THE COMPANIES ACT, 2013

Companies Act, 2013 contains 470 sections, 7 schedules & 29 chapters.

* Section 1 – Short Title, Extent, Commencement & Application

Short Title ↓ The Companies Act, 2013

Extent ↓ Whole of India

Commencement ↓ 30^{th} Aug 2013

Applicability of The Companies Act, 2013

- → Companies incorporated under CA, 2013 or previous Co. law ↓ (CA, 1956; 1866, 1882, 1913)
- → Insurance Co. (Also Insurance Act 1938, IRDA Act, 1999)
- → Banking Co. (Also Banking Regulation Act, 1949)
- → Electricity Co. (Electricity Act, 2003)
- → Other Co. governed by Special Act of Parliament
- → Body Corporate which CG specifies

* Company – Meaning & its features

Section 2(20) – "Company means a company incorporated under this Act or under any previous company law."

A company is an artificial person created by law, having separate entity, with perpetual succession & common seal.

Features of a Company

- Separate legal Entity
- Perpetual Succession
- Limited liability
- Artificial legal Person
- Common seal

1. Separate legal Entity

a) Co. → Legal Person having separate legal entity from its members

b) Co. → separate person having own rights, powers, obligations.

c) Co. can own property, have bank A/c, raise loans, incur liabilities & enter into contracts.

d) For debts of co., only creditors can sue it & not members.

e) Co. can own, dispose property in own name.
Co. is owner of assets & capital, contributed by shareholders.
Shareholders → Not the private or joint owners of co's property

<u>Case law</u>: Macaura vs. Northern Assurance Co. Ltd.
↓
Member doesn't have insurable interest in property of Co.

Macaura held all shares (except 1) of timber co.
Macaura insured co.'s timber in own name.
Timber was lost in fire.
He claimed compensation.
Decision → Insurance Co. not liable to him as no shareholder has right to property of co. as he has no interest.

2. Perpetual Succession

Members die / change BUT Co. goes on till its wound up by Act.
Co. goes on forever, it never dies'.
Co. → artificial person, law alone can end it.

3. Limited liability

on basis of liability

- Co. Ltd. by Shares
  - Having sh capital → unpaid amount of shares held by Member
- Co. Ltd by Guarantee
  - Having sh capital → unpaid amount of shares held by Member + Guaranteed Amt. by Member
  - Not Having sh Capital → Guaranteed Amt. by Member
- Unlimited Co.
  - Having sh Capital → unpaid amt of shares + unlimited liab.
  - Not Having Sh Capital → unlimited liability

Maximum Liability of Members

Co. Ltd. by Shares: Liability arises when co is in going concern

Co. Ltd by Guarantee: Liability arises only at time of winding up

4. Artificial legal Person

Co. → artificial person, not created by natural birth, created by law.

Co. can sue & be sued in its own name.
It can do everything which natural person does Except be sent to jail, take an oath, marry, practice a learned profession.

Co. acts through directors.
Directors → not the "agents" of members of co.
Directors authenticate co's acts.

5. Common seal

Common seal - official signature of co. → affixed by officers & employees of co.

Companies Amendment Act 2015, made common seal → Optional

Authentication of Documents belonging to co.

- Co. has common seal
  - ↓ apply & authenticate
- Co. doesn't have common seal
  - Co. has CS
    - ↓ 1 Director + CS can authorize
  - Co. doesn't have CS
    - ↓ 2 Directors can authorize.

* Corporate Veil Theory

Corporate veil - Co. is distinct from members of co.

Members are shielded from liability of co. →
Meaning → members are not liable for co.'s debts/liabilities

Case law: Saloman vs. Saloman & co. Ltd

Facts of case: Saloman was carrying sole Proprietor Business of boot manufacturing.
He incorporated co. with name 'Saloman & Co. Ltd' & that co. took over his sole proprietor business

Members of Co.
- → Saloman
- → Wife
- → 4 sons
- → 1 daughter

} → One man Company

Co. took over business for £ 38782.
- → 20000 shares of £ 1 each
- → 10000 £ debentures → secured
- → 6 shares to other members
- → Balance in cash

unsecured creditors of £ 7000 were also there
Co. liquidated due to General Trade Depression

Contention of unsecured creditors → Saloman is MD of co, hence cannot be secured creditor & co. is of him only & not different from him & mere sham & fraud.

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Decision of court – Co. different from subscribers to MOA, & thus subscribers, members are not liable for acts of co.

However 'Corporate Veil' can be lifted or Pierced.

Meaning of lifting or Piercing corporate Veil →

It means ignoring the separate identity of co. & disregarding corporate personality & looking behind real person who are in control of co. & making them liable for wrongs done in name of co.

Court has the power to lift corporate veil on question of control than on question of ownership

Lifting / Piercing the corporate veil

1. To determine the character of co. → whether friend or enemy

Case law: Daimler Co. Ltd vs. Continental Tyre & Rubber Co.

German citizens ⟶ Tyre & Rubber Mfg → German Co.

↓ also incorporated co. in England

Daimler Co. Ltd (Eng) $\xrightarrow{\text{transacted}}$ Continental Tyre & Rubber co. (England co.)

few deals with

But refused to pay for them as WW 1 happened.

- All directors are German residents
- German co. holds entire sh capital

Held: Corporate personality ignored & persons behind Daimler Co. was German citizens & they controlled the co, hence enemies & suit Not Maintenable.

2. To Protect Revenue / Tax

Case law – Dinshaw Maneckjee Petit

Assesee earned Huge income by → dividends
→ interest.

↓ opened some companies.
& purchased shares

Co. A Co. B Co. C.

The income transferred back to assessee by way of Pretended LOAN.

Court held → Co's were sham & corporate veil was lifted to decide real owner of income.

3. To avoid a legal obligation

Case law → Workmen Employed in Associated Rubber Industries Ltd, Bhavnagar vs. The Associated Rubber Industries Ltd, Bhavnagar

'A' Ltd purchased shares of 'B' Ltd by investing ₹450000. Dividend was shown in P/L A/c. of co. & thus taken into a/c for calculating bonus payable to workmen of co.

Co. transfered shares of B Ltd $\xrightarrow{\text{to}}$ C Ltd, subsidiary of it.

Thus, Dividend income could not be shown in P/L of A Ltd and as a result income got reduced which in turn reduced bonus for workmen.

Court held → Co. was formed for purpose of reducing liability of bonus payable under Bonus Act. Thus, profits of subsidiary were of Holding co.

4. Formation of subsidiaries to act as agents.

Case Law: Merchandise Transport Ltd. vs. British Transport Commission.

Transport co. wanted licences for vehicles but could not do so in own name, it formed subsidiary co. & vehicles transferred to subsi.

Held → Parent & subsi → one commercial & app^n of licence was rejected.

5. Company formed for fraud/ improper conduct / defeat law

Case law: Gilford Motor Co. vs. Horne

Horne $\xrightarrow[\text{with}]{\text{contracted}}$ Gilford Motor co. (Employer of Horne)

that he will not solicit the customers of employer after leaving co.

But after leaving co, he made another co with family members & solicited customers of ex-employer.

Held → to avoid legal obligation, veil can be lifted. Co. formed by Horne was restrained from soliciting customers of employer.

* Classification of companies

On basis of

- Size
  - Private Co.
    - OPC
    - small co
    - other than OPC & small Co.
  - Public Co.
- Liability
  - on basis of shares
  - on basis of guarantee
  - unlimited co.
- Control
  - Holding Co.
  - Subsidiary co.
  - Associate co.
- Listing of Securities on St. Exchange
  - Listed
  - Unlisted
- other Co.
  - Foreign Co.
  - Govt co.
  - Sec 8 Co.
  - PFI
  - Dormant Co.
  - Nidhi co.

1. On basis of liability

- Co. Ltd by Shares → liab arises during lifetime of co. or at winding up
  - unpaid amt of shares held by them
- Co. Ltd by Guarantee → liability arise only after winding up.
  - Having sh Cap
    - unpaid amt of shares + Guaranteed Amt
  - Not having sh capital
    - Guaranteed Amt
- Unlimited Co.
  - Having sh capital
    - unlimited + Unpaid amt of shares
  - Not having sh capital
    - Unlimited

Max liability of Members ltd by MOA

Shareholder is co-owner of co., & not of co's assets

2. On basis of size & members.

a) One Person Company (introduced by CA, 2013)
↓
Single person can incorporate a co.

Sec 2(62) - OPC is a co. which has one person as member

OPC → different from sole proprietorship (as OPC has ltd liability)

OPC formation & compliances are simpler as it has certain exemptions. than other co.

OPC → Private co. with Minimum paid up share capital as may be prescribed & has atleast 1 member

- MOA of OPC to specify name of NOMINEE, who in event of Member's death (or) incapacity to contract $\xrightarrow{\text{becomes}}$ Member of co.

- Nominee must give Prior written consent & Consent $\xrightarrow[\text{to be filed with}]{}$ ROC at time of incorporation

- Nominee may also withdraw his consent.

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- Member can change name of Nominee after giving notice to co. & co. $\xrightarrow{\text{to}}$ ROC.
  intimate to

- Change of Nominee is not alteration of MoA

- Natural Person.
  \+
  Indian citizen.
  \+
  stayed in India for 120 days or more during immediately Preceding FY.

  whether Indian resident or not

  → Can be member of OPC
  → can be nominee of OPC

- 1 person can be member of 1 OPC & nominee of other OPC at same time. (max limit)

  Eg. Archana can be member of 'A' OPC &
  Archana can be nominee of 'B' OPC at same time

But if Archana becomes member of 'B' OPC due to death of member of 'B' OPC, then she has to decide within 180 days, which OPC's member she wants to continue as

- Minor cannot be → Member of OPC
  → Nominee of OPC.
  → Hold shares with beneficial interest

- OPC cannot
  - → be converted/formed as into sec 8 co.
  - → Carry Non Banking Financial Investment activities
- OPC can be converted to Pvt or Public co.
- Contravention of Provision by OPC/officer → fine extend to ₹10000, + further fine of 1000 ₹ every day till default continue

b) Private Company [Sec 2(68)]

means co. having minimum paid up sh capital as may be prescribed, & which:

→ restricts right to transfer its shares
→ limits no. of members to 200 (except OPC)

Note 1: In 200 limit, don't count → Current employees cum members
→ Ex employees cum members

Note 2: Count joint holders of shares as one.

→ prohibits any invitation to public to subscribe for any securities of co.

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c) Small Company - [Sec 2(85)] → Private co.

A. co. is small co. if it satisfies both following conditions :

(1) Its Paid up share Capital does not exceed
→ ₹ 50 Lacs,
→ or such higher amt as may be prescribed. which shall not be more than ₹ 10 Cr
(max. amt prescribed is ₹ 2 cr)

and (&)

(2) Its Turnover (as per P/L A/c for immediately preceding PY) does not exceed
→ ₹ 2 cr,
→ or such higher amt as may be prescribed. which shall not be more than ₹ 100 cr.
(max. amt prescribed is ₹ 20 cr)

Co. shall not be small co. if
i) it's a public co.
ii) it's a holding co. or subsidiary co.
iii) Sec 8 co.
iv) a co. or body corporate governed by any special Act.

d) Public company [Sec 2(71)] means a company which
(i) is not private co.
(ii) has minimum paid up sh capital as may be prescribed.

Subsidiary of Public co. → deemed to be public co. even if it's private co. as per its articles.

- Shares of Public co. are freely transferable.
- Min no. of Members → 7
- Max no. of members → No limit

Sec 3(1)(a) – co. may be formed for any lawful purpose by 7 or more persons, where co. to be formed is a public co.

3. On basis of control

a) Holding & Subsidiary co.

Holding co – A co. is holding co in relation to one or more cos, means a co. of which such co. are subsidiary cos.

Subsidiary co. – Subsidiary co. in relation to other co. (i.e holding co.) means co. in which holding co.

→ Controls composition of BOD (Appoint or remove all or majority of Directors)

→ Exercises or controls more than half of Total voting power at its own or together with one or more of its subsidiary cos.

Note: Holding co. to have max 2 layers of subsidiaries

Eg 1: ABC Pvt. Ltd

↓ controls composition of BOD.

XYZ Pvt. Ltd → has 20 Directors.

(if 11 or more directors of XYZ PVT. Ltd can be appointed / removed by ABC Pvt Ltd, then ABC Pvt Ltd is Holding co & XYZ Pvt Ltd is Subsidiary co.

Eg 2: ABC Pvt. Ltd

↓ controls 51% voting power.

XYZ Pvt. Ltd.

(XYZ Pvt Ltd is subsidiary of ABC Pvt. Ltd)

Eg 3: ABC Pvt. Ltd → 30% voting power → XYZ Pvt Ltd

ABC Pvt. Ltd ↓ 60% voting power ↓ DEF Pvt. Ltd

DEF Pvt. Ltd → 40% voting power → XYZ Pvt Ltd

(subsi of ABC Pvt Ltd.)

Is XYZ Pvt Ltd, subsidiary of ABC Pvt Ltd?

ABC Pvt Ltd. holds 30% VP in XYZ Pvt Ltd.

ABC Pvt Ltd. holds (40% X 60%) VP through DEF Pvt Ltd

So, 30% + 40 X 60% = 54% voting Power.

This is a case of 'together with one or more of its subsidiary'.

Hence XYZ Pvt Ltd is subsidiary of ABC Pvt Ltd

Eg 4:

A Ltd. → C : 40% voting power

A Ltd. → B Ltd. : 45% voting power

B Ltd. → C : 40% voting power

B Ltd. (Not subsi of A Ltd).

NO co. is subsi of any co in this Eg.

Eg 5: ABC Ltd. (Public co.)

ABC Ltd. → DEF Pvt Ltd. : 51% Voting Power

DEF Pvt Ltd. (Private co.)

DEF Pvt Ltd is subsi of ABC Ltd. (as Pvt. co. which is subsi of Public co. is deemed Public co.)

Eg 6:

A Ltd. → C Ltd : 30%

A Ltd. → B Ltd. : 60% voting power (1st Layer)

B Ltd. → C Ltd : 60% voting power (2nd Layer)

C Ltd → D Ltd. : 80% voting power (3rd Layer)

B Ltd. (subsi of A Ltd)

C Ltd is subsi of A Ltd as 30% + 60 × 60% = 66%

Is D subsi of A Ltd? → No, as only 2 layers allowed.

b) Associate company

↓

Means a co. in which other co. has significant influence but which is not subsi co. of co. having such influence AND includes a joint venture co.

*'Significant Influence' means control of atleast 20% of Total voting Power

or

20% of Control of or Participation in business decisions.

Eg:

A Ltd.

| 20% Total voting Power.

↓

B Ltd

B Ltd is associate co. of A Ltd.

Associate co.	Holding/Subsi	Wholly Owned subsidiary
Minimum 20% upto 50%.	More than 50% upto 99.99%.	100%

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4. On basis access to capital / listing of Securities on St. Exchange

a) Listed company [Sec 2 (52)]

Co. which has any of its securities listed on any recognised stock exchange.

Note: → some cos not considered as listed cos even if they have listed or intend to list their securities.

'Security' meaning to be taken from Securities contracts (Regulation) Act, 1956.

b) Unlisted company means co. other than listed co.

5. Other Companies.

a) Government co. [sec 2(45)] means any co. in which not less than 51% (51% or more) paid up share capital is held by
→ CG, or
→ by SG or Govts, or
→ partly by CG, & partly by 1 or more state Govts,

Subsidiary of Govt co. is also a govt. co.

Note: Paid up share capital construed as 'Total voting power' where shares with DVR have been issued.

b) Foreign co. [sec 2(42)]

→ Co. or body corporate incorporated o/s India which
→ has place of business in India,

By itself, physically or electronically | By / through agent, physically or electronically,

and

→ conducts business activity in India

Must fulfill All conditions

c) Formation of companies with charitable objects etc (sec 8 co.)

Section 8 Companies are formed to
→ promote charitable objects of

charity, commerce, sports, art, science, education etc.

Sec 8 co. applies its profits in promoting objects of co, & prohibiting payment of dividend to members.

Examples of Sec 8 Co. :→ FICCI – Federation of Indian chambers of commerce & Industry
ASSOCHAM – The Associated Chambers of Commerce & Industry in India
National Sports club of India, etc.

* Power of CG to issue the license:-

1) Sec 8 co. allows CG to register person or AOP as a Sec8co. without adding 'Ltd' or 'Pvt Ltd' to its name.

2) Registrar to register person or AOP as sec 8 co.

3) After registration, co. to enjoy same privileges & obligations as of Ltd. co.

⇒ Revocation of license

CG can revoke license of Sec 8 co. if

- co. contravenes provisions of this section
- affairs of co. are conducted fraudently **or** violative of objects of co. **or** prejudicial to public interest
- contravention of this section

Before Revocation? CG must → co.
give written notice of intention to revoke licence &
OOBH to

- After Revocation, CG to put 'Ltd' or 'Pvt Ltd' to co's name.

Order of CG after Revocation of licence of section 8 co:-

→ In Public interest order co. to be amalgamated with Sec 8 co. having similar objects
to form single co.
with properties, powers, rights, interest, authorities, privileges, duties & obligations, or co. be wound up.

Penalty / Punishment in contravention –

- Company
  - Min : ₹10 Lac
  - Max : ₹1 cr
- Officer in default (OID)
  - Min : ₹25000
  - Max : ₹25 Lac

If affairs conducted fraudulently, Every OID liable u/s 447.

- Sec 8 Co. can call for AGM by giving 14 days notice instead of 21 days.
- Min no of directors, ID etc does not apply.
- Sec 8 co. not required to constitute NRC, & SRC.
- Firm can be member of sec 8. co.

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d) Dormant co. [sec 455]

Co. formed & registered under this Act →
- for a future project
- to hold an asset
- to hold intellectual property.

↓

and has no significant accounting transaction, or inactive co.

↓

Such co. can apply to ROC for obtaining status of dormant co.

"Inactive co." means a co. which has not →
- been carrying on any business or operation,

  $\boxed{or}$
- made any significant accounting transaction during last 2 FYs,

  $\boxed{or}$
- filed financial statements & Annual Returns during last 2 FYs.

Significant Accounting Transactions are transactions other than ⟹
- payment of fees by co. to Registrar
- payment made by it to fulfil requirements of act
- allotment of shares to fulfil requirements of act
- payments for maintenance of its office & records

e) Nidhi co [Sec 406 (1)] → "Nidhi" co.
or
"Mutual Benefit Society"

means co. which CG by notification in Official Gazette declare to be Nidhi or Mutual Benefit Society.

Nidhi means a co → incorporated as a Nidhi with object of cultivating habit of thrift & savings amongst its members,
receiving deposits & lending deposits to them.
for mutual benefit only.

f) Public financial Institutions (PFI) → [sec 2(72)]

- Life Insurance Corporation of India under Life Insurance Corporation of India Act, 1956
- Infrastructure Development Finance Co. Ltd.
- Co. referred in Unit Trust of India (UTI)
- institution notified by CG in consultation with RBI

Conditions for institution to be notified as PFI

- Institutions established or constituted by or under any act → Central or State
- Atleast 51% of PUSC held / controlled by
  - → CG
  - → SG
  - → Partly by CG / SG

* Mode of Registration / Incorporation

Promoters :→ Sec 2(69)

Promoter means a person

- named as promoter in Prospectus or is identified by co in Annual Return as per Sec 92
- who has control over affairs of co. directly or indirectly whether as a shareholder, director, or otherwise
- on whose advice, directions, or instructions → BOD is accustomed to act

Promoters
- → form the co.
- → conceive idea of forming co.
- → Take steps for registering co.
- → are not those who act in professional capacity (Solicitor, Banker, Accountant etc)

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Section 3 – Companies.

Public Co. → 7 or more Persons

Private co. → 2 or more Persons

One Person Co. → One Person

* Incorporation of Co. → Sec 7 provides procedure

① Filing documents & information with Registrar

a) MoA & AoA signed by all subscribers to MOA.

b) Declaration signed by person engaged in formation of Co.
(Advocate, PCA, PCS or PCWA)
AND
Declaration by person named in articles
(Director, manager or secretary)

That all requirements of CA, 2013 & Rules w.r.t Reg^n is complied with

c) Declaration from subscribers to MOA
AND
Declaration from person named in AoA as first Directors, that

- Not convicted of offence with Promotion, formation of any co.
- not guilty of fraud or misfeasance of co. during last 5 yrs.
- all docs filed with ROC is correct & complete & true

d) Correspondence address till RO is established.

e) Particulars of Every Subscriber to MOA → Names, Surnames, family names, residential address, nationality, Proof of identity

f) Particulars of Every Person named as 1st Director in AoA → Names, Surnames, Director Identification No. (DIN), Residential address, nationality, Proof of Identity

g) Person who's 1st Director in AoA
→ Particulars of his interest in other firms or bodies corporate, &
→ Consent to act as director.

Note: Particulars of professionals engaged in formation of co. are Not required.

② Issue of Certificate of incorporation on Registration

Registrar to register all docs & info in Register
AND
issue Certificate of incorporation.

③ Allotment of Corporate Identity Number (CIN)

Registrar to allot CIN which is distinct identity of co.

CIN ↓ 21 Digit alphanumeric No.

(4) Maintenance of copies of All Docs & Info^n

Co. to maintain & preserve docs & info at its R.O. till dissolution
↓
copies

(5) Furnishing of false or incorrect info^n or suppression of material fact (at time of incorporation)

Person → furnishes → false/incorrect info^n
→ suppresses material info^n

& aware of that is liable u/s 447 for fraud.

(6) Company already incorporated by furnishing any false or incorrect info^n or representation or by suppression of any material fact

If after incorporation, it's proved that

→ Co. incorporated by filing false / incorrect info^n/ representation / suppressing any material fact or info
→ or decl^n filed or fraudulent action.

Then Promoters
+
Persons named as 1st directors of co.
+
Persons making decl^n

} → liable u/s 447

(7.) Order of Tribunal

Tribunal, if it's satisfied

- Pass orders for regulation of mgt of co. including changes in MOA / AOA.
- direct, liability of members be unlimited
- direct removal of name of co. from ROC
- pass order for winding up of co.
- pass orders as deem fit.

Before passing any order

- Co. given ROOBH
- Tribunal to consider transactions entered into by co. including obligations

Form for incorporating co. online
↓
SPICE + INC 32
(Simplified Proforma for Incorporating Co. Electronically)

* Effect of Registration : Section 9 of CA, 2013

→ Co. → body corporate from date mentioned in COI
→ Co. capable of exercising all functions of incorporated co.
→ Perpetual succession
→ Power to acquire, hold & dispose property → both moveable/immoveable, tangible, intangible.
→ Power to contract.
→ Sue & be sued.

→ Case law: Hari Nagar Sugar Mills vs S.S. JhunJhunwala

Co. → Legal person separate from its incorporators, has perpetual Existence until struck off Register

→ Case Law: State Trading Corporation of India vs. Commercial Tax Officer

Legal personality emerges the moment, co. is registered. Co. on regn becomes separate from its members

→ Case Law: Spencer & Co. Ltd Madras vs. CWT Madras

Co. purchases shares of another co. & becomes controlling co.
Just because a co. is controlling another co., it will not end corporate character of another co. & each co. is separate juristic entity.

→ Case Law : Heavy Electrical Union vs. State of Bihar

Entire capital of co. contributed by CG, & shares held by President of India & officers of CG does not make difference in position of Regd co. & it does not make co. → agent either of President or CG.

* Effect of Memorandum & Articles

- → Co. is bound to members
- → Members are bound to co.
- → Members are not bound to each other
- → Monies payable by member to co. under MOA/AOA is debt due from him to co.

* Classification of capital

- Nominal or Authorised or Regd. Capital
- Issued Capital
- Subscribed Capital
- Called up Capital
- Paid up Capital

* Shares

Sec 2(84) – Share means share in the share capital of a Company & includes stock.

"Share" is the basic unit into which Capital of co. is divided

Eg: Co. with nominal capital of ₹1 crore divided into 10 Lakh units of ₹10 each.
Each unit of ₹10 is a "Share" of co.

Shares →
- Moveable property
- Transferable
- Distinct No.

Kinds of Shares

- Equity Share Capital
  - With voting Rights
  - With Differential voting Rights as to Dividend, Voting.
- Preference Share Capital
  - Pref. Sh Capital (General)
  - Deemed or Participative PSC

Equity share capital – All share capital that is not Preference share capital is called Equity share capital.

Preference share capital – That part of issued share capital of co. which carries or would carry a preferential right with respect to –

a) Payment of Dividend – fixed Amt or Fixed rate

b) Repayment of capital – upon winding up.

Deemed or Participative Preference share capital

Dividend

↓

Participation with Eq shares in Profits of co. after payment of Dividend to Eq shares

Eg: After payment of dividend of 25% to Eq Sh., balance surplus will be shared equally by Pref & Eq. shareholders.

Capital

↓

Participation with Capital in surplus remaining after repayment of entire capital

Entitled to surplus assets of co., after repayment of Eq. share capital

* Memorandum of Association (MOA)

↓

Charter of co.; defines constitution & scope of powers of co. with which it's established.

Objects of Registering a MOA → (Public document)

- → Has object for which co. is formed & scope. beyond which operations can't go.
- → Shareholders, creditors etc get to know through MOA → the powers, & activities.
- → Public document, can be inspected through mca.gov.in
- → For shareholders to know purposes for which money is used by co. & risks in investment

Co. cannot go beyond MOA, if it does its ultravires & void.

Forms of MOA

Table A → Co. ltd by shares
Table B → Co. ltd by Guarantee & not having sh capital
Table C → Co. ltd by Guarantee & having sh capital
Table D → Unlimited co. not having sh capital
Table E → Unlimited co. having sh capital

Contents of MOA

1. Name Clause – Name of co. with last word
'Limited' → if Public co.
'Private limited' → if Private co.
'One Person Company' → if One Person Co.

This clause not applicable to Sec 8 co.

2. Registered office clause – State in which RO of co. is situated

3. Object clause – Objects of co. → for which it's incorporated

4. Liability clause – to be stated in MOA

Ltd by shares – unpaid amt held by members.
Ltd by guarantee – ltd to amt
a) to assets of co. if wound up while he's member or within 1 yr after he ceases to be member, for debts & payments of liabilities.

b) costs, charges, expenses of winding up.

5. Capital clause – MOA must state

→ Amt of sh cap with which co. registered.
→ Division of it into shares
→ No. of shares which subscribers agree to take
→ no. of shares mentioned opposite member's name

6. Nominee for OPC – MOA to state name of Nominee in case of Member's death or incapacity to contract

Note:

① MOA → printed, signed by 7, 2, 1 (as case maybe) + persons.

signed by 1 witness atleast,
also mention their particulars of signatories

② Minor cannot be signatory to MOA as he's incompetent to contract.
Guardian of Minor who subscribes to MOA → deemed to have subscribed in his personal capacity.

→ Principle (Rule)

* Doctrine of Ultra vires

Ultra Means 'beyond'
Vires Means 'Powers'

Ultra vires means act / transaction beyond or in excess of powers of co.

An act / transaction is ultra vires if
→ it's not permitted / authorised by companies Act, 2013
→ it falls outside object clause of MO
→ it's attainment is not incidental to attainment of main objects.

Effects of ultra vires acts.

① An act done beyond powers / objects of co. is Void & not binding on co.

② Co. can neither be sued nor it can sue on it.

Since MOA is public document, one can inspect it to know the powers / objects of co.
If person still enters into contract with co. for ultra vires act, he cannot enforce it against co.

⇒ Case law: Ashbury Railway Carriage & Iron co. Ltd vs Riche

Facts of case:

Objects of co:
- → To make, sell, lend, hire railway carriages & wagons
- → To carry on business of mechanical engineers & general contractors
- → To purchase, lease, sell & work mines
- → To purchase, & sell as merchants, agents, coal, timber.

Directors of co. entered into contract with Richie, for purpose of financing construction of railway line in Belgium

Co. repudiated contract as ultra vires.
Richie sued co. for damages.

Richie's contention – Contract was within powers of co. & ratified by shareholders' majority.

Court held – Null & void, as

- only those contracts covered in 'general contractors' as related or connected with mechanical engineering
- co. could not finance construction of railway line alleging business outside scope of general contractors.

Eg: Lion & others
(others to be interpreted as animals likewise lion) & not every animal.

Thus, ultra vires contract cannot be binding on co.

Acts which are ultravires

Company	Directors	Articles
cannot be ratified by unanimous consent of all shareholders (unanimous means 'all')	can be ratified by members of co. through Resolution at GM.	can be ratified by altering AoA by SR at GM

But doctrine of ultra vires is defeated now, as object Clause can be easily altered by passing SR at GM of shareholders.

<u>Note:</u> If someone lent money / goods for ultra vires act to co., ~~you~~ that person cannot obtain/recover it.
But if its not spended by co., lender may stop co. from partying with it by injunction (stay order)
If ultravires loan utilised in meeting debt of co., the lender steps into shoes of debtor & can recover his money.

* Articles of Association (AOA)

AOA – are rules & regulations for internal management of co.
They govern mgt. of its internal affairs & conduct of its business.

Contents of AOA

1. Contains regulations for mgt of co.

2. Includes matters prescribed under rules of CA, 2013.
Co. can include additional matters also in AOA.

3. Contains provision for entrenchment (making it stricter) that some provisions of AoA may be altered, only if conditions or procedures as restrictive of SR is met.

4. Entrenchment can be done

- on formation of co.
  - → Send Notice to ROC
- after formation of co by amending AoA
  - Pvt co. → agreed by all members (unanimous resolution)
  - Public Co → by passing Special Resolution
  - → Send Notice to ROC.

5. forms of articles (co. may adopt these model articles)

Table F → Co. Ltd by shares
Table G → Co. Ltd by Guarantee, & having share capital
Table H → Co. Ltd by Guarantee & not having share capital
Table I → Unlimited co., having share capital
Table J → Unlimited co, not having share capital

D/b MOA	AOA
1. Defines scope/objects of co.	Lays down Rules & Regulations for internal mgt of co.
2. Defines relationship of co. with outside world.	defines relationship b/w co. & members
3. Can be altered with permission of Regional Director or NCLT.	Can be altered by passing SR
4. Acts beyond scope of MoA are ultra vires & void.	Can be ratified by SRs if acts beyond AoA
5. Subsidiary to Companies Act	Subsidiary to Companies Act & MoA

* Doctrine of Constructive Notice

1. It favors Co. i.e protects company

2. Once registered, MOA / AOA are public Docs.
Every person presumed that he has read them & understood them.

3. He's also presumed to have notice of all Resolutions, that are registered with ROC

Thus if a person enters into contract with co. in contravention of MOA / AOA, He cannot enforce such contract.

* Doctrine of Indoor Management → Exception of Doctrine of Constructive Notice

1. It favors outsiders, i.e protects outsiders.

2. Persons dealing with co. can safely assume / presume that internal proceedings have been done properly. They cannot / neednot inquire into regularity of internal proceedings

Case Law : Royal British Bank vs. Turquand (also called Turquand Rule)

Mr. Turquand was official liquidator of a co.

Co. $\xrightarrow{\text{gave bond of £2000 to}}$ Royal British Bank

& took Loan

Co. defaulted in repayment of loan.
Co. was sued, it alleged that under registered AoA, it only gave directors to borrow up to Amt. authorized by co. resolution.
But Resolution passed however it did not mention amt upto which directors can borrow.

Held → Bond is valid, & Royal British bank (outsider) can enforce terms of contract.
Bank was aware about AoA & MoA.
But Bank could not know which resolutions passed because they were not registered with ROC.
Outsiders cannot inquire in internal workings of co.
Outsiders can also presume that internal workings of co. have been done properly.

This Rule is Indoor Management which protects outsiders, as outsiders can't inquire in internal work of co. They can say co.'s indoor affairs are co's problem.

* Exceptions to doctrine of Indoor Management

1. Knowledge of irregularity (Actual/constructive)

Person dealing with co. has Knowledge about internal workings of co. → Then this Doctrine does not apply.

Case law: Howard vs. Patent Ivory Mfg. Co.

- Directors of co. could borrow upto £1000 without sanction of members in GM.
- Consent was required to borrow in excess of £1000 of shareholders
- Directors themselves lent £3500 to co. without consent of shareholders/members in GM

Co. refused to pay amt. to directors, saying ultra vires acts of co.

Held → Directors had notice of internal irregularity & therefore co. liable only upto £1000 & not £3500
(Means Directors knew, that they had to take members' consent which they did not take) & hence they can not be protected in specified case.

2. Suspicion of irregularity

There are suspicion grounds surrounding a transaction, but person dealing with co – fails to make reasonable inquiry, benefit of doctrine of indoor mgt is not available.

Case law: Anand Bihari Lal vs. Dinshaw & Co.

X Ltd (Dinshaw & Co.)

↓

Accountant of Co. (Mr P) entered into contract with Anand Bihari on behalf of co. $\xrightarrow{\text{to sell property of co. to}}$ Anand Bihari

Third person (Anand Bihari) could not assume that Mr P (accountant) was not authorised by co. to sell property of co. (this act was outside the scope of Mr P's authority)

Thus Anand Bihari could not enforce contract against co. even though Anand Bihari acted in good faith

3. Forgery

Forgery is nullity.

Case Law: Ruben vs. Great Fingall Consolidated

Ruben was issued share certificate under seal of defendant's co.
CS + 2 Directors had signed on it.
But signature of Directors were forged on sh certificate

Ruben's contention – He was not aware of signature that whether it was genuine or forget, & thus as its issued to him, it should be valid.

Court Held – in case of forgery, there is no defect in consent but there is no consent at all, & thus certificate issued by forgery is VOID.