

The Companies act, 2013

Why?

Companies act is made to regulate and to avoid damages related to companies and it includes 470 sections, 29 chapters, and 7 schedules.

Meaning?

According to Section 2(20) a company means a company registered under company act 2013 or any of the previous act.

Features of Company

- ① Incorporated association:- The company is not naturally born it is to be incorporated by individual the company need to be created by someone.
- ② Artificial judicial person:- The company is not naturally made it is created by an individual that's why it is an artificial person.
- ③ Separate legal entity:- A company is clothed with legal personality its existence is distinct and separate from that of its members. a company can own property, have bank account, raise loans, incur liabilities and enter into contract. even members can contract with company.
- ④ Perpetual Succession:- Members may die or change but company will be continue the shares of company may change and infinitely but that does not affect the existence of company since company is an artificial person created by law, law alone can bring end to its life. Its existence does not effect by death or insolvency of members.
- ⑤ Limited liability:- It means the liability of shareholder is limited to the amount maximum fixed or promised by them that means even if the liability of the company exist. Shareholders is only liable for the amount he has promised. In such a situation person assets of the shareholders will not be liable for the amounts he has promised. In such a situation person assets of the shareholders will be not utilised for payment of liability of company.

liability an amount a person need to pay for some legal contract.

o Companies limited by share :-

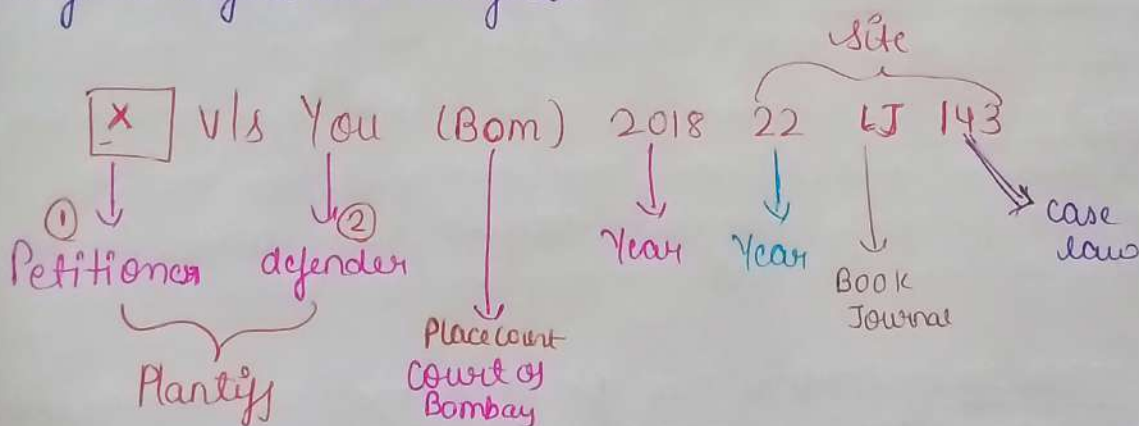
Where a shareholder of the company promise to invest a money in a capital of the company (upto) limited amount from incorporation till winding up is company limited by shares.

o guarantee Company :-

The member of the company gives promise to invest the money in the company at the (time of winding up) only if the liability is ~~not~~ more than assets than such a promise is called as guarantee & company

⑥. Common Seal :-

Common seal is a official signature of a company signed by the director of company. electronic common seal is known as digital signature certificate.



① Companies limited by shares :- Section 2(22)

The amount which is unpaid or contributed on shares instrument such as it is known as a company limited by shares. The liability of Shareholders is upto amount contributed by him his separate property cannot be encompassed to meet the company's debt. The property of the company is not the property of Shareholders. Property of Company is separate from Property of Shareholders.

② Companies limited by Guarantee :- Section 2(21)

Cl by guarantee means members have liability limited to the amount promised or undertaken such a amount should be contributed at the time of winding up they will be liable for the amount promised not anything from the personal assets.

Distinction b/w both the above terms

① Shares of se faira jagougha winding up the amt in to be contributed till winding up.

-> Guarantee end m hikeruga
(amt to be contributed at the last only at the time of winding up).

② Share Capital Shares insue kriskli h.
(Shares Capital can insue Shares)

-> Guarantee company ^{guarantee} insue nahi kriskli h.
(Guarantee company cannot insue any guarantee.)

③ Unlimited liability :-

UL means a company who do not have limit on liability of members. If the liability of the company is more than assets than personal assets of Shareholders will be applied till the members get insolvent or till the liability is over which ever is earlier.

④ OPC - One person Company

Section 2(62) defines one person company as which has only one person as a member.

OPC is a private limited company with the minimum paid up share capital as may be prescribed & has at least one member.

- o Only one person member, minimum paid up capital - nominee prescribed
- o The MOA shall describe the ~~address~~ name of other person, who shall in the event of the subscriber's death or his incapacity, do contract, become the member of the company.
- o the other person whose name is given in memorandum shall give his prior written consent prescribed form & the same shall be filed with Registrar of Companies at the time of incorporation.
- o Such other person may be given the right to withdraw his consent.
- o The member of OPC may change at any time the name of such other person by giving notice to the company and shall intimate the same to Registrar.
- o member shall not be eligible to incorporate more than one OPC or become nominee in more than one such company.
- o minor cannot become member or nominee or ~~cannot~~ hold share as beneficiary
- o cannot converted into Section 8 may convert in public or private in certain cases.
- o OPC cannot carry out non-banking financial investment activities.
- o OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation.
- o only a natural person who is an Indian citizen & resident of India shall be eligible to incorporate a OPC, shall be a nominee for the sole member of OPC.

(5) Private Company Section 2(68)

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

- restricts the rights to transfer its shares.
 - except in case of OPC, limits the number of its members to two hundred.
 - Prohibition on invitation to subscribe to securities of the company.
- (iv). Small company is a private company.
- (v). OPC can be formed only as a private company.

Small Company - Under the Section 2(85) of the company act which means a company other than company -

(i) paid up share Capital of which does not exceed 50 lakh or such higher ₹ as may be prescribed which shall not be more than five crore ₹.

(ii). turnover of which as per its last P&L a/c does not exceed 2 crore ₹ or such higher ₹ as may be prescribed which shall not be more than 20 crore ₹.

→ Exceptions -

(a) a holding company or a subsidiary company

(b) a company registered under section 8 and

(c) a company or body corporate governed by any special act.

(6) Public Company [Section 2(71)] :-

- is a ^{not} private company
- Shares freely transferrable
- no minimum paid up capital requirement.
- minimum number of member -7
- maximum no of members -no limit
- subsidiary of a public company is deemed to be a public company.

⇒ On Basis of Control

(8) Holding & Subsidiary Companies :-

→ a holding company is a corporation that owns enough voting stake in one or more other companies to exercise control over them. a corporation that exists solely for this purpose is called a pure holding company.

* A subsidiary company, or sister company is a company that is completely or partly owned & partly or wholly controlled by another company that owns more than half of the subsidiary's stock. The subsidiary can be a company, corporation or limited liability company.

• A company is a holding company in relation to one or more other companies means a company of which such company are subsidiary companies.

• Section 2(187) in relation to any other company means a company in which the holding company -

- (i) Controls the composition of the board of directors or,
- (ii) exercise or control more than ^{one half} of the total share capital either at its own or together with one or more of its subsidiary companies.

for the purpose of this section :-

- ① a company shall be deemed to be a subsidiary company of the holding company even if the control referred in sub clause (i) or sub clause (ii) is of another subsidiary company of the holding company.
- ②. The expression "company" includes anybody corporates.
- ③. the composition of a company's Board of director 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 ~~the~~ majority of the directors.
- ④. 'layer' in relation to the holding company means its subsidiary or subsidiaries.

① Associate Company :- Section 2(16)

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 & includes a joint venture company.

The term Total Share Capital means aggregate of the -

- (i). Paid up equity share capital &
- (ii). Convertible preference share capital

On the basis of access to capital:-

(10) Listed Company ²⁽⁵²⁾ - 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.

(11) Unlisted Company ²⁽⁸⁵⁾ - means company other than listed company.

(12) Government Company ²⁽⁴⁵⁾ - means any company in which not less than 51% of the paid up share capital is held by-

- (i) Central govt or
- (ii) by any state govt or govt or,
- (iii) partly by central govt and partly by one or more state govt.

(13) Foreign Company ²⁽⁴²⁾ -

It means any company or body corporate incorporated outside electronic mode and; conducts any business activity in India in any other manner.

(14) Section 8 Companies [Charitable Companies]

- ① It involves in social benefit, education, charitable, and religious.
- ② It earns profit but utilize it in charitable usage.
- ③ This company cannot distributed profit as dividend.
- ④ license is given by central govt.
- ⑤ If license is not useful for charitable work, license can be revoked by central govt.
- ⑥ This company can be public or private.
- ⑦ but the company cannot use the word Ltd, or Pvt in its own name.
- ⑧ requirement of minimum capital is not apply.

9. After revocation of license of a company central govt may windup or amalgamate the company with another company having similar, object.

(15) Dormant Companies?

(i) When company is being formed but business is not being conducted or the business will be conducted in future then in such a case such a company will be called as dormant companies.

(ii) Inactive company means a company which does not carrying on any business or operation, or has not made any significant accounting transactions during the last two financial year, or has not filed financial statement and annual returns during the two financial year.

⁴⁵⁹
(16) Nidhi Company \rightarrow Section 406
~~the company~~ the company which is created for benefit of the members for habit of saving and cost counting by taking deposits from the members & issuing loan to 3 party.
nidhi company can take ~~loan~~ deposits from members not from the 3 party.

(17) Public Financial Institutions (PFI) Section 2(72)

(i) financial institution which is govt company in PFI.

(ii) LIC, IDFC, UTI, any institution notify by central or state govt.

(iii) Any institution notify by central govt in calculation by RBI.

To create the PFI there are 2 basis condition

(i) to be created in specific law or central state.

(ii) 51% of product capital should be held by central or state govt.

Section	Public 2(71)	Private 2(68)	OPC 2(62)
minimum	7	2	1
maximum	∞	200	1
who?	any	any	Individual

How to form Company?

A company can be formed out of 3 companies public, private, OPC. In public there can be 7 or more persons, In private there can be 200 or more persons and one person where company is formed in OPC.

Incorporation of Company :-

- ① Promoter shall legally constitute a company.
- ② Promoter shall select company from public, private, OPC.
- ③ Promoter shall file MOA, AOA with ROC
- ④ Affiliate should be given by the members that they are not disqualified they are not debarred from Companies act and they can form a company.
- ⑤ All documents shall be filed with ROC with an application to incorporate a company.
- ⑥ ROC will incorporate the company issue certificate of incorporation and corporate identification number to promoter.
- ⑦ All the documents used in incorporation shall be maintain at registered office of the company for verification
- ⑧ All the details such as name address or correspondan other particular shall be also filed with ROC and if anyone

gives a false information he will be liable to fraud under section 447.

MOA (Memorandum of Association).

The MOA is a constitutional document which talks about 7 constitutional things regarding companies.

- (i) name clause
- (ii) object clause
- (iii) registered office clause
- (iv) capital clause
- (v) liability clause
- (vi) subscription clause
- (vii) nomination clause (POPC)

1) Name clause:-

(a) the last word limited in case of public ltd in case of public company the last word will be private in case private ltd.

(b) In section 8 this clause is not applicable.

(c) the govt company's name must end with the word ~~govt.~~ ltd, in case of OPC, the word OPC should be included.

2) Object clause:-

(a) object means the area in which a company will do business.

(b) object can be of 2 types main and supplementary.

example- for that example main object is agriculture, supplementary object is animal husbandary.

(c) the object of the company shall show some ~~to~~ connection & cooperation with the business. (some connection)

3) Registered Office Clause:-

(a) the company is situated in.

(b) The place where all the activity of company held.

(c) The place where all official communication and decision will held.

④ Capital clause:-

- ① the amount invested in capital for business.
- ② Share capital can be of 2 types equity or preference.
- ③ equity with uniform right and equity with differential capital.

⑤ Subscription clause:-

- ① Sub clause means list of persons or members who has invested in the capital.
- ② Such a persons are called as subscription which should be minimum numbers of members.
- ③ Subscription are also shares holder. for the amount of capital that they have invested.

⑥ Liability clause:-

- ① means the amount of capital which members will contribute to the assets of the company of payment of liability is of the company.
- ② When members give limited amt the company is called limited by liabilities but, when members give personal assets without any limit for payment of liability of company then it is called Unlimited company.

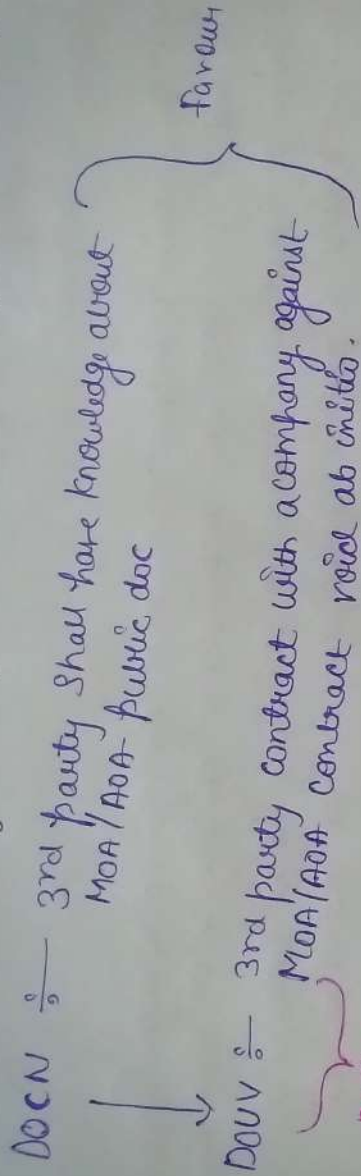
#^{bb} Doctrine of Ultra Vires^{dd}

① The meaning of the term Ultra Vires is simply "beyond (their) powers" the legal phrase "Ultra Vires" is applicable to only to acts done in excess of the legal power of the doers. This presupposes that the powers in their nature are limited. to an ordinary citizen, the law permits whatever does the law not expressly forbid.

② It is a fundamental rule of company law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the act - thus far and no further. [Ashtbury railway company Ltd v Riche].

- ③. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding of the company.
- ④. On this account, a company can be restrained from employing its funds for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorized to carry on.
- ⑤. The impact of the doctrine of ultra vires is that a company can neither be used on an ultra vires transaction, nor can it sue on it. Since the memorandum is a **public document**, it is open to public inspection.
- ⑥. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.
- ⑦. If the ultra vires loan has been utilized in meeting lawful debts of the company then the lender steps into the shoes of the debtor paid off and consequently he would be entitled to recover his loan to the extent from the company.
- ⑧. An act, which is ultra vires the company being void, cannot be ratified by the shareholders of the company. Sometimes act, which is ultra vires can be regularized by ratifying it subsequently for instance, if the act ~~conducted~~ is ultra vires the power of the directors, the shareholders can ratify it; if it is ultra vires the articles of the company, the company can alter the articles, if the act is within the power of the company but is done irregularly, shareholder can validate it.

Ashbury railway carriage and Iron Company Ltd v Riche (1875)

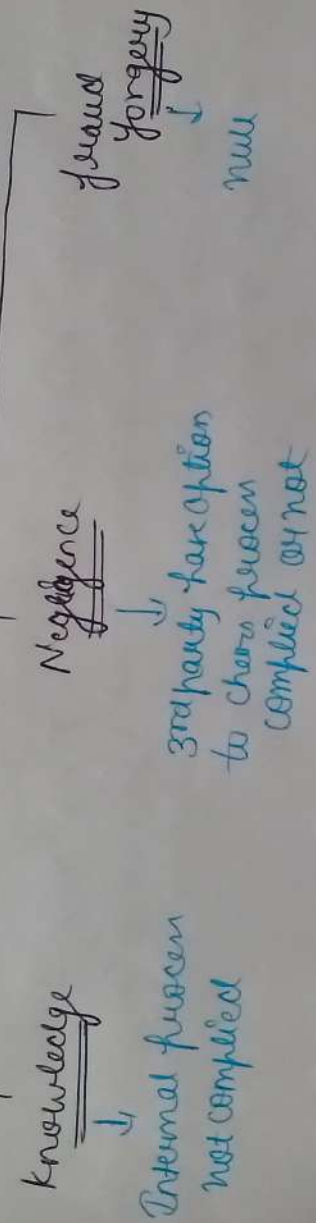


DoIM
doctrine of indoor management

Royal British bank v Turquand rule

→ 3rd party shall not/need not have knowledge about internal affairs of company. It can assume that internal affairs is being processed.

Exceptions (icuan choka degi)



Doctrine of Indoor Management :-

① According to "doctrine of indoor management" the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of company to enter into the proposed contract are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned everything has done properly.

②. They are bound to examine the registered documents of company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more.

Meaning: The doctrine of indoor management also referred to as the Turquand's rule evolved 150 yrs back, this doctrine came into play as an opposition to the doctrine of constructive notice. On one hand, where doctrine of constructive notice is intended to protect the company against outsiders, the doctrine of indoor management was meant to protect the third party or rather the outsiders from actions of the company. In other words DOI means that people dealing with the company need not enquire about the internal proceedings related to the contract they are satisfied that the transactions follows MWA/AOA.

Exceptions of Doctrine of Indoor Management:

①. Where the outsiders had knowledge or irregularity:-
The application of the doctrine stands repealed in cases where the outsiders dealing with the company is aware of the lack of authority of the person acting on behalf of the company.

Case: In the case of Howard v Patent Co. the directors of the company borrowed the sum of 3500 pounds from another director without the consent of the annual general meeting. The rule stated that no director was allowed to borrow more than 1000 pounds without the consent of the general meeting.

Verdict: Since the plaintiff here was the director and was well aware of the rules and internal irregularities, the company would not be liable.

②. Negligence :- The doctrine is not applicable in the case of where the officer of a company does an act beyond his authority.

Case - In the case of B. Amand Behari V/s Dinshaw & Co. (Bankers Ltd) an accountant of the company transferred the company in favour of Amand Behari.

Verdict - The court held that the doctrine of Indoor management won't be applicable as the transfer would be void considering the fact that the transfer made by the accountant was beyond his authority.

③. Forgery :- The company cannot be held liable for forgery committed by an officer. Thus the doctrine is not applicable to forged transactions which are void ab initio.

Case :- In the case of Rouben V Great Fingal Consolidated the Secretary of the company forged the signature of two directors of the company and issued a Certificate without authority.

Verdict - It was thus held that the holder of certificate could not take the remedy of indoor management.

All Case law of Companies act

SR no.	Name of case	Decision	Regarding
①	Dinshaw Manekji Petit and Juggilal V/S Commission of tax.	Creation of a company to avoid the tax is void in law. In such a situation corporate veil will be lifted to identify the ultimate person.	Tax
②	Daimier Co. Ltd. V/S Continental tyre & Rubber Co.	Contract with company who is Alien enemy in such case contract is void to check that alien enemy company we need lifting of corporate veil.	Alien enemy
③	Guildford motors V/S Harne	Creations of such company which solicit customer of other who is prohibited to do so. Such company is void. lifting of corporate veil is to identify such person who is restricted to do so.	Solicitation of customers.
④	Merchandise transport Ltd V/S British transport Commission (1982)	Creation of company for a getting a license which is rejected to a holding company is void in law. In such a case the corporate veil shall be lifted to subsidiary company to identify whether license was allowed to holding company or not.	Transport license
⑤	Workmen of association rubber Industry Ltd, V/S Association rubber industry Ltd.	Creation of a company to avoid a law is valid in law. In such a case lifted corporate veil whether law is made to avoid or to compile the law.	Payment of Bonus

S.no	Name of case	Decision	Regarding
6	Narender Kumar Agarwal V/S Sanjay Maloo	In case of shares Capital shares can be transferred or sold easily but inquirable	Regarding
Case law related to doctrine of Indoor management.			
		Fact of the case	Verdict of the case
1	Royal British Bank V/S Turquand.	The director borrowed a certain sum from Plaintiff The Article of Company allows ^{provide} company for the borrowing of money on bonds, with a condition attached to it which stated that a resolution should be passed in general meeting. But the shareholders claimed that such resolution was not passed in the general meeting & thus the company is not liable to pay the money.	It was held that company would be liable to pay the amount the director were entitled to borrow the amt only after a resolution was passed in the general meeting. Thus the plaintiff had the right to infer that the formalities were done & the resolution was passed. Turquand was thus entitled to sue the company on the strength of the bond. Lord Halsbury in his judgement said "Outsiders are bound to know the external position of the company, but are not bound to know its indoor management."