Powers and Duties of shareholders under Companies Act

A company acts through two bodies of people – its shareholders and its board of directors. A shareholder, commonly referred to as a stockholder, is any individual, company, or institution that owns at least one share of a company's stock. Since shareholders are a company's owners, they receive the rewards of the company's successes in the form of increased stock valuation. For example someone who owns stock in Apple is a shareholder of Apple.

A person or corporation can become a shareholder of a company in three ways:

- By subscribing to the memorandum of the company during incorporation
- By investing in return for new shares in the company
- By obtaining shares from an existing shareholder by purchase, by gift or by will.

Ownership of the corporation entitles the shareholder to particular rights and privileges. However, the rights of a shareholder may be subject to the extent of ownership such that the individual who owns the majority of shares can exercise greater powers than the minority. Shareholders likewise have responsibilities that arise from their ownership of the corporation.

POWERS AND PRIVELEGES OF SHAREHOLDERS:

- **APPOINT OFFICERS:** It is the responsibility of the shareholders to appoint corporation officers to help in the running of the business. Shareholders elect directors during annual general meetings; these directors constitute a board that is charged with the responsibility for the overall management of the company. The shareholders also appoint external auditors who examine the corporation's books of accounts and deliver audited statements at the end of each financial year. The following directors can also be appointed in a board meeting in accordance with the articles of association:
    - Additional director, to hold office till the date of the company's next annual general meeting.
    - Alternate director, to act as an alternate for a director during his absence from India for a period of three months or more.

- Nominee director nominated by any institution under any law in force at the time or any agreement.
- Director appointed in the case of a casual vacancy in the office of any director appointed in a general meeting in a company. Such appointment needs shareholder approval in the next general meeting.

- **REMOVE A DIRECTOR:** Generally, a shareholders' ordinary resolution is required for the appointment and removal of directors under the Companies Act 2013. Shareholders also can bring legal action against director by the rules laid down in the Companies Act 2013. They are:

- Any act done by the director in any manner which is prejudicial against the affairs of the company.
- Any act done which is beyond the law or against the constitution.
- Fraud.
- When the assets of the company are being transferred at an undervalued rate.
- When there is a diversion of funds of the company.
- Any act done in a mala fide manner.

- **VOTING RIGHTS**: Shareholders also have the right to attend and vote at the annual general body meeting. Every company registered in India should comply with the provisions of the Companies Act 2013. It is mandatory for every Indian company to hold an annual general meeting once in every year. They take part in the deliberations of the General Shareholders´ Meeting and to vote as part of the corresponding decision-making processes, including the appointment of the internal institutions and individuals who, in accordance with the Law and the Corporate Statutes, they are entitled to elect and, if necessary, to have effective mechanisms at hand to be represented before said Meetings.
- **RIGHT TO CALL FOR GENERAL MEETINGS:** Shareholders have the right to call a general meeting. They have a right to direct the director of a company to call extraordinary general meeting. They also can approach the Company Law Board for the conduction of general body meeting, if it is not done according to the statutory requirements.
- **RIGHT TO PROXY REPRESENTATION:** A shareholder also has a right to appoint proxy on his behalf when he is unable to attend the meeting. Though the

proxy is not allowed to be included in the quorum of the meeting in case of voting, it is allowed by following a procedure mentioned in the Companies Act 2013.

- **CHALLENGING RESOLUTIONS**: A single shareholder holding a minimum of 10% of the company's paid-up share capital can challenge a resolution adopted by a general meeting on the grounds of oppression or mismanagement. Such a challenge can be brought about by filing a petition before the National Company Law Tribunal. A single shareholder, irrespective of his shareholding in the company, can also bring a derivative suit challenging a resolution adopted by a general meeting, on behalf of the company, if that resolution was detrimental to the interest of the company. However, such action by a shareholder is only maintainable if he has approached the court with "clean hands". The procedure for derivative action has been set out in the (Indian) Code of Civil Procedure 1908.
- **INFORMATION:** The management of a corporation ensures that proper books of accounts and records are maintained so that shareholders can inspect them to get an exact photo of the situation of the business. Shareholders have a right to be presented with audited financial statements and other documents disclosed in articles 446 and 447 of the Code of Commerce, within the fifteen (15) working days prior to the meetings of the General Shareholders´ Meeting, where the end-of-year financial statements are discussed. These statements are thereafter filed with the company's registry, where they can be readily accessed. Corporations also prepare annual reports that cover every aspect of the business to give the shareholders comprehensive information that they can use to make decisions about the future of the company.

- **OVERSIGHT:** Shareholders have a responsibility to oversee the proper management of the company. They have a duty to call the organizational management and board of directors to account for the performance of the company. Shareholders may ask questions, seek clarifications and even raise objections to the actions and decisions of the management. Shareholders usually address management during the annual general meeting but they can convene extraordinary and special meetings to discuss specific agenda relating to the management of the company.

- **AMENDMENT OF AOA OR MOA:** Amendment to article of association /memorandum of association can be done by means of convening a general meeting of the company. The shareholders of the company have the right to cast their votes regarding any amendments made to AOA/MOA.

- **TO RECEIVE DIVIDENDS**: Shareholders have a right to receive dividends as a part of the Company´s profits in a proportion equivalent to the number of shares that the holder owns, in accordance with the provisions set forth by Law and under the Corporate Statutes. Equity shares do not guarantee a fixed return and, in a liquidation scenario, equity shareholders are entitled to a return after all statutory and other pay-outs are made. Preference shareholders are given a preference with respect to payment of dividend and repayment in case of liquidation of the company.
- **TRANSFER OF SHARES**: Shareholders have a right to transfer or dispose of his shares, in accordance with legal provisions and the corporate statutes, as well as to know the methods for stock registration and the identity of the Company's main shareholders, in accordance with the law.
- **WINDING UP OF THE COMPANY:** Before the company is wound up the company has to inform all the shareholders about the same and also all the credit has to be given to all the shareholders.

ADDITIONAL RIGHTS:

- To make recommendations about the Company´s good corporate governance, through written requests filed before the Shareholders and Investors Service Office.
- To present proposals to the Board of Directors, jointly with other shareholders, under the terms defined hereunder.
- Be employed by the company.
- Ensure other shareholders do not compete with the company.
- 'Drag along' and 'tag along' in the event of a proposed sale.
- Confidentiality in respect of information provided by a shareholder.

SHAREHOLDERS DUTIES

Shareholders must act with loyalty towards the Company, abstaining from participating in actions or behaving in a manner that would put the Company's interests at risk, or which represent a disclosure of the Company's privileged information. A shareholder doesn't manage the day to day business of the company as this is handled by the board of directors.

However, decisions in relation to the company's goals and overall performance often require shareholder approval, which include (but are not limited to), the following:

- Changes to the constitution of the company
- Declaring a dividend
- Approving the financial statements of the company
- Winding up of the company by way of voluntary liquidation

Though it is not possible for shareholders to amend decisions made by directors or interfere with the running of the company, they can convene a general meeting and raise a motion to remove a director, or the full board, or they can amend the articles to restrict the director's powers.

Duties of directors are specified under various statutes. In addition, directors have a fiduciary duty towards the company and its shareholders. Some of their main duties under Companies Act 2013 include the following:

- Act in accordance with the company's articles of association.
- Act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, and the community and for the protection of the environment.
- Exercise their duties with due and reasonable care, skill and diligence and exercise independent judgement.
- Not get involved in a situation in which they may have a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.
- Not achieve or attempt to achieve any undue gain or advantage either to themselves or to their relatives, partners, or associates.
- Not assign their office.

Apart from the Companies Act 2013, directors are also liable for certain duties under employment and taxation laws in India.

Although directors do not have any express liability towards the shareholders of a company under Indian law, due to the nature of their fiduciary relationship with the shareholders, under certain limited circumstances directors may be held personally liable for losses suffered by shareholders.There is no provision for the limitation of liability of a director. However, a director will not be considered "an officer who is in default" under the Companies Act 2013

(CA 2013), and held liable for any contravention of a duty under the CA 2013, if he was not aware of the contravention, or objected to it.

CONCLUSION:

A shareholder is a part-owner of a corporation who acquires his interest by contributing capital towards the formation of the company or by buying its shares. Shareholders can be people or other corporations; since these are independent legal entities. Shareholders of a company enjoy a number of rights and powers in exchange for their investment in the company and also have responsibilities that arise from their ownership of the corporation. Shareholders thereby play an important role in the functioning of a company.