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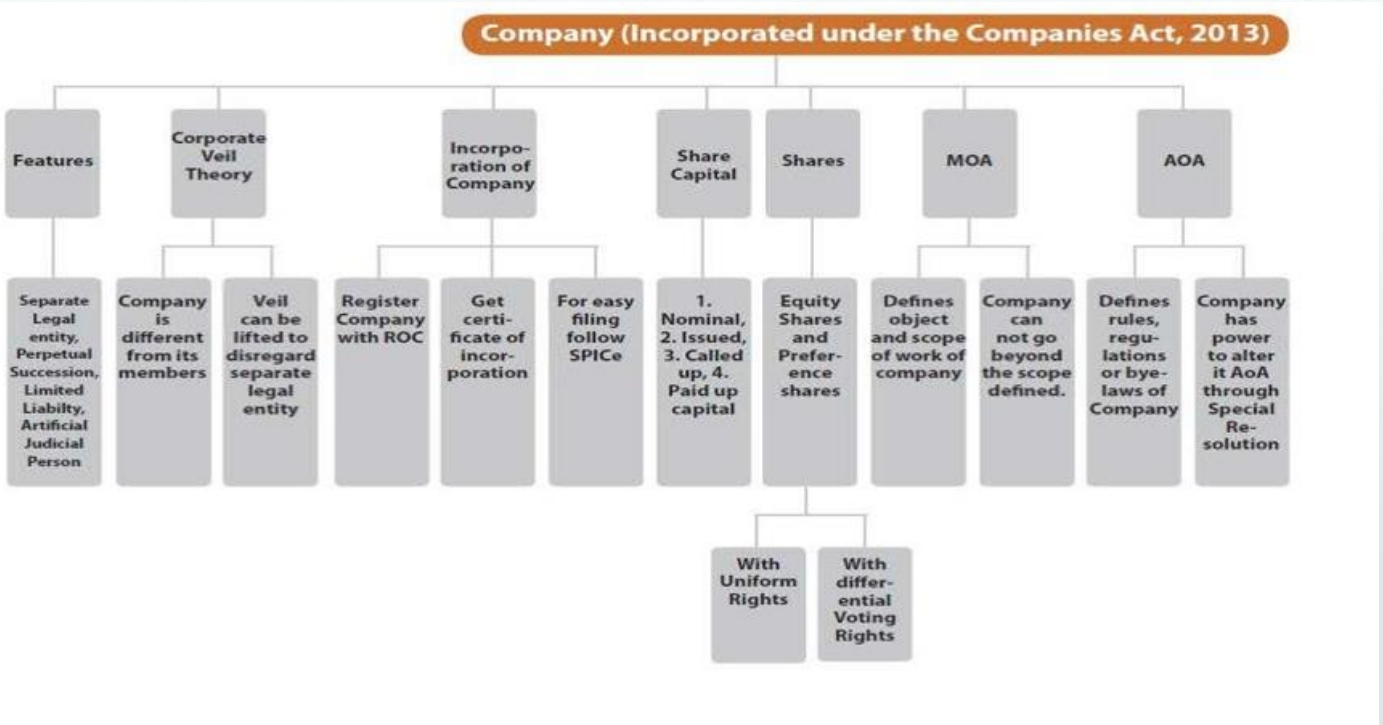

Company (Incorporated under the Companies Act, 2013)
Features
Separate Legal entity, Perpetual Succession, Limited Liabilty, Artificial Judicial Person
Corporate Veil Theory
Company is different from its members
Veil can be lifted to disregard separate legal entity
Incorpo-ration of Company
Register Company with ROC
Get certi-ficate of incor-poration
For easy filing follow SPICe
Share Capital
1. Nominal, 2. Issued, 3. Called up, 4. Paid up capital
Shares
Equity Shares and Prefer-ence shares
With Uniform Rights
With differ-ential Voting Rights
MOA
Defines object and scope of work of company
Company can not go beyond the scope defined.
AOA
Defines rules, regu-lations or bye-laws of Company
Company has power to alter it AoA through Special Re-solution

Introduction

The Companies Act, 2013 contains 470 sections and seven schedules. The entire Act has been divided into 29 chapters.


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 provisionsof 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 CentralGovernment 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"Companies incorporated under this Act or under any previous company law.

FEATURES

Separate Legal Entity

- Legally separate from the members

Perpetual succession

- Change in members does not affect existence of Company

Limited Liabilty

- Liability of Company different from liability of members

Artificial Juridicial Person

- Company can act through human agency only
- Company can contract, sue and be sued in its own name

Separate Legal Entity:

It's a Distinctive feature between different forms of organizations and the most striking feature in the company form of organization. When a company is registered, it is clothed with a legal personality. It comes to have almost the same rights and powers as a human being. 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.**

(a) It is at law, a person which is different from the subscribers to the memorandum of association.

(b) Even members can contract with company, acquire right against it or incur liability to it. For the debts of the company, only its creditors can sue it and not its members. A company is capable of owning, enjoying and disposing of property in its own name. **The shareholders are not the private or joint owners of the company's property**.

A member does not even have an insurable interest in the property of the company. The leading case on this point is of *Macaura Vs. Northern Assurance Co. Limited (1925)*

Perpetual Succession:

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

Example 1: Many companies in India are in existence for over 100 years. This is possible only due to the fact that the company has perpetual existence. There was a company which has 7 members and all of them died in an aircraft. Despite this the company still exists unlike partnership form of business.

Limited Liability

The liability of a member depends upon the kind of company of which he is a member.

(i) In the case of a limited liability company, the debts of the company in totality do not become the debts of the shareholders. In no case can the shareholders be asked to pay anything more than the unpaid value of their shares.

(ii) 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.

(iii) If it is an unlimited company, the liability of its members is unlimited as well.

Artificial Legal Person:

(1) A company is an artificial person as it is created by a process other than natural birth. It is a person since it is clothed with all the rights of an individual.

(2) 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. 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.

(3) 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.

(4) Thus, a company is called an artificial legal person.

Common Seal

A company being an artificial person is not bestowed with a body of a natural being. Therefore, it works through the agency of human beings. 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 a seal used by a corporation as the symbol of its incorporation.


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. 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.

The Salomon Vs. Salomon and Co Ltd. laid down the foundation of the concept of corporate veil or independent corporate personality.

Lifting of Corporate Veil:

(1) **To determine the character of the company i.e. to find out whether co-enemy or friend:** In the law relating to trading with the enemy where the test of control is adopted. The leading case in this point is **Daimler Co. Ltd. vs. Continental Tyre & Rubber Co.**, if the public interest is not likely to be in jeopardy, the Court may not be willing to crack the corporate shell.

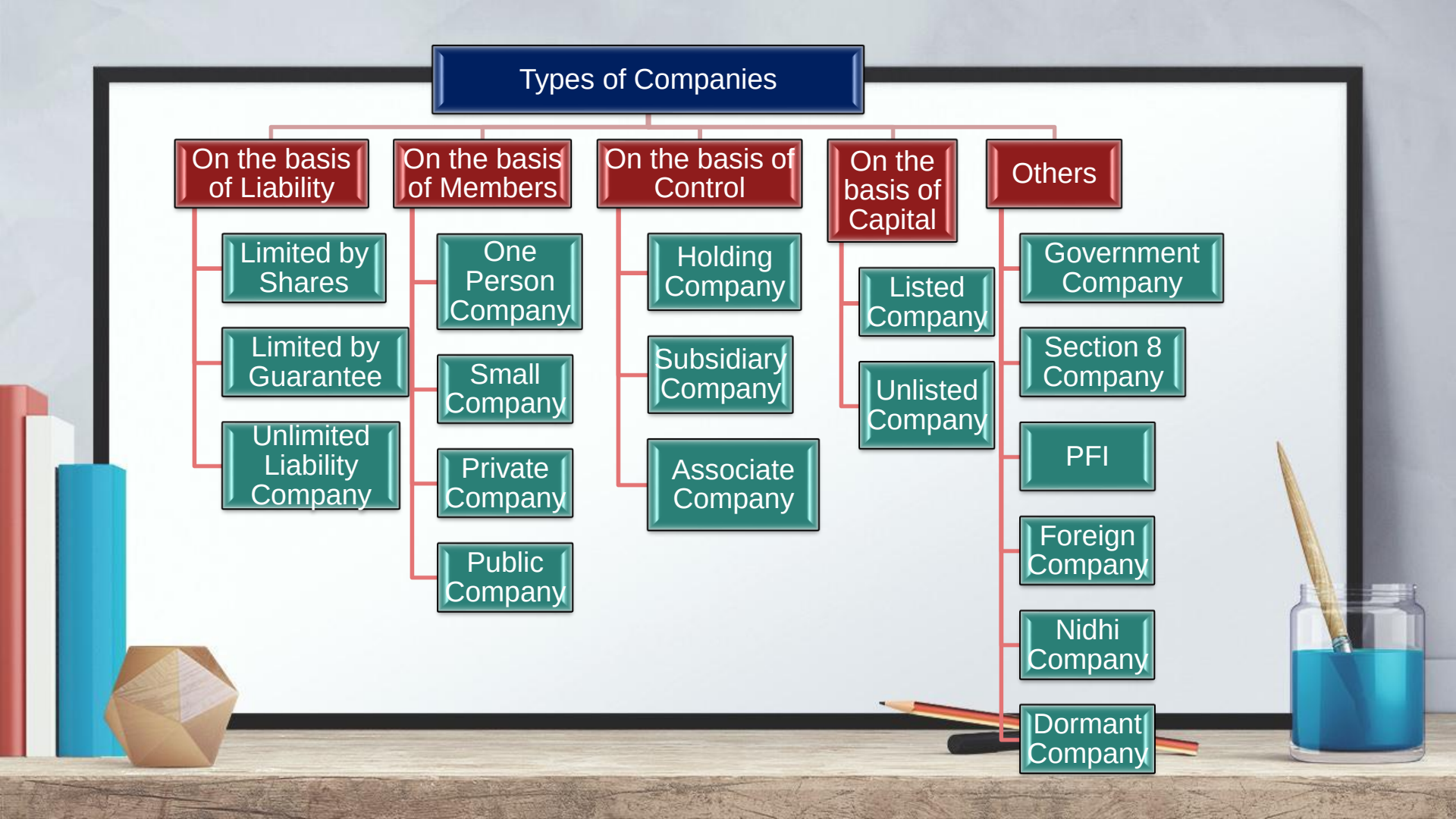
(2) **To protect revenue/tax:** In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue . **Dinshaw Maneckjee Petit**, it was held that the company was not a genuine company at all but merely the assessee.

(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. ***The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar vs. The Associated Rubber Industries Ltd., Bhavnagar and another.***

(4) 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 (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, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations.* ***Gilford Motor Co. vs. Horne***

Types of Companies


Types of Companies
On the basis of Liability
Limited by Shares
Limited by Guarantee
Unlimited Liability Company
On the basis of Members
One Person Company
Small Company
Private Company
Public Company
On the basis of Control
Holding Company
Subsidiary Company
Associate Company
On the basis of Capital
Listed Company
Unlisted Company
Others
Government Company
Section 8 Company
PFI
Foreign Company
Nidhi Company
Dormant Company

Incorporation of Companies

PROMOTERS:

The Companies Act, 2013 defines the term "Promoter" under section 2(69) which means a person—

(1) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

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

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

FORMATION OF COMPANY:

Section 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the 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 registrar***: For the registration of the company following documents and information are required to be filed with the registrar within whose jurisdiction the registered oflce of the company is proposed to be situated-

(1) the memorandum and articles of the company duly signed by all the subscribers to the memorandum.

(2) 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), 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.

(3) a declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that-

(1) he is not convicted of any offence in connection with the promotion, formation or management of any company, or

(2) 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,

(3) 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;

(4) the address for correspondence till its registered office is established;

(5) 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.

(6) the particulars (names, including surnames or family names, the Director Identification Number, residential address, nationality) of the persons mentioned in the articles as the subscribers to the Memorandum and such other particulars including proof of identity as may be prescribed; and

(7) 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.

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.

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.

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.

Furnishing of false or incorrect information or suppression of material fact at the time of incorporation (i.e. at the time of Incorporation):

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 for fraud under section 447.

Company already 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 for fraud under section 447.

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 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,—

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

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 filing of forms for incorporation of a company through Simplified Proforma for incorporating company electronically.

EFFECT OF REGISTRATION: Section 9 of the Companies Act, 2013 provides for the effect of registration of a company.
According to section 9, from the date of incorporation (mentioned in the certificate of incorporation), the subscribers to the memorandum and all other persons, who may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum.


Capital

Classification Of Capital

The term Capital has a variety of meanings. It means one thing to economists; another to accountants and still another to businessmen and lawyers. 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
b. Issued Capital
c. Subscribed Capital
d. Called up Capital
e. Paid up Capita

SHARES

I. Nature of shares:

Section 2(84) of the Companies Act, 2013 defines the term 'share' which means a share in the share capital of a company and includes stock. 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.

Share is an interest in the company:

Farwell Justice, in Borland Trustees vs. Steel Bors. & Co. Ltd. observed that "a share is not a sum of money but is an interest measured by a sum of money and made up of various rights contained in the contract, including the right to a sum of money of a more or less amount".

Share is an interest in the company:

You should note that the shareholders are not, in the eyes of law, part owners of the undertaking. The undertaking is somewhat different from the totality of the shareholders. The rights and obligations attaching to a share are those prescribed by the memorandum and the articles of a company. It must, however, be remembered that a shareholder has not only contractual rights against the company, but also certain other rights which accrue to him according to the provisions of the Companies Act.

Shares are a movable property:

According to section 44 of the Companies Act, 2013, the shares or debentures or other interests of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

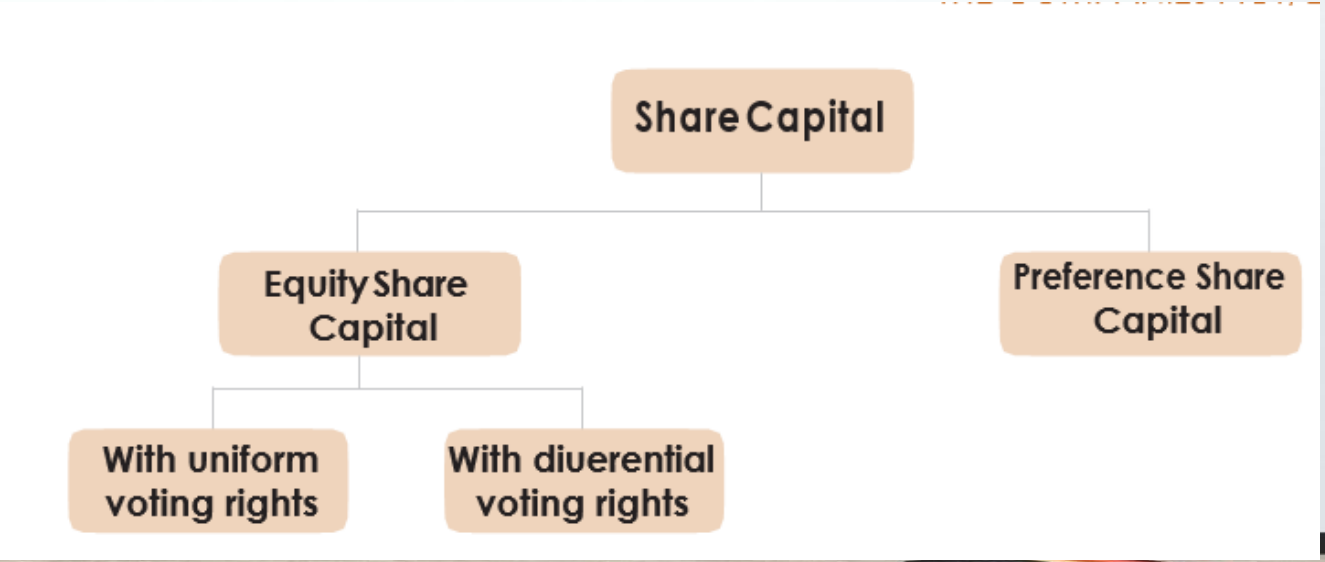
Shares shall be numbered:

Section 45 provides, every share in a company having a share capital, shall be distinguished by its distinctive number. This implies that every share shall be numbered.

However, this shall not apply to a share held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository.

III. Kinds of share capital

Section 43 of the Companies Act, 2013 provides the kinds of share capital. According to the provision the share capital of a company limited by shares shall be of two kinds, namely:—



According to explanation to section 43:

a. **payment of dividend,** either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and

b. **repayment**, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;

Memorandum of Association

Memorandum Of Association

The Memorandum of Association of company is in fact its charter; it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built.

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.

As per Section 4, Memorandum of a company shall be drawn up in such form as is given in Tables A, B, C, D and E in Schedule I of the Companies Act, 2013.

- **Table A** is a form for memorandum of association of a company limited by shares.
- **Table B** is a form for memorandum of association of a company limited by guarantee and not having a share capital.
- **Table C** is a form for memorandum of association of a company limited by guarantee and having a share capital.
- **Table D** is a form for memorandum of association of an unlimited company.
- **Table E** is a form for memorandum of association of an unlimited company and having share capital.

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

Content of the memorandum: The memorandum of a company shall state—

a. the name of the company (**Name Clause**) with the 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. This clause is not applicable on the companies formed under section 8 of the Act. 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].
As per MCA notification dated 5th June, 2015, a Government company's name must end with the word "Limited". In the case of One Person Company, the words "One Person Company", should be included below its name.

b. the **State in which the registered office of the company** (Registered Office clause) is to be situated;

c. the **objects** for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof (Object clause); 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.

d. the liability of members of the company **(Liability clause)**, whether limited or unlimited, and also state,—

- in 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; and
- in the case of a company **limited by guarantee**, the amount up to which each member undertakes to contribute—

➢ to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and

➢ to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;

e. the amount of **authorized capital (Capital Clause)** 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 shall not be less than one share. A company not having share capital need not have this clause.

f. the desire of the subscribers to be formed into a company. The Memorandum shall conclude with the association clause. Every subscriber to the Memorandum shall take at least one share, and shall write against his name, the number of shares taken by him.

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

MEMORANDUM OF ASSOCIATION

OF

[NAME OF THE LIMITED COMPANY]

I. Name of the Company

The name of the company is [SPECIFY].

II. Address of the Company

The registered office of the company will be situated in [CITY, STATE/PROVINCE/ COUNTRY].

III. Objects

The object for which the company is established is to carry on business. [SUMMARIZE THE MAIN OBJECTIVES FOR ESTABLISHING THE COMPANY AND THE USE OF FINANCIAL RESSOURCES].

IV. Limited Liability

The liability of the members is **limited**.

V. Authorized Capital

The authorized capital of the company is [SPECIFY] divided into [SPECIFY] shares. The different categories/class of shares are [SPECIFY]. The nominal value per share are [SPECIFY].

VI. Type of Shares

The company is authorized to issue [SPECIFY] shares without nominal value or par value. **[Do not include article VI & VII if all shares have par value]**.

VII. Maximum Price of Shares

The maximum price or consideration at, or for which, the shares without nominal or par value may be sold is [SPECIFY].

VIII. Subscriber of the Company

Each subscriber to this Memorandum of Association wishes to form a company and agrees to become a member of the company and to take at least one share.

Structure of Memorandum Of Association

The memorandum must be **printed, divided into paragraphs, numbered consecutively, and signed by at least seven persons** (two in the case of a private company and one in the case of One Person Company) in the presence of at least one witness, who will attest the signatures. The particulars about the signatories to the memorandum as well as the witness, as to their address, description, occupation etc., must also be entered.


Doctrine Of Ultra Vires

Doctrine of ultra vires: The meaning of the term ultra vires is simply "beyond (their) powers". The legal phrase"ultra vires" is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers in their nature are limited.

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. 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 on the company. On this account, a company can be restrained from employing its fund 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 authorised to carry on. The impact of the doctrine of ultra vires 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 ultra vires the company, you cannot enforce it against the company.

Example: If you have supplied goods or performed service on such a contract or lent money, you cannot obtain payment or recover the money lent. But if the money advanced to the company has not been expended, the lender may stop the company from parting with it by means of an injunction; this is because the company does not become the owner of the money, which is ultra vires the company. As the lender remains the owner, he can take back the property in specie. If the ultra vires loan has been utilised in meeting lawful debt of the company then the lender steps into the shoes of the debtor paid ou and consequently he would be entitled to recover his loan to that extent from the company.

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 regularised by ratifying it subsequently. For instance, if the act 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.
The leading case through which this doctrine was enunciated is that of **Ashbury Railway Carriage and Iron Company Limited v. Riche-(1875).**

Doctrine Of Ultra Vires

The facts of the case are:
The main objects of a company were:

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, sell and work mines.
d. To purchase and sell as merchants or agents, coal, timber, metals etc.

The directors of the company entered into a contract with Riche, for financing the construction of a railway line in Belgium, and the company further ratified this act of the directors by passing a special resolution. The company however, repudiated the contract as being ultra-vires. And Riche brought an action for damages for breach of contract. His contention was that the contract was well within the meaning of the word general contractors and hence within its powers. Moreover it had been ratified by a majority of share- holders. However, it was held by the Court that the contract was null and void. It said that the terms general contractors was associated with mechanical engineers, i.e. it had to be read in connection with the company's main business. If, the term general contractor's was not so interpreted, it would authorize the making of contracts of any kind and every description, for example, marine and fire insurance.

An ultra vires contract can never be made binding on the company. It cannot become "Intravires" by reasons of estoppel, acquiescence, Iapse of time, delay or ratification.

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.

Articles of Association

Articles Of Association

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.].
The articles of association are in fact the bye-laws of the company according to which director and other officers are required to perform their functions as regards the management of the company, its accounts and audit. It is important therefore that the auditor should study them and, while doing so he should note the provisions therein in respect of relevant matters.



Doctrine of Constructive Notice:

Doctrine of Constructive Notice: Section 399 of the Companies Act, 2013 provides that any person can inspect by electronic means any document kept by the Registrar, or make a record of the same, or get a copy or extracts of any document, including certificate of incorporation of any company, on payment of prescribed fees.
The memorandum and articles of association of a company when registered with Registrar of Companies, become public documents, and they are available for inspection to any person, on the payment of a nominal fees. In other words, Section 399 confers the right of inspection to all. It is, therefore, the duty of every person dealing with a company to inspect its documents and 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 documents. This kind of presumed/implied notice is called constructive notice.

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, and

ii. 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.

Thus, 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 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 aforesaid doctrine of constructive notice does in no sense mean that outsiders are deemed to have notice of the internal auairs of the company. For instance, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed. This can be explained with the help of a landmark case The Royal British Bank vs. Turquand. This is the doctrine of indoor management popularly known as Turquand Rule.

Doctrine of Indoor Management:

Mr. Turquand was the official manager (liquidator) of the insolvent Cameron's Coalbrook Steam, Coal and Swansea and Loughor Railway Company. It was incorporated under the Joint Stock Companies Act, 1844. The company had given a bond for £ 2,000 to the Royal British Bank, which secured the company's drawings on its current account. The bond was under the company's seal, signed by two directors and the secretary. When the company was sued, it alleged that under its registered deed of settlement (the articles of association), directors only had power to borrow up to an amount authorized by a company resolution. A resolution had been passed but not specifying how much the directors could borrow.

Doctrine of Indoor Management:

- Thus, you will notice that the aforementioned rule of Indoor Management is important to persons dealing with a company through its directors or other persons. They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required.
- The above mentioned doctrine of Indoor Management or Turquand Rule has limitations of its own. That is to say, it is inapplicable to the following cases, namely:

Doctrine of Indoor Management:

Held, it was decided that the bond was valid, so the Royal British Bank could enforce the terms. He said the bank was deemed to be aware that the directors could borrow only up to the amount resolutions allowed. Articles of association were registered with Companies House, so there was constructive notice. But the bank could not be deemed to know which ordinary resolutions passed, because these were not registrable. The bond was valid because there was no requirement to look into the company's internal workings. This is the indoor management rule, that the company's indoor auairs are the company's problem.

Exception to Doctrine of Indoor Management:

A. Actual or constructive knowledge of irregularity:

The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity. In Howard vs. Patent Ivory Manufacturing Co. where the directors could not defend the issue of debentures to themselves because they should have known that the extent to which they were lending money to the company required the assent of the general meeting which they had not obtained.

Likewise, in Morris v Kansseen, a director could not defend an allotment of shares to him as he participated in the meeting, which made the allotment. His appointment as a director also fell through because none of the directors appointed him was validly in office.

Exception to Doctrine of Indoor Management:

B. Suspicion of Irregularity:

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 oflcer is purporting to act in matter, which is apparently outside the scope of his authority. Where, for example, as in the case of Anand Bihari Lal vs. Dinshaw & Co. the plaintiu accepted a transfer of a company's property from its accountant, the transfer was held void.

Exception to Doctrine of Indoor Management:

B. Suspicion of Irregularity:

The plaintiu could not have supposed, in absence of a power of attorney that the accountant had authority to euect transfer of the company's property.

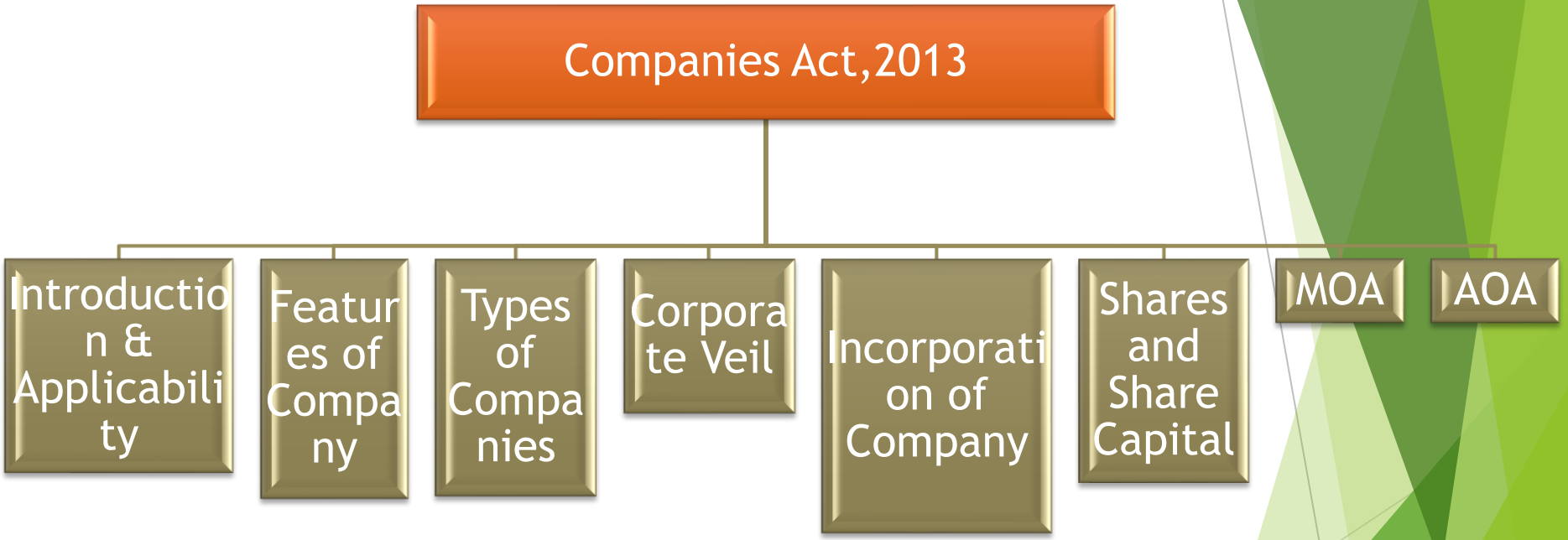
Similarly, in the case of Haughton & Co. v. Nothard, Lowe & Wills Ltd. where a person holding directorship in two companies agreed to apply the money of one company in payment of the debt to other, the court said that it was something so unusual"that the plaintiu were put upon inquiry to ascertain whether the persons making the contract had any authority in fact to make it." Any other rule would "place limited companies without any suflcient reasons for so doing, at the mercy of any servant or agent who should purport to contract on their behalf."

Exception to Doctrine of Indoor Management:

C. 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. Forgery may in circumstances exclude the 'Turquand Rule'. The only clear illustration is found in the Ruben v Great Fingall Consolidated. In this case the plaintiu was the transferee of a share certificate issued under the seal of the defendant's company. The company's secretary, who had aflxed the seal of the company and forged the signature of the two directors, issued the certificate. The plaintiu contended that whether the signature were genuine or forged was apart of the internal management, and therefore, the company should be estopped from denying genuineness of the document. But it was held, that the rule has never been extended to cover such a complete forgery.

Mind Maps


Companies Act,2013
Introduction & Applicability
Features of Company
Types of Companies
Corporate Veil
Incorporation of Company
Shares and Share Capital
MOA
AOA

Introduction , Meaning & Applicability

The Companies Act, 2013 contains 470 sections and seven schedules. The entire Act has been divided into 29 chapters

u/s 2(20)“Company means a company incorporated under this Act or under any previous company law”.

Applicability of Act:

a) Insurance Companies

b) Banking Companies

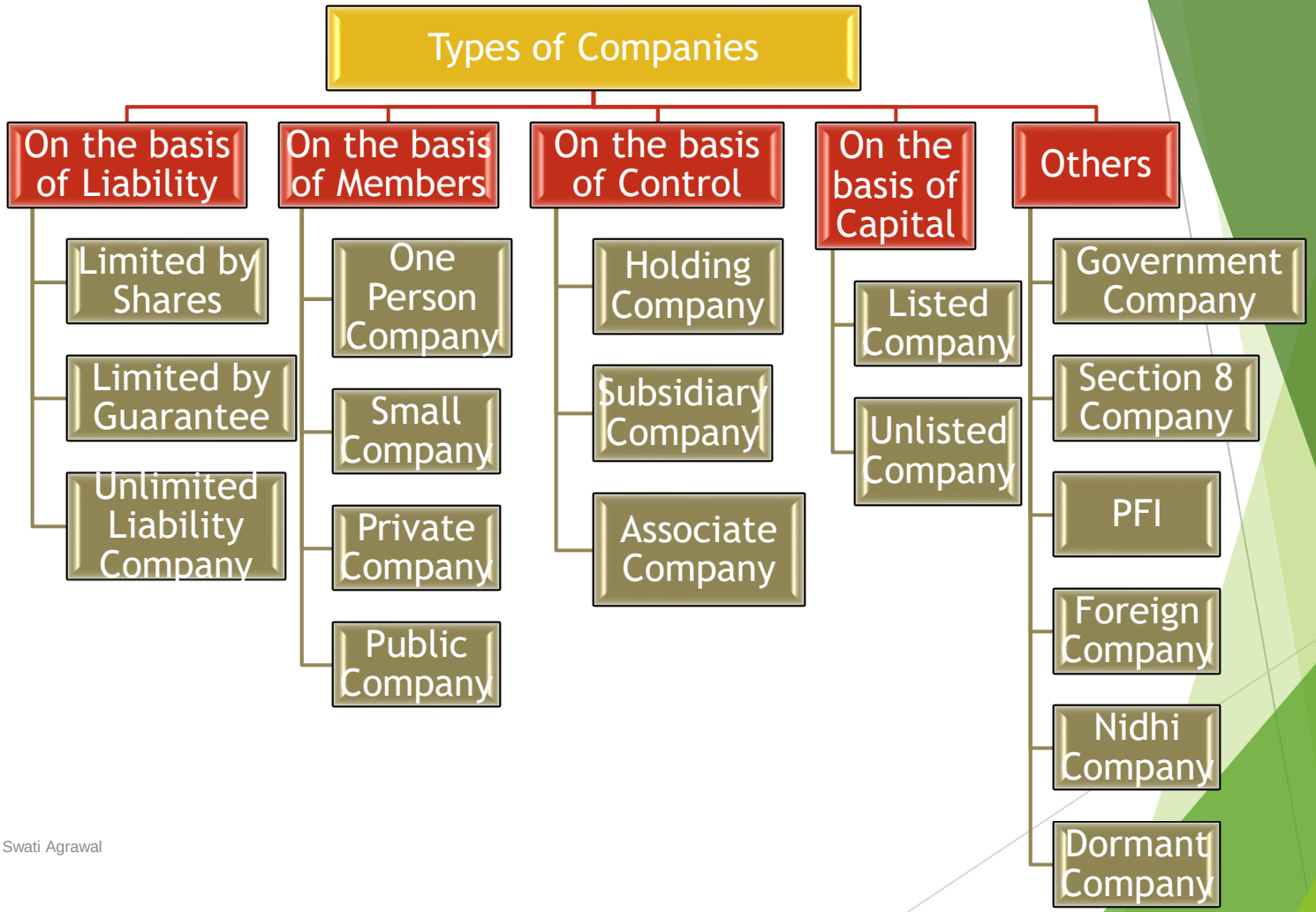
c) Electricity Companies

d) Registered under special Act

e)Any other body Corporate

Features of Company

- Separate Legal Entity (Macaura Vs. Northern Assurance Co.)
- Perpetual Succession
- Limited Liability
- Artificial Legal Person
- Common Seal (optional)


Types of Companies
On the basis of Liability
Limited by Shares
Limited by Guarantee
Unlimited Liability Company
On the basis of Members
One Person Company
Small Company
Private Company
Public Company
On the basis of Control
Holding Company
Subsidiary Company
Associate Company
On the basis of Capital
Listed Company
Unlisted Company
Others
Government Company
Section 8 Company
PFI
Foreign Company
Nidhi Company
Dormant Company

Corporate Veil

Meaning

Lifting Up of Corporate Veil

- Trading With Enemy
- Where corporate entity is used to evade Taxes
- Where Subsidiary company is form to act as agent
- To Avoid Legal obligation
- Forgery

Incorporation of Company

Promoters:

-Person who is named as promoter in Prospectus or Annual Return.

- Controls directly or Indirectly Affairs of Company

Formation of Company:

-Public Company: 7 or More Members.

-Private Company: 2 or More Members

-One Person Company: 1 Member

Steps of Incorporation of Company:

1.Filling of Documents.

2. Issue of Incorporation Certificate

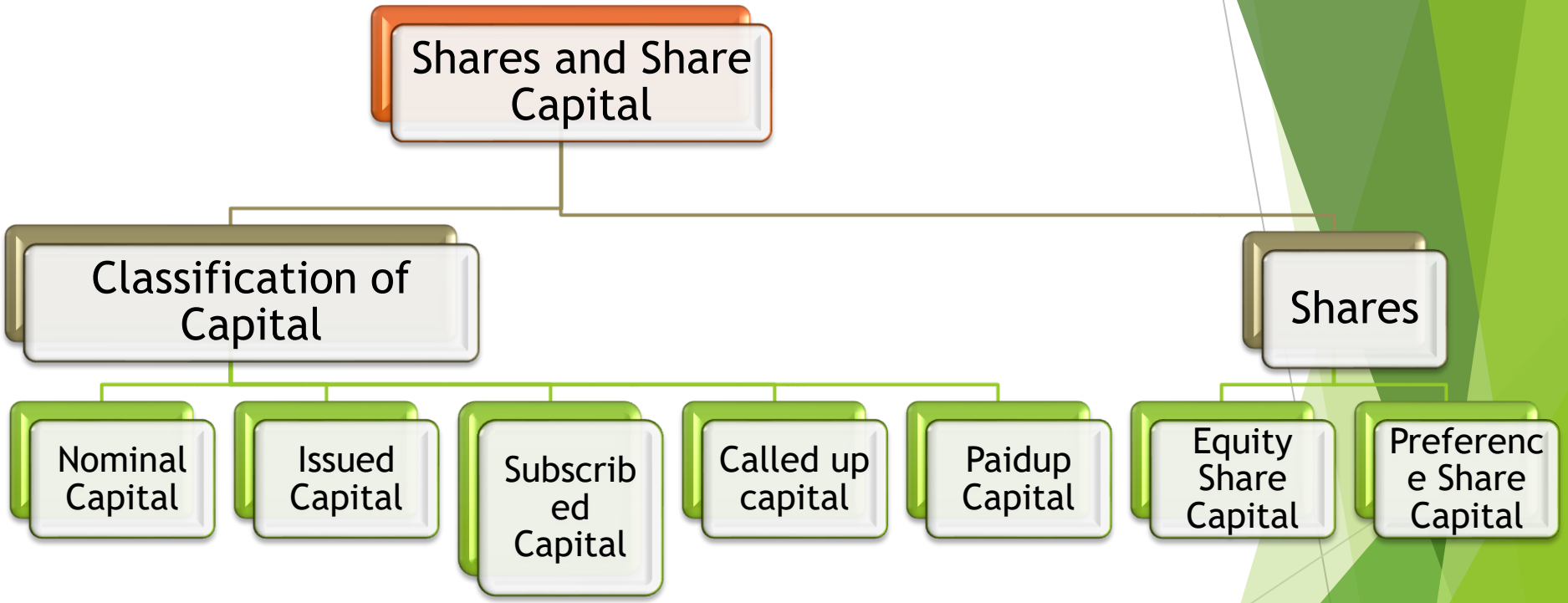
3. Allotment of Corporate Identification Number(CIN)

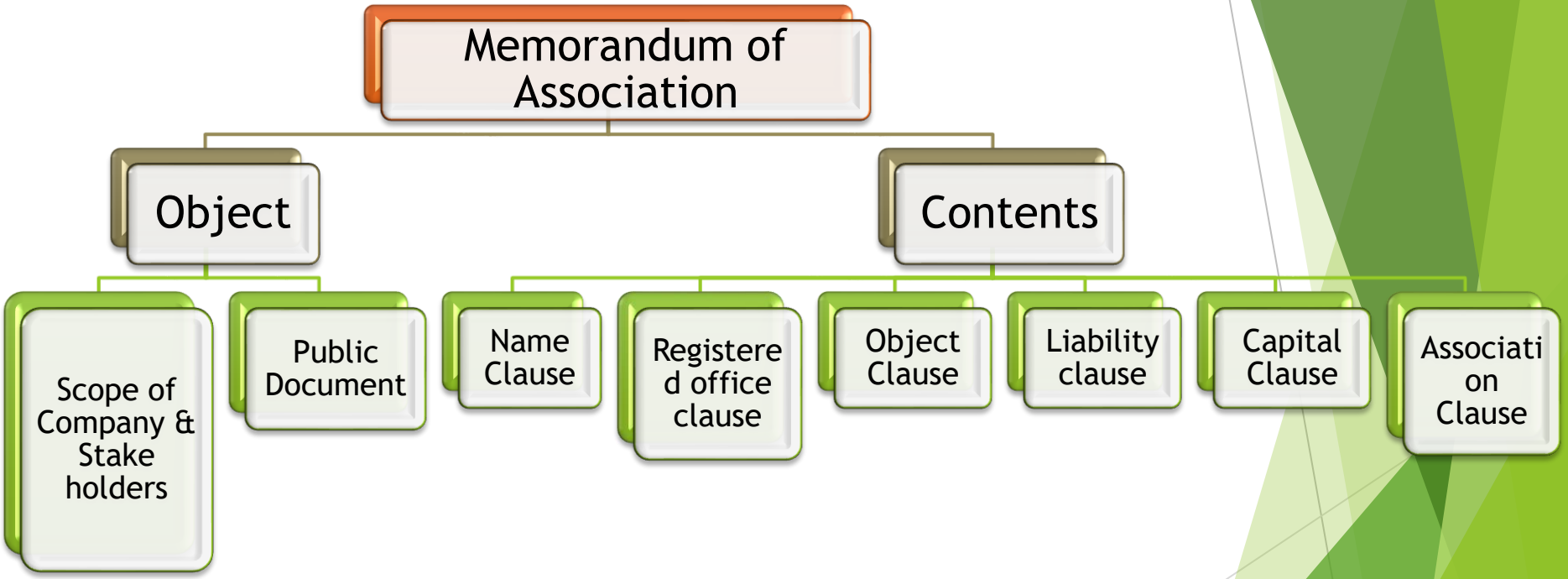
4.Maintainance of Copies of Documents.

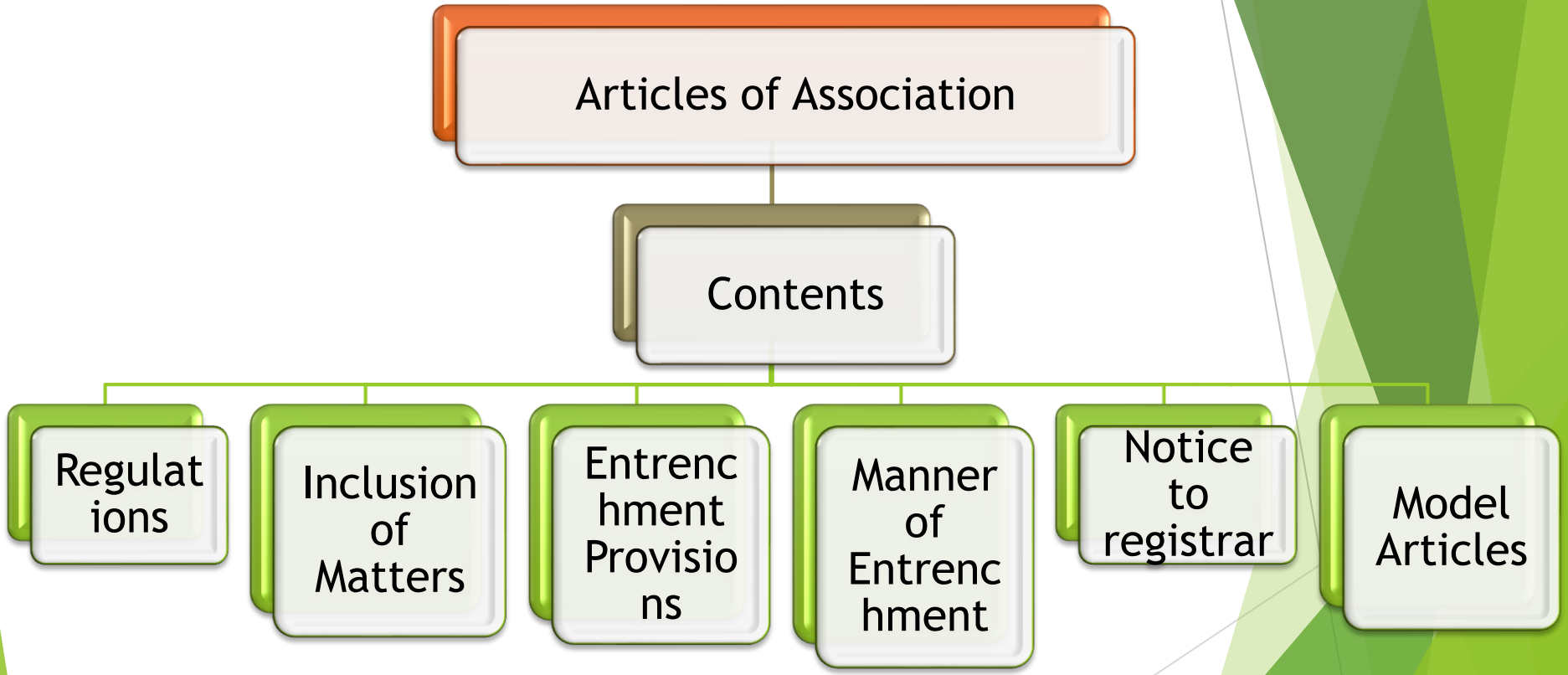
5.Furnishing of False/Incorrect information or suppression of facts.

6. Already incorporated by furnishing false information.

7.Order of Tribunal


Shares and Share Capital
Classification of Capital
Nominal Capital
Issued Capital
Subscribed Capital
Called up capital
Paidup Capital
Shares
Equity Share Capital
Preference Share Capital


Memorandum of Association
Object
Contents
Scope of Company & Stake holders
Public Document
Name Clause
Registered office clause
Object Clause
Liability clause
Capital Clause
Association Clause


Articles of Association
Contents
Regulations
Inclusion of Matters
Entrenchment Provisions
Manner of Entrenchment
Notice to registrar
Model Articles

Doctrines

Doctrine of Ultra Vires:

-Ultra Vires means Beyond Power

-Void-Ab-Initio

-Cannot be ratified

Doctrine of Indoor Management:

1. Exception to Doctrine of constructive Notice.

2.Outsider cannot be assumed to have knowledge of internal irregularities.

3. Protection for outsider against Company

Case: Royal British Bank V. Turquand

Doctrine of Constructive Notice :

1. Any person dealing with company assumed to have knowledge of documents of Company.

2. Protection for Company against Outsider.

Case: Ashbury Railway Carriage Company V. Riche