

# THE COMPANIES ACT, 2013

Preceded by Companies Act, 1956

DATE \_\_\_\_\_  
PAGE \_\_\_\_\_

Sec. 20

## Applicability

Companies incorporated under this Act or any previous Company Law

Insurance companies

Banking Companies

Electricity Companies

Other Co. under any special Act

Body corporate

- By notification of Central Govt.

## COMPANY: MEANING AND ITS FEATURES

Chief Justice Marshall ↴

"a corporation is an artificial being, invisible, intangible, existing only in contemplation of law. Being a 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."

### Features

Separate legal Entity

Perpetual Succession

Limited Liability

Artificial Juridical Person

Common Seal

- contains 470 sections and seven schedules.
- entire act divided into 29 chapters
- The Companies Act, 2013 aims to improve corporate governance, simplify regulations and strengthen the interests of minority investors.
- makes more contemporary.

Section 2(20)

"Company means a company incorporated under this Act or under any previous company law."

CORPORATE VEIL THEORY

- (i) Corporate veil: Company is identified separately from the members of the company.
- Members of a company are shielded from liability connected to the company's actions.
- Members enjoy corporate insulation.

CASE: Salomon Vs. Salomon and Co Ltd. laid down the foundation of the concept of corporate veil or independent corporate personality.

(ii) Lifting of Corporate veil

- To determine the character of the company i.e. to find out whether co-enemy or friend.

CASE: Daimler Co. Ltd. vs. Continental Tyre & Rubber

- To protect revenue tax

CASES: S. Berendsen Ltd. vs. Commissioner of Inland Revenue.  
Juggilal vs. Commissioner of Income Tax AIR (SC)

Dinslaw ~~case~~ court decided that the private co. Maneckjee Petit were sham and the corporate veil was lifted to decide the real owner of income.

- To avoid legal obligations

CASE:- The workmen employed in Associated Rubber Industries Limited, Bhavnagar vs. The Associated Rubber Industries Ltd., Bhavnagar and another.

Workmen of Associated Rubber Industry Ltd. Vs. Associated Rubber Industry Ltd.

- Formation of subsidiaries to act as agents

CASE :- Merchandise Transport Limited

vs.

British Transport Commission (1982)

- Company formed for fraud / improper conduct or to defeat law

CASE :- Gilford Motor Co. vs. Horne

### CLASSES OF COMPANIES UNDER THE ACT

#### 1. On the basis of liability

- Company limited by shares

- Company limited by guarantee

CASE :- Narendra Kumar Agarwal vs. Sargj Maloo

- Unlimited company

#### 2. On the basis of members

- Private Company [Section 2(68)]

- Public Company [Section 2(71)]

- OPC (One person company) [Section 2(62)]

- Small Company [Section 2(85)]

#### 3. On the basis of control

- Holding and subsidiary companies [Section 2(46)]

- Associate company [Section 2(6)]

#### 4. On the basis of access to capital

- Listed company

- Unlisted company

## 5. Other Companies

- Government Company [Section 2(45)]
- Foreign Company [Section 2(42)]
- Companies with charitable objects / NPO [Section 8]
- Dormant Company [Section 455]
- Public Financial Institutions (PFI) [Section 2(72)]

## MODE OF REGISTRATION / INCORPORATION OF COMPANY

### PROMOTERS

### FORMATION OF COMPANY

↳ Public → 7 or more persons

Private → 2 or more persons

OPC → One person

### INCORPORATION OF COMPANY

- ~~Filing~~ Filing of the documents and information with the registrar
- Issue of certificate of incorporation on registration
- Allotment of Corporate Identity Number (CIN)
- Maintenance of copies of all documents and information
- Furnishing of false or incorrect <sup>info.</sup> or suppression of material fact at the time of incorporation.
- Company already incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact (post incorporation)
- Order of the Tribunal
  - Simplified Proforma for Incorporation Company Electronically (SICE)
  - Effect of Registration

CASE :- Hari Nagar Sugar Mills Ltd. vs. S. G. Thunjhunwala  
State Trading Corporation of India vs. Commercial Tax Officer  
Spencer & Co. Ltd. Madras vs. CWT Madras  
Heavy Electrical Union vs. State of Bihar

→ Effect of Memorandum and Articles

## CLASSIFICATION OF CAPITAL

- Nominal or authorised or registered capital
- Issued Capital
- Subscribed capital
- Called-up capital
- Paid-up capital

## SHARES

- Nature of shares
  - share is an interest in the company
    - ↳ *Borland Trustees vs. Steel Bors. & Co. Ltd.*
  - shares are a movable property.
  - shares shall be numbered.
- Kinds of share capital
  - Equity share capital
  - Preference share capital

## MEMORANDUM OF ASSOCIATION

- Object of registering a memorandum of association
- Content of the memorandum

## DOCTRINE OF ULTRA VIRES

*Ashbury Railway Carriage and Iron Co. Ltd. v. Riche - (1875).*

## ARTICLES OF ASSOCIATION

## DOCTRINE OF INDOOR MANAGEMENT