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Company's Act (2013)

2(5) - Articles
2(6) - Associate Company
2(8) - Authorised Capital
2(11) - Body Corporate
2(15) - Called up capital
2(20) - Company
2(21) - Company limited by guarantee
2(22) - Company limited by shares
2(42) - Foreign company
2(45) - Goverment company
2(46) - Holding company
2(50) - Issued Capital
2(52) - Listed Company
2(56) - Memorandum
2(62) - OPC
2(68) - Private Company
2(71) - Public Finacial Institution
2(84) - Share
2(85) - Small company
2(87) - Subsidairy company
2(92) - Unlimited Company
3 - Formation of company
4 - Memorandum
5 - Articles
7 - Incorporation
8 - Company with charitable objects.
43 - Kinds of share capital
44 - Shares are movable
465 - Dorment Company.

* 470 Section, 7 schedules, 29 chapters.
* 2(20) - Company = Company incorpate under 2013 or Previous law.
* This act apply on - defination, Insurance company if incosident with Insurance Regulatory and development Authority act, 1999.
- Banking company - Banking Regulolation Act, 1949
- Supply of electricity - Electricity Act, 2003
- special act.
- body corporate - FCI, NHAI

* Charactristics.

i) Separate legal entity - (Macaura vs Northan Assurance ltd
ii) Perpetual Succession
iii) limited liablity - a) limited by share = upto unpaid amt.
debt of company ≠ debt of shareholder
b) limited by guarntee = upto amt. guaranteed when company liquidation
c) Unlimited company = unlimited liablited.

iv) Artifical Person = a) created by law, every right
b) bank a/c, loan, sue/can sue, incur right and liablity but can't marry, oath, Proffession, go to jail.
c) director act or common seal.

v) Common seal = offical signature, now optional if have then by C.S if not then by 2 Directors or 1 Director and 1 Com. Secretary. [Com. Act, 2015]

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* Company is not citizen but yet has nationality, domicile and residence.

⇒ Corporate Veil :- Separte from members.
where member is protected by company's action
Only company is liable any act at name of company (Salomon vs Salomon & Co ltd.)

*** lifting the corporate veil = looking behind the company as legal person where company is equal to member.

i) where device of incorporation is adopted for illegal or improper purpose = defeat law, creditors
(Guilford Motor Co. vs Horne)

ii) For determining residence and character = for wheter it is enemy (Daimler vs Continental Tyre Rubber)

iii) For divide income and avoid tax + welfare law.
(Sir Dinshaw Maneckjee Petit)

iv) To avoid legal obligation = bonus to workmen
(Workemen of - vs Associated Rubber industries)

v) to act as agent = lost its individuality in favour of Principal
(Merchandise Transport vs. British Transport commisson).

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* Classification of Company

a) Based on liablity

2(22) i) limited by shares = unpaid amt., full = nothing to pay

2(21) ii) limited by gaurntee = gaurnted amt by MOA
- liablity arise on liquidation, not when concern
- ex club, trade, association, societies promte
- differnce G = liquidation S = any time.
(Narendra Kumar vs Saroj Maloo)

2(92) iii) Ulimited Company = extent to person property to meet debts.
- Member's lia → company → Creditors, only liqudator ask to members on winding up.

b) Based on Members

2(68) i) Private company - i) Restrict transfer of share.
- members 200 - jointly as single, not include employees ~~members~~ or Past employes which still member.
- Prohibit invitation to Public. atleast two members, two directors, name end with 'Private ltd.'

2(71) ii) Public Company - which is not Private
- minimum share capital, 7 or more meber
- Public company → Private ⇄ Public
- three directors, name end with '~~Pub~~ limited'

2(62) iii) OPC should have 'OPC' or 'One person company'' by Printed, affixed or engraved.
- name of other Person - when incapity in MOA
- written conset with ROC.
- Can withdraw conset or can change by notic to ROC.
- Indian person with 120 days in year in india.
- One Person = one OPC = one nominee
- no minor allowed.
- OPC ⊗ Sectio 8 companies or can't investment

2(85) iv) Small company - not Public
- Paid-up share capital upto - 4 Cr. not more than 10 Cr.
- Turnover upto - 40 cr. not more than 100 cr.
- Can't be - holding - Subsidary, Section 8, Public

* Based on Control

2(87) i) Holding and Subsidary
2(46) - Subsidary = other control on BOD, have more than one half Powers, first mention subsidiary of which is other's subsidary, but beyond layer not (not more than 3)
A - B - C
- Can be between Indian and Foreign company.
- Holding = which is relation with subsidary.

2(6) ii) Associated - has significat influence. = 20%
· joint venture company
- Total share capital = equity + Convertible Preference.
- new in 2013 act.

* Based on Capital

2(52) i) listed - in reconginsed stock exchange.
intend to list by SEBI ≠ listed company

ii) Unlisted = other than listed.

* Other Company

2(45) i) Goverment - not less than 51% held by -
CG or SG or combined,
Goverment's subsidary Goverment

2(42) ii) Foreign - incorparate outside india
- business in india by itself, agent, electric mode.

8(iii) non-Profit company
- for com, art, Sci, Sports, edu, reserch, religion, charity
social welfare etc. ex FICCI, CII
- Can't declare dividend, surplus for Promoting object.
- license by CG, enjoy Privileges of limited Company
- Revocation of lisence by frudalenty or violance or
Put 'ltd.' or 'Pvt ltd.' in company's name
- Give written notic and opponitu of to " be heard.
- After - i) Change name or wound up.
ii) or amalgamted (Joint) with another.
- Fine : 10 lakh to 1 Cr.
- director's fine: 25000 to 25 lakh.
- liable in Section 447.
- general meeting by 14 days not 21.
- Partnership can be Section 8 Company

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455 iv) Dormant - for future Profect, no transaction in last two years, no returns in two years.
- not inculde - Payments of fees to ROC.
  - fulfil requirment by law
  - allotment of share
  - Payment for maintance.

406(1) v) Nidhi = Mutual benifit declary by CG.

2(72) vi) Public financial institution - LIC, IDFCL, UTI, under 4A(2) and 465
- also by other CG or SG Act other than this
- 51% by CG, SG or Combo.

* Mode of Registration
2(69) Promoter = name in Prospectus or annual return
- who has control over affair directly or indirectly.
- by his advice, BOD accustomed to act.

3 Formation = Public = 7, Private = 2, OPC = 1

7 Incorporation of Company
i) Type of company selection.
ii) Preliminary Requirement (Directors have DIN) also one direct have sign online
iii) ROC for reservation of name
iv) MOA and AOA charter and interal rule. done by experts, shows main object.

v) Filling document with ROC.
- MOA and AOA signed by subscriber.
- Declaration by CA, CS, director, manager.
- Declaration by subscribers or first director for
  - He is not convicted for any connection
  - not guity for fraud or misfeusance in 5 years
  - all documents are true.
- address for correspondence.
- name, family name, adress, nationality of subscriber,
- " " of Person in articles
- " " of intrested Person (first directors)

vi) Certificate and CorParte Indentity Number by ROC.

* effects of Registration (Section 9).
- After date of incorporate have Perpetuall sucession
- seprate legal entity from members.
- may Purchase share of other company. but can't all shares.

* Effect of furnishing false info or suppression fact. (Section 447)

at time of Process
any Person do he will liable for fraud
Section 447

before making order
- opportinuty for being heard
- Take into consideration obligation and liablity.

at Post incorporation.
Promoters, directors or Person makin declaration
Tribunal = 1) change in MOA, AOA.
2) liablity unlimited.
3) remove name from ROC
4) order for winding up
5) any other deem fit.

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* MCA has new Idea and filing forms by Simplified Pro forma for Incorporating Company Electronically (SPICe)

* Memorandum of Association (Section 399)
- charter, define scope, foundation on which company built
- Contain object and scope beyond which company can't go.
- enable for all who deal ~~dil~~ with company (Public document)
- Shareholders - where their money go.
- If company go beyond power it is ultra vires.

* Form of Memorandum (Section 4) Tables.
A = limited by share, ~~B~~ =
B = limited by guarntee, no share capital
C = limited by guarntee, share capital.
D = unlimited company, no share capital
E = unlimited company, share capital.

* Contents of MOA
i) Name clause - ltd, Pvt ltd., not for section 8 'Electoral Trust' for Electoral Trusts scheme by CBDT.
- Section 8 may have foundation, forum, Association, chamber, council

ii) Situation Clause - name of state of ROC

iii) Object clause - All objects which for company form
If company chang activity, change name according to it in 6 months.

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iv) liablity clause - limited by share/guarntee
in guarntee - contribute for liablity on wound up
all member should - all cost, charge, expense on wond up.

v) Capital Clause (if have) - authorized share capital and fixed amount and number of share.

vi) Association Subscription clause -
- Signed by all subscribers and signature by witness.
- subscriber must have one share.
- write his share numbers.

vii) Succession Clause (OPC) - name of Person after death of subscriber.
- Public - sign by 7, Private - 2, OPC - 1.
- also signatories's adress, description, occupation.
- minor can't by guardian can sign.
- MOA can't contain contrary to Companies Act.

* Articles of Association (Section 5)
- for internal regulation.
- AoA is subsidiary, MoA is charter.
- buisness document, construed strictly, create rights and obligation between member-company.
- Perform their function like accounts and audit.

* Contents and model
i) Contain regulation
ii) Inclusion of matters require for management. by rules.

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iii) Entrenchment Provison by special Resolution for altering ~~on~~ AOA. made on time of formation or by special resolution - in Public, agreed by member in Private.

iv) Forms of articles - Table F, G, H, I, J (Sc. 1)

v) Model article - must contained, for changing can't Possible.

Points.	MOA	AOA
Objective	define limit and object	internal rules and regulation.
Relation	outside world.	company - members.
Alteration	by certain circumtanses Permisson of Tribunal	by Special resolution.
Ultra vires.	beyond scope can't ratified.	Can ratified by special resolution.

* Doctrine of ultra virus.
- null and void, MOA can't ratify.
- no rights and obligation arise
- no one can sue.
- beyond power of directors but intravires can ratified.
- AOA can ratify by special resoluation.
  [Ashbury Railway Carriage and Iron Company ltd. vs Riche]

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* Doctrine of Constructive Notice (Section 399)
- Person deal with company presume to read documents. in true Perspective also check by nominal fees.
- Protect company against outsiders.

* Doctrine of Indoor management
- no duty of outsider to check indoor managment it must done in true way, Protect outsider against company.
(The Royal British Bank vs Truquand)

* Expection
i) Actual or constructive Knowledge of irregularity.
[Howard vs Patent Ivory manufacturing Co.]

ii) Suspicion of irregularity (Should inquiry)
[Anand bihari lal vs Dinshaw & Co.]

iii) Forgery (sign by mistake)
[Ruben vs Great Fingall Consolidated]

* Share (Section 2[84]) - share in share capital
- Participate in Profit, declare dividend, assets on winding up.
- Share is movable Property

i) Dematerikaised share - compalsary, Proof of ownership, Can't distinctive number. for Public offer.

ii) Physical share - other companies may issue.
- Proof of ownership
- Can distinctive number.

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* Nominal Authorised / Registered Capital [2(8)]
(maximum amount)

↓

Issued Capital

↓

Subscribed Capital [2(86)]

- Called Capital [2(15)]
(called for Payment)
  - Paidup [2(64)]
  (Paid on share issued)
  - UnPaid Capital
- Uncalled capital

Share Capital.

- Preferrnce share.
(Preferncial right for dividend and repayment of capital)
- Equity share
  - with voting rights
  - with differnital voting rights.

- ii) differnital voting rights for dividend, voting or otherwise.

ex Tata moters, 2008