

Companies Act 2013



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The Companies Act, 2013

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

Banking companies

Companies engaged in the generation or supply of electricity.

Any other company governed by any special act for the time being in force.

Such body corporate which are incorporated by any act for time being in force, and as the central government may by notification specify in this behalf.

COMPANY: MEANING AND ITS FEATURES

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



FEATURES OF A COMPANY: [SHORT CODE = CLAPS]

1. **Common seal:** Common seal is the official signature of a company, which is affixed by the officers and employees of the company on its every document.

- The common seal is optional.
- In case of a company does not have a common seal, the authorization shall be made by two directors or by a director and the company secretary, wherever the company has appointed a company secretary.



2. **Limited liability:** The liability of a member depends upon the kind of company of which he is a member.

- The liability of the members of the company is limited to the extent of the nominal value of shares held by them.
- In the case of a company limited by guarantee, the members are liable only to the extent of the amount guaranteed by them and that too only when the company goes into liquidation.
- However, if it is an unlimited company, the liability of its members is unlimited.



3. Artificial Person:- A company is an artificial person created by law.

- Further, the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts.
- It can sue and be sued in its own name.
- As the company is an artificial person, it can act only through some human agency, viz., directors.
- The directors can either on their own or through the common seal can authenticate its formal acts.

4. Perpetual succession:- Members may die or change, but the company goes on till it is wound up on the grounds specified by the Act.

- Since a company is an artificial person created by law, law alone can bring an end to its life.
- Its existence is not affected by the death or insolvency of its members.

5. Separate legal entity:- When a company is registered, it is clothed with a 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 contracts.
- Its personality is distinct and separate from the personality of those who compose it.
- A company is capable of owning, enjoying and disposing of property in its own name.

CORPORATE VEIL THEORY

Corporate Veil:- 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.

Case law:- *Salmon Vs. Salmon*

In *Salmon Vs. Salmon & Co. Ltd.* It was held that a company is a person distinct and separate from its members.



lifting the veil. It means looking behind the company as a legal person, i.e., disregarding the corporate entity and paying regard instead to the realities behind the legal facade.

Lifting of Corporate Veil:- The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members -

1] To determine the character of the company i.e to find out whether co-enemy or friend:-

A company does not have mind therefore, it cannot be a friend or foe. It may, however, be characterized as an enemy company, if its affairs are under the control of people of an enemy country.

for this purpose, The court may examine the character of the persons who are really at the helm of affairs of the company.

2] To Protect revenue tax:-

In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue.

Case law:- Dinshaw Maneckjee Petit

3] To avoid a legal obligation:-

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.

Case law:- Workmen of Associated Rubber Industry Ltd. v Associated Rubber Industry.

4) Formation of subsidiaries to act as agent/s:-

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 Here the principal will be held liable for the acts of that company.

Case law:- Merchandise Transport limited vs. British Transport
ommission (1982)

5) Company formed for fraud / improper conduct or to defeat law

Where the device of incorporation is adopted for some illegal or improper purpose eg to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

Case law:- Gilford Motor Co. vs. Home

CLASSES OF COMPANIES UNDER THE ACT.

On the Basis of liability

Company limited by shares

Company limited by guarantee

Unlimited Company

a) Company limited by shares:- When the liability of the members of a company is limited by its memorandum of association to the amount unpaid on the shares held by them, it is known as a company limited by shares.



- The shareholder may be called upon to contribute only to the extent of the amount which remains unpaid on his shareholdings.

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b) Company limited by guarantee:- The company having the liability of its members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up.



Similarities between limited by shares & Guarantee

- In Both the cases, The liability of members is limited.
- In Both the cases, The liability can arise only during winding up of the company.

Difference Between limited by shares and by Guarantee	
Limited by shares	Limited by Guarantee
<ul style="list-style-type: none"> The liability of the members is limited upto the extent of unpaid share capital. 	<ul style="list-style-type: none"> The liability of the members is limited upto the extent of guaranteed amount.
<ul style="list-style-type: none"> Liability can arise either during the life-time or during winding up. 	<ul style="list-style-type: none"> Liability arises only during winding up.

C) Unlimited Company:- A company not having any limit on the liability of its members.

- In such a company, The liability of a member ceases when he ceases to be a member.
- The liability of each member extends to the whole amount of the company's debts and liabilities but he will be entitled to claim contribution from other members.



On the basis of members

One person
company
(OPC)

Private
company

Public
company

Small
company

a) One Person Company:-

- Company which has only one person as a member
- 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, and the same shall be filed with Registrar of companies.
- 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
- Only a natural person who is an Indian citizen whether resident in India or otherwise shall be eligible to incorporate a OPC &
- Shall be a nominee for the sole member of a OPC.
- No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- 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.
- Such Company cannot carry out Non-Banking financial Investment activities including investment in securities of any body corporate

b) Private Company:-

Section 2(68) - Private Company

L

Limitation of membership

200 except for OPC

Joint Holders counted as 1

Employees members not counted

Ex-employees members not counted

R

Restriction on the right to transfer its shares

P

Prohibition on making an invitation to public

c) Small Company:-

Section 2(85) - Small Company

Small company means a company, other than a public company -



Provided that nothing in this clause shall apply to -

(A) Holding company or subsidiary company

(B) Company registered under section 8

(C) company or body corporate governed by any special Act

d) Public Company:-

Section 2(71) - Public Company

A public company means a company which:

i. Is not a private company

ii. Has a minimum paid up capital as may be prescribed

iii. Is a private company & which is subsidiary of a public company

On the basis of Control

Holding and Subsidiary companies

Associate Company

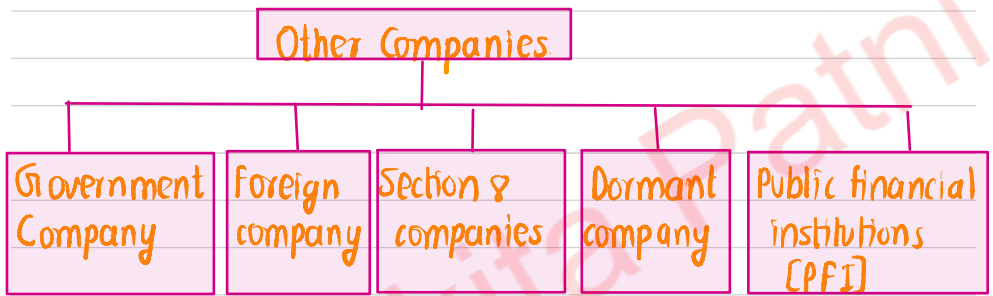
(a) Holding and Subsidiary companies:-

- A company is a holding company in relation to one or more than other companies, means a company of which such companies are subsidiary companies.
- The expression company includes any body corporate. "subsidiary company" in relation to any other company means a company in which the holding company -
 - (i) controls the composition of the Board of Director or by another company at its discretion can appoint or remove all or a majority of the directors.
 - (ii) exercises or controls more than one half of the total voting power 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. [Number prescribed is 2].
- A Private company, which is subsidiary of a public company shall be deemed to be public company.



b) 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 influences and includes a joint venture company.
- significant influence means control of at least twenty per cent of total voting power or control of participation in business decisions under an agreement.



a) Government Company:- Government Company means any company in which not less than 51% of the paid-up share capital is held by-

- (i) 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 and the section includes a company which is a subsidiary company of such a government company.

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

**c) Formation of companies with charitable objects etc
(section 8 company)**

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

- promote the charitable objects of commerce, arts, science, sports, education, research, social welfare, religion, charity, protection of environment, etc such company intends to apply its profit in
 - i) promoting its objects and
 - ii) prohibiting the payment of any dividend to its members.
- Need not use the word **ltd. / Pvt. ltd.** in its name and adopt a more suitable name such as club, chambers of commerce etc.
- Central Government issues license to incorporate such companies.
- License revoked if conditions contravened.
- On revocation, Central Government may direct it to
 1. Converts its status and change its name.
 2. Wind-up
 3. Amalgamate with another company having similar object.

- Can call its general meeting by giving a clear 14 days notice instead of 21 days.
- Requirement of minimum number of directors, independent directors, etc does not apply.
- Need not constitute Nomination and Remuneration Committee and Shareholders Relationship Committee.
- A Partnership firm can be a member of a section 8 company.

d) Dormant Company:-

- Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual project and has no significant accounting transaction.
- such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
- "Significant accounting transaction" means any transaction other than-
 - i) Payment of fees by a company to the Registrar.
 - ii) Payments made by it to fulfil the requirements of this Act or any other law;
 - iii) Allotment of shares to fulfil the requirements of this Act
 - iv) Payments for maintenance of its office and records.

e) Public Financial Institutions (PFI):-

The following institutions are to be regarded as public financial institutions:-

- i) Life Insurance Corporation of India
- ii) Infrastructure Development Finance Company.
- iii) Unit Trust of India

- iv] Institutions notified by the Central Government
- v] Such other institutions as may be notified by the Central government in consultation with the Reserve Bank of India

MODE OF REGISTRATION / INCORPORATION OF COMPANY

PROMOTERS:- means a person -

- a] who has named as such in a prospectus or is identified by the company in the annual return referred to in section 92.; 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.

FORMATION OF COMPANY:-

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

INCORPORATION OF COMPANY:-

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

1. Filing of the documents and information with the registration form:-

- The memorandum and articles of the company duly signed by all the subscribers to the memorandum.
- 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. [director, manager or secretary of the company]
- A declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating -
 - 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 of any breach of duty to any company under this Act or any previous company law during the last five years.
- The address for correspondence
- The particulars (names, surnames, or family names or residential address, nationality) of every subscribers to the memorandum along with the proof of identity.
- The particulars (names, surnames, or family names or residential address, nationality) of the persons mentioned in the articles as the directors and such other particulars including proof of identity.
- 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.

2. Issue of certificate of incorporation on registration:-

The Registrar, shall register all the documents and information in the register and issue a certificate of incorporation.

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. If any person furnishes any false or incorrect particulars with the Registrar in relation to the registration of a company, he shall be liable for action for fraud under section 447.

6. 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 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 its articles, in public interests or if the interest of the company and its members and creditors or
- b) direct that liability of the members shall be unlimited
- c) direct removal of the name of the company from the register of companies
- d) pass an order for the winding up of the company or
Provided that before making any order
 - The company shall be given a reasonable opportunity of being heard and
 - The Tribunal shall take into consideration the transactions entered by the company, including the obligations, if any, contracted or payment of any liability.

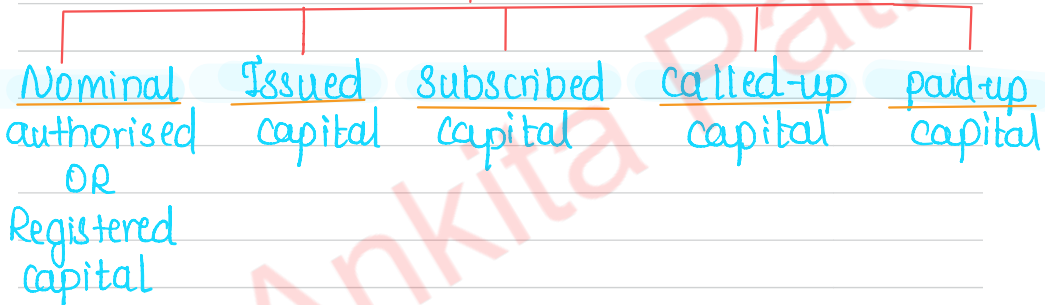
EFFECT OF REGISTRATION I

- A registered company shall be capable of exercising all the functions of an incorporated company under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue or be sued, by the said name.
- It has perpetual existence until it is dissolved by liquidation or struck out of the register
- A company on registration acquires a separate existence and the law recognises it as a legal person separate and distinct from its members.

Effect of Memorandum & Articles

The memorandum & articles when registered, shall bind the company & the members thereof to the same extent as if they respectively had been signed by the company and by each member, and an agreement to observe all the provisions of the memorandum & of the articles.

Classification Of Capital



1] Nominal / Authorised / Registered capital.

"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.

2] Issued Capital

Issued Capital means such capital as the Company issues from time to time for subscription.

3] Subscribed capital.

Subscribed capital is that part of capital which is for the time being subscribed by the members of the company.

4] Called-up capital.

Called-up capital is that part of capital, which has been called for payment. It is the total amount called up on the shares issued.

5] Paid-up capital

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

Shares



Nature of Shares :

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

Shares are a movable property.

Shares or debentures of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

Shares shall be numbered.

Every share in the company having a share capital, shall be distinguished by its distinctive number.

Kinds of Share capital

Equity Share Capital

Preference Share Capital

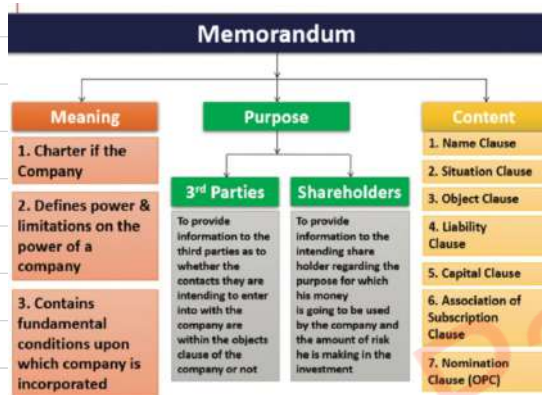
i) with voting rights
ii) with differential rights

Equity share capital means all share capital which is not preference share capital

Preference share capital means that part of the issued share capital of the company which carries or would carry a preferential right with respect to -

a) Payment of dividend
b) Repayment in the case of winding up.

Memorandum of Association



Content of memorandum

Content of memorandum shall state –

a) Name clause:

last word "limited" in the case of a public limited company, or the last words "Private limited" in the case of a private limited company.

In the case of a One Person Company, the words "One Person Company", should be included below its name.

b) Registered office clause.

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

c] Object Clause

The objects for which the company is proposed to be incorporated.

d] Liability clause

The liability of members of the company, whether limited or unlimited, and also state, —

- The case of a company limited by shares, that the liability of its members is limited to the amount unpaid, if any, on the shares held by them; &

- In the case of a company limited by guarantee, the amount up to which each member undertakes to contribute —

- i] To the assets of the company in the event of its being wound-up while he is a member.

- ii] To the costs, charges & expenses of winding-up & for adjustment of the rights of the contributories among themselves.

e] Capital clause

The amount of authorized capital divided into share of fixed amounts and the number of shares with the subscribers to the memorandum have agreed to take, indicated opposite their names, which is not less than 1 share.

fj Association of subscription clause.

Every subscriber to the Memorandum shall take at least one share, & shall write against his name, the number of shares taken by him.

gj Nomination (clause (DPC))

In the case of DPC, the name of the person who, in the event of death of the subscriber, shall become the member of the company.

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 the contract. The guardian of minor, who subscribes to a memorandum on his behalf, will be deemed to have subscribed in his personal capacity.



Doctrine Of Ultravires

The meaning of the term ultra vires is simply "beyond (their) powers."

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 & inoperative in law & is therefore not binding on the company.

* The impact of the doctrine of ultravires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document," it is open to public inspection. 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 ultravires the company, you cannot enforce it against the company.

An act which is ultra vires the company being void, cannot be ratified by the shareholders of the company. If the act is ultravires 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 Limited v. Richie (1875)

Articles Of Association

The articles of association of a company are its rules & regulations, which are framed to manage its internal affairs.

The articles are the internal regulations of the company. The articles play a part subsidiary to the memorandum of association. It regulates domestic management of a company & creates certain rights & obligations between the members & the company.

Contents & model of AOA.

1] Contains regulations

The articles of the company shall contain the regulations for the management of the company.

2] Inclusion of matters.

The articles shall also contain such matters, as are prescribed under the rules.

3] contain provision for entrenchment.

The articles may contain provision for entrenchment (to protect something) to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

4] Manner of inclusion of the entrenchment provision.

The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company & by a special resolution in the case of a public company.



ARTICLES OF ASSOCIATION

Difference between AOA & MOA



1] Objectives: Memorandum of association defines & delimits the objectives of the company whereas the Articles of association lays down the rules & 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 & Articles define the relationship between the company & its members.

3] Alteration: Memorandum of Association can only be altered only under certain circumstances. 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 ultravires & 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 Constructive Notice

The memorandum & articles of association of a company when registered with Registrar of companies, become public documents, & they are available for inspection to any person, on payment of nominal fees.

It is, therefore, the duty of every person dealing with a company to inspect its document & make sure that his contract is in conformity with their provisions but whether a person reads them or not, it will be presumed that he knows the contents of the document.

By constructive notice is meant:

i] whether a person reads the documents or not, he is presumed to have knowledge of the contents of the documents.

He is not only presumed to have read the documents but also understood them in their true perspective.

If a person enters into a contract which is beyond the powers of the company as defined in the memorandum, or outside the authority of the directors as per memorandum or articles, he cannot acquire any rights under the contract against the company.

Doctrine Of Indoor Management.

The doctrine of Indoor management is the exception to the doctrine of constructive notice.

[The Royal British bank v/s Turquand.]
The doctrine of Indoor management is popularly known as Turquand Rule.

Exceptions to the doctrine of Indoor Management

1] Actual or constructive knowledge of irregularity:

The rule does not protect any person when the dealing with the company

has notice, whether actual or constructive, of the irregularity.

Howard v/s Patent Ivory Manufacturing Co.

2] Suspicion of Irregularity:

The doctrine in no way, rewards those who behave negligently.

Anand Binari Lal v/s Dinshaw & Co.

3] Forgery:

The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery which must be regarded as nullity.

Ruben v/s Great Fingall Consolidated.

