

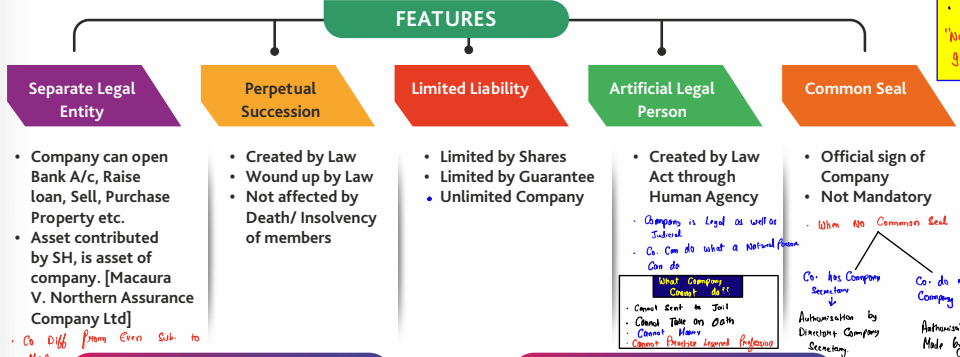
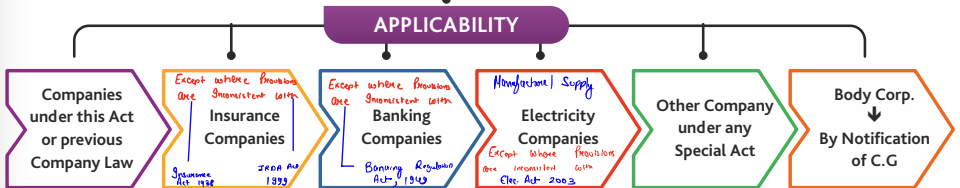
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WORKINGS

COMPANIES ACT

THE COMPANIES ACT, 2013

Sec(20) : Company Incorporated under this act or under any previous company law.



CORPORATE VEIL THEORY

- Members Shielded from liability connected to Company's Action
- Company identified separately from its members [Salomon V. Salomon & Co. Ltd.]

LIFTING OF CORPORATE VEIL

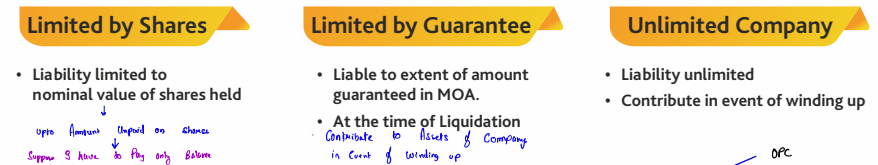
- Courts ignore company & concerns directly with its members
- Disregarding corporate entity & paying regard to realities behind the legal facade.

CASES WHERE COMPANY LAW DISREGARD CONCEPT OF "SEPERATE LEGAL ENTITY"

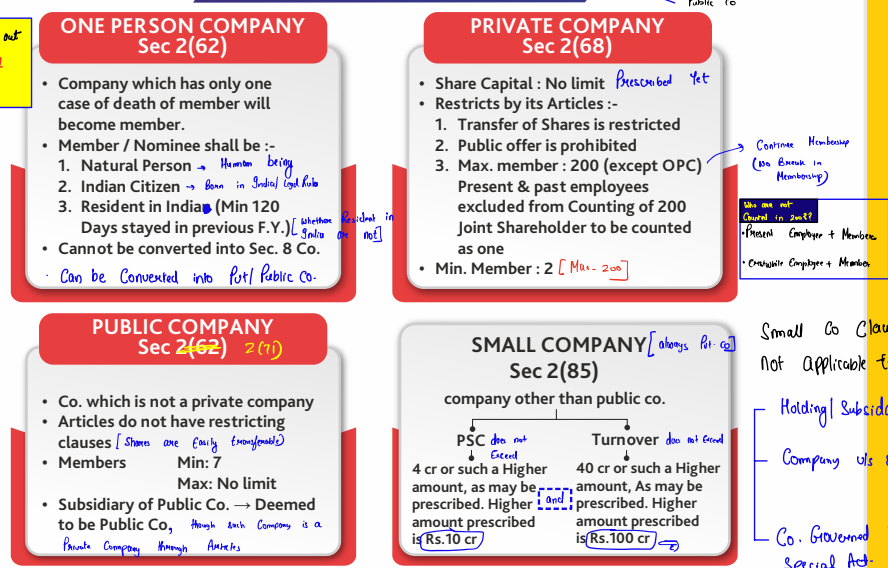
- Determine Character of Company Daimler Co. Ltd V. Continental Tyre & Rubber Co. [Friend Co.]
- To Protect Revenue/ Tax Dinshaw Maneckjee Petit [Enemy Co.]
- To Avoid Legal Obligation Workmen of Associates Rubber Industry V. Associates Rubber Ind. Ltd.
- Formation of Subsidiary to act as agents Merchandise Transport Ltd. V. British Transport Commission
- Company formed for Fraud/ Improper Conduct Gilford Motor Company Ltd. V. Horne

CLASSES OF COMPANIES

On the basis of Liability



ON THE BASIS OF MEMBERS

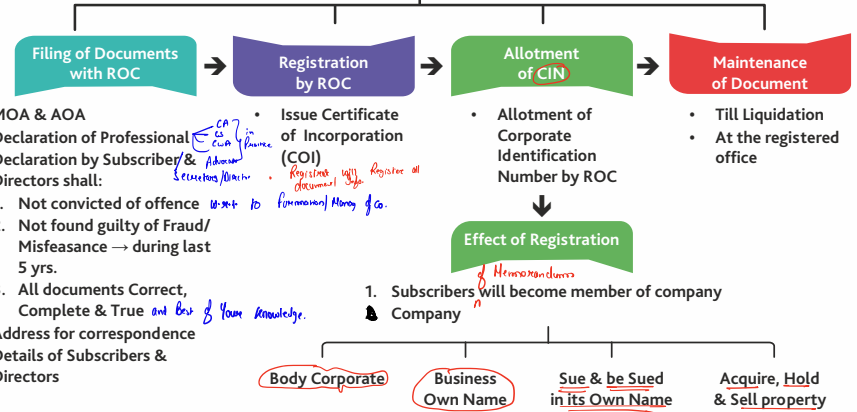


ON THE BASIS OF ACCESS TO CAPITAL



THE COMPANIES ACT, 2013

INCORPORATION OF COMPANIES [Section-7]



ON THE BASIS OF CONTROL

Holding and Associate

HOLDING COMPANY
• Sec 2 (46)
• A company of whose other companies are subsidiary or Associate companies

SUBSIDIARY COMPANY
• Sec 2 (87)
• A company in which Holding Co. :-
1. Controls composition of B.O.D. [Board of Directors]
OR
2. Controls more than half of total voting Power
on its own or together with its subsidiary
• Deemed to be Subsidiary Co. :- If control is of another Subsidiary Co. of the Holding Co.

ASSOCIATE COMPANY
• Sec 2 (6) [Major Share]
• A company in which other company has "Significant Influence" (Atleast 20% of total voting power / control)
• Includes Joint venture but not a Subsidiary Co.

Significant Influence
Control of atleast 20% of Total Voting Power
Control of Participation in business decision Under Agreement

OTHER COMPANIES

Government Company
• Sec 2 (45)
• Company in which not less than 51% of paid up Share Capital held by :-
1. CG
2. SG
3. CG + SG
Company by CG and partly by SG

Foreign Company
• Sec 2 (42)
• Company incorporated outside India
• Has place of business in India
• Through itself or agent, physically or electronically.
• Conduct business in India

Nidhi Company
• Sec 406 (1) [Mutual benefit Society]
• Company incorporated to Cultivate habit of savings amongst its members
• CG May Give notification in official Gazette to declare Nidhi Co.

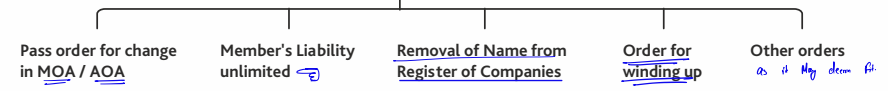
Dormant Company
• Company formed for future project or to hold IPR / Asset
• No Significant Accounting Trans.
• Inactive Company :-
1. Not carrying business
2. Not Significant Accounting Tr.
3. Not filed financial statements and Annual Return
During last 2 F.Y.

Section 8 Company
• To promote Art, Science, Commerce, Sports, Religion, Environment etc.
• Profit utilized for promotion of objects
• Dividend distribution prohibited
• Need not use word 'Limited' or 'Private Limited'
• Licence can be Revoked
• Penalty: Company → 10 days to 3 months, Officer in default → 10000 to 25000

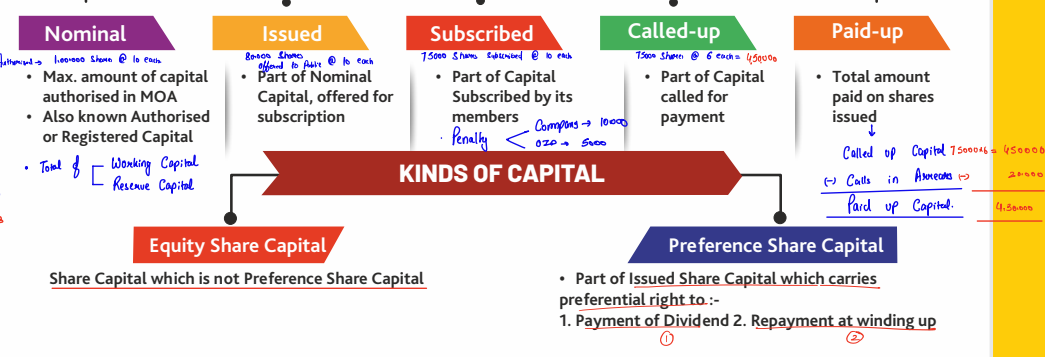
Public Financial Institution
• LIC established under LIC Act, 1956
• UTI [Specified Co referred in UTI Act 2002]
• IDFC [Infrastructure Development Finance Co.]
• Notified by CG in consultation with RBI
• Established under Central State Act. Specification notified by CG
• Such Institution notified by CG in Consultation with RBI at least 51% paid up capital held by CG / SG / CG + SG



TRIBUNAL IF SATISFIED



CLASSIFICATION OF CAPITAL



Significant Accounting Transactions
Any Exemption other than:
• Payment of Fees by Company
• Payment Made to fulfill Requirements of the Act
• Allotment of Shares
• Payment for Maintenance of its office and Records

Notice of 14 days instead of 21 days

THE COMPANIES ACT, 2013

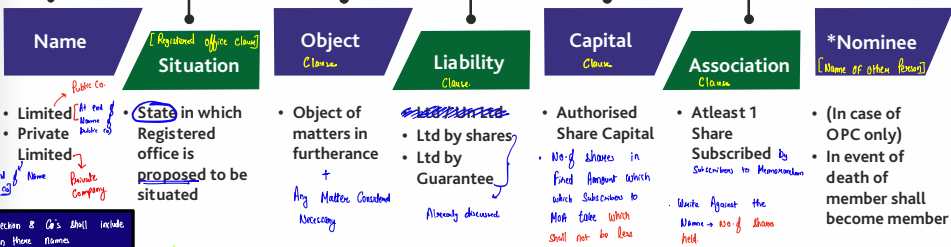
Memorandum of Association

Signing of Memorandum
 - Signed by atleast Seven Persons [Public Co]
 Two Persons [Pvt Co]
 One Person [OPC]
 - Sign in presence of atleast one witness

- Chartered document, defines scope of powers of Company
- Contains object for which company is formed, Beyond which actions cannot go.
- **Sec 399**: Memorandum is public document, person contracting with company **presumed** to have knowledge of it
- Any contract beyond the power of memorandum **ULTRA VIRES & VOID**
- Form of MOA : Table A, B, C, D, E [A- Ltd By shares, B- Ltd by Guarantee, C- Ltd by Guarantee & Shares, D- Unlimited Co, E- Unlimited Co Having Share Capital]
- Memorandum: Printed, Paragraphed, Numbered, Signed in presence of 1 witness, Description of Subscribers.
- MOA must comply with provisions of Companies Act, 2013.

CONTENT OF MEMORANDUM

All these are clauses.



- Section 8 Co's shall include in their names:
- Foundation
 - Trust
 - Public Charitable
 - Religious
 - Charitable
 - Co-operative
 - Association
 - Electoral Trust
- [See Electronic Scheme, 2018] Classified by CBOT

MEMORANDUM OF ASSOCIATION

- Rules & Regulations framed to manage internal affairs.
 - Forms of Articles : Table F, G, H, I & J [Under some as Memorandum]
 - Model Articles : May adopt all or any regulations
 - Entrenchment Provision : [To protect something]
 1. Amendment, if more restrictive provisions are inserted
 2. At the time of Incorporation or by Amendment (Special Resolution)
- Notes: Votes in favour are added to total no. of votes.

BASIS	MOA	V/S	AOA
Objectives	Defines & assess the objectives of Company		Rule & Regulation for management of Company
Relationship	Company and outside world		Company and its members
Alteration	Only under certain circumstances with permission of RD/ NCLT Regional Director → National Co. Law Tribunal		By passing Special Resolution
Ultra Vires	Acts done beyond MOA - void and ultravires, cannot be ratified 23.11.2011		Acts beyond AOA, Ratified by Special Resolution of Shareholder

DOCTRINE OF ULTRA VIRES

- Act done in excess of legal powers
- Acts done beyond the power of ~~Director~~ Company → void & not binding on Company
- Company can neither sue nor can it sue on it
- MOA public document (open for inspection)
- Person dealing with Company cannot enforce against Company, if ultra vires.
- Acts ultra vires the Director → SH can ratify
- Acts ultra vires the Articles → Articles altered + Passing of Res. of SH
- Acts ultra vires the Company → VOID, SH cannot ratify
- [Ashbury Railway Carriage & Iron Company Ltd V. Riche]

Protects Company

DOCTRINE OF CONSTRUCTIVE NOTICE

- "Right of Inspection to all."
- Any person can inspect by electronic means, make record or get copies. → on payment of prescribed fees
- Duty of person dealing with company:
 1. To inspect documents
 2. Ensure, Contract is in conformity with provisions.
- Person reads the document or not → Presumed to have knowledge of contents.
- If Contracts, beyond power of Company → Cannot acquire any rights against Company

Protects outsiders

DOCTRINE OF INDOOR MANAGEMENT

- Exception to doctrine of Constructive Notice
- Outsiders not deemed to have notice of internal affairs of Company.
- Popularly known as **Turquand Rule** [Royal British Bank V. Turquand]
- Indoor management is internal problem of Company, Outsiders not deemed to have knowledge of internal Affairs of Company.

EXCEPTIONS TO DOCTRINE OF INDOOR MANAGEMENT

1 Actual Constructive Knowledge of Irregularity

- [Howard V. Patent Ivory Manufacturing Co.]
- Omitting to do something that is necessary.
- Cannot be protected under Doctrine of Indoor Management
- Rule does not protect any Person who Person dealing with the Company has notice of irregularity.

Case law → Moppers vs Kancon

2 Suspicion of Irregularity

- [Anand Biharilal V. Dinshaw & Co.]
- Person dealing with Company suspicious about circumstances
- Still doesn't enquire, then cannot rely on Doctrine of Indoor Management

3 Forgery

- [Ruben V. Great Fingall Consolidated]
- Doctrine of Indoor Management not applicable on Forgery.
- Forgery is considered Null & Void

Royal British Bank v/s Turquand



Mr Turquand was the official Manager [Liquidator] of Insolvent Company. It was Incorporated under the "Joint Stock Companies Act, 1844."

The Company had Given bond of £2000 to the Royal British Bank, which Secured Company Drawing on its Current Acc. The bond was Under Companies seal and Signed by 2 directors and the Secretary.

When the Company was sued, it alleged that under a registered deed of Settlement [Article of Association] directors only had Power to borrow upto an Amount

Authorise by Company Resolution. A Resolution was passed but not specifying how Much directors could borrow.

Held that, it was decided that the bond was Valid, So Royal British Bank could enforce the terms. He said the bank was deemed to be aware that directors could borrow only upto the Amount Resolutions is allowed.

AOA was registered with Companies House, so there was Constructive Notice, But Bank could not be deemed to know which Ordinary Resolution passed because these was not Registrable.

The bond was Valid because there was No Requirement to Look into the Companies Internal Working.



This is the Indoor
Management Rule, that
Company's Indoor affairs
are the Companies
Problem.

Howard v/s Patent Ivory Manufacturing Co.

- Where the directors could not defend, the issue of debentures to themselves because they should have known the extent to which they were lending money to company
→ Required the Assent of the General Meeting which they had not obtained.



Morris v/s Kanssen

- A director could not defend an allotment of shares to him as he participated in the Meeting, which made the allotment.



- His Appointment as a director also fell through because none of the directors appointed him was validly in office.

Anand Bihari Lal v/s Dinshaw and Co.

Plaintiff Accepted a transfer of Companies property from its Accountant and the transfer was held Void.



Plaintiff could not have supposed, in the absence of a power of attorney that the Accountant had authority to effect transfer of Companies property.



Ruben v/s Great Fingall Consolidated

In this case the Plaintiff was the transferee of share Certificate issued Under Seal of the Defendants Company.

The Company Secretary who has affixed the Seal of the Company and forged the Signature of two directors Issued the Certificate.

The Plaintiff Contended that whether the Signature were Genuine (or) forged was part of Internal Management

↳ and therefore the Company should be estopped From Denying Genuineness of the document.

But it was held that the Rule has Never been Extended to cover such a Complete Forgery.