

# Companies Act, 2013

↓  
companies  
470 sections + 7 schedules

↓  
99 chapters

## Aim of companies act:

1. Improve corporate governance
2. simplify regulation
3. strengthen interest of minority share holders
4. Protects whistle blowers.

## Section 1: Applicability

→ company registered under this act or any previous law.

→ Insurance

→ Banking

→ Electricity

(Except when said act is inconsistent with companies act, then specific act will prevail.)

Supply Distribution

→ Special Act companies

→ Any other body corporate - notified by CG

Q. what is meant by company? Explain its features

## Section 2 (20):

A company means company registered under this act or any of previous company law.



\* As per prof. Haney -

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

\* Following are features of company:

1. Separate Legal Entity:

• When company is registered it is clothed with legal personality.

• It is distinct from its members and can have separate bank account, assets, Raise loan & enter into contract.

• Even members can enter into contract with company can acquire rights against it or incur liability

case law: Salomon and Salomon Co. Ltd

• Makara vs Northern Assurance Co. Ltd

• Members even do not have insurable interest in property of company.

2. Perpetual Succession:

1. Members may die or change but company goes on till it is wound up on grounds of specified act



2. Since company is artificial person law can alone bring end to its life.

3. Its existence is not affected by death or insolvency of members.

### 3. Limited liability:

- The liability of member depends upon kind of company in which he is member.

→ In case of company limited by shares liability of members is restricted upto unpaid amount of nominal value. Share holder cannot be asked to pay more than unpaid value on shares.

→ In case of company limited by guarantee members are liable only to extend of amount guaranteed by person / member at time of liquidation.

→ However in unlimited company - liability is unlimited.

### 4. Artificial Legal Person:

→ company is created by law and it is cloth with all rights of individual.

→ company being separate legal entity can own property, bank account, Raise loan



and enter into contract

→ company is artificial person & it acts through its human agency i.e. Directors. They are not agent of members but are of company who can act on their own through common seal.

### 5. Common Seal:

→ It is an official signature of a company which is affixed by officer & employee on every document of company.

→ As per 100th amendment act 2015, common seal has been made optional. It provides that to authenticate document either common seal can be used or it can be done with 2 directors or with 1 director and 1 company secretary.

### \* Corporate Veil:

→ It is a concept where company is identified separately from its members.

- It refers to concept where members of company are protected from liability of company's action.
- If company incurs any action which is illegal then member will not be liable for those errors.



They enjoy corporate insulation.

case law : Salomon vs Salomon Co. Ltd

• In following case corporate veil can be lifted

1. To determine character of company

• In law related to trading with enemy where test of control is adopted.

• If public interest is in jeopardy then corporate veil shall be lifted

**IMP** • A company shall be characterised as Enemy company if affairs are controlled by enemy people of an enemy country.

case law - Dameles Co. Ltd vs Continental Tyre & Rubber Co.

2. To Protect tax Revenue.

• If any company is formed just to avoid duties and taxes the corporate veil shall be lifted.

case law : Dinshaw Manekji Petit



3 To avoid legal obligation

- If any body corporate is incorporated for sole purpose - as a device to reduce amount of tax legal obligation which needs to be paid by law.

case law: workmen of Associate Rubber Industry vs Associate Rubber Industry

4. Formation of subsidiary to Act as Agent

- A company may sometimes be regarded as agent of another company and therefore deemed to have lost individuality in favour of principal shall be liable for acts of company.

case law: Merchandise Transport Limited vs British Transport Commission.

5. Company formed for fraud and improper conduct.

- where device of incorporation is adopted for some illegal or improper conduct - then corporate veil shall be lifted.

case law: Gilford Motor vs Hoare



## Classes of Companies Under Act

### On the basis of liability:

#### a) Company Limited By shares:

① When company is the liability of members is limited by its memorandum of association upto unpaid amount on shares

② It means shareholders can be asked to pay only unpaid value on nominal value

③ Shareholder is co-owner of company and not company's asset.

#### b) Company limited By Guarantee:

- Members liability is limited by memorandum of association to such amount which member undertake to contribute to assets of company.

- member can't be called to pay more than specified amount.

#### c) Unlimited Company:

- It donot have any limit on liability of member

- Liability ceases when member ceases to exist.



## II On the basis of members

### IMP a) One Person Company :

- It's a company which can be incorporated by one person.
- Minimum paid up capital is not prescribed.
- MOA shall specify name of person who shall in event of death may become member of company.
- Other person (Nominee) shall give prior consent in prescribed form and it shall be filed with ROC.
- Only a natural person who is Indian citizen and who has stayed in India for more than 180 days during immediately preceding financial year.
- shall be eligible to incorporation OPC.
- shall be eligible to become Nominee.
- No person shall be eligible to incorporate more than one OPC.
- such company can't be converted into section 8 company.
- such company can't carry out non-Banking Financial Activities.



• Default :

company : upto 10,000 + 1000 / day

offices in Default : not defined

b) Private Company :

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

1. Restrict the right to transfer its shares
2. limits no. of members to 200.

provided that 2 or more person holds one or more shares jointly they shall be treated as single member.

Provided that further that ↓

1. Person who are in Employment of a company

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2. Person who have been formerly in the employment of the company were members and have continued to be members



\* Small company : As per Section 2(85) -

which means company other than public company

1. Paid up share capital does not exceed 50 lac or higher amount as may be prescribed which shall not be more than 10 cr.

and

2. Turnover as per Profit and Loss in immediately preceding financial year does not exceed 2 cr or such higher amount as may be prescribed not more than 100 cr.

As per Rules

Paidup share capital amount is 2 cr.

Turnover is 20 cr.

• Exception :

1. Holding and subsidiary company
2. Section 8 company
3. company or body corporate gov. by special act
4. Small company



### \* Public Company :

It means a company which is not a private company has minimum paid up share capital.

- a) is not a private company
- b) has minimum paid up share capital.

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

### III On the Basis of Control

#### 1. Holding and Subsidiary Company :

- This is a relative term
- subsidiary company in relation to any other company means a company in which holds HOLDING COMPANY ↴

1. Controls composition of board of directors
2. Exercises or controls more than one-half of total voting power either on its own or through subsidiary.

Composition of BOD mean when one company can appoint or remove all or majority of director.



2. Associate Company :

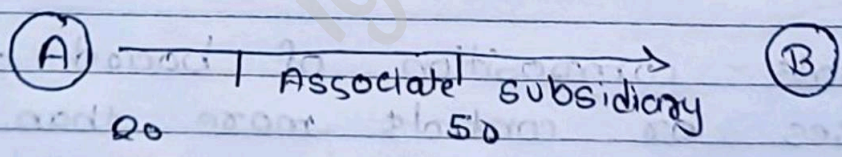
In relation to any other company it means, a company in which company has significant influence, but which is not subsidiary company having such influence and includes joint venture.

Explanation :-

1. Control of 20% of total voting power or control on decision under an agreement.

2. Total share capital = Paid up share capital + Convertible preference share capital.

Shares held by company in fiduciary capacity shall not be treated for associate purpose.





On the basis of access to capital.

1. Listed Company :

It is a company which has its securities listed on recognised stock exchange.

2. Unlisted Company :

Company other than listed company

3. Other Co

Other Company :

1. Government Company

A company in which not less than 51% of paid up share capital is held by

- Central Government
- State Government / Governments
- Partly by central government or Partly by state government.

It also includes company which is subsidiary of such government company

2. Foreign Company :

→ It means company or body corporate incorporate outside India which



→ (a) has place of business in India, whether by itself or through agent, physically or through electronic mode.

(b) conducts any business activity in India in any other manner.

### 3. Section 8 Company:

#### Formed with objects

- Promote : Commerce, Arts, science, sports, education, research education, social, charity.

- Such company should apply its profit in promoting objects.

- Prohibits the payment of dividend.

#### \* Power Of CG. to issue license

1. CG may allow to register person or AOP without words limited or PVT limited.

2. ROC shall on application register it as company.

3. Company shall enjoy same privilege as limited company.



## \* Revocation Of licence

- If CG finds out that company has contravened conditions subjects to which licence is issued.
- Affairs of company are fraudulently managed or violates objects of company or prejudicial to public interest.
- On revocation Register shall Pvt word limited or Private limited.

• Before this reasonable opportunity shall be given

### Penalty company

10 Lac - 1 Cr  
Director / O/D - 25000 to 250000  
(officer in Default)

+ If fraud - Sec 441

## \* Dormant Company

1. Company registered under the act for future project or to hold asset or intellectual property and has no significant accounting transactions

2. Such company shall apply to Roc for dormant company



### 3. Inactive Company

Company which has not been carrying any business or operating or NOT MADE any significant accounting transaction during last 2 year or has not filled Financial Statement and Annual Returns during last 2 year

#### • Significant Accounting

~~Company which has not been carrying any business or operation OR not made any significant accounting transactions during last 2 year or has not filled financial statement and Annual Return during last 2 year.~~

#### • Significant Accounting

→ It means transaction other than

1. Payment of fees to registrar
2. Payment for fulfilling requirement of act
3. Allotment of shares to fulfill requirements of act



4. Payment for maintenance of offer and records.

\* Nidhi Company

company which central government notifies in official gazette - as Nidhi or mutual benefit society.

\* Public Financial Institution

Following are condition - for institution to be notified as PEI:

A) It is established under central or state act other than company law

B) Not less than 51% of Paid-up share capital is held or controlled by CG / SG or SG's

→ Examples : LIC , UTI etc



## Section 7 : Incorporation of company

### 1. Promoters:

- Person who formed the company are known as promoters.
- They receive the idea of forming company.
- They take necessary action of formation of company.
- However, Person acting in professional capacity are not regarded as promoters.

### \* Basic Requirement of forming a company

In case of Public Co. = 7 or more  
Pvt Co. = 2 or more  
OPC = 1 member

### Incorporation of a company

#### 1. Filing of document and information with registrar:

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

- MOA and AOA duly signed by registered



- Declaration by a person engaged in formation of company → CA / CS / CMA / Advocate and by person named in article (Director, Manager or Secretary) that all requirements of act have been complied.

- Declaration from each of subscriber to memorandum and from person named as director, if any in the articles stating he is convicted.

(1) He is <sup>not</sup> convicted of any offence in connection with promotion or management of company

(2) He is not been found guilty of any fraud or misfeasance for breach of duty in company act or previous law.

(3) Documents submitted with Registrar of Companies are true to best of knowledge and belief.

- Address of correspondence, till Registered office is established.

- Particulars (Name, surname, family name, Nationality) of every subscribers in MOA along with proof of identity

- Particulars (Name, surname, Address,



director identification number along with proof of identity.

## 2. Issue of certificate of incorporation

→ After all the documents is filed registrar shall issue certificate of incorporation to effect that company is incorporated under the act.

## 3. Allotment of corporate identity number.

→ Registrar shall issue a Corporate Identification Number which shall be unique & distinct identity for company.

## 4. Maintenance of copies of all document & information:

→ Company shall maintain all document originally filled with RoC in such manner as may be prescribed.

## 5. Furnishing of false or incorrect information or suppression of material fact at time of incorporation.

→ Person shall be liable for fraud v/s 447.

a. Company already incorporated by furnishing false or incorrect information or by suppressing material fact:

- Promoters are liable for fraud v/s 447.



- Person making declaration - u/s 447

### 7. Order of Tribunal:

Where company has already incorporated by furnishing incorrect information or by suppressing material fact or incorporated by any fraudulent action - Tribunal may on application and if situation so demands:

- ① Pass such orders as it may think fit for regulating management of company including changes in MOA/AOA.
- ② Direct liability to be unlimited.
- ③ Direct removal of name of company from Registrar of companies.
- ④ Direct winding up of company.
- ⑤ Pass such order as it may think fit.

→ Provided that company shall be given reasonable opportunity of being heard and tribunal shall look into transaction of company.



## Effect of Registration

→ Once company is incorporated all features of company get activated - perpetual succession, disposal prop of property, Right to enter into contract.

## # Shares

### Types of shares:

#### 1. Preference share capital

• with reference to any company limited by shares. It means that part of share capital that would carry preference right with respect to:

##### 1.1 payment of dividend:

either a fixed amount or amount calculated at a fixed rate, either free or subject to IT.

##### 1.2. Repayment

In case of winding up or repayment of capital, amount of share capital or paid up capital - there is preferential right with respect to premium or capital.

## 2. Equity Shares:

→ It means capital which is not preference share



capital.

Two types: ① with voting rights  
2. with differential voting rights

\* Features of share:

1 > Shares are movable property:

• According to section 44 - shares or debentures of any member shall be movable or transferable as per Articles of Association

2 > Shares shall be numbered:

• shares shall be distinguished from distinctive number

\* Memorandum of Association

→ It is chapter in document which defines scope of power which has established under this act.

• Object of Registering MOA

• It contains object for which company is formed, and defines its scope beyond which actions can't go.

• It enables shareholder, creditors and



all those associated with company - powers company

- Shareholder should know purpose for which money will be used.

Memorandum of Association shall be drawn in such form

Form A - MOA of company limited by shares

Form B - MOA of Guarantee Company & Not having share capital.

Form C - MOA of guarantee company & Having share capital.

Form D - MOA - unlimited company

Form E - MOA - unlimited company having share capital.

### \* Content of MOA

1. Name clause :

- In case of Public limited - "limited"
- In case of Pvt limited - "Pvt Ltd"
- In case of section 8 - No such condition

"Electoral"



→ "Electoral Trust" is allowed for registration of company in accordance with Electoral Trust scheme and as notified by Central Government.

→ In case of OPC - One person company shall be included below its name.

2. Registered Office Clause :

- state in which registered office of company is situated.

3. Object Clause :

- It contains objects for which company is proposed to be incorporated and incidental matters thereto.

4. Liability clause :

- In case of company limited by shares:- amount unpaid on face value shall be liable to be paid by share holder
- In case of guarantee company:- amount upto which each member undertakes to contribute:-
  - (i) To the assets of company in event of winding up while member is member OR within one year after



he ceases to be member for payment of debts and liabilities which may have been contracted while he was member

- (ii) Expenses of winding up.

### 5. Capital Clause:

- It contains amount of share capital company is authorised to issue and also contains name of subscribers who wish to become member.

### 6. Association Clause:

- It contains name of person who agrees to be associated with company during incorporation.

### \* Doctrine Of Ultra Vires

- It simply means beyond powers.
- It means when acts of company are beyond power contemplated by MOA/AOA, such act becomes void and neither company nor outsiders can sue regarding it.
- Company can be restrained from deploying its fund for purpose other than sanctioned



by MOA / AOA

- It also assumes that one who is dealing with company shall be deemed to know about its power.

case law: Ashbury Railway carriage and Iron Co. Ltd vs Riche

- Act which is ultra vires can never be binding on company. It cannot become Intra vires by reason of estoppel, lapse of time, delay

\* Following are Positions:

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

2) Act which is ultra vires can't be ratified by unanimous consent of all share holders.

3) Act which is ultra vires director but intra vires to company can be ratified by members by passing resolution in general meeting.



4) If act is ultra vires the article, it can be ratified by amending AOA by passing special resolution.

## \* Articles Of Association

- They are rules and regl regulation which are framed to manage its internal affairs.
- They are also known as Magna Carta.
- It regulates domestic management of company and certain rights & obligation between management and company.

### Contents of AOA:

1. Contains regulation: it contain rules for regulating management of company.
2. Inclusion of matter: contains matter which are prescribed in rules.
3. Contains provision of entrenchment:  
→ It may contain provision of entrenchment [to protect something] only if procedure are



more restrictive than those applicable in state.

#### 4. Manner of Inclusion:

In case of Pvt. Co - unanimous approval  
In case of Public Co. - Special Resolution

#### 5. Notice to ROC:

Company shall give notice to ROC in such manner as may be prescribed.

#### 6. Forms of Article:

Table F G H I and J - schedule I

#### 7. Model Articles:

Company may adopt some or all of model article

#### 8. Company registered after commencement of this act:

company has to comply with all model article provision which are applicable for regulating the company



## \* Difference Between: MOA & AOA

Basis	MOA	AOA
Objectives:	states objective for which company is incorporate incoop	states rules and regulation for achieving objects.
Relation-ship	Defines relationship with outside world	Defines relationship with company and members
Alteration:	can be altered under certain circumstance	can be altered by passing special resolution
Ultra vires	Act done beyond scope is VOID	Act done beyond scope is VOID, but can be ratified by passing special resolution.

## \* Doctrine of Constructive Notice

1. Sec 399 - MOA & AOA is public document and any person can inspect by electronic means kept with registrar or may make copy of records by paying amount of fees.
2. Every person dealing with company is presumed to have knowledge of documents