

- The Companies Act, 2013 was preceded by the Companies Act, 1956.
- It contains 470 sections and seven schedules. The entire Act has been divided into 29 chapters.
- The Companies Act, 2013 aims to improve corporate governance, simplify regulations, strengthen the interests of minority investors and for the first time legislates the role of whistle-blowers and provisions relating to class action suit.
- ❖ **Applicability of the Companies Act, 2013:** The provisions of the Act shall apply to-
 - Companies incorporated under this Act or under any previous company law.
 - Insurance companies (except where the provisions are inconsistent with the Insurance Act, 1938 or the IRDA Act, 1999)
 - Banking companies (except where the provisions are inconsistent with the Banking Regulation Act, 1949)
 - Companies engaged in the generation or supply of electricity (except where the provisions are inconsistent with the Electricity Act, 2003)
 - Any other company governed by any special Act for the time being in force.
 - Such body corporate which are incorporated by any Act for time being in force, and as the Central Government may by notification specify in this behalf.

❖ **Company-Section 2(20):** “Company means a company incorporated under this Act or under any previous company law”. **Following are the main features:**

- 1. Separate Legal Entity:** It comes to have almost the same rights and powers as a human being. Its existence is distinct and separate from that of its members. A company is capable of owning, enjoying and disposing of property in its own name.
- 2. Perpetual Succession:** Members may die or change, but the company goes on till it is wound up on the grounds specified by the Act. Since a company is an artificial person created by law, law alone can bring an end to its life.
- 3. Limited Liability:** The liability of a member depends upon the kind of company of which he is a member.
 - a. Thus, in the case of a limited liability company the liability of the members is limited to the extent of the nominal value of shares held by them.
 - b. In the case of a company limited by guarantee, the members are liable only to the extent of the amount guaranteed by them and that too only when the company goes into liquidation.
 - c. However, if it is an unlimited company, the liability of its members is unlimited as well.
- 4. Artificial Legal Person:** A company is an artificial person as it is created by a process other than natural birth. As the company is an artificial person, it can act only through some human agency, viz., directors.
- 5. Common Seal:** Common seal is the official signature of a company, In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, if appointed.

❖ **CORPORATE VEIL THEORY**

- It is legal concept whereby the company is identified separately from the members of the company.
- The company has its own existence and as a result, a shareholder cannot be held liable for the acts of the company even though he holds virtually the entire share capital.
- The whole law of corporation is in fact based on this theory of separate corporate entity.

Lifting of Corporate Veil:

- It means looking behind the company as a legal person, i.e., disregarding the corporate entity and paying regard, instead, to the realities behind the legal facade.
- Where the Courts ignore the company and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted.
- Only in appropriate circumstances, the Courts are willing to lift the corporate veil and that too, when questions of control are involved rather than merely a question of ownership.

The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

- a) To determine the character of the company i.e. to find out whether co-enemy or friend
- b) To protect revenue/tax
- c) To avoid a legal obligation
- d) Formation of subsidiaries to act as agents
- e) Company formed for fraud/improper conduct or to defeat law

❖ **CLASSES OF COMPANIES UNDER THE ACT**

Companies may be classified into various classes on the following basis:

1. On the basis of liability:

(a) Company limited by shares- Section 2(22): Here, the liability of the members of a company is limited to the amount (if any) unpaid on the shares held by them, it is known as a company limited by shares.

(b) Company limited by guarantee-Section 2(21): The company having the liability of its members limited such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up.

(c) Unlimited company-Section 2(92): Unlimited company as a company not having any limit on the liability of its members. In such a company, the liability of a member ceases when he ceases to be a member.

2. On the basis of members:

(a) One person company-Section 2(62):

- OPC is a private limited company and has only one member.
- Minimum paid up capital – no limit prescribed.
- The memorandum shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- The other person shall give his prior written consent and the same shall be filed with Registrar
- The member may change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- **Only a natural person who is an Indian citizen and has stayed in India for a period of not less than 120 days during the immediately preceding financial year** shall be eligible to incorporate a OPC; shall be a nominee for the sole member of a OPC.
- No person shall be eligible to incorporate or become nominee in more than one OPC.
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- It cannot be incorporated or converted into a company under section 8 of the Act.
- It cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.
- If OPC or any officer contravenes the provisions: **fine** up to Rs. 10000 and further fine up to Rs. 1000 for every day during which such contravention continues.

(b) Private Company [Section 2(68)]: It is a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—

- (i) restricts the right to transfer its shares;
- (ii) Except in case of OPC, limits the number of its members to two hundred. Where two or more persons hold shares in a company jointly, they shall be treated as a single member. further, persons who are in the employment of the company; and persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
- (iii) prohibits any invitation to the public to subscribe for any securities of the company;

Small Company-Section 2(85): Small Company is a company, other than a public company—

- (i) paid-up share capital of which does not exceed **two crores** rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed **twenty crores** or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Exceptions: This clause shall not apply to:

- a) a holding company or a subsidiary company;
- b) a company registered under section 8; or
- c) a company or body corporate governed by any special Act.

(c) Public company [Section 2(71)]: "Public company" means a company which is not a private company; and has a minimum paid-up share capital, as may be prescribed. A company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act.

3. On the basis of control:

(a) Holding and subsidiary companies:

- 'Holding and subsidiary' companies are relative terms.
- A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies. Here the expression "company" includes any body corporate.
- Whereas section 2(87) defines "subsidiary company" in relation to any other company (the holding company), means a company in which the holding company—
 - (i) controls the composition of the Board of Directors; or
 - (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:Provided that such of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed. "layer" in relation to a holding company means its subsidiary or subsidiaries.
- A Private company, which is subsidiary of a public company shall be deemed to be public company, even where such subsidiary company continues to be a private company in its articles.

(b) Associate company [Section 2(6)]:

- In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.
- "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement;
- "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.
- The term "Total Share Capital", means the aggregate of the - (a) Paid-up equity share capital; and (b) Convertible preference share capital.
- The shares held in a 'fiduciary capacity' shall not be counted for the purpose of determining the relationship of 'associate company'.

4. On the basis of access to capital:

- a) **Listed company-section 2(52):** it is a company which has any of its securities listed on any recognised stock exchange. Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the SEBI, shall not be considered as listed companies.
- b) **Unlisted company** means company other than listed company.

5. Other companies:

- a) **Government company [Section 2(45)]:** Government Company means any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company.
- b) **Foreign Company [Section 2(42)]:** It means any company or body corporate incorporated outside India which— (i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (ii) conducts any business activity in India in any other manner.
- c) **Formation of companies with charitable objects etc. (Section 8 company):** It means companies which are formed to:
- promote the charitable objects of commerce, art, science, sports, education, research etc.
 - Such company apply its profit in promoting its objects and prohibiting the payment of any dividend to its members.

Examples of section 8 companies are FICCI, ASSOCHAM, National Sports Club of India, CII etc.

- Central Government has power to register a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name, by issuing licence on such conditions as it deems fit. It may revoke the licence after giving written notice and opportunity to be heard, where the company contravenes any of the requirements or the conditions of this sections or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest.
 - Central Government may, in the public interest order that the company whose licence is revoked should be amalgamated with another company registered under this section having similar objects or the company be wound up.
 - **Penalty/punishment in contravention: For Company:** fine Min 10 lakh rupees but up to 1 crore rupees
For the directors and every officer in default: fine Min 25000 rupees but up to 25 lakh rupees.
 - **when the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.**
 - Company Can call its general meeting by giving a clear 14 days' notice instead of 21 days.
 - Requirement of minimum number of directors, independent directors etc. does not apply.
 - Need not constitute Nomination and Remuneration Committee and Shareholders Relationship Committee.
 - A partnership firm can be a member of Section 8 company.
- d) **Dormant company (Section 455):**
- Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar for obtaining the status of a dormant company.
 - **"Inactive company"** means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.
 - **"Significant accounting transaction"** means any transaction other than— (i) payment of fees by a company to the Registrar; (ii) payments made by it to fulfil the requirements of this Act or any other law; (iii) allotment of shares to fulfil the requirements of this Act; and (iv) payments for maintenance of its office and records.
- e) **Meaning of Nidhi Companies [Section 406(1)]:** "Nidhi" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.
- f) **Public Financial Institutions (PFI) [Section 2(72)],** the following institutions are to be regarded as public financial institutions:
- (i) the Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;
 - (ii) the Infrastructure Development Finance Company Limited,
 - (iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;
 - (iv) institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act;
 - (v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:
- **Conditions for an institution to be notified as PFI:** No institution shall be so notified unless—
 - a) it has been established or constituted by or under any Central or State Act other than this Act or the previous Companies Law; or

- b) not less than fifty-one per cent of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.

❖ **MODE OF REGISTRATION/INCORPORATION OF COMPANY**

A. PROMOTERS [section 2(69)] which means a person—

- a) who has been named as such in a prospectus or is identified by the company in the annual return; or
b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act. Persons acting only in a professional capacity e.g., the solicitor, banker, accountant etc. are not regarded as promoters.

B. FORMATION OF COMPANY- Section 3: In the case of a public company, any 7 or more persons can form a company by subscribing their names to memorandum and complying with the requirements of this Act. However, 2 or more persons can form a private company and one person where company to be formed is one person company.

C. INCORPORATION OF COMPANY: Section 7 of the Companies Act, 2013 provides for the procedure to be followed for incorporation of a company.

1. **Filing of the documents and information with the registrar:** following documents and information are required to be filed with the registrar -

- the memorandum and articles signed by all the subscribers.
- a declaration by person who is engaged in the formation of the company (an advocate, a CA, CMA or CS in practice), and by a person named in the articles (director, manager or secretary of the company), that all the requirements of this Act and the rules have been complied with.
- a declaration from each of the subscribers and first directors, if any, in the articles stating that-
 - a) he is not convicted of any offence in connection with the promotion, formation or management of any company, or
 - b) he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years,
 - c) and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;
- the address for correspondence till its registered office is established;
- the particulars of every subscriber to the memorandum along with proof of identity.
- the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company.

2. **Issue of certificate of incorporation on registration by Registrar**

3. **Allotment of Corporate Identity Number (CIN):** The Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.

4. **Maintenance of copies of all documents and information:** 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.

5. **Furnishing of false or incorrect information or suppression of material fact at the time of incorporation (i.e. at the time of Incorporation):** such person shall be liable for action for fraud under section 447.

6. **Company already incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact (i.e. post Incorporation):** the promoters, the persons named as the first directors of the company and the persons making declaration under this section shall each be liable for action for fraud under section 447.

7. **Order of the Tribunal:** Where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants, —

- a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
- b) direct that 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:

Provided that before making any order, —

- the company shall be given a reasonable opportunity of being heard in the matter; and
- It shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

Simplified Proforma for Incorporating Company Electronically (SPICE) : MCA has simplified the process of filing of forms for incorporation of a company through Simplified Proforma for incorporating company electronically.

- D. EFFECT OF REGISTRATION:** According to Section 9, from the date of incorporation (mentioned in the certificate of incorporation), the subscribers to the memorandum and all other persons, who may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum. Such a registered company shall be capable of exercising all the functions of an incorporated company under this Act and 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.
- E. EFFECT OF MEMORANDUM AND ARTICLES:** where the memorandum and articles when registered, shall bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and an agreement to observe all the provisions of the memorandum and of the articles.

❖ Classification of Capital	❖ Shares
<p>Capital means the contributions of persons to the common stock of the company form the capital of the company. The proportion of the capital to which each member is entitled, is his share. The term 'capital' is used in the following senses:</p> <p>(a) Nominal or authorised or registered capital (section 2(8)): It means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company.</p> <p>(b) Issued capital-Section 2(50): It means such capital as the company issues from time to time for subscription</p> <p>(c) Subscribed capital- Section 2(86): it is such part of the capital which is for the time being subscribed by the members of a company. It is the nominal amount of shares taken up by the public.</p> <p>(d) Called-up capital- Section 2(15): It is such part of the capital, which has been called for payment. It is the total amount called up on the shares issued.</p> <p>(e) 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.</p>	<p>Section 2(84) defines the term 'share' which means a share in the share capital of a company and includes stock. A share thus represents such proportion of the interest of the shareholders as the amount paid up thereon bears to the total capital payable to the company.</p> <p>Shares are a movable property</p> <p>Shares shall be numbered: Every share shall be distinguished by its distinctive number. However, this shall not apply to if such share is in the records of a depository.</p> <p>Kinds of share capital:- There are two kinds, namely:—</p> <p>(i) Equity share capital — with voting rights; or with differential rights as to dividend, voting or otherwise in accordance with prescribed rules;</p> <p>ii) Preference share capital</p> <p>According to explanation to section 43:</p> <ol style="list-style-type: none"> "Equity share capital", means all share capital which is not preference share capital; "Preference share capital", means that part of the issued share capital of the company which carries or would carry a preferential right with respect to— <ul style="list-style-type: none"> (a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and (b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company; <p>Exception: In case of private company - Section 43 shall not apply where memorandum or articles of association of the private company so provides.</p>

❖ MEMORANDUM OF ASSOCIATION

The Memorandum of Association of company is in fact its charter; it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built.

<p>As per Section 4, Memorandum of a company shall be drawn up in such form as is given in Tables A, B, C, D and E in Schedule I of the Companies Act, 2013.</p> <p>Table A-company limited by shares.</p> <p>Table B-company limited by guarantee and not having a share capital.</p> <p>Table C-company limited by guarantee and having a share capital.</p> <p>Table D-unlimited company.</p> <p>Table E -unlimited company and having share capital. The memorandum and articles of a company must be as closed to model forms, as possible, depending upon the circumstances.</p> <ul style="list-style-type: none"> • Every subscriber to the Memorandum shall take atleast one share, and shall write against his name, the number of shares taken by him. • It is to be noted that a company being a legal person can through its agent, subscribe to the memorandum. However, a minor cannot be a signatory to the memorandum. 	<p>Content of the memorandum: The memorandum of a company shall state—</p> <ol style="list-style-type: none"> a) Name Clause: 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. In the case of a private limited company. In the case of OPC, the words "One Person Company", should be included below its name. b) Registered Office clause: The State in which the registered office is to be situated; c) Object clause: the objects for which the company is proposed to be incorporated d) Liability clause: The liability of members of the company, whether limited or unlimited
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| <ul style="list-style-type: none"> Memorandum cannot contain anything contrary to the provisions of the Companies Act. If it does, the same shall be devoid of any legal effect. | <ul style="list-style-type: none"> e) Capital Clause: the amount of authorized capital divided into share of fixed amounts and the number of shares with the f) association clause: The desire of the subscribers to be formed into a company. |
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❖ DOCTRINE OF ULTRA VIRES

Doctrine of ultra vires:

- The term ultra vires is simply means “beyond (their) powers”.
- Any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.
- An ultra vires contract can never be made binding on the company. It cannot become “Intravires” by reasons of estoppel, acquiescence, lapse of time, delay or ratification.**
- The whole position regarding the doctrine of ultra vires can be summed up as:**
 - When an act is performed, which though legal in itself, is not authorized by the object clause of the memorandum, or by the statute, it is said to be ultravires the company, and hence null and void.
 - An act which is ultravires, the company cannot be ratified even by the unanimous consent of all the shareholders.
 - An act which is ultravires the directors, but intravires the company can be ratified by the members of the company through a resolution passed at a general meeting.
 - If an act is ultravires the Articles, it can be ratified by altering the Articles by a Special Resolution at a general meeting.
 - Although it may be useful to members in restraining the activities of the directors, **it is only a nuisance in so far as it prevents the company from changing its activities in a direction which is agreed by all.**

❖ ARTICLES OF ASSOCIATION

The articles of association of a company are its rules and regulations, which are framed to manage its internal affairs. The articles of association are in fact the bye-laws of the company according to which director and other officers are required to perform their functions as regards the management of the company, its accounts and audit.

Contents and model of articles of association (Section 5)-

- Contains regulations:** The articles of a company shall contain the regulations for management of the company.
 - Inclusion of matters:** The articles shall also contain such matters, as are prescribed under the rules. However, a company may also include such additional matters as may be considered necessary.
 - Contain provisions for entrenchment:** The articles may contain provisions for entrenchment (to protect something) to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.
 - Manner of inclusion of the entrenchment provision:** The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.
 - Notice to the registrar of the entrenchment provision:** Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.
 - Forms of articles:** The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.
 - Model articles:** A company may adopt all or any of the model articles applicable to such company.
 - Company registered after the commencement of this Act:** Any company registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company.
- ❖ **The following are the key differences between the Memorandum of Association vs. Articles of Association:**
- Objectives:** Memorandum of Association defines and delimits the objectives of the company whereas the Articles of association lays down the rules and regulations for the internal management of the company. Articles determine how the objectives of the company are to be achieved.
 - Relationship:** Memorandum defines the relationship of the company with the outside world and Articles define the relationship between the company and its members.
 - Alteration:** Memorandum of association can be altered only under certain circumstances and in the manner provided for in the Act. In most cases permission of the Regional Director, or the Tribunal is required. The articles can be altered simply by passing a special resolution.
 - Ultra Vires:** Acts done by the company beyond the scope of the memorandum are ultra-vires and void. These cannot be ratified even by the unanimous consent of all the shareholders. The acts ultra-vires the articles can be ratified by a special resolution of the shareholders, provided they are not beyond the provisions of the memorandum.

❖ DOCTRINE OF INDOOR MANAGEMENT

Doctrine of Constructive Notice:

Section 399 provides that any person can inspect by electronic means any document kept by the Registrar, or make a record of the same, or get a copy or extracts of any document, on payment of prescribed fees. It is, therefore, the duty of every person dealing with a company to inspect its documents and make sure that his contract is in conformity with their provisions

By constructive notice is meant:

(i) Whether a person reads the documents or not, he is presumed to have knowledge of the contents of the documents, He is not only presumed to have read the documents but also understood them in their true perspective, and

(ii) Every person dealing with the company not only has the constructive notice of the memorandum and articles, but also of all the other related documents, such as Special Resolutions etc., which are required to be registered with the Registrar.

Thus, if a person enters into a contract which is beyond the powers of the company as defined in the memorandum, or outside the authority of directors as per memorandum or articles, he cannot acquire any rights under the contract against the company.

Doctrine of Indoor Management: The Doctrine of Indoor Management is the exception to the doctrine of constructive notice. If an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed.

Exceptions: Persons dealing with a company through its directors or other persons are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. The above mentioned doctrine of Indoor Management or Turquand Rule has limitations of its own. That is to say, it is inapplicable to the following cases, namely:

- a) Actual or constructive knowledge of irregularity
- b) Suspicion of Irregularity
- c) Forgery

CASE LAW

1. **Macaura Vs. Northern Assurance Co. Limited (1925):** Macaura (M) holder of nearly all (except one) shares and a major creditor of the company. M insured the company's timber in his own name which was lost in a fire. M claimed insurance compensation. Held, the insurance company was not liable to him as no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest in them. **(Separate legal entity)**
2. **Salomon Vs. Salomon and Co Ltd:** It was held by Lord Mac Naughten: "The Company is at law a different person altogether from the subscribers to the memorandum, and though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustees for them. Nor are the subscribers, as members, liable, in any shape or form, except to the extent and in the manner provided by the Act." **(Corporate Veil)**

• **Lifting of Corporate Veil:**

3. **Daimler Co. Ltd. vs. Continental Tyre & Rubber Co:** if the public interest is not likely to be in jeopardy, the Court may not be willing to crack the corporate shell. But it may rend the veil for ascertaining whether a company is an enemy company. **(To determine the character of the company i.e. to find out whether co-enemy or friend)**
4. **S. Berendsen Ltd. vs. Commissioner of Inland Revenue:** In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue. **(To protect revenue/tax)**
5. **Juggilal vs. Commissioner of Income Tax AIR (SC):** Where corporate entity is used to evade or circumvent tax, the Court can disregard the corporate entity. **(To protect revenue/tax)**
6. **Dinshaw Maneckjee Petit:** The assessee opened some companies and purchased their shares in exchange of his income by way of dividend and interest. This income was transferred back to assessee by way of loan. The Court decided that the private companies were a sham and the corporate veil was lifted to decide the real owner of the income. **(To protect revenue/tax)**
7. **Workmen of Associated Rubber Industry Ltd., v. Associated Rubber Industry Ltd:** Here a company created a subsidiary and transferred to it, its investment holdings in a bid to reduce its liability to pay bonus to its workers. Thus, the Supreme Court brushed aside the separate existence of the subsidiary company. **(To avoid a legal obligation)**
8. **Merchandise Transport Limited vs. British Transport Commission (1982):** a transport company could not apply licences for its vehicles in its own name. Hence, formed a subsidiary company, and the application for licence was made in the name of the subsidiary. Held, the parent and the subsidiary were one commercial unit and the application for licences was rejected. **(Formation of subsidiaries to act as agents)**
9. **Gilford Motor Co. vs. Horne:** Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations. **(Company formed for fraud/improper conduct or to defeat law)**

• **Classes of Companies:**

10. **Narendra Kumar Agarwal vs. Saroj Maloo:** The Supreme Court has laid down that the right of a guarantee company to refuse to accept the transfer by a member of his interest in the company is on a different footing than that of a company limited by shares. The membership of a guarantee company may carry privileges much different from those of ordinary shareholders. **(Company limited by guarantee)**

- **Effect of registration:**

11. **Hari Nagar Sugar Mills Ltd. vs. S.S. Jhunjunwala:** From the date of incorporation mentioned in the certificate, the company becomes a legal person separate from the incorporators; and there comes into existence a binding contract between the company and its members as evidenced by the Memorandum and Articles of Association
12. **State Trading Corporation of India vs. Commercial Tax Officer:** A legal personality emerges from the moment of registration of a company and from that moment the persons subscribing to the Memorandum of Association and other persons joining as members are regarded as a body corporate or a corporation in aggregate and the legal person begins to function as an entity.
13. **Spencer & Co. Ltd. Madras vs. CWT Madras:** A company may purchase shares of another company and thus become a controlling company. However, merely because a company purchases all shares of another company it will not serve as a means of putting an end to the corporate character of another company and each company is a separate juristic entity.
14. **Heavy Electrical Union vs. State of Bihar:** The mere fact that the entire share capital has been contributed by the Central Government and all its shares are held by the President of India and other officers of the Central Government does not make any difference in the position of registered company and it does not make a company an agent either of the President or the Central Government.

- **Share is an interest in the company:**

15. **Borland Trustees vs. Steel Bors. & Co. Ltd:** A share is not a sum of money but is an interest measured by a sum of money and made up of various rights contained in the contract, including the right to a sum of money of a more or less amount”.
16. **Ashbury Railway Carriage and Iron Company Limited v. Riche-(1875):** The directors of the company entered into a contract with Riche, and the company further ratified this act by passing a special resolution. The company however, repudiated the contract as being ultra-vires. And Riche brought an action for damages for breach of contract. It was held by the Court that the contract was null and void. It said that the terms general contractors was associated with mechanical engineers, i.e. it had to be read in connection with the company’s main business. If, the term general contractor’s was not so interpreted, it would authorize the making of contracts of any kind and every description, for example, marine and fire insurance.

- **Articles of Association:**

17. **Guinness vs. Land Corporation of Ireland:** The articles of association of a company are its rules and regulations, which are framed to manage its internal affairs. Just as the memorandum contains the fundamental conditions upon which the company is allowed to be incorporated, so also the articles are the internal regulations of the company.
18. **S.S. Rajkumar vs. Perfect Castings (P) Ltd.:** The document containing the articles of a company (the Magna Carta) is a business document; hence it has to be construed strictly. It regulates domestic management of a company and creates certain rights and obligations between the members and the company.

- **Doctrine of Indoor Management**

19. **Royal British Bank vs. Turquand:** The company had given a bond to the Royal British Bank, which was under the company’s seal, signed by two directors and the secretary. When the company was sued, it alleged that under its articles of association directors only had power to borrow up to an amount authorized by a company resolution. A resolution had been passed but not specifying how much the directors could borrow. **Held,** it was decided that the bond was valid. He said the bank was deemed to be aware that the directors could borrow only up to the amount resolutions allowed. Articles of association were registered with Companies House, so there was constructive notice. But the bank could not be deemed to know which ordinary resolutions passed, because these were not registrable.

- **Exceptions to the doctrine of Indoor Management:**

20. **Howard vs. Patent Ivory Manufacturing Co:** The directors could not defend the issue of debentures to themselves because they should have known that the extent to which they were lending money to the company required the assent of the general meeting which they had not obtained. **(Actual or constructive knowledge of irregularity)**
21. **Morris v Kansseen:** a director could not defend an allotment of shares to him as he participated in the meeting, which made the allotment. His appointment as a director also fell through because none of the directors appointed him was validly in office. **(Actual or constructive knowledge of irregularity)**
22. **Anand Bihari Lal vs. Dinshaw & Co:** the plaintiff accepted a transfer of a company’s property from its accountant, the transfer was held void. The plaintiff could not have supposed, in absence of a power of attorney that the accountant had authority to effect transfer of the company’s property. **(Suspicion of Irregularity)**
23. **Haughton & Co. v. Nothard, Lowe & Wills Ltd.:** where a person holding directorship in two companies agreed to apply the money of one company in payment of the debt to other, the court said that it was something so unusual “that the plaintiff were put upon inquiry to ascertain whether the persons making the contract had any authority in fact to make it.” Any other rule would “place limited companies without any sufficient reasons for so doing, at the mercy of any servant or agent who should purport to contract on their behalf.” **(Suspicion of Irregularity)**
24. **Ruben v Great Fingall Consolidated:** The Company’s secretary had forged the signature of the two directors and issued the share certificate. The plaintiff (transferee) contended that it was a part of the internal management, and therefore, the company should be estopped from denying genuineness of the document. **Held,** that the rule has never been extended to cover such a complete forgery. **(Forgery)**

Past Year Questions

1. What is the main difference between a Guarantee Company and a Company having Share Capital? (July-2021-3 Marks)
2. Define OPC (One Person Company) and state the rules regarding its membership. Can it be converted into a non-profit company under section 8 or a private company? (May-2018-6 Marks)
3. State the limitations of the doctrine of indoor management under the Companies Act, 2013. (May-2018-3 Marks)
4. There are cases, where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct from its shareholders or members. Elucidate. (Nov-2018-6 Marks)
5. What do you mean by "Companies with charitable purpose" (section 8) under the Companies Act 2013? Mention the conditions of the issue and revocation of the licence of such company by the government. (June-2019-6 Marks)
6. "The Memorandum of Association is a charter of a company". Discuss. Also explain in brief the contents of Memorandum of Association. (Nov-2019-6 Marks)
7. What are the significant points of Section 8 Company which are not applicable for other companies? Briefly explain with reference to provisions of the Companies Act, 2013. (Nov-2020-6 Marks)
8. Mike Limited company incorporated in India having Liaison office at Singapore. Explain in detail meaning of Foreign Company and analysis on whether Mike Limited would be called as Foreign Company as it established a Liaison office at Singapore as per the provisions of the Companies Act, 2013? (Nov-2020-3 Marks)
9. Explain Doctrine of 'Indoor Management' under the Companies Act, 2013. Also state the circumstances where the outsider cannot claim relief on the ground of 'Indoor Management'. (Jan-2021-6 Marks)
10. Explain the classification of the companies on the basis of control as per The Companies Act, 2013. (July-2021-6 Marks)
11. What do you mean by the term Capital? Describe its - classification in the domain of Company Law. Dec-2021-6 Marks)
12. Explain the 'doctrine of ultra vires' under the Companies Act, 2013. What are the consequences of 'ultra vires' acts of the company? (June-2022-6 Marks)
13. Ravi Private Limited has borrowed Rs. 5 crores from Mudra Finance Ltd. This debt is ultra vires to the company. Examine, whether the company is liable to pay this debt? State the remedy if any available to Mudra Finance Ltd.? (May-2018- 4 Marks)
14. A company registered under Section 8 of the Companies Act, 2013, earned huge profits during the financial year ended on 31st March, 2018 due to some favourable policies declared by the Government of India and implemented by the company. Considering the development, some members of the company wanted the company to distribute dividends to the members of the company. They approached you to advise them about the maximum amount of dividend that can be declared by the company as per the provisions of the Companies Act, 2013. Examine the relevant provisions of the Companies Act, 2013 and advise the members accordingly. (Nov-2018-4 Marks)
15. Mr. X had purchased some goods from M/s ABC Limited on credit. A credit period of one month was allowed to Mr. X. Before the due date Mr. X went to the company and wanted to repay the amount due from him. He found only Mr. Z there, who was the factory supervisor of the company. Mr. Z told Mr. X that the accountant and the cashier were on leave, he is in-charge of receiving money and he may pay the amount to him. Mr. Z issued a money receipt under his signature. After two months M/s ABC Limited issued a notice to Mr. X for non-payment of the dues within the stipulated period. Mr. X informed the company that he had already cleared the dues and he is no more responsible for the same. He also contended that Mr. Z is an employee of the company to whom he had made the payment and being an outsider, he trusted the words of Mr. Z as duty distribution is a job of the internal management of the company. Analyse the situation and decide whether Mr. X is free from his liability. (Nov-2018-3 Marks)
16. Sound Syndicate Ltd. a public company, its articles of association empowers the managing agents to borrow both short and long term loans on behalf of the company, Mr. Liddle, the director of the company, approached Easy Finance Ltd. a non banking finance company for a loan 25,00,000 in name of the company. The Lender agreed and provided the above said loan. Later on Sound Syndicate Ltd. refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed by the company and the lender should have enquired about the same prior providing such loan hence company not liable to pay such loan. Analyse the above situation in terms of the provisions of Doctrine of Indoor Management under the Companies Act, 2013 and examine whether the contention of Sound Syndicate Ltd. is correct or not? (June-2019-4 Marks)
17. Popular Products Ltd. is company incorporated in India, having a total Share Capital of Rs. 20 Crores. The Share capital comprises of 12 Lakh equity shares of Rs. 100 each and 8 Lakhs Preference Shares of Rs. 100 each. Delight Products Ltd. And Happy products Ltd. hold 2,50,000 and 3,50,000 shares respectively in Popular Products Ltd. Another company Cheerful products Ltd. holds 2,50,000 shares in Popular Products Ltd. Jovial Ltd. is the holding company for all above three companies namely Delight Products Ltd; Happy products Ltd; Cheerful products Ltd. Can Jovial Ltd., be termed as subsidiary company of Popular Products Ltd., if it Controls composition of directors of Popular Products Ltd. State the related provision in the favour of your answer. (June-2019-3 Marks)
18. Mr. Anil formed a One Person Company (OPC) on 16th April, 2018 for manufacturing electric cars. The turnover of the OPC for the financial year ended 31 March, 2019 was about Rs. 2.25 Crores. His friend Sunil wanted to invest in his OPC, so they decided to convert it voluntarily into a private limited company. Can Anil do so? (Nov-2019-4 Marks)
19. A, an assessee, had large income in the form of dividend and interest. In order to reduce his tax liability, he formed four private limited company and transferred his investments to them in exchange of their shares. The income earned by the companies was taken back by him as pretended loan. Can A be regarded as separate from the private limited company he formed? (Nov-2019-3 Marks)

20. ABC Limited has allotted equity shares with voting rights to XYZ Limited worth 15 Crores and issued Non-Convertible Debentures worth 40 Crores during the Financial Year 2019-20. After that total Paid-up Equity Share Capital of the company is 100 Crores and Non-Convertible Debentures Stands at 120 Crores. Define the Meaning of Associate Company and comment on whether ABC Limited and XYZ Limited would be called Associate Company as per the provisions of the Companies Act, 2013? (Nov-2020-4 Marks)
21. ABC Limited was registered as a public company. There were 245 members in the company. Their details are as follows:
- | | |
|---|-----|
| Directors and their relatives | 190 |
| Employees | 15 |
| Ex-employees | 20 |
| (shares were allotted when they were employees) | |
| Others | 20 |
| (Including 10 joint holders holding shares jointly in the name of father and son) | |
- The Board of directors of the company propose to convert it into a private company. Advice whether reduction in the number of members is necessary for conversion. (Jan-2021- 4 Marks)
22. SK Infrastructure Limited has a paid-up share capital divided into 6,00,000 equity shares of INR 100 each, 2,00,000 equity shares of the company are held by Central Government and 1,20,000 equity shares are held by Government of Maharashtra. Explain with reference to relevant provisions of the Companies Act, 2013, whether SK Infrastructure Limited can be treated as Government Company. (Jan-2021-3 Marks)
23. Y incorporated a "One Person Company (OPC)" making his sister Z as nominee. Z is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said OPC. Taking into considerations the provisions of The Companies Act, 2013 answer the questions given below: (i) Is it mandatory for Z to withdraw her nomination in the said OPC, if she is leaving India permanently? (ii) Can Z continue her nomination in the said OPC, if she maintained the status of Resident of India after her marriage? (July-2021-4 Marks)
24. AK Private Limited has borrowed Rs.36 crores from BK Finance Limited. However, as per memorandum of AK Private Limited the maximum borrowing power of the company is Rs.30 crores. Examine, whether AK Private Limited is liable to pay this debt? State the remedy, if any available to BK Finance Limited. (Dec-2021-4 Marks)
25. BC Private Limited and its subsidiary KL Private Limited are holding 90,000 and 70,000 shares respectively in PQ Private Limited. The paid-up share capital of PQ Private Limited is Rs. 30 Lakhs (3 Lakhs equity shares of 10 each fully paid). Analyse with reference to provisions of the Companies Act, 2013 whether PQ Private Limited is a subsidiary of BC Private Limited. What would be your answer if KL Private Limited is holding 1,60,000 shares in PQ Private Limited and no shares are held by BC Private Limited in PQ Private Limited? (Dec-2021-6 Marks)
26. The Articles of Association of Aarna Limited empowers its managing agents to borrow loans on behalf of the company. Ms. Anika, the director of the company, borrowed Rs. 18 Lakhs in name of the company from Quick Finance Limited, a non-banking finance company. Later on, Aarna Limited refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed by the company and therefore the company is not liable to pay such loan. Decide whether the contention of Aarna Limited is correct in accordance with the provisions of the Companies Act, 2013? (June-2022-4 Marks)