

Chapter 6: The Companies Act, 2013

Section 2(20) Company | Section 2(42) Foreign Company

Quest on 1:

Mike Limited, a company **incorporated in India**, established a **Liaison office at Singapore**. The question is whether Mike Limited would be called a **Foreign Company** under the **Companies Act, 2013**? [Dec 20 - 3 Marks]

Answer:

As per **Sect on 2(42)**, a **Foreign Company** means a company **incorporated outside India** having a **place of business in India** and conducting any business activity in India. Since **Mike Limited is incorporated in India** (under Sec. 2(20)) and not outside India, it can be called a **Company** but **cannot be called a Foreign Company**.

Quest on 2:

Mike LLC, a company **incorporated in Singapore**, established an **office in Pune, India**. The question is whether Mike LLC would be called a **Foreign Company** under the **Companies Act, 2013**. [Nov 22 - 3 Marks]

Answer:

Since **Mike LLC is incorporated outside India** and has a **place of business in India**, it is a **Foreign Company**.

Quest on 3:

Whether **ACT Ltd.**, a company **incorporated in Singapore** by all Indian citizens and **having a place of business in India**, can be treated as a **foreign company** under the **Companies Act, 2013**. [ACT]

Answer

As per **Sect on 2(42)**, a **foreign company** is one **incorporated outside India** which also **has a place of business in India** (directly/through agent/physically/electronically) **and conducts business activity in India**. Since **ACT Ltd. is incorporated outside India and has a place of business in India**, it will be treated as a **foreign company**, and the fact that it is incorporated by Indian citizens is **immaterial**.

Quest on 4:

When a company incorporated outside India shall be considered a **'foreign company'** under **Sect on 2(42) of the Companies Act, 2013**, and whether the following companies would qualify:

- (i) Company incorporated outside India with a **representative in India receiving orders** from customers.
- (ii) Company incorporated outside India that **holds its Board meetings and general meetings in India**. [ACT]

Answer

As per **Sect on 2(42)**, a **foreign company** means any company **incorporated outside India** that has a **place of business in India** (directly/through agent/physically/electronically) **and conducts business activity in India**.

- Case (i): Since the **representative receives orders in India**, it amounts to having a **place of business in India**, hence the company **is a foreign company**.
- Case (ii): Merely **holding Board/general meetings in India** does **not constitute a place of business**, hence the company **is not a foreign company**.

Section 2(71): Public Company

Section 2(87): Subsidiary Company

Quest on: 5

Cross Limited is a company incorporated under the erstwhile Companies Act, **1956**, while **XYZ Private Limited** is a company registered under the Companies Act, **2013**. XYZ Private Limited has issued:

- 1,00,000 **convertible preference shares** (carrying voting rights) of ₹100 each
- 10,00,000 **equity shares** of ₹10 each, fully paid-up.

Cross Limited holds **all the preference shares** and **1,00,000 equity shares** of XYZ Private Limited.

Based on the above facts, **examine** the following:

1. Whether the provisions of the Companies Act, 2013 are applicable to Cross Limited?
2. Whether XYZ Private Limited shall be regarded as a **public company** under the Companies Act, 2013? [MTP May 24 (2) – 5 Marks]

Answer:

1. Applicability of Companies Act, 2013:

As per **Sect on 1 (4)**, the Companies Act, 2013 applies to all companies incorporated under this Act or under any previous company law (including the Companies Act, 1956).

Hence, **Cross Limited is governed by the Companies Act, 2013.**

2. Status of XYZ Private Limited: Under **Sect on 2(87)**, a company is considered a **subsidiary** if another company controls **more than 50% voting power** in it.

- XYZ has total voting shares worth ₹2 crore (₹1 crore preference + ₹1 crore equity).
- Cross Limited holds ₹1 crore preference + ₹10 lakh equity = ₹1.10 crore → **more than 50%**.
Thus, **XYZ is a subsidiary of Cross Limited.**

Now, per **Sect on 2(71)**, if a private company is a subsidiary of a **public company**, it shall be **deemed to be a public company** under the Act.

So, **XYZ Private Limited is deemed to be a public company**, even if it remains private in its articles.

Quest on: 6

The question asks whether the **Companies Act, 2013** is applicable to the following entities:

1. **HDFC Bank Ltd.** (incorporated under the Companies Act, 1956)
2. **HDFC Life Insurance Co. Ltd.** (incorporated under the Companies Act, 1956)
3. **National Thermal Power Corporation Ltd.** (Electricity company incorporated under the Companies Act, 1956)
4. **Reliance Industries Ltd.** (incorporated in 1973)
5. **Tata Steel Ltd.** (incorporated in 1907)
6. **Infosys Ltd.** (incorporated in 1981) **[ACT]**

Answer:

As per **Sect on 2(20)**, *company* means a company incorporated under the **Companies Act, 2013** or any **previous company law**. Hence, the **Companies Act, 2013** applies to all the above companies. However, in the case of **banking, insurance, and electricity companies**, the Act applies **except where inconsistent** with the **Banking Regulation Act, 1949, Insurance Act, 1938 / IRDA Act, 1999, and Electricity Act, 2003** respectively.

Quest on: 7

- **BC Pvt Ltd** → Holding company
- **KL Pvt Ltd** → Subsidiary of BC Pvt Ltd
- **PQ Pvt Ltd** → Target company

Case 1:

- **PQ's Paid-up Share Capital = ₹30 Lakhs = 3,00,000 equity shares (₹10 each fully paid)**
- **Shareholding:**
 - BC Pvt Ltd = **90,000 shares**
 - KL Pvt Ltd = **70,000 shares**

Whether PQ Private Limited is a subsidiary of BC Private Limited.

Case 2:

- **PQ's Paid-up Share Capital = ₹30 Lakhs = 3,00,000 equity shares (₹10 each fully paid)**
- **Shareholding:**
 - KL Pvt Ltd = **1,60,000 shares**
 - BC Pvt Ltd = **0 shares**
 - **KL is already a subsidiary of BC**

Whether PQ Private Limited is a subsidiary of BC Private Limited. **[Dec 21 – 3 Marks]**

Answer: (Sec. 2(87))

- **Case 1:** Since **BC (90,000) + KL (70,000) = 1,60,000 (More than 50% of 3,00,000 equity shares)**, PQ Pvt Ltd is a **subsidiary of BC Pvt Ltd**.
- **Case 2:** Even though **BC holds no shares, KL (its subsidiary) holds 1,60,000 (More than 50%)**. By law, **PQ Pvt Ltd is still a subsidiary of BC Pvt Ltd** since Control via another subsidiary is also considered.

Quest on: 8

- **Paid-up Share Capital of Ram Pvt Ltd = ₹10 crores**
 - 7,00,000 Equity Shares of ₹100 each
 - 3,00,000 Preference Shares of ₹100 each
- **Lakhan Pvt Ltd holds:**
 - 3,00,000 Equity Shares
 - 3,00,000 Preference Shares
- **Issue:** Whether Ram Pvt Ltd is a subsidiary of Lakhan Pvt Ltd under the Companies Act, 2013? (MTP Oct 21 - 4 Marks)

Answer:

- In this case, it is **not specified** that preference shares carry voting rights → assume **no voting rights**.
- Voting power is therefore **only based on equity**.
- **Lakhan Pvt Ltd holds 3,00,000 equity shares out of 7,00,000 = less than 50%.**
- Hence, **Ram Pvt Ltd is NOT a subsidiary of Lakhan Pvt Ltd.**

Quest on: 9

- **ABC Limited** had a **paid-up capital ₹1,00,000** as on **31.03.2023** (10,000 equity shares of ₹10 each).
- In **June 2023**, ABC Limited issued **10,000 additional equity shares** (fully subscribed).
- After issue → **Total capital = ₹2,00,000 (20,000 equity shares of ₹10 each).**
- Out of these, **5,000 shares** were issued to **XYZ Pvt. Ltd.**
- **XYZ Pvt. Ltd.** is the **holding company** of **PQR Pvt. Ltd.** by having **control over Board composition**.
- **Claim:** PQR Pvt. Ltd. asserts that it becomes a **subsidiary of ABC Ltd.** as being the subsidiary of its subsidiary (**XYZ Pvt. Ltd.**).

What is the relationship between **ABC Ltd. & XYZ Pvt. Ltd.** under the **Companies Act, 2013?** (June 24 - 7 Marks)

Answer:

- Here, **XYZ Pvt. Ltd. holds only 25%** in ABC Ltd. → **not a subsidiary**.
- Hence, **PQR Pvt. Ltd. cannot claim to be a subsidiary of ABC Ltd.**
- As per **Section 2(6):** An **Associate Company** is one where another company has **significant influence (at least 20% voting power)**.
- Therefore, **ABC Ltd. & XYZ Pvt. Ltd. have an Associate Company relationship.**

Quest on: 10

- **Popular Products Ltd.:** Incorporated in India, **total share capital = ₹20 crores.**
- Share capital comprises **20 lakh equity shares of ₹100 each.**
- **Shareholding in Popular Products Ltd.:**
 - **Delight Products Ltd.** → 2,50,000 shares
 - **Happy Products Ltd.** → 3,50,000 shares
 - **Cheerful Products Ltd.** → 2,50,000 shares
- **Jovial Ltd.** is the **holding company** of all the above three companies (Delight, Happy, Cheerful).

Can **Jovial Ltd.** be termed as a **subsidiary company** of **Popular Products Ltd.** under the **Companies Act, 2013?**

What if **Jovial Ltd. controls the composition of directors** of Popular Products Ltd. [MTP I Sep 24 – 3 Marks]

Answer:

- Here, **Jovial Ltd. + subsidiaries hold only 8,50,000 shares** i.e. **less than one-half of its total voting power.**
- However, if **Jovial Ltd. controls the composition of directors of Popular Products Ltd.**, it qualifies as a **holding company** of Popular Products Ltd.
- Therefore, **Jovial Ltd. is a Holding Company, not a Subsidiary** of Popular Products Ltd.

Quest on: 11

- **Darshan Photographs Pvt. Ltd.** → **Paid-up capital ₹1 crore** consisting of:
 - 50,000 Equity Shares of ₹100 each.
 - 50,000 Preference Shares of ₹100 each (**no voting rights**).
- **Shadow Evening Pvt. Ltd.** holds:

- **Case (a):** 25,000 Equity Shares.
- **Case (b):** 25,000 Equity Shares + 5,000 Preference Shares (without voting rights).

Is **Darshan Photographs Pvt. Ltd.** a **subsidiary** of **Shadow Evening Pvt. Ltd.** under **Section 2(87)** of the **Companies Act, 2013** in each case? (MTP 1 June 24 - 7 Marks)

Answer:

- **Case (a):** Shadow Evening holds **25,000 / 50,000 equity shares = 50% voting power.**
 - Requirement is **more than one-half** voting power.
 - **Not a subsidiary.**
- **Case (b):** Preference shares have **no voting rights**, so even with 5,000 preference shares, Shadow Evening still holds only **50% voting power.**
 - **Not a subsidiary (answer remains the same).**

Section 2(6): Associate Company

Quest on: 12

ABC Ltd. allotted **equity shares with voting rights worth ₹15 crores** to **XYZ Ltd.** and also issued **Non-Convertible Debentures (NCDs) worth ₹40 crores** during FY 2019–20. After this, the **total paid-up equity share capital = ₹100 crores** and **NCDs = ₹120 crores.** The question asks whether **ABC Ltd. and XYZ Ltd.** can be regarded as **Associate Companies** under the **Companies Act, 2013.** [Dec 20 4 Marks]

Answer:

Since **XYZ Ltd. holds only 15% of equity (₹15 crores out of ₹100 crores)** and **NCDs (₹40 crores)** are **not considered** for voting power, **ABC Ltd. and XYZ Ltd. cannot be called Associate Companies** under the Act.

Quest on: 13

The **paid-up equity share capital** of **ACD Ltd.** is **Rs 80 crores** and **preference share capital** is **Rs 20 crores.** **B Ltd.** holds **equity shares worth Rs 15 crores** and **preference shares worth Rs 10 crores** in **ACD Ltd.** The question asks whether **B Ltd. can be considered an Associate Company** of **ACD Ltd.** [May 25- 3 Marks]

Answer:

Preference shares (Whether Convertible or Non-Convertible) are excluded from voting calculation. **B Ltd. holds only 18.75% of equity shares** ($[(15/80) \times 100]$), which is **less than 20%**, so **B Ltd. cannot be considered an Associate Company** of **ACD Ltd.**

Section 2(68): Private Company

Quest on: 14

- **Company: ABC Limited**
- **Total Members = 245**
 - **Directors & Relatives = 190**
 - **Employees = 25**
 - **Ex-employees = 20 (Shares were allotted when they were employees)**
 - **Others (including 10 joint holders) = 20**

Whether **reduction in number of members** is required for conversion into a **Private Company** under **Section 2(68)?** [Jan 21 – 4 Marks]

Answer:

As per **Sec. 2(68)**, employees/ex-employees are excluded, and joint holders counted as one. Thus, **total members = 200**, which is within the limit. Therefore, **no reduction in members is required** for conversion into a private company.

Quest on: 15

Jagannath Oils Ltd., a public company with 220 members, plans to convert into a private company. **25 of these members** were employees from **1st April 2006 to 28th June 2016** and were **first allotted shares on 1st July 2007,** but **sold them on 1st August 2016.** Later, they **re-acquired shares on 1st December 2016,** and have held them since. You are required to examine:

(I) Whether the company must reduce members for conversion.

(II) Would your answer differ if they were employees until 28th June 2017? [MTP Nov 21-4 Marks]

Answer:

- **Yes, reduction needed** — since **25 ex-employees** got shares on **1st Dec 2016**, i.e., **after their employment ended on 28th June 2016**, they **do not qualify for exclusion** and are **counted in the 200-member limit**.
- **No reduction needed** — if they were **employees till 28th June 2017**, they would have acquired shares **during employment**, hence they **qualify for exclusion** and are **not counted** in the 200 limit.

Section 2(85): Small Company

Quest on: 16

Oakwood Private Limited is the **holding company** of **Silveroak Private Limited**, whose **paid-up share capital** is **Rs 80 lakh** and **turnover** is **Rs 1.80 crore** for the year ending 31st March, 2025. The **Board of Directors** wants to avail the status of a **small company**, and the question asks whether the **Company Secretary's contention** that **Silveroak cannot be categorized as a small company** is correct. [RTP Sep 25]

Answer: Although **Silveroak Private Limited** meets the **capital and turnover criteria**, it **cannot be classified as a small company** because it is a **subsidiary of Oakwood Private Limited**. Therefore, the **Company Secretary's contention is correct**.

Quest on: 17

STS Pvt. Ltd. has a **turnover of Rs 10 crore** and **paid-up capital of Rs 1 crore** (1,00,000 equity shares of Rs 100 each), out of which **60,000 shares are held by UV Infratech Pvt. Ltd.**; **ZX Ltd.** has **paid-up capital of Rs 3 crore** and **turnover of Rs 35 crore**. The question asks whether these companies can be treated as **Small Companies** under the **Companies Act, 2013**. [May 25 – 4 Marks]

Answer:

STS Pvt. Ltd. is a **subsidiary of UV Infratech Pvt. Ltd.** (holding 60% of shares as per **Sect on 2(87)**) and **cannot be classified as a Small Company**, even though it meets the capital and turnover thresholds.
ZX Ltd. is a **public company** and **cannot be treated as a Small Company** despite meeting the thresholds.

Quest on: 18

Resolute Private Limited has a **paid-up equity share capital of Rs. 50,00,000** (5,00,000 shares of Rs. 10 each), **turnover of Rs. 2,00,00,000**, and **Yellow Limited (a public company)** holds **2,00,000 equity shares** in it. The question is whether **Resolute Private Limited** shall be deemed a **small company** under the **Companies Act, 2013** when a public company holds significant equity shares. [Inter]

Answer:

As per **Sect on 2(85)**, a small company is one (other than a public company) whose **paid-up capital does not exceed Rs. 4 crore** and **turnover does not exceed Rs. 40 crore**, subject to exclusions (holding, subsidiary, Sect on 8, or special Act companies). Since **Resolute Pvt Ltd** is **not a subsidiary of Yellow Ltd**, is a **private company**, and its **capital (Rs. 50 lakh)** and **turnover (Rs. 2 crore)** fall within limits, it **qualifies as a small company**.

Government Company [Section 2(45)]

Quest on: 19

Whether **Shah Auto Pvt. Ltd.**, with ₹10 crore share capital (10 lakh shares of ₹100 each), becomes a **Government Company** when **Narendra Motors Ltd. (a Government Company)** holds **5,05,000 shares (more than 50% voting power i.e. 50.5%)** in it. [RTP Nov 21] [RTP Dec 23] [RTP Jan 25] [RTP Sep 25]

Answer:

As per **Sect on 2(87)**, **Shah Auto** becomes a **subsidiary of Narendra Motors Ltd.**, and under **Sect on 2(45)**, a **subsidiary of a Government Company is itself a Government Company**; hence, **Shah Auto Pvt. Ltd. is rightly a Government Company**.

Quest on: 20

Whether **Z Pvt. Ltd.** can be called a **subsidiary** and a **Government Company**, when:

- The **State Govt. of X** holds **48 lakh shares** in **Y Ltd.**, whose total share capital is ₹9.5 crore (i.e., 95 lakh shares of ₹10 each) i.e. **50.52%** and

- Y Ltd. holds 2,50,600 shares in Z Pvt. Ltd., which has a capital of ₹5 crore (i.e., 5 lakh shares of ₹100 each). (Dec 23 - 4 Marks) (MTP II Sep 24 - 7 Marks)

Answer:

As Y Ltd. holds **more than 50%** of Z Pvt. Ltd.'s shares, Z is a **subsidiary** of Y Ltd.
But since the State Govt. holds **less than 51%** in Y Ltd., Y is **not** a Government Company → so **Z Pvt. Ltd. is also not a Government Company.**

Quest on: 21

Can XYZ Ltd. be considered a **Government Company** when its shareholding as on 31.03.2024 is: GOI – 20%, Govt. of Tamil Nadu – 10%, Govt. of Rajasthan – 10%, LIC – 8%, ABC Ltd. (Govt. owned) – 15%? (June 24 - 4 Marks) (RTP Jan 25) (MTP II Jan 25 - 4 Marks)

Answer:

No, XYZ Ltd. is **not** a Government Company since **only 40%** is held by the Central and State Governments combined, which is **less than the 51%** required under Sect on 2(45) of the Companies Act, 2013. LIC & ABC Ltd.'s holding is **not counted** for this purpose.

Section 2(62): One Person Company (OPC)

Quest on: 22

Kamal, a Chartered Accountant, incorporated a **One Person Company (OPC)** on **1st October 2023** and initially nominated his **brother Sudhakar** as the nominee in the **Memorandum of Association**. Kamal now intends to **replace Sudhakar** with one of his shortlisted friends as nominee effective **1st January 2024**:

- (1) **Robert**, an Indian citizen, who was a resident in India but shifted to **USA on 31st May 2022** and has not returned since, and
- (2) **Dinkar**, an Indian citizen and non-resident in India, who came for employment in India on **1st April 2023** and has been continuously staying in India. The question asks about the **eligibility of the shortlisted friends** and the **procedure for changing the nominee** under the **Companies Act, 2013**. [Sep 2024 – 4 Marks]

Answer:

As per **Section 2(62) of the Companies Act, 2013**, a nominee must be a **natural person and Indian citizen**, with **residency in India optional**. Both **Robert and Dinkar are eligible**. The **procedure to change the nominee**: the **sole member gives notice to the OPC**, and the **company intimates the Registrar of Companies (RoC)**; such change **does not amount to an alteration of the memorandum**.

Quest on: 23

Mr. Raja formed an OPC with his brother Mr. King as nominee, who later withdrew consent —question is whether such **withdrawal is valid** and if **Mr. Shyam (minor son)**, **Ms. Devaki (non-resident Indian sister)**, and **Mr. Ashok (already OPC member)** are eligible to be nominees. [Nov 20 - 6 Marks]

Answer:

Yes, Mr. King can validly withdraw; Mr. Shyam is ineligible (minor), Ms. Devaki is eligible (Indian citizen, residency not mandatory), and Mr. Ashok is eligible (can be nominee in one OPC even if member in another).

Quest on: 24

Axar, engaged in **plant research**, invented a process for extracting **bio-fuel from plants** and proposes to commercialize it by forming a **One Person Company (OPC)**. He wants to appoint **himself and his wife as directors**. The question is about the **number of shareholders and directors OPC can have**. [ACT]

Answer:

As per **Sect on 2(62) of the Companies Act, 2013**, an **OPC can have only one person as a member/shareholder**. However, an OPC **may have more than one director on its Board**. Therefore, Axar can form an OPC, where **he will be the sole member**, and both **he and his wife can be directors** of the company.

Format on of Companies with Charitable Objects, etc. – Sect on 8

Quest on: 25

Harmony Foundat on, a newly incorporated **Sect on 8 company** promot ng **educat on and healthcare**, earned prof t for the year ending 31st March 2024 and **transferred some prof t to M/s LMP Associates**, a **partnership f rm and member** of the company. The **Central Government**, af er giving an opportunity of being heard, **directed the company to be wound up**, alleging that a **partnership f rm cannot be a member** and the company **cannot transfer prof t to it**. The quest on asks whether the **ground for winding up is suf cient** under the **Companies Act, 2013**. [Jan 25, 4 Marks]

Answer:

The **transfer of prof t to M/s LMP Associates** is therefore a **valid ground for winding up**. However, a **partnership f rm can be a member** of a Sect on 8 company, so the ground regarding membership is **incorrect and insuf cient**. Hence, **only the prof t transfer violat on just f es winding up**; the membership ground does not.

EFFECT OF REGISTRATION: SECTION 9

Quest on: 26

A **company was incorporated on 6th October**, but the **Cert f cate of Incorporat on was issued on 15th October**. On **10th October**, the company entered into a **contract** creat ng contractual liability. The company denies liability on the ground that the contract was made **before issue of the Cert f cate of Incorporat on**. The quest on is whether the company can be exempted from such contractual liability. [ACT]

Answer:

As per **Sect on 9 (Ef ect of Registrat on)**, a company comes into existence **from the date of incorporat on stated in the Cert f cate**, not from the date of its issue. Since the contract was entered **af er incorporat on (6th Oct)** but **before the cert f cate was issued (15th Oct)**, it is **binding on the company**, and the company **cannot escape liability**.

Section 2(52): Listed Company

- Means a company having **any of its securities** listed on a **recognized stock exchange**.

Proviso:

- Certain classes of companies **may be excluded** from this definition as **prescribed in consultation with SEBI**.

The term **securities** has the same meaning as in **Section 2(h) of the Securities Contracts (Regulation) Act, 1956 (Section 2(81) of Companies Act)**. An **unlisted company** is a company **other than a listed company**.

Classes of Companies on the basis of Liability

Quest on: 27

Nolimit Private Company is incorporated as an **unlimited company** with **share capital of Rs 10,00,000**. A creditor, **Mr. Samuel**, f led a suit against a shareholder, **Mr. Innocent**, for recovery of his debt from the company. The quest on asks whether **Mr. Samuel can directly recover his dues from Mr. Innocent**. [RTP Sep 24]

Answer:

As per **Sect on 2(92) of the Companies Act, 2013**, an **unlimited company** has **no limit on the liability of its members**, but a **member's liability arises only when the company is being wound up**. **Mr. Innocent, as a shareholder, cannot be directly held liable** for the company's debts while it is a going concern; his liability is limited to his **share capital**. His **unlimited liability** arises only if the **of cial liquidator calls for contribut on towards the company's debts during winding up**. Therefore, **Mr. Samuel cannot directly recover his dues from Mr. Innocent**.

Public Financial Institution (PFI)

Quest on: 28

The **Rural Development Fin. Corp. Ltd.** has the following **shareholding pattern**: **Central Government – 26%, State Government – 18%, State of Tamil Nadu – 24%, Public – 32%**. The question asks whether this company can be considered a **Public Financial Institution (PFI)** under the **Companies Act, 2013** and requests a brief explanation of **various institutions regarded as PFIs**. [Jan 25 -5 Marks]

Answer:

As per **Section 2(72) of the Companies Act, 2013**, a **public financial institution** includes:

Institutions notified by the Central Government in consultation with the RBI, provided:

- It is **established or constituted by or under any Central or State Act** (other than Companies Act), and
- **Not less than 51% of the paid-up share capital** is held or controlled by the **Central Government or State Governments** or partly by both.

In the instant case:

- **Central Government shareholding = 26%**
- **State Government shareholding = 18% + 24% = 42%**
- **Total government holding = 26% + 42% = 68%** ✓
- This exceeds the **minimum 51% government ownership requirement**.
- The company is presumably **established under a State/Central Act**.

Therefore, **Rural Development Fin. Corp. Ltd.** qualifies as a **Public Financial Institution (PFI)** under the **Companies Act, 2013**.

Other examples of PFIs under the Act include:

- **Life Insurance Corporation of India** (established under LIC Act, 1956)
- **Infrastructure Development Finance Company Limited**
- **Specified companies under the Unit Trust of India Act, 2002**
- **Any other institution notified by Central Government in consultation with RBI**

Dormant Company

Quest on: 29

XYZ Ltd., incorporated to hold a **patent** for a new product, plans to start **commercial production within two years**. Meanwhile, it has placed a **purchase order for plant and machinery with a down payment of Rs 1 crore**. The question asks whether the company can acquire the status of a **dormant company** under the **Companies Act, 2013**. [Sep 2024, 3 Marks]

Answer:

As per **Section 455, Companies Act, 2013**, a **dormant company** is one formed for a **future project** or to **hold an asset/intellectual property** with **no significant accounting transaction**. Here, **XYZ Ltd.** has made a **significant accounting transaction (down payment of Rs 1 crore)**, therefore it **cannot acquire dormant company status**.

Quest on: 30

MTK Private Limited, registered under the **Companies Act, 2013** on **5th January 2021**, has **not started its business** till date. On **7th April 2023**, the company received a **notice from ROC for non-filing of FORM No-INC-20A**. The question asks under which **category** the company is classified and the **definition of that category**. (Dec 23 - 3 Marks)

Answer:

An **inactive company** is defined as a company which has **not carried on any business or operation**, or has **not made any significant accounting transaction** during the last **two financial years**, or has **not filed financial statements and annual returns** during the last **two financial years**. A **significant accounting transaction** excludes: (a) fees to Registrar, (b) payments to comply with laws, (c) allotment of shares to comply with laws, (d) payments for maintenance of office/records. Since **MTK Private Limited** has **not started business** and **more than two years** have elapsed, it is classified as an **inactive company**.

Nidhi Companies (Sec. 406(1))

- **Definition:** "Nidhi" or "Mutual Benefit Society" is a company declared as such by the **Central Government** via **Official Gazette notification**.
- **Purpose:** Primarily to **cultivate habit of thrift and savings** among its members.

MODE OF REGISTRATION/INCORPORATION OF COMPANY

Promoters (Sec. 2(69)):

- Person **named in prospectus** or **identified in annual return (Sec. 92)**.
- Person who **controls company affairs**, directly or indirectly (shareholder, director, etc.).

- Person whose **advice, directions, or instructions the Board usually follows.**
- **Role:** Conceive the idea, take steps for registration.
- **Exclusion:** Professionals acting only in **professional capacity** (solicitor, banker, accountant).

Formation of Company (Sec. 3):

- **Public Company:** 7 or more persons.
- **Private Company:** 2 or more persons.
- **One Person Company:** 1 person.
- **Requirement:** Subscribe to **Memorandum of Association** and comply with **Companies Act, 2013.**

Quest on: 31

What documents and information are required to be filed with the Registrar for the registration of a company under the Companies Act, 2013? (MTP I May 25 7 Marks)

1. Filing with Registrar:

- **Documents required:**
 - Memorandum & Articles of Association signed by subscribers.
 - **Declarations** by:
 - **Person engaged in formation** (advocate, CA, CS, cost accountant in practice).
 - **Persons named in Articles** (directors, manager, secretary) – confirming compliance with Act.
 - **Subscribers & first directors** – stating no convictions, fraud, misfeasance in last 5 years & correctness of documents.
- **Other particulars:**
 - Correspondence address till registered office established.
 - Subscriber details: name, address, nationality, proof of identity; if corporate, prescribed particulars.
 - First directors' details: name, DIN, address, nationality, interests in other firms, consent to act.
- **Note:** Particulars relate to individual subscribers, not professionals.

2. Certificate of Incorporation:

- Registrar registers documents & issues **Certificate of Incorporation** in prescribed form.

3. Corporate Identity Number (CIN):

- CIN allotted from date of incorporation; distinct identity for company; included in certificate.

4. Maintenance of Documents:

- Company must preserve all incorporation documents at registered office until dissolution.

5. False/Incorrect Information – Liability:

- **At incorporation:** Person furnishing false info or suppressing facts → liable under **Sec. 447 (fraud).**
- **Post incorporation:** If incorporation obtained by fraud/false info, promoters, first directors, declarants liable under **Sec. 447.**

6. Tribunal Powers (if incorporation obtained by fraud):

- Can regulate management, amend MOA/AOA.
- Can declare members' liability **unlimited.**
- Can remove company name from register.
- Can order **winding up.**
- Other orders as deemed fit.
- **Opportunity to be heard** must be given; transactions & obligations considered.

MEMORANDUM OF ASSOCIATION

1. Definition & Purpose:

- **Charter of the company;** defines **constitution and powers.**
- **Foundation** of the company.
- Contains **objects** to indicate scope of operations.
- **Public document (Sec. 399)** → presumed known by all contracting with the company.
- **Ultra vires acts** (beyond MoA powers) are void.

2. Form & Tables (Sec. 4 & Sch. I):

- Must follow **Tables A–E:**

- **A:** Limited by shares
- **B:** Limited by guarantee, no share capital
- **C:** Limited by guarantee, with share capital
- **D:** Unlimited company
- **E:** Unlimited with share capital
- MoA & AoA should **closely follow model forms.**

3. Contents / Clauses:

- **Name Clause:**
 - Public → “Limited”; Private → “Private Limited”
 - OPC → “One Person Company”
 - Section 8 → “Foundation, Forum, Association, Federation, Chambers, Confederation, Council, Electoral Trust” etc.
- **Registered Office Clause:** State of registered office.
- **Object Clause:** Company’s purposes & matters for furtherance.
 - If activities change, **name must reflect new activities within 6 months.**
- **Liability Clause:**
 - Shares: members liable up to unpaid amount
 - Guarantee: members liable up to agreed contribution for debts & winding-up
- **Capital Clause:** Authorized capital & number of shares; subscribers’ share commitment.
- **Association Clause:** Details of subscribers; each must take at least 1 share; OPC must mention successor member.

4. Signing Requirements:

- **Public:** ≥7 subscribers; **Private:** ≥2; **OPC:** 1
- Signed in presence of **witness**; witness attests signature.
- **Minor cannot sign**; guardian may sign on behalf.

5. Other Points:

- MoA may contain **other provisions** (e.g., rights attached to shares).
- MoA **cannot contravene Companies Act**; contrary provisions are **void**.

ARTICLE OF ASSOCIATION

Entrenchment Clause

Quest on: 32

Justice Private Limited, with **9 directors**, currently has its **Articles of Association** stating that the **quorum for board meetings** shall be **1/3rd of total strength or 2 directors, whichever is higher**. The company intends to **amend the article** to specify the quorum as **1/3rd of total strength or 4 directors, whichever is higher**. The question asks about the **procedure for including this entrenchment provision** and whether the advice differs for a **public company**. [Jan 2025 - 3 Marks]

Answer:

As per **Sections 5(4) & 5(5) of the Companies Act, 2013**, an **entrenchment provision** can be included:

- For a **private company**: **consent of all members** is required and **notice must be given to the Registrar**.
- For a **public company**: it requires a **special resolution** and **notice to the Registrar**.

Hence, **Justice Private Limited** can include the entrenchment provision with **all members’ consent and registrar notice**, while for a **public company**, the procedure **differs by requiring a special resolution**.

MoA vs AoA

1. Objectives:

- **MoA:** Defines & limits the company’s objectives.
- **AoA:** Lays down rules for internal management; determines **how objectives are achieved**.

2. Relationship:

- **MoA:** Company ↔ outside world.
- **AoA:** Company ↔ its members.

3. Alteration:

- **MoA:** Can be altered only under Act; usually requires **Regional Director/Tribunal** approval.
- **AoA:** Can be altered via **special resolution**.

4. Ultra Vires Acts:

- **MoA:** Acts beyond scope → **void**, cannot be ratified.
- **AoA:** Acts beyond AoA but within MoA → **can be ratified** by special resolution.

Effect of Memorandum and Articles

Quest on: 33

What is the effect of Memorandum and Articles when registered? [Sep 24, 2 Marks]

As per **Sect on 10**, once **Memorandum and Articles** are registered, they bind the **company** and its **members** as if signed by both, creating an **agreement** to observe all their provisions. Further, **any monies payable by a member** under these documents shall be treated as a **debt due to the company**.

Doctrine Of Ultra Vires

1. Meaning:

- **Ultra vires** = “beyond the powers” of the company or directors.
- Acts beyond the powers conferred by **MoA** or law are **void and inoperative**.

2. Legal Consequences:

- Company **cannot be sued** on an ultra vires transaction, nor can it sue.
- **Public document (MoA)** → all parties deemed to know company powers.
- **Lender protection:** Money not spent ultra vires remains recoverable; if spent for lawful purpose, lender can recover to that extent.
- Ultra vires acts **cannot be ratified by shareholders**, if beyond company powers.

3. Ratification / Regularisation:

- **Ultra vires directors' act** (but intra vires company) → can be ratified by shareholders.
- **Ultra vires Articles** → can be regularized by altering Articles via **Special Resolution**.
- **Acts intra vires but irregular** → can be validated by shareholders.

4. Case Law:

- **Ashbury Railway Carriage & Iron Co. v. Riche (1875):**
 - Contract beyond main objects → ultra vires → void, even if ratified by shareholders.
 - “General contractors” must be read in context of company’s main business.

5. Key Principles Summary:

- Act legal in itself but beyond **MoA/statute** → **ultra vires**, void.
- Ultra vires the company → cannot be ratified by shareholders.
- Ultra vires directors but intra vires company → can be ratified.
- Ultra vires Articles → can be ratified by altering Articles.
- Doctrine protects shareholders/creditors but can limit company’s flexibility; object clause can now be easily altered via **Special Resolution**.

Quest on: 34

JV Limited borrowed a **secured loan of Rs 5 crore** from **Star Bank Limited** for working capital, but its **borrowing powers under the MoA were restricted to Rs 1 crore**. The bank released the loan in **two instalments of Rs 1 crore and Rs 4 crore**. On repayment, the company **refused liability** on the ground that the borrowing was **ultra vires**, though **Rs 3 crore of the loan was used to repay lawful debts** and the remaining **Rs 2 crore cannot be traced**. The quest on asks whether the company’s denial of repayment is valid under the **doctrine of ultra vires** and the **remedies available to the bank**. [Sep 24 - 4 Marks]

Answer:

As per the **doctrine of ultra vires under Companies Act, 2013**, any act **beyond the powers of the company as per its MoA is void**. Borrowing beyond Rs 1 crore was **ultra vires**, so the company **cannot be compelled to repay Rs 4 crore** (excess amount). However, since **Rs 3 crore was applied for lawful purposes**, the **bank can recover this amount** as it steps into the shoes of the creditors paid of. The **remaining Rs 1 crore** (untraceable portion) **cannot be recovered**.

Quest on: 35

The **object clause** of **ABC Pvt. Ltd.** authorized the company to **trade in property in Gurgaon**. The **directors**, without **member approval**, borrowed **Rs 5 crore from Magnum Finance Ltd.** to enter the **construct on business**. The company **refused repayment**, and the quest on asks the **recourse available to Magnum Finance Ltd.** under the **Companies Act, 2013**. [May 25 – 4 Marks]

Answer:

As per the **doctrine of ultra vires**, any act **beyond the powers of the company as per its MoA is void**. Taking a loan for **construct on business** is **ultra vires**, so **ABC Pvt. Ltd. is not bound** to repay the loan. However:

- (a) If the loan amount was **utilized for lawful debts**, **Magnum Finance Ltd. can recover that port on** as it steps into the shoes of the creditor.
- (b) If the amount is **unspent**, the lender can **seek injunct on** to prevent unauthorized use and **recover the unspent loan**.

Quest on: 36

The **objects clause** of **XYZ Pvt. Ltd., New Delhi** authorized the company to **trade in mangoes**. The company entered into a **partnership with Mr. A** for trading in mangoes and **incurred liabilities**, but later **refused to admit the liability** on the ground that the agreement was **ultra vires**. The question asks whether the **company's stand is legally valid**. [ACT]

Answer:

The **company's stand is legally valid**. The **partnership agreement** is **ultra vires** the company because the **object clause does not expressly authorize entering into a partnership**. As per the **doctrine of ultra vires**, the contract is **void ab initio** and **not binding** on the company or the other party.

Doctrine Of Indoor Management

1. Constructive Notice (Sec. 399):

- MoA & AoA are **public documents**, available for inspection.
- **Presumed knowledge**: All persons dealing with the company are deemed to know contents, whether read or not.
- Includes **other registered documents** (e.g., special resolutions).
- Contracts beyond company powers or directors' authority → **cannot acquire rights** against company.

2. Doctrine of Indoor Management:

- **Exception to constructive notice**; outsiders can assume **internal formalities are properly observed**.
- Outsiders are entitled to presume that acts within apparent authority are valid.
- Established in **Royal British Bank v. Turquand (1856)**.

3. Key Principle (Turquand Rule):

- Company's **internal irregularities are its own problem**.
- Outsiders are protected when acting in **good faith** on acts within authority.

4. Exceptions / Limitations:

(a) **Actual or constructive knowledge of irregularity** – no protection (e.g., Howard v. Patent Ivory Mfg.; Morris v. Kansseen).

(b) **Suspicion of irregularity** – duty to inquire if transaction unusual or outside ordinary course (e.g., Anand Bihari Lal v. Dinshaw; Haughton & Co. v. Nothard).

(c) **Forgery** – Turquand Rule does **not apply**; forged acts are null (e.g., Ruben v. Great Fingall).

5. Practical Effect:

- Outsiders dealing with company **need not verify internal approvals**, unless they **know, suspect, or deal with forgery**.

Quest on: 37

Mr. R, a toy manufacturer, purchased **raw material worth Rs. 1,50,000** from **MNO Pvt. Ltd.** on a **one-month credit**. Before the due date, he **paid Mr. C**, an employee at the **billing counter**, who issued a **signed and sealed receipt**. Later, the company **sent a recovery not ce** claiming non-payment. The quest on asks about the **liability of Mr. R** under the **Companies Act, 2013**, and whether the outcome differs if **no receipt under company seal** was issued.

[Nov 22 - 4 Marks]

Answer:

- As per the **doctrine of indoor management (Royal British Bank v Turquand)**, outsiders are entitled to **presume internal regularity**.
- **Mr. R is not liable** to pay Rs. 1,50,000 since he had **genuine reasons to trust Mr. C**, and **receipt under company seal** was issued.
- If **no receipt was issued**, Mr. R **would be liable**, as the **doctrine does not protect negligence**; he had a duty to **verify Mr. C's authority** to receive payment.

Quest on: 38

The **Articles of Association of XYZ Pvt. Ltd.** allowed the **Board of Directors** to take loans up to **Rs. 50,00,000** by **Board Resolution**, and amounts above that required a **Special Resolution** in the **general meeting**. The Board, in urgent need, applied for a loan of **Rs. 60,00,000** from a **reputed bank** without passing the Special Resolution but **gave an undertaking** that it was passed. The company later **denied liability**, claiming the act was **ultra vires**. The question asks whether the **bank can recover the loan**. [RTP June 23]

Answer:

As per the **doctrine of indoor management (Royal British Bank v Turquand)**, outsiders are entitled to **presume internal regularity**. The **bank can recover the loan** from the company because it **relied on the Board's undertaking**, and there is **no requirement for the bank to verify the internal proceedings**. The transaction is **binding on the company**, despite the internal irregularity.

Features of a Company

1. Separate Legal Entity:

- Company has **own legal personality** distinct from its members.
- Can **own property, incur liabilities, enter contracts, raise loans**, and sue or be sued.
- Shareholders **do not own company property**; no insurable interest (e.g., *Macaura v. Northern Assurance*, 1925).

2. Perpetual Succession:

- Company **continues despite death, insolvency, or change of members**.
- Only law can terminate the company via **winding up**.

3. Limited Liability:

- **Limited by shares:** Members liable only up to unpaid share value.
- **Limited by guarantee:** Liability limited to amount guaranteed.
- **Unlimited company:** Members have **unlimited liability**.

4. Artificial Legal Person:

- Created by law, not natural birth.
- Can act like a person (**own property, contract, sue & be sued**) except natural acts (marriage, jail, oath).
- Acts **through directors**, who are not agents of members.

5. Common Seal:

- Official signature of the company; used to authenticate documents.
- **Optional** under Companies (Amendment) Act, 2015.
- If no seal, authorization by **two directors or director + company secretary**.

Perpetual Succession

Quest on: 39

M and N, holding **70% and 30% shares** in a company, **died in an accident**. The question asks about the **legal effect on the company** under the **Companies Act, 2013**. (June 24 - 3 Marks)

Answer:

The company has **perpetual succession**. The **death of M and N does not affect the existence** of the company. Their **shares will be legally transmitted to their heirs**, and the company **continues to exist** as an **artificial person under law** until it is formally wound up.

Common Seal

Quest on: 40

Goodwill Private Limited, incorporated on **15th May 2024**, issued **share certificates** to its subscribers **Amit, Sumit, and Sumat**. The **certificates were issued without affixing the common seal** and were **signed by Amit and Sumit**, the directors of the company. The company has **not yet appointed a Company Secretary**. **Sumat**, a director, **objected** to the validity of the share certificates signed only by the other two directors. Amit and Sumit **clarified** that the share certificates are valid as the company opted **not to have a common seal**. The quest on asks whether the **object on and the clarification** are correct, and whether the answer **would differ if the company had a Company Secretary**. [Sep 24 - 3 Marks]

Answer:

As per the **Companies Act, 2013**, since the company **opted not to have a common seal**, the **share certificates signed by two directors** are **valid** because no Company Secretary is appointed. The **object on of Sumat is not valid**, and the **clarification by Amit and Sumit is correct**. If the company **had a Company Secretary**, the **share certificate would need to be signed by a director and the Company Secretary**, so the answer would differ in that scenario.

CORPORATE VEIL THEORY [June 23, 6 Marks]

1. Definition:

- **Corporate Veil** = legal concept separating the company's identity from its members.
- Members are **shielded from liability** for company's debts or legal violations.
- Provides **corporate insulation** to shareholders.

2. Legal Basis:

- Established in **Salomon v. Salomon & Co. Ltd. (1897)**.
- **Company = separate legal entity** from its members.
- Shareholders' liability limited to **extent provided by law**; not liable for company's acts even if they hold majority of shares.

3. Lifting/Piercing the Veil:

- **Lifting the veil** = disregarding corporate entity to look at **real actors behind the company**.
- Courts lift veil **only in exceptional circumstances**, mainly involving **control, fraud, or improper conduct**, not mere ownership.

4. Principle:

- Company has **own existence**, distinct from shareholders.
- Acts of company are **not acts of members**, even if they manage the company.

When Corporate Veil is Lifted [June 23, 6 Marks]

1. To determine character of company (enemy or friend):

- *Daimler Co. Ltd. v. Continental Tyre & Rubber Co.* → Court may see who controls the company (enemy control → enemy company).

2. To protect revenue/tax:

- *S. Berendsen Ltd. v. Commissioner of Inland Revenue* → veil lifted in tax matters.
- *Juggilal v. CIT* → to prevent tax evasion.
- *Dinshaw Maneckjee Petit* → company a **sham**; income diverted through private companies; veil lifted.

3. To avoid a legal obligation:

- *Workmen of Associated Rubber Industries Ltd. v. Associated Rubber Industries Ltd.* → subsidiary formed only to reduce bonus liability; veil lifted.

4. Formation of subsidiaries to act as agents:

- *Merchandise Transport Ltd. v. British Transport Commission (1982)* → subsidiary used as agent to obtain licence; treated as one commercial unit.

5. Company formed for fraud / improper conduct / to defeat law:

- *Gilford Motor Co. v. Horne* → incorporation used to avoid legal obligations; veil lifted.

SHARES [MTP Sep 25]

1. Definition (Sec. 2(84))

- **Share** = proportion of interest in a company's share capital, includes stock.

- Represents **interest in company assets** corresponding to amount paid.

2. Nature of Shares:

- **Interest, not ownership:** Shareholder has **rights & obligations** as per MoA, AoA, and Companies Act; not a part-owner of the undertaking (Borland Trustees v. Steel Bors).
- Shareholder has **contractual rights** and statutory rights under the Act.

3. Movable Property (Sec. 44):

- Shares, debentures, or other interests of a member = **movable property**, transferable as per AoA.

4. Numbering of Shares (Sec. 45):

- Every share in a company with share capital must have a **distinctive number**.
- Exception: Shares held in **depository as beneficial interest** need not be numbered.

Kinds of share capital (Dec 23 - 6 Marks)

1. Equity Share Capital

- Can be of two types:
 1. **With voting rights**
 2. **With differential rights (DVRs)** as to:
 - Dividend
 - Voting
 - Other rights (as per prescribed rules)
- **Example:** Tata Motors' 'A' equity shares (2008) – 10 shares = 1 vote but +5% dividend.
- **Definition:** All share capital which is **not preference share capital**.

2. Preference Share Capital

- Carries **preferential rights** regarding:
 - a. **Dividend** – fixed amount or at fixed rate (tax-free or taxable)
 - b. **Repayment on winding up** – preferential repayment of paid-up capital (with or without fixed premium)

3. Exception

- **Private companies:** Sec 43 does **not apply** if MOA/AOA provides otherwise.

Quest on: 41

What do you mean by the term capital? Describe its classification in the domain of Company Law. [Dec 21 – 6 Marks] [MTP II May 25- 7 Marks]

Answer:

In the context of a **company limited by shares**, **capital** means **share capital**, i.e., contributions of members to the **common stock** of the company. A **share** is an interest measured by money and represents various rights. Under the **Companies Act, 2013**, capital is classified as follows:

1. **Authorised / Nominal Capital** [Sec. 2(8)] – Maximum share capital authorized by **MOA**; also called **registered capital**; stamp duty payable on this amount.
2. **Issued Capital** [Sec. 2(50)] – Part of authorised capital issued for subscription; includes shares issued for **non-cash consideration**.
3. **Subscribed Capital** – Portion of issued capital subscribed by members/public. If authorised capital is disclosed, **subscribed and paid-up capital** must also be disclosed; non-compliance leads to **penalty: ₹10,000 (company) + ₹25,000 (officer in default)**.
4. **Called-up Capital** – Amount called for payment on shares issued.
5. **Paid-up Capital** – Actual amount paid or credited as paid-up; equals **called-up capital – calls in arrears**.