

Chapter - 6

The Companies Act, 2013

Basics

- Contains - 470 sections, 7 schedules, 29 chapters
- Aim - To improve corporate governance, simplify regulations, strengthen minority interest
- **Applicability -**

a) Companies Incorporated under this act or under previous company law	b) Insurance company	c) Banking company
d) Company engaged in generation or supply of electricity	e) Any other company governed by any special act for the time being in force	f) Any other body corporate specified by CG.
Note: In case of (b), (c), (d) - Except where provision inconsistent with IRDA Act, 1999/ Banking Regulation Act, 1949/ Electricity Act, 2003		

Meaning & Features of Company

Definition - Section 2(20) of the Companies Act, 2013 defines the term 'company'. "Company means a company incorporated under this Act or under any previous company law".

Features of a Company

1) Separate Legal Entity:

- When a company is registered, it is clothed with a legal personality (Same rights & powers)
- Its existence is distinct and separate from that of its members.
- Company can own property, have bank a/c, raise loans, incur liabilities & enter into contracts.
- It is at law, a person, which is different from the subscribers to the MOA.
- 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.
- Shareholders are not owners of company's capital & assets even though contributed by them.
- Member doesn't even have an insurable interest in the property of the company

Case Law: Macaura Vs Northern Assurance Co. Ltd. (1925)

2) Perpetual Succession:

- Members may die or change, but the company goes on till it is wound up
- Shares of the company may change hands infinitely but that does not affect the existence.

- 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.

3) Limited Liability

- Limited liability company - The liability of the members limited to the extent of nominal value of shares held by them. (Max liability - Up to the unpaid value of shares)
- Company limited by guarantee - Amount guaranteed by them and that too only when the company goes into liquidation.
- Unlimited company, the liability of its members is unlimited as well.

4) Artificial Legal Person:

All points of Separate legal entity plus:

- It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession.
- Company is an artificial person, it can act only through some human agency, viz., directors.
- Directors act as its agency, but they are not the "agents" of the members of the company.
- For authentication, directors can either on their own or through the common seal

5) Common Seal:

- Company works through the agency of human beings. Common seal is the official signature which is affixed by the officers & employees of the company on its every document.
- Common seal is the symbol of its incorporation.
- The Companies (Amendment) Act, 2015 has made the common seal optional
- The documents which need to be authenticated by a common seal will be required to be so done, only if the company opts to have a common seal.
- In case a company does not have common seal, Authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed CS.

Corporate Veil Theory

- Members of a company are shielded from liability connected to the company's actions.
- Company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors.
- Thus, the shareholders are protected from the acts of the company.
- Shareholder can't be held liable for acts of company even though he holds entire share capital.

Case Law: Salomon Vs. Salomon and Co Ltd.

Lifting of Corporate Veil

Where the Courts ignore the company and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted.

Only in following circumstances, the Courts are willing to lift the corporate veil:

1) Determine the character of the company - Daimler Co. Ltd. vs. Continental Tyre & Rubber Co (Test of control is adopted to determine company as friend or foe)

2) To protect revenue/tax - Dinshaw Maneckjee Petit (Corporate entity is used to evade or circumvent tax, court will disregard the corporate entity)

3) To avoid a legal obligation - Workmen Employed in Associated Rubber Industries Limited, Bhavnagar vs. The Associated Rubber Industries Ltd., Bhavnagar and another (New company is created to reduce the gross profit)

4) Formation of subsidiaries to act as agents - Merchandise Transport Limited vs. British Transport Commission (1982) (Parent & Subsidiary are treated as one commercial unit)

5) Company formed for fraud/improper conduct or to defeat law - Gilford Motor Co. vs. Horne (Device of incorporation is adopted for some illegal or improper purpose)

Classes of Companies Under the Act (16 Types)

On the basis of liability:

1) Company limited by shares [Section - 2(22)]:

- when 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.
- Shareholder's separate property cannot be encompassed to meet the company's debt.
- Ownership of the assets remains with the company, because of its nature as a legal person. Shareholders are not the co-owners of the assets even though contributed by them.
- Rights & duties of a shareholder as co-owner is measured by his shareholdings.

2) Company limited by guarantee [Section 2(21)]

- Liability of its members limited to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of winding up.
- Members cannot be called upon to contribute beyond that stipulated sum.
- It does not raise its initial working funds from its members. Useful only where no working funds are needed or where these funds can be held from other sources like donation, etc.
- The common features between a 'guarantee company' and 'the company having share capital' are legal personality and limited liability. Both of them have to state in their memorandum that the members' liability is limited.

- Point of distinction is Guarantee co. members may be called upon to discharge their liability only after commencement of winding up, but Company Ltd by shares may be called upon to do so at any time, either during the company's life-time or during its winding up.

Case Law: In Narendra Kumar Agarwal vs. Saroj Maloo,

3) Unlimited company [Section 2(92)]

- Company not having any limit on the liability of its members.
 - Liability of a member ceases when he ceases to be a member.
 - Liability extends to whole amount of the company's debts and liabilities. (Claim Contribution)
 - So long as the company is a going concern - the liability on the shares is the only liability.
 - Creditors can institute proceedings for winding up of the company for their claims.
- The official liquidator may call the members for their contribution which can be unlimited.

On the basis of members:

1) One person company [Section 2(62)]

- Companies Act, 2013 defines OPC as a company which has only one person as a member.
- OPC is a private Ltd co. with minimum paid up share capital prescribed and having one member.
- Member can be the sole member and director of OPC.
- Minimum paid up capital - no limit prescribed.
- Memorandum shall indicate the name of the other person, who shall, in the event of subscriber's death or his incapacity to contract, become the member of OPC.
- Other person shall give his prior written consent in prescribed form and the same shall be filed with Registrar at the time of incorporation of company. (Right to withdraw may be given)
- At any time, member of opco can change the name of such other person by giving notice to co. & co. shall intimate the same to Registrar. (Such change is not deemed to be alteration of MOA)
- Only a natural person who is an Indian citizen whether resident in India or otherwise-
 - ✓ shall be eligible to incorporate a One Person Company;
 - ✓ shall be a nominee for the sole member of a One Person Company.

"Resident in India" means a person who has stayed in India for a period of not less than one hundred and twenty days during the immediately preceding financial year.

- No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- No minor shall become member or nominee of OPC or can hold share with beneficial interest.
- OPC can't be incorporated or converted section 8 co. Can be converted to private or public co.
- OPC can't carry out Non-Banking Financial Investment activities including investment in securities of any body corporate.

2) Private Company [Section 2(68)]

- Means a company having a minimum paid-up share capital prescribed, and which by its articles,
 - restricts the right to transfer its shares;
 - except in case of OPC, limits the number of its members to two hundred;
 - prohibits any invitation to the public to subscribe for any securities of the company;
- Provided, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:
- Following shall not be included in the number of members
 - persons who are in the employment of the company; and
 - persons who, having been formerly in the employment of the company, have continued to be members after the employment ceased,
- Number of members - Min - 2, Max - 200, OPC - 1
- Small company & One person company can be formed as private company.

Small Company [Section 2(85)]

- means a company, other than a public company whose
 - PUSC does not exceed 4 crore rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
 - turnover of which as per profit and loss account for the immediately preceding financial year does not exceed Forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees;
- Exceptions: This clause shall not apply to (a) holding company or a subsidiary company (b) section 8 company (c) a company or body corporate governed by any special Act.

3) Public company [Section 2(71)]

- means a company which is not a private company & has minimum PUSC, prescribed
- Provided that a company which is a subsidiary of a company, shall be deemed to be public company even where such subsidiary company continues to be a private company in its articles;
- Shares freely transferable.
- Number of members - Min - 7, Max - No limit

On the basis of control:

1) Holding and subsidiary companies [Section 2(46)] & [Section 2(87)] respectively.

- Holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies. (Company includes body corporate)
- Subsidiary company in relation to any other company (that is to say the holding company), means a company in which the holding company,
 - controls the composition of the Board of Directors;
 - or 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.

- Controls the BoD means that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- A Company shall be deemed to be a subsidiary company of the holding company even if the control is of another subsidiary company of the holding company.
- Private company, which is subsidiary of a public company shall be deemed to be public company
- Holding companies shall not have layers of subsidiaries beyond numbers as may be prescribed.

2) Associate company [Section 2(6)]

- 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;

On the basis of access to capital:

1) Listed company [Section 2(52)]

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

2) Unlisted company

- Company other than listed company.

Other Companies:

1) Government company [Section 2(45)]

- Any company in which not less than 51% of the PUSC is held by Central Government, or by any State Government or Governments, or partly by Central and partly by one or more State Governments, & includes subsidiary of such a Government company.
- PUSC shall be construed as "total voting power", where shares with differential voting rights have been issued.

2) 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.

3) Section 8 Company (Charitable objects)

- promote the charitable objects & intends to apply its profit in promoting its objects and prohibiting the payment of any dividend to its members.

Can call it's general meeting in 14 days instead of 21 days.

A partnership firm can also be a member of Section 8 company.

- License - Section 8 allows the CG to register person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name. Registrar on application will register the company and it will enjoy privileges of limited co.
- Revocation of license - The CG may by order revoke the licence of the company where the company
 - contravenes any of the requirements or conditions subject to which a licence issued or
 - where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest,

On Revocation - Registrar shall put 'Limited' or 'Private Limited' to its name.

Before Revocation - CG must give a written notice of its intention & opportunity of being heard.

- Order of the Central Government: Where a licence is revoked, CG may in the public interest order to amalgamate with another company registered under this section having similar objects, to form a single company (with such conditions as CG deem fit) or wound up.
- Penalty/punishment in contravention of any of the requirements of this act:
Company - Not less than 10 lakhs but may extend to 1 crore and
Director & Every officer in default - Fine not less than 25 thousand but may extend to 25 lakhs. (If fraud, liable under section 447)

4) Dormant company (Section 455)

- 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 Registrar to get the status.
- "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.
- Significant accounting transaction means any transaction other than
 - (a) payment of fees by a company to the Registrar
 - (b) payments made by it to fulfil the requirements of this Act or any other law
 - (c) allotment of shares to fulfil the requirements of this Act; and
 - (d) payments for maintenance of its office and records.

5) Nidhi Companies [Section 406(1)]

Nidhi Companies are created for cultivating the habit of thrift and savings amongst its members.

6) Public Financial Institutions (PFI) [Section 2(72)]

- Following institutions are to be regarded as public financial institutions
 - LIC of India, established under the Life Insurance Corporation Act, 1956;
 - Infrastructure Development Finance Company Limited,
 - specified company referred to in the Unit Trust of India
 - institutions notified by the CG under Companies Act, 1956 so repealed
 - institution notified by the CG in consultation with the RBI
- No institution shall be so notified unless -
 - it has been established or constituted by or under any Central or State Act
 - Not less than 51% of PUSC is held or controlled by Central or by any State Government or Governments or partly by Central and partly by one or more State Governments.

Mode of Registration/Incorporation of Company

Promoters [Section 2(69)]

- Means a person who has been
 - named as such in a prospectus or is
 - identified by the company in the annual return referred to in section 92; or
 - who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
 - in accordance with whose advice, directions, or instructions the BoD is accustomed to act.
- Persons who form the company are known as promoters. It is they who conceive the idea of forming the company. They take all necessary steps for its registration.
However, Persons acting only in a professional capacity are not regarded as promoters.

Formation of company (Section - 3)

- Public company - 7 or more persons, Private company - 2 or more persons, One person company - One person can form a company for any lawful purpose by subscribing their names to MOA.

Incorporation of Company (Section - 7)

Procedure to be followed for incorporation of a company.

- File the following documents to the registrar of the registered office jurisdiction
 - the memorandum and articles of the company duly signed by all the subscribers
 - Declaration by person who is engaged in formation of the company and by a person named in the articles that all the requirements of this Act and the rules made there under in respect of registration have been complied with.
 - Declaration from each of the subscribers to the memorandum and first directors that
 - ✓ he is not convicted of any offence in connection with promotion, formation or management of any company, or

- ✓ he has not been found guilty of any fraud or misfeasance or breach of duty to any company during the last five years,
- ✓ that all the documents filed with the Registrar contain information that is correct and complete and true to the best of his knowledge and belief.
- the address for correspondence till its registered office is established;
- the particulars of every subscriber to the memorandum along with proof of identity.
- the particulars of the interests of first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company
- Particulars provided in this provision shall be of the individual subscriber and not of professional engaged in the incorporation
- Issue of certificate of incorporation on registration: Registrar shall register all the documents and information in the register and issue a certificate of Incorporation.
- Allotment of Corporate Identity Number (CIN): Registrar shall allot to the company a CIN number, which shall be a distinct identity for the company on & from date mentioned in CoI.
- Maintenance of copies of all documents and information: Company shall maintain and preserve at its RO copies of all documents & information as originally filed till its dissolution.
- Furnishing of false or incorrect information or representation or suppression of material fact at the time of incorporation - If any person furnishes any false or incorrect particulars or suppresses any material information which he is aware or, in any of documents filed with the Registrar in relation to the registration, he shall be liable for action of fraud u/s 447.
- Company already incorporated by above (Post Incorporation): Where, at any time after the incorporation if the above is proved, then the promoters, first directors & the persons making declaration under this section shall be liable for fraud under section 447.
- Order of the Tribunal: Company has been incorporated by above (F/I/R/S) , then the Tribunal may, on an application made to it, on being satisfied that the situation so warrants, -
 - pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum & articles, in public interest or in the interest of the company and its members and creditors; or
 - direct that liability of the members shall be unlimited; or
 - direct removal of the name of the company from the register of companies; or
 - pass an order for the winding up of the company; or
 - pass such other orders as it may deem fit

Provided that before making any order, Company shall be given reasonable opportunity of being heard & the Tribunal shall take into consideration the transactions entered into by the company,

Simplified Proforma for Incorporating Company Electronically (SPICe)

MCA has taken various initiatives for ease of business. It has simplified the process of filing of forms for incorporation of a company through SPICe.

Effect of Registration of Company (Section 9)

- From the date of incorporation mentioned in CoI, It shall be a body corporate by the name contained in the memorandum.
- All points of Separate Legal Entity
- There comes into existence a binding contract between the company and its members as evidenced by the Memorandum and Articles of Association
- Company may purchase all shares of another company but it will not end the corporate character of another company and each company is a separate juristic entity
- Mere fact that the entire share capital has been contributed by the CG and all its shares are held by the President of India does not make any difference in the position of company and it does not make a company an agent either of the President or the Central Government

Effect of Memorandum & Articles when registered (Section 10)

- Memorandum & articles when registered, shall bind the company and members as if they respectively had been signed an agreement to observe all the provisions of MoA & AoA
- All monies payable by any member to company under M/A shall be a debt due from him to co.

Classification of Capital

- Capital means share-capital, divided into shares of fixed amount.
- Contributions of persons to the common stock of company form the capital.
- Proportion of the capital to which each member is entitled, is his share.
- A share is not a sum of money; it is rather an interest made up of various rights.

1) Nominal or authorised or registered capital [Section 2(8)]

- As is authorised by memorandum to be the maximum amount of share capital of the company.
- It is to be registered being max amount authorised to raise & upon which stamp duty is paid.
- Usually fixed estimated amount, company will need including working capital & reserve capital.

2) Issued capital [(Section 2(50)]

- Means such capital as the company issues from time to time for subscription.
- Part of authorised capital offered by company for subscription and includes the shares allotted for consideration other than cash.
- Schedule III makes it obligatory to disclose its issued capital in balance sheet.

3) Subscribed capital [(Section 2(86)]

- Means such part of capital which is subscribed by the members of a company.
- It is the nominal amount of shares taken up by the public.
- Notice/Advertisement/Business letter/Bill head/letter paper/other official communication issued shall state the Authorised, Subscribed and paid-up capital in conspicuous characters.
- Default - Company and Every officer - penalty 10000 & 5000 respectively. [Section 60].

4) Called-up capital [Section 2(15)]

- such part of capital, which has been called for payment on shares issued.

5) Paid-up capital

- Total amount paid or credited as paid up on shares issued. Called up less calls in arrears.

Shares [Section 2(84)]

- 'Share' means a share in the share capital of a company and includes stock.
- It represents proportion of the interest of the shareholders measured by a sum of money.
- Shares/Debentures/Other interest of members are a movable property (Manner as per AOA)
- Shares shall be numbered & distinguished by its distinctive number. (Not applicable for holder of beneficial interest in the records of a depository)

Kinds of share capital (Section 43)

1) Equity share capital - Means all share capital which is not preference share capital

- Equity share capital with voting rights;
- Equity share capital with differential rights as to dividend, voting or otherwise

2) Preference Share Capital - Means that 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 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.

Exception: In case of private company - Section 43 shall not apply where MOA & AOA provides.

Memorandum of Association

- It is in fact its charter; it defines its constitution and the scope of the powers of the co.
- It is the very foundation on which the whole edifice (structure) of the company is built.
- Object of registering a memorandum of association:
 - Contains object for which company is formed, identifies possible scope of its operations beyond which it cannot go. (If it does so, It will be ultra virus the company & void)

- Enables shareholders, creditors & all those who deal with company to know what its powers are and what activities it can engage in.
- Memorandum is a public document (Sec - 399) Consequently, every person entering into a contract with company is presumed to have the knowledge of conditions contained therein.
- Shareholders must know purposes for which his money can be used & what risks he is taking in making the investment.
- As per Section 4, Memorandum of a company shall be drawn up in such form as given in tables.
 - Table A - MOA of a company limited by shares.
 - Table B - company limited by guarantee and not having a share capital.
 - Table C - company limited by guarantee and having a share capital.
 - Table D - Unlimited company not having share capital.
 - Table E - Unlimited company and having share capital.

Note: The MOA & AOA of a company must be as closed to model forms, as possible.

- Memorandum must be printed, divided into paragraphs, numbered consecutively, and signed by at least seven persons (two in the case of a private company and one in the case of One Person Company) in the presence of at least one witness, who will attest the signatures.
- Company being a legal person can through its agent, subscribe to the memorandum. Minor cannot be a signatory as he is not competent to contract. Guardian of a minor who subscribes will be deemed to have subscribed in his personal capacity.
- MOA cannot contain anything contrary to provisions of the Companies Act. (No legal effect) All other documents of company must comply with provisions of the Memorandum.
- Content of the memorandum: The memorandum of a company shall state -
 - Name Clause - Name of company with the last word "Limited" in case of a public limited company, or the last words "Private Limited" in case of a private limited company. In the case of OPC, the words "One Person Company", should be included below its name. Government company's name must end with the word "Limited". This clause is not applicable on Section 8 companies. Section 8 company shall include the words as given under The Companies (Incorporation) Rules, 2014.
 - Registered Office Clause - the State in which the RO of the company is to be situated;
 - Object Clause - Objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof

Note: If company has changed its activities which are not reflected in its name, it shall change name in line with activities within a period of 6 months from change of activities.

- Liability clause - Liability of members whether limited or unlimited, and also state in the case of a company limited by shares - liability is limited to the amount unpaid, & in the case of a company limited by guarantee - Amount up to which each member undertakes to contribute
 - to the assets of the company in the event of its being wound-up while he is a member at the time of winding up or within one year after he ceases to be a member before winding up for payment of debts & liabilities contracted before he ceases to be a member,
 - to the costs, charges & expenses of winding-up & for adjustment contributories.
- Capital Clause - Amount of authorized capital divided into share of fixed amounts and the number of shares with the subscribers, indicated opposite their names, which shall not be less than one share. (This clause will not apply to company not having share capital)
- Association Clause - Details of subscribers to form company. MOA shall conclude with this clause. Every subscriber to MOA shall take at least one share, and shall write against his name, the number of shares taken by him.
- Succession Clause - In the case of OPC, the name of the person who, in the event of death of the subscriber, shall become the member of the company.

Articles of Association

- Articles of a company are its rules & regulations framed to manage its internal affairs.
- Articles play a part subsidiary to memorandum of association.
- It provides the mode & form in which the business/changes of company is to be carried on.
- The document containing the articles of association of a company (the Magna Carta) is a business document; hence it has to be construed strictly.
- It regulates domestic management of a company and creates certain rights and obligations between the members and the company.
- Articles are the bye-laws of company according to which director & other officers are required to perform their functions as regards to management, accounts & audit of company.
- Section 5 of the Companies Act, 2013 seeks to provide the contents and model of articles
 - Contains regulations: Articles shall contain the regulations for management of company.
 - Inclusion of matters: Also contain such matters, as are prescribed under the rules. Also include additional matters as may be considered necessary for its management.
 - Contain provisions for entrenchment: Articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures which are more restrictive than special resolution, are met or complied with.

- Manner of inclusion of the entrenchment provision: Made either on formation of a company, or by an amendment in the articles agreed to by all the members in case of private company & agreed by special resolution in case of public company.
- Notice to the registrar of the entrenchment provision: Whether made on formation or by amendment, the company shall give notice to the Registrar in the manner prescribed.
- Forms of articles: Articles shall be specified in Tables, F, G, H, I & J in Schedule I.
- Model articles: Company may adopt all or any of the regulations contained in the model articles applicable to such company. (If do not exclude or modify the model applicable, it shall be applicable in same manner as if they were contained in the registered article)

Difference between MOA & AOA

1) Objectives	2) Relationship	3) Alteration	4) Ultra Virus
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Doctrine of Ultra Vires

- Meaning of the term ultra vires is simply "beyond (their) powers".
- Fundamental rule of Company Law that the objects can be departed from only to the extent permitted by the Act,
- The impact of ultra vires is that a company can neither be sued nor can it sue on it.
- Memorandum is a "public document", it is open to public inspection.
Therefore, when one deals with a company is deemed to know about the powers of company. If enter into a transaction which is ultra vires the company, you cannot enforce it against it.
- An act which is ultra vires the company being void, cannot be ratified by the shareholders of the company.
- Ultra vires contract can never be made binding on the company. It cannot become "Intravires".
Case law: Ashbury Railway Carriage and Iron Company Limited v. Riche
- When an act is performed, which though legal in itself, is not authorized by object clause of the memorandum, it is said to be ultravires the company, and hence null and void.
- An act which is ultravires, the company cannot be ratified even by the unanimous consent.
- 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.

Doctrine of Indoor Management

Doctrine of Constructive Notice:

Any person can inspect, make a record, get a copy or extracts of any document kept with registrar on payment of prescribed fee. (Sec - 399)

- MOA & AOA when registered becomes public documents, hence available for inspection
- It is therefore, the duty of every person dealing with a company to inspect its documents and make sure that his contract is in conformity with their provisions
- But whether a person reads them or not, it will be presumed that he has knowledge of the contents & also understood them in true perspective all the documents, This kind of presumed/implied notice is called constructive notice.
- Thus, if a person enters into a contract which is beyond the powers of the company or outside the authority of directors, he cannot acquire any rights under the contract against company.

Doctrine of Indoor Management/ Turquand Rule

It is the exception to the doctrine of constructive notice.

- It does in no sense mean that outsiders are deemed to have notice of the internal affairs of the company.
- If an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed.

Case Law: Royal British Bank vs. Turquand.

• Exceptions to the doctrine of Indoor Management:

- Actual or constructive knowledge of irregularity: Rule does not protect any person when the person dealing with company has notice whether actual or constructive, of irregularity.

Case law: Howard vs. Patent Ivory Manufacturing Co.

- Suspicion of Irregularity: The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, it is the duty of the outsider to make the necessary enquiry.

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

- Forgery: The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery as it is nullity.

Case law: Ruben v Great Fingall Consolidated.