

THE COMPANIES ACT, 2013

Basics of THE COMPANIES ACT, 2013 (TCA)

- TCA 2013 was made to consolidate & Ammend the law related to Companies. Before TCA 2013 there was TCA 1956.

TCA 2013 has — 29 Chapters — 7 Schedules — 470 Sections

Applicability :- The provisions of TCA, 2013 applies to -

- To all the companies registered under this Act or any previous Co. law (1956)
 - To Insurance Co.
 - To Banking Co.
 - To electricity Co.
 - To any other Co. under special Acts.
- except { when it's inconsistent with individual Act }
- Insurance Act 1938
The Banking Reg. Act, 1949
The Electricity Act, 2003
- Means { In case of any dispute the individual Act will override }

WHAT IS A COMPANY ?

- As per **Section 2(20)** :- A company is a company incorporated or registered under this Act (2013) or any other previous Co. law
- As per Justice Marshall / Professor Haney :-
 - Incorporated Association.
 - An **artificial person created by law** [Intangible & Invisible]
 - Who has a separate Legal entity.
 - A perpetual succession and
 - A common seal
 - A company possesses powers / properties stated in their CHARTER means Memorandum of Association & Article of Assoc.

Features of A Company :- **I TOP CLASS** - Trick to learn

- (i) **I = Incorporated Association** - A company can be incorporated
 - 2 Members in case of Pvt. - 7 members in Public - 1 member in OPC
- (ii) **P = Perpetual Succession** - Members may come or go but the Company will go on forever.
 - Company is created by law & law alone can end its life. Eg- wind up
 - Death / insolvency of a member has no effect on Co.'s existence.
- (iii) **Common Seal** :- A company needs human agency to work on its behalf. Common seal is an artificial signature of the company.
 - It can be affixed by anyone who is authorised to do so.
 - It is optional, hence if you don't have CS then $\leftarrow$ 2 directors / 1 DIR / 1 CS.

(iv) A - **Artificial Person** = It is a person created by law means by not the process of natural birth. It is not a fictitious person. It exists only in the eyes of law and it needs human agency to function eg
Eg:- BOARD OF DIRECTORS (BOD)

(v) S = **Separate Legal Entity** = This feature means company is distinct of separate from its members. Company on its own name :-

- Can own property
- Can sue anyone
- raise loans / liabilities
- Can be sued by anyone
- Can have bank account
- Can enter into contracts

(vi) L = **Limited Liability** = It means Company debt don't become members debt. SH's liabilities is limited to the unpaid amount on the shares / Guarantee held by them. (Depends on kind of Co.)

Basis	Guarantee Company	Share Capital Company
Meaning	When MOA say that liability of members shall be restricted to the amount they've guaranteed	When MOA says that the liability of members shall be restricted to the unpaid amount on the shares held by them
Share Capital	May or may not have SC	Must have SC
Quantum of liability	In case of winding up liability of every member Guaranteed amount	Liability of every member. Unpaid amount on the shares held by them
When does the liability arise?	Only in the case of winding UP of a company	When valid call is made by the company
Suitability	where huge initial capital isn't required and funds can be arranged by the way of borrowings fees charged etc	where huge initial capital is required and financial resources can't be arranged by the way of borrowings.

Are Shareholders The Owner of Any Assets of Company?

- ① Shareholders aren't Private or joint owners of Company's Assets
- ② Shareholders get dividend / Profit as a return towards their contribution to the capital / assets of the company.
- ③ Shareholders enjoy ownership in the form of various other benefits like Voting Rights among others.

Macaura Vs Northern Assurance Company Ltd. (1931)

Concept :- Separate legal entity

Timber Company

M

M is the owner of a timber company and holds all shares except for one.
He is also a major creditor of the company.
M insured the company's timber in his own name.

Conclusion :-

A member doesn't have an insurable interest in the property of the company.

Unfortunately, the timber caught fire, leading to significant losses.

M decided to claim insurance compensations for the damage incurred.

Judgement

Held - the insurance company wasn't liable to him.
As no shareholders have no rights to any item of property owned by the company.
He has no legal or equitable interest in them.

Hence, in this case, since the timber was insured in the company's name, M could find not claim the compensation from insurance company.

Ans Case Law :- Macaura Vs. Northern Assurance Company Ltd.
Concept :- Separate legal entity

Provision :- A company is a separate and distinct from its members.
It means Co. can have its own loans / liab. it can own property in its own name & Co. can sue or be sued by anyone. Co. can enter into contracts & Co.'s assets / property are separate from members.

Conclusion / Analysis :-

Although members contribute to the capital / assets of the company but members do not have any type of insurable or equitable interest in the assets of the company.

Standing of Shareholders? (Not part of Answer)

Yes, they do contribute to the capital and assets of the company but they're not the private or joint owners of the company's property.

CORPORATE VEIL THEORY

- It's a legal concept which says company is identified as separate from its members.
- Members are shielded from the liability of the company
- If the Co. incurs any debt or contravenes any law then members shouldn't be liable for that members from the company's acts. It is a concept of - CORPORATE INSULATION

⇒ Why CV is lifted or Pierced?

In special circumstances court ignores & disregard the separate entity b/w Co. & members and will look behind the legal face of the Co. to see the real faces / culprits (members) behind the act.
Thus, CV is lifted when it's a question of Control rather than ownership

Salomon Vs. Saloman & Co. Ltd.

He took debentures worth 10,000 pounds of the company. So he is a secured creditor of the company as well

Salomon & Co. Ltd

Took over personal assets of Saloman

In return he took 20,000 shares in company

Judgement

Company has its own existence and as a result, a "SHAREHOLDER" can't be held liable for the acts of the company even though he holds virtually the entire share capital.

The house of Lords laid down that a company is a person distinct and separate from its members.

New company goes into the liquidation where Assets were 6000 and liabilities were 16000 pounds.

Claims of secured creditors that Co's director, creditor, owner or investor in the same person. He is also a secured creditor but he should not be paid first as this is a one man company.

Concept: - - Members of Co. are shielded from liability connected to the Co.'s action

- If Co. incurs any debts or contravenes any laws, the CV concept implies that members shouldn't be liable for those errors.

In other words: They enjoy "Corporate Insulation"

Eg:- Mr. Raj formed a company with a capital of ₹ 50000. He sold his business to another company of ₹ 400000. For the payment of sale, he accepted shares worth ₹ 300000 (30000 shares of ₹ 10 each). The balance 100000 was considered as loan and Mr. Raj secured the amount by issue of debentures. His wife and three daughter took one share each. Owing to strike the company was wound up. The assets of the company were valued at ₹ 60000. The debts due to unsecured creditors were ₹ 80000. Mr. Raj retained the entire sum of ₹ 60000 as part payment of loan. To this, the other creditors objected. Their contention was that a man could not own any money to himself and the entire sum of ₹ 60000 should be paid to them. Examine the rights of Mr. Raj and other creditors. Who'll succeed? (MTP May 23)

Ans Provision:

As per the relevant provision under TCA 2013 a member & its company are distinct & separate from each other.

Hint: Property own / Bank / loan / liabilities... so on

As per the corporate veil theory which is a legal concept saying that members are not liable for Co's debt / liabilities.

Reference Case Law:- Salomon Vs. Saloman & Co. Ltd.

In the instant case, Mr. Raj is a shareholder of / Debt holder of the Co. and he claims his right over the assets of the company first in case of winding up.

Conclusion:- After Applying above provisions & Case law

Co. is a distinct / separate person & members are not liable for Co's debt. Hence Mr. Raj being a secured creditors will be paid first and unsecured creditors will not succeed.

Lifting OF Corporate Veil

It means looking behind the company as legal person i.e.

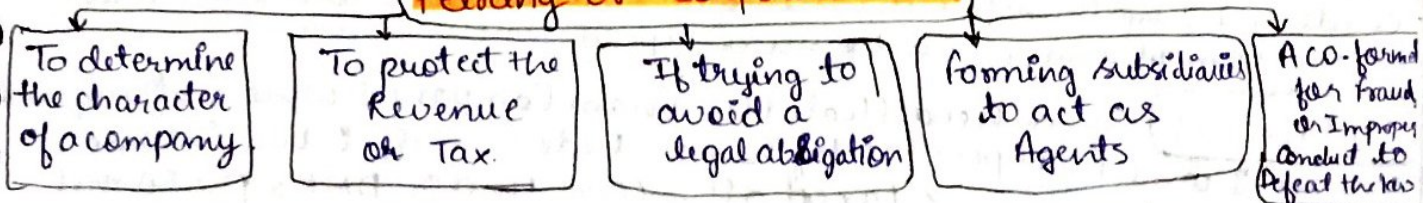
- disregarding the corporate entity and paying regard.
- Instead to the realities behind the legal facade.

* Where the Court ignores the company and see directly with the members or managers, the corporate veil may be said to have been lifted.

★★ Only in appropriate circumstances, the courts are willing to lift the Corporate Veil.

- When questions of control are involved rather than merely a question of ownership.

Piercing OF Corporate Veil

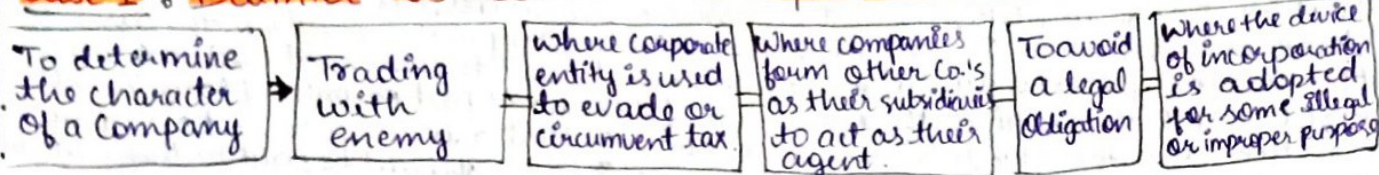


These are the following cases where company law disregards the principle of corporate personality or

The principle that the company is a legal entity distinct and separate from its shareholders / members:

EXCEPTIONS OF CORPORATE VEIL THEORY

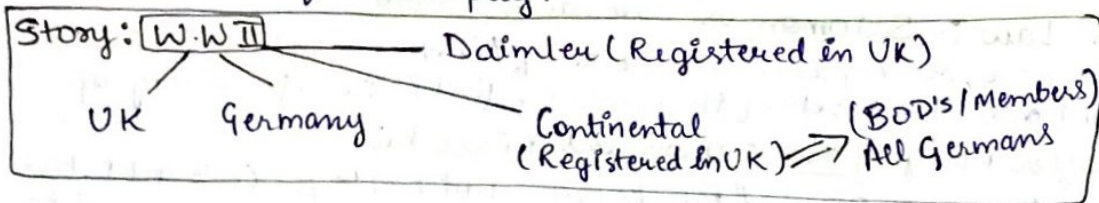
Case 1: Daimler Vs. Continental Tyre Co. Ltd.



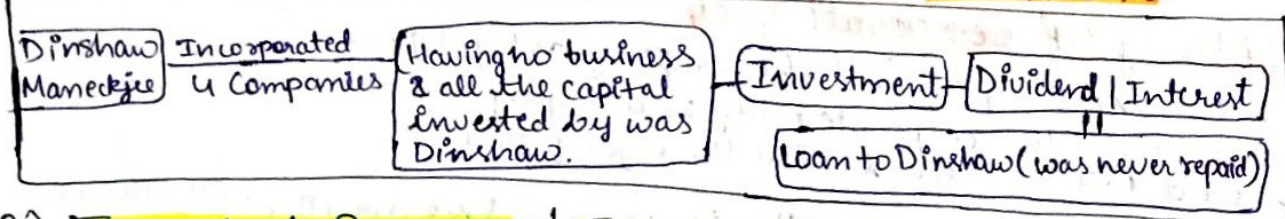
(1) When you need to check the character of the Company as whether the Co. is our friend or enemy. For this purpose the court will examine the real person behind the affairs of the company.

Reference Case law :- Daimler Vs. Continental Tyre Co. Ltd.

Judgement The court held that trading with Continental or will result into the trading with the enemy. Hence Corporate Veil was lifted by the Court keeping public Interest in mind. Thus, Daimler Co. Ltd. was not required to pay.



Case 2: Dinshaw Maneckjee Petit Vs. Commissioner of Income Tax (1927)



(2) To protect Revenue / To stop Tax Evasion

Reference Case law : Dinshaw Maneckjee Petit Vs. Comm. of IT

- When corporate identity is used to evade tax then court will disregard the corporate identity.
- DMP incorporated and Sham Companies to lower his own income of 2 to evade tax, he transferred his income to these Co. & took them back in the form of loan which he never repaid.

Judgement Court held that the Sham Companies were not required genuine & were incorporated by him to hide himself & his income. Hence court lifted CV & taxed all income under DMP's personal account and considered Companies and DMP as one.

Case: 3 Workmen Of Associated Rubber Industry Ltd. Vs. Associated Rubber Industry Ltd.

Concept: (To avoid legal obligation) - eg: Bonus

Reference Case Law: Workmen of Associated Rubber Co. Vs. AR Co. Ltd

The Principal Co. (AR Ltd.) created a subsidiary Co. who doesn't have any assets of its own.

- The principal Co. transferred its investment which is in (INARCO Ltd.) to subsidiary Co. who is enjoying dividend income out of it.

- Workmen Contention:

The principal company transferred its investment to reduce its Gross Profit which will in turn reduce bonus liability of Co. towards workmen.

Judgement It was held that subsidiary Co. was incorporated to avoid legal obligation, hence its separate identity (existence) will be trusted aside resulting in lifting of Corporate Veil and Associate Rubber Co. will be liable for the Bonus amount.

Case: 4 Merchandise Transport Ltd. Vs. British Transport Commission (1982)

Concept: - Formation of subsidiaries to act as an agent.

Ref. Case Law: Merchandise Transport Vs. British Transport Comm.

The principal / Parent Co. after being rejected by British Comm. for registration of Vehicle under his name, formed as subsidiary Co. who applied for license under its own name.

Judgement It was held by the court that Parent & subsidiary Co. are ONE UNIT only & Application was further rejected resulting into lifting of CV by ignoring separate identity of parent & Subs. Co.

* Case: 5 Gifford Motor Co. Vs. MR. HORNE

Concept: - Company formed for fraud / improper conduct or to defeat law

Reference Case Law: Gifford Motor Co. Vs. MR. Horne.

When Co. is formed / devised / incorporated for same illegal purpose or to defeat the purpose of law then in such scenario...

Judgement The court held that Mr. Horne was the person behind it and the non-compete clause will be applicable or binding on him as well as his new company resulting in the lifting of Corporate Veil.

CAPITAL - Meaning & Classifications

• What is capital?

⇒ The contribution made by persons to the common stock of the company form capital of the company. Capital means "Share Capital". It is expressed in terms of money (₹) divided into shares of a fixed amount.

Eg:- 10000 shares (x) ₹10 = Capital by ₹100000/-

• What do you mean by "Shares"?

→ Share is a smallest unit of the company's assets or capital and incl. Stocks.

→ Shares represent proportional interest in the company.

→ A share is not just a sum of money but it's a bundle of various rights but represented in terms of money.

Eg: Voting rights, dividends etc [Borland]

→ Every share is distinctly numbered in sequence.

→ Owning shares came at a risk as well but SH. aren't part owners of Co's Assets.

→ Shares are Movable Property.

Type OF Capital	Descriptions	Examples.
1.) Authorized Capital (Nominal / Registered)	The maximum amount of share capital that a company is authorised to issue as per its constitutional documents.	A company is authorised to issue shares worth ₹ 10 crores.
2.) Issued Capital	The portion of authorised capital that has been offered to shareholders for subscriptions.	Out of ₹ 10 crores authorised the company issues ₹ 6 crores.
3.) Subscribed Capital	The portion of issued capital that has been subscribed by shareholders.	Out of ₹ 6 crores issued shareholders subscribe to ₹ 5 crores.
4.) Paid-UP Capital	The actual amount of money received by the company for the shares that have been issued and subscribed.	Out of ₹ 5 crores subscribed ₹ 4 crores has been paid by shareholders.
5.) Called-UP Capital	The portion of subscribed capital that shareholders have been asked to pay.	The company has called up ₹ 4.5 crores out of ₹ 5 crores subscribed.
6.) Uncalled Capital	The portion of subscribed capital that has not yet been called up by the company.	₹ 0.5 crores remaining uncalled out of ₹ 5 crores subscribed.

Paid-UP Capital = Called UP Capital - Calls in arrears

• Nominal / Authorized / Registered Share Capital :

- Capital which company will utilized it in its lifetime.
- Authorized by its documents (Memorandum of Association)
- Upon which stamp duty will be paid

Eg: Lifetime = 10000000 (10 cr. - autho SC) $\rightarrow$ 1 cr. shares $\times$ 10/-

• Issued Share Capital :

- It is a part of Authorized SC which is being offered to public / SH. for subscription.

Eg: Today 5 cr. $\rightarrow$ 50L $\times$ 10/- each

• Subscribed SC :

- It is the part of Issued SC which is subscribed by the members.

Eg: At par, Under subscription, Over subscription.

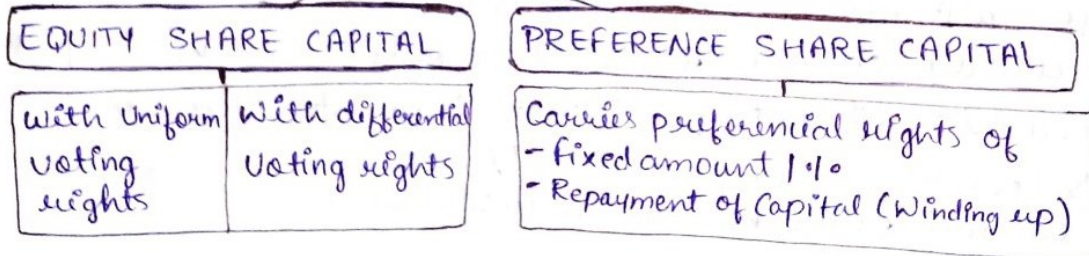
• Called-UP Share Capital :

- Amount called up on shares. Part of subscribed share capital.

Types $\rightarrow$ Paid up SC's (To capital issue ki hai aur received bhi hogi)
 $\rightarrow$ Calls in arrears (To capital issue ki but received nhi hai)

Paid UP Capital	Calls in Arrears	Uncalled Capital
Called UP SC $\rightarrow$ Calls in arrears.	Called up capital portion but not received.	Portion of subscribed capital yet to be called.

SHARE CAPITAL (Section - 43)



Equity Share Capital : It is Share Capital which isn't Preference SC.

Preference Share Capital : It means that the part of SC which has 2 preferential rights with them -

(i) Payment of Dividend - They receive dividend either at fixed rate or fixed amount.

(ii) Repayment of Capital - At the time of WP. PSH will receive the part of SC at preference.

Apart from PSC.

ESC which is not Preference SC means ESC don't have any preferential right but they have voting rights on all the matters

$\rightarrow$ Premium on redemption of PS can be paid as preference depending on MOA/AOA of the Company.

Equity Share Capital = It is a share capital is not preference share capital means don't have any preferential right but they've

- with voting rights.
- with differential rights as to dividend, voting or otherwise in accordance with prescribed rules.

Two Types Of Equity Share Capital :-

(i) **With uniform voting rights**

=> This follows the general rule where shares stands for one vote hence it's called uniform

(ii) **Differential Voting rights**

=> This means that there is a differential right attached to these share which might be related to dividend, voting power or otherwise

Benefits :- **To the Company** = Company issues shares in case of DVR with less impact on overall voting power that's less liquidation of VP.

To the Members = DVR holders receive higher dividend and sharing at lower price.

Company On The Basis Of Liability

Division on the basis of liability has been done understand Member's Liability, as company's liability is often unlimited in nature.

(1) **Unlimited Company** - **Section 2.(Clause 92) - 2(92)**

- (a) It is a company where liability of its members is unlimited.
- (b) Member's liability becomes unlimited only when Co. is wound up. It means before WP, member's liability is limited.
- (c) Members could be called up to contribute only in case winding up

Who can call to contribute? = Official Liquidator / Receiver.

(d) Member's Liability = Companies debt / liabilities

(e) Member can call others members to contribute.

UNLIMITED COMPANY

No limit on the liability of Members

The liability ceases on when he ceases to member

Liability is not unlimited till the time Company is not wound up.

Liability of each member extends to amount of company debt and liability

Members can be called to contribute only in the event of winding up of company.

However, he can claim contribution from other members.

In the case the company has share capital, the Article of Association must state the amount of share capital and the amount of each share.

Classes Of Companies Under the Act

Liability	Size (Members)	Control	Listing	Others
Unlimited	Public	Holding	Listed	Foreign
Limited :-	Private	Subsidiary		Government
• By shares	OPC		Unlisted	Section B
• By Guarantee	Small Company	Associate		Dormant Company
				Nidhi Company

Difference b/w : Guarantee Company Vs. Share Capital Co.

BASIS	GUARANTEE COMPANY	SHARE CAPITAL COMPANY
Meaning	When Memorandum of Association says that liability of members shall be restricted to the amount they have guaranteed.	When Memorandum of Association says that liability of members shall be restricted to the unpaid amount on the shares held by them.
LIABILITY	Only in the case of WP	Whenever valid call is made
Liability of every member	In case of WP Guaranteed amount or unpaid amount of shares	Unpaid amount on the share held by them.
Suitability	Where huge initial capital isn't required and funds can be arranged by way of borrowings etc.	Where huge initial capital is required and financial resources can't be arranged by way of borrowings.

Company Limited By Guarantee (2(21))

- It is a company where liability of the members is limited upto the amount of guarantee given by them which is stated in the MOA of the company.
- Members could be called upon to contribute only in the case of WP to contribute to the assets of the company.
- Members liability cannot go beyond the stipulated amount of guarantee.
- **Suitability** :- This company is suitable when huge initial capital is not required.

Company Limited By Shares : 2(22)

- When liability of the members of the Company is limited up to the unpaid amount of the shares held by them. Company can call unpaid amount at anytime and members separate property can't be used for Company's debt.

Suitability:- Huge initial capital required.

PRIVATE COMPANY Section 2(68)

A company is said to be private company who is :

- (a) PP = Prohibited from inviting the public to subscribe securities
- (b) R = Restrict but do not prohibit the right to transfer of shares
- (c) LIM = allowed to have limited no. of members i.e. 200 (Max.) (except OPC)

 Some Important Points :-

- OPC and Small Company are also a type of Private Company.
- Private company can have minimum. 2 members (OPC = only 1)
- Right to transfer is restricted as per AOA.

PUBLIC COMPANY Section 2(71)

A company which is not a private company which means :

- It can invite public to subscribe its securities
- It's AOA don't have restriction clause means shares are freely transferable
- It doesn't have any limit on the members.

 Some Important Points :-

- Minimum members is 7 and maximum = NO limit

Deemed Public Company

→ A private company which is a subsidiary of a public company is treated as a deemed Public Company even if it continues to be a private company in its articles

Not all but few rules of Public Company will be applied.

Requirements of Public Ltd.	No. of Shareholders	No. of Directors	No. of members
	Unlimited	Minimum 3	Minimum 7

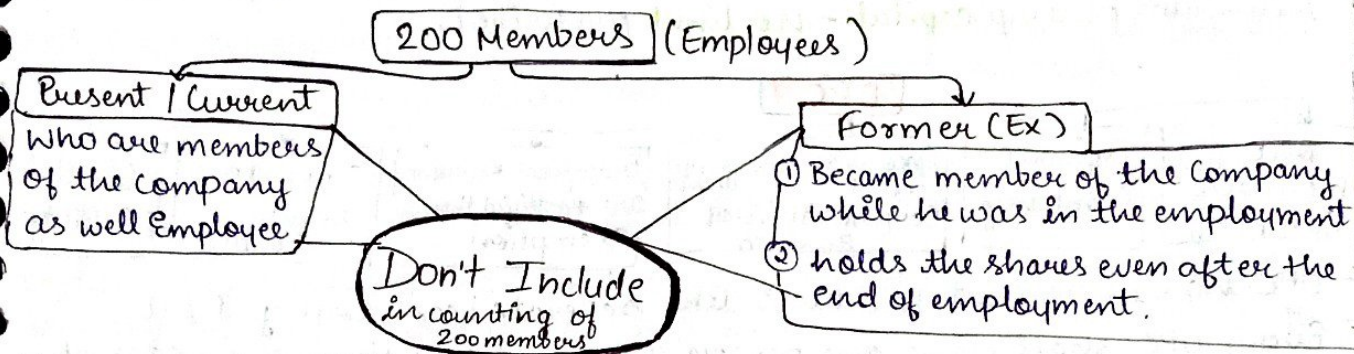
HOW TO COUNT 200 MEMBERS ?

For counting 200 members -

- Joint members to be counted as one.

Don't Include :

- (A) Existing employees cum members and
- (B) Former employees who were members of the company while in that employment and have continued to be members after the employment and have continued to be members after the employment ceased. (employment cum members)



For answering the question :-

As per the Section 2 (68) of the Company's Act, 2013, "Private Company" means a company having minimum paid up share capital as may be prescribed and which by its articles, except in the case of One Person Company limits the no. of its members two hundred.

However, for counting 200 members following should be keep in mind :

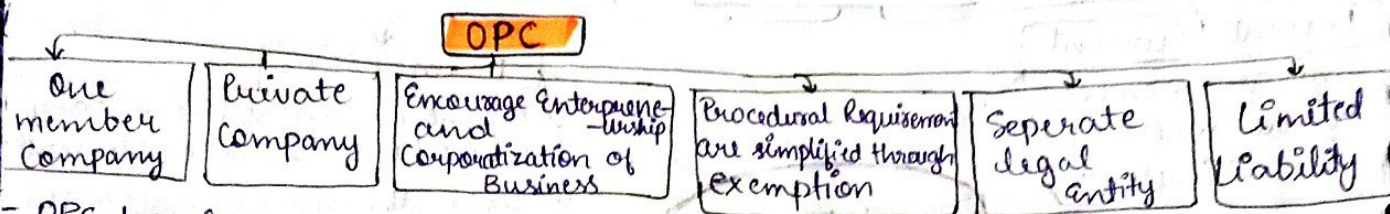
- (a) Joint Members who hold shares jointly will be counted as a single members means one.
- (b) Exclude the below from the count of 200 members :
 - (i) Existing employees who are in the employment
 - (ii) Former employees who were employees of the Company and they become the members while they were in the employment and have continued to hold shares (members) after the employment ceased then shall not include in the no. of members.

ONE PERSON COMPANY (Small Company)

8 > ONE Person Company → Small Company → special kind of private company

As per Section 2(62),

- A new class of companies which can be incorporated by a single person
- OPC is a private limited company.
- All OPC are private but all private are not OPC.
- Only one person as member
- Minimum paid up capital - no limit prescribed.



- OPC has important features like Seperate legal entity & L.L
- Every OPC shall have one person appointed as a Nominee in case of member's death or incapacity to contract. (compulsary)
- Nominee's Written consent is required in the prescribed form filed to ROC (Registrar)
- Nominee's can withdraw his/her consent.
- Member can change Nominee's name but he has to intimate to OPC and ROC.
- One Person can be a member in only ONE OPC.
- One Person can be a nominee's in only one OPC.

OPC Vs. Sole Proprietary Concern (Why OPC? Need?.)

To encourage entrepreneurship and corporatisation of business :-

- OPC is a type of Company so it's a seperate legal entity with a limited liability of the member.
- The liability in SP of owner is not restricted and it extends to the owner's entire assets constituting of official and personal.

SMALL COMPANY - 2(85)

It is a company other than a Public Company (means it's a type of Pvt. Co.) whose paid up share capital doesn't exceed 4 Cr and turnover [as per P&L of Immediately previous year] doesn't exceed 40 Cr.

A company has to satisfy both the conditions stated above.

Exception :- This clause do not apply to :-

- (a) Holding or Subsidiary Company
- (b) Sect. 8 Company
- (c) Any Co. registered under any special Act

Means no need to check the limits for these companies.

Example: PQR Pvt. Ltd. is a company registered under the companies Act 2013 with a paid up share capital of 40 lakh and turnover of ₹ 2.5 crores.

Explain the meaning of the "Small Company" and examine whether this Company can avail the status of small company in accordance with the provisions of Companies Act, 2013.

Ans According to Section 2(85) of the Companies Act, 2013, a "small company" is a private company whose paid up share capital doesn't exceed 4 Cr and turnover [as per P&L of Immediately previous year] doesn't exceed 40 Cr.

In the case of PQR Pvt. Ltd; although the paid up capital of ₹ 40 lakh is within the prescribed limit, the turnover of ₹ 2.5 crore which is also within prescribed limit. Therefore PQR Pvt. Ltd. qualifies as a "small company" under the Company Act, 2013 and is eligible to avail itself of the benefits and relaxations provided to small companies".

Who Can be a Member & Nominee ? (Eligibility)

- (i) Only a natural person.
- (ii) Only an Indian citizen (whether residence or otherwise) (Ignore 120 days shall be eligible to incorporate OPC).

Some other points :

- (1) Minor can't be a member / nominee.
- (2) OPC can be converted into Pvt. / Public But OPC can't be sec. 8 Company.
- (3) OPC = Non Banking Financial Co. (NBFC) (X) Investment in other (X)
- (4) No minimum Capital / Turnover requirement.

Clarification - OPC

Only Two Conditions
- Natural Person
- Indian Citizen
- Resident or otherwise

Three Conditions
- Natural Person
- Indian citizen
- Resident / otherwise
120 days stayed.

What are the Don't ?

- Involvement in Two OPCs - X (More than one not allowed)
(नहीं एक से ज्यादा का member ना ही Nominee)
- Minor ≠ Member / nominee (NO)
- OPC ≠ cannot be incorporated or converted into Section 8.
- OPC = May be converted to private or private/public company = **YES**
- OPC ≠ cannot carry out Non-Banking financial investment activities included investment in securities of any body corporate.
- Here the member can be the sole member and director as well.

Have A look to Some Questions Samples :-

Mr. Anil - **OPC** (16/04/18) - Electric car → Turnover (\$2.25 crores). Friend Sunil wants to invest in OPC - **decided to convert OPC → Pvt. Ltd.** Can Anil do so? As per TCA, 203

Ans Section 2(62) of the Companies Act, 2013 defines one person company as a company which has only one person as a member. However, a private company shall have minimum 2 members without any restriction on the share capital or turnover. If OPC is converted into private company Mr. Anil and Mr. Sunil both can be the members of the company and investment from Mr. Sunil can be accepted.

A OPC can voluntarily convert itself into a private company by following the compliances given under the Companies Act, 2013. In the instant case, OPC formed by Mr. Anil can be voluntarily converted into a private company by following the compliances given under the Companies Act, 2013. Here, the information given relating to turnover for the financial year ended 31 March 2019 is immaterial.

Ex-2 Naveen incorporated a "ONE PERSON company" making his sister Navita as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact she is withdrawing her consent of nomination in the said OPC. Taking into consideration the provisions of the Companies Act, 2013 answer the questions.

- Is it mandatory for her to withdraw her nomination in OPC?
- If she maintain resident status after marriage then can continue her nomination in OPC?

Ans (a) No, it's not mandatory for Navita to withdraw her nomination in the said OPC even if she's leaving India permanently as only as a natural person who is an Indian citizen can be a member & nominee in the OPC whether or not resident of India

(b) Yes, She can continue irrespective of the fact that she maintains the status of Resident of India after her marriage

Classes Of Companies On the Basis Of Control :- (Holding, subsidiary, Associate)

★ Holding And subsidiary Company :- Both are relative terms

Holding Company : means who either

- (i) Controls the compositions of Board of Directors (Majority/All) Or
- (ii) Exercises or controls more than one-half of the total voting power i.e. 50% or more of total share capital.

Subsidiary Company : A company is which holding company who

- (i) Controls the composition of Board of Director
- (ii) Exercises or controls more than one-half of the total voting power i.e. 50% +

• Points to Consider :-

- (i) Controlling of BOD means controlling the composition i.e. appointment / removal of majority or all the BOD at its discretion. (50%+)
- (ii) HC can exercise/control total VP either Directly or together through one or more of its subsidiary companies.

(iii) While calculating 50% of Total Voting power

- Ignore Preference SC as NO VP.
- In case of convertible PS → (By default assume NO VP. hence ignore but alternative answer can be given)
- Ignore debentures & Non-convertible debentures.

★ Associative Company 2(6) :- In relation to other country, a company in which other company holds atleast 20% but max 50% of total voting power which is called significant influence.

- Associate company is not a subsidiary company
- It includes joint venture as well (JV).

Joint Venture :- A joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

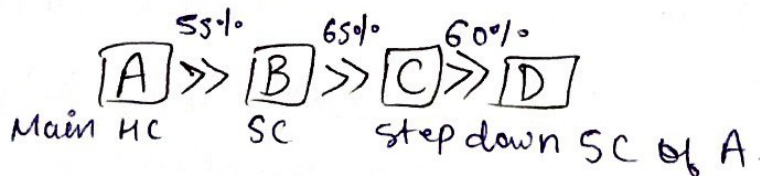
• What do you mean by controlling BOD?

HC at its discretion can appoint or remove all or majority of the directors.

Preference Share Capital - NO Voting Right

Convertible Preference Share Capital - Assumed NO VR

Non-convertible Debentures - Out of question.



Ex:- The paid up capital of Ram Private Limited is RS 10 Crores in the form of 700000 Equity share of ₹ 100 each and 300000 Preference shares of ₹ 100 each. Lakhan Private Limited is holding 300000 Equity shares and 300000 preference shares in Ram Private Limited. State with reason whether Ram Private Limited is subsidiary.

Ans According to Section 2(87) of Companies Act, 2013 "subsidiary company" in relation to any other company (Hc) means a company in which the holding company -

- (i) Controls the composition of the Board of Directors or
- (ii) exercises or controls more than one half of the total voting power either at its own or together with one or more of its subsidiary companies.

for the purpose of this section :-

(i) 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 its and decision can appoint or remove all or a majority of the directors.

(ii) the expression "company" includes anybody corporate.

It is to be noted that Preference share capital will also be considered if preference shareholders have same voting right as equity shareholder in the instant case. Ram Private Ltd. is having paid up capital of ₹ 10 Cr. in the form of 700000 Equity shares of ₹ 100 each and 300000 Preference shares of ₹ 100 each. Lakhan Private Limited is holding 300000 Equity shares and 300000 Preference shares in Ram Private limited.

As in the given problem it's not clear that whether Preference shares are having voting rights or not, it can be taken that there is no voting right these shares. On the basis of provisions of Section 2(87) and facts of the given problem, Lakhan Private Limited is holding 300000 Equity shares of total equity paid up share capital of Ram Private Ltd. Therefore, as Lakhan Private Limited doesn't exercise or controls more than one-half of the total voting power in Ram Private Ltd., Ram Private Limited isn't subsidiary of Lakhan Private Ltd.

— Sample Answer (Mock Test - 2) Solutions. —

SECTION 8 COMPANY

- (1) A company formed with any kind of charitable purpose like education, commerce, environment etc. it is called sec. 8 company.
- (2) A sec. 8 co. can apply its profit only for promoting its objects.
- (3) This company is prohibited from distributing dividend to its members.
- (4) License to such co. is sanctioned by Cg (Delegated to ROC)
- (5) There is no requirement for minimum SC as such & it's limited Co.
- (6) No need to use the words "limited" or "Pvt. Ltd." instead foundation clubs etc. can be used.
- (7) Cg may revoke the licenses (written notice + DDBH)
 - When conditions of Sec 8 are not followed / contravenes
 - When affairs are conducted fraudulently.
 - When acts are prejudicial to public interest.
- (8) Cg may ORDER :-
 - To convert into Pvt / Public Company (status)
 - To wind up the company.
 - To amalgamate with similar object company
- Can call its general meeting by giving a clear 14 days notice instead of 21 days
- Need not constitute Remuneration Committee & Nomination and Shareholders Relationship Committee.
- A partnership firm can be a member of section 8 company.

In short :- (As per the module) - For short Revision

Formation : To promote Charitable objects

App. of Profits : To promote its objects

- No payment of dividend out of Profits

Type of Co. : • Limited liability

- Without addition of words "Ltd" or "Pvt."

How status is granted : • The Cg can grant such status

- However, Cg has delegated the power to grant licence to ROC

Revocation of Licence : • Cg may revoke licence

- If conditions of section 8 are contravened
- Affairs of the company are conducted fraudulently or prejudicial to public interest.

Effect of Revocation of Licence

- Co has to use words "Ltd." or "Pvt. Ltd."

Dormant Company : Section 455.

- A company which is formed for future project - or to hold any type of assets or intellectual property.
- It is an inactive company means it has No significant Accounting transactions (SAT).
- This company doesn't have any Business or operations and hasn't filled Annual Return or Financial statements for the last 2 yrs.

In such situation company can apply to Registrar for the status of Dormant Company.

Q. What are the significant accounting transactions?

- ⇒ (i) Payment of fees to ROC (iii) office maintenance / Records
(ii) Payment as per Act / Law (iv) Allotment of shares.
(Not SAT)

In short any transactions other than these functions mentioned above.

Eg: Explain the concept of "Dormant Company" as envisaged in the Companies Act, 2013.

Ans: According to Section 455 of the Companies Act, 2013, A dormant company is:

Where a company is formed and registered under Act for future project to hold on asset or intellectual property and has no significant accounting transaction such a company is an inactive company. 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 hasn't been carrying on any business or operation or hasn't made any significant accounting transaction during the last two financial years or hasn't filled financial statement and annual returns during the last two financial years.

Significant accounting transaction means any transaction other than -

- (a) Payment of fees by a company to the Registrar.
- (b) Payment made by it to fulfill the requirements of this Act or any other law.
- (c) allotment of shares to fulfill the requirements of this Act.
- (d) Payment for maintenance of its office and records.

NIDHI COMPANIES :- (Section 406A)

- "Nidhi" or "Mutual Benefits Society" -
- A company which the Central Govt. may
- by notification in the Official Gazette of
- declare to be a Nidhi or Mutual Benefit Society

Nidhi Company are created mainly for cultivating the habit of thrift and Savings amongst its members.

PUBLIC FINANCIAL INSTITUTIONS (PFI) - Sec 2(72)

The following institutions are to be regarded as PFI:

- The Life Insurance Corporation of India (LIC)
- The Infrastructure Development and Finance Company Limited (IDFC Ltd)
- Company in Unit Trust of India (UTI)
- Institutions under Section 4A(2) of the Company Act, 1956
- Such other institution as may be notified by the OG in consultation with the RBI.

PFI → LIST = LIC / IDFC Ltd. / NABARD / UTI / 1956 Co's Act
 → Notify = i) Central / State Act (ii) Govt. Company.

Conditions for an institutions to be notified as PFI

Established / Constituted by or under any Central or State Act.

At least 51% of the paid-up share capital is held / controlled by the CG or by any State Government / or partly by the CG and partly by one or more State Govt.

Govt. Company

Formation & Incorporation Of Company:

Imp. Sections to remember : Sec. 3 - Formation / Promoter - 2(69)

Sec. 4 - Memorandum of Association (MOA)

Sec. 5 - Article of Association (AOA)

} Most Imp. document for incorporation

Sec. 7 - Incorporation (COI) - Certificate of Incorporation

Sec. 9 - Effect of Registration

Sec. 10 - Effect of MOA / AOA

2(68)	2(69)	2(71)
Private	Promoter	Public

★ Section 2(69) - Who is Promoter?

- Who has been named as such in a prospectus or in the annual return referred to in Sec. 92; or - (1 point)
- Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise or - (2 point)
- In accordance with whose advice directions or instructions the BODs of the company is accustomed to act. - 6th point.
- Persons who forms the company are known as promoters. - (3rd point)
- It's they who conceive the idea of forming the company - (4th point)
- They take all necessary steps for its registration. - (5 points)

Write in exams according to this serial numbers : →

"Idea" दे रही है	Form the Company	सारे "Affairs" Control कर ली	"Prospectus" (पत्रिका) "Annual Return" हर साल दाखल करा जता है।	मेरी रही Advice / directions instructions कर ली.
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इन कुछ Points को याद रखो :-

Persons acting only in a professional capacity e.g., the solicitor, ~~a lawyer~~ Banker, accountant etc. are not regarded as "Promoters".

Duty of Promoters :-

- Not to make secret Profit (Profit earn कर सकता है But secretly nhi karna use disclose रखना होगा)
- Full & fair disclosure of his interest in every transactions or contract with Company in which he is interested. (Mtlb sab kuch transparent hona chahiye no secrets)

Section 3 - Formation of A Company :-

To form a company we require :-

- (1) Minimum no. of members :
 - (a) In case of Pvt. Company = Min. 2 members or more
 - (b) In case of Public Company = Min. 7 members or more
 - (c) In case of OPC = 1 person only.
- (2) for any lawful purpose,
- (3) By subscribing their names to MOA
- (4) Complying all the requirements of the Act. in respect of registration

Flow of Incorporating a Company as per Sec. 7 :-

- Ministry of Corporate Affairs (MCA) $\Rightarrow$ Registrar of Co. (depends on Reg. Office address)
- Online Platform / form = [SPICE+] - [INC 32]

SPICE+ $\rightarrow$ Part A (Name Proposal) = apply = Reserve
Application $\rightarrow$ Part B - other important information

- Obtain $\rightarrow$ Digital signature certificate (DSC)
 $\rightarrow$ Director identification number (DIN)

$\Rightarrow$ Major Documents - MOA (INC-33) + AOA (INC-34) = electronically
 $\Rightarrow$ Proposed Registered office = RO = Address.

$\Rightarrow$ Declaration - (a) Professional involved in INC [CA, CS, lawyer etc]
(b) Subscriber / Directors.

$\Rightarrow$ Particulars (s/d) full name / Address / Nationality / DIN etc.

→ Submit all the documents to Registrar (ROC).

→ ROC after scrutiny - if ROC is satisfied

Issue: COI = Certificate of INC. INC-II Mentioned in COI

→ ROC will allot :- CIN - Corporate Identification Number

Points To remember:

- Preserve all the documents (INC) till dissolution @ RO

- If any false / incorrect information = Material fact Supress
Omitt > Tribunal Action

MCA → SPICE + INC 32/33/34

→ Doc. file - List 1 / 2 Doctrine / RO / Particulars

→ Interest disclose + consent

Formation Of A Company ► INCORPORATION

0 INCORPORATION OF A COMPANY - SECTION - 7

To incorporate a company under the Companies Act, 2013. Ministry of Corporate Affairs (MCA) has made a stepwise process through (SPICE+) which is called simplified Proforma for incorporating company electronically and it's done through respective → Register of Company (ROC).

⇒ STEPS ARE AS FOLLOW :-

(1) For incorporating a company file an application under INC-32 (SPICE+) It has two parts (Part A) for name proposal and reservation & (Part B) for other important information.

(2) Submit all the relevant documents to ROC as follows :-

(a) Two major docs - MOA & AOA under INC 33 & 34 respectively (electronic) signed by all the subscribers.

(b) Declarations to be given to ROC :-

(i) WHO? By persons who're engaged in the process of formation / incorporation of the company like CA / CS / Cost Acc. / Advocate etc. and persons named in the articles as DIR / MGR / secretary

WHAT? That all requirements under the Act / Rules have been complied

(ii) WHO? :- By all the subscribers & Directors (1st) of the company

WHAT? :- (1) Not convicted of any offence related to formation / Mgt. of

(2) Not been found guilty related to TCA in the last 5 years

(3) All the docs. & info given to ROC = Correct / complete & best to our knowledge / belief.

(c) Address of the Company which is proposed as Registration Office for Correspondance.

- (d) Particulars of all the subscribers mentioning their full name, address, nationality etc along with POI (Proof of Identity) & if DIR = DIN
- (e) Particulars of any interest held by director in any other entity along with their written consent to act as a director.

(3) Submit all the documents stated above to ROC and after ROC is satisfied, it will issue certificate of Incorporation (COI) under INC-11 ROC will also allot (CIN) i.e Corporate Identity Number on COI

(4) Maintenance of all the docs & info shared with ROC for this process shall be done by preserving them till the dissolution of the company.

(5) Furnishing any false / incorrect information or suppressing of any material fact :- (1) At the time of INC (2) Post incorporation.

If any person does so then all the directors / Promoters & People who gave declarations would be liable under fraud penalty of 447.

(6) Order Of Tribunal

If a company has received its incorporation by promoting false / incorrect information then Tribunal may pass such orders :-

- Changes in MOA / AOA
- Liability of members to be unlimited
- Pass on order to wind up the company
- Pass on order of the name removal of the company
- Pass any such other which it deems fit

Steps for Incorporation Of Company:

Obtain DSC & DIN / Apply through SPICE+ (Part A & B) - Proposed Name reservation MOA & AOA / ROC scrutiny / COI by ROC.

- All OF Companies Types :- Apply to ROC : SPICE+ → Simplified proforma for incorporating companies electronically in INC 32 (SPICE)
- Documents - (c) MOA & AOA (INC 33 & 34) with declarations to ROC
- Registrar will registrar all the documents & issues COI (INC-11)
- Allotment of Corporate Identity Number (CIN)
- If false or incorrect info is provided or any material info is suppressed - Tribunal has Powers (NCLT)

Documents for Incorporation

e-MOA & e-AOA INC 33-34	2 types of Declarations	Proposed Ro ADDRESS	KNOW YOUR SUBSCRIBERS AND DIRECTORS PARTIC
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- 1.) MOA/AOA - Shall be duly signed by subscribers
- 2.) Declaration - All the requirement under Act/Rules have been followed who are involved in the process of Incorporation.
 - (a) Signed by - CA / Cost Accountant / Advocate / CS in practice and Directors / Managers / Secretary as per articles.
 - (b) By Every Subscriber & 1st director that
 - (I) Not been convicted for promotion and related activities
 - (II) Has not been found guilty of fraud in 5 years.
 - (III) All document with ROC are correct and complete.
- 3.) Address - Till the RO is established
- 4.) Particulars of every subscriber and 1st director info:

POA full name, family name, Resi. Address, DIN, nationality etc
- 5.) Interest held by directors in others entities & consent to act as

Where Material Information Provided as False / Incorrect or Suppressed
Power of Tribunal??

Persons liable u/s 447

- Promoters
- Every person named as 1st directors
- Every person who made a declaration that act/rules were complied with.

Power of Tribunal

- Pass an order of changes in MOA/AOA
- Direct for member's unlimited liability.
- Removal of company's name
- Winding up

● 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.

● 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 (CIN)
- which shall be a distinct identity for the company and
- which shall also be included in the certificate.

- 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 filled
 - till its dissolution under this Act.

- Furnishing of false or incorrect information or suppression of material fact at the time of incorporation (i.e. at the time of INC)

- 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.

- 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 of
- by suppressing any material fact or information in any documents
- declaration filed on made for incorporating such company or
- by any fraudulent action

- Order of the Tribunal (Power) -

The tribunal may on an application made to it, on being satisfied that the situation so warrants - Pass orders for -

- Regulation of the management of the company.
- Changes, if any, in its MOA and AOA
 - In public interest
 - In the interest of the company and its member and creditors
- Make members liability unlimited or
- Removal of the name of the company from the ROC or
- Winding up of the company or
- 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.

Section 9: Effect of Registration :-

from the date of incorporation (mentioned in the certificate of incorporation)

Subscribers ----->> Members of the Co Company ----->> Body Corporate

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 name contained in the Memorandum.

Such a registered company will be capable of :

- Having a perpetual succession.
- Power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible.
- To contract and sue and be sued, by the said name.

Important Case Laws :

(1) Hari Nagar Sugar Mills Ltd. vs. SS Thunihumwala

State Trading Corporation of India vs. Commercial Tax Officer

- The company becomes a legal person, separate from the incorporators.
- A binding contract between the company and its members as evidenced by the Memorandum and Article of Association.
- It has perpetual existence until it is dissolved by liquidation or struck out of the register.
- A shareholder who buys shares, doesn't buy any interest in the property of the company.

(2) Spencer & Co. Ltd. Madras vs. CWT Madras

- A company may purchase shares of another company and thus become controlling company.
- However, merely because a company purchases all shares of another company it'll not serve as a -
- means of putting an end to the corporate character of another company.
- Each company is a separate juristic entity.

When Entire Share Capital Held by CG / President ?

- If entire share capital contributed by the CG and all its shares are held by President of India and other officers of CG (Heavy Electrical Union vs. State of Bihar)

Doesn't make any difference in the position of registered company and it doesn't make a company an agent either of President of India or CG.

Judgement from Various Case Laws :-

- 1) If one company purchases all the shares of another company it doesn't mean that the other company will lose its corporate character.
(All company has its separate entity)
- (2) If president of India or Govt. holds entire SC of the company it doesn't mean that the company is an agent of the Govt.

Section 10 - BINDING FORCE OF MOA & AOA :-

MOA/AOA shall bind the company and the members as if -

They respectively had been signed by the company

Company Is Bound To Members -

Company cannot deprive any members of its rights and it does then members may obtain an injunction from court.

Members Are Bound To Company -

Members must pay the debt due from them to the company and they must observe all the provisions of all memorandum and of the articles.

ACT - MOA - AOA - Directors / Management

▲ MEMORANDUM OF ASSOCIATION - (SECTION 4)

- Character of the Company
- Constitution of the Company
- Defines - Scopes / Powers / Object of the Company
- Fundamental Documents

WHY? ⇒ Beyond which Co.'s Actions can't go.

Investor = His money is used / utilised for ? Risk ?

Outsider = Shareholder / Creditor - before engaging

PUBLIC DOCUMENT = (Section 399)

Every person before entering into contract presumed to have knowledge of the conditions contained there in.

Thus, MOA is a foundation on which the whole edifice of the company is built.

• What Company Can't Do Based ON MOA?

- Cannot depart from the provisions contained in MOA however imperative may be the necessity for departure. (Unavoidable action)
- Cannot enter a contract or engage in any trade or business which is beyond the power conferred on it by the memorandum.
- If it does so, it would be ultra vires the company and void.
(अतः अ court मे void announced हो पावे) an action done that falls outside the Co. objectives.

Some rules related to MOA :-

- Must be printed and divided into paragraphs numbered consecutively.
- Signed by at least
 - 7 persons (Public) - 2 persons (Pvt Co) - 1 person (OPC)
- In the presence of at least one witness, who will attest the signatures.
- Particular about (signatories, witness) - address / description / occupation etc.

Can a Minor Sign - MOA?

- A minor can't be a signatory to the memorandum as he is not competent to the contract.
- The guardian of Minor who subscribes to MOA on his behalf will be deemed to have subscribed in his personal capacity.

Content of the memorandum

Clause	(S.S.O.N.N.C.L) Description
Situation / Registration Office	Name of the state where RO
Subscription / Association	No. of shares each subscriber has agreed ; at 1 share
Object	Object for which Co. is incorporated
Name	Pvt. / limited ; NA to sec 8
Nomination	In case of OPC - even of death / incapacity
Capital	Amt of SC and its distribution
Liability	Unlimited / limited by G - To assets & cost in case of WP (Member or in 1 year of cessation).

S.No	Clause	Description
4 (1) (a)	NAME CLAUSE	"limited" = Public limited company "Private limited" = Private limited - Not applicable to Section 8 of the Act 'Electoral Trust' may be allowed for Registration of Companies to be formed under Section 8 of the Act - Section 8 of the Act shall include the words foundation, forum, Association, Federation, Chambers, Confederation, council, Electoral trust and like etc. - A government company's = Must end with the word "limited". - OPC's name - "One Person Company"
4 (1) (b)	Situation Clause OR Registere of office	- To establish domicile of company - The state in which the registered office of the Co. is to be situated. - shall have an RO in 30 days of INC.
4 (1) (c)	Object Clause	- To objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof. - The objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof. - Main object = - Ancillary or Incidental Objects.
4 (1) (d)	Liability Clause	- The liability of members of the company, whether limited or unlimited and also state - - limited by shares - Liability of its members is limited to the amount unpaid if any, on the shares held by them. - 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.

#		• 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 debt and liabilities of the company or contracted before he ceases to be a member, as the case may be; and • To the cost, charges and expenses of winding-up and for adjustment of the rights of the contributions themselves.
	NOTE:	Those shareholders who're members of the company at the time of its winding up are included in list 'A'. They're primarily liable for making payment to the company at the time of its winding-up. While list 'B' consists of those persons who were the members of the company during the 12 months preceding the date of winding up. B list contributors are liable to contribute if amount realized from the contribution of list 'A' isn't sufficient to discharge the liabilities of the company.
4 (1) (e) (i)	Capital Clause	• Amount of authorised or nominal capital divided into share of fixed amounts and • On face value • The no. 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.
4 (1) (e) (ii)	Subscription or Association Clause	• The detail 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 will write against his name the no. of shares taken by him.
4 (1) (f)	Nomination Clause (OPC)	• In the case OPC, the name of the person who in the event of death of the subscriber, shall become the member of the company.

Summary Short for MOA Clauses :- SSONNCL: Sec 4(1)

N - Name Clause: In this clause has to mention the name of the Co. and write :- PVT Ltd. = Pvt Co. | OPC = One person Co. | limited = Govt. Company
Limited = Public Co. | Not applicable to sec 8

S - Situation Clause: It is also called RO clause. Write the state name as well.

O - Object Clause: Mention the purpose [Main + Ancillary (additional)] as well.

L - Liability Clause: Mention the liability of members $\leftarrow$ ^{UL} limited by shares
limited by guarantee

C - Capital Clause: Mention nominal/authorised SC divided into no. of shares with face value. It doesn't apply to Co. with no SC.

S - Subscription Clause: Mention the name of subscriber with no. of shares held by even if one share it held, mention it.

N - Nomination Clause: App. only to OPC. Mention the name of Nominee.

ARTICLE OF ASSOCIATION - (SEC-5)

- Internal Management of the Company.
- Contains Rules & Regulations of the Company. (Ex - Meetings, shares etc.)
- Company may include Additional Matters also (which can be in use anytime)
- May adopt all or any of the provisions in AOA (as required)
- Entrenchment (एन्ट्रन्चमेंट) - extra layer
- [Tese ROC about this] - tough to override
- Additional safeguard
- Formation
- Ammendant $\left\{ \begin{array}{l} \text{Pvt. - ALL} \\ \text{Public - SR} \end{array} \right\}$

SHORT SUMMARY :-

Article of Association = Sec. 5 -

- MOA and AOA are business documents for the company & AOA is a subsidiary doc to MOA
- AOA contains Rules/Regulation for the internal mgt. or domestic mgt. of the company. It is called Bye-law of the Company
- It defines the power, duties and rights of Directors, members, & the Co. itself. It also contain matter related to business of the Co. & obey to day working as well
- It contains additional matters as well which a Co. can adopt all or any of them as a when required (applicable)
- Forms for Article of Association (Table - F1/G1/H1/I1/J)

[Entrenchment :-]

- This means to add additional safeguard / protection to a provision to make it difficult to override.
- The AOA can have a provision for entrenchment to protect something and to alter a specified provision.
- This makes it more restrictive in nature.
- Entrenchment can be due at the time of formation in SPICE + or can be altered (amended) later give after coming into existence.
- Manager - In case of Pvt Co. = Agreed by All the members } Inform (Notice)
In case of Public Co. = By special Resolution (75%) } of entrenchment to ROC

[Section-10 - Binding force of MOA & AOA :-]

MOA / AOA shall bind the company and the members as if -

They respectively had been signed by the Company.

Company is Bound to Members -

Company cannot deprive any member of its rights and if does then members may obtain an injunction from court.

Members are bound to Company -

Members must pay the debt due from them to the company and they must observe all the provisions of the memorandum and of the articles.

[DOCTRINE OF CONSTRUCTIVE NOTICE]

Protects the Company from O/S Ignorance

Implied of Knowledge

If available Publicly

MOA -
AOA -
Resolutions -

Public Documents with the Registrar

Duty Of An Outsider $\Rightarrow$ Inspect / Read / Understand.

Outsiders क्या कर सकता है? $\Rightarrow$ No Rights Against the Co.

Can be Invoked by the Company.

Operates in the favour of the Company.

Short Summary: Doctrine Of Constructive Notice

- This is a theory which says that it's presumed (constructive) in nature that an outsider has notice (knowledge) of all the nature documents which are publicly available - Connect to Sec. 399
- This doctrine works in the favour of the Co. and Not outsider.
- This doctrine says that it's the duty of an O/s to Read, inspect and understand all publicly available document before entering into a contract with Co.
- If a person enters into a contract which is Ultra Vires or beyond the Director's power than also he doesn't have any right against the Co [Case law :- Kotha vs. Rammurthy].

DOCTRINE OF ULTRA VIRES

Any Act(s) done Beyond The Powers or more than the legal powers of the Company.

It is a theory which says that the Company should not "Go Beyond" (ultra) its legal Powers (Vires)

- It means Co. shouldn't go beyond the Act & its MOA (Object clause)
- If Co. does something beyond its powers such act will be Ultra Vires.

Consequence Of UV Act :-

- Any act or contract entered into on any kind of trade/Business which is Ultra Vires to the company will result into VOID AB INITIO
- It will be inoperative of & Not binding on any of the parties. This means neither Co. nor the other Party can sue each other on such UV act [No legal Effect]
- As per Sec. 399, MOA is a public document & hence every person is presumed to have knowledge of powers of the company and its Object clause.

★ Important POINTS OF UV ACT :-

- If directors misapply the funds of the company for any act / Business which is ultra Vires then they will held personally liable
- The Company doesn't become the owner of the funds received for ultra vires acts. It means the lender can stop the company from spending the money through injunction (unspent money)
- If the Co. has utilized the money for any lawful debt of the Co. then in such situation lender will step into the shoes of a debtor paid off & would be entitled to recover the money upto that extent.

Benefit OF UV :-

Due to this directors & Co.'s activities can be controlled & keep them in check to do only those activities which is agreed by all purpose of UV is defeated because Co. can alter its MOA / Object clause.

• Consequences or Impact Of Ultra Vires Acts :-

Acts or contracts - Beyond the powers of not only of the directors but Company also.

- Void-ab-initio and Inoperative in law and
- Not binding on the Company.
- Can't Misapply the funds for purposes other than those sanctioned by the MOA. If done then directors are personally liable
- Can't carry on a trade different from the one it's authorised to.
- A company can neither be sued on an ultra vires transaction, nor can it sue on it.

Example :-



Explanation :- This is because the company doesn't 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 off & consequently the would be entitled to recover his loan to that extent from the company.

WHEN CAN AN ACT BE RATIFIED? (Approval through voting)

Beyond AOA or Director Powers — But Intra vires the Company or ACT
Can be Ratified

Beyond MOA or ACT — Can't be Ratified

RATIFICATION - To Ratify / Approval after action (करना के बाद #)
who? = Members How? = Voting.

Any UV Act means which is beyond TCA or object clause (MOA)
Cannot be ratified at all. Even if 100% (Unanimous) approval happens

⇒ What about AOA / Director?

If director goes beyond the power or AOA then it can be ratified
by all the members but it should be Intra vires to MOA / ACT

⇒ AOA can be altered through SR that is why it can be ratified
later

An act which is ultra vires the company being void cannot be ratified
by the shareholders of the company.

Sometimes - Yes, When?

→ If the act is UV the power of the directors - Yes, SH can ratify it

→ If it is ultra vires the articles of the Co. - Then Co. can alter articles

→ If the act is within the power of the company but is done irregularly
⇒ Shareholders can validate it.

→ WHICH ACTS CAN BE RATIFIED (Approved by SH)

UV - Co.
&
OBJECT

- ▷ Void-ab-Initio / Null
- ▷ Not operative in Law / Not binding < Co. other
- ▷ Can't be ratified even (with 100% voting)

UV -
Director

- ▷ UV-Directors but Intra vires the AOA
- ▷ Can be ratified

Just Stay Under MOA / OBJECT CLAUSE. If Beyond
Director Power / AOA - Can Be Ratified

UV-
AOA

- ▷ Company can alter the articles (with SR)
- ▷ It is at the option of shareholders
- ▷ UV-AOA But Intra Vires the MOA

Acts and Their Impact -

1	Legal ACT but Not authorised by the object clause of the memorandum or by the statute	Ultra vires the Co. and hence Null and void
2	Ultra vires the company means object clause or MOA.	Cannot be ratified even by the unanimous consent of all the shareholders.
3	Ultra vires the directors but intra-vires the Company.	Can be ratified by the members of the company. through a resolution passed at a general meeting.
4	Ultra Vires the Articles	Can be ratified by altering the articles by a special resolution at a general meeting.

Directors of the Company entered into a contract with Riche, for financing the construction of a railway line in Belgium, and the Co. further ratified this act of the directors by passing a special resolution. The Company however, repudiated the contract as being ultra-vires.

Ashbury Railway Carriage and Iron Company Ltd. vs Riche (1875)

Ashbury Railway Carriage and Iron Company Limited.

Riche bought an action for damages for breach of contract

RICHES

Judgement

Contract was Null and Void

It said that the terms general contractor 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 wasn't so interpreted, it would authorize the making of contracts of any kind and every description

OBJECT OF THE COMPANY

- 1) To make, sell or lend on hire, railway carriages and wagons.
- 2) To carry on the business of mechanical and general contractors.
- 3) To purchase, lease, sell and work mines.
- 4) To purchase and sell as merchants or agents, coal, timber, metals, etc.

His contention was that the contract was well within the meaning of the word general contractors and hence within the powers.

Questions appeared in the exams:-

Briefly explain the doctrine of "ultra vires" under the Companies Act, 2013.
What are the consequences of ultra vires acts of the company?

Ans Doctrine of Ultra Vires means going beyond the legal powers.
- Fundamental rule of Company law says that the Object Clause of Company as stated in MOA.

1- Any act done beyond the power of [Directors + MOA (Object Clause)]

★ Inoperative / null & void / void-ab-initio

★ Not binding on the company.

★ Cannot enforce it against the company.

★ Company Can't misapply the funds - if done DIR. are personally liable

★ Can't trade - Neither be sued / nor can sue on it.

★ MOA = Section 399 (Public document) - Deemed presumed.

RATIFICATION

1) Any act done ULTRA VIRES a company / MOA / Object Clause / Co's Act
- Can't be Ratified.

2) Something it can be done:-

- UV the powers of directors $\Rightarrow$ Yes (SH Can)

- UV the AOA $\Rightarrow$ Yes (After the AOA)

- Intra Vires the Company $\Rightarrow$ Yes (SH can validate it)

- but (Irregular)

- UV the Company

$\Rightarrow$ Can't be done even with 100% Voting.

3) UV has become useless / why? - Object Clause $\leftarrow$ Altered Special Resolution

DOCTRINE OF INDOOR MANAGEMENT

Exception to the Doctrine of Constructive Notice and Company's Misuse of Power

PROTECTS
O/S from the
Co's Irregularity

Internal
Affairs

Co's Matter not of the III Party.

OR ?

SR ?

Sign ?

ये दोस्त के अंदर
श्री श्री फर्म आदमी
(Company's) Matter...

INNOCENT OUTSIDERS PRESUMES

$\Rightarrow$

Internal formalities (all good)
Taken Care of

Can Be Invoked By the Person dealing with the Co.

Operates Against the Company

DOCTRINE OF INDOOR MANAGEMENT

- ① This is a theory which is an exception to the doctrines of CN
- ② This is also called Turquand Rule
- ③ This creates a presumption in the favour of outsider that OIS are not deemed to have knowledge of Co's internal affairs
- ④ This doctrine protects OIS who are innocent & enters into BIZ with the Co. in good faith from Co's irregularity.
- ⑤ An outsider is always entitled to presume that all the internal formalities of the Co. are regular and taken care of

Ref. Case Law :- Royal British Bank vs. Turquand

Turquand Rule

In the favor of Outsiders
Creates a presumption in the favor of the outsider

The Doctrines of Indoor Management is the exception to the doctrine of Constructive notice

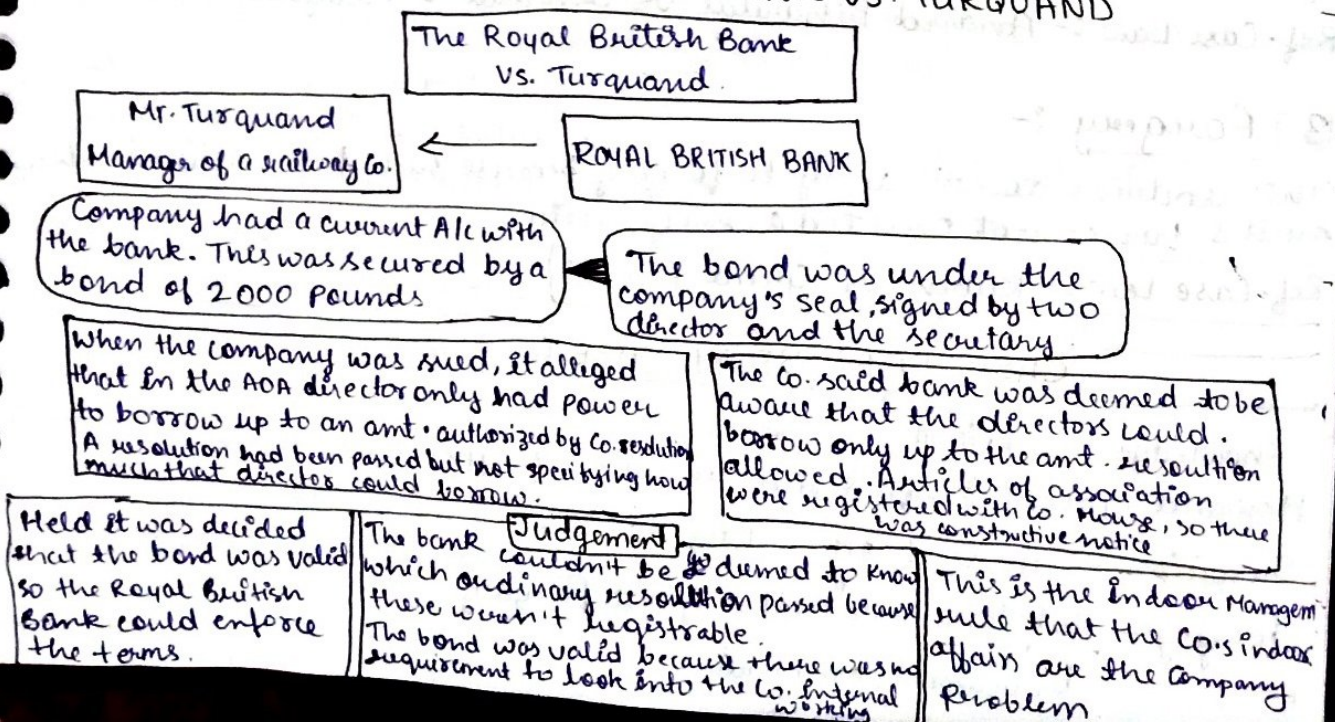
An outsider are not deemed to have notice of the internal affairs of the Company

This protects outsiders (III Parties) who deal with the company in good faith

An outsider is entitled to assume and presume that all the detailed internal formalities for doing any act have been observed & taken care of

Thus, doctrine protects innocent outsiders from any irregularity in Co.

FACTS OF THE ROYAL BRITISH BANK VS. TURQUAND



KEY DIFFERENCES

ASPECT	CONSTRUCTIVE NOTICE	INDOOR MANAGEMENT
Who it protects	Protects the Company by presuming outsiders have knowledge.	Protects outsiders dealing with the Company.
Obligation on third parties	Outsiders must verify the Co's public documents.	Outsiders can assume internal company procedure are correct.
Assumption	Assumes third parties know internal rules from public document	Assumes internal management is properly conducted.
Focus	Focuses on external corporate documents	Focuses on internal corporate processes.

Exceptions OF DOCTRINE OF IM:-

DIM was made to protect O/S while dealing with Co. through Directors / Persons. But in few cases DM can't be used by O/S.

(1) Actual / Constructive Notice / Knowledge of Irregularity:-

This rule doesn't protect outsiders who've notice / knowledge of Co's irregularity.

Ref. Case Law:- MORRIS VS KHANSEEN AND HOWARD VS PATENT

(2) Suspicion Of Irregularity:-

This doctrine don't support outsiders who behave negligently means if an O/S has a suspicion then he should enquire about it.

If he doesn't then he can't use DIM.

Ref. Case Law:- Anand Beharilal Vs Dinshaw & Houghton Vs NLV

(3) Forgery:-

This doctrine doesn't apply to forgery because such transaction is always null & hence not counted as irregularity.

Ref. Case Law:- Ruben Vs. Great Fingall

CASE LAW STORY SHEET

Knowledge - Friend

Howard - Patent है खुद के नाम पर नाम - ? - MK

Suspicion - Anand aur - Din से

Forgery - Rub किया aur देता - Great Forgery
 ↳ Document / Marksheet

Case 1 : Actual or constructive knowledge of Irregularity

The rule doesn't protect any person when the person dealing with the company has notice, whether actual or constructive of the irregularity
(आपको कमी या गलती का पहले से पता था तो आप इस DOCTRINE को अपने Protection के लिए use नहीं कर सकते)

Case 2 : Suspicion of Irregularity

The doctrine in no way, rewards those who behave negligently
(लेवकुओं के लिए कोई जगह नहीं है)

- 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's the duty of the outsiders to make the necessary enquiry
- the circumstances surrounding the contract are suspicious and therefore invite inquiry
- Suspicion should arise from the fact that an officer who is acting in the matter which is apparently outside the scope of his authority

Anand Behari Lal vs. Dinshaw & Co.

- A person accepted a transfer of a company's property from its accountant
- the transfer was held void.
- The plaintiff couldn't have supposed, in absence of a power of attorney that the accountant had authority to transfer of the company's property

Haughton & Co. v. Nothard, Lowe & Wills Ltd.

- where a person holding directorship in two companies
- agreed to apply the money of one company in payment of the debt to other
- the court said that it was something so unusual.
- That the plaintiff were put upon inquiry.
- To ascertain whether the persons making the contract
- had any authority in fact to make it

Case 3 : Forgery

(गौरी और ऊपर से सीमा गौरी - धोके के लिए use नहीं कर सकते)

- The doctrine of indoor management applies only to irregularities
- which might otherwise affect a transaction.
- but it can't apply to forgery
- which must be regarded as nullity
- Forgery may in circumstances exclude the 'Turquand Rule'

4 ● Ruben v Great Fingall Consolidated Consolidated

- In this case the plaintiff was the transferee of a share certificate
- issued under the seal of the defendant's company.
- The Co.'s secretary, who had affixed the seal of the company and forged the signature of the two directors, issued the certificate.
- The plaintiff contended that whether the signature were genuine or forged was a part of the internal management and
- therefore, the company should be estopped from denying genuineness of the documents.
- But it was held, that the rule has never been extended to cover such a complete forgery.

Exceptions	Cases	About
Knowledge	Howard vs Patent Morris vs Kassen	Shares or Debentures allotment - without approval
Suspicion	Anand vs Dinshaw Houghan vs. Nothard	Accountant sold the property Director in two companies
Forgery	Ruben vs. Great Fingall	SC - forgery sign CS.