

# *Chapter Name*



**Companies Act**

# Definition of company (Sec.2(20))

## Company

Incorporated  
under this Act

Or

Under any  
other  
previous law

2013

➤ 1913

➤ 1942

➤ 1956

# Sec. 1 of Companies Act, 2013

| Short title         | Extent                   | Application   |
|---------------------|--------------------------|---|
| Companies Act, 2013 | Extent to whole of India | <ol style="list-style-type: none"><li>1. Companies defined u/s 2(20)</li><li>2. Banking company – Except, if inconsistent with Banking Regulation Act, 1949</li><li>3. Insurance company – Except, if inconsistent with Insurance Act, 1938 or IRDA, 1999</li><li>4. Electricity company – Except, if inconsistent with Electricity Act, 2003</li><li>5. Statutory Company unless inconsistent with it's Special Act.</li></ol> |

# \* FEATURES OF COMPANY

## PLASTIC<sup>2</sup>

|   |  |  |
|---|--|--|
| P | Perpetual Succession                     | <ul style="list-style-type: none"><li>• Members may go, members may come</li><li>• Company continues to exist</li><li>• Only law has created, only law has power to dissolve it.</li></ul>   |
| L | Limited Liability                        | <ul style="list-style-type: none"><li>• Liability of members in company is Ltd</li><li>• Unpaid value of shares / guarantee.</li></ul>   |
| A | Artificial /person separate legal entity | <ul style="list-style-type: none"><li>• Co. is distinct from members of company</li><li>• In eye of law</li><li>• A Co. can own property, have bank A/c, enter into contract in its own name</li><li>• It is a separate legal person</li></ul> |
| S | Separation of ownership from Mgt.        | <ul style="list-style-type: none"><li>• Owned by members</li><li>• Managed by BOD</li></ul>  |
| T | Transferability of Shares                | <ul style="list-style-type: none"><li>• In Public Co → Shares are freely transferable from one person to another</li><li>• In Private Co. → ask BOD if transfer to outsiders</li></ul>   |
| I | Incorporated Association                 | <ul style="list-style-type: none"><li>• Comes into existence once registered under companies Act.</li></ul>  |
| C | Capacity of sue or being sued            | <ul style="list-style-type: none"><li>• In his own name</li></ul>  |
| C | Common Seal                              | <ul style="list-style-type: none"><li>• Metallic seal in which name of Co. engraved.</li><li>• Used where signature required</li><li>• Now not compulsory → instead → 2 director or 1 dir + 1 secretary can authorize</li></ul>                |

# Question

In the Flower Fans Private Limited, there are only 5 members. All of them go in a boat on a pleasure trip into an open sea. The boat capsizes and all of them died being drowned. Explain with reference to the provisions of Companies Act, 2013:

(i) Is Flower Fans Private Limited no longer in existence?

(ii) Further is it correct to say that a company being an artificial person cannot own property and cannot sue or be sued? [RTP June 2023] [MTP Jun 2022(3 Marks)]

# Answer

(i) **Perpetual Succession** – A company on incorporation becomes a separate legal entity. It is an artificial legal person and have perpetual succession which means even if all the members of a company die, the company still continues to exist. It has permanent existence. The existence of a company is independent of the lives of its members. It has a perpetual succession.

In this problem, the company will continue as a legal entity. The company's existence is in no way affected by the death of all its members.

(ii) The statement given is incorrect. the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

# Macaura vs Northern Assurance Co. Ltd.

## Fact of Case

Macaura was holder of nearly all shares and also major creditor of Co.



M insured Co.'s timber in his own name



Timber lost in fire



Can M claim insurance compensation

## Law

A member do not have insurable interest on property of company

## Conclusion

Held, insurance company was not liable to Macaura, as shareholders have not right on any item held by company

# Concept of Separate Legal entity

- Company is separate from members
- Members are shielded from act of company
- Ref. Case Salomon vs Salomon Co. Ltd.

## Fact

Salomon → shoe manufacturer from a company – Saloman & Co. Ltd. and took over his shoe business.

↓  
**Consideration**

- 20,000 shares of 1 each
- 10,000 – Debenture with charge on Co.'s Asset
- 8782 – Cash

↓  
Co. – wound up unsecured creditor claimed that salomon and Co. is one and the same , they should be paid first

## Law

**Company is a separate legal person from member**

## Conclusion

Held, Saloman is different from company. Even if he virturally holds all the shares, he as a member and as a creditor different from company. So he will have rights as secure creditor for his debentures on assets of company.



# Lifting of Corporate Veil

- Means disregarding company as a separate legal entity and pay regards to actual realities
- Can be lifted under following cases.

## 1) To determine enemy character.

- If affairs of Co./ Control under people of enemy country
- Co. Can be held as enemy Co.
- Ref. Case → Daimler Co. Ltd. vs Continental type and Rubber Co.

## 2) To Protect Tax

- To protect revenue of govt.
- Ref. case → Sir Dinshaw manickjee pettitt

## 3) To avoid legal obligation

- If sole purpose to form Co. to reduce amt to be paid by way of bonus.
- Ref. Case → workman of Associated Rubber industries vs Associated Rubber Industries Ltd.

## 4) Forming Subsidiary to act as agent

- Ref. Case → Merchandise transport Ltd. vs British Transport commission

## 5) Fraud or improper Conduct

- Where SLE used for illegal / fraudulent purpose
- Gilford motors Ltd. vs Horne

## Question

**Explain the concept of 'Corporate Veil'. Briefly state the circumstances when the corporate veil can be lifted as per the provisions of the Companies Act, 2013.**

**[June 2023 (6 Marks)]**

CA WALLAH

# Answer

**Corporate Veil:** Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company. Due to this, members of a company are shielded from liability connected to the company's actions.

**Lifting of Corporate Veil:** The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

(1) **To determine the character of the company i.e. to find out whether co-enemy or friend:** It is true that, unlike a natural person, a company does not have mind or conscience; therefore, it cannot be a friend or foe. It may, however, be characterised as an enemy company, if its affairs are under the control of people of an enemy country. For this purpose, the Court may examine the character of the persons who are really at the helm of affairs of the company.

(2) **To protect revenue/tax:** In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue. Where corporate entity is used to evade or circumvent tax, the Court can disregard the corporate identity.

(3) **To avoid a legal obligation:** Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction.

(4) **Formation of subsidiaries to act as agents:** A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company.

(5) **Company formed for fraud/improper conduct or to defeat law:** Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

## Question

A transport company wanted to obtain licences for its vehicles but could not obtain licences if applied in its own name. It, therefore, formed a subsidiary company and the application for licence was made in the name of the subsidiary company. The vehicles were to be transferred to the subsidiary company. Will the parent and the subsidiary company be treated as separate commercial units? Explain in the light of the provisions of the Companies Act, 2013.

[RTP Nov 2022]

# Answer

If the subsidiary is formed to act as agent of the Principal Company, it may be deemed to have lost its individuality in favour of its principal. The veil of Corporate Personality is lifted and the principal will be held liable for the acts of subsidiary company.

The facts of the case are similar to the case of *Merchandise Transport Limited vs. British Transport Commission (1982)*, wherein a transport company wanted to obtain licences for its vehicles but could not do so, if applied in its own name. It, therefore, formed a subsidiary company, and the application for the licence was made in the name of the subsidiary. The vehicles were to be transferred to the subsidiary company. Held, the parent and the subsidiary were held to be one commercial unit and the application for licences was rejected.

Hence, in this case the parent and the subsidiary company shall not be treated as separate commercial units.

- *A, an assessee, had large income in the form of dividend and interest. In order to reduce his tax liability, he formed four private limited company and transferred his investments to them in exchange of their shares. The income earned by the companies was taken back by him as pretended loan. Can A be regarded as separate from the private limited company he formed? (module)*

# ANSWER

- In the instant case, the four private limited companies were formed by A, the assessee, purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the assessee himself. Therefore, the whole idea of Mr. A was simply to split his income into four parts with a view to evade tax. No other business was done by the company.
- Hence, A cannot be regarded as separate from the private limited companies he formed.

## Private company [Sec. 2(68)]

## Public company [Section 2(71)]

1. Prohibits any invitation to the public to subscribe for any securities of the company.
2. Cannot invite deposits from public
3. Restricts the right to transfer its shares;
4. limits the number of its members to 200

- Is not a private company
- Is a private company which is a subsidiary of a public company,

### Rules for calculation of 200

1. Joint members of shares = 1 member
2. Past and present employee not counted



# Question

24. Aqua Limited was registered as a public company. There are 230 members in the company as noted below:

|  |     |
|--|-----|
| (a) Directors and their relatives  | 190 |
| (b) Employees  | 15  |
| (c) Ex-Employees (Shares were allotted when they were employees            | 10  |
| (d) 5 couples holding shares jointly in the name of husband and wife (5*2) | 10  |
| (e) Others   | 5   |

The Board of Directors of the company proposes to convert it into a private company. Also advise whether reduction in the number of members is necessary.

[MTP Apr 2023(3 Marks)]

# Answer

According to section 2(68) of the Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, limits the number of its members to two hundred.

However, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

It is further provided that—

- (A) persons who are in the employment of the company; and
- (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,  
shall not be included in the number of members.

In the instant case, Aqua Limited may be converted into a private company only if the total members of the company are limited to 200.

# OPC [Sec. 2(62)]

## Basics

- Company formed by only 1 person
- Private Company
- Appointing nominee compulsory

## Qualification for Member/nominee

- Natural Person
- Indian Citizen
- Resident of India or otherwise
- For Resident – stay of Atleast 120 days in Previous (F.Y)

## Restrictions

- One person member of only one OPC
- 1 person nominee of only 1 opc
- If he becomes member of 2 opcs by virtue of death where he was nominee , he shall decide which opc to continue within 180 days
- Minor cannot become nominee or member
- Cannot be converted into sec. 8 companies
- Cannot invest into securities of any company
- Cannot carry non banking financial activity

## Other imp points

- Now no limit on P.U.C or turnover
- No provision of compulsory conversion
- OPC can anytime convert into any other Co except sec 8 co

*Naveen incorporated a "One Person Company" making his sister Navita as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.*

- a) If Navita is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?*
- b) If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company?  
**(module)***

- (A) No , since she is Indian Citizen , Residency doesn't matter
- (B) Yes, Navita can continue her nomination in the said OPC maintaining status doesn't matter

CA WALLAH

## Question

13. Mr. R is an Indian citizen, and his stay in India during the immediately preceding financial year is for 130 days. He appoints Mr. S, a foreign citizen, as his nominee, who has stayed in India for 125 days during the immediately preceding financial year. Is Mr. R eligible to be incorporated as a One-Person Company (OPC)? If yes, can he give the name of Mr. S in the Memorandum of Association as his nominee? Justify your answers with relevant provisions of the Companies Act, 2013.

[May 2022 (3 Marks)]

# Answer

Law - As per the provisions of the Companies Act, 2013, only a natural person who is an Indian citizen and resident in India or otherwise can become member or even nominee in OPC

Resident in india means -person who stayed in India for a period of not less than 120 days during immediately preceding financial year)

R can be member as he is Indian Citizen

and S cannot be nominee as not Indian citizen

## Question

8. Mr. Anil formed a One Person Company (OPC) on 16 April, 2018 for manufacturing electric cars. The turnover of the OPC for the financial year ended 31 March, 2019 was about ₹ 2.25 crores. His friend Sunil wanted to invest in his One Person Company (OPC), so they decided to convert it voluntarily into a private limited company. Can Anil do so, as per the provisions of the Companies Act, 2013?

[Nov. 2022 (4 Marks)]



# Answer

Section 2(62) of the Companies Act, 2013 defines one person company as a company which has only one person as a member. However, a private company shall have minimum 2 members without any restriction on the share capital or turnover. If OPC is converted into private company Mr. Anil and Mr. Sunil both can be the members of the company and investment from Mr. Sunil can be accepted.

A One Person Company can voluntarily convert itself into a private company by following the compliances given under the Companies Act, 2013.

In the instant case, OPC formed by Mr. Anil can be voluntarily converted into a private company by following the compliances given under the Companies Act, 2013. Here, the information given relating to turnover for the financial year ended 31st March, 2019 is immaterial.

# SMALL COMPANY [SEC. 2 (85)]

## Conditions

## Following cannot be small company

(1) Paid up share capital

- Does not exceed 4 cr

&

(2) Turnover (as per last P &L)

- Does not exceed 40 cr.

(a) Public company

(b) Holding company of any company

(c) Subsidiary of any company

(d) Sec. 8 company

(e) Statutory company

CA WALLAH

# ON THE BASIS OF CONTROL

**Holding & Subsidiary Co.**  
Sec 2 (87)



Relation exist between 2 Co. if

- i. **A Company**
  - **Itself**
  - **Itself & subsidiary**
  - **Through subsidiaries**

↓

Holds more than 50% voting rights in other company
- ii. **It controls composition of BOD in other company** (i.e can appoint or remove majority of BOD)

**Associate Co. 2(6)**



If other co. hold significant influence in that co. but not subsidiary



**i.e. atleast 20% ,Max 50% of total voting powers**  
**Includes joint venture co.**

## Question

**Explain the classification of the companies on the basis of control as per the Companies Act, 2013.**

**[RTP June 2023]**

**CA WALLAH**

## Question

14. BC Private Limited and its subsidiary KL Private Limited are holding 90,000 and 70,000 shares respectively in PQ Private Limited. The paid-up share capital of PQ Private Limited is ₹ 30 Lakhs (3 Lakhs equity shares of ₹ 10 each fully paid). Analyse with reference to provisions of the Companies Act, 2013 whether PQ Private Limited is a subsidiary of BC Private Limited. What would be your answer if KL Private Limited is holding 1,60,000 shares in PQ Private Limited and no shares are held by BC Private Limited in PQ Private Limited?

[RTP Dec 2023]

# Answer

In the instant case, BC Private Limited together with its subsidiary KL Private Limited is holding 1,60,000 shares (90,000 + 70,000 respectively) which is more than one half in nominal value of the Equity Share Capital of PQ Private Limited. Hence, PQ Private Limited is subsidiary of BC Private Limited.

(ii) In the second case, the answer will remain the same. KL Private Limited is a holding 1,60,000 shares i.e., more than one half in nominal value of the Equity Share Capital of PQ Private Limited (i.e., holding more than one half of voting power). Hence, KL Private Limited is holding company of PQ Private Company and BC Private Limited is a holding company of KL Private Limited.

Hence, by virtue of Chain relationship, BC Private Limited becomes the holding company of PQ Private Limited.

## Question

4. ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ₹ 15 crores and convertible preference shares worth ₹ 10 crores during the financial year 2022-23. The total share capital of the company is ₹ 100 crores.

Comment on whether XYZ Limited would be called an Associate Company as per the provisions of the Companies Act, 2013? Also define an Associate Company.

[June 2023 (4 Marks)]

# Answer

In the instant case, ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ₹ 15 crore and convertible preference shares worth ₹10 crore during the financial year 2022-23 out of the total share capital of ABC Limited of ₹ 100 crore.

Since XYZ Limited is holding only 15% significant influence (₹ 15 crore equity shares with voting rights) in ABC Limited, which is less than twenty per cent, XYZ Limited is not an Associate company of ABC Limited.

CA WALLAH

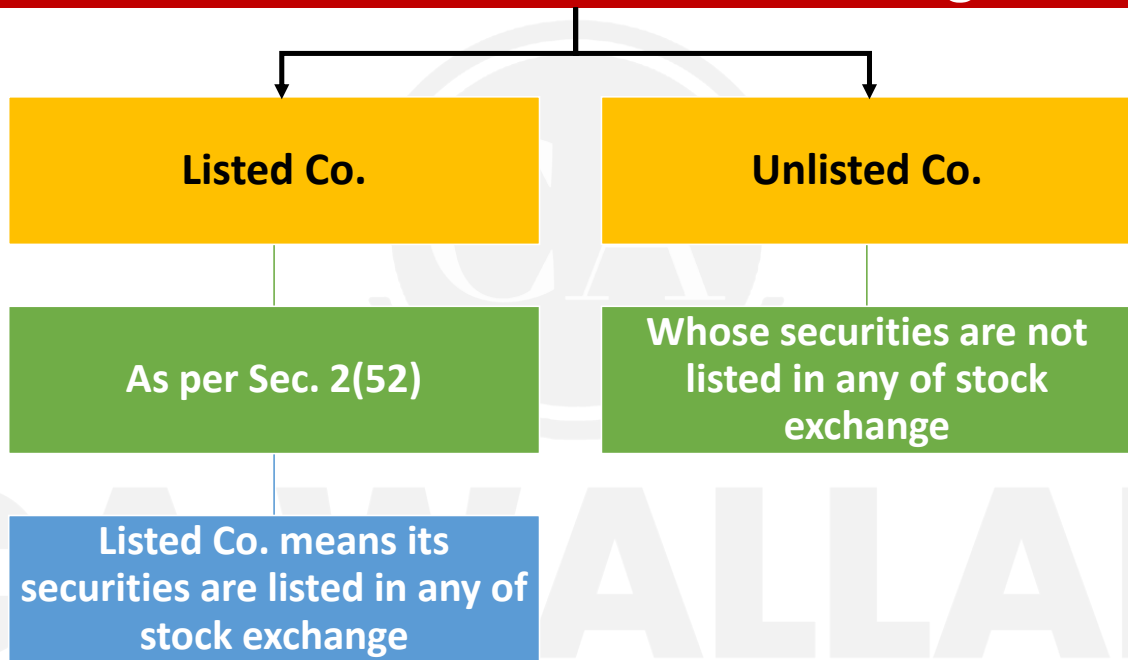


# Classification

## On the Basis of Liability



# Classification on basis of listing



Note: -To be listed company only it's equity shares should be listed that too in India.

## Question

**Explain listed company and unlisted company as per the provisions of the Companies Act, 2013.**

**[Nov. 2022 (2 Marks)]**

**CA WALLAH**

Means any company in which not less than fifty- one per cent. of the paid-up share capital (having voting rights ) is held by-

- i. the Central Government, or
- ii. by any State Government or Governments, or
- iii. partly by the Central Government and partly by one or more State Governments,

And the section includes a company which is a subsidiary company of such a Government company;

## Question

15. Narendra Motors Limited is a Government Company. Shah Auto Private Limited have share capital of ₹ 10 crore in the form of 10,00,000 shares of ₹ 100 each. Narendra Motors Limited is holding 5,05,000 shares in Shah Auto Private Limited. Shah Auto Private Limited claimed the status of Government Company. Advise as legal advisor, whether Shah Auto Private Limited is government company under the provisions of Companies Act, 2013?

[RTP Dec 2023]

# Answer

**Law – Quote both sec 2(45 ) and sec 2(87)**

**Conclusion -** By virtue of provisions of Section 2(87) of Companies Act, 2013, Shah Auto Private Limited is a subsidiary company of Narendra Motors Limited because Narendra Motors Limited is holding more than one-half of the total voting power in Shah Auto Private Limited. Further as per Section 2(45), a subsidiary company of Government Company is also termed as Government Company. Hence, Shah Auto Private Limited being subsidiary of Narendra Motors Limited will also be considered as Government Company.

# Question

The State Government of X, a state in the country is holding 48 lakh shares of Y Limited. The paid up capital of Y Limited is ₹ 9.5 crore (95 lakh shares of ₹ 10 each). Y Limited directly holds 2,50,600 shares of Z Private Limited which is having share capital of ₹ 5crore in the form of 5 lakh shares of ₹ 100 each. Z Private Limited claimed the status of a subsidiary company of ₹ 100 each. Z Private Limited claimed the status of a subsidiary company of Y Limited as well as a Government company. Advise as a legal advisor, whether Z Private Limited is a subsidiary company of Y Limited as well as a Government company under the provisions of the Companies Act, 2013?

[Dec 2023(4 Marks)]

# Answer

According to Section 2(45) of the Companies Act, 2013, Government Company means any company in which not less than 51% of the paid-up share capital is held by-

- (i) the Central Government, or
- (ii) by any State Government or Governments, or
- (iii) partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company.

As per Section 2(87) of the Companies Act, 2013, “subsidiary company” in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises 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.

In the instant case, the State Government of X, a state in the country is holding 48 Lakh shares in Y Limited which is below 51% of the paid up share capital of Y Limited i.e. 48.45 Lakh shares (51% of 95 Lakh shares). Hence Y Limited is not a Government Company.

Further, Y Limited directly holds 2,50,600 shares in Z Private Limited, which is more than one-half of the total shares of Z Limited i.e. 2,50,000 shares (50% of 5 Lakh shares). Thus, the Company controls more than one-half of the total voting power of Z Limited. Hence Z Private Limited is a subsidiary of Y Limited.

Therefore, we can conclude that Z Private Limited is a subsidiary of Y Limited but not a Government Company since Y Limited is not a Government Company.



**Means any company or body corporate incorporated outside India which—**

- i. Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and**
- ii. Conducts any business activity in India in any other manner**

## Question

**10. Mike LLC incorporated in Singapore having an office in Pune, India. Analyse whether Mike LLC would be called as a foreign company as per the provisions of the Companies Act, 2013? Also explain the meaning of foreign company.**

**[Nov. 2022 (3 Marks)]**

# Answer

Mike LLC is incorporated in Singapore and having a place of business in Pune, India. Since, Mike LLC is incorporated outside India and having a Place of business in India, hence it is a foreign Company.

**Foreign Company [Section 2(42) of the Companies Act, 2013]:** It means any company or body corporate incorporated outside India which—

- (i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (ii) conducts any business activity in India in any other manner.

# SEC. 8 COMPANY NOT FOR PROFIT

## Conditions

1. Object to promote Art, Science, sports, Education, Social welfare, etc.
2. Apply profit only for its purpose
3. No payment of dividend to members

## Applications

- To C.G
- ROC issues license
- Note - Firm can also become member in sec 8 Co

## Effect of license

- No use of word Ltd. or Pvt. Ltd.
- Many tax benefits

## Revocation of license

- C.G may revoke
- If breach in conditions

## Effect of Revocation

- Needs to register in any other company
- Wind up
- Amalgamate with other Sec 8 Co having similar object

## Question

**23. Can a non-profit organization be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt?**

**[MTP Nov 2022(6 Marks)]**

CA WALLAH

## Question

20. A Company registered under Section 8 of the Companies Act, 2013, has been consistently making profits for the past 5 years after a major change in the management structure. Few members contented that they are entitled to receive dividends. Can the company distribute dividend? If yes, what is the maximum percentage of dividend that can be distributed as per provisions of the Companies Act, 2013? Also, to discuss this along with other regular matters, the company kept a general meeting by giving only 14 days' notice. Is this valid?

[RTP Nov 2022]

## Answer

**A company registered under Section 8 of the Companies Act, 2013 is prohibited from the payment of any dividends to its members.**

**Hence in the given case, the contention of the members to distribute dividend from the profits earned is wrong.**

**Also, Section 8 company is allowed to call a general meeting by giving 14 days instead of 21 days.**

# Question

21. A, B and C has decided to set up a new club with name of ABC club having objects to promote welfare of Christian society. They planned to do charitable work or social activity for promoting the art work of economically weaker section of Christian society. The company obtained the status of section 8 company and started operating from 1st April, 2017 onwards.

However, on 30th September 2019, it was observed that ABC club was violating the objects of its objective clause due to which it was granted the status of section 8 Company under the Companies Act 2013.

Discuss what powers can be exercised by the central government against ABC club, in such a case?

[RTP May 2022]



# Answer

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them.

Since ABC Club was a Section 8 company and it was observed on 30 th September, 2019 that it had started violating the objects of its objective clause. Hence in such a situation the following powers can be exercised by the Central Government:

- (i) The Central Government may by order revoke the licence of the company
- (ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.
- (iii) However, no such order shall be made unless the company is given a reasonable opportunity of being heard.

# Public Financial Institutions [Sec 2(72)]

## Specified

- a) LIC
- b) Infrastructure development finance company ltd.
- c) UTI
- d) Institutions already notified under 1956 Act
- e) Any other notified by CG in consultation with RBI

## Notified

### Rules to notify

- a) Constituted under any Central or State Act
- b) Not less than 51%

↓  
Paid up Capital

↓  
CG/SG/ Partly by CG and partly by SG

- A company which has no significant accounting transaction, is called as a Dormant Company

"Significant accounting transaction" means any transaction other than- (RAAM)

- R**- payment of fees by a company to the Registrar;
- A**-payments made by it to fulfil the requirements of this Act or any other law
- A**-allotment of shares to fulfil the requirements of this Act; and
- M** - payments for maintenance of its office and records.

Note - "Inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years

## Question

3. MTK Private Limited is a company registered under the Companies Act, 2013 on 5th January, 2021. The company has not started its business till now. On 7th April, 2023, a notice has been received from ROC for non-filing of FORM No-INC-20A. Identify under which category MTK Private Limited company is classified. Explain the definition of the category of the company in detail.

[Dec 2023(3 Marks)]

# Answer

**“Inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years. [Explanation (i) to Section 455 of the Companies Act, 2013]**

**“Significant accounting transaction” means any transaction other than—**

- (a) payment of fees by a company to the Registrar;**
- (b) payments made by it to fulfil the requirements of this Act or any other law;**
- (c) allotment of shares to fulfil the requirements of this Act; and**
- (d) payments for maintenance of its office and records.**

**[Explanation (ii) to Section 455 of the Companies Act, 2013]**

**In the instant case, MTK Private Limited was registered on 5th January, 2021 and has not started its business till now. On 7th April, 2023, a notice has been received from ROC for non-filing of Form No. INC-20A. Since the Company has not started its business and a period of more than two years have already elapsed, it will be treated as an inactive company.**

# Nidhi Company [Sec. 406]

- created mainly to cultivate habit of



Cost thrift & saving



Amounts it's members

- Main function to

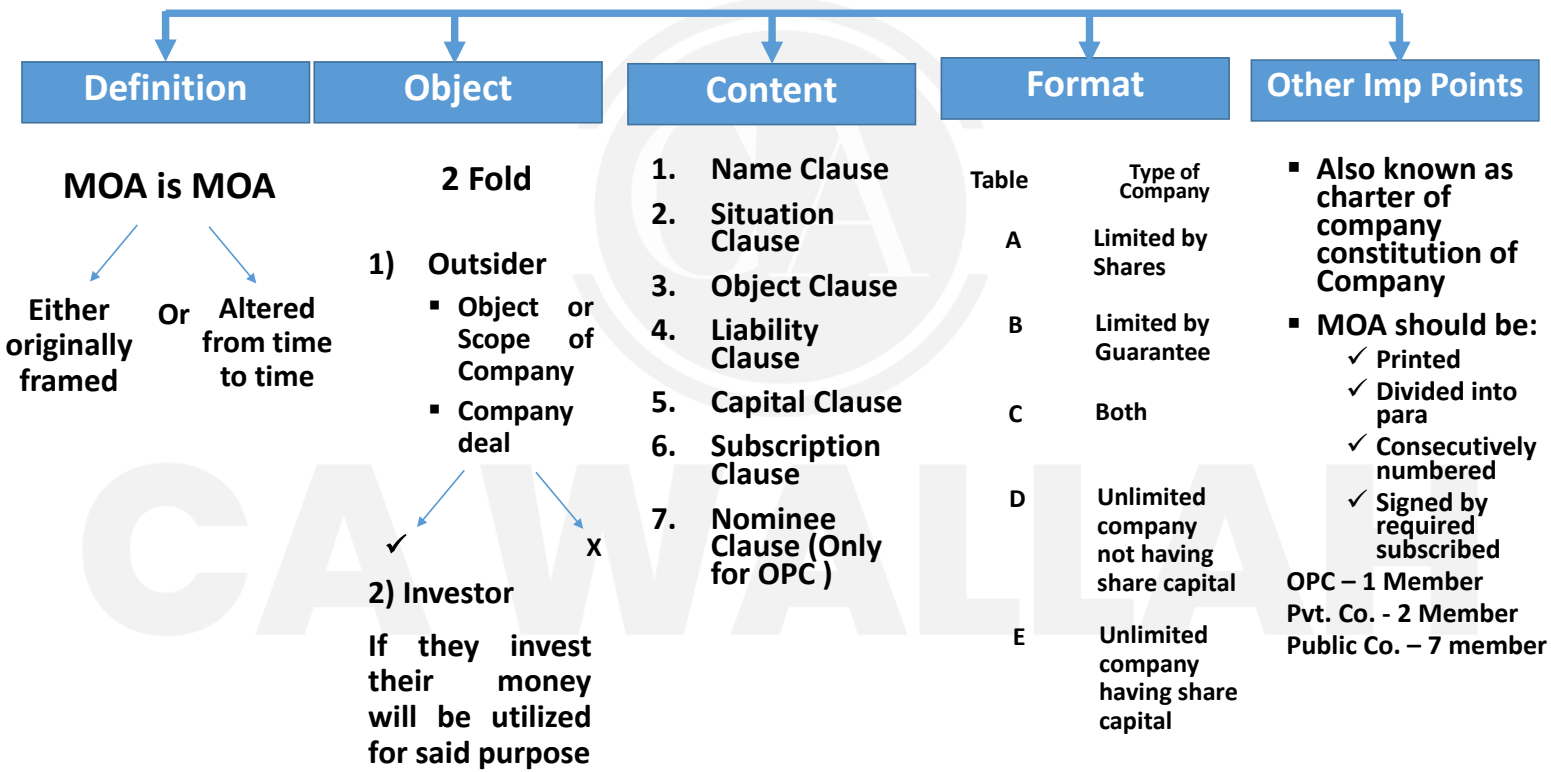
Borrow money

Lend money

Among it's members

- A.K.A mutual benefit society

# MEMORANDUM OF ASSOCIATION



# ARTICLES OF ASSOCIATION

## Definition

**AOA is AOA**

Either originally framed Or Altered from time to time

## Object

**Internal Management of the company**

## Content

**Contains Rules regarding**

- Shares
- Debentures
- Prospectus
- Meetings
- BOD
- General powers of company

## Format

Table

F

G

H

I

J

Type of Company

Limited by Shares

Both

Limited by Guarantee

Unlimited company having share capital

Unlimited company not having share capital

## Other Imp Points

- **AOA should be**
  - ✓ Printed
  - ✓ Divided into paragraphs
  - ✓ Consecutively numbered
  - ✓ Signed by required Subscribers
- OPC – 1 Member
- Pvt. Co. - 2 Member
- Public Co. – 7 member



# DOCTRINE OF ULTRA VIRES ACT (Beyond the power)

|                            | Meaning   | Effect on Contract                       | Ratification                           | Other important points   |
|----------------------------|---|--|--|--|
| Ultra vires the 'MOA'      | <b>Any act not authorised by:</b><br>a) Companies Act<br>b) Object Clause | <b>Void-ab-initio</b>                    | <b>×</b>                               | <b>1) Member may obtain injunction</b><br><b>2) Director personally liable, if funds misapplies or wasted.</b> |
| Ultra vires the 'AOA'      | <b>Any act not authorised or against articles</b>                         | <b>Voidable @ option of shareholders</b> | <b>can be ratified by altering AOA</b> |  |
| Ultra vires the 'Director' | <b>Any act beyond powers of directors</b>                                 | <b>Voidable @ option of shareholders</b> | <b>can be ratified by altering AOA</b> |  |

## Question

Explain the 'Doctrine of ultra vires under the Companies Act, 2013. What are the consequences of 'ultra vires' acts of the company?

[May 2022 (6 Marks)]

CA WALLAH

# Question

ABC Limited was into sale and purchase of iron rods. This was the main object of the company mentioned in the Memorandum of Association. The company entered into a contract with Mr. John for some finance related work. Later on, the company repudiated the contract as being ultra vires.

With reference to the same, briefly explain the doctrine of “ultravires” under the Companies Act, 2013. What are the consequences of ultravires acts of the company?

[RTP June 2023]

# Answer

**Law - Doctrine of ultra vires**

**Conclusion - Hence in the given case, ABC Limited cannot enter into a contract outside the purview of its object clause of Memorandum of Association as it becomes ultra vires and thus null and void.**

CA WALLAH

# ASHBURY RAILWAY CARRIAGE AND IRON CO. LTD V/S RICHIE

**Object clause of company**

- a) Make, Sell, lend, hire → railway carriage, wagons
- b) Carry on mechanical engineering & gen contractors
- c) Purchase, lease, word, sell → mine, minerals, land & building

**Contract by company**

**For financing of construction of railway line in Belgium**

**Decision by court**

- ultra vires act
- Financing is different from mechanical engineering
- Even general contractor can define it's meaning from mechanical engineer.

# Doctrine of Constructive Notice

- i. MOA, AOA is a public document. It is available to outsiders at a reasonable cost**
- ii. So, it is presumed that anybody dealing with company have read MOA & AOA of the company**
- iii. If not, outsider is at fault and such contract will not be enforceable on company**
- iv. This doctrine operates in favour of company & protects company from outsider**
- v. Ref. Case → Kotla Venkata Swamy vs C. Ram Murti**

# Kotal Venkata Swamy vs C. Ram Murthi

## Facts

Whether Co. will be liable on contract where AOA specified signature of M.D, Sec. & WTD, However on a mortgage deed, only secretary and WTD signed

## Law

Doctrine of Constructive

## Conclusion

No contract will not be enforceable on the company

# Doctrine of Indoor Management

- i. It is exception to doctrine of constructive notice**
- ii. Although outsider dealing with co. should appraise themselves with MOA, AOA, but they are not require to inquire into internal management of company**
- iii. So, if it is a case of internal irregularity, company is at fault and such contracts will be enforceable on company.**
- iv. This doctrine protects outsider form company and operates in favour of outsiders**
- v. Ref. Case → Royal British Bank vs Turquand**



# Royal British Bank vs Turquand

## Facts

AOA specified that Co. can borrow money only when resolution by shareholders will be passed but co. borrowed money without consent of shareholders whether co. will be liable on the contract

## Law

Doctrine of Indoor Management

## Conclusion

Contract will be liable on company

# Question

11. The Articles of Association of Aarna Limited empowers its managing agents to borrow loans on behalf of the company. Ms. Anika, the director of the company, borrowed ₹ 18 Lakhs in name of the company from Quick Finance Limited, a non-banking finance company. Later on, Aarna Limited refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed by the company and therefore the company is not liable to pay such loan.

Decide whether the contention of Aarna Limited is correct in accordance with the provisions of the Companies Act, 2013?

[May 2022 (4 Marks)]

# Answer

## Law – Quote Doctrine of Indoor Management

**Conclusion -**In the given question, Quick Finance Limited being external to the company, need not enquire whether the necessary resolution was passed properly. Even if Aarna Limited claims that no resolution authorizing the loan was passed, Aarna Limited is bound to repay the loan to Quick Finance Limited.

CA WALLAH

# Exceptions to Indoor Management

**1. Knowledge of irregularity**

**Howard vs Patent Ivory Manufacturing company**

**2. Negligence  
Suspicious  
Circumstances or  
unusual magnitude of  
transactions**

**Anand Bihari Lal vs Dinshaw & Company**

**3. Forgery**

**Ruben vs Great Fingall Consolidated Company**

**4. No knowledge of  
articles**

**Rama Corporation vs Proved Tin & General Investment  
Company Ltd.**

**5. Illegal  
ransactions**

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- *Explain clearly the doctrine of 'Indoor Management' as applicable in cases of companies registered under the Companies Act, 2013. Explain the circumstances in which an outsider dealing with the company cannot claim any relief on the ground of 'Indoor Management'. (module)*

# Question

7. Mr. R, a manufacturer of toys approached MNO Private Limited for supply of raw material worth ₹ 1,50,000/-. Mr. R was offered a credit period of one month. Mr. R went to the company prior to the due date and met Mr. C, an employee at the billing counter, who convinced the former that the payment can be made to him as the billing-cashier is on leave.

Mr. R paid the money and was issued a signed and sealed receipt by Mr. C. After the lapse of due date, Mr. R received a recovery notice from the company for the payment of ₹ 1,50,000/-.

Mr. R informed the company that he has already paid the above amount and being an outsider had genuine reasons to trust Mr. C who claimed to be an employee and had issued him a receipt.

The Company filed a suit against Mr. R for non-payment of dues. Discuss the fate of the suit and the liability of Mr. R towards company as on current date in consonance with the provision of the Companies Act 2013? Would your answer be different if a receipt under the company seal was not issued by Mr. C after receiving payment?

[Nov. 2022 (4 Marks)]

# Answer

(i) Fate of the suit and the liability of Mr. R towards the company:

## Doctrine of the Indoor Management

According to the Doctrine of the Indoor Management, the outsiders are not deemed to have notice of the internal affairs of the company. They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required. This is the indoor management rule, that the company's indoor affairs are the company's problem. This rule has been laid down in the landmark case-the Royal British Bank vs. Turquand. (Known as "Turquand Rule")

In the instant case, Mr. R is not liable to pay the amount of ₹ 1,50,000 to MNO Private Limited as he had genuine reasons to trust Mr. C, an employee of the company who had issued him a signed and sealed receipt.

(ii) Liability of Mr. R in case no receipt is issued by Mr. C:

Exceptions to doctrine of indoor management: Suspicion of irregularity is an exception to the doctrine of indoor management. The doctrine of indoor management, in no way, rewards those who behave negligently. It is the duty of the outsider to make necessary enquiry, if the transaction is not in the ordinary course of business.

If a receipt under the company seal was not issued by Mr. C after receiving payment, Mr. R is liable to pay the said amount as this will be deemed to be a negligence on the part of Mr. R and it is his duty to make the necessary enquiry to check that whether Mr. C is eligible to take the payment or not.

# Howard vs Patent Ivory Manufacturing company

**AOA specified resolution for borrowing more than Rs. 1000**



**Co. borrowed money from Directors themselves**



**But no resolution passed**



**Held directors had knowledge of irregularity so they cannot claim  
defense from indoor management**



**Contract liable only for 1000**



# Ruben vs Great Fingall Consolidated Company

**Secretary issued share certificate by forging signature of 2 directors**



**Held that in forgery, protection of indoor management will not apply & contract will not be liable on company**

CA WALLAH

# Promoters Sec. 2 (69)-PAC + Act = PACt

- a) who has been named as such in a **Prospectus** or
- b) is identified by the company in the **Annual return**
- c) who has **Control** over the affairs of the company, directly or indirectly
- d) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to **Act**.

**Note** - If Person is acting in his professional capacity he is not Promoter

Mr. Abhi is a Chartered Accountant and MBA by profession, has been appointed as an Executive Director on the Board of XYZ Limited. His job profile includes advising the Board of Directors of the company on various compliance matters, strategies, business plans, and risk matters relating to the company. Keeping in view of above position whether Mr. Abhi can be classified as the Promoter of XYZ Limited? Please examine the same under the provisions of the Companies Act, 2013. (RTP May 2022)

## **Hint**

As the job profile of Mr. Abhi is only limited to advise the Board of Directors on various compliance matters, strategies, business plans and risk matters relating to business of the company and that too only in a professional capacity, he will not be classified as a Promoter of XYZ Limited.

# Step to incorporate company [Sec. 7]

**Step 1** → Obtain Name of Company (Spice + Part A )

**Step 2** → File application for incorporation (Spice + Part B) (Inc.32)

**Step 3** → Attach with application form

↓  
**DM – DADA**  
↓

**D** → Details of Subscriber and first directors

**M** → MOA signed by required subscribers

**D** → Declaration from professional (CA / CS /CMA / Advocate) → **That all requirement of act and rules for incorporation complied**

**A** → AOA signed by required subscribers

**D** → Declaration from Subscribers & 1<sup>st</sup> Directors

- **Not convicted for any offence connected with formation / mgt. of Co.**
- **Not been found guilty of fraud under Co. Act. → Previous 5 years**
- **Documents filed with ROC and information – correct and complete**

**A** → Address of regd. Office/ correspondence

**Step 4** → Submit to ROC (Central registration Centre)

**Step 5** → ROC issue certificate of Incorporation (Inc-11)

# Sec. 9 Effect of Registration

On Incorporation / Registration



**COMPANY**

Becomes



**BODY CORPORATE**

**SUBSCRIBERS**

Becomes



**MEMBERS OF  
COMPANY**

**MOA & AOA  
(Sec. 10)**

Binding on  
members



**AS IF THEY THEMSELF HAVE  
SIGNED**

CA WALLAH

# Consequences Of Furnishing False Information For Incorporation

## Action by CG / Tribunal / ROC

Against PERSON

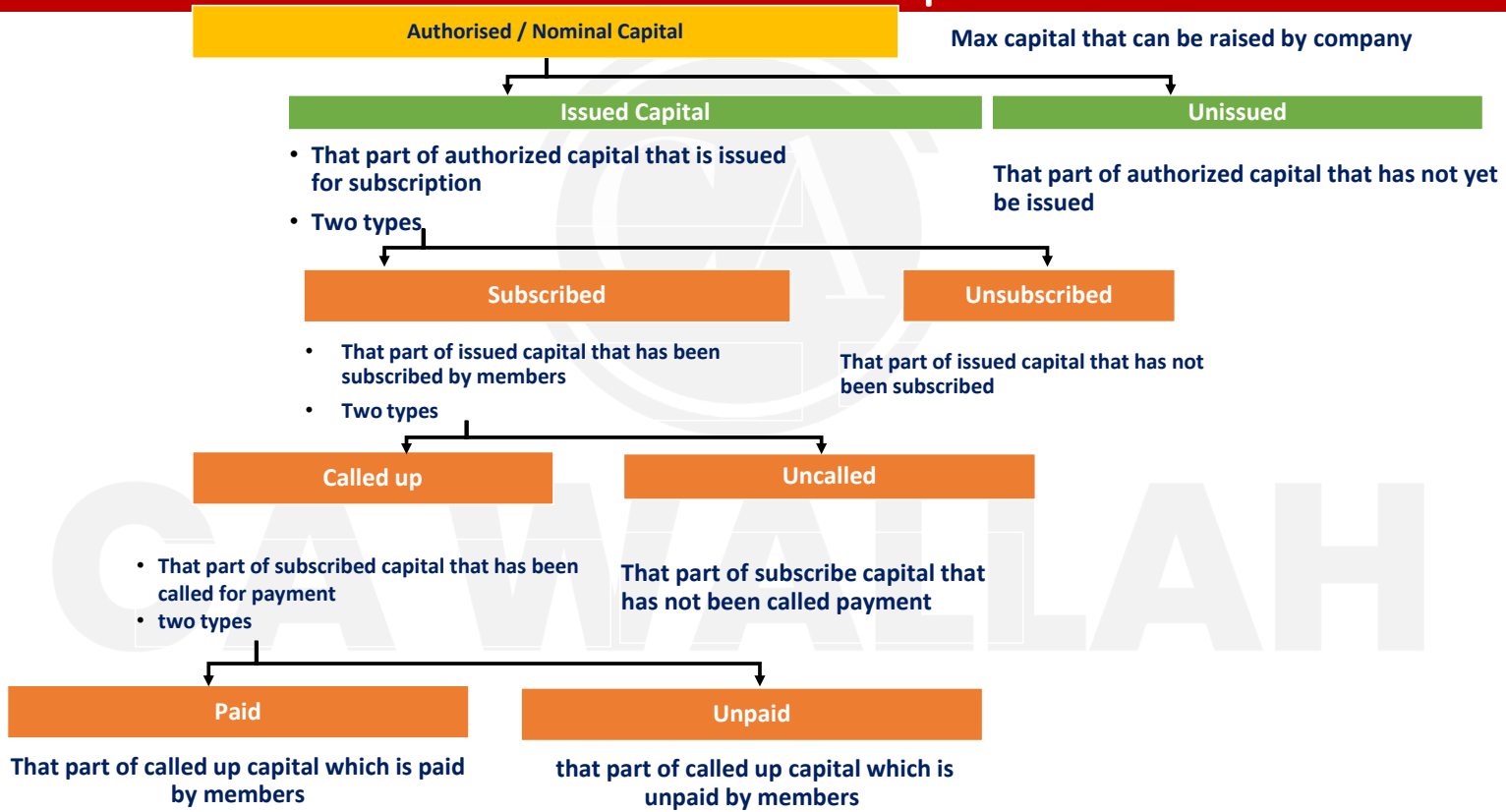
Against COMPANY

- (a) Promoters;
- (b) First Directors;
- (c) Professionals incorporating company

- i. Direct Limited liability to Unlimited
- ii. Removal of name
- iii. Pass order to wound up Company
- iv. Any order which they deem fit.

Liable u/s 447

# Classification of Capital



# \*Shares

- Share means share in share capital of company
- Movable property (Sec 44)
- Every share have distinct no. (Sec. 45) except in demat form
- Two types of shares (Sec. 43)

## Equity Shares



- Which are not preference shares
- Two types
  - (i) Normal Equity shares
  - (ii) Equity shares with Differential Voting Rights (DVR)
    - Voting /dividend different from normal shares
- Normally can vote in all matters in general meeting

## Preference Shares



→ Preference as to

Payment of dividend

Requirement of capital @ wind up

→ Fixed dividend

→ Can vote in matters related to them

## Question

**2. Explain the kinds of share capital as per the Companies Act, 2013. Also explain when the capital shall be deemed to be preference capital.**

**[Dec 2023(6 Marks)]**

CA WALLAH