

Companies Act, 2013.

Introduction → 438 sections
It contains 470 sections, 29 chapters & 7 schedules.

Applicability →
All Companies registered under this act or any other previous Company law.

- * Banking Company
- * Electric Company
- * Insurance Company.

Definition → [Section 2(20)] Clause.

"Company means a company formed and registered under this act or any other previous law."

→ A company is an incorporated association, which is an artificial person created by law, having a separate entity, with a perpetual succession and a common seal.

Features → SLAP @beingcommerce

a) Separate legal Entity →
 → Company once registered shall be clothed with legal personality and shall have separate & distinct identity from members, directors, creditors & all related party.
 → Even members does not have insurable interest in Company.
 [Macaura vs. Northern Assurance Co. Limited] 1925.

b) Perpetual Succession →
 → Members may die or change but Company goes on till it is wound up.

c) Limited Liability → (for members)
 → Liability of members depends upon kind of company in which he is member.
 (limited by shares, limited by guarantee, unlimited liability for)

d) Artificial legal person →
 → Company is clothed with rights of individual and it is a person created by law. Therefore Company is known as artificial person.

→ A Company can own assets, sue & can be sued, open Bank A/c etc however cannot marry, take oath, become a professional.

→ Company rules by human agency called directors.

e) Common Seal →
 → Company can have a Common Seal, a feature which is now optional since 2015 which works as signature of Company, now replaced by signature of 2 directors & secretary.

Corporate Veil

- This refers to a concept where Company is separate from its members and all related parties. (Stakeholder)
- Corporate veil refers to a concept that members are shielded from the liability of Company.
[Salomon vs. Salomon & Co. Ltd.]
- This case explains that Company is different from subscriber and all other related person, even if one person holds majority of stake.

Lifting UP of Corporate Veil →

- In certain cases Corporate Identity of Company shall be disregarded & person behind Company are identified & punished.
- Following are cases where corporate veil is lifted.
 1. To determine Character of Company → / Co-Entry
[Daimler Co. Ltd vs Continental Tyre & Rubber Co.]
→ If public interest is at risk, court shall disregard Corporate identity of Company & identified people involved in Company.
 2. To protect revenue / Tax →
[Sir Dinshaw Maneckjee Petit vs LIT]
→ Where Corporate identity of Company is used to evade tax, court shall disregard Company Corporate identity.
 3. To avoid legal obligation →
[Worker Employed in associated rubber industry Bhavnagar vs. Associate Rubber Industries, Bhavnagar & Another]
→ Where it is found that Companies is formed solely for the purpose to avoid legal obligation like Bonus to workers, than Corporate identity is disregarded and person behind Company are punished.
 4. Formation of Subsidiary to act as agent →
[Merchandise Transport Ltd vs British Transport Commission.]
→ IF holding & subsidiary Company are working as single Commercial unit than Corporate Veil is lifted to check person behind Company.
 5. Company is formed for fraud / Improper Conduct →
[Gilford Motors vs Horne]
→ Where Company is formed for illegal or improper purposes that is to defeat law.

Types of Companies →

* On the Basis of Liability →

- a) Co. limited by Shares → Section 2[22]
→ Liability of members shall be limited upto unpaid amount of shares only.
- b) Co. limited by Guarantee → Section 2[21]
→ Liability of member shall be limited to amount guaranteed by them.
- c) Unlimited Company → Section 2[92]
→ There is no limit in the liability of members i.e. every member is liable to words total debt of Company.
[Narendra Kumar Aggrawal vs. Saroj Malan] → *Case law of Co. limited by guarantee.*

* On the Basis of Members →

- a) One Person Company → *Limited liability Separate legal identity*
→ It means a Company with only one person as member.
→ One person needs to appoint nominee. (Nominee can be appointed 10 days after start)
→ Subscriber and nominee must be *resident & Indian Citizen*.
→ No limit for minimum paid-up capital.
- b) Small Company → Section 2(85)
→ Means a Company other than public Company
→ Having paid-up ^{share} capital as ₹ crore.
→ Turnover ₹ 10 crore.
- c) Private Company → Section 2(68)
→ Means a Company which
→ Restrict right to transfer Share.
→ Maximum limit can't be more than 200 members.
→ Prohibits invitation to subscription from public.
- d) Public Company → Section 2(71)
→ A Company which is not a private Company.
→ Also, subsidiary of public Company is deemed public Company.

* On the Basis of Control →

- a) Holding Company → Section 2(46)
→ A company is a holding Company in relation to one or more other Companies i.e. a Company in which other Companies are its subsidiaries.
- b) Subsidiary Company → Section 2(87)
→ Subsidiary Company in relation to any other Company, means a company in which holding Company—

- Controls Composition of BOD.

- Exercises more than 1/2 of total voting power either at its own or with one or more of its subsidiaries.

Note → ^{Section 2(71)} Subsidiary of a Public Company is deemed **public Company**.

c) Associate Company → ^{Section 2(6)}

→ A Company in which other Company has "Significant Influence".
Significant Influence means control of ^{all the} 20% of total voting power.

* On the Basis of Capital →

a) Listed Company → ^{Explained in Sec 2(81)} Section 2(52)

→ It is a company which has any of its (securities) listed on recognised Stock Exchange.

b) Unlisted Company →

→ which is not a listed Company.

* Other Companies →

a) Govt. Company → ^{Section 2(45)}

Means a Company in which not less than 51% paid-up Share Capital is held by -

→ Central Govt.

→ State Govt.

→ Partly Central & State Govt.

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Note → Subsidiary of Govt. Co. is deemed Govt. Company.

b) Foreign Company → ^{Section 2(42)}

It means a Company incorporated outside India & having place of business in India & conducts business in India.

c) Dormant Company → ^{Section 455}

An inactive Company may make an application to registrar for obtaining status of dormant. (Haven't done any significant transaction)

d) Inactive Company →

which do not carrying any business activity or doing any significant accounting transaction during last 2 years.

* Significant Accounting Transaction means any transaction other than following:-

→ Payment of fees by company to registrar

→ Payment made by Company to fulfill legal requirements.

→ Allotment of shares to fulfill legal requirements.

→ Payment of for maintenance of office.

Can have general meeting within 14 days instead of 21 days

Company → [Section 8] (need not to use Pvt Ltd at End)

Formation of Company with charitable object etc.

These Companies are formed to promote charitable object of commerce, art, science, research, sports, education, charity & these companies can apply their profit in promoting object & prohibited payment of dividend.

Such companies have privileges like, not to use Pvt Ltd or Ltd as suffix no. minimum share Capital requirement and cannot declare dividend to its members.

IF Conditions Contravened, Central Government may revoke licence, or Amalgamate or strike off Company. (Penalty on directors) (Penalty on Company) (Penalty on directors) (Penalty on Company)

Nidhi Company :- [Section 406]

Means mutual Benefit Society or which central Government notified as Nidhi.

Public Financial Institution (PFI): Section 2(72).

Following Institutions are PFI's → Such Co. are incorporate because of laws.

- * LIC Institutional Development Finance Corp of India
- * IDFC
- * UTI
- * Institution notified by Central Government.
- * Institution notified by Central Government as discussed with RBI.

PFI

Established by Central or State Act.

Not less than 51% of paid-up Capital is held by Co or St or Both

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Modes of Incorporation of Company →

Promoters: Section 2(69) means a person :-

- who has been named as promote in annual return (prospective of company)
- who has control over affairs of Company.
- who advises BOD's of Company & Directors follow their instructions

Formation of Company :- Section 3

- * Public Company → 7 subscribers
- Private Company → 2 subscribers
- One Person Company → 1 subscribers & 1 nominee.

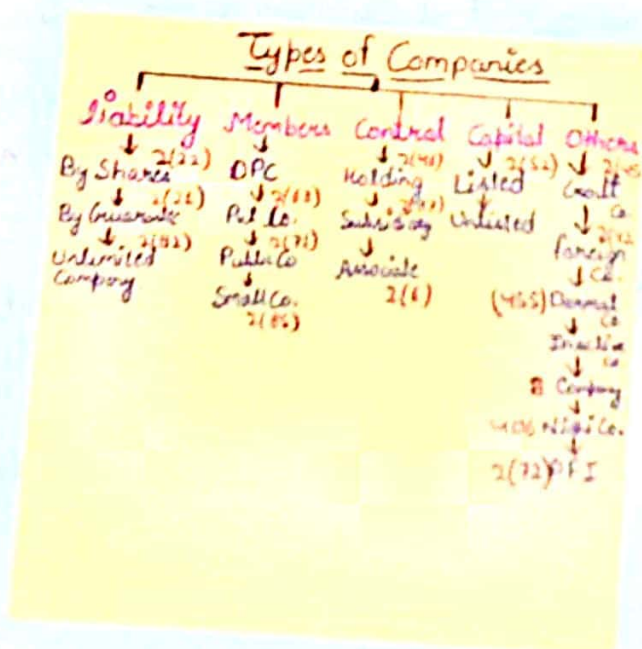
Incorporation of Company → [Section 7]

1. Filing of Documents with ROC (Registrar of Company)
 - a) MOA & AOA duly signed by Subscribers
 - b) Declaration by professional involved in formation of Company that all requirements are complied.
 - c) Declarations from all subscribers and first directors that not connected (in offence) in formation of Company or found guilty of any fraud or guilty in management of Company.
 - d) Address of Correspondence.
 - e) Particulars of every subscriber (personal details of members)
 - f) Particulars of first Director (personal detail of Director)
 - g) Particulars of any other interested person.
2. Registrar shall issue Certificate of Incorporation if he is satisfied with documents submitted.
3. Allotment of Corporate Identification Number (CIN)
4. Company shall maintain & preserve all these documents at registrar office
5. Company cannot Incorporate by furnishing false or incorrect or information or by suppression of fact. [Section 447]
6. If Company is already incorporated with false incorporation or by suppression of facts, then liable person will be punished [Section 447]
7. Tribunal shall take action against such company.

NCLT - National Company Law Tribunal.

Simplified Proforma for Incorporating Company Electronically (SPICE)
 (Section 9)
 Ministry of Corporate Affairs has simplified the process of filling the forms of incorporating of a company through (SPICE).

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Capital

1

1. Nominal / Authorised / Registered Capital. ^{→ MOA} Section 2(8)

- It means such a capital which is authorised by memorandum of Company to be the maximum amount of share capital of Company.
- Have to pay stamp duty on Nominal Capital.

2. Issued Capital. Section 2(50) → AOA

- It means such capital issues from time to time for subscription.
- It is that part of authorised capital which is offered for by the Company for subscription & includes the shares allotted for consideration other than cash.
- Have to be disclosed in Company's balance sheet.

3. Subscribed Capital. Section 2(86)

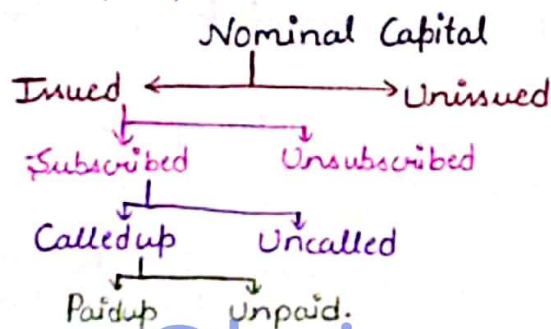
- Such part of capital which is for the time being subscribed by members of Company.
- It is nominal amount of shares taken by public.

4. Called-up Capital. Section 2(15)

- Such part of capital, which has been called for payment.
- It is the total amount called up on the shares issued.

5. Paid-up Capital.

- It is the total amount paid or credited as paid-up on shares issued.
- It is equal to called up capital less calls in arrears.



Shares

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Nature of Share: Section 2(84)

- Means a share in the share capital of Company & includes stock.
- Share is an interest in the Company.

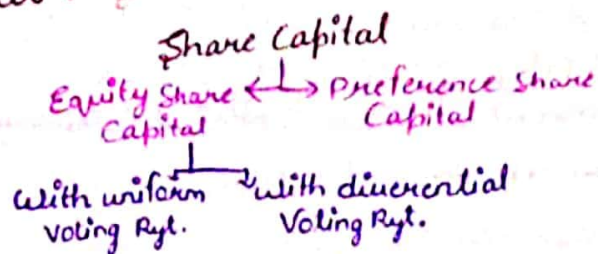
Shares are a movable property: - [Section 44]

- Shares or Debentures or other interest of any member in a company shall be movable property transferable in the manner provided by articles of Company.

Shares shall be numbered: (Section 45)

- Every share in a company having a share capital, shall be distinguishable by its distinctive number.

Kinds of ^{Share} Capital: Section 43



a) Payment of Dividend →

→ Either as a fixed amt or an amt calculated at a fixed rate, which may either be free of or subject to income tax.

b) Repayment →

→ There is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in MOA & AOA.

Memorandum of Association → "Public document"

MOA is a charter of Company. ^{scope}

It defines its constitution and the scope of the powers of Company with which it has been established under the act.

Object of registering a memorandum of association:-

→ It identifies the possible scope of its operation beyond which its action cannot go.

→ It clarifies powers & activities of shareholder, creditors & all those who deal in company.

→ It is presumed that every person entering into contract has the knowledge of the conditions contained therein.

→ MOA is a public document. [Section 399]

→ Shareholder must know abt purpose for which his money is used by Company & what risk they are taking in making investment.

Note → It cannot enter into a contract or engage in any trade or business which is beyond the power conferred in memorandum.

Schedule I Section 4

- TABLE A → is a form for MOA of Company limited by shares. ^{net} Capital
- TABLE B → is a form for MOA of Company lim by guarantee & having share ^{Capital}
- TABLE C → is a form for MOA of Company lim by guarantee & having share ^{Capital}
- TABLE D → is a form for MOA of an unlimited Company.
- TABLE E → is a form for MOA of an unlimited Company & having share Capital.

Content of Memorandum

a) **Name Clause** →
Name of the Company. → MCA notices stated name clause.
Ltd. → Public Ltd. Company
Pvt. Ltd. → Private Ltd. Company.

This clause is not applicable on the Companies formed under Section 8 of the Act.

One Person Co. → One Person Company.

b) **Registered Office Clause** →
→ State in which the registered Office of the Company.

c) **Object Clause** →
→ The object for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

→ If Company change its activity, then it shall change its name in line of such activity within a period of 6 months.

d) **Liability Clause** →

Limited by Shares → liability of its member is limited to its unpaid amt.
limited by Guarantee → amount that is promised by partner during wound-up

e) **Capital Clause** → { **Authorised Capital Clause** }

→ Maximum Authorised Capital issued by Company in how many number of shares are divided with prices.

f) **Association Clause** →

It includes name of all the subscriber^{& their details} who signed the MOA.

In One Person Company →

Name of nominee is also mentioned.

Doctrine of (Ultra) Vires → "Beyond (their) powers"

→ The legal phrase is applicable only to acts done in excess of the legal powers of doers.

→ A Company can be restrained from employing its fund for purposes other than those sanctioned by MOA.

Caselaw: - Ashbury Railway Carriage and Iron Company Ltd vs. Riche (1875)

Anything done by company beyond its power is void ab initio.

Article of Association → (Magna Carta)

- It regulates domestic management of a Company and creates certain rights and obligations b/w members & Company.
- It is a business document. (Domestic management)
- AOA are bye-laws of Company acc. to which management perform their functions.

Contents & Models of AOA. (Section 5)

1. Contains regulations →
2. Inclusion of matters →
 - Activities that management perform and additional matter that management gonna handle.
3. Contain Provision for Entrenchment →
 - Rules to protect Company provision. (to protect something)
 - Decides punishment if rules are not followed.
4. Manner of Inclusion of Entrenchment Provision →
 - Such provisions can made Either on formation of Company or by amendment in articles agreed by all members.
 - In public Company, a special resolution is made.
5. Notice to registrar of Entrenchment provision →
6. Forms of articles →
 - In Schedule 1, Tables (F, G, H, I & J) have specified forms.
7. Model Article →
 - A Company may adopt all or any of the regulations contained in model articles applicable to such Company.
8. Company registered after the commencement of this Act →
 - AOA of such Companies are regulated by latest Acts.

Difference b/w AOA & MOA.

Objectives →

MOA → Delimits the objectives of Company

AOA → It lay down rules & regulations for internal management.

Relationship →

MOA → Company with outside world.

AOA → Company and its members.

Alteration →

MOA → Altered under certain circumstances & in most cases, permission of Regional director, Tribunal is required.

AOA → Can be altered by passing a special resolution.

Ultra Vires →

MOA → These can't be ratified even by unanimous consent of all shareholders.

AOA → The articles can be ratified by passing a special resolution of shareholders.

Doctrine of Indoor Management → (Section 399)

→ It says that any person can inspect by electronic means any document kept by registrar or get a copy by payment of prescribed fees.

→ Section 399 confers right of inspection to all, it will be presumed that person knows the content of the document.

This kind of presumed/implied notice is called Constructive notice.

By Constructive notice is meant →

i) It is presumed to have knowledge of the content of documents.

ii) Every person have knowledge of Constructive notice of MOA & AOA and also other documents such as Special Resolution.

Doctrine of Indoor Management →

→ It is Exception to Doctrine of Constructive notice

→ The aforesaid doctrine of Constructive notice does in no sense mean that outsiders are deemed to have notice of internal affairs of Company.

→ This is the doctrine of Indoor Management also known as Turquand Rule.

→ (The Royal British Bank vs. Turquand.)

Exception of doctrine of Indoor Management →

6.

a) Actual or Constructive knowledge of Irregularity →

→ The rule does not protect any person when person dealing with the Company has notice, whether actual or constructive of irregularity.

(Caselaw:- Howard vs. Patent Ivory Manufacturing Co.)

b) Suspicion of Irregularity →

→ The protection of the "Turquand Rule" is also not available where circumstances surrounding the Contract are suspicious and therefore invite inquiry.

(Caselaw:- Anand Bihari Lal vs Dinshaw & Co.)

c) Forgery :-

→ The doctrine of Indoor management applies only to irregularities which might otherwise affect a transaction but it can't apply to forgery which must be regarded as nullity.

(Caselaw:- Ruben vs Great Fingall Consolidated.)