

Company Act – Sec.1 – 10 Summary

<p style="text-align: center;"><u>Applicability – Sec. 1</u></p> <p>Co. Reg. under Co. Act Banking Co. Insurance Co. Generation and Supply of Electricity and Co. Co. Governed by Special Act Any Body Corporate notified by CG</p>	<p style="text-align: center;"><u>Features</u></p> <ul style="list-style-type: none"> ➤ <u>Separate Legal Entity</u> – co. can own property, have bank account, raise loans, incur liabilities and enter into contracts <u>Salomon v/s Salomon and Co. Ltd.</u> <u>Macaura Vs. Northern Assurance Co. Limited</u> ➤ <u>Perpetual Succession</u> – Its existence is not affected by the death or insolvency of its members 	
<p style="text-align: center;"><u>Corporate Veil</u></p> <p>Co. is identified separately from the members of the co. members of a company are shielded from liability connected to the company's actions</p>	<ul style="list-style-type: none"> ➤ <u>Limited liability</u> – Share Guarantee Unlimited ➤ <u>Artificial Legal Peron</u> – It can sue and be sued in its own name ➤ <u>Common Seal</u> – official signature of a company if no Common seal – signed by 2 directors or by a director and CS <p style="text-align: center;"><u>Types of Company</u></p>	
<p>Lifting of Corporate Veil when questions of control are involved rather than merely a question of ownership Where company law disregards the principle of corporate personality</p> <p>To determine the character of co. - <u>Daimler Co. Ltd. vs. Continental Tyre & Rubber Co.</u></p> <p>To Protect Tax – <u>Dinshaw Maneckjee Petit</u></p> <p>To avoid legal obligation – <u>The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar vs. The Associated Rubber Industries Ltd., Bhavnagar and another</u></p>	<p style="text-align: center;"><u>On the Basis of Liability</u></p> <ul style="list-style-type: none"> ➤ <u>Co. Limited by Shares</u> – shareholder may be called upon to contribute only to the extent of the amount, which remains unpaid on his shareholdings ➤ <u>Co. Limited by Guarantee</u> – liability of the member is limited upto a stipulated sum mentioned in the memorandum in wound up ➤ <u>Unlimited Co.</u> – not having any limit on the liability of its members 	<p style="text-align: center;"><u>On the Basis of Control</u></p> <ul style="list-style-type: none"> ➤ <u>Holding Co.</u> ➤ <u>Subsidiary Co.</u> – controls the composition of the BoDs; or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies ➤ <u>Associate Co.</u> – a company in which that other company has a significant influence (20% or more voting power) and includes Joint venture Co.
<p>Formation of subsidiaries to act as agents – <u>Merchandise Transport Limited vs. British Transport Commission</u></p> <p>Company formed for fraud/improper conduct or to defeat law – <u>Gilford Motor Co. vs. Horne</u></p>	<p style="text-align: center;"><u>On the basis of Members</u></p> <ul style="list-style-type: none"> ➤ <u>OPC</u> <ul style="list-style-type: none"> ✓ MoA should indicate name of Nominee ✓ Nominee must give his prior written consent ✓ Member may change nominee any time – deemed to be no changes in MoA ✓ Only a natural person who is an Indian citizen whether resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately previous FY is eligible to incorporate OPC and be nominee ✓ No minor shall become member or nominee of the OPC ✓ Not converted in to Sec. 8 and cannot carry Non banking financial activities ✓ Penalty - fine which may extend to INR 10,000 and with a further fine which may extend to INR 1,000 for every day after the first during which such contravention continues. 	
<p style="text-align: center;"><u>Sec. 8 Co.</u></p> <ul style="list-style-type: none"> ➤ Formed for the promotion of commerce, art, science, religion, charity, protection of environment, sports, etc. ➤ Uses its profits for the promotion of the objective for which formed. 	<ul style="list-style-type: none"> ➤ <u>Private Co.</u> 	

<ul style="list-style-type: none"> ➤ Can not declare dividend to members. ➤ special licence from Central Government. ➤ Need not use the word Ltd./ Pvt. Ltd. in its name ➤ Licence revoked if conditions contravened. ➤ On revocation, Central Government may direct it to <ul style="list-style-type: none"> ✓ Converts its status and change its name ✓ Wind – up ✓ Amalgamate with another company having similar object. ➤ Can call its general meeting by giving a clear 14 days’ notice instead of 21 days. ➤ Requirement of minimum number of directors, independent directors etc. does not apply. ➤ Need not constitute Nomination and Remuneration Committee and Shareholders Relationship Committee. ➤ A partnership firm can be a member of Section 8 company. ➤ Penalty – Co. 10 lac – 1 crore & Director and Officer 25000 – 25 lac 	<ul style="list-style-type: none"> ✓ No minimum paid-up capital requirement. ✓ Minimum – 2 and Maximum members – 200, excluding present employee-cum-members and former employee-cum-members. ✓ Right to transfer shares restricted. ✓ Prohibition on invitation to subscribe to securities of the company. ➤ Small Co. <ul style="list-style-type: none"> ✓ Only A private company can become small co. ✓ Paid up capital – not more than Rs. 4 crores Or ✓ Turnover – not more than Rs. 40 crores. ✓ Should not be – Section 8 company Holding or a Subsidiary company Public co. ➤ Public Co. <ul style="list-style-type: none"> ✓ Is not a private company (Articles do not have the restricting clauses) ✓ Shares freely transferable. ✓ No minimum paid up capital requirement. ✓ Minimum – 7 and Maximum members – No limit. ✓ Subsidiary of a public company is deemed to be a public company. 						
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td data-bbox="592 943 970 1189" style="text-align: center; vertical-align: top;"> <p><u>On the basis on Access to capital</u></p> <ul style="list-style-type: none"> ➤ Listed Co. - which has any of its securities listed on any recognised stock exchange. ➤ Unlisted Co. </td> <td data-bbox="970 943 1396 1189" style="text-align: center; vertical-align: top;"> <p>Govt. Co.</p> <p>any company in which not less than 51% of the paid-up share capital is held by- the CG, or by any SGs or partly by the CG and partly by one or more SG, and includes a company which is a subsidiary company of such a government company.</p> </td> </tr> <tr> <td data-bbox="592 1189 970 1469" style="text-align: center; vertical-align: top;"> <p>Dormant Co.</p> <p>Co. formed for Future project and no significant a/c transaction or Inactive co. (not filed FS or AR from 2 years or not doing significant a/c transaction from 2 FY</p> </td> <td data-bbox="970 1189 1396 1469" style="text-align: center; vertical-align: top;"> <p>Foreign Co.</p> <p>any company incorporated outside India and has a place of business in India and conducts any business activity in India</p> </td> </tr> <tr> <td data-bbox="592 1469 970 1727" style="text-align: center; vertical-align: top;"> <p><u>No Significant A/c Transactions</u></p> <p>payment of fees to Registrar or requirements of this Act or any other law allotment of shares payments for maintenance of its office and records.</p> </td> <td data-bbox="970 1469 1396 1727" style="text-align: center; vertical-align: top;"> <p>PFI</p> <p>LIC IDFC UTI Institution Specified by CG in sec 465 Notified by CG with RBI consult</p> </td> </tr> </table>	<p><u>On the basis on Access to capital</u></p> <ul style="list-style-type: none"> ➤ Listed Co. - which has any of its securities listed on any recognised stock exchange. ➤ Unlisted Co. 	<p>Govt. Co.</p> <p>any company in which not less than 51% of the paid-up share capital is held by- the CG, or by any SGs or partly by the CG and partly by one or more SG, and includes a company which is a subsidiary company of such a government company.</p>	<p>Dormant Co.</p> <p>Co. formed for Future project and no significant a/c transaction or Inactive co. (not filed FS or AR from 2 years or not doing significant a/c transaction from 2 FY</p>	<p>Foreign Co.</p> <p>any company incorporated outside India and has a place of business in India and conducts any business activity in India</p>	<p><u>No Significant A/c Transactions</u></p> <p>payment of fees to Registrar or requirements of this Act or any other law allotment of shares payments for maintenance of its office and records.</p>	<p>PFI</p> <p>LIC IDFC UTI Institution Specified by CG in sec 465 Notified by CG with RBI consult</p>
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<p><u>Formation of Co. - Sec. 3</u> Min. members required Public Co. – 7 Private Co. – 2 OPC – 1</p>	<p><u>Effect of MoA and AoA – Sec. 10</u> where the memorandum and articles when registered, shall bind the company and the members as if signed by them</p>						
<p><u>Promoter</u></p>							

<ul style="list-style-type: none"> ✓ Whose name is mentioned in Prospectus or AR or ✓ who has control as a shareholder, or director or ✓ in accordance with whose advice, directions or instructions the BoD accustomed to act (Exception – Professional Capacity) <p style="text-align: center;">Shares</p> <p>an interest measured by a sum of money and made up of various rights contained in the contract</p> <p>Kinds of share capital</p> <ul style="list-style-type: none"> ➤ Equity share capital (which is not preference share capital) <ul style="list-style-type: none"> – ✓ with voting rights; or ✓ with differential rights as to dividend or voting ➤ Preference share capital - would carry a preferential right with respect to— <ul style="list-style-type: none"> ✓ payment of dividend, either as a fixed amount or fixed rate, and ✓ repayment, in the case of a winding up 	<ul style="list-style-type: none"> ➤ Subscribed Capital – nominal amount of shares taken up by the public ➤ Called up Capital – total amount called up on the shares issued ➤ Paid up Capital – total amount paid - called up capital less calls in arrears <p>In every notice, advertisement or other official communication or any business letter, bill head or letter - company states the authorised capital, the subscribed and paid-up capital must also be stated in equally conspicuous characters.</p> <p>Penalty – Co. 10000 Every officer who is in default - 5,000</p>
<p style="text-align: center;">Incorporation of Co. – Sec. 7</p> <p>Following documents file with Registrar-</p> <ul style="list-style-type: none"> ➤ MoA and AoA signed by all subscriber ➤ declaration by engaged CA/Advocate/CS/CMA and Director that all the requirements of this Act have been complied with. ➤ Declaration by each subscribers and first directors, if any, in the articles stating that- <ul style="list-style-type: none"> ✓ not convicted for promotion, formation or management of any company, or ✓ he has not been found guilty of any fraud or of any breach of duty during the last five years, ✓ and that all the documents - correct and complete ➤ the address for correspondence till its registered office is established; ➤ the name, address etc. of each subscriber and director (with DIN) ➤ the particulars of the interests first directors in other Body Corporate <p>Registrar shall register all the documents and information in the register and issue a certificate of incorporation and issued CIN The company shall maintain and preserve all documents copies at its registered office For any false or incorrect particulars - liable for action for fraud under section 447.</p> <p>Order of the Tribunal (after giving opportunity of being heard)</p> <ul style="list-style-type: none"> ✓ members shall be unlimited liable; or ✓ direct removal of the name of the company from the RoC; or ✓ pass an order for the winding up of the company; or ✓ pass such other orders as it may deem fit: 	<p style="text-align: center;">MoA – Sec. 4</p> <p>charter; it defines its constitution and the scope of the powers of the company</p> <p style="text-align: center;">Contents of MoA</p> <ul style="list-style-type: none"> ➤ Name Clause ➤ Registered Office Clause ➤ Object Clause ➤ Liability Clause ➤ Capital Cause ➤ Subscriber Clause <p>Printed divided into paragraphs numbered consecutively, and signed by at least 7 /2/1 persons with 1 witness</p> <p style="text-align: center;">AoA – Sec. 5</p> <ul style="list-style-type: none"> ➤ rules and regulations - framed to manage its internal affairs ➤ regulates domestic management of a company ➤ creates certain rights and obligations between the members and the company
<p>Difference Between MoA and AoA</p>	

Basis	MoA	AoA
Objective	defines the objectives of the company	determine how the objectives of the company are to be achieved
Relationship	company with the outside world	between the company and its members
Alteration	In most cases permission of the Regional Director, or the Tribunal is required	altered simply by passing a special resolution
Ultra vires	cannot be ratified even by the unanimous consent	can be ratified by a special resolution of the shareholders (if intra vires to MoA)
<u>Doctrine of Ultra vires</u> beyond (their) powers <u>Ashbury Railway Carriage and Iron Company Limited v. Riche</u> <ul style="list-style-type: none"> ➤ ultravires the co. and hence null and void ➤ ultravires, the co. cannot be ratified shareholders ➤ ultravires to directors, but intravires the co. can be ratified by the members ➤ ultravires the Articles - can be ratified by altering the Articles by a Special Resolution at a general meeting. 	<u>Doctrine of Constructive Notice</u> The MoA and AoA of a company when registered with RoC, become public documents, Sec. 399 - available for inspection to any person, on the payment of a nominal fees. It is the duty of every person, who are dealing with Co. – to inspect its documents and also understand them in their true perspective	<u>Doctrine of Indoor Management</u> exception to the doctrine of constructive notice <u>The Royal British Bank vs. Turquand</u> outsiders are deemed to have notice of the internal affairs of the company <u>Exception</u> – Actual or constructive knowledge of irregularity - <u>Howard vs. Patent Ivory Manufacturing Co.</u> Suspicion of Irregularity - <u>Anand Bihari Lal vs. Dinshaw & Co.</u> Forgery - <u>Ruben v Great Fingall Consolidated</u>

Notes

This Summary, in no way, is a substitute to the Study Material issued by ICAI. It is only a humble effort to help the students to revise their Co. Act syllabus.

Every effort has been made to avoid errors or omissions in this publication. Any mistake, error or discrepancy noted may be brought to our notice which shall be taken care of in next edition.

Wish you all the best in your study endeavors. Happy Learning!

Rishabh Gaur
Educator Since 2009

