

## COMPANIES ACT, 2013

Definition = Registered under this Act or previous company law.

Features of Company (own language)

- 1) Artificial Person
- 2) Incorporated Association
- 3) Separate legal status = own Rights and liabilities  
= Separate from its members.

RC: Saloman v/s Saloman & Co. Ltd.



\* boat business  
 \* \$38782

\$20000 Share

\$10000 dividend

\$ Cash

\* wound up - losses  
 \* All money given to Saloman against debentures.

\* nothing was paid to creditors.

- 4) Capacity to sue and be sued upon
- 5) Separate Property

RC: MACAURA v/s NORTHERN ASSURANCE CO. Ltd



Members have no insurable interest in the property of company.

- 6) Perpetual Duration. = Members may come and go but a company goes on forever.



7. Limited liability.
8. Transferrability of Share
  - ↳ Private Co = Restricted Share Transferability
  - Public Co = Share are freely transferable
9. Separate Management = Company is separate from its members.
  - Company management - Board of directors
  - Company owner - Shareholders

## CORPORATE VEIL (Most important)

\* Company Curtain = Co.  $\Rightarrow$  Separate  $\Rightarrow$  From its members.

Fictional veil

(Corporate veil)

Fictional act, Co. separate

\* Separate legal status

From its members.

RC - Salomon's case in which separate legal status

\* SALOMON VS SALOMON CO. LTD.  $\Rightarrow$  RC

## LIFTING OF CORPORATE VEIL

- \* Ignore separate legal status of company
- \* Making members liable for the acts of Co.

1. Determining primary character of company  
 RC: Daimler Co. Ltd vs Continental Tyres & Co. Ltd.



Gov. की रहा तो की उरी ही रही ।

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### 2. Protection of Revenue

RC: Dinsdass, Manikji Patil

\* 4 company

\* income = Parts divided

\* So that he don't have to pay tax

\* Court ruled Corporate tax

### 3. Avoidance of Indian legislation.

RC: WORKMEN OF ASSOCIATED RUSSIAN INDUSTRIES

ASSOCIATED = Russian which had company

\* Court Ruling -> Corporate tax will not

\* company = subsidiary company

Court Ruling -> \* have to give bonus to workers.

### 4. Present Fraud on Miscellaneous

RC: GIFFORD, MOTON/LOKARUS

\* Mr. Moton -> Promised Co -> don't stop

Customers

\* Mr. Moton company -> and said it's wrong.

\* Court Ruling -> Mr. Moton's soliciting

the customers

him 2  
Mol:



# # TYPES OF COMPANY

=> on the basis of liability.

① Company ltd by shares.  
 \* liability limited to the extent of (amount unpaid on share)

\* Can be called up at any time

② Company ltd by guarantee.

\* liability  $\Rightarrow$  limited  $\Rightarrow$  to the extent of amount he undertakes to contribute in event to winding up.

\* only called up in event of winding up.

③ unlimited company.  
 \* no limit  $\Rightarrow$  liability of members.

=> on basis of size.

① Private company.

\* Restricts transfer of shares

\* Cannot invite Public to subscribe to shares

\* Maximum 200 members

Private

Joint name

Partnership

Single member

Electoral

\* minimum 2 members

\* Name end  $\rightarrow$  Pvt Ltd.



## ② Public Company

which is  
not a  
Private Co.

Private

Co. which is

Subsidiary of  
Public Co.

Min = 7 mem

Max = no limit

Share

Freely  
transferable

Name

end

htd.

Subscription of

Share

## ③ One Person Company

\* Who can become Member / nominee of OPC?

→ natural Person and,

→ citizen of India and,

→ Resident of India or not

Resident ⇒ Purchasing financial year = India  
Stay = 120 days or more

\* Minor cannot become Member or nominee.

\* One Person cannot become Member or nominee of more than one OPC.

\* OPC ⇒ Prohibited ⇒ non banking financial  
instrumental activities.

\* OPC ⇒ form) cannot ⇒ Not for Profit company.



① Small company

and

Paid up Share Capital (Equity + Preference)  $\leq ₹4\text{L}$

Turnover  $\leq ₹40\text{L}$

Exclude:   
~~\* Public Company~~   
~~\* Not for Profit Co.~~   
~~\* Holding Co. & Subsidiary Co.~~   
~~\* Company governed by Special Act.~~

⇒ on basis of control

①

Holding Company

more than 50% Voting Power

equity share (directly)

Subsidiary Company

H. Co.

S1

Indirectly more than 50% Voting Power

S2

Ram Ltd

H. Co.

control (control of board of directors)

S. Co.

Right to appoint OR Remove majority directors



## ② Associate company

Significant  
influence.

(10.)

Associate Co.

20% or more voting

Power

(Control over business decisions)

includes joint venture  
Joint right on net assets of business.

## OTHER COMPANIES.

### 1 Foreign company.

① incorporated outside India  
• Co. has a place of business in India  
Carrying on business activity in India.

### 2 Government company.

• 51% or more Paid up Capital (equity + preference) is held by one or more Govt. Co. is also a G. Co.



3. Sec: 8 Company  
NOT for Profit Company

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• C.G. license = 3 conditions  $\Rightarrow$  Satisfied

Object of Company is to Promote Arts, Culture Science etc

intends to Apply its Profits for Presentation of its objects

Prohibited Payment of dividend

• P. Firm can become member of not-for-profit company.

• Revocation of license  $\Rightarrow$  C.G.  $\Rightarrow$  Reasonable

OR  
 (Contravenes) Sec: 8 (Continuous) Condition

Application of being made  
 OR  
 Fraudulent Purpose or Violation of its objects.

9/10



(consequences)

OR

OR

(Co.  $\Rightarrow$  convert  
 $\Rightarrow$  Public or  
 Private Co.

Co. will  
 be under to  
 be wound up

an amalgamated  
 with another  
 Not for Profit  
 Co. having  
 similar objects

#### 4. # DORMANT COMPANY

\* Formed for a future project or to hold any assets and  $\Rightarrow$  obtain status of dormant company

\* Co. has not had significant accounting transaction.

\* not being carrying on any business. (OR)

\* No significant Accounting transaction in last 2 years (OR)

\* Not Filed Final Statements to ROC in last 2 years.



## # PUBLIC FINANCIAL INSTITUTION

- \* LIC OF India
  - \* IDFC
  - \* UTI
  - \* institutions not find
- any institution  
as relation with  
VIS 14A(2) OF COIS Act 1990 & 1981  
1952.

Institution

51% on

under central

more paid up

OR State Act

held by G.H,  
G.H in both

## # PROMOTERS

Names as promoters

Promoter in annual

Prospectus on annual

Return on annual

Person as

Person who

has central

own affairs of  
the company

Person whose director's,

Person Acting in << bod of Co are

Profusion capacity Accustomed to Act.

is not a promoter



## # BASIC REQUIREMENTS TO FORM A COMPANY

⇒ lawful business

⇒ Private Co. | Public Co. | OPC of 1 person

⇒ limited by share, quantum, unlimited to.

## # PROCESS OF INCORPORATION OF COMPANY.

STEP:1

ROC Application ⇒ Form INC-32 (SPIL)  
Simplified Proforma for incorporation  
of company.

STEP:2

Document to be submitted.

\* MOA & AOA duly signed by  
subscribers.

\* declaration ⇒ all Requirements of CA 2013

have been complied with

↳ Sign = director / Manager /  
secretary.

Sign = CA / LS / Advocate / Cost Act.

\* declaration ⇒ Every first director /  
subscribers.

⇒ no Offences = formation / Management.

⇒ no financial / mis-deeds in last 5 years.

⇒ information and documents = true &  
(correct).



SALE

GOODS

IN FURN

GRAN

BAILM

ILLY

AGEN

PLU

UNINGE

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- \* Address for correspondence
- \* Particulars of subscribers
- \* Particulars of first directors

STEP 3: Certificate of Registration

⇒ FORM INC-11

(company's identity no.)

FORM OF INCORPORATION - stamp (CIN)

company's name

STEP 4: False / incorrect information.

Punishment u/s

447

↓

• First directors

• Declaration

• Regulation of

management OR

members unlimited

• liability OR

• Removal of name of

company OR

company OR

company OR

(company's name)

(company's name)

(company's name)

(company's name)

(company's name)

(company's name)



## # EFFECTS OF INCORPORATION OF COMPANY

- ① Date of incorporation - mentioned in Certificate of incorporation.
- ② Name - mentioned in MOA.
- ③ body corporate - subscribers to MOA will become members.
- ④ Capacity to function
- ⑤ Perpetual succession
- ⑥ Separate Property
- ⑦ Capacity to sue & be sued as an entity.

# MEANING OF MOA. = charter of company.  
 = Objects for which co. is incorporated.  
 = Actions of company cannot go beyond MOA.

~ contents of MOA. (7 clause)

- ① Name clause
- ② Situation clause
- ③ Object clause
- ④ Liability clause
- ⑤ Capital clause
- ⑥ Association clause
- ⑦ Nomination clause = only in case of one person company.



# Meaning of AOA = bylaws of the Co.  
= containing Regulation for  
internal management of the Co.

# FORMANT OF MOA & AOA of the Co. = Section I  
FORM OF MOA & AOA

MOA

- A limited by share
- B limited by guarantee  $\rightarrow$  without S.C capital
- C limited by guarantee  $\rightarrow$  with S.C capital
- D unlimited Co.  $\rightarrow$  without S.C capital
- E unlimited Co.  $\rightarrow$  with S.C capital

AOA

- F limited by shares
- G Quantum Co. with S.C capital
- H Quantum Co. without S.C capital
- I unlimited Co. with S.C capital
- J unlimited Co. without S.C capital

# DOCTRINE OF ULTRA VIRES

ultra = beyond      vires = Power

Any Act of Company which falls outside the  
object clause of MOA.

RC: ASHURBY Railway Carriage & Iron Co. Ltd  
v/s Richey

MOA = manufacturing, sell & hire Railway  
wagons.



Contract with Rights = Allow for the  
construction of Railway line in  
burgum.

↳ Court = ultra vires & void as in *initial*

⇒ Effects of ultra vires transaction.

① void as in *initial* - No legal effect -  
NO Rights to co. or third Party.

② NO Ratification & *initial* - *initial*

③ Injunction Against the company.

④ Personal liability of directors.

⑤ ~~at the~~ ultra vires & *initial* party.

↳ during ultra vires transaction

↳ Purchased Property

↳ has valid Rights

company = valid      company = valid

Not valid      Not valid      Not valid

Not valid      Not valid      Not valid



## # DOCTRINE OF CONSTRUCTIVE NOTICE

- => Once Registered - MOA & AOA are Public documents.
- => Every Person dealing with the company is Required to Read MOA & AOA.
- ✓ => Every Person dealing with co. is Presumed to have Read MOA & AOA.
- => Outsider cannot enforce a contract with company which is beyond MOA & AOA.
- => Negative doctrine = Operates in favour of Company & Against outsiders. Exception

## # DOCTRINE OF INDOOR MANAGEMENT

- => Positive doctrine = Operates in favour of outsiders.
- => Outsiders are not Required to enquire into internal affairs of company.
- => As far as internal Proceedings are concerned, they can assume that everything is being done Regularly.



RC: Royal British Bank v. Turquand

=> Court Ruling: Contract will remain valid even if there is internal irregularity

=> Articles stated that borrowings can be taken only with authorization of shareholders.

=> Company = loan = without authorization of shareholders

=> VALID: AOA complied with internal procedure

Exceptions doctrine of indoor management is not applicable & required

① knowledge of irregularity => Turanton  
RC: Howard v. Patent Ivory Manf. Company.

Jo L director loan = Howard = without authorisation

L AOA = \$ 1000 ✓

L loan taken = \$ 3500

L not valid



- ② Negligence in suspicious circumstances  
RC: Brand binari da vls dinnham & company  
 ↳ Accountant contract to sell company  
 ↳ become careless  
 ↳ doctrine will not apply  
 ↳ Court → negligent.

- ③ Forgery = False Signature  
RC: Ruben vls Great Fingal (consolidate company)  
 ↳ Court → Forgery, doctrine will not apply  
 ↳ Forgery null and void  
 ↳ Co. Secretary = Co. director's signature forgery.  
 ↳ Share Certificate

(document)

proposed & contract is null  
 or company  
 contract

(document) not  
 (document)

get a new contract  
 published