

Chapter 6

THE COMPANIES ACT, 2013

After studying this chapter, you would be able to understand-

- Company form of Business Organisation and its features
- Corporate veil theory
- Classes of companies under the Companies Act
- Registration of companies
- Memorandum of Association and Articles of Association

INTRODUCTION

- contains 470 sections and seven schedules
- divided into 29 chapters

Some Basics	
Application of Act [Sec. 1]	The provisions of this Act shall apply to: <ol style="list-style-type: none"> (a) Companies defined u/s 2(20); (b) Insurance Companies, except if inconsistent with Insurance Act, 1938 or IRDA Act, 1999; (c) Banking Companies, except if inconsistent with Banking Regulation Act, 1949; (d) Companies engaged in the generation or supply of electricity, except if inconsistent with Electricity Act, 2003; (e) Statutory Companies unless inconsistent with its Special Act; (f) Body corporate, incorporated by any Act for the time being in force, as the CG may, by notification, specify in this behalf.
Company [Section 2(20)]	Company means a company incorporated: <ol style="list-style-type: none"> (a) Under this Act; or (b) Under any previous company law. <p>Note:</p> <ul style="list-style-type: none"> • The word "Company" when used in Companies Act, does NOT include Foreign Companies or Company Incorporated Outside India
According to Chief Justice Marshall	A corporation is an artificial being, invisible, intangible, existing only in contemplation of law. Being a mere creation of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as accidental to its very existence

professor Haney	A company is an incorporated association, which is an artificial person created by law, having a separate entity, with a perpetual succession and a common seal
Body Corporate or Corporation [Section 2(11)]	<p>Section 2(11) of the Companies Act, 2013 provides that body corporate or corporation includes a company incorporated outside India, but does not include-</p> <ul style="list-style-type: none"> (i) a co-operative society registered under any law relating to co-operative societies; and (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf. <p>Note –</p> <ol style="list-style-type: none"> 1 Body Corporate is an entity which has these characteristics:- <ul style="list-style-type: none"> • Separate Legal Entity (Artificial Person) • Perpetual Succession • Common Seal (optional) Incorporate under any Statute. 2 Thus the term body corporate includes not only companies within the meaning of Companies Act, 2013 and corporations established under Special Acts of Parliament but also foreign companies. It will further include all public financial institutions as well as nationalized banks. Thus the term 'body corporate' is wider than the expression company. 3 LLP is also a Body Corporate. 4 All companies are body corporate but all body corporate are not company.

Features Of Company (Shortcut – PLASTIC)	
Separate Legal Entity	<ul style="list-style-type: none"> • 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 who have formed it. • A company can own property, have bank account, raise loans, incur liabilities and enter into contracts. • A company is capable of owning, enjoying and disposing of property in its own name. • Although the capital and assets are contributed by the shareholders, the company becomes the owner of its capital and assets. • The shareholders are not the private or joint owners of the company's property. <p>Macaura Vs. Northern Assurance Co. Limited (1925):</p>

	<ul style="list-style-type: none"> • Macaura (M) was the holder of nearly all (except one) shares of a timber company. He was also a major creditor of the company. M insured the company's timber in his own name. The timber was lost in a fire. M claimed insurance compensation. Held, the insurance company was not liable to him as no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest in them. Hence in this case, since the timber was insured in the company's name, M could not claim the compensation from insurance company. • Conclusion - A member does not even have an insurable interest in the property of the company 										
<p>Perpetual Succession</p>	<ul style="list-style-type: none"> • Death, insolvency, insanity etc. of any member does not affect the continuity of the company. Thus, the life of the company does not depend upon the life of its members. • It is generally said that 'members may come and go, but the company goes on forever'. Thus, a company never dies. • Since a company is an artificial person created by law, law alone can bring an end to its life. Its existence is not affected by the death or insolvency of its members. <p>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.</p>										
<p>Limited Liability</p>	<p>The liability of a member depends upon the kind of company of which he is a member. We know that company is a separate legal entity which is distinct from its members.</p> <table border="1" data-bbox="469 1352 1414 1753"> <thead> <tr> <th data-bbox="469 1352 816 1388">Nature of company</th> <th data-bbox="816 1352 1414 1388">Extent of liability of members</th> </tr> </thead> <tbody> <tr> <td data-bbox="469 1388 816 1461">Company limited by shares</td> <td data-bbox="816 1388 1414 1461">Amount unpaid on the shares held by every member</td> </tr> <tr> <td data-bbox="469 1461 816 1535">Company limited by guarantee</td> <td data-bbox="816 1461 1414 1535">Amount guaranteed by every member.</td> </tr> <tr> <td data-bbox="469 1535 816 1644">Company limited by guarantee and having share capital</td> <td data-bbox="816 1535 1414 1644">Aggregate of amount unpaid on the share held by a member and the amount guaranteed by him.</td> </tr> <tr> <td data-bbox="469 1644 816 1753">Unlimited company</td> <td data-bbox="816 1644 1414 1753">Every member is liable to contribute to the assets of the company until all the debts of the company are paid in full.</td> </tr> </tbody> </table>	Nature of company	Extent of liability of members	Company limited by shares	Amount unpaid on the shares held by every member	Company limited by guarantee	Amount guaranteed by every member.	Company limited by guarantee and having share capital	Aggregate of amount unpaid on the share held by a member and the amount guaranteed by him.	Unlimited company	Every member is liable to contribute to the assets of the company until all the debts of the company are paid in full.
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<p>Artificial Legal Person:</p>	<p>1) A company is an artificial person as it is created by a process other than natural birth.</p>										

	<p>2) It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual.</p> <p>3) 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.</p> <p>4) As the company is an <i>artificial person</i>, it can act only through some human agency, viz., directors and members. The directors can control affairs of the company and act as its agency, but they are not the “agents” of the members of the company.</p> <p>5) Thus, a company is called an artificial legal person.</p>
Common Seal	<ul style="list-style-type: none"> ◆ Common seal is the official signature of the company. ◆ Any document, on which common seal is affixed, is deemed to be signed by the company. ◆ The Companies (Amendment) Act, 2015 has made the common seal optional This amendment provides that the documents which need to be authenticated In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.
Capacity to sue or being sued in its own name	<ul style="list-style-type: none"> ● A company can sue others and be sued in its own name.
Separation of ownership from management	<ul style="list-style-type: none"> ◆ The members do not participate in day-to-day affairs of the company. ◆ The management of the company lies in the hands of elected representatives of members, called as Board of directors or simple the Board. ◆ The directors are appointed as well as removed by the members.
Transferability of Shares	<ul style="list-style-type: none"> ◆ Shares are movable property ◆ Shares are transferable in the manner provided in articles ◆ Private company – the right to transfer the shares is restricted. ◆ Public company – shares are freely transferable.

Practical Question

1. ABC Pvt. Ltd., is a Private Company having five members only. All the members of the company were going by car to Mumbai in relation to some business. An accident took place and all of them died. Answer with reasons, under the Companies Act, 2013 whether existence of the company has also come to the end? [RTP June 2023]

CORPORATE VEIL Theory	
Meaning	<ul style="list-style-type: none"> ◆ A company is a legal entity separate from its members. ◆ 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. ◆ Thus, the shareholders are protected from the acts of the company
Salomon vs Salomon Co. Ltd.	<p><u>Facts of the Case</u></p> <ul style="list-style-type: none"> ◆ Mr. Salomon was carrying on the business of boot manufacturing as a sole proprietor. ◆ He incorporated a company named Salomon & Co. Ltd. For the purpose of taking over this business. ◆ The Purchase Consideration agreed was 38,782 pounds. The consideration was paid in terms of secured debentures of 10,000 pounds, fully paid up shares of 1 pound each - 20,000 and the balance 8,782 pounds in cash. ◆ The remaining six members of the family of Mr. Salomon were issued one share each. ◆ The company borrowed from creditors, an amount of 7000 pounds. ◆ The company ran into financial difficulties and eventually went into liquidation. The assets realized were only upto 6000 pounds. ◆ The unsecured creditors contended that Salomon and the company were one and the same <p><u>Decision</u></p> <ul style="list-style-type: none"> ◆ The court held that company was in the eyes of law, a separate person independent from salomon & was not his agent. Salomon, though virtually the holder of all the shares in the company was also a secured creditor & was entitled to repayment in priority to unsecured creditors.

LIFTING OR PIERCING OF CORPORATE VEIL	
Meaning of lifting or Piercing the corporate veil	<p>It means looking behind the company as a Separate legal person, i.e., disregarding the corporate entity and paying regard, instead, to the realities behind the legal facade.</p> <p>Where the Courts ignore the company and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted.</p> <p>Only in appropriate circumstances, the Courts are willing to lift the corporate veil and that too, when questions of control are involved rather than merely a question of ownership.</p>
Lifting is permissible only in	<ul style="list-style-type: none"> ▪ Lifting of corporate veil is permissible only if - <ol style="list-style-type: none"> 1. it is permitted by the <i>Statute</i>; or 2. by court in judicial decisions.

exceptional cases	<ul style="list-style-type: none"> ▪ The Court has the <i>discretion</i> whether or not to lift the corporate veil.
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Lifting of corporate veil under judicial decisions		(P/Q)
1. Protection of revenue / tax	<p>Where a company is being used as a means of tax evasion (theft), the court may lift the corporate veil and ignore the corporate entity.</p> <p>Sir Dinshaw Maneckjee Pettit</p> <ul style="list-style-type: none"> ▪ An assessee was receiving huge dividend and interest income on certain investments. ▪ He formed four private companies. The whole of the investments were transferred to these private companies. ▪ The interest and dividend received by these companies were within the exempted limits under the Income Tax Act of that time. ▪ These companies did not have any business or asset except these investments. ▪ The income received on investments by these companies was diverted to the assessee in the form of pretended loans, which were never paid back by him. ▪ The Court held that the only purpose of incorporating these private companies was to evade taxes. Each of these companies was a sham. ▪ Therefore, income earned by all these private companies was treated as the income of the assessee. 	
2. Prevention of fraud or improper conduct	<p>The Corporate veil may be lifted if the company is formed to defeat the law or defraud the creditors or avoid legal obligations.</p> <p>Gilford Motor Co. Ltd. vs Horne</p> <ul style="list-style-type: none"> ▪ An employee entered into a contract with his employer that he will not solicit the customers of the employer after leaving the employment. ▪ After leaving the employment, the employee incorporated a company. He, his wife and one other person were the only members of this company. ▪ The company started soliciting the customers of the employer. ▪ The Court held that the purpose of formation of the company was to avoid a legal- obligation arising from a contract, which was not permissible. ▪ Therefore the company was restrained from soliciting the customers of the employer. 	

<p>3. Determining the character of the company - whether an enemy company</p>	<ul style="list-style-type: none"> ▪ A company being an artificial person cannot be any enemy or friend. It may, however, be characterised as an enemy company, if its affairs are under the control of people of an enemy country <p>Daimler Co. Ltd. vs Continental Tyre & Rubber Co. Ltd.[1916]</p> <ul style="list-style-type: none"> ▪ A company was formed in England for the purpose of selling tyres made by a German company. The German company virtually held the entire share capital of the English company. All the directors were German residents. ▪ During the First World War, the English company commenced an action to recover a trade debt from another English company. ▪ It was held that the corporate personality of the company be ignored and the persons in the ultimate control of the company shall be considered. Since the persons controlling the company were enemies, the suit was not maintainable
<p>4. Check avoidance of welfare legislation/ To avoid legal obligation</p>	<p>When the structure of the company is being used to defeat or by –pass the welfare legislation relating to employees, then the court can disregard to corporate personality.</p> <p>Workmen employed in Associated Rubber Industries Ltd.,Bhavnagar vs. Associated Rubber industries Ltd.</p> <ul style="list-style-type: none"> ▪ As per Bonus Act, 1965, the basis of payment of bonus is the profits earned. ▪ A company was earning huge profits. The company incorporated a subsidiary company and transferred some valuable investments to it. ▪ The subsidiary company did no business, and had no assets except the investments transferred to it. ▪ Looking at the purpose of formation of the subsidiary, the Court lifted the corporate veil. It was held that the subsidiary was formed merely for the purpose of reducing the liability of bonus payable under the Bonus Act. Therefore the profits earned by the subsidiary company were held to be the profits of the holding company
<p>5. Formation of subsidiaries to act as agents</p>	<p>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.</p> <p>Merchandise Transport Limited vs. British Transport Commission (1982),</p> <ul style="list-style-type: none"> ▪ a transport company wanted to obtain licences for its vehicles but could not do so if applied in its own name.

	<ul style="list-style-type: none"> ▪ It, therefore, formed a subsidiary company, and the application for licence was made in the name of the subsidiary. ▪ The vehicles were to be transferred to the subsidiary company. ▪ Held, the parent and the subsidiary were one commercial unit and the application for licences was rejected.
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2. A transport company wanted to obtain licences for its vehicles but could not obtain licences if applied in its own name. It, therefore, formed a subsidiary company and the application for licence was made in the name of the subsidiary company. The vehicles were to be transferred to the subsidiary company. Will the parent and the subsidiary company be treated as separate commercial units? Explain in the light of the provisions of the Companies Act, 2013. [RTP Nov 2022]

3. Explain the concept of 'Corporate Veil'. Briefly state the circumstances when the corporate veil can be lifted as per the provisions of the Companies Act, 2013. [June 2023 (6 Marks)]

Practical Question

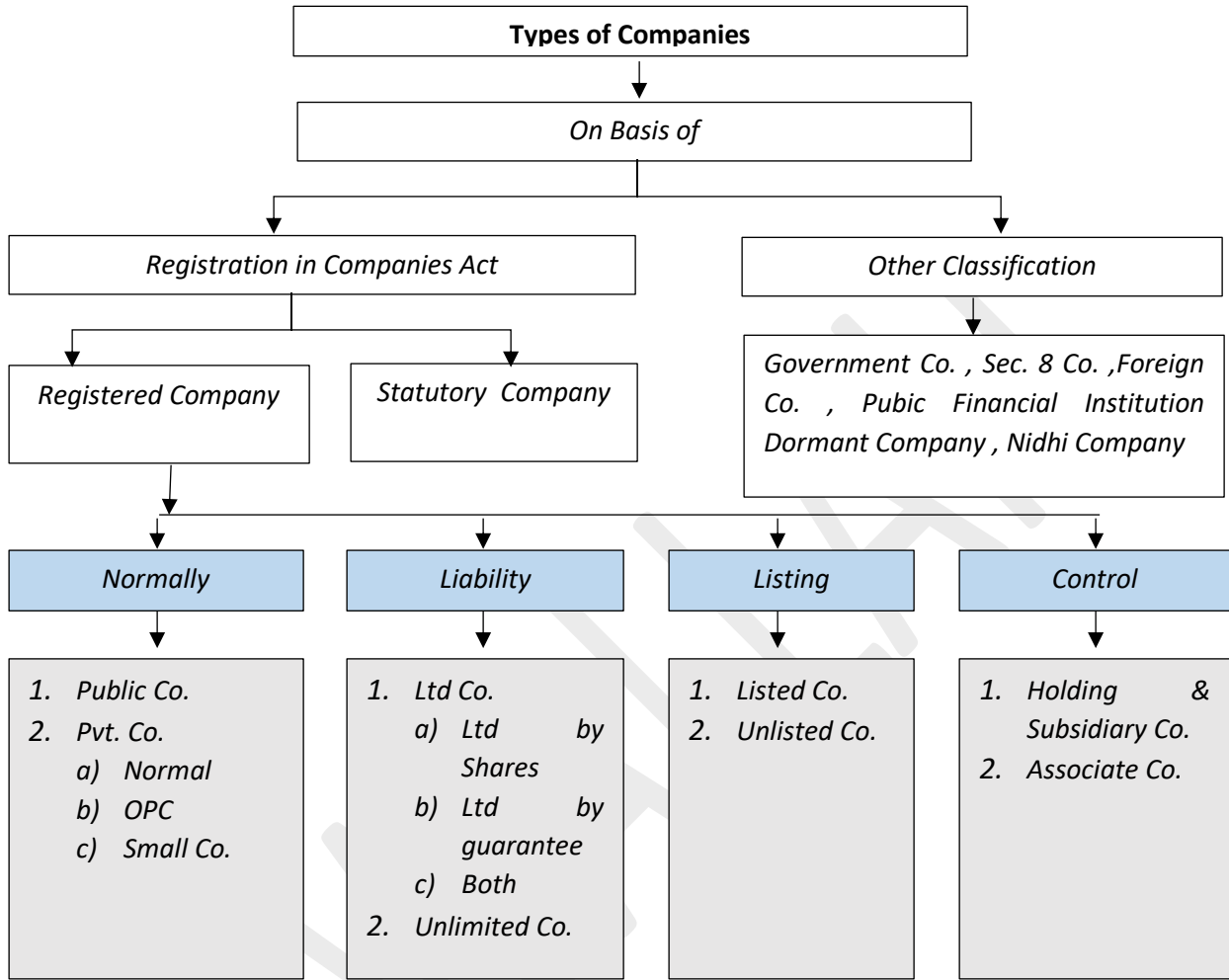
(PEQ)

4. F, an Assessee, was a wealthy man earning huge income by way of dividend and interest. He formed 3 Private Companies and agreed with each to hold a block of investment as an Agent for it. The Dividend and Interest Income received by the Company was handed back to F as a pretended loan. This way F divides his income into 3 parts in a bid to reduce tax liability. Decide for what purpose 3 Companies were established. Whether the legal personality of all the 3 Companies may be disregarded? (module)

Practical Question

5. Some of the creditors of M/s Get Rich Quick Ltd. have complained that the company was formed by promoters only to defraud the creditors and circumvent the compliance of legal provisions of the Companies Act, 2013. In this context they seek your advise as to the meaning of corporate veil an when the promoters can be made personally liable for the debts of the company.

Classes / Types of Companies



Statutory Company

- Company which is not formed under companies act, but **formed under special act of parliament.**
- Such special act governs this company
- E.g. → LIC, ICAI, ICSI, RBI etc.
- Normally these Companies are formed for some public utility.

TYPES OF COMPANIES

A. ON THE BASIS OF MEMBERSHIP

Private company [Sec. 2(68)]	Public company [Section 2(71)]
<p>Private company means</p> <p>(i) Restricts the right to transfer its shares;</p> <p>(ii) limits the number of its members to 200 (Except in case of one Person Company,)</p>	<ul style="list-style-type: none"> ▪ Is not a private company, and ▪ Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be a

(iii) Prohibits any invitation to the public to subscribe for any securities of the company.	public company for the purposes of this act even where such subsidiary company continues to be a private company in its articles.
<p>Maximum number of members under a private company as provided under the Companies Act, 2013. (module)</p> <p>a. 50 b. 150 c. 200 d. No limit</p> <p>A Private Company which is subsidiary of a Public Company is treated as- (module)</p> <p>a. Public Company b. Private Company c. Holding Company d. Dormant Company</p> <p>The minimum number of members in a private company and public company are (module)</p> <p>a. Three and Seven respectively b. Two and seven respectively c. Two and nine respectively d. None of the above</p>	

Note-

Joint members = 1 member	where 2 or more persons hold one or more shares in a company jointly, for the purposes of this clause, be treated as a single member
Past and present employee not counted	Persons who are in the employment of the company; and Persons who, having been formerly in the employment of the company, shall not be included in the number of members
Pvt co. who is subsidiary 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

Practical Question

6. In a Private Limited Company it is discovered that there are, in fact, 215 Members. On an enquiry, it is ascertained that 20 of such Members have been Employees of the Company in the recent past and that they acquired their Shares while they were still Employees of the Company. Is it necessary to convert the Company into a Public Limited Company?

(N 09 & M 10 PE II)

Hint

Practical Question

7. Aqua Limited was registered as a public company. There are 230 members in the company as noted below:

- | | | |
|--|-----|--|
| (a) Directors and their relatives | 190 | |
| (b) Employees | 15 | |
| (c) Ex-Employees (Shares were allotted when they were employees | 10 | |
| (d) 5 couples holding shares jointly in the name of husband and wife (5*2) | 10 | |
| (e) Other - 5 | | |

The Board of Directors of the company proposes to convert it into a private company. Also advise whether reduction in the number of members is necessary. [MTP Apr 2023 (3 Marks)]

Private company - significant points

- No minimum paid-up capital requirement.
- Minimum number of members – 2 (except if private company is an OPC, where it will be 1).
- Right to transfer shares restricted.
- Small company is a private company.
- OPC can be formed only as a private company.

Public company - significant points

- Is not a private company (Articles do not have the restricting clauses).
- Shares freely transferable.
- No minimum paid up capital requirement.
- Minimum number of members – 7.
- Maximum numbers of members – No limit.
- Subsidiary of a public company is deemed to be a public company.

One Person Company [Sec. 2(62)]

Definition [Sec. 2(62)]	'One Person Company' means a company which has only one person as a member.
Basics	<p>(i) It is basically a private company with some unique features.</p> <p>(ii) As regards the name of a one person company, the act provides that the words "one person company" or OPC" shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.</p> <p>(iii) The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.</p>

	<p>(iv) The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation of the company along with its e-memorandum and e-articles.</p> <p>(v) Such other person may be given the right to withdraw his consent.</p> <p>(vi) The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.</p>
Qualifications for being a Member/Nominee	<p>(i) Only a natural person who is an Indian citizen whether resident in India or otherwise shall be eligible</p> <p>(a) to incorporate OPC;</p> <p>(b) to be a nominee for the sole member of a OPC.</p> <p>(ii) For the purpose of this rule, the term 'resident in India' means a person who has stayed in India for a period of not less than 120 days during the immediately preceding FY.</p>
Restrictions [Rule 3]	<p>(i) A natural person shall not be member of more than 1 OPC at any point of time and the said person shall not be a nominee of more than 1 OPC.</p> <p>(ii) However, if a natural person is member in a OPC and becomes a nominee in another OPC, such person shall meet the eligibility criteria specified in within 180 days.</p> <p>(iii) A minor shall no become a member or nominee of the OPC.</p> <p>(iv) Such company cannot be incorporated or converted into a company under section 8 of the Act.</p> <p>(v) OPC cannot carry out non-banking financial investment activities and cannot invest in securities of a body corporate.</p>
<p><i>Only a natural person who is an Indian citizen and who has stayed in India for a period of at least ____ days during the immediately preceding financial year shall be eligible to incorporate an OPC. (module)</i></p> <p>a. 180 days</p> <p>b. 181 days</p> <p>c. 120 days</p> <p>d. 183 days</p>	
<p>8. Naveen incorporated a "One Person Company" making his sister Navita as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.</p> <p>a) If Navita is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?</p> <p>b) If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company? (module)</p>	

9. Mr. Anil formed a One Person Company (OPC) on 16 April, 2018 for manufacturing electric cars. The turnover of the OPC for the financial year ended 31 March, 2019 was about ₹ 2.25 crores. His friend Sunil wanted to invest in his One Person Company (OPC), so they decided to convert it voluntarily into a private limited company. Can Anil do so, as per the provisions of the Companies Act, 2013? [Nov. 2022 (4 Marks)]
10. Mr. R is an Indian citizen, and his stay in India during the immediately preceding financial year is for 130 days. He appoints Mr. S, a foreign citizen, as his nominee, who has stayed in India for 125 days during the immediately preceding financial year. Is Mr. R eligible to be incorporated as a One-Person Company (OPC)? If yes, can he give the name of Mr. S in the Memorandum of Association as his nominee? Justify your answers with relevant provisions of the Companies Act, 2013. [May 2022 (3 Marks)]

Small Company [Sec. 2(85)]	
Conditions for being a 'Small Company' [Sec. 2(85)]	A company shall be a small company only if it satisfies both the following conditions: (i) Its paid-up share capital does not exceed Rs. 4 crore ; and (ii) Its turnover (as per profit and loss account for the immediately preceding FY) does not exceed Rs. 40 crore
Certain Companies not to be 'Small Companies' [Proviso to Sec. 2(85)]	A company shall not be a small company, if: (i) It is a public company; or (ii) It is a holding or a subsidiary company; or (iii) It is a company registered u/s 8 ; or (iv) It is a company or body corporate governed by any special Act.
11. Define the term 'Small Company' as contained in the Companies Act, 2013.(MAY 2015)	
12. ABC Private Limited is a registered company under the Companies Act, 2013 with paid up capital of ₹ 35 lakhs and turnover of ₹ 2.5 crores. Whether the ABC Private Limited can avail the status of a Small Company in accordance with the provisions of the Companies Act, 2013? Also discuss the meaning of a Small Company.[June 2023 (3 Marks)]	

- As on 31st March 2023, paid up capital of ABC Pvt. Ltd. was 2.5 crores and turnover was 36 crores. For categorizing it a small company, ABC Pvt. Ltd. needs to have following paid up capital and turnover which shall not exceed, as per sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Companies Act, 2013 : (Nov 23)
 - Paid up capital Rupees two crores or turnover Rupees twenty crores.
 - Paid up capital Rupees two crores and turnover Rupees twenty crores.
 - Paid up capital Rupees four crores or turnover Rupees forty crores.**
 - Paid up capital Rupees four crores and turnover Rupees forty crores.
- Roma along with her six friends has incorporated Roma Trading Ltd. in May 2019. The paid-up share capital of the company is 2 cr. Further, in April 2020, she noticed that in the last financial year, the turnover of the company was well below 40 crores. Advise whether the company can be treated as a 'small company'. **(module)**
 - Roma Trading Ltd. is definitely a 'small company' since its paid- up capital is much below 4cr and also its turnover has not exceeded the threshold limit of 40

- crores.
- b. **The concept of 'small company' is applicable only in case of a private limited company/OPC and therefore, despite meeting the criteria of 'small company' it being a public limited company cannot enjoy benefits of 'small company'.**
 - c. Unlike a private limited company/OPC which automatically becomes a 'small company' as soon as it meets the criteria of 'small company', Roma Trading Ltd. being a public limited company has to maintain the norms applicable to a 'small company' continuously for two years so that, thereafter, it is treated as a 'small company'.
 - d. If all the shareholders of Roma Trading Ltd. give an undertaking to the ROC stating that they will not let the paid-up share capital and also turnover exceed the limits applicable to a 'small company' in the next two years, then it can be treated as a 'small company'.
3. The paid-up capital of Akash Ltd. is 25 Lakh and its turnover as per profit and loss account for the year ended 31st March, 2020 is 1.80 Crore. In view of provisions of Companies Act, 2013, which of the following statement is correct?
 - a. Akash Ltd. is a 'small company' since it fulfils both, the paid-up capital and turnover criteria.
 - b. **The concept of 'small company' is applicable only to private companies and therefore, Akash Ltd. cannot be categorised as a small company.**
 - c. The paid-up capital and turnover criteria has to be fulfilled for minimum 2 successive years. Therefore, Akash Ltd. cannot be categorised as a small company.
 - d. None of the above
 4. The provisions relating to 'small company' as given in Section 2(85) of the Companies Act, 2013 does not apply to:
 - a. A Holding company or a Subsidiary company
 - b. A company registered under Section 8
 - c. A company or body corporate governed by any special act
 - d. **All of the above**

On the basis of liability				
Point of Distinction	Company Limited by Shares [Sec.2(22)]	Company Limited by Guarantee without Share Capital [Sec.2(21)]	Company Limited by Guarantee with Share Capital	Unlimited Company [Sec. 2(92)]
Extent of Liability	Amount unpaid on the shares held by the members	Amount agreed by the Members and stated in the MOA.	(a) Amount unpaid on the shares held by the members; and (b) Amount agreed by the Members and stated in the MOA	Liability of members is unlimited Liability ceases if ceases to be member

Timing of Liability	(a) During the continuance of the Company ; or (b) At the time of winding up	After commencement of winding up of company	(a) During the continuance of the Company ; and (b) At the time of winding up	Liability is not unlimited till the time company is not wound up
13. What is meant by a Guarantee Company? State the similarities and dissimilarities between a Guarantee Company and a Company having Share Capital. (module)				

On the basis of listing on Stock Exchange	
Listed Company [Sec. 2(52)]	'Listed company' means a company which has any of its securities listed on any recognised stock exchange. Newly Inserted [The Companies (Amendment) Act, 2020] 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 SEBI (Securities and Exchange Board of India), shall NOT be considered as listed companies.
Unlisted Company	It means a company other than a listed company.
14. Explain listed company and unlisted company as per the provisions of the Companies Act, 2013.[Nov. 2022 (2 Marks)]	

On the basis of Control	
Holding Company [Sec. 2(46)]	(i) Holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies. (ii) For the purposes of this clause, the expression 'company' includes any Body corporate.
Subsidiary Company [Sec. 2(87)]	Section 2(87) provides that a company shall be deemed to be a subsidiary of another, if any of the following conditions are satisfied: (a) That other controls the composition of its board of directors ; (b) That other exercises or controls more than one-half of the total voting power <ul style="list-style-type: none"> • either at its own or • together with one or more of its subsidiary companies; or • through its Subsidiaries (c) The first-mentioned company is a subsidiary of any company which is that other's subsidiary (chain action). Note –

	<p>(i) For the purpose of clause (a) above, the composition of the board of directors of a company means that the holding company has power, at its discretion, to appoint or remove all or majority of the directors of the subsidiary company without the consent of the other persons.</p> <p>(ii) Company shall not have more than two layers of subsidiaries.</p> <p>(iii) For the purpose of this clause, the term 'company' includes any Body corporate.</p>
<p>15. Explain the classification of the companies on the basis of control as per the Companies Act, 2013.[RTP June 2023]</p>	
<p>16. BC Private Limited and its subsidiary KL Private Limited are holding 90,000 and 70,000 shares respectively in PQ Private Limited. The paid-up share capital of PQ Private Limited is ₹ 30 Lakhs (3 Lakhs equity shares of ₹ 10 each fully paid). Analyse with reference to provisions of the Companies Act, 2013 whether PQ Private Limited is a subsidiary of BC Private Limited. What would be your answer if KL Private Limited is holding 1,60,000 shares in PQ Private Limited and no shares are held by BC Private Limited in PQ Private Limited? [RTP Dec 2023]</p>	
<p>17. The paid-up share capital of Saras Private Limited is ` 1 crore, consisting of 8 lacs Equity Shares of ` 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of `10 each, fully paid-up. Jeevan (JVN) Private Limited and Sudhir Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Saras Private Limited. Jeevan Private Limited and Sudhir Private Limited are the subsidiaries of Piyush Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Saras Private Limited is a subsidiary of Piyush Private Limited? Would your answer be different if Piyush Private Limited has 8 out of 9 Directors on the Board of Saras Private Limited? (RTP MAY 2018) (RTP MAY 2019)</p>	
<p>Associate Company [Sec. 2(6)]</p>	<p>1. "Associate Company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence</p> <p>2. And includes a joint venture company.</p> <div style="border: 1px solid black; padding: 5px;"> <p>Explanation — For the purpose of this clause,—</p> <p>a) the expression "significant influence" means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement;</p> <p>b) 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> </div>
<p>18. ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ₹ 15 crores and convertible preference shares worth ₹ 10 crores during the financial year 2022-23. After that the total share capital of the company is ₹ 100 crores. Comment on whether XYZ Limited would be called an Associate Company as per the provisions of the Companies Act, 2013? Also define an Associate Company.[June 2023 (4 Marks)]</p>	
<p><i>Under the Companies Act, 2013, "Significant influence" constitutes how much % of total share capital or of business decisions under an agreement? (module)</i></p> <p>a. At least 2%</p> <p>b. At least 2.5%</p> <p>c. At least 10%</p>	

d. At least 20%

Practical Question

(M 00)

19. The Paid Up Share Capital of Advanced Casting Pvt Ltd is ` 1 Crore consisting of 8,00,000 Equity Shares of ` 10 each fully paid up and 2,00,000 Convertible Preference Shares of ` 10 each fully paid up. Quality Forgings Pvt Ltd and Supreme Engineering Pvt Ltd are holding 3,00,000 Equity Shares and 2,50,000 Equity Shares respectively. Quality Forgings Pvt Ltd and Supreme Engineering Pvt Ltd are the Subsidiaries of Unique Machineries Pvt Ltd. Examine -

- (a) Whether Advanced Casting Pvt. Ltd is the Subsidiary of Unique Machineries Pvt. Ltd.
(b) Will your answer be different if Unique Machineries Pvt. Ltd controls the Composition of Board of Directors of Advanced Casting Pvt. Ltd? (M 00 PE II)**

Hint -

1. A Ltd. is the holding company of B Ltd. Another company C Ltd. is the subsidiary company of B Ltd. Is there any relationship between A Ltd. and C Ltd. (RTP MAY 2019)
 - a. There is no relationship between A Ltd. and C Ltd.
 - b. C Ltd. is deemed to be the subsidiary of A Ltd.**
 - c. A Ltd. shall be deemed to be the holding company of C Ltd. provided A Ltd. acquires at least 10% stake in C Ltd.
 - d. C Ltd. shall be deemed to be the subsidiary of A Ltd. if the latter company acquires minimum 10% stake in the former company within six months after C Ltd. becomes subsidiary of B Ltd.
2. Aman Pvt. Ltd. was incorporated in 2009 with 10 members having equal amount of equity shares. Subsequently, eight shareholders sold their holding to another company Chaman Ltd. In view of provisions of Companies Act, 2013, which of the following statement is correct?
 - a. Since the identity of company is distinct from its members, the status of Aman Pvt. Ltd. will not change with the change in the shareholders.
 - b. Since Chaman Ltd. holds more than 50% of voting power of Aman Pvt. Ltd., Aman Pvt. Ltd. will be deemed to be a public company.**
 - c. Aman Ltd. will have to amalgamate with Chaman Ltd. since it holds more than 50% of its capital.
 - d. None of the above
3. A Ltd. is the holding company of B Ltd. Another company C Ltd. is the subsidiary company of B Ltd. Is there any relationship between A Ltd. and C Ltd.?
 - a. A Ltd. and C Ltd. have separate legal entities and there is no relationship between them.
 - b. C Ltd. is deemed to be the subsidiary of A Ltd.**
 - c. A Ltd. shall be deemed to be the holding company of C Ltd. provided A Ltd. acquires at least 10% stake in C Ltd.
 - d. A Ltd. shall be deemed to be the holding company of C Ltd. provided A Ltd. acquires at least 51% stake in C Ltd.
4. H Ltd., its Managing Director and its Company Secretary hold 33.33% equity shares each in S Ltd. Which of the following statement is correct?
 - a. S Ltd. will be treated as subsidiary of H Ltd.
 - b. S Ltd. will be joint venture of H Ltd., its

- Managing Director and its Company Secretary.
- c. Both (a) and (b)
 - d. **None of the above**
5. A Limited held equity shares in B Limited. Later on, A Limited became subsidiary company of B Limited. Decide under the Companies Act, 2013, what will be the requirement as to shares held by A Limited in B Limited.
- a. A Limited, which is now a subsidiary of B Limited will have to surrender the equity shares of B Limited.
 - b. **A Limited will continue to hold the equity shares of B Limited but it cannot exercise voting rights in respect of these shares.**
 - c. A Limited will continue to hold the equity shares of B Limited and can exercise voting rights in respect of these shares.
 - d. None of the above
6. In order to be an 'Associate company', in relation to another company, the other company has to:
- a. Acquire at least 20% of the voting power
 - b. Control the business decision making under an agreement
 - c. Enter into a joint arrangement to have joint control of net assets of the arrangement
 - d. **Any of the above**

Formation of Companies with Charitable Objects, etc. [Sec. 8]	
Requirements for formation of a non-profit company	A company may be formed u/s 8 if <ol style="list-style-type: none"> (a) the objects of the company are to promote commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or such other object; (b) the company intends to apply its profits in promoting its objects; and (c) the company intends to prohibit the payment of dividend to its members.
20. A Company registered under Section 8 of the Companies Act, 2013, has been consistently making profits for the past 5 years after a major change in the management structure. Few members contented that they are entitled to receive dividends. Can the company distribute dividend? If yes, what is the maximum percentage of dividend that can be distributed as per provisions of the Companies Act, 2013? Also, to discuss this along with other regular matters, the company kept a general meeting by giving only 14 days' notice. Is this valid? [RTP Nov 2022]	
Issue of license by CG and registration of company by the Registrar	Where CG is satisfied that an association of persons proposed to be registered under this Act as a limited company satisfying all the conditions given u/s 8, CG may: <ol style="list-style-type: none"> (i) by issue of a licence in the prescribed manner; (ii) allow, that the company may be registered as a limited company, but without using the word(s) 'Limited' or 'Private Limited'.
Privileges of limited company	No use of word 'Pvt' or "Ltd"
Revocation of license	<ol style="list-style-type: none"> (i) The CG (R.D) may revoke the licence issued to the company if the company: <ol style="list-style-type: none"> (a) contravenes any of the provisions of Sec. 8; or (b) contravenes any condition subject to which the licence was issued; or

	<p>(c) the affairs of the company are carried on fraudulently or not as within the object of the company.</p> <p>(ii) Before passing any such order, CG shall give a reasonable opportunity of being heard to the company.</p>
<p>21. Can a non-profit organization be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt? (module)</p>	
<p>Other Imp points</p>	<p>(1) A firm may become a member of a company registered u/s 8</p> <p>(2) A non-profit company may alter the provisions of its MOA or AOA with the prior approval of the CG.</p> <p>(3) CG may order a section 8 Company to:</p> <p>(a) wound up; or</p> <p>(b) amalgamated with any other company registered u/s 8 and having similar objects;</p> <p>only if CG has revoked the licence or is satisfied that such order is necessary in public interest and the company has been given a reasonable opportunity of being heard.</p>
<p>22. A group of enthusiastic women is planning to establish the Nursing Medicare Association, a limited liability company with the objective of providing comprehensive theory and practical training to aspiring nurses. The association aims to operate under the provisions of section 8 of the Companies Act, 2013, with a core objective of education. The intended duration for the association's operation is set at ten years, after which a dissolution will be initiated. In the event of dissolution, any remaining assets exceeding liabilities will be allocated among the members according to the standard procedures permitted by the Companies Act. Assess the viability of the proposal and offer guidance to the promoters, taking into account the regulations outlined in the Companies Act, 2013. 5 M (Nov 23)</p>	
<p>23. Alpha Ltd., a Section 8 company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2020. Mr. Chopra is holding 800 equity shares as on date. State whether the act of the company is according to the provisions of the Companies Act, 2013. [May 2018 2M]</p>	
<p>24. A, B and C has decided to set up a new club with name of ABC club having objects to promote welfare of Christian society. They planned to do charitable work or social activity for promoting the art work of economically weaker section of Christian society. The company obtained the status of section 8 company and started operating from 1st April, 2017 onwards.</p> <p>However, on 30th September 2019, it was observed that ABC club was violating the objects of its objective clause due to which it was granted the status of section 8 Company under the Companies Act 2013.</p> <p>Discuss what powers can be exercised by the central government against ABC club, in such a case?[RTP May 2022]</p>	

1. Abhilasha and Amrita have incorporated a 'not for profit' private limited company which is registered under Section 8 of the Companies Act, 2013. One of their friends

has informed them that their company can be categorized as a 'small company' because as per the last profit and loss account for the year ending 31st March, 2019, its turnover

was less than ` 2.00 crores and its paid up share capital was less than ` fifty lacs. Advise.

(ICAI) (module)

- a. A section 8 company, which meets the criteria of ‘turnover’ and ‘paid- up share capital’ in the last financial year, can avail the status of ‘small company’ only if it acquires at least 5% stake in another ‘small company’ within the immediately following financial year.
- b. If the acquisition of minimum 5% stake in another ‘small company’ materializes in the second financial year (*and not in the immediately following financial year*) after meeting the criteria of ‘turnover’ and ‘paid-up share capital’ then with the written permission of concerned ROC, it can acquire the status of ‘small company’.
- c. **The status of ‘small company’ cannot be bestowed upon a ‘not for profit’ company which is registered under**

Section 8 of the Companies Act, 2013.

- d. A section 8 company, if incorporated as a private limited company (*and not as public limited company*) can avail the status of ‘small company’ with the permission of concerned ROC, after it meets the criteria of ‘turnover’ and ‘paid-up share capital’.
2. Mr. Anurag and Mr. Sumit, both are teacher of Mathematics and want to open a coaching academy for poor children. They seek to raise money for their operational expenses by way of sponsorship from some like-minded friends and reinvest any surplus left for this noble cause only. In your opinion, what kind of entity should be incorporated for this purpose?
- a. A One Person Company
 - b. A Private Limited Company
 - c. **A Section 8 Company**
 - d. A Limited Liability Partnership

Other Types Of Companies	
Government Company [Section 2(45)]	Government Company means any company: <ul style="list-style-type: none"> (i) in which not less than 51% of the paid up share capital is held – <ul style="list-style-type: none"> (a) by the Central Government; or (b) by any State Government(s); or (c) jointly by the Central Government and any State Government(s). (ii) which is a subsidiary of a Government company. <p>Note - For the purposes of Sec. 2(45), the term "paid-up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued.</p>
<p>XYZ Limited is having 15% share capital held by X Limited and 50% held by Central Government and 10% held by State Government and 25% held by other people then that company will be (module).</p> <ul style="list-style-type: none"> a. Government Company b. Private Company c. Public Company d. Dormant company 	

<p>25. The State Government of X, a state in the country is holding 48 lakh shares of Y Limited. The paid up capital of Y Limited is ₹9.5 crore (95 lakh shares of ₹ 10 each). Y Limited directly holds 2,50,600 shares of Z Private Limited which is having share capital of ₹ 5crore in the form of 5 lakh shares of ₹ 100 each. Z Private Limited claimed the status of a subsidiary company of ₹ 100 each. Z Private Limited claimed the status of a subsidiary company of Y Limited as well as a Government company. Advise as a legal advisor, whether Z Private Limited is a subsidiary company of Y Limited as well as a Government company under the provisions of the Companies Act, 2013?[Dec 2023(4 Marks)]</p>	
<p>26. Narendra Motors Limited is a Government Company. Shah Auto Private Limited have share capital of ₹10 crore in the form of 10,00,000 shares of ₹ 100 each. Narendra Motors Limited is holding 5,05,000 shares in Shah Auto Private Limited. Shah Auto Private Limited claimed the status of Government Company. Advise as legal advisor, whether Shah Auto Private Limited is government company under the provisions of Companies Act, 2013?[RTP Dec 2023]</p>	
<p>Foreign Company [Section 2(42)]</p>	<ul style="list-style-type: none"> • It means any company or body corporate incorporated outside India which— • has a place of business in India • whether by itself or through an agent, physically or through electronic mode; • and conducts any business activity in India in any other manner.
<p>27. Mike LLC incorporated in Singapore having an office in Pune, India. Analyse whether Mike LLC would be called as a foreign company as per the provisions of the Companies Act, 2013? Also explain the meaning of foreign company. [Nov. 2022 (3 Marks)]</p>	
<p>Dormant Company [Sec. 455]</p>	<p>Where a company is formed and registered under this Act for:-</p> <ul style="list-style-type: none"> • a future project and has no Significant Accounting Transaction or, • to hold an asset or intellectual property and has Significant Accounting Transaction , or • an INACTIVE company, <p>then such a company may make an application (MSC-1) to the Registrar for obtaining the status of DORMANT company.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Inactive Company" means a company which:-</p> <ul style="list-style-type: none"> • has not been carrying on any business or operation during the last 2 financial years or • has not made any Significant Accounting Transaction during the last 2 financial years or • has not filed Financial Statements and Annual Returns during the last 2 financial years. </div>

	<p>"Significant Accounting Transaction" means any transaction other than — (RAAM)</p> <ul style="list-style-type: none"> (i) payment of fees by a company to the Registrar; (ii) payments made by it to fulfil the requirements of this Act or any other law; (iii) allotment of shares to fulfil the requirements of this Act (Sec 3); and (iv) Payments for maintenance of its office and records.
<p>28. Explain the concept of "Dormant Company" as envisaged in the Companies Act, 2013.(MAY 2016)</p>	
<p>29. MTK Private Limited is a company registered under the Companies Act, 2013 on 5th January, 2021. The company has not started its business till now. On 7th April, 2023, a notice has been received from ROC for non-filing of FORM No-INC-20A. Identify under which category MTK Private Limited company is classified. Explain the definition of the category of the company in detail. [Dec 2023(3 Marks)]</p>	
<p>Meaning of 'Nidhi' w.r.t to Sec. 406</p>	<p>'Nidhi' means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such Rules as are prescribed by CG for regulation of such class of companies.</p>
<p>Public Financial Institution 2(72)</p>	<ul style="list-style-type: none"> (i) The Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956; (ii) The Infrastructure Development Finance Company Limited, (iii) Specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002; (iv) Institutions notified by the CG u/s 4A(2) of the Companies Act, 1956 so repealed u/s 465 of this Act; (v) Such other institution as may be notified by the CG in consultation with the RBI: Provided that no institution shall be so notified unless: <ul style="list-style-type: none"> (a) it has been established or constituted by or under any Central or State Act or other than this act or previous company law, or (b) not less than 51% of the paid up share capital is held or controlled by the CG or by any SG or Governments or partly by the CG and partly by one or more SG.

Practical Question

30. 40% of the Paid-Up Share Capital of Company A is held by the Central Government and 11% by Public Financial Institutions like Life Insurance Corporation of India and the Unit Trust of India. Is Company A, a Government Company? (RTP)

Law

Conclusion	

Four Stage of Company Formation

1. Promotion Stage
2. Incorporation Stage
3. Raising of Capital Stage
4. Commencement of Business Stage

Promotion Stage and Promoters

Meaning of 'Promoter'	"Promoter' means a person who generates the idea of incorporating a company and who takes all the necessary steps to incorporate it.
Definition of 'Promoter' [Sec. 2(69)]	<p>Promoter means a person: (Mnemonic - PACT)</p> <p>P → a) who has been named as such in a Prospectus; or</p> <p>A → b) is identified by the Company in the Annual Return;</p> <p>C → c) who has control over the affairs of the company directly or indirectly,</p> <p>Act → d) in accordance with whose advice, directions or instructions; the BOD of a company is accustomed to Act.</p> <p>Note- However, a person acting merely in a professional capacity shall not be regarded as promoter under point (d). e.g., the solicitor, banker, accountant etc</p>
<p>31. Mr. Abhi is a Chartered Accountant and MBA by profession, has been appointed as an Executive Director on the Board of XYZ Limited. His job profile includes advising the Board of Directors of the company on various compliance matters, strategies, business plans, and risk matters relating to the company. Keeping in view of above position whether Mr. Abhi can be classified as the Promoter of XYZ Limited? Please examine the same under the provisions of the Companies Act, 2013. (RTP May 2022)</p>	

B Incorporation Stage:

Memorandum of Association MOA [Sec.4]

Definition of MOA [Sec. 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 companies law or of this Act.
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Objective of MOA	<p>(i) It enables shareholders, creditors and all those who deal with company to know</p> <ul style="list-style-type: none"> • what its powers are • what activities it can engage in. • scope of its operations <p>(ii) 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.</p>	
MOA is compulsory	<p>1. No company can be registered without a memorandum.</p> <p>2. It is the most fundamental document of the company specifying the most important information relating to a company. Hence, it is also called as the charter of the company.</p>	
Contents of MOA [Sec. 4]	I. Name Clause	<p>1. It contains name of the company</p> <p>2. 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.</p> <p>3. This clause is not applicable on the companies formed under section 8 of the Act.</p> <p>4. A Government Company may be formed as a private company or a public company. However. the name of a Government Company shall end with the word 'limited', whether it is a public company or a private company,</p>
	II. Situation Clause	The 'situation clause' of memorandum shall mention the name of the State in which the registered office of the company is proposed to be situated.
	III. Objects Clause	The objects clause of memorandum shall state the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance of the main objects.
	IV. Liability Clause	The liability clause of memorandum shall state as to whether the liability of members of the company is limited or unlimited.
	V. Capital Clause	<p>The 'capital clause of memorandum shall state:</p> <ul style="list-style-type: none"> • the authorized share capital/Nominal capital of the company • the division of share capital into number and face value of shares.
	VI. Subscription Clause	<ul style="list-style-type: none"> • Details of subscribers

	/Association Clause	<ul style="list-style-type: none"> The number of shares each subscriber to the memorandum intends to take(not less than 1 shares)
	VII. Nomination Clause (in case of an OPC)	In the case of OPC, the memorandum shall state the name of a person, who, in the event of death or incapacity of the subscriber, shall become the member of the company.
Format of Memorandum	The memorandum shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to the company.	
	Table A	Memorandum of a company limited by shares
	Table B	Memorandum of a company limited by guarantee and having no share capital
	Table C	Memorandum of a company limited by guarantee and having a share capital
	Table D	Memorandum of an unlimited company having no share capital
	Table E	Memorandum of an unlimited company having a share capital
Other important points	<ul style="list-style-type: none"> It is to be noted that a company being a legal person can through its agent, subscribe to the memorandum. However, a minor cannot be a signatory to the memorandum as he is not competent to contract. The guardian of a minor, who subscribes to the memorandum on his behalf, will be deemed to have subscribed in his personal capacity. 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. The Memorandum of Association of a company cannot contain anything contrary to the provisions of the Companies Act. If it does, the same shall be devoid of any legal effect. Similarly, all other documents of the company must comply with the provisions of the Memorandum. 	
<p>Which one of the following is not the content of the Memorandum of Association? (module)</p> <ol style="list-style-type: none"> Name clause Registered office clause Objects clause Board of Directors clause. 		

Doctrine of Ultra Vires Act	
Meaning of the doctrine	Ultra means " beyond " or " in excess of " and vires means ' powers '. Thus, ultra vires means an act or transaction beyond or in excess of the powers of the company.
Ultra vires the 'MOA'	<ul style="list-style-type: none"> (i) An act or transaction shall be ultra vires if <ul style="list-style-type: none"> (a) it is not permitted or authorised by the Companies Act, 2013; (b) it falls outside the object clause of memorandum; and (c) its attainment is not incidental to the attainment of main objects. (ii) An act which is ultra vires the company is void and is of no legal effect. (iii) Even ratification of an ultra vires contract by the whole body of shareholders does not make an ultra vires contract valid or enforceable. (iv) Any member may obtain an injunction order from the Court, i.e. an order of the Court restraining the company from proceeding with the ultra vires contract. (v) If funds of the company are misapplied or wasted by entering into ultra vires transactions, the directors shall be personally liable to the company for breach of trust.
Ultra vires the 'AOA'	<ul style="list-style-type: none"> (i) Any act not authorised by or is against the articles. (ii) Such ultra vires act is voidable at the option of shareholders. (iii) Ultra vires act against AOA can be ratified by members by altering AOA.
Ultra vires the 'Director'	"SAME LIKE ABOVE"
Ashbury Railway Carriage and Iron Company Ltd. v/s Richie	<p>Extract of object clause: The object clause of an industrial company contained the following objects besides some other objects:</p> <ul style="list-style-type: none"> (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, work and sell mine, minerals, land and buildings. <p>Contract made by company: The company entered into a contract with Richie, for the financing of a construction of a railway line in Belgium.</p> <p>Decision of the Court: The Court held that the word "general contractors" had to be given a restricted meaning.</p> <ul style="list-style-type: none"> (a) Only such contracts could be covered in the term 'general contractors' as are in some way related or connected with mechanical engineering (b) Therefore, the company could not finance the construction of a railway line by alleging that such a business falls under the business of general contractors.
<p>An Act is said to be ultra vires a company when it is beyond the powers. (module)</p> <ul style="list-style-type: none"> a. <i>Of the Company</i> b. <i>Of the Directors</i> c. <i>Of the Directors but not the company</i> d. <i>Conferred on the company by the Articles of Association.</i> 	

32. Briefly explain the doctrine of “ultravires” under the Companies Act, 2013. What are the consequences of ultravires acts of the company? (module) [May 2022 (6 Marks)]

33. The object clause of the Memorandum of Association of Miranda Private Ltd, Kolkata authorized it to do trading in fruits and vegetables. The company, however, entered into a Partnership with Mr. Karan and traded in steel and incurred liabilities to Mr. Karan. The company, subsequently, refused to admit the liability to Karan on the ground that the deal was ‘Ultra Vires’ the company. Examine the validity of the company’s refusal to admit the liability to Karan. Give reasons in support of your answer. (RTP Nov 2016)

34. ABC Limited was into sale and purchase of iron rods. This was the main object of the company mentioned in the Memorandum of Association. The company entered into a contract with Mr. John for some finance related work. Later on, the company repudiated the contract as being ultra vires. With reference to the same, briefly explain the doctrine of “ultravires” under the Companies Act, 2013. What are the consequences of ultravires acts of the company? [RTP June 2023]

Practical Question

35. The principal business of XYZ Company Ltd was the acquisition of vacant plots of land and to erect houses. In the course of transacting the business, the Chairman of the Company acquired the knowledge of arranging finance for the development of land. The XYZ Company introduced a Financier to another Company ABC Ltd and received an agreed fee of ` 2 Lakhs for arranging the finance. The MOA of the Company authorizes the Company to carry on any other trade or business which can in the opinion of the Board of Directors, be advantageously carried on by the Company in connection with the Company's general business. Examine the validity of the contract carried out by XYZ Company Ltd with ABC Ltd. [N 06]

Practical Question

36. The Object Clause of the MOA of LSR Private Limited, Lucknow, authorized to do trading in fruits and vegetables. The Company, however, entered into a Partnership with J and traded in steel and incurred liabilities to J. The Company, subsequently, refused to admit the liability to J on the ground that the deal was "Ultra Vires" the Company. Examine the validity of the Company's refusal to admit the liability to J. [M 07 (PE II)]

Practical Question

37. The Objects Clause of the MOA of XYZ Pvt Ltd, New Delhi, authorized to trade directly in mangoes. The Company, however, entered into Partnership with Mr.A and traded in mangoes and incurred liabilities to Mr.A. The Company subsequently denied the liability to Mr.A on the ground of ultra vires the Company. Advice whether the stand of the Company is legally valid and if so give reasons in support of your answer. [N 97]

Conclusion

Practical Question

38. The object clause of the Memorandum of Association of RST Limited authorizes it to publish and sell text-books for students. The company, however, entered into an agreement with Q to supply 100 laptops worth ` 5 lacs for resale purposes. Subsequently, the company refused to make payment on the ground that the transaction was ultra vires the company. Examine the validity of the company's refusal of payment to Q under the provisions of the Companies Act, 2013. (PM10)

Articles of Association - AOA [Sec. 5]		
Definition of articles	Articles means the articles of association of a company as originally framed or as altered from time to time or applied in lieu of any previous company law or of this Act.	
Meaning	Articles are the regulations framed by a company for its own governance.	
Inclusion of matters	The articles of a company shall contain the REGULATIONS for internal management of the company.	
Content of AOA	The article contains rules regarding shares, debentures, prospectus, meetings, BOD, general powers of company.	
Format of AOA [Sec. 5(6)]	The articles shall be in respective forms specified in Tables F, G, H, I and J in Schedule I as may be applicable to the company	
	Table F	Articles of a company limited by shares
	Table G	Articles of a company limited by guarantee and having a share capital
	Table H	Articles of a company limited by guarantee and having no share capital
	Table I	Articles of an unlimited company having a share capital
	Table J	Articles of an unlimited company having no share capital
Entrenchment [Sec. 5 and Rule 10]	<ol style="list-style-type: none"> Usually an AOA may be altered by passing special resolution but entrenchment makes it more difficult to change it. So entrenchment means making something more protective. The AOA may contain the provisions for entrenchment, i.e. certain specified provisions of the articles can be altered only by complying with such conditions or procedures as are more restrictive than those as are applicable in case of a SR. The provisions for entrenchment may be made <ul style="list-style-type: none"> ➤ at the time of formation of the company; or ➤ by an amendment of articles, <ol style="list-style-type: none"> (a) In case of a private company, with the consent of all the members; (b) In case of a public company, by passing Special Resolution. 	
Applicability of model articles [Sec. 5(7), (8)]	(a) A company may adopt all or any of the provisions contained in the model articles applicable to it.	

	(b) Where the registered articles of a company do not exclude or modify the provisions contained in the model articles applicable to it, then, such provisions of the model articles shall apply to such company, as if they were contained in the duly registered articles.
Applicability to existing companies [Sec. 5(9)]	Nothing in this section shall apply to the articles of a company registered under any previous company law, unless amended under this Act.
Document that regulates the management of internal affairs of a company are- (module)	
<ul style="list-style-type: none"> a. Memorandum of Association b. Prospectus c. Articles of Association d. Certificate of incorporation 	

Effect of Memorandum and Articles (Sec. 10)

Provision of Sec. 10	MOA and AOA shall bind the company and members as if each one have individually signed it
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The following are the key differences between the Memorandum of Association vs. Articles of Association:

1. **Nature –**
2. **Scope and objective :** Memorandum of Association defines and delimits the objectives of the company whereas the Articles of association lays down the rules and regulations for the internal management of the company. Articles determine how the objectives of the company are to be achieved.
3. **Relationship:** Memorandum defines the relationship of the company with the outside world and Articles define the relationship between the company and its members.
4. **Alteration:** Memorandum of association can be altered only under certain circumstances and in the manner provided for in the Act. In most cases permission of the Regional Director, or the Tribunal is required. The articles can be altered simply by passing a special resolution.
5. **Ultra Vires:** Acts done by the company beyond the scope of the memorandum are ultra-vires and void. These cannot be ratified even by the unanimous consent of all the shareholders. The acts ultra-vires the articles can be ratified by a special resolution of the shareholders, provided they are not beyond the provisions of the memorandum.

Doctrine of Constructive Notice							
Applicability	This doctrine operates in favor of the company , i.e. it creates a presumption in favor of the company. It operates against the persons dealing with the company.						
Effect of the doctrine	<p>(i) Once registered the memorandum and articles become public documents (Sec. 399). Therefore, every person dealing with the company is presumed to have read the memorandum and articles. Further, it is presumed that he has understood the provisions of memorandum and articles correctly, i.e. in the right sense</p> <p>(ii) The doctrine prevents any person dealing with the company from alleging that he did not know the provisions contained in the articles or memorandum.</p> <p>(iii) If a person enters into a contract with the company in contravention of the provisions of the memorandum and articles, he cannot enforce such a contract.</p> <p>(iv) Any person entering into a contract with company which is in contravention of provisions of MOA or AOA cannot present a defense later on, that he did not know the provisions in these documents.</p>						
Reference Case	Kotla Venkata Swamy vs C. Ram Murti						
	<table border="1"> <tr> <td>Facts</td> <td>Whether Co. will be liable on contract where AOA specified signature of M.D, Secretary & WTD, However on a mortgage deed, only secretary and WTD signed</td> </tr> <tr> <td>Law</td> <td>Doctrine of Constructive Notice.</td> </tr> <tr> <td>Conclusion</td> <td>No contract will not be enforceable on the company.</td> </tr> </table>	Facts	Whether Co. will be liable on contract where AOA specified signature of M.D, Secretary & WTD, However on a mortgage deed, only secretary and WTD signed	Law	Doctrine of Constructive Notice.	Conclusion	No contract will not be enforceable on the company.
Facts	Whether Co. will be liable on contract where AOA specified signature of M.D, Secretary & WTD, However on a mortgage deed, only secretary and WTD signed						
Law	Doctrine of Constructive Notice.						
Conclusion	No contract will not be enforceable on the company.						

Doctrine of Indoor Management/Turquand rule			
Applicability	The doctrine of indoor management operates in favor of the outsiders , i.e. this doctrine creates a presumption in favor of the outsiders.		
Effect of the doctrine	<p>(i) As per this doctrine, outsiders dealing with the company are not required to enquire into the internal management of the company.</p> <p>(ii) Outsiders dealing with the company are entitled to assume that as far as internal proceedings of the company are concerned, everything has been done regularly.</p> <p>(iii) If not , company is in fault and cannot deny liability on said ground</p> <p>(iv) Thus, the doctrine protects an innocent outsider from any irregularity present in the working of the company</p>		
Reference case	Royal British Bank vs Turquand		
	<table border="1"> <tr> <td>Facts</td> <td>AOA specified that Co. can borrow money only when resolution by shareholders will be passed but co. borrowed money without consent of shareholders whether co. will be liable on the contract</td> </tr> </table>	Facts	AOA specified that Co. can borrow money only when resolution by shareholders will be passed but co. borrowed money without consent of shareholders whether co. will be liable on the contract
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	Law	Doctrine of Indoor Management
	Conclusion	Contract will be liable on company
<p>39. Sound Syndicate Ltd., a public company, its articles of association empowers the managing agents to borrow both short and long term loans on behalf of the company, Mr. Liddle, the director of the company, approached Easy Finance Ltd., a non banking finance company for a loan of ` 25,00,000 in name of the company. The Lender agreed and provided the above said loan. Later on, Sound Syndicate Ltd. refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed by the company and the lender should have enquired about the same prior providing such loan hence company not liable to pay such loan. Analyse the above situation in terms of the provisions of Doctrine of Indoor Management under the Companies Act, 2013 and examine whether the contention of Sound Syndicate Ltd. is correct or not?(module)</p>		
<p>Exceptions to Indoor Management</p>	<p>Knowledge of irregularity</p>	<p>Where a person dealing with a company has actual or constructive notice of the irregularity as regards internal management, he cannot claim the benefit under the rule of indoor management.</p> <p>Reference Case: Howard vs Patent Ivory Manufacturing Company</p>
	<p>Suspicion of Irregularity</p>	<p>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.</p> <p>Reference Case: Anand Biharilal vs Dinshaw & Company</p>
	<p>Forgery</p>	<p>Traditionally, outsider does not get the benefit of Turquand Rule in case of forgery because forgery means "no acceptance" and hence no agreement.</p> <p>Reference Case: Ruben vs Great Fingall consolidated company.</p>

40. Explain clearly the doctrine of ‘Indoor Management’ as applicable in cases of companies registered under the Companies Act, 2013. Explain the circumstances in which an outsider dealing with the company cannot claim any relief on the ground of ‘Indoor Management’. (module)

<p>Turquand Rule is related to: (module)</p> <ul style="list-style-type: none"> a. Doctrine of ultra vires b. Doctrine of constructive notice c. Doctrine of indoor management d. Doctrine of subrogation <p>The Doctrine of indoor management is a protection that is available to: (module)</p> <ul style="list-style-type: none"> a. Shareholders b. Outsiders who deal with the company

- c. Board of Directors
- d. Creditors

The doctrine which advocates the fact that company cannot act beyond the scope of its memorandum of association is: (module)

- a. Doctrine of constructive notice
- b. Doctrine of indoor management
- c. Doctrine of ultra vires
- d. Doctrine of intra vires

Howard vs Patent Ivory Manufacturing company

Facts	<ul style="list-style-type: none"> (i) The directors of a company could borrow upto £1,000 without the sanction of members in GM. (ii) The consent of the shareholders was required to borrow in excess of £1,000. (iii) The directors themselves lent £3,500 to the company.
Case law	Howard vs Patent Ivory Manufacturing company
Conclusion	It was held that the directors had the notice of the internal irregularity and therefore company was liable to them only for £1,000.

Anand Bihari Lal vs Dinshaw & Company

Facts	An accountant of the company entered into a contract on behalf of the company with a party to sell the property of the company.
Case law	Anand Bihari Lal vs Dinshaw & Company
Conclusion	<ul style="list-style-type: none"> (i) It was held that the third party could not assume that the accountant was authorised by the company to sell the property of the company. (ii) Therefore, the third party could not enforce such a contract against the company even though the third party had acted bonafide.

Ruben vs Great Fingall Consolidated Company

Facts	<ul style="list-style-type: none"> (i) A share certificate was issued under the common seal of the company. (ii) The secretary of the company had signed on the share certificate. (iii) However, the signatures of two directors were also required on it, which were forged by the secretary. (iv) The holder of the share certificate contended that he was not aware of the fact of forgery, it was not possible for him to determine whether the signatures were genuine or forged and therefore, the certificate issued to him should be held as valid.
Case law	Ruben vs Great Fingall Consolidated Company

Conclusion	The Court held that in case of forgery, there is not a defect in consent, but absence of consent, and therefore the certificate issued by way of forgery is void. Thus, the certificate was held to be invalid.
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41. Mr. R, a manufacturer of toys approached MNO Private Limited for supply of raw material worth ₹ 1,50,000/-. Mr. R was offered a credit period of one month. Mr. R went to the company prior to the due date and met Mr. C, an employee at the billing counter, who convinced the former that the payment can be made to him as the billing-cashier is on leave. Mr. R paid the money and was issued a signed and sealed receipt by Mr. C. After the lapse of due date, Mr. R received a recovery notice from the company for the payment of ₹ 1,50,000/-.

Mr. R informed the company that he has already paid the above amount and being an outsider had genuine reasons to trust Mr. C who claimed to be an employee and had issued him a receipt.

The Company filed a suit against Mr. R for non-payment of dues. Discuss the fate of the suit and the liability of Mr. R towards company as on current date in consonance with the provision of the Companies Act 2013? Would your answer be different if a receipt under the company seal was not issued by Mr. C after receiving payment?[Nov. 2022 (4 Marks)]

Formation of a Company [Sec. 3]

Lawful Purpose	(i) A company may be formed for any lawful purpose . [Sec 3(1)] (ii) The objects of the company must not be illegal, immoral or opposed to public policy .	
Subscription to memorandum [Sec. 3(1)]	(i) The persons who sign on the memorandum are termed as subscribers. (ii) Minimum number of subscribers :	
	(a) where the company to be formed is to be a Public Company,	By 7 or more persons
	(b) where the company to be formed is to be a Private Company,	By 2 or more persons
	(c) where the company to be formed is to be a One Person Company (OPC) that is to say a private company,	By 1 person
Specified IFSC Public Company or Private Company	A Specified IFSC Public Company or a Specified IFSC Private Company shall be formed only as a company limited by shares .	

Incorporation of Company [Sec. 7]

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 office of the company is proposed to be situated-
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	<ul style="list-style-type: none"> ▪ The memorandum and articles of the company duly signed by all the subscribers to the memorandum. ▪ a declaration by person who is engaged in the formation of the company (an advocate, a chartered accountant, cost accountant or company secretary in practice), and by a person named in the articles (director, manager or secretary of the company), 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. ▪ 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- <ul style="list-style-type: none"> ○ he is not convicted of any offence in connection with the promotion, formation or management of any company, or ○ he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years, ○ 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; ▪ the address for correspondence till its registered office is established; ▪ 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. ▪ 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 ▪ 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.
<p>Issue of certificate of incorporation on registration</p>	<p>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.</p>
<p>Allotment of Corporate Identity Number (CIN)</p>	<p>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.</p>

Preservation of documents [Sec. 7(4)]	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.
Consequences where a company is incorporated by furnishing false information [Sec. 7(6)]	If it is proved that a company was incorporated by furnishing false or incorrect information , or by suppressing any material fact or by any fraudulent action , then, the following persons shall be held liable u/s 447 : (a) the promoters; (b) every person named in the articles as a first director; and (c) every person who made a declaration that the requirements of the Act and the Rules were complied with.
Order of the Tribunal	(i) Where a company has been got incorporated by any fraudulent action , the Tribunal may , on being satisfied that the situation so warrants: (a) pass such orders, as it may think fit, for the regulation of the management of the company; or (b) direct that the 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 . (ii) Before passing any order: (a) the company shall be given a reasonable opportunity of being heard; and (b) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

Effect of Registration [Sec. 9]

1. The date mentioned in the certificate of incorporation issued by the Registrar, shall be the date of incorporation of the company.
2. Effect of incorporation/registration :
 - (i) **Subscribers** to the Memorandum **become members** of the company.
 - (ii) **Company becomes a body corporate** having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.

SHARES

Classification of capital

Authorised / Nominal Capital	Maximum amount of capital a company can raise.
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Issued capital	That part of authorized capital which has been issued by company from time to time for subscription and includes the shares allotted for consideration other than cash.
Subscribed capital	That part of issued capital that is being subscribed by shareholders.
Called up capital	That part of subscribed capital which has been called up by the company for Payment
Paid up capital	That part of called up capital i.e. paid by shareholders on call. It is equal to called up capital less calls in arrears.

Meaning and Types

Shares:

- Sec 2(84) defines shares as share in share capital of the company.
- Shares are movable property.
- Every share has distinctive number except share held in depositories.
(not practical as most of shares present today are D-mat form)
- Shares includes stock (normally all provision of shares included in stock)

Equity share Capital v/s preference share capital (sec 43)

Basis	Equity share capital	Preference share capital
Meaning	Means all share capital which are not preference capital	Share carrying preferential right as to (dividend or repayment of capital)
Types	(i) Normal equity shares (ii) DVR (Differential Voting Rights) <ol style="list-style-type: none"> a. With voting rights b. Without voting rights 	Note - Exception: In case of private company - Section 43 shall not apply where memorandum or articles of association of the private company so provides.

42. Explain the kinds of share capital as per the Companies Act, 2013. Also explain when the capital shall be deemed to be preference capital. [Dec 2023(6 Marks)]