

Characteristics of Company

Incorporated Association	Artificial Judicial Person	Separate Legal Entity	Perpetual Succession
The company is not natural person like human plant or animal. It is created by human. It is a creation for some specific object. So it will run for achieving the object & beyond for new objects.	As the company is created by human, its not natural . Its an artificial entity which cannot be formed on its own. It has to be created. But creation will be judicial i.e. legal under any law in force in the territory of any country.	Company have its own identity , its own legal existence like any other human. It is just that the Company is intangible & exist only on paper. As company is separate legal entity , it has right to enter into contract on its own, it work in it own name. Everything which is done in the Company will be known by the name of the company	Members, owners, promoters, BOD, stakeholders may come & go but company will remain till eternity . The company does not have life equal to its promoters or members. Even after death of all, company can run for ages . The company will only cease to exist when it is dissolved.

Limited Liability	Common Seal	Transfer of Shares	Separation of Ownership from Management	Separate Property
The liability of the members of the company is normally limited up the amount of the share capital invested in the company. The personal assets of the owners of the company will not be liable for any payment to creditor.	Human uses signature to show the authentication of document & to mention personal identity. For company signature means Seal. The document is deemed to be signed by company if the document bears the seal of the company.	The ownership of the Company is represented by the shares of the company. So for ease of transactions, the share-holders can transfer the shares of the company with its ownership & it does not affect the company in any way, it only changes the share-holding pattern.	The Company is combination of the three pillars Investor, Management, Auditor. Investor invests the money which is used by management to run the business and is checked by auditor whether money is being properly used or not. Thus the investors need not enter in to day to day transaction of the company or management of the company.	As company is separate legal entity it has right to enter into contract on its own . Thus company can purchase or sale property on its own. Do transaction on its own. Its like company has its entire separate range of assets or liabilities.

Separate Legal Entity: Land Mark Case Laws

Case Name	Decision of the court	Key Word
Salomon Vs. Salomon & Co. Ltd	There can be a transfer of property from a member to the company & vice-versa. A person can be a member, director, employee and creditor of the company at same time. A company has rights and duties of its own. A company is not an agent of members or directors.	Creditors compensation
Lee Vs Lee Air Farming Ltd.	Lee is a person who is a member as well as director as well as employee and he have valid contract of compensation if he gets damaged or diseased during the course of employment. After few days Lee met with an accident and becomes dead. Then it was held that there was a valid contract between the company and Lee of service as worker. Therefore contention of Mrs. Lee is right in law.	Employees compensation
Gramophone & Typewriter Co. Vs Stanley.	Property of the company is not the property of the shareholders, it is the property of the company. Therefore shareholders do not have any right on the property of the company during the entire life of the company.	Unauthorised use
Macaura Vs. Northern Assurance Co. Ltd.	a) It was held that the insurance company is not liable to Macaura due to loss of Insurable Interest as the owner of the timber is company and the insurance is in the name of Macaura. b) As the company is a separate legal entity, the timber should be insured in the name of the company.	Insurance of companies property

Lifting of Corporate Veil

Meaning

- A) The company has a **separate legal entity** from its members. This principle is called the '**Veil of Incorporation**'.
- B) Board of Directors act **behind** the Company
- C) If BOD executes fraud behind the company then question is **who shall be penalised Company** or Board of Director ?
- D) In such case veil of the company **shall be lifted** and **culprit** shall be identified
- E) This process is called as **lifting of corporate** veil.

Crux – In short the person committing fraud or illegal activity or coercive activity inside the company shall be held personally liable for the acts done by setting aside the separate identity of the company.

Lifting of Corporate Veil: Land Mark Case Laws

Case Name	Decision of the court	Key Word
Dinshaw Maneckji Petit	a) It was held that companies and the assessee are no separate legal entity. These are created only for purpose of running from tax burden . b) As the company has done no business & is formed just for the purpose of converting dividend income into loan and avoid tax .	Protection of Revenue
Daimler Co. Ltd Vs. Continental Tyre & Rubber Co. (Great Britain) Ltd.	It was held that the company was alien company & the payment of debt to it would amount to trading with enemy. Therefore the company is not allowed to proceed with action.	Contract with enemy

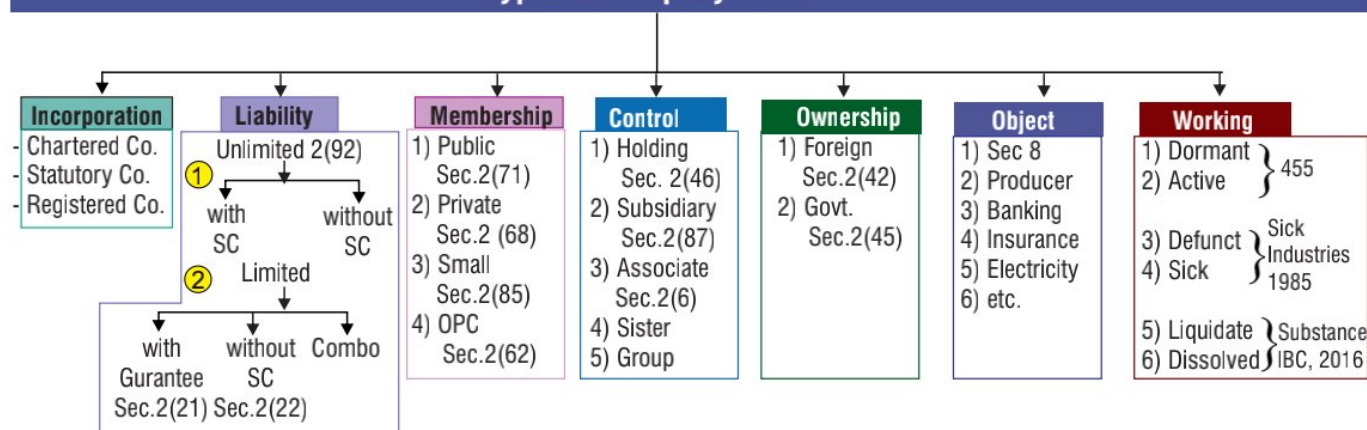
Jones Vs. Lipman	The court looked into reality and ignored the transfer and ordered the company to transfer the land to J.	Fraud and improper conduct improper resale
Guildford Motors Company Vs. Horne	Horne is in fact controlling the company. Its formation was mere Cloak or Sham to break the agreement with plaintiff. The court issued the injunction against him. And his company was restrained from soliciting the Plaintiff's customer.	Fraud and improper conduct- Solicitation of Customers
Merchandise Transport Ltd. Vs. British Transport Commission	Held that parent and subsidiary company is one commercial unit. And application for the license was rejected .	Protection of public policy
Workman of Asso. Rubber Industry Ltd. Vs. Asso. Rubber Industry Ltd.	Company avoiding legal obligation or welfare legislation Where the sole purpose of formation of a new company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Corporate veil should be pierced to look at the real transaction.	Protection of welfare legislation
F.G. Films Ltd.	The decision is considered as valid since the British Company acted as nominee of the American company.	Acting as an agent for prohibited actions
New Horizons Ltd. Vs. Union of India	The experience of the promoters could be considered as the experience of the company in the technical field of the company	Expertise and experience of company

Punishment for improper use of "Limited" or "Private Limited":

If any person or persons trade or carry on business under any name or title, of which the word "**Limited**" or the words "**Private Limited**" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability.

Such offence will be punishable with fine of **Rs. 500 to Rs. 2000** per day during use of such name.

Types of company chart



Companies with Limited Liability

Heading	Limited by Guarantee	Limited by Shares
Section	2(21): Company Limited by Guarantee	2(22): Company Limited by Shares
Definition	"company limited by guarantee" means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up .	"company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.
Meaning	The company in which the investor does not invest any amount at the incorporation or during the life of the company, but they invest the amount max upto amount agreed at the time of winding up of the company depending on the liability of the company is company limited by guarantee.	The Company in which the investor invests the funds at the incorporation or/& during the life of the company or/& at the winding up against the instrument indicating ownership and part in capital of the company is company limited by shares.
Owners	In these companies the members or owners act as guarantor .	In these companies the shares are held by the shareholders .
Practical Use	These companies are normally the non-profit making organisations.	These companies are normally profit making organisations.
Classes	There can be different classes of members voting and not voting .	There can be different classes of members based on the shares .
Capital clause	Company limited by guarantee do not have capital clause .	Company limited by shares have capital clause in its MOA

Companies with Limited Liability – As per membership

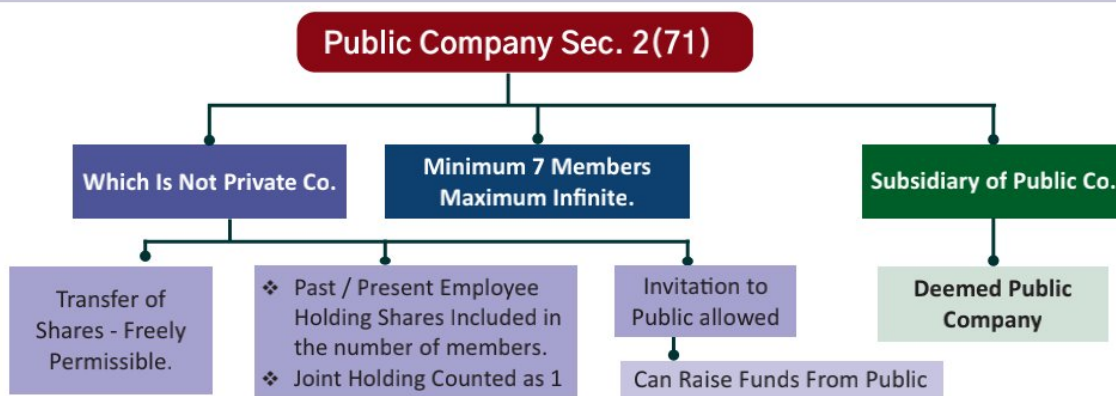
Public Company 2(71)

The Companies Act, 2013, defines public company as a company which–

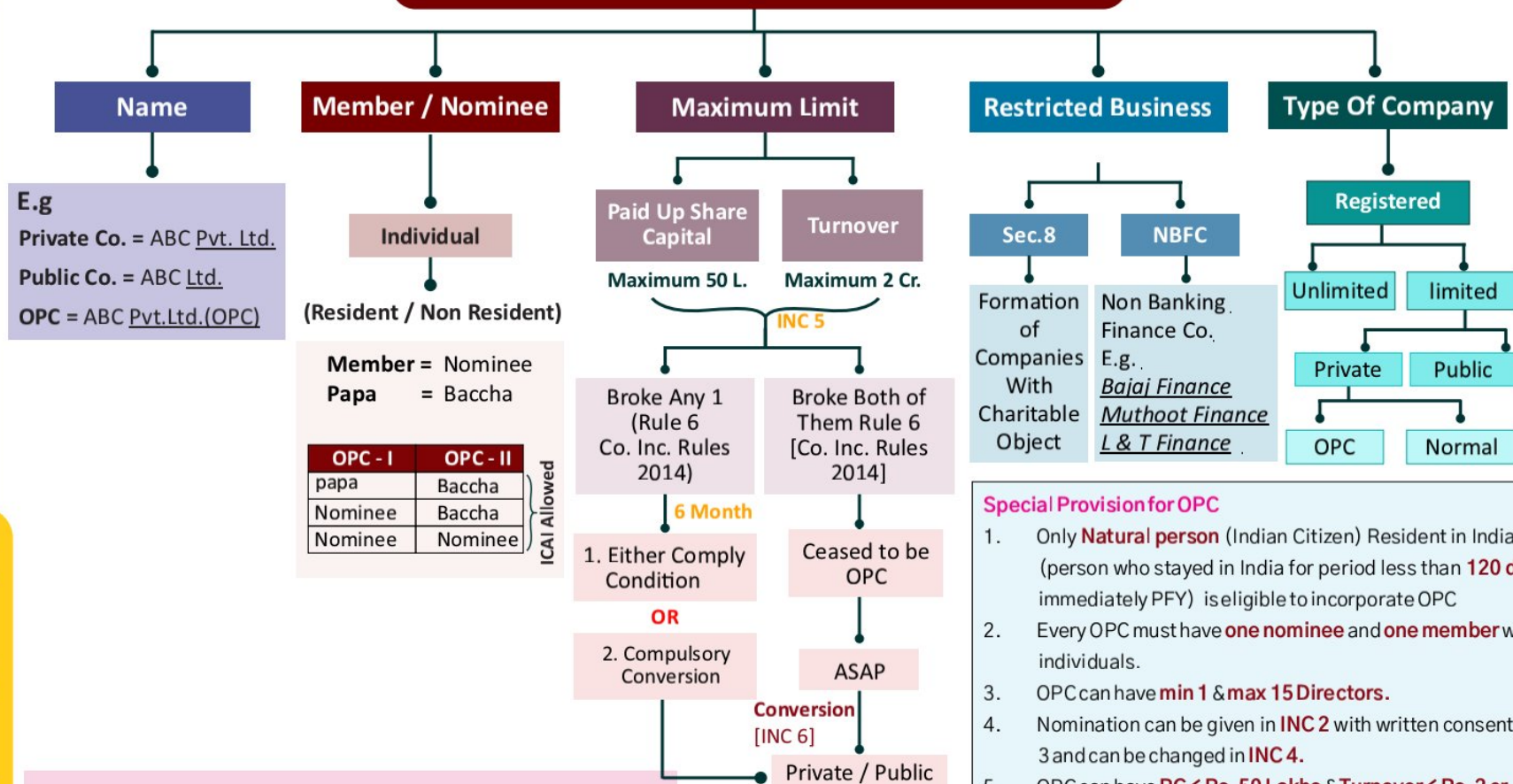
- ✓ is not a private company
- ✓ has a minimum paid up share capital as may be prescribed
- ✓ Seven or more members are required to form the company.

This section provides that a company which is subsidiary of a company (not being a private company) shall be deemed to be public company even where such subsidiary company continues to be a private company in its articles.

Chart for Understanding



One Person Company [Sec. 2(62) + Sec. 3]



1. Only **Natural person** (Indian Citizen) Resident in India or not (person who stayed in India for period less than **120 days** in immediately PFY) is eligible to incorporate OPC
2. Every OPC must have **one nominee** and **one member** who are individuals.
3. OPC can have **min 1 & max 15 Directors**.
4. Nomination can be given in **INC 2** with written consent in INC 3 and can be changed in **INC 4**.
5. OPC can have **PC < Rs. 50 Lakhs & Turnover < Rs. 2 cr.** (INC-5)
6. Minor **cannot** become member or nominee in OPC
7. OPC **cannot** do business of **sec 8** company and **NBFC**.
8. OPC will be **always** small company as per sec 2 (85).
9. OPC can convert to other company by **INC-6**

INC-2 : Application for incorporation and nomination
by Member of OPC (Formation of Company)

INC-3 : One Person company nominee's written consent form

INC-4 : One person company change in member/Nominee

INC-5 : OPC-intimation of exceeding threshold

INC-6 : OPC- Application for Conversion

Private Companies 2(68)

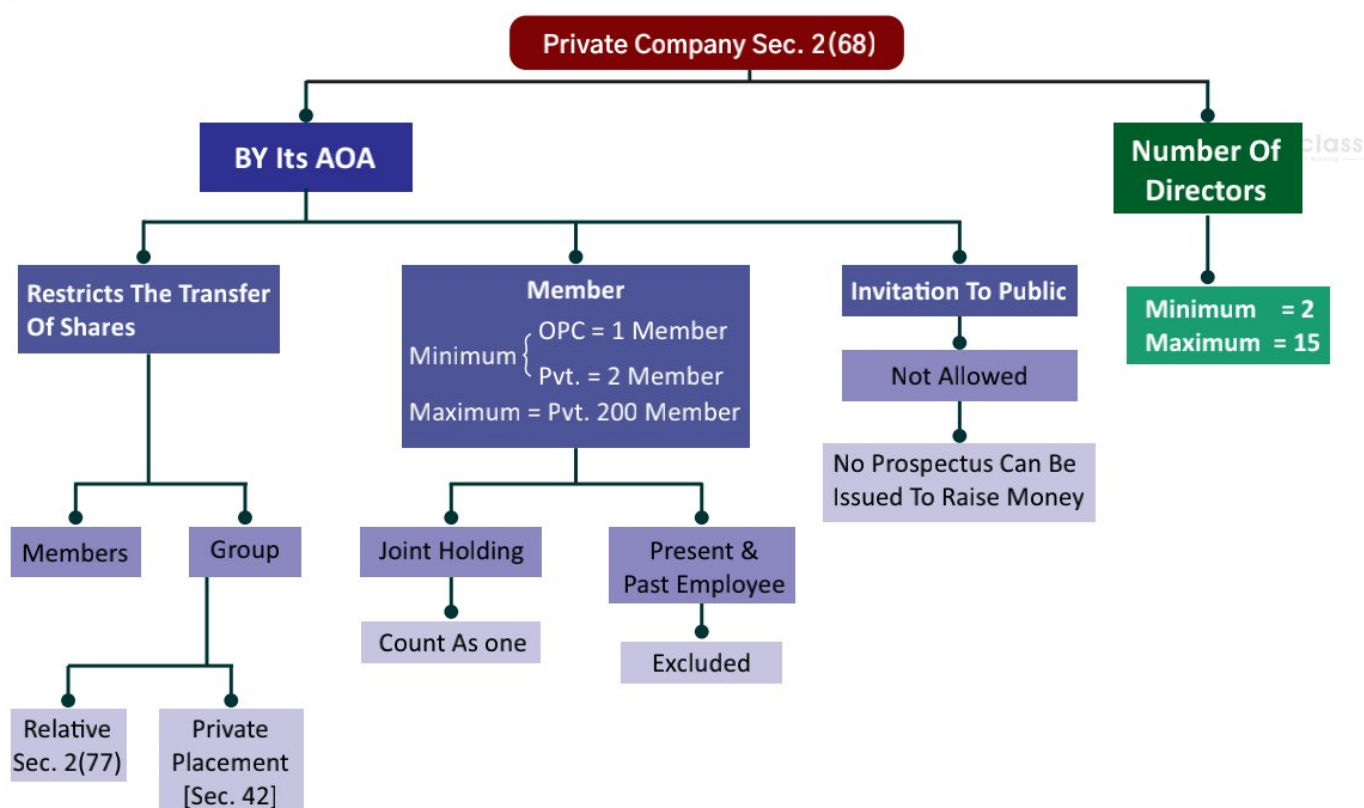
Means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, —

- (i) restricts the right to transfer its shares;
- (ii) limits the number of its members to two hundred (except in case of One Person Company):

The section provides that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member. However, following shall not be included in the number of members:

- ✓ persons who are in the employment of the company; and
- ✓ persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased.

- (iii) prohibits any invitation to the public to subscribe for any securities of the company.

Chart for Understanding**Small Company 2(85)**

“small company” means a company, other than a public company,—

- (i) paid-up share capital of which does **not exceed ₹ 50 Lakh** or such higher amount as may be prescribed which shall not be more than ₹ 10 crore; and
- (ii) turnover of which as per its last **profit and loss account for the immediately preceding financial year does not exceed ₹ 2 crore** or such higher amount as may be prescribed which shall **not be more than ₹ 100 crore** :

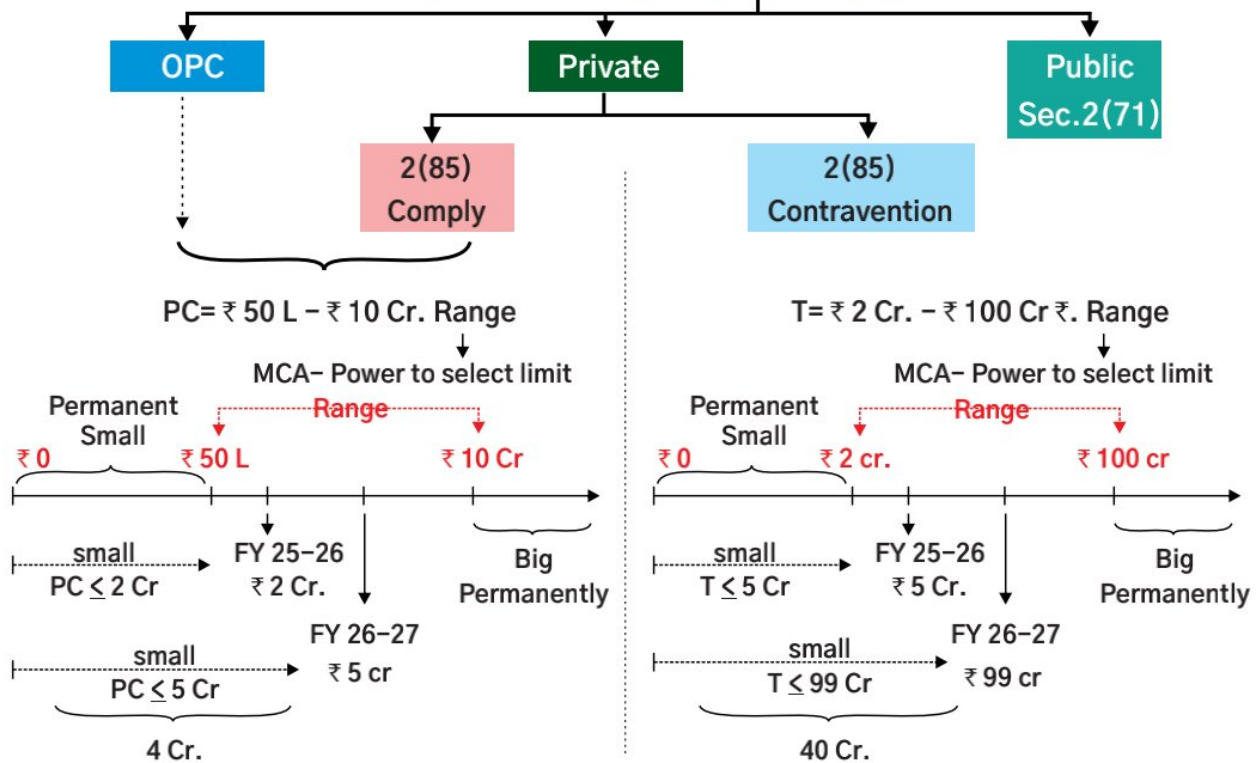
For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed ₹ 4 crores and ₹ 40 crores respectively.

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company; (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act;

Chart for Understanding

Small company Sec. 2 (85)

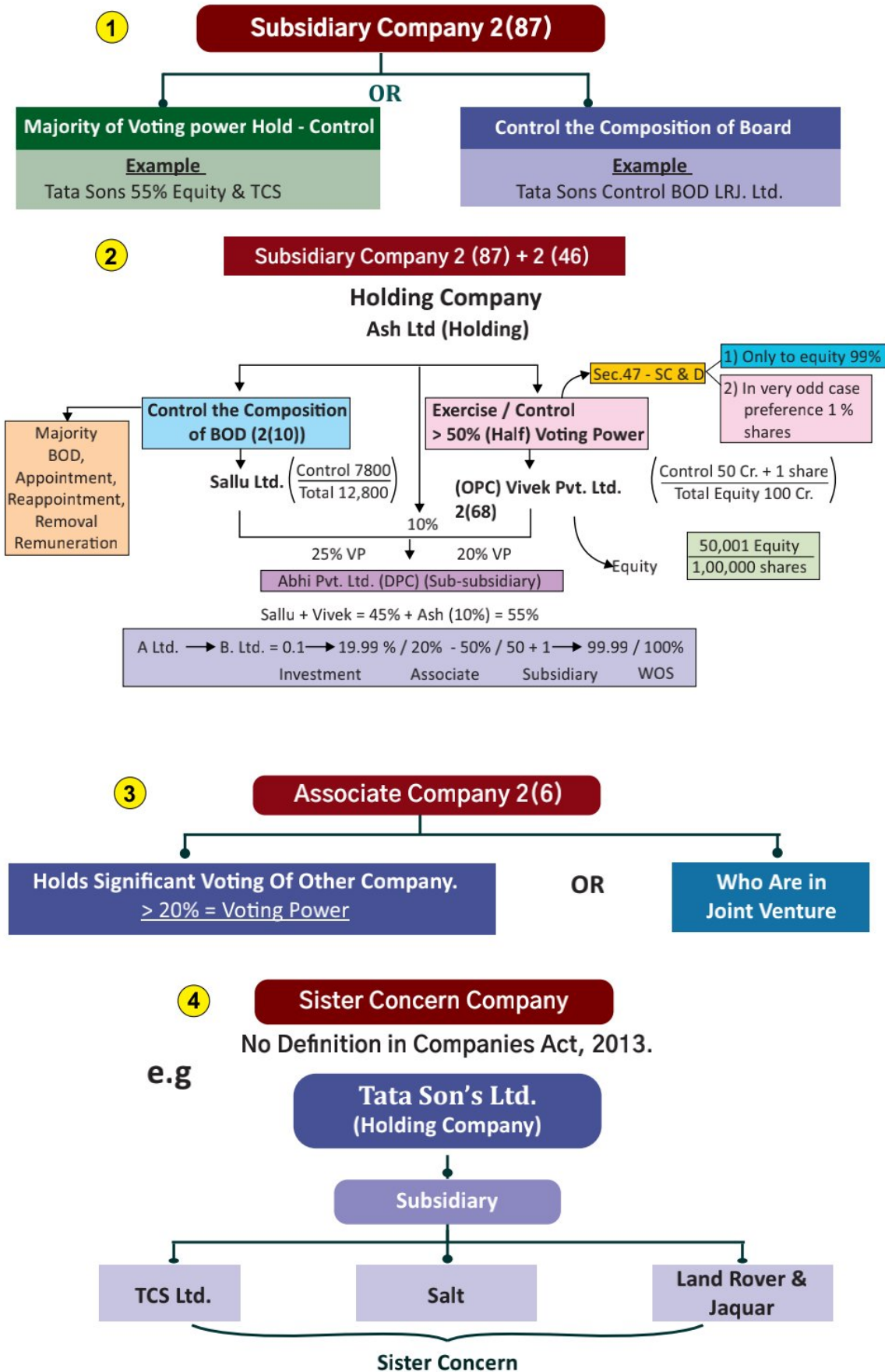


As per Control

Holding Company	Subsidiary Company	Associate Company
<p>Holding Company 2(46)</p> <p>Holding and subsidiary companies are relative terms. A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.</p> <p>Explanation.— For the purposes of this clause, the expression "company" includes any body corporate.</p>	<p>Subsidiary Company 2(87)</p> <p>Section 2(87) defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company –</p> <p>(i) controls the composition of the Board of Directors; or</p> <p>(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.</p> <p>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.</p>	<p>Associate Company 2(6)</p> <p>Associate Company means a company in which other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.</p> <p>Explanation. – For the purpose of this clause</p> <p>The term "significant influence" means control of at least 20% of total voting power, or of business decisions under an agreement control of or participation in business decisions under an agreement;</p> <p>the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.</p> <p>"total voting power", in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members there of or their proxies having a right to vote on that matter are present at the meeting and cast their votes;</p>

Chart for Understanding

BASICS



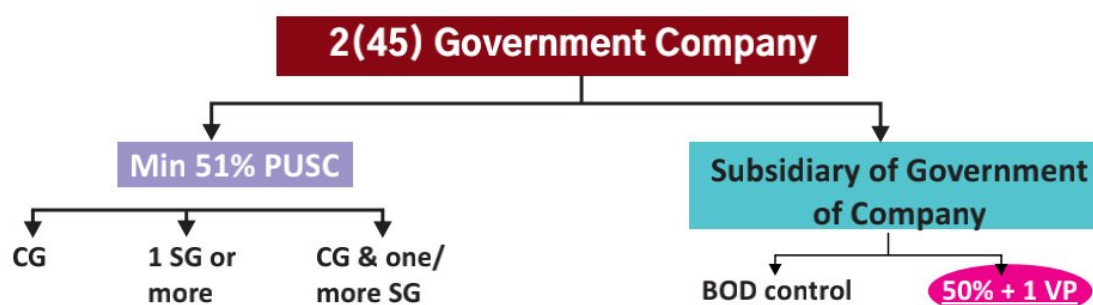
Government Company 2(45)

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;

[**Explanation.** - For the purposes of this clause, the "paid up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued.]

Chart for Understanding**Foreign Company 2(42)**

means any company or body corporate **incorporated outside India** which—

- (i) has a **place of business in India** whether by itself or through an agent, physically or through electronic mode; and
- (ii) **conducts** any **business activity in India** in any other manner

Sec 379 From chapter foreign Company states that:

Where **not less than fifty per cent** of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by **one or more citizens of India** or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as maybe prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

Incorporation of Company**Incorporated in Foreign****Incorporated In India
Indian Companies Act, 2013 is**

Place of Business	Foreign	Foreign	India	India
50% of PC is held by India?	No	Yes	No	Yes
Status of the Company	NA	NA	Foreign Company	Deemed Indian Company
Laws Applicable?	No laws	No laws	Chapter Foreign Company	Indian Companies Act, 2013

Important Definition from ICAI Module

Sec 2(52) – “Listed company” means

- 1) a company which has any of its securities listed on any recognised stock exchange;

Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

According to rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:—

“2A. Companies not to be considered as listed companies.— For the purposes of the proviso to clause (52) of section 2 of the Act, the following classes of companies shall not be considered as listed companies, namely:—

- a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their
 - (i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
 - (ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
 - (iii) both categories of (i) and (ii) above.
- b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;

Sec 2(72) – “Public Financial Institution” means—

- i) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);
- ii) (the Infrastructure Development Finance Company Limited, referred to in clause (vi) of sub-section (1) of section 4A of the Companies Act, 1956 (1 of 1956) so repealed under section 465 of this Act;
- iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002);
- iv) institutions notified by the Central Government under sub-section (2) of section 4A of the Companies Act, 1956 (1 of 1956) so repealed under section 465 of this Act;
- v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless—

- a) it has been established or constituted by or under any Central or State Act other than this Act or the previous company law; or
- b) not less than 51 % of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments;

E-Filing Forms Companies (Incorporation) Rules, 2014

E-Form	Details	Relevant section	Rule No
INC-1	Reservation of name (MOA)	4(4)	9
INC-2	Nomination by Member of OPC (Formation of Company)	3	3
INC-3	One Person company nominee's written consent form.	3(1)	4
INC-4	One person company change in member / Nominee	3(1)	4
INC-5	OPC - Intimation of exceeding threshold	3	6
INC-6	OPC - Application for Conversion	3	7
INC-7	Application for Incorporation of Company	7	12
INC-8	Declaration by professionals	7	14
INC-9	Declaration from subscribers and directors	7	15
INC-10	Particulars of every subscriber to be filed with the ROC at time of incorporation	7	16
INC-11	Certificate of Incorporation	7	18
INC-12	Application for granting license under section 8	8	19
INC-13	Memorandum of association	8	19
INC-14	Declaration by professionals to be filed at the time of incorporation of the company with charitable objective with the ROC.	8	19
INC-15	Declaration by each of the persons making application to the Registrar of Companies for the grant of licence under section.	8	19
INC-16	License under sec 8(1) of the Companies Act, 2013	8	20
INC-17	License under sec 8(5) of the Companies Act, 2013	8	20
INC-18	Application to regional director for conversion of the sec 8 company into company of any other kind.	8	21
INC-19	Notice by sec 8 company which is seeking for conversion into some other kind of company.	8	22
INC-20	Intimation to ROC revocation / surrender of license under sec 8.	8	22
INC-20A	Declaration for commencement of business	10A	23A
INC-21	Declaration prior to the commencement of business or exercising borrowing powers.	11	24
INC-22	Notice of situation or changes of situation of registered office.	12	25, 27
INC-23	Application to the regional directors for approval to shift the registered office from one state to another state or from jurisdiction of one ROC to another ROC within same state.	12	28
INC-24	Application to CG for change in name.	13	29
INC-25	Certificate of incorporation pursuant to change in name.	13	29
INC-26	Advertisement to be published in the newspaper for license for existing companies.	8, 13	20, 30
INC-27	Conversion of public company in private company or private company in public company.	14	33
INC-28	Notice of order of court or any other competent authority.	13	31

INC-29	SPICE (Integrated Incorporation form)		
INC-30	MOA		
INC-31	AOA		
INC-32	SPICE (Incorporation form for Company)		
INC-33	E-MOA		
INC-34	E-AOA		

Coverage of Chapter

Section	Name of Section
3	Formation of company
3A	Members severally liable in certain cases (members below min.)
4	Memorandum of Association
5	Articles of Association
6	Act to override memorandum, articles, etc.
7	Incorporation of company
8	Formation of companies with charitable objects, etc. (NPO)
9	Effect of registration
10	Effect of memorandum and articles
10A	Commencement of business etc.
11	Commencement of business, etc.
12	Registered office of company
13	Alteration of memorandum of association
14	Alteration of articles of association
15	Alteration of memorandum or articles to be noted in every copy
16	Rectification of name of company
17	Copies of memorandum, articles, etc., to be given to members
18	Conversion of companies already registered
19	Subsidiary company not to hold shares in its holding company
20	Service of documents
21	Authentication of documents, proceedings and contracts
22	Execution of bills of exchange, etc.



Sec. 3 Formation of Company

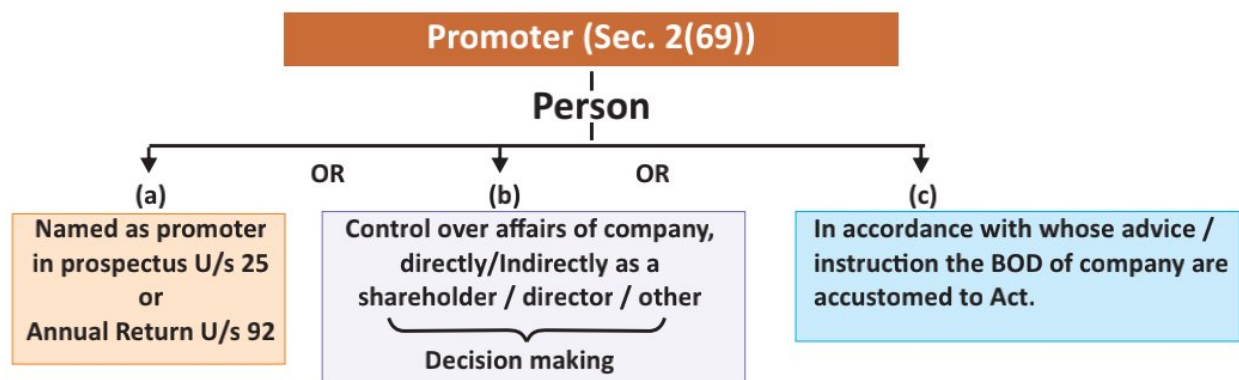
Who is Promoter? 2(69)

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

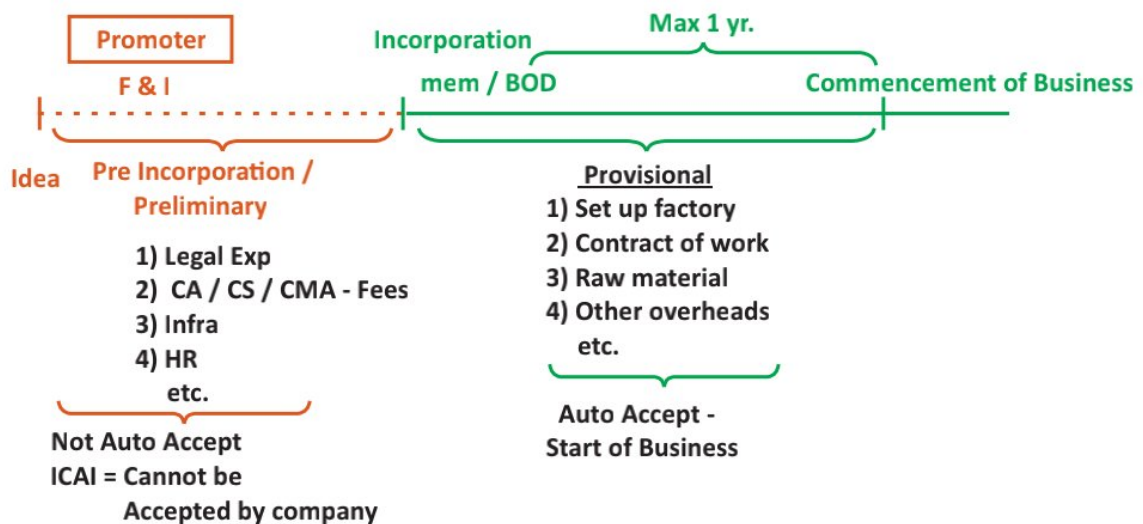
- (a) who has been **named as such in a prospectus** or is identified by the company in the **annual return** referred to in section 92; or
- (b) who **has control** over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- (c) in accordance with whose **advice, directions or instructions** the Board of Directors of the company is accustomed to act.

Provided that, a person **who is acting merely in a professional capacity**, shall **not be** regarded as **promoter**, e.g., the solicitor, banker, accountant etc. are not regarded as promoters.

Chart for Understanding



Normal Case : Promoter is a person involved in formation & Incorporation of company



Difference between Pre incorporation Contracts and Provisional Contract







Basis of differences	Pre-incorporation Contracts	Provisional Contracts
Meaning	Contracts which are entered into, by the persons proposing to float a company in the name of the prospective company before it have come into existence.	Contracts which are entered into by a company after obtaining the Certificate of Incorporation but before eligible to commence business under section 11 of the Companies Act.

Nature & Consequences Execution	Contracts are void ab initio as the company is not in existence and hence cannot enter into a contract either in its own name or through agents. A company is neither bound by nor can it enforce a pre incorporation contracts nor can it ratify the same after incorporation as being non-existent it cannot appoint agents on its behalf.	Contract shall be binding upon the company from the date on which the company is entitled to commence business
Nature & Consequences Execution	As the company is not in existence , so company is neither bound by nor can it enforce a pre-incorporation contracts nor can it ratify the same after incorporation	Contracts entered into by a company after its incorporation and before it is entitled to commence business are provisional only and are not binding on the company until the trading company completes the added formalities under section 11 (1) (a) and (b)

Answer Writing Points

A Company can be formed for **any legal purpose** i.e. for **profit making** or others and of any type whether Public or Private or One Person Company (OPC)

By **minimum Number of members** as per the type of the company **coming together** and **subscribing** their names in the memorandum and fulfilling **all the conditions** required by the registrar.

Heads	Members			Directors		
	Public	Private	OPC	Public	Private	OPC
Section No.	2(71)	2(68)	2(62)	149(1)	149(1)	149(1)
Minimum	7 	2 	1 	3 	2 	1 
Maximum	No limit	200	1	15 [AOA can provide lower amount]		
Who can be	Any person	Any person	Individual	Individual		

Sec 3A: Members severally liable in certain cases.

Answer Writing Points

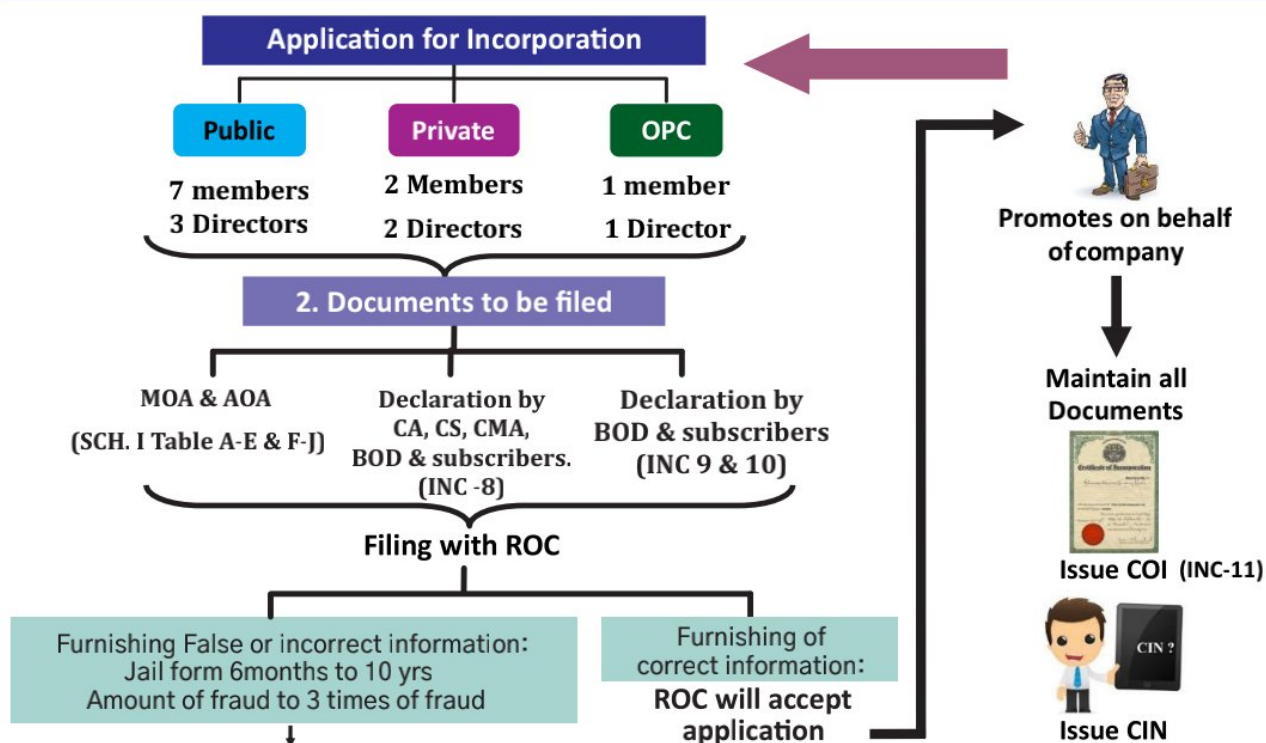
Conditions	Liability
<p>If at any time–</p> <p>i) the number of members of a company is reduced (below statutory minimum limit) i.e</p> <ul style="list-style-type: none"> · in the case of a public Co. – below 7, · in the case of a private Co.– below 2, <p>and</p> <p>ii) the company carries on business for more than 6 months while the number of members is so reduced,</p>	<p>every person who ,</p> <ul style="list-style-type: none"> • is a member of the company during the time that it so carries on business after those 6 months and • is cognisant of the fact that it is carrying on business with less than 7 members or 2 members, as the case may be, <p>shall be severally liable for the payment of the whole debts of the company contracted during that time(i.e debts contracted after 6 months), and may be severally sued therefor.</p>

Sec 7: Incorporation of Companies

Answer Writing Points

- 1) The company shall be **legally created, legally constituted with legal object.**
- 2) As per section 3 the company to incorporate and manage necessary member and BOD.
- 3) Promoter shall file **MOA & AOA** with **ROC**.
- 4) Promoter shall file **INC 8** for declaration by **CA/CS/CMA** regarding authentication of documents.
- 5) The **subscribers & BOD** shall file personal details in **INC 9** & sign following Affidavit/declaration in **INC 10** regarding
 - a) Not involved in **any offence** in formation/management of company.
 - b) Not involved in **fraud** of any law in last **5 years**.
 - c) All the documents & information provided to best of his knowledge is **true & fair**.
- 6) The above documents shall be filled with **ROC** in **Form INC 7/ SPICe 29/ SPICe 32** for application of incorporation and **ROC** shall verify status and Allot **CIN & COI** within **30 days**.
- 7) If the above information is false/incorrect then **NCLT** will pass order **u/s 447** for **fraud** &
 - a) **Take over** management of company
 - b) **Liability** of members **unlimited**
 - c) **Winding up** of company
 - d) **Removal of Name** of company from **ROC**
 - e) Any other required order.

Chart for Understanding



Order of Tribunal: Where a company has been **got incorporated** by furnishing **false** or incorrect information then NCLT –

- (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.

Sec 4: Memorandum of Association (MOA)

Definition

As per **section 2(56)** memorandum means the memorandum of association of a company **as originally framed or as altered from time to time** in pursuance of any previous company law or of this Act;

Memorandum of Association (Sec. -4)

Name Clause	Object Clause	Registered Office Clause	Capital Clause	Subscription Clause	Liability Clause	Nomination Clause
The name of the company 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.	The objects for which the company is proposed to be incorporated & any matter considered necessary in furtherance thereof; If any company has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of six months from the change of activities after complying with all the provisions as applicable to change of name.	The State in which the registered office of the company is to be situated. It is the place of business of the company where the official communications will be made with the company. The Registered office defines the ROC under which the company will be registered & function accordingly. The General Meetings will be held in city in which the Registered office of the company is situated .	The amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share . The share capital also states proportion of member's holding in the company and voting rights available to him and control according to same.	The number of share each subscriber to the memorandum intends to take is indicated opposite his name. Subscription clause states that how many persons are involved in membership of the company at the time of incorporation. Subscriber can be any person. Either artificial or natural . First director will be elected from the subscribers if the names of directors are not mentioned in AOA.	The liability of members of the company, whether limited or unlimited, and also state,— 1) 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 2) 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 it being wound-up while he is a member or within one year after he ceases to be a member, and • to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;	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. The OPC contains only one member who is individual. So in case of death of original member, the OPC will not function. In such case the nominee will become the sole member of the OPC and OPC will function as it is.

Forms of Memorandum and Articles (as per schedule I)

Sr. No.	Type Of Company	Form of Memorandum
1)	Company Limited By Shares	Table A
2)	Company Limited By Shares and not having Share capital	Table B
3)	Company Limited By Shares and having Share capital	Table C
4)	Unlimited Company not having Share capital	Table D
5)	Unlimited Company having Share capital.	Table E
6)	Articles of association of a Company limited by shares	Table F
7)	Articles of association of a company limited by guarantee and having a share capital	Table G
8)	Articles of association of a company limited by guarantee & not having share capital	Table H
9)	Articles of association of an unlimited company and having a share capital	Table I
10)	Articles of association of an unlimited company and not having share capital	Table J

Sec 4, 13 & 16 – Name Clause
Sec 4: Application for Name

- The person shall make application for Name in **INC 1 or SPICe 32 to ROC**
- The application can be accepted considering following prohibitions:
 - Identical/resembling** name **not** allowed
 - Defensive** name **not** allowed
 - Undesirable name** **not** allowed
 - Name showing any **connection to CG / SG / Statutory Company/ Body corporate** is **not** allowed.
 - Name with prohibited words as per **rule 8A** not allowed.
- The application can be accepted/rejected. If rejected resubmit after correction in **15 days** of rejection.
- If accepted then name will be reserves as follows:
 - Primary for **20 days**
 - Additional **20 days** on payment of **Rs 1000**
 - Additional extra 20 days on payment of **Rs 2000**

[Total **20+20+20= 60 days** on payment of total **Rs 3000**]
- The application for incorporation shall be made within above period of reservation. If not name can be allotted to other company after above period.
- In case of **false/wrong/fraudulent** information-
 - Penalty upto **Rs. 100000**
 - Order for:
 - Change** name in **3 months**
 - Strike** of the name from **ROC**
 - Winding up** of company

**Sec 13(1)(2)(3)(6):
Voluntary Change / Alteration
of Name**

- For voluntary change in name the company shall pass **GM-SR**
- The company shall apply to **CG(ROC)** for such change
- CG(ROC)** approval **not** required in case of **conversion from Ltd to Pvt Ltd.**
- The application shall be made in **INC 24**
- The new certificate of incorporation shall be allotted with new name in **INC 25.**

Sec 16: Rectification of Name

- For Alteration of Name:
 - The **CG (RD-delegated)** shall pass order to change name.
 - The company shall pass **GM-OR** for change in name.
 - Such change shall be made in **3 months.**
- For Alteration of Trade mark:
 - The application by aggrieved party to **CG** within period of **3 years** of copy of trademark.
 - CG(RD)** shall pass order to change Trademark.
 - GM-OR** shall be passed for such change
 - Change** shall be made in **3 months**
- In both of above case the new name shall be filed with **CG(RD)** in **15 days** of such change.

Chart for Understanding

Name Clause

- 1) Identical or similar name not allowed.
- 2) Name shall not constitute offence under any law.
- 3) It shall not be undesirable as per CG.
- 4) The name shall not show any connection with CG / SG or local authority, etc.
- 5) Name shall not contain the words prohibited by CG to be used without its approval.

Application ↓ INC 1



ROC will accept application & reserve name for 20 days

↓ 20 days

Incorporation of Company with Name reserved

Voluntary alteration of Name Sec 13

Name Clause

- 1) **GM-SR** shall be passed.
- 2) **Prior CG approval** shall be obtained.
- 3) **No CG approval** to change in Pvt Ltd to Ltd.
- 4) Apply in form **INC 24**.
- 5) ROC will issue **fresh certificate** of incorporation in new name in form INC 25.

Compulsory alteration of Name or Rectification Sec 16

Identical or Similar to existing name.

Rectification

- 1) Rectification **order by CG**.
- 2) Pass **GM-OR** for change in name.
- 3) Rectify name within **3 months** of order of CG.

Identical or Similar to existing trade mark.

- 1) Person aggrieved can **apply to CG** within **3 years**.
- 2) The CG can order to change name.
- 3) Pass **GM-OR** for change in name.
- 4) Rectify name within **3 months** of order of CG.

If a company is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the company in such manner as may be prescribed and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter:

Sec 4: Object Clause / Sec 13: Alteration of Object

Answer Writing Points

- 1) Object clause means a **purpose** for which company **runs its business** & there are 2 types of objects.
 - a) Main object
 - b) Supplementary/Ancillary/Other [low cost profitable]
- 2) For **alteration** of object clause company shall pass **GM-SR**
- 3) **Dissenting** shareholders can get there **shares/capital refunded**
- 4) The **GM-SR** shall be published in:
 - a) One English newspaper
 - b) One Regional newspaper
- 5) The change in clause of memorandum and **GM-SR** shall be filed with **ROC** in **30 days**.

[All the above points are common/Similar for alteration of content of prospectus u/s 27]

Sec 4: Registered Office Clause / Sec 12 & 13: Alteration of Registered Office

Answer Writing Points (Setting up of RO)

- 1) The Registered office is a physical presence of company geographically
- 2) It determines domicile & nationality of company.
- 3) It also decides jurisdiction of court for litigation
- 4) The books & accounts shall be kept at **RO & place of GM** as per RO.
- 5) All official communications/legal communications shall be **posted at registered office** of company.
- 6) It shall be physical office not a post box
- 7) The address of RO shall be mentioned on all invoices & official communications & prospectus letter heads.
- 8) Registered office is a physical existence of company as per geography.
- 9) The company shall set up Registered office within 30 days of its incorporation & shall file INC 22 with ROC.
- 10) If there is **default in setting up** RO in **30 days** the **ROC** can remove the name of the company.
- 11) The Registered Office address shall be mentioned:
 - a) Outside every place of business
 - b) Official communication
 - c) Other documents
 - d) Letters heads/ Bill heads
 - e) Bill/Notes/Hundi
 - f) Etc.

Sec 13: Alteration of Registered office of the company

- 1) If the company want to shift Registered office **within same city**, then it shall pass **BOD-OR**.
- 2) The company shall pass **GM-SR** in case it wants to shift registered office **from one city to another** i.e. **inter-city**. But in **same state**.
- 3) In case company wants to shift its registered office from **one ROC to another then** company shall take **approval of both the ROC**.
- 4) Such **application to regional Director** for shifting of registered office is to be given in **Form INC 23** along with such fee as may be prescribed. Confirmation should be **received in 30 days** from such regional director.
- 5) Then company shall file copy of **INC-23** with the ROC within **60 days** & get approval regarding the same in **30 days**.
- 6) In case registered office is shifting from one state to another then **prior approval of CG** is required.
- 7) Once the certificate of **such change is issued** it will be the proof that change in location of **registered office has taken place** as per the provisions of the act.
- 8) Further, if the **Registrar remains the same** for the **whole state**, there will be **no need** for the company to seek the confirmation to such change from the **Regional Director**.

In India there are only 2 states who have 2 ROC

In Maharashtra there are 2 ROC.	In Tamilnadu there are 2 ROC.
1) Mumbai ROC: for Mumbai and Vidharbha Region.	1) Chennai ROC.
2) Pune ROC: for Pune and Marathwada Region.	2) Coimbatore ROC.

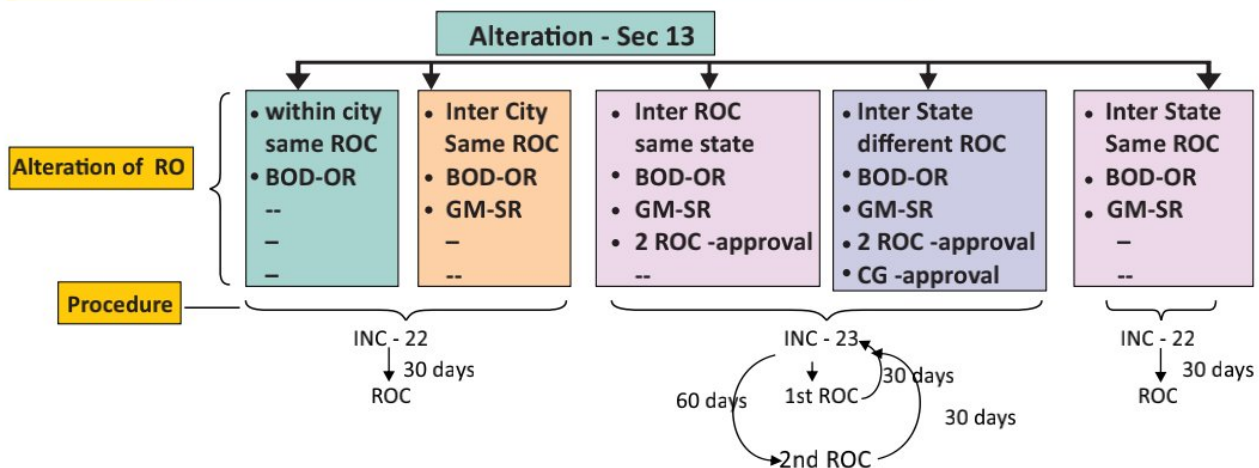
Chart for Understanding

Registered office clause

Set up of RO

Sec 4 + Sec 12 + Sec 13

- 1) RO set up in 30 days
- 2) File with ROC in 30 days in INC 22
- 3) RO-Place of communication
- 4) RO-Decide nationality / Domicile
- 5) RO- Name & liability
- 6) RO - Document /Communication & letter heads



Sec 4: Capital Clause & Subscription Clause & Sec 61: Alteration of Capital

Answer Writing Points

- Capital is part of **own funds** in the form of **equity or preference** in company.
- The alteration of capital will require **GM-OR** u/s 61
- The capital can be altered in following cases
 - Increase in Capital
 - Decrease in Capital
 - Conversion of Capital
 - Division of Capital
 - Consolidation of Capital
- The alteration of capital shall be authorized by **AOA**.

Suggestion:

Apart from above the capital can be altered in specific way like Buy back (sec.68), Bonus share (sec. 63), Sweat Equity (Sec.54) etc.

In cases the specific resolutions of such section shall override section 61 i.e. **GM-OR**.

Sec 4 & 13(1): Liability Clause & Alteration of Liability Clause.

Answer Writing Points

- Liability of members can be limited or unlimited.
- It is an amount members agreed to contribute to company either as share capital or guarantee
- Capital in form of shares can be contributed through out the life of company.
- Guarantee is promise to contribute of winding up of liability is more than assets.

Imp Note for Exam – Section 65 is not applicable in the syllabus and unanimous resolution for increase in liability is not stated or accepted by any Institutes Material so from exam point of you, liability clause cannot be altered and if it can be only through unanimous resolution by increase in liability.

Sec 14: Alteration of Article of Association (AOA)

Answer Writing Points

- The **articles of association** are in fact the **bye-laws** of the company according to which directors and other officers are required to **perform their functions** as regards the management of the company, its accounts and audit.
- Section 14 of the Companies Act, 2013, vests companies with **power** to alter or add to its **articles**. The law with respect to alteration of articles is as follows:

- a) **Alteration by special resolution:** Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a **special resolution** alter **its articles**.
- b) **Filing of alteration with the registrar:** Every alteration of the **articles** and a copy of the order of the Tribunal approving **the alteration**, shall be filed with **the Registrar**, within a **period of 15 days**.
- c) **Any alteration made shall be valid:** Any alteration of the articles registered as above **shall, be valid** as if it were originally **contained** in the **articles**.
- d) **Alteration noted in every copy:** Every alteration made in articles of a company shall be noted in every copy of the articles, as the case **may** be.

Sec 6: Act to Override MOA & AOA

Answer Writing Points

- 1) The provisions of companies act, 2013 overrides **MOA/AOA**
- 2) **MOA/AOA** overrides agreements & resolution and contracts along with Companies Act, 2013.
- 3) Any provision which is in contravention to Companies Act, 2013 in MOA/AOA/Contracts/Agreements/Resolution will be void & unenforceable.

Sec 15: Alteration of MOA or AOA to be noted in every copy

Answer Writing Points

- 1) Every **alteration** made in MOA or AOA of a company shall be **noted** in **every copy of MOA or AOA**.
- 2) If a company makes **any default** in complying it, **company & every officer** who is in default shall be liable to a **penalty of Rs. 1000** for every copy of MOA or AOA issued without such alteration.

Sec 17: Copies of MOA & AOA

Answer Writing Points

- 1) Every company shall send **copies of MOA, AOA** & Every agreement and resolution as per **sec.117** to members on his request.
- 2) In case of default, **company & every officer** who is in default shall be liable to a penalty of **Rs. 1000 for each day or Rs. 1 lakh, whichever is less**.

Doctrine of Ultra Virus & Doctrine of Constructive Notice

Aushbary Railway & Iron Co Vs. Richie

Ashbury Railway Carriage & Iron Co.
Main Object: Creating Railway Wagons

1) Agreed to Provide Finance to manufacture railway

2) Richie the Mechanic want to manufacture the wagons.

3) The finance was cancelled by company containing that it is beyond the objects of its MOA.

4. Richie sued the company claiming that as the company is itself involved in the manufacturing of railway wagons so the financing for manufacturing of the same is well within its scope.

Meaning and Conclusion

Doctrine of Ultra Virus

The company shall not work beyond the powers of its MOA and **AOA**. The MOA and **AOA** are the limitations of the company which are stated and approved by the members i.e. owners of the company. The company shall not work beyond the same. Any act done beyond the MOA and **AOA** will be considered as void-ab-initio.

Doctrine of Constructive Notice

The MOA and AOA are **public documents**. The outsider or the 3rd party dealing with the company shall have the **knowledge of the MOA and AOA** of the company. Anything which is not approved as per MOA and AOA or beyond its powers will be considered as invalid in law. All the requirements of MOA and AOA shall be complied by the company before entering into contract with the 3rd party or outsider. If the contract is beyond the limits of MOA or AOA it will be void and 3rd party or outsider cannot claim any compensation for the same as it is assumed that he had knowledge of contravention through MOA or AOA.

Doctrine of Indoor Management / Turquand Rule

Rule of doctrine of indoor management

The aforesaid doctrine of constructive notice does in no sense mean that outsiders are deemed to have notice of the internal affairs 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.

The Royal British Bank Vs. Turquand

RBB

Royal British Bank

1. The bank has policy to issue bond after BOD-OR

2. The Director of the bank issued the bonds without passing BOD OR.

4. The bank demanded the bonds back contending the issue is invalid as resolution is not passed. & Turquand must be aware of company's AOA policy regarding BOD-OR requisition.



Turquand

3. He assumed that BOD-OR is passed by company.

Exceptions to Doctrine of Indoor Management

1) Knowledge of irregularity:-	The rule does not protect any person when the person dealing with the company has notice, of the irregularity. The transaction must be executed in good faith. [Moris vs. Kenssen (1946) A.C.459; Devi Ditta Mal vs. The Standard Bank of India (1972) I.C. 568]
2) Negligency:-	The doctrine in no way, rewards those who behave negligently. [Underwood vs. Bank of Liverpool (1924) I.K.B. 775]
3) Forgery :	When an instrument purporting to be executed on behalf of the company is a forgery. [Ruben vs. Great Fingal Consolidated (1966) A.C. 439; Official Liquidator vs. Commr. Of Police (1969) I Comp. L.J. (Mad.)]

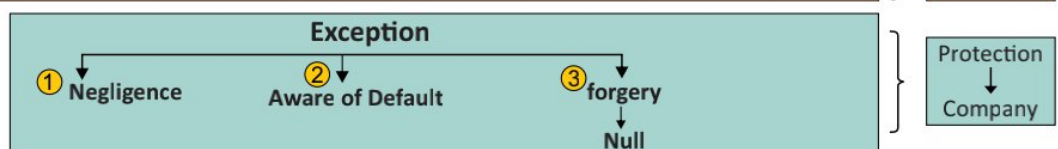
Chart for Understanding

Ashbury Railway & Iron Vs. Richie

DOCN :	3rd Party shall be aware about clauses of MOA / AOA - as it is a Public Document	} Protection ↓ Company
DOUV :	If 3rd party contracts with company beyond powers of MOA / AOA then such contract is void in law & 3rd Party is not protected for same	

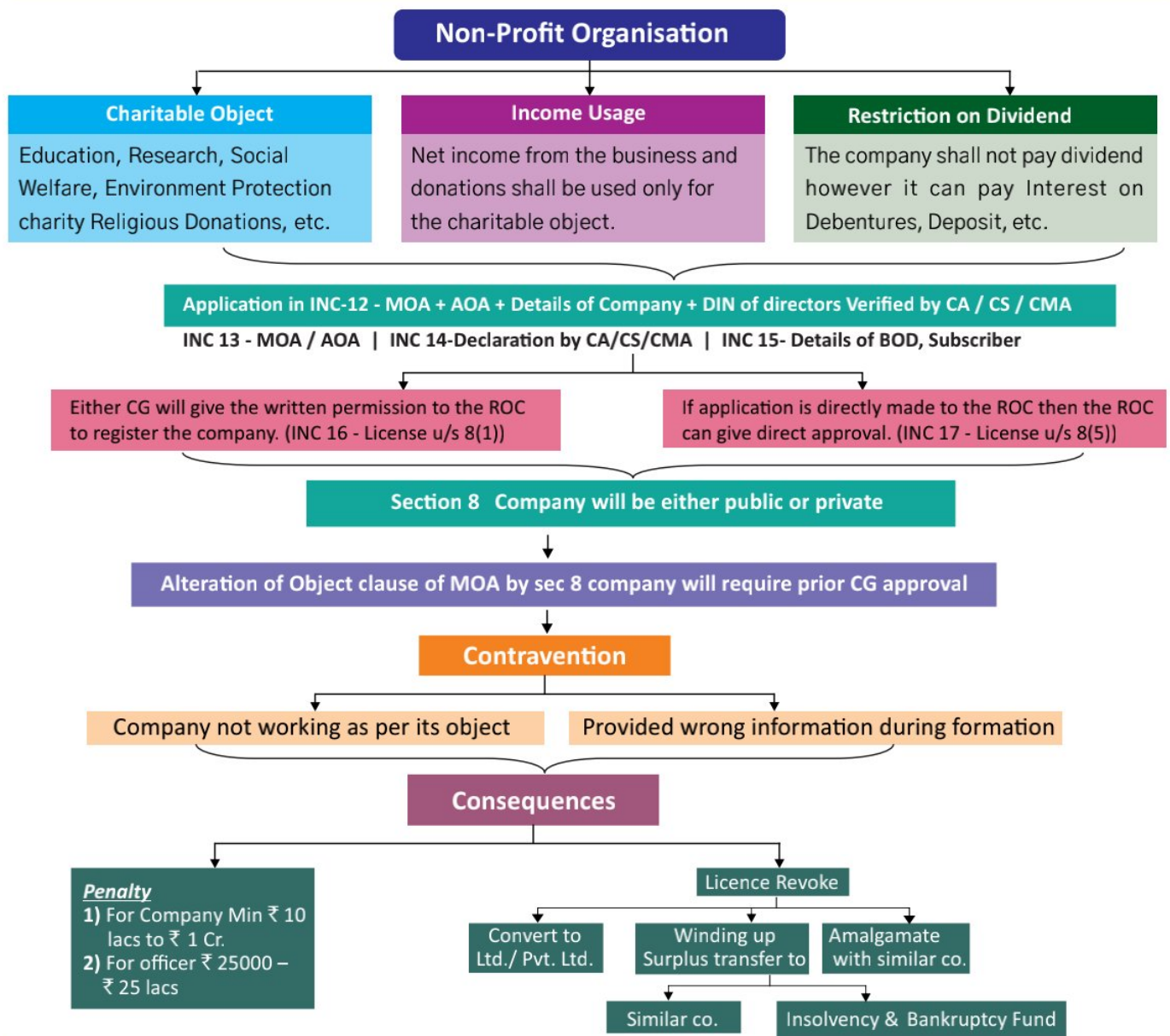
RBB Ltd. Vs. Turquand

DOIM :	3rd Party need not be aware of internal process of company so any Internal deficiency in the process of company will not damage 3rd party & contract is valid.	} Protects 3rd party
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Sec 8: Non Profit making organisation / Charitable Organisation

Chart for Understanding



Answer Writing Points

Incorporation of NPO

- The Not for Profit Organisation [NPO] shall have following objects:
 - Business of Education, Research, Social welfare, Sports, Environment protection, Religious, Donations etc.
 - The company uses its profit for promoting its objects
 - The Company does not distribute dividend but provides interest on loan/debenture.
- Application of NPO shall contain:
 - INC 12/32** – Application for Incorporation
 - INC 13** – Memorandum/Articles of NPO
 - INC 14** – Declaration of CA/CS/CMA/Advocate
 - INC 15** – Details of BOD/Subscribers.
- The Company shall receive license for NPO as follows:

- a) **INC 16** – License by CG (ROC)
- b) **INC 17** – License by ROC
- 4) The NPO can be a private or public company & it need **not** use the words “Pvt Ltd” or “Ltd” in its name.

Conversion of NPO

- 1) For **conversion** of NPO/Change in object of NPO to other company requires **GM-SR**.
- 2) The Company shall provide **explanatory statement (section 102)** for such conversion to members.
- 3) The Company shall make application to **RD(CG) in INC 18**.
- 4) The Company shall publish the **Notice** of conversion in **INC 19** in two newspapers, one in **vernacular** and other in **English** and on the website of company.
- 5) The Company shall give a notice to following persons
 - a) Chief commissioner of Income Tax
 - b) Income Tax Officer
 - c) Charity Commissioner
 - d) Chief Secretary of SG
 - e) Department of CG/SG for charitable Concerns
- 6) After such conversion the approval of RD along with **GM-SR** shall be filed with **ROC**.

Revocation, Contravention & Consequences

- 1) If company executes any of the following contravention then liability is discussed from point no. 2
 - a) Company is not working as per its object
 - b) Wrongful or false information provided by Company
- 2) The **Company** shall be liable for penalty of **Rs. 10 lakhs to Rs 1 Cr & Officer in default** shall be liable for penalty of **Rs. 25000 to Rs. 25 lakhs**.
- 3) The license of NPO shall be revoked under **INC 20** & additionally company will be liable for
 - a) Conversion of Company
 - b) Surplus assets will be transferred to other NPO having some objects
 - c) Winding up of NPO under IBC Code, 2016
 - d) Amalgamation of NPO with other NPO having similar objects.

Sec 9: Effect of Registration (Characteristics of Company)

Additional Case Studies

Hari Nagar Sugar Mills Ltd. vs. S.S. Jhunjhunwala	From the date of incorporation mentioned in the certificate, the company becomes a legal person separate from the incorporators; and there comes into existence a binding contract between the company and its members as evidenced by the Memorandum and Articles of Association
State Trading Corporation of India vs. Commercial Tax Officer	A company on registration acquires a separate existence and the law recognises it as a legal person separate and distinct from its members
[Spencer & Co. Ltd. Madras vs. CWT Madras].	Merely because a company purchases all shares of another company it will not serve as a means of putting an end to the corporate character of another company and each company is a separate juristic entity
[Heavy Electrical Union vs. State of Bihar].	As has been stated above, the law recognizes such a company as a juristic person separate and distinct from its members.

Sec 10: Effect of MOA & AOA

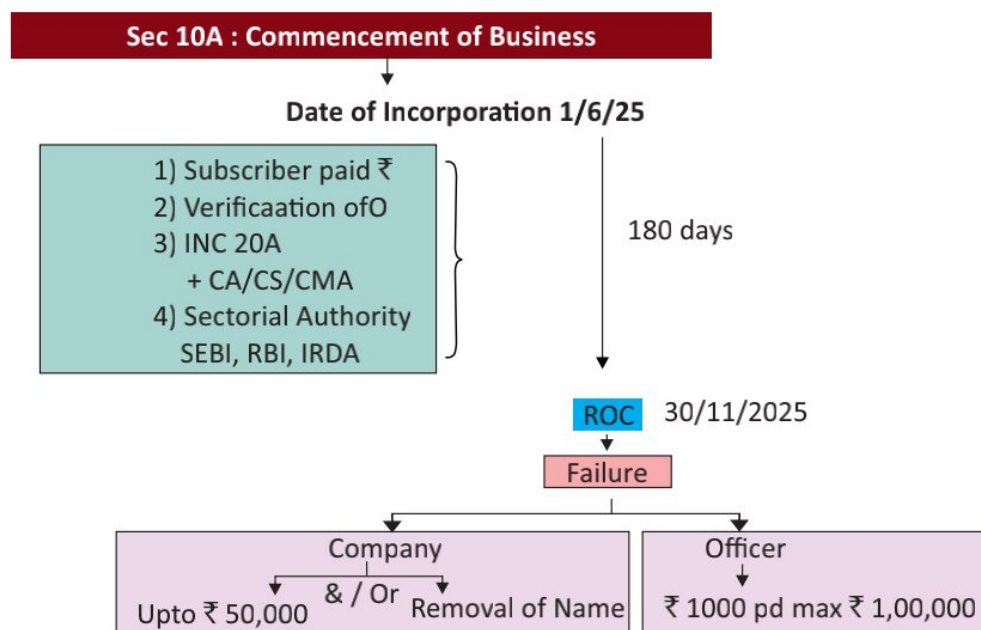
- 1) The Memorandum and Articles, when registered, would be **binding on the company** and its members to the same extent as if each one of them had **individually** signed the documents, so far as the **covenants** therein are **concerned**.
- 2) All monies payable by any member to the company under the **memorandum** or **articles** shall be a **debt due** from him to the company.

Sec 10A: Commencement of business etc.

Answer Writing Points

- 1) Every company shall after its incorporation ensure that its **BOD** shall file a declaration that the subscribers have brought the amount committed in **180 days**.
- 2) Additionally the company shall file physical verification of its registered office with **ROC**.
- 3) The above declaration by **BOD** shall be filed in **Form INC 20A** with **ROC**.
- 4) Additionally the declaration of **CA/CS/CMA/Advocate** will be required with above filing
- 5) The approval of sectorial authority will be required within **180 days** of incorporation (Eg SEBI, RBI)
- 6) In case of contravention of section 10A
 - a) **The company** will be liable upto **Rs 50000** and/or **Removal of Name** from **ROC**
 - b) **The officer who is in default** will be liable for **Rs.1000** per day max upto **Rs 1 lakh**.

Chart for Understanding



Sec 11: Commencement of Business

Omitted by Companies Amendment Act, 2015.

Sec 18: Conversion of the Company

Answer Writing Points

Conversion of One Person Company into a Public company or a Private company.

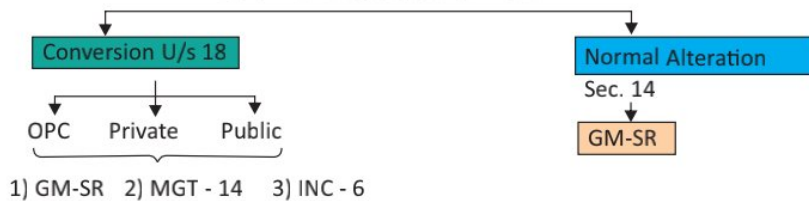
- 1) The OPC shall alter its MOA and AOA by **passing a resolution** in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.
- 2) A OPC may be **converted** into a Private or Public Company, other than a company registered under section 8 of the Act, after increasing the minimum number of members and directors to **2 or 7 members and 2 or 3 directors**, as the case may be, and maintaining the **minimum paid-up capital** as per the requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion
- 3) The company shall file an application in **e-Form No. INC-6** for its conversion into Private or Public Company, other than under section 8 of the Act, along with fees as provided in the Companies (Registration offices and fees) Rules, 2014 by attaching documents, namely: –
 - a) Altered MOA and AOA; b) copy of resolution;
 - c) the list of proposed members and its directors along with consent;
 - d) list of creditors; and e) the latest audited balance sheet and profit and loss account.
- 4) On being satisfied that the requirements stated herein have been complied with, the Registrar shall **approve the form and issue the Certificate.**

Conversion of private company into One Person Company.

- 1) A private company other than a company registered under section 8 of the Act may convert itself into OPC by passing a **GM-SR.**
- 2) Before passing such resolution, the company shall obtain **No objection** in writing from members and creditors.
- 3) The one person company shall file copy of the special resolution with the **ROC within 30 days** from the date of passing such resolution in **Form No. MGT. 14.**
- 4) The company shall file an application in **Form No. INC. 6** for its conversion into OPC along with fees as provided in the Companies (Registration offices and fees) Rules, 2014, by attaching the following documents, namely:–
 - (i) The directors of the company shall give a **declaration** by way of **affidavit** duly sworn in confirming that all members and creditors of the company have given their consent for conversion.
 - (ii) the **list of members and list of creditors;**
 - (iii) the **latest Audited Balance Sheet** and the **Profit and Loss Account;** and
 - (iv) the **copy of No Objection letter** of secured creditors.
- 5) On being satisfied and complied with requirements stated herein the **Registrar** shall **issue the Certificate.**

Chart for Understanding

Sec 14 : Alteration of OA



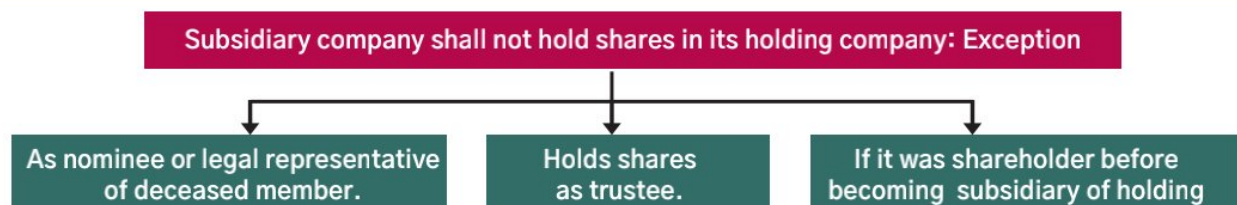
For conversion we Amend AOA / MOA for following things .	OPC	Private	Public
1) Section	2(62)& 3	2(68)	2(71)
2) Members	1	2-200	7-∞
3) BOD	Min 1	Min. 2	Min. 3
4) Transfer of Shares	prohibited	Restricted member Relati e Pvt.Placement	Freely
5) Nomination	✓	✗	✗
6) Max limit	PC ≤ 50 L T ≤ 2 Cr.	✗	✗
7) Restriction on business	NBFC Sec. 8	✗	✗
8) Joint Holding counting	NA	as 1	as 1
9) Employee to be counted as member	NA	Prohibited	Allowed
10) Invitation / Prospectus to public	Prohibited	Prohibited	Allowed
11) Listed	Prohibit	Can be for Debt Instrument only	freely for any security
12) Co Act Applicable	Less Restriction	Moderate Restriction	Huge Restriction

Sec 19: Subsidiary Company shall not hold shares in Holding Company

Answer Writing Points

- According to section 19 of the Companies Act, 2013 a company shall **not hold any shares in its holding company** either by **itself** or **through its nominees**. Also, holding company shall **not allot** or transfer **its shares** to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary **company shall be void**.

Chart for Understanding



Sec 20: Service of Document & Sec 21. Authentication of Documents, Proceeding & Contracts & Section 22: Execution of Bill of Exchange

Answer Writing Points

Sec 20: The ROC or 3rd person **can serve document** on company or vice-versa by way of **physical delivery, registered** or speed post, courier, E-Mail, Fax, or any other means of which **evidence can** be obtained.

Sec 21: Were the **genuineness of a document**, proceedings, contracts made by or on behalf of company etc. is to be verified, we have to see whether, the Key Managerial Person or an officer who is authorised by board to do so has signed such documents.

Sec 22: **Bills of exchange, Promissory notes** etc. will be deemed to be executed if they are signed or **accepted or endorsed** by any person who is **impliedly or expressly** authorised to do so. Company can authorise any person in **writing by** affixing common **seal** on such **written document** to execute in general or for any **special contract** or deed on behalf of the company in or outside India. If such authorised person **signs any document** or executes any contract or deed then the company is liable to continue such contract or deed.

Chart for Understanding

