

Business Laws

The Company Act 2013

Introduction

1. Business can be done alone or together with someone else.
2. When we do business alone, there is no possibility of any dispute with anyone, because there is no co-founder.
3. When we do business with other people as co-founders or partners, there are high chances of disagreements & disputes.
4. So, there must be some pre-written rule to run business with co-founders / partners.
5. These pre-written rules are of two types:
 - a) Rules written by co-founders themselves (Deed or Articles)
 - b) Rules written in law (Law)
6. There are Multiple laws to govern businesses of co-founders.



- 7) out of all the option available, We Can't decide Which law is Suitable for us depending upon the law Selected We go to the Concerned Registrar Office for registration
- eg Partnership: Registrar of Firm
LLP: Registrar of Companies
Company: Registrar of Companies

- 8) Company Registration is done under Companies act 2013 In other words, Business Registered under Companies act 2013 or any other Companies law is Called Company [Section 2(20)]

How to check if Company is Business or not?

- ① If we get Pan card of Business 4th character of PAN Shall be 'C'
- ② If we get Registration number of the Business, its Registration number shall be of 21 digit Starting from U or L
- ③ If we neither PAN Card nor be have Registration number We can check the name of Business If the name ends With Limited or Pvt Ltd. It shall be Company.
- eg IOCL: Indian oil Corporation Ltd
HUL: Hindustan Unilever Ltd

Distinctive Features of Company

- i) Separate legal Identity: Company & People who run the company are considered absolutely different persons. Director who runs the company cannot say that they own the company they should just act as caretakers & not owners.

For eg Drawings are possible from the capital of the Partnership & Proprietorship. But the same is not allowed in case of company. Director can either take salary or advance. There is no concept of drawing.

- ii) Perpetual Succession: Perpetual succession means that company never dies on its own. If we wish to close the company, we can do so by following process specified in the law but it never dies automatically even if all shareholders / members die together. Company continues to exist. It is because ownership of company will get carry forward.

- iii) Limited Liability: If means liability of members of the company shall be limited to the amount promised by them. In other words, if assets of company are not sufficient to pay of company debts, members are not required to pay anything more than the promised amount.

- iv) Artificial legal Person: Company is a separate person in the eyes of law but it is an artificial person, not natural person. It can have assets, liabilities, contract in its own name but as it is not natural

It cannot decide things. It needs some natural person to act on its behalf. They are known as directors of company, better known as directors.

- v) Common Seal: Common seal is a kind of stamp of the company. If we use common seal on any document, it is considered to be an authorised document. However, common seal is now optional.

If common seal is not available, we can use signatures of following people to authorise a document:

- i) 2 Directors
OR

- ii) 1 Director and 1 CG

Q34 E Book Question

Reference: Present Problem has been taken from the concept of features of company under Companies Act 2013

Statutory Provision: ① As per Perpetual Succession feature, members may come, members may go, company last forever.

② Even if all members die, company will continue to exist.

③ As per feature of separate legal identity & artificial personality, it can own property, it can definitely sue others & it can also be sued.

Conclusion In this case,

1) No, Flower Farm Private Ltd is still in existence

2) No, it is not correct because it can own property, it can sue and also be sued.

CORPORATE VEIL THEORY

1 It is a concept which provides protection to the people who run company

2 Till the time, company mistakes are acting honestly working within their powers, abiding their duties, they will never be held personally liable.

3 In other words, even if company suffers from some liability because of actions of directors, company will provide protection to them with incurr liability free.

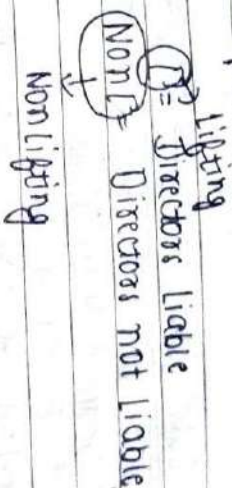
4 This protection is called corporate veil. Veil refers to an imaginary wall that separates company from its directors.

5 Directors are acting for the company but they are not company themselves.

6 However this protection or corporate veil will get lifted in certain cases where intentional wrong actions are committed.

7. When corporate veil is lifted, the directors become personally liable for the liabilities of company.

8. In other words when intentional wrong takes place, company & directors are considered same and they get personal punishment.



9. Following are some situations in which corporate veil is generally lifted and directors are made personally liable:

1) To determine Character of the company: If we need to determine that company is our friend or enemy, we need not to look at the company, we must look at people who run the company. If action taken by a company are in support of the country, the company should be considered a friend to the nation. These actions are actually taken by directors on behalf of company.

(ii) To Protect Revenue / Tax: If tax evasion takes place, company directors must have not made payment of taxes within intention of ill will so, when non payment of tax is proved to be an intentional default, directors must be personally liable.

(iii) To avoid legal obligation: Whenever any legal obligation is not fulfilled and breach of law takes place,

Company directors will be personally liable. This breach of law can be of any kind, whether corporate law, environmental law, share market law, labour law, etc.

iv) Formation of subsidiaries as agent: When a company finds itself not able to perform an activity due to certain government restrictions, it creates another company as its subsidiary which technically becomes eligible to perform the same activity. It means the existing company tried to bypass the law by indirectly securing something for which it was not eligible.

In such case corporate veil shall be lifted and director of existing company shall be personally liable.

v) In case of fraudulent or illegal action: If any deceptive practice is adopted or any illegal action was performed, corporate veil shall be lifted and directors will be personally liable.

034 E-Book

Referred: Present problem has been ~~referred~~ taken from the concept of lifting of corporate veil under companies act 2013

Statutory Provision 1. Whenever tax evasion is attempted, it must have been done not by the company itself but by caretakers of company.

2. In such cases of tax evasion, fraudulent actions and illegal activities, corporate veil is lifted and the real person behind the action will be personally liable.

Conclusion: In this case, NO MHA cannot be regarded as separate from companies be formed.

042 E-Book

Reference: Present problem has been taken from the concept of lifting of corporate veil under companies act 2013

Statutory Provision

Whenever any fraudulent action is done, company caretakers will be held personally liable. Moreover, it is to be noted that breach of contract is also a kind of fraud.

Conclusion: In this case, Mr. Karan has broken his promise with ABC Ltd.

He deliberately opened up new company PAR in order to do something which he was technically not allowed to do. Here, Mukherjee will personally liable.

Classes of Companies under the act

1) First of all we must understand that there are multiple categories in which classification can be done.

2) Second most important aspect we must understand that a single company can fall in multiple categories.

3) Following are the categories of companies:-

(i) On the Basis of liability

- limited by shares
- limited by guarantee } Q1
- unlimited

(ii) on the Basis of Numbers

- One Person Company - Q2, 20, 25, 30
- Private Company - Q23, 40
- Public Company
- Small Company - Q36.

(iii) on the Basis of Control

- Holding Company
- Subsidiary Company } Q19, 10, 24, 34
- Associate Company } Q22,

(iv) on the Basis of access to capital

- listed Company } Q12
- unlisted Company,

(v)

Others

- Government Company - Q24, 31
- Foreign Company - Q8, 14
- Charitable Company - Q8, 7, 66, 71
- Dormant Company - Q33
- Nidhi Co. -
- Public Financial Institution -

On the Basis of liability

- Company limited by shares :- This is a company in which liability of members is limited to the amount of shares purchased by them. If shareholder has paid full value on his shares, nothing more can be demanded from him. This is the most common category of companies in India.

- Company limited by guarantee :- This is a company in which members give a written guarantee that they will pay a guaranteed amount to the company at the time of winding up.

Note:- There may be a combination as well which means a company limited by guarantee can also issue shares.

- Unlimited Company :- It is a company in which liability of members is not limited. They will have to bring in more money if assets of the company are not sufficient to pay debts of the company.

On the Basis of Members

• One Person Company :-

- 1) One Person Company is a special type of private company.
- 2) Private Company means a company with limited number of members & it cannot invite public to sell its shares.
- 3) OPC is also called special type of private company because OPC also cannot issue shares to general public.
- 4) One Person Company should have just one member having 100% shares.
- 5) One Person Company can appoint more than one directors but cannot have more than one shareholder.
- 6) OPC must have a nominee person who will become member of OPC after the original member vacates office.
- 7) In simple words we need following 3 people :-
 - 1 Member
 - 1 Nominee
 - At least 1 director

Members + Director
= Can be same person
Members + Nominee
= Cannot be same person
Nominee + Director
= Can be same person

- 8) In other words following is the minimum & maximum number of persons involved in one person company

Shareholder	1	Max
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Director 1 15*

Nominee 1 1

* More than 15 directors can be appointed after passing special resolution.

- 9) Members as well as nominee must be Indian citizen.
- 10) Members as well as nominee may or may not be Indian Resident.

- 11) A person becomes resident if he stays in India for 180 days or more.

- 12) Counting of 180 or more days shall be done from previous financial year.
eg If we wish to check residential status today 30.02.2024. [FY 23-24]

Counting shall be done from previous year = 2023-2024
[1.4.22 to 31.3.23] FY 2022-2023

- 13) In simple words, Member and Nominee
 - Must be natural person
 - Must be Indian citizen
 - May or may not be Indian resident
- 14) One person can become member in just one OPC at one time.

15) One person can become nominee in Just one OPC at one time.

16) However one single person can become member in one OPC and nominee in another OPC.

eg OPC1 OPC2

Member	Ram	Alay
Nominee	Mohan	Ram

17) Generally, same person cannot become member of 2 OPC but if it happens because the same person was nominee in another OPC and had to become member after the original member vacated his seat, such membership of 2 OPC is allowed for maximum 180 days.

18) It means the same person who accidentally became member of 2 OPC has to choose one OPC within 180 days. If he does not decide anything, he will lose membership of that OPC which came later to him. (19) Nominee of OPC can resign and member also can remove nominee at any point of time.

20) Nominee of OPC whether first nominee or subsequent nominees, must give written consent that he is willing to become nominee.

21) OPC can never be a charitable company and can never be converted into a charitable company.

22) OPC cannot operate as NBFC.

23) NBFC stands for Non Banking Financial Company. Minor can never become member or nominee in OPC.

24) OPC can be converted into any other kind of Co. without restrictions.

Q25 E-Book

Reference: Present problem has been taken from the concept of OPC - one person company under Companies act 2013.

Statutory Provision: It is mandatory that sole member and nominee of OPC must be Indian citizen.

2) It is not mandatory that sole member and nominee must be Indian resident.

Conclusion: In this case, yes, it is mandatory for 2 to withdraw her name as nominee if she is leaving Indian citizenship.

2) She can continue as nominee only if she maintains Indian citizenship. It does not matter whether she maintains residential status or not.

Q30 E-Book

Reference: Present problem has been taken from the concept of OPC under Companies act 2013.

Statutory Provision: 1 OPC may or may not be a small company.

2) OPC can have any amount of capital & turnover.

3) OPC can be converted into any other kind of company.

at any point of time.

4) OPC can be converted without any fulfillment of

any condition.

Conclusion: In this case,

1. And can do so
2. And can convert his OPC into Pvt company.

• Private Company:

- 1) Private Company is a company which has following 3 restrictions on it:
 - (a) It can have maximum 200 Members.
 - (b) It cannot invite Public to sell its shares
 - (c) Transfer of shares of this company is restricted

2) In the counting of 200 members, following 2 people are not counted:

- (a) employees of the company who were allotted shares during their employment
- (b) ex-employees of the company means people who have left the employment of the company but they still carry company membership / shares.

3) In the counting process, Joint owner of shares will be counted as 1.

Q40 E-Book

Refring: Present problem has been taken from the concept of Private company under Companies act 2013.

Statutory Provision:

- 1 Maximum number of members in a Private company are 200
2. employees and ex employees are not counted in the limit of 200 members. But the condition is that they must get shares during the employment

Conclusion: In this case,

Case 1 When employment ends on 28.06.2016
Company will have to reduce no of members because 25 persons who purchase shares on 1.12.2016 were not employees of the company. Their relationship with company as an employee and as shareholder has already ended.

Case 2: When employment ends on 28.6.2017

Company need not to reduce no of members because it has 195 members, which is less than 200.
We will not count 25 persons who bought shares they were employees as on date of purchase.

Referred :- Present case has been taken from the concept of Private Company under Companies Act 2013.

Statutory Provision :-

- 1) Number of members in a Private Company cannot exceed 200
- 2) Employees and Ex-Employees who got shares during the employment are not counted
- 3) Joint owner of single share shall be counted as one member.

Conclusion :- In this case, counting of number of members is shown below:-

Directors and Relatives	190
Employees	0
Ex-Employees	0
Joint Owners	10
Total Members	200

As number of member is not exceeding 200, there is no need reduce number of member to complete conversion of Company.

Small Company :-

1. Small company is basically a Private Company with limited amount of paid-up share capital and turnover.
2. Small company must have maximum paid up share capital of ₹ 4 crore
3. This 4 crore surplus is the present maximum limit and it can be increased by central Govt upto ₹ 10 crore.
4. Small company must have maximum turnover of ₹ 40 Cr.
5. This 40 Cr surplus is the present maximum limit of turnover which can be increased by central Govt upto ₹ 100 Cr.

$$\text{Small Co} = \text{Net Co} + \text{PSC Max} + \text{Turnover Max}$$

$$40 \text{ Cr} \quad 40 \text{ Cr}$$
6. Small company enjoys several exemptions and relaxations because of being small.
 eg Any punishment to be applied on any company get reduced to half in case of small company.
7. If any of the limit whether paid-up share capital or turnover get crossed, small company will lose status of being small and will not get any more exemptions.
8. Following companies can never be considered as small company even if Paid-up share capital and Turnover are within limits:-

- (a) Holding Company of any other Company
- (b) Subsidiary Company of any other Company
- (c) Section 8 / Charitable Company
- (d) Company for which separate act has been passed.
(e.g. LIC of India)

Q36 E Book

Reference: Present Problem has been taken from the concept of small company under Companies act 2013

Statutory Provision:

1. Small Company must be a private Company
2. Small Company must maintain paid up Share Capital not more than ₹ 4 Cr and Turnover not more than ₹ 40 Cr
3. Paid up Share Capital limit can be increased by Central Govt upto 10 Cr
4. Turnover limit can be increased by Central Govt upto ₹ 100 Cr
5. Following Companies can never be small even if they maintain limit of paid up share capital and turnover.

Conclusion: In this case, ABC Private limited is definitely a small company because

- (a) It is a Private Company
- (b) It has paid up share capital of ₹ 35 lakh i.e. less than ₹ 4 Cr
- (c) It has turnover of ₹ 2.5 Cr i.e. less than ₹ 40 Cr

• Public Company:

1. Public Company is a company which is not a private company.
2. Public Company is a company which does not suffer from limitations of a private company
3. It means:
 - (a) It can have any number of members and not just 200
 - (b) It can invite public to sell its shares to general public
- (c) Transfer of shares in this company is freely allowed.
4. Number of members in Public Company are as follows:

Min = 7
Max = No limit
5. Name of the Public Company must end with the word 'Ltd'.
6. Subsidiary company of a Public Company is deemed to be a Public Company.

On the Basis of Control

• Holding and Subsidiary Companies :-

1. Holding and Subsidiaries Company are normal and Private Companies and Public Companies. They are called holding and subsidiary because of control of one company in the hands of another company.
2. Control becomes the major factor of holding subsidiary relationship.
3. Control of one company can go in the hands of another company in following cases :-
Case 1 OR Case 2

<u>Control because of Voting Rights</u>	<u>Control with the Composition of Board of Directors</u>
When one company acquires more than 50% Voting Rights in another company either because of equity shares or because of guarantee in Guarantees Co.	When Control of one company is in the hands of another company, control goes to that company. Whichever and whichever director
4. Subsidiary of subsidiary is also considered to be subsidiary, because of chain relationship.

Ques 19 E-Book

Relevance :- Present Problem has been taken from the concept of Holding and Subsidiary Company under Companies Act 2013

Statutory Provision :-

1. Holding subsidiary companies are relative terms.
2. Holding subsidiary relationship arises only when one company acquires control over another company.
3. Control is acquired in any of the following ways :-
(a) when one company acquires majority voting rights in another company whether due to share ownership.
(b) when one company controls composition of board of directors of another company.
4. Company which acquires control is called holding company and company which gets controlled is called subsidiary company.
5. Subsidiary of subsidiary company is also considered to be subsidiary.

Conclusion :- In this case, Yes, Tovia Ltd. shall be considered as holding company of popular Products because of two reasons :-

(a) Tovia is controlling composition of directors of popular products.

(b) Tovia is not directly holding any shares in popular but subsidiary companies of Tovia together possess majority shares in popular. Majority shareholding is computed below.

$$(c) \frac{2.5Cr + 2.5Cr + 3.5Cr}{100} = 70.83\%$$

Q24 EBook

Reference: Present Problem has been taken from the concept of Holding Subsidiary Company under Companies Act 2013

Statutory Provision:

1. Holding Subsidiary Companies are negative terms
2. Holding Subsidiary relationship arises because of Control
3. Control of one company can go in the hands of another company in any of the following ways:
 - (a) when one company acquires majority voting rights in another company
 - (b) when one company acquires control of composition of board of directors of another company
4. Company which acquires controls is called Holding company and company which get controlled is called subsidiary companies
5. Subsidiary of subsidiary company is also considered to be subsidiary.

Conclusion: In this case, BC Pvt Ltd will be holding company of PQ in both the cases. It is because direct and indirect holding of BC in PQ is coming to be 53.33%.

This is computed as follows:

Case I Shareholding of BC in PQ

Direct Shareholding = 90,000
Indirect Shareholding = 70,000
Total = 1,60,000

Shares out of 3,00,000 shares

Case II Shareholding of BC in PQ

Direct Shareholding = 0
Indirect Shareholding = 1,60,000
Total = 1,60,000
Shares out of 3,00,000
= 53.33%.

Associate Company:

Alt'd is buying shares of B Ltd

How much?

Investor Co. 0-19% Investor Co.
Investor Co. 20-50% Associate Co.
Holding Co. 50.1%-99% Subsidiary
Holding Co. 100% Wholly Owned Subsidiary Co.

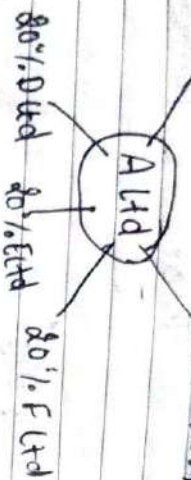
1. Associate Company is also a negative term.
2. One company becomes associate of another company in any of the following ways:
 - (a) when company acquires significant influence over another company. Significant influence means control of 20% or more voting power. Significant influence does not include subsidiary relationship.

(OR)

(b) when a Joint Venture Company is created, this Joint Venture Company shall be associate company of the Co-Ventures.

↳ People who created Joint Venture

3. One company can become associate company of more than one company at the same time.
Eg 80% Bird 80% C Ltd



As we can see there are 5 companies, each holding 20% shares in A Ltd so A Ltd shall be considered to be an associate of all these 5 companies.

Q22 E-Book

Reference: Present Problem has been taken from the concept of Associate Company under Companies Act 2013.

Statutory Provision:

1. One company will become associate company of another company in two ways:
 - (a) when one company acquires significant influence over another company
 - (b) when a joint venture is created, it remains associate of all the co-venturers.
2. Significant influence arises upon acquisition of min 20%, or more voting rights

This significant influence should remain only upto

50%. Voting rights because beyond 50% subsidiary relationship will start

Conclusion: In this case, shareholding of XYZ by ABC is just 15%, which is less than the minimum requirement of 20%. So Associate Company relationship does not exist.

Computation of shareholding is done as follows:

$$\frac{1500 \times 100}{10000} = 15\%$$

Q34 E-Book

Reference: Present Problem has been taken from the concept of Associate Company under Companies Act 2013.

Statutory Provision:

1. One company becomes associate of another company in any of the following ways:
 - (a) when one company acquires significant influence over another company
 - (b) when a joint venture company is created, it is called associate company of all the co-venturers.
2. Significant influence arises upon acquisition of 20% or more voting rights.
3. Significant influence should not go beyond 50% otherwise

It will create subsidiary relationship.

Conclusion: In this case, Associate relationship exist between ABC Co and XYZ Co.

because of 85% shareholding
85% shareholding is computed below

$$\frac{\text{₹ } 1564 + \text{₹ } 1664}{\text{₹ } 10064} \times 100 = 85\%$$

- On the basis of access to capital

- Listed Company:

→ It is a company which has listed his securities (Shares/Debt/Both) on any of the recognised stock exchange in India

→ Listed Companies are called listed companies because they sign listing agreement with the stock exchange.

→ A same company can get listed on more than one stock exchange at the same time.

→ Major stock exchanges in India are Bombay stock exchange and National stock exchange

Unlisted Company:

All companies other than listed companies are called unlisted companies

Other Companies

- Government Company

1. A company in which 51% or more paid up share capital is held by central government, state government or by both.

2. Subsidiary company of a government company shall also be a government company.

Q24 E-Book

Reference: Present problem has been taken from the concept of government company under Companies act 2013

Statutory Provision:

1. Government company is a company in which 51% or more paid up share capital is held by central govt or state govt or jointly by both.

2. Subsidiary company of a government company shall also be govt company.

Conclusion: In this case, Total Shareholding of Govt in the Co. is 53.33%. $\therefore$ So, Yes

Sk Infrastructure Ltd shall be a Govt Co.

53.33% is computed in the following manner

Shares Held by Central Govt = 21,00,000

" " Maharashtra Govt = 1,20,00,000

Total Shareholding 3,20,00,000

which equals to $\frac{320000}{600000} \times 100$

$$= 53.33\%$$

Q31 E-Book

Reference: Present Problem has been taken from the Concept of Govt Company under Companies Act 2013

Statutory Provision:

1. A Company shall be a Govt Company in either of the following two ways:

(a) 51% or more paid up Share Capital is held by the Central Govt, State Govt or both.

(b) OR

(b) Subsidiary Company of a Govt Company shall also be a Govt Company

d. Holding Subsidiary relationship arises in any of the following ways:

(a) when one company acquires majority voting rights in another company

OR

(b) when one company acquires control over composition of board of directors of another company

OR

(c) Subsidiary Company of a Subsidiary Company shall also be a Subsidiary Company because of Chain relationship

Conclusion: In this case,

1. Z Pvt Ltd is ultimately Subsidiary Company of Y Ltd because Shareholding of Y Ltd in Z Pvt Ltd is more than 50%, computed below

$$= \frac{2,50,600}{5,00,000} \times 100$$

$$= 50.12\%$$

2. Z Pvt Ltd is not a Govt Company because Shareholding of its Shares are held by Govt not its holding Company i.e. Y Ltd is a Govt Company

3. Y Ltd is not a Govt Co. because Shareholding of Govt in Y Ltd is less than 51%. Computed below

$$= \frac{48,00,000}{95,00,000} \times 100$$

$$= 50.53\%$$

• Foreign Company :

1. A company which is incorporated outside india but it has a place of business and business activity in india, shall be a foreign company.

2. Place of Business and business activity

(a) May be physical or virtual

(b) May be done by company directly or through agent

Q8 E Book

Reference : Present Problem has been taken from the concept of foreign company under Companies Act 2013

Statutory Provision :

1. A company which is incorporated outside india but it has place of business and business activity in india, shall be a foreign company

2. ~~Place of business and business activity~~

Business can be conducted either by the company itself or through the agent

3. Place of Business may be physical or virtual.

Conclusion : In this case, Mike Ltd shall be an indian company as it is incorporated in india when incorporation is done in india the company will remain indian if it has offices across the globe.

Q19 E Book

Reference : Present Problem has been taken from the concept of foreign company under Companies Act 2013

Statutory Provision :

1. A company which is incorporated outside india and has a place of business in india shall be a foreign company

2. Business can be conducted by either itself or through agent

3. Place of Business can be physical or virtual

Conclusion : In this case, Mike LLC would be a foreign company because it is incorporated in Singapore ie outside india and it has a place of business in pune in India.

• Dormant Company:

1. Dormant company means following two companies:

a) A company which is incorporated for some future project, OR to hold some asset, OR to hold intellectual property.

b) An inactive company

2. Inactive company means a company, which has not done any business for last two financial years

OR
→ Has not performed any significant accounting transaction in last two financial years.

OR
→ Has not filed annual accounts and annual return for last 2 financial years

3. Significant accounting transaction means all the transaction other than following:

a) Payment of fee by company to registrar

b) Payment made by company to fulfill requirement of any law

c) Allotment of shares as per the requirement of company law

d) Payment for maintenance of office & records.

4. Every inactive company is dormant but every dormant company is not inactive

Q33 E-Book

Reference: Present problem has been taken from the concept of Inactive Company under Companies Act 2013.

Statutory Provision:

1. Inactive company is a kind of Dormant company

2. A company becomes inactive in following situations:

(a) When no business is conducted for 2 financial years

(b) When no significant accounting transaction has been performed for 2 financial years

(c) When annual accounts & annual returns are not filed for 2 financial years

Conclusion: In this case, MTK Pvt Ltd shall be an inactive company because it has not commenced business even after completion of 2 financial years.

Date of Incorporation = 05.01.2021

Completion of 1st F.Y = 31.03.2022

Completion of 2nd F.Y = 31.03.2023

No, Business started even after 31.03.2023, making it an inactive company.

• Nidhi Company :-

1. Nidhi Company or Mutual benefit society company means a company declared as such by Central Govt.
2. These companies operate similar to bank but they are not banks.
3. These companies are incorporated to cultivate habit of thrift and saving among its members.
4. Nidhi Company is always is the nature of public company.

• Public Financial Institutions :-

1. Public Financial Institution are basically Govt Owned Financial Institutions.
2. PFI are owned by Government with minimum shareholding of 51% and they are governed by the special act made for them.

2. They follow companies act 2013 only when their own law is silent on a particular matter.

Eg a) UTI = Unit Trust of India

b) LIC = Life Insurance Corporation

c) IDFC = Industrial development Finance Corporation

• Charitable Company :-

1. It is a normal Public or Private Company but registered with Charitable objects.
2. Charitable objects include promotion of Commerce, Art, Science, Culture, education, Sports, Research, Social Welfare, Charity, environment protection etc.
3. Charitable Company cannot distribute profits to any of its members and used only for promotion of its objects.
4. It means a charitable companies can perform all commercial activities but it cannot distribute profit.
5. Such companies need to take license from Central Government for operating as charitable.
6. After obtaining license such company may remove/ or not use limited or Pvt Ltd words after its name.

Eg. FIICI, ASSOCHAN, National Sports Club, CIL

7. A Charitable Company enjoys many relaxations and exemptions in the company law.

Eg. i) Notice of annual General Meeting

14 days before the meeting instead of 21 days

ii) Charitable Company need not to establish nomination and remuneration committee and stake holder Relationship Committee

iii) Rules Regarding independent directors do not apply

iv) A Partnership firm cannot become member of Commercial Company but can become member of Charitable Company.

8. These relaxations and exemptions will be withdrawn if Central Govt revokes license of Charitable Company.

9. If Charitable Company does not follow rules regarding Charitable Company, Central Govt may revoke its license after giving opportunity of being heard.

10. After cancellation of license, Central Government may issue following Orders:

a) Converting the status as Commercial Company OR

b) Amalgamating this Company into any other Charitable Company OR

c) Winding up of the Company

11. Any reserve and surplus of Charitable Company at the time of conversion or closure, cannot

be distributed among members, it shall be spent on Charity only.

INCORPORATION OF COMPANY

1. When we wish to open Company, we cannot do it ourself ourselves.

2. We can just apply to open a Company. If our documents are found to be correct, Central Government will be allow creation of Company for us.

③ So, we can say that incorporation of Company is an application approval process where we apply & Central Government approved.

4. People who take pains to incorporate a Company are Called Promoters.

5. Promoters are the people who perceive an idea of opening Company, complete all formalities, make formal application to Registrar of Companies, and get certificate of incorporation at the end of the process.

6. Role of Promoters comes to an end upon incorporation if they want to keep some or more control in their own hands, they must appoint themselves as first Shareholder & first directors.

7. An simple words Promoters, Shareholder and directors may or may not be same persons.

8. It is upto Promoters, whether they wish to make themselves Shareholder and director or they appoint someone else.

9. Company can be incorporated for any lawful purpose by :-

- (a) Min 2 Persons → In case of Private Co.
- (b) Min 7 Persons → In case of Public Co.
- (c) Exactly 1 Person → In case of one person Co.

10. Promoters must decide the kind of company they wish to incorporate because requirement of no of persons and documents to be submitted will change accordingly.

11. Following is a standard list of documents to be submitted for incorporation of company :-

(a) Memorandum of Association and Articles of Association of a company

(b) Affidavits of Associates

(c) Declaration from one of the professional (CA/CS/CMA/Advocate) who is engaged in the process of incorporation of company, as well as from one of the directors or managers that all formalities are complied with.

(c) Declaration from all first Shareholders and directors of proposed company that :-

→ They are not found guilty or doing incorporation by submitting false information at any time at past.

→ They are not found guilty of fraud information or mismanagement of Co in last 5 years

→ They have submitted true information for incorporation of this company.

(d) Proof of registered office address

(e) Identity and Address Proof of all subscribers

(f) Identity and Address Proof of all first director

(g) Signature and Photo of authorised Signatory under labour law & other allied law such as for GST Registration

(h) disclosure of interest by first directors in other entities

12. If the company has maximum three directors, simpler incorporation process is done through a simple process called Spic (Simplified Procedures for incorporating companies electronically)

13

Relevant form for incorporation is INC-32

14. People who become directors of the company must submit consent to become directors. They must declare that they are willing and eligible to become directors of company.

15. If everything is verified and found correct, Registrar of Companies will issue a certificate of incorporation. This certificate will be a conclusive evidence that company's incorporation is done.

16. Conclusive evidence means that even if there are thousand errors in the process of incorporation, even then company's existence is valid. In simple words, existence of company cannot be challenged just because there were errors in the process.

17. Government may punish those who have submitted false information, Government can order closure of companies, Government can prescribe any other suitable order but in any case existence of company cannot be declared void.

18. Certificate of incorporation contains 21 digit alpha numeric number which is called Corporate Identity number. In simple words, this is called Registration number of company.

All the documents which are related to incorporation process must be kept preserved by company for lifetime.

EFFECTS OF REGISTRATION

1. Once a company is incorporated, it becomes separate legal entity having perpetual succession & common seal.
2. Company enjoys its separate existence and has its own set of assets and liabilities.
3. Company can sue and can be sued.
4. Registrar of Companies maintains a register of all companies which means existence of company is found on legal records as well.
5. If we wish to close the company, it cannot be done till the time ROC strikes off name of company from the register.
6. ROC can do strike off either upon request or upon order from court or central govt or by himself.

SHARE & SHARE CAPITAL

1. Capital means money or money's worth put in the business at the commencement of or at any time during the continuation of business.
2. Capital of Company is decided by promoters at the time of incorporation itself. They must declare maximum amount of capital which can be collectively contributed by shareholders.
3. Company law requires that the maximum capital which a company will share among shareholders must be declared but not added to the balance sheet.
4. Capital of Company with which registration was done. In other words, the maximum capital of the company is called Authorised Capital, Nominal Capital and Registered Capital.
5. Company may issue some or more or all shares in the capital of company as may be decided by company administration. So, that part of authorised capital which is actually offered for sale among investors is called issued capital.
6. When Company offers share for sale, it may or may not be actually sold and allotted to investors. So, that part of issued capital which is actually sold is called Subscribed Capital.
7. Shares which are actually sold must be paid by shareholders. It is the liability of every shareholder to pay for the shares allotted to him. However, Company may not even demand full value on its share from the shareholders. So, that part of Subscribed Capital which is actually demanded and called from shareholders is called called up capital.
8. When Company is calling money from shareholders, it may happen that shareholders do not pay full value on their shares. Some shareholders may make default in making payment. Such money which is not paid is called ~~to~~ falls in Arrears. So that part of called up capital which is actually paid by shareholders is called paid up capital.
9. So, Capital of Company is divided in following parts:
OR Capital of Company is of various kinds as follows:
 - a) Authorised / Registered / Nominal Capital
 - b) Issued Capital
 - c) Subscribed Capital
 - d) Called-up Capital
 - e) Paid-up Capital
10. As we know Capital of Company is divided in small parts, The smallest part in the capital of Company is called Share.
11. In simple words, Share is interest (sth) proportionate in the company ownership and management.

18. Share is considered as movable property because the interest (Etd) obtained by shareholders in the company can be sold / transferred to another person.

13. When ~~shareholder~~ ^{a person} become shareholder in the company, ~~the~~ ^{he} can either further sell the shares to have advantage of price increase. He may keep the share with himself to enjoy voting power and dividend.

14. Shares are of 2 kinds:

- a) Preference Shares
- b) Equity Shares with or without differential voting rights

48 Equity

15. Preference Shares: These are shares which carry the preferential rights which are not available on the category of shares:-

- a) Right to receive fixed dividend in priority to equity shares
 - b) Right to receive repayment of capital upon winding up in priority to equity shares
- Preference shares generally do not carry voting rights. But if dividend is not paid for continuous 2 years, preference shareholders also get voting rights just like equity shareholders.

16. Equity Shares: These are shares which do not carry rights available to preference shareholders. When equity company has profit, it may declare and distribute dividend but its not compulsory. Similarly at the time of winding up of company, these shareholders receive

of winding up of company, the ^{great advantage} surplus money, if available at the end. The ^{great advantage} of equity share is that they carry voting rights. Voting right means right to vote in all matters in the meeting of shareholders. This right is not available with preference shareholders.

These voting rights of equity shares are always in proportion to the shares held by shareholder. One share one vote principle is followed and this is the reason such shares are called equity shares. However in some cases, some equity shareholders may be given differential voting rights.

MEMORANDUM OF ASSOCIATION

1. This document works as constitution of company.
 2. Memorandum of Association is a compulsory document prepared at the time of incorporation of company.
 3. MoA contains certain fixed particulars which define boundaries for the company, within which company must operate.
- eg. MoA contains object clause in which we need to write what shall be the main objects of company i.e. what is the nature of industry in which it will operate. If object clause says that company will perform textile business, it cannot carry on other businesses.

4. If any changes are required, Memorandum is a document which can be altered Shareholder need to pass special resolution (means 75% vote in favour) in the meeting of Shareholders.

5. MOA is a public document. It means any one whether inside or outside the company can demand access to MOA.

6. In fact it is said that any one dealing with the company must read MOA before entering into any contract.

7. Companies Act, 2013 has prescribed various formats of memorandum of association of different companies Table A to Table E of Schedule I of Companies Act 2013 contains format of MOA as applicable in different cases.

8. When company is incorporated, memorandum can be prepared manually and can be uploaded along with application, or it can be prepared using a web form on MCA website.

9. Following are the contents of memorandum of association
a) Name Clause: This clause contains complete name of company along with suffix only in case of charitable company, suffix can be ignored.

b) State Clause: This clause contains name of state in which registered office of the company

is proposed to be situated. It is not necessary that complete address of registered office of the company is to be given at the time of incorporation. It is sufficient if only name of state is given. (This clause is also known as Registered Office clause and Address clause)

c) Object clause: This clause contains list of activities which can be and will be pursued by company. This clause contains description of main business activity for which company is being incorporated. This object clause is divided in two parts:

a) Main Object

(b) Activities related to or incidental to main business

(d) Liability clause: This clause contains description of liability of members. It specifies whether the liability of members of company is limited by shares, limited by guarantee, unlimited company.

e) Capital clause: This clause contains two major things:

(a) Maximum amount of share capital beyond which company cannot issue further shares.

(b) Division of such maximum capital amount in share price and quantity.

In simple words this clause contains details of authorized capital.

Memorandum also contains name and details of all subscribers and number of share taken by them is also shown about their names.

(b) Nominee clause: This clause is applicable only on OPC. This clause contains details about nominee of the sole member of OPC. This nominee details are required because the nominee will become Member of OPC if the original member has to step down.

10. So, it is clear that Memorandum of one Private Company contains six clauses and Memorandum of all other companies contains 5 clauses.

ARTICLES OF ASSOCIATION

1. Articles means internal rules. Articles of association means internal rules of a company.

2. AOA contains all the rules regarding powers, duties and procedures of various matters.

3. These rules are drafted by promoters because they are to the prepared and submitted at the time of incorporation.

4. However, they can be altered from time to time, whenever needed subject to passing of special resolution in the meeting of shareholders.

Although AOA need not to be drawn in a particular format, company law has prescribed various formats of AOA applicable on different types of companies.

6. Rules specified in the articles of association must not be against and beyond law.

7. Articles can contain a provision which is more strict as compared to law but cannot break the law. This is called Entrenchment.

8. Entrenchment means making the rules more strict as compared to legal provision.

9. Entrenchment can be done either at the time of incorporation itself or at any time later on as well.

10. If entrenchment is to be done at the time of incorporation itself, promoters need not to take consent from any one.

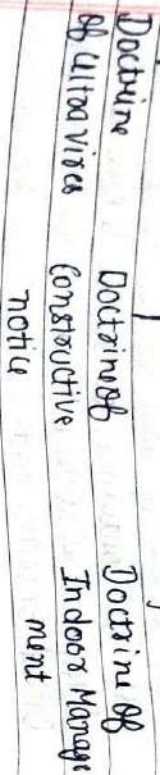
11. However, if entrenchment is to be done any time later on, Shareholders approval is necessary in the following manner:

(a) 100% resolution in case of Private Company

(b) 75% resolution in case of Public Company

12. Copy of Entrenched articles must be circulated among all who were given original Articles.

DOCTRINE



• Doctrine of Ultra Vires

1. Ultra means beyond and Vires means powers.
2. Anything done beyond powers is called ultra vires.
3. All ultra vires activities are considered to be void-ab-initio.

4. However, if a superior authority approves such transaction or activity, the same ultra vires activity will get converted into intra vires activity.

5. If a transaction is ultra vires but done for the welfare of company has a whole and company has already consumed advantages of such activity, company must honour such transaction.

• Doctrine of Constructive Notice :

1. Constructive Notice means deemed Notice.
2. Whatever is specified in memorandum and articles of association is deemed to be communicated to public at large.
3. Any one dealing with company must just read them and if he does not, it is his responsibility to suffer any loss arising out of it.
4. In simple words, doctrine of constructive notice runs in the favour of company as it need not to communicate to all separately.

• Doctrine of Indoor Management :

1. This doctrine runs in favour of outsiders to the company.
2. This doctrine creates responsibility of internal people to do proper management of the company.
3. Outsiders cannot peep into the company and verify what's happening.
4. They have a right to presume that everything will happen as per rules.
5. If everything does not take place as per rules, it is

Liability of Company management

6 In Simple words doctrine of indoor management makes internal management responsible but they can be certain exception where outsiders cannot sue indoor management.

- Exception of doctrine of indoor management
- (a) Forgery
 - (b) When outsider had knowledge of wrong done
 - (c) When wrong done was not discovered because of negligence of outsiders.

Q45 E-Book

Requency : Present Problem has been taken from the concept of Charitable Company under Companies Act 2013.

Statutory Provision:

1. Charitable Company is not allowed to distribute its profits to members.
2. It must spends its profits on its objective only.
3. In other words, members are not entitled to claim any dividend from the Charitable Company.
4. Charitable Company enjoys several relaxations and exemptions such as it can call general meeting by giving 14 days notice instead of 21 days notice.

Conclusion : In this case,

1. No, the company cannot distribute dividend
2. As the company cannot distribute dividend, Question of percentage does not arise.
3. Yes, General meeting with 14 days notice is valid

Q41. Requency : Present Problem has been taken from the concept of Section 8 Company under Companies Act 2013.

Statutory Provision:

1. Central Government has power to revoke license given to the charitable company if it is violating condition of being a charitable company.
2. Before revocation of license, an opportunity of being heard must be given to the company.
3. After revocation of license, Any of the following actions can be undertaken by Central Govt:
 - a) Conversion of this company into a commercial company
 - b) Amalgamation of this company with some other charitable company
 - c) Order for winding up of the company

Conclusion : In this case, Central Govt can exercise these powers accordingly.

Q15

Refrance : Present Problem has been taken from the concept of Doctrine of Ultra Vires under Companies Act 2013.

Statutory Provision :

1. Ultra means Beyond
2. Vires means powers
3. Ultra vires means something beyond Powers.
4. Company is not liable for any act which is Ultra Vires
5. Company's directors i.e. directors are personally liable for the same

Conclusion : In this case,

1. Ravi Pvt Ltd is not at all liable for this ultra vires debt
2. Mudra Finance Ltd can recover this from directors of Ravi Pvt Ltd in their personal capacity.

Q17

Refrance

Refrance : Present Problem has been taken from the concept of doctrine of Indoor Management under Companies Act 2013

Statutory Provision :

1. Doctrine of Indoor Management states that an outsider is entitled to presume that there is no irregularity in the procedures adopted and followed by the company
2. Outsiders cannot peep into the company to check if everything is done as per rules or not.
3. Internal affairs is the responsibility of company management.
4. In simple words, Doctrine of Indoor Management means in the favour of outsiders.

Conclusion : In this case,

Yes, Mux is free from liability because he has completed payment and he was entitled to rely on company management.

Q18.

Reframe : Present problem has been taken from the concept of Doctrine of Indoor Management under Companies Act 2013.

Statutory Provision :

1. Doctrine of Indoor Management states that outsiders can presume that company is operating as per rules and management is not violating them.
2. Outsider cannot enter the company to verify the compliance.
3. They can read the memorandum and articles but cannot check the compliance with the company.
4. It is the duty of company caretakers i.e. directors to ensure management is per data and rules.
5. Doctrine of Indoor Management turns in favour of outsiders.

Conclusion : In this case,

1. Easy Finance Ltd gave loan because it was authorised by Articles of Sound Syndicate Ltd.
2. When Mr Liddle applied and obtained loan, Sound Syndicate should have stopped him.

3. Now when loan has been taken after authentication of articles, Sound Syndicate will have to pay it.

4. So, contention of Sound Syndicate Ltd is not correct.