

* Ch-6

Companies Act, 2013

=> The Companies Act, 2013 was preceded by the Companies Act, 1956.

=> The Companies Act, 2013 contains :-

- 470 sections
- Seven schedules
- 29 chapters
- A substantial part of this Act in the form of Companies Rules

* □ Section 2(20) of The Companies Act, 2013 defines the term 'company'. "Company means a company incorporated under this Act or under any previous company law."

* Applicability of The Companies Act, 2013

- Companies incorporated under this Act or under any previous company law.
- Insurance Companies Except where provisions are inconsistent with the provisions of the Banking Regulation Act, 1949)

- Banking companies (except where provisions are inconsistent with the provisions of The Banking Regulation Act, 1949)
- Insurance companies (except where provisions are inconsistent with the provisions of The Insurance Act, 1938 or The IRGA Act, 1999).
- Companies engaged in the generation or supply of electricity (except where provisions are inconsistent with the provisions of The Electricity Act, 2003)
- Any other company governed by any special Act for the time being in force.

* Salient Features :-

1. Body Corporate

2. Perpetual Succession

3. Separate Legal Entity

4. Artificial Legal Person

• Can sue property • sue and be sued

• Enter into contracts

• Act through human agency

5. Common Seal

6. Limited Liability

* Corporate Veil Theory :-

• Separate Legal Entity :

⇒ Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

⇒ Members of a company are shielded from liability connected to the company's actions.

⇒ Thus, the shareholders are protected from the acts of the company.

⇒ A company is a person distinct and separate from its members.

* Lifting of Corporate Veil - Case Laws

• Daimler Co Ltd. Vs Continental Tyre & Rubber Co.
(Alien enemy case law reference)

• Dinshaw Maneckjee Petit (To protect revenue or evade taxes)

• Gifford Motor Co. Vs Moore (Fraud / Misconduct)

* Lifting of Corporate Veil

	Reasons	Examples
1.	To determine the character of the company	Trading with enemy
2.	To Protect Revenue	Tax evasion
3.	To avoid legal obligation	Avoid Labour Laws
4.	Formation of subsidiaries to act as agents	Merchandise Transport Limited Vs British Transport Commission
5.	Formed for fraud / improper conduct	Illegal Activities

* Classes of Companies :

i) On the basis of Incorporation -

- Registered Companies
- Statutory Companies
- Chartered Companies

ii) On the basis of Liability -

- Limited by shares
- Limited by Guarantee
- Unlimited Companies

* One Person Company :

=> To encourage entrepreneurship Separate legal entity with limited liability feature.

* Private Company :

- No minimum Paid up Capital
- Minimum 2 and max 200 (excluding employees)
- Right to transfer shares restricted
- Prohibition on invitation to subscribe to securities of the company

* Public Company:

- NOT a Private Company
- Minimum Paid up Capital
- Subsidiary of a Public Company deemed to be a Public Company.
- Minimum 7 and Maximum unlimited.

* Holding and Subsidiary Company:

- Controls the composition of BOD
- More than half of total Voting Power
- Subsidiary's Subsidiary.

* Associate Company:

⇒ Significant Influence but not subsidiary

⇒ Significant influence: atleast 20% total voting power or participation in business decisions under agreement.

⇒ Includes Joint Venture

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* Listed and Unlisted Companies:

⇒ Securities listed on Stock Exchange.

* Government Company:

- Not less than 51% of PLC by
- Central Government
- Partly includes subsidiary of Govt. Company
- State Govt.(s)

* Foreign Company & Sec. 8 Company:

⇒ Company registered outside India but having a place in India.

⇒ Promote Charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment.
(FICCI, National Sports Club of India, CII)

* Small Company:

- Other than a Public Company
- PUC not exceed INR 50 lakh - INR ~~2~~ Crore and
- TO does not exceed INR 2 crore - INR 20 crore

⇒ Should not be -

- Holding or Subsidiary Company
- Sec. 8 Company
- BC governed under any special Act.

* Companies & PFI

⇒ Where a company is formed for a future project or to hold assets or intellectual company and has no significant transaction-dormant company status.

⇒ "Nidhi" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.

⇒ LIC, IDFC (Public Financial Institutions).

* Incorporation of a Company:

1. Filing of Documents with ROC -

- MOA and AOA duly signed
- Declaration regarding requirements
- Declaration by subscribers & first directors
- Address for correspondence
- Particulars of every subscriber
- Particulars of persons mentioned in AOA as subscribers
- Particulars of the interests of the persons mentioned in the AOA.

2. Certificate of Incorporation -

⇒ ROC to issue, Allotment of Corporate Identity No. Co. to maintain documents.

⇒ False Information: Fraud under Sec. 447 Order of The Tribunal (National Company Law Tribunal)

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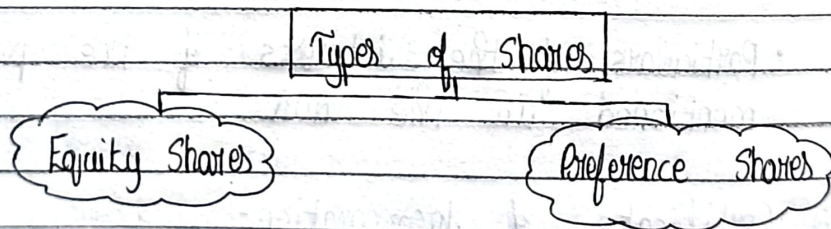
* SPICE - Simplified Proforma for Incorporating Company Electronically:

- Ease of doing Business
- Simplified proforma
- Effects of registration - legal personality with perpetual existence.

* Classification of Capital:

- Nominal
- Issued
- Subscribed
- Called up
- Paid up

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⇒ Features

i) With uniform voting rights

ii) With differential voting rights

⇒ Features

i) Dividends

ii) Capital

* Memorandum of Association:-

- Object:
- Purpose of Company
- Enables SH, C and ALL to know about powers and activities
- Purpose for which money is used - Stakeholders

=> Contents of MOA-

1. Name Clause
2. Registered Office Clause
3. Object Clause
4. Liability Clause
5. Capital Clause
6. Association Clause

* Doctrine of Ultra Vires:

- "Beyond (their) powers"
- The Impact is that a company can neither be sued on an ultra vires transaction, nor can it sue on it.
- ASHBURY RAILWAY CARRIAGE AND IRON COMPANY LIMITED (1875).

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* Articles of Association:

- "Rules and Regulation for Internal Management"
- It regulates domestic management of a company and creates certain rights and obligations between the members and the company.

* Doctrine of Indoor Management:

⇒ Doctrine of Indoor Management - Protection to Outsiders

⇒ Royal British Bank Vs Turquand

⇒ Doctrine of Constructive Notice - Protection to Company

⇒ Presumed to have a knowledge of the contents of the documents.

⇒ Documents which are registered with Registrar.

* Exceptions to the doctrine of Indoor Management

i) Actual knowledge of irregularity

ii) Suspicion of irregularity

iii) Forgery.