

Contents

Contains -

- ✓ 470 sections and seven schedules.
- ✓ Act is divided into 29 Chapters
- ✓ Substantial part is rules

Aims -

- ✓ To improve Corporate governance
- ✓ Simply regulations
- ✓ Strengthen interest of minority and whistle blowers
- ✓ Class action suits

Applicability

- ✓ Companies incorporated under this Act or under any previous company law.
- ✓ Insurance companies, Banking companies, Companies engaged in the generation or supply of electricity (except where provision inconsistent with IRDA Act, 1999/ Banking regulation Act, 1949/ Electricity Act, 2003)
- ✓ Any other company governed by any special Act for the time being in force
- ✓ Any other company as specified by CG

Meaning of company

Section 2(20) of the Companies Act, 2013 -

"Company means a company incorporated under this Act or under any previous company law"

Chief Justice Marshall

"a corporation is an artificial being, invisible, intangible, existing only in contemplation of law."

Professor Haney

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

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Features of Company

SLAPS

Separate legal entity -

- ✓ Its existence is distinct and separate from that of its members.
- ✓ A company can own, enjoy and dispose property, have bank account, raise loans, incur liabilities and enter into contracts in its own name.
- ✓ Even members can contract with company, acquire right against it or incur liability to it.
- ✓ For the debts of the company, only its creditors can sue it and not its members.
- ✓ A member does not even have an insurable interest in the property of the company. The leading case on this point is of *Macaura Vs. Northern Assurance Co. Limited (1925)*

Perpetual Succession -

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

Limited Liability -

In case of limited liability company/ company limited by guarantee/unlimited liability, liability of member shall be limited/limited to extent of amount guaranteed/unlimited respectively.

Artificial Legal Person -

- ✓ It is legal/judicial as created by law
- ✓ It has separate legal entity, therefore can sue and be sued in its own name.
- ✓ Company is artificial person - can only act through human agency. (DIN)

Common Seal - (Optional)

Common seal is the official signature of a company, which is affixed by the officers and employees of the company on its every document. In case a company does not have a common seal, the authorization shall be made by two directors/by a director & CS.

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Corporate Veil -

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

Lifting of corporate veil - Cases where company law disregards the principle that the company is a legal entity distinct and separate from its shareholders or members

→ **Trading with Enemy** - Test of control/character of people at helm is ascertained to determine the same (Case Law - Daimler Co. Ltd. vs. Continental Tyre & Rubber Co.)

→ **To protect revenue/tax** - When entity is used to evade/circumvent tax. [Case law - Juggilal vs. Commissioner of Income Tax AIR (SC)/Dinshaw Maneckjee Petit] (11)

→ **To Avoid Legal obligation** - When sole purpose of formation of the entity is to use it as a device to reduce bonus to workmen - veil is lifted. (Case law - (The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar vs. The Associated Rubber Industries Ltd., Bhavnagar and another).

→ **Formation of subsidiaries to act as agents** - (Case law - Merchandise Transport Limited vs. British Transport Commission (1982))

→ **Company formed for fraud/improper conduct or to defeat law** - Where the device of incorporation is adopted for some illegal or improper purpose [Gilford Motor Co. vs. Horne] (28)

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Class of Company - On the basis of liability

Company Limited by Share

- ✓ When the liability of the members of a company is limited by its memorandum of association to the amount (if any) unpaid on the shares held by them, it is known as a company limited by shares.
- ✓ It implies for meeting the debts of the company, the shareholder may be called upon to contribute only to the extent of the amount, which remains unpaid on his shareholdings.
- ✓ His separate property cannot be encompassed to meet the company's debt.

Company Limited by Guarantee

- ✓ defines it as the company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up.
- ✓ In a company limited by share - member may be called at any time to discharge liability whereas in case of guarantee only at the time of winding up.
- ✓ Case law - Narendra Kumar Agarwal vs. Saroj Maloo

Unlimited

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

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Class of Companies - on the basis of members

One person Company -

- ✓ Is a company which has only one person as a member.
- ✓ Minimum paid up capital - no limit prescribed
- ✓ Memorandum of OPC will contain name of nominee/successor of the member and such person will give his written consent to be filed with registrar. - such nominee can withdraw his consent at any time. Name of nominee can be changed at any time by giving notice to registrar - this change is not deemed to be alteration to memorandum.
- ✓ Person eligible to be form OPC/be nominee shall be - 1. Resident in India or has stayed in India for not less than 120 days in preceding FY. 2. Non- minor. 3. Eligible only to form one OPC 4. Natural Personal + Indian Citizen
- ✓ OPC cannot be converted to section 8. also, cannot carry out NBFC activities incl. investment in other corporates.

Private Company:- (15) (31)

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

Small Company -

- ✓ A private company
- ✓ Paid up capital - not more than Rs. 4 Crore Or Turnover - not more than Rs. 40 crores.
- ✓ Should not be - Section 8 company - Holding or a Subsidiary company

Public Company -

- ✓ Is not a private company
- ✓ Shares freely transferable.
- ✓ No minimum paid up capital requirement.
- ✓ Minimum number of members - 7.
- ✓ Maximum numbers of members - No limit. Subsidiary of a public company is deemed to be a public company.

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Class of Companies - on basis of Control

Holding and Subsidiary Companies (13)

- ✓ "Subsidiary company" in relation to holding company, means a company in which the holding company—
 - (i) controls the composition of the Board of Directors; or
 - (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.
- Provided that such class of holding companies shall not have layers of subsidiaries beyond such numbers.
- ✓ A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.
- ✓ Pvt. Co. subsidiary to public co. - deemed to be public

Associate Company (26)

- In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.
- ✓ Significant Influence - means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement
 - ✓ "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

Class of Companies - on the basis of Access to Capital

Listed company -

As per the definition given in the section 2(52) of the Companies Act, 2013, it is a company which has any of its securities listed on any recognised stock exchange.

Unlisted company -

means company other than listed company.

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(29)

Government Company -

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

- (i) the Central Government, or
- (ii) by any State Government or Governments,
- (iii) or partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary.

Foreign Company [Section 2(42)]-

It means any company or body corporate incorporated outside India which - has a place of business in India whether by itself or through an agent, physically or through electronic mode; and conducts any business activity in India in any other manner.

Other Companies

(32)

Formed to promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc. Such company intends to apply its profit in promoting its objects and prohibiting the payment of any dividend to its members.

Section 8 company

Registration - CG can register such company without addition of limited or private limited. Registrar will register on application. It shall enjoy privileges and obligations of limited company after registration.

Revocation of License - CG may revoke license if in violation of conditions under section 8 after giving written notice and opportunity of being heard. On Revocation - CG may direct such company to Convert its status and change its name ; Wind - up; Amalgamate with another company having similar object.

Penalty/Punishment - default in complying with this section - Company - Fine - Rs. 10 Lakh to 1 cr . Director/officer - Rs. 25000 to 25 lakhs. If fraudulent affair- Fine - Section 447 of Act.

It can call General meeting on 14 days' notice. Requirement of minimum no. of director, independent director, Nomination and Remuneration Committee and Shareholders Relationship Committee

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Dormant company :-

Where a company is formed and registered under this Act for

- ✓ a future project or
- ✓ to hold an asset or intellectual property and
- ✓ has no significant accounting transaction,

such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

"Significant accounting transaction" means any transaction other than—

- ✓ payment of fees to the Registrar;
- ✓ payments made to fulfil the requirements of this Act or any other law;
- ✓ allotment of shares to fulfil the requirements of this Act; and
- ✓ payments for maintenance of its office and records.

"Inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.

Nidhi Company:-

A company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be. Nidhi Companies are created mainly for cultivating the habit of thrift and savings amongst its members.

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Public Financial Institutions (PFI):

The following institutions are to be regarded as public financial institutions:

- (i) the Life Insurance Corporation of India;
- (ii) the Infrastructure Development Finance Company Limited,
- (iii) specified company referred to in the Unit Trust of India Act, 2002;
- (iv) institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act;
- (v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India.

Conditions for an institution to be notified as PFI

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graph TD; A[Conditions for an institution to be notified as PFI] --> B[Established or constituted by or under any Central or State Act]; A --> C[At least 51% of the paid-up share capital is held/controlled by the CG or by any State Govt./s or partly by the CG and partly by one or more State Govts.]
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Established or 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 Govt./s or partly by the CG and partly by one or more State Govts.

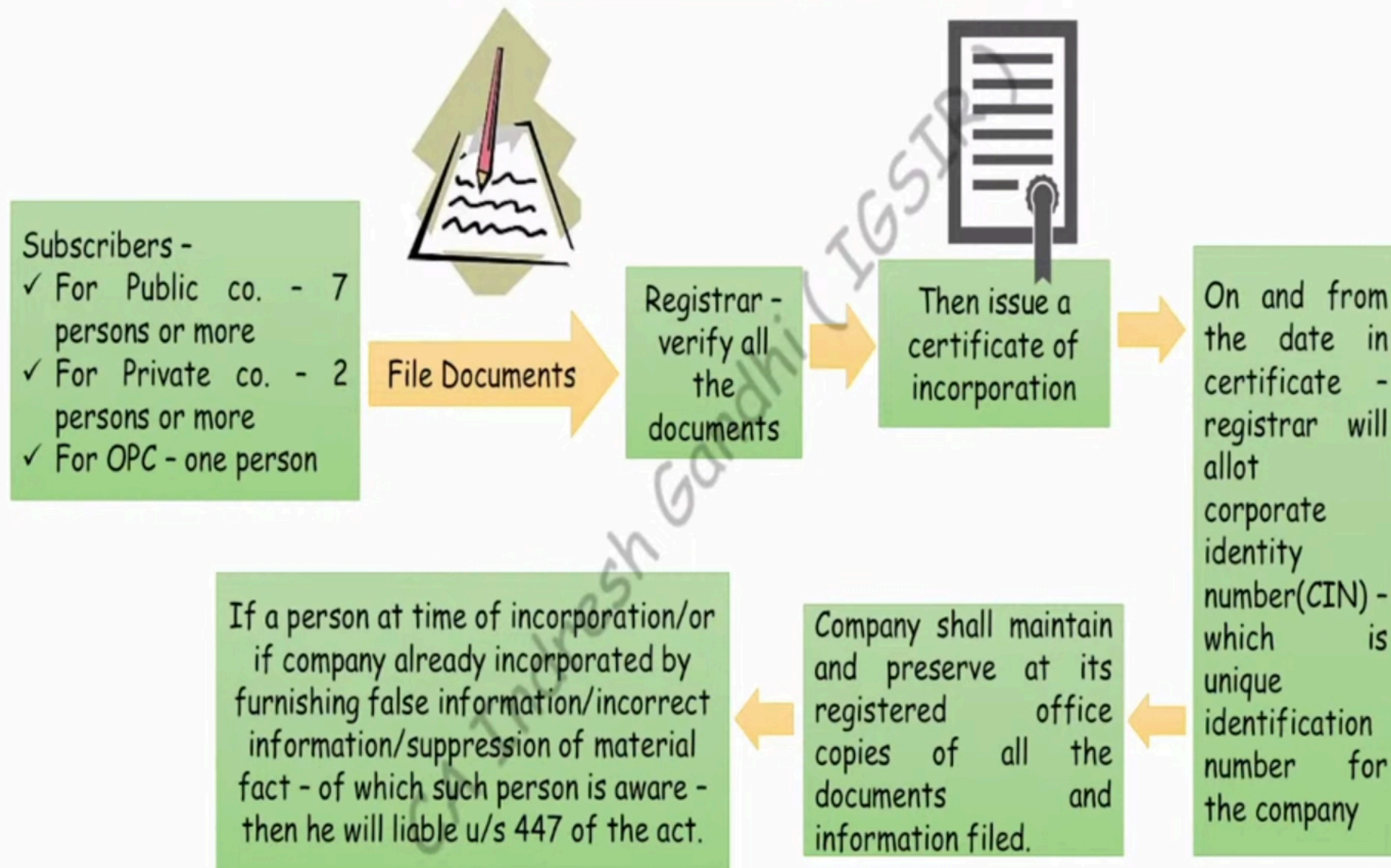
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Incorporation of Company



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Documents to be filed with Registrar -

- ✓ MOA and AOA signed by all the subscribers
- ✓ Declaration by person who is engaged in the formation of the company (Advocate/CA/CS/Cost Accountant) and by a person named in the articles that all the requirements of this act and the rules.
- ✓ A declaration from each of subscribers to memorandum and from person named as first directors stating:
 1. he is not convicted for any offence with respect to promotion, formation or management of company,
 2. he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years,
 3. and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief
- ✓ Address for correspondence till registered office is established
- ✓ the particulars (names, including surnames or family names, residential address, nationality) of every subscriber to the memorandum along with proof of identity
- ✓ the particulars (names, including surnames or family names, the Director Identification Number, residential address, nationality) of the persons mentioned in the articles as the subscribers to the Memorandum and such other particulars including proof of identity as may be prescribed; and
- ✓ the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

Ministry of Corporate affairs has simplified the process of form filling for incorporation through Simplified proforma for incorporating company electronically (SPICe)

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Order of the Tribunal:

Where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, tribunal may -

- ✓ Pass such orders as it thinks fit for regulation of management including changes in MOA and AOA
- ✓ Liability of members - unlimited
- ✓ Remove of name of company from register of companies
- ✓ Pass order of winding up
- ✓ Pass any other order as it deems fit

But before passing any order company will be given - opportunity of being heard and transactions entered into by the company will be taken into consideration.

Effect of Registration:

- ✓ From the date of Incorporation - registered company shall be capable of exercising all the functions of company under this act.
- ✓ the company becomes a legal person separate from the incorporators; and there comes into existence a binding contract between the company and its members as evidenced by the Memorandum and Articles of Association [Hari Nagar Sugar Mills Ltd. vs. S.S. Jhunjhunwala].
- ✓ A company on registration acquires a separate existence and becomes a legal person separate and distinct from its members [State Trading Corporation of India vs. Commercial Tax Officer].
- ✓ a company may purchase shares of another company and thus become a controlling company. However, merely because a company purchases all shares of another company it will not serve as a means of putting an end to the corporate character of another company and each company is a separate juristic entity [Spencer & Co. Ltd. Madras vs. CWT Madras]. The mere fact that the entire share capital has been contributed by the Central Government and all its shares are held by the President of India and other officers of the Central Government does not make any difference in the position of registered company and it does not make a company an agent either of the President or the Central Government [Heavy Electrical Union vs. State of Bihar].

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Share and Share Capital - the contributions of persons to the common stock of the company form the capital of the company. The proportion of the capital to which each member is entitled, is his share.

Classification of shares :-

- ✓ Authorized/Nominal/Registered Capital:- Capital authorized by MOA to be maximum amount of share capital of company.
- ✓ Issued Capital:- It means capital issued from time to time for subscription. Part of authorized capital and includes share allotted for other than cash. Obligatory to disclose in balance sheet.
- ✓ Subscribed Capital:- part of the capital which is for the time being subscribed by the members of a company.
- ✓ Called up Capital:- It is part of the capital which has been called for payment. It is the total amount called up on the shares issued.
- ✓ Paid up Capital:- It is the total amount paid or credited as paid up on shares issued. It is equal to called up capital less calls in arrears.

Shares (Section 2(84)):-

- ✓ 'share' which means a share in the share capital of a company and includes stock.
- ✓ Share is an interest in the company (Borland Trustees vs. Steel Bors. & Co. Ltd.)
- ✓ Shares are movable property transferable in the manner provided in articles
- ✓ Every share in a company a company having a share capital shall be distinguished by its distinctive number.

Kinds of Share Capital:-

- ✓ Equity Share Capital:- with voting rights; or with differential rights as to dividend, voting or otherwise in accordance with prescribed rules
- ✓ Preference share capital:- part of the issued share capital of the company which carries or would carry a preferential right with respect to— payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up.

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Memorandum of Association (MOA) - is in fact its charter; it defines its constitution and the scope of the powers of the company with which it has been established under the Act

Object of registering a MOA:-

- ✓ Contains object and thereby identifies scope beyond which company's action cannot go.
- ✓ Enables to know the company's powers and what activities can be engaged in.
- ✓ Every person dealing with the company is presumed to have knowledge of MOA.
- ✓ Helps shareholder understand where his money is being used and risks related to the same.

MOA of a company shall be drawn up in such form as is given in Tables A, B, C, D and E in Schedule I of the Companies Act, 2013.

Table A - MOA form for company limited by shares.

Table B - MOA form of a company limited by guarantee and not having a share capital.

Table C - MOA form of a company limited by guarantee and having a share capital.

Table D - MOA form of an unlimited company.

Table E - MOA form of an unlimited company and having share capital.

Contents of MOA :-

- a) Name clause - last word : limited for public and Government company, private limited for private company, OPC for OPC, not applicable to section 8 and electoral trust if formed under section 8.
- b) Registered Office clause - state of office.
- c) Object Clause - If there is change in activities not reflected in the name, company should change its name within 6 months of such activity change.
- d) Liability Clause - in case of company limited by share - amount unpaid on share. In case of limited by guarantee - Amount of contribution of each member 1) to the assets of company in case of winding up; 2) to the costs, charges and expenses of winding up and for adjustment of rights of contributories
- e) Capital Clause - Amount of authorized capital divided into share of fixed amount.
- f) Association Clause - details of subscribers along with number of shares taken by him.

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Additional points on MOA :-

1. Other contents of MOA - Including the clauses mentioned above - it shall also contain -

- ✓ In case of OPC - name of nominee
- ✓ May contain other provisions for ex:- rights of various class of shares.

2. MOA is to printed, divided into paragraphs, numbered consecutively and signed by atleast 7/2/1 person(s) in case of public/private/one person company respectively. It is to be noted that a company can subscribe to MOA however, a minor cannot.

3. Also, MOA Cannot contain anything contrary to the provision of the Companies Act. If it does, it shall be devoid of any legal effect.

Doctrine of Ultra Vires:- The meaning of the term ultra vires is simply "beyond (their) powers".

- ✓ When an act is performed, which though legal in itself, is not authorized by the object clause of the memorandum, or by the statute, it is said to be ultravires the company, and hence null and void. and is therefore not binding on the company. The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it.
- ✓ An act which is ultravires, the company cannot be ratified even by the unanimous consent of all the shareholders [Ashbury Railway Carriage and Iron Company Limited v. Riche-(1875)]. An act which is ultravires the directors, but intravires the company can be ratified by the members of the company through a resolution passed at a general meeting. If an act is ultravires the Articles, it can be ratified by altering the Articles by a Special Resolution at a general meeting.
- ✓ An ultra vires contract can never be made binding on the company. It cannot become "Intravires" by reasons of estoppel, acquiescence, lapse of time, delay or ratification.
- ✓ The disadvantages of this doctrine outweigh its main advantage, namely to provide protection to the shareholders and creditors. Although it may be useful to members in restraining the activities of the directors, it is only a nuisance in so far as it prevents the company from changing its activities in a direction which is agreed by all.

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Articles of Association (AOA) - Rules and Regulations for the company including the bye laws of the company. Defines the duties, rights and powers of the director and company and form in which business will be carried on (Ashbury Carriage Vs. Riches). [S.S. Rajkumar vs. Perfect Castings (P) Ltd.].

Content and model of AOA (Section 5):-

- (1) Contains regulations for management of company.
- (2) Inclusion of matters as prescribed and any additional if required.
- (3) Contain provisions for entrenchment (for protection): implement provision that specific provision of article can only be altered if restrictive provision than special resolution are met.
- (4) Inclusion of entrenchment provision will be made on formation/by amendment in articles which is agreed by all in case of private company and by special resolution in case of public company.
- (5) Company can also on formation/amendment of entrenchment provision notice will be given to registrar.
- (6) Forms of articles - Specified in table F,G,H, I and J as applicable to such company.
- (7) Company may adopt all the rules in model articles applicable.
- (8) Company registered after commencement of this act - If model articles are not excluded/modified then they will be considered as registered articles.

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Basis	MOA	AOA
Objective	Defines objective of company.	Determine how the objective of company are achieved.
Relationship	Company with world	Company and its members
Alteration	Altered only under certain circumstances and in manner provided	Altered by passing a special resolution
Ultra Vires	Act beyond the MOA cannot be ratified.	Act beyond AOA can be ratified by shareholders

