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Legal Aspects of Business

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❖ Indian Contract Act, 1872:

The law relating to contracts is contained in the Indian Contract Act, 1872. In broadest prospect, a contract is an exchange of promises by two or more persons that is an agreement creating an obligation to do or to refrain from doing a particular act, which is enforced by law. **According to Section 2(h) of the Act**, the term contract is defined as *"an agreement enforceable by law"*.



The contract consists of two essential elements:

- an agreement, and
- enforceability by law.

All agreements are not studied under the Indian Contract Act, 1872, as some of those are not contracts. Only those agreements, which are enforceable by law, are contracts. The term 'agreement' given in Section 2(e) of the Act is defined as *"every promise and every set of promises, forming the consideration for each other"*. An agreement to become a contract must give rise to a legal obligation which means a duty enforceable by law.

Example - A agrees with B to sell car for Rs. 2 lacs to B. Here A is under an obligation to give car to B and B has the right to receive the car on payment of Rs. 2 lacs and also B is under an obligation to pay Rs. 2 lacs to A and A has a right to receive Rs. 2 lacs.



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➤ Essential Elements of Valid Contract:

According to Section 10, *"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not*

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hereby expressly declared to be void." The following essential elements must co-exist in order to make a valid contract:

1. Proper offer and Proper acceptance with intention to create legal relationship.
2. Lawful Consideration and lawful object.
3. Capacity to contract.
4. Free Consent.
5. Agreements not declared void or illegal.
6. Certainty of meaning.
7. Possibility of performance of an agreement.
8. Necessary legal formalities.

➤ **Capacity of Parties:**

The parties to a contract must have capacity (legal ability) to make valid contract. In every case of contract there must be assent of the parties. If, therefore, either of the parties to an agreement is deprived of the use of his understanding or if he be deemed by law not to have attained it, there can be no such agreement which shall bind him. Section 11 of the Indian Contract Act specifies that every person is competent to contract provided,

- (a) is of the age of majority according to the law to which he is subject, and
- (b) who is of sound mind, and
- (c) is not disqualified from contracting by any law to which he is subject.

In other words (a) a minor, (b) a person of unsound mind (a person of unsound mind can enter into a contract during his lucid intervals) and (c) a person disqualified from contracting by any law to which he is subject, e.g. an alien enemy, foreign sovereigns and accredited representatives



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of a foreign state, insolvents and convicts, are not competent to contract.

In India, the age of majority is regulated by the Indian Majority Act (Act IX of 1875). Every person domiciled in India attains majority on the completion of 18 years of age.

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➤ Agreement with Minor:

A minor is not competent to contract and any agreement with or by a minor is void from the very beginning. In the leading case of ***Mohori Bibi v. Dharmodas Ghose*** held that in minor's contracts are absolutely void. A minor cannot ratify the agreement on attaining majority as the original agreement is void ab initio. However, minor is liable to pay out of his property for the necessities supplied to him by the other. Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor. Thus, a promissory note duly executed in favour of a minor is not void.

➤ Free Consent:

The consent of the parties must be genuine. The term 'consent' means parties to a contract must agree upon the same thing in the same sense. i.e. there should be *consensus- ad-idem*. Consent is said to be not free when it is vitiated by coercion, undue influence, fraud, misrepresentation or mistake. In such cases, the contract becomes voidable at the option of the party whose consent is not free.

Example: A threatened to shoot B if he (B) does not lend him Rs. 2,000 and B agreed to it. Here the agreement is entered into under coercion and hence voidable at the option of B.

	ELEMENTS VITIATING FREE CONSENT
Coercion	Coercion is the committing or threatening to commit any act, forbidden by the Indian Penal Code or the unlawful detaining or threatening to detain, any property, to the prejudice of any person with the intention of causing any person to enter into an agreement. A contract induced by coercion is voidable at the option of the aggrieved party.
Undue influence	When one party to a contract is able to dominate the will of the other and uses the position to obtain an unfair advantage, the contract is said to be induced by undue influence. Such contract is voidable, not void.
Fraud	Fraud exists when a false representation has been made knowingly with an intention to deceive the other party, or to induce him to enter a contract. Contract in the case is voidable.
Misrepresentation	It means a misstatement of a material fact made believing it to be true, without an intent to deceive the other party. Contract will be voidable in this case.



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Mistake
When both the parties are at a mistake to a matter of fact to the agreement, the agreement is altogether void.

❖ Discharge of Contract:

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Performance of the promise or promises remaining to be performed is the principal and most usual mode of discharge. The parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law. Promises bind the representatives of the promisor in case of death of such promisor before performance, unless a contrary intention appears from the contract.

Example - A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representative.

Who shall perform the promise ?

- The promise under a contract may be performed, as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.
- When two or more persons have made a joint promise, then unless a contrary intention appears from the contract, all such persons must jointly fulfill the promise.
- The contracts which involve the exercise of personal skill or diligence, or which are founded on personal confidence between the parties must be performed by the promisor himself.
- **Example:** A promises to paint a picture for B and this must be performed by the promisor himself. If A dies before painting the picture, the contract cannot be enforced either by A's representative or by B.

Mode of Discharge of Contract

Discharge by performance	It takes place when the parties to the contract fulfil their obligations arising under the contract within the time and in the manner prescribed. Discharge by performance may be actual performance or attempted performance.
Discharge by mutual agreement	Contract Act provides if the parties to a contract agree to substitute a new contract for it, or to refund or remit or alter it, the original contract need not be performed.
Discharge by impossibility of performance	The impossibility may exist from the very start. In that case, it would be impossibility ab initio. Alternatively, it may supervene. Example - A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

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Discharge by lapse of time

A contract should be performed within a specified period as prescribed by the Limitation Act, 1963. For *example*, if a creditor does not file a suit against the buyer for recovery of the price within three years, the debt becomes time-barred and hence irrecoverable.

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Discharge by operation of law	A contract may be discharged by operation of law which includes by death of the promisor, by insolvency etc. Example: A took a land on lease from B. Subsequently, A purchases that very land. Now, A becomes the owner of the land and the ownership rights being superior to rights of a lessee, the earlier contract of lease stands terminated.
Discharge by breach of contract	If one of the parties to a contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract. Example: A contracts to marry B. Before the agreed date of marriage, he marries C. B is entitled to sue A for breach of promise.

❖ Breach of Contract:

Breach means failure of a party to perform his or her obligation under a contract.



Breach of contract may arise in two ways:

- (1) **Anticipatory breach of contract** - When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach. Example - A contracts to marry B. Before the agreed date of marriage, he marries C. In this case, A has committed anticipatory breach of contract.
- (2) **Actual breach of contract** – It is a case of refusal to perform the promise on the scheduled date. Example - A agrees to deliver 100 bags of sugar to B on 1st Feb, 2019.



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On the said day, he failed to supply 100 bags of sugar to B. This is actual breach of contract.

❖ Remedies for Breach of Contract:

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Breach of contract entitles the injured party to file a suit for damages, which are the monetary compensation awarded to a person by the court.

Besides claiming damages as a remedy for the breach of contract, the following remedies are also available:

- (i) **Rescission of contract:** When a contract is broken by one party, the other party may treat the contract as rescinded. In such a case he is absolved of all his obligations under the contract and is entitled to compensation for any damages that he might have suffered.
- (ii) **Suit upon *Quantum Meruit*:** The phrase '*quantum meruit*' literally means "as much as is earned" or "according to the quantity of work done". When a person has begun the work and before he could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for the work done under the contract. He may also recover the value of the work done where the further performance of the contract becomes impossible.
- (iii) **Suit for specific performance:** Where damages are not an adequate remedy in the case of breach of contract, the court may in its discretion on a suit for specific performance direct party in breach, to carry out his promise according to the terms of the contract.
- (iv) **Suit for injunction:** Where a party to a contract is negativating the terms of a contract, the court may by issuing an 'injunction order' restrain him from doing what he promised not to do. Example: X, a film star, agreed to act exclusively for a particular producer, for one year. During the year she contracted to act for some other producer. Held, she could be restrained by an injunction.

❖ Quasi-Contract:

In the case of every contract, the promisor voluntarily undertakes an obligation in favour of the promisee. A similar obligation may be imposed by law upon a person for the benefit of another even in the absence of a contract. In certain circumstances the law presumes the existence of contract even though no agreement was made between the parties. Such cases are known as quasi contracts. A quasi or constructive contract rests upon the maxims, "No man must grow rich out of another persons loss"

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Example: P supplies milk to his customer R who receives and consumes it. R is bound to pay the price. R's acceptance of the milk constitutes an implied promise to pay.

The salient features, of *quasi contractual* right, are as follows:

- (a) Firstly, it does not arise from any agreement of the parties concerned, but is imposed by the law; and
- (b) Secondly, it is a right which is available not against the entire world, but against a particular person or persons only.

	INSTANCES OF QUASI-CONTRACTS
Claim for necessities supplied to persons incapable of contracting	If necessities are supplied to a person who is incapable of contracting, e.g. minor or a person of unsound mind, the supplier is entitled to claim their price from the property of such a person.
Right to recover money paid for another person	A person who has paid a sum of money which another is obliged to pay, is entitled to be reimbursed by that other person provided the payment has been made by him to protect his own interest.
Obligation of a person enjoying benefits of non-gratuitous act	<i>Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered</i>

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Responsibility of a finder of goods

A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee. He is, therefore, required to take proper care of things found, not to appropriate it to his own use and, when the owner is traced, to restore it to the owner.

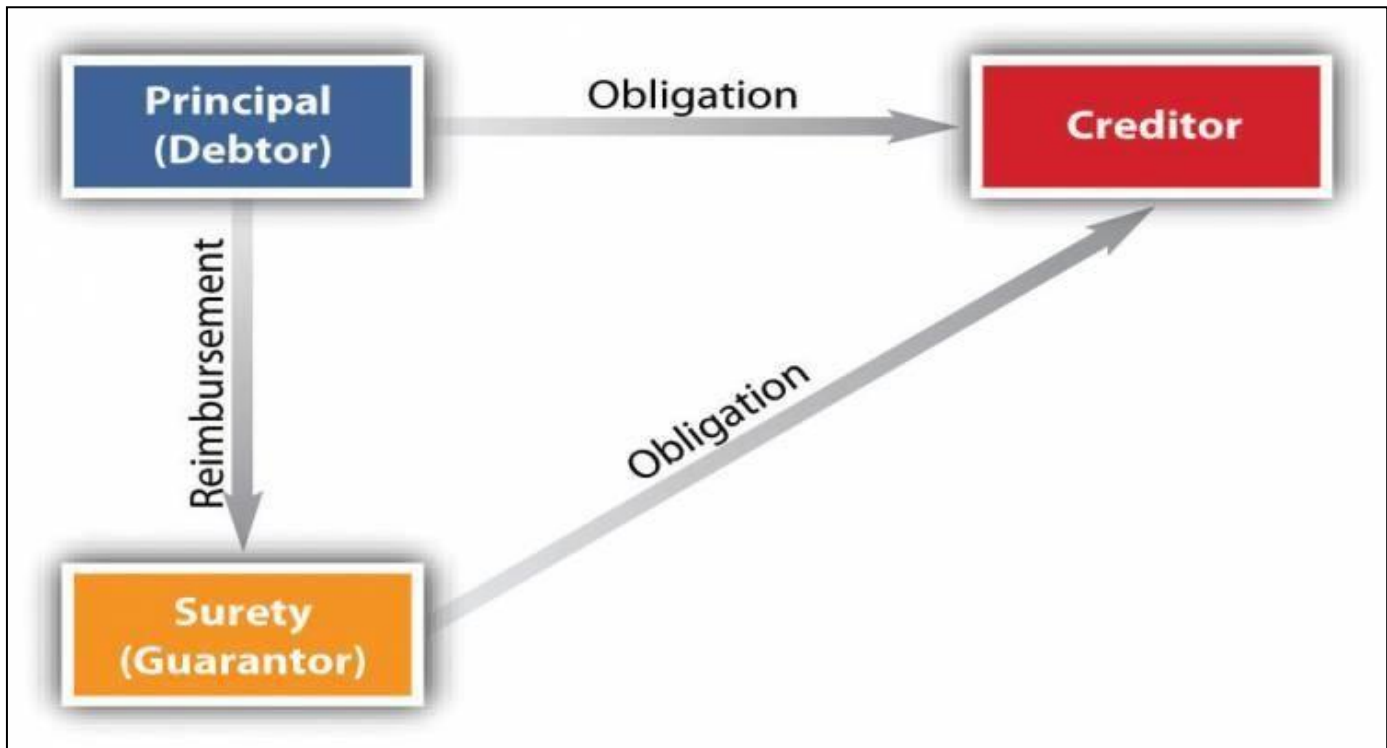
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Liability for money paid or thing delivered by mistake or under coercion

A person to whom money has been paid, or anything delivered, by mistake or under coercion must repay or return it.

❖ Contract of Guarantee:

A contract of guarantee is defined as “a contract to perform the promise, or discharge the liability, of a third person in case of his default”. The person who gives the guarantee is called ‘surety’; the person for whom the guarantee is given is called the ‘principal debtor’, and the person to whom the guarantee is given is called the ‘creditor’.



In a contract of guarantee there are three parties, viz., the creditor, the principal debtor and the surety.

Creditor: The creditor is entitled to demand payment from the surety as soon as the principal debtor refuses to pay or makes default in payment. The creditor should not change any terms of the original contract without seeking the consent of the surety. The creditor is under an obligation not to release or discharge the principal debtor. The surety is discharged by a contract between the creditor and principal debtor, by which the principal debtor is released.



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Surety: The liability of a surety is called as secondary or contingent, as his liability arises only on default by the principal debtor. The surety has a right to recover from the principal debtor the amounts which he has rightfully paid under the contract of guarantee. Where a surety has



paid the guaranteed debt on its becoming due or has performed the guaranteed duty on the default of the principal debtor, he is invested with all the rights which the creditor has against the debtor. This is known as right of subrogation. Where a debt has been guaranteed by more than one person, they are called co-sureties.

❖ Contract of indemnity:

It is a contract whereby one party promises to save the other from loss caused to him (the promisee) by the conduct of the promisor himself or by the conduct of any other person. A contract of insurance is a glaring example of such type of contracts. These are two parties involved - indemnifier and indemnified. The indemnifier promises to make good the loss of the indemnified (i.e., the promisee).



Contract of indemnity	Contract of guarantee
A contract of indemnity is a contract by which one party promises to save the other from the loss caused to him by the conduct of the promisor or another person.	A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default.
The liability of the promisor is primary there is no secondary liability.	The liability of principal debtor is primary and the liability of surety is secondary.
The contract is express and specific.	The contract between principal debtor and creditor is specific and between the principal debtor and surety is implied.
There are two parties involved and only one agreement.	There are three parties involved and three agreements.
The promisor cannot file the suit against third person until and unless the promisee subrogates his right for filing a suit.	The surety does not require any subrogation for filing of suit.



❖ Contract of Bailment:

Bailment is defined as the “delivery of goods by one to another person for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of person delivering them”. The person delivering the goods is called the ‘bailer’ and the person to whom the goods are delivered is called the ‘bailee’.



The bailee is under an obligation to re-deliver the goods, in their original or altered form, as soon as the time of use for, or condition on which they were bailed, has elapsed or been performed.

Example: A delivers some clothes to B, a dry cleaner, for dry cleaning.

- **Bailer:** The bailer is bound to disclose to the bailee faults in the goods bailed, of which the bailer is aware and which materially interfere with the use of them or expose the bailee to extraordinary risks.
- **Bailee:** In all cases of bailment, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailer, or according to his directions, any increase or profit which may have accrued from the goods bailed. An important right of bailee is the right of lien. Lien is a right in one person to retain that which is in his possession, belonging to another, until some debt or claim is paid. Since, lien is available only until the debt or claim is satisfied, once the debt is satisfied or obligation discharged, the right of lien is extinguished.
- **Gratuitous Bailment:** It refers to bailment without reward. In case of gratuitous bailment, the bailer can demand their return whenever he pleases, even though he lent it for a



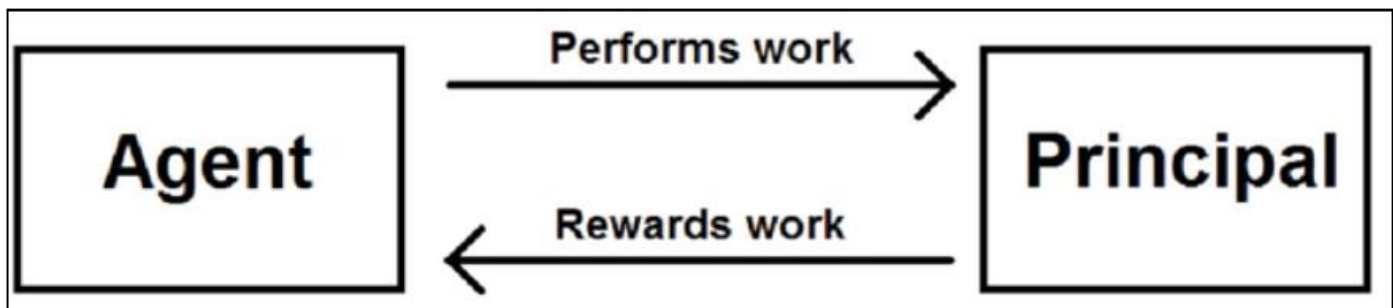
specified time or purpose.

- **Finder of Lost Goods:** A finder of lost goods is treated as the bailee of the goods found as such and is charged with the responsibilities of a bailee, besides the responsibility of exercising reasonable efforts in finding the real owner. A finder of lost goods may retain the goods until he receives the compensation for money spent in preserving the goods and/or amount spent in finding the true owner. Further, if the owner cannot with reasonable diligence be found or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it:
 - (i) when the thing is in danger of perishing or of losing the greater part of its value; and
 - (ii) when the lawful charges of the finder in respect of the thing found, amount to two-third of its value.

➤ **Pledge:** A pledge is the **bailment of goods as security for payment of a debt or performance of a promise**. The person, who delivers the goods as security, is called the 'pledgor' and the person to whom the goods are so delivered is called the 'pledgee'. The ownership remains with the pledgor. In case the pledgor fails to pay his debt or complete the performance of obligation at the stipulated time, the pledgee may sell the goods pledged on giving the pledgor a reasonable notice of sale. However, the sale made by the pledgee without giving a reasonable notice to the pledgor is not void, i.e., cannot be set aside. The pledgee will be liable to the pledgor for the damages.

❖ **Contract of Agency:**

Agent is "a person employed to do any act for another or to represent another in dealings with third person". Thus, agent is a person who acts in place of another. The person for whom or on whose behalf he acts is called the Principal. Any person who is of the age of majority according to the law to which he is subject and who is of sound mind, may employ agent. A contract of agency may be created by an express agreement or by implication (implied agreement) or by ratification. Implied agency arises from the conduct, situation or relationship of parties. Implied agency includes agency by estoppel, agency by holding out and agency of necessity.



- **Agency by Estoppel:** When a person has, by his conduct or statements, induced others to believe that a certain person is his agent, he is estopped from subsequently denying it. The



principal is precluded from denying the truth of agency which he himself has represented as a fact, although it is not a fact. Example - Prakash allows Anand to represent as his agent by telling Cooper that Anand is Prakash's agent. Later on, Cooper supplied certain goods to Anand thinking him to be Prakash's agent. Prakash shall be liable to pay the price to Cooper. By allowing Anand to represent himself as his agent, Prakash leads Cooper to believe that Anand is really his agent.

- **Agency by Holding Out:** Though part of the law of estoppel, some affirmative conduct by the principal is necessary in creation of agency by holding out. Example: Puran allows his servant Amar to buy goods for him on credit from Komal and pay for them regularly. On one occasion, Puran pays his servant in cash to purchase the goods. The servant purchases good on credit pocketing the money. Komal can recover the price from Puran since through previous dealings Puran has held out his servant Amar as his agent.
- **Agency by Ratification:** Where agent does an act for his principal but without knowledge of authority, or where he exceeds the given authority, the principal is not held bound by the transaction. However, principal, if he so desires can ratify the act of the agent. To be valid, ratification must fulfill certain conditions:
 - The principal must have been in existence at the time the agent originally acted.
 - The principal must not only be in existence but must also have contractual capacity at the time of the contract as well as at the time of ratification.
 - Ratification must be made within a reasonable time.
 - The act to be ratified must be a lawful one.
 - The principal should have full knowledge of the facts.
 - Ratification must be of the contract as a whole.
- **Agency Coupled with Interest:** Agency is said to be coupled with interest when authority is given for the purpose of securing some benefit to the agent. It should be noted that, it is not the ordinary type of interest which every agent has such as the remuneration, but it is that special type of interest which agent possesses that makes it agency coupled with interest. Example - Agent is appointed to sell properties of the principal and to pay himself out of such sale proceeds the debt due to the agent. The authority of the agent is agency coupled with interest.
- **Sub-agent:** A sub-agent is a person employed by and acting under the control of the original agent in the business of agency. Since the sub-agent is appointed by the act and under the control of the agent, there is no privity of contract between the subagent and the principal.



The sub-agent, therefore, cannot sue the principal for remuneration and, similarly the principal cannot sue the sub-agent for any moneys due from him.

- **Substituted Agent** - Where agent appoints or names another person for being appointed as agent in his place, such person is called a substituted agent. Example - Amar directs Bharat, his solicitor, to sell his estate by auction and to employ an auctioneer for the purpose. Bharat names Cooper, an auctioneer, to conduct the sale. Cooper is not a sub-agent, but is Amar's agent for the conduct of the sale.
- **Undisclosed Principal:** Where agent, though discloses the fact that he is agent working for some principal, conceals the name of the principal, such a principal is called an undisclosed principal. The liability of an undisclosed principal is similar to that of a disclosed principal unless there is a trade custom making the agent liable.
- **Concealed Principal:** Where agent conceals not only the name of the principal but the very fact that there is a principal, the principal is called a concealed principal. In such a case, the third parties are not aware of the existence of the principal and regard the agent as the person contracting for himself. The third parties, thus, must look to the agent for payment or performance and the agent may sue or be sued on the contract.
- **Liability of Agent:** Agent is only a connecting link between the principal and third parties. Being only a medium, he can, in the absence of a contract to the contrary, neither personally enforces contracts entered into by him on behalf of his principal, nor is he personally bound by them. However, agent is personally liable in certain cases. Where agent acts either without any authority or exceeds his authority, he is deemed to have committed breach of warranty of authority in such a case. He will be held personally liable if his acts are not ratified by the alleged principal.

❖ **Sale of Goods Act, 1930:**

It came into force on the 1st of July, 1930 as the Indian Sale of Goods Act, 1930. In due course, the word "Indian" was omitted by the **Indian Sale of Goods (Amendment) Act, 1963 (33 of 1965)** and it became "The Sale of Goods Act, 1930". The act lays down special provisions governing the contract of sale of goods. The Sale of Goods Act, 1930 deals with the 'sale' but not with 'mortgage' or 'pledge', which comes within the purview of the Transfer of Property Act, 1882 and the Indian Contract Act, 1872 respectively. Secondly, the Act deals with 'goods' but not with all movable property, e.g., actionable claims and money.



- **Contract of Sale of Goods** – It is a contract between buyer and seller intending to exchange property in goods for a price. **Section 4 (1) of the Sale of Goods Act, 1930 defines the term 'Contract of Sale'** as – a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. The following elements must co-exist so as to constitute a contract of sale of goods under the Sale of Goods Act, 1930.
 - (i) There must be at least two parties, the seller and the buyer.
 - (ii) The subject matter of the contract must necessarily be goods covering only movable property. It may be either existing goods, owned or possessed by the seller or future goods.
 - (iii) A price in money (not in kind) should be paid or promised.
 - (iv) A transfer of property in goods from seller to the buyer must take place. The contract of sale is made by an offer to buy or sell goods for a price by one party and the acceptance of such offer by other.
 - (v) A contract of sale must be absolute or conditional.
 - (vi) All other essential elements of a valid contract must be present in the contract of sale.
- **Sale and Agreement to Sell** - In the Sale of Goods, the property is transferred from seller to the buyer immediately. The term Sale is defined in the Section 4(3) of the Sale of Goods Act, 1930 as – “where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale.” In an agreement to sell the ownership of the goods is not transferred immediately. It is intending to transfer at a future date upon the completion of certain conditions thereon. The term is defined in Section 4(3) of the Sale of Goods Act, 1930, which is as follows – "where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition



thereafter to be fulfilled, the contract is called an agreement to sell."

Sale	Agreement to sell
1. The property in the goods passes to the buyer and along with the risk.	1. Since property in the goods does not pass to the buyer, the risk also does not pass to him.
2. It is an executed contract. i.e. contract for which consideration has been paid.	2. It is an executory contract. i.e. contract for which consideration is to be paid at a future date.
3. The seller can sue the buyer for the price of the goods because of the passage of the property therein to the buyer.	3. The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date.
4. A subsequent loss or destruction of the goods is the liability of the buyer.	4. Such loss or destruction is the liability of the seller.
5. Breach on part of seller gives buyer double remedy; a suit for damages against the seller and a proprietary remedy of recovering the goods from third parties who bought them.	5. The seller, being still the owner of the goods, may dispose of them as he likes, and the buyer's remedy would be to file a suit for damages only.

- **Subject matter of contract of sale** - The subject matter of contract of sale is always the goods. The goods may be existing or future goods. Existing goods are such goods as are in existence at the time of the contract of sale, i.e., those owned or possessed by the seller. Future goods means goods to be manufactured or produced or acquired by the seller after making the contract of sale.
- **Doctrine of Caveat Emptor**: In case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The rule of Caveat Emptor is laid down in the Section 16 of sale of goods act, which states that, "subject to the provisions of this Act or of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale".



Example: A sold pigs to B. These pigs being infected, caused typhoid to other healthy pigs of the buyer. It was held that the seller was not bound to disclose that the pigs were unhealthy. The rule of the law being “Caveat Emptor”.

➤ **Exceptions to doctrine of Caveat Emptor:**

- Where the buyer makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller’s skill or judgment and the goods are of a description which is in the course of seller’s business to supply, it is the duty of the seller to supply such goods as are reasonably fit for that purpose.
- In case where the goods are purchased under its patent name or brand name, there is no implied condition that the goods shall be fit for any particular purpose.
- Where the goods are sold by description there is an implied condition that the goods shall correspond with the description.
- Where the goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality.
- Where the goods are bought by sample, this rule of Caveat Emptor does not apply if the bulk does not correspond with the sample.
- An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade and if the seller deviates from that, this rule of Caveat Emptor is not applicable.
- Where the seller sells the goods by making some misrepresentation or fraud and the buyer relies on it or when the seller actively conceals some defect in the goods so that the same could not be discovered by the buyer on a reasonable examination, then the rule of Caveat Emptor will not apply.

➤ **Unpaid Seller:**



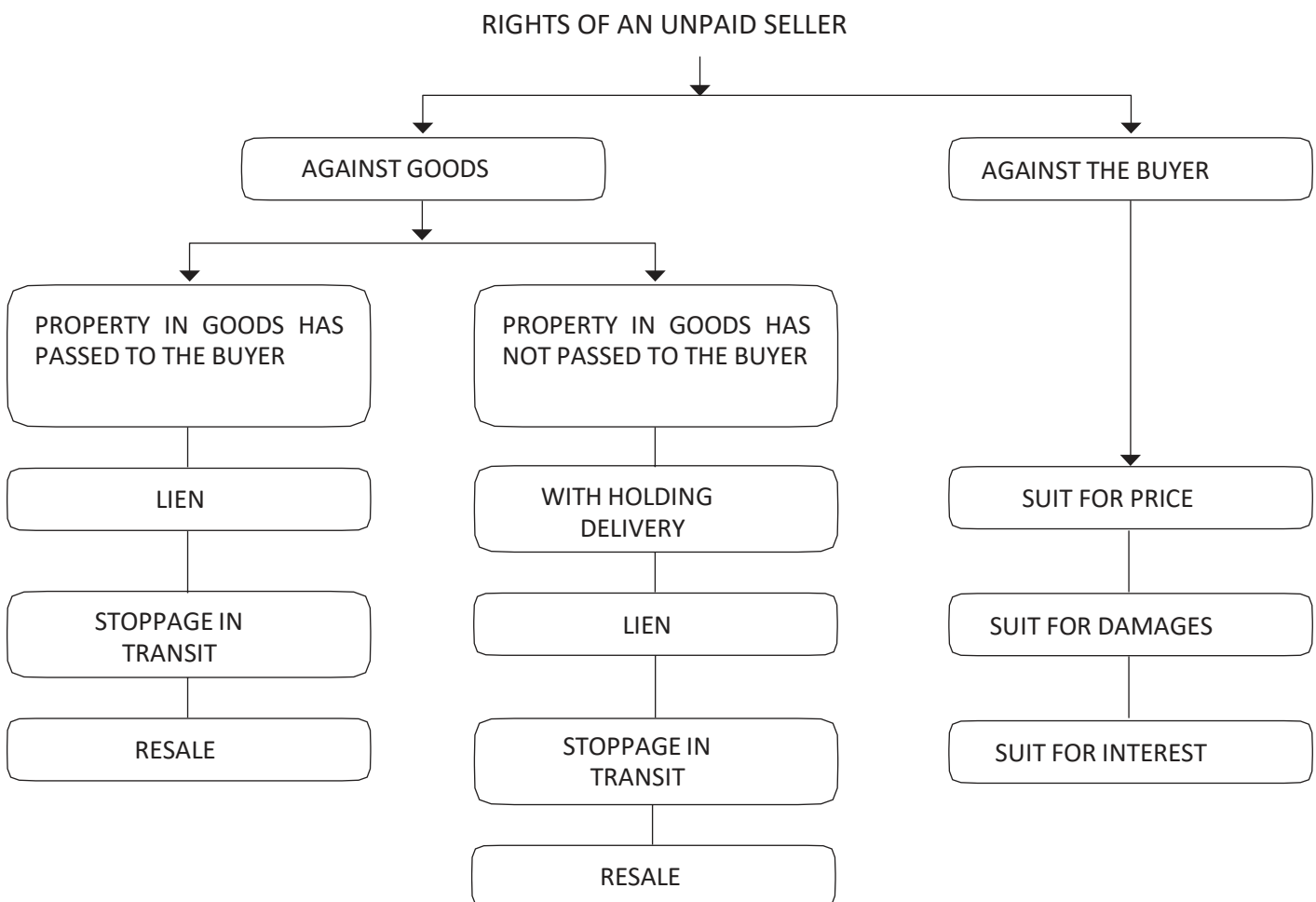
According to Section 45(a) of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when-

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

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

Example - X sold certain goods to Y for Rs. 5,000. Y paid Rs. 4,000 but fails to pay the balance. X is an unpaid seller.

- **Rights of unpaid seller:** An unpaid seller has been expressly given the rights against the goods as well as the buyer personally.



- **Rights against goods:** He has a right of lien on the goods for the price while he is in possession, until the payment or tender of the price of such goods. When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise



this right of asking the carrier to return the goods back, or not to deliver the goods to the buyer. The unpaid seller can exercise the right to re-sell the goods where **the goods are of a perishable nature and where he gives notice to the buyer of his intention to re-sell.**

- **Rights against buyer:** The rights of the seller against the buyer personally are called rights in personam and are in addition to his rights against the goods. Where property has passed to the buyer and he wrongfully neglects or refuses to pay for the goods, the seller may sue him for the price of the goods. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non- acceptance. Where there is specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer.
- **Rights of buyer against seller:** If the seller commits a breach of contract, the buyer gets the following rights against the seller:
 - Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.
 - Where the seller commits of breach of the contract of sale, the buyer can appeal to the court for specific performance.
 - The buyer may treat the contract as subsisting and wait for the date of delivery or he may treat the contract as repudiated and sue for damages for breach.
 - The buyer is entitled to recover interest or special damages to recover the money paid where in consideration for the payment of it has failed.

❖ **Negotiable Instruments Act, 1881:**

This is an Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The Act applies to the whole of India. The Act was amended several times. The Amendment Act, 2015 modifies the definition of a cheque in electronic form given in section 6, and clarifies the appropriate area of jurisdiction of courts by amendment in cognizance of offences in section 142 and through insertion of a new section 142A dealing with the transfer of pending cases related to the dishonour of cheques.

- **Negotiable Instruments:** Negotiable Instruments is an instrument which is transferable (by customs of trade) by delivery, like cash, and is also capable of being sued upon by the person holding it for the time being. The Act does not define the term 'Negotiable Instruments'. However, section 13 of the Act mentions only three kinds of negotiable instruments namely, bills, notes and cheques.



The maker of a bill of exchange or cheque is called the “drawer”; the person thereby directed to pay is called the “drawee”. The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the “payee”.

- **Promissory Note:** A “**promissory note**” is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Promissory Note Template

Promissory Note

Amount: _____

Date: _____

Place: _____

I Mr. ABC, make commitment to pay XYZ Company, the Sum of \$ _____.

Repayment is to be made in the form of 200 equal payments at the interest rate of 7.2% of \$ _____ payable on the 10th of each month, beginning 10/01/2011 until the total amount of debt is paid.

IN WITNESS WHEREOF, I set my hand under seal this ____ [the day] of _____ [month], 20____ and I acknowledge receipt of a completed copy of this instrument.

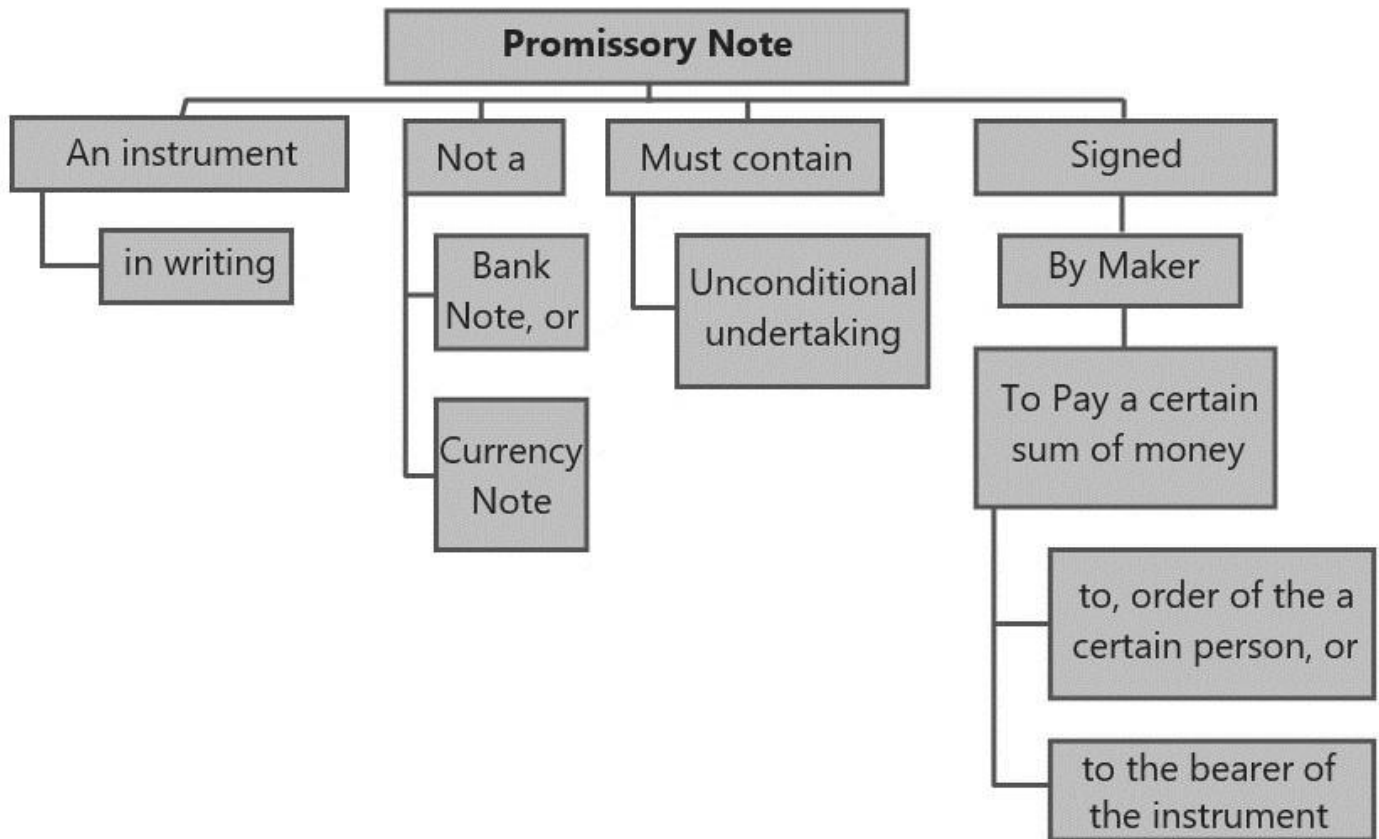
Sign: [Signature of borrower]

Notary Public - SEAL

My Commission Expire

Name & Address: [Party name]

____/____/____



- **Bill of Exchange** - A “bill of exchange” is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.



Buyer

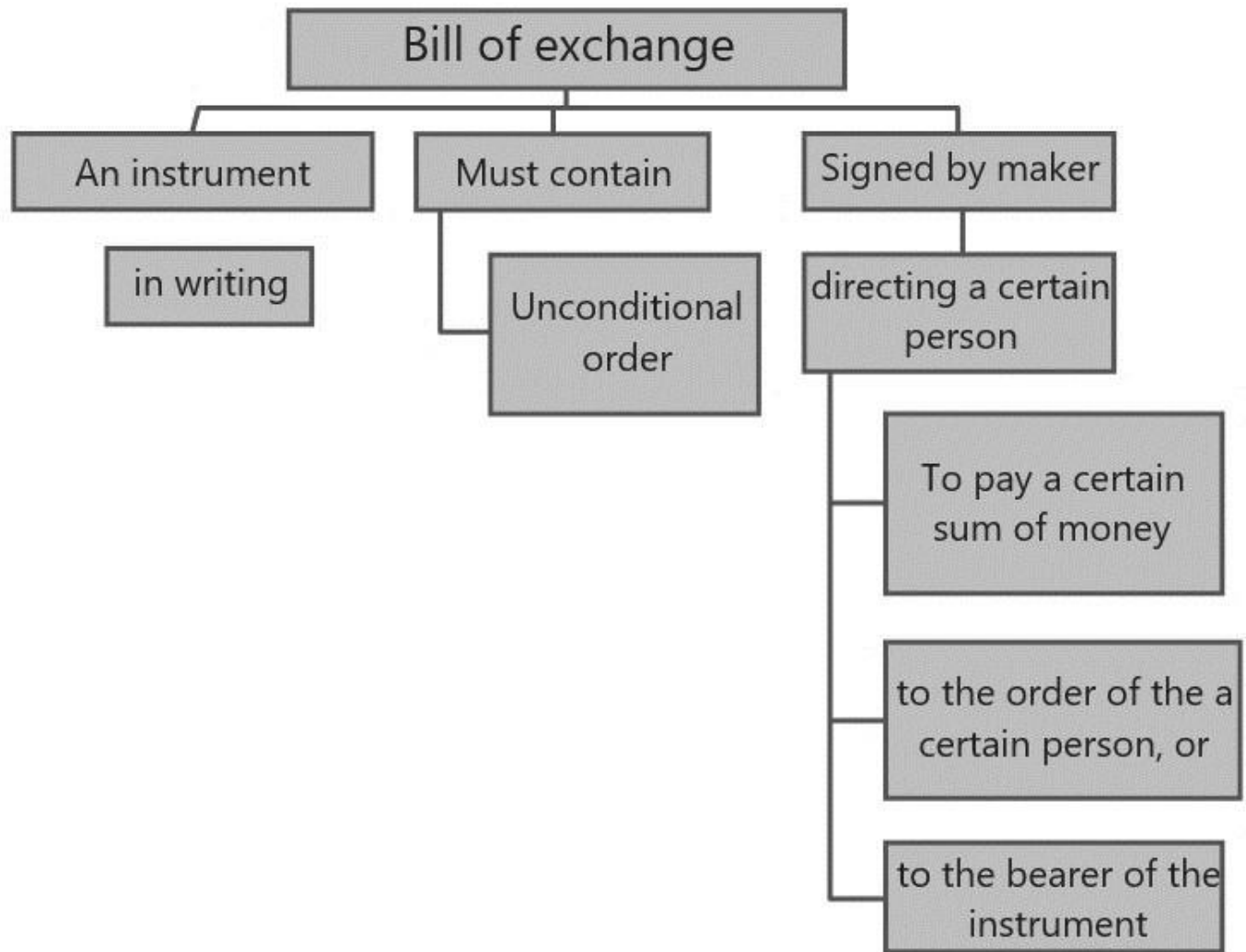
Bill of Exchange



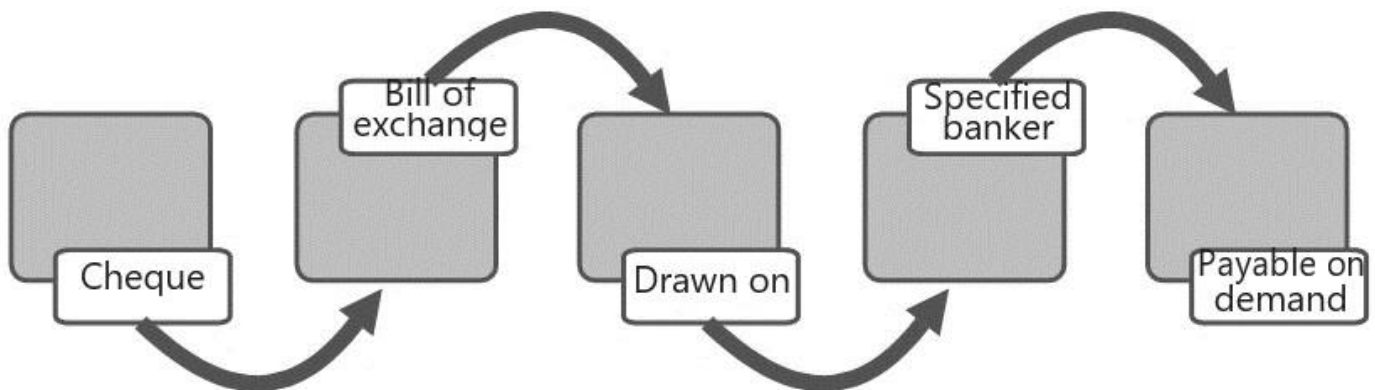
Goods Dispatched




Seller



- **Cheque [Section 6]** - A “cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.







भारतीय स्टेट बैंक
State Bank Of India

(11724) KARAMANA
KAIRALI PLAZA, NH-47, KARAMANA
THIRUVANANTHPURAM-695002
IFS CODE: SBIN0011724

केवल 3 माहों के लिए वैध / VALID FOR 3 MONTHS ONLY

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

PAY _____

रुपये RUPEES _____

अदा करें ₹ _____

को या उनके आदेश पर OR ORDER

खा.सं.
A/c No. _____

VALID FOR Rs. 1000000/- & UNDER

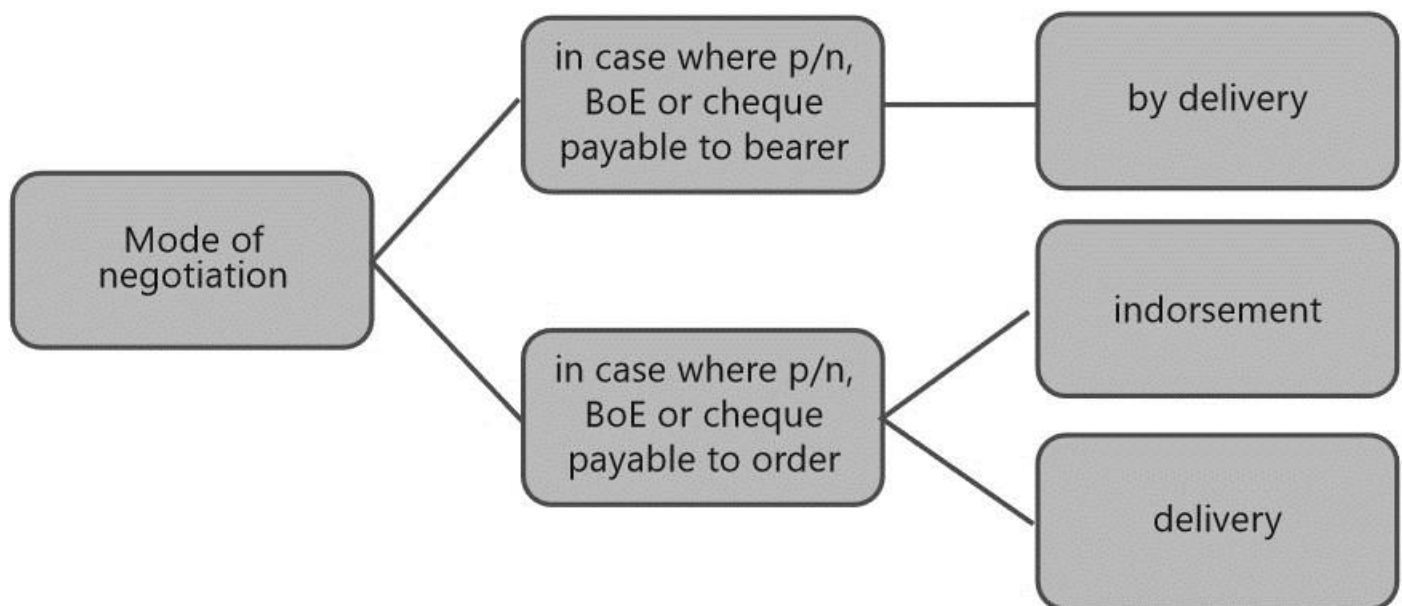
Prefix :
1515900002

MULTI-CITY CHEQUE Payable at Par at All Branches of SBI

Please sign above

⑈950020⑈ 695002032⑈ 002860⑈ 31

- **Negotiation and Assignment:** The most important feature of the negotiable instrument is that it can be freely transferred, which is possible in two ways, i.e. negotiation and assignment. Negotiation implies the transfer of negotiable instrument, that takes place in order to make the transferee, the holder of the instrument.
- **Modes of Negotiation:** A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof. A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by endorsement and delivery thereof. Example - A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.





- **Indorsement** - When the maker or holder of a negotiable instrument signs the same (otherwise than as such maker)—

- for the purpose of negotiation
- on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument,
- he (maker/holder) is said to indorse the same, and is called the “indorser”.

Example: X, who is the holder of a negotiable instrument writes on the back thereof : “pay to Y or order” and signs the instrument. In such a case, X is deemed to have en- dorsed the instrument to Y. If X delivers the instrument to Y, X ceases to be the holder and Y becomes the holder.

- **Assignment:** Assignment alludes to the transfer of ownership of the negotiable instrument, in which the assignee gets the right to receive the amount due on the instrument from the prior parties. The most important difference between negotiation and assignment is that they are governed by different acts.



BASIS FOR COMPARISON	NEGOTIATION	ASSIGNMENT
Meaning	Negotiation refers to the transfer of the negotiable instrument, by a person to another to make that person the holder of it.	Assignment implies the transfer of rights, by a person to another, for the purpose of receiving the debt payment.
Governing Act	Negotiable Instrument Act, 1881	Transfer of Property Act, 1882
Effected by	Mere delivery in case of bearer instrument and, endorsement and delivery in case of order instrument.	A written document duly signed by the transferor.
Consideration	It is presumed	It is proved
Title	Transferee gets the right of holder in due course.	Assignee's title is subject to the title of Assignor.
Transfer notice	Not required	Must be served by assignee on his debtor.
Right to sue	The transferee has the right to sue the third party, in his/her own name.	The assignee has no right to sue the third party in his/her own name.

❖ Dishonour of Negotiable Instrument:

When a negotiable instrument is dishonoured, the holder must give a notice of dishonour to all the previous parties in order to make them liable. **A negotiable instrument can be dishonoured either by non-acceptance or by non-payment.** A cheque and a promissory note



can only be dishonoured by non-payment but a bill of exchange can be dishonoured either by non-acceptance or by non-payment.

When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

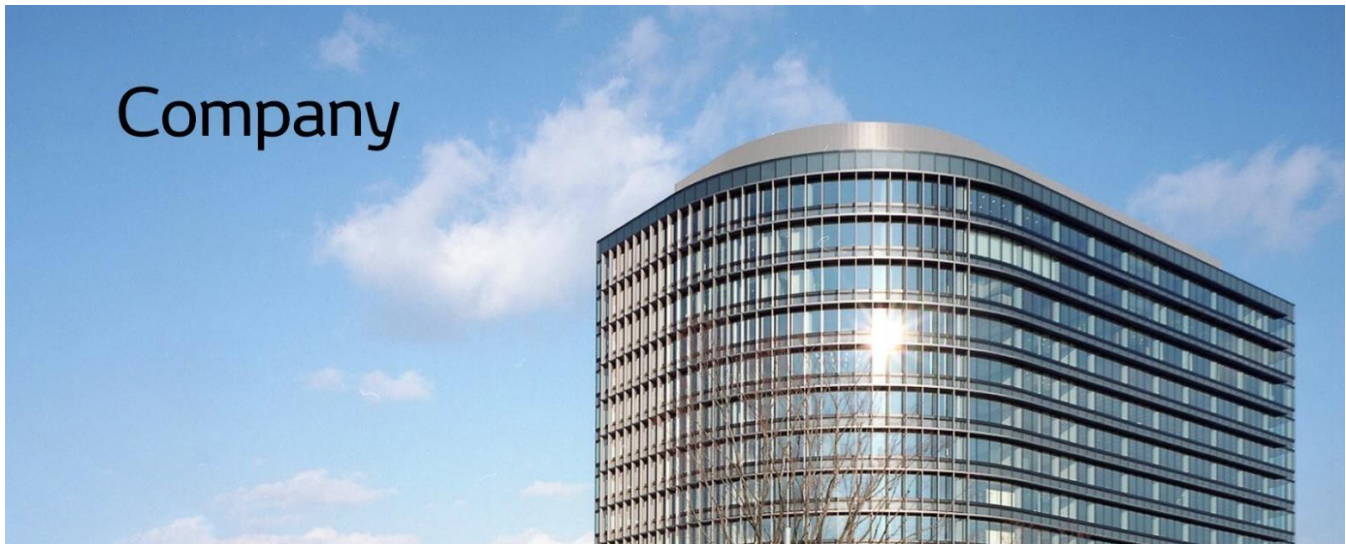
- **Discharge of Duty:** The maker, acceptor or endorser respectively of a negotiable instrument is discharged from liability thereon—
 - (a) **By cancellation**— to a holder thereof who cancels such acceptor's or endorser's name with intent to discharge him, and to all parties claiming under such holder
 - (b) **By release**—to a holder thereof who otherwise discharges such maker, acceptor or endorser, and to all parties deriving title under such holder after notice of such discharge;
 - (c) **By payment**—to all parties thereto, if the instrument is payable to bearer, or has been endorsed in blank, and such maker, acceptor or endorser makes payment in due course of the amount due thereon.
- **Discharge by allowing drawee more than forty-eight hours to accept:** If the holder of a bill of exchange allows the drawee more than forty eight hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.
- **Discharge in case of Cheque:** Where a **cheque is not presented for payment within a reasonable time of its issue**, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage. The holder of the cheques as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.
- Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course. Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any indorsement whether in full or in blank appearing thereon, and



notwithstanding that any such indorsement purports to restrict or exclude further negotiation.

❖ Companies Act, 2013:

Companies Act, 2013 was enacted to consolidate and amend the law relating to the companies. The Companies Act, 2013 was preceded by the Companies Act, 1956. Due to changes in the national and international economic environment and to facilitate expansion and growth of our economy, the Central Government decided to replace the Companies Act, 1956 with a new legislation. The Companies Act, 2013 contains 470 sections and seven schedules. The entire Act has been divided into 29 chapters. A substantial part of this Act is in the form of Companies Rules. The Companies Act, 2013 aims to improve corporate governance, simplify regulations, strengthen the interests of minority investors and for the first time legislates the role of whistle-blowers.



Applicability of Companies Act, 2013 – The provisions of the Act shall apply to-

- Companies incorporated under this Act or under any previous company law.
- Insurance companies (except where the provisions of the said Act are inconsistent with the provisions of the Insurance Act, 1938 or the IRDA Act, 1999)
- Banking companies (except where the provisions of the said Act are inconsistent with the provisions of the Banking Regulation Act, 1949)
- Companies engaged in the generation or supply of electricity (except where the provisions of the above Act are inconsistent with the provisions of the Electricity Act,



- Any other company governed by any special Act for the time being in force.
- Such body corporate which are incorporated by any Act for time being in force, and as the Central Government may by notification specify in this behalf.

➤ **Company** - In the words of professor Haney "A company is an incorporated association, which is an artificial person created by law, having a separate entity, with a perpetual succession and a common seal." This definition sums up the meaning as well as the features of a company succinctly.

Section 2(20) of the Companies Act, 2013 defines the term 'company'. "Company means a company incorporated under this Act or under any previous company law".

Features of a Company

Separate Legal Entity

- ♦ Legally separate from the members

Perpetual succession

- ♦ Change in members does not affect existence of Company

Limited Liability

- ♦ Liability of Company different from liability of members

Artificial Juridical Person

- ♦ Company can act through human agency only
- ♦ Company can contract, sue and be sued in its own name

➤ **Common Seal** - A company being an artificial person is not bestowed with a body of a natural being. Therefore, it works through the agency of human beings. Common seal is the official signature of a company, which is affixed by the officers and employees of the company on its every document. The common seal is a seal used by a corporation as the symbol of its incorporation.

The Companies (Amendment) Act, 2015 has made the common seal optional by omitting the



words “and a common seal” from Section 9 so as to provide an alternative mode of authorization for companies who opt not to have a common seal. Rational for this amendment is that common seal is seen as a relic of medieval times. Even in the U.K., common seal has been made optional since 2006.

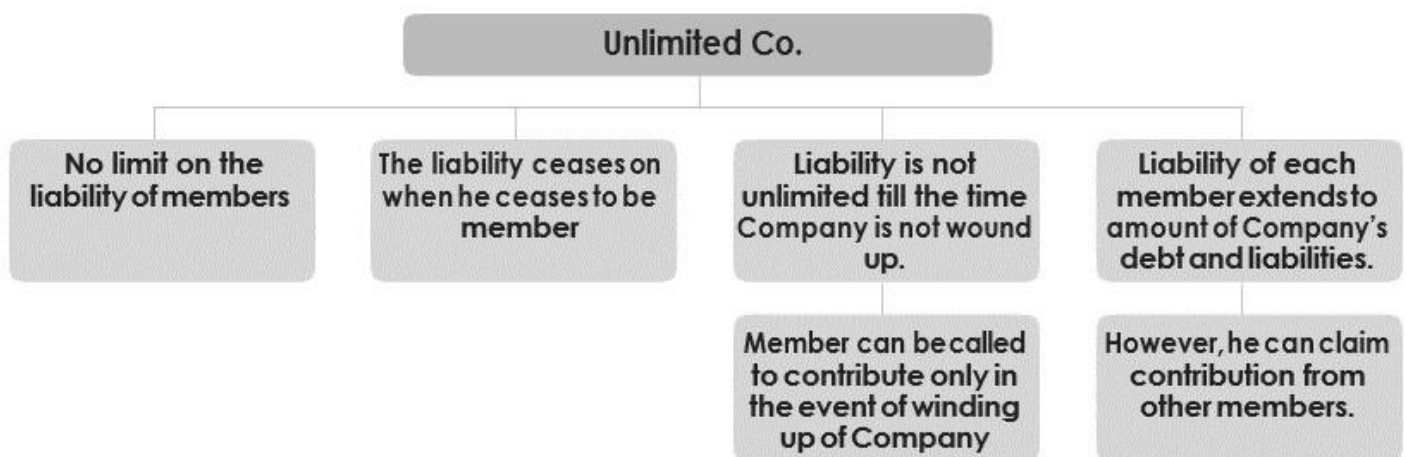
Classification of companies: Companies may be classified into various classes on the following basis:

❖ **On the basis of liability:**

(a) Company limited by shares: Section 2(22) of the Companies Act, 2013, defines that when the liability of the members of a company is limited by its memorandum of association to the amount (if any) unpaid on the shares held by them, it is known as a company limited by shares. It thus implies that for meeting the debts of the company, the shareholder may be called upon to contribute only to the extent of the amount, which remains unpaid on his shareholdings. His separate property cannot be encompassed to meet the company’s debt.

(b) Company limited by guarantee: Section 2(21) of the Companies Act, 2013 defines it as the company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up. Thus, the liability of the member of a guarantee company is limited upto a stipulated sum mentioned in the memorandum. Members cannot be called upon to contribute beyond that stipulated sum.

(c) Unlimited company: Section 2(92) of the Companies Act, 2013 defines unlimited company as a company not having any limit on the liability of its members. In such a company, the liability of a member ceases when he ceases to be a member. The liability of each member extends to the whole amount of the company’s debts and liabilities but he will be entitled to claim contribution from other members.



❖ **On the basis of members:**



- **One Person Company (OPC)** - The Companies Act, 2013 introduced a new class of companies which can be incorporated by a single person. Section 2(62) of the Companies Act, 2013 defines one person company (OPC) as a company which has only one person as a member. One person company has been introduced to encourage entrepreneurship and corporatization of business. OPC differs from sole proprietary concern in an aspect that OPC is a separate legal entity with a limited liability of the member whereas in the case of sole proprietary, the liability of owner is not restricted and it extends to the owner's entire assets constituting of official and personal.

According to section 3(1)(c) of the Companies Act, 2013, OPC is a private limited company with the minimum paid up share capital as may be prescribed and has at least one member.

- 1. Private Company [Section 2(68)]:** "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—
- restricts the right to transfer its shares;
 - except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

- persons who are in the employment of the company; and
- persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,
- shall not be included in the number of members; and
- prohibits any invitation to the public to subscribe for any securities of the company;

Small Company: Small company given under the section 2(85) of the Companies Act, 2013 which means a company, other than a public company—

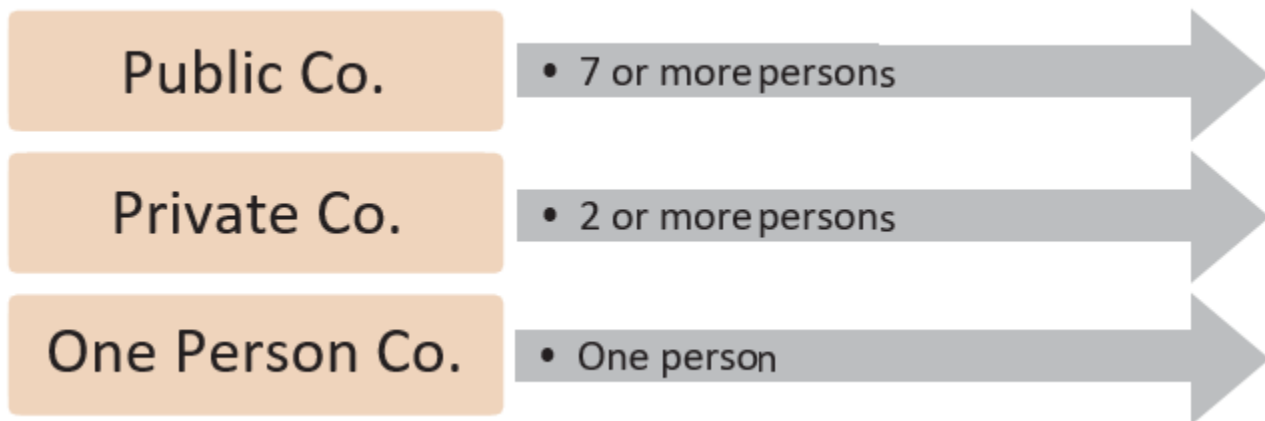
- **paid-up share capital** of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; and
- **turnover** of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

2. Public company [Section 2(71)]: “Public company” means a company which—

- is not a private company;
- has a minimum paid-up share capital, as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles

According to section 3(1)(a), a company may be formed for any lawful purpose by seven or more persons, where the company to be formed is to be a public company.



❖ On the basis of control:

➤ **Holding and subsidiary companies:** ‘Holding and subsidiary’ companies are relative terms.

A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies. [Section 2(46)]

Whereas section 2(87) defines “subsidiary company” in relation to any other company (that is to say the holding company), means a company in which the holding company—

- controls the composition of the Board of Directors; or
- exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

The composition of a company’s Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.

Examples of **Holding and subsidiary companies:**



Example 1: A will be subsidiary of B, if B controls the composition of the Board of Directors of A, i.e., if B can, without the consent or approval of any other person, appoint or remove a majority of directors of A.

Example 2: A will be subsidiary of B, if B holds more than 50% of the share capital of A.

Example 3: B is a subsidiary of A and C is a subsidiary of B. In such a case, C will be the subsidiary of A. In the like manner, if D is a subsidiary of C, D will be subsidiary of B as well as of A and so on.

➤ **Associate company [Section 2(6)]:** In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

The term “significant influence” means control of at least 20% of total share capital, or of business decisions under an agreement. [Section 2(6)]

The term “Total Share Capital”, means the aggregate of the -

- Paid-up equity share capital; and
- Convertible preference share capital.

❖ On the basis of access to capital

- **Listed company:** As per the definition given in the section 2(52) of the Companies Act, 2013, it is a company which has any of its securities listed on any recognised stock exchange.
- **Unlisted company:** means company other than listed company.





- **Government company [Section 2(45)]:** Government Company means any company in which not less than 51% of the paid-up share capital is held by-
- the Central Government, or
 - by any State Government or Governments, or
 - partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company.

- **Foreign Company [Section 2(42)]:** It means any company or body corporate incorporated outside India which—
- has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
 - conducts any business activity in India in any other manner

➤ **Formation of companies with charitable objects etc. (Section 8 company):**

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to

- promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.

Such company intends to apply its profit in

- promoting its objects and
- prohibiting the payment of any dividend to its members.

Examples of section 8 companies are FICCI, ASSOCHAM, National Sports Club of India, CII etc.



Section 8 allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name, by issuing licence on such conditions as it deems fit.

Section 8 Company at a Glance:



Formation

- ♦ To promote Charitable objects

Application of profits

- ♦ To promote its objectives
- ♦ No payment of dividends out of profits

Type of Co.

- ♦ Limited Liability
- ♦ Without the addition of words "Ltd." or "Pvt Ltd."

How status is granted

- ♦ The CG can grant such status
- ♦ However, CG has delegated the power to grant license to ROC

Revocation of license

- ♦ CG may revoke license
 - If conditions of section 8 are contravened, or
 - affairs of the company are conducted fraudulently, or prejudicial to public interest

Effect of revocation of license

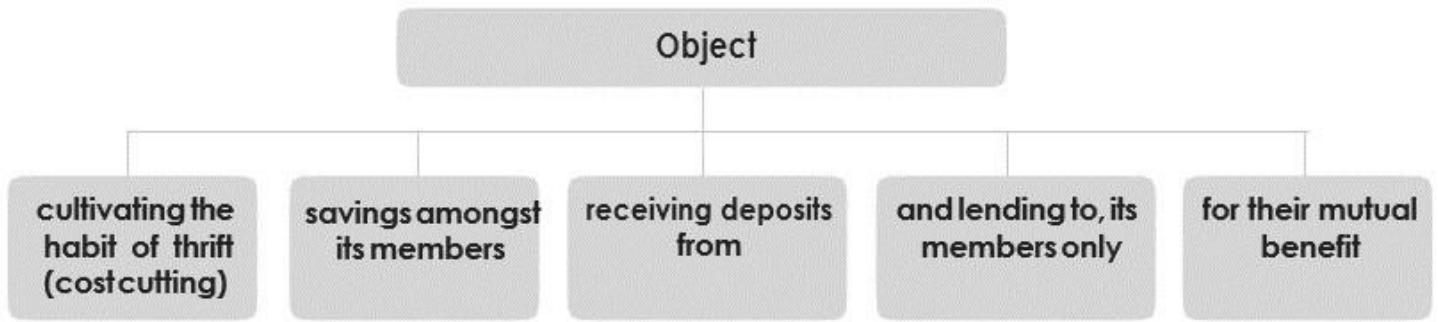
- ♦ Co. has to use words "Ltd." or "Pvt Ltd."

- **Dormant company (Section 455):** Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

"Inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.



- **Nidhi Companies:** Company which has been incorporated as a nidhi with the object of cultivating the habit of thrift (cost cutting) and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies. [Section 406 of the Companies Act, 2013]



❖ Formation of Company:

Section 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the company. In the case of a public company, any 7 or more persons can form a company for any lawful purpose by subscribing their names to memorandum and complying with the requirements of this Act in respect of registration. In exactly the same way, 2 or more persons can form a private company and one person where company to be formed is one person company.

- **Incorporation of Company:** Section 7 of the Companies Act, 2013 provides for the procedure to be followed for incorporation of a company.



Filing of the documents and information with the registrar

Memorandum and Articles of the company

Declaration that all the requirements of this Act and the rules complied

Affidavit from each of subscribers to memorandum and from persons named as the first directors,



Issue of certificate of incorporation on registration



Allotment of Corporate Identity Number (CIN)

Furnishing of false or incorrect information or suppression of material fact at the time of incorporation - If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action for fraud under section 447.

➤ Effect of Registration:

Section 9 of the Companies Act, 2013 provides for the effect of registration of a company. According to section 9, from the date of incorporation (mentioned in the certificate of incorporation), the subscribers to the memorandum and all other persons, who may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum. Such a registered company shall be capable of exercising all the functions of an incorporated company under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name. From the date of incorporation mentioned in the certificate, the company becomes a legal person separate from the incorporators.



➤ **Memorandum of Association** - Memorandum of Association of company is in fact its charter; it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built.

As per Section 4, Memorandum of a company shall be drawn up in such form as is given in Tables A, B, C, D and E in Schedule I of the Companies Act, 2013.

Contents of Memorandum of Association (MoA)

Name of the company (**Name Clause**) with the last word “Limited” in the case of a public limited company, or the last words “Private Limited” in the case of a private limited company.

State in which the registered office of the company (**Registered Office clause**) is to be situated

Objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof (**Object clause**)

Liability of members of the company (**Liability clause**), whether limited or unlimited

Amount of authorized capital (**Capital Clause**) divided into share of fixed amounts and the number of shares

Memorandum shall conclude with the **association clause**. Every subscriber to the Memorandum shall take atleast one share, and shall write against his name, the number of shares taken by him.

➤ **Articles of Association** - The articles of association of a company are its rules and regulations, which are framed to manage its internal affairs. Just as the memorandum contains the fundamental conditions upon which the company is allowed to be incorporated, so also the articles are the internal regulations of the company.

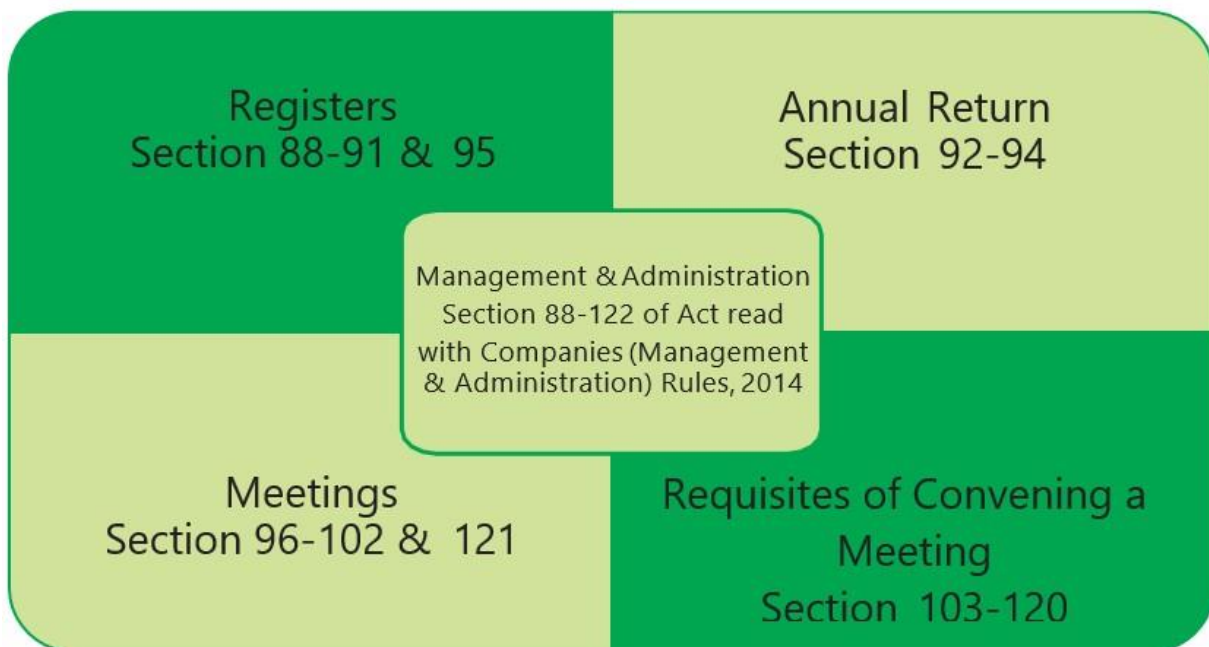


Section 5 of the Companies Act, 2013 seeks to provide the contents and model of articles of association. The section lays the following law-

- **Contains regulations:** The articles of a company shall contain the regulations for management of the company.
- **Inclusion of matters:** The articles shall also contain such matters, as are prescribed under the rules. However, a company may also include such additional matters in its articles as may be considered necessary for its management.
- **Contain provisions for entrenchment:** The articles may contain provisions for entrenchment (to protect something) to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.
- **Forms of articles:** The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.
- **Model articles:** A company may adopt all or any of the regulations contained in the model articles applicable to such company.

➤ **Management of Company:**

Provisions relating to management and administration of company are contained in Section 88 to 122 of the Companies Act.



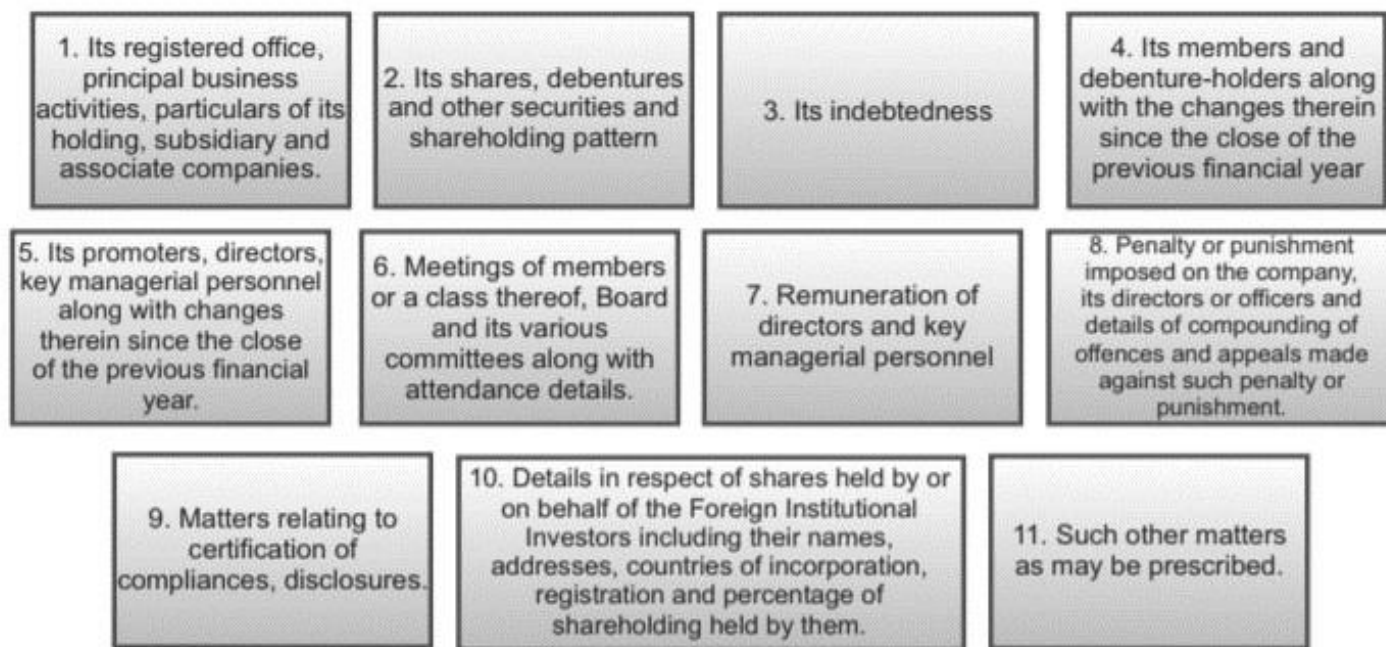
- **Maintaining Registers - Section 88(1)** of the Companies Act, 2013 seeks to provide that every company shall keep and maintain the register of members, register of debenture-holders and



register of any other security holders. The registers shall be maintained at the registered office of the company unless a special resolution is passed in a general meeting authorizing the keeping of the register at any other place within the city, town or village in which the registered office is situated or any other place in India in which more than 1/10th of the total members entered in the register of members reside.

- **Annual Return** - The provisions of preparation and filing of annual return of a company are contained in section 92 of the Companies Act, 2013. The section is particularly important from the compliance point of view, since this is an annual compliance and essentially captures all the important events that have taken place in the company during the financial year. Every company is required to file with the RoC, the annual return as prescribed in section 92, in Form MGT – 8 as per Rule 11(1) of the Companies (Management & Administration) Rules, 2014.

The particulars contained in an annual return, to be filed by every company are as follows:



- **Meetings** – The term general meeting is used to describe a meeting of members of shareholders, as per the provisions of the Act; whereas there exist other types of meetings as well, viz. Board Meetings, i.e. meetings of the board of directors and class meetings, i.e. meetings of special class of persons, like, creditors, preference shareholders, etc.

Annual General Meeting (AGM) vs. Extra-ordinary General Meeting (EGM)



Companies Act, 2013 states that every company, whether public or private, except One Person Company, shall hold an annual general meeting every year and that the gap between two AGMs shall not be more than 15 months. In case of the First AGM of a company, it shall be held within a period of 9 months from the date of closing of the 1st financial year (i.e. April to March next year). In any other case, AGM shall be held within a period of 6 months from the date of closing of its financial year.

The members/shareholders of a company can call for an extraordinary general meeting. However, only certain members with a significant stake in the company are allowed to call for an EGM. EGM is held in case of emergency situations.

- **Notice of a meeting** - Companies Act, 2013 states that in order to properly call a general meeting the notice should be sent at least 21 clear days before the meeting, to all the members, legal representative of any deceased member or the assignee of insolvent members, the auditors and directors, in writing or electronic mode.
- **Contents of the Notice** - A valid notice must state the day, date, time and place of the meeting and shall contain a statement of business to be transacted in that meeting. It must be issued on the authority of the Board of Directors under the name of an authorised official. Where any special business is to be transacted at the company's general meeting, then an 'Explanatory Statement' should be annexed to the notice calling such general meeting.

Section 101(4) states that any accidental omission to give notice to, or non-receipt of such notice to any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.

➤ Quorum for Meetings:

Public Company -	Private Company -
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> If number of members is not more than 1000, quorum shall be 5 members personally present	<input type="checkbox"/> Quorum-2-members personally present
<input type="checkbox"/> If number of members is more than 1000, but upto 5000, then the quorum shall be 15 members personally present	
<input type="checkbox"/> If the number of members exceed 5000, then quorum shall be 30 members personally present.	



If the required quorum is not present within half an hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board of Directors.

Companies Act, 2013 provides that any member of a company who is entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf. However, a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll.

➤ Voting in a meeting:

As per the Companies Act, 2013, the voting in a meeting can take place in the following ways:



➤ **Motions & Resolution in Meetings** - Most matters come before a meeting by way of a motion recommending that the meeting may express approval or disapproval or take certain action or order something to be done. A motion is a proposal, and a resolution is the adoption of a motion duly made and seconded. But every motion need not be followed by a resolution, as where a motion is made for the adjournment of the meeting. As per the Companies Act, 2013, resolutions are of two types–



- **Ordinary Resolutions** – which are passed by simple majority; and
- **Special Resolutions** – which are passed by 75% majority.

In simple words, a resolution shall be a special resolution, when it is duly specified in the notice, calling the general meeting and votes cast in favour is 3 times the votes cast against the resolution.

- **Winding up of Company** - As per Section 2(94A) of the Companies Act, 2013, winding up” means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016, as applicable. Chapter XX of the Companies Act, 2013 of Winding up is comprised of four parts:

Part I: Winding up by the tribunal (Section 271-303),

Part II: Voluntary winding up (Section 304- 323), Omitted vide enforcement of the Insolvency and Bankruptcy Code, 2016,

Part III: Provisions applicable to every mode of winding up (Section 324-358),

Part IV: Official Liquidators (Section 359 -365),

- **Winding up by the Tribunal** - A company may, on a petition be wound up by the Tribunal:—

- (a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;
- (b) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;
- (c) if on an application made by the Registrar or any other person authorised, Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner and that it is proper that the company be wound up;
- (d) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or
- (e) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

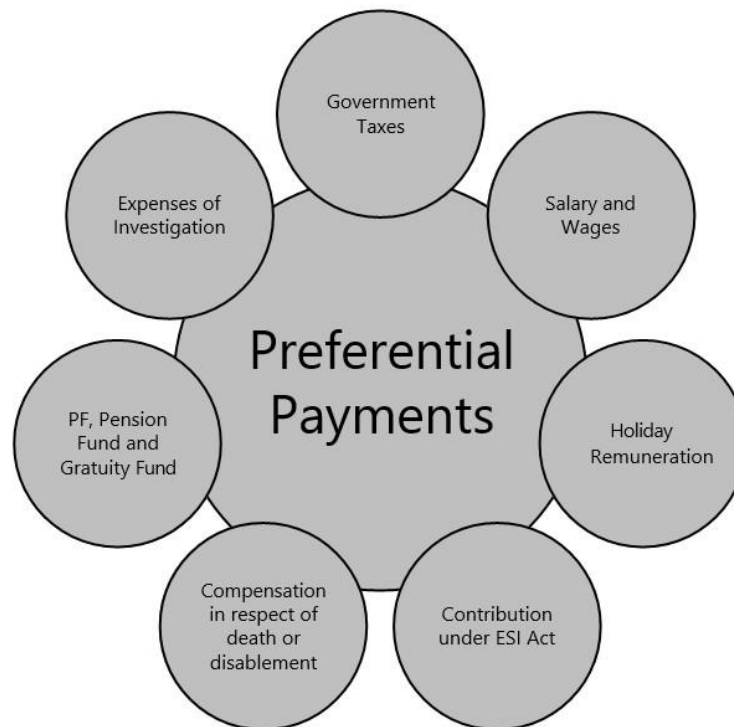
- **A petition to the Tribunal for the winding up of a company shall be presented by—**

- the company;



- any contributory or contributories;
 - all or any of the persons specified in clauses (a) and (b);
 - the Registrar;
 - any person authorized by the Central Government in that behalf; or
 - in a case falling under clause (b) of section 271, by the Central Government or a State Government.
- **Effect of winding up order** - The order for the winding up of a company shall operate in favour of all the creditors and all contributories of the company as if it had been made out on the joint petition of creditors and contributories. When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose. However, Nothing in this sub-section shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.
- **Overriding Preferential Payments** - In the winding up of a company under this Act, the following debts should be paid in priority to all other debts,
 - workmen's dues; and
 - where a secured creditor has realized a secured asset, so much of the debts due to such secured creditor as could not be realized by him or the amount of the workmen's portion in his security (if payable under the law), whichever is less, paripassu with the workmen's dues:

Example: The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs.3,00,000. The aggregate of the amount of workmen's dues and the amount of debts due to secured creditors is Rs. 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is Rs. 25,000.
- **Preferential Payments** - In a winding up they should be paid in priority to all other debts subject to the provisions of section 326 (Overriding Preferential Payments). The debts enumerated in this section should a. rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they should abate in equal proportions.



➤ **Limited Liability Partnership Act, 2000 –**

Parliament passed the Limited Liability Partnership Bill on 12th December, 2008 and the President of India has assented the Bill on 7th January, 2009 and called as the Limited Liability Partnership Act, 2008, and many of its sections got enforced from 31st March 2009. This Act have been enacted to make provisions for the formation and regulation of Limited Liability Partnerships and for matters connected there with or incidental thereto. The LLP Act, 2008 has 81 sections and 4 schedules.

- First Schedule deals with mutual rights and duties of partners, as well limited liability partnership and its partners where there is absence of formal agreement with respect to them.
- The Second Schedule deals with conversion of a firm into LLP.
- The Third Schedule deals with conversion of a private company into LLP.
- The Fourth Schedule deals with conversion of unlisted public company into LLP.

Administering the LLP Act, 2008: The Ministry of Corporate Affairs (MCA) and the Registrar of Companies (ROC) are entrusted with the task of administering the LLP Act, 2008.

- ## ➤ **Limited Liability Partnership (LLP)** - LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that not only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organising their internal structure as a traditional partnership. The LLP is a separate legal entity and, while



the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited. LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.

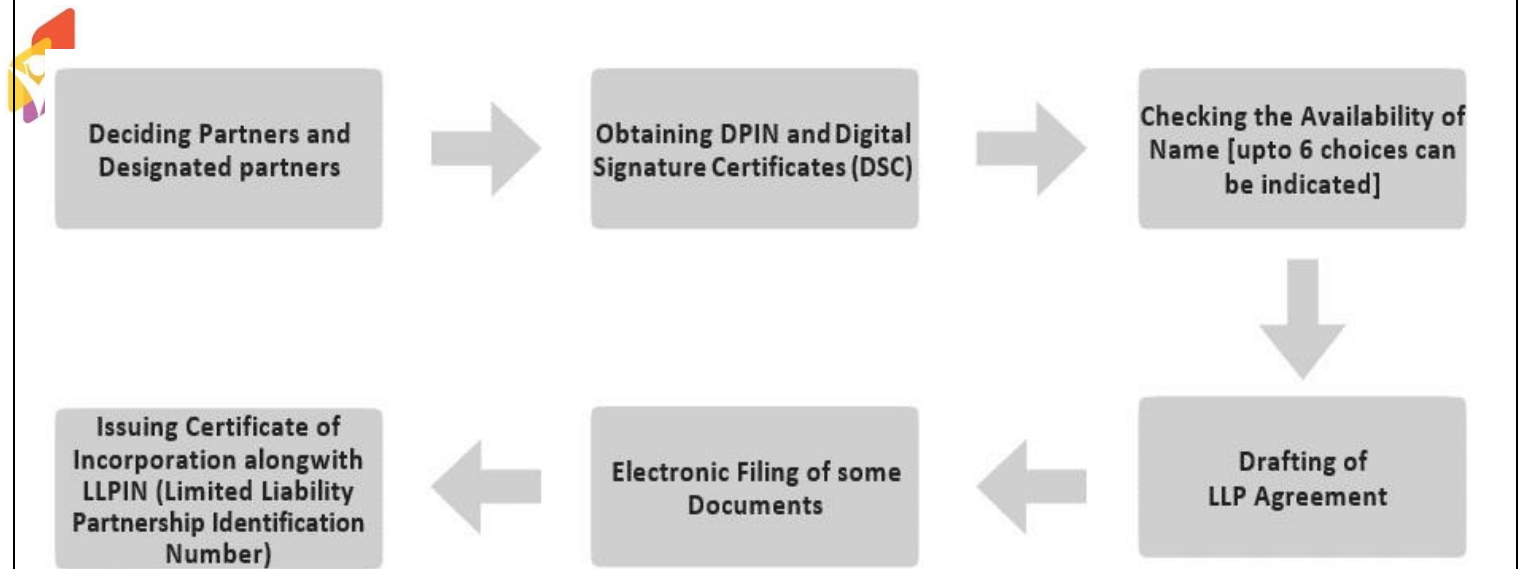
Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.

➤ Key Features of LLP:

- **LLP is a body corporate:** Section 3 of LLP Act provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.
- **Perpetual Succession:** The LLP can continue its existence irrespective of changes in partners. Death, insanity, retirement or insolvency of partners has no impact on the existence of LLP. It is capable of entering into contracts and holding property in its own name.
- **Separate Legal Entity:** The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP. In other words, creditors of LLP shall be the creditors of LLP alone.
- **Mutual Agency:** Further, no partner is liable on account of the independent or unauthorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct. In other words, all partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.
- **LLP Agreement:** Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners. The LLP Act, 2008 provides flexibility to partner to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the LLP Act, 2008.
- **Artificial Legal Person:** A LLP is an artificial legal person because it is created by a legal process and is clothed with all rights of an individual. It can do everything which any natural person can do, except of course that, it cannot be sent to jail, cannot take an oath, cannot marry or get divorce nor can it practice a learned profession like CA or Medicine.
- **Common Seal:** A LLP being an artificial person can act through its partners and designated partners. LLP may have a common seal, if it decides to have one [Section 14(c)]. Thus, it is not mandatory for a LLP to have a common seal. It shall remain under the custody of some responsible official and it shall be affixed in the presence of at least 2 designated partners of the LLP.



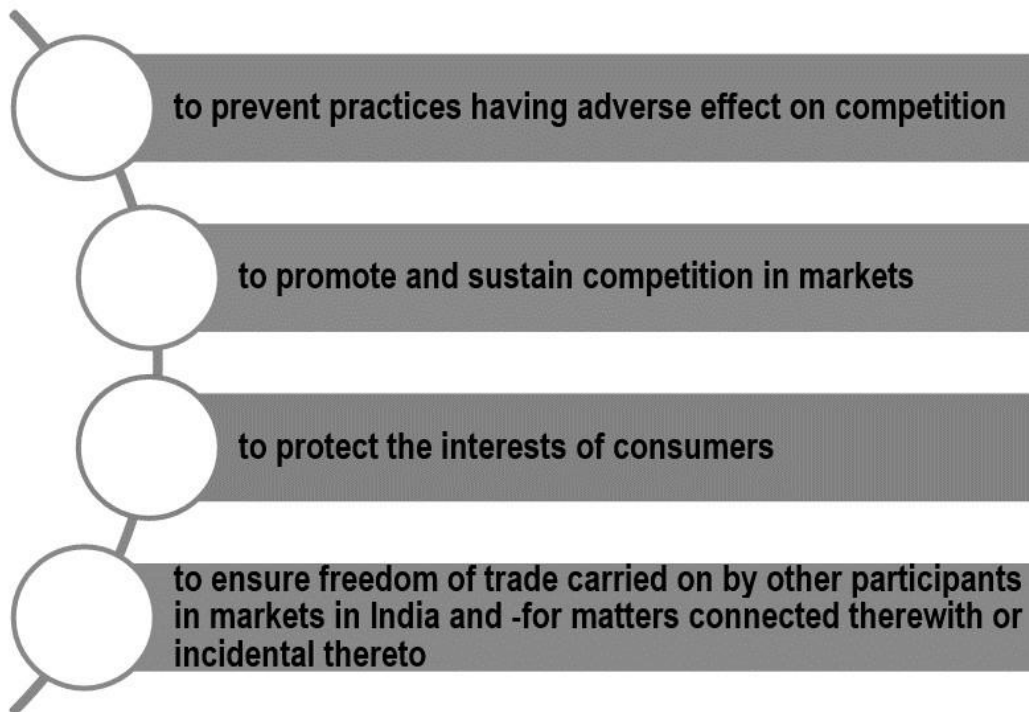
- **Limited Liability:** Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section. 26). The liability of the partners will be limited to their agreed contribution in the LLP.
 - **Minimum and Maximum number of Partners:** Every LLP shall have least two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India. There is no maximum limit on the partners in LLP.
 - **Conversion into LLP:** A firm, private company or an unlisted public company would be allowed to be converted into LLP in accordance with the provisions of LLP Act, 2008.
- **Incorporation of LLP:** Under the LLP Act, 2008; the following elements are very essential to form a LLP in India:
- To complete and submit incorporation document in the form prescribed with the Registrar electronically;
 - To have at least two partners for incorporation of LLP [Individual or body corporate];
 - To have registered office in India to which all communications will be made and received;
 - To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India.
 - A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by MCA.
 - To execute a partnership agreement between the partners inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.
 - LLP Name.
- **Process of LLP formation:**



❖ Competition Act, 2002:

Government constituted a High Level Committee on Competition Policy and Law on 15.9.1999 under the Chairmanship of Mr. S.V.S. Raghavan, to recommend a legislative framework relating to Competition Law including mergers and demergers. The Committee submitted its report on 22nd May 2000. The Government, after considering the report and suggestions from various organizations, institutions and general public, introduced the Competition Bill in the Parliament. This Bill became an Act i.e., the Competition Act, 2002 after receiving assent from the President on 13th January 2003 and all the sections of the Act have already come into force by virtue of separate Government notifications. **This Act extends to the whole of India except the State of Jammu and Kashmir.** Private enterprises as well as government owned enterprises and even government departments are covered by the provisions of Competition Act, 2002.

Objectives of Competition Act, 2002 – Broad objectives are as under:



- **Competition Commission of India** - Competition Commission of India ['CCI'] was established on 14 October, 2003. CCI consists of a Chairperson and 6 Members appointed by the Central Government. CCI functions as market regulator for preventing and regulating anti – competitive practices in the country. CCI can be approached to report any unfair competition practices. CCI is also empowered to act suo-moto or on the reference. A Competition Appellate Tribunal was also established, which is a quasi-judicial body established to hear and dispose of appeals against any direction issued, or decision made by the CCI.





- **Key elements of competition law** - There are three major elements of a competition law; i) Anti – competitive agreements; ii) Abuse of dominance; and iii) Merger, amalgamations and acquisitions control.

- **Anti-competitive agreements** – They are those agreements that restrict competition. Section 3 of the Competition Act, 2002 prohibits any agreement with respect to production, supply, distribution, storage, and acquisition or control of goods or services which causes or is likely to cause an appreciable adverse effect on competition in India. Section 3(2) of the Competition Act, 2002 declares that any anti competitive agreement within the meaning of section 3(1) of the Competition Act, 2002 shall be void. The whole agreement is construed as void if it contains anti – competitive clauses having appreciable adverse effect on the competition.

Horizontal and Vertical Agreements:

Agreement between rivals or competitors is termed as horizontal agreements. The most malicious form of an anti-competitive agreement is cartelization. When rivals or competitors agree to fix prices or share consumer or do both, the agreement termed as cartel. Besides horizontal agreements, there can be anti-competitive agreements between producers and suppliers or between producers and distributors. These are referred to as vertical agreements. Vertical agreements too can undermine competition in the market.

- **Abuse of Dominant Position** - Section 4 of the Competition Act, 2002 expressly prohibits any enterprise or group from abusing its dominant position. The term 'Dominant Position' includes a position of strength, enjoyed by an enterprise or group, in relevant market, in India, which enables it to Operate independently of competition forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour.



- **Predatory Pricing - "Predatory price"** means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors. There shall be abuse of dominant position if an enterprise or a group directly or indirectly, imposes unfair or discriminatory price in purchase or sale (including predatory price) of goods or service.
- **Merger, Amalgamations and Acquisitions Control** - Competition Act, 2002 uses the word combinations to cover acquisition of control, shares, voting rights and assets, and mergers and amalgamations. Section 6 of the Competition Act, 2002 prohibits any person or enterprise from entering into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and if such a combination is formed, it shall be void. Any person or enterprise, who or which proposes to enter into any combination, shall give a notice to the Competition Commission of India, disclosing details of the proposed combination.

❖ **Information Technology Act, 2000:**

Information Technology Act was enacted on 17th May 2000 primarily to provide legal recognition for electronic transactions and facilitate e-commerce. India became the 12th nation in the world to adopt cyber laws by passing the Act. When the Information Technology Act, 2000 was introduced, it was the first information technology legislation introduced in India. The IT Act is based on Model law on e-commerce adopted by UNCITRAL (United Nations Commission on International Trade) of United Nations organization.



- **Applicability of IT Act, 2000** - It is applicable to whole of India. The Act is also applicable to any offence that is committed outside India by any person.

Following are the documents or transactions to which the Act shall not apply –

- **Negotiable Instrument** (Other than a cheque) as defined in section 13 of the Negotiable Instruments Act, 1881;
 - A **power-of-attorney** as defined in section 1A of the Powers-of-Attorney Act, 1882;
 - A **trust** as defined in section 3 of the Indian Trusts Act, 1882;
 - A **will** as defined in clause (h) of section 2 of the Indian Succession Act, 1925 including any other testamentary disposition;
 - Any **contract** for the sale or conveyance of immovable property or any interest in such property;
 - Any such class of documents or transactions as may be notified by the Central Government.
- **Objectives of Information technology Act, 2000:** The Information technology Act, 2000 was made applicable in India with following objectives:
 - To grant legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication commonly referred to as “electronic commerce” in place of paper based methods of communication.
 - To give legal recognition to Digital signatures for authentication of any information or matter, which requires authentication under any law;
 - To facilitate electronic filing of documents with Government departments;
 - To facilitate electronic storage of data;
 - To facilitate and give legal sanction to electronic fund transfers between banks and financial institutions;
 - To give legal recognition for keeping of books of accounts by banker’s in electronic form; and
 - To amend the Indian Penal Code, the Indian Evidence Act, 1872, the Banker’s Book Evidence Act, 1891, and the Reserve Bank of India Act, 1934.
 - **Cyber Appellate Tribunal** - The Tribunal initially known as the Cyber Regulations Appellate Tribunal (C.R.A.T.) started functioning from October 2006. The Cyber Regulations Appellate Tribunal after the amendment of the IT Act in the year 2008 is known as the Cyber Appellate



Tribunal (CAT). It seeks to resolve disputes rising from this law. The Act requires that a Cyber Appellate Tribunal shall consist of one person only to be referred as the Presiding Officer of the Cyber Appellate Tribunal who is to be appointed, by notification, by the Central Government.

- **IT Amendment Act, 2008** - A major amendment was made in 2008. It introduced the Section 66A which penalized sending of "offensive messages". It also introduced the Section 69, which gave authorities the power of "interception or monitoring or decryption of any information through any computer resource". It also introduced for child porn, cyber terrorism and voyeurism.

Supreme Court in 2015 declared Section 66A of Information Technology Act as unconstitutional and struck it down. This section had been widely misused by police in various states to arrest innocent persons for posting critical comments about social and political issues and political leaders on social networking sites.

- **Cyber Crimes (Offences under IT Act and their punishments):**

Section	Offence	Description	Penalty
65	Tampering with computer source documents	If a person knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force.	Imprisonment up to three years, or/and with fine up to ₹200,000
66	Hacking with computer system	If a person with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys	Imprisonment up to three years, or/and with fine up to ₹500,000



		or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hack.	
66B	Receiving stolen or computer communication device	A person receives or retains a computer resource or communication device which is known to be stolen or the person has reason to believe is stolen.	Imprisonment up to three years, or/and with fine up to ₹100,000
66C	Using password of another person	A person fraudulently uses the password, digital signature or other unique identification of another person.	Imprisonment up to three years, or/and with fine up to ₹100,000
66D	Cheating using computer resource	If a person cheats someone using a computer resource or communication.	Imprisonment up to three years, or/and with fine up to ₹100,000
66E	Publishing private images of others	If a person captures, transmits or publishes images of a person's private parts without his/her consent or knowledge.	Imprisonment up to three years, or/and with fine up to ₹200,000
66F	Acts of cyberterrorism	If a person denies access to an authorised personnel to a computer resource, accesses a protected system or introduces contaminant into a system, with the intention of threatening the unity, integrity, sovereignty or security of India, then he commits cyberterrorism.	Imprisonment up to life.



67	Publishing information which is obscene in electronic form.	If a person publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.	Imprisonment up to five years, or/and with fine up to ₹1,000,000
67A	Publishing images containing sexual acts	If a person publishes or transmits images containing a sexual explicit act or conduct.	Imprisonment up to seven years, or/and with fine up to ₹1,000,000
67B	Publishing child porn or predating children online	If a person captures, publishes or transmits images of a child in a sexually explicit act or conduct. If a person induces a child into a sexual act. A child is defined as anyone under 18.	Imprisonment up to five years, or/and with fine up to ₹1,000,000 on first conviction. Imprisonment up to seven years, or/and with fine up to ₹1,000,000 on second conviction.
67C	Failure to maintain records	Persons deemed as intermediary (such as an ISP) must maintain required records for stipulated time. Failure is an offence.	Imprisonment up to three years, or/and with fine.
68	Failure/refusal to comply with orders	The Controller may, by order, direct a Certifying Authority or any employee of such Authority to	Imprisonment up to three years, or/and with fine up to ₹200,000



		take such measures or cease carrying on such activities as specified in the order if those are necessary to ensure compliance with the provisions of this Act, rules or any regulations made thereunder. Any person who fails to comply with any such order shall be guilty of an offence.	
69	Failure/refusal to decrypt data	If the Controller is satisfied that it is necessary or expedient so to do in the interest of the sovereignty or integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence, for reasons to be recorded in writing, by order, direct any agency of the Government to intercept any information transmitted through any computer resource. The subscriber or any person in charge of the computer resource shall, when called upon by any agency which has been directed, must extend all facilities and technical assistance to decrypt the information. The subscriber or any person who fails to assist the agency referred is deemed to have committed a crime.	Imprisonment up to seven years and possible fine.
70	Securing access or attempting to secure	The appropriate Government may, by notification in the Official	Imprisonment up to ten years, or/and with fine.

	access to a protected system	Gazette, declare that any computer, computer system or computer network to be a protected system. The appropriate Government may, by order in writing, authorise the persons who are authorised to access protected systems. If a person who secures access or attempts to secure access to a protected system, then he is committing an offence.	
71	Misrepresentation	If anyone makes any misrepresentation to, or suppresses any material fact from, the Controller or the Certifying Authority for obtaining any license or Digital Signature Certificate.	Imprisonment up to three years, or/and with fine up to ₹100,000

❖ Right to Information Act, 2005:

Right to Information Act 2005 came into force on 12th October, 2005. The Act extends to the whole of India except the State of Jammu & Kashmir. This Act will have jurisdiction over every public authority in the country. It empowers citizens to know their entitlement to avail a particular public service, and redress the grievance, if any. The basic object of the Right to Information Act is to empower the citizens, to promote transparency and accountability in the working of the Government, to contain corruption, and to enhance people's participation in democratic process thereby making our democracy work for the people in a real sense.





- **Right to Information under the Act** - A citizen has a right to seek such information from a public authority which is held by the public authority or which is held under its control. This right includes inspection of work, documents and records; taking notes, extracts or certified copies of documents or records; and taking certified samples of material held by the public authority or held under the control of the public authority.
- **Public Information Officers** - Public authorities have designated some of its officers as Public Information Officers. They are responsible to give information to a person who seeks information under the RTI Act. Public Information Officer is required to supply the 'material' in the form as held by the public authority, and is not required to do research on behalf of the citizen to deduce anything from the material and then supply it to him.
- **Application for seeking information** - There is no prescribed format of application for seeking information. The application can be made on plain paper. The applicant should mention the address at which the information is required to be sent. The information seeker is not required to give reasons for seeking information. A citizen who desires to seek some information from a public authority is required to send, along with the application, a demand draft or a bankers cheque or an Indian Postal Order of Rs.10/- as fee prescribed for seeking information. If the applicant belongs to the below poverty line (BPL) category, he is not required to pay any fee.
- **Time period for supplying information** - In normal course, information to an applicant shall be supplied within 30 days from the receipt of application by the public authority. If information sought concerns the life or liberty of a person, it shall be supplied within 48 hours.
- If an applicant is not supplied information within the prescribed time of thirty days or 48 hours, as the case may be, or is not satisfied with the information furnished to him, he may prefer an appeal to the first appellate authority who is an officer senior in rank to the Public Information Officer. If the first appellate authority fails to pass an order on the appeal within the prescribed period or if the appellant is not satisfied with the order of the first appellate authority, he may prefer a second appeal with the Central Information Commission within ninety days.
- **Information Exempted from disclosure** - The information which, in normal course, is exempt from disclosure under subsection (1) of Section 8 of the Act, would cease to be exempted if 20 years have lapsed after occurrence of the incident to which the information relates.



However, the following types of information would continue to be exempt and there would be no obligation, even after lapse of 20 years, to give any citizen-

- (i) Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the State, relation with foreign state or lead to incitement of an offence;
- (ii) Information, the disclosure of which would cause a breach of privilege of Parliament or State Legislature; or
- (iii) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other Officers subject to the conditions given in proviso to clause (i) of sub-section(1) of Section 8 of the Act.

Also, certain intelligence and security organisations specified in the Second Schedule, are exempted from providing information excepting the information pertaining to the allegations of corruption and human rights violations.

❖ Intellectual Property Rights (IPRs):

IPRs are legal rights that protect creations and/or inventions resulting from intellectual activity in the industrial, scientific, literary or artistic fields. The most common IPRs include patents, copyrights, marks and trade secrets. The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both treaties are administered by the World Intellectual Property Organization (WIPO).



- **Patents** - A patent is an exclusive right granted for an invention – a product or process that provides a new way of doing something, or that offers a new technical solution to a problem.



A patent provides patent owners with protection for their inventions. Protection is granted for a limited period, generally 20 years. Patents provide incentives to individuals by recognizing their creativity and offering the possibility of material reward for their marketable inventions. These incentives encourage innovation, which in turn enhances the quality of human life.

- **Evergreening of Patents** - Many a time, drug companies to retain the huge profit and especially after 20 years of patent, try to add trivial molecules or take recourse to various methods which neither can be termed as an invention nor should lead to secondary patent. However, pharma companies have been able to do that, which can be termed as evergreening of patents. Once a drug loses its patent, it becomes generic and the cost falls down as low as 80%, which is not in the interest of the pharma companies, hence they employ various means and methods to have the hold over patents. This acts against the general interest of the public as the drugs become beyond the reach of affordability for many. Indian **Patent Act, 1970** has elaborate provisions to check evergreening.
- **Trademarks** - A trademark is a distinctive sign that identifies certain goods or services produced or provided by an individual or a company. Its origin dates back to ancient times when craftsmen reproduced their signatures, or “marks”, on their artistic works or products of a functional or practical nature. The system helps consumers to identify and purchase a product or service based on whether its specific characteristics and quality – as indicated by its unique trademark – meet their needs. Trademarks may be one or a combination of words, letters and numerals.
- **Copyright** - Copyrights covers literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs.
- **National Intellectual Property Rights (IPR) Policy, 2016** - Union Cabinet has approved the National Intellectual Property Rights (IPR) Policy on 12th May, 2016 that shall lay the future roadmap for IPRs in India. The Policy recognises the abundance of creative and innovative energies that flow in India, and the need to tap into and channelize these energies towards a better and brighter future for all. It is based on the motto - “**Creative India; Innovative India**”.



Key Highlights of Policy:

- It views IPRs holistically, taking into account all inter-linkages and thus aims to create and exploit synergies between all forms of intellectual property (IP), concerned statutes and agencies.
- Policy recognizes that India has a well-established TRIPS-compliant legislative, administrative and judicial framework to safeguard IPRs, which meets its international obligations while utilizing the flexibilities provided in the international regime to address its developmental concerns.
- It reiterates India's commitment to the Doha Development Agenda and the TRIPS agreement.
- Cell for IPR Promotion and Management (CIPAM) shall be created as a professional body under aegis of DIPP to address the identified objectives of the Policy.
- A detailed review of IPR Policy shall be undertaken every five years. Continuous and regular Review will be done by a Committee to be constituted for this purpose under the Secretary, DIPP.

❖ Goods and Services Tax (GST):

It is a destination based tax on consumption of goods and services. It is to be levied at all stages right from manufacture up to final consumption with credit of taxes paid at previous stages available as setoff. In a nutshell, only value addition will be taxed and burden of tax is to be borne by the final consumer.

Article 366(12A) of the Constitution as amended by 101st Constitutional Amendment Act, 2016 defines the Goods and Services tax (GST) as a tax on supply of goods or services or both, except supply of alcoholic liquor for human consumption. Five petroleum products viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel have temporarily been kept out and GST Council shall decide the date from which they shall be included in GST. Furthermore, electricity has been kept out of GST.

GST replaces the following taxes:



Central Taxes

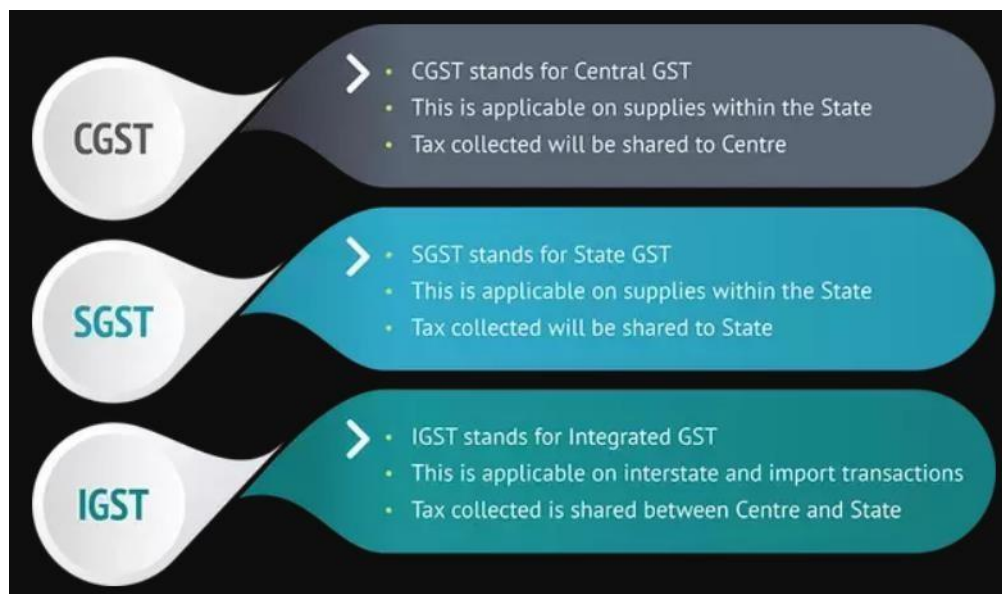
- Central Excise duty
- Additional duties of excise
- Excise duty levied under Medicinal & Toiletries Preparation Act
- Additional duties of customs (CVD & SAD)
- Service Tax
- Surcharges & Cesses

State Taxes

- State VAT / Sales Tax
- Central Sales Tax
- Purchase Tax
- Entertainment Tax (other than those levied by local bodies)
- Luxury Tax
- Entry Tax (All forms)
- Taxes on lottery, betting & gambling
- Surcharges & Cesses



- **Dual GST** - It would be a dual GST with the Centre and States simultaneously levying it on a common tax base. The GST to be levied by the Centre on intra-State supply of goods and / or services would be called the Central GST (CGST) and that to be levied by the States/ Union territory would be called the State GST (SGST)/ UTGST. Similarly, Integrated GST (IGST) will be levied and administered by Centre on every inter-state supply of goods and services.





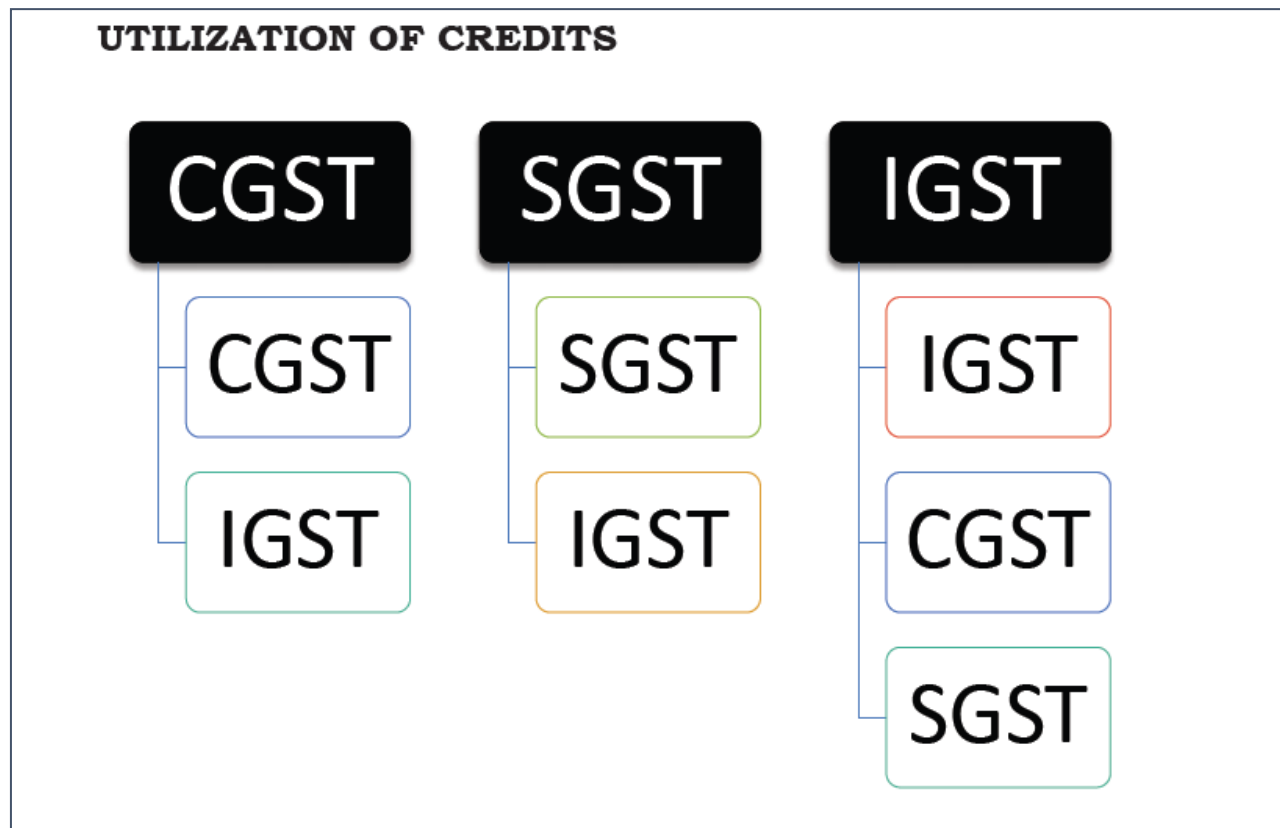
Example 1: Company A in UP sold goods to a Company B in UP worth Rs. 10,000. The GST rate is 18% comprising (9% CGST + 9% SGST). In this case Company A charges Rs. 1800 GST. From this amount, Rs. 900 will go to the central government and Rs. 900 will go to the UP government.

Example 2: Company A in UP sold goods to a Company C in Gujarat worth Rs. 10,000. The GST rate is 18% comprising (18% IGST). In this case Company A charges Rs. 1800 IGST.

➤ **Input Tax Credit** - An important feature of GST is seamless input credit or ITC. Input credit means at the time of paying tax on output, you can reduce the tax you have already paid on inputs. Say, you are a manufacturer –

- tax payable on output (FINAL PRODUCT) is Rs 420
- tax paid on input (PURCHASES) is Rs 300
- You can claim INPUT CREDIT of Rs 300 and you only need to deposit Rs 120 in taxes.

However, one must remember that all the input taxes (Input CGST, Input SGST and Input IGST) cannot be freely set off with output taxes (output CGST, output SGST and output IGST). The sequence and manner of utilization can be seen through the following diagram:

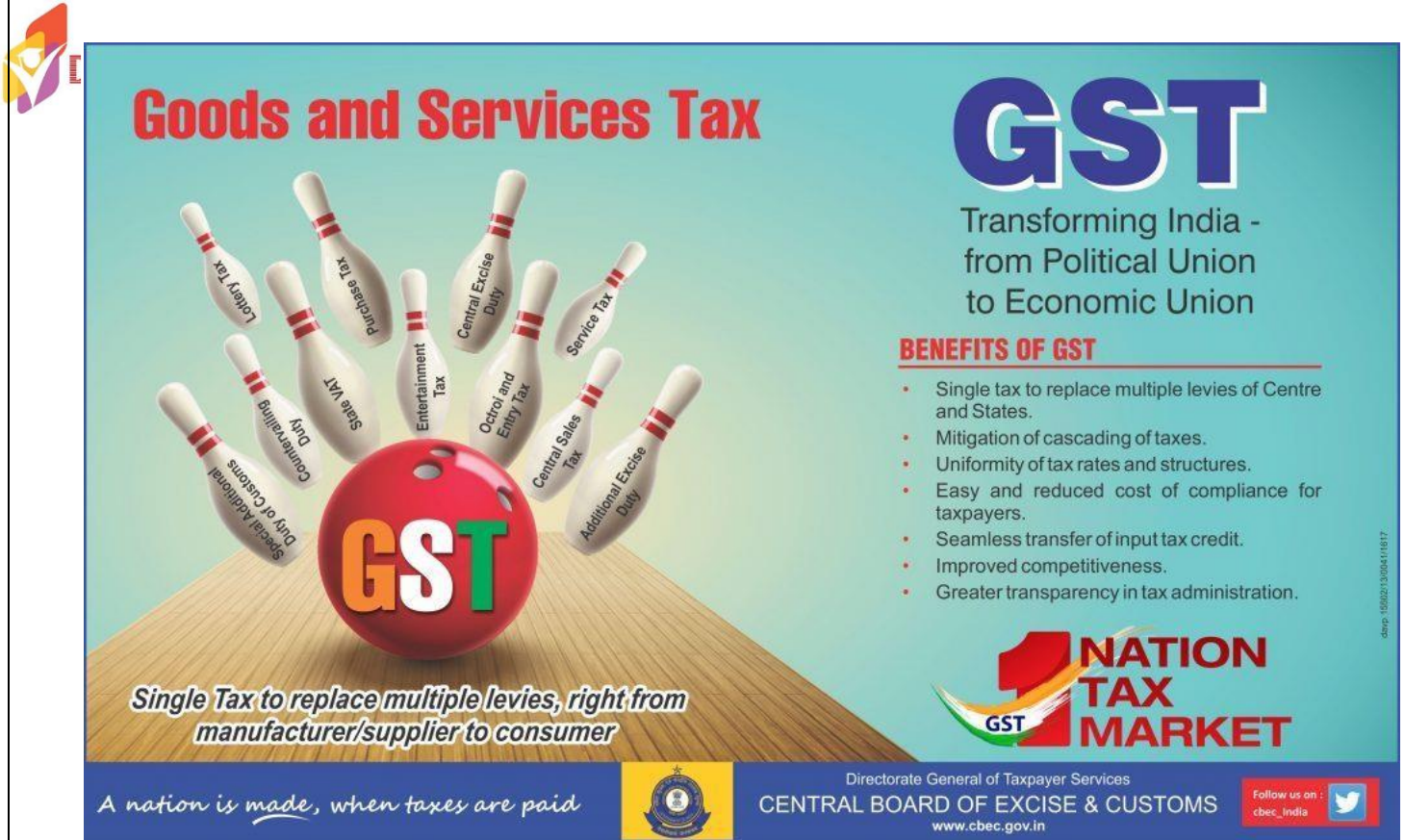




- **Goods and Services Tax Network (GSTN)** - GSTN has been set up by the Government as a private company under erstwhile Section 25 of the Companies Act, 1956. GSTN would provide three front end services to the taxpayers namely registration, payment and return. Besides providing these services to the taxpayers, GSTN would be developing back-end IT modules for 27 States who have opted for the same. The contract for developing this vast technological backend was awarded to Infosys in September 2015.
- **Goods & Services Tax Council {GST Council}** - It has been created in September 2016 under Article 279-A of the Constitution of India. A GST Council has been constituted comprising the Union Finance Minister (who will be the Chairman of the Council), the Minister of State (Revenue) and the State Finance/Taxation Ministers to make recommendations to the Union and the States on different aspects of GST.



- **Benefits of GST** - GST confers different benefits on different sections of society. Let us study them one by one:



The graphic features a large red bowling ball with 'GST' written on it, positioned on a wooden lane. Several white bowling pins are scattered around, each labeled with a different tax type: Lottery Tax, Purchase Tax, Central Excise Duty, Service Tax, Octroi and Entry Tax, Central Sales Tax, Additional Excise Duty, Special Additional Duty of Customs, Countervailing Duty, State VAT, and Entertainment Tax. The background is a light blue gradient.

Goods and Services Tax

GST

Transforming India -
from Political Union
to Economic Union

BENEFITS OF GST

- Single tax to replace multiple levies of Centre and States.
- Mitigation of cascading of taxes.
- Uniformity of tax rates and structures.
- Easy and reduced cost of compliance for taxpayers.
- Seamless transfer of input tax credit.
- Improved competitiveness.
- Greater transparency in tax administration.

Single Tax to replace multiple levies, right from manufacturer/supplier to consumer

A nation is made, when taxes are paid

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NATION TAX MARKET

deep 1502/13041/1817

Central/State Governments:

- (i) A unified common national market to boost Foreign Investment and “Make in India” campaign
- (ii) Boost to export/manufacturing activity, generation of more employment, leading to reduced poverty and increased GDP growth
- (iii) Improving the overall investment climate in the country which will benefit the development of states
- (iv) Uniform SGST and IGST rates to reduce the incentive for tax evasion
- (v) Reduction in compliance costs as no requirement of multiple record keeping.

Trade/Industry:

- (i) Reduction in multiplicity of taxes
- (ii) Mitigation of cascading/double taxation
- (iii) More efficient neutralization of taxes especially for exports



(iv) Development of common national market

(v) Simpler tax regime-fewer rates and exemptions

Citizens:

(i) Simpler tax system

(ii) Reduction in prices of goods and services due to elimination of cascading

(iii) Uniform prices throughout the country

(iv) Transparency in taxation system

(v) Increase in employment opportunities



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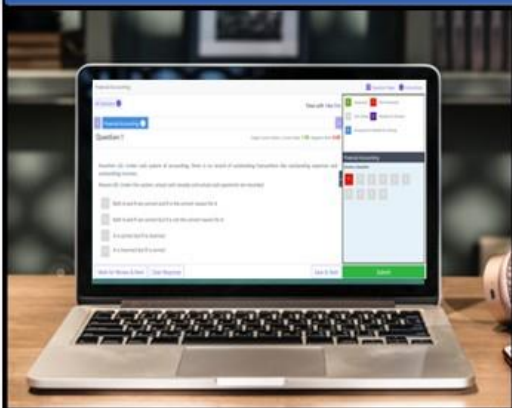
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