The Companies Act, 2013

↓

- 470 sections + lots of Rules
- 29 chapters
- VII Schedules

SEC-1
→ Name : TCA, 2013 [Short title]
→ Scope : whole of India [Extent]
→ Commencement : अलग - अलग दिन ✗
→ Applicability
- Companies
- Insurance
- Banking
- Electricity
- Special act
- CG notified

Insurance, Banking, Electricity, Special act — if not contradictory to their respective acts.

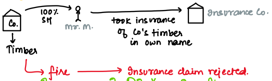
Sec 2(20) Company means a co incorporated (India)
→ under this Act — Eg: 2013
→ any previous Co. law — Eg: 1956

Features

- Separate legal entity : Co. अलग - shareholder अलग
  → Co. can enter into contracts / hold property / sue.
- Perpetual Succession : People may come People may go
  Co. goes on Forever ☺
- Liability
  → limited
  → Unlimited
- Artificial Judicial Person : made by law — can be wound up / dissolved by law.
  → Not human : can't breathe, eat, sleep etc.
- Common Seal : Optional
  ↓
  if not
  → 2 Directors
  or
  → 1 Director + 1 CS

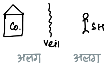
Sec 9 Effect of Registration

CASE LAW : Macaura vs. Northern Assurance ltd.

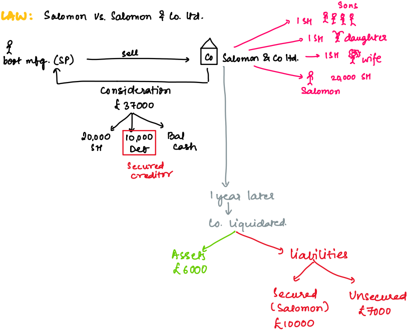

Co.
100% SH
Mr. M.
took insurance of Co's timber in own name
Insurance Co.
Timber
fire
Insurance claim rejected.

Moral : Co. के assets Co. के होते हैं SH के नहीं

☆☆☆ CORPORATE VEIL THEORY


Co.
Veil
SH
अलग
अलग

CASE LAW : Salomon vs. Salomon & Co. ltd.


boot mfg. (SP)
sell
Co
Salomon & Co ltd.
Sons
1 SH
1 SH daughter
1 SH wife
20,000 SH
Salomon
Consideration
£ 37000
20,000 SH
10,000 Deb
Bal cash
Secured creditor
1 year later
Co. Liquidated.
Assets
£ 6000
Liabilities
Secured (Salomon) £10000
Unsecured £7000

Contention of liquidator + Unsecured creditors:

'Salomon (MD) is responsible for the liquidation & being owner, he should not be paid'.

Verdict:

Co अलग है | Salomon अलग है

↓

not liable

↓

Secured – paid before unsecured.

Exceptions → lifting / Piercing of corporate Veil — Co = owner

दोनों same entity है

- ① Trading with Enemy
- ② Tax Evasion
- ③ Form Subsidiary
  - ↓ to act as agent
- ④ avoid legal obligation
- ⑤ illegal / fraudulent Purpose

① To Determine the character of Co.

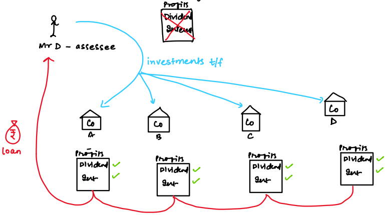
↓

Check character of the people who control the Co.

Case law: Daimler co ltd vs. Continental Tyre & Rubber Co.

② To protect tax

Caselaw: Dinshaw Maneckjee Petit

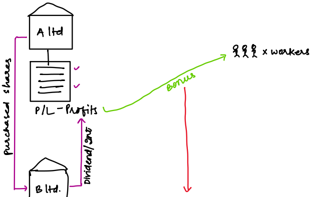

Profits
~~Dividend~~
~~Interest~~
Mr D – assessee
investments t/f
Co A
Co B
Co C
Co D
Profits
Dividend ✓
Int ✓
loan

Verdict : A/B/C/D — Sham companies

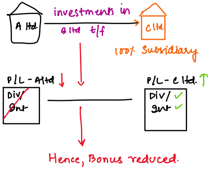
Real owner of Income = Mr D.

③ To avoid legal obligation

Caselaw: Workmen of.... vs. Associated Rubber Industry Ltd.


A ltd
P/L – Profits
Purchased shares
Dividend/Int
B ltd.
Bonus
x workers

to reduce this :

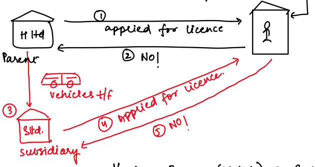


A ltd.
investments in B ltd t/f
C ltd.
100% subsidiary
P/L - A ltd ↓
Div/ ~~Int~~
P/L - C ltd. ↑
Div/ ✓
Int ✓
Hence, Bonus reduced.

Verdict : $\boxed{\text{C ltd}}$ — no separate existence.

④ Form subsidiary (S ltd) —— to act as agent
↓
agent / trustee
↓
another co. (H ltd)

Case law : Merchandise Transport ltd vs. British Transport Commission



H ltd
Parent
① applied for licence
② No!
vehicles t/f
③
S ltd.
subsidiary
④ applied for licence
⑤ No!

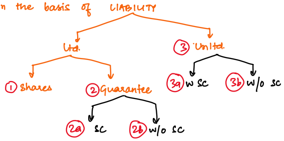
Verdict: Parent (H ltd.) = Subsidiary (S ltd.)
∴ licence rejected.

⑤ Fraud / Improper conduct / Defeat law

Caselaw: Gilford Motor vs. Horne

Classification of Companies

Ⓐ On the basis of LIABILITY



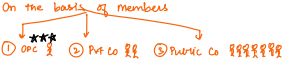
Ltd.
③ Unltd.
① Shares
② Guarantee
③a w sc
③b w/o sc
②a sc
②b w/o sc

① Co $\boxed{\text{ltd}}$ by Shares $\boxed{2(22)}$ — liable { during co's lifetime / winding up
amt unpaid on shares

② Co $\boxed{\text{ltd}}$ by Guarantee $\boxed{2(21)}$ — liable — winding up
amt undertaken by members to contribute to assets
debts, costs of winding up

③ Unlimited co $\boxed{2(92)}$ — liable — winding up
liability (-) assets
contribution from every member [joint (+) several]

Ⓑ On the basis of members



① OPC ★★★
② Pvt Co
③ Public Co

Sec 3

① One Person Co (OPC) 2(62)

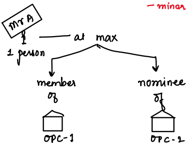
1 🧍 → in case of Death/ incapacity → 🧍 Nominee

- written consent
- can withdraw
- member may change Nominee — inform ROC 🧍
- ≠ Alteration of MOA

1 🧍 → member / director [can be same]

Eligibility

- Natural Person 🧍 ✓
- Indian citizen ✓
- Resident or not ✓
  : ≥ 120 days - PFY Stayed in India ✓
- minor ✗


Mr A
1 person
at max
member of
nominee of
OPC-1
OPC-2

OPC can't

- Charity Sec 8
- NBFC

Contravention: 10,000/- (+) 1000/day [continuing default]

② Pvt. Co 2(68)

min 🧍🧍 — except OPC-1
max - 200

- don't include
  - employees
  - ex-employees
- Joint holders = single member

Share t/f: restricted

invite public: prohibited

Types

- OPC
- Small 2(85)
  - Public Co ✗
  - PUSC ≤ 4cr
  - T/O ≤ 40cr
  - Exceptions:
    - Holding - Subs. Co
    - Sec 8 - charity Co
    - Special Act - Co

③ Public Co 2(71)

Not a pvt co.

Subs of Public Co deemed to be Public Co

min - 🧍🧍🧍🧍🧍🧍🧍

max - No limit

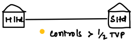
shares freely t/f.

Ⓒ On the basis of Control

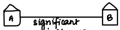
① Holding Co 2(46)

② Subsidiary Co 2(87)

③ Associate Co 2(6)



- controls > ½ TVP
- controls Board Composition



significant influence ≥ 20% of TVP

(+) JV ✓

(-) shares in fiduciary capacity (trustee) ✗

Note: - Subs ki subs bhi Holding ki subs hoti hai
- max 2 layers of subs allowed.

Ⓓ On the basis of Access to Capital

- Listed 2(52)
  ↓
  Securities listed on RSE [NSE/BSE]
- Unlisted

Ⓔ Other Companies

- Charity Co **Sec 8**
  - Application of profits
    - promotion of objective ✓
    - Dividend to members - prohibited ✗
  - licence
    - CG/ROC grants
    - Revocation → conditions contravened / fraudulent affairs / Public interest ✗
      - written Notice (+) OBH — fail
        - Convert Status — change name ltd./Pvt ltd.
        - Windup
        - Amalgamate with other Sec 8 Co [same obj]
    - Penalty : Co - 10 lakh - 1 cr
      - OID - 25K - 25 lakh
      - Fraud - Sec 447
  - Privileges :
    - call GM - 14 days' Notice ~~21 Days~~
    - Min Directors, ID ✗
    - NRC/SRC ✗
    - Partnership firm can become member ✓
    - Name - ~~ltd./Pvt ltd.~~ - Enjoys privilege of ltd. Co ✓
- Govt Co **2(45)**
  - ≥ 51% PUSC/TVP held by CG/SG(s)/both
  - subs of Govt Co deemed to be Govt Co
- Foreign Co **2(42)**
  - incorporated O/s India
  - In India —
    - place of Business
      - itself/agent
      - physical/e-mode
    - conducts business activity
- Dormant Co **Sec 455**
  - why ? → future project / holds asset/IPR
  - **No significant a/c transactions** - in last 2 yrs.
    - does not include :
      - fees to ROC
      - payment required by Law
      - Share allotment
      - payment for office/records maintenance
- Nidhi Co **Sec 406**
  - habit of saving
  - deposits/lending to members
- PFI **2(72)**
  - LIC
  - UTI
  - IDFC
  - CG notified
  - CG [RBI consulted] notified
    - constituted under central/State law
    - ≥ 51% PUSC held by CG/SG(s)/both.

SHARES

2(84) — **Share** means — share in SC — includes stock

- interest in the Co ~~[Assets of Co]~~
- Movable **Sec 44**
- Numbered **Sec 45** ~~[Demat]~~

CAPITAL

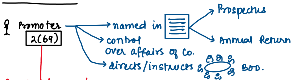
- **2(8)** Authorised Cap : max amt - MOA [Stamp Duty] — **Sec 60** Where this is included in Notice/Ad etc. → must also be stated in Equally conspicuous characters
- **2(50)** Issued Cap : issued for subscription (+) consideration other than cash
- **2(86)** Subscribed Cap : subscribed by members
- **2(15)** Called-up Cap : called for payment
- Paid-up Cap : called (-) calls in arrears

Penalty : Co – 10K / OID – 5K / default

KINDS **Sec 43**

- Equity
  - with Voting
  - with DVRs
    - eg: Tata motors 10 shares = 1 vote (+) 5% extra dividend
- Preference
  - Dividend
    - fixed rate/amt
    - free/subject to Income-tax
  - Repayment of Capital
  - Participative → Right to participate in **Surplus**

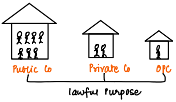
INCORPORATION



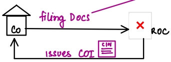
Promoter 2(69)
- named in → Prospectus / Annual Return
- control over affairs of Co.
- directs/instructs BOD.

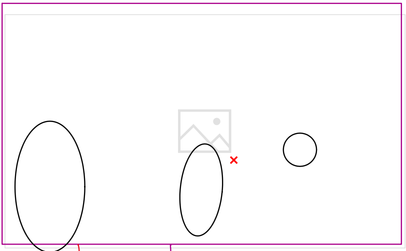
~~Solicitor/Banker/Accountant acting in professional capacity.~~

Sec 3 Formation of a Company


Public Co
Private Co
OPC
lawful purpose

Sec 7 Incorporation – [SPICe]


Co
filing Docs
ROC
issues COI
CIN



Maintain/Preserve copies till Dissolution at Registered Office

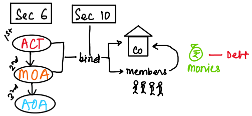
False info/Suppression of material fact :
- Liable u/s 447
- Order of NCLT
  - Changes in MOA/AOA
  - Unlimited liability
  - Name Removal
  - Winding up
  - such other orders as it may deem fit

पहले OBH ✓

Most imp Docs

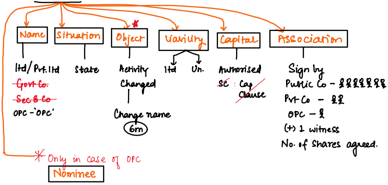
① MOA – Sec 4 – Co & o/s

② AOA – Sec 5 – Co & members


Sec 6
Sec 10
1st ACT
2nd MOA
3rd AOA
bind
Co
members
Monies – Debt

Memorandum [MOA]

- Charter
- Scope of Powers
- Registered with ROC
  - SH/Creditors can know powers of Co.
  - Public Doc Sec 399
  - SH can know – where the money is used / the risk
- model Tables [A – E]
- Contents [Clauses]

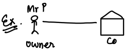

Name
ltd/Pvt.ltd
~~Govt Co.~~
~~Sec 8 Co~~
OPC – 'OPC'
Situation
State
Object *
Activity Changed
Change name
6m
Liability
ltd
Un.
Capital
Authorised
~~SC : Cap Clause~~
Association
Sign by
Public Co –
Pvt Co –
OPC –
(+) 1 witness
No. of Shares agreed.
* Only in case of OPC
Nominee

ARTICLES [AOA]

- Magna Carta
- Rules (+) Regulations – Internal affairs
- Bye-laws
- Includes matters
- Model Tables [F-J]
- Provisions for Entrenchment
  - to protect : Alteration of AOA [Change] SR से भी ज़्यादा Difficult >75%
  - कैसे ?
    - Formation के time ✓
    - Later : Amendment
      - Pvt Co – all members
      - Public Co – SR-75%

Notice to ROC

Ex.


Mr P
owner
Co

wants to remain director for lifetime

Entrenchment : "95% ~~75%~~ votes to casted in favour to remove Mr P."

DOCTRINES ★★★

① Ultra Vires ② Constructive Notice ③ Indoor management ★★★

ULTRA VIRES

beyond powers

Co
O/S
Contract

can't sue each other

beyond object clause of MOA ?

= WHOLLY VOID (+) INOPERATIVE

Can't bind company

Cant even be RATIFIED by 100% SH !!!

beyond Directors/AOA/done irregularly

= CAN BE RATIFIED - SR[75%] - SH. ☺

Caselaw : Ashbury Railway Carriage & Iron Co ltd. Vs. Riche

A ltd.
Financing ✓
(+) Ratified by SR
Riche

MOA : obj clause :

Railway wagon ✓

mines ✓

~~Financing~~

Mechanical Engineers & General Contractors

Co repudiated the contract [ultra vires]

↓

Riche sued < General Contractors ✓ / SR: Ratified ✓

Verdict : Contract - Void

SH can't ratify.

General contractors associated with mechanical engineers

CONSTRUCTIVE NOTICE / IMPLIED NOTICE (In favour of Co. ⌂)

Sec 399 : COI/MOA/AOA/SR are Public Docs

O/S —fees→ ROC

ROC —all docs→ O/S

हर जो ⌂ के साथ deal/contract करने आया है

↓

Duty to read MOA+AOA etc.

↓

∴ मान लिया जाएगा O/S (Presumed) → पढ़कर आया है (Read!) → Content जानता है (knows+understands)

EXCEPTION :

INDOOR MGMT (In favour of O/S)

बाहर वाला (O/S) MOA+AOA etc. सिर्फ पढ़कर आ सकता है

↓

Cannot know internal affairs

↓

∴ can assume सब Detailed formalities comply हो गई होगी

Case law : The Royal British Bank vs. Turquand

£ 2000 Bond
Cameron... Co.
Royal British Bank

Royal British Bank → Read MOA ✓ AOA ✓

Conditions: 2 Director + 1 CS : Sign.

(+) OR → assumed to be passed ✓

Cameron... Co. → Insolvent

Liquidator Mr. Turquand

↳ denied payment of Bond

'OR passed but £ ___ not specified'

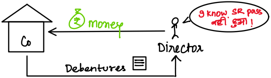
RBB : 'मुझे कैसे पता चलेगा - 'OR' is not a Public Doc - I cant read it

Verdict : RBB can get the £2000 back. as it cannot know whether OR passed or not.

EXCEPTIONS [favour of 🏠) – Applicability of Constructive Notice

Actual / Constructive knowledge of Irregularity

Caselaw: Howard vs. Patent Ivory Mfg. Co

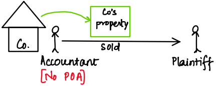

Co
₹ money
Director
I know SR pass नहीं हुआ!
Debentures

Verdict : Director cannot get money back.

Suspicion / Negligence

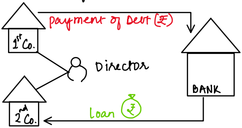
Unusual transaction : Duty of o/s to make necessary Enquiry.

Caselaw: Anand Biharilal vs. Dinshaw & Co.


Co.
Co's property
sold
Accountant
[No POA]
Plaintiff

Verdict : Accountant had no authority to sell
∴ t/f = void

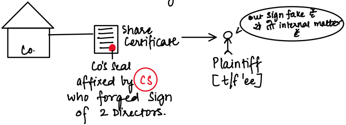
Caselaw: Haughton & Co. v. Nothard, Lowe, Wills Ltd.


payment of Debt (₹)
1st Co.
Director
BANK
2nd Co.
Loan ₹

Forgery

→ Nullity

Caselaw: Ruben v. Great Fingall Consolidated


Co.
Share Certificate
Co's seal affixed by CS who forged sign of 2 Directors.
Plaintiff [t/f 'ee]
our sign fake है ये तो internal matter है

Verdict : Rule can't be extended to cover complete forgery.