

Chapter II

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

Four Stage of Company Formation

1. Promotion Stage
2. Incorporation Stage
3. Raising of Capital Stage
4. Commencement of Business Stage

Promotion Stage and Promoters

Meaning of 'Promoter'	"Promoter" means a person who generates the idea of incorporating a company and who takes all the necessary steps to incorporate it.
Definition of 'Promoter' [Sec. 2(69)]	<p>Promoter means a person: (Mnemonic - PACT)</p> <p>P → a) who has been named as such in a Prospectus; or</p> <p>A → b) is identified by the Company in the Annual Return;</p> <p>C → c) who has control over the affairs of the company directly or indirectly,</p> <p>Act → d) in accordance with whose advice, directions or instructions; the BOD of a company is accustomed to Act.</p> <p>Note- However, a person acting merely in a professional capacity shall not be regarded as promoter under point (d).</p> <p>Promoter is not necessary to be initiated with initial formation but one who subsequently arrange to float capital can also be regarded as promoter</p>

Mr. Abhi is a Chartered Accountant and MBA by profession, has been appointed as an Executive Director on the Board of XYZ Limited. His job profile includes advising the Board of Directors of the company on various compliance matters, strategies, business plans, and risk matters relating to the company. Keeping in view of above position whether Mr. Abhi can be classified as the Promoter of XYZ Limited? Please examine the same under the provisions of the Companies Act, 2013. (RTP May 2022)

Position of Promoters	<ul style="list-style-type: none"> (i) A promoter is neither an agent nor a trustee of the company, since the company has not yet come into existence. (ii) A promoter stands in a fiduciary capacity towards the company.
Duties of Promoters	<ul style="list-style-type: none"> (i) must not make any secret profit at the expense of the company he promotes. If he has made any secret profit, the fact must be disclosed to an independent BOD. (ii) A promoter must make full and fair disclosure of his interest in every transaction with the company in which he is, directly or indirectly interested.
Remedies available to the company against the promoters	<p>Where a promoter makes a secret profit, and the fact becomes known to the company, the company will have the following remedies:</p> <ul style="list-style-type: none"> (a) The company may rescind the contract, even if the company had adopted the contract and communicated the fact to the other party to the contract. However rescission must be made within a reasonable time. (b) The company may recover the secret profit made by the promoters. (c) The company may sue promoters for breach of trust.
Right to receive remuneration or reimbursement	<ul style="list-style-type: none"> (a) The promoters shall have no right to – <ul style="list-style-type: none"> (i) receive any remuneration from the company; or (ii) recover the expenses properly incurred by them for incorporation of the company, unless the company, after incorporation, has contracted the same. (b) Even where the articles provide that the company shall pay remuneration to the promoters or reimburse expenses incurred by them, such a provision is not binding on the company.

1 The definition of Promoter includes all of the following except:

- a. A person named as 'Promoted' in a Prospectus or Annual Return of the company.
- b. A person who has control over the affairs of the company as a shareholder or Director.
- c. **A person who is engaged in formation of company in a professional capacity.**
- d. A person on whose advice the Board of Company is accustomed to act.

2 The status of a Promoter in relation to the company is:

- a. An agent of the company.
- b. A trustee for the company.
- c. **A person in fiduciary capacity in relation to company.**
- d. None of the above

3 The duties of a promoter include:

- a. Not to make any secret profit out of the promotion of the company.
- b. To disclose his interest in any transaction entered by him, to the company.
- c. Not to make an unfair or unreasonable use of his position.
- d. **All of the above**

- 4 Which of the following statement is correct in relation to compensation to a Promoter?
- A promoter has no right to get compensation or remuneration from company.**
 - A promoter can be paid remuneration or profit with full and fair disclosure to the company.
 - A promoter can be paid for the expenses incurred by him on incorporation of the company.
 - A promoter can be issued shares in lieu of his remuneration and expenses.
- 5 A and B bought a real estate property for 10 Lakh and transferred it to a company for 12 Lakh. They then formed a new company and transferred the property for 15 Lakh and disclosed the profit of 3 Lakh but did not reveal the first profit of 2 Lakh. Which of the following statement is correct with regard to the duty of promoters?
- The first profit of 2 Lakh not disclosed by promoters is a secret profit and A and B would be bound to pay it to the company.**
 - The promoters are not bound to disclose each and every transaction made by them prior to incorporation of company.
 - A and B have made disclosure of the profit of 3 Lakh made by them and therefore no further action is required.
 - All of the above

Pre-Incorporation or Preliminary Contracts

Meaning	<ul style="list-style-type: none"> means a contract entered into by the promoters on behalf of a proposed company, before incorporation of a company. These contracts are usually made by the promoters to acquire some property or right for the proposed company.
Requirements of adoption of a pre-incorporation contract	<p>As per Sec. 15 and 19 of the Specific Relief Act, 1963 a company as well as the other party to the contract is bound by a pre-incorporation contract, if the following conditions are satisfied:</p> <ol style="list-style-type: none"> The promoters entered into a contract before incorporation of a company. The contract is for the purpose of the company. Such contract falls within any of the clauses contained in the 'object clause'. The company has accepted such contract after incorporation of the company. The company has communicated such acceptance to the other party to the contract.
Position where a company adopts a pre-incorporation contract	<ol style="list-style-type: none"> The contract can be enforced by the company. The contract becomes binding on the company. The promoters shall not be personally liable on such a contract.
Position where a company does not adopt a pre-incorporation contract	<ol style="list-style-type: none"> The contract shall not bind the company. <ul style="list-style-type: none"> Even if the contract stipulates that the company, after incorporation, shall be bound by it Even if the company takes the benefit of pre-incorporation contract The promoters shall be personally liable on such contract [Kelner v Baxter]

- 1 Any contract or agreement which is made prior to incorporation of company can be enforced only if:
 - a. If the contract is warranted by the terms of its incorporation.
 - b. The contract is accepted by the company.
 - c. The company has communicated the acceptance of contract to the third party.
 - d. **All of the above**

B] Incorporation Stage:

Memorandum of Association MOA [Sec.4]	
Definition of MOA [Sec. 2(56)]	Memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act.
Objective of MOA	<p>(i) It enables shareholders, creditors and all those who deal with company to know</p> <ul style="list-style-type: none"> • what its powers are • what activities it can engage in. • scope of its operations <p>(ii) The shareholders must know the purposes for which his money can be used by the company and what risks he is taking in making the investment.</p>
MOA is compulsory	<ol style="list-style-type: none"> 1. No company can be registered without a memorandum. 2. It is the most fundamental document of the company specifying the most important information relating to a company. Hence, it is also called as the charter of the company.
Contents of MOA [Sec. 4]	<p>I. Name Clause</p> <ol style="list-style-type: none"> 1. It contains name of the company 2. The name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company. 3. This clause is not applicable on the companies formed under section 8 of the Act. 4. A Government Company may be formed as a private company or a public company. However, the name of a Government Company shall end with the word 'limited', whether it is a public company or a private company, if it is a limited company and it has not committed any default in filing with the Registrar, its financial statements u / s 137 or annual return u/s 92)
	<p>II. Situation Clause</p> <p>The 'situation clause' of memorandum shall mention the name of the State in which the registered office of the company is proposed to be situated.</p> <p>Note – Co shall have regd office within 30 days of incorporation</p>
	<p>III. Objects Clause</p> <p>The objects clause of memorandum shall state the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance of the main objects.</p> <p>It comprises of :-</p> <ul style="list-style-type: none"> • Main Objects – The types of Business which the

		<p>company can carry.</p> <ul style="list-style-type: none"> Incidental /Ancillary Objects – The types of Transactions which the company can conduct for achieving its main objects.
	IV. Liability Clause	The liability clause of memorandum shall state as to whether the liability of members of the company is limited or unlimited.
	V. Capital Clause	The 'capital clause of memorandum shall state: <ul style="list-style-type: none"> the authorized share capital/Nominal capital of the company the division of share capital into number and face value of shares.
	VI. Subscription Clause /Association Clause	<ul style="list-style-type: none"> Details of subscribers The number of shares each subscriber to the memorandum intends to take(not less than 1 shares)
	VII. Nomination Clause (in case of an OPC)	In the case of OPC, the memorandum shall state the name of a person, who, in the event of death or incapacity of the subscriber, shall become the member of the company.
Format of Memorandum	The memorandum shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to the company.	
	Table A	Memorandum of a company limited by shares
	Table B	Memorandum of a company limited by guarantee and having no share capital
	Table C	Memorandum of a company limited by guarantee and having a share capital
	Table D	Memorandum of an unlimited company having no share capital
	Table E	Memorandum of an unlimited company having a share capital
Other important points	MOA should be: <ol style="list-style-type: none"> Printed Divided into para Consecutively numbered Signed by required subscriber. 	

Articles of Association - AOA [Sec. 5]		
Definition of articles	Articles means the articles of association of a company as originally framed or as altered from time to time or applied in lieu of any previous company law or of this Act.	
Meaning [Sec. 5(1)]	Articles are the regulations framed by a company for its own governance.	
Inclusion of matters	The articles of a company shall contain the REGULATIONS for internal management of the company.	
Content of AOA	The article contains rules regarding shares, debentures, prospectus, meetings, BOD, general powers of company.	
Format of AOA [Sec. 5(6)]	The articles shall be in respective forms specified in Tables F, G, H, I and J in Schedule I as may be applicable to the company	
	Table F	Articles of a company limited by shares
	Table G	Articles of a company limited by guarantee and having a share capital
	Table H	Articles of a company limited by guarantee and having no share capital
	Table I	Articles of an unlimited company having a share capital
	Table J	Articles of an unlimited company having no share capital
Entrenchment [Sec. 5 and Rule 10]	<ol style="list-style-type: none"> Usually an AOA may be altered by passing special resolution but entrenchment makes it more difficult to change it. So entrenchment means making something more protective. The AOA may contain the provisions for entrenchment, i.e. certain specified provisions of the articles can be altered only by complying with such conditions or procedures as are more restrictive than those as are applicable in case of a SR. The provisions for entrenchment may be made <ul style="list-style-type: none"> ➤ at the time of formation of the company; or ➤ by an amendment of articles, <ol style="list-style-type: none"> (a) In case of a private company, with the consent of all the members; (b) In case of a public company, by passing Special Resolution. Where the articles contains the provisions for entrenchment, the company shall give notice of such provisions to the Registrar: <ol style="list-style-type: none"> (i) In Form No. INC-2 & SPICe+ INC-32, as the case may be, at the time of incorporation of the company; (ii) In Form No. MGT-14, within 30 days from the date of entrenchment of the articles in case of existing companies. 	
1. The Articles of Association of a Company may contain provisions for entrenchment under Section 5 of the Companies Act, 2013. What is meant by entrenchment provisions in this context? Also State		

the relevant provisions of the said Act dealing with entrenchment provisions.(3 Marks)(Nov 2020) (MTP Oct. 22)

2. Yadav Dairy Products Private limited has registered its articles along with memorandum at the time of registration of company in December, 2014. Now directors of the company are of the view that provisions of articles regarding forfeiture of shares should not be changed except by a resolution of 90% majority. While as per section 14 of the Companies Act, 2013 articles may be changed by passing a special resolution only. Hence, one of the directors is of the view that they cannot make a provision against the Companies Act, 2013. You are required to advise the company on this matter. (RTP MAY 2020)
3. Mr. Shyamlal is a B. Tech in computer science. He has promoted an IT start up and got it registered as a Private Limited Company. Initially, only he and his family members are holding all the shares in the company. While drafting the Articles of Association of the company, it has been included that Mr. Shyamlal will remain as a director of the company for lifetime. Mr. Mehra, a close friend of Mr. Shyamlal has warned him (Mr. Shyamlal) that in future if 75% or more shares in the company are held by non-family members then by passing a Special Resolution, the relevant articles can be amended and Mr. Shyamlal may be removed from the post of director. Mr. Shyamlal has approached you to advise him for protecting his position as a director for lifetime. Give your answer as per the provisions of the Companies Act, 2013. (6 Marks)(MTP M 21)

Conclusion - In the said situation the IT startup company is a private company. Therefore, Mr. Shyamlal can get the articles altered which is agreed to by all the members whereby the amended article will say that he can be removed from the post of director only if, say, 95% votes are cast in favour of the resolution and give notice of the same to the Registrar.

Applicability of model articles [Sec. 5(7), (8)]	(a) A company may adopt all or any of the provisions contained in the model articles applicable to it. (b) Where the registered articles of a company do not exclude or modify the provisions contained in the model articles applicable to it, then, such provisions of the model articles shall apply to such company, as if they were contained in the duly registered articles.
Applicability to existing companies [Sec. 5(9)]	Nothing in this section shall apply to the articles of a company registered under any previous company law, unless amended under this Act.

1. In case of a private company, the provisions for entrenchment may be made at the time of formation of the company or by amendment of articles, (April 22)(1 Mark)
 - a. By passing a special resolution

- b. With the consent of all the members
- c. By passing a special resolution and approval of the Central Government
- d. With the consent of all the members and approval of the Central Government

Act to Override Memorandum, Articles, etc. (Sec.6)

Act to have overriding effect [Sec. 6(1)]	The provisions of this Act, shall have overriding effect over anything, contrary contained in: (a) MOA of a company; or
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	(b) AoA of a company; or (c) any agreement executed by a company; or (d) any resolution passed by the company in GM/ BM. However, if any other section of the Act say that article is superior then we will treat it accordingly.
Inconsistent provisions to be void	If any provision contained in the MOA, AOA, agreement or resolution is inconsistent the provisions contained in Act, then such provision shall be void to the extent of such inconsistency.

Effect of Memorandum and Articles (Sec. 10)

Provision of Sec. 10	MOA and AOA shall bind the company and members as if each one have individually signed it
Member bound to company	The members are bound to company as in a contract and the company can exercise a right of lien on shares of member for any debt due to company.
Company bound to members	A company is also liable to members as to whatever is contained in its MOA and AOA and so far as it affects any rights of member . Therefore, a member can sue company for any act ultra vires, right to notice of meeting, right to poll, right to dividend declared etc.
Members bound to other members	The Articles bind the members inter se as far as rights and duties arising out of the Articles. However, a member can enforce his rights against another member only through company and not directly.
Binding with 3rd parties	The Memorandum and Articles do not bind either the company or the members to any third party.

1. In Eley v Positive Life Insurance Co., the articles provided that Eley should act as a solicitor for life to the company and should not be removed from office except for misconduct. Eley acted as a solicitor to the company and also became a member of the company. The company however discontinued his he had no cause of action because the articles did not constitute any contract between the company and himself as solicitor. His action was dismissed.
2. The Articles of a Public Company clearly stated that Mr. A will be the solicitor of the company. The company in its general meeting of the shareholders resolved unanimously to appoint B in place of A as the solicitor of the company by altering the articles of association. Examine, whether the company can do so? State the reasons clearly. (RTP May 2015) (RTP May 2016) (MAY 2013) (MTP MAY 2017)

Hint:-

In the present case, the company has altered the Articles by a unanimous resolution of the members passed at a general meeting. Hence, the alteration is valid and after registration of the altered Articles, the appointment of B will stand and A will be terminated.

Alteration of MOA or AOA to be noted in Every copy[Sec. 15]

Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be.

Copies of MOA, AOA, etc. to be given to Members [Sec.17]

Provision [Sec. 17(1)]	Every company on request of a member, shall send copies of the following documents within 7 days of the request on the payment of fees: a) memorandum; b) articles ; c) every agreement and every resolution referred in section 117
Punishments [Sec. 17(2)]	Company and officer in default shall be liable penalty of Rs 1000 per day during which such default continues or Rs 1 lakh, whichever is less.

Doctrine of Ultra Vires Act

Meaning of the doctrine	Ultra means "beyond' or 'in excess of' and vires means 'powers'. Thus, ultra vires means an act or transaction beyond or in excess of the powers of the company.
Ultra vires the 'MOA'	<ul style="list-style-type: none"> (i) An act or transaction shall be ultra vires if <ul style="list-style-type: none"> (a) it is not permitted or authorised by the Companies Act, 2013; (b) it falls outside the object clause of memorandum; and (c) its attainment is not incidental to the attainment of main objects. (ii) An act which is ultra vires the company is void and is of no legal effect. (iii) Even ratification of an ultra vires contract by the whole body of shareholders does not make an ultra vires contract valid or enforceable. (iv) Any member may obtain an injunction order from the Court, i.e. an order of the Court restraining the company from proceeding with the ultra vires contract. (v) If funds of the company are misapplied or wasted by entering into ultra vires transactions, the directors shall be personally liable to the company for breach of trust.
Ultra vires the 'AOA'	<ul style="list-style-type: none"> (i) Any act not authorised by or is against the articles. (ii) Such ultra vires act is voidable at the option of shareholders. (iii) Ultra vires act against AOA can be ratified by members by altering AOA.
Ultra vires the 'Director'	"SAME LIKE ABOVE"
Ashbury Railway Carriage and Iron Company Ltd. v/s Richie	Extract of object clause: The object clause of an industrial company contained the following objects besides some other objects: <ul style="list-style-type: none"> (a) To make, sell or lend on hire, railway carriages and wagons. (b) To carry on the business of mechanical engineers and general contractors.

	<p>(c) To purchase, lease, work and sell mine, minerals, land and buildings.</p> <p>Contract made by company: The company entered into a contract with Richie, for the financing of a construction of a railway line in Belgium.</p> <p>Decision of the Court: The Court held that the word "general contractors" had to be given a restricted meaning.</p> <p>(a) Only such contracts could be covered in the term 'general contractors' as are in some way related or connected with mechanical engineering</p> <p>(b) Therefore, the company could not finance the construction of a railway line by alleging that such a business falls under the business of general contractors.</p>
<p>The object clause of the Memorandum of Association of Miranda Private Ltd, Kolkata authorized it to do trading in fruits and vegetables. The company, however, entered into a Partnership with Mr. Karan and traded in steel and incurred liabilities to Mr. Karan. The company, subsequently, refused to admit the liability to Karan on the ground that the deal was 'Ultra Vires' the company. Examine the validity of the company's refusal to admit the liability to Karan. Give reasons in support of your answer. (RTP Nov 2016)</p>	

Doctrine of Constructive Notice

<p>Applicability</p>	<p>This doctrine operates in favor of the company, i.e. it creates a presumption in favor of the company. It operates against the persons dealing with the company.</p>			
<p>Effect of the doctrine</p>	<p>(i) Once registered the memorandum and articles become public documents (Sec. 399). Therefore, every person dealing with the company is presumed to have read the memorandum and articles. Further, it is presumed that he has understood the provisions of memorandum and articles correctly, i.e. in the right sense</p> <p>(ii) The doctrine prevents any person dealing with the company from alleging that he did not know the provisions contained in the articles or memorandum.</p> <p>(iii) If a person enters into a contract with the company in contravention of the provisions of the memorandum and articles, he cannot enforce such a contract.</p> <p>(iv) Any person entering into a contract with company which is in contravention of provisions of MOA or AOA cannot present a defense later on, that he did not know the provisions in these documents.</p>			
<p>Reference Case</p>	<p>Kotla Venkata Swamy vs C. Ram Murti</p> <table border="1" data-bbox="443 1809 1418 1935"> <tr> <td data-bbox="443 1809 635 1935"> <p>Facts</p> </td> <td data-bbox="635 1809 1418 1935"> <p>Whether Co. will be liable on contract where AOA specified signature of M.D, Secretary & WTD, However on a mortgage deed, only secretary and WTD signed</p> </td> </tr> </table>		<p>Facts</p>	<p>Whether Co. will be liable on contract where AOA specified signature of M.D, Secretary & WTD, However on a mortgage deed, only secretary and WTD signed</p>
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	Law	Doctrine of Constructive Notice.
	Conclusion	No contract will not be enforceable on the company.

Doctrine of Indoor Management/Turquand rule		
Applicability	The doctrine of indoor management operates in favor of the outsiders , i.e. this doctrine creates a presumption in favor of the outsiders.	
Effect of the doctrine	<ul style="list-style-type: none"> (i) As per this doctrine, outsiders dealing with the company are not required to enquire into the internal management of the company. (ii) Outsiders dealing with the company are entitled to assume that as far as internal proceedings of the company are concerned, everything has been done regularly. (iii) If not, company is in fault and cannot deny liability on said ground (iv) Thus, the doctrine protects an innocent outsider from any irregularity present in the working of the company 	
Reference case	Royal British Bank vs Turquand	
	Facts	AOA specified that Co. can borrow money only when resolution by shareholders will be passed but co. borrowed money without consent of shareholders whether co. will be liable on the contract
	Law	Doctrine of Indoor Management
	Conclusion	Contract will be liable on company
Exceptions to Indoor Management	Knowledge of irregularity	Where a person dealing with a company has actual or constructive notice of the irregularity as regards internal management, he cannot claim the benefit under the rule of indoor management. Reference Case: Howard vs Patent Ivory Manufacturing Company
	Negligence	Where a person dealing with a company could discover the irregularity if he had made proper inquiries, he cannot claim the benefit of the rule of indoor management. The protection of this rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry Reference Case: Anand Biharilal vs Dinshaw & Company
	Forgery	Traditionally, outsider does not get the benefit of Turquand Rule in case of forgery because forgery means "no acceptance" and hence no agreement.

		Reference Case: Ruben vs Great Fingall consolidated company.
	No knowledge of articles	If the authority to enter into a contract on behalf of the company could be delegated to an officer or employee of the company as per the articles, but such authority has not been actually delegated to him, an outsider who deals with such an officer cannot assume that the required authority has been delegated to him, if the outsider has not read the articles. Reference Case: Rama Corporation vs Proved Tin & General Investment Company Ltd.
	Illegal transactions	The benefit of doctrine of indoor management is not available in case of any ultra vires or illegal transaction.
<p>1. The role of doctrine of 'indoor management' is opposed to that of the role of 'Constructive notice'. Comment on this statement with reference to the Companies Act, 2013. (6 Marks) (MTP Nov. 23)</p> <p>2. The directors of Smart Computers limited borrowed a sum of money from Mr. Tridev. The company's articles provided that the directors may borrow on bonds such sums as may, from time to time, be authorized by resolution passed at a general meeting of the company. The shareholders claimed that there had been no such resolution authorizing the loan, and therefore, it was taken without their authority and the company is not bound to repay the loan to Tridev. In the light of the contention of shareholders, decide whether the company is bound to pay the loan. (MTP MAY 2020) (NOV 2016) Conclusion - In the given question, Mr. Tridev being a person external to the company, need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. Even if the shareholders claim that no resolution authorizing the loan was passed, the company is bound to pay the loan to Mr. Tridev.</p> <p>3. The Doctrine of Indoor Management always protects the persons (outsiders) dealing with a company." Explain the above statement. Also, state the exceptions to the above rule (MAY 2015) (NOV 2018) (MTP Sep 22)</p>		

Howard vs Patent Ivory Manufacturing company

Facts	(i) The directors of a company could borrow upto £1,000 without the sanction of members in GM. (ii) The consent of the shareholders was required to borrow in excess of £1,000. (iii) The directors themselves lent £3,500 to the company.
Case law	Howard vs Patent Ivory Manufacturing company
Conclusion	It was held that the directors had the notice of the internal irregularity and therefore company was liable to them only for £1,000.

Anand Bihari Lal vs Dinshaw & Company	
Facts	An accountant of the company entered into a contract on behalf of the company with a party to sell the property of the company.
Case law	Anand Bihari Lal vs Dinshaw & Company
Conclusion	(i) It was held that the third party could not assume that the accountant was authorised by the company to sell the property of the company. (ii) Therefore, the third party could not enforce such a contract against the company even though the third party had acted bonafide.

Ruben vs Great Fingall Consolidated Company	
Facts	(i) A share certificate was issued under the common seal of the company. (ii) The secretary of the company had signed on the share certificate. (iii) However, the signatures of two directors were also required on it, which were forged by the secretary. (iv) The holder of the share certificate contended that he was not aware of the fact of forgery, it was not possible for him to determine whether the signatures were genuine or forged and therefore, the certificate issued to him should be held as valid.
Case law	Ruben vs Great Fingall Consolidated Company
Conclusion	The Court held that in case of forgery, there is not a defect in consent, but absence of consent, and therefore the certificate issued by way of forgery is void. Thus, the certificate was held to be invalid.

Doctrine of Constructive Notice	Doctrine of Indoor Management
A. This doctrine is AGAINST outsiders.	A. This doctrine is in FAVOUR of outsiders.
B. MoA-AoA are public documents and can be easily verified by outsiders.	B. Internal Management of the company is not public information and cannot be verified by outsiders.
C. An outsider entering into an unusual transaction must read MoA-AoA to check that the transaction is within the powers of the Company.	C. An outsider who has read MoA-AoA and ascertained that transaction is with powers of the company cannot be expected to check whether the company has actually followed the procedure/regulations.
D. Exception: Doctrine of Indoor Management.	D. Exceptions: There are 5 Exceptions.

1. The provisions for entrenchment can be contained in Articles:
 - a. On formation of a company.
 - b. By an amendment in the Articles agreed to by all of the members of the company, in the case of a private company; and by a Special Resolution, in the case of a Public Company.
 - c. **Either (a) or (b)**
 - d. None of the above
2. In case of conflict in the provisions contained in the Memorandum or Articles of Association of a company and the provisions of the Companies Act: -
 - a. **The provisions of Companies Act shall prevail notwithstanding anything to the contrary contained in the Memorandum or Articles of the company.**
 - b. The provisions contained in the Memorandum or Articles of company shall prevail notwithstanding anything to the contrary contained in the Companies Act.
 - c. The provision which is more beneficial to the company shall prevail.
 - d. The provision which is approved by Central Government shall prevail.
3. The Memorandum and Articles shall, when

registered, bind to the same extent as if they, respectively, had been signed by each of them and contained covenants on its and his part to observe all the provisions of the Memorandum and of the Articles.

- a. The company, the members and all other persons
 - b. The company, the promoters and the directors
 - c. **The company and the members**
 - d. The company and the directors
4. A company shall, on being so requested by a member, send to him within of the request and subject to the payment of such fees as may be prescribed, a copy of the Memorandum and Articles of the company.
 - a. **7 days**
 - b. 15 days
 - c. 30 days
 - d. 45 days
 5. A company shall verify its registered office to the Registrar within of its Incorporation by filing Form No. _____
 - a. 7 days, INC-20
 - b. 15 days, INC-21
 - c. **30 days, INC-22**
 - d. 60 days, INC-23

Alteration of Name Clause	
<p>Voluntary Alteration [Sec. 13]</p>	<ul style="list-style-type: none"> (i) A company may change its name by passing SR (ii) The change in name shall have effect only after the approval of ROC by applying in Form INC-24. (iii) However, no such approval is required, where the change in the name is only the addition/deletion of the word ' Private", on the conversion of any one class of companies to another class in accordance. with the provisions of the Act. (iv) The change of name shall not be allowed if the company has not filed annual returns or FS with the Registrar or has failed to pay or repay matured deposits or debentures or interest thereon. (v) The company shall file a copy of the SR and order of approval with the ROC in Form No. MGT-14 within 30 days of passing resolution. (vi) Apply for new name (vii) The Registrar shall : <ul style="list-style-type: none"> (a) enter the new name of the company in the register of companies; and (b) issue a fresh certificate of incorporation in Form No. 1NC-25
<p>Where name is identical or similar to name of a company already registered (sec 16)</p>	<ul style="list-style-type: none"> (i) Where a company is registered by a name, which in the opinion of C.G(R.D), is identical with, or too nearly resembles, the name of a company previously registered, then it may direct the company to rectify its name. (ii) When such a direction is given, the company shall, within 3 months, rectify its name by passing an ordinary resolution.
<p>Where name is identical or similar to name of a registered trade mark [Sec. 16(1)(b)]</p>	<ul style="list-style-type: none"> (i) The proprietor of a registered trade mark may make an application to RD that the name of a company is identical with, or too nearly resembles, the registered trade mark of which he is the proprietor. (ii) Such an application may be made by the proprietor of the registered trade mark within 3 years of registration of the company by such name; or such new name. (iii) On receipt of such an application, if RD is of the opinion that the name of a company is identical with, or too nearly resembles, the registered trade mark, the proprietor of which is the applicant, then it may direct the company to rectify its name. (iv) When such a direction is given, the company shall, within 3 months, rectify its name by passing an ordinary resolution. (v) If a company is in default in complying with any direction given by CG:- <ul style="list-style-type: none"> A. the CG shall allot a new name to the company in such manner as may be prescribed and B. the Registrar shall enter the new name in the register of companies in place of the old name and C. the Registrar shall issue a fresh certificate of incorporation with the new name, which the company shall use thereafter.

	Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13.
Filing with Registrar [Sec. 16(2)]	(i) The company shall file with the Registrar, a copy of OR notice of rectification of name and a copy of order of RD, within 15 days of passing an OR for rectification of name. (ii) The Registrar shall make necessary changes in the MOA and in the certificate of incorporation.
Paritosh and friends got registered a company in the name of Taxmann advisory Private Limited. Taxmann is a registered trademark. After 5 years when the owner of trademark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of trademark? Can the owner of registered trademark request the company and then company changes its name at its discretion? (April 22)(6 Marks) (RTP Mar 23)	

Registered Office of Company [Sec. 12]

Registered office [Sec. 12(1)]	It is mandatory for every company to have its registered office within 30 days of its incorporation and at all times thereafter.
Verification of Registered office [Sec. 12(2) & Rule 25]	The company shall file the verification of the registered office with the Registrar in Form No INC. 22 along with the fee within 30 days of its incorporation (60 days for IFSC Public & IFSC Private Company). The following documents shall be attached to the verification form: <ul style="list-style-type: none"> (a) Registered document of the title of the premises of the registered office in the name of the company; or (b) Notarised copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than 1 month; (c) Authorisation from the owner or authorised occupant of the premises along with proof of ownership or occupancy authorisation, to use the premises by the company as its registered office; and (d) Proof of evidence of any utility service like telephone, gas, electricity, etc.

	depicting the address of the premises in the name of the owner or occupant, as the case may be, which is not older than 2 months .
Labeling of Company [Sec. 12(3)]	Every company shall: <ul style="list-style-type: none"> (a) paint or affix its name, and the address of its registered office, and keep the same on the outside of every office or place in which its business is carried on in legible letters, and also in the characters of that language/s, in general use in that locality. (b) have its name engraved in legible characters on its seal, if any; (c) get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and (d) have its name printed on hundies, promissory notes, bills of exchange and such other documents as may be prescribed.
Name change by the company	Where a company has changed its name/s during the last 2 years, it shall paint or affix or print, along with its name, the former name or names so changed during the last 2 years.

1. Swara Musical Instruments Private Limited was incorporated on 10th October, 2018 by converting existing partnership firm into company. Sohini and Mohini became the promoters of the company. Sohini's premises which was rented out to the partnership firm was to be used as the registered office. Mention the documents which need to be filed with the Registrar of Companies (ROC) for verification of registered office.

a. **A notarised copy of rent agreement along**

with rent receipt which is not older than one month.

- b. A copy of the public notice published in a local newspaper that the premises is rented out to the company along with certified copy of rent agreement.
- c. A notarised copy of rent agreement along with rent receipt which is not older than two months.
- d. A notarised copy of rent agreement only.

Shifting of Registered Office (RO) [Sec. 12]

Change of RO within same city or town	A company can change its registered office from one place to another within the local limits of the same town, village or city in local following manner: <ul style="list-style-type: none"> (i) Hold a Board Meeting and pass a Board Resolution. (ii) File Copy of B.R with ROC and notice of the change with ROC in Form INC.22 within 30 days of the change (60 days for IFSC Public and IFSC Private Company). <p>However, such change does not involve alteration of MOA.</p>
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<p>Change of RO to different city (within the state) [Sec. 12(5)]</p>	<p>A company can change its registered office from one city to another city but within same state, in following manner:</p> <ul style="list-style-type: none"> (i) Take BM and pars B.R to conduct GM. (ii) Take GM and pass SR. (iii) File a copy of SR with ROC within 30 days of passing the resolution in Form MGT-14. (iv) File notice of the change of registered office with the ROC in Form INC.22 within 30 days of the change (60 days for IFSC Public and IFSC Private Company) <p>However, such change does not involve alteration of MOA.</p>
<p>Change of RO from one ROC to another (within the state) [Sec. 12(5), (6), (7) and Rule 28]</p>	<p>A company can change its registered office. from jurisdiction of ROC to another ROC but within same state in following manner:</p> <ul style="list-style-type: none"> (i) Hold GM and pass SR (ii) File copy of SR with the Registrar in Form No MGT-14 within 30 days of passing SR. (iii) Apply to RD in Form INC 23 for confirmation of change of place of Registered Office (iv) RD shall communicate the confirmation of change to the company within 30 days of application. (v) The company shall file the confirmation with the Registrar within 60 days of confirmation. in Form No.INC-28 (vi) Sift to new place and file inc-22 with ROC (vii) ROC shall issue new COI
<p>Change of RO to different state [Sec. 13(4), (5), (6) and Rule 30]</p>	<p>A company may change the place of its registered office from one State to another State in following manner.</p> <ul style="list-style-type: none"> (i) Take GM and pass SR and Alter MOA (ii) Obtain approval from RD, on an application in Form No INC. 23 along with fee. (iii) RD shall dispose of the application within 60 days and before passing any order, it shall satisfy itself that: <ul style="list-style-type: none"> a. the creditors, debenture-holders and other persons concerned with the company have consented to such alterations; or b. the company has made sufficient provision or provided adequate security for the discharge of all its debts and obligations. (iv) The company shall file a copy of SR in MGT-14 and Altered MOA & Copy of approval of RD with the ROC, in Form No. INC 28 within 30 days of receipt of order. (v) File e. Form No. INC.22 with ROC within 30 days from shifting to new ROC.
<p>Physical verification of RO [Sec. 12(9)]</p>	<ul style="list-style-type: none"> (i) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the Registered office of the company.

	(ii) If any default is made in complying with section 12(1), Registrar may initiate action for the removal of the name of the company from the register of companies without any prejudice to section 12(8).
<p>XY Ltd. has its registered office at Mumbai in the State of Maharashtra. For better administrative conveniences the company wants to shift its registered office from Mumbai to Nashik (within the State of Maharashtra). What formalities the company has to comply with under the provisions of the Companies Act, 2013 for shifting its registered office as stated above? Explain. (MTP MAY 2019) (Hint – Mumbai to Nashik same state – Diff ROC)</p> <p>Hint:- Refer Sec 12 – shifting to different city , same state , different RoC</p>	

Alteration of Object Clauses of Memorandum (Sec. 13)

<p>Alteration of Object Clause [Sec. 13(8), (9), (10)]</p>	<p>(i) A company may alter its object clause by passing SR.</p> <p>(ii) If a company has raised money from the public by issue of a prospectus, and any part of it remains unutilized with the company, then the company shall alter its objects for which it raised the money through prospectus if following conditions are satisfied:</p> <ol style="list-style-type: none"> the company has published the prescribed details and justification for such alteration in 2 -newspapers (one English newspaper and one newspaper in vernacular language) circulating at the place where the registered office of the company is situated; the prescribed details and justification for such change have been placed on the website of the company, if any, and the dissenting shareholders have been given an exit opportunity by the promoters and shareholders having control in accordance with the regulations to be specified by SEBT <p>(iii) The company shall file a copy of SR with the Registrar within 30 days.</p> <p>(iv) The Registrar shall register the alteration and issue a certificate of registration within 30 days of receipt of the SR.</p> <p>(v) The alteration shall not be effective until it has been duly registered by the Registrar.</p>
<p>Rishi Pharmacy Ltd. decided to take up the business of food processing because of the downward trend in pharmacy business. There is no provision in the object clause of the Memorandum of Association to enable the company to carry on such business. State whether its object clause can be amended? Mention briefly the procedure to be adopted for change in the object clause. (MAY 2016)</p>	

1. Namita Ceramic Goods Limited having 152 members was incorporated with the main objects of manufacture of ceramic goods, glazed, unglazed floor and wall tiles, etc. and to carry on trading in such products. After three years of successful operation, it wants to diversify its business by entering into the field

of manufacturing electronic goods for which it is required to alter its objects clause. Advise the company in relation to alteration of Memorandum.

a. The company can alter its Memorandum of Association by passing an ordinary

resolution and obtaining the confirmation of the Regional Director (RD).

- b. **The company can alter its Memorandum of Association by passing a special resolution at the shareholders' meeting.**
- c. The company can alter its Memorandum of Association in relation to the objects clause by passing a special resolution at the shareholders' meeting and obtaining

the confirmation of the Regional Director (RD).

- d. The company can alter its Memorandum of Association in relation to the objects clause by passing a special resolution at the shareholders' meeting and simultaneously publishing the contents of special resolution in two newspapers (one in English and the other one in vernacular language) circulating in that are

Alteration of Liability Clause [Sec.13(11)]	<ol style="list-style-type: none"> (i) A company may alter its liability clause by passing a SR. (ii) Any alteration of the MOA, in the case of a company limited by guarantee and not having a share capital, intending to give any person a right to participate to the divisible profits of the company otherwise than as a member, shall be void. (iii) The company shall file a copy of SR and altered MOA with the Registrar in form No. MGT-14, within 30 days.
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Alteration of Capital Clause (sec 61)

Ways	<ol style="list-style-type: none"> (i) Increase its authorised share capital (ii) Consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares. (iii) Convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination; (iv) Subdivide its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum (v) Cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.
Procedure	<ul style="list-style-type: none"> ▪ The alteration of share capital by a company limited by shares under Section 61 can be done by passing an Ordinary Resolution in the General Meeting of the company. ▪ Where a company alters its share capital in any manner specified in Section 61(1), the company shall file a notice in Form No. SH-7 with the Registrar within a period of 30 days of such alteration or increase or redemption, as the case may be, along with an altered Memorandum. <i>[Rule 15 of Companies (Share Capital and Debentures) Rules, 2014]</i>

Alteration of Articles [Sec.14]	
Resolution Required [Sec. 14(1)]	<p>1 SR is required for every alteration of articles, including alteration of articles for purpose of conversion of:</p> <p>(a) a private company into a public company; or (b) a public company into a private company.</p> <p>However, such alteration shall be subject to the provisions of this Act and conditions contained in its memorandum.</p> <p>2 File alteration with ROC within 15 days in inc - 27</p>
<p>The Board of Directors of Sindhu Limited wants to make some changes and to alter some Clauses of the Articles of Association which are to be urgently carried out, which include the increase in Authorized Capital of the company, issue of shares, increase in borrowing limits and increase in the number of directors. Discuss about the provisions of the Companies Act, 2013 to be followed for alteration of Articles of Association. (RTP NOV 2018)</p> <p>Hint:-Refer Section 14 of the Companies Act, 2013, vests companies with power to alter or add to its articles.</p>	
Conversion of a private company into a public company [1 st Proviso to Sec. 14(1)]	<p>(a) A private company may get converted into a public company, by altering its articles (by passing a special resolution) in such a manner that its articles no longer include the restrictions and limitations required to be included in the articles of a private company as per Sec. 2(68).</p> <p>(b) Increase the number of members to 7, if not already.</p> <p>(c) Increase the number of directors to 3, if not already.</p> <p>(d) The conversion from private company into a public company shall take effect from the date of alteration of articles.</p> <p>(e) The application for such conversion shall be filled with ROC in Form No. INC. 27 with fee.</p>
Conversion of a public company to a private company [2 nd Proviso to Sec.14(1)]	<p>(a) Alter MOA — Change of Name (insert the word Private in the name). Pass SR. No need to file INC-24 for CG approval for adding the word 'Private' in the name. (Section 13)</p> <p>(b) Alter AOA — Adding the 3 restrictive clauses u/s 2(68) from its Articles. Pass SR. (Section 14)</p> <p>(c) Conversion of a public company into a private company shall not be valid unless it is approved by an C.G(R.D) on an application made in Form No. INC-27 within 60 days from the date of passing of S.R</p> <p>(d) A copy of order of the Tribunal approving the alteration shall be filed with the Registrar in Form No. INC - 27 with fee along with the printed copy of altered articles within 15 days from the date of receipt of the order from the Tribunal.</p>
Filing with Registrar [Sec. 14(2))]	<p>Where any alteration is made in the articles a copy of the altered articles shall be filed with the Registrar within 15 days, and the Registrar shall register the same.</p>
Effect of alteration [Sec. 14(3)]	<p>Any alteration of articles which is registered by the Registrar, shall be as valid as if it were originally contained in the articles.</p>

1. In view of the fact that a private company enjoys a number of privileges, Orange Pharma Limited having 20 members is contemplating to convert itself into the private company. For this purpose the company needs to alter its articles by inserting three restrictive clauses as specified in Section 2 (68) and the change in name is to be authorized by members by passing --.
- A special resolution and after obtaining approval of the Central Government.**
 - A special resolution and after obtaining approval of the National Company Law Tribunal (NCLT).
 - A special resolution and after obtaining approval of the Registrar of Companies (ROC).
 - A special resolution and after obtaining approval of the State Government.

Formation of a Company [Sec. 3]	
Lawful Purpose	(i) A company may be formed for any lawful purpose . [Sec 3(1)] (ii) The objects of the company must not be illegal, immoral or opposed to public policy .
Subscription to memorandum [Sec. 3(1)]	(i) The persons who sign on the memorandum are termed as subscribers.
	(ii) Minimum number of subscribers :
	(a) where the company to be formed is to be a Public Company , By 7 or more persons
	(b) where the company to be formed is to be a Private Company , By 2 or more persons
	(c) where the company to be formed is to be a One Person Company (OPC) that is to say a private company, By 1 person
Specified IFSC Public Company or Private Company	A Specified IFSC Public Company or a Specified IFSC Private Company shall be formed only as a company limited by shares .

Members severally Liable in Certain Cases (Sec 3A)	
Shortfall from Minimum Requirement of Members for a Company Formation	<p>A. If at any time the number of members of a company is reduced below 2/7, {in the case of a private company, below 2, and in the case of a public company, below 7}, AND</p> <p>B. the company carries on business for more than 6 months while the number of members is so reduced,</p> <p>EVERY person who is a member of the company during the time that it so carries on business</p> <ul style="list-style-type: none"> AFTER those 6 months and is cognizant of the fact that it is carrying on business with less than 2/7 members,

	shall be SEVERALLY LIABLE (personally liable) for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.
<p>Red Limited was incorporated on 1st April, 2014 is facing severe effects of depression of the economy. Owing to its bad financial status most of the members have started withdrawing their holding from the company. The company had 250 members on 10th January, 2019. By 15th January, 2019, 244 members had withdrawn their holding. No new member has invested in the company after 15th February till date. Now, Mr. A, an existing member has approached you to advise him regarding his liabilities in such a situation. (RTP NOV 2019)</p>	

Incorporation of Company [Sec. 7]

Step 1 - Reservation of Name	<p>(i) The promoters of company shall make an application through the web service available at MCA website and reserve its name through 'SPICe +' form – Part A, (INC-32).</p> <p>(ii) The company shall have option to propose 2 names, with the prescribed fees.</p> <p>(iii) The reserve name shall remain valid for 20 days.</p> <p>(iv) Co can extend reservation time for beyond 20 days - next 20 days – 1000 fees , next 20 days – 2000 fees (max 60 days reservation only allowed)</p> <p>(v) Old companies can change name through Reserve Unique Name (RUN) scheme which when available will be reserved for 60 days.</p>
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1. A and B made a name reservation application accompanied by requisite fee to the Registrar for forming a new Private Company. The Registrar accorded its approval for reservation of most preferred name on 3rd March, 2020. By which date necessary documents for incorporation of the company must be

submitted to the Registrar so that the reserved name does not get lapsed?

- Latest by 30th March, 2020
- Latest by 24th March, 2020**
- Latest by 2nd May, 2020
- Latest by 1st June, 2020

Step 2 – filling od application with ROC	File the following information within next 20 days in Part-B of the SPICe+. (INC-32)	
	Attached with following documents	
1.	INC-33	e-Memorandum of Association (e-MOA)
2.	INC-34	e-Articles of association (e-AOA)

	3.	INC-35 (AGILE-PRO-S)	AGILE-PRO-S (Application for GSTIN, ESI plus EPF, P.- Tax Registration & Opening of Bank a/c and Shops and Establishment Registration)
	4.	INC-8	Declaration that requirements of act complied By – Advocate /C.A/Cost accountant /C.S who is engaged in formation of Co,
	5.	INC-9	Declaration shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles. That <ul style="list-style-type: none"> • All info is correct and true • Not convicted in last 5 years for any offence in connection with promotion or mgt or fraud or breach of duty under this actor previous co law
	6.	DIR-12 and DIR-2	Particulars of first director of the company and his interest in other firms or bodies corporate along with his consent to act as director of the company shall be filed.
	7.	Registration Fees	Pay Registration Fees electronically.
	8.	INC-22	Filing of Registered Office Address A company may furnish verification of its registered office :- <ol style="list-style-type: none"> 1. In Form INC-32 (SPICe+) at the time of incorporation or 2. In Form INC-22 within 30 days of incorporation.
	Issue of COI by Central Registrar (CRC)		
	The Certificate of Incorporation shall be issued by the Registrar in Form No.INC-11 and the Certificate of Incorporation shall mention :- <ol style="list-style-type: none"> a) PAN of the company where if it is issued by the Income-tax Department. b) CIN of the company allotted by Registrar. 		
State the documents and information for registration of One Person Company (OPC) required to be filed with the Registrar of Companies. (MAY 2016)			
Preservation of documents [Sec. 7(4)]	The company shall maintain and preserve at its registered office copies of all documents and information as originally filed, till its dissolution under this Act.		

<p>Consequences where a company is incorporated by furnishing false information [Sec. 7(6)]</p>	<p>If it is proved that a company was incorporated by furnishing false or incorrect information, or by suppressing any material fact or by any fraudulent action, then, the following persons shall be held liable u/s 447:</p> <ul style="list-style-type: none"> (a) the promoters; (b) every person named in the articles as a first director; and (c) every person who made a declaration that the requirements of the Act and the Rules were complied with.
<p>Order of the Tribunal [Sec. 7(7)]</p>	<ul style="list-style-type: none"> (i) Where a company has been got incorporated by any fraudulent action, the Tribunal may, on being satisfied that the situation so warrants: <ul style="list-style-type: none"> (a) pass such orders, as it may think fit, for the regulation of the management of the company; or (b) direct that the liability of the members shall be unlimited; or (c) direct removal of the name of the company from the register of companies; or (d) pass an order for the winding up of the company; or (e) pass such other orders as it may deem fit. (ii) Before passing any order: <ul style="list-style-type: none"> (a) the company shall be given a reasonable opportunity of being heard; and (b) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.
<p>Formation of Sec 8 Co – additional documents</p>	<ol style="list-style-type: none"> 1. The company shall comply with following additional conditions: (licencing) <ul style="list-style-type: none"> (i) File MOA in Form No. INC-13. (ii) Declaration by professionals in Form No INC-14 that the MOA and AOA have been drawn up in conformity with the provisions of section 8. (iii) Declaration by each of the persons making the application in Form No. INC. 15. (iv) An estimate of the future annual income and expenditure of the company for next 3 years. 2. A limited company with objects specified u/s 8 and follows the restrictions and prohibitions u/s 8, and is desirous of being registered u/s 8 without the addition to its name of words 'Limited' or 'Private Limited' shall: <ul style="list-style-type: none"> (i) make an application in Form No INC. 12 along with fee to the Registrar; (ii) within a week from making application to the Registrar, publish a notice and copy of it shall be sent to Registrar in Form No. INC 26. <p>The licence of such existing company shall be in Form No INC. 16 or Form No. INC 17.</p> <p>Note: The other documents required by the company to file with the Registrar are same as that of a new company would file (INC. 13, INC.14, INC.15).</p>

Effect of Registration [Sec. 9]

1. The date mentioned in the certificate of incorporation issued by the Registrar, shall be the date of incorporation of the company.
2. Effect of incorporation/registration :
 - (i) **Subscribers** to the Memorandum **become members** of the company.
 - (ii) **Company becomes a body corporate** having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.

Commencement of Business, etc. [Sec. 10A]

Applicability	Sec 10A shall apply only if the company is having a share capital ;
Conditions for commencement of business or exercising borrowing powers	<p>The Company shall commence any business or exercise any borrowing powers only after satisfying the following conditions:</p> <ol style="list-style-type: none"> a) a declaration in Form INC-20A certified by CA, CS, CMA in practice is filed by a director within 180 days of the date of incorporation of the company, with the Registrar that "EVERY SUBSCRIBER to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration"; and b) the company has filed with the Registrar a verification (Address Proof) of its registered office in :- <ul style="list-style-type: none"> • SPICe+ (INC-32) at the time of incorporation or, • INC-22 within 30 days of incorporation.
Power of Registrar to remove the name of the company	<p>if:</p> <ol style="list-style-type: none"> (a) the declaration is not filed with the Registrar within 180 days of the date of incorporation of the company; and (b) the Registrar has reasonable cause to believe that the company is not carrying on any business or operations.

Mr. Dinesh incorporated a new Private Limited Company under the provisions of the Companies Act, 2013 and desires to commence the business immediately. Please advise Mr. Dinesh about the procedure for commencement of business as laid under the provisions of the Section 10A of the Companies Act, 2013.(5 Marks) (MTP M 21)

1. A company incorporated after 2nd November, 2018 and having a share capital shall not commence any business or exercise any borrowing powers unless:
 - a. It files a declaration with the Registrar within a period of 180 days of the date of incorporation that every subscriber to the Memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration.
 - b. It files with the Registrar a verification of its registered office within 30 days of its incorporation.
 - c. **Both (a) and (b)**
 - d. None of the above

Conversion of Companies Already Registered [Sec.18]	
Alteration of MOA and AOA [Sec. 18(1)]	A company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of this Chapter.
Filing with the Registrar [Sec. 18(2)]	(i) Wherever such conversion of companies is required to be done, the company shall file an application to the Registrar. (ii) The Registrar on satisfying himself that the provisions applicable for registration of companies have been complied with, shall close the former registration of the company.
Issue of Certificates of incorporation [Sec. 18(2)]	After registering the required documents, issue a certificate of incorporation in the same manner as its first registration.
No effect on the debts, liabilities etc incurred before conversion [Sec. 18(3)]	The registration of a company under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by the company or on behalf of it, before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such registration had not been done.

Subsidiary Company not to hold shares in its holding company [Sec. 19]	
Prohibition [Sec. 19(1)]	(i) A subsidiary company shall not hold any shares in its holding company either itself or through its nominee. (ii) A holding company shall not allot or transfer its shares to any of its subsidiary companies and if so done, it shall be void.
Exceptions [Proviso to Sec. 19(1)]	Sec. 19 is not applicable to a case: (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or (b) where the subsidiary company holds such shares as a trustee ; or (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company: However, the subsidiary company to whom section 19 does not apply, shall have a right to vote at a meeting of the holding company only in case (a) or (b) mentioned above.
Interpretation of this section in other situation [Sec. 19(2)]	The reference in this section to the shares of a holding company which is a company limited by guarantee or an unlimited company, not having a share capital, shall be construed as a reference to the interest of its members, whatever be the form of interest.

1. As at 31st March, 2018, the paid up share capital of S Ltd. is ` 1,00,00,000 divided into 10,00,000 equity shares of ` 10 each. Of this, H Ltd. is holding 6,00,000 equity shares and 4,00,000 equity shares are held by others. Simultaneously, S Ltd. is holding 5% equity shares of H Ltd. out of which 1% shares are held as a legal representative of a deceased member of H Ltd. On the basis of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013 : (MAY 2019)

- (i) Can S Ltd. make further investment in equity shares of H Ltd. during 2018-19?
- (ii) Can S Ltd. exercise voting rights at Annual general meeting of H Ltd.?
- (iii) Can H Ltd. allot or transfer some of its shares to S Ltd.?

In the instant case,

- (i) As per the provisions of sub-section (1) of Section 19 of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company. Therefore, S Ltd. cannot make further investment in equity shares of H Ltd. during 2018-19.
- (ii) As per second proviso to Section 19, a subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee. Therefore, S Ltd. can exercise voting rights at the Annual General Meeting of H Ltd. only in respect of 1% shares held as a legal representative of a deceased member of H Ltd.
- (iii) Section 19 also provides that no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. Therefore, H Ltd. cannot allot or transfer some of its shares to S Ltd.

2. S Ltd acquired 10% paid up share capital of H Ltd on 15th March 2017. H Ltd acquired 55% paid up share capital of S Ltd on 10th March 2018. H Ltd. on 25th September, 2020 decided to issue bonus shares in the ratio of 1:1 to the existing shareholders. Accordingly, bonus shares were allotted to S Ltd. Examine under the provisions of the Companies Act, 2013 and decide (Nov 2020)

- (i) the validity of holding of shares by S Ltd. in H Ltd.
- (ii) allotment of Bonus shares by H Ltd. to S Ltd.

Conclusion - In the given case, H Ltd. has acquired 55% paid up share capital of S Ltd. on 10th March 2018. Whereas, S Ltd. has been holding 10% paid up share capital of H Ltd. since 15th March, 2017. The said instance as asked in the question falls under the exception stated above.

Therefore -

- (i) Holding of shares by S Ltd. in H Ltd. is valid in view of the proviso (c) to sub-section of section 19 of the Act, which states that the restrictions of provisions of section 19(1) will not be applicable where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.
- (ii) Allotment of bonus shares by H Ltd. to S Ltd. is also valid in view of the above proviso

3. Octagon Limited is holding 58% of the paid up share capital of Pentagon Limited. Vijay, one of the shareholders of Octagon Limited, holding 10% shares of the company, has made a charitable trust. He donated his 10% shareholding in Octagon Limited and ` 20 crore to the trust. He appointed Pentagon Limited as the trustee. All the assets of the trust are held in the name of Pentagon Limited. As per the provisions of the Companies Act, 2013, decide whether Pentagon Limited can hold shares of Octagon Limited. (6 Marks) (MTP Sep. 22)

Hint - In the given case, one of the shareholders of holding company (Octagon Limited) has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company (Pentagon Limited). It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation Pentagon Limited can hold shares in Octagon Limited.

4. ABC Limited issued equity shares worth 1,00,000 (10,000 shares of 10 each) on 1st April, 2023 which has been fully subscribed, whereby XYZ Limited holds 3,500 equity shares and PQR Limited holds 2,500 equity shares. Prior to the issue of equity shares, ABC Limited already hold 20% of the equity shares of MNP Limited. Further, XYZ Limited holds 10% of MNP Limited's equity shares as a trustee. MNP Limited controls the composition of the Board of Directors of XYZ Limited and PQR Limited on 01.07.2023. Examine with reference to the relevant provisions of the Companies Act, 2013 —
- (i) Whether ABC Limited is a subsidiary of MNP Limited ?
 - (ii) Whether ABC Limited and XYZ Limited have the right to vote on the Annual General Meeting of MNP Limited held on 30th September, 2023 ? (Nov 23) 5 Marks

1. Win Limited bought 15% shares of Om Limited in the year 2018. In the year 2020 it formed a trust for its employees and donated its 15% shares of Om Limited along with ` 10,00,000 to the trust and became its trustee. In February 2023, Om Limited acquired 55% stake in Win Limited through an in-house deal. Can a subsidiary company hold shares in its holding company justifiably in this situation? (RTP Nov 23)
- a. Win Limited cannot represent itself as a trustee after it becomes a subsidiary of Om Limited.

- b. Win Limited can represent itself as a trustee only after it was a holding company of Om Limited.
- c. Win Limited cannot hold shares as a trustee even though it is a subsidiary company.
- d. Win Limited can do so as it is holding shares in Om Limited prior to becoming a subsidiary of it

Service of Documents [Sec. 20]		
Serving of documents	To company or officer of company at registered office of company [Sec 20(1)]	To Registrar or any member at his office or address [Sec. 20(2)]
	By: (i) registered post; or (ii) Speed post; or (iii) courier service; or (iv) leaving at its registered office; or (v) electronic or other mode as may be prescribed.	By: (i) Post; or (ii) registered post; or (iii) speed post; or (iv) courier; or (v) delivering at his office or address; or (vi) electronic or other mode as may be prescribed.
	However, where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.	However, a member may request for delivery of any document through a particular mode on payment of such fees as determined in the AGM.
Meaning of Courier	Courier means a person or agency which delivers the document and provides proof of its delivery.	
Time of delivery [Rule 35]	In case of delivery by post, such service shall be deemed to have been effected: (i) in the case of a notice of a meeting, at the expiration of 48 hours after the letter containing the same is posted; and (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.	
Nidhi Companies	(i) Document may be served only on members: (a) who hold shares of more than Rs 1, 000 in face value ; or (b) more than 1% of the total paid-up Capital of the Nidhi's whichever is less. (ii) For other shareholders, document may be served by a public notice in newspaper circulated in the district where the Registered Office is situated; and publication of the same on notice board of the Nidhi.	
Explain the provisions of the Companies Act, 2013 relating to the 'Service of Documents' on a company and the members of the company. (3 Marks) (MTP M 21) (MTP Sep 22)		

Authentication of Documents, Proceedings and Contracts [Sec. 21]

A document or proceeding requiring authentication by a company or contracts made by or on behalf of a company may be signed by–

- (i) any key managerial personnel, or
- (ii) an officer or employee of the company duly authorized by the Board in this behalf.

Note: In case of specified IFSC Public company and IFSC Private Company the word 'an officer' may be read as 'An officer' or any other person.

Execution of bills of Exchange, etc. [Sec. 22]

Negotiable Instruments when binding? [Sec. 22(1)]	A bill of exchange, hundi or promissory note shall be deemed to have been made, accepted, drawn, or endorsed on behalf of a company if such Instrument is made, accepted, drawn, or endorsed on behalf of the company by any person acting under its authority; express or implied.
Authorisation to execute deeds [Sec. 22(2)]	A company may authorise any person as its attorney to execute deeds on its behalf in any place either in India or outside India. Such authorization may be made by: <ul style="list-style-type: none"> (i) writing under the common seal of the company, if any; (ii) if company does not have a common seal, by: <ul style="list-style-type: none"> (a) 2 directors; or (b) a director and the Company Secretary, wherever the company has appointed a Company Secretary.
Binding effects of deeds	A deed signed by such an attorney on behalf of the company and under his seal shall be binding on the company.