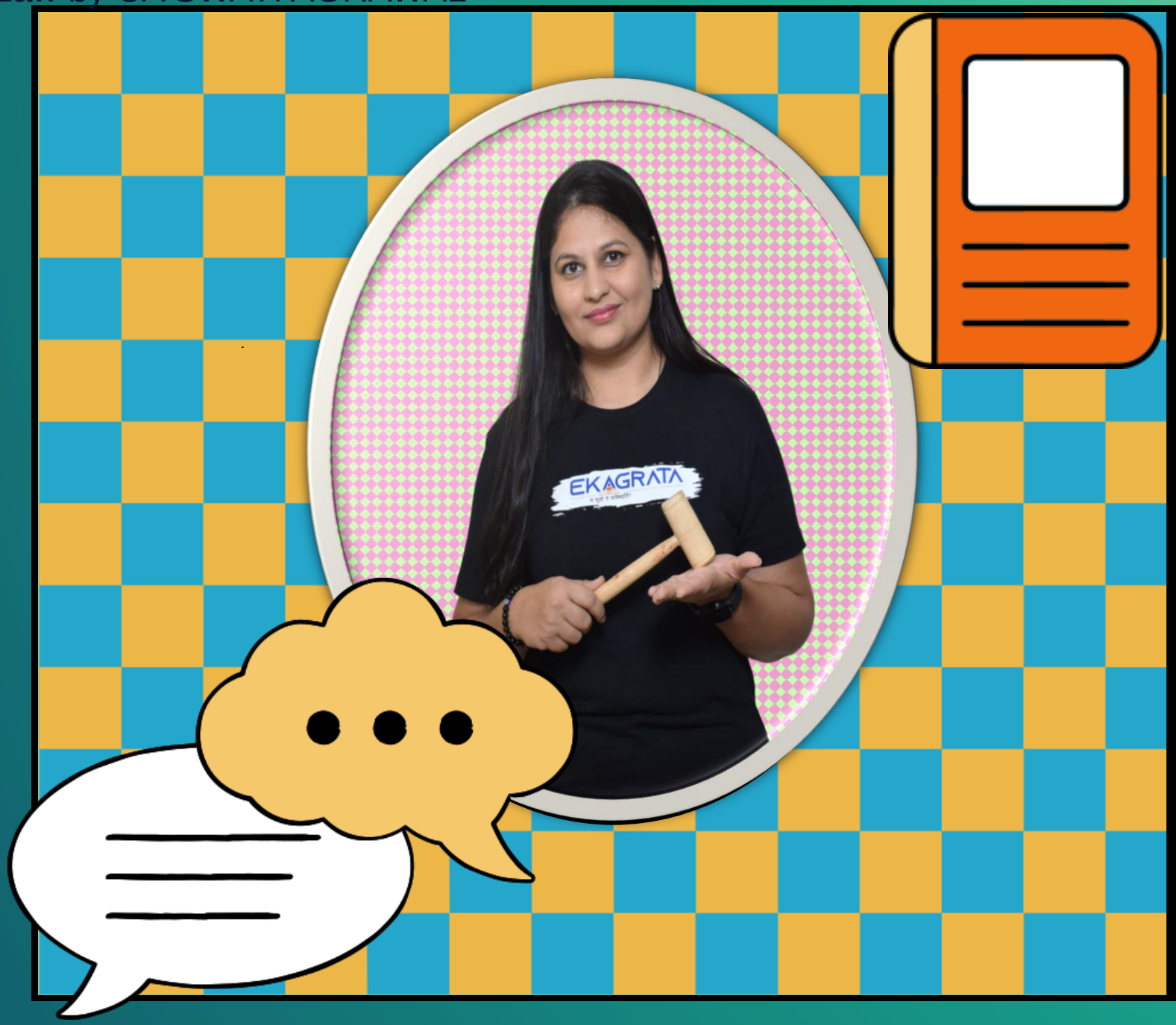
The Companies Act,2013 One Shot Revision



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- Completed B. Com. (Hons.) and ‘O’ Level examination.
- Taught thousands of students more 10+ years
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1. Introduction

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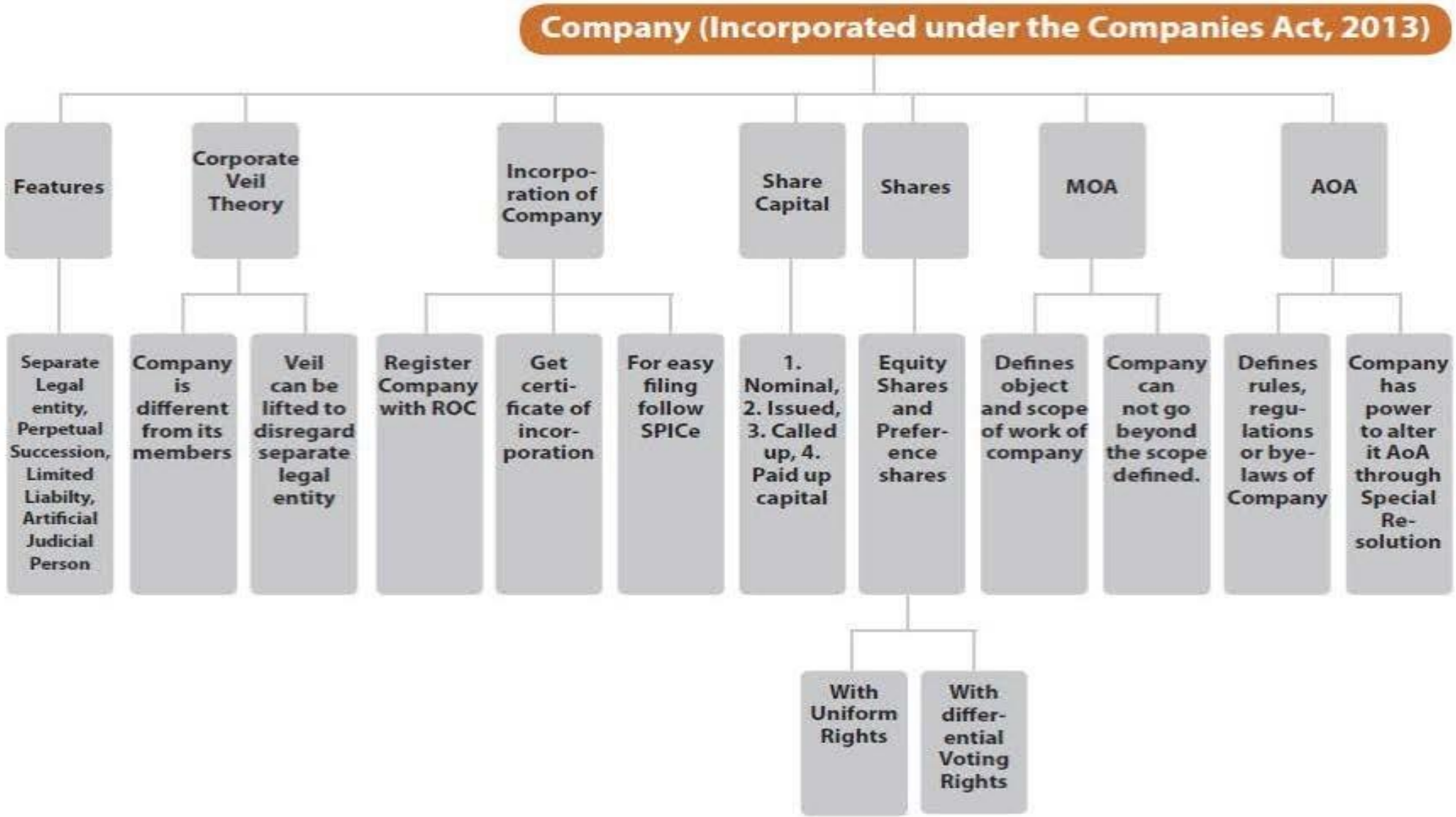

Company (Incorporated under the Companies Act, 2013)
Features
Corporate Veil Theory
Incorpo-ration of Company
Share Capital
Shares
MOA
AOA
Separate Legal entity, Perpetual Succession, Limited Liabilty, Artificial Judicial Person
Company is different from its members
Veil can be lifted to disregard separate legal entity
Register Company with ROC
Get certi-ficate of incor-poration
For easy filing follow SPICe
1. Nominal, 2. Issued, 3. Called up, 4. Paid up capital
Equity Shares and Prefer-ence shares
Defines object and scope of work of company
Company can not go beyond the scope defined.
Defines rules, regu-lations or bye-laws of Company
Company has power to alter it AoA through Special Re-solution
With Uniform Rights
With differ-ential Voting Rights

Introduction

The Companies Act, 2013 was enacted to consolidate and amend the law relating to the companies. The Companies Act, 2013 was preceded by the Companies Act, 1956.
Due to changes in the national and international economic environment and to facilitate expansion and growth of our economy, the Central Government decided to replace the Companies Act, 1956 with a new legislation.

Introduction

The Companies Act, 2013 contains 470 sections and seven schedules. The entire Act has been divided into 29 chapters. A substantial part of this Act is in the form of Companies Rules. 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 whistleblowers. Thus, this enactment seeks to make our corporate regulations more contemporary.

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 of the said Act are inconsistent with the provisions of the Insurance Act, 1938 or the IRDA Act, 1999)
- Banking companies (except where the provisions of the said Act are inconsistent with the provisions of the Banking Regulation Act, 1949)
- Companies engaged in the generation or supply of electricity (except where the provisions of the above Act are inconsistent with the provisions of the Electricity Act, 2003)

Applicability of the Companies Act, 2013

The provisions of the Act shall apply to-

- 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.

2. Meaning & Definition

DEFINITION

- According to Chief Justice Marshall,“a corporation is an artificial being, invisible, intangible, existing only in contemplation of law. Being a mere creation of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as accidental to its very existence.

- In the words of professor Haney“A company is an incorporated association, which is an artificial person created by law, having a separate entity, with a perpetual succession and a common seal.” This definition sums up the meaning as well as the features of a company succinctly.

MEANING

- However, the Act defines the term company a bit differently. Section 2(20) of the Companies Act, 2013 defines the term ‘company’. “Company means a company incorporated under this Act or under any previous company law”. As we shall progress under the chapter, the meaning of the term company will be understood by the students.

FEATURES OF A COMPANY

Features of A Company

Separate Legal Entity

- Legally separate from the members

Perpetual succession

- Change in members does not auect existence of Company

Limited Liabilty

- Liability of Company diuerent from liability of members

Artificial Juridicial Person

- Company can act through human agency only
- Company can contract, sue and be sued in its own name

Features of A Company

Separate Legal Entity:

There are distinctive features between different forms of organisations and the most striking feature in the company form of organisation vis-à-vis the other organisations is that it acquires a unique character of being a separate legal entity. In other words, when a company is registered, it is clothed with a legal personality. 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 can own property, have bank account, raise loans, incur liabilities and enter into contracts.

a. It is at law, a person is different altogether from the subscribers to the memorandum of association. Its personality is distinct and separate from the personality of those who compose it.
b. Even members can contract with company, acquire right against it or incur liability to it. For the debts of the company, only its creditors can sue it and not its members.

A company is capable of owning, enjoying and disposing of property in its own name. Although the capital and assets are contributed by the shareholders, the company becomes the owner of its capital and assets. The shareholders are not the private or joint owners of the company's property.

Case Study

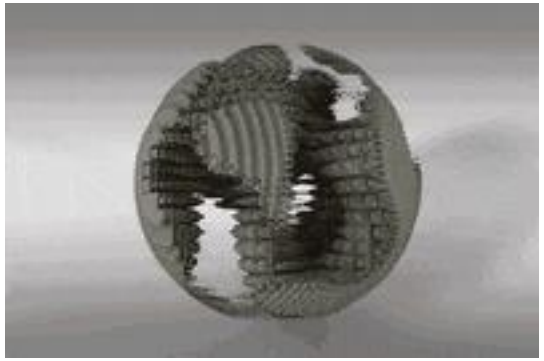
A member does not even have an insurable interest in the property of the company. The leading case on this point is of Macaura v. Northern Assurance Co. Limited (1925):

Fact of the case

Macaura (M) was the holder of nearly all (except one) shares o a timber company. He was also a major creditor of the company. M Insured the company's timber in his own name. The timber 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.

II. Perpetual Succession:

Members may die or change, but the company goes on till it is wound up on the grounds specified by the Act. The shares of the company may change hands infinitely but that does not affect the existence of the company. Since a company is an artificial person created by law, law alone can bring an end to its life. Its existence is not affected by the death or insolvency of its members.



III. Limited Liability:

The liability of a member depends upon the kind of company of which he is a member. We know that company is a separate legal entity which is distinct from its members.

i. Thus, in the case of a limited liability company, the debts of the company in totality do not become the debts of the shareholders. The liability of the members of the company is limited to the extent of the nominal value of shares held by them. In no case can the shareholders be asked to pay anything more than the unpaid value of their shares.

ii. 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.

iii. However, if it is an unlimited company, the liability of its members is unlimited as well.

IV. Artificial Legal Person:

1. A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual.

2. Further, the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

3. As the company is an artificial person, it can act only through some human agency, viz., directors. The directors cannot control auairs of the company and act as its agency, but they are not the “agents” of the members of the company. The directors can either on their own or through the common seal (of the company) can authenticate its formal acts.

4. Thus, a company is called an artificial legal person.

v. Common Seal:

A company being an artificial person is not bestowed with a body of a natural being. Therefore, it works through the agency of human beings. Common seal is the official signature of a company, which is a fixed by the officers and employees of the company on its every document. The common seal is a seal used by a corporation as the symbol of its incorporation.

The Companies (Amendment) Act, 2015 has made the common seal optional by omitting the words “and a common seal” from Section 9 so as to provide an alternative mode of authorization for companies who opt not to have a common seal. Rational for this amendment is that common seal is seen as a relic of medieval times. Even in the U.K., common seal has been made optional since 2006.

This amendment provides that the documents which need to be authenticated by a common seal will be required to be so done, only if the company opts to have a common seal. 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, wherever the company has appointed a Company Secretary.

Corporate Veil Theory

Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.
The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors. In other words, they enjoy corporate insulation.
Thus, the shareholders are protected from the acts of the company.

The **Salomon Vs. Salomon and Co Ltd.** laid down the foundation of the concept of corporate veil or independent corporate personality.

In Salomon vs. Salomon & Co. Ltd. the House of Lords laid down that a company is a person distinct and separate from its members. In this case one Salomon incorporated a company named "Salomon & Co. Ltd.", with seven subscribers consisting of him self, his wife, four sons and one daughter. This company took over the personal business assets of Salomon for £ 38,782 and in turn, Salomon took 20,000 shares of £ 1 each, debentures worth £ 10,000 of the company with charge on the company's assets and the balance in cash. His wife, daughter and four sons took up one £ 1 share each.

Subsequently, the company went into liquidation due to general trade depression. The unsecured creditors to the tune of £ 7,000 contended that Salomon could not be treated as a secured creditor of the company, in respect of the debentures held by him, as he was the managing director of one-man company, which was not different from Salomon and the cloak of the company was a mere sham and fraud. **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."

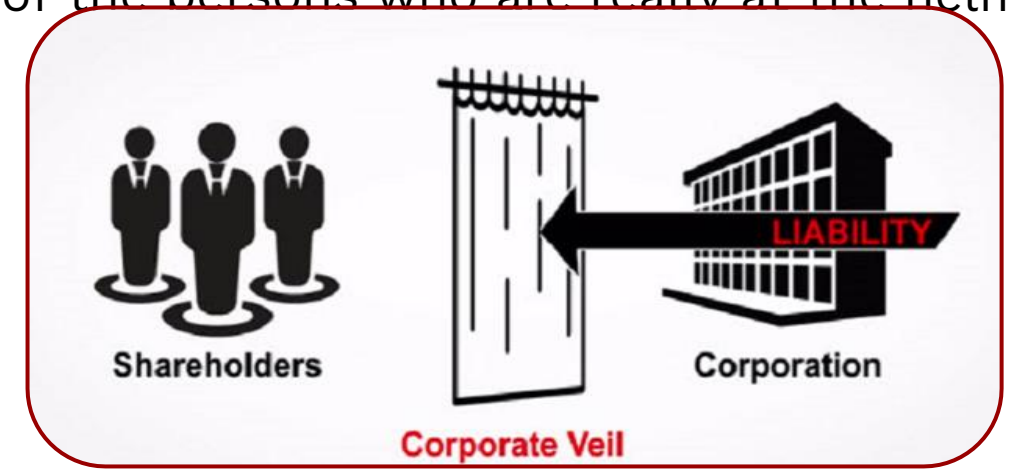
Thus, this case clearly established that company has its own existence and as a result, a shareholder cannot be held liable for the acts of the company even though he holds virtually the entire share capital. The whole law of corporation is in fact based on this theory of separate corporate entity

Corporate Veil Theory

1. **To determine the character of the company i.e. to find out whether co-enemy or friend:**

In the law relating to trading with the enemy where the test of control is adopted. The leading case in this point is 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.

It is true that, unlike a natural person, a company does not have mind or conscience; therefore, it cannot be a friend or foe. It may, however, be characterised as an enemy company, if its auairs are under the control of people of an enemy country. For this purpose, the Court may examine the character of the persons who are really at the helm of affairs of the company.



2. To protect revenue/tax:

In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue. **[S. Berendsen Ltd. vs. Commissioner of Inland Revenue]**

In **[Dinshaw Maneckjee Petit],** it was held that the company was not a genuine company at all but merely the assessee himself disguised under the legal entity of a limited company. The assessee earned huge income by way of dividends and interest.
So, he opened some companies and purchased their share exchange of his income by way of dividend and interest. T income was transferred back to assessee by way of loan. Court decided that the private companies were a sham an the corporate veil was lifted to decide the real owner of t income.

3. To avoid a legal obligation:

Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction **(The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar vs. The Associated Rubber Industries Ltd., Bhavnagar and another).**

Workmen of Associated Rubber Industry ltd., v. Associated Rubber Industry Ltd.: The facts of the case are that “A Limited” purchased shares of “B Limited” by investing a sum of ` 4,50,000. The dividend in respect of these shares was shown in the profit and loss account of the company, year after year. It was taken into account for the purpose of calculating the bonus payable to workmen of the company.

4. Formation of subsidiaries to act as agents:

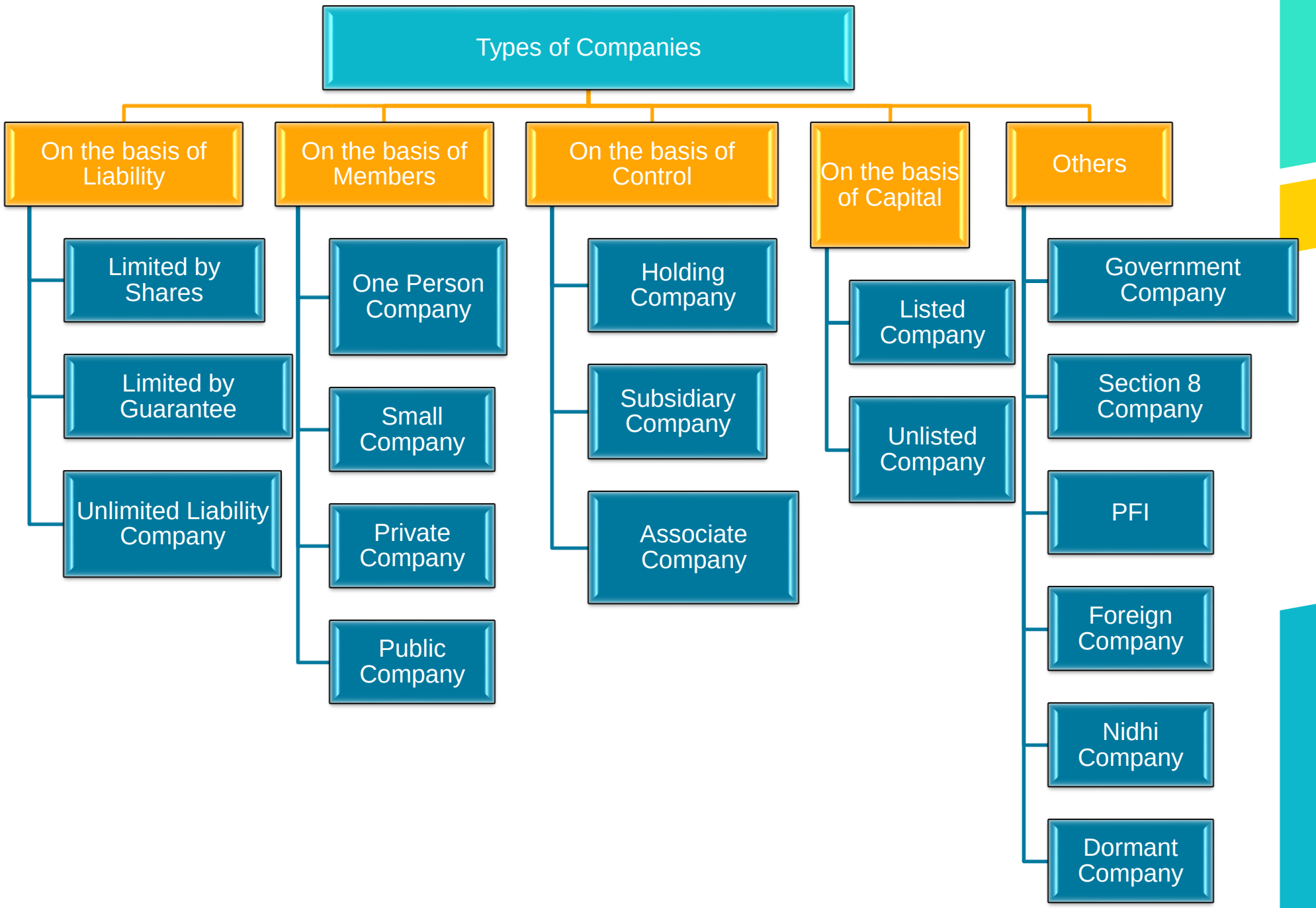
A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company.

In the case of **Merchandise Transport Limited vs. British Transport Commission (1982),** a transport company wanted to obtain licences for its vehicles, but could not do so if applied in its own name. It, therefore, formed a subsidiary company, and the application for licence was made in the name of the subsidiary. The vehicles were to be transferred to the subsidiary company. Held, the parent and the subsidiary were one commercial unit and the application for licences was rejected.

5. **Company formed for fraud/improper conduct or to defeat law:**

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. **[Gilford Motor Co. vs. Horne]**

Types of Companies


Types of Companies
On the basis of Liability
Limited by Shares
Limited by Guarantee
Unlimited Liability Company
On the basis of Members
One Person Company
Small Company
Private Company
Public Company
On the basis of Control
Holding Company
Subsidiary Company
Associate Company
On the basis of Capital
Listed Company
Unlisted Company
Others
Government Company
Section 8 Company
PFI
Foreign Company
Nidhi Company
Dormant Company

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) of the Companies Act, 2013, defines that when the liability of the members of a company is limited by its memorandum of association to the amount (if any) unpaid on the shares held by them, it is known as a company limited by shares.

It thus implies that for meeting the debts of the company, the shareholder may be called upon to contribute only to the extent of the amount, which remains unpaid on his shareholdings. His separate property cannot be encompassed to meet the company's debt.

It may be worthwhile to know that though a shareholder is a co-owner of the company, he is not a co- owner of the company's assets. The ownership of the assets remains with the company, because of its nature - as a legal person. The extent of the rights and duties of a shareholder as co-owner is measured by his shareholdings.

b. Company limited by guarantee:

Section 2(21) of the Companies Act, 2013 defines it as the company having the liability of its members limited by the memorandum to 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.

Thus, the liability of the member of a guarantee company is limited upto a stipulated sum mentioned in the memorandum. Members cannot be called upon to contribute beyond that stipulated sum.

The **common features** between a ‘guarantee company’ and ‘the company having share capital’ are legal personality and limited liability.

b. Company limited by guarantee:

Therefore, such a company may be useful only where no working funds are needed or where these funds can be held from other sources like endowment, fees, charges, donations, etc.

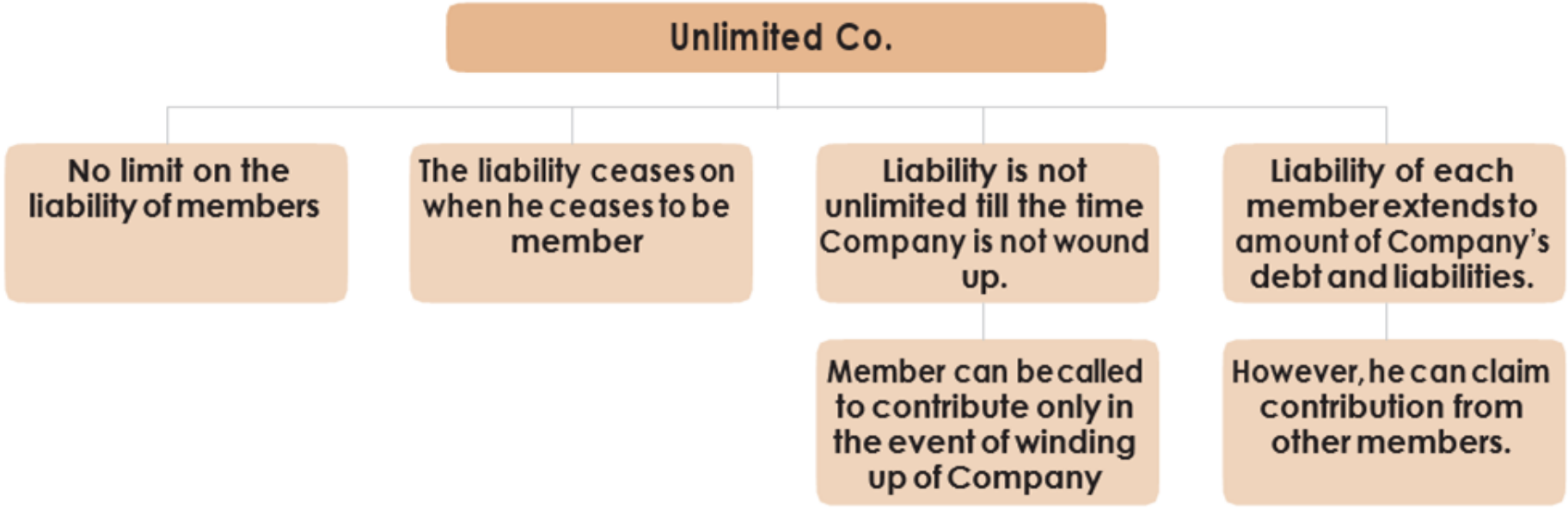
In **Narendra Kumar Agarwal vs. Saroj Maloo,**

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.

c. Unlimited company:

Section 2(92) of the Companies Act, 2013 defines 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.

The liability of each member extends to the whole amount of the company's debts and liabilities but he will be entitled to claim contribution from other members. In case the company has share capital, the articles of association must state the amount of share capital and the amount of each share. So long as the company is a going concern the liability on the shares is the only liability which can be enforced by the company.


Unlimited Co.
No limit on the liability of members
The liability ceases on when he ceases to be member
Liability is not unlimited till the time Company is not wound up.
Member can be called to contribute only in the event of winding up of Company
Liability of each member extends to amount of Company's debt and liabilities.
However, he can claim contribution from other members.

OPC (One Person Company) - significant points

- Only one person as member.
- Minimum paid up capital – no limit prescribed.
- The memorandum of OPC 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 whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.

OPC (One Person Company) - significant points

- Such other person may be given the right to withdraw his consent.
- The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- Only a natural person who is an Indian citizen whether resident in India or otherwise and he stayed in India for a period of not less than **120** days during the immediately preceding financial year:

OPC (One Person Company) - significant points

- 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 more than one OPC or become nominee in more than one such company.

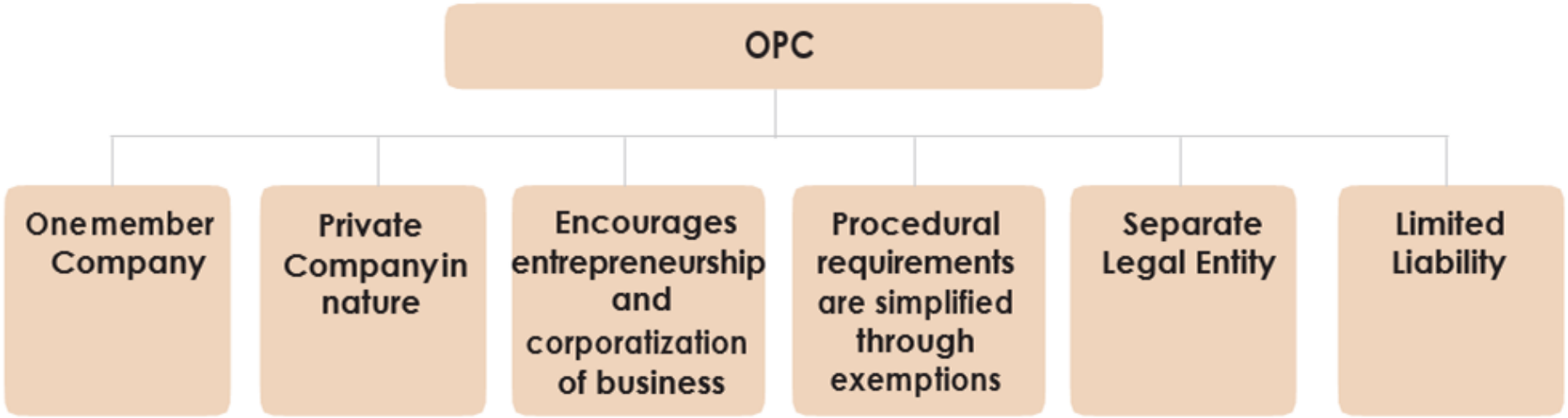
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.

- Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases.

OPC (One Person Company) - significant points

- Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.

Here the member can be the sole member and director.



b. Private Company [Section 2(68)]:

“Private company” means 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;

i. except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member

Provided further that—

A. persons who are in the employment of the company; and

A. 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;

Private company - significant points

- No minimum paid-up capital requirement.
- Minimum number of members – 2 (except if private company is an OPC, where it will be 1).
- Maximum number of members – 200, excluding present employee-cum-members and erstwhile employee-cum-members.
- Right to transfer shares restricted.
- Prohibition on invitation to subscribe to securities of the company.

Private company - significant points

- Small company is a private company.
- OPC can be formed only as a private company.

Small Company:

Small company given under the section 2(85) of the Companies Act, 2013 which means a company, other than a public company—

i. **paid-up share capital** of which does not exceed **fifty Lakh rupees** 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 its last profit and loss account does not exceed **two crore** rupees or such higher amount as may be prescribed which shall not more than **hundred crore rupees**:

Exceptions:

This section 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.

Small Company –significant points

- A private company

Paid up capital – not more than Rs. **4** crores.

Or

Turnover – not more than Rs. **40** crores.

- Should not be – Section 8 company
  – Holding or a Subsidiary company

c. **Public company [Section 2(71)]:**

"Public company" means a company which—

a. is not a private company; and

a. has a minimum paid-up share capital, as may be prescribed:

Provided that 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 even where such subsidiary company continues to be a private company in its articles ;

Public company - significant points

Is not a private company (Articles do not have the restricting clauses).

- Shares freely transferable.
- No minimum paid up capital requirement.
- Minimum number of members – 7.
- Maximum numbers of members – No limit.
- Subsidiary of a public company is deemed to be a public company.

- Subsidiary of a public company is deemed to be a public company.

According to section 3(1)(a), a company may be formed for any lawful purpose by seven or more persons, where the company to be formed is to be a public company.

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. [Section 2(46)]

For the purposes of this clause, the expression ”company" includes any body corporate.

Whereas section 2(87) defines “subsidiary company” in relation to any other company (that is to say 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 share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

For the purposes of this section —

I. a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

II. the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

a. **Holding and subsidiary companies:**

III. the expression “company” includes anybody corporate;

III. “layer” in relation to a holding company means its subsidiary or subsidiaries.

Status of private company, which is subsidiary to public company:

In view of Section 2(71) of the Companies Act, 2013 a Private company, which is subsidiary of a public company shall be deemed to be public company for the purpose of this Act, 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.

Explanation. — For the purpose of this clause —

a. the expression ”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;

a. the expression ”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

a. Convertible preference share capital.

This is a new definition inserted in the 2013 Act.

Vide General Circular no. 24/2014 dated 25th of June 2014, the Ministry of Corporate Affairs has clarified that the shares held by a company in another company in a ‘fiduciary capacity’ shall not be counted for the purpose of determining the relationship of ‘associate company’ under section 2(6) of the Companies Act, 2013.

4. On the basis of access to capital:

a. Listed company:

As per the definition given in the section 2(52) of the Companies Act, 2013, it is a company which has any of its securities listed on any recognised stock exchange.
Whereas the word securities as per the section 2(81) of the Companies Act, 2013 has been assigned the same meaning as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.

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 Securities and Exchange Board, shall not be considered as listed companies.

b. Unlisted company:

means company other than listed company

5. **Other companies:**

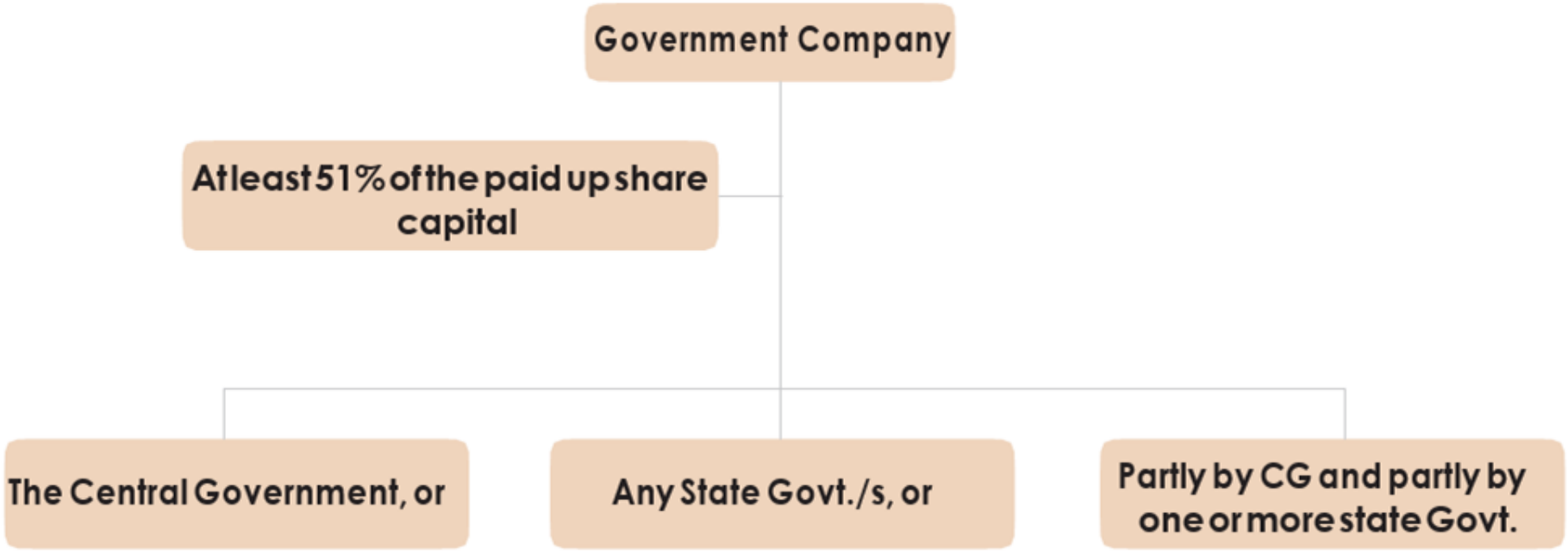
a. **Government company [Section 2(45)]:**

Government Company means any company in which not less than 51% of the paid-up share capital is held by-

i. the Central Government, or

i. by any State Government or Governments, or

i. 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


Government Company
Atleast 51% of the paid up share capital
The Central Government, or
Any State Govt./s, or
Partly by CG and partly by one or more state Govt.

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

i. conducts any business activity in India in any other manner

c. **Formation of companies with charitable objects etc. (Section 8 company):**

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to

- promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
  Such company intends to 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.

Power of Central government to issue the license–

i. Section 8 allows the Central Government to register such person or association of persons as 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.

i. The registrar shall on application register such person or association of persons as a company under this section.

i. On registration the company shall enjoy same privileges and obligations as of a limited company.

Revocation of license:

The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put ‘Limited’ or ‘Private Limited’ against the company’s name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

Order of the Central Government:

Where a licence is revoked there the Central Government may, in the public interest order that the company registered under this section should be amalgamated with another company registered under this section having similar objects, to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order, or the company be wound up.

Penalty/punishment in contravention:

If a company makes any default in complying with any of the requirements laid down in this section,the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to **twenty-five lakh rupees:**

Provided that when it is proved that the affairs of the Company were conducted fraudulently,every officer in default shall be liable for action under section 447

Section 8 Company- Significant points

- Formed for the promotion of commerce, art, science, religion, charity, protection environment, sports, etc.
- Requirement of minimum share capital does not apply.
- Uses its profits for the promotion of the objective for which formed.
- Does not declare dividend to members.
- Operates under a special licence from Central Government.
- Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.
- Licence revoked if conditions contravened.

Section 8 Company- Significant points

- On revocation, Central Government may direct it to
  - Converts its status and change its name
  - Wind – up
  - Amalgamate with another company having similar object.
- 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.

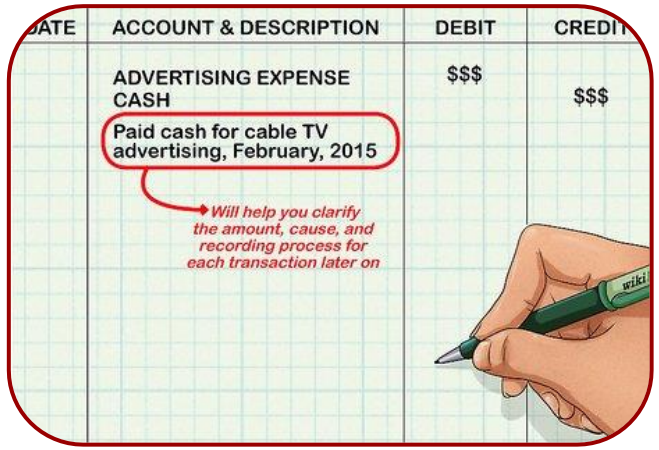
d. Dormant company (Section 455):

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 in such manner as may be prescribed 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.

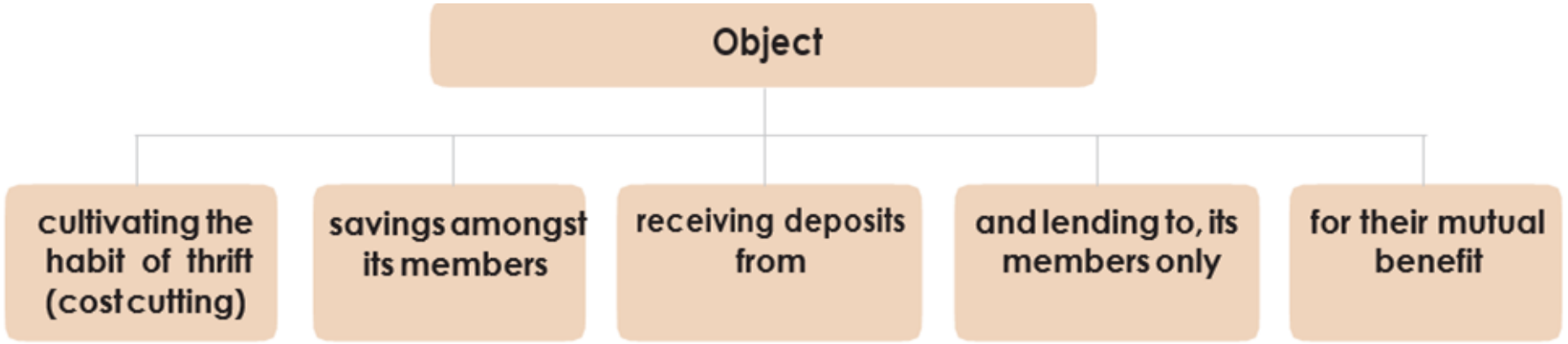
“Significant accounting transaction” means any transaction other than—

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. Nidhi Companies:

Company which has been incorporated as a nidhi with the object of cultivating the habit of thrift (cost cutting) and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies. [Section 406 of the Companies Act, 2013]


Object
cultivating the habit of thrift (cost cutting)
savings amongst its members
receiving deposits from
and lending to, its members only
for their mutual benefit

f. Public Financial Institutions (PFI):

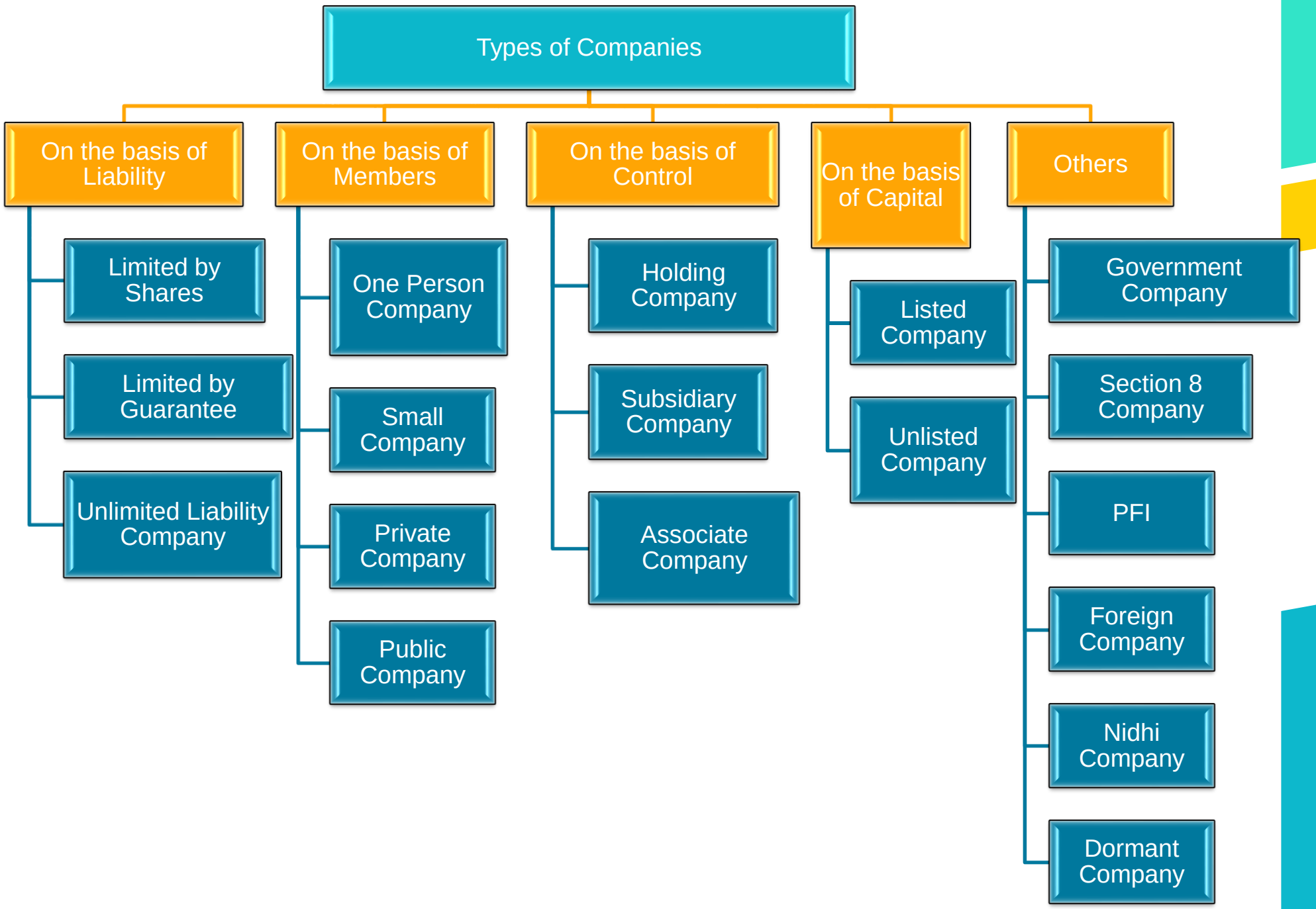
By virtue of Section 2(72) of the Companies Act, 2013, the following institutions are to be regarded as public financial institutions:

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 percent 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.


Types of Companies
On the basis of Liability
Limited by Shares
Limited by Guarantee
Unlimited Liability Company
On the basis of Members
One Person Company
Small Company
Private Company
Public Company
On the basis of Control
Holding Company
Subsidiary Company
Associate Company
On the basis of Capital
Listed Company
Unlisted Company
Others
Government Company
Section 8 Company
PFI
Foreign Company
Nidhi Company
Dormant Company

Incorporation of Companies

PROMOTERS:

The Companies Act, 2013 defines the term “Promoter” under 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 referred to in section 92; 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.

In simple terms we can say,

- ✓ Persons who form the company are known as promoters.
- ✓ It is they who conceive the idea of forming the company.
- ✓ They take all necessary steps for its registration.
- ✓ It should, however, be noted that persons acting only in a professional capacity e.g., the solicitor, banker, accountant etc. are not regarded as promoters.

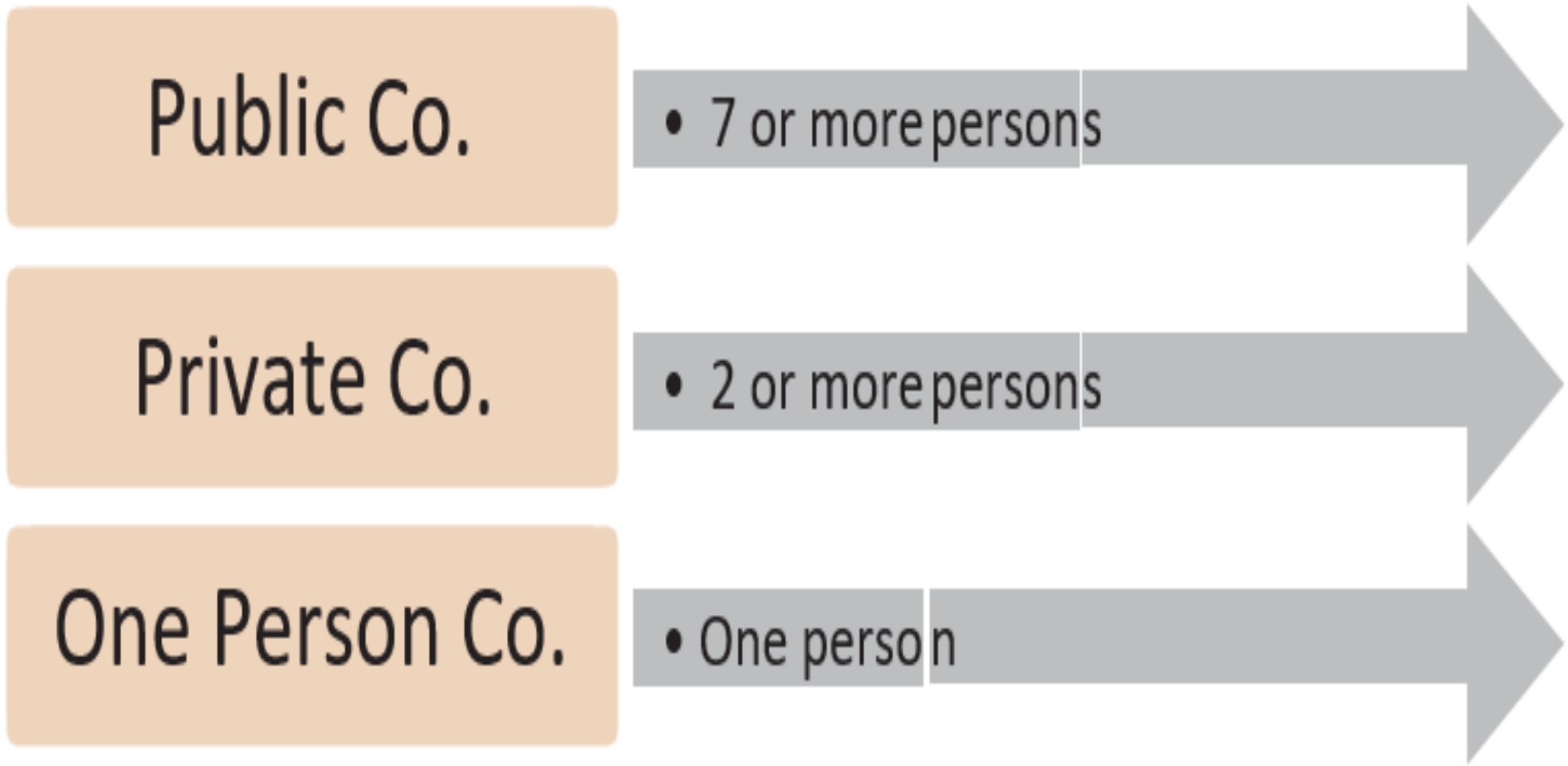
Mode Of Registration/Incorporation Of Company

FORMATION OF COMPANY:

Section 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the company.

In the case of a public company, any 7 or more persons can form a company for any lawful purpose by subscribing their names to memorandum and complying with the requirements of this Act in respect of registration.

In exactly the same way, 2 or more persons can form a private company and one person where company to be formed is one person company.


Public Co.
• 7 or more persons
Private Co.
• 2 or more persons
One Person Co.
• One person

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:** For the registration of the company following documents and information are required to be filed with the registrar within whose jurisdiction the registered oflce of the company is proposed to be situated-

- the memorandum and articles of the company duly **signed by all the subscribers** to the memorandum.

- a **declaration by person who is engaged in the formation of the company** (an advocate, a chartered accountant, cost accountant or company secretary 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 made thereunder in respect of registration and matters precedent or incidental thereto have been complied with.
- a **declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles** stating that-

➢ he is not convicted of any offence in connection with the promotion, formation or management of any company, or

➢ 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,

➢ 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

- the **address for correspondence** till its registered office is established;

- the **particulars** (names, including surnames or family names, residential address, nationality) **of every subscriber** to the memorandum along with proof of identity, and in the case of a subscriber being a body corporate, such particulars as may be prescribed.

- the **particulars** (names, including surnames or family names, the Director Identification Number, residential address, nationality) **of the persons mentioned in the articles as the subscribers to the Memorandum** and such other particulars including proof of identity as may be prescribed; and
- 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 in such form and manner as may be prescribed.

Particulars provided in this provision shall be of the individual subscriber and not of the professional engaged in the incorporation of the company [The Companies (Incorporation) Rules, 2014].

2. Issue of certificate of incorporation on registration:

The Registrar on the basis of documents and information filed, shall register all the documents and information in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

3. Allotment of Corporate Identity Number (CIN):

On and from the date mentioned in the certificate of incorporation, 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):**

If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he 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):**

Where, at any time **after the incorporation of a company,** it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, 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 in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, 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

- the Tribunal 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)

The Ministry of Corporate Affairs has taken various initiatives for ease of business. In a step towards easy setting up of business, MCA has simplified the process of filing of forms for incorporation of a company through Simplified Proforma for incorporating company electronically.

EFFECT OF REGISTRATION: Section 9 of the Companies Act, 2013 provides for the effect of registration of a company. 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.

Capital

Classification Of Capital

The term Capital has a variety of meanings. It means one thing to economists; another to accountants and still another to businessmen and lawyers. In relation to a company limited by shares, the word capital means share-capital, i.e., the capital or figure in terms of so many rupees divided into shares of fixed amount. In other words, 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. A share is not a sum of money; it is rather an interest measured by a sum of money and made up of various rights contained in the contract.

In the domain of Company Law, the term ‘capital’ is used in the following senses:

a. Nominal or authorised or registered capital:

This form of capital has been defined in section 2(8) of the Companies Act, 2013. “Authorised capital” or “Nominal capital” means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company. Thus, it is the sum stated in the memorandum as the capital of the company with which it is to be registered being the maximum amount which it is authorised to raise by issuing shares, and upon which it pays the stamp duty. It is usually fixed at the amount, which, it is estimated, the company will need, including the working capital and reserve capital, if any.

b. Issued capital:

Section 2(50) of the Companies Act, 2013 defines “issued capital” which means such capital as the company issues from time to time for subscription. It is that part of authorised capital which is offered by the company for subscription and includes the shares allotted for consideration other than cash.Schedule III to the Companies Act, 2013, makes it obligatory for a company to disclose its issued capital in the balance sheet.

c. Subscribed capital:

Section 2(86) of the Companies Act, 2013 defines “subscribed capital” as 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. Where any notice, advertisement or other official communication or any business letter, bill head or letter paper of a company states the authorised capital, the subscribed and paid-up capital must also be stated in equally conspicuous characters. A default in this regard will make the company and every officer who is in default liable to pay penalty extending ` 10,000 and ` 5,000 respectively. [Section 60].

d. **Called-up capital:**

Section 2(15) of the Companies Act, 2013 defines “called-up capital” as such part of the capital, which has been called for payment. It is the total amount called up on the shares issued.

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

Shares

I. Nature of shares:

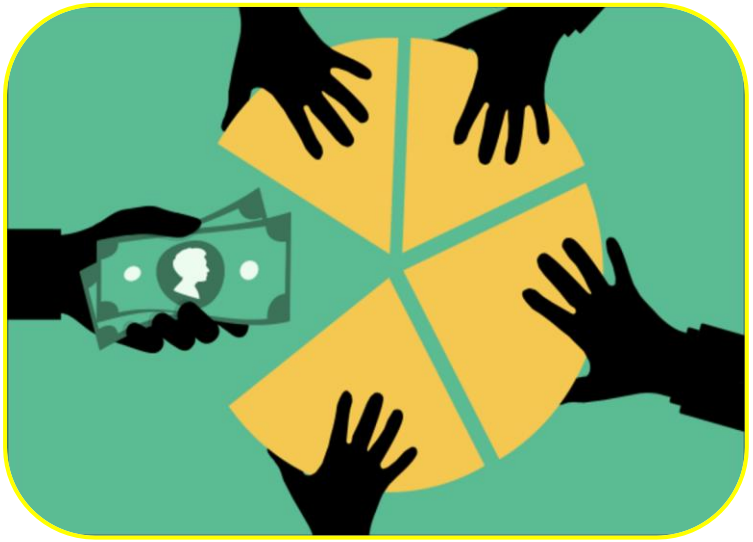
Section 2(84) of the Companies Act, 2013 defines the term ‘share’ which means a share in the share capital of a company and includes stock. A share thus represents such proportion of the interest of the shareholders as the amount paid up thereon bears to the total capital payable to the company. It is a measure of the interest in the company’s assets to which a person holding a share is entitled.

Share is an interest in the company:

Farwell Justice, in Borland Trustees vs. Steel Bors. & Co. Ltd. observed that “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”.

Share is an interest in the company:

You should note that the shareholders are not, in the eyes of law, part owners of the undertaking. The undertaking is somewhat different from the totality of the shareholders. The rights and obligations attaching to a share are those prescribed by the memorandum and the articles of a company. It must, however, be remembered that a shareholder has not only contractual rights against the company, but also certain other rights which accrue to him according to the provisions of the Companies Act.



Shares are a movable property:

According to section 44 of the Companies Act, 2013, the shares or debentures or other interests of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

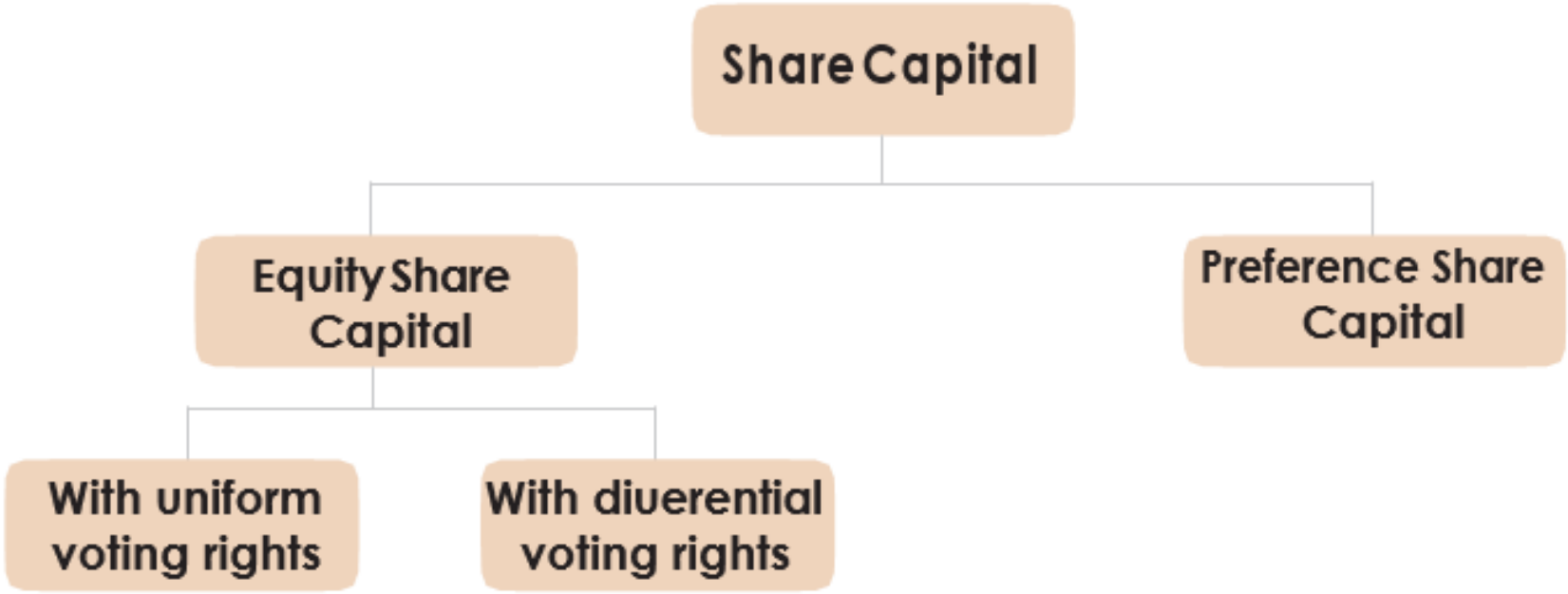
Shares shall be numbered:

Section 45 provides, every share in a company having a share capital, shall be distinguished by its distinctive number. This implies that every share shall be numbered.

However, this shall not apply to a share held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository.

III. Kinds of share capital

Section 43 of the Companies Act, 2013 provides the kinds of share capital. According to the provision the share capital of a company limited by shares shall be of two kinds, namely:—



According to explanation to section 43:

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;

Memorandum of Association

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.

Object of registering a memorandum of association:

- It contains the object for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go.
- It enables shareholders, creditors and all those who deal with company to know what its powers are and what activities it can engage in.
- A memorandum is a public document under Section 399 of the Companies Act, 2013. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein.

- 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.

A company cannot depart from the provisions contained in the memorandum however imperative may be the necessity for the departure. It cannot enter into a contract or engage in any trade or business, which is beyond the power confessed on it by the memorandum. If it does so, it would be ultra vires the company and void.

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.

- **Table A** is a form for memorandum of association of a company limited by shares.
- **Table B** is a form for memorandum of association of a company limited by guarantee and not having a share capital.
- **Table C** is a form for memorandum of association of a company limited by guarantee and having a share capital.
- **Table D** is a form for memorandum of association of an unlimited company.
- **Table E** is a form for memorandum of association of an 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.

Content of the memorandum: The memorandum of a company shall state—

a. the name of the company (**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. This clause is not applicable on the companies formed under section 8 of the Act. The name including phrase 'Electoral Trust' may be allowed for Registration of companies to be formed under section 8 of the Act, in accordance with the Electoral Trusts Scheme, 2013 notified by the Central Board of Direct Taxes (CBDT). For the Companies under section 8 of the Act, the name shall include the words foundation, Forum, Association, Federation, Chambers, Confederation, council, Electoral trust and the like etc. [The Companies (Incorporation) Rules, 2014].
As per MCA notification dated 5th June, 2015, a Government company's name must end with the word "Limited". In the case of One Person Company, the words "One Person Company", should be included below its name.

b. the **State in which the registered office of the company** (Registered Office clause) is to be situated;

c. the **objects** for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof (Object clause); If any company has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of **six months** from the change of activities after complying with all the provisions as applicable to change of name.

d. the liability of members of the company **(Liability clause)**, whether limited or unlimited, and also state,—

- in the case of a company **limited by shares**, that the liability of its members is limited to the amount unpaid, if any, on the shares held by them; and
- in the case of a company **limited by guarantee**, the amount up to which each member undertakes to contribute—

  - to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and
  - to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;

e. the amount of **authorized capital (Capital Clause**) divided into share of fixed amounts and the number of shares with the subscribers to the memorandum have agreed to take, indicated opposite their names, which shall not be less than one share. A company not having share capital need not have this clause.

f. the desire of the subscribers to be formed into a company. The Memorandum shall conclude with the association clause. Every subscriber to the Memorandum shall take at least one share, and shall write against his name, the number of shares taken by him.

In the case of OPC, the name of the person who, in the event of death of the subscriber, shall become the member of the company.

MEMORANDUM OF ASSOCIATION

OF

[NAME OF THE LIMITED COMPANY]

I. Name of the Company

The name of the company is [SPECIFY].

II. Address of the Company

The registered office of the company will be situated in [CITY, STATE/PROVINCE/ COUNTRY].

III. Objects

The object for which the company is established is to carry on business. [SUMMARIZE THE MAIN OBJECTIVES FOR ESTABLISHING THE COMPANY AND THE USE OF FINANCIAL RESSOURCES].

IV. Limited Liability

The liability of the members is **limited**.

V. Authorized Capital

The authorized capital of the company is [SPECIFY] divided into [SPECIFY] shares. The different categories/class of shares are [SPECIFY]. The nominal value per share are [SPECIFY].

VI. Type of Shares

The company is authorized to issue [SPECIFY] shares without nominal value or par value. **[Do not include article VI & VII if all shares have par value]**.

VII. Maximum Price of Shares

The maximum price or consideration at, or for which, the shares without nominal or par value may be sold is [SPECIFY].

VIII. Subscriber of the Company

Each subscriber to this Memorandum of Association wishes to form a company and agrees to become a member of the company and to take at least one share.

Structure of Memorandum Of Association

The memorandum must be **printed, divided into paragraphs, numbered consecutively, and signed by at least seven persons** (two in the case of a private company and one in the case of One Person Company) in the presence of at least one witness, who will attest the signatures. The particulars about the signatories to the memorandum as well as the witness, as to their address, description, occupation etc., must also be entered.

Doctrine Of Ultra Vires

Doctrine of ultra vires: The meaning of the term ultra vires is simply “beyond (their) powers”. The legal phrase“ultra vires” is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers in their nature are limited.

It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequence, 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. On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on. The impact of the doctrine of ultra vires is that a company can neither be sued on

Since the memorandum is a **“public document”,** it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

Example: If you have supplied goods or performed service on such a contract or lent money, you cannot obtain payment or recover the money lent. But if the money advanced to the company has not been expended, the lender may stop the company from parting with it by means of an injunction; this is because the company does not become the owner of the money, which is ultra vires the company. As the lender remains the owner, he can take back the property in specie. If the ultra vires loan has been utilised in meeting lawful debt of the company then the lender steps into the shoes of the debtor paid ou and consequently he would be entitled to recover his loan to

An act which is ultra vires the company being void, cannot be ratified by the shareholders of the company. Sometimes, act which is ultra vires can be regularised by ratifying it subsequently. For instance, if the act is ultra vires the power of the directors, the shareholders can ratify it; if it is ultra vires the articles of the company, the company can alter the articles; if the act is within the power of the company but is done irregularly, shareholder can validate it.
The leading case through which this doctrine was enunciated is that of **Ashbury Railway Carriage and Iron Company Limited v. Riche-(1875).**

Doctrine Of Ultra Vires

The facts of the case are:
The main objects of a company were:

a. To make, sell or lend on hire, railway carriages and wagons;
b. To carry on the business of mechanical engineers and general contractors.
c. To purchase, lease, sell and work mines.
d. To purchase and sell as merchants or agents, coal, timber, metals etc.

The directors of the company entered into a contract with Riche, for financing the construction of a railway line in Belgium, and the company further ratified this act of the directors 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. His contention was that the contract was well within the meaning of the word general contractors and hence within its powers. Moreover it had been ratified by a majority of share- holders. However, 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.

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:

i. 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.
ii. An act which is ultravires, the company cannot be ratified even by the unanimous consent of all the shareholders.
iii. 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.
iv. If an act is ultravires the Articles, it can be ratified

Articles of Association

Articles Of Association

The document containing the articles of association 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 [S.S. Rajkumar vs. Perfect Castings (P) Ltd.].

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. It is important therefore that the auditor should study them and, wh
should note the provisions therein in respe
matters.

Section 5 of the Companies Act, 2013 seeks to provide the contents and model of articles of association. The section lays the following law-

1. **Contains regulations:** The articles of a company shall contain the regulations for management of the company.
2. **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 in its articles as may be considered necessary for its management.
3. **Contain provisions for entrenchment:** The articles may contain provisions for entrenchment (to protect something) to the euect 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.

4. **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.
5. **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.
6. **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.

7. **Model articles:** A company may adopt all or any of the regulations contained in the model articles applicable to such company.

8. **Company registered after the commencement of this Act:** In case of any company, which is 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, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.

The following are the key differences between the Memorandum of Association vs. Articles of Association:

1. **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.
2. **Relationship:** Memorandum defines the relationship of the company with the outside world and Articles define the relationship between the company and its members.

3. **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.
4. **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 of the Companies Act, 2013 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, including certificate of incorporation of any company, on payment of prescribed fees.

The memorandum and articles of association of a company when registered with Registrar of Companies, become public documents, and they are available for inspection to any person, on the payment of a nominal fees. In other words, Section 399 confers the right of inspection to all. 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 but whether a person reads them or not, it will be presumed that he knows the contents of the documents. This kind of presumed/implied notice is called constructive notice.

Doctrine of Indoor Management:

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:

Doctrine of Indoor Management:

- The Doctrine of Indoor Management is the exception to the doctrine of constructive notice. The aforesaid doctrine of constructive notice does in no sense mean that outsiders are deemed to have notice of the internal auairs of the company. For instance, 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. This can be explained with the help of a landmark case The Royal British Bank vs. Turquand. This is the doctrine of indoor management popularly known as Turquand Rule.

Doctrine of Indoor Management:

Mr. Turquand was the official manager (liquidator) of the insolvent Cameron's Coalbrook Steam, Coal and Swansea and Loughor Railway Company. It was incorporated under the Joint Stock Companies Act, 1844. The company had given a bond for £ 2,000 to the Royal British Bank, which secured the company's drawings on its current account. The bond was under the company's seal, signed by two directors and the secretary. When the company was sued, it alleged that under its registered deed of settlement (the 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.

Doctrine of Indoor Management:

- Thus, you will notice that the aforementioned rule of Indoor Management is important to persons dealing with a company through its directors or other persons. They 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. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required.
- 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:

Doctrine of Indoor Management:

Held, it was decided that the bond was valid, so the Royal British Bank could enforce the terms. 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. The bond was valid because there was no requirement to look into the company's internal workings. This is the indoor management rule, that the company's indoor auairs are the company's problem.

Exception to Doctrine of Indoor Management:

A. **Actual or constructive knowledge of irregularity:**

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

In Howard vs. Patent Ivory Manufacturing Co. where 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.

Likewise, in 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.

Exception to Doctrine of Indoor Management:

B. Suspicion of Irregularity:

The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.

The protection of the “Turquand Rule” is also not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry. Suspicion should arise, for example, from the fact that an oflcer is purporting to act in matter, which is apparently outside the scope of his authority. Where, for example, as in the case of Anand Bihari Lal vs. Dinshaw & Co. the plaintiu accepted a transfer of a company’s property from its accountant, the transfer was held void.

Exception to Doctrine of Indoor Management:

B. Suspicion of Irregularity:

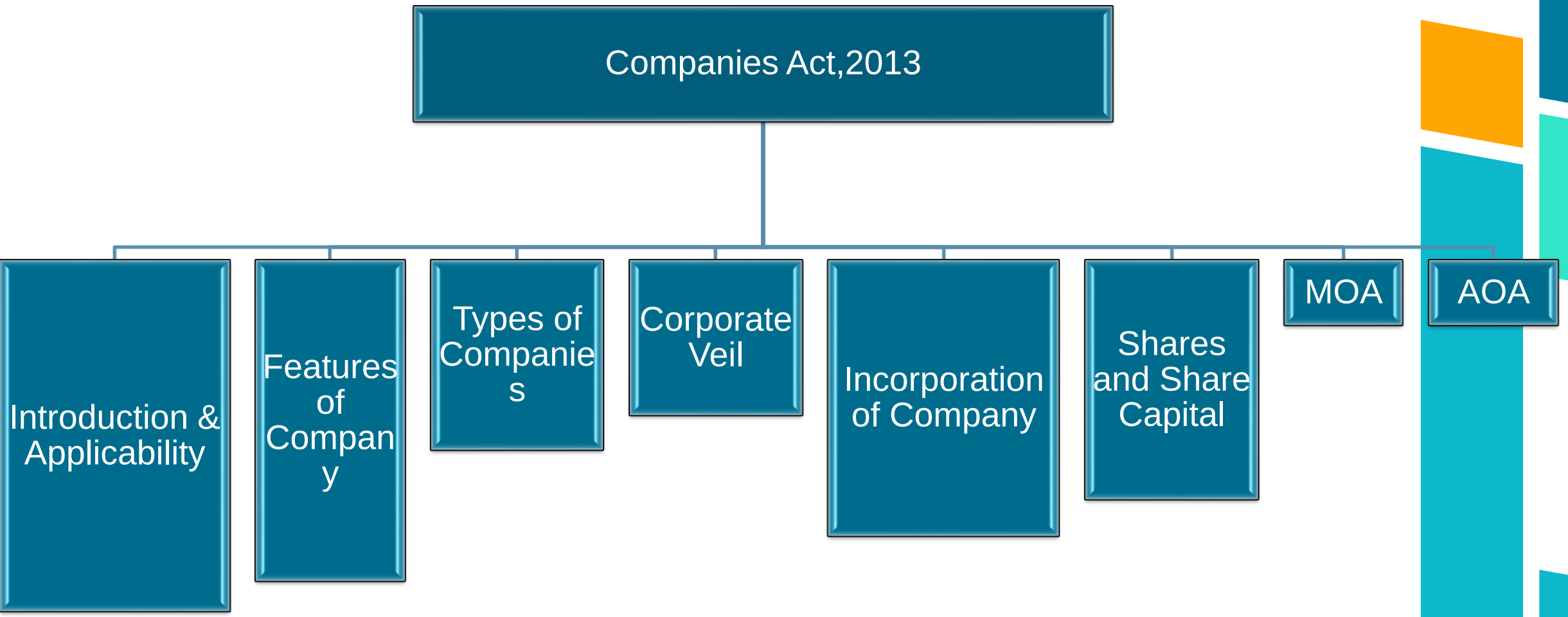
The plaintiu could not have supposed, in absence of a power of attorney that the accountant had authority to euect transfer of the company's property.

Similarly, in the case of 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 plaintiu 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 suflcient reasons for so doing, at the mercy of any servant or agent who should purport to contract on their behalf."

Exception to Doctrine of Indoor Management:

c. Forgery:

The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery which must be regarded as nullity. Forgery may in circumstances exclude the ‘Turquand Rule’. The only clear illustration is found in the Ruben v Great Fingall Consolidated. In this case the plaintiu was the transferee of a share certificate issued under the seal of the defendant’s company. The company’s secretary, who had aflxed the seal of the company and forged the signature of the two directors, issued the certificate. The plaintiu contended that whether the signature were genuine or forged was apart of the internal management, and therefore, the company should be estopped from denying genuineness of the document. But it was held, that the rule has never been extended to cover such a complete forgery.


Companies Act,2013
Introduction & Applicability
Features of Company
Types of Companies
Corporate Veil
Incorporation of Company
Shares and Share Capital
MOA
AOA

Introduction , Meaning & Applicability

The Companies Act, 2013 contains 470 sections and seven schedules. The entire Act has been divided into 29 chapters

u/s 2(20)“Company means a company incorporated under this Act or under any previous company law”.

Applicability of Act:

a) Insurance Companies

b) Banking Companies

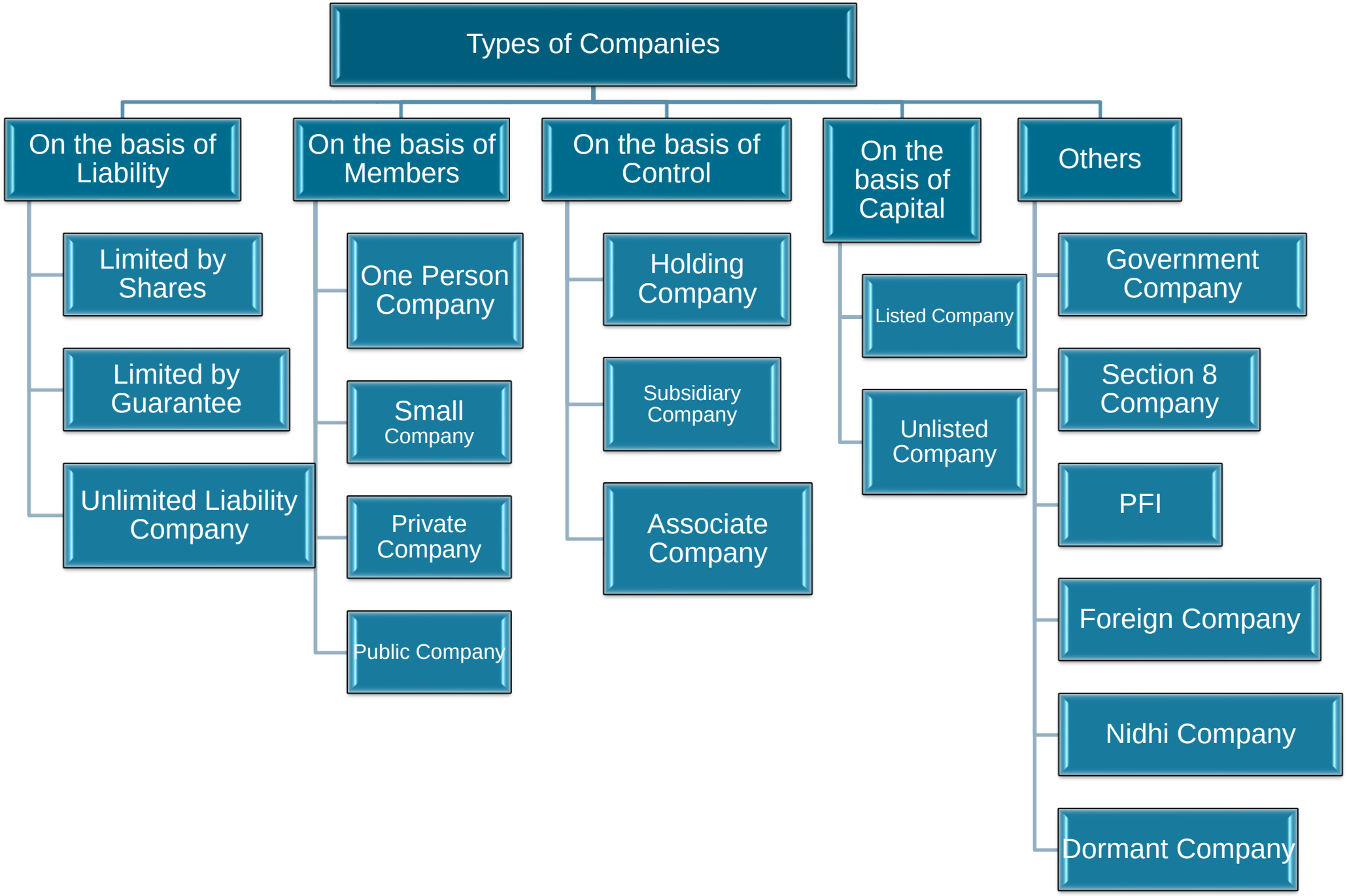
c) Electricity Companies

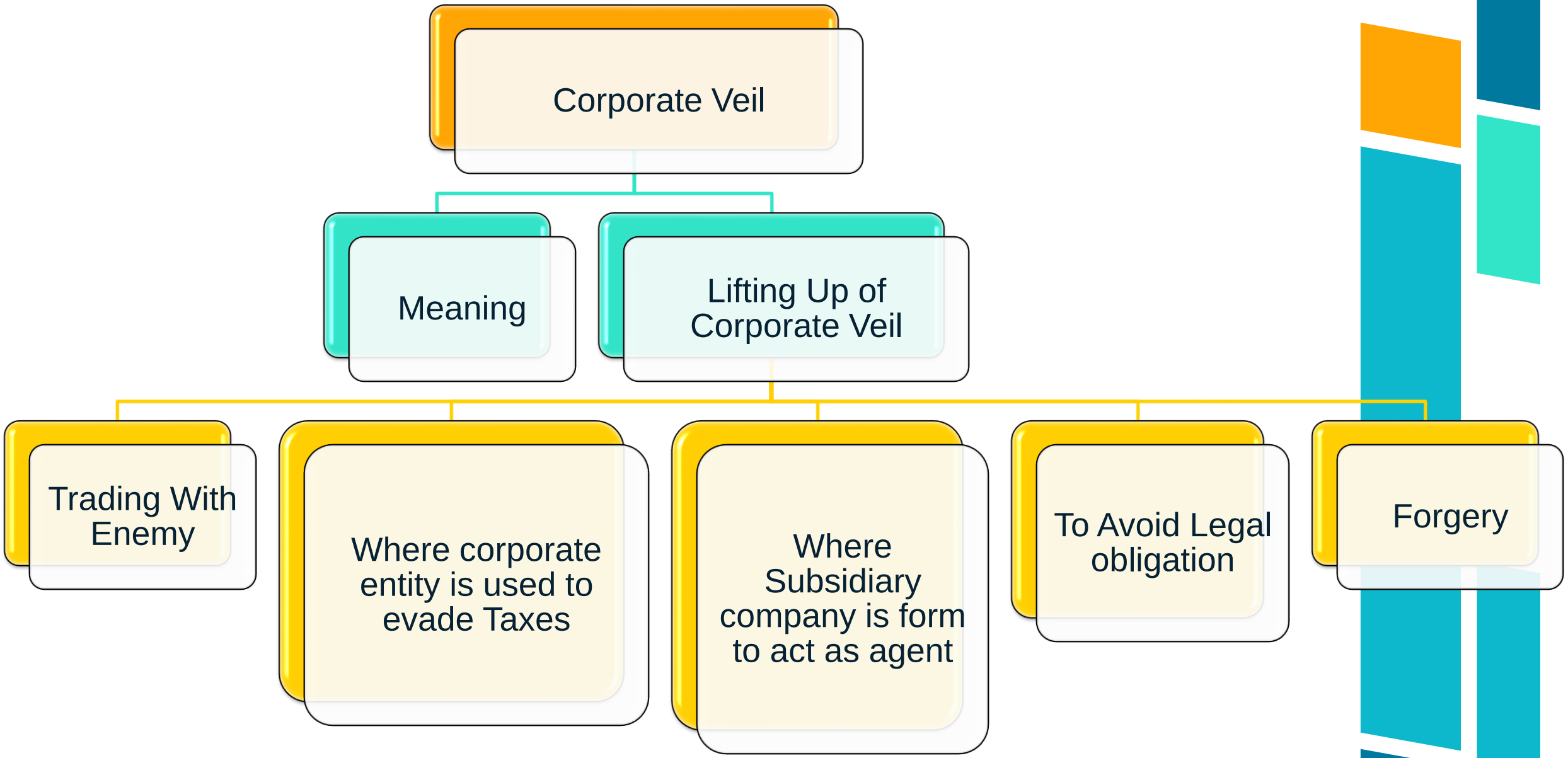
d) Registered under special Act

e)Any other body Corporate

Features of Company

- Separate Legal Entity
  (Macaura Vs. Northern Assurance Co.)
- Perpetual Succession
- Limited Liability
- Artificial Legal Person
- Common Seal (optional)


Types of Companies
On the basis of Liability
Limited by Shares
Limited by Guarantee
Unlimited Liability Company
On the basis of Members
One Person Company
Small Company
Private Company
Public Company
On the basis of Control
Holding Company
Subsidiary Company
Associate Company
On the basis of Capital
Listed Company
Unlisted Company
Others
Government Company
Section 8 Company
PFI
Foreign Company
Nidhi Company
Dormant Company


Corporate Veil
Meaning
Lifting Up of Corporate Veil
Trading With Enemy
Where corporate entity is used to evade Taxes
Where Subsidiary company is form to act as agent
To Avoid Legal obligation
Forgery

Incorporation of Company

Promoters:

-Person who is named as promoter in Prospectus or Annual Return.

- Controls directly or Indirectly Affairs of Company

Formation of Company:

-Public Company: 7 or More Members.

-Private Company: 2 or More Members

-One Person Company: 1 Member

Steps of Incorporation of Company:

1.Filling of Documents.

2. Issue of Incorporation Certificate

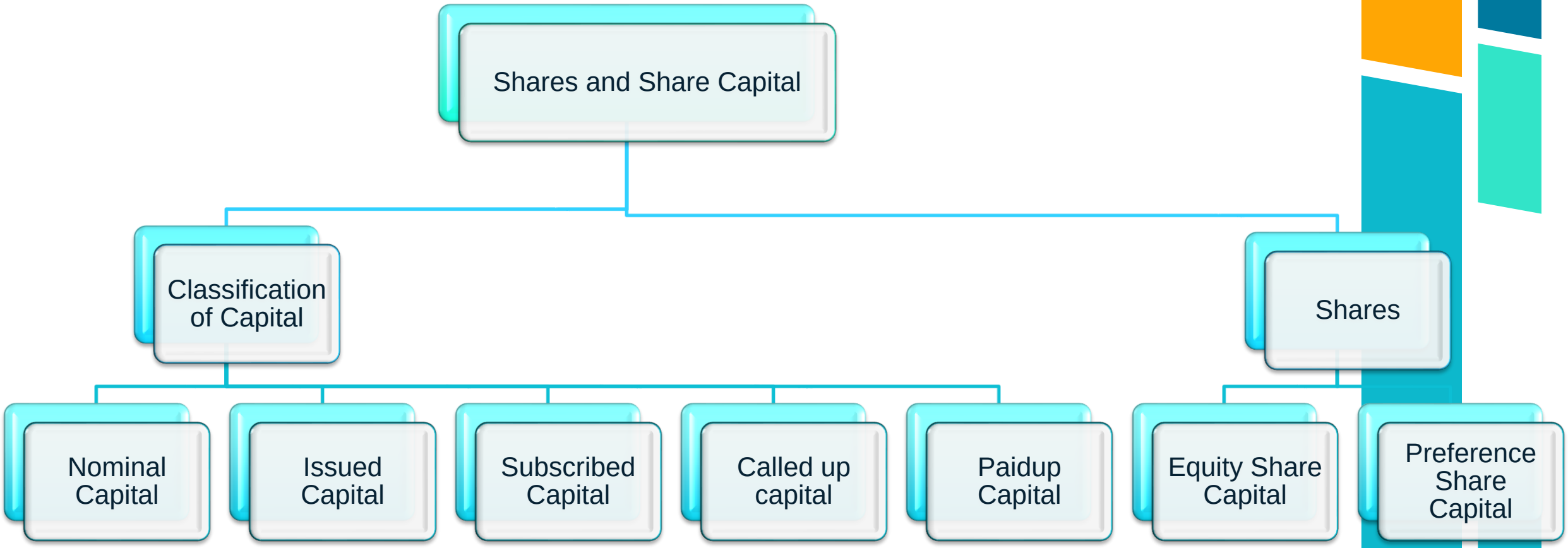
3. Allotment of Corporate Identification Number(CIN)

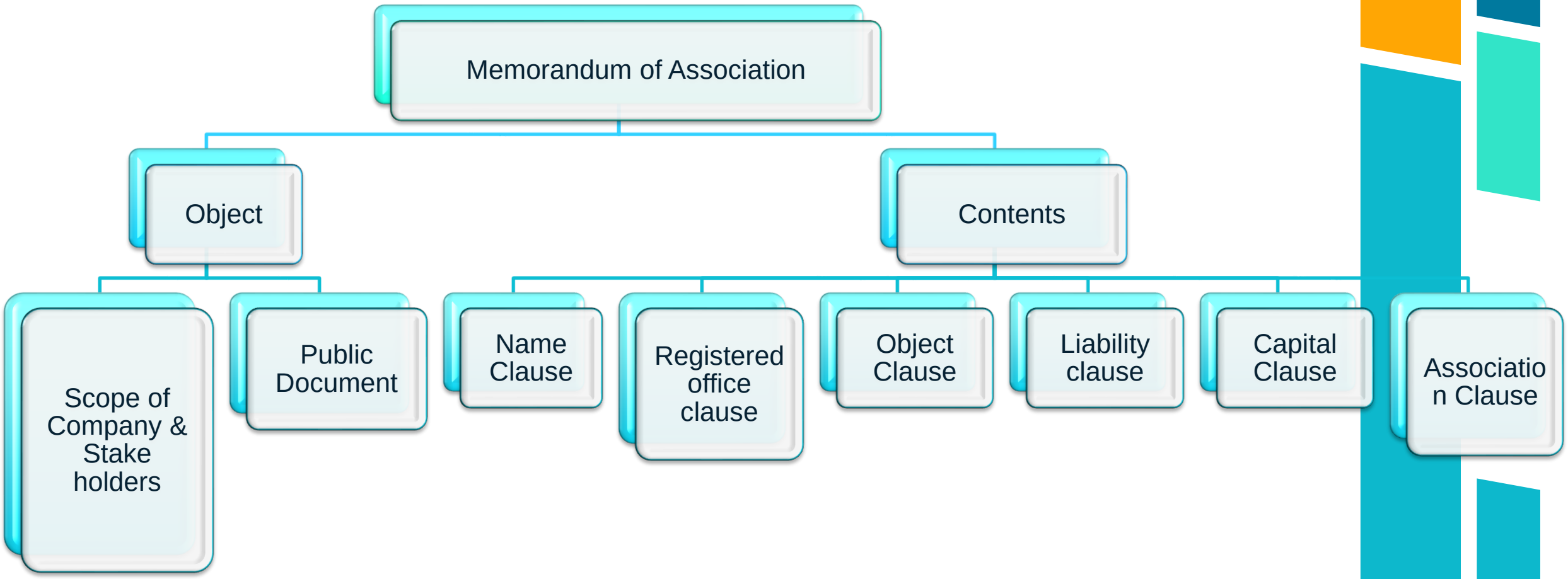
4.Maintainance of Copies of Documents.

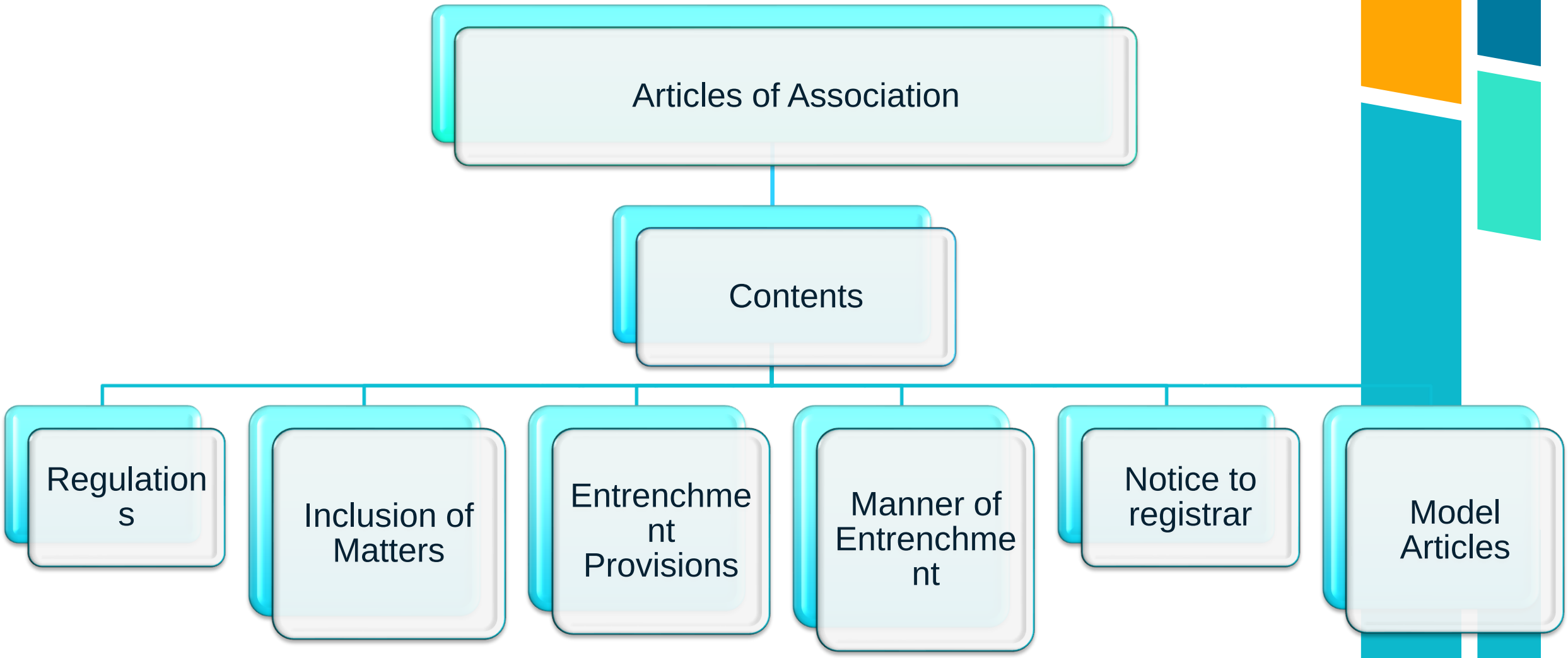
5.Furnishing of False/Incorrect information or suppression of facts.

6. Already incorporated by furnishing false information.

7.Order of Tribunal


Shares and Share Capital
Classification of Capital
Shares
Nominal Capital
Issued Capital
Subscribed Capital
Called up capital
Paidup Capital
Equity Share Capital
Preference Share Capital


Memorandum of Association
Object
Contents
Scope of Company & Stake holders
Public Document
Name Clause
Registered office clause
Object Clause
Liability clause
Capital Clause
Association Clause


Articles of Association
Contents
Regulations
Inclusion of Matters
Entrenchment Provisions
Manner of Entrenchment
Notice to registrar
Model Articles

Doctrines

Doctrine of Ultra Vires:

-Ultra Vires means Beyond Power

-Void-Ab-Initio

-Cannot be ratified

Ashbury railway carriage co. vs. Riche

Doctrine of Indoor Management:

1. Exception to Doctrine of constructive Notice.

2.Outsider cannot be assumed to have knowledge of internal irregularities.

3. Protection for outsider against Company

Case: Royal British Bank V. Turquand

Doctrine of Constructive Notice :

1. Any person dealing with company assumed to have knowledge of documents of Company.

2. Protection for Company against Outsider.

		THE COMPANIES ACT, 2013
Section	Clause	**Particular**
1		**Short title, extent,commencement and application**
2		**Definitions**
	5	**Articles**
	6	**Associate Company**
	8	**Authorised Capital**

	9	Banking Company
	11	Body Corporate
	15	Called up Capital
	17	Chartered Accountant
	20	Company
	21	Company limited by guarantee
	22	Company limited by shares
	27	Control
	39	Financial Institutions
	41	Financial Year
	42	Foreign Company
	45	Government Company
	46	Holding Company
	50	Issued Capital
	52	Listed Company
	56	Memorandum

	62	One Person Company
	64	Paid up Share Capital
	68	Private Company
	71	Public Company
	72	Public Financial Institutions
	84	Share
	85	Small Company
	86	Subscribed Capital
	87	Subsidiary Company
	92	Unlimited Company
3		Formation of company
4		Memorandum
5		Articles
7		Incorporation of company
8		Formation of companies with charitable objects, etc
9		Effect of registration

10		Effect of memorandum and articles
43		Kinds of Shares
399		Inspection, Production and Evidence of Documents Kept by Registrar
455		Dormant Company
447		Punishment for Fraud