Companies Act 2013

(21 marks)

Topics

- Corporate Veil & Cases
- Types of Companies
- Registration
- Doctrine
  - UV
  - DOCN
  - DOIM

Introduction

Why – Act meant to consolidate and amend the law relating to the companies

When – 29th August (Signed)
30th August (Section 1)

Where → Inconsistent with Parent Act

- Company in this Act or Previous law
- Body Corporate Incorporated by Any Act (NHAI)
- Insurance Co
- Banking Co
- Company electricity – G / S
- Company governed by Special Act (RBI/ICAI)

Companies features 2(20)

- **Seprate Legal Entity** – it is clothed with a legal personality / person different from subscribers to the MOA/ Member does not have a insurable interest.
- **Perpetual Succession** – Since its a person created by law, not affected by death or insolvency of members.
- **Limited Liability** – * Limited to extent of the nominal value of shares, the Shareholders not be asked to pay anything more than unpaid value
  - freely transferrable
  - call up anytime during winding up or business

* **Limited by Guarantee**
extent upto the amount guaranteed only on liquidation / cannot transfer membership → company is on a seprate footing than that of a company limited by shares.

* **Unlimited Company**
not having any limit on the liability of its members / claim contribution from other members / event of winding up.

Corporate Veil & Cases

- **Artificial Legal Person** – created by a process other than natural birth / can do everything except sent to jail / on oath, marry or learned possesion / directors cannot control affairs of the company, but not agents of the members
- **Common Seal** – In case a company does not have a CS, the Authorisation shall made by 2 directors or by a director and the CS (if cs is appointed) / Section 9 as to provide an alternative mode of authorisation.

Corporate Veil Theory

- members of a company are shielded from liability connected to the Company's action
the corporate veil concept implies that members should not be liable for those errors.
- Shareholders are protected from acts of the Company.
- Salmon vs Salomon and Co Ltd

– the Veil of Corporate Personality can never be lifted or Pierced.
– Only in appropriate circumstances, the Courts are willing to lift the corporate veil.

Lifting Up the Corporate Veil

- Determine the Character of the Company
(Daimler Co Ltd vs Continental Tyre)
- To Protect Revenue / tax
(Dinshaw Maneckjee Petit vs CIT)
- To Avoid Legal Position
(Workmen Employed in Associated Rubber vs the Associated Rubber Industry)
- Formation of subsidiaries to act as agents
(Merchandise Transport Limited vs British Transport Company)
- Company formed for fraud / improper conduct or to defeat law
(Gilford Motor Co vs Horne)

Youtube – Top Case Studies

Classes of Companies

Liability

Company Limited by Shares – Section 2(22) liability of members is limited by MOA to the amount unpaid on shares. Shareholders can be called upon to contribute only to extent of the amount unpaid.

Company Limited by Guarantee – 2(21) members liability limited by memorandum, to the amount guaranteed, to be called up only on winding up. [Narendra Kumar vs Saroj Maloo]

Unlimited Company – 2(92) liability of members extends to personal assets of the members only of winding up, liability ceases on termination of membership. Can Contribution from other members.

Members

Private Company
- minimum paid up capital as may be prescribed
- articles restrics
  – the right to shares tr
  – limits members upto 200
    - joint holders as one
    - Employee / former
  – Prohibits invitation to Public

Public company
- is not a private company and
- minimum paid up capital as may be prescribed
- Subsidiary of public company is deemed Public Co

Small Co (Other Public Co)
- PSC 4cr higher
Amt Prescribed 10cr
AND
- Turnover 40cr higher (PY)
Amt Prescribed 100 cr

Not include
- Section 8
- Special Act
- H/S/~~R~~

OPC (Stay in India 120 days in PY)
- Indian Citizen, Natural Person, whether Resident or Not, shall be a member in OPC (Single member)
- Nominee, natural Person
- Minor shall not be a nominee
- Shall not transact operations of NBFC or Section 8 Co
- Can convert itself to public or private Company without restrictions.

Control

Holding 2(46)
means a company having one or more subsidiary companies

Subsidiary 2(87)
means a company in which holding company
(i) controls the composition of the BOD or
(ii) exercies controls more than one half of total voting power on its own or together with one or more subsidiary

[Subsidiary of a Public Co which is a private Co is deemed Pub Co]

A Ltd (H) → B Ltd (S): 70%
A Ltd → C Ltd: 40%
B Ltd → C Ltd: 20%
C Ltd: 60%

Associate 2(6)
- Significant influence
- Not Subsidiary
- Includes joint venture

- Significant influence
twenty per cent of total voting power
  - Equity Sh Capital
  - Convertible Pref Shares

Access to Capital

Listed Company 2(52)
- Securities listed on any RSE (India)
- Securities as per 2(81)

Unlisted Company – means company other than listed company.

Other Companies

① **Government Co** 2(45)
- not less than 51% of paid up share capital held by
  – CG
  – SG
  – CG & partly by one or more SG and includes a Co which is a subsidiary Co of such a Governmental

② **Foreign Co** 2(42)
- Company incorporated outside India
- Place of Business
  - physically
  - Agent
  - electronic

③ **Inactive Company** – means a company carrying on business, or has not made any significant accounting transaction during last two financial years or has not filed fst & AR → last 2 FY's
→ Acquire Status of Dormant Company

Not	SAT
M	– Maintainence Exp
A	– Requirements of Act
A	– Allotment
F	– Fees to ROC

MAAF Kare → toh Inactive → toh Dormant
MAAF ke Alawa Kare → toh Active → Not Dormant

Public financial Institution 2(72)

– established under the Central or State Act or Previous Co Law or
– Not less than 51% of CG, SG and other combination
→
- LIC
- IDFC Ltd
- UTI
- RBI
- Producer Companies

Section 8 – Non Profit Organisation

- a company engaged in art, science, sports, education, welfare etc
- Connot declare dividend to its members

- Allowed without the addition of words, Ltd or Pvt Ltd to its name
- Requirement of Minimum Capital Not Apply
- Can Call its GM in 14 days instead of 21 days
- Requirement of directors not required

- Need not compose NRC Nomination & Remuneration Committee
- Partnership firm can be a firm
- Need not compose SRC Stakeholder Redressal Committee
- Requirement of ID is not needed.

The Central Government may by order revoke the licence of the company contravenes

- P – Prejudical to Public Interest
- R – Contravenes any requirements
- O – Violate objects of the Company
- F – Conducted fraudulently

Punishment
- Company
  - Min 10 lakhs
  - Max 1cr
- Officers (447) → Fraud / Mistake
  - Min 25000
  - Max 25 lakhs

Windingup

Amalgamation → Similar Objectives

ROC —Co→ Tribunal
(After opportunity of being heard)
- ✓ winding up
- ✓ removal of name
- ✓ extend liability to Unlimited
- ✓ change of management
- ✓ other, as may deem fit

Officers involved liable for fraud u/s 447

Incorporation

Promoter 2(69)
- N – named in a prospectus or annual return
- C – Controls affairs of the Company
- D – Directs the BOD of Company

(A person appointed in professional capacity to direct BOD is not a promoter)

Section 3
Basic Requirement to constitute a company
– Public 7 persons
– Private 2 persons
– OPC 1 person

Section 4 →
- It contains object for which the Comp is formed
- Charter of the Company
- Name Clause
- Registered Clause
- Object Clause
- Liability Clause
- Capital Clause
- Association Clause

Section 5
Articles of Association
Rules meant for internal regulation of management and for internal affairs control. It is a business document follow in strict manner.

Entrenchment Provision – is introduced to protect something, entrenchment could be introduced at time of incorporation in case of a pvt or public Company.

After Incorporation
- Public – 75% Special Resolution
- Private – 100% Consent ✓

Registration
Section 7
Documents
- Particulars of directors (DIN)
- MOA & AOA
- Declaration by CA/CS/CMA/ Advocate all matters complied
- Declaration by Member or director
  - C – Complete
  - F – Fraud
  - O – offence
- Disclosure of Director Interest
- Particulars of Members
- Address for correspondence

On Submission of above documents the registrar Shall grant the Certificate of Incorporation with CIN. (Conclusive Evidence of Registration)

False Statement / Supression → Officers in fault liable for 447

Doctrine of Ultra Vires

(Beyond Powers of the directors)

Objects of a company which depart outside the scope of MOA are void. The Company cannot sue or be sued in an ultra vires transaction.

- Ultra Vires transaction cannot be ratified
- Such a transaction is null n void.
- Ultra Vires cannot be ratified by all company.
- Intra Vires the Company but Ultra Vires the directors, can be ratified
- the creditor paid off. the outsider can bring an injunction against the Company.

Doctrine of Constructive Notice

Requries every person to read the
- MOA
- AoA
- SR

prior to dealing with the Company

Doctrine of Indoor Mgt

does in no sense mean that outsiders are deemed to have notice of affairs of the company.

Royal British Bank vs Turquand

Exception to this Rule

① Actual or Constructive Knowledge of irregularity – does not protect any person, when person dealing has actual or constructive Knowledge

② Suspicion of Irregularity – does not reward a person who behaved in a negligent manner and failed to conduct detailed investigation.

③ Forgery – forgery is regarded as a nullity.

LLP 2008

Financial Year

After 30th Sept

29th Sept 2024 — 31/3/2025

1st Oct 2024 — 31/3/2026

31/3/2025 - 1/4/2025

Small LLP 2(ta)

Capital Contribution ≤ 25 lakh — 5Cr

(AND)

Turnover ≤ 40 lakhs — 50Cr

PY

5 marks

20 mins

Resume at 9:20 pm

1 - 17

Q2(b)

1 2 3 4 5 6 7 11 12 13 14 15 16 17

Chapters 14

Sections 81

Schedule 4
- R&D of Partners
- PF → LLP — II
- Pvt Co → LLP — III
- Unlisted PubCo → LLP — IV

Meaning
- Co vs Firm — Alternate Corporate Vechicle
- Seprate Legal Entity
- Limited Liability — Contribution
- Liability shifted to LLP
- flexible Structure

Section 4 - IPA 1932 Not Applicable on LLP

Section 5 - Any Individual or Body Corporate can be Partner

Except
- U - Unsound Mind
- U - Undischarged Insolvent
- I - Insolvent Application pending

~~Tribunal~~ — ~~Winding Up~~

2

Section 6 - Minimum 2 Partners (If Number falls below 2 replace within 6 months or liability unlimited)

case study

Section 7 - Atleast 2 natural Person as DP

↓ DP 2 — 20

- 1 → Resident in India (120 days in India)
- 2 Body Corporates can form LLP by Appointing 2 Nominees or 2 Partners as DP (Natural Person)

Characteristics

Company	Firm	Unique
• Seprate Legal Entity — LLP ✓ P ✗ F	• Management of business → Partners only — DP — legal matters	• Investigation — MCA - 6 months
• Body Corporate — Registered	• Mutual Agency	• e-filing of documents
• Artifical Legal Person — LLP	• Min - 2	• Foreign LLP
• Common Seal → 2DP	Max - No limit	
• Limited Liability — LLP	Firm: P → All P; LLP: P → Firm	

Co — 8 2(72); 4 2(71); 2(42)

Partner's Capital Contribution

Section 11 - Incorporation document + 2 partners + Business + Profit

3 Firm — N A B; 2 Partner — NP DP — A+N

⊕ Statement by CA/CS/CMA/Advocate

• Penalty → Prison 2 years and → 10,000 to 5 lakhs

5 lakh × 2 year: 5 × 2 = 10,000

Section 12 - The LLP shall recieve the incorporation document within 14 days of submission.

LLPIN

Conclusive Evidence of Registration

Section 13 - LLP Inform → ROC (Registered office) 30 days

Any change also communicate

→ Penalty 500 per day upto 50,000

Section 14 - Effect of Registration
1. Can Sue or be sued
2. Common Seal
3. Own, dispose, charge, mortgage immovable property.
4. Such other acts as applicable to LLP

Section 15 -
- LLP added to the Name
- Name not to be undesirable or Identical

Section 16 -
- Name reservation can apply for 3 months — 3m

Section 17 -
- CG can order for change of Name
- LLP to Comply in 3 months

On failure → CG shall suo moto (on its own) change Name

Amendment Dec 2021

→ 15 days ROC inform — 30 — COI → ~~Penalty~~

Section 22 - The agreement contains Rights & Duties

Section 23 -
- Any changes in agreement shall be ratified by all partners.
- However for matters not mentioned in the agreement follow Schedule I.

Section 24 -
- Partner — 30 days Notice — LLP
- Automatic End
  - U. Unsound
  - I. Insolvent
  - D. Death

  → ROC
- Partner → Capital; Profits - Losses = NET

Note: NO Interference of retired Partner

24 Statement of A/C, Statement of Solvency — Co → ROC in 6 months from FY end.

25 Annual Return — 60 days — ROC from end of FY

Section 25 - Partner change
- Name
- Address

Inform LLP → 15 days; LLP → ROC in 30 days

Change: Partner — 15 days — LLP — 30 days — ROC

• Partner Enters or Ceases
- ROC → Confirm with LLP (15 days)
- LLP — in 30 days → ROC

Partner — 30 days — ROC

• Penalty 10,000

Section 26 - • Every Partner is the agent of the LLP.

Section 27 - LLP Pov
- Activity performed within Authority + Purpose of business. — LLP Responsible
- LLP is responsible for all wrongful Act or omission.
- Liabilities to be met out of LLP Assets

Section 28 - Partner Pov
- Partner shall make the LLP liable for Any of the → Authority → Purpose of Business — LLP Shall take responsibility

Section 29 - Holding Out
- Where a person by words spoken or written
- represents himself, as a partner
- Any credit given to the LLP for this representation
- The LLP shall be responsible to refund the amount.
- Any benefit arising from such amount Shall be restored

Section 30 - Fraud
- Where the LLP is involved in fraud or
- Any of the partners along with partners are involved in fraud.

Partners
- Compensate — Outsider
- Penalty 2 → 5 — Prison 5 years + Fine 50000 to 500,000

5 yr — 50,000 — 5,00,000

Section 31 -
- Whistle Blowing involves waiver of penalty.
- If such information leads to conviction.

Section 34 -
- Proper Books of Accounts = Accrual/Cash + Double Entry
- Statement of Solvency + Statement of Accounts — Audit

in 6 months → ROC

LLP = 25000 to 5 lakhs; DP = 10,000 to 1 lakh

Section 35 - LLP — Annual Return → ROC — 60 days — Summary of financial Performance

Penalty → 100 per day upto 50,000

Section 58 -

Old Registration
- Normal Partnership Firm
- Company Act

2/3/4 — PF-LLP, Pvt-LLP, UPLC to LLP

New Registration — LLP

Inform Old Registrar in 15 days

Inform

- Assets
- Liabilities
- Pending Cases

→ LLP New

Section 63 - Partners can dissolve LLP with approval of tribunal.

Section 64 - Cases in which tribunal can dissolve the firm.
- If LLP decides to wind Up
- If LLP continue > 6 months with one partner.
- If LLP is unable to pay Debts
- It is against the S I S of India — Sovereignty, Integrity, Security
- LLP defaults in filing of Statement of Solvency or annual Return in 5 consecutive Years

END of LLP