1. PRELIMINARY

Max. 5 Marks

347

⇒ Applicability of Co. ACT, 2013 :-

(1) on All companies

(2) Insurance co., Banking co., Electricity co. & co. governed by special Act.

Except If prov. are inconsistent

Banking Reg. Act, IRDA Act, 1999, Electricity Act, 2003 & special Act.

(3) Any other co. incorporated under other Act as Co prescribed by Notification.

⇒ The companies Act, 2013

Section : 1 Short tittle, Extent & commencement

The companies Act, 2013

Whole of India

Diff. secti. on Diff. date

Preamble :-

⇒ ENACTED

To consolidate & Ammend

law Related to companies

No. of sections :- 470 sections Totally
schedules :- 7
co. Rules, 2014 :- prescribed by CG time to time
circulars :-
Notifications
chapter :- 29 → out of which 10 ch. in CA INTER

co. Act, 1956 ------------ The co. Act, 2013
(1) Improve corporate governance.
(2) Simplification of Regulations.
(3) changed Economic conditions.
(4) strength to minority Investors.
(5) modern provisions.

section 2 :- Definations

mpany :- co. Incorporated under co. Act, 2013 OR
Any other previous co. law (like co. Act, 1956)

mpany → status :- citizen ⊗ As per constitution of India & citizenship Act, 1955
:- Resident ✓
:- Nationality ✓
:- Domicile ✓ (i.e. where co. is situated)

⇒ characteristices of company :-

(1) seperate legal Entity :-
↳ Members are Different from the company.
↳ company got own Identity once they Incorporate

(2) perpetual succession :-
↳ Death, Insanity of member ↴
Doesn't effect existence of co.
↳ Member may come or go, company goes forever.

(3) Management of co. :- Different from ownership

Member — Management

owners — Board of Directors

shareholders

(4) company { can sue / To be sued } { from others / on others } By its own name

(5) seperate property.

Case law :- Macura VS. Northern Assurance :-
↳ company property belongs to company
↳ It is not owned by members of co.
↳ Member of co. Doesn't have insurable interest in property of co.

Members VS. company
(corporate veil)

→ once members Incorporate the company, company gets seperate Identity from members.
→ Law creates veil (curtain) Between company & members.
→ Now, company is reasponsible for its own Acts, members are not responsible for co. Acts or vice versa
→ But sometime, court can ignore concept of corporate veil & uphold this artificial curtain
→ when members / Directors Involves Tax evasion, enemy country contract, To avoid legal obligation or contract, court will ~~Disag~~, Disregard seperate entity ~~comp~~ concept & look into Real culprits

Types of company { Liability wise }

Liability → Member → limited upto unpaid value of shares

→ co. can call anytime the unpaid value from member

→ shares
- Fully paid up → Member liability is NiL
- Not fully paid up → Member liability upto the value of unpaid Amt.

↓

Even If company Incurred loss.

→ Unpaid Amount can be called by company

During liquidation | Going concern.

- Company Limited By shares

Initial Funds | Subsequent Funds

↓ | ↓

From shares capital | other ~~Dists~~ contribution.

- Company Limited By Guarantee
  - NPO
  - clubs
  - Trade Association

Liability of Member $\xrightarrow{\text{Limited}}$ upto the value of Guarantee given in MOA

↓

To contribute in the Assets of the co. in case of wind up → given guarantee by member to co.

→ When company can call guaranteed Amount from members ?

During going concern — ✗

During liquidation → only at the time of liquidation → ✓

Guarantee company

Having share capital (2 fold liability)
Now, member has to pay
- (If) Unpaid Amt → At any time
- ⊕ Guarantee Amt → At liquidation

Initial funds ⇒ from members
Working funds ⇒ other sources

NOT Having share capital → one liability → only Guarantee Amt → At time of liquidation

Initial funds ⇒ other sources
Working funds ⇒ other sources

No. of Members

Pvt co. | Pub. co. | OPC

⇒ private co :- By AOA (RLP)

Restriction
↓
Transfer of shares

Limitation
↓
No. of members
↓
Max :- 200

Employee having share of co. | Ex-Employee having share of co.

NOT to be included in 200 limit of members

Prohibition
↓
on Inviting public for subscription of shares

Members
↳ Min :- 2
Max :- 200
↓
Directors
↳ Min : 2
Max : 15

→ "Use PVT LTD after its name" after Incorporation

→ Joint shareholders are to be treated as one shareholder.

⇒ public co. ⇒ A company which is not Pvt. co.

Min. Directors	Max Directors
3	15

↳ No. limit on No. of members

Min members	Max Members
(7) → sec: 3	(No limit)

↳ No Restriction on Transfer of shares

↳ No prohibition on Inviting public for subscription of shares

→ "Use LTD word after its name"

⇒ Special Note:-

Pvt. co. $\xrightarrow[\text{of}]{\text{subsidiary}}$ public co.

↓

Then Deemed to be public co.

↓

No exemptions now as Applicable to Pvt. co.

Section 3: Formation of co.

To form

Pvt. co.	Pub. co.	OPC
2 or more person	7 or more person	1 person

Subscribe their names in MOA

only for lawful purpose

↓

comply All requirement of Registration.

special Note:- section 3A :-

Pvt. co. (2) / Pub. co. (7)	Member reduce below threshold	But co. still carry B/s upto 6 Months → NO ISSUE	more than 6 Months → Every member during this period liable personally for All Debt of that period & can also be sued personally.

⇒ one person company :-

→ OPC should be written as suffix in Bracket → every where

→ only one person as a member.

→ concept suggested by J. J. irani commitee

→ To avoid the requirement of forceful entry of 2nd shareholder.

→ Pvt. co. → except some provisions

→ Min no. of Director → 1

→ NO GM / AGM → Sec. 122 of co. Act, 2013

→ Summary of BOD report applicable.

→ Annual Return sign (Sec: 92)

- co. secretary → yes → CS ✓
- No → Director → will sign

→ No Need of CFS → sec: 129

→ Director Meeting

Only 1 Director: → No BOD Meetings

More than one Director: → one Board Meeting → In half of calender year

→ GAP Between 2 Board Meetings → At least 90 Days

→ Nominee Name $\xrightarrow{\text{Given in}}$ succession clause (MOA) → who will become members at Death / Incapacity of subscriber

→ Natural ✓
→ Resident ✓ — More than 120 Days in P.F.Y.
→ Minor ✗
→ Indian citizen ✓
→ Nominee will give his written consent Form INC-3 prior approval

→ Co. During Incorporation — INC-32 + MOA + AOA + INC-3 } ROC

→ Nominee can withdraw his consent at anytime — Notice — subscriber + OPC → Now this subscriber will appoint new nominee within 15 Days from this notice

→ Subscriber can also change the Nominee Name at any time.

→ change in the name of person (Nominee) Not to be called as "Alteration of MOA"

→ suppose subscriber → Died → Now, Nominee will become new member, Now position of nominee gets vacated.
↳ So, New Nominee will be appointed within 15 Days

→ Three cases
- Withdrawal of consent by Nominee
- Replace of Nominee by member
- Nominee Becomes member

} within 30 Days ↓ Intimate to ROC.

A person
- → cannot be member of more than 1 OPC
- &
- shall not nominee of more than 1 OPC

→ OPC
- $\xrightarrow{\text{coverted}}$ NPO u/s 8. ✗
- $\xrightarrow{\text{converted}}$ pub co. ✓ / pvt co. ✓ — sec: 18
- $\xrightarrow{\text{cannot carry out}}$ NBFC

→ In case of OPC, Minor can not become subscriber & ~~AO~~ Nominee

⇒ small company :-

→ public co. shall not be small company.

→ pvt. co. → PUSC :- < 4 cr ~~~ 10 cr → the CG can time to time increase this limit upto 10/100 cr.

⊕

→ T/O :- < 40 cr ~~~ 100 cr

As per PCL Immediately PY preceeding

→ Holding co. → these can't ← section 8 (NPO)

subsidiary co. → small co. ← special Act co.

→ some exceptions applicable to small company due to Burden :-

↳ No Need to prepare CFS

↳ Board Meeting :- Half of calender year → Gap between 2 BM shall not be < 90 Days

↳ small companies can be Amalgamated without court

⇒ subsidiary co.

↳ If BOD of this company controlled by other company (i.e. Holding co.)

↳ If holding company control more than 50% of voting power of this company

By Holding co. OR Subsidary of Holding co.

↳ If Holding company has power

Appoint Remove BOD at Discreation → All Majority

Example :- (1) A $\xrightarrow[\text{More than 50\% of B}]{\text{controls}}$ B

A ↓ Holding company

B ↓ subsidary company

(2) A $\xrightarrow[\text{more than 50\% of PUSC}]{\text{Invest}}$ B $\xrightarrow[\text{55\% of PUSC in 'C'}]{\text{Invest}}$ C

A ↓ Holding co. for 'B' & 'C'

B ↓ subsidary co. for 'A' & Holding co. for 'C'

C ↓ subsidary co. for 'A' & 'B'

A → C, B } Both are subsidary

(3) A $\xrightarrow[\text{than 50\% of PUSC}]{\text{Invest more}}$ B $\xrightarrow[\text{of PUSC}]{\text{Invest 25\%}}$ C

A $\xrightarrow[\text{of PUSC}]{\text{Invest 28\%}}$ C

Now, 'B' is subsidary of 'A' >50%

& 'C' is subsidiary of 'A' & 'B' (25+28) ↗53%

Special Note :- If one co. holds more than 50% shares in another co. as Investment on behalf of other as trustee (Fidicurary Relationship)

↓

No Holding → sub. Relationship

↓

MCA circular

→ Generally holding company invest money in subsidary company.

→ So, subsidary company obvious can not invest in the Holding company (Because उसका पैसा उसी co. है)

→ So, there are some Restrictions on subsidary company to hold shares in holding company.

⇒ Holding co. $\xrightarrow[\text{shares in}]{\text{Hold}}$ subsidiary co. ✓

⇒ subsidiary co. $\xrightarrow[\text{hold shares in}]{\text{CAN NOT}}$ Holding co. } sec: 19

→ So, It means Holding co. can not allot shares to subsidary co.

→ If Holding co. Allot shares to subsidary co, then it is to be called void contract

⇒ Kapila Ltd. → PUSC = 10,000 @ 10

4000 shares — Kusha Ltd.

more than 50 %

2000 shares — Prem Ltd.

holds
35%)

Red Limited → control BOD company of Kusha / Prem

→ So, Red Ltd is Holding company

Kusha & Prem → subsidiary co.

:- Exception:-

Q:3 JKSC Pg no: 1 (Q & A Book)

Exceptions :-

subsidary co. hold shares as legal Representive of Deceased member of holding co.

subsidary co. hold shares in holding company as trustee.

Right to Vote ✓

subsidary co. is a shareholder of holding co. Before they become holding & subsidary co.

Right to Vote ✗

⇒ Associate company :- (less than 50% PUSC).

- If one co. has significant Influence on another company.
- They Don't share the Relationship of holding co. & subsidary co.
- Joint venture
- If one company controls at least 20% of voting power.
- Participation in B/S Decisions under agreement.

⇒ Dormant company :-

- company Registred for future project
- or hold an Assets (IPR)
- No significant Accounting Transaction
- Inactive co. from last 2 years.

so, Now apply to ROC for Apply to Dormant co.

- If payment to ROC for fees.
- Allotment of shares.
- For maintainance of office.
- Fees Payment.

→ These are not to be called "significant Accounting Transaction"

⇒ Government company.

- Any co. in which not less than 51% of PUSC held by
  → CG
  → SG
  → SG + CG
  → SG1 + SG2 + SG3

- subsidary co. of Govt. co. is also treated as Govt. co. ("CAFC Dec-23 Try yourself")

⇒ NIDHI company section : 406

- Incorporated as NIDHI
- cost saving to members
- Lend Deposits
- Recieve Deposits

Lend Deposits / Recieve Deposits → To / from members

→ Rules prescribed by CG

⇒ Foreign company

1) Any company or Body corporate Incorporated o/s India (+)
2) Having A place of B/s in India

Physically OR electronically → whether server is in India or o/s India

By itself OR Agent

3) (+) conducts Any B/s Activity in India

⇒ Public Financial Institutions (PFI)

- LIC
- IDFC
- UTI
- Institutions notified by CG under Co. Act 1956
- Institution notified by CG + RBI
  - Institutions established under central/state Act
  - OR
  - NOT less than 51% of PUSC → SG / CG / SG+CG / SG+SG

* CAN we convert one company to Another co.?

Ans:- • yes ⇒ u/s 18 of Co. Act, 2013

- Pvt. co. $\xrightarrow{\text{convert}}$ Pub. co. ✓
- Pub. co. ⟶ Pvt. co. ✓
- OPC ⟶ Pvt. co. ⊘ / Pub. co. ⊘
- Pvt. co. ⟶ OPC ✓
- Pub. co. ⟶ OPC ✗

* Pvt. co $\xrightarrow[\text{u/s 18}]{\text{convert}}$ Pub. co. छोटे से बड़े पर जाना

1) Pass SR for Alter AOA.
2) Delete "RLP" from AOA → Restriction, limitation, prohibition → Delete.
3) PASS SR for Alter MOA.
4) Delete word "Pvt co." from its name.
5) Altered MOA / AOA $\xrightarrow[\text{within 15 Days}]{\text{copy}}$ sent to ROC

6) Copy of SR $\xrightarrow[\text{MGT-14}]{\text{copy within 30 days}}$ sent to ROC
7) Now, ROC Register & Issue certificate of Incorporation (COI) → New
8) If Pvt. $\xrightarrow{\text{convert}}$ Pub. Co.

No. of members = 2 → Increase upto 7
No. of Directors = 2 → Increase upto 3

* Public Co. $\xrightarrow[\text{u/s 18}]{\text{convert}}$ Pvt. Co. (बड़े से छोटे पर जाना)

1) Alter AOA → By pass SR
2) Add RLP (Restriction limitation prohibition) In AOA.
3) obtain CG Approval ⊛
4) Alter MOA → By pass SR
5) Add private at the name end.
6) Altered MOA / AOA / CG Approval ⊛ $\xrightarrow[\text{15 days}]{\text{copy}}$ ROC
7) Copy of SR $\xrightarrow[\text{30 days}]{\text{within}}$ ROC (MGT-14).
8) ROC $\xrightarrow{\text{Issue}}$ New COI
9) Decrease member upto 200 (If required)

* OPC $\xrightarrow[\text{yes, u/s 18}]{\text{convert}}$ Pub. Co. / Pvt. Co.

1) Increase No. of members from one → Pvt = 2, Pub. = 7
2) Increase No. of Directors → Pvt. = 2, Pub = 3
3) Alter AOA / MOA → Pass SR

4) copy of SR / AOA / MOA / Application ⟶ ROC
If he satisfied with All compliances, he will close old & Register OPC & Issue New COI.

* Pvt. co. $\xrightarrow[\text{u/s 18}]{\text{convert}}$ OPC
(1) pass SR
2) Take NOC → Member, → creditors } of co.
3) copy of SR $\xrightarrow[\text{30 days}]{\text{MGT-14}}$ ROC
4) File INC-6 (conversion Appln)
5) Director Affidavit → Members & creditors } → consent
6) List of members & creditors
7) Audited ⟶ B/S & P/L
8) NOC copy
9) If ROC satisfied ⟶ New COI → Pvt. → OPC

⇒ Listed company
→ Whose security are listed on any Recongnised stock exchange.

NOT To Be called listed co.

pub co. $\xrightarrow[\text{NOT listed}]{\text{equity shares}}$ But listed on Pvt. placement on Rec. stock exchange

Non convertible Debt security OR/Both Non convertible Redeemable pref. shares

Pvt. co. $\xrightarrow[\text{on}]{\text{listed}}$ Non convertible Pvt. placement on RSE.

→ Equity share listed on

section: 8 : NPO company

→ For promotion of

ART / science / sports / culture / charitable / Religion / commerce / Education / Environment

→ NPO $\xrightarrow[\otimes \ u/s\ 23]{\text{Dividend}}$ Members

→ surplus earn → only can utilise on on above activity.

→ No minimum paid up share capital
→ No need to Add Ltd / Pvt. Ltd with name
→ Limited Liability
→ CG has power to issue license → Now with ROC.
→ partnership firm $\xrightarrow{\text{members}}$ NPO
→ NPO Alter → AOA / MOA } only Approval of CG required
→ conversion possible → pass SR
→ Amalgamation only with NPO → possible
↳ Not with other.
→ NPO $\xrightarrow[\text{to ROC}]{\text{Application}}$ SPICE + (Incorporation)

(+) MOA / AOA
(+) future predicted ← Income & Exp. A/c → Next 3 years
(+) source of Income
(+) objects of NPO exp.
(+) Declaration ← CA / CS / CMA / Advocate } Practice — MOA → AOA → complied u/s 8 ; All Rules & Regulations u/s 8 are complied

- conversion proceedure $\rightarrow$ By pass SR

(1) pass SR
(2) Notice + Explanatory statement (sec: 101/102)
(3) copy of ① & ② $\xrightarrow{\text{file}}$ Regional Director (RD)
(4) ① + ② + ③ $\xrightarrow[\text{file}]{\text{copy}}$ ROC
(5) Notice $\xrightarrow{\text{publish}}$ vernacular language + English Newspaper
$\xrightarrow{\text{publish}}$ website of co.
(6) Financial statements & Returns (Annual) $\xrightarrow{\text{Have been filed with Authority}}$ Before Appⁿ give to RD.
~~(7)~~ suppose
Application to RD made after 3 Months from end of P.F.Y. then financial position certified by CA (made at least 30 Days Before) submission to RD.
(7) If RD satisfied $\longrightarrow$ Allow conversion $\longrightarrow$ can also Impose some conditions After giving opportunity of being heard
(8) Now, company Alter
AOA MOA } By passing SR $\xrightarrow{\text{copy of SR}}$ ROC
(MGT-14)
(9) ROC $\xrightarrow{\text{Issue}}$ New COI

36%

* NPO $\xrightarrow[\text{Issue}]{\text{License}}$ CGI $\xrightarrow[\text{Delegate}]{\text{Power}}$ ROC

elegate these powers to RD ← so, CGI can Revoke licence if
↓
1) NPO $\xrightarrow{\text{contravense}}$ conditions or Requirement ⟶ on the basis of license issued
2) Affairs of co. $\xrightarrow{\text{conducted}}$ Fraudently
3) objects of co. $\xrightarrow[\text{to}]{\text{prejudicial}}$ public Interest
4) If co. $\xrightarrow{\text{violate}}$ objects of co.

* so, before revocation $\xrightarrow[\text{Being heard}]{\text{opportunity of}}$ co.
+ written Notice

Pvt. ltd / ltd. $\xrightarrow{\text{Add}}$ to the Name of co.

CGI $\xrightarrow[\text{license}]{\text{while Revoking}}$ pass order ⟶ In public Interest
↓
- change Name/status of co.
- wound up the co. ⟶ After settlement of ~~cash~~ Debtors, assets
↓
If Anything Remain
either transfer to another NPO OR sale them ⟶ Proceed ↓ Transfer ↓ Insolvency & Bankruptcy code
- Amalagmation with another Npo having similar objective
↓
Now CGI Amlagamate to form a single co.