meeting and prepares agenda and issues the notices of meetings.
3. He ensures that the actions of the Board do not infringe the provisions of the Companies Act and are not beyond the scope of Memorandum and Articles of association.
4. The secretary functions in the best interest of the shareholders. He has to deal with the shareholders with tact. He performs all legal formalities connected with the conduct of general meetings of shareholders and records the proceedings of the minutes in the Minute book. He should ensure that all correspondence with shareholders is dealt with promptly and their queries answered carefully keeping in view the statutory provisions in this regard.
5. His functions in relation to issue of allotment letters, share certificates, dividend warrants, share transfers, forfeiture of shares and a host of other things are also important.
6. As a chief officer closely connected with the Board, he has to co-ordinate the work of different departments.
7. He has to liaise between staff and directors, management and labour and other persons dealing with the company efficiently and effectively.
8. He has to inspire confidence in their staff and win their co-operation.



Statutory Duties of a company secretary

1. To sign any document requiring authentication under any statute
2. To arrange for filing statement in lieu of prospectus
3. To deliver share or debenture certificate within 3 months of allotment or within 2 months of registration of transfer
4. To file notice of situation of the registered office of the company
5. To make a statutory declaration for getting the certificate of commencement of business and file it with the Registrar
6. To sign the annual return
7. To send notices of general meetings to every member of the company
8. To prepare minutes of every general and Board meetings or meetings of every committee of the Board within 30 days.
9. To maintain a number of statutory books such as register of members, register of debenture holders, etc.,



THANK YOU