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UNIT 4:

THE COMPANIES ACT, 2013

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1. Nature of a Company

- The 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.**
- **It received the assent of President on 29th August, 2013 and came into force on 12th September,2013.(98 sections).**
- 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. Thus, this enactment seeks to make our corporate regulations more contemporary.

Applicability of the 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, 2003)
- 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.

DEFINITION AND MEANING OF A COMPANY [Sec. 2(20)]

STATUTORY DEFINITION

As per Sec. 2(20) of the Companies Act, 2013, 'company' means a company incorporated

- Under this Act or
- Any of the previous Companies laws

SOME OTHER DEFINITIONS

As defined by Justice Marshall

A company is an artificial person. It has no physical existence. It is invisible and intangible .It exists only in contemplation of law. Being a mere creation of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as accidental to its very existence.

As defined by Professor Haney

A company is an artificial person created by law having

- Separate identity
- Perpetual Succession

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- Common seal(Now optional as per latest amendment)

As defined by Justice Lindley

- A Company is as an **association of persons**,
- These person **contribute** money or money's worth to a common stock,
- The common stock so contributed is denoted in money and is called as the **Capital** of the company,
- The Persons who contribute the capital are called the **members** of the company,
- The Capital is employed in some common **trade or business**
- The Members **share the profit or losses** arising from such business.
- The Proportion of capital to which each member is entitled is called his **share.**
- The Shares are always **transferable** though the right to transfer is often more or less restricted.

Meaning of company

For the purpose of Companies Act, 'company' means a company incorporated under the Companies Act, 2013 or any Companies Act enacted prior to the Companies Act, 2013 [Sec. 2(20) of the Companies Act, 2013].

Thus, for the purpose of Companies Act, 2013, not every association of persons is a 'company', only such, association of persons shall be a 'company', which is registered under the Companies Act, 2013 or any previous Companies Act.

A Company is the most dominant (common) form of business organizations.

It means an association of persons duly registered under the Act, run by professional people (called as Board of directors). The persons who invest the funds in the company are called as members or shareholders.

CHARACTERISTICS/FEATURES OF A COMPANY

MAY 2004, May 2011

Explain clearly the concept of perpetual succession and Common seal in relation to a company incorporate under the companies Act 2013.

1.Incorporated Association	• A company is **formed and registered** by complying with the prescribed formalities prescribed under the Act.
2.Artificial Person	• A company is **not a natural person**. Consequently, a company cannot fall ill, or die or be declared as insolvent. • A company is **an artificial person**. • But it is **not a fictitious person**. A company does exist but only in the eyes of law. In other words, a company exists only in contemplation of law. • A company can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. • A company can sue others and be sued in its own name. • It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense. • As the company is an *artificial person*, **it can act only through some human agency, viz., directors.** The directors cannot control affairs of the company and act as its agency, but they are not the "agents" of the members of the company. The directors can either on their own or through the common seal (of the company) can authenticate its formal acts.
3.Separate Legal Entity	• A Company is legal person in the eyes of law distinct from its members. • A company is a separate person having its own rights and obligations.

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	(Discussed in detail later)
4.Perpetual Succession	• Death, insolvency, insanity etc. of any members does not affect the continuity of the Company. Thus, the life of the company does not depend upon the life of its members. • In case of death of a member, the shares held by him shall vest in his legal representative (or his nominee, if a valid nomination exists). Similarly, in case of insolvency of a member, the shares held by him shall vest in the official assignee or official receiver, as the case may be. This is called as transmission of shares. Thus, even in case of death or insolvency of all the members, the existence of the company is not affected since transmission of shares shall take place in respect of the shares held by them, and the company will have new members. • Since a company is an artificial person created by law, law alone can bring an end to its life. • **'Members may come and go, but the company goes on forever'. Thus a company never dies.**
5.Limited Liability	For the debts of the company, its creditors can sue it and not its members whose liability is limited to the unpaid amount on shares held by them or the guarantees provided by them to contribute on the winding up of the company, depending on the type of company.

Nature of company	**Extent of Liability of members**
Company limited by shares	Amount unpaid on the shares held by every member
Company limited by Guarantee	Amount guaranteed by every member.
Company limited by Guarantee having share capital	Aggregate of the amount unpaid on the shares held by a member and the amount guaranteed by him
Unlimited Company	Every member is liable to contribute to the assets of the company until all the debts of the company are paid in full.

6.Common Seal	• Common seal is the official signature of the Company. • Any document, on which the common seal is affixed, is deemed to be signed by the Company. • **(The Ministry of Corporate Affairs through the Companies (Amendment) Act, 2015 has made the provisions related to common seal as optional w.e.f. 29th May, 2015.)** • This amendment provides that the documents which need to be authenticated by a common seal will be required to be so done, only if the company opts to have a common seal. • **In case a company does not have a common seal, the authorization shall be made by <u>two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary</u>.**
7.Transferability Shares	• Shares are **movable property** (<u>Sec. 44 of the companies Act, 2013</u>) • Shares are **transferable** in the manner provided in the Articles (Sec. 44 of the Companies Act, 2013). • **In a Private company** - the right to transfer the shares is restricted. • **In a Public company –** shares are **freely transferable.**
8. Ownership separate from management	• **The members do not participate in the day-to-day affairs of the Company.** • The management of the company lies in the hands of elected representatives of members, commonly called as **Board of Directors** or directors or simply the board. • The directors are appointed as well as removed by the members. Thus, the Act has

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	ensured the ultimate control of members over the company.
9.Separate property	• A Company can own and enjoy property in its own name. • Members are not owners or co-owner of the company's property. • Members have no insurable interest in the property of the company. **Macaura v. Northern Assurance Co. Ltd.** • M owned almost all the shares in a company. • The timber belonging to the company was insured in the name of M. • The timber was destroyed by fire. • The insurance claim was rejected since M had no insurable interest.

SEPARATE LEGAL ENTITY

Meaning

- A company is a legal entity separate from its members.
- It is known by its own name has rights and liabilities of its own.
- **Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company**. The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors. In other words, they enjoy corporate insulation. Thus, the shareholders are protected from the acts of the company

Salomon v Salomon & Co. Ltd.

- **Transfer of sole proprietorship business to company.** Mr. Salomon was carrying on the business of boot manufacturing as a sole proprietor. He incorporated a company named Salomon & Co. Ltd. for the purpose of taking over this business.
- **Payment of purchase consideration by the company**

(a) Total consideration £38,872
(b) Cash paid £8,872
(c) Fully paid shares of £1 each issued to Salomon £20,000
(d) Secured Debentures issued to Salomon £10,000

- **Constitution of Salomon & Co. Ltd.** The 6 members of the family of Mr. Salomon were issued one share each. Salomon was the managing director of Salomon & Co. Ltd. Salomon & Co. Ltd. is commonly called as 'one man company'.
- **Inability to pay debts by the company in liquidation:** In the course of business, the company borrowed from creditors to the extent of £ 7000. Due to trade depression the company ran into financial difficulties and eventually went into liquidation. The assets realized only £ 6,000,which were insufficient to discharge the debentures(held entirely by Saloman himself) and thus nothing was left for the unsecured creditors.
- **Contention of unsecured creditors - one man cannot owe money to himself.** The unsecured creditors contended that Salomon was carrying on business in the name of Salomon & Co. Ltd. Thus, Salomon Co. was agent for S.
- **Decision of the Court:** it was held that Salmon & Co. Ltd. was a real company fulfilling all the legal requirements. It had an identity different from its members. The business belonged to the company and not to Salomon and therefore the secured debentures(held by Salomon) were to be paid in priority to unsecured creditors. **It was held by Lord Mac Naughten:** *"The Company is at law a different person altogether from the subscribers to the memorandum, and though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers, and the same hands receive the profits, the*

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company is not in law the agent of the subscribers or trustees for them. Nor are the subscribers, as members, liable, in any shape or form, except to the extent and in the manner provided by the Act."

Lee v Lee's Air Farming Ltd.

- Lee was qualified pilot.
- He virtually owned all the shares and he was the sole governing director.
- He was also receiving salary from the company for being a chief pilot under the company.
- He was killed in an air accident while working for the company.
- As the workers were insured, workers were entitled for compensation on death or injury.
- The question for consideration before the court was whether while holding the position of sole governing director, could Lee also be an employee /worker of the company.
- It was held that Lee's widow was entitled to compensation. Mere fact that someone was the director of the company was no impediment to his entering into a contract to serve the company.

Implications of the rule of 'Separate legal entity'

- There can be a transfer of property from a member to the company and vice versa.
- A person can be a member, director, employee and creditor of the company at the same time.
- A company has the rights and duties of its own.
- A company is not an agent of members or directors.

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LIFTING OR PIERCING OF CORPORATE VEIL

Meaning of corporate veil

By fiction of law **a company is seen as a distinct entity,** yet in reality it is an association of person who are in fact the beneficial owners of all the corporate property. This fiction is created by a fictional veil, i.e., the corporate veil. **Only a company is liable** for the acts (and defaults) done in the name of the company even though members, directors, or any officer or employee of the company had acted on behalf of the company.

This principle of differentiating the legal entity of the company from that of its shareholders may be referred to as **'the veil of incorporation'**.

Meaning of lifting or Piercing the corporate veil

Lifting of corporate veil means **ignoring the separate identity** of a company. It means **disregarding the corporate personality and looking behind the real persons who are in the control of the company.**

Lifting is permissible only in exceptional cases

- Lifting of corporate veil is permissible only if -
- It is permitted by the statute; or
- There is a clear evidence of abuse of the device of incorporation.
- The **court has the discretion** whether or not to lift the corporate veil.
- **It is not possible to lay down a specific set of circumstances in which corporate veil may be lifted.**
- Under certain exceptional circumstances the courts may disregard or pierce the corporate veil of a company and hold persons controlling the affairs of the company liable for the acts of the company.
- Where the legal entity of a corporate body is misused for fraudulent and dishonest purposes, the individuals concerned will not be allowed to take shelter behind the corporate entity of the company

The circumstances or the cases in which the Courts have disregarded the corporate personality of the company are:

Protection of Revenue (To prevent evasion of taxation)	The Courts may ignore the corporate entity of a company where it is used for tax evasion**.** **Re, Sir Dinshaw Maneckjee Pettit** ▪ An assessee was receiving huge dividend and interest income on certain investment. ▪ He formed four private companies. The whole of the investments were transferred to these private companies. ▪ The interest and dividend received by these companies were within the exempted limits under the Income Tax Act of that time. ▪ These companies did not have any business or assets except these investments. ▪ The income received on investment by these companies was diverted to the assessee in the form of pretended loans, which were never paid back by him. ▪ The court held that the only purpose of incorporating these private companies was to evade taxes. Each of these companies was a sham. Therefore, income earned by all these private companies was treated as income of the assessee.
Prevention of fraud or improper conduct	• The legal personality of a company may also be disregarded in the interest of justice where the machinery of incorporation has been used for some fraudulent purpose like defrauding creditors or defeating or circumventing law. • Professor Gower has rightly observed in this regard that the veil of a corporate body will be lifted where the '**corporate personality is being blatantly used as a cloak for fraud or improper conduct'.** **Gilford Motor Co. Ltd. v Horne** ▪ An employed entered into a contract with his employer that he will not solicit the customers of the employer after leaving the employment. ▪ After living the employment, the employee incorporated a company. He, his wife and one other person were the only members of this company. ▪ The company started soliciting the customers of the employer. ▪ The court held that the purpose of formation of the company was to avoid a legal obligation arising from a contract which was not permissible. ▪ Therefore the company was restrained from soliciting the customers of employer.
Determining the character of the Company - whether an enemy company	A company may assume an enemy character when persons in de facto control of its affairs are residents in an enemy country. In such a case, the Court may examine the character of persons in real control of the company and declare the company to be an enemy company**.** **Daimler Co. Ltd. Vs Continental Tyre & Rubber Co. Ltd.** ▪ A company was formed in England for the purpose of selling tyres made by a German company. The German company virtually held the entire share capital of the English company. All the directors were German residents. ▪ During the First World War, the English company commenced an action to recover a trade debt from another English company. ▪ It was held that the corporate personality of the company be ignored and the persons in the ultimate control of the company shall be considered. Since the persons controlling the company were enemies, the suit was not maintainable.
To avoid a legal obligation	Where the courts find that there is avoidance of welfare legislation, it will be free to lift the corporate veil. Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction*:* The facts of the case are that Here a company created a subsidiary and transferred to it, its investment holdings in a bid to reduce its liability to pay bonus to its workers. Thus,

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	the Supreme Court brushed aside the separate existence of the subsidiary company. The new company so formed had no assets of its own except those transferred to it by the principal company, with no business or income of its own except receiving dividends from shares transferred to it by the principal company and serving no purpose except to reduce the gross pro_t of the principal company so as to reduce the amount paid as bonus to workmen. **Workmen of Associated Rubber Industry Ltd. v Associated Rubber Industry Ltd.** ▪ "A Limited" purchased shares of "B Limited" by investing a sum of Rs.4,50,000. The dividend in respect of these shares was shown in the profit and loss account of the company, year after year. It was taken into account for the purpose of calculating the bonus payable to workmen of the company. ▪ Sometime in 1968, the company transferred the shares of B Limited, to C Limited a subsidiary, wholly owned by it. Thus, the dividend income did not find place in the Profit & Loss Account of A Ltd., with the result that the surplus available for the purpose for payment of bonus to the workmen got reduced. ▪ The subsidiary company did no business, and had no assets except the investments transferred to it. ▪ Looking at the purpose of formation of the subsidiary, the court lifted the corporate veil. It was held that the subsidiary was formed merely for the purpose of reducing the liability of bonus payable under the Bonus Act. Therefore the profits earned by the subsidiary company were held to be the profits of the holding company.
Formation of subsidiaries to act as agents	A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company. **Merchandise Transport Limited vs. British Transport Commission**: • A transport company wanted to obtain licences for its vehicles, but could not do so if applied in its own name. • It, therefore, formed a subsidiary company, and the application for licence was made in the name of the subsidiary. • The vehicles were to be transferred by the subsidiary company. Held, the parent and the subsidiary were one commercial unit and the application for licences was rejected
In quasi-criminal cases	The courts pierce the corporate veil in quasi-criminal cases in order to look behind the legal person and punish the real persons who have violated the law.

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Nov. 2004

Some of the creditors of M/s Get Rich Quick Ltd. have complained that the company was formed by the promoters only to defraud the creditors and circumvent the compliance of legal provisions of the companies Act 2013 .In this context they seek your advice as to the meaning of corporate veil and when the promoters can be made personally liable for the debts of the company

Answer:

After incorporation, the company in the eyes of law becomes a different person from the shareholders who have formed the company. The company has its own existence and as a result the shareholders cannot be held liable for the acts of the company even though they hold the entire share capital of the company. This recognition of the company as a separate legal entity and being liable for its own acts and liabilities is known as the "Corporate Veil".

However, under certain exceptional circumstances the courts lift or pierce the corporate veil by ignoring the separate entity of the company and the promoters and other persons who have managed and controlled the affairs of the company. Thus, when the corporate veil is lifted by the courts, the promoters and persons exercising control over the affairs of the company are held personally liable for the acts and debts of the company.

In the following circumstances, corporate veil can be lifted by the courts and promoters can be held personally liable for the debts of the company.

i. Trading with enemy country.
ii. Evasion of taxes.
iii. Forming a subsidiary company to act as its agent.
iv. In quasi criminal cases
v. Device of incorporation is adopted to defraud creditors or to avoid legal obligations

May 2008

ABC Pvt. Ltd. company is a private company having five members only. All the members of the company were going by car to Mumbai in relation to some business. An accident took place and all of them died. Answer with reason, under the companies Act, whether existence of the company has also come to the end?

Answer:

Death of all members of a Private Limited Company, Under the Companies Act, 2013:

The most distinguishing feature of a company is its being a separate entity from the shareholders and promoters who form it. This lends stability and perpetuity to the company form of business organization. In short, a company is brought into existence by a process of law and can be terminated or wound up or brought to an end only by a process of law. Its life is not impacted by the death, insolvency or retirement of any or all shareholder(s) or director(s).

The provision for transferability or transmission of the shares helps to preserve the perpetual existence of a company by allowing the constitution and identity of shareholders to change. In the present case, ABC Pvt. Ltd. does not cease to exist even by the death of all its shareholders. The legal process will be for the successors of the deceased shareholders to get the shares registered in their names by way of the process which is called "transmission of shares". The company will cease to exist only when it is wound up by a due process of law.

Therefore, even with the death of all members (i.e. 5), ABC (Pvt.) Ltd. does not cease to exist.

June 2009

F, an assessee was a wealthy man earning huge income by way of dividend and interest. He formed three private companies and agreed with each to hold a bloc of investment as an agent for it. The dividend and interest income received by the company was handed back to F as a pretended loan. This way of F divided his income into three parts in a bid to reduce his tax liability. Decide, for what purpose there companies were established? Whether the legal personality of all the three companies may be disregarded?

Answer:

The House of Lords in *Salomon Vs Salomon & Co. Ltd.* laid down that a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company. But under certain circumstances the separate entity of the company may be ignored by the courts. When that happens, the courts ignore the corporate entity of the company and look behind the corporate façade and hold the persons in control of the management of its affairs liable for the acts of the company. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee.

The problem asked in the question is based upon the aforesaid facts. The three were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the assessee himself.

Therefore, the whole idea of Mr. F was simply to split his income into three parts with a view to evade tax. No other business was done by the company.

The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried on no other business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to hand them over to the assessee as pretended loans. The same was upheld in *Re Sir Dinshaw Maneckji Petit* AIR 1927 Bom.371 and *Juggilal vs. Commissioner of Income Tax* AIR (1969) SC (932).

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2. Kinds of Companies

CLASSIFICATION OF COMPANIES

1. On the basis of Members	(a) Private Company [Sec.2(68)] (b) Public Company [Sec.2(71)]
	A private company may be – (i) One person company [Sec. 2(62)] (ii) Small company [Sec. 2(85)] (iii) Other than 'one person company 'and 'small Company '
2. On the basis of Liability	(a) Limited Company (b) Unlimited Company[Sec. 2(92)
	A company in which the liability of members is unlimited is termed as 'limited company'. A limited company may be – (i) 'Company Limited by guarantee' [Sec. 2(21)] (ii) 'Company Limited by shares' [Sec. 2(22)]
	A company in which there is not any limit on liability of members is termed as 'Unlimited company
3. On the basis of control	(a) Holding Company [Sec.2(46)] (b) Subsidiary Company [Sec.2(87)] (c) Associate Company [Sec.2(6)]
4. On the basis of access to capital	(a) Listed company [Sec. 2(52)] (b) Unlisted company
5. Other companies	(a) Foreign company [Sec. 2(42)] (b) Government company [Sec.2(45)] (c) Companies with charitable objects etc. (Non-profit companies) (Sec. 8) (d) Dormant company[Sec 455] (e) Nidhi Companies.[Sec 406] (f) Public financial Institutions.[Sec 2(72)]

CLASSIFICATION OF COMPANIES BASED ON NUMBER OF MEMBERS

PRIVATE COMPANY [Sec. 2(68)]

'Private company' means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, -

i. restricts the right to transfer its shares;
ii. except in case of One Person Company, limits the number of its members to 200:

Provided that where 2 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 -

a. persons who are in the employment of the company; and
b. 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

(iii)Prohibits any invitation to the public to subscribe for any **securities** of the company.

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Analysis of definition of private company

Restrictions in articles

The articles of a private company must contain the following three restrictions:

a. The right to transfer the shares shall be restricted.

The articles of a private company must provide restrictions on transferability of shares. However, the articles cannot impose prohibition on transferability of shares. In other words, there cannot be a complete ban on transfer of shares.

The restrictions must be applied uniformly on all the members of the company. In other words, the articles must not discriminate between the members regarding their right to transfer the shares.

b. The number of members shall be limited to 200. While computing the number of members for this purpose, following provisions shall apply:
   i. Joint holders of shares shall be counted as one member only.
   ii. The employees of the company, who became members by virtue of their employment, shall not be considered while counting the limit of 200 members.
   iii. The employees of the company, who became members by virtue of their employment, shall not be counted, even though they have, as on date, ceased to be the employees of the company. **In other words, ex-employees (or former employees) shall not be considered while counting the limit of 200 members.**
c. The company is prohibited from making any invitation to public to subscribe for any securities. In other words, a private company shall not make a public issue of its securities.

PUBLIC COMPANY [Sec. 2(71)]

'Public company' means a company which -

i. is not a private company; **and**
ii. 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 a public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

Analysis of definition of public company

a. 'Public company' means a company which is not a private company.
b. 'Public company' means a company which is a private company which is a subsidiary of a company which is not a private company.

In other words, subsidiary of a public company is always a public company.

Seven or more members are required to form the public company. There is no limit on the maximum numbers of members.

EXEMPTIONS AND PRIVELEGES AVAILABLE TO PRIVATE COMPANIES

A private company enjoys some privileges and exemptions, which a public company is deprived of. These are as follows:

1. Two or more persons may form a private company as against seven persons in case of public company [Section 3(1)(b)].
2. A private company need not have more than 2 directors as against minimum 3 in case of a public company[Section 149]
3. A private company is not required to have independent directors [Section 149 (4)].
4. A private company is exempt from the provisions of having an audit committee constituted by the Board of Directors [Section 177(1)]

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5. A private company is exempt from the constitution of a Nomination & Remuneration Committee [section 178(1)], as well as Stakeholders Relationship Committee [section 178 (5)].

It should be noted that as the number of members of a private company has been raised from 50 to 200, some exemptions have been withdrawn due to higher number of members

Differences between Private Company and Public Company

Following are the main points of distinction between a private company and a public company:

1. **Minimum number of members:** In case of a private company minimum number of persons to form a company is 2 while it is 7 in case of a public company.
2. **Maximum number of members:** In case of private company, maximum number must not exceed 200 whereas there is no such restriction on the maximum number of members in the case of a public company.
3. **Transferability of Shares:** As per Sec 44, the shares of any member in a company shall be movable property transferable in the manner provided by the articles of the company. In case of private company, by its very definition, articles of a private company have to contain restrictions on transferability of shares.
4. **Prospectus:** A private company cannot issue a prospectus while a public company may, through prospectus; invite the general public to subscribe for its securities.
5. **Minimum number of Directors**: A private company must have atleast 2 directors, whereas a public company must have at least 3 directors.
6. **Exemptions**:A private company has been granted exemptions from several provisions of this Act(eg.appointment of independent directors,constitution of audit committee,Nomination & remuneration committees),whereas as no such exemptions are available to a public company.

ONE PERSON COMPANY [SEC. 2(62)]

- 'One person company' means a company which has **only one person as a member**.
- Such a company is described **under section 3(1)(c) as a private company**.
- 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.

Provisions applicable

- 'One person company' is also a private company.Thus all the provisions as are applicable to a private company shall also apply to "One person company".
- However certain provisions of the Act and the rules are applicable only to 'One Person company 'and not to all private companies.
- To conclude except for the specific provisions applicable only to 'One Person Company ' all the provisions of the act and the rules as are applicable to a private company shall equally apply to 'One Person Company'

Specific provisions applicable to 'One Person company'

- In case the company proposed to be formed is a 'One Person Company' the memorandum must be subscribed to by 1 person.
- In the case of a One Person Company, the memorandum shall state the name of a person ,who in the event of death of subscriber ,shall become the member of the company .
- In case of One Person Company, the words 'One Person Company' shall be mentioned in brackets below the name.
- Every private company shall have a minimum of 2 members. However 'One Person Company' shall have 1 member only.

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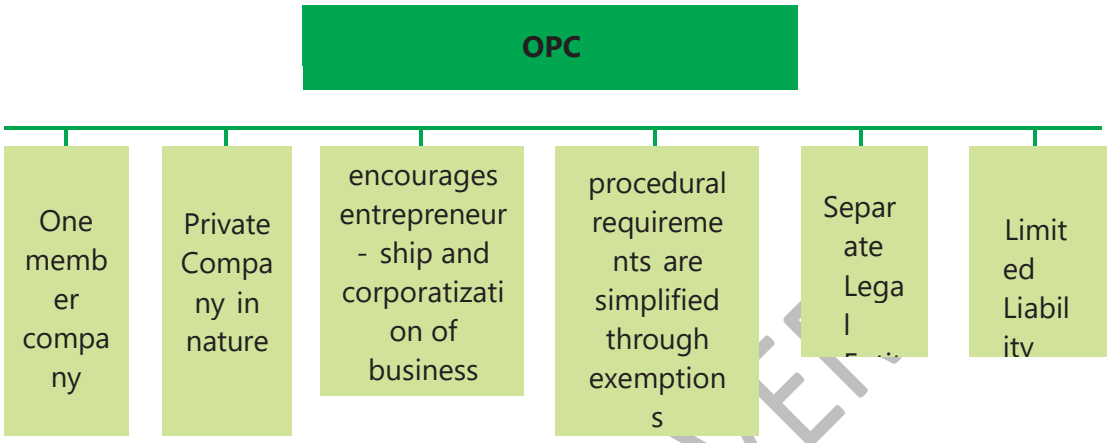
- The number of members shall exceed 200 in case of a private company .However in 'One Person Company' shall have 1 member only.
- Every private company shall have a minimum of 2 directors. However, every 'One Person Company' shall have a minimum of 1 director.

Provisions relating to incorporation of One Person Company



Law with respect to formation of OPC provides that –

• The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's **death or his incapacity to contract**, become the member of the company.

• The other person whose name is given in the memorandum shall give **his prior written consent** in prescribed form and the **same shall be filed with Registrar of companies** at the time of incorporation.

• Such other person may be given the **right to withdraw his consent**.

• The member of OPC may at any time **change the name of such other person** by giving **notice to the company** and **the company shall intimate the same to the Registrar.**

• Any such change in the name of the person **shall not** be deemed to be **an alteration of the memorandum**.

• Only **a natural person** who is **an Indian citizen** and **resident in India** (person who has stayed in India for a period of not less than **182 days** during the immediately preceding **one calendar year**)-

- shall be eligible to incorporate a OPC;
- shall be a nominee for the sole member of a OPC.

• **A natural person shall not be member of more than a One person company at any point of time and the said person shall not be a nominee of more than a One person company.**

• Where a natural person being member in OPC becomes member in another such company by virtue of his being a nominee in that OPC, **such person shall meet the eligibility criteria (as given in point above) within a period of 182 days.**

• **No minor** shall become **member or nominee of the OPC or can hold share with beneficial interest**.

• Such Company **cannot be incorporated or converted into a company under section 8 of the Act**. Though it may be converted to private or public companies in certain cases.

• Such Company **cannot carry out Non-Banking Financial Investment activities** including investment in securities of anybody corporate.

• OPC **cannot convert voluntarily** into any kind of company **unless two years** have expired from the date of incorporation, except where the paid up share capital is increased beyond **fifty lakh rupees** or its **average annual turnover during the relevant period exceeds two crore rupees.**

Compulsory conversion:

(a) A One Person Company shall, cease to be entitled to continue as a One Person Company, if —

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(i) Its paid up share capital exceeds Rs. 50 lakh; or

(ii) Its average annual turnover during the relevant period exceeds Rs. 2 crore.

Relevant period means the period of immediately preceding 3 consecutive financial years

(b) Within 6 months, such One Person Company shall be required to convert itself, in accordance with the provisions of Sec. 18, into —

(i) a private company with a minimum of 2 members and 2 directors; or

(ii) a public company with at least 7 members and 3 directors.

• If One Person Company or any officer of such company contravenes the provisions related to the formation and nomination by the subscriber/member of OPC, the OPC or any officer of such company shall be punishable with fine which may extend **to 5000 rupees** and with a further fine which may extend to **500 rupees** for every day after the first during which such contravention continues.

SMALL COMPANY [Sec. 2(85)]

Small company given under the section 2(85) of the Companies Act, 2013 which means a company, **other than a public company** which satisfies **both** the following conditions :

(i) its paid-up share capital does not exceed

- **Rs. 50 lakhs**; or
- Such higher amount as may be prescribed (not being more than **Rs. 10 crore**).

(ii) Its turnover(as per the profit and loss account for immediately preceding financial year)does not exceed

- **Rs. 2 crore** or
- Such higher amount as may be prescribed (not being more than **Rs. 100 crore**).

Certain companies not to be "small companies"

A company shall not be a small company, if

(i) It is a public company ;or

(ii) It is a holding company of any company ;or

(iii) It is a subsidiary company of any company

(iv) It is a company registered/s 8 (viz. it is a non profit company);or

(v) It is a company or a body corporate governed by any special Act .

CLASSIFICATION OF COMPANIES BASED ON LIABILITY

Company limited by shares [Sec. 2(22)]

- 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

Company limited by guarantee [Sec. 2(21)]

- 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.

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Similarities and differences between the Guarantee Company and the Company having share capital:
The **common features** between a 'guarantee company' and 'share company' are legal personality and limited liability. In the latter case, the member's liability is limited by the amount remaining unpaid on the share, which each member holds. Both of them have to state in their memorandum that the members' liability is limited.

However, the **point of distinction** between these two types of companies is that in the former case the members may be called upon to discharge their liability only after commencement of the winding up and only subject to certain conditions; but in the latter case, they may be called upon to do so at any time, either during the company's life-time or during its winding up.
It is clear from the definition of the guarantee company that it does not raise its initial working funds from its members. Therefore such a company may be useful only where no working funds are needed or where these funds can be held from other sources like endowment, fees, charges, donations, etc.

Unlimited company [Sec. 2(92)]

- Section 2(92) of the Companies Act, 2013 defines such 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. In case the company has a share capital the articles of association must state the amount of share capital and the amount of each share.
- So long as the company is a going concern the liability on the shares is the only liability which can be enforced by the company. The creditors can institute proceedings for winding up of the company for their claims. The official liquidator may call the members for their contribution towards the liabilities and debts of the company, which can be unlimited.

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GUARANTEE COMPANY VIS-A-VIS COMPANY HAVING SHARE CAPITAL

Question:
What is meant by a guarantee Company? State the similarities and dissimilarities between a guarantee Company and a Company having Share Capital.

Basis of distinction	Guarantee Company	Company having Share Capital
(a) Meaning-Requirements as to memorandum	If the memorandum states that the liability of members shall be limited to the amount that they have respectively guaranteed to pay to the company in the event of winding up of the company, the company is said to be a 'company limited by guarantee'.	If the memorandum states that the liability of members shall be limited to the unpaid amount on the shares held by them, the company is said to be a 'company limited by shares'.
(b) Share capital	A company limited by guarantee may or may not have share capital.	Such a company must have share capital.
(c) Quantum of liability	Every member shall be liable to pay the amount that he has guaranteed to pay to the company in the event of winding up of the company. Also, if the company has a share capital, the members are liable to pay unpaid calls on shares in addition to the guaranteed amount.	Every member shall be liable to pay the unpaid amount on the shares held by him.
(d) When does 'liability arise?	The liability of a member shall arise only in the event of winding up of the company, i.e., in no	The liability of a member shall arise when a valid call is made by the

	case he can be compelled to pay the guaranteed amount during the lifetime of the company.	company, i.e. during the lifetime of the company or in the event of winding up of the company.
(e) Suitability	A guarantee company (having no share capital) is suitable in those Cases where initial capital requirement is not required or where funds can be arranged from other sources like endowment, fees charges, donations or from borrowings.	These companies are suitable in those cases where initial capital is requirement is high and sufficient financial resources cannot be arranged by way of borrowings.

Similarities: The common features between a "guarantee company" and the "company having share capital" are legal entity and limited liability. In case of a company limited by shares, the liability of its members is limited to the amount remaining unpaid on the shares held by them. Both these type of companies have to state this fact in their memorandum that the members' liability is limited

ON THE BASIS OF CONTROL

HOLDING AND SUBSIDIARY COMPANIES (Sec. 2(46) and 2(87))

'Holding and subsidiary' companies are relative terms.

Definition of 'Holding company'

'Holding company', in relation to one or more other companies, means a company of which such companies are subsidiary companies [Sec. 2(46)].

'Explanation.—For the purposes of this clause, the expression "company" includes any 'body corporate;'

Definition of 'Subsidiary company' or 'subsidiary'

As per **Sec. 2(87)** of the Companies Act, 2013, 'subsidiary company' or 'subsidiary', in relation to any other company (that is to say the holding company), means a company in which the holding company-

(i) **controls** the composition of the **Board of Directors**; or

(ii) 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.**

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation: For the purposes of this clause, -

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) 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;

(c) the expression 'company' includes any body corporate;

(d) 'layer' in relation to a holding company means its subsidiary or subsidiaries.

Definition of 'total share capital'

As per Clause (r) of Sub-Rule (1) of Rule 2 of the Companies (Specification of definitions details) Rules, 2014, Total Share Capital', for the purposes of clause (87) of Sec. 2, means the aggregate of-

(a) equity share capital; and

(b) **Convertible** preference share capital.

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ANALYSIS OF DEFINITION:

Section 2(87) of the Companies Act, 2013 envisages the existence of subsidiary companies in different circumstances. It may be that by acquiring sufficient share capital of a company sufficient control may be obtained over that company to enable control in the composition of board of directors. But it is also possible to obtain such control in regard to the composition of the board without making such an investment in equity capital of the company. **Such a control may be by reasons of an agreement such as where one company may agree to advance funds to another company and in return may, under the terms of an agreement surrender control over the right to appoint all or a majority of the board of directors.**

The first of the cases envisaged in section 2(87)(i) is the case where a control is obtained by a company in the matter of composition of the board of directors of another company. That would be sufficient to constitute the former as holding company and the other as subsidiary.

The second type of case given in section 2(87)(ii) is where more than half of the total share capital is held by another company. By virtue of such holding that other company becomes a holding company and the one whose shares are so held becomes a subsidiary company. That other company is also a subsidiary of the holding company of the subsidiary.

It may be noted that the phrase **"controls the composition of board of directors'** is to be read in accordance with and only in accordance with Sub-section (87) of Section 2 of the Companies Act, 2013 and that sub-section conceives of control if but only if, **the company which claims control can appoint or remove the holders of all or a majority of the directorships by the exercise of some power exercisable by it at its discretion without the consent or concurrence of any other person.**

Status of private company, which is subsidiary to public company: In view of Section 2(71) of the Companies Act, 2013 a Private company, which is subsidiary of a public company shall be deemed to be public company for the purpose of this Act, even where such subsidiary company continues to be a private company in its articles.

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.

May 1996

The paid-up share capital of XYZ (Private) Company Limited is Rs. 20 lakhs consisting of 2,00,000 Equity shares of Rs. 10 each fully paid-up. ABC (Private) Limited and its subsidiary DEF (Private) Limited are holding 60,000 and 50,000 shares respectively in (Private) Company Limited.

Examine with reference to the provisions of the Companies Act, whether XYZ (Private) Company Limited is a subsidiary of ABC (Private) Limited. Would your answer be different, if DEF (Private) Limited is holding 1,10,000 shares in XYZ (Private) Company Limited and no shares are held by ABC (Private) Limited in XYZ (Private) Company Limited?

Answer

Total ESC of XYZ (Private) Co. Ltd.	– is Rs. 20,00,000.
ESC held by ABC (Private) Ltd. in XYZ (Private) Co. Ltd.	– Is Rs. 6,00,000
ESC held by DEF (Private) Ltd. in XYZ (Private) Co. Ltd.	– is Rs. 5,00,000.

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ESC held by ABC (Private) Ltd. in XYZ (Private) Co. Ltd.	– is Rs. 11,00,000, since for the purpose of determining holding-subsidiary relationship, the share capital held in XYZ (Private) Ltd. by ABC (Private) Ltd. on its own (viz. Rs. 6,00,000) together with share capital held in XYZ (Private) Ltd. by its Subsidiary DEF (Private) Ltd. (viz. Rs. 5,00,000) shall be considered.
XYZ (Private) Co. Ltd. is a subsidiary of ABC (Private) Ltd.	– since ABC (Private) Ltd exercises and controls more than half of the ESC of XYZ (Private) Ltd.
Answer would remain same	– even if DEF (Private) Ltd, is holding 1,10,000 shares in XYZ (Private) Ltd. and no shares are held by ABC (Private) Ltd. in XYZ (Private) Ltd.

May 2000

The paid up share capital of Advanced Castings Private Ltd. is Rs. one crore consisting of 8,00,000 equity shares of Rs. 10 each fully paid up and 2,00,000 cumulative preference shares of Rs. 10 each fully paid up. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt. Ltd. are holding 3,00,000 equity shares and 1,50,000 equity shares respectively in Advanced Castings Private Ltd. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt. Ltd. are the subsidiaries of Unique Machineries Pvt. Ltd. Examine with reference to the provisions of the Companies Act whether Advanced Castings Private Ltd. is a subsidiary of Unique Machineries Pvt. Ltd. Will your answer be different, if Unique Machineries Pvt. Ltd. controls the composition of Board of Directors of Advanced Castings Private Ltd.?

Answer

Total ESC of Advanced Castings Pvt. Ltd.	– is Rs. 80,00,000.
ESC held by Quality Forgings Pvt. Ltd. in Advanced Castings Pvt. Ltd.	– is Rs. 30,00,000.
ESC held by Supreme Engineering Pvt. Ltd. in Advanced Castings Pvt. Ltd.	– is Rs. 15,00,000.
ESC held by Unique Machineries Pvt. Ltd. in Advanced Castings Pvt. Ltd.	– is Rs, 45,00,000 since for the purpose of determining holding-subsidiary relationship, ESC held in Advanced Castings (Private) Ltd, by its Subsidiaries Quality Forgings Pvt. Ltd. (viz. Rs. 30,00,000) and Supreme Engineering Pvt. Ltd. (viz. Rs. 15,00,000) shall be considered.
Advanced Castings Pvt. Ltd. is a subsidiary of Machineries Pvt. Ltd.	– since Unique Machineries Pvt. Ltd holds more than one-half of ESC of Advanced Castings Pvt. Ltd.
Answer would remain same	– even if Unique Machineries Pvt. Ltd. controls the composition of Board of Directors of Advanced Castings Pvt. Ltd.

May 2007

The paid-up Share Capital of AVS Private Limited is Rs. 1 crore, consisting of 8 lacs Equity Shares of Rs. 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of Rs. 10 each, fully paid-up. XVZ Private Limited and BCL Private Limited are holding 3 lacs Equity Shares and 1,50,000 Equity Shares respectively in AVS Private Limited.

XYZ Private Limited and BCL Private Limited are the subsidiaries of TSR Private Limited. With reference to the provisions of the Companies Act, examines whether AVS Private Limited is a subsidiary of TSR Private Limited? Would your answer be different if TSR Private Limited has 8 out of total 10 directors on the Board of Directors of AVS Private Limited?

Ans.

Total ESC of AVS Pvt. Ltd.	– is Rs. 80,00,000.
ESC held by XYZ Pvt. Ltd. in AVS Pvt. Ltd.	– is Rs. 30,00,000.
ESC held by BCL Pvt. Ltd. in AVS Pvt. Ltd.	– is Rs. 15,00,000.
ESC held by TSR Pvt. Ltd. in AVS Pvt. Ltd.	– is Rs. 45,00,000, since for the purpose of determining holding-subsidiary relationship, ESC held in AVS Ltd. by its Subsidiaries XYZ Pvt. Ltd. (viz. Rs. 30,00,000) and BCL Pvt. Ltd. (viz. Rs. 15,00,000) shall be considered.
AVS Pvt. Ltd. is a subsidiary of TSR Pvt. Ltd.	– since TSR Pvt. Ltd. holds more than one-half of ESC of AVS Pvt. Ltd.
Answer would remain same	– even if TSR Pvt. Ltd. has 8 out of 10 directors on the Board of Directors of AVS Pvt. Ltd. since in such a case TSR Pvt. Ltd. controls the composition of Board of Directors of AVS Pvt. Ltd.

June 2009

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The paid up share capital of ABC Private Limited is Rs. one crore consisting of 8,00,000 equity shares of Rs. 10 each and 2,00,000 cumulative preference shares of Rs. 10 each, both fully paid up. PQR Private Limited and MNO Private Limited are holding 3,00,000 equity shares and 1.50,000 equity shares respectively in ABC Private Limited, PQR Private Limited and MNO Private Limited are the subsidiaries of UMC Private Limited. Examine with reference to the provisions of the Companies Act, whether ABC Private Limited is a subsidiary of UMC Private Limited. Would your answer be different, if UMC Private Limited controls the composition of Board of Directors of ABC Private Limited?

Ans.

Total ESC of ABC Pvt. Ltd.	– is Rs. 80,00,000.
ESC held by PQR Pvt. Ltd. in ABC Pvt. Ltd.	– is Rs. 30,00,000.
ESC held by MNO Pvt. Ltd. in ABC Pvt. Ltd.	– is Rs. 15,00,000.
ESC held by UMC Pvt. Ltd. in ABC Pvt. Ltd.	– is Rs. 45,00,000, since for the purpose of determining holding-subsidiary relationship, ESC held in ABC Pvt. Ltd. by its Subsidiaries PQR Pvt. Ltd. (viz. Rs. 30,00,000) and MNO Pvt. Ltd. (viz. Rs. 15,00,000) shall be considered.
ABC Pvt. Ltd. is a subsidiary of UMC Pvt. Ltd.	– since UMC Pvt. Ltd. holds more than one-half of ESC of ABC Pvt. Ltd.
Answer would remain same	– even if UMC Pvt. Ltd. controls the composition of Board of Directors of ABC Pvt. Ltd.

ASSOCIATE COMPANY

Definition of 'Associate Company'

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**.

Definition of 'significant influence'

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 -

(a) Paid-up equity share capital; and

(b) convertible preference share capital.

This is a new definition inserted in the 2013 Act.

Shares held by a company in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the relationship of 'associate company' under section 2(6) of the Companies Act, 2013.

NATURE OF COMPANY BASED ON THE BASIS OF ACCESS TO CAPITAL: [Sec. 2(52)]

(**a) 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. Whereas the word securities as per the section 2(81) of the Companies Act, 2013 has been assigned the same meaning as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.

(b) Unlisted company: means company other than listed company.

FORMATION OF COMPANIES WITH CHARITABLE OBJECTS ETC: [SEC. 8]

1. **Object for formation of Section 8 companies:**

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.

Conditions for formation of a non-profit company

A company may be formed u/s 8 if

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a) The objects of the company are to promote commerce, art, science, sports, education research , social welfare, religion, charity, protection of environment or such other object.
b) The company shall intend to apply its profits in promoting its objects; and
c) The company intends to prohibit the payment of dividend to its members

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

2. **Power of Central government to issue the license** –
   - This section allows the Central Government(power delegated to ROC) 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**.
   - The registrar shall on application register such person or association of persons as a company under this section.
   - On registration the company shall enjoy same privileges and obligations as of a limited company.
3. **A firm may be a member of the company registered under section 8.**
4. **Alteration of Memorandum and Articles:** A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

5. **Revocation of license:**

i. The Central Government may by order revoke the licence of the company where
   - the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or
   - where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest,

ii. On revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register.

iii. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

Order of the Central Government:

- Where a licence is revoked, the Central Government may, by order, **if it is satisfied that it is essential in the public interest**, direct that the company **be wound up under this Act or amalgamated with another company registered under this section..**However, no such order shall be made unless the company is given a reasonable opportunity of being heard.
- Where a licence is revoked and where the **Central Government is satisfied** that it is essential in the public interest that the company registered under this section should be **amalamated with another company registered under this section and having similar objects**, then, notwithstanding anything to the contrary contained in this Act, **the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.**
- If on the **winding up or dissolution of a company** registered under this section, **there remains**, after the satisfaction of its debts and liabilities, **any asset**, they may be **transferred to another company** registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or **may be sold and proceeds thereof credited to the Insolvency and Bankruptcy Fund** formed under section 224 of the Insolvency and Bankruptcy Code, 2016.
- A company registered under this section shall amalgamate only with another company registered under this section and having similar objects
- **Thus, on revocation, Central Government may direct it to—**

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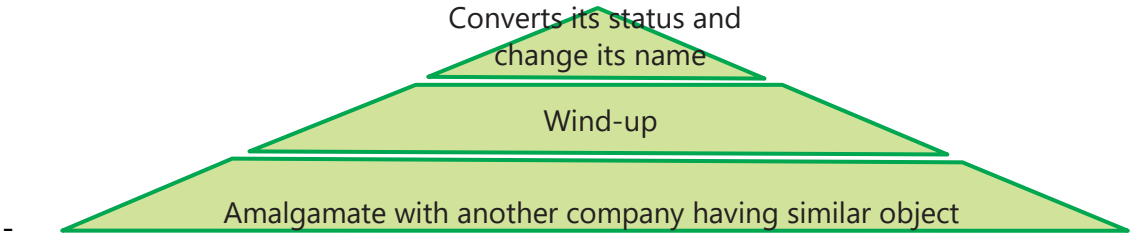

6. **Penalty/ punishment in contravention:** If a **company** makes any default in complying with any of the requirements laid down in this section, the company shall, be punishable with fine varying from **ten lakh rupees to one crore rupees** and **the directors and every officer of the company who is in default** shall be punishable with **imprisonment for a term which may extend to three years or with fine varying from twenty-five thousand rupees to twenty-five lakh rupees, or with both**.
And where it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

7. **Exceptions/Exemptions:**
(i) Can call its general meeting by giving a clear 14 days notice instead of 21 days.
(ii) Requirement of minimum number of directors, independent directors etc. does not apply.
(iii) Need not constitute Nomination and Remuneration Committee and Shareholders Relationship Committee
(iv) Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.
(v) A partnership firm can be a member of Section 8 company.

FOREIGN COMPANY [Sec. 2(42)]

Definition of foreign company

Foreign company Means any company or body corporate incorporated outside India which -
(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
(b) conducts any business activity in India in any other manner.

GOVERNMENT COMPANY [Sec. 2(45)]

Government Company means any company —
(a) in which not less than 51% of the paid up share capital is held —
(i) by the Central Government; or
(ii) by any State Government or governments; or
(iii) partly by the Central Government and partly by one or more State Governments,
(b) which is a subsidiary of a Government company.

DORMANT COMPANY [Sec. 455]

1. Application by a company to the registrar for obtaining the status of dormant company

(a) A company may make an application to the Registrar so as to obtain the status of a dormant company in the following two cases:
i. It was formed and registered under the Companies Act, 2013 for a future project or to hold an asset or intellectual property and it has no significant accounting transaction.
ii. It is an inactive company.
(b) The application shall be made to the Registrar in such manner as may be prescribed.

2. Meaning of 'inactive company'

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'Inactive company' means—
(a) a company which has not been carrying on any business or operation; or
(b) a company which has not made any **significant accounting transaction** during the last 2 financial years; or
(c) a company which has not filed financial statements and annual returns during the last 2 financial years.

3. Meaning of 'significant accounting transaction'

'Significant accounting transaction' means any transaction other than —
(a) payment of fees by a company to the Registrar;
(b) payments made by it to fulfill the requirements of this Act or any other law;
(c) allotment of shares to fulfill the requirements of this Act; and
(d) payments for maintenance of its office and records.

4. Grant of status of dormant company by the Registrar

(a) After considering the application made by the company, the Registrar shall allow the status of a dormant company to the applicant company.
(b) The Registrar shall issue a certificate in the prescribed form.

5. Compliance requirements for a dormant company

(a) To retain its dormant status, a dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed.
(b) If a dormant company fails to comply with these requirements, the Registrar shall strike off its name from the register of dormant companies.

NIDHI [Sec. 406]:

'Nidhi' means a company which has been incorporated as a Nidhi
- with the object of cultivating the habit of thrift 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 CG for regulation of such class of companies?

PUBLIC FINANCIAL INSTITUTIONS:

By virtue of **Section 2(72)** of the Companies Act, 2013 the following institutions are to be regarded as public financial institutions.

(i) the Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;
(ii) the Infrastructure Development Finance Company Limited,
(iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;
(iv) institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act;
(v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless-
(A) it has been established or constituted by or under any Central or State Act; ***other than this Act or the previous company law;*** or
(B) not less than fifty-one per cent of the paid-up share capital is held or controlled 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.

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3. Incorporation of a Company

PROMOTION AND PROMOTER

Meaning of promotion

- The term 'promotion' means all those steps that are required to bring a company into existence, and then to set it going.
- Promotion means the preliminary steps undertaken by the promoters to bring a company into existence..

Definition of promoter

Definition as per Sec. 2(69) of the Companies Act, 2013

'Promoter' means a person -

(a) who has been named as such in a prospectus or is identified by the company in the annual return; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) In accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.

Definition given by Palmer

"Promoter is a person who originates a scheme for the formation of the company, gets the memorandum and articles prepared, executed and registered, and find the first directors, settle the terms of preliminary contracts and prospectus, and makes arrangements for advertising and circulating the prospectus and placing the capital."

Functions of promoters

- Generating the idea of a starting a business and forming a company, i.e. which business to be started.
- Making a feasibility study so as to determine whether the proposed business is profitable or not.
- Taking decisions regarding some fundamental questions, like -

(a) Whether to start a new business or to take over an existing business by purchase of an existing undertaking.

(b) Nature of company to be formed - whether it should be a public company or a private company; whether it should be a limited company or an unlimited company; whether the liability of members shall be limited by shares or by guarantee or by both.

(c) The amount of authorised capital of the company.

- Preparation of memorandum, articles and other documents
- Arranging the subscribers to memorandum
- Filing the required documents with the registrar
- Entering into negotiations with the person who shall become the first directors of the company
- Entering into pre-incorporation contracts (for the purpose of business of the company) on behalf of the company.
- Making arrangements for issue of shares

Any person who performs one or more of the above functions shall be regarded as a promoter.

The mere fact that a person is a subscriber to memorandum does not ipso facto make him a promoter.

FORMATION OF A COMPANY (Sec.3)

1. Classification of companies as limited companies and unlimited companies

- Every company formed under the Companies Act, 2013 shall be either a limited company or an unlimited company.

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- A limited company may be further classified as follows:

(i) Company limited by shares
(ii) Company limited by guarantee having no share capital
(iii) Company limited by guarantee and having a share capital

- An unlimited company may be further classified as. follows:

(i) An unlimited company having no share capital.
(ii) An unlimited company having a share capital.

2. Classification of companies as private and public companies

Every company formed under the Companies Act, 2013 shall either be a public company or a private company.

3. One Person Company

A company may be formed under the Act as a One Person Company. The One Person Company is also a private company.

4. Legal requirements for formation of a company

(a) Lawful purpose

Section 3 states that a company may be formed for any lawful purpose. Thus, no company shall be formed for carrying on any unlawful objects.

(b) Subscription to memorandum

The persons who sign on the memorandum are termed as subscribers. The provisions relating to subscription of memorandum are explained as below:

(i) In case, the company proposed to be formed is a **public company,** the memorandum must be subscribed to **by 7 or more persons**.

(ii) in case the company proposed to be formed is a **private company**, the memorandum must be subscribed to **by 2 or more persons**.

(iii) In case the company proposed to be formed is a **One Person Company**, the memorandum must be subscribed **to by 1 person.**

(c) Filing of documents

The memorandum, articles and other documents required to be filed for formation of the company shall be filed with the registrar.

(d) Compliance of requirements of the Act

The requirements of the Act with respect to registration / formation of a company must be complied with.

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INCORPORATION OF COMPANY (Sec 7)

- Steps for Incorporation
- 1. Obtain Digital Signatures
- .2 Obtain Director Identification Number [Section 153]
- 3. Name availability for proposed company
- 4 Preparation of the Memorandum of Association (MOA) and Articles of Association (AOA)
- .5 Application for incorporation of a company
- 6 DUTY OF REGISTRAR TO SCRUTINISE THE DOCUMENTS
  - If after fillings the Requisite forms for incorporation with the Registrar of Companies along with fees, ROC is satisfied with the contents of the documents filed, ROC will issue the Certificate of incorporation in Form No. INC 11 as directed by Rule-18 of Companies (incorporation) Rules, 2014
- 7. Certificate of Incorporation issued by ROC

This Section 7 of the Companies Act, 2013 provides for the procedure to be followed for incorporation of a company.

(1) **Filing of the documents and information with the registrar:**

For the registration of the company following documents and information are required to be filed with the **registrar within whose jurisdiction the registered office of the company is proposed to be situated**-

- the **memorandum and articles** of the company duly **signed by all the subscribers** to the memorandum.
- the **address for correspondence** till its registered office is established;
- the **particulars** (names, including surnames or family names, residential address, nationality) **of every subscriber** to the memorandum **along with proof of identity**, and in the case of a subscriber being a **body corporate**, such particulars as may be prescribed including **proof of identity and identity as may be prescribed.**

Explanation-In case the subscriber is already holding a valid DIN, and the particulars provided therein have been updated as on the date of the application, and the declaration to this effect is given in the application, the proof of identity and residence is not to be attached.*[Vide Companies (incorporation)Third Amendment Rules 2016 dated 27th July ,2016]*

- the **particulars** (names, including surnames or family names, the Director Identification Number, residential address, nationality) **of the persons mentioned in the articles as the first directors** of the company and such other particulars including proof of identity as may be prescribed;
- the **particulars of the interests of the persons mentioned in the articles** as the first directors of the company in other firms or bodies corporate **along with their consent to act as directors** of the company in such form and manner as may be prescribed.

Particulars provided in this provision shall be of the individual subscriber and not of the professional engaged in the incorporation of the company [The Companies **(Incorporation)** Rules, 2014].

- a **declaration by person who is engaged in the formation of the company** (an advocate, a chartered accountant, cost accountant or company secretary in practice), **and by a person named in the articles**

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(director, manager or secretary of the company), that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with.

- an **affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles** stating that-
  - he is not convicted of any offence in connection with the promotion, formation or management of any company, or
  - he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years,
  - and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

Provided that in case pursuing of any objects of a company requires registration or approval from sectoral regulators such as RBI, SEBI, registration or approval, as the case may be, from such regulator shall be obtained by the company before pursuing such objects and a declaration in this behalf shall be submitted at the stage of incorporation of the company.-[*Vide Companies(Incorporation) Second Amendment Rules 2015,dated 29-5-2015]*

(2) **Issue of certificate of incorporation on registration:**
The Registrar on the basis of documents and information filed, **shall register all the documents and information** in the register **and issue a certificate of incorporation** in the prescribed form to the effect that the proposed company is incorporated under this Act.

(3) **Allotment of corporate identity number (CIN):**
On and from the date mentioned in the certificate of incorporation, the **Registrar shall allot to the company a corporate identity number**, which shall be **a distinct identity for the company** and which shall also be included in the certificate.

(4) **Maintenance of copies of all documents and information:** The company shall maintain and preserve at its registered office copies of all documents and information as originally filed, till its dissolution under this Act.

(5) **Furnishing of false or incorrect information or suppression of material fact:** 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 under section 447.

(6) **Company incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact : (i.e. post incorporation)**
Where, at any time after the incorporation of a company, it is proved that

- the company has been got incorporated by furnishing any false or incorrect information or representation or
- by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or
- by any fraudulent action,

the promoters, the persons named as the first directors of the company and the persons making declaration under this section shall each be liable for action under section 447.

(7) **Order of the Tribunal*:**
Where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating

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such company or by any fraudulent action, **the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—**

a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
b) direct that liability of the members shall be unlimited; or
c) direct removal of the name of the company from the register of companies; or
d) pass an order for the winding up of the company; or
e) pass such other orders as it may deem fit:

Provided that before making any order,—

- the company shall be given a reasonable opportunity of being heard in the matter; and
- the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.
-

*** "Tribunal" means the National Company Law Tribunal (NCLT) constituted under section 408 of the Companies Act, 2013. The NCLT is a quasi-judicial body in India that adjudicates issues relating to companies in India. The NCLT was established under the Companies Act 2013 and was constituted on 1 June 2016.**

SIMPLIFIED PROFORMA FOR INCORPORATING COMPANY ELECTRONICALLY (SPICE):

The Ministry of Corporate Affairs has taken various initiatives for ease of business. In a step towards easy setting up of business, MCA has simplified the process of _ling of forms for incorporation of a company through Simplified Proforma for incorporating company electronically

EFFECTS OF INCORPORATION (Sec. 9)

1. Date of incorporation	The date mentioned in the certificate of incorporation issued by the Registrar, shall be; the date of incorporation of the company.
2. Body corporate	From the date mentioned in the certificate of incorporation, the subscribers to memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate.
3. Name	The name, as mentioned in the memorandum, shall be the name of the company.
4. Capacity to function	The company shall become capable of exercising all the functions of an incorporated company.
5. Perpetual succession	The company shall have perpetual succession.
6. Power to acquire	The company shall have the power to acquire, hold and dispose of the property of any property kind, whether movable or immovable, tangible or intangible.
7. Power to contract	The company shall have the power to contract in its own name.
8. Capacity to sue and be sued	The company shall have the power to sue in its own name, and the company can be sued in its own name.

- From the date of incorporation mentioned in the certificate, **the company becomes a legal person separate from the incorporators; and there comes into existence a binding contract between the company and its members as evidenced by the Memorandum and Articles of Association** [*Hari Nagar Sugar Mills Ltd. vs. S.S. Jhunjhunwala*]**.** It has perpetual existence until it is dissolved by liquidation or struck out of the register. A shareholder who buys shares, does not buy any interest in the property of the company but in certain cases a writ petition will be maintainable by a company or its shareholders.
- A legal personality emerges from the moment of registration of a company and from that moment the persons subscribing to the Memorandum of Association and other persons joining as members are regarded as a body corporate or a corporation in aggregate and the legal person begins to function as an entity. A

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company on registration acquires a separate existence and the law recognises it as a legal person separate and distinct from its members *[State Trading Corporation of India vs. Commercial Tax Officer]***.**

- **It may be noted that under the provisions of the Act, a company may purchase shares of another company and thus become a controlling company. However, merely because a company purchases all shares of another company it will not serve as a means of putting an end to the corporate character of another company and each company is a separate juristic entity** *[Spencer & Co. Ltd. Madras vs. CWT Madras]***.**
- **As has been stated above, the law recognizes such a company as a juristic person separate and distinct from its members. The mere fact that the entire share capital has been contributed by the Central Government and all its shares are held by the President of India and other officers of the Central Government does not make any difference in the position of registered company and it does not make a company an agent either of the President or the Central Government** *[Heavy Electrical Union vs. State of Bihar]***.**

BINDING FORCE OF MEMORANDUM AND ARTICLES (Sec. 10)

Text of Sec. 10	Effect of memorandum and articles. (1) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles. (2) All money payable by any 'member to the company under the memorandum or articles shall be a debt due from him to the company.
Company is bound to members	(a) Every member is given some individual rights under the Act and the articles. If a company deprives any of its members of such rights, such a member can sue the company for enforcement of his rights. (b) The company is bound to comply with all the terms and conditions contained in the memorandum and articles. Therefore, the following conclusions may be drawn: ▪ If a company is about to commit a breach of any terms and conditions of memorandum and articles, any member can obtain an injunction from the Court thereby restraining the company from committing such breach. ▪ If a company has already committed a breach of any terms and conditions of memorandum or articles, any member can sue the company, directors and the persons responsible for such breach.
Members are bound to company	▪ When memorandum and articles are registered, it shall be deemed that these documents were signed by every member of the company individually. ▪ Every member shall be bound to comply with the provisions contained in the memorandum and articles. ▪ In case of non-compliance, the company may sue a member.
Members are not bound inter se(i.e., with each other)	▪ There is no privity of contract between the members. ▪ However, a member may enforce his rights against another member through the company, but not directly.
Company is not bound to outsiders	▪ The memorandum and the articles do not bind a company to the outsiders. This is based on the general rule of law that a stranger to a contract does not acquire any rights under the contract. ▪ Therefore, an outsider cannot take the help of the articles to establish a contract with the company.**[Eley v Positive Govt. Security Life Assurance Co.]**

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May 2004, May 2007, May 2013

The articles of association of a limited company provided that 'X' shall be the law officer of the company and he shall not be removed except on the ground of proved misconduct. The company removed him even though he was not guilty of misconduct. Decide, whether company's action is valid?

OR

A limited company is formed with its Articles stating that one Mr. X shall be the solicitor for the company, and that he shall not be removed except on the ground of misconduct. Can the company remove Mr. X from the position of solicitor even though he is not guilty of misconduct?

OR

The Articles of a Public Company clearly stated that Mr. A will be the solicitor of the company. The Company in its general meeting of the shareholders resolved unanimously to appoint B in place of A as the solicitor of the company by altering the articles of association. Examine, whether the company can do so? State the reasons clearly.

OR

Articles of a public company clearly stated that Mr. L will be the Solicitor of the company. The company in its general meeting of the shareholders resolved unanimously to appoint Mr. M in place of Mr. L as the Solicitor of the company by altering the articles of association. State with reasons, whether the company can do so? If L files a case against the company for removal as a solicitor, will he succeed?

Answer

Company's action is valid, and 'X' has no remedy against the company	– since the memorandum and articles do not bind a company to the outsiders (Sec, 10); – since, unless 'X' /A proves a contract independent of the articles, he cannot enforce any right against the company as he has no right to rely on the articles [Eley v Positive Govt. Security Life Assurance Co.].

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4. Memorandum and Articles

MEMORANDUM OF ASSOCIATION [Sec. 2(56)]

Statutory definition

'Memorandum' means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act **[Sec. 2(56)].**

Other definitions

As given by Palmer

Memorandum contains the objects for which the company is formed and therefore, identifies the possible scope of its operations beyond which its actions cannot go. **It defines as well as confines the powers of the company**.

As given by Lord Cairns

Memorandum serves two purposes. It enables the shareholders, creditors and those who deal with the company to know what its powers are and what is the range of its activities. Likewise, anyone dealing with the company will know whether the transaction he intends to make with the company is within the objects of the company and not ultra vires.

As given by Bowen L J.

Memorandum contains the fundamental conditions upon which alone the company is allowed to be incorporated.

IMPORTANCE OF MEMORANDUM

Key document

Memorandum is a key document containing vital details about the company. It is the most important document as regards incorporation of the company is concerned. This is the most fundamental document of the company specifying the most important information relating to the company. **Therefore, memorandum is also called as the charter of the company.**

Public Document

Memorandum is a public document, i.e. any person (whether a member of document of the company or not) can inspect it in the office of Registrar

Every company must have its own memorandum

No company can be registered without a memorandum. It is one of the main documents that are required to be filed with the Registrar at the time of registration of the company.

Object of registering a memorandum of association :

- It contains the object for which the company is formed and therefore **identifies the possible scope of its operations beyond which its actions cannot go.**
- It **enables shareholders, creditors and all those who deal with company to know what its powers are and what activities it can engage in.**
- A memorandum is a **public document under Section 399 of the Companies Act, 2013**. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein.
- The shareholders must know the **purposes for which his money can be used by the company** and what risks he is taking in making the investment.
- **A company cannot depart from the provisions contained in the memorandum** however imperative may be the necessity for the departure. It cannot enter into a contract or engage in any trade or business, which is beyond the power confessed on it by the memorandum. **If it does so, it would be ultra vires the company and void.**

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CONTENTS OF MEMORANDUM (CLAUSES CONTAINED IN MEMORANDUM) (Sec. 4)

1. Name Clause

(a) The 'name clause' of memorandum shall state the name of the company.

(b) In the case of a public company, the word 'limited' shall be the last word of the name of the company.

(c) In the case of a private company, the words 'private limited' shall be the last words of the name of the company.

(d)The requirement to use the word 'limited' or the words 'private limited', as the case may be, **shall not apply to a company registered u/s 8.**

(e) In case of a government company the word **'limited'** shall be the last word of the name of the company

(f) The name including phrase **'Electoral Trust'** may be allowed for Registration of companies to be formed under section 8 of the Act, in accordance with the Electoral Trusts Scheme, 2013 notified by the Central Board of Direct Taxes (CBDT). For the Companies under **section 8 of the Act, the name shall include the words foundation, Forum, Association, Federation, Chambers, Confederation, council, Electoral trust and the like etc.** [The Companies **(Incorporation)** Rules, 2014]

(g) In the case of **One Person Company,** the words **"One Person Company", should be included below its name.**

2. Situation clause/Registered office Clause

The 'situation clause' of memorandum shall state the **name of the State** in which the registered office of the company is proposed to be situated.

3. Objects clause

The 'objects clause' of memorandum shall state the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof. If any company has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of six months from the change of activities after complying with all the provisions as applicable to change of name

4. Liability clause

(a) The 'liability clause' of memorandum shall state as to whether the liability of members of the company is limited or unlimited.

(b) In case of a company limited by shares, the memorandum shall state that liability of every member shall be limited to the amount unpaid on the shares held by him.

(c) In case of a company limited by guarantee, the memorandum shall state that liability of every member shall be limited to the amount that he has undertaken to pay to the company, in the event of winding up of the company.

- The liability of a member shall arise only if the company is wound up while he is a member or within 1 year of cessation of his membership.
- The liability of member shall be limited for payment of—
  (i) such debts, as the company had incurred before he ceased to be a member;
  (ii) expenses,costs and charges of winding up of the company; and
  (iii) adjustment of the rights of the contributories among themselves.

5. Capital clause

(a) In case of a company having a share capital, the memorandum shall contain the **'Capital Clause'**.

(b) The 'capital clause' of memorandum shall state—

(i) the amount of share capital with which the company is registered (viz. the authorized Share Capital);and

(ii) the division of the authorized share capital into shares of a fixed amount.

6. Subscription (Association) clause

(a) The 'Subscription clause' of memorandum shall state the number of shares that each subscriber to Member has agreed to subscribe.

(b) Every subscriber shall agree to subscribe for at least 1 share.

(c) The number of shares subscribed by each subscriber shall be indicated opposite to his name.

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7. Nomination Clause

In the case of a One Person Company, the memorandum shall state the name of a person, who, in the event of death of the subscriber, shall become the member of the company.

The above clauses of the Memorandum are called compulsory clauses, or "Conditions". In addition to these a memorandum may contain other provisions, for example rights attached to various classes of shares.

Form of memorandum

(a) Various forms of memorandum have been specified in Tables A, B, C, D and E in Schedule I, as explained hereunder:

Table A: Memorandum of a company limited by shares
Table B: Memorandum of a company limited by guarantee and having no share Capital
Table C: Memorandum of a company limited by guarantee and having a share capital
Table D: Memorandum of an unlimited company having no share capital
Table E: Memorandum of an unlimited company having a share capital

(b) The memorandum and articles of a company must be as close to model forms, as possible, depending upon the circumstances.

A company being a legal person can through its agent, subscribe to the memorandum. However, a minor cannot be a signatory to the memorandum as he is not competent to contract. The guardian of a minor, who subscribes to the memorandum on his behalf, will be deemed to have subscribed in his personal capacity

Companies Act overrides the Memorandum:

The Memorandum of Association of a company cannot contain anything contrary to the provisions of the Companies Act. If it does, the same shall be devoid of any legal effect. Similarly, all other documents of the company must comply with the provisions of the Memorandum

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ARTICLES (Sec. 2(5) and Sec. 5)

Definition of 'articles'

'Articles' means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous companies law or of this Act [Sec. 2(5) of the Companies Act, 2013].

Meaning

- Articles are the rules and regulations framed by a company for its own governance.
- 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 ***(Guiness vs. Land Corporation of Ireland).***
- These general functions of the articles have been aptly summed up by Lord Cairns in ***Ashbury Carriage Co. vs. Riches*** as follows: "The articles play a part subsidiary to memorandum of association. They accept the memorandum as the charter of incorporation, and so accepting it the articles proceed to define the duties, the rights and powers of the governing body as between themselves and the company and the mode and form in which the business of the company is to be carried on, and the mode and form in which changes in the internal regulation of the company may from time to time be made.
- The document containing the articles of association of a company **(the Magna Carta)** is a business document; hence it has to be construed strictly. It regulates domestic management of a company and creates certain rights and obligations between the members and the company ***[S.S. Rajkumar vs. Perfect Castings (P) Ltd.].***

Contents of articles

- The articles shall contain the Regulations for the management of the company.
- The articles shall contain such matters as may be prescribed under the Rules.
- A company may include any additional matter in its articles which is considered necessary for the management of the company.

Provisions for entrenchment

(a) The articles may contain the provisions **for entrenchment(to protect something), i.e. certain specified provisions of the articles can be altered only by complying with such conditions or procedures as are more restrictive than those as are applicable in case of a special resolution.**

(b) The provisions for entrenchment may be made —

(i) **at the time of formation of the company**;
or

(ii) by an amendment of articles, **with the consent of all the members,** in the case of a **private company;** or

(iii) by an amendment of articles, **by passing a special resolution**, in the case of **a public company.**

(c)Where the articles contain the provisions for entrenchment, the **company shall give notice of such provisions to the Registrar, in such form and manner as may be prescribed.**

(d) The **notice to the Registrar** shall be given irrespective of the fact as to **whether the provisions for entrenchment were contained in the articles at the time of formation of the company or were included in the articles afterwards, by way of an amendment.**

Form of articles

(a) Various forms of articles have been specified in Tables F, G, H, I and J in Schedule I. as explained hereunder:

Table F: Articles of a company limited by shares

Table G: Articles of a company limited by guarantee and having a share capital

Table H: Articles of a company limited by guarantee and having no share capital

Table I: Articles of an unlimited company having a share capital

Table J: Articles of an unlimited company having no share capital

(b) The articles of a company shall be in such form (viz. Table F, G, H, I and J) as may be applicable to it.

Model articles: A company **may adopt all or any of the regulations** contained in the model articles applicable to such company.

Company registered after the commencement of this Act:

In case of any company, **which is registered after the commencement of this Act**, in so far as the registered articles of such company **do not exclude or modify the regulations contained in the model articles** applicable to such company, **those regulations shall, so far as applicable, be the regulations of that company** in the same manner and to the extent **as if they were contained in the duly registered articles of the company.**

Section not to apply on company registered under any previous company law:

Nothing in this section shall apply to the articles of a company registered under any previous company law, unless amended under this Act.

Differences between the Memorandum of Association Vs. Articles Of Association

1. Objectives: Memorandum of Association defines and delimits the objectives of the company whereas the Articles of association lays down the rules and regulations for the internal management of the company. Articles determine how the objectives of the company are to be achieved.

2. Relationship: Memorandum defines the relationship of the company with the outside world and Articles define the relationship between the company and its members.

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3. Alteration: Memorandum of association can be altered only under certain circumstances and in the manner provided for in the Act. In most cases permission of the Regional Director or the Tribunal is required. The articles can be altered simply by passing a special resolution.

4. Ultra Vires: Acts done by the company beyond the scope of the memorandum are ultra-vires and void. These cannot be ratified even by the unanimous consent of all the shareholders. The acts ultra-vires the articles can be ratified by a special resolution of the shareholders, provided they are not beyond the provisions of the memorandum.

DOCTRINE OF ULTRA VIRES

Nov. 2003 Briefly explain the doctrine of 'ultra vires' under the Companies Act. What are the consequences of ultra vires acts of the company?

Meaning and effect of the doctrine	▪ Ultra means 'beyond' or 'in excess of' and vires means 'powers'. Thus, ultra vires means an act or transaction beyond or in excess of the powers of the company. ▪ An act or transaction shall be ultra vires if- – it is not permitted or authorised by the Companies Act, 2013 – it falls outside the object clause of memorandum; and – its attainment is not incidental or ancillary to the attainment of main objects.
Ashbury Railway Carnage & Iron Company Ltd. v Richie	The object clause of an industrial company contained the following objects besides some other objects: (a) To make, sell or lend on hire, railway carriages and wagons. (b) To carry on the business of mechanical engineers and general contractors. (c) To purchase, lease, work and sell mine, minerals, land and buildings. The company entered into a contract with Richie, for the financing of a construction of a railway line in Belgium. The Court held that the word 'general contractors' had to be given a restricted meaning. • Only such contracts could be covered in the term 'general contractors' as are in some way related or connected with mechanical engineering. • Therefore, the company could not finance the construction of a railway line by alleging that such a business falls under the business of general contractors.

Effects of ultra vires transactions

The transaction is void ab initio	▪ An act which is ultra vires the company is void and of no legal effect. ▪ Neither the company nor the other contracting party derives any right under an ultra vires contract. ▪ Even ratification of an ultra vires contract by the whole body of shareholders does not make an ultra vires contract valid or enforceable.
No ratification or estoppel	An ultra vires contract cannot become valid by estoppel or ratification. ***An ultra vires* contract can never be made binding on the company. It cannot become "Intravires" by reasons of estoppel, acquiescence, lapse of time, delay or ratification.**
Injunction against the company	Any member may obtain an injunction order from the Court, i.e., an order of the Court restraining the company from proceeding with the ultra vires contract.
Personal liability of Directors	If funds of the company are misapplied or wasted by entering into ultra vires transactions, the directors shall be personally liable to the company for breach of trust.
Ultra vires property	If the company acquires some property under an ultra vires transaction, the company has the right to hold that property and protect it against damage by other parties.

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Effects of acts ultra vires the directors or articles

- Acts ultra vires the directors or articles means those acts which are beyond the powers of the directors or powers given under the articles.
- Such acts are not altogether void and inoperative. Such acts may be ratified by the members.

SUMMARY

The whole position regarding the doctrine of ultra vires can be summed up as:

(i) When an act is performed, which though legal in itself, is not authorized by the object clause of the memorandum, or by the statute, it is said to be ultravires the company, and hence null and void.

(ii) An act which is ultravires, the company cannot be ratified even by the unanimous consent of all the shareholders.

(iii) An act which is ultravires the directors, but intravires the company can be ratified by the members of the company through a resolution passed at a general meeting.

(iv) If an act is ultravires the Articles, it can be ratified by altering the Articles by a Special Resolution at a general meeting.

However, the disadvantages of this doctrine outweigh its main advantage, namely to provide protection to the shareholders and creditors. Although it may be useful to members in restraining the activities of the directors, **it is only a nuisance in so far as it prevents the company from changing its activities in a direction which is agreed by all.** Again, the purpose of doctrine of ultravires has been defeated as now the object clause can be easily altered, by passing just a special resolution of the shareholders.

Nov. 1997

The objects clause of The Memorandum of Association of the XVZ (Pvt.) Ltd., New Delhi, authorized to do trading in mangoes. The company, however, entered into partnership with Mr. A and traded in mangoes and incurred liabilities to Mr. A. The Company, subsequently, refused to admit the liability to 'A' on the ground of 'ultra vires' the Company'. Advice whether stand of the company is legally valid and if so, gives reasons in support of your answer.

Answer

The company is not liable to A	– since the partnership agreement for trading in mangoes is an ultra vires contract, and an ultra vires contract is void-ab-initio, and is not binding on the company or the other party; – since the power to enter into partnership is not an ancillary or incidental power; – since such power can be legally exercised by the company only if the object clause of memorandum expressly authorises the company to enter into partnership.

Nov. 2006

The principal business of XYZ Company Ltd. was the acquisition of vacant plots of land and to erect the houses. In the course of transacting the business, the Chairman of the Company acquired the knowledge of arranging finance for the development of land. The XYZ Company introduced a financier to another company ABC Ltd. and received an agreed fee of Rs. 2 lakhs for arranging the finance. The Memorandum of Association of the company authorizes the company to carry on any other trade or business which can in the opinion of the board of directors, be advantageously carried on by the company in connection with the company's general business. Referring to the provisions of the Companies Act, examine the validity of the contract carried out by XYZ Company Ltd. with ABC Ltd.

Answer

Arranging finance or financer is an ultra vires act	– since it falls outside the object clause of memorandum; – since an object contained in the object clause is not valid if it authorises the company to carry on any other trade or business which can be advantageously carried on by the company.
The contract entered into by the company is ultra	– since the company has no power to arrange finance or financer; – since the Board cannot take the defence that the memorandum authorises the company to carry on any business which can be advantageously carried on in connection with

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vires	company's present business – unless the memorandum is first altered by complying with the requirements of Sec. 17, and afterwards the business of arranging finance is carried on.

May 2007

The object clause of the Memorandum of Association of LSR Private Ltd, Lucknow authorized to do trading in fruits and vegetables. The company, however, entered into a Partnership with Mr. J and traded in steel and incurred liabilities to Mr. J. The Company, subsequently, refused to admit the liability to J on the ground that the deal was 'Ultra Vires' the company. Examine the validity of the company's refusal to admit the liability to J. Give reasons in support of your answer.

Answer

The company is not liable to J	– since the partnership agreement for trading in steel is an ultra vires contract, and an ultra vires contract is void ab initio, and is not binding on the company or the other party; – since the power to enter into partnership is not an ancillary or incidental power; – since such power can be legally exercised by the company only if the object clause of memorandum expressly authorises the company to enter into partnership.

Nov 2007.

X, a chemical manufacturing company distributed 20 lac (Rs. Twenty Lac) to scientific institutions for furtherance of scientific education and research. Referring to the provisions of the Companies Act, decide whether the said distribution of money was "Ultra vires" the company?

Ans.

Donation of Rs. 20 Lakhs for furtherance of scientific education and research is permissible	– since it is incidental or ancillary to the main objects of the company; – since it is conducive to the continued growth of the company as chemical manufacturers as was held in Evans v Brunnner, Mood & Co. Ltd.

May 2010

The object clause of the Memorandum of Association of RST Limited authorizes it to publish and sell text-books for students. The company however entered into an agreement with Q to supply 100 laptops of worth Rs. 5 lac for resale-purposes. Subsequently, the company refused to make payment on the ground that the transaction was ultra vires the company. Examine the validity of the company's refusal for payment to Q under the provisions of the Companies Act.

The contract to purchase laptops	– is an ultra vires contract, and is therefore, void ab initio.
Q cannot enforce the contract against RST Limited	– since the contract is ultra vires; – since no party to an ultra vires contract has a right to sue.
The Court may order RST Limited to deliver back the laptops to Q	– if the laptops are still in the possession of the company; – if the Court, applying the principle of equity, deems it fit considering the circumstances of the case.

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DOCTRINE OF CONSTRUCTIVE NOTICE

Applicability of doctrine

This doctrine operates in favour of the company, i.e., it creates a presumption in favour of the company. It operates against the persons dealing with the company.

Effect of the doctrine

- Once registered the memorandum and articles become public documents (Sec. 399).
- Therefore, every person dealing with the company **is presumed to have read the memorandum and articles**. Further, it is presumed that he has **understood the provisions** of memorandum and articles correctly, i.e. in the right sense. [T.R. Pratt (Bombay) Ltd. v E.D. Sassoon & Co. Ltd.].
- Thus, it is required of **every person to apprise himself with the requirements of the memorandum and articles,** before entering into any contract with a company.
- Every person dealing with the company not only has the constructive notice of the memorandum and

articles, but **also of all the other related documents, such as Special Resolutions etc., which are required to be registered with the Registrar**.

- The doctrine prevents any person dealing with the company from alleging that he did not know the provisions contained in the articles or memorandum.
- If a person enters into a contract with the company in contravention of the provisions of the memorandum and articles, he cannot enforce such a contract.

Examples:

One of the articles of a company provides that a bill of exchange to be effective must be signed by two directors. A bill of exchange is signed only by one of the directors. The payee will not have a right to claim under the bill.

Kotla Venakataswamy v C Rammurthi

- The articles of a company required that all the documents and deeds of the company shall be signed by MD, the secretary and a working director of the company,
- A mortgage deed was signed by the secretary and a working director only.
- It was held that the mortgage deed was invalid even though the plaintiff had acted in good faith and money was utilised for the benefit of the company.

DOCTRINE OF INDOOR MANAGEMENT OR TURQUAND'S RULE

Purpose of doctrine

The doctrine of indoor management operates in favour of the outsiders, i.e., this doctrine creates a presumption in favour of the outsiders. The Doctrine of Indoor Management is the **exception to the doctrine of constructive notice.**

Meaning of the doctrine

- As per this doctrine, outsiders dealing with the company are not required to enquire into the internal management of the company.
- Outsiders dealing with the company are entitled to assume that as far as internal proceedings of the company are concerned, everything has been done regularly. It is a presumption and therefore rebuttable.
- Thus, the doctrine protects an innocent outsider from any irregularity present in the working of the company (provided he had actual knowledge of the memorandum and articles, and he complied with the requirements contained in the memorandum and articles).

Effect of the doctrine

- If a contract is entered into on behalf of the company by any director or officer of the company, it is enforceable against the company, if provisions contained in the memorandum and articles have been complied with, even though while entering into such a contract, some internal irregularity had arisen of which the outsider was unaware.

Example:

Royal British Bank v Turquand

- The articles of a company stated that the directors could borrow money on behalf of the company, if they are so authorised by a resolution passed by the shareholders in GM.
- The directors borrowed money from R without obtaining any authorisation from shareholders.
- R had lent the money to the company assuming that the shareholders had authorised the directors to borrow money as per the requirement of the articles.
- It was held that borrowing of money by the directors without any authorisation from the shareholders amounted to a mere internal irregularity, and since R had no knowledge of such internal irregularity, he would not be prejudiced by such internal irregularity.

Conclusion

The benefit of doctrine of indoor, management can be availed only if the person dealing with the company -

- has the knowledge of the memorandum and articles;
- has no knowledge of internal irregularity,

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Exceptions to the doctrine of indoor management

1) **Knowledge of irregularity:**

Where the persons dealing with the company have knowledge of an internal irregularity, obviously the presumption that every internal proceeding has been conducted regularly shall stand rebutted, i.e., they cannot assume that everything has been done regularly. Therefore, the benefit of doctrine of indoor management shall not be available in such a case.

Howard v Patent Ivory Manufacturing Company

- The directors of a company could borrow upto £1,000 without the sanction of members in GM.
- The consent of the shareholders was required to borrow in excess of £1,000.
- The directors themselves lent £3,500 to the company.
- It was held that the directors had the notice of the internal irregularity and therefore the company was liable to them only for £1,000.

2) **Negligence -Suspicious circumstances or unusual magnitude of transactions:**

- If there are suspicious grounds surrounding a transaction, but the person dealing with company fails to make reasonable inquiry, the benefit of doctrine of indoor management will not be available.
- The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.
- The protection of the "Turquand Rule" is also not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry. Suspicion should arise, for example, from the fact that an officer is purporting to act in matter, which is apparently outside the scope of his authority.

Anand Bihari Lal v Dinshaw & company

- An accountant of the company entered into a contract on behalf of the company with a third parry to sell the property of the company.
- It was held that the third party could not assume that the accountant was authorised by the company to sell the property of the company.
- Therefore, the third party could not enforce such a contract against the company even though the third party had acted bonafide.

Underwood v Bank of Liverpool

- A director of a company paid into his own account cheques drawn in favour of the company.
- It was held that the bank could not claim the benefit of Turquand's rule, as it ought to have made an inquiry to see whether the director concerned had the power to do so.

3) **Forgery:**

- The rule of indoor management does not extend to transactions involving forgery.
- In case of forgery it is not that there is absence of free consent but there is no consent at all. Since there is no consent at all there is no transaction.Consequently,it is not that the title of person is defective but there is no title at all.

Ruben v Great Fingall Consolidated Company

- A share certificate was issued under the common seal of the company.
- The secretary of the company had signed on the share certificate.
- However, the signatures of two directors were also required on it, which were forged by the secretary.
- The holder of the share certificate contended that he was not aware of the fact of forgery, it was not possible for him to determine whether the signatures were genuine or forged and therefore, the certificate issued to him should be held as valid.
- The Court held that in case of forgery, there is not a defect in consent, but absence of consent, and therefore the certificate issued by way of forgery is void. Thus, the certificate was held to be invalid.

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May 2012

Explain the doctrine of "Indoor Management" as applicable in case of companies. Explain also the circumstances in which an outsider denting with a company cannot claim any relief on the oasis of doctrine of "Indoor Management ".

May 2007

The Secretary of a Company issued a share certificate to 'A' under the Company's seal with his own signature and the signature of a Director forged by him. 'A' borrowed money from 'B' on the strength of this certificate. 'B' wanted to realise the security and requested the company to register him as a holder of the shares. Explain whether 'B' will succeed in getting the share registered in his name.

Answer

A or B is not entitled to shares	since in case of forgery, there is not a defect in consent, but absence of consent, and therefore the share certificate issued by way of forgery is invalid (Ruben v Great Fingall Consolidated company).

Nov. 2007

P the secretary of XYZ Limited issues a Share certificate in favour of A purporting to be signed by the directors and the secretary and the seal of the company affixed to it. In fact the secretary forged the signature of the directors and has affixed the seal without authority. Can A hold the company liable for the shares covered by the Share certificate, under the provisions of the Companies Act?

Ans.

A is not entitled to shares and he cannot hold the company liable for any loss	– since in case of forgery, there is not a defect in consent, but absence of consent, and therefore the share certificate issued by way of forgery is invalid (Ruben v Great Fingall Consolidated company).

May 2008

Under the Articles of Association of Sunshine Ltd. Company directors had power to borrow up to Rs.10,000 without the consent of the general meeting. The Directors themselves lent Rs. 35,000 to the company without such consent and took debentures of the Company. Decide under the provisions of the Companies Act, whether the company is liable? If so, what is the extent of liability of the company in this case?

Answer

The company is not liable for Rs. 35,000	– since, the benefit of doctrine of indoor management can be availed of only by an outsider who has no knowledge of any irregularity in the internal management of the company.
The liability of the company is limited to Rs. 10,000	– since the directors, having knowledge of the fact that the limit of borrowings specified under the articles would be exceeded, themselves lent Rs. 35,000 without the consent of the general meeting; – since on the, similar facts as in the given case, same decision was given in Howard v Patent Ivory Manufacturing Company.

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5. SHARES AND SHARE CAPITAL

INTRODUCTION:

- Shares and debentures are financial instruments for raising funds for the company. Under the Companies Act, 2013, these are jointly referred to as "Securities".
- Generally, shares depict ownership interest in a company with entrepreneurial risks and rewards whereas debentures depict lender's interest in the company with limited risks and returns.
- Both these financial instruments are presented on the liabilities side of the issuer company and on the assets side of the investor or lender respectively.
- **Legal provisions related to these instruments are covered in Chapter IV of the Companies Act, 2013 (comprising sections 43 to 72) and the *Companies (Share Capital & Debentures) Rules, 2014* as amended from time to time along with endorsement in the company formation documents or approved by suitable company forum, wherever necessary**.

Concept of Capital

- In relation to a company limited by shares, the word capital means share-capital, *i.e.*, the capital or figure in terms of so many rupees divided into shares of fixed amount.
- In other words, the contributions of persons to the common stock of the company form the capital of the company.
- The proportion of the capital to which each member is entitled, is his share. A share is not a sum of money; it is rather an interest measured by a sum of money and made up of various rights contained in the contract.

In the domain of Company Law, the term 'capital' is used in the following senses:

a) Nominal or authorised or registered capital:

- This form of capital has been defined in **section 2(8) of the Companies Act, 2013.**
- **"Authorised capital" or "Nominal capital" means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company**.
- Thus it is the **sum stated in the memorandum** as the capital of the company with which it is to be registered being the maximum amount which it is authorised to raise by issuing shares, and upon which it pays the stamp duty.
- At the time of registration of the company, the **company has to pay fees to CG which is calculated with respect to authorised capital.** Similarly, at the time of increasing the authorised capital, the company has to pay fees to CG which is calculated as difference between the increased authorised capital and existing authorised capital.

b) Issued capital:

- Section 2(50) of the Companies Act, 2013 defines "issued capital" which means such capital as the company issues from time to time for subscription.
- **It is that part of authorised capital which is offered by the company for subscription and includes the shares allotted for consideration other than cash**.
- Schedule III of the Companies Act, 2013, makes it obligatory for a company to disclose its issued capital in the balance sheet.

a) Subscribed capital:

- Section 2(86) of the Companies Act, 2013 defines "subscribed capital" as such part of the capital which is for the time being subscribed by the members of a company;
- It is the nominal amount of shares taken up by the public.
- ***Where any notice, advertisement or other official communication or any business letter, bill head or letter paper of a company states the authorised capital, the subscribed and paid-up capital must also be stated in equally conspicuous characters.***
- ***A default in this regard will make the company and every officer who is in default liable to pay penalty extending Rs.10,000 and Rs.5,000 respectively.*** **[Section 60].**

d) Called-up capital:

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- Section 2(15) of the Companies Act, 2013 defines "called-up capital" as such part of the capital, which has been called for payment;
- It is the total amount called up on the shares issued.

e) Paid- up capital:

- Paid-up capital is the total amount paid or credited as paid up on shares issued.
- It is equal to called up capital less calls in arrears.

INTRODUCTION TO SHARES [Sec. 2(84)]

Definition of 'share' [Sec. 2(84)].

'Share' means a share in the share capital of a company and includes stock

Meaning of 'share'

A share is the smallest unit into which the share capital of a company is divided. A share thus represents such proportion of the interest of the shareholders as the amount paid up thereon bears to the total capital payable to the company. It is a measure of the interest in the company's assets to which a person holding a share is entitled.

KINDS OF SHARE CAPITAL (SEC. 43)

May 2007 *Explain in brief 'Equity Share Capital' and 'Preference Share Capital.'*

1) Kinds of share capital

Share capital shall be of 2 kinds, namely:

a) Preference share capital; and
b) Equity share capital
   i. with voting rights; or
   ii. with differential rights as to dividend, voting or otherwise, in accordance with such rules as may be prescribed by CG.

Example:

Tata Motors in 2008 introduced equity shares with differential voting rights called 'A' equity shares in its rights issue. In the issue, every 10 'A' equity shares carried only one voting right but would get 5 percentage points more dividend than that declared on each of the ordinary shares. Since 'A' equity share did not carry the similar voting rights, it was being traded at discount to other common shares having full voting. **Other companies which have issued equity shares with differential voting rights (popularly called DVRs) are Future Retail, Jain Irrigation among others.**

2) Preference share capital

Share capital carrying a preferential right with respect to dividend and repayment of capital is termed as preference Share capital.

(i) **Preferential right as to payment of dividend**

- In a case, where a dividend is declared by the company, the Preference shareholders shall have a preferential right to payment of dividend.
- Such preferential right as to payment of dividend may be —
  a) with respect to a fixed rate; or
  b) with respect to a fixed amount; or
  c) free of income tax; or
  d) subject to income tax.

(ii) Preferential right as to repayment of capital

- In the case of winding up of the company or of repayment of capital, the preference shareholders shall have a preferential right to the repayment of the amount of share capital paid up.
- Share capital shall be deemed to be preference share capital whether or not it is entitled to either or both of the following rights:
  a) Participation in surplus profits
  Right to participate with the equity share capital, in the surplus profits in the case of payment of dividend.

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b) Participation in surplus assets

Right to participate with the equity share capital, in any surplus which may remain after the entire share capital is repaid in the case of a winding up.

3) Equity share capital

Share capital which is not preference share capital is termed as equity share capital.

4) Applicability

Sec. 43 applies to all companies, whether public or private.

The provisions of sec. 43 shall not apply to a private whose memorandum or articles so provide.[Notification No G.S.R 464(E) dated 5th June 2015]

Nature of shares(Sec 44)

The shares and debentures shall be -

a) movable property
b) transferable in the manner provided by the articles of the company

Numbering of shares (sec. 45)

- Every share shall be distinguished by its distinctive number.

Exception -Shares held in depository system shall not have distinctive numbers (Sec.45 of the Companies Act, 2013).

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