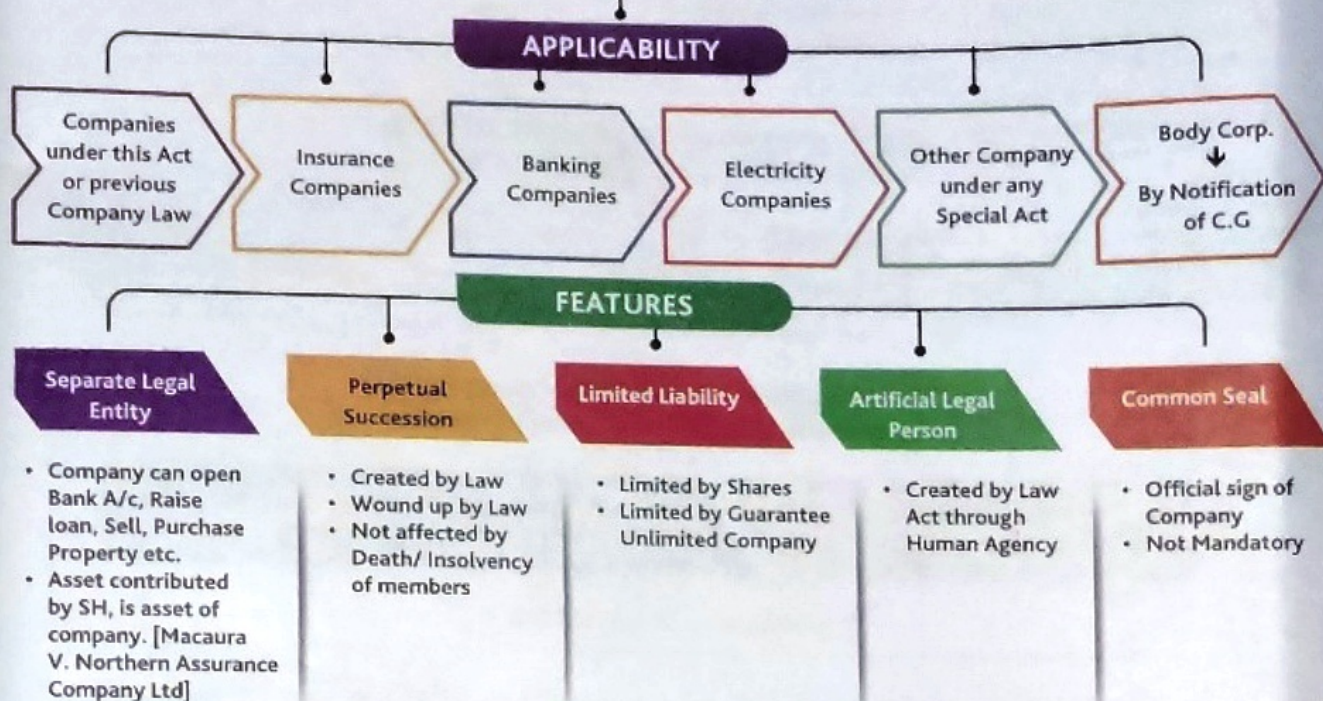


THE COMPANIES ACT, 2013

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"

- | | |
|--|---|
| <ul style="list-style-type: none"> Determine Character of Company Daimler Co. Ltd V. Continental Tyre & Rubber Co To Protect Revenue / Tax Dinshaw Maneckjee Petit To Avoid Legal Obligation Workmen of Associates Rubber Industry V. Associates Rubber Ind. Ltd. | <ul style="list-style-type: none"> 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

Limited by Shares

- Liability limited to nominal value of shares held

Limited by Guarantee

- Liable to extent of amount guaranteed in MOA.
- At the time of Liquidation

Unlimited Company

- Liability unlimited
- Contribute in event of winding up

ON THE BASIS OF MEMBERS

ONE PERSON COMPANY Sec 2(62)

- Company which has only one case of death of member will become member.
- Member / Nominee shall be :-
 1. Natural Person
 2. Indian Citizen
 3. Resident in Indian (Min 120 Days stayed in previous F.Y.)
- Cannot be converted into Sec. 8 Co.

PRIVATE COMPANY Sec 2(68)

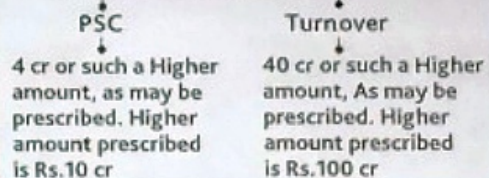
- Share Capital : No limit
- Restricts by its Articles :-
 1. Transfer of Shares is restricted
 2. Public offer is prohibited
 3. Max. member : 200 (except OPC)
Present & past employees excluded from Counting of 200
Joint Shareholder to be counted as one
- Min. Member : 2

PUBLIC COMPANY Sec 2(62)

- Co. which is not a private company
- Articles do not have restricting clauses
- Members Min: 7
 Max: No limit
- Subsidiary of Public Co. → Deemed to be Public Co.

SMALL COMPANY Sec 2(85)

company other than public co.



ON THE BASIS OF ACCESS TO CAPITAL

LISTED COMPANY

- SEC 2 (52)
- Company which has any of its securities listed on any recognised Stock Exchange
- If SEBI prescribes : - Co. not to be considered as Listed Company

UNLISTED COMPANY

- Company other than listed company

THE COMPANIES ACT, 2013

ON THE BASIS OF CONTROL

HOLDING COMPANY

- Sec 2 (46)
- A company of whose other companies are subsidiary or Associate companies

ASSOCIATE COMPANY

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

SUBSIDIARY COMPANY

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

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

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)
- Company incorporated to Cultivate habit of savings amongst its members

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 statement/ Annual Return

During last 2 F.Y.

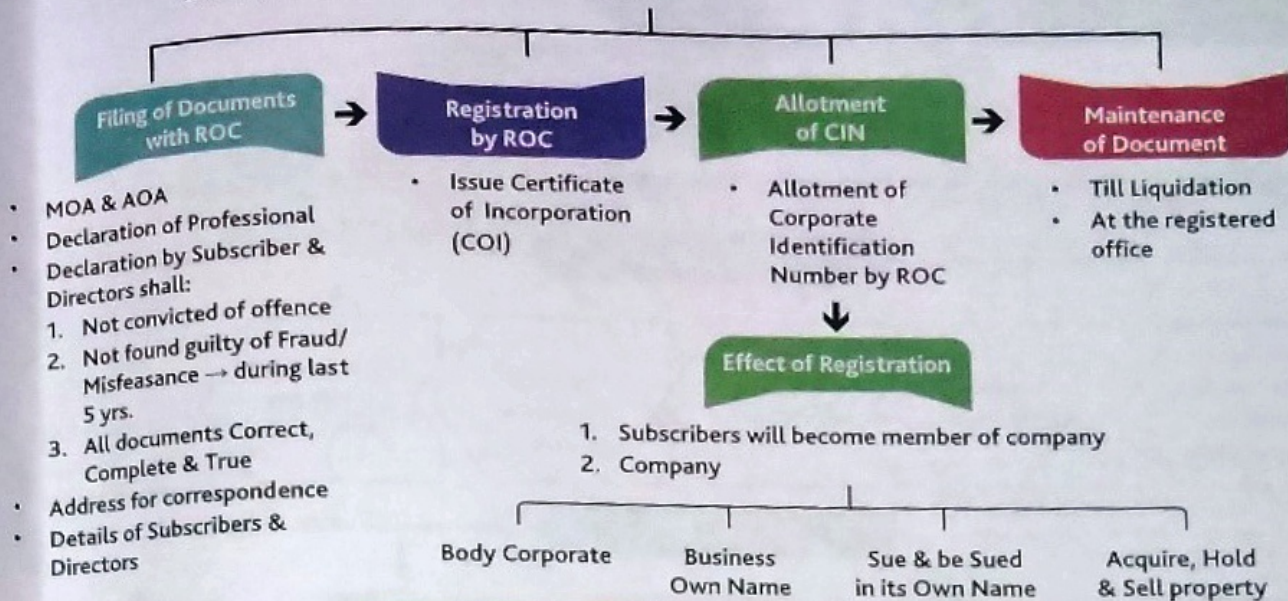
Section 8 Company

- 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'

Public Financial Institution

- LIC
- UTI
- IDFC
- Notified by CG in consultation with RBI
- Established under Central State Act
- Such Institution notified by CG in Consultation with RBI atleast 51% paid up capital held by CG / SG / CG + SG

INCORPORATION OF COMPANIES



PENALTY FOR FALSE DISCLOSURE

Company Not been Incorporated

- Person furnishing false information
- Liable for Fraud u/s 447

Company has been Incorporated

- Promoter / First Directors / Person making Declaration
- Liable for Fraud u/s 447

TRIBUNAL IF SATISFIED

Pass order for change in MOA / AOA

Member's Liability unlimited

Removal of Name from Register of Companies

Order for winding up

Other orders

CLASSIFICATION OF CAPITAL

Nominal

- Max. amount of capital authorised in MOA
- Also known as Authorised or Registered Capital

Issued

- Part of Nominal Capital, offered for subscription

Subscribed

- Part of Capital Subscribed by its members

Called-up

- Part of Capital called for payment

Paid-up

- Total amount paid on shares issued

KINDS OF CAPITAL

Equity Share Capital

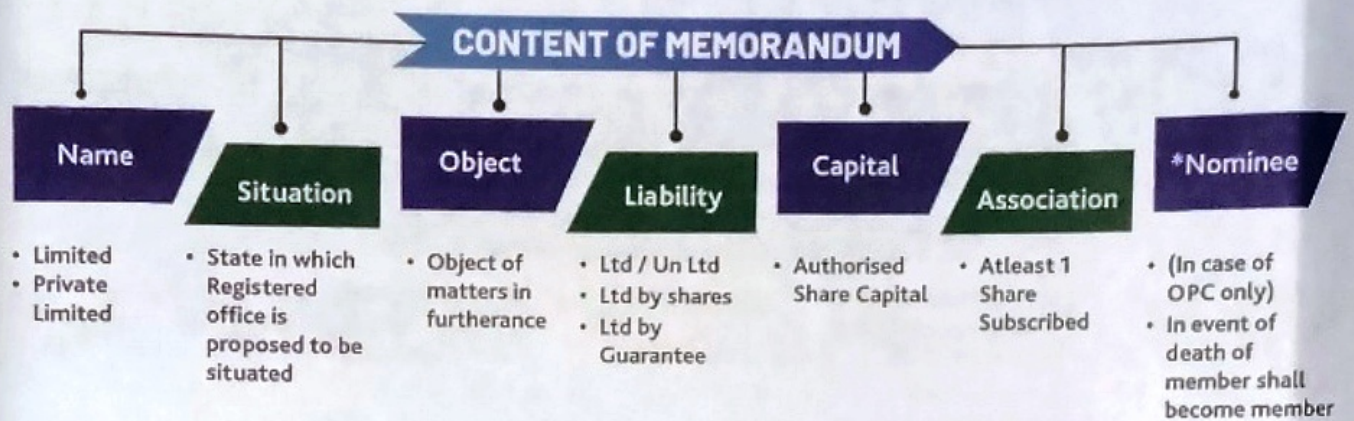
Share Capital which is not Preference Share Capital

Preference Share Capital

- Part of Issued Share Capital which carries preferential right to :-
 - Payment of Dividend
 - Repayment at winding up

THE COMPANIES ACT, 2013

- 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
- Memorandum: Printed, Paragraphed, Numbered, Signed in presence of 1 witness, Description of Subscribers.
- MOA must comply with provisions of Companies Act, 2013.



MEMORANDUM OF ASSOCIATION

- Rules & Regulations framed to manage Internal affairs.
- Forms of Articles : Table F,G, H, I & J
- Model Articles : May adopt all or any regulations
- Entrenchment Provision :
 1. Amendment, if more restrictive provisions are inserted
 2. At the time of Incorporation or by Amendment (Special Resolution)

BASIS	MOA	V/S	AOA
Objectives	Defines & delimits the objectives of Company		Rules & Regulation for management of Company
Relationship	Company and outside world		Company and its members
Alteration	Only under certain circumstances with permission of RD/ NCLT		By passing Special Resolution
Ultra Vires	Acts done beyond MOA – void and ultravires, cannot be ratified		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 and 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
- 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.
- 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

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