**Business Law for Managers**
**Name of Faculty- Mr. Kaushik Mukherjee**
**Vinod Gupta School of Management**
**IIT Kharagpur**
**Module-1: Corporate Law**

**Lecture - 03**
**Meetings of a Company and Memorandum of Associations**

Good afternoon. Today we have to cover we are covering lecture 3, Meetings of a Company and Memorandum of Association.

**(Refer Slide Time: 00:34)**


As a company is an association of persons, and one of the most important aspects of a company form of organization is decision making by a democratic way and their meetings are very important. Meetings of whom? Basically, meetings take place at every level, starting from the junior most level to senior level to higher grades to general managers to different hierarchies.

But what we are going to cover in our business law is meetings at the highest level, which is the meetings of the board of directors. We are not talking of meetings of the various hierarchies, other than the board of directors. We all know those meetings that take place. Now board of directors are the persons who are at the helm of affairs of the company. They are the persons who have been appointed by the shareholders to run the company.

**(Refer Slide Time: 01:43)**


Now when they hold a meeting, there are various purposes for which these meetings are held. But the name for that meeting remains the same, the board name. For example, any meeting of the board of directors is called a board of directors meeting. We call it a board meeting loosely. Now law has stated how many meetings shall take place in a year, minimum.

Maximum has not been prescribed because if you want you can have a board meeting every month. But what we find that the board of directors of a company, then the persons who are appointed by the owners to run the company these persons they have in turn have appointed senior management to run the company on a daily basis who are the employees of the company.

The board of directors are not the employees of the company, barring one person who acts as a link between the employees and the board of directors who is the managing director of the company. So, the Board of Directors since not being the employees of the company, they are not supposed to meet every day to interfere in the affairs of the company. They are going to give a broad overview.

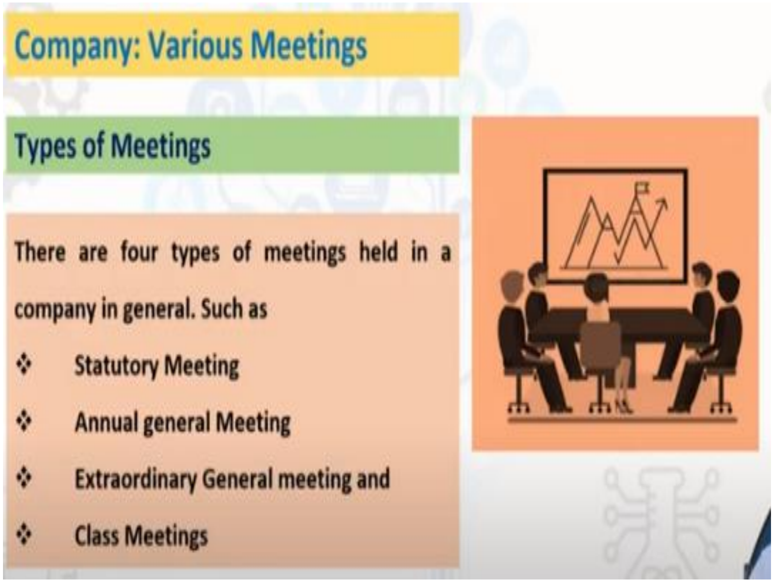
They are going to understand the performance of the company and create the strategic framework. And then every time take stock of the performance, do a performance appraisal, course correction, ensure compliance, governance and allow the company to progress, not interfere. It is a kind of strategic monitoring. That is the board of directors' job.

So how many times minimum the company has also the see, the law has also understood this. And therefore, the law has said the minimum number of times you should meet is once in every three months. So once in calendar, once in every three months, three months here is a calendar year. You must meet and have a meeting of the board of directors.

We will see other meetings of the directors as we progress. But this is a very important concept of how many meetings have a board of directors and why the board of directors meet, board meeting as we call it. And there is one more meeting which is equally important, which is called the shareholders meeting. And that happens only once in a year, we call the Annual General Meeting.

Broad framework is annual general meeting, one. The name suggests it is annual. And then we have board meeting which is minimum four. And then there are a plethora of other meetings which the board of directors meet. And with the new amendments coming in more and more meetings are statutorily required to be held, statutorily required. Earlier it was not there. We will see to it.

**(Refer Slide Time: 04:45)**




There are four types of meetings held in a company in general. These are shareholders meeting. All these four are shareholders meeting. We are not going to the board meeting. Shareholders meeting first, for any company only once is statutory meeting, only once in a lifetime when the company is formed. Within six months from the formation, you have to have one statutory meeting.

What is the purpose of this meeting? In that meeting, you appoint the first auditors, you open the bank account, you regularize the appointment of the first directors, broadly these three. Then the annual general meeting, which happens only once in a year and of the shareholders, meeting of most important type. Why, because the shareholders are the owners of the company, who only once in a year take stock of the company.

Stock of the performance of the company, the management of the company, the board of directors of the company also, extraordinary general meetings. The name suggests what it is, extraordinary. For any extraordinary purpose, if you need the approval of the shareholders, then hold this meeting. Because in any case you are holding once in a year. Why do again want to hold one more year, extraordinary.

Meaning something beyond ordinary. What can be the reason? It can be a reason where the shareholder's approval is required, where the managing director of the company's remuneration or for that matter, something to do with the company's diversification, companies want a different line of business.

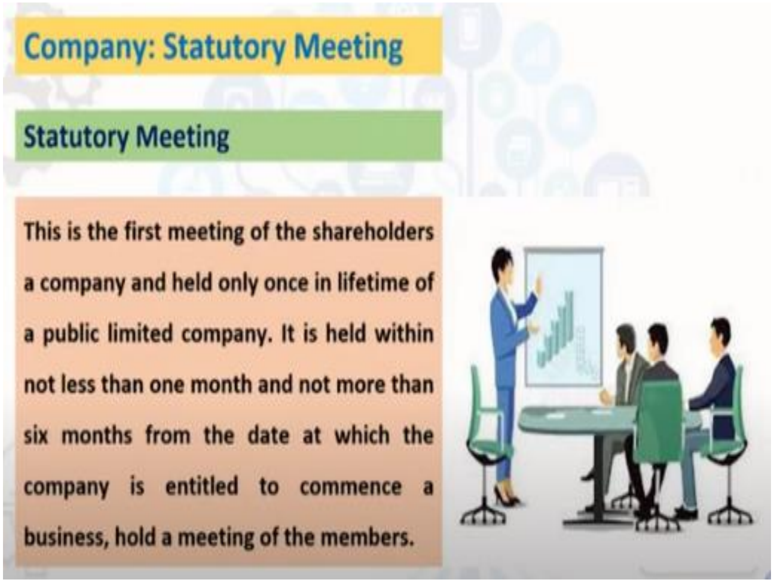
Or for the matter, if there is some loan which is to be approved, which is much beyond the scope approved by the Board of Directors, immediate required. So that may be the reason of that. So urgent, some urgent matter which cannot be deferred till the Annual General Meeting. When does the Annual General Meeting take place? Normally, the Annual General Meeting takes place within six months from the close of the financial year.

All financial year ends at now for all Indian companies 31st March. Within six months with 30 September, you must have the Annual General Meeting. So, some urgent matter comes up in the month of February, which you cannot wait till six months from the end of the financial year. So, it is not that you have to do in the sixth month, you can do it in the third month.

Third month also means March, April, May, June, but you are happening in February. February to June, you cannot wait for June. So, you need an extraordinary general meeting. Class meetings. Sometimes creditors find that the company is not doing well. Lot of NPAs, lot of dues are going up, their dues are not being paid.

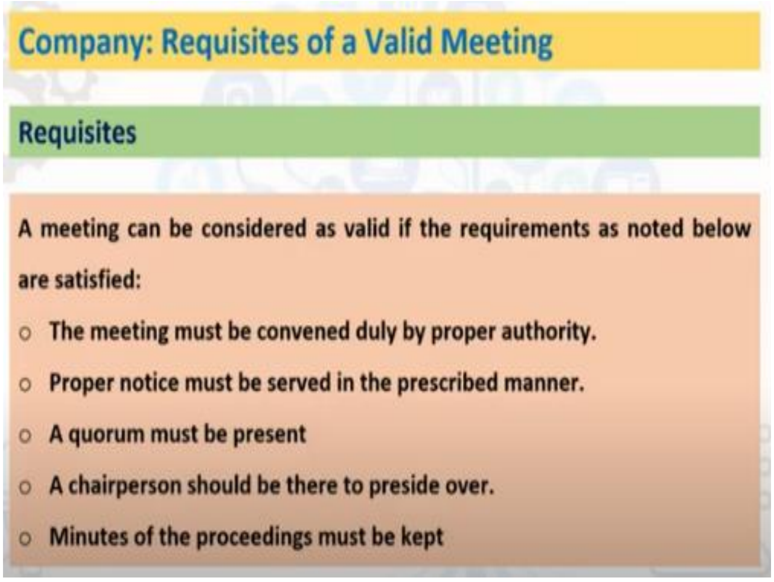
So, creditors can hold a meeting and take the company to book or file a case against a company for winding up, creditors winding up meetings can take place. Class meeting of shareholders, minority shareholders. They feel they are deprived. They feel the majority shareholders are doing oppression and mismanagement. They can call a class meeting.

**(Refer Slide Time: 07:38)**




This is the first meeting as I explained of the company once in a lifetime, six months within.

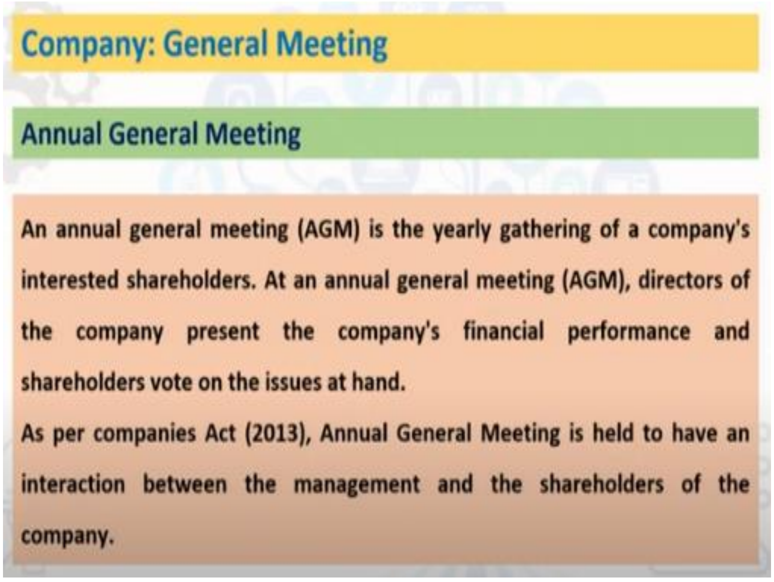
**(Refer Slide Time: 07:47)**




These are the prerequisites of that meeting. Any meeting will require a quorum. What is a quorum? Quorum means the minimum number of directors which are required to be present in an Annual General Meeting or in a general meeting. Normally, for any meeting it is 5 members physically present.

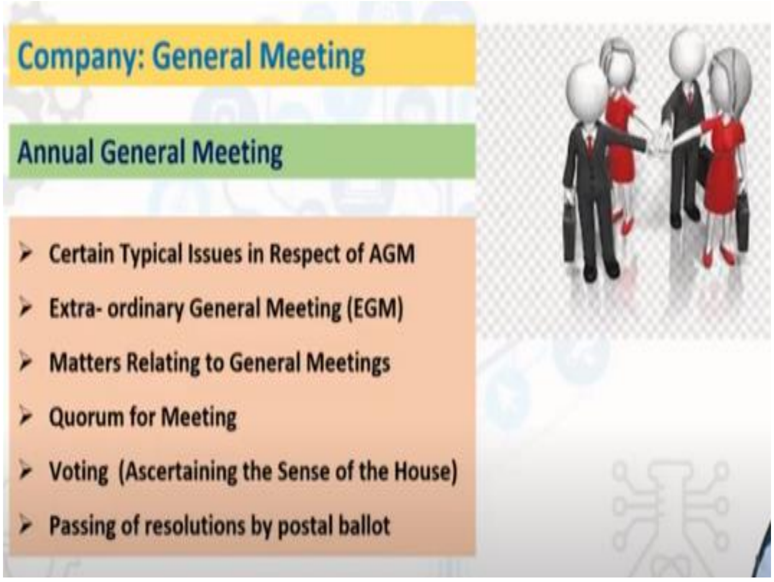
Now of late in September 2013 onwards, Companies Act 2013 has made it to 30 members physically present.

**(Refer Slide Time: 08:15)**




Annual General Meeting.

**(Refer Slide Time: 08:22)**




Now in an Annual General Meeting, four items are mandatory, which are discussed and these four items are of paramount importance for a company from ownership angle, from ownership control angle. We call normally these four items as adda, ADDA. The first A is adoption of annual accounts. Annual accounts gets adopted. Second, director's appointment reappointment.

Appointment and reappointment of directors take place in that meeting. Declaration of dividend. If dividend is to be declared, then the shareholders have to take a decision in Annual General Meeting the dividend needs to be declared. That is called declaration of dividend. And the last A is the appointment reappointment of auditors.

So ADDA are the four items which are mandatory covered in an Annual General Meeting. Anything over and above this which is covered falls under special business. There are two types of businesses, ordinary business and special business. Ordinary business contains ADDA; adoption of annual accounts, directors' appointment reappointment, declaration of dividend, and then appointment reappointment of auditors.

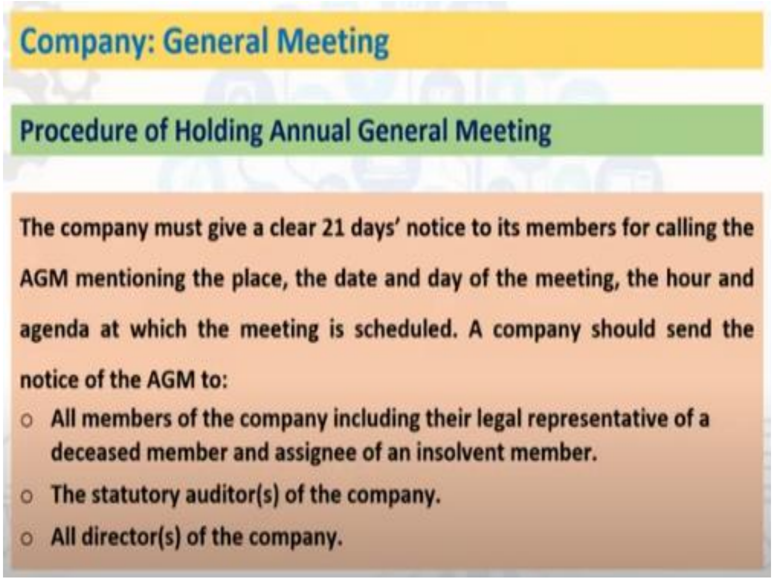
Anything over and above this like increase or change of name of the company or for example increasing the borrowing powers mortgaging the assets of the company, change of registered office, change of object clause, all these will come under special business. Now there is another concept which has come in is postal ballot.

And more in COVID situation postal ballot has seen, I mean a big rise where you do not have to call an Extraordinary General Meeting. EGM is to be called. Now EGM is not required to be called. You sent postal ballot to all the shareholders, let them vote. Now it is followed by email, e-voting. So, you get an ISI the particular code, EVM number.

And they will give you a timeline within this date to this date this voting module will be open. And they are given certain details based on which they will log in and cast their vote. So do not have to travel, do not have to go anywhere. You can be anywhere in the country and outside also. You have to just log in and cast your vote. So that is another form of voting which is taking place, doing away with EGM.

But AGM is a must, it cannot be done by postal ballot. It has to be done physically. In COVID, there was relaxation. Even this year there is a relaxation. Last two years there are relaxations. Otherwise, Annual General Meeting is a physical meeting, must, no way you can do away with.

**(Refer Slide Time: 11:36)**




The persons who are present in an Annual General Meeting, the statutory auditors of the company, the persons who have audited the accounts. They will be questioned; their accounts will be questioned. The accounts will be discussed. The owners, the shareholders raise questions of the accounts of the company, the performance of the company. The directors of the company have to be present.

Their appointment reappointment is being considered. The auditor's appointment reappointment is being considered. Adoption of financial statements and accounts. Debtor's report and auditor's report. Auditor's report is read out and auditors report is questioned by the owners. Many times, it happens the auditors have to qualify in that report stating that in that we have gone through the report.

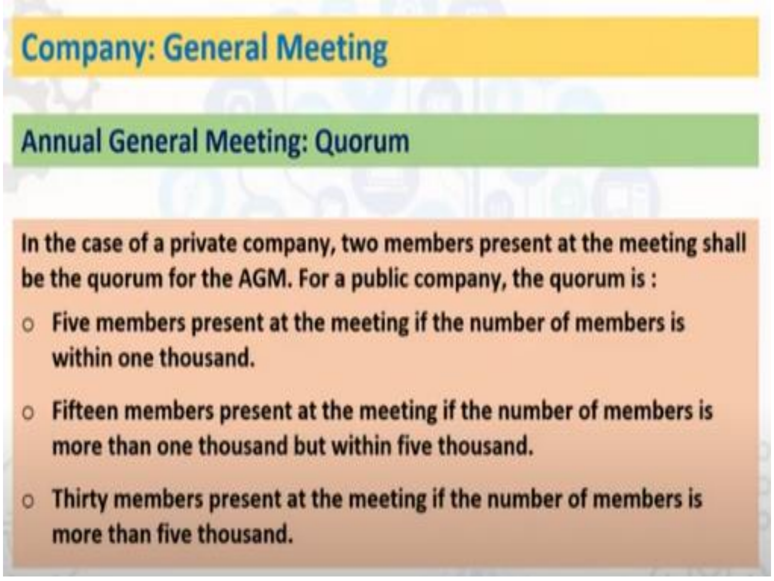
However, these are the anomalies. We call it a qualified report. Audit reports can be a qualified report. If it is a qualified report, it affects the accounting of the company, it affects the image of the company. The shareholders are very conscious, very alert on qualified audit reports. Immediately the qualified audit report would have adverse impact on the share price of the company.

The market cap will go down. So, no company would like to have an account which is qualified. So, they will try to abide by whatever recommendation the statutory auditors give. Even after that if we find that auditor's report is qualified then the shareholders will may not pass those accounts. They may give it back to the management to rectify the accounts in line with the auditor's comments.

Supposing the auditors write in the comments that there is a provision of 5 crores which is made against some dues which is not, I mean, the company cannot have these dues, these dues are not realizable. If the auditor writes that 5 crores is not realizable according to their belief. However, the management has taken it as a provision and increase the profit.

In that case, the Board of Directors might say you take the suggestion, reduce the profit, revise the accounts and come back to us. It has happened in the past. So, this kind of decisions are taken in the meeting of the shareholders in Annual General Meeting. Special businesses in anything over and above this is treated as special business.

**(Refer Slide Time: 14:07)**




30 members now is the present which is required if it is more than 5000, number of members is more than 5000. For large companies 30 members are now, quorum is now 30 members for Annual General Meeting. Earlier it was 5 members. Now 5 members is there if the member number is less than 1000. But most of the companies you see big companies have their members more than 1 lakh.

Most of the big company's number of members is more than 1 lakh. So, 30 members have to be physically present to form the quorum.

**(Refer Slide Time: 14:39)**


Now coming to the board meeting. Board of Directors meeting is one of the most primary important meetings for any company and lot of top management heads get rolled in board meetings because of the kind of performance appraisal they do. A strong board means a strong corporate governance. A strong board means a strong discipline and always good for the shareholders, but not an interfering board.

The difference between a strong board and an interfering board. The board should be someone who should give direction, ensure compliance, who have a broader strategy, but not go for day-to-day monitoring. Then the board does not function, neither the company can function.

**(Refer Slide Time: 15:32)**


The structure as follows. The chairman. The chairman is the big boss of the Board of Directors. He is the one who chairs the board meeting. He can be appointed by the board to be the chairman for all meetings. He can be appointed by the shareholders to be the chairman of all meetings, of board meetings. Normally we have seen the chairman is the largest shareholder.

The largest shareholder becomes the chairman of most companies because he does not want to lose the totally the control of management. So that is the case in most Indian companies. Managing Director is normally a person who acts as the link between the company and the Board of Directors. He is the chief boss of the company. He is the supremo uno one.

He is nobody above him in the organization in the corporate as far as the management of the corporate goes. However, when he sits in the board, he just becomes a member of the board, which is chaired by the chairman. So, he wears two jackets as the CEO of the organization and as a director of the company. So, two together he becomes the managing director. Who is an executive director?

Somebody who is a member of the board, at the same time he is an employee of the company, but he is reporting to the Managing Director as an employee of the company. In the board, he is sitting as a member of the board like the Managing Director. However, in the organization, he is reporting to the Managing Director. Supposing the finance head becomes a member of the board?

Supposing the marketing head becomes a member of the board? In that case, that person will be recorded as an executive director. Non-executive director, who is not an employee of the board, but he is a member of the board, he is a non-executive director. A non-executive director actually will be now divided into two, independent director and non-independent director and there are other designations also normally directors like.

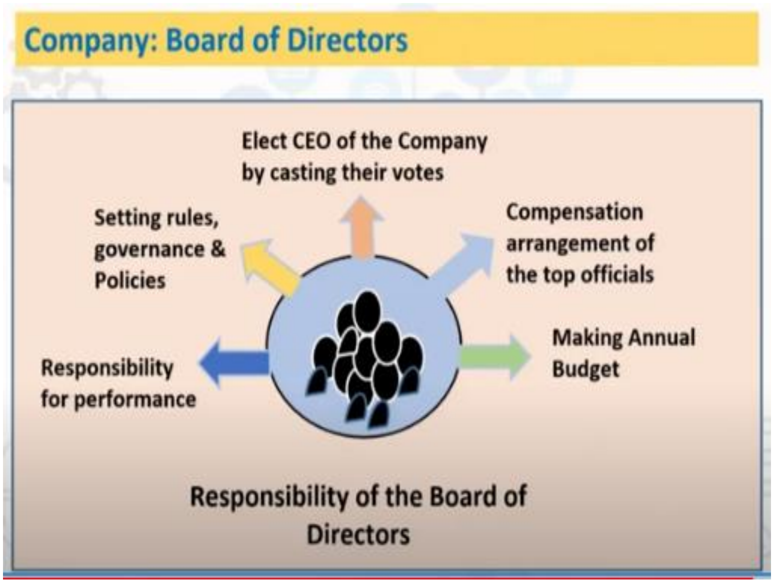
Or some companies have shareholders directors. The shareholders of the company, they have got somebody to represent them. So that is called a shareholder. Many banks have shareholders directors, employee directors, workmen directors. Now we have another constant called women director. Every public limited company must have a women director.

And diversity, inclusion, a good concept brought in by Securities and Exchange Board of India to have a women director.

**(Refer Slide Time: 18:09)**

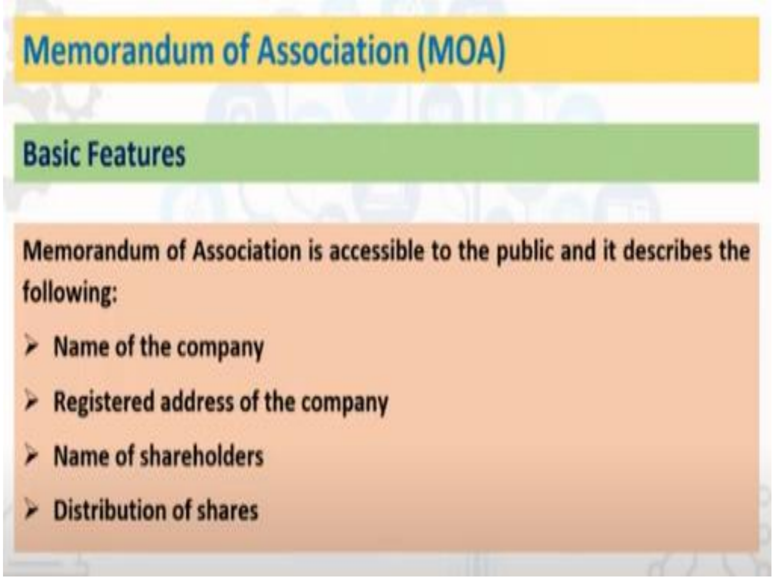

These are closely held private companies and nonprofit companies were family members rule the board. So here you do not find really much of a governance. It is more of a control. There is no separation of ownership and management.

**(Refer Slide Time: 18:31)**



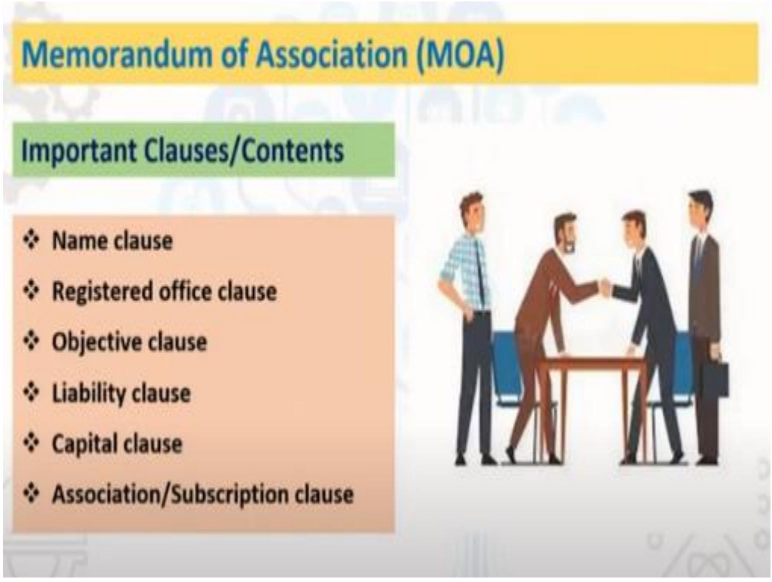

Responsibility of the Board of Directors. Elect the CEO. Compensation arrangement of the top officials. Making the annual budget. Setting rules and governance and policies. Not only setting, ensuring. Responsibility for performance.

**(Refer Slide Time: 18:51)**



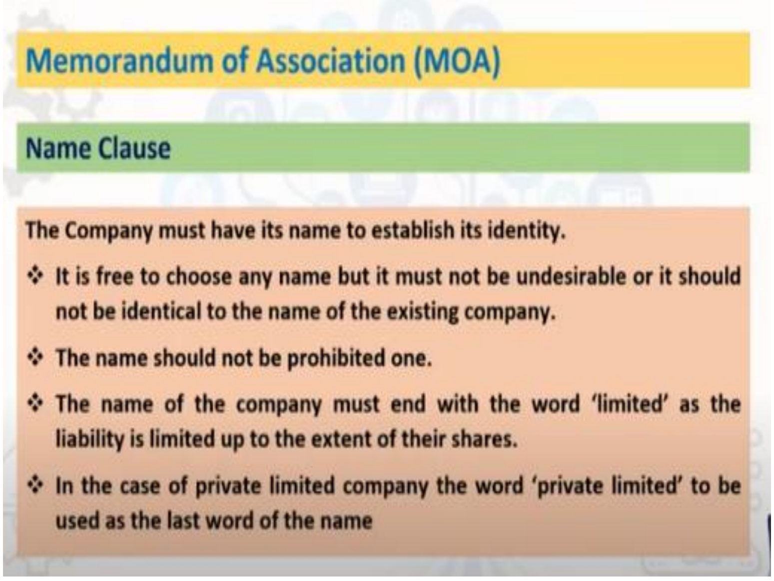

Members of Association is accessible to the public, Memorandum of Association and it contains those five clauses; name of the company, registered office of the company, objective of the company very purpose why the company is formed, the liability of the company, and the capital structure of the company. These are the basic five.

**(Refer Slide Time: 19:14)**




Name, registered office, objective, liability, capital clause.

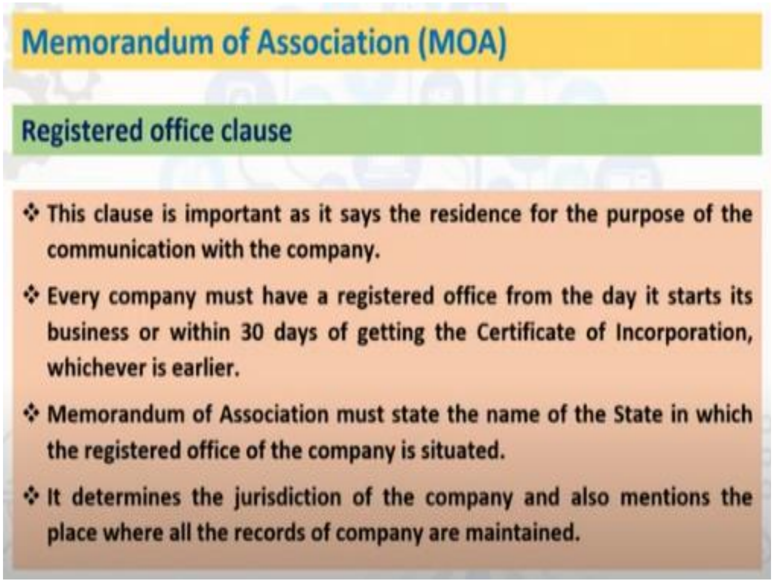
**(Refer Slide Time: 19:18)**




Name clause. The company can have any name bearing the names, which are already prevalent. Certain names are not allowed, like the India is best company or company number one. All those things which give a wrong impression to the investors are not allowed to be given. So, you need to have an approval of the name from the registrar of companies which is a controller of companies.

From him you have to have confirmation as regards the availability of the name.

**(Refer Slide Time: 19:47)**

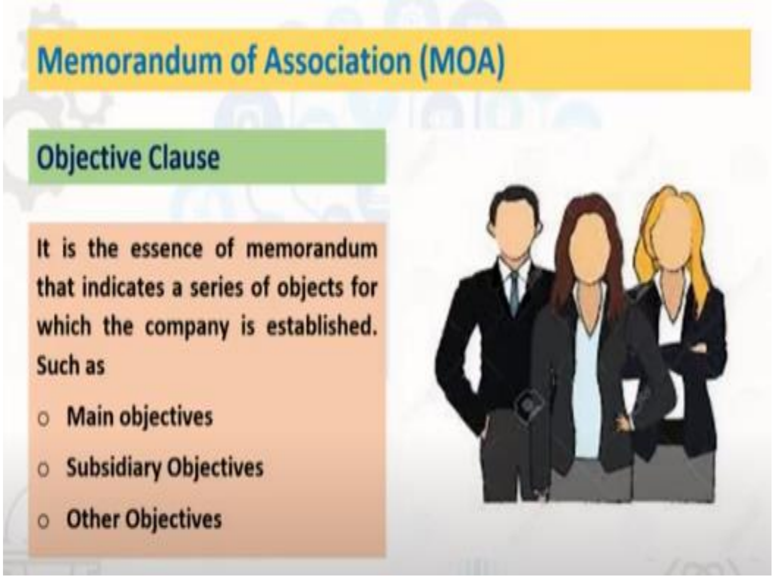



Registered office of the company is a very important place because the Annual General Meeting has to be held at a place city, town, or village where the registered office of the company is situated. Annual General Meeting cannot be held anywhere you want.

If your registered office is in Bhagalpur or your registered office is in Cochin, if your registered office is in Shillong, the Annual General Meeting has to be held in the city, town or village, where the registered office of the company is situated. And again, registered office is a place where if we do not find any other address a letter addressed to the registered office is enough, will be considered as compliance.

So, a company may have lot of regional offices, branch offices or different place for corporate office, but registered office is what is considered by law as the place where you can issue your notice, legal notice or any notice for that matter, and that will be considered as proper serving or proper communication.

**(Refer Slide Time: 20:55)**




Objective clause also is important to understand there are main objectives, subsidiary objectives and other objectives. Main objectives are most important. If your objective is to as I always give this example is to produce power and you go for paper without having to change the object laws, then you are doing something which is totally illegal.

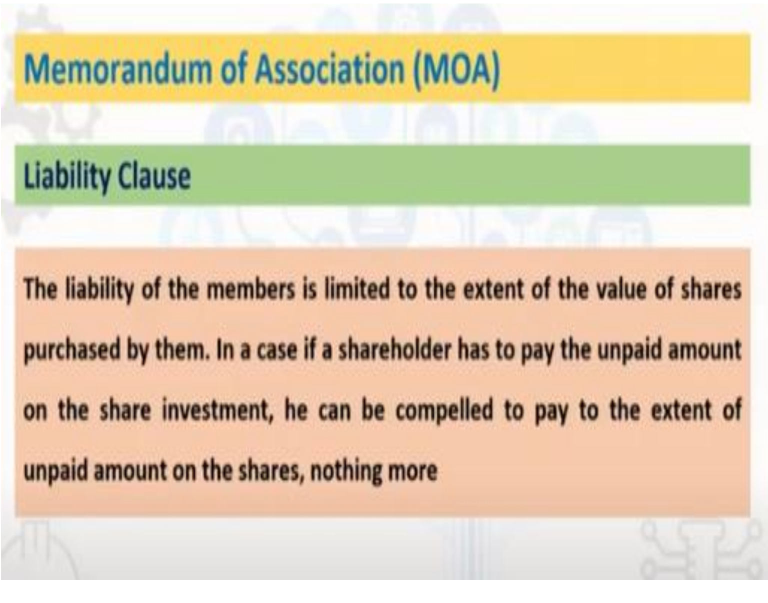
Whatever investment you have made, whatever you have done, if it is challenged in law, you will not get any realization because you have done a business beyond your power given by the board of directors or by the shareholders to you. So, you cannot overrule what is mentioned in the objective laws of the Memorandum of Association. Many companies do little bit of trading other than doing manufacturing.

On raw materials they do some trading. They buy extra raw materials and those raw materials are not required. So, they sell it to competition. Sometimes companies do it. You know buying huge quantities give you advantage of economies of scale. So, you buy and you store, your huge tanks you store and then little bit of the amount which becomes excess, you know this will become excess, you sell at a price to other competition. Competition also is happy because he cannot buy in bulk quantities. So, he buys in small quantities.

It is a win-win proposition no doubt and it is a business proposition also. But does it is it allowed in the Memorandum of Association? Can you do trading? If you are not, then if you have done it, and it is brought into the notice, you can be even issued a show cause notice for this. The profit may be one crore, two crores whatever it is, but liability come in huge numbers.

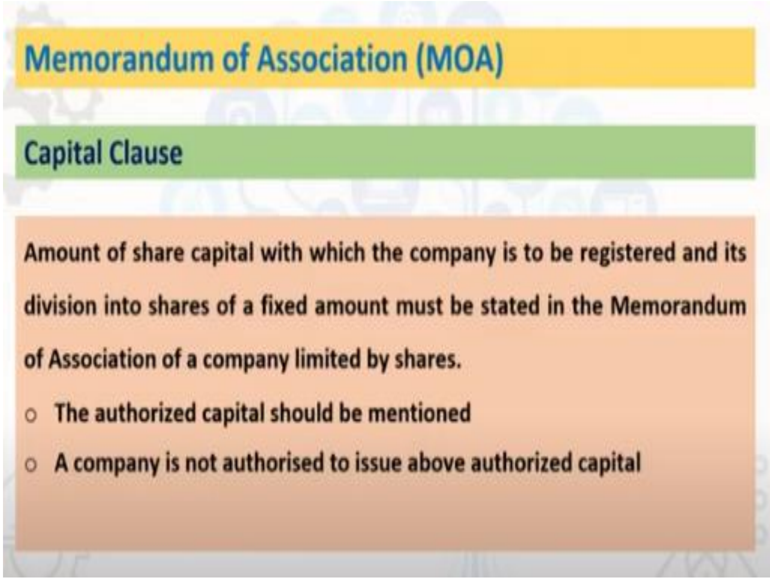
First the image of the company over and above. So very important to understand what I am allowed as per the objective clause to do.

**(Refer Slide Time: 22:36)**




Liability is limited. Limited to the number of shares you have subscribed. Liability is not unlimited in a company form of organization. A Memorandum of Association also contains that.

**(Refer Slide Time: 22:46)**



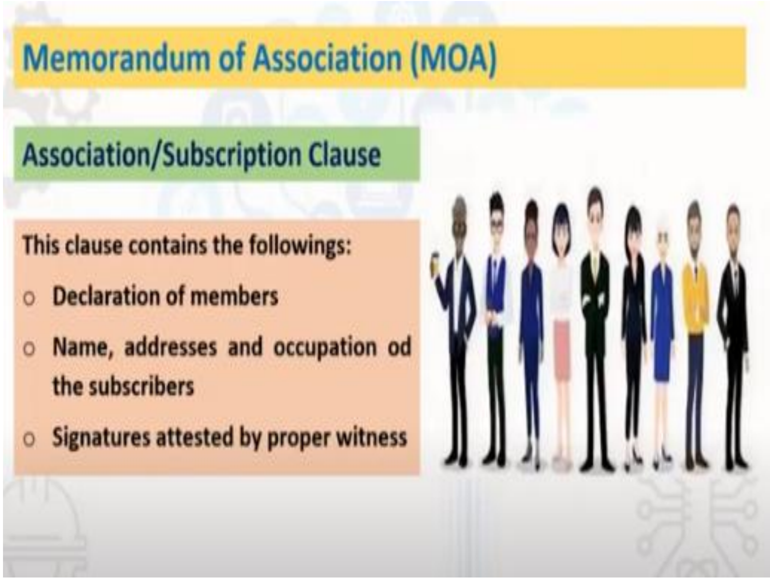

Capital, there are various types of capital. Authorized capital, issued and subscribed capital, paid up capital. Authorized capital is the capital that is allowed to be issued by you at any particular point of time, you cannot go beyond that. Who allows that? The shareholders allow that by passing a resolution. If 100 is authorized capital then issued and subscribed, you may have issued only 80.

Subscribed maybe 80 or maybe 70. And then out of 70 only paid up maybe 60. So, there may be a case of 100 authorized, 80 subscribed, 80 issued, 70 subscribed and 60 paid up. 100, 80, 70, 60. So different forms of capital then. However, for accounting angle what is important is to consider what is paid up and what has been subscribed. What is issued is immaterial, what is authorized is also immaterial.

Authorized is totally immaterial, because they is nothing to do because I have issued out of 100 only 80. Though I have issued 80, people have shown interest for only 70. So, 10 goes to for toss. So, 10 is my subscribed capital. 10 is what to be allotted, they have entered into an agreement, out of which he has paid only 60 which is a paid-up capital. So, 10 has to be paid again. 60 realized and 10 to be paid.

So, what is important for the company is the subscribed capital and the paid-up capital. Issued capital and authorized capital are only for knowledge's sake.

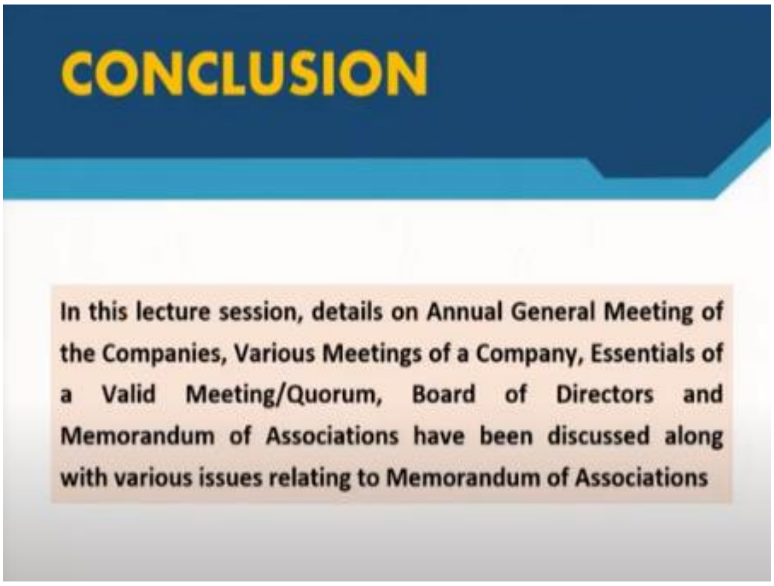
**(Refer Slide Time: 24:15)**




**(Refer Slide Time: 24:18)**


The various covers that we have taken from the books.

**(Refer Slide Time: 24:24)**




But as I mentioned that mostly my lecture sessions, I share my experience that I have for more than 25 years now in the corporate circle and being in corporate these are certain examples which come to me and I share these things more of out of my experience. Thank you.