

The Companies Act, 2013: Chapter 6 - Company Law Essentials

Introduction to Companies Act, 2013

- **Enacted to:** Consolidate & Amend company law.
- **Extent:** Whole of India.
- **Contents:** 470 sections, 7 schedules, 29 chapters.
- **Aims to Improve:** Corporate governance, simplify regulations, strengthen minority investor interests, legislate whistle-blowers & class action suits.

Applicability of The Companies Act, 2013

- Applies to:
- Companies incorporated under this Act or any previous company law.
 - Insurance companies (exceptions apply for provisions inconsistent with Insurance Act, 1938 / IRDA Act, 1999).
 - Banking companies (exceptions apply for provisions inconsistent with Banking Regulation Act, 1949).
 - Electricity companies (exceptions apply for provisions inconsistent with Electricity Act, 2003).
 - Companies governed by any special Act.

Company: Meaning & Features

Meaning

- **Chief Justice Marshall:** Artificial being, invisible, intangible, existing only in contemplation of law.
- **Professor Haney:** Incorporated association, artificial person, separate entity, perpetual succession, common seal.
- **Section 2(20):** Company incorporated under this Act or any previous company law.

Features of a Company (💡 T.O.P. C.L.A.S.S. Memory Hack)

Feature	Description
Incorporated Association	Registered group of members (Public: ≥7, Private: ≥2).
Transferability of Shares	Movable property. Restricted in Pvt. but not prohibited; freely transferable in Public.
Ownership - separate from its members	Members don't participate in day-to-day affairs; managed by BOD.
Perpetual Succession	Members may come and go, company continues until wound up by law.
Common Seal	Official signature (Optional as per Co. Act, 2015).
Limited Liability	Limited by shares (unpaid value) or guarantee (amount guaranteed).
Artificial Legal Person	Created by law, not fictitious. Exists only in eyes of law.
Separate Legal Entity	Distinct from members, with its own rights & obligations.
Separate Property and Sue	Can own property, bank account, raise loans, incur liabilities. Can sue & be sued.

Detailed Features

- Separate Legal Entity:**
 - Most distinctive feature.
 - Company is a legal person, distinct from its subscribers.
 - Can contract with members, acquire rights, incur liabilities.
 - Creditors sue the company, not members.
 - Owns property in its own name. Shareholders don't have insurable interest in company property.
 - 🏛️ **Landmark Case: Macaura Vs. Northern Assurance Co. Ltd. (1925)**
 - **Fact:** M insured company's timber in his own name. Timber caught fire.
 - **Conclusion:** Insurance company not liable. Shareholders have no legal/equitable interest in company property.
- Perpetual Succession:**
 - Members may die or change, but company continues until wound up by Act.
 - Shares transfer infinitely without affecting company's existence.
 - Artificial person, only law can end its life.
 - Existence unaffected by death/insolvency of members.
 - **Example:** Company with 7 members, all died in an aircraft crash. Company still exists.
- Limited Liability:**
 - **By Shares:** Liability limited to unpaid value of shares.
 - **By Guarantee:** Liability limited to amount guaranteed, payable during liquidation.
 - **Unlimited Company:** Members' liability is unlimited.
- Artificial Legal Person:**
 - Created by law, not natural birth.
 - Has rights & powers of an individual, except being jailed, taking oath, marrying, or practicing profession.
 - Acts through human agents (directors).
 - Directors act as company's agency, not members' agents.
- Common Seal:**
 - Official signature, affixed to documents.
 - Optional since Companies (Amendment) Act, 2015.
 - If no common seal, authorization by two directors OR director + Company Secretary.

Corporate Veil Theory

- **Concept:** Company identified separately from its members. Members shielded from liability.
- **Corporate Insulation:** Shareholders protected from company's acts.

Lifting of Corporate Veil (पर्दा उठाना - Looking behind the company)

- Courts disregard corporate entity in specific circumstances:
- To determine character of company (enemy or friend):**
 - 🏛️ **Landmark Case: Daimler Co. Ltd. vs. Continental Tyre & Rubber Co.**
 - **Fact:** Company registered in England, but controlled by German residents (enemy aliens during war).
 - **Conclusion:** Company deemed an enemy company.
 - To protect revenue/tax:**
 - When corporate entity used to evade taxes.
 - 🏛️ **Landmark Case: Juggilal vs. Commissioner of Income Tax (Dinshaw Maneckjee Petit)**
 - **Fact:** Dinshaw formed 4 companies to divert income and avoid tax.
 - **Conclusion:** Companies were a sham; corporate veil lifted to identify the real owner of income.
 - To avoid a legal obligation:**
 - When company formed solely to breach contract or evade legal duties.
 - 🏛️ **Landmark Case: Gilford Motor Co. vs. Horne**
 - **Fact:** Ex-MD formed new company to solicit old customers, breaching non-compete clause.
 - **Conclusion:** New company was a mere device; veil lifted, ex-MD held liable.
 - Formation of subsidiaries to act as agents:**
 - When subsidiary is merely an agent of the principal company.
 - 🏛️ **Landmark Case: Merchandise Transport Limited vs. British Transport Commission (1982)**
 - **Fact:** Parent company formed subsidiary to obtain vehicle licenses it couldn't get itself.
 - **Conclusion:** Parent and subsidiary were one commercial unit; application rejected.
 - Company formed for fraud/improper conduct or to defeat law.**
 - Formation to reduce bonus to workmen:**
 - 🏛️ **Landmark Case: Workmen of Associated Rubber Industry Ltd. v. Associated Rubber Industry Ltd.**
 - **Fact:** Company transferred investments to a subsidiary to reduce profits & pay less bonus.
 - **Conclusion:** Supreme Court disregarded separate existence of subsidiary.

Classes of Companies Under The Act

Companies are classified based on:

Basis	Types of Companies
Liability	Unlimited, Limited (by Guarantee, by Shares)
Size (Members)	Public Co., Private Co., OPC, Small Co., Other than.
Control	Holding Co., Subsidiary Co., Associate Co.
Listing	Listed, Unlisted
Others	Foreign Co., Gov. Co., Section 8 Co., Dormant Co., Nidhi Co.

- On the basis of liability**
 - Company limited by shares (Section 2(22)):**
 - Liability of members limited to unpaid amount on shares.
 - Separate property cannot be used to meet company's debt.
 - Company limited by guarantee (Section 2(21)):**
 - Liability limited to amount guaranteed, payable during winding up.
 - Unlimited company (Section 2(92)):**
 - No limit on members' liability.
 - Liability extends to whole amount of company's debts.
 - Creditors can initiate winding up for claims.

BASIS	GUARANTEE Company	SHARE CAPITAL Company
Meaning	MOA states liability restricted to guaranteed amount.	MOA states liability restricted to unpaid amount on shares.
SC	May or may not have SC.	Must have SC.
Quantum of Liability	Guaranteed amount (in winding up).	Unpaid amount on shares (on call).
When does liability arise?	Only in case of winding up.	When valid call is made by co.
Suitability	Initial capital not required; funds from borrowings/fees.	Initial capital required; financial resources from shares.

- On the basis of members**
 - One Person Company (OPC) (Section 2(62)):**
 - Incorporated by a single person as member.
 - Encourages entrepreneurship.
 - Private limited company.
 - **Significant points:** Only one member, no minimum paid-up capital prescribed.
- Provisions related to Member and Nominee for OPC
- MOA to name another person as nominee in case of subscriber's death/incapacity.
 - Nominee's prior written consent required.
 - Nominee can withdraw consent.
 - Change of nominee by notice to company, then company intimates ROC.

- Who can be a Member and Nominee?
- Only a natural person, Indian citizen (resident in India for ≥120 days in immediately preceding FY).
- What are the DONT'S? (🔥 Exam Alert)
- Cannot involve in TWO OPCs (neither for Member nor for Nominee).
 - Minor

Member or nominee.	—
OPC	—
incorporated/converted into Section 8 company.	—
OPC	—
carry out Non-Banking Financial Investment activities.	—
Can be converted to private or public companies.	—
b. Private Company (Section 2(68)):	—
• Prohibits invitation to public to subscribe for securities.	—
• Restricts right to transfer shares.	—
• Limits members to 200 (excluding current/former employee-members).	—
• Minimum members: 2 (except OPC). Maximum: 200.	—
c. Small Company (Section 2(85)):	—
• Private company with:	—
• Paid-up capital ≤ ₹4 Crores (or prescribed higher amount, not exceeding ₹10 Crores).	—
• Turnover ≤ ₹40 Crores (or prescribed higher amount, not exceeding ₹100 Crores).	—
• Exceptions: Holding/subsidiary company, Section 8 company, company governed by special Act.	—
d. Public Company (Section 2(71)):	—
• Not a private company.	—
• Shares freely transferable.	—
• No minimum paid-up capital.	—
• Minimum members: 7. No maximum limit.	—
• Subsidiary of a public company is deemed public, even if private in articles.	—

- On the basis of control**
 - Holding and Subsidiary Companies (Sections 2(46) & 2(87)):**
 - **Holding Company:** One which has one or more subsidiary companies.
 - **Subsidiary Company:** A company where the holding company:
 - Controls composition of Board of Directors (appoint/remove majority).
 - Exercises or controls ≥50% of total voting power OR share capital (Equity SC + Convertible Preference SC).
 - Includes foreign companies.
 - Chain relationship: If B is subsidiary of A, & C is subsidiary of B, then C is subsidiary of A.
 - Associate Company (Section 2(6)):**
 - Company having "significant influence" over another company, but not its subsidiary.
 - Includes Joint Venture company.
 - **Significant Influence:** Control ≥20% of total voting power OR participation in business decisions under agreement.

- On the basis of access to capital**
 - **Listed Company:** Securities listed on any recognized stock exchange.
 - **Unlisted Company:** Any company other than a listed company.

5. Other companies

a. Government Company (Section 2(45)):

- ≥51% of paid-up share capital (with voting rights) held by:
 - Central Government, OR
 - State Government(s), OR
 - Partly by CG and partly by SG.
- Includes subsidiary of such a Government Company.

b. Foreign Company (Section 2(42)):

- Incorporated outside India.
- Has a place of business in India (by itself/agent, physically/electronic mode).
- Conducts business activity in India.

c. Section 8 Company:

- Formed to promote charitable objects (commerce, art, science, sports, etc.).
- Uses profits for objects, prohibits dividend payment.
- CG issues license. Can be registered with limited liability without "Ltd."/"Pvt. Ltd." suffix.
- **Revocation of license:** By CG if contravenes conditions, acts fraudulently, or against public interest.
- **Penalty:** Fine on company (₹10 Lakh - ₹1 Crore), directors/officers (₹25,000 - ₹25 Lakh).

d. Dormant Company (Section 455):

- Formed for a future project, to hold asset/IP, or inactive.
- Has no "significant accounting transaction" (other than fees to ROC, fulfilling Act requirements, share allotment, office maintenance).
- Has not carried on business or made significant accounting transaction for last two FYs.
- Has not filed financial statements/annual returns for last two FYs.

e. Nidhi Companies (Section 406(1)):

- "Mutual Benefit Society".
- CG notifies it.
- Cultivates thrift and savings among members.

f. Public Financial Institutions (PFI) (Section 2(72)):

- LIC, IDFC Ltd, UTI, and other institutions notified by CG (in consultation with RBI).
- **Conditions:** Established by Central/State Act, OR ≥51% paid-up capital held/controlled by CG/SG.

Mode of Registration/Incorporation of Company

Promoters (Section 2(69))

- Named in prospectus or annual return.
- Controls company affairs (directly/indirectly).
- Board of Directors accustomed to act on their advice/directions.
- Conceive idea, take steps for registration.
- **Duty:** Not to make secret profit, full & fair disclosure of interest.
- Professional capacity (solicitor, banker) does not make one a promoter.

Incorporation of Company (Section 7)

1. Filing of documents with Registrar (ROC):

- e-MOA & e-AOA (INC 33-34), duly signed.
- Declaration from person engaged in formation (advocate, CA, CS) & from director/manager/secretary that requirements complied with.
- Declaration from first director(s) & each subscriber: Not convicted of offence, not found guilty of fraud/misfeasance/breach of duty in last 5 years, documents filed are correct & complete.
- Address for correspondence.
- Particulars of subscribers (name, address, nationality, DIN).
- Interest in other entities & consent to act as director from first directors.

2. Issue of Certificate of Incorporation (COI):

- ROC registers documents & issues COI in prescribed form.

3. Allotment of Corporate Identity Number (CIN):

- On & from COI date, ROC allots CIN (distinct identity).

4. Maintenance of copies: Company maintains copies of all filed documents.

5. Furnishing false/incorrect information (at incorporation): Liable for fraud (Section 447).

6. Company already incorporated by false/incorrect information (post incorporation): Promoters, first directors, declarants liable for fraud (Section 447).

Order of the Tribunal (Power)

- If company incorporated with false information, Tribunal can order:
 - Regulation of management.
 - Changes in MOA/AOA (in public interest or company's/members'/creditors' interest).
 - Members' liability unlimited.
 - Removal of company name from ROC.
 - Winding up.
 - Other orders.
- Company must be given reasonable opportunity to be heard.

Simplified Proforma for Incorporating Company Electronically (SPICE)

- MCA simplified incorporation process via electronic filing.

Effect of Registration (Section 9)

- From COI date, subscribers become members, company becomes body corporate.
- Has perpetual succession.
- Capable of acquiring, holding, disposing of property (movable/immovable).
- Can contract, sue, and be sued in its own name.

Binding Force of MOA & AOA (Section 10)

- MOA/AOA bind company and members as if they signed it.

Classification of Capital

Capital: Share-Capital, in rupees, divided into shares of fixed amount.

Share: Proportion of capital a member is entitled to, with various rights. (*Borland Trustees vs. Steel Bors. & Co. Ltd.*)

Types of Capital

1. **Nominal/Authorised/Registered Capital:** Maximum amount of share capital company authorized to raise by MOA.
2. **Issued Capital:** Part of authorized capital offered for subscription.
3. **Subscribed Capital:** Part of issued capital taken up by public.
4. **Called-up Capital:** Part of subscribed capital called for payment.
5. **Paid-up Capital:** Total amount paid or credited as paid on shares. (Called-up capital less calls in arrears).

Kinds of Share Capital (Section 43)

a. Equity Share Capital:

- With uniform voting rights.
- With differential voting rights (DVRs) as to dividend, voting, etc. (*Example: Tata Motors DVRs*).

b. Preference Share Capital:

- Carries preferential right for:
 - Payment of dividend (fixed amount/rate).
 - Repayment of capital (in winding up).
- Can also have rights to participate in surplus dividend/capital.

Memorandum of Association (MOA)

- **Statutory Definition:** As originally framed or altered under the Act.
- **The Charter:** Defines constitution, scope of powers, established under the Act.
- **Foundation:** Whole edifice of company built on it.

Object of Registering MOA (💡 K.O.W. Memory Hack)

- Knowledge for Shareholders & Other Parties (Outsider point of view).
- Object and Scope of Work of Company.
- Where Money is Utilized (Investor point of view).

MOA as a Public Document

- Under Section 399.
- Everyone dealing with company presumed to know its contents.

What Company CAN'T do based on MOA (🔥 Exam Alert)

- Cannot depart from MOA provisions.
- Cannot enter contracts or trades beyond its defined scope (*ultra vires* and void).

Forms for MOA

- Table A: Company limited by shares.
- Table B: Company limited by guarantee & not having share capital.
- Table C: Company limited by guarantee & having share capital.
- Table D: Unlimited company.
- Table E: Unlimited company & having share capital.

Content of Memorandum (Clauses)

S.No.	Clause	Description
1	Name Clause	"Limited" for Public, "Private Limited" for Private. Not for Section 8. "One Person Company" below name for OPC.
2	Registered Office or Situation Clause	State where registered office is situated.
3	Object Clause	Objects for which company incorporated. Cannot go beyond scope defined.
4	Liability Clause	Whether limited or unlimited. Limited by shares (unpaid value) or guarantee (guaranteed amount).
5	Capital Clause	Amount of authorized capital. Number of shares subscribers agree to take (≥1 share each). Not for companies without share capital.
6	Subscription or Association Clause	Details of subscribers. Every subscriber takes ≥1 share.
7	Nomination Clause (OPC)	Name of nominee for subscriber in OPC.

Rules related to MOA

- Printed, paragraphed, numbered.
- Signed by ≥7 (Public), ≥2 (Private), ≥1 (OPC) persons in presence of ≥1 witness.
- Particulars of signatories & witness.
- Company as legal person can subscribe to MOA.
- Minor cannot be signatory (guardian subscribes in personal capacity).

Doctrine of Ultra Vires

- **Meaning:** "Beyond the powers" of the company.
- Any act beyond legal powers of company is *ultra vires*.

Consequences/Impact of Ultra Vires Acts (🔥 Exam Alert)

- **Void-ab-initio:** Inoperative in law, not binding on company.
- **Cannot be ratified:** Even by unanimous consent of shareholders.
- **No legal enforceability:** Company cannot sue/be sued on *ultra vires* transaction.
- **Misapplication of funds:** Directors personally liable for funds used *ultra vires*.
- **Injunction:** Lender can stop company from parting with money if not spent. If spent on lawful debt, lender steps into shoes of debtor.
- **Can't carry on different trade:** Cannot engage in trade different from authorized.
- 🏛️ **Landmark Case: Ashbury Railway Carriage and Iron Company Limited vs. Riche (1875)**
 - **Fact:** Company entered contract to finance railway line, which was outside its MOA objects. Shareholders ratified it.
 - **Conclusion:** Contract was *ultra vires*, void-ab-initio, and could not be ratified.

When CAN be Ratified?

- Acts *ultra vires* **Directors' powers** but *intra vires* Company/Act

Can be ratified by shareholders' resolution.	✓
Acts <i>ultra vires</i> Articles but <i>intra vires</i> MOA/Act	✓
Can be ratified by Special Resolution to alter Articles.	✓
Acts <i>ultra vires</i> MOA or Act	✓
Cannot be ratified.	

Articles of Association (AOA)

- **Statutory Definition:** As originally framed or altered under the Act.
- **Internal Regulations:** Rules for internal management.
- **Bye-laws:** Define duties of directors/officers, management of company, accounts.
- Company may adopt model articles.
- 🏛️ **Landmark Case: Guinness vs. Land Corporation of Ireland**
 - **Fact:** AOA are internal regulations.
 - **Conclusion:** AOA are internal regulations.
- 🏛️ **Landmark Case: Ashbury Carriage Co. vs. Riche**
 - **Fact:** AOA are subsidiary to MOA. They define how business is carried on and how rules can be altered.
 - **Conclusion:** AOA define how business is carried on and how internal regulations can be altered.
- 🏛️ **Landmark Case: S.S. Rajkumar vs. Perfect Castings (P) Ltd**
 - **Fact:** AOA is a business document, construed strictly. Regulates domestic management, creates rights/obligations between members.
 - **Conclusion:** AOA is a business document regulating internal affairs and member relations.

Content of AOA

S.No.	Clause	Description
1	Contains regulations	Rules for internal management.
2	Inclusion of matters	Additional matters considered necessary for management.
3	Entrenchment provision (सख्ती)	Specific provisions made more restrictive/tough to alter. Can be at formation or by amendment (consent of all in Private, SR in Public). Notice to ROC.

Forms for Articles

- Table F: L by S (Limited by Shares)
- Table G: L by G + SC (Limited by Guarantee + Share Capital)
- Table H: L by G (Limited by Guarantee)
- Table I: UL + SC (Unlimited + Share Capital)
- Table J: UL - SC (Unlimited - Share Capital)

Doctrine of Indoor Management (Turquand Rule)

- **Principle:** Outsiders dealing with a company are entitled to assume that all internal formalities have been complied with.
- **Favour:** Protects innocent outsiders.
- **Exception to Constructive Notice:** Outsiders are NOT deemed to know internal affairs.
- 🏛️ **Landmark Case: Royal British Bank vs. Turquand**
 - **Fact:** Company's AOA allowed borrowing with shareholder resolution. Loan taken without resolution.
 - **Conclusion:** Bank could assume internal formalities were met; company liable.

Exceptions to Doctrine of Indoor Management (🔥 Exam Alert)

The doctrine does not apply if:

1. **Actual or constructive knowledge of irregularity:**
 - Outsider has notice of irregularity. (*Howard vs. Patent Ivory Manufacturing Co.*)
2. **Suspicion of Irregularity/Negligence:**
 - Transaction is unusual or outside ordinary course of business, raising suspicion. Outsider has duty to enquire. (*Anand Bihari Lal vs. Dinshaw & Co.*)
3. **Forgery:**
 - Rule does not apply to forged documents. (*Ruben v. Great Fingall Consolidated*)