**Corporate Law & Secretarial Practice:**

***What is Law?***

*Assurance of rights & obligations through law enforcement agencies is called Law.*

***Business law of Pakistan:***

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| *http://www.tahseenbutt.com/images/spacer.gif* |
| *This overview of business laws of Pakistan is a very brief description of common forms of businesses adopted by private and public sector investors in Pakistan. An attempt has also been made to outline general requirements and regulatory regimes for each of these forms of businesses in Pakistan. These brief notes are for general guidance only and should not be taken as a substitute for thorough and professional legal advice.****Business Law****:* ***Business law*** *is the general field of law relating to business organizations, business structures, and business transactions. Also included in the* ***business law*** *field are issues related to real estate, tax, and the environment.* *These brief notes are for general guidance only and should not be taken as a substitute for thorough and professional legal advice* |  |

***Corporate Law:***

*Corporate law deals the formation and operations of corporations and is related to commercial and contract law. A corporation is a legal entity created through the laws of its state of incorporation, treating a corporation as a legal "person" that has standing to sue and be sued, distinct from its stockholders.*

***An others defination of cooperates law***

*A corporation law is created under the laws of a* [*state*](http://en.wikipedia.org/wiki/State_%28polity%29) *as a* [*separate legal entity*](http://en.wikipedia.org/wiki/Separate_legal_entity) *that has privileges and liabilities that are distinct from those of its members. There are many different forms of corporations, most of which are used to conduct* [*business*](http://en.wikipedia.org/wiki/Business)*. Today the corporate sector of Pakistan is governed by Companies Ordinance of 1984. The history of corporate law in this region is much older than the history of Pakistan. Great Britain passed Companies Act in 1908 which introduced several important provisions relating to company administrations. In 1913 after five years, Companies Act of 1913 was passed in British India. Pakistan came into being on 14 August 1947 and adopted the companies Act of 1913. In 1959 a company Law Commission was set up to make laws in accordance with modern times. Report of Company Law Commission of Pakistan was published in 1960. Finally the Companies Act of 1913 was replaced by the Companies Ordinance 1984.*

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***Agreement:***

*An exchange of promises between two or more persons resulting in an obligation to do or not to do a particular act.*

*Agreement = Offer + Acceptance*

***Contract:***

*An exchange of promises between two or more persons resulting in an obligation to do or not to do a particular act, which obligation is recognized and enforced by law.*

*Any agreement and promise which is enforceable by law is called contract*

*Contract = Agreement + Enforceability*

*\* Validity of offer should be specific.*

***Essentials of a Valid Contract:***

1. ***Offer & Acceptance***
2. ***Competent Parties (Ability to do such contract)***
3. ***Legal Obligation***
4. ***Lawful consideration (no bribe or other illegal factor involve)***
5. ***Lawful Object (which are permitted by law, e.g. drugs will be unlawful)***
6. ***Certainty of terms (No if & but, should be very clear cut terms)***
7. ***Possibility of Performance (should possible to perform, should be realistic)***
8. ***Free Consent (Without any pressure, fraud, mistake, undue influence)***
9. ***Not expressly declared to be void***

*(Due to any reason, e.g. After Contract govt. order by which performance of contract effected)*

1. ***Writing, registration, attestation require by law.***
2. ***OFFER AND ACCEPTANCE:***

***For an agreement, there must be a lawful offer by one party and lawful acceptance of that offer by the other party. The term lawful means that the offer and acceptance must satisfy the requirements of contract act.***

***EXAMPLE:***

***An offer to sale his cycle to B for Rs. 2000. This is an offer. If B accepts this offer there is an acceptance.***

1. ***COMPETENT PARTIES:***

***An agreement is enforceable if it is made by parties who are competent to contract. To be competent to contract it is essential that the parties are of the age of majority have sound mind and are not disqualified from contracting by law.***

***EXAMPLE:***

***M a person of unsound mind agrees to sale his house to S for Rs. 200000 it is not a valid contract because M is not competent to contract.***

1. ***LEGAL OBLIGATIONS:***

***The parties to an agreement must create legal obligations it means that if one party does not fulfill his promise he shall be liable for breach of contract. It is presumed in commercial agreements that parties intend to create legal relations.***

***example:***

***A offer to sale his watch to B Rs. 200, B agrees to buy. It is a contract as it creates legal obligations.***

1. ***LAWFUL CONSIDERATION:***

***For a valid contract consideration should be lawful. Consideration is the price paid by one party for the promise of the other party. An agreement is enforceable only when both the parties give and take something. That something given on taken is called consideration.***

***EXAMPLE:***

***A agrees to sale his house to B Rs. 10000000. For A Rs. 10000000 is there consideration and for B house is the consideration.***

1. ***Lawful Object:***

***The objective of the agreement must be lawful. Any act prohibited by law will not be valid and such agreements cannot be treated as a valid contract.***

***EXAMPLE:***

***A rent out his house for the business of prostitution or for making bomb, the acts performing there are unlawful. Hence such agreement cannot be treated as a valid contract. Therefore the consideration as well as the object of the agreement should be lawful.***

1. ***Certainty of term:***

***Wording of the agreement must be clear and not uncertain or vague.***

***EXAMPLE:***

***A promise to sale 20 books to B without specifying their title. The agreement is void because the terms are not clear.***

1. ***Possibility of performance:***

***If the act is impossible of performance, physically or legally, the agreement cannot be enforced by law. There must be possibility of performance of the agreement.***

***EXAMPLE:***

***A agrees with B to discover a treasure by magic, the agreement is not enforceable.***

1. ***Free consent:***

*Consent means to agree to something. Free consent means to agree without coercion - without being forced or threatened.*

*According to the Pakistan Contract Act sec 14 free consent is said to be free when it is not caused by:*

* *coercion*
* *undue influence*
* *fraud*
* *misrepresentation*
* *mistake*

***example:***

*a compels B to enter into a contract at gun point. It is not a valid contract as the consent of B is not free.*

1. ***not expressly declared to be void:***

***The agreement must not be one of those agreements which have been expressly declared to be void by the law.***

***EXAMPLE:***

*a promise to close his business on the promise of B to pay him Rs. 200000 is a void agreement because it is in restraint of trade.*

1. ***writing and registeration:***

*A contract may be in oral or in writing. It is preferable that the contract be in writing because it is easy to prove in court. If required by law a particular contract must be in writing, signed, attested by witnesses and registered; sale and mortgage of land.*

***EXAMPLE:***

*A verbally promises to sale his house to B. it is not a valid contract because the law require it to be in writing.*

***FREE CONSENT:***

*Consent is said to free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.*

1. ***COERCION***

*Coercion is the committing or threatening to commit any act forbidden by the Pakistan penal code or the unlawful detaining or threatening to detain any property to the prejudice of any person whatever with the intension of causing any person to the enter into an agreement.*

***EXAMPLE:***

*A threatens to kidnap B’s son if he does not give him Rs 2 lack. B agrees the agreement made by coercion.*

1. ***UNDUE INFLUENCE:***

*The term undue influence means the unfair use of one’s superior power in order to obtain the consent of person who is in a weaker position.*

***EXAMPLE:***

1. ***FRAUD:***

*Fraud means and includes any of the following acts committed by a party to contract or with his connivance or by his agent with intent to deceive another party thereto or his agent or to induce him to enter into the contract.*

***EXAMPLE:***

*A knows that his watch has been made in Pakistan but tells B that it has been made by Japan. B buys the watch A is guilty of fraud.*

1. ***MISREPRESENTATION:***

*Misrepresentation means an innocent misstatement of fact about the contract made by one party to induce the party to enter into a contract*

1. ***MISTAKE:***

*When the parties with their consent under any mistake there is no agreement.*

***Classification of Contract:***

1. ***Types of Contract (By Enforceability):***
2. *Valid Contract*
3. *Voidable Contract*
4. *Void Contract*
5. ***Valid Contract:***

*Valid contract is one which is fully operative in accordance with the intention of the parties and the law. Valid contract is one which enforceable by law. Valid contract must have all the essentials elements prescribe by law; if one of such elements is missing then contract will be voidable or unenforceable.*

***Example:***

*A agree to sell a car to b if it full fills all the essentials of a contract it is a valid contract*

1. ***Voidable Contract:***

*Voidable contract can be enforceable by law at the option of one or more of the parties but not at the option of other or others is a voidable contract.*

1. ***Void Contract:***

*Void contract is which subsequently ceases to be enforceable by law becomes void, when it ceases to be enforceable. It means that void contract is not void from the beginning. It is valid contract when it is made but subsequently it become void due to certain reasons.*

***Example:***

*A contact made between two parties in two different countries but war declares between these countries the contract will be void and unable to perform.*

1. ***Types of Contract (By Formation):***
2. *Express Contract*
3. *Implied Contract*
4. *Quasi Contract*
5. ***Express Contract:***

*An Express contract is one in which the parties have made oral or written declaration of their intention and terms of transaction. An express contract is one the terms of which are expressly agreed upon by words (spoken or written) at the time of formation of the contract.*

***Example:***

*A tell on telephone to b that he wants to sell his car and b informs that he agrees to buy a car it is an express contract.*

1. ***Implied Contract:***

*An implied contract is such a contract in which parties express their consent of formation of contract through their action.*

***Example:***

*A person went to the coffee shop and has a cup of tea; this is a best example of implied contract. Action of that person shows that he/she is ready to form contract.*

1. ***Quasi Contract:***

*Quasi Contract may be defined as an obligation created by law (Regardless of agreement) whereby an obligation is imposed on a party due to action taken by that party.*

***Example:***

***A*** *forgot his mobile in* ***B*** *house and* ***B*** *use that mobile or sell that mobile then* ***A*** *is liable to compensate.*

1. ***Types of Contract (By Performance):***
2. *Executed Contract*
3. *Executory Contract*
4. *Unilateral Contract*
5. ***Executed Contract:***

*An executed contract is one which has been completely performed by both the parties, under the terms of the contract nothing remain to be done by either party.*

***Example:***

*Aslam contracts to buy a bicycle from Bilal. Aslam pays cash to Bilal and Bilal delivers the bicycle to Aslam. This is an executed Contract.*

1. ***Executory Contract:***

*An Executory contract is one which is unperformed, or in which there remains something further to be done or the parties have yet to perform their things.*

***Example:***

*Agree to teach b in May and b promises to pay Rs. 800 to a it’s is an Executor contract because the promises are yet to be performed.*

1. ***UNILATERAL CONTRACT:***

*It is a contract in which only one party has to perform his part of obligation at the time of formation of the contract but the other party having performance his part of obligation before the contract come into existence.*

***EXAMPLE:***

*A has paid the fare Rs.700 for making journey from Lahore to Karachi. It means he has performed his part of obligation. Now it is the duty of transport Company to carry him.*

***Offer & Acceptance:***

*When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.*

*When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.*

***Offer & Acceptance through Courier/Remote Parties:***

*If A send offer to B and B accept the offer & send acceptance to A, then A only can withdraw from this offer till A receive acceptance from B.*

***Performance of contract***

*Performance is actually completing the deal according to the terms given in the contract.*

1. ***Promisor***
2. ***Promise***

***Joint performance***

*Join performance is same as performance but in this performance, more than one persons/parties are involves in one side or in both sides for performance of contract.*

***Example:*** *Promisee (A, B, C) paid loan to Promisor(X, Y, Z) Rs. 10,000. Any one from Promisee (A, B, C) can say to Promisor(X, Y, Z) for performance. Promisor(X, Y, Z) can pay any one from Promisee (A, B, C).*

***Note:***  *if any one person from Promisee (ABC) receive consideration, now it is right of that Promisee he should pay to his other partners which they have right. Same if any one of Promisor paid to Promisee their liability, now he has right to receive from their partners which he paid behalf of them.*

***Discharge of contract***

*A contract is said to be discharge or terminated when the rights and obligations created by it come to end. A contract may discharge in any of the following ways;*

1. ***By performance***
2. ***By agreement***
3. ***Subsequent impossibility***
4. ***Laps of time***
5. ***Operation of law***
6. ***Breach of contract***

***By performance***

*A contract becomes****discharged through performance****where both parties have fully performed their contractual obligations.*

***By agreement***

*A contract may be****discharged by agreement****when both parties agree to bring the contract to an end and release each other from their contractual obligations*

***Subsequent impossibility***

*The performance of the contract may be possible when the contract is entered into but because of some event, which the Promisor could not prevent, the performance may impossible or unlawful.*

***Laps of time***

*The limitation act provides that a contract should be performed within a specified period. If the contract is not performed, and if no legal action is taken by the promisee within the period of limitation, the contract in such a case is terminated.*

***Operation of law***

*A contract termination, by the operation of law in the following cases:*

***Death*** *– where the contract is of personal nature,* ***Insolvency*** *– when a person is declared insolvent,* ***Merger*** *– When an inferior right contract merges with the superior right contract, the former stands discharged automatically,* ***complete loss of evidence*** *– If the evidence providing the existence of the contract is lost, it stands terminated.*

***Breach of contract***

*A contract may, in some circumstances, be****discharged by a breach of contract****. Where there exists a breach of*[*condition*](http://www.e-lawresources.co.uk/Conditions%2C-warranties-and-innominate-terms.php)*(as oppose to breach of warranty)*

***Remedies of Breach of contract***

*Following remedies are available to be aggrieved party*

1. ***Sue for recession***
2. ***Sue for damages***
3. ***Sue for quantum merit***
4. ***Sue for specific performance***
5. ***Sue for injunction***

***Contract rescission:****The former contract which is the subject of dispute is “cancelled” and a new one may be formed to meet the parties’ needs.*

***Sue for damages:***

***Ordinary damages: When the loss arises naturally from the breach ordinary damages can be claimed.
Special Damages: When loss arises because of an unusual circumstance which the Promisor was aware of and the parties had taken it into consideration. However, if the unusual circumstance was not known, then it cannot be claimed.
Exemplary damages: is awarded in cases to preserve certain as highly of specialized obligations.***

***Liquidated damages****: The parties agree, at the time they make the contract, that if one party breaches the contract, the breaching party should pay a specified sum. Thus, this is an amount written in the contract.* ***it is called liquidated damages.***

***Specific performance:****A court can require the breaching party to perform their duties under the contract. This is afforded for unique circumstances.*

***Sue for quantum merit:***

*Quantum Merit means "As much as earned or deserved", "as much as is merited".*

***Sue for injunction:***

*Injunction is an order of court restraining a person from doing a particular act.*

***Indemnity***

***“A contract by which one party promises to save the other party from loss caused to him by the conduct of Promisor himself or by the conduct of other person”***

*There are two parties involve in a contract of indemnity*

1. *Indemnifier*
2. *Indemnity holder*

***Guarantee***

***“A contract of guarantee is contract to perform the promise or discharge the liability of third person in case of his default.”***

*Following are three parties to a contract of guarantee*

1. *Surety*
2. *Creditor*
3. *Principal debtor*

***Example:*** *A request to B lends Rs. 500,000 to C and undertakes that if C fail to pay the loan, A shall pay to B. There is contract of guarantee*

***Bailment***

***“A bailment is the delivery of goods by one person to another for some purpose, upon a contract that the shell be, when the purpose is accomplished be returned or otherwise dispose of according to the person delivering them.”***

*There are two parties in contract of bailment*

1. *Bailor*
2. *Bailee*

***Example:*** *Ahmed delivers watch to Bilal for repair. There is contact of bailment*

***Pledge***

***“The bailment of goods as security for the payment of debt or performance of a promise is called pledge”***

*There are two parties involved in this contract*

1. *Pledgor*
2. *Pledgee*

***Example:*** *Ali borrows Rs. 100 from Bashir and keeps his watch as security for payment of debt. The bailment of watch is called pledge*

***Agency***

*The contract of relationship between an* ***agent*** *and his* ***principal*** *is called agency.*

***Agent***

*An agent is a person employed to an act for another or to represent another in dealing with third party*

***Principal***

*The person on whom such an act is done or who is so represented is called principal*

***Partnership***

*Partnership can be performed and registered under partnership act 1932*

***“Partnership is an association of two to twenty people who carry on business together for the purpose of making profit”***

*Persons in business are called:* ***partners***

*Business called:*  ***Firm***

*Registration of partnership is not compulsory by law but it is better to do so.*

***Registration***

* *Name of business, partner names, and place etc*
* *Partnership deed/agreement*
* *Fee Paid challan*
* *CNIC of partners and other relevant persons*

***Benefit of registration***

*Registered firm can enforce its rights against the third parties.*

*The partners of registered firm can sue its fellow partners or the firm for the enforcement of their rights.*

***Characteristics***

1. ***Large Capital:***
2. ***Better decisions***
3. ***Loan Facility***
4. ***Division of Risk:***
5. ***Skills:***
6. ***Easy Formation***
7. ***Borrowing Power:***
8. ***Unlimited Liability:***
9. ***Lack of mutual cooperation***
10. ***misuse of authority***
11. ***delay in decision***
12. ***leakage Secrets***

***Dissolution of partnership***

# *Dissolution of a firm means that the firm closes its business and comes to end, While dissolution of a partnership means, termination of old partnership agreement and a reconstitution of firm due to admission, retirement or death of a partner. In dissolution of a partnership the remaining partners may agree to carry on the business under a new agreement.*

*“The dissolution of partnership between all the partners of a firm is called the "dissolution of the firm"*

*The dissolution of a firm may take place in one of the following five ways.*

1. ***Compulsory dissolution***
2. *Unlawful business*
3. *Insolvencies of partners*
4. ***By Contingencies***
5. *Death of partner*
6. *Insolvencies of partner*
7. *Expiry of period*
8. *Completion of work*
9. ***By Court***
10. *Breach of agreement*
11. *Unsound mind*
12. *Unable to perform duty*
13. *Misconduct*
14. *Transfer of shares*
15. *Regular losses*
16. ***Dissolution by agreement***

*A firm may be dissolve with the consent of the all partners or in accordance with the contract between the partners.*

1. ***Dissolution by notice***

*The firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.*

***Discharge of liabilities***

*Partnership debts are normally joint (section 9 of the Partnership Act 1890) otherwise they will be joint and several.*

*When a firm fails first of all*

* *Pay outsider loans*
* *Pay insider loans*
* *Divide assets liabilities according to capital ratio*
* *Remaining surplus after paying capital, divide according to profit ratio*

***Types of business ownership***

*Registration Registration Registration*

*No legal requirement optional compulsory*

 *Regulate & monitors by regulate & monitors by*

 *Partnership Act 1932 company ordinance 1984*

*No separate identity No separate identity it has artificial judiciary*

*Unlimited liability unlimited liability limited or unlimited liability*

***Proprietorship:***

*A type of business ownership in which only one member involve in the business affairs. It has no legal requirement regarding registration. It has no separate legal identity and having unlimited liability.*

***Partnership:***

*A type of business ownership in which more than one member involve in the business affairs for the sake of profit. It registration is optional, having no separate legal identity and unlimited liability. It regulates and monitor by Partnership Act 1932.*

***Company:***

*A type of business ownership in which registration is compulsory. It regulates and monitor by the Companies Ordinance 1984. It has an artificial judiciary and having limited or unlimited liability.*

***Types of company (registered):***

***Types of company (registered)***

*Limited by guarantee limited by shares unlimited*

 *Private Limited Public limited*

*Single member company Multi Member Company*

 *Unlisted company Listed Company*

***Limited by guarantee:***

*Amount of capital paid to the members at the time of winding up.*

***Limited by share:***

*Amount of capital paid to the members according to the ratio of shares among them.*

*It has two types:*

1. ***Private limited:***

*Share of the company cannot offer to the general public. It has two types: (a) Single member company (b) Multi Member Company*

1. ***Public limited:***

*Share of the company offer to the general public. It has two types: (a) Listed Company (b) Unlisted Company*

***Security and exchange commission of Pakistan:***

*According to the act 1997 , SECP is an autonomous body having their own regulations it is a department of government but they have their own rules and regulations it is not directly monitor by the government its main function is to discuss the affairs of regulate bodies in Pakistan*

***Heads of security exchange commission of Pakistan***

*It has two main heads:*

* *Administrative*
* *Financial*

***Administrative:*** *it’s not directly control by the government officials**because it is a regulatory authorized body*

***Financial:*** *they have separate budget. Sometimes government can finance them but in spite of that they have their own rules and regulations and they are not to bind to answer the ministry of finance*

***Objectives of security exchange commission of Pakistan***

* *Regulate and monitor the capital market of Pakistan*
* *Regulate and monitor the co-operate parties of Pakistan*
* *Promulgate the law , rules and regulations , procedures to regulate and monitor the above*

***Working of security exchange commission of Pakistan***

*Their working is control by the two main heads*

* *Commissioner of SECP*
* *Policies board of SECP*

***Appointment of commissioner of security exchange commission of Pakistan***

*5 commissioner appointed by the government and 50 % are from the private sector and for this purpose scholars from the public sector universities should be taken as private sector persons . The federal government also appoints the chairman for 3 years amongst the commissioner. No person can continue as chairman of SECP for 2 consecutive years.*

***Policy board of security exchange commission of Pakistan***

*In policy board of SECP there should be 9 members out of which 5 members should be x-officials and remaining would be appointed by the federal government for the period of three years and these appointed members would be 50% included from private sector .*

***X-officials:***

*They are the members of policy board and they have no any time limit*

***Positions of x-officials:***

* *federal sectary finance*
* *federal secretary commerce*
* *federal sectary of law*
* *deputy governor of SECP*
* *Chairman of SECP*

***Number of members and directors:***

|  |  |  |
| --- | --- | --- |
|  |  ***Private limited company*** | ***Public limited company*** |
| *SMC* | *MMC* | *Unlisted* | *Listed*  |
| *Minimum number of members* | *01* | *02* | *03* | *07* |
| *Maximum number of members* | *01* | *50* | *Unlimited* | *Unlimited* |
| *Minimum number of directors* | *01* | *02* | *03* | *07* |
| *Maximum number of directors* | *01* | *50* | *Unlimited* | *Unlimited* |
| *Restriction on sale of share* | *Approval from SECP through CRO* | *Inform company before dispose off* | *First come first have* | *No restriction* |

***Statutory appointments:***

|  |  |  |
| --- | --- | --- |
| **Position** | **Listed company** | **Unlisted company** |
| Directors | Mandatory | Mandatory |
| Chief executives | Mandatory | Mandatory |
| Auditors | Mandatory | Mandatory |
| Legal advisors | Mandatory | Optional/mandatory(more than 500,000 paid up capital) |
| Secretary | Mandatory | Optional/mandatory( single member company) |
| Chief finance officer | Mandatory | Optional |
| Head of internal audit | Mandatory | Optional |
| **For Directors Appointment** |
| **Particulars** | **First appointment** | **Regular appointment** | **Casual appointment** |
| **Appointing authority** | Promoters | Shareholders | Board of directors |
| **In the meeting of** | Promoters | Annual general meeting | Board of directors |
| **Time & appointment** | Filing of incorporation document | Retirement of previous director | On creation of vacancy |
| **Through the process** | 100% consensus of promoters | Voting | Voting |
| **Tenure** | Till first annual general meeting | 3 years | Remaining period |
| **Remuneration fixed by** | Promoters | Shareholders | Board of directors |
| **For Chief Executive Appointment** |
| **Particulars** | **First appointment** | **Regular appointment** | **Casual appointment** |
| **Appointing authority** | Board of directors | Board of directors | Board of directors |
| **In the meeting of** | Board of directors | Board of directors | Board of directors |
| **Time & appointment** | Within 15 days of incorporation | Retirement of previous director | On creation of vacancy |
| **Through the process** | Voting | Voting | Voting |
| **Tenure** | Till first annual general meeting | 3 years | Remaining period |
| **Remuneration fixed by** | Board of directors | Board of directors | Board of directors |
| **For Auditors Appointment** |
| **Particulars** | **First appointment** | **Regular appointment** | **Casual appointment** |
| **Appointing authority** | Board of directors | Shareholders | Board of directors |
| **In the meeting of** | Board of directors | Annual general meeting | Board of directors |
| **Time & appointment** | Within 60 days of incorporation | Retirement of previous director | On creation of vacancy |
| **Through the process** | Voting | Voting | Voting |
| **Tenure** | Till first annual general meeting | 1 year | Remaining period |
| **Remuneration fixed by** | Board of directors | Shareholders | Board of directors |
| **For Legal Advisor Appointment** | **For Secretary Appointment** |
| **Particulars** | **Regular appointment** | **Particulars** | **Regular appointment** |
| **Appointing authority** | Board of directors | **Appointing authority** | Chief executives approved by Board of directors |
| **In the meeting of** | Board of directors | **In the meeting of** | \_ |
| **Time & appointment** | As and when required | **Time & appointment** | As and when required |
| **Through the process** | Voting | **Through the process** | \_ |
| **Tenure** | As per term of appointment | **Tenure** | As per term of appointment |
| **Remuneration fixed by** | Board of directors | **Remuneration fixed by** | Approved by Board of directors |

***Procedure for the Formation of a new company:***

*Following are the requirements for registration of a company in Pakistan:****Step No. 1 for Registration of a Company in Pakistan*** ***Availability of Name*** *The first step with regard to incorporation of a company is to seek availability of the proposed name for the company from the Registrar. For this purpose, an application is to be made and a fee is required to be paid for seeking availability certificate.*

*The name should be unique not exist able. Identical, resembled, known personality already existed and restricted business name can’t be used.*

***Step No. 2 for Registration of A Company in Pakistan*** *Application to the CRO for the availability of the name will be written. If the proposed name is available then it will took by registrar for the 90 days reservation. If not available then it will be told.*

***Important attachments:***

* *Memorandum and articles of association*
* *Form 1 declaration of applicant*
* *Form 21 address of registered office*
* *Form 29 particulars of directors*
* *Letter of availability of name*
* *Letter of authority*
* *Copies of CNIC of all relevant persons*
* *Fee paid Chillan*

***For public company these attachments are also must:***

* *Form 27 list of person consenting to act as director*
* *Form 28 consent of persons to act as directors and chief executives*

***Relevant laws of Pakistan for registration of a company in Pakistan:***

* [*Companies Ordinance, 1984*](http://www.tahseenbutt.com/documents/companies_ordinance_1984.pdf)
* [*Companies (General Provisions and Forms) Rules, 1985*](http://www.tahseenbutt.com/documents/companies_general_provisios_forms_rules_1985.pdf)
* [*Single Member Companies Rules, 2003*](http://www.tahseenbutt.com/documents/single_member_companies_rules_2003.pdf)
* [*Schedule filing fees*](http://www.tahseenbutt.com/documents/schedule_filing_fees.pdf)

***Introduction of Memorandum of Association:-***

*Memorandum of association is one of the documents which has to filed with the registrar of companies at the time of incorporation of a company. Section 2(28)defines a memorandum to mean “the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this act.” The definition, however, either does not give us any idea as to what a memorandum of association really is nor does it point out the role which it plays in the affairs of the company.*

***Importance:-***

*The memorandum of association is an extremely important document in relation to the affairs of the company. It is a document which sets out the constitution of the company and is really the foundation on which the structure of the company is based. It contains the fundamental conditions upon which alone the company is allowed to be incorporated. A company may pursue only such objects and exercise only such powers as are conferred expressly in the memorandum or by implication therefore i.e. such powers as are incidental to the attainment of the objects. A company cannot depart from the provisions contained in its memorandum, however, great the necessity may be. If it does, it defines its relation with the outside world and the scope of its activities. The purpose of the memorandum is to enable shareholders, creditors and those who deal with the company to know what the permitted range of the enterprise is.*

*It defines as well as confines the powers of the company; it not only shows the object of its formation, but also the utmost possible scope of its operation beyond which its action cannot go. Lord Cairns in Ashbury Railway Carriage Co. V. Riche pointed out,” The memorandum is as it were, the area beyond which the action of the company cannot go; inside that area the shareholders may make such regulations for their own government as they think fit.”*

***Memorandum of Association:-***

*The memorandum of association is a document which contains the fundamental rules regarding the constitution and activities of a company. It is the basic document which lays down the how the company is to be constituted and what work it shall undertake.*

***\* According to Lord Cairns L.C***

*“The memorandum is as it were, the area beyond which the action of a company cannot go, inside the area the shareholders may make such regulations for their own, government as they think fit”.*

***Purpose of memorandum:-***

*The purpose of the memorandum is twofold.*

*1. The intending share holder who contemplates the investment of his capital shall know within what field it is to be put at risk.*

*2. Anyone who shall deal with the company shall know without reasonable doubt whether the contractual relation into which he contemplates entering with the company is one relating to a matter within its corporate objects.*

*At least seven persons in the case of public company and at least two in the case of a private company must subscribe to the memorandum. The memorandum shall be printed, divided into consecutively numbered paragraphs, and shall be signed by each subscriber, with his address, description and occupation added, the presence of at least one witness who will attest the same.*

***Contents of Memorandum:-***

*According to section 13, the memorandum of association of every company must contain the following clauses:*

*1. The name of the company with ‘limited’ as the last word of the name in the case of a public limited company and with ‘private limited’ as the last word in the case of a private limited company.*

*2. The state in which the registered office of the company is to be situated.*

*3. The objects of the company to be classified as:*

*a. The main objects of the company to be pursued by the company on its incorporation and objects incidental to the attainments of the main objects, and*

*b. Other objects not included above*

*4. In the case of companies with object not confined to one state, the states to whose territories the objects extend.*

*5. The liability of members is limited if the company is limited by shares or by guarantee.*

*6. In the case of a company having a share capital, the amount of share capital with which the company proposes to be registered and its division into shares of a fixed amount.*

*An unlimited company need not include items 5 and 6 in its memorandum.*

*In the case of a company limited by guarantee, its memorandum of association shall state that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member or within or year after wards for the payment of the debts and liabilities of the company.*

*Every subscriber to the memorandum shall take at least one share and shall write opposite to his name the number of shares taken by him.*

***Clauses of the Memorandum o f Association:-***

* *Name Clause*
* *Object Clause*
* *Liability Clause*
* *Capital Clause*
* *Association Clause*
* *Registered office clause*

*The explanation is given below:-*

***Name clause:-***

*A company may be registered with any name it likes. But no company shall be registered by a name which in the opinion of the central government is undesirable and in particular which is identical or which too nearly resembles the name of an existing company. Where a company is registered by a name so similar to that of another company, that the public are likely to be deceived, the court will grant an injunction restraining it from using that name.*

*Every public company must write the word ‘limited’ after its name and every private limited company must write the word ‘private limited’ after its name. The use of the word ‘company’ is however, not compulsory. Companies, whose liabilities are not limited, are prohibited from using the word ‘limited’. The words ‘limited’ may be dispensed with in the name of charitable companies. But companies formed to promote art, science, religion etc, which do not propose to pay dividend but intend to apply all its profits towards the working of the company, can be registered without the word ‘limited’ under licenses granted by the central government.*

***Object Clause:-***

*In this the object of the company is stated in which the company will deal. The objects clause is the most important clause in the memorandum of association of a company. It is not merely a record of what is contemplated by the subscribers, but it serves a two-told purpose:*

*(a) It gives an idea to the prospective shareholders the purposes for which their money will be utilized.*

*(b) It enables the persons dealing with the company to ascertain its powers.*

*In case of companies which were in existence immediately before the commencement of the companies’ act 1965, the objects clause has simply to state the objects of the company. But in the case of a company to be registered after the amendment, the objects clause must state separately:*

*(a) Main objects. This sub-clause has to state the main objects to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of the main objects.*

*(b) Other objects. This sub-clause shall state other objects which are not included in the above clause.*

*Further, in the case of a non-trading company. Whose objects are not confined to one states clause must mention specifically the states to whose territories the objects extend.*

*The subscribers to the memorandum of association may choose and object or objects for their company. There are, however, certain restrictions.*

*1. The objects should not be against the policy of the constitution. For example, the object should not be such as to encourage untouched ability which has been abolished under our constitution.*

*2. The objects should not include anything which is illegal or against public policy. For example, forming a company for dealing in lotteries or for trading with the alien enemies.*

*3. The object must not be against the provisions of the companies act, as for example, authorizing the company to purchase its own shares.*

*On its being registered, the company has power to do whatever is necessary to do for attaining the objects stated in the memorandum, and to do whatever else is incidental to or consequential upon the attainment of the main object. It is, therefore, clear that any act of the company outside its stated, objects is ultra viruses and therefore void and cannot be ratified even by the whole body of shareholders.*

***Liability clause:-***

 *This clause states that the liability of the members of the company is limited. In the company is limited. In the case of a company limited by shares, the member is liable only to the amount unpaid on the shares taken by him. In the case of a company limited by guarantee the members are liable to the amount undertaken to be contributed by them to the assets of the company in the event of its being wound up. However, this clause is omitted from the memorandum of association of unlimited companies.*

*Any alteration in the memorandum compelling a member to take up more shares, or which increases his liability, would be null and void.*

*If a company carries on business for more than six months, while the number of members is less than 7, in the case of public company and less than 2 in case of a private company each member aware of this fact, is liable for all the debts contracted by the company after the period of six months has elapsed.*

***Capital clause:-***

*The memorandum of a company limited by shares must state the authorized or nominal share capital, the different kinds of shares, the authorized or nominal share capital, the different kinds of shares, and the nominal value of each share. The capital clause need not state anything else and it is usually better that it should not do so.*

***Registered Office Clause:-***

*This clause states the name of the state where the registered office of the company is to situate. The registered office clause is important for two reasons. Firstly, it ascertains the domicile and nationality of a company. This domicile clings to it throughout its existence. Secondly, it is the place where various registers relating to the company must be kept and to which all communications and notices must be sent. A company need not carry on its business at its registered office.*

*A company shall have its registered office. Such office must be in existence from the date on which the company begins to carry on business or within 30 days after incorporation, whichever is earlier. Notice of situation of the registered office and every change therein must be given within 30 days from the date of incorporation of the company of after the date of change, as the case may be.*

***Association Clause:-***

*The clause which consists of the Organizations object throughout its life and in which the company will deal in her whole life is term to be the association clause. This clause can never be changed.*

*This clause provides that those who have agreed to subscribe to the memorandum must signify their willingness to associate and form a company. According to section 12 of the act, at least seven persons are required to sign the memorandum in the case of a public company, and at least two persons in the case of a private company.*

*The memorandum has to be signed by each subscriber in the presence of at least one witness who must attest the signatures. Each subscriber must write opposite his name the number of shares he shall take. No subscriber of the memorandum shall take less than one share. This clause need not be numbered.*

***ALTREATION***

***Alteration in Memorandum:-***

*Clauses other than the conditions can be altered by the special resolution, as if they are contained in the articles of the association.*

***Alteration in Name Clause:-***

*The name of the company can be altered by passing a special resolution and if it is approved than the old name of the Company is also written along its new name for the next one year. A company can Change its name. For this purpose it must first pass a special resolution and then obtain approval of the central government in writing. However, no such approval is necessary for merely including or deleting the word ‘private’ consequent on the conversion of the public company into private company and vice versa.*

***Alteration in Object Clause:-***

*A company has no unlimited right to alter the objects clause of the memorandum however urgent or beneficial such alteration may be. The intention of the legislature is to prevent too easy an alteration of the condition contained in the memorandum. Section 17 only gives a limited right to the company to alter its object clause. This section provides that the objects clause can be altered only if the change enables the company:*

*(a) To carry on its business more economically or more efficiently*

*(b) To attain its main object by new or improved means;*

*(c) To enlarge or change the local area of its operation;*

*(d) To carry on some business which under existing circumstances may be conveniently or advantageously combined with the business of the company;*

*(e) To restrict or abandon any of the object specified in the memorandum;*

*(f) To sell or dispose of the whole or any part of the undertaking of the company;*

*(g) To amalgamate with any other company or body of persons.*

***Alteration Liability Clause:-***

*To change the liability clause the company has to pass the special resolution. The company is converted from the limited liability to unlimited liability than the clause may be deleted from the Memorandum of Association.*

***Alteration in Capital Clause:-***

*Capital clause can change with a ordinary resolution. The Company can increase or decrease the authorized capital divide, subdivide or consolidate its share capital and also can canceled the same.*

*The Capital clause can only be changed if allowed in the article of the association.*

***Alteration in Registered Office Clause:-***

*A company can shift its registered office from one place to another within the same city, town or village, provided a notice of change is given to the registrar within 30 days of such change. But, where the registered office is to be changed outside the local limits of any city, town or village in the same state, a special resolution to that effect must be passed. A notice of such change shall be given to the registrar within 30 days of the change. These two changes in the registered office do not involve alteration of memorandum.*

1. *Special resolution*
2. *The company should get the confirmation within 60 days from SECP for Office change*
3. *The Co should file form number 21 for new office with the registrar.*

***Alteration in Association Clause:-***

*This clause cannot be changed throughout the life of the business and it can’t be alternated.*

***ARTICLE OF ASSOCIATION***

***Article of Association:-***

*A document that specifies the rules and regulations for a company's operations. The articles of association define the company's purpose and lays out how tasks are to be accomplished within the organization, including the process for appointing directors and how financial records will be handled.*

***ALTERATION***

***Alteration in Article of Association:-***

*Any change in Article of association is if required than it can be changed through a special resolution.*

*However if the change affects the rights and substantive rights and the liabilities of the members and a class of members it can be carried out only if at least ¾ of the class of the members vote in the favor of the change.*

***PROCEDURE FOR ALTERATION OF CAPITAL***

***ALTERATION OF CAPITAL CLAUSE:-***

*Out of the five clauses comprising the Memorandum of Association of the Company Capital Clause is the Fifth clause depicting the capital of the company like whether it is limited or unlimited and if limited then whether limited by shares or by guarantee and this Capital clause is also sub divided into various parts viz. Authorized, Subscribed, Issued & Paid-up Capital.*

***Why the alteration is required?***

*At various instances & occasions there arises a need to alter its various parts in various forms like increase, subdivision, reclassification, consolidation conversion, cancellation, reduction & many more. Generally the people have a misconception that alteration of capital is alteration of Authorized Share capital but it’s not true at all as alteration can be made at various stages like by just increasing the paid up capital.*

***How it is done?***

*If the alteration is made to any clause other than Authorized Capital then all what we need not to modify the Charter of the Company i.e. Memorandum of Association of Company &/or Articles of Association of the Company, as it can just be done either by according the Board Consent or shareholders Consent as the situation demands. However if the Authorized Share Capital is to be altered we need to follow a detailed procedure depicted as below:*

***STAGES***

***STAGE I- PRIOR STAGE:-***

*At this stage the in-house consent i.e. of management is accorded by passing a Board Resolution by simple majority at a duly convened Board Meeting or either by circulation. When such consent is attained then a proper notice1 is sent to all the shareholders of the company to intimate them about the ensuing General Meeting2 for the said purpose. The Notice is to be attached with the relevant Explanatory Statement3*

***STAGE II- Conduction of Meeting & according the consent of shareholders:-***

*When a proper notice is sent then comes the stage of convening the meeting which can be convened only if there is a proper Quorum4. At the meeting we need to accord the consent of shareholders of the company by passing an ordinary resolution/ or special resolution as the situation demands like if it’s the case of increase, consolidation, sub-division, conversion or cancellation of Share Capital under section 94 of the Companies Act, 1956 then ordinary resolution is required however in case of reduction of Share Capital under Section 100 of the Companies Act, 1956 then consent is to be accorded by way of Special Resolution and not only this along with the special resolution the consent of court is also required.*

***STAGE III- Proceedings on the consent accorded:-***

*Once the consent of the shareholders is accorded & in case of reduction of share capital the approval of court is also obtained then the necessary changes are to be made to the Memorandum of Association of the Company & if required then to the Articles of Association of the company as well and an intimation to the Registrar of Companies is made by way of filing the E-form 5, E-form 23 and E-form 21 as may be required according to the alteration made. Stamp duty is also to be paid in case of increase which is to be paid as per the relevant State Stamp Act. The said E-Forms are to be filed with the concerned Registrar of Companies*

***STAGE IV- Approval of the said Change:-***

*It not just that the intimation is made to the Registrar of Companies and the alteration is made. The form needs to be get approved by the concerned Registrar of Companies. Hence it is always advisable to keep a check on the status of the E-form filed.*

***CONCLUSION:-***

*Summing up we have discussed the memorandum and article of association in the light of law and its sections which clears the role of Memorandum and Article of Association in the organization and afterwards its we have discussed the procedure of alteration of capital in detail.*

***PROSPECTUS***

***DEFINITION:-***

*PROSPECTUS is the document which is prepared by the promoters of the company after the formation of the company to take the shares for the public and in which all the data includes regarding the company’s policy*

***According To Companies Ordinance 1984:-***

***‘’****prospectus means any document described or issued as prospectus and includes any notice circular, advertisement or any other communication, inviting the public for the description or purchase of the shares .it invites the deposits from the public & financial institutions..*

***CONTENTS OF PROSPECTUS:-***

|  |  |
| --- | --- |
| 01 | The contents of the memorandum with particulars of signatories and numbers of shares |
| 02 | The number and value of the shares |
| 03 | Description of business to be undertaken and its prospectus |
| 04 | Any provision in the articles relating to remuneration of directors & c/e |
| 05 | Particulars of present or proposed directors, c/e, managing agent and secretary |
| 06 | Amount of minimum description |
| 07 | The date and time of opening and closing of the subscription list |
| 08 | Amount payable on application of each share |
| 09 | The number, description, and amount of share capital issued within the two proceeding years along with amount of premium  |
| 10 | Name of underwriters if any, |
| 11 | As respect to the property for which the subscription is to be applied, the following information shall be provided:* Particulars of vendors
* Mode of payment
* The nature of the title or interest on such property
 |
| 12 | If amount paid within two preceding years as commission to underwriter the following information should be disclosed:* The name and addresses and other description of underwriter
* Rate of commission
* Any other material terms and condition
 |
| 13 | Amount of preliminary expenses |
| 14 | Any amount paid within two preceding years to any promoter if officer and the consideration for such payment |
| 15 | Particulars of any contract entered into for the appointment of C/E, managing agent or secretary within two years before the issue of prospectus |
| 16 | Name and addresses of the auditors and legal advisor |
| 17 | Full particulars of the nature and interest of every director or promoter in the promotion of the company or in any property acquired in two preceding years |
| 18 | Right of the voting at the meeting of the company |
| 19 | The nature and extent of any restriction in the articles relating to attending, speaking or voting at the meeting or right to transfer the shares |
| 20 | Length of the time form the date of commencement of the business |
| 21 | Particulars of capitalization of any reserves or profits if any. |
| 22 | Particulars of surplus on revaluation of the assets and the manner, in which such surplus has been applied, adjusted or treated. |
| 23 | A reasonable time and place where copies of auditor’s accounts along with auditor’s report. |
| 24 | Summary in columnar form of the earnings of the company for each of the last three financial year |
| 25 | Pending legal proceedings. |

***Other Requirements Relating To Prospectus:****-*

* *Prospectus must be dated*
* *It must include an auditor report on last five years profit and loss account and no balance sheet at last date of the issue of the prospectus and on rates of dividend for each class of shares for each of the last five financial years*
* *It must be published not less than seven or more than thirty days before the subscription date*
* *If the prospectus includes a statement made by an expert the expert must not be engaged or interested in the formation or promotion, or in the management of the company. A written consent of the expert should be obtained before the issue of the prospectus with the statement.*
* *In case of a listed company approval of SECP must be obtained within sixty days before the date of issue of prospectus. However, commission may, while according approval impose such conditions as it may deem necessary*
* *A copy of prospectus must be sent to the registrar before the issue of prospectus.*
* *Registrar should not register the prospectus unless the above requirement have been complied with*
* *A sufficient number of copies of the prospectus issued under sun section q shall be made available at the registered office of the company, with the stock exchange at which the company is listed or is proposed to be listed and with the bankers to the issue, and the prospectus in its full text or in such abridged form as may be prescribed, shall be published at least in one Urdu and one English daily news paper having circulation in the province where stock exchange is situated at which the company is listed.*

***DOCUMENTS WHICH ARE REQUIRED WITH THE PROSPECTUS:-***

* *Consent of expert required under section 55*
* *In case of prospectus issued generally*
1. *A copy of contract regarding remuneration of chief executive and incase of an unwritten contract a memorandum thereof,*
2. *A report from auditors regarding any adjustment to assets and liabilities of the company, and reason thereof*

***Civil Liability for misstatement in prospectus:-***

*No person shall be liable for any loss or damages if he proves that*

* *He withdrew his consent to become a director before the issue of prospectus*
* *The prospectus was issued without his knowledge*
* *After the issue of prospectus and before the allotment, he became aware that the prospectus was untrue and withdrew his consent and gave a public notice of the withdrawal*
* *As regards the untrue statement, the expert believes on the reasonable grounds that statement was true, correct and fair representation.*

***CIVIL LIABILITY OF EXPERT(59):-***

*Expert civil liability is limited to the opinion given by him in the prospectus. He is not considered to be a person who has authorized for issue the prospectus. The expert did not be held liable if he proves the following*

* *That he had given the consent for the inclusion of his opinion in the prospectus but he withdrew the consent before the prospectus was filled for registration with the registrar.*
* *That after registration of prospectus and before allotment of shares he became aware of any untrue statement in his opinion and he withdrew his consent and face a reasonable public notice of such withdrawal.*
* *That he believed up to the date of the allotment that the statement was true to the best of his competence*

***Civil liability of directors (59)***

*Directors civil liability expands to the whole of the issue as those are the persons who have authorized for issue the prospects. The directors shall be responsible for the untrue statement made by the experts in the prospectus. The directors can avoid civil liability if he proves any of the following.*

* *That the director had* withdrawn *his consent to become the director and the prospectus was issued without his authority.*
* *That the prospectus was issued without his knowledge and when he became aware of issuance of prospectus; he gave a reasonable public notice of the fact*
* *That he became aware of the untrue statement after issuance of prospectus and he gave a reasonable public notice regarding such untrue statement*
* *That the statement was true copy or true extract from the opinion made by any expert and the directors believe that the expert dad sufficient knowledge and ability to express the opinion*
* *That the statement was true copy or true extract taken from any public official document*
* *Other than the opinion of expert or public official document; the director believes that the statement was true to the best of his knowledge and belief*

***NOTE:-***

*Where a prospectus is issued without the knowledge or consent of a person specified in the prospectus as a director who was not consented to become a director, or an expert who has not given or had withdrawn his consent before the issue of a prospectus, the directors shall be liable to indemnify in respect of all damages.*

***SHARES***

*Under companies ordinance 1984 share is defined as:*

*“A share in the share capital of the company.”*

***It includes :***

* *Stocks except when there is a difference exist between stock and shares expressed or implied.*
* *It is a moveable property or transferable in the manner provided by the company's articles.*

*A share is a right to receive a certain proportion of the profits made by a company while it is a going concern and of the capital when it is wound up. In the companies ordinance, 1984 a share is defined as “a share in the share capital of the company” It includes stocks, except when the distinction between stocks and shares is expressed or implied. It is a movable property, transferable in the manner provided by the articles of the company.*

***CLASSES OF SHARES***

***a) Ordinary shares:***

*These carry the right to share in profits, if available, the right to share in surplus assets on winding up, and the voting rights.*

***b) Preference shares:***

*These carry the right to a fixed dividend which is payable before payment of any dividend on the ordinary shares, but these shares have no voting right except when the rights of the holders are affected. The right to receive dividend may either be cumulative or non-cumulative.*

***c) Redeemable preference shares:***

*These are preference shares which are redeemable at the option of the company, subject to the provisions of section 85 of the Companies Ordinance, 1984.*

*In addition to the above shares, a company’s capital may contain redeemable capital (like PTCs, TFCs, musharika certificates, or participatory redeemable capital).*

***ALLOTMENT OF SHARES***

***1- Definition***

*Allotment of shares means division of entire shares capital into definite shares each of a particular value and also of different classes and an assignment of such shares individually or collectively to different persons.*

***2- Application for allotment of shares***

***a)*** *Application must be made:*

***i)*** *On the form specified by the commission: and*

***ii)*** *For such amount as prescribed by the commission.*

***b)*** *The amount payable should be the full nominal amount of the shares applied for*

***c)*** *All statements and declarations made by the applicant shall be binding on him*

***d)*** *Application should be irrevocable*

***3- Restrictions as to allotment***

*a) No allotment is made for shares offered to public for subscription unless:-*

***i)*** *Amount of minimum subscription stated in the prospectus has been subscribed and paid in cash to the company.*

***ii)*** *Nominal value of each share is fully paid.*

***iii)*** *Share money is kept in a separate bank account till certificate of commencement of business has been obtained.*

***4- Repayment as to allotment***

*If the above conditions are not fulfilled, after 40 days from first issue of prospectus all money received shall be repaid without surcharge. Where the amount is not paid within 50 days of the issue of prospectus, the directors shall be jointly and severally liable to repay the amount surcharge at the rate of 1.50% for a month or part thereof.*

***5- Repayment of money received for shares not allotted***

***i)*** *The company within 10 days from share subscription date shall decide as to whom shares are to be allotted.*

***ii)*** *The amount to unsuccessful applicants shall be refunded within 10 days from the decision.*

***iii)*** *if the refund is not made within 15 days, the directors of the company shall be jointly and severally liable to repay the amount along with a surcharge at the rate of 11/2 % for a month or part thereof .they are also liable for a fine up to Rs. 5,000/- and a further fine of Rs. 100 per day in case of continuing offense. However, a director shall not be liable if he proves that a default in making refund was not due to any misconduct or negligence on his part.*

***ISSUE OF SHARES***

***Application of premium received on issue of shares***

***a)*** *Where shares are issued at premium an amount an amount equal to premium shall be transferred to an account called “Share premium account”*

***b)*** *The “Share premium account” may be utilized by the company in:*

***i)*** *Writing off the preliminary expense: or*

***ii)*** *Writing off the commission paid or discount allowed on issue of shares or debentures: or*

***iii)*** *Providing for the premium on redemption of preference share or debentures: or*

***iv)*** *Issue of bonus shares to its members.*

***Issue of shares at discount***

*Company can issue shares at discount provided that:*

***a)*** *Discount must be authorized by resolution passed in general meeting*

***b)*** *It must be sanctioned by the commission*

***c)*** *The resolution must specify the maximum rate of discount at which the shares are to be issued*

***d)*** *At least one year should have been elapsed from the date of commencement of business.*

***e)*** *It is issued within 60 days from the date of sanction of the Commission. The commission may extend its period: and*

***f)*** *Every prospectus and balance sheet issued after such issue must contain the particulars of discount allowed on issue of shares or of so much of that discount which has not been written off at the date of issue of prospectus or balance sheet.*

***SHARE CAPITAL***

*“Share capital means a particular amount of money with which a business is started.”*

*It may be:*

***a) Nominal or authorized capital***

*The maximum amount of capital which a company can issue according to its memorandum.*

***b) Issued capital***

*That part of amount of authorized capital which is offered by directors or promoters for subscription.*

***c) Subscribed capital***

*That part of amount of issued capital which is taken by the people.*

***d) Paid up capital***

*That part of subscribed capital against which money has been received*

***Further issue of capital***

*Where the directors decide to increase the capital of the company by issue of further shares such shares shall be first offered to the existing share holders in proportion to their existing share holdings such issue is called “Right issue”*

*However a public company can further raise its capital without issue of right shares by passing a special resolution and after the approval of the Federal Government or can offer a certain percentage of its shares to its employees under the Employees Stock Option Scheme.*

*The offer of right shares shall be accompanied by a circular in the prescribed form and duly signed by he directors containing material information about the affairs of the company, latest accounts and necessity for issue of further capital.*

*Such circular should be filled with the register before it is sent to the share holders .the circular shall specify the last date of acceptance of the offer. If whole or any part of offer is not accepted, the directors may issue such shares in such manner as they deem fit.*

***TRANSFER AND TRANSMISSION OF SHARES***

***1- Provisions regarding transfer of shares***

***a)*** *The mode of transferring shares in a company is usually provided by the articles;*

***b)*** *An application for the registration of a transfer of shares may be made either by the transferor or by the transferee;*

***c)*** *The company is prohibited from registering a transfer of shares unless the proper instrument of transfer, duly stamped and executed by the transferor, has been delivered to the company along with the shares certificate;*

***d)*** *Where the original transfer deed, signed by the transferor and the transferee, has been lost, destroyed or mutilated, the directors, if satisfied, may on a duly stamped written application of the transferee, register the transfer on such indemnity as they think fit;*

***e)*** *A shareholder has an absolute right to transfer his shares, unless the articles provide otherwise;*

***f)*** *A company shall have share certificate ready for delivery within 45 days of application of transfer.*

***2- Refusal to transfer***

***a)*** *The director cannot refuse to transfer the shares unless the transfer deed is invalid or defective.*

***b)*** *If the directors refuse registration of a transfer of any shares, they must notify this fact to the applicant within thirty days or where the transferee is a central depository, within five days from the date on which the instrument of transfer was lodged with the company.*

***c)*** *However* ***in case of private company,*** *if any restriction on transfer of shares is imposed by the articles, then the transfer of shares shall be subjected to those restrictions, and on the basis of those restrictions, directors can refuse the transfer of shares.*

***d) In case of default,*** *every director or officer of the company who is in default shall be punishable with fine which may extend to 500 rupees for every day during which the default continues.*

***3- Appeal against refusal for registration of transfer***

***a)*** *A person may appeal to the commission against any refusal by the company to register the transfer or transmission.*

***b)*** *The above referred appeal to the commissioner shall be made within two months of the receipt of notice of refusal of expiry of the thirty days period for registration.*

***c)*** *The commission shall, after giving reasonable opportunity to the parties concerned for making representation, may direct that transfer and transmission shall be registered by the company or it need not be registered. The company shall give effect to the decision within15 days of the receipt of order.*

***4- Transfer of the shares by the nominee or legal representative***

*Transfer of the share by nominee or legal representatives shall be as if he had been a member at the time of execution of the instrument of transfer.*

***5- Transmission of shares***

*Transmission is the passing of title or property in shares by operation of law on the happening of such events as death, insolvency or lunacy of shareholders*

|  |  |  |
| --- | --- | --- |
|  | ***Transfer*** | ***Transmission*** |
| ***1*** | *Transfer is the passing of title or property and deliberate act of the shareholder.* | *Transmission is the passing of title or property in shares in shares by operation of law on the happening of certain events.* |
| ***2*** | *Transfer takes place when a member transfers his shares to some other person on a sale, gift etc, during his life time* | *Transmission of shares takes place on the death, insolvency of shareholder* |
| ***3*** | *In case of transfer the title to holding and the right to transfer passes to the transferee.* | *In transmission the title to shares and the right to transfer them passes to the executors or administrators* |
| ***4*** | *In case of transfer, a duly stamped and property executed instrument of transfer signed by transferor and transferee has to be lodged with the company for registration.* | *In case of transmission no instrument of transfer is needed. Only probate, letter of both administration or succession certificate or courts order is to be produced by the legal representative.* |

***Summary of Difference between transfer and transmission of shares***

***Share holders and Members***

***Share holders***

*An* [*individual*](http://www.businessdictionary.com/definition/individual.html)*,* [*group*](http://www.businessdictionary.com/definition/group.html)*, or* [*organization*](http://www.businessdictionary.com/definition/organization.html) *that owns one or more* [*shares*](http://www.businessdictionary.com/definition/share.html) *in a* [*company*](http://www.businessdictionary.com/definition/company.html)*, and in whose name the share* [*certificate*](http://www.businessdictionary.com/definition/certificate.html) *is issued.*

*It is* [*legal*](http://www.businessdictionary.com/definition/legal.html) *for a company to have only one shareholder. Also called (in the US)* [*stockholder*](http://www.businessdictionary.com/definition/stockholder.html)*. The benefits of being a shareholder include receiving dividends for each share as determined by the Board of Directors, the right to vote (except for certain preferred shares) for members of the board of directors, to bring a derivative action (lawsuit) if the corporation is poorly managed, and to participate in the division of value of assets upon dissolution and winding up of the corporation, if there is any value.*

***Member***

*Member means in relation to a company having share capital, a subscriber to the memorandum of the company and a person to whom is allotted, or who becomes the holder of, any share, scrip or other security which gives him a voting right in the company and whose name is entered in the register of members, and, in relation to a company not having a share capital, any person who has agreed to become a member of the company and whose name is so entered.*

***How to become a Member***

***a) By subscription***

*A person who subscribes his name to the memorandum of association by signing such memorandum is deemed to be the member of company.*

***b) By Application***

*A person who makes an application to take the shares of the company and agrees to become a member*

***c) By Transfer***

*A person by taking a share from a member, becomes the member of the company, on being put on the register of members.*

***d) By succession***

*The legal representative of the deceased member or an official assignee of an insolvent, becomes the member of company in place of such deceased or insolvent.*

***e) By estoppel***

*a person who allows his name on the register of members or otherwise holds out as a member and who is estopped from denying that he is registered with his consent, becomes the member of company.*

***Number of Members***

***i) A public company (unlisted)*** *shall have a minimum of three members and there is no restriction as to maximum number of members.*

***ii) A public company (listed)*** *shall have a minimum of seven members and there is no restriction as to maximum number of members.*

***iii) A private company (other than single member company)*** *shall have a minimum of two members and a minimum of fifty members.*

***iv) Single Member Company*** *shall have a single member only.*

***v) A company limited by guarantee and an unlimited company*** *shall have such minimum and maximum numbers of members as are specified by its Articles.*

***Register of Members***

***Every company must have a register of its members containing:***

*a) The names, father’s name, description, nationality, occupation and addresses of members;*

*b) The amount and the number of their shares;*

*c) The date of acquiring the shares;*

*d) The amount paid on the shares;*

*e) The date of entering a member in the register, and*

*f) The date and reason for ceasing to be a member*

***Every company, having more than 50 members, must keep an index of the register of members.***

***DIRECTORS:***

*A* ***board of directors*** *is a body of elected or appointed members who jointly oversee the activities of a* [*company*](http://en.wikipedia.org/wiki/Company_%28law%29) *or* [*organization*](http://en.wikipedia.org/wiki/Organization)*. Other names include* [***board of governors***](http://en.wikipedia.org/wiki/Board_of_governors)*,* ***board of managers****,* [***board of regents***](http://en.wikipedia.org/wiki/Board_of_regents)*,* ***board of trustees****, and* ***board of visitors****. It is often simply referred to as "the board".*

***Minimum Number of Directors:***

*Minimum number of directors of company:*

*Every listed company shall have not less than seven directors to be elected in a general meeting in the manner provided in this Ordinance.*

***Procedure for election of directors:***

*(a)The directors of a company shall, subject to section 174, fix the number of elected directors of the company not later than thirty-five days before the convening of the general meeting at which directors are to be elected.*

*(b) The number so fixed shall not be changed except with the prior approval of a general meeting of the company.*

*(c) The notice of the meeting at which directors are proposed to be elected shall among other matters, expressly state -*

*(i) The number of elected directors fixed; and*

*(ii) The names of the retiring directors.*

*(d) A notice should be filed by the person consenting election with the company at least 14 days before the meeting. The notice can be withdrawn any time before the holding of the election.*

*(e) All notices received by the company shall be communicated to the members not later than seven days before the date of the meeting. in the case of a listed company by publication at least in one issue each of a daily newspaper in English language and a daily newspaper in Urdu language having circulation in the Province in which the stock exchange on which its securities are listed is situate.*

*(f) The directors of a company having a share capital shall, unless the number of persons who offer themselves to be elected is not more than the number of directors fixed be elected by the members of the company in general meeting in the following manner, namely:-*

*(i) a member shall have such number of votes as is equal to the product of the number of voting shares or securities held by him and the number of directors to be elected;*

*(ii) a member may give all his votes to a single candidate or divide them between more than one of the candidates in such manner as he may choose; and*

*(iii) The candidate who gets the highest number of votes shall be declared elected as director and then the candidate who gets the next highest number of votes shall be so declared and so on until the total number of directors to be elected has been so elected.*

*(g) the directors of a company not having share capital shall be elected by the members of the company in general meetings in the manners as provided is articles of association of the company.*

*(h) any person who is nominated or seeks to contest an election to the office of director of a public company or a modaraba company whose shares are quoted on stock exchange or of a financial institution or a banking company shall file along with the consent required under section 184(1) a declaration on oath, duly attested by an oath commissioner as specified below:*

*(i) A declaration that no loan obtain from any bank, financial institution, cooperative society or cooperate body in his own name or in the name of his spouse or dependent children or dependent parent or any business concern mainly owned by the aforesaid, remain unpaid for more than one year from the due date;*

*(ii) A declaration that he, his spouse or dependent children or dependent parents or a business concern mainly browned by the aforesaid have not made default in payment of taxes for over six month;*

*(iii) A declaration that he, his spouse or dependent children or dependent parents or a business concern mainly browned by the aforesaid have not made default in payment of government dues and utility expenses, including telephone, electricity, gas and water charges for over six months;*

*(iv) A declaration specifying his educational qualifications, occupation, national identity card no. and national tax no. if any.*

*(v) A declaration of assets and liabilities of his own, spouse and dependence on the preceding thirteenth day of June; and*

*(vi) A declaration specifying income tax, wealth tax paid by him during last three assessment year and, where applicable, land revenue paid by him during the last two financial years.*

***NOTE****: (if no. of candidates and the no. of directors to be elected are equal, then all candidates shall be stands elected unopposed):*

***PROCEDURE FOR ELECTION OF DIRECTORS OF COMPANY NOT HAVING SHARE CAPITAL:***

*A company not having share capital shall elect its directors in general meeting in manner as provided in its articles of associations. (Sec 178(6))*

***Creditors may nominate directors:***

*A company may have directors nominated by the company's creditors, or other special interests by virtue of contractual arrangements.*

***Consent to act as director to be filed with registrar:***

*"*[*(1)*](http://www.paksearch.com/Government/CORPORATE/COMPANY/COMORD/A3.htm) *No person shall be appointed or nominated as a director or chief executive of a company or represent as holding such office, nor shall any person describe or name any other person as a director or proposed director or chief executive or proposed chief executive of any company, unless such person or such other person has given his consent in writing for such appointment or nomination."; and*

*"*[*(2)*](http://www.paksearch.com/Government/CORPORATE/COMPANY/COMORD/A3.htm) *Within fourteen days from the date of appointment or nomination, as the case may be, the company shall file with the registrar a list of persons who have consented to act as director or chief executive of the company along with their consent to do so in the prescribed form.”
(3) This section shall not apply to a private company, not being a private company which is a subsidiary of a public company.*

***Ineligibility of certain persons to become director:***

*No person shall be appointed as a director of a company if he,-*

*(a) Is a minor?*

*(b) is of unsound mind;*

*(c) Has applied to be adjudicated as an insolvent and his application is pending;*

*(d) Is an un-discharged insolvent;*

*(e) Has been convicted by a Court of law for an offence involving moral turpitude;*

*(f) Has been debarred from holding such office under any provision of this Ordinance;*

*(g) has betrayed lack of fiduciary behavior and a declaration to this effect has been made by the Court under section 217 at any time during the preceding five years;(h) is not a member: Provided that clauses (i) and (j) shall be applicable only in case of a listed company.". Provided that clause (h) shall not apply in the case or—(i) a person representing the Government or an institution or authority which is a member; (ii) a whole-time director who is an employee of the company;*

*(iii) A chief executive; or*

*(iv) A person representing a creditor;*

[*(i)*](http://www.paksearch.com/Government/CORPORATE/COMPANY/COMORD/A4.htm) *has been declared by a Court of competent jurisdiction as defaulter in repayment of loan to a financial institution, exceeding such amount as may be notified by the Commission from time to time; and*

[*(j)*](http://www.paksearch.com/Government/CORPORATE/COMPANY/COMORD/A4.htm) *is member of a Stock Exchange engaged in the business of brokerage, or is a spouse of such member:.*

***REMOVAL OF DIRECTORS:***

*A company may by resolution in general meeting remove a director appointed under section 176 or section 180 or elected in the manner provided for in section 178:*

*Provided that a resolution for removing a director shall not be deemed to have been passed unless the number of votes cast against it is equal to, or exceeds.*

*(i) the minimum number of votes that were cast for the election of a director at the immediately preceding election of directors, if the resolution relates to removal of a director elected in the manner provided in sub-section (5) of section 178; or*

*(ii) the total number of votes for the time being computed in the manner laid down in sub-section (5) of section 178 divided by the number of directors for the time being, if the resolution relates to removal, of a director appointed under section 176 or section 180.*

***Meetings***

* *Statutory Meeting (Only for Public Limited Company)*
* *Annual General Meeting(For all companies)*
* *Extra Ordinary general meeting(For all companies)*

***Statutory Meetings:***

*Statutory Meeting is conveying within 3 months and before 6 months from the date of entitlement to commencement of business.*

***Annual General Meetings:***

* *Annual general meetings is conveying with in 4months from the end of financial year and within 15 months from the last Annual General Meeting(which ever is earlier)*
* *1st Annual general meeting of the company should be conveying with in 18 month from the date of incorporation.*

***Extra ordinary general meeting:***

* *Extra ordinary general meetings can be conveying every time for the matter which requires approval from the members of the company and the matter cannot delay till next annual general meetings.*

***Frequency of the meeting:***

* *Statuary meeting is conveying only once in the life of the company*
* *For annual general meeting, every company shall conveying annual general meeting once for every financial year.*
* *For extra ordinary general meeting, shall be conveying any time when required.*

***How can call meeting:***

***Statuary meeting:***

* *Only company call the meeting*
* *Director or any person who have the authority to call the meeting may be call the meeting*

***Annual general meeting:***

* *Only company call the meeting*
* *Director or any person who have the authority to call the meeting may be call the meeting*

***Extra ordinary general meeting:***

* *Company can call the meeting*
* *Directors/company can call meeting only the requisition by the members having at least 1/10 of voting rights*
* *If company fails to call the meeting on the request of requisitionists within 21days from the date of requisition, then the requisitionists can call the meeting, within 3 months from the date of requisition.*

***Who will chair the meeting?***

* *Meeting of the members shall be chaired by the chairman of the board of directors of the company.*
* *If chairman and any of the directors are not available or not willing to chair the meeting then members can nominate any one among themselves to chair the meeting*

***Quorum:***

* *Minimum numbers of person/ members required to be present in a meeting to transact the business of the meeting*
* *Members having at least 25 percent voting rights and minimum 2 members present physically*
* *If within half hour form the starting time of the meeting, Quorum is not completed;*
1. *If meeting is called on the request of the members, then the meeting shall be cancelled.*
2. *If the meeting is called by the company on its own motion then the meeting shall be postponed for next week same day, same time, same place.*
* *If the quorum is also not completed within half hour form the starting time of the adjust meeting then the quorum shall become as two members present only.*

***Business of the meeting:***

***Statutory Meetings:***

* *The meeting shall consider and approved report called statutory report*
* *The statutory report should be sent to each member at least 21 days before the statutory meeting*
* *The statutory report shall include:*
1. *Total number of shares allotted distinguishing between shares allotted for cash and other than cash*
2. *Total cash received against shares allotted.*
3. *Summary of receipts and payments*
4. *Particulars of directors, chief executive, secretary, auditor and legal advisor.*
5. *Particular of commission paid on issue of shares.*
6. *A particular of any contract to be modified in the meeting.*
7. *Extend of carrying out or not carrying out any underwriting contract along with reason for not carrying out.*
8. *Statutory report should also contain a brief review of the state of affairs of the company.*
* *Report should be accompanied by an auditor certificate in respect of cash received against shares allotted and receipts and payment of the company.*
* *Report shall be certified by the chief executive and to directors.*
* *Five copies of the report are filled with the registrar forthwith after sending report the members.*

***Annual General meeting:***

* *To discuss and approved minutes of last meeting*
* *To discuss, approve and adopt auditor’s report along with financial statement of the company*
* *To appoint auditors of the company for the next financial year, and fixed their remuneration*
* *To elect the next board of directors, if required*
* *Any other ordinary or special business as per agenda*
* *Any other business with the permission of chair.*

***Extra ordinary general meeting:***

* *Any important and urgent matter that requires members approval and the same cannot be delayed till next annual general meeting*

***Notice required for the members meeting:***

* *Notice shall be send 21 days before the meeting*
* *For every listed company notice shall publish in one Urdu one English newspaper having circulation in the province in which stock exchange situated where shares of the company are listed.*

***Winding Up of Business***

***Introduction:***

*The term ‘winding up of a company may be defined as the proceeding by which a company is dissolved the life of a company is put to end. The winding up is the process of putting an end to the life of the company. And during this process, the assets of the company are disposed of , the debts of the company are paid off out of the realized assets or from the contributories and if any surplus is left, it is distributed among the members in proportion to their share holding in the company. The winding up of the company is also called the liquidation of the company.*

***Definition:***

*A process that entails selling all the assets of a business entity, Paying off creditors, distributing any remain assets to the principals, and then dissolving the business.*

***Winding up of the company by the Court:***

*The winding up of a company by an order of the Court is called the compulsory winding up.*

*The ordinance envisages the following circumstances, under which a company may be wound up by the Court on the petition submitted to it.*

1. *Default in holding statutory meeting.*
2. *Company does not start the business for a 1 year after its incorporation or does it’s business.*
3. *Fail to maintain minimum no of members that are required by law.*
4. *Company is unable to pay its debts.*
5. *If the company has by special resolution. Resolved that the company be wound up by the Court;*
6. *If default is made in delivering the statutory report to the registrar or in holding the statutory meeting or any two consecutive annual general meetings.*
7. *If the number of members is reduced, in the case of private company and below seven in case of listed company.*
8. *If being a listed company it ceases to be such company.*

***Procedure for winding up of company and filing of petition before Court:***

1. *To pass special Resolution by 3/4th majority of the members of the company that the company be wound up by the Court in Case if the company itself intend to file a petition and file the Special Resolution on Form 26 with the registrar.*
2. *To prepare a list of the assets to ascertain that the company is unable to pay its debts.*
3. *To prepare a list of Creditors.*
4. *In case of defaults in payments the creditor or creditor to make a decision for the filing up of the winding up petition.*
5. *To engage advocates for the preparation and filing of the petition.*

***Competent to file petition for winding up in the Court.***

1. *The company may its self passed a special resolution.*
2. *Creditor or Creditors.*
3. *Share holders.*
4. *Registrar of company.*
5. *Securities and Exchange Commission of Pakistan or by a person authorized by the Commission.*

***Voluntary Winding up of Members:***

*Winding up by own will situation which voluntary winding up is done. A company can be wound up voluntary.*

1. *On expiration of the period fixed for the duration of the company by its Articles of Association or on occurrence of event leading to dissolution of the company as provided in the Memorandum and Articles of Association and company has to pass a special resolution in general meeting for its wound up voluntarily within five weeks of filling of declaration of solvency.*
2. *On passing of the special resolution that the company be wound up voluntarily. A voluntary winding up is deemed to commence at the time of passing of the resolution for voluntary winding up. The company ceases to carry out business just on commencement of winding up. However, it can carry on its activities and business for beneficial winding up of the company.*

*Directors should sign the declaration of solvency before 21 days of deciding for winding up the company, company is able to pay its debts – Declaration of solvency after signing. BOD calls meeting. In meeting of members company shall pass special resolution for voluntary winding up by member. Official Liquidator by members hired by court.*

***CREDITOR’S VOLUNTARY WINDING UP OF THE COMPANY***

*If company is unable to pay its debt then company will call meeting of members and creditors separately. On both meeting Liquidators will be appointed. If Liquidators appointed by members and creditors are not the same then the creditors shall file an application with the court for the appointment of Liquidation.*

* *Court will appoint Liquidator from one of there Or appoint the 3rd Liquidator.*
* *Liquidator is one only while official Liquidator can be more than 1*
* *Liquidator will report to both creditors and members*

*Hence:*

*Voluntary winding up can be done by*

* *MEMBERS*
* *CREDITORS*

***Winding up of the company subject to the supervision of the Court***

*When a company has passed a resolution for voluntary winding up, the Court may of its own motion or on the application of any person entitled to apply to the Court for winding up a company, make an order that the voluntary winding up shall Continue, but subject to such supervision of the Court, and with such liberty for Creditors, contributories or others to apply to the Court, and generally on such terms and conditions, as the Court think just. A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits and other legal proceedings, be deemed to be a petition for winding up by the Court.*

*The Court may, in deciding between a winding up by the Court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, but subject to the provisions which would have been applicable had the company been wound up by the Court.*

1. ***Liquidation Expense:***

*All the expenses related to Liquidation e.g. Promotion, meeting expense etc.*

1. ***Government dues:***

*Taxes and duties of all times debts.*

1. ***Utility Bills:***

*Telephone bill water, Electricity, Gas etc.*

1. ***Compensation to employee:***

*To pay against what employees have done. Money of insurance, medical bill, retirement bills. In short, payment related to employee that is remaining. Bonus is not included.*

1. ***Secured Creditors:***

*The things against there is security e.g. loan or pledge.*

1. ***Unsecured creditors;***

*Against the things there is no security e.g. trading.*

1. ***Debenture value of debenture holders:***

*Insurance of debentures’ face value. We have to pay.*

1. ***Share value of share holder***

*To pay the face value of share.*

1. ***Preference dividend:***

*To pay the dividend or profit among holders of preference share.*

1. ***Surplus distribution:***

*If the amount is still left. If is distributed among share holder.*