

# 14. COMPANIES ACT, 2013

## 1) INTRODUCTION TO COMPANIES ACT:

- ❖ Companies Act, 2013 repealed the Companies Act, 1956.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

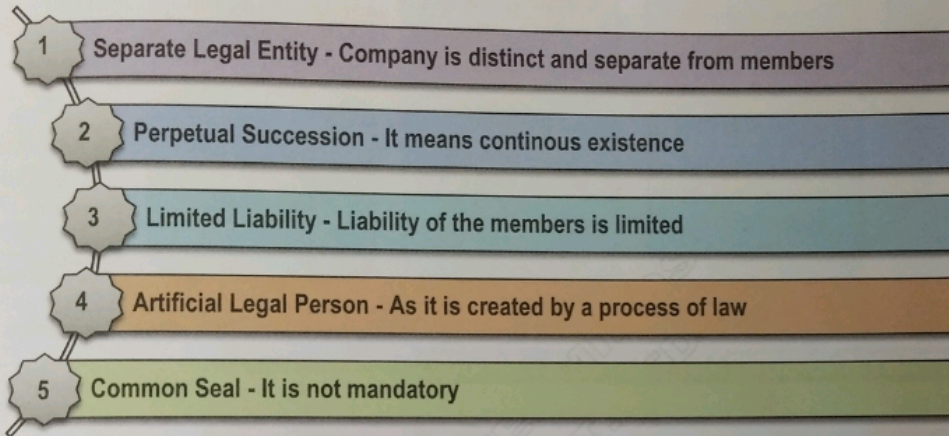


## 2) FEATURES OF A COMPANY:

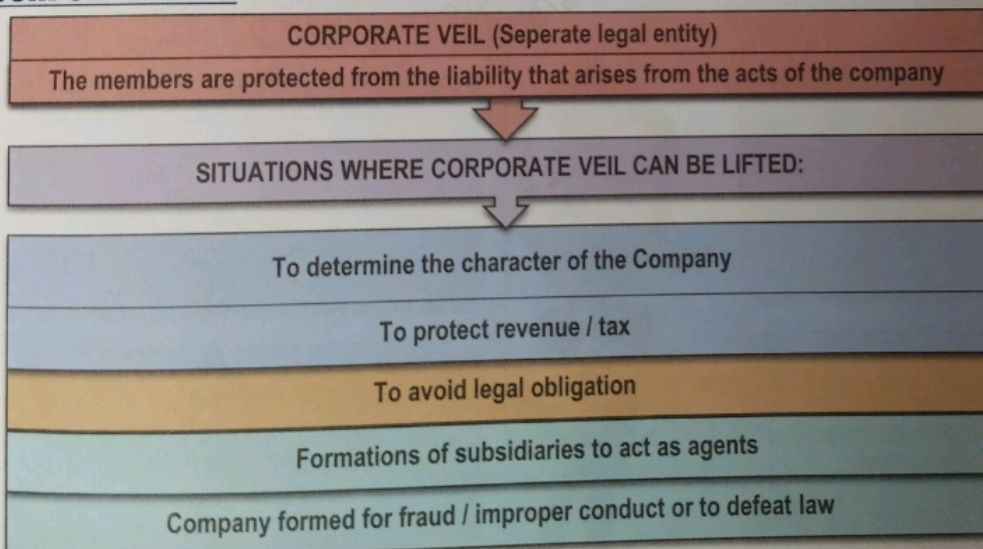
2.1. COMPANY: Company means

“A company incorporated under this Act or under any previous company law.”

2.2 FEATURES OF A COMPANY:

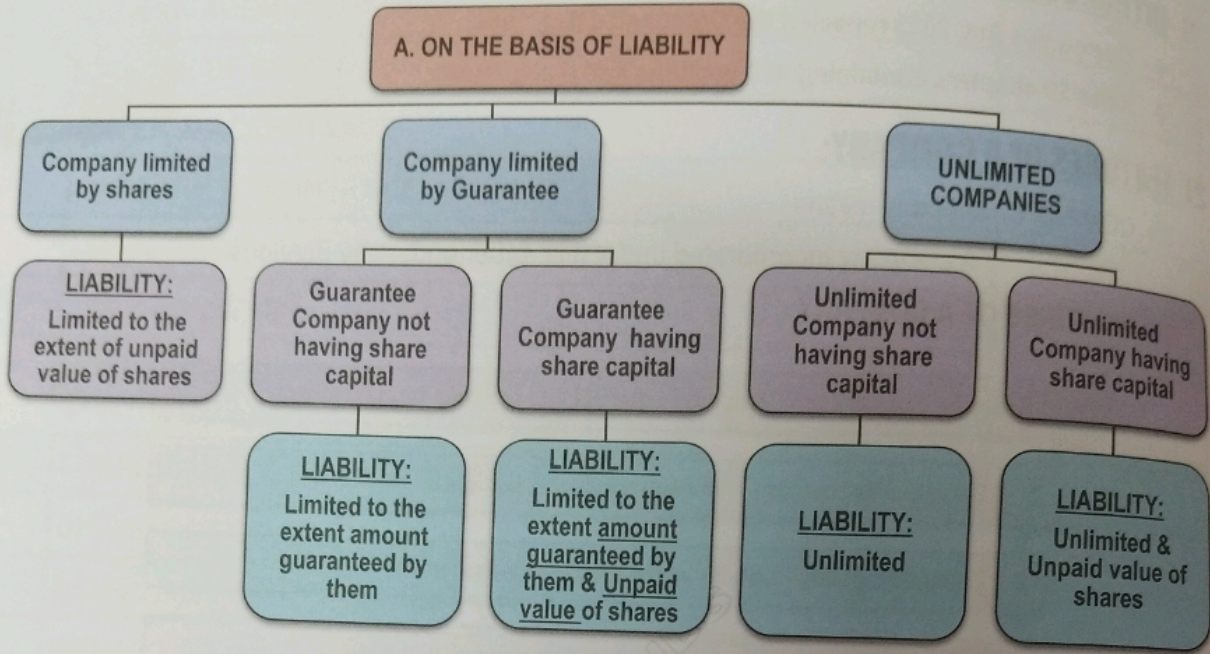


## 3) CORPORATE VEIL:

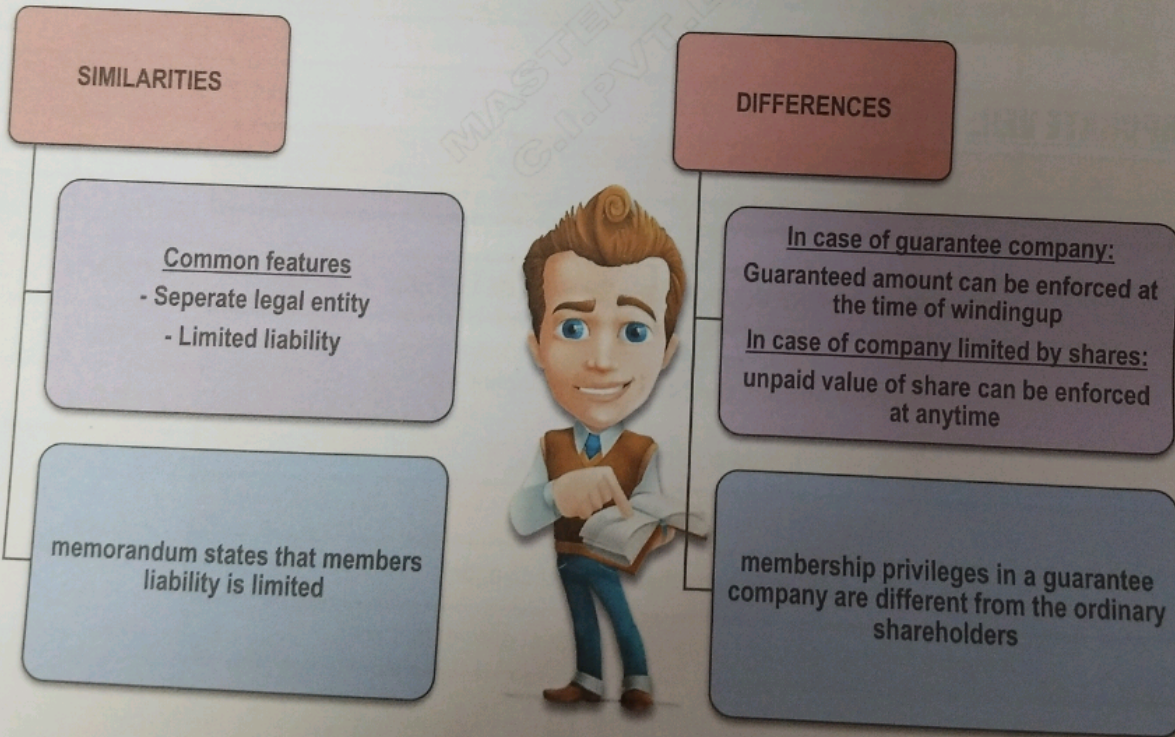


# 4) CLASSIFICATION OF COMPANIES:

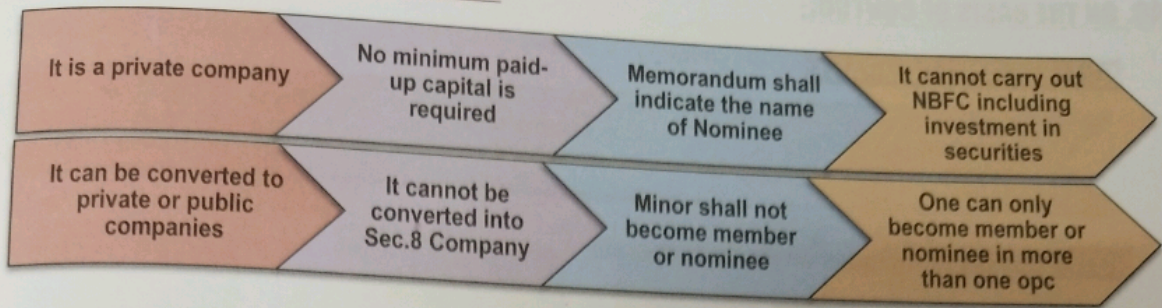
## 4A. ON THE BASIS OF LIABILITY OF MEMBERS:



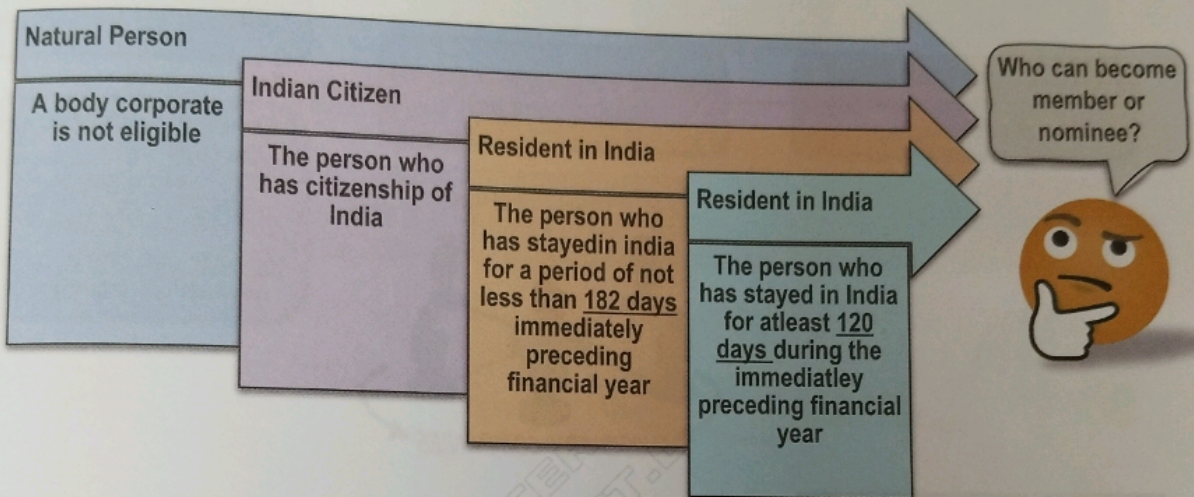
### GUARANTEE COMPANY AND COMPANY LIMITED BY SHARES



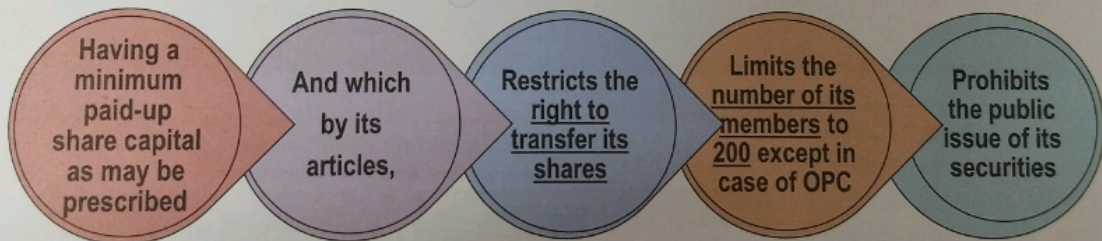
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**4B.1. ONE PERSON COMPANY:** OPC is a company which has only one person as a member.



**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:**



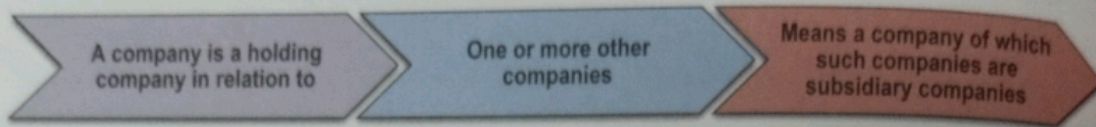
Public company means a company

- 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.

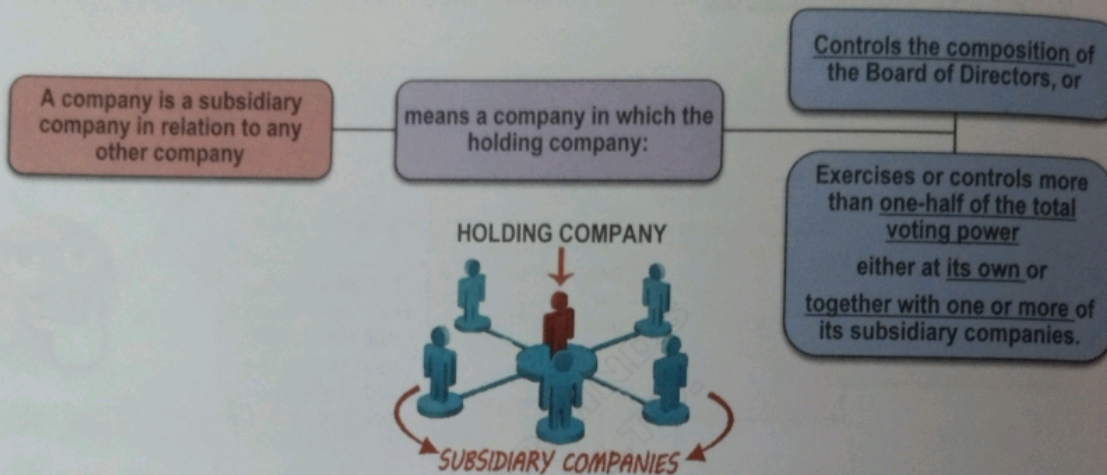
#### 4C. ON THE BASIS OF CONTROL:

##### 4C.1. HOLDING COMPANY:

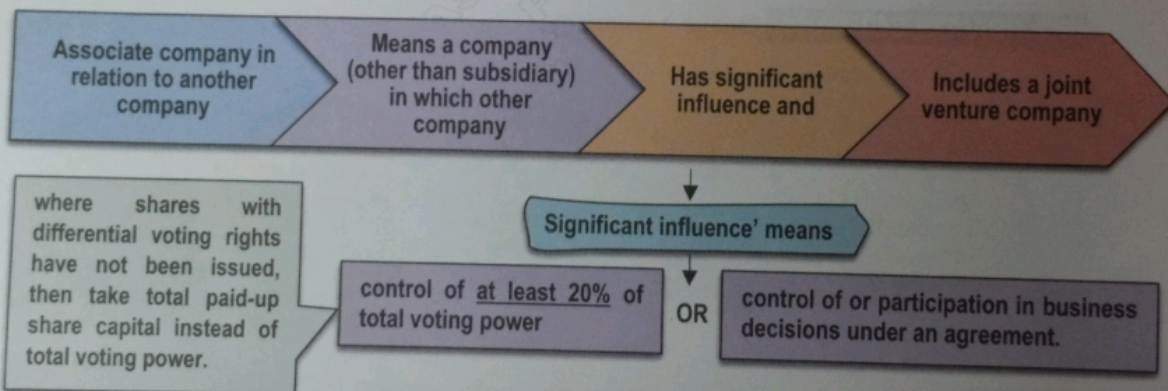


**NOTE:** Company' includes anybody corporate

##### 4C.2. SUBSIDIARY COMPANY:



##### 4C.3. ASSOCIATE COMPANY:



#### 4D. ON THE BASIS OF ACCESS OF CAPITAL:

##### 4D.1. LISTED COMPANY:

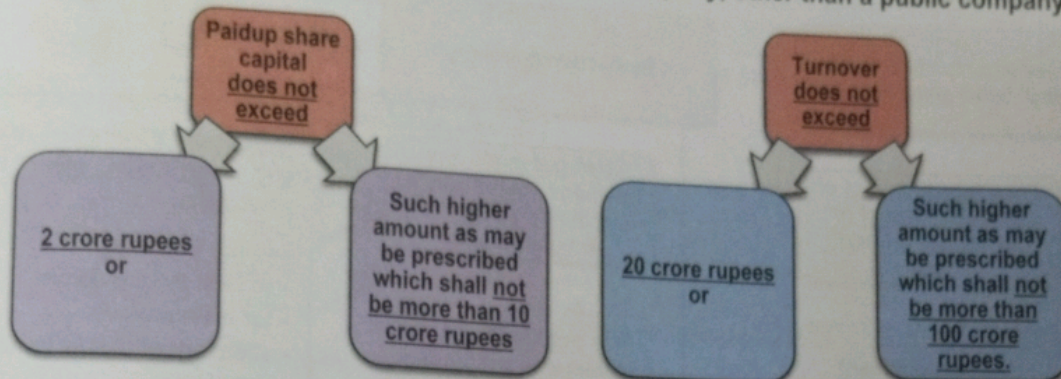
"A company which has any of its securities listed on any recognized stock exchange."

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

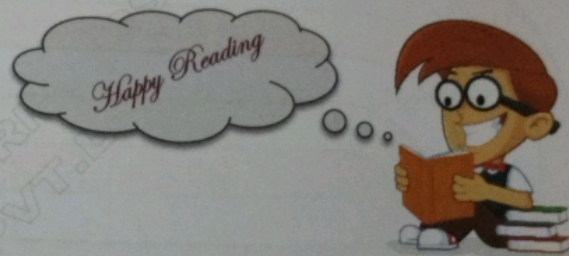
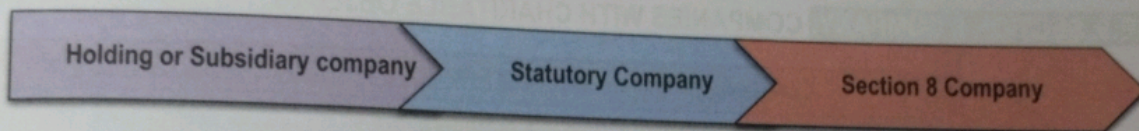
**4D.2. UNLISTED COMPANY:** "It is a company other than listed company."

#### 4E. OTHER COMPANIES:

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



Following cannot be considered as small company:



#### 4E.2. GOVERNMENT COMPANY:

Any company in which <u>not less than 51%</u> of the <u>paid-up share capital</u> 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

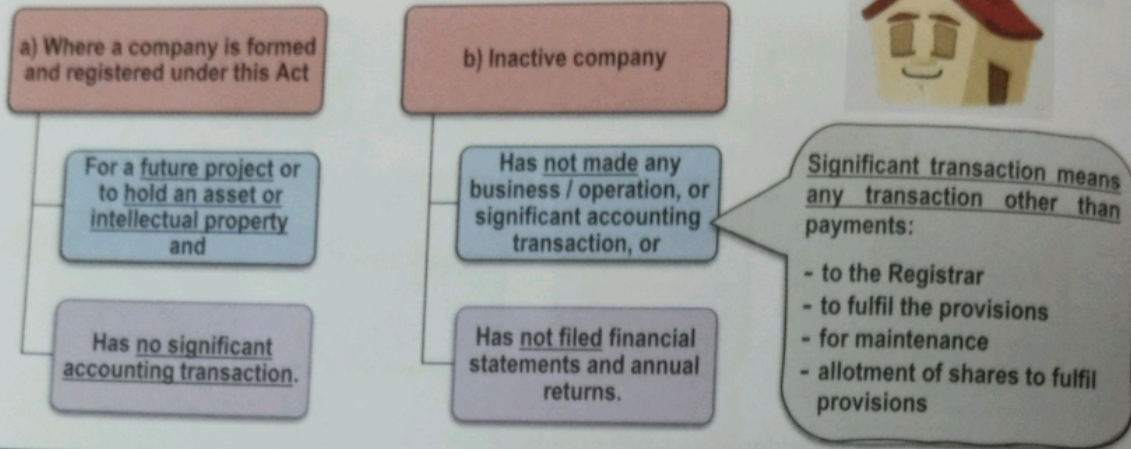
#### NOTE:

- ❖ 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 <u>place of business in India</u> , whether	
By <u>itself</u> or <u>through an agent</u>	<u>Physically</u> or through <u>electronic mode</u> , and
Conducts any business activity in India in any other manner	

**4E.4. DORMANT COMPANY:** The following companies can make an application for obtaining the status of a dormant company:



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



**FORMATION OF SEC. 8 COMPANY:**

- Application to registrar
- Licence from Central Government

**PUNISHMENT IN CONTRAVENTION:**

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

**REVOCAION 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)

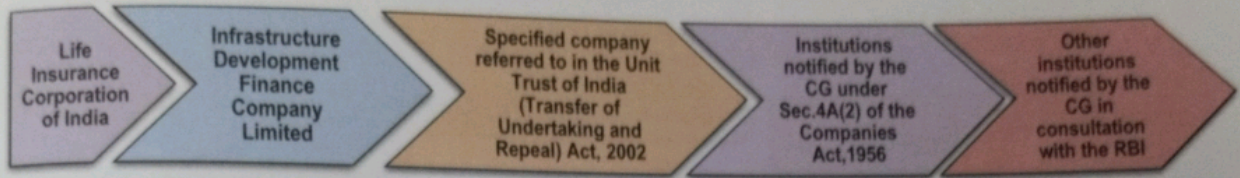
#### 4E.6. NIDHI COMPANIES: means a company

- i) Which the Central Government may,
- ii) By notification in the Official Gazette,
- iii) Declare to be a Nidhi or Mutual Benefit Society, as the case may be.

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



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



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

### 5) INCORPORATION OF A COMPANY:

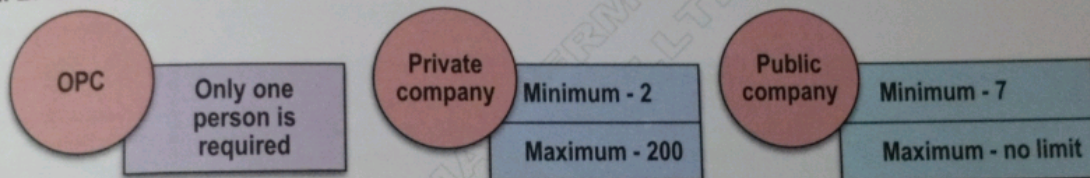
5.1. PROMOTER: Promoter is a person who

- ❖ 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.

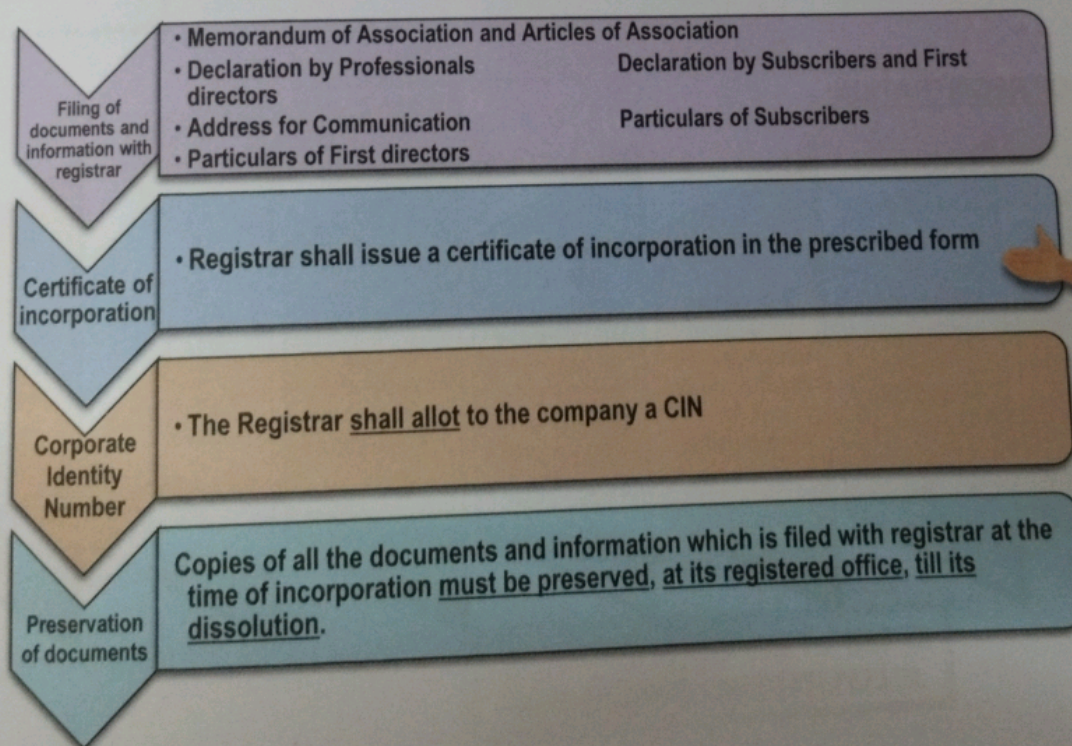
#### COMPANY



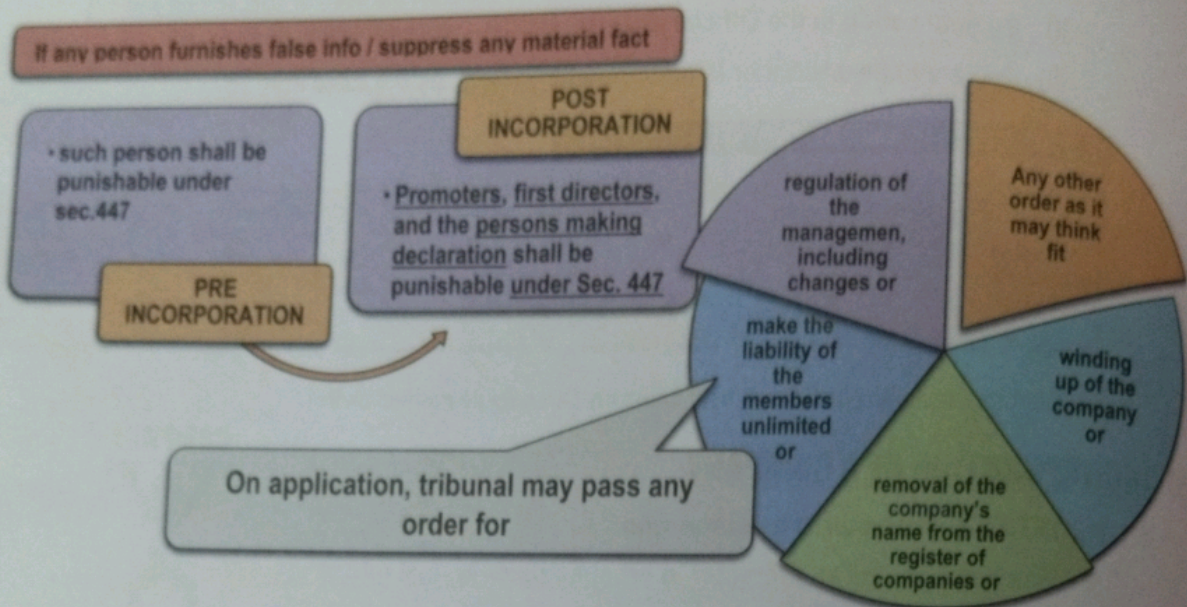
5.2. BASIC REQUIREMENT WITH RESPECT TO THE CONSTITUTION OF THE COMPANY:



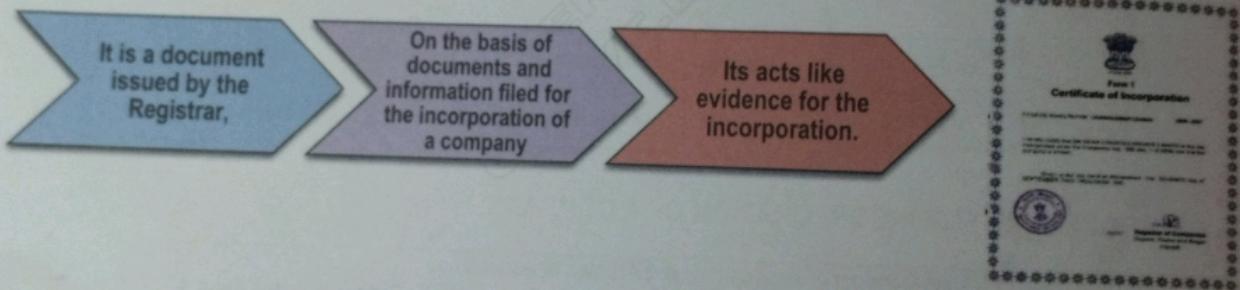
5.3. PROCEDURE FOR INCORPORATION OF A COMPANY:



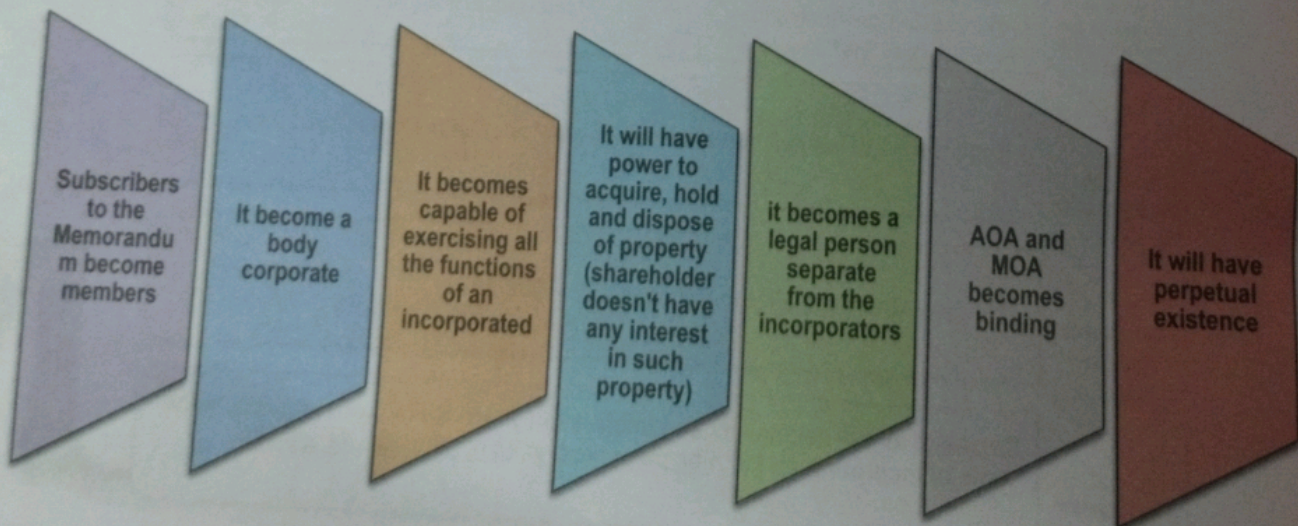
5.4. CONSEQUENCES FOR FURNISHING FALSE OR INCORRECT INFORMATION OR SUPPRESSION OF MATERIAL FACT:



5.5. CERTIFICATE OF INCORPORATION:



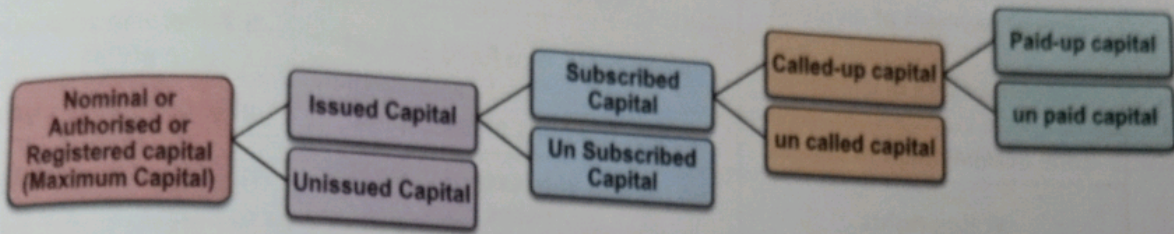
5.6. EFFECT OF REGISTRATION:



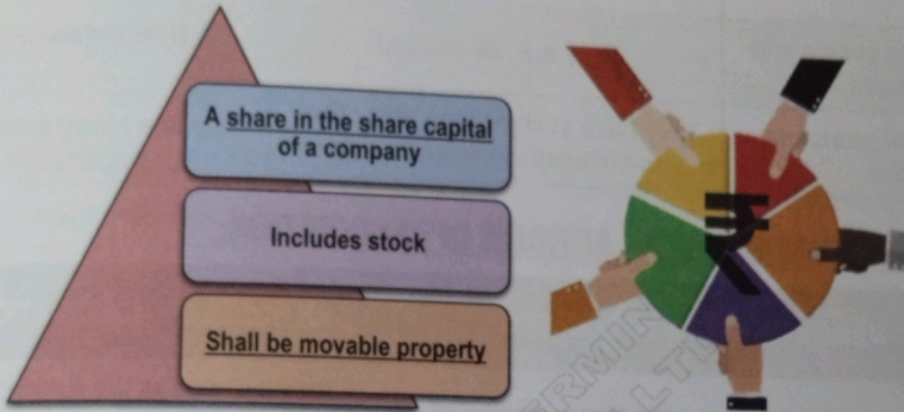


## 6) CLASSIFICATION OF CAPITAL:

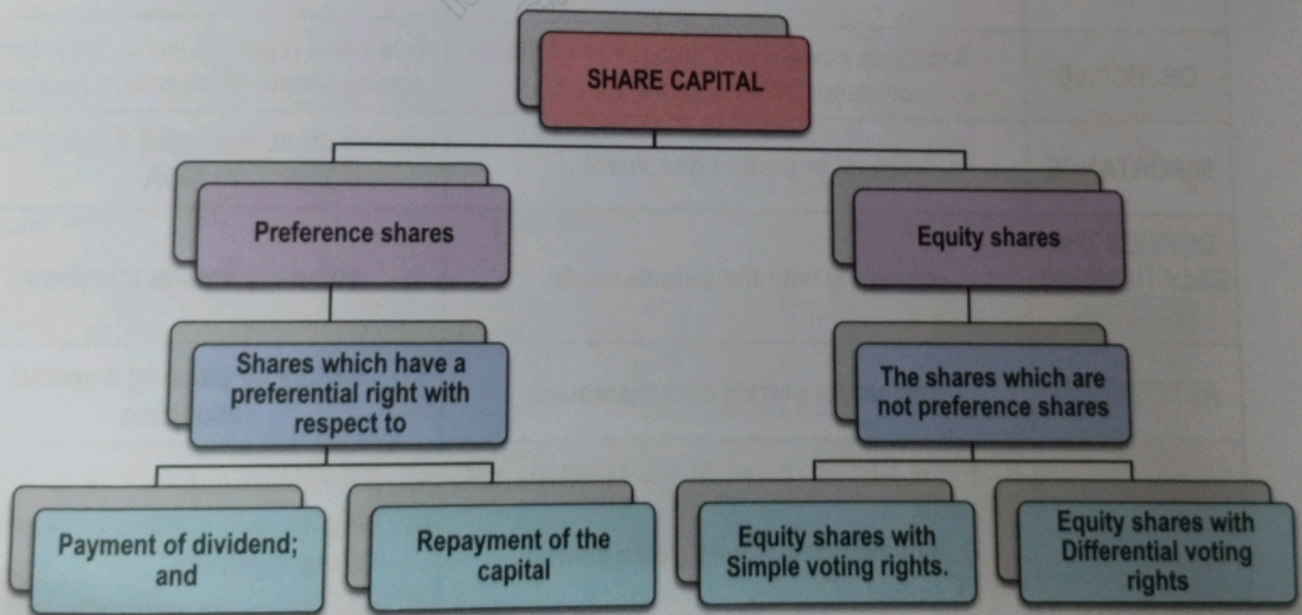
Here, the word capital refers to share-capital.



### 6.1. SHARES:



### 6.2. CLASSIFICATION OF SHARES:



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6.3. PREFERENCE SHARES **vs** EQUITY SHARES:

BASIS OF DISTINCTION	PREFERENCE SHARES	EQUITY SHARES
Time of payment of dividend	Prior to equity shares	After preference 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 vote
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 right

7) MEMORANDUM OF ASSOCIATION **vs** ARTICLES OF ASSOCIATION:

BASIS OF DISTINCTION	MEMORANDUM OF ASSOCIATION	ARTICLES OF ASSOCIATION
DEFINITION	'Memorandum' means the Memorandum of Association of a company as <u>originally framed</u> 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 <u>originally framed</u> or <u>as altered</u> from time to time in accordance with the Act.
OBJECTIVE	It defines powers and objectives of the company. ( <i>What is to be done?</i> )	rules and regulations for the internal management. ( <i>How it is to be done?</i> )
IMPORTANCE	most important document	second most important & Subordinate to MOA
DEFINES THE RELATIONSHIP BETWEEN	company with the outside world.	company and its members.
ALTERATION	only under certain circumstances	simply by passing a special resolution.
CONTENTS	a) <u>Name Clause</u> : name of the company with suffix i) Private company – Private limited ii) Public company – limited iii) Government Company – limited iv) One Person Company - One Person Company v) Section 8 company - not required	a) It Contains regulations b) May include matters necessary for its management c) provisions for entrenchment (shall give notice to the Registrar) <u>Inclusion of the entrenchment provision:</u> a) At the time of formation or

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

### FORM OR FORMAT OF MOA & AOA:

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

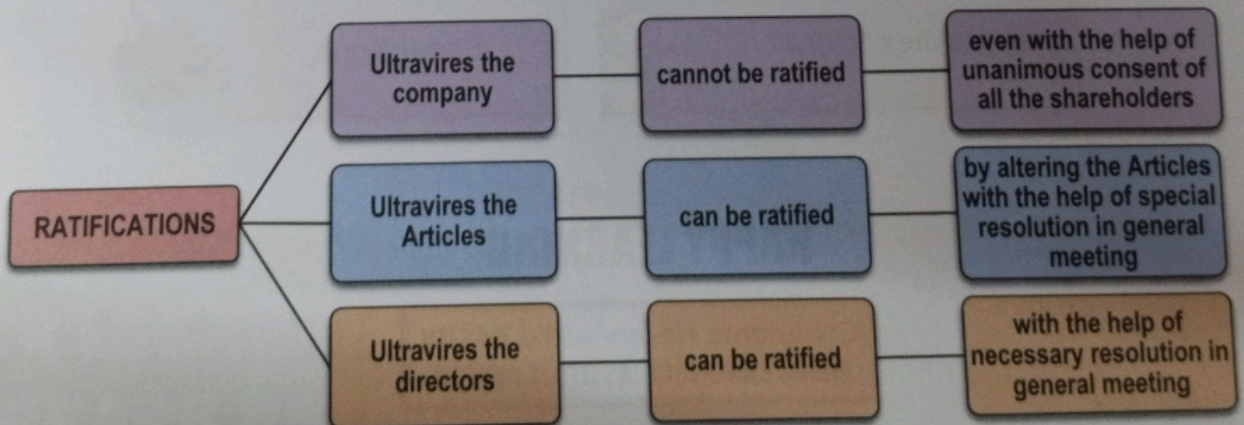
### 8.1. DOCTRINE OF ULTRA VIRES:

**DOCTRINE:**

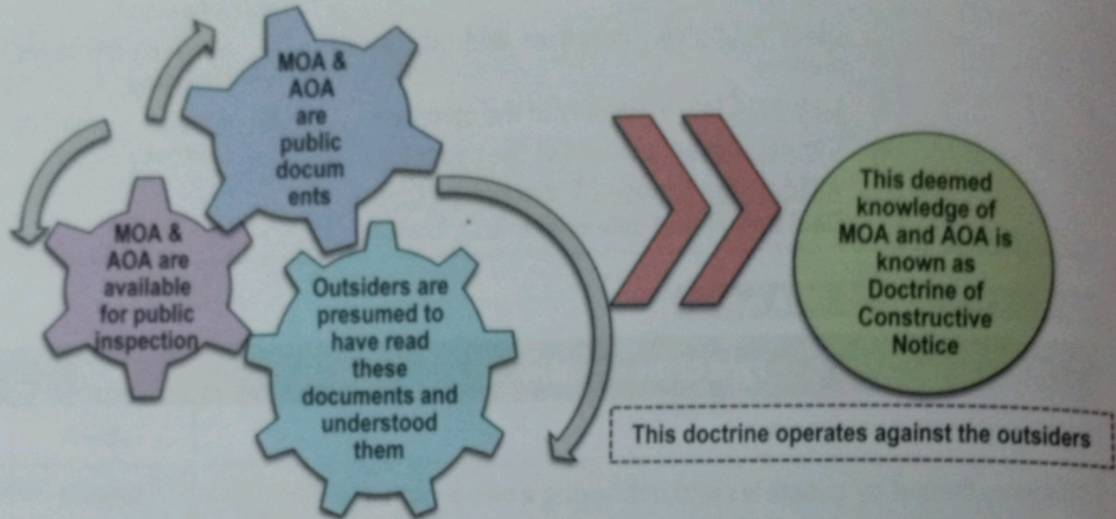
- 'Ultra vires' means beyond the powers
- Company can do anything which is specified in objects clause of MOA.
- Any act done by the company beyond the powers is an ultra vires act.

**CONSEQUENCES:**

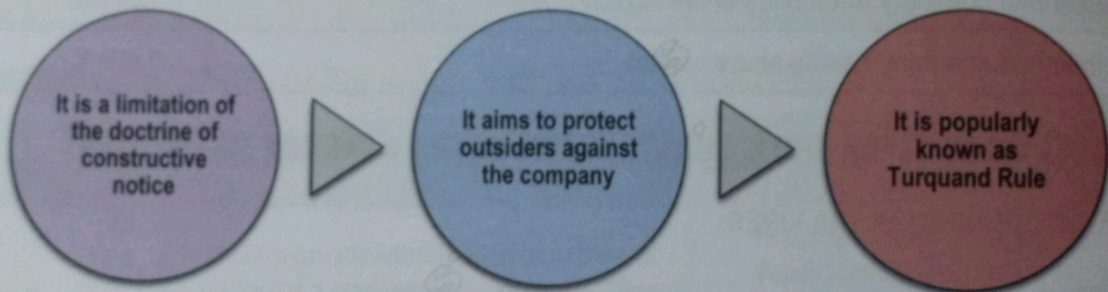
- Such contract becomes wholly void and inoperative in law.
- Not binding upon the company.
- Directors are personally liable.




### 8.2. DOCTRINE OF CONSTRUCTIVE NOTICE:



### 8.3. DOCTRINE OF INDOOR MANAGEMENT NOTICE:



• 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 