Date: / /

3 stages of formation of a company :-

(1) Formation stage
(2) Registration / incorporation stage
(3) commencement of business stage.

॥ श्री ॥

date
11 sept

Page No.
Date :

Chapter - 2
Incorporation of Company &
Matters Incidental Thereto

Formation of Company Sec 3

① A company shall be formed by any lawful purpose by

Public Company	Private Company	OPC
7 or more persons	2 or more persons	1 person

② A company may be either
(a) a company limited by shares or
(b) a company limited by guarantee or
(c) an unlimited company

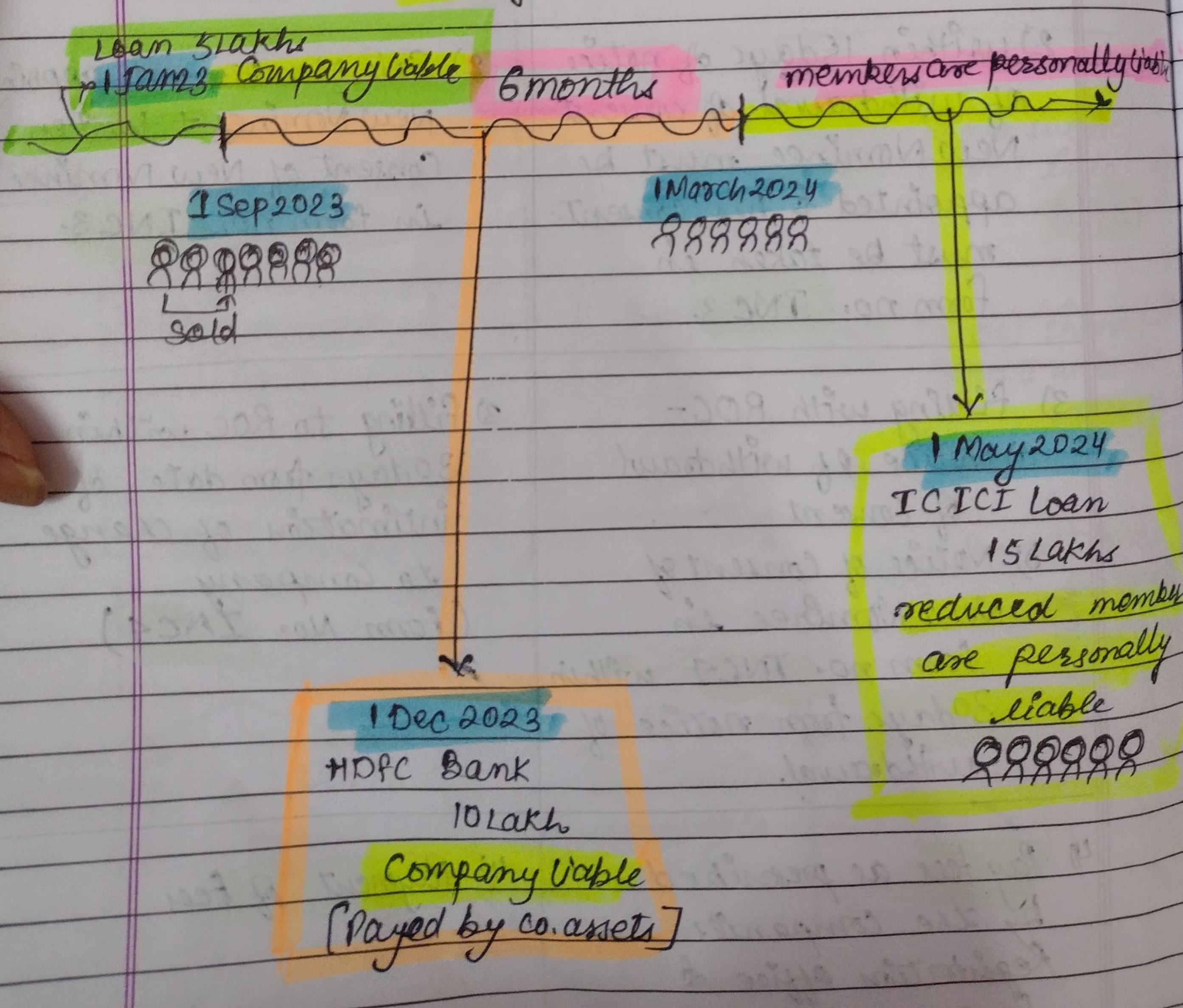
③ Memorandum of OPC shall indicate the name of a nominee, with his prior written consent in form no. INC 3
Such a nominee may be removed or he may withdraw his consent.

alag-2 से भी case file कर सकते हो

Members Severally liable Sec 3A

(1) If the number of members ~~of~~ ~~red~~ a company is reduced
- Below 7 in case of Public
- Below 2 in case of Private

and the company carries on the business for more than 6 months then these members who were aware about the facts will be personally liable & can be severally sued.



similar | identical | resemble

नाम और काम

Memorandum of Association Sec 4

① MOA is a public document. ~~It is also the~~ charter of the company. NRLOC पार करके AA गया

② Content of MOA

(i) Name clause :- • The name of the company shall end with

limited → public co.
private limited → private co
Pvt Ltd (OPC) → OPC

• The name shall not resemble to any other existing co, trademark

• It should not be undesirable, something that constitutes an offence.

• The name should also not carry any impression that the company is connected with the Govt.

NRLOC
N → Sec 4 + sec 13 + sec 16
R.
L → ⑧ expect co-type is changing
O → sec 13
C →
~~Aa~~ Association clause.
OPC (Nomination clause) → ⑦

Reservation of Name

New Company → SPICE + → 20 days

Existing Company → change → RUN → 60 days

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Cancellation of Reserved Name

[application was furnished by giving incorrect information]

False info

Company has not been incorporated

- reserved name shall be cancelled.
- Penalty upto ₹1 Lakhs.

Company has been incorporated

- Direct the company to change its name within 3 months, after passing Ordinary resolⁿ.
- Strike off the name from register of companies
- petition for windingup.

Ultra Vires Act

Ultra → Beyond
Vires → Power

① Null [void-ab-inito]
② Directors are personally liable
③ Injuction Order [Stay order]
④ No Ratification Possible

(ii) Registered office Clause :→ It states the name of state where registered office is to be situated

(iii) Object Clause :→ It states the object for which the company is incorporated. The Company cannot do acts beyond the object clause. If done it will be Ultra Vires and void-ab-inito.

ex

Anshbury Railway Carriage & Iron Co V/S Riche

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(iv) Liability Clause :- This shall state the amount upto which the liability of the members is limited.

(a) Company limited by shares → unpaid share capital
(b) Company limited by guarantee → guaranteed amount
(c) Unlimited Co → liability of members is unlimited

(v) Capital Clause :- Authorised share capital divided into no. of shares & their face value.

(vi) Subscription Clause / Association clause :- Subscribers name address, no. of shares he agreed to take.
1st Subscribers becomes 1st members of the Co

~~Nomoci~~
(vii) Nomination clause
OPC

entrenchment → more restrictive not SR (75%)
(75% ↑ 90%)

Rules & Regulation

Articles of Association :→ Sec 5

① Articles of a company contain the regulations for management of the company.

② The articles may contain the provision for entrenchment to the effect that specified provisions of the articles may be altered ~~by~~ only with more restrictive provisions as compared to the Act.

③ Entrenchment (more stricter)

- At formation (newly Incorporated Companies)
  - Articles will originally be entrenched during the formation of the companies
- Later On (Existing Companies)
  - Private Company
    - Consent of all members
  - Public Company
    - Pass a Special resolⁿ

Doctrine of Constructive Notice

① Read MOA + AOA

\+

② Internal preceedings have been complied with or not.

"Protect the Company against the Outsider."

AOA

2Directors → sign → Company wants to take a loan

$\boxed{\text{Dir}_1}$ ← Loan — $\boxed{\text{Bank}}$

only

Hence, Company is Not Liable to repay the loan. As this loan was null (void-ab-inito).

Doctrine of Indoor Management (Turquand's Rule)

Royal British Bank Vs Turquand

Company —Bonds £2000→ RBB (Creditor)

Company —Insolvent→ Liquidator (Turquand)

RBB —sue→ Liquidator

① Read MOA & AOA

② Presume that the internal. preceedings have been complied with

"Protect the outsider against the company"

Exceptions to Doctrine of Indoor management:→

① knowledge of irregularity

$\boxed{\text{Howard Vs Patent Ivory manf Co.}}$

② Negligence

$\boxed{\text{Anand Bihari lal Vs Dinshaw \& Co Ltd}}$

③ forgery → is a case of absence of consent

"no consent no contract."

$\boxed{\text{Rubin Vs Great Fingall Consolidated Co}}$

Contrary → बेकार है

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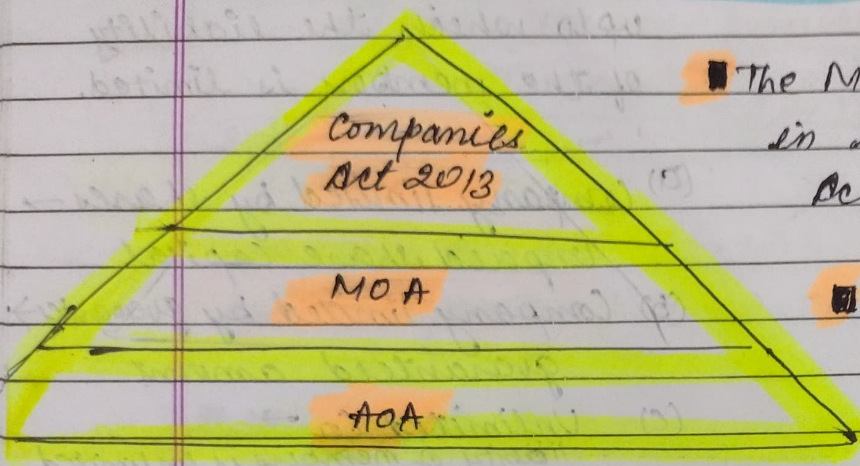
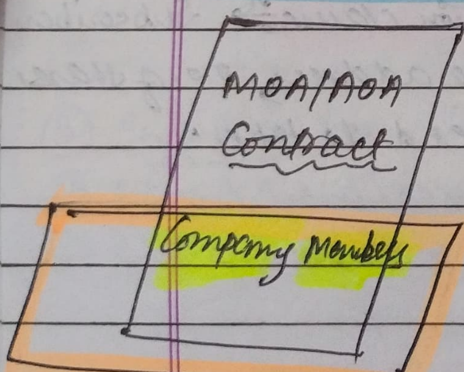
Act to Override the MOA, AOA Sec 6



- The MOA, AOA have to be in line with the Companies Act 2013.
- If there any provision in the MOA, AOA which is conflict with the Act, then it becomes Void & the Act will prevail.

Effect of MOA & AOA Sec 10



Parties to the Contract

① Company will be bound to its members
[e.g → dividend distribution]

② Members will be bound to the Company
[e.g → Paying Call money]

Company & the member can file a ~~cause~~ case upon its.

③ Members are also bound to each other through the route of Company
[ex → Shares transf to Directors not others members]

f → इन चोर नहीं है और इसने चोरी नहीं की है   Convicted → दोषी (Proved guilty)

g) → all the requirements of rules & acts complied.

Incorporation of Company Sec 7

SPICe+ (INC 32)

- Part A → Reservation of Name
- Part B → Other details

Steps of Incorporating a Company :→

Part A : → ① Reservation of Companies Name → [for 20 days]

Part B : → ② Submission of documents

(a) e-MOA INC 33

(b) e-AOA INC 34

(c) Particulars of 1st subscriber → Identity Proof, Nationality, Surname, Name, address, description, occupation

(d) Particulars of 1st directors → Name full, address, ~~description~~ Nationality, occupation, Identity proof, DIN (director Identification number)

e) Consent of 1st director

f) Declaration → 1st subscribers, 1st Directors } fraud 5 yrs

{This declaration states that the 1st subscribers & 1st directors have not convicted any offence in connection to}

{Promotion, formation, or management of any company, or not found guilty of any fraud under companies Act during the last 5 years.}

g) Statutory declaration (CA/CS/CMA/Advocate) (Director/Manager/Secretary)

{declaration that all the requirements of this act & rules have been complied with}

h) Address of correspondence.

furnishing → False
Supress → Half truth

(COI)

③ Certificate of Incorporation → INC11
→ Name
→ Date of incorporation
→ CIN (Corporate Identity Number)

④ 21 digit - Alpha Numeric

⑤ Maintain & preserve all the documents till its dissolution.

⑥ Where a company has been incorporated by furnishing false information or supressing material facts. then the Tribunal may pass an order

(a) To make changes in the management of the company.

(b) Direct that the liability of the members shall be unlimited

(c) Direct the removal of the name of the company from the ROC.

(d) Pass an order for windingup.

(Sec 9) Effect of Registration

- Now company can buy assets in its own name, incurr liability in its own name.
- Can sue & Can be sued on its own name.
- Incorporated a sepperate person in eyes of law having perpetual succession

INC 20A → director on behalf of Co.
declaration ki saare subscribers ne shares le liya hai or Paisa de diya hai company's

Commencement of Business Sec 10A

Declaration

① INC 20A
180 days
from Incorporation

That subscribers ने shares खरीद लिए हैं & Co को उनका पैसा आ चुका है (shares allot कर & Co ने दिए हैं)

Company having share Capital

+

② INC 22
verification of Registered office 30 days from Incorporation

ROC ⟹ Commencement of Business or Borrowings

Alteration of Memorandum Sec ~~13~~ ~~13~~ 13

Procedure of Alteration of Memorandum

① **Change in Object Clause :-** [Sec13]

(a) Special resol^n [Postal Ballot] — By way of
(b) MGT 14 → ROC → 30 days
(c) 2 newspaper advertisement [1 English + 1 vernacular]
(d) Website
(e) Dissenting shareholders will be given an opportunity to exist

② **Change in Name Clause :-** [Sec 4 + Sec13 + Sec16]

- ~~Voluntarily~~ **Voluntarily** — Sec 13 (CG – ROC)
  - Prior approval of Central govt + Special resol^n
  - • Change in name shall not be allowed if the company has not filed Annual return or financial statements or has failed to pay matured deposits / deb / interest thereon.
- ~~Comp~~ **Compulsory** (Directions given by CG) — Sec 16 (CG → RD)
  - Name similar to existing Co.
    - Ordinary resol^n + comply directions within 3 months
  - Name infringes a registered trademark
    - Ordinary resol^n + comply directions within 3 months
    - Application by the registered proprietor of a trademark that the name is

ROC → ममी   RD – पापा

Maharastra
2 ROC
Mumbai Pune

Tamil
2 ROC
Chennai Koyambith

• Above approval is not required if the company is converting from Public to private or vice-versa.

identical or resembling its registered trademark has to be filed within 3yrs of incorporation

③ Change in the Registered office clause :→ [Sec12 + Sec13]

— MOA contains the registered office clause which only specifies the state of the registered office. Thus, alteration of the MOA will only happen in the 4th case.

Date of Incorporation Sec12
↓
30days

① Have a registered office

② Verification of Registered office
↓
INC 22
↓
ROC

20A ✗ → not done strikeoff the co. name (Having sh cap) from ROC through sec. 10A.

22 ✗ → strike off sec 12.
(all company types)

Physical verification

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(I) One place to another within the same city.

Sec 12

eg → Pune Camp → Pune FC Rd.

Board Resolⁿ

INC-22 → ROC → 30days

(II) Outside city within the State (same ROC)

Sec 12

eg → Gujarat Rajkot → Gujarat Surat

Special Resolⁿ

MGT14 → ROC → 30days
INC22 → ROC → 30days

~~(III) Outside city~~

(III) Outside city within the state (ROC Jurisdication has changed)

Sec 12

eg → Pune → Mumbai
Maharashtra

Special resolⁿ

MGT14 → ROC → 30days
INC 22 → ROC → 30days

Regional Director
(30–60–30)

- The RD must comunicate about his approval for the change of registered office within 30days from the date of receipt of application.
- The company shall file the confirmation with the ROC within a period of 60 days.
- The ROC shall certify the registration within a period of 30days from the date of filing such confirmation.

(IV) Outside the state

Sec 13 → Alteration of The MOA

eg → Amritsar → Jaipur
Punjab → Rajasthan.

Special resolⁿ

MGT14 → ROC → 30days
INC22 → ROC → 30days

Central Govt → Regional Director
(60 days – 30days)

All Creditors, DH → convince them
→ security
→ paying them off

- The CG (RD) shall dispose of the application within a period of 60days.
- A certify copy of the order of the CG shall be filed by the company with the ROC within 30 days.
- The Registrar of the state where the registered office is being shifted shall issue fresh certificate of incorporation indicating the Alteration.

Change in liability Clause :-

can't be changed if you are converting the type of your company.

Change in Capital Clause :-

① Increase in the Authorised Share Capital
② Cancellation of shares
③ Consolidation
④ Sub-division
⑤ Conversion of shares into stock or vice-versa

Alteration of AOA (Sec 14)

- Special reso^{n}
- 'MGT 1' ⟶ ROC ⟶ 15 days
- Public Co $\xrightarrow{\text{convert}}$ Private Co.

  You will required a prior approval of the CG.

Alteration of MOA or AOA to be noted in every copy (Sec 15)

- Every copy of MOA & AOA to be ammend
- Supply latest (amended) copy of MOA & AOA

Registered office of Company (Sec 17)

- Members to get copies of MOA & AOA within 7 days of demand if not

VIP%
VVIP%
VIP%
Important.

Subsidary Co not to hold shares in Holding Co :-
Sec 19

General Rule :-
- A subsidary company is not allowed to hold the shares of its holding company.
- Consequently, any allotment or transfer of shares in a holding company to its subsidary shall be void.

Exceptions :-

(i) where a subsidary company is a legal representative of a deceased of the Holding Company :-

example :-

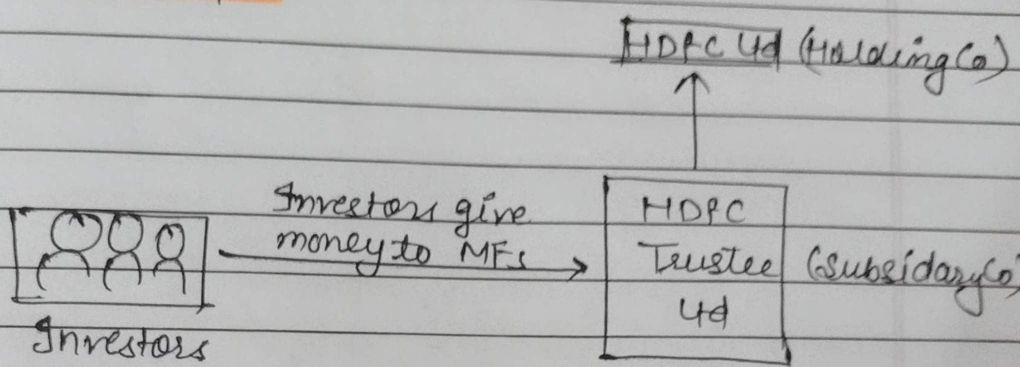
Mukesh Ambani
↓
$\boxed{\text{RIL}}$ (Holding Co)
↓
Reliance Retail Ltd
(Subsidary Co)

Mukesh Ambani has appointed Reliance Retail Ltd as its Legal Representative for shares of RIL.

Voting Rights (✓)

(ii) where the subsidary holds such shares as Trustee :→

example :→



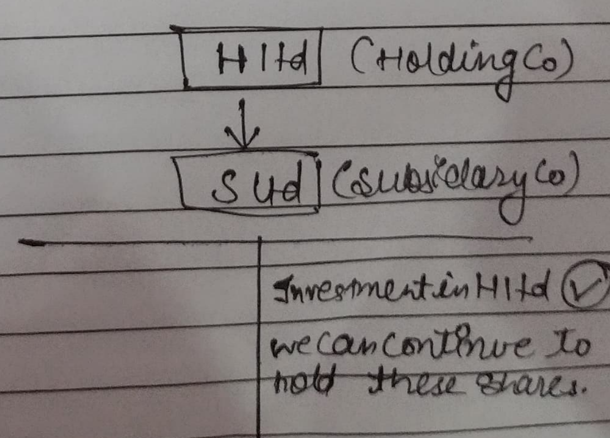
Voting allowed here ✓

(iii) where the subsidary company is a shareholder even before it became a subsidary company of the holding company :→

example :→

→ S Ltd → invest → in the shares of H ltd of 1st Oct 18 10% of PUSC.

→ S Ltd become the subsidary of H Ltd on 1 Nov 20



Right to vote at a meeting of the Holding Co is prohibited in this case. ✗

Ans → 24

Service of Documents Sec 20

① A document may be served on the Company or an office by sending it to the Company at its Registered office —
(a) Registered Post
(b) Speed Post
(c) Courier
(d) Leaving it at its registered office
(e) Electronic mode

② A document may be served on the Registrar or any member by sending it to him by
(a) Post
(b) Registered Post
(c) Speed Post
(d) Courier
(e) delivering at his office or address
(f) Electronic mode

Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as decided by the Company in its AGM

Authentican of Contracts, documents
Sec 21

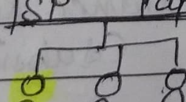
Signed by
- KMP#
- employee who is authorised by the BODs

MD
CS
WTD
CFO

Any other officer, due level below the director who is in whole time employment of the company

eg → SPC Pvt Ltd

Directors | SP Papa |



Pankaj S/o

Bills of Exchange (NIs)/ Deeds
Sec 22

① BOEs, PNs, Hundis → execute
BODs will authorise someone

② Deeds

who will execute deeds?

Does the company have a common seal

- Yes → In writing authorise a person as attorney to execute the deed
- NO → deeds will be executed by
  - Director + CS
  - 2 Director