

SUIT - legal proceeding
more

REPEAL → MATANA → UNACTIVE

When a company files a suit on somebody
when somebody files a suit on the company it is sued.

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COMPANIES ACT 2013

MEANING OF A COMPANY

FEATURES OF A COMPANY

As per section 2(20) of the Companies Act, 2013, "COMPANY" means 'Company ^{registered} incorporated under this Act or any other previous company law'.

→ Separate Legal Entity:- The identity of a company is distinct from the identity of its members. Since company is a registered Entity,

The Companies Act, 2013 was enacted to consolidate and amend the law relating to the Companies. Companies Act, 2013 was preceded by Companies Act, 1956.

it can have
→ Separate Bank A/c.
→ Separate contracts with 3rd parties.
→ Loans raised from banks in its own name.

Supporting things to the Act

Companies Act, 2013 contains 470 sections, 7 schedules and 29 chapters.

Property of the company is the property of the company.

- Companies Act, 2013 aims to:-
- (i) Improve corporate governance.
 - (ii) Protect / safeguard the interest of minority investors.
 - (iii) Simplify regulations relating to companies.

→ PERPETUAL-SUCCESSION:- change in members does not affect the existence of a company. (cases like → death → Insolvency) does not end the life of the company.

→ LIMITED-LIABILITY:- Liability of members of company is limited only to the extent of unpaid value of their shares. Eg. share has a face value ₹10, Paid up ₹8, members liability ₹2 only.

→ ARTIFICIAL LEGAL PERSON:- Formation of company happens under law. A company requires a human-agency to manage its affairs. A company can sue or be sued.

COMPANIES ACT, 2013

Important

COMPANY ON THE BASIS OF LIABILITY	COMPANY ON THE BASIS OF MEMBERSHIP			
	PARTICULARS	MINIMUM MEMBERS	MAXIMUM MEMBERS	MINIMUM SHARE-CAPITAL
<p>→ <u>LIMITED BY SHARES</u> [Section 2(22)]: Liability of members of a company is limited by its Memorandum of Association only to the unpaid value of shares held by them. Shareholders are not liable to personally contribute in the debts of the company.</p>	OPC [ONE PERSON COMPANY]	1	1	No Limit
<p>→ <u>LIMITED BY GUARANTEE</u> [Section 2(21)]: Liability of a member of a company is limited to such an amount as the member may respectively undertake by the Memorandum to contribute to the assets of the company in the event of its winding up.</p>	PRIVATE COMPANY PUBLIC COMPANY SMALL COMPANY	2	200	No Limit No Limit ₹ 4 crores
<p>→ <u>UNLIMITED COMPANY</u> [Section 2(92)]: There is no limit on the liability of its members. Creditors can institute proceedings against members to claim amount to pay off company's debts.</p>				

Filing of suits

→ Promoter is a person who has idea to start up a company.
 → limited (Ltd) → In India you can form company by limited liability.

V.IMP
 →

COMPANIES ACT, 2013 :-

CONSTITUTIONAL DOCUMENTS OF A COMPANY :-

* MEMORANDUM OF ASSOCIATION :-

supreme

→ Memorandum of Association of a company refers to the charter of a company.

It defines → The constitution & Scope of Powers of a company. It lays down the objects for which a company is formed or incorporated.

→ MoA - contains - 6 - clauses :-

- a) Name clause
 - b) Object clause
 - c) Registered office clause
 - d) Capital clause
 - e) Liability clause
 - f) Subscription clause → cannot altered / No need to alter
- Association clause
- change
 Alterable by applying Registrar of companies (ROC)

(a) NAME CLAUSE :- Name clause contains the name of a company. last word must ^{always} contain "limited". eg: - X.Ltd, X.Pvt.Ltd. This clause is not applicable to a section 8 company. Infact, section 8 companies use wordings like "association", "foundation", "forum", "chambers", "federation", behind their names. eg. Reliance foundation, TATA Trust. A Government company's name must end with the word "limited". In case of O.P. (one person company) last name must be X.Pvt (OPC) Ltd.

(b) OBJECT-CLAUSE :- Those who deal with the company like shareholders & Creditors They must know the object for which the company is formed / Incorporated / Registered.

section 8 company
 ↓
 charity / NPO

Date: _____ YOUVA

A MoA is the Public Document [Section 399 of the Companies Act, 2013]. Consequently, every person entering into a contract with the company is presumed to have knowledge of conditions contained in object clause of MoA. A company cannot depart from the provisions contained in MoA. It cannot enter into contracts beyond the powers conferred on it by the object clause of MoA; otherwise, such acts of the company will be ultra-vires and void (invalid).

(C) REGISTERED OFFICE-CLAUSE: It is also known as the 'Domicile' clause'. It contains the name of the state in which the Registered Office (R.O) of the company is situated. This is important to decide ROC-Jurisdiction and ROC-communication. Eg: RIL - Maharashtra, Tesla India Pvt. Ltd - Karnataka.

(D) CAPITAL CLAUSE: It contains the Authorised Capital of the company. Authorised capital is the maximum/Registered capital of the company; that subscribers have agreed to take. A company not having share capital (initially) may not have this clause.

(E) LIABILITY-CLAUSE: Liability of members can be

- Limited by - upto the unpaid value of shares held by them.
- Limited by - the amount each member guarantee undertakes to contribute in the event of winding up.

valid only when company starts

(F) SUBSCRIPTION CLAUSE: MoA shall conclude with the Association Clause. Every subscriber shall take at least 1 share, the subscribers are generally referred to as First Directors of the company.

SECTION 8 COMPANY: detailed notes

- Section 8 companies are also known as "Non-Profit Organisation (NPO)".
- Section 8 companies are for the purpose of promoting commerce, arts, science, religion, charity, education, environment, sports, etc.
- ★ → Section 8 companies are prohibited to declare dividends to their members. However, they can make profit.
- Section 8 companies have to obtain license from Central Government, and operate as per the conditions which are laid down by the Central Government when it issues the license.
- If the section 8 company contravenes / violates ^{does not follow} the conditions for which the license was issued then the government shall revoke ^{cancel} the license.
- Section 8 company shall use words like, "association", "foundation", "forum", "chambers", "federation", etc behind their names.
- Once the license issued by the central government gets revoked then the section 8 company shall be either directed by the government to windup its business or change its status to a private limited or a public limited company and thereafter, add words 'Ltd' or 'Pvt Ltd' behind its name as the case maybe or merge ^{combine} with another section 8 company.

GOVERNMENT COMPANY [S. 2(45)]:

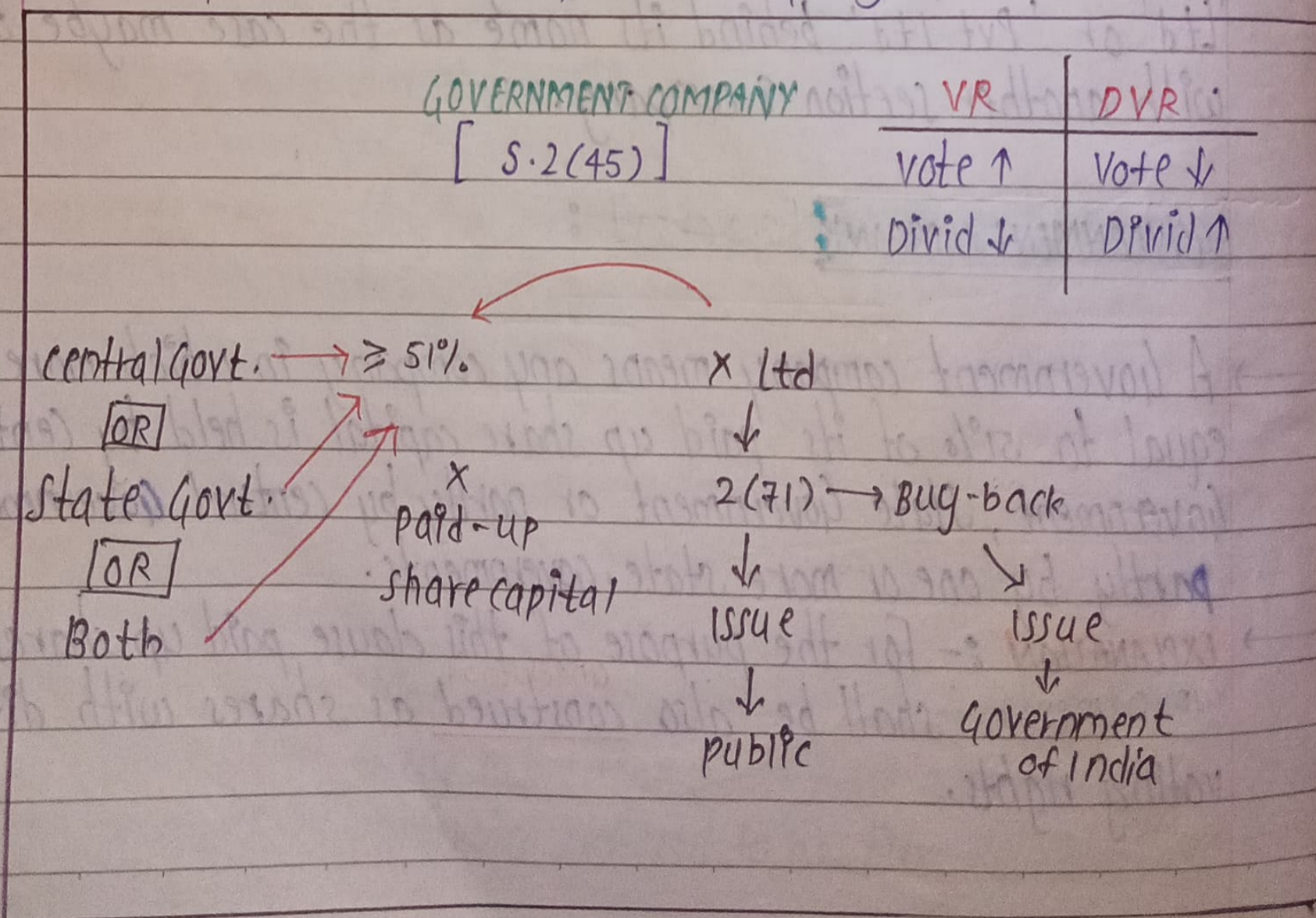
- A Government company means any company in which more than equal to 51% of its paid up share capital is held by central government, State Government or partly by central government and partly by one or more state governments.
- **EXPLANATION** :- For the purpose of this clause paid up shares capital (amendment) shall be also construed ^{understood} as shares with differential voting rights.

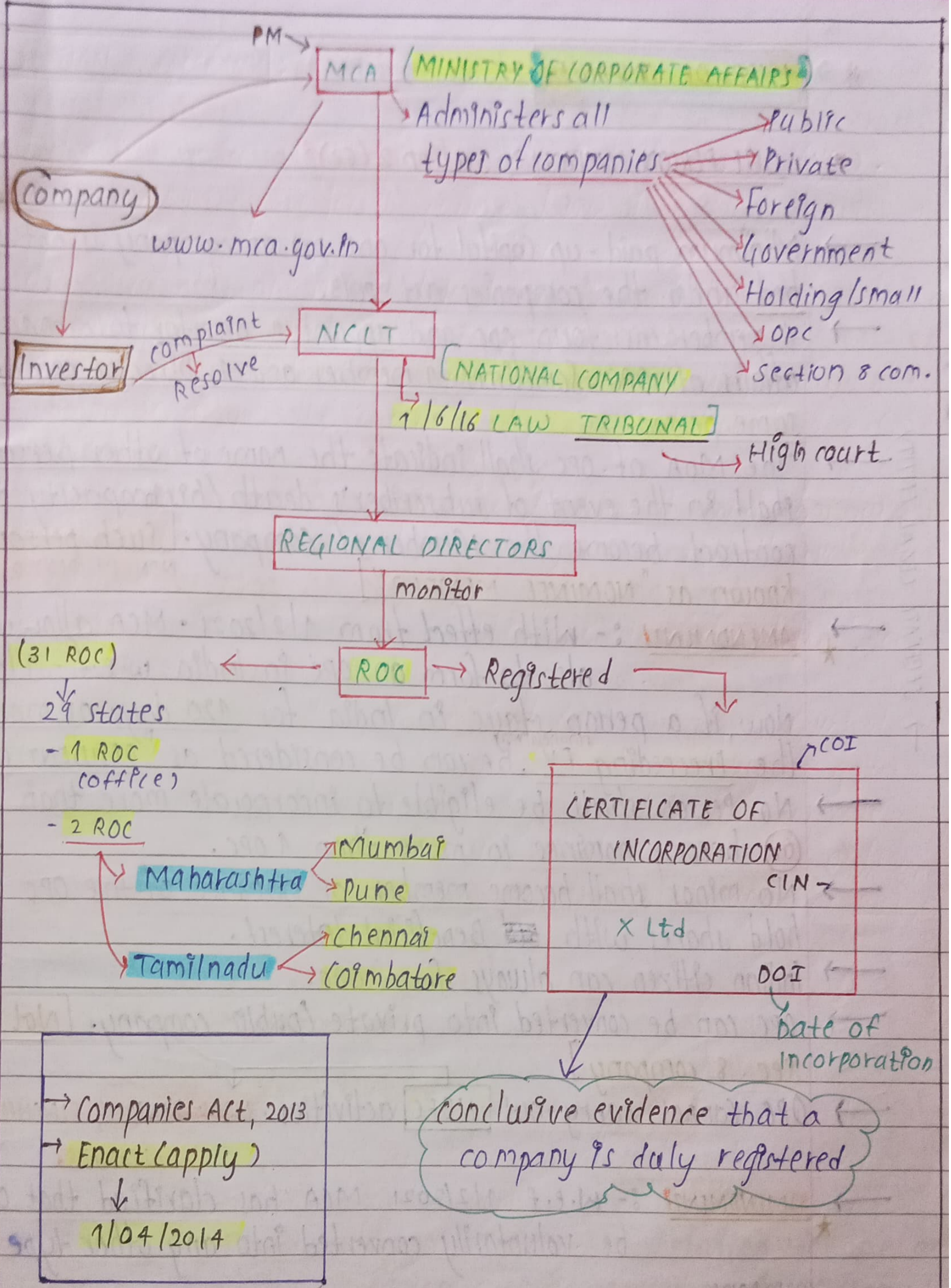
→ A company may issue shares with differential voting rights on the fulfillment of certain conditions, sometimes only. A share with differential voting rights allows an equity shareholder to forego his voting rights and claim higher dividends.

ONE PERSON COMPANY :

- A One Person Company is formed by one person. A one person company has only one person as its member.
- The provisions relating to a one person company are contained under s.2(62). In order to encourage entrepreneurship and corporatization of business. The concept of one person company is introduced.
- The one person company differs from a sole proprietary business as it is a separate legal entity. OPC is registered under the Companies Act, 2013, whereas sole proprietor are not registered under any law.
- There is no minimum prescribed limit for the paid up share capital of a one person company.

*





SATYAM COMPUTER SCAM - 2009.

* TYPES OF COMPANIES :-

• ONE PERSON COMPANY: Section 2 (62)

- Minimum paid-up capital for one person company is not prescribed under the companies act, 2013. not ment
ioned
- 1 member can form opc and appoint 1 director to manage the affairs of OPC. Sometimes 1 member and 1 Director can be the same person.

→ SEPERATE LEGAL ENTITY

→ The MoA of opc shall indicate the name of other person, who shall in the event of subscriber's death (his incapacity to contract become the Member of company. [Such person is known as "NOMINEE MEMBER"] NON-RESIDENT OF INDIA

→ AMENDMENT :- With effect from 1/2/2021 - MCA allowed NRI also to form an opc in India w.e.f - 1/4/2021.

Now, if a person stays in India for 120 days or more, in the preceeding FY, he can be considered as "RESIDENT OF INDIA".

- No person shall be eligible to incorporate more than 1 opc or become nominee in more than 1 opc.
- No minor shall become member or nominee of the OPC or can hold shares with ~~the~~ Beneficial Interest.
- Indian citizen can always form OPC.
- OPC can be converted into private / public company. [Not into Sec. 8 company]

→ OPC cannot carry-out NBFC activities. NON-BANKING FINANCIAL COMPANIES

→ AMENDMENT :- W.e.f 1/2/2021 MCA has clarified that OPC can be voluntarily converted into any other type of company.

→ Earlier, OPC cannot voluntarily convert into any company unless 2 yrs have expired from the date of incorporation except its

paid up capital increased beyond ₹ 50 lakhs or average annual turnover during relevant pre period exceeds ₹ 2 crores.

• SMALL COMPANY: Section 2 (85)

→ Company, other than Public company.

(a) Paid-up share capital of which does not exceed ₹ 4 crores or such higher amount as maybe prescribed which shall not be more than ₹ 10 crores.

OR AND

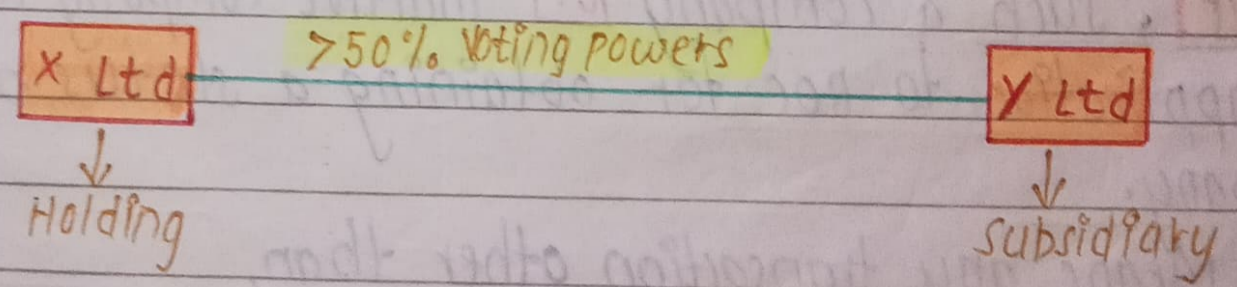
(b) Turnover of which as per profit and loss A/c for immediately preceeding F.Y does not exceed ₹ 40 crores or such higher amount as may be prescribed which shall not be more than ₹ 100 crores.
 ↳ if in future then.

→ A small company should not be
 ↳ section 8 company
 ↳ Holding company
 ↳ Subsidiary company

→ A small company is a private company.
 ↳ by nature

• HOLDING COMPANY AND SUBSIDIARY COMPANY: (relatives, group)

→ HOLDING COMPANY: Section 2 (46)



→ A company is a Holding company in relation to one or more companies, of which such companies are subsidiary companies.

→ A Holding company hold >50% Voting Power in subsidiary companies.
 ↳ majority (voting rights)

→ WHOLLY OWNED COMPANY: Section 2(87)

→ A company in which Holding company controls the composition of Board of Directors

[OR]

→ Exercises/controls more than 1/2 of voting powers.

NOTE: A Holding company can have 2-layers of subsidiaries

• FOREIGN COMPANY: Section 2(42)

registered entity

→ As per Sec 2(42): It means any company/body [↑] corporate incorporated outside - India.

- which has place of business in India whether by itself or through an agent, physically [OR] through electronic - mode.

[AND]

- Conducts any business activity in India.

(Screening)

• DORMANT COMPANY: Section 455

SAT nhi hota hai
→ related to project

→ Where a company is formed and registered under this Act for a future project / to hold an asset or ^{intangible} intellectual property and has no SAT [SIGNIFICANT ACCOUNTING TRANSACTIONS], such a company [OR] inactive company may make an application to ROC for obtaining a status of dormant company.

→ SAT = Means any transaction other than,

- (1) Payment of fees by a company to ROC.
- (2) Payments made to fulfill requirements of this Act / any other law.
- (3) Allotment of shares to fulfill requirements of this Act.
- (4) Payments made for maintenance of its office / records.

NOTE

INACTIVE COMPANY :-

An inactive company means any company which has not been carrying on any business operations or has not made any SAT during the last 2 financial year or has not filed its financial statements and annual returns during the last two financial years.

All inactive companies need not be dormant companies. In order to become a dormant company it shall specifically apply to the ROC.



COMPANY	FIRMS	LLP
Companies Act, 2013	Indian Partnership Act, 1932	Limited Liability Partnership Act, 2008
Registration from → ROC	Registration is not mandatory	Registration from → ROF
Legal Entity	No legal entity	Legal entity

DIN → Director Identification Number
CIN → Corporate Identification Number
GIN → Global Identification Number

* HOW TO INCORPORATE A COMPANY?

→ Steps to form / Incorporate / Register a company are as follows:

- ① It is the Promoter [Section 2(69)] who incorporates a company.
- ② Promoter means = who has been named as such in the prospectus (is identified by the company in the annual return referred under Section 92 of the Act.

= who has control over the affairs of the company directly, indirectly whether as a shareholder, director or otherwise.

= On whose advice, directions or instructions the Board of Directors of the company are accustomed to act. to follow instructions
Kisi ke ishara pe kaam karna

→ In simple words a person who forms a company or conceives the idea of forming a company and takes all necessary steps to register a company is known as its promoter.

- ③ As per Section 3 of the Companies Act, 2013
 - 7 or more persons are required to form a public company.
 - 2 or more persons are required to form a private company.
 - 1 person is required to form a one person company.

- ④ Filing of documents and Necessary Information with the ROC: Within whose Jurisdiction the Registered Office (R.O) of the company is situated. MoA must be duly signed by subscribers and a Declaration to form a company must be taken from a -

area of operation

IPO → Initial Public Offer

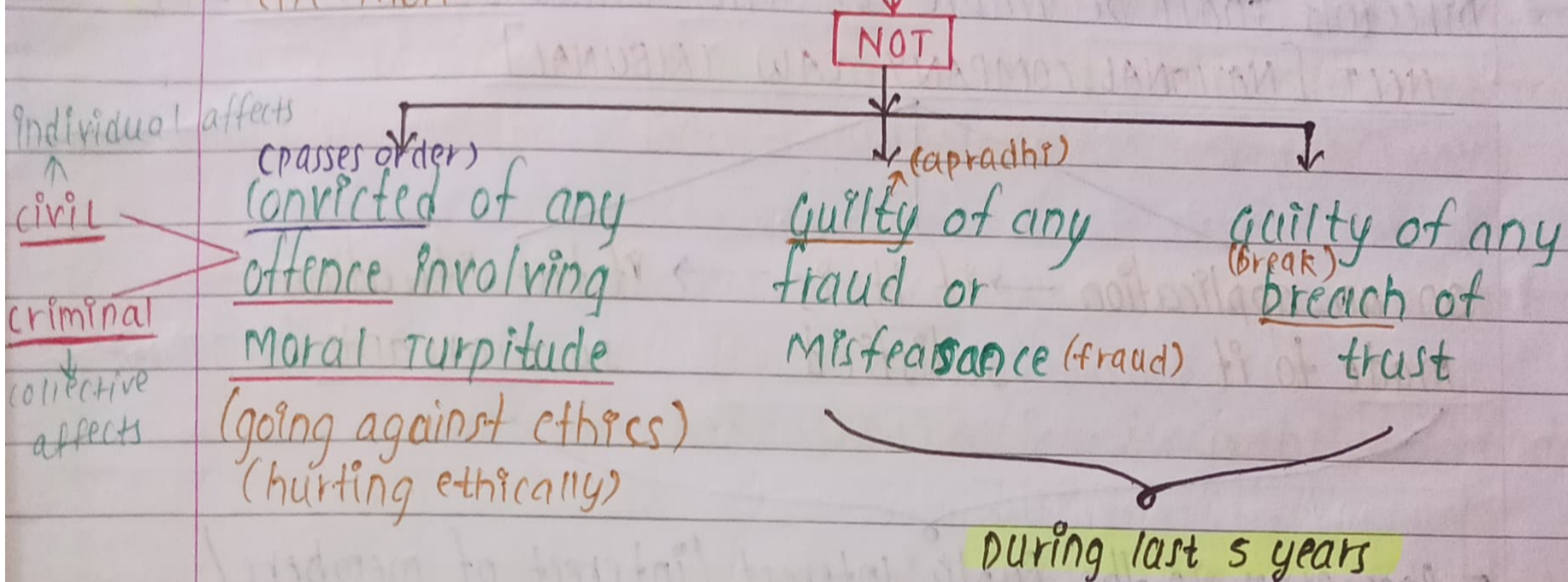
Without having DIN you cannot become a directors of the company.

→ Practicing CA/CS/Advocate and by persons whose names are mentioned in the Articles of Association as - Director/Manager/CS.

→ that all requirements of Act and rules made there under in relation of Registration and Matters which are incidental there to have been complied with.

→ Declaration from 1st Director is also required.

→ A declaration that each subscriber whose name is mentioned in the MOA.



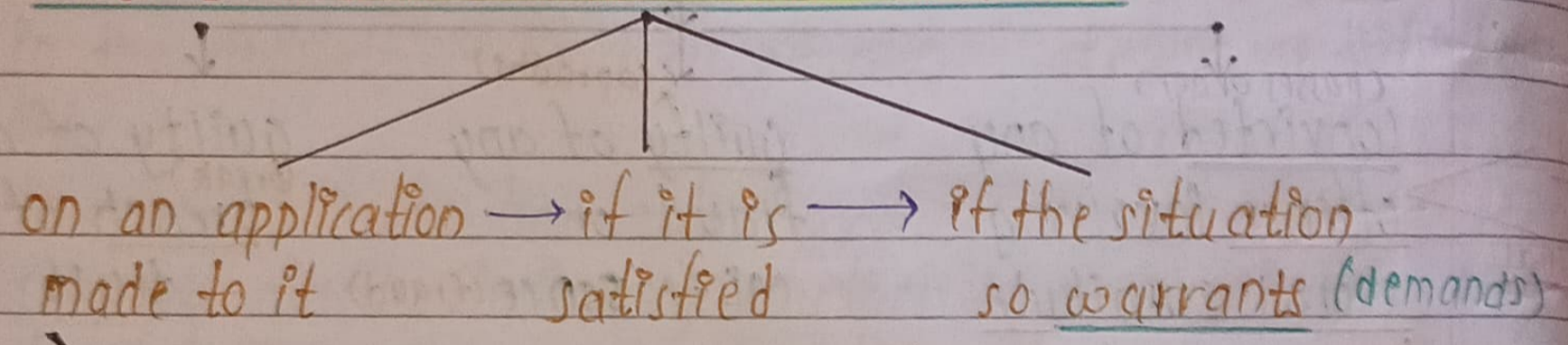
→ Address for correspondence shall be mentioned till Registered office (R.O) gets established.

→ Particulars of Directors → Names, surnames
(unique number given by ROC)
D-I-N (Directors Identification Number)
Residential - Address + Identity proof
Nationality.

⑤ Certificate of incorporation issued by ROC :- ROC on the Basis of documents and information filed, shall register all documents and information and issue a certificate of incorporation in the prescribed form. COI is a conclusive evidence that the company is duly Registered/Incorporated under this Act.

⑥ Allotment of C.I.N [Corporate Identification Number] :- CIN will be mentioned on C.O.I which indicates distinct identity of the company. The company shall maintain and preserve all records @ its R.O.

④ False/Incorrect information and Suppression of material facts:- At the time of incorporation, if any person furnishes false information, etc- of which he is aware with the ROC, he shall be liable for action under section 447. If a company gets incorporated on the basis of furnishing incorrect information or by ^{hiding of imp information} suppression of material-fact or by any false-declaration made the Promoters / first-directors shall be liable for action under section 447. The NCLT [NATIONAL COMPANY LAW TRIBUNAL]



- Pass order in the Public interest / interest of members / creditors / shareholders.
- [or]
- Make members liability as unlimited.
- [or]
- Wind up the company.
- [or]
- Remove / strike-off its name for register. xtd
- [or]
- Pass any such other as it deems fit. (jaisa unhe archa lagewala)

⑤ MCA has launched SPICE: Simplified Proforma for
 ↓
 Incorporating - company Electronically facility.
 ↓
 online incorporation of company

Statutory Corporation
power of autonomy

FINANCIAL INSTITUTION	BANK
- Lending	- Borrowing - Lending

* **CONCEPT OF PUBLIC FINANCIAL INSTITUTIONAL (PFI) :-**

(1) By ^(as per) virtue of section 2 (72) of the companies Act. Following conditions need to be satisfied to be notified as a Public Financial Institution:- [PFI is a Government company].

- (a) The public financial institution is established or constituted as per any central or state Act.
- (b) At least 51% of its paid up share capital is controlled by central government or state government or partly by central government and partly by one or more state governments.

(2) Following are examples of PFI :-

- (a) Life Insurance Corporation (LIC) which is established under the LIC Act of 1956.
- (b) State Bank of India (SBI) which is established under the SBI Act of 1955.
- (c) Infrastructure Development Finance Company Limited (IDFC).
- (d) Unit Trust of India (UTI) which is established under the UTI (transfer of undertaking and ^{to take back} repeal) Act of 2002.
- (e) Any institution notified by central government in ~~consult~~ consultation with RBI (Reserve Bank of India).

PFI can be a government company but government company cannot be a PFI.

* **NIDHI COMPANY :-**

Under ^{subsection} section 406 (1) of the companies Act, 2013, A Nidhi or a mutual benefit society means a company which the central government may by notification in official gazette may declare to be a Nidhi or a mutual benefit society, as the case maybe.

- EXAMPLE :- (1) Chit Fund (speculation)
(2) Leasing Company

- Law always sees intention
- Tax planning is a legal way of not paying tax.
- Tax evasion is illegal way of not paying tax.

ambit = coverage / scope

* **DOCTRINES AND CASE LAWS :-**

DOCTRINE (PRINCIPLE) OF CORPORATE-VEIL :-

- **CORPORATE VEIL** : Is a legal-concept whereby the company is identified as a separate legal-Entity distinct from its members.
- Members of company are shielded from liability connected to company's actions. If a company incurs any debts **or** contravenes any law, corporate veil implies that members should not be hold liable for such errors. They enjoy corporate ^{coverage} insulation.
- However, under exceptional circumstances the court will lift **or** pierce the corporate veil by ignoring the separate identity of the company and promoters and other persons who have managed or controlled the affairs of the company shall be held personally liable for the debts/acts of the company.
- Where the intention is to MIS-USE ^{partia} veil / to commit a fraud / illegal activity inside the company; then such persons shall be held personally liable. In the following cases the company law disregards the Principle of Corporate Personality of the company :-

① **When company is formed to evade taxes.** Supreme court
 [Jugglal v/s Commissioner of Income Tax - SC]
 [Sir Dinshaw Maneckjee Petit - Bom] Bombay High court Judgement

② **Company is formed to defeat law / for fraud / improper conduct.**

[To defraud creditors / avoid legal obligations]

③ **To determine the character of the company** i.e., to find out whether the company is enemy / friend.

A company if it is controlled by people of enemy country. As per 'Daimler co. Ltd v/s Continental Tyres and Rubber co. Ltd' the court will determine the character

case law :-

Deceive - cheating - fraud

Daimler company is

is subsidiary of Mercedes Benz.

(A) vs (B)

Plaintiff - sufferer (husband)

Defendant - cause of suffering (wife)

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cn = casual / in = formal

of persons who are at helm of affairs of company.

DOCTRINE OF CONSTRUCTIVE NOTICE AND DOCTRINE OF INDOOR MANAGEMENT :

→ As per Doctrine of Indoor Management: Persons dealing with the company need not inquire about the Internal Proceedings of the company. The outsiders are entitled to assume that, detailed formalities for doing activities as laid down in the MoA + AOA have been followed. If the act is authorized by MoA + AOA then outsiders can assume that detailed formalities for doing such acts have been followed.

→ What happens internal to a company is not the matter of Public-knowledge. An outsider can only presume the intentions of a company, but do not know the information he/she is not privy to. (no information unke 19ye nhi hai)

→ Doctrine of Constructive Notice : The Indoor Management Doctrine is an exception to the Doctrine of Constructive Notice.

It is assumed that the persons concerned has not only read (MoA + AOA) these documents but has understood these documents in their proper meaning as per Doctrine of constructive Notice.

→ Doctrine of Indoor Management is also known as "Turquand Rule".

As per "Royal British Bank vs Turquand" (case 1856) the directors of R.B.B gave a bond to T (liquidator), the AOA empowered directors to issue → Bonds under the authority of proper resolution. so if no resolution was passed, T could sue the company as he was entitled to assume that the resolution have been passed. This is popularly known as Turquand - Rule.

money raised used for

BOND	DEBENTURE
specific purpose	general purpose

decision = Resolution taken by shareholders at meeting

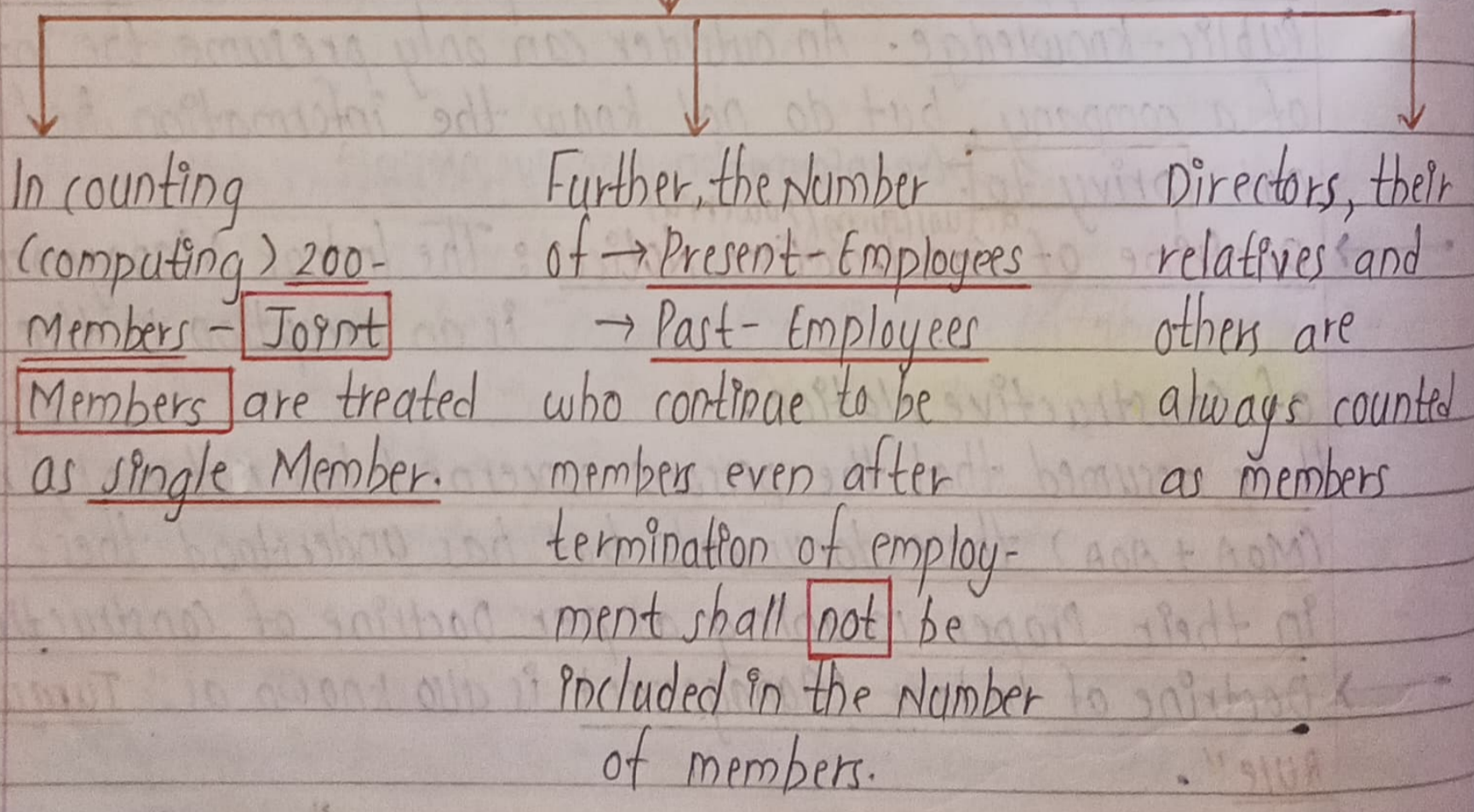
Exceptions to Doctrine of Indoor Management / Turquand's Rule

Rule: (Hote hua dekha hai) (can be fraud or error)

- [Doubt]
- Actual (constructive knowledge of irregularity) (bhanak lagha)
 - Suspicion of irregularity.
 - Forgery. Manipulation of financial statement
(window dressing in accounts)

PRIVATE COMPANY :- [Section 2(68)]

- Private company is restricted by its AOA to invite subscriptions from public/investors. It cannot accept Public-Deposits.
- There are maximum 200 members in a private company.



CRUX OF THE CASE = chota kar cena bade case ko.

Government
body

SFIO → serious Fraud Investigating office

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AOA cannot override the provisions of companies, Act.

ARTICLES OF ASSOCIATION :-

- (1) AOA contain rules and regulations - which are required for a smooth functioning of a company.
- (2) AOA should be always crafted / drafted / designed keeping in mind the provisions of companies Act, 2013.
- (3) Provisions of AOA can never be made beyond the powers conferred by companies Act, 2013.
- (4) AOA can always be made within the ambit of
 - Companies Act, 2013
 - MoA

(5) Following are contents of AOA :-

- (a) It describes the form in which the business is to be conducted.
- (b) It also states powers of { Directors & } Officers of the company.

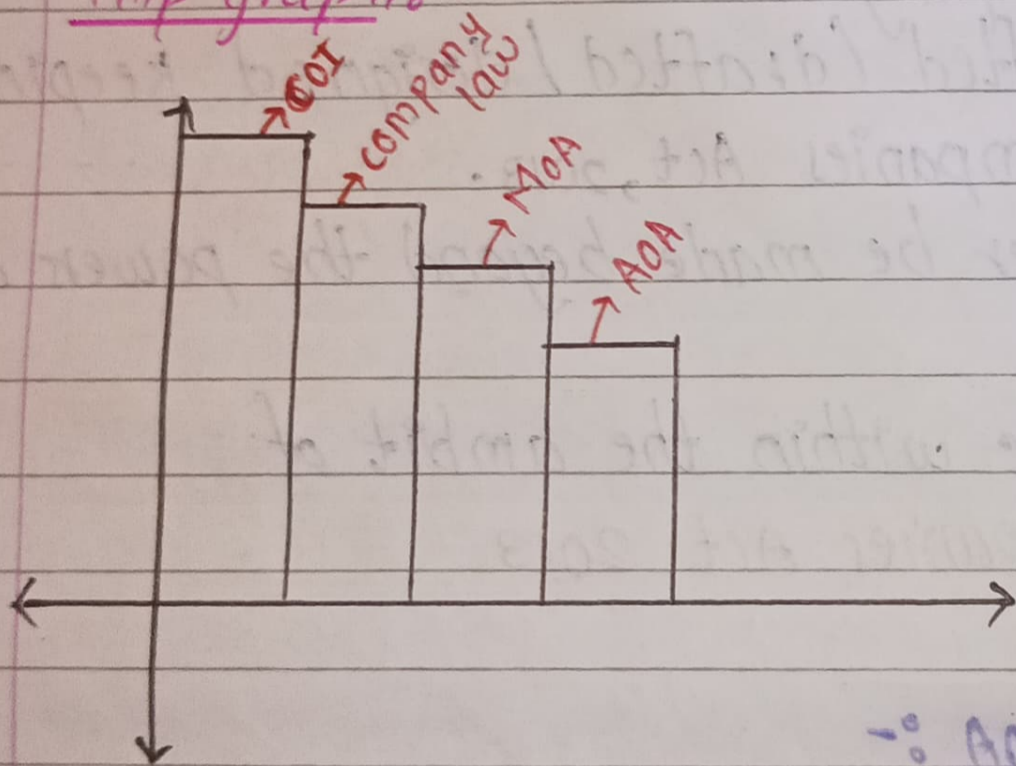
(6) A company can alter its AOA by obtaining shareholders approval by way of a special-resolution ^{75% or above} and same should also be approved by central-Government (ROC).

DOCTRINE OF ULTRA-VIRES :-

- (1) Ultra-vires → simply means beyond powers.
- (2) This doctrine only becomes applicable for those acts which are done beyond / in excess of legal powers conferred to doers. There is a pre-supposition that powers are limited.
- (3) Any acts which are done beyond the powers of object-clause of MoA is void (invalid).
- (4) Company can neither sue / nor be sued for ultra-vires Acts.
- (5) Therefore, one who deals with company is deemed to have knowledge about the powers of company and since MoA is a Public Document it is open for inspection. If inspite of

having knowledge (deeming provision), if you enter into a contract with company you cannot enforce it against the company.

Imp graph:



-: AoA to contents of