

Companies Act, 2013

Companies contains

470 Sections

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7 Schedules

→ Divided in 29 chapters

Purpose of the Act

- (i) Improve corporate governance.
- (ii) Simplify Regulation
- (iii) Strength in the interest of minority investor.
- (iv) Role of whistle-blower
- (v) class action suit.

Applicability of Act

- (i) Companies incorporated under this Act, or any previous Company law.
- (ii) Insurance company.
- (iii) Banking company
- (iv) Company engaged in generation or supply of electricity.
- (v) Companies governed by Social Act [SEBI - SEBI Act]
- (vi) Body incorporated incorporated under Act the special by central government.

Meaning of company :-

Section 2(20) :- A company incorporated under this Act, or any previous company law.

Date _____
Page _____

features of company

(1) Separate legal entity :-

- (a) When a company is registered it is clothed with legal personality.
- (b) its existence is separate and distinct from that of members.
- (c) A company can own property have bank account, raise loan, incur liability and enter into contract.
- (d) Although the capital and assets are contributed by shareholders a company becomes owner of its capital and assets. Shareholders are not joint or co-owner of company property.

Case law :- Saloman v/s saloman & co. Ltd

A member do not have even insurable interest in Assets of company.

Case law :- Mercantile v/s Northern Assurance company Ltd (1952)

(2) perpetual succession :-

- (a) members may dies or change but company goes on till it is wound up on grounds specified by Act.
- (b) company is created by law and law only can bring end to it.

Method
Date _____
Page _____

(3) Limited liability :-

① A member's liability upon type of company of which he is a member.

* Limited liability :- liability is limited upto nominal value of share held by him shareholder. Can't be asked to pay more than unpaid value of share.

* Guarantee company :- Members are liable only to extend at amount guarantee by them and that too only when company goes into liquidation.

* unlimited company :- liability is unlimited.

(4) Artificial legal person :-

(a) Company is created by law and therefore it is clothed with legal personality.

(b) it has separate legal identity from its members.

(c) it can run through human being Agency - director who control affairs of company but they not agent of members of company.

(5) Common seal :-

① it is official signature of company affixed by officers and employee of company.

(B) As per companies Ammendment Act, 2015 common seal has been made optional.

(C) For document which need to be authenticated by Common seal now can be authenticated by.

- * two directors of company or
- * A director and company secretary where company has appointed CS.

Corporate veil :-

- (1) Refer to legal concept where company is identified separately from members.
- (2) members of company are shielded from liability connected to company action.
- (3) There is corporate insteraction
Case law is Saloman v/s Saloman Co. Ltd.

Lifting up to corporate veil

- (a) It means disregarding the corporate entity and paying regard instead to realities behind legal forces.
or,
- (b) when law ignore concept of separate legal entity and treats members and company one and same by looking into actualities.

Scenarios :-

(1) To determine character of company whether company is Enemy or friend :-

Case law :- Dainley company Ltd. v/s continental types & rubber company

- test of control is adopted so that public interest is not likely to be in jeopardy.

- if affairs of the company are under control people of enemy then it is treated as enemy and contract turning out to be void.

(2) To protect Revenue :-

- if corporate identity is used to evade or circumvent tax court disregards the separate legal entity.

Case law :- Dinshaw maneksee petit v/s cit

(3) To void legal obligation :-

* when sole purpose of forming a company is used to reduce amount which is duty of company to pay then corporate veil may be lifted.

* Case law :- The workman employed in associated Rubber Insurance limited, Bhavnagar v/s The associated Rubber Industries Ltd. Bhavnagar and another.

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(iv) Formation of subsidiaries to act as an agent :-

- A company may sometimes be regarded as an agent or trustee of member or of another co. and may be deemed to act individually in favour of principal. Here principal shall be liable for action of company.

Case law :- Merchandise Transport Limited v/s British Transport Commission. (1982)

(v) Company formed for fraud / improper conduct or to defeat any law :-

- Where device of incorporation is adopted for some legal - defat defact / circumvent tax defraud to creditors or avoid legal obligation.

Case law :- Wilford Motor Co. v/s Horne.

* Classes of company under the Act

(1) on the Basis of liability :-

(a) Company limited by shares :-

- Section 2(22) when liability of members of a company is limited by its memorandum to the amount unpaid of shares it is known as company limited by shares.

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* it means shareholder may be called up to contributed only to extent of the amount which remains unpaid on the shareholding, his personal property cannot be used to meet companies debt.

* Shareholder is co-owner of company & not companies assets.

(b) Company limited by guarantee :-

* Section 2(21) company having liability of its members limited by memorandum to such amount which members undertake to contribute to assets of company in event of winding up.

* Members can't be called to pay more than specified amount.

* Members may not called upon to contribute beyond stipulated sum.

Guarantee company and company limited by shares

Common feature

- (i) separate legal person
- (ii) limited liability

distinction

- (i) Guarantee com :- company can call amount only at time of winding up.
- (ii) limited liability com :- Company can call amount at any time as it may deemed fit.

(c) unlimited company :-

- * No limited on liability of its members.
- * Liability cases when one person ceases to be member.

II. on the basis of Member :-

(a) one person company :-

- * it is company which can be incorporated by one person.
- * Minimum paid up capital is not prescribed.
- * MOA () shall specifically name of person who shall in event of death may become members of company.
- * Other person (nominee) shall give period consent in prescribe form and it shall be filed with Register of company.
- * Only a natural person who is Indian citizen who has stayed in Indian for more than 120 days during immediately preceding financial year.
 - (i) shall be eligible to incorporate op.c.
 - (ii) shall be eligible to become nominee.
- * No person shall be eligible to incorporate more than one op.c.

* Such company can't be converted into sec 8 company.

* Such company can't carry donot banking financial activities.

* Default :-

Company :- upto 10k + 1000/day officers in default
:- specified nh have

(b) private Company :-

* A company having minimum paid-up share capital as may be prescribed and by which articles.

(i) Restrict the right of transfer its shares.

(ii) limited no. of members to 200 provided that where to one more person hold one or more shares jointly they shall be treated as single members.

* provided further that :-

(i) person who are in employment of Company &

(ii) person who have been formally in the employment of company were members and have continued to be members.

(c) Small company :-

As per sec 2(85) :- which mean company other than public Company.

(i) paid up share capital does not exceed 50 km or higher amount as may be prescribed which small not be more than 10 crore and.

(ii) Turn over as per profit and loss in immediately preceding financial year does not exceed 2cr. or such higher amount as may be prescribed not more than 100cr.

Provision as per Rules :-

- paid up share capital prescribed is 4cr. and.
- Turn over prescribed is 40cr.

Exception :-

- (i) Holding and subsidiary company.
- (ii) Section 8 company.
- (iii) Company or body incorporated governed by special Act.

(d) public company :- It means a company which

- (i) is not a private company.
- (ii) Has minimum paid up share capital

provided that a company which is subsidiary of public company shall be deemed as public company for purpose of this law.

III On the basis of control

(9) Holding and subsidiary company :-

- These are relative terms.
- Subsidiary company is relation to any other company

Means a company in which holding company :-
(i) Controls composition of board of directors.
(ii) exercise or controls more than one-half of total voting power either own it or through subsidiary.

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→ Composition of board of directors means when one company can appoint or remove all or majority of directors.

(b) Associate company :- in relation to any other company has significant influence, but which is not subsidiary company having such influence and influence joint venture.

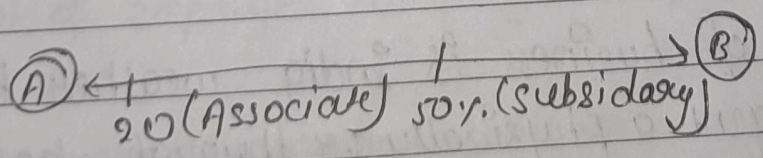
Explanation :-

(i) control of 20% of total voting power or control on decision under an agreement.

* Total share capital :-

→ paid up share capital :- convertible preference share capital.

→ share held by company in fiduciary capacity shall not be treated / counted for associate purpose.



Date _____
Page _____

IV On the basis of Access to capital

- (a) listed company :-> it is a company which has securities listed on recognised stock exchange.
- (b) unlisted company :-> Company other than listed.

V other companies :->

(a) Government company :->

• A company which not less than 51% of paid up share capital is held by :->

- (i) central government
- (ii) state government /
- (iii) partly by central government or partly state government

It also includes company which of subsidiaries of such government company.

(b) foreign company :-> It means company or body corporate, incorporated outside Indian which

(i) Has place of business in India whether by itself or through agent or physically or through electronic mode

(ii) Conducts any business activities in India in any other manner.

(c) Section 8: company :- formed with objects

- promote :- Commerce, Art, Science, Sport education research, social charity.
- Such company shall apply its profit in promoting objects.
- prohibits the payment of dividend.

* power of central government to issue the license :-

(1) Central government :- may allow to register person or association of person without words limit or Pvt. limited

(2) Registered of company shall on application register it is Company.

(3) Company shall enjoy same privileges as limited Company.

* Revocation of license

• if central government find out the company has contravenus condition subject to which increase in issued.

• Affairs of company are fundamentally managed or violates object of employe. or prejudicial to public interest.

• on revocation Register shall put word limited of private Ltd.

• Before his reasonable shall be given.

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Date _____
Page _____

* penalty :- Company :- 10 lakh to 1 cr. Rupees
Director/officer In default 25000 to 25 lakh + of fraud
Section 447.

(d) Dormant company :-

- (i) Company registered under the act or future project or to hold asset or intellectual property and has no significant accounting transaction.
- (ii) Company shall apply to register to company dormant states.

Qu inactive company :- Company which has not been carry any business or operation or not made by significant accounting transaction during last two year or has not filed financial statement or annual return during last 2 year.

Significant Accounting transaction :-

It means transaction other than

- (i) payment of fees registers.
- (ii) payment for fulfilling requirement of Act.
- (iii) Allotment of shares to fulfill requirement Act.
- (iv) payment for maintenance office and records.

(e) Nedhi company :- company which notifies in official gazette - as public benefit society.

(f) public financial institution :-

following are condition - for institution to be notified as pfi.

(i) it is established under central or state act other than company law.

(ii) Not less than 51% of paid up share capital is held or controlled by central government state government or state governments.
Eg :- LIC, UTI etc.

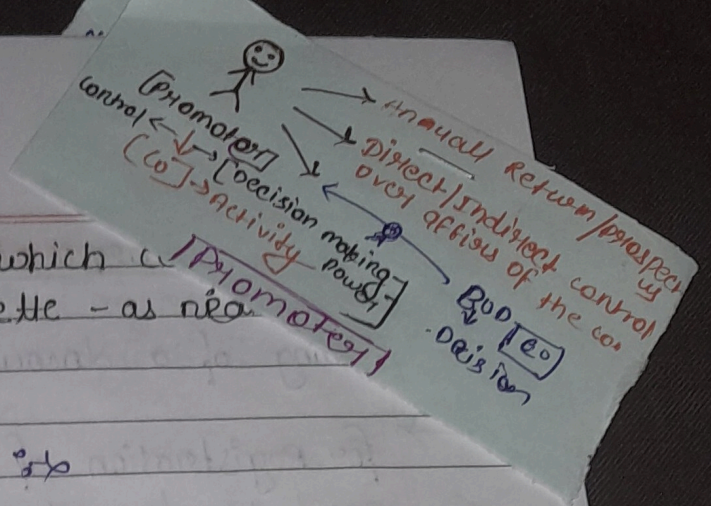
* Incorporation of company :-

(1) promoter :-

- (a) person who from the company are known as promoter.
- (b) They receive idea of forming company.
- (c) They takes necessary action of formation of company.
- (d) However, person acting in professional capacity are not regarded as promoter.

Basic requirement of forming a company

increase of public company :- 7 or more
 Pvt. Co. :- 2 or more
 OPC :- 1 member



A Incorporation of company

(i) Filing of a documents and information with the registrar. Section 7:

For registration of company following document need to be submitted with registrar within whose jurisdiction registered office is situated.

Articles
→ Artificial of association

- MOA or AOA duly signed by registrar.
- Declaration by a person engaged in formation of Company.
 - - CA / CS / CMA / Advocate, and by a person named in article [Dir, moner, secr]
- that all requirements of Act have been complied.
- Declaration from each of subscribers to MOA and from person named as director, if any in the articles stating.
 - proved guilty
- He is not convicted at any offence in connection with promotion, formation or management of company.
- He has been not found guilty of any fraud or misfeasance or breach of duty in companies Act or previous law.
- Documents submitted with are true to best of knowledge and belief.
- Address of correspondence till registered office is established.
- Particulars (name, surname, family, name nationality) of every subscribers in MOA along with proof of identity.
- Particulars (name, surname, Address, Director identification no.) along with proof of identity.
- consent → first director.

Liability
/ case

- (2) Issue of Certificate of incorporation :-
After all the document is filed register shall issue certificate of incorporation to effect that company is incorporated under the act.
- (3) Allotment of corporate Identity Number (CIN) :-
Register shall issue CIN will shall be unique / distinct identify on the company.
- (4) Maintenance of copies of all documents and information :-
Company shall maintain all document originally filled with register of company in such manner as may be prescribed.
- (5) Furnishing of false or incorrect information or suppression of material fact at the time of incorporation :-
person shall be liable for fraud under section 447.
- (6) Company already incorporated by furnishing any false or incorrect information or by suppressing material fact.
• promoters are liable for fraud under section 447.
→ person making declaration - under section 447.
- (7) Order of Tribunal :-
where company has already incorporated by furnishing incorrect information or by suppressing material fact or incorporated by any fraudulent action -
Tribunal may on application any if situation so demanded :-

① pass such order as it may think fit for regulating management of company including changes in MOA/AOA

② Direct liability to be unlimited of members.

③ Direct removal of name of company from ROC.

④ Direct winding up of company

⑤ pass such order as it may depute fit

provided that company shall be given Reasonable opportunity of being heard and tribunal shall look into transaction of company.

Effect of Registration :->

Section 9:

one company is incorporated all features of company gets activated - perpetual succession, disposal of property, rights to enter into contract.

Share

Types of Share

(i) preference share capital :->

• With preference to any company limited by shares it means that part of shares capital that would carry preferential right with respect to carry

① payment of dividend :->

Section 43:

either fixed amount, or amount calculated at a fixed Rate, either free or subject to income tax.

(b) Repayment :- in case of winding up or Repayment of capital. Amount of share capital or paid up capital there is preferential right with respect to premium on capital.

(ii) Equity share :-
It means capital which is not preference share capital.

Two types (a) with voting rights
(b) with differential voting right.

Features of shares

(i) Share are movable property :-
According to Section 44 :- Shares or debentures of any member shall be movable or transferable as per articles of association.

(ii) Shares shall be numbered :- Section 45 :- Shares shall be distinguished from distinctive number.

Memorandum of Association (MOA)

• It is charter document which defines scope of power which has been Established under the Act.

Objec

Object of Registering MOA

- It contains object ^{purpose} for which company is formed and also defines its scope beyond which actions can't go.
- It enables shareholder, creditors and all those associated with company - powers of company.
- Shareholders should know purpose for which money will be used.

Memorandum of Association shall be down in such form

From A form A :- MOA of company ltd by shares.

B :- MOA of Guarantee company and not having share capital.

C :- MOA of Guarantee co. and having share capital.

D :- MOA of unlimited company.

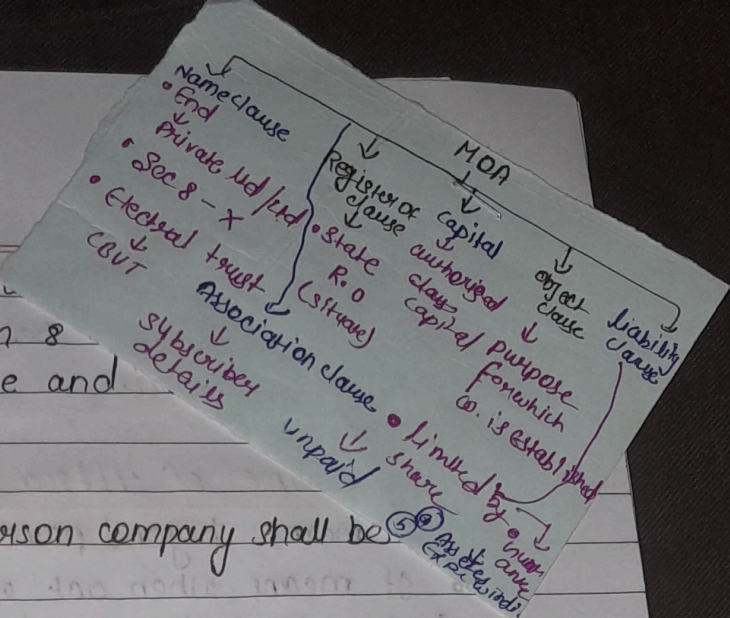
E :- MOA of unlimited company and having share capital.

Content of MOA

- ① Name clause
 - in case of public limited - "limited"
 - in case of private limited - "pvt ltd"
 - in case of section 8 - no such condition.

"Electoral trust" is allowed
 Company under section 8
Electoral trust scheme and
government

in case of OPC :- one person company shall be
below is name.



(2) Registered office clause :- State in which registered office of company is situated.

(3) object clause :- It contains objects on which company is prepared to be incorporated & any incidental matter there to.

(4) Liability clause :- In case of company Ltd. by shares amount unpaid on face value shall be liable to be paid by share holder.

→ In case of guarantee company :-

• amount upto which each member undertakes to contribute.

(i) To the assets of company in even of winding up while he is member of within one year after he ceases to be member for payment of debt and liabilities which may have been contracted while he was a member.

(ii) Expenses of winding up.

(5) Capital clause :- It contains amount of share capital Company is authorized to issue & also contains name of subscribers who become member.

Date _____
Page _____

(6) Association clause :- It contains name of person who who agrees to be associated with company during incorporation.

doctrine of ultra vires

- It means beyond power.
- It means when act of company are beyond power contemplated by MOA/AOA, such act becomes void & neither company nor outside can sue regarding it.
- Company can be restrained from deploying its fund for purpose other than sanctioned by MOA/AOA.
- ~~Company can be restrained from deploying its fund for purpose other than sanctioned by~~
- It also assume that one who is dealing with company shall be deemed to know about its power.

Case law :- Ashobery Railway carriage and iron Company limited v/s. Riche. (1875)

- Act which is ultra vires can never be binding on company it cannot become intra vires by reason of estoppel, laps of time, dealy.

following are position

- ① when Act is performed which is legal in itself. not authorised by object clause of MOA - is ultra vires and is void in nature.

- (ii) Act which is ultra vires can't be ratified by unanimous consent of all share hold.
- (iii) Act which is ultra vires director but intra vires to company can be ratified by members by passing resolution in general meeting.
- (iv) If Act is ultra vires the article it can be ratified by amending AOA by passing special Resolution.

Articles of Association

- They are Rules and Regulations which are formed to manage its internal affairs.
- They are also known as
- It regulates domestic management of company and certain Rights and obligation between management and company.

Contents of AOA

- (i) certain Regulation :- It contains Rules for Regulation management of company.
- (ii) Inclusion of matter :- Contains matter which are prescribed in Rules.
- (iii) Contains provision of entrenchment :- It may contains provision of entrenchment (to protect something) only if procedure are more restrictive than those applicable in statute.

(iv) Manner of inclusion of the entrenchment provision :-
 In case of private company - unanimous approval
 public company - Special Resolution

(v) Notice to Roc :- company shall give notice to roc in such manner as may be prescribed.

(vi) forms of article :- Table F, G, H, I and J - Schedule 1

(vii) Model Article :- company may adopt some or all of model Article.

(viii) Company registered after commencement of this Act :-
 Company has to comply with all model article provision which are applicable for regulating the Company.

Difference between MoA & AOA

Basis	MOA	AOA
Objective	States objective for which co. is	It states <u>Rules & Regulation</u> for achieving objective.
Relationship	Defines Relationship with <u>outside world</u>	Defines Relationship with <u>company and members</u>
Alteration	can be <u>altered</u> under <u>certain circumstances</u>	can be altered by <u>passing S.R. (Special Resolution)</u>
ultra vires	Act done beyond scope is <u>void</u>	Act done beyond is <u>void</u> but can be <u>Ratified</u> by <u>passing S.R.</u>

company
↓
MOA/AOA → Registered
Public document
↑
inspects (person icon)
Any person

We shall presume that company has complied with its internal Regulation. (Section) 3-B1 Company

Documents of constructive notice

- (i) Sec 399 :- MOA and AOA is public document and any person can inspect by electronic means kept with Registrar or make copy of Records by paying amount of fees.
- (ii) Every person dealing with company is presumed to have knowledge of documents.
- (iii) Such presumptions is called constructive notice.
- (iv) whether person reads or not he is presumed to have knowledge of contents of document. Also he is assumed to understand it in true sense.

Thus, a person dealing with company if enters into a contract which is beyond the scope / power of company then he is not acquired any right against the company.

Doctrine of Indirect management

- It is one exception to doctrine of constructive notice.
- It means outside dealing with company can't be presume to have knowledge of internal affairs of company.