14. COMPANIES ACT, 2013

11 INTRODUCTION TO COMPANIES ACT:

- . Companies Act, 2013 repealed the Companies Act, 1956.
- It has 29 chapters containing 470 sections and 7 schedules

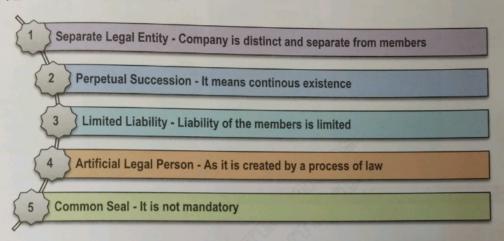
COMPANY

21 FEATURES OF A COMPANY:

2.1. COMPANY: Company means

"A company incorporated under this Act or under any previous company law."

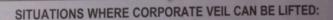
2.2 FEATURES OF A COMPANY:



3) CORPORATE VEIL:

CORPORATE VEIL (Seperate legal entity)

The members are protected from the liability that arises from the acts of the company



To determine the character of the Company

To protect revenue / tax

To avoid legal obligation

Formations of subsidiaries to act as agents

Company formed for fraud / improper conduct or to defeat law

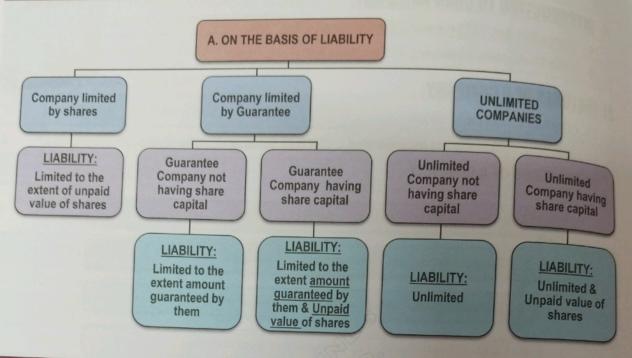




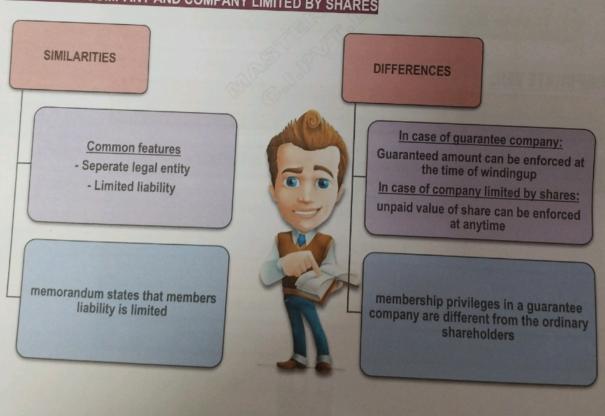


4) CLASSIFICATION OF COMPANIES:

4A. ON THE BASIS OF LIABILITY OF MEMBERS:



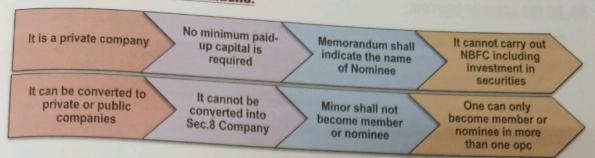
GUARANTEE COMPANY AND COMPANY LIMITED BY SHARES



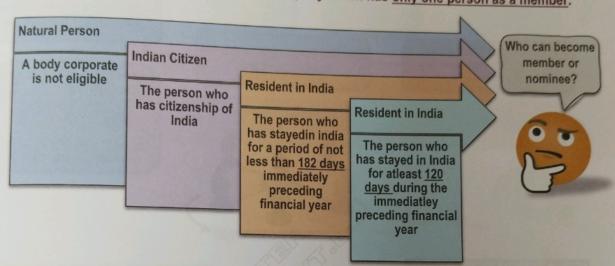
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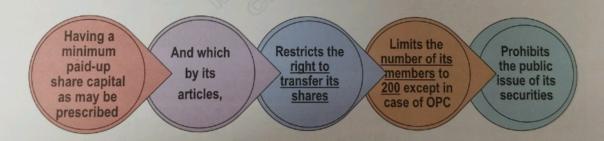
4B. ON THE BASIS OF NUMBER OF MEMBERS:



4B.1. ONE PERSON COMPANY: OPC is a company which has only one person as a member.



4B.2. PRIVATE COMPANY: Means a company.



NOTE: Joint shareholders shall be treated as single member.

Employees or ex-employees, who are members of the company by virtue of their employment shall not be included in the number of members.

4B.3. PUBLIC COMPANY:



Public company means a company

- Which is not a private company and
- Has a minimum paid-up share capital, as may be prescribed.

NOTE: Its subsidiary is also a public company.

4C.1. HOLDING COMPANY:

A company is a holding company in relation to

One or more other companies

Means a company of which such companies are subsidiary companies

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NOTE: Company' includes anybody corporate

4C.2. SUBSIDIARY COMPANY:

A company is a subsidiary company in relation to any other company

means a company in which the holding company:

HOLDING COMPANY

SUBSIDIARY COMPANIES

Controls the composition of the Board of Directors, or

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.

4C.3. ASSOCIATE COMPANY:

Associate company in relation to another company

Means a company (other than subsidiary) in which other company

Has significant influence and

Significant influence' means

OR

Includes a joint venture company

where shares with differential voting rights have not been issued, then take total paid-up share capital instead of total voting power.

control of at least 20% of total voting power

control of or participation in business decisions under an agreement.

4D. ON THE BASIS OF ACCESS OF CAPITAL:

4D.1. LISTED COMPANY:

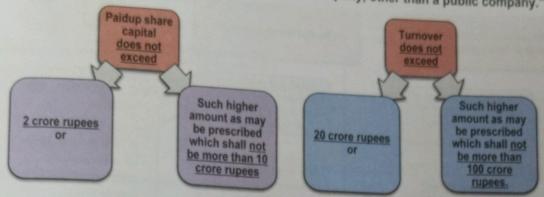
"A company which has any of its securities listed on any recognized stock exchange."

Central government in consultation with SEBI shall consider prescribed companies, which have listed or intend to list such class of securities, as unlisted companies.

4D.2. UNLISTED COMPANY: "It is a company other than listed company."

4E. OTHER COMPANIES:

4E.1. SMALL COMPANY: "Small company means a company, other than a public company."



Following cannot be considered as small company:

Holding or Subsidiary company

Statutory Company

Section 8 Company



4E.2. GOVERNMENT COMPANY:

Any company in which not less than 51% of the paid-up share capital is held by

The Central Government; or

Any State Government(s); or

Partly by the Central Government and partly by one or more State Governments

NOTE:

- Its subsidiary is also a government company.
- Take total voting power instead of share capital when the company is having differential voting rights shares.

4E.3. FOREIGN COMPANY: It means any company or body corporate incorporated outside India which

Has a place of business in India, whether

By itself or through an agent

Physically or through electronic mode, and

Conducts any business activity in India in any other manner

a) Where a company is formed and registered under this Act

> For a future project or to hold an asset or intellectual property and

Has no significant accounting transaction. b) Inactive company

Has not made any business / operation, or significant accounting transaction, or

Has not filed financial statements and annual returns.

Significant transaction means any transaction other than payments:

- to the Registrar
- to fulfil the provisions
- for maintenance
- allotment of shares to fulfil provisions

4E.5. SECTION 8 COMPANY: COMPANIES WITH CHARITABLE OBJECTS



FORMATION OF SEC. 8 COMPANY:

O Application to registrar

Licence from Central Government

PUNISHMENT IN CONTRAVENTION:

- Company shall be punishable with fine: Rs. 10 lakhs to Rs. 1 crore
- Directions and every officer in default punishable with fine: Rs. 25,000 to Rs. 25 lakhs

REVOCATION OF LICENCE:

- Contravenes Sec.8 or
- Contravenes any condition imposed on it or
- The affairs are carried on fraudulently or prejudicial to public interest.

OTHER SIGNIFICANT POINTS:

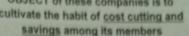
- On revocation, the Registrar shall put 'Ltd' or 'Pvt Ltd' against the company's name in the register.
- CG must give written notice and opportunity of being heard.
- CG may order to windup or amalgamate the company as per sec.8(10)

4E.6. NIDHI COMPANIES: means a company

- Which the Central Government may,
- By notification in the Official Gazette,

OBJECT of these companies is to cultivate the habit of cost cutting and savings among its members

MEG / GEG TO CA/ CMA FINAL





iii) Declare to be a Nidhi or Mutual Benefit Society, as the case may be.

4E.7. PUBLIC FINANCIAL INSTITUTIONS (PFI):



Infrastructure Development Finance Company Limited

Specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002

notified by the CG under Sec.4A(2) of the Companie Act, 1956

Statutory company or Government company can only be notified as PFI.

5) INCORPORATION OF A COMPANY:

- 5.1. PROMOTER: Promoter is a person who
 - Has been named as promoter in prospectus or annual return
 - Has control over the affairs of the company
 - In accordance with whose advice the BOD is accustomed to act.

5.2. BASIC REQUIREMENT WITH RESPECT TO THE CONSTITUTION OF THE COMPANY:



Only one person is required

Private company

Minimum - 2

Maximum - 200

Public company

Minimum - 7

Maximum - no limit

5.3. PROCEDURE FOR INCORPORATION OF A COMPANY:

Filing of documents and nformation with registrar

- Memorandum of Association and Articles of Association
- · Declaration by Professionals directors
- Address for Communication
- Particulars of First directors

Declaration by Subscribers and First

Particulars of Subscribers

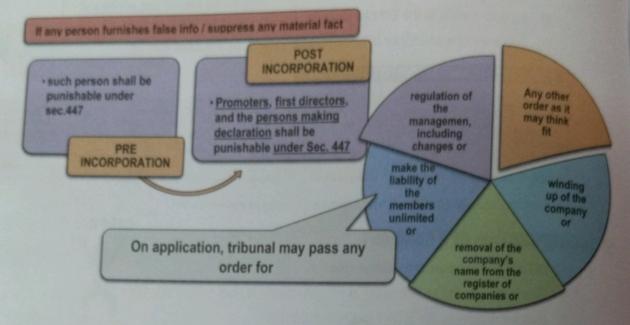
Certificate of incorporation · Registrar shall issue a certificate of incorporation in the prescribed form

Corporate Identity Number

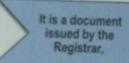
The Registrar shall allot to the company a CIN

Preservation of documents Copies of all the documents and information which is filed with registrar at the time of incorporation must be preserved, at its registered office, till its dissolution.

5.4. CONSEQUENCES FOR FURNISHING FALSE OR INCORRECT INFORMATION OR SUPPRESSION OF MATERIAL FACT:



5.5. CERTIFICATE OF INCORPORATION:

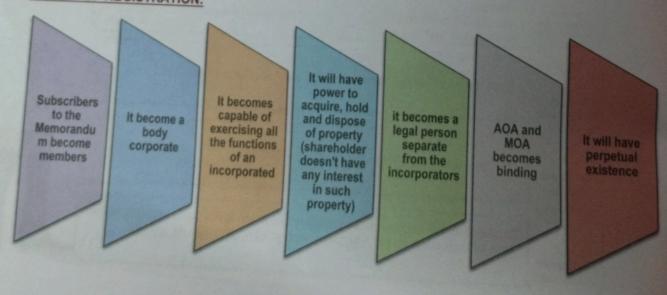


On the basis of documents and information filed for the incorporation of a company

Its acts like evidence for the incorporation.



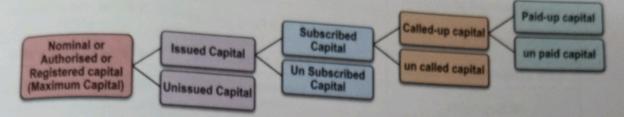
5.6. EFFECT OF REGISTRATION:



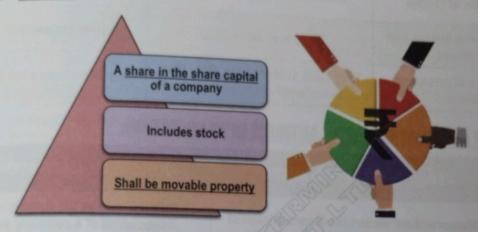
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61 CLASSIFICATION OF CAPITAL:

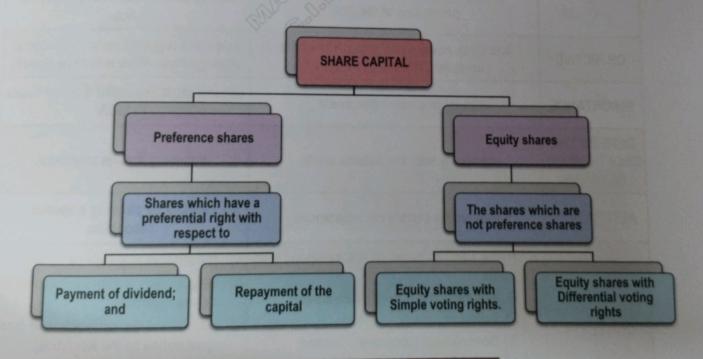
Here, the word capital refers to share-capital.



6.1. SHARES:



6.2. CLASSIFICATION OF SHARES:



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BASIS OF DISTINCTION	PREFERENCE SHARES	After preference shares	
Time of payment of dividend	Prior to equity shares		
Amount or rate of dividend	a fixed rate, or a fixed amount	It varies with amount of profits	
Time of repayment of capital	Prior to equity share capital	after preference capital	
Voting rights	no right to vote except in certain cases	They have a right to vot	
Redemption of shares	These are always redeemable	These are always irredeemable	
Entitled to bonus shares and right shares	They are not entitled	They are entitled	
Accumulation of arrears of dividend	They have such right in other than of non-cumulative preference shares	They don't have such rig	

7) MEMORANDUM OF ASSOCIATION ARTICLES OF ASSOCIATION:

BASIS O DISTINCTI		ARTICLES OF ASSOCIATION	
DEFINITIO	or <u>as altered</u> from time to time as per provisions of the Act.	'Articles' means the Articles of Association of a company as originally framed or as altered from time to time in accordance with the Act.	
OBJECTIVE	company. (What is to be done?)	rules and regulations for the internal management. (How it is to be done?)	
IMPORTANCE	most important document	second most important & Subordinate to MOA	
DEFINES THE RELATIONSHI BETWEEN		company and its members.	
ALTERATION	only under certain circumstances	simply by passing a special resolution.	
CONTENTS	i) Private company – Private limited ii) Public company – limited iii) Government Company – limited	a) It Contains regulations b) May include matters necessary for its management c) provisions for entrenchment (shall give notice to the Position of the Position	

b)	Registered	Office	Clause:	State	of
	registered of	ffice			"

- c) Objects Clause: objectives and incidental matters
- d) Liability Clause: liability of the members
- e) Capital Clause: amount of the capital
- f) Association Clause / Subscription Clause:
 Declaration and details of subscribers
- Subsequently by amendment with the consent of:
 - i) all the members private company
 - ii) special resolution public company

FORM OR FORMAT OF MOA & AOA:

al

Type of the company	MOA	AOA
Company limited by shares.	Table A	Table F
Company limited by guarantee and not having a share capital.	Table B	Table H
Company limited by guarantee and having a share capital.	Table C	Table G
Unlimited company not having share capital.	Table D	Table J
Unlimited company having share capital.	Table E	Table I

8) DOCTRINE OF ULTRA VIRES, CONSTRUCTIVE NOTICE & INDOOR MANAGEMENT

8.1. DOCTRINE OF ULTRA VIRES:

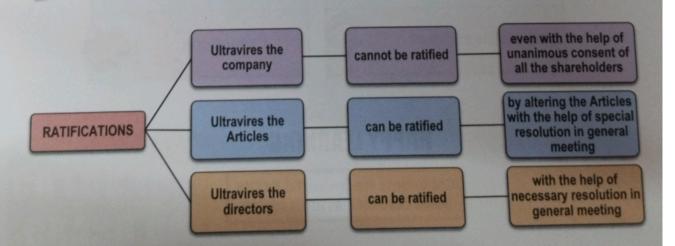
DOCTRINE:

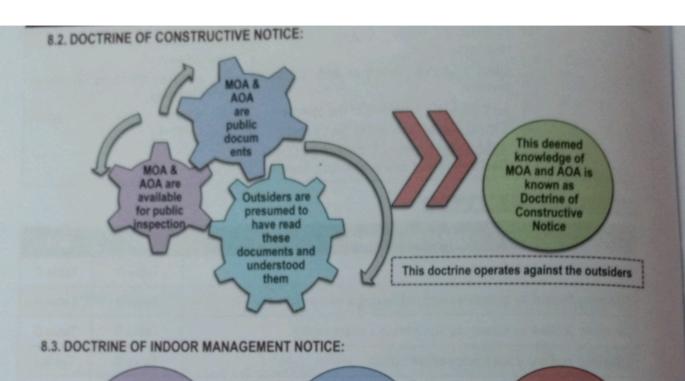
- · 'Ultra vires' means beyond the powers
- Company can do anything which is specified in objects clause of MOA.
- Any act done by the company beyond the powers is an ultra vires act.

CONSEQUENCES:

- Such contract becomes wholly void and inoperative in law.
- · Not binding upon the company.
- · Directors are personally liable.







It is a limitation of the doctrine of constructive notice



It aims to protect outsiders against the company



It is popularly known as Turquand Rule

- Internal procedures are not open to public inspection
- Outsiders are not presumed to have the knowledge of internal proceedings
- Thus, outsiders are entitled to assume that everything has been done as per AOA, MOA & Act.

What is the doctrine?



- Actual or constructive knowledge of irregularity
- · Suspicion of Irregularity
- ·Forgery

Exceptions

