

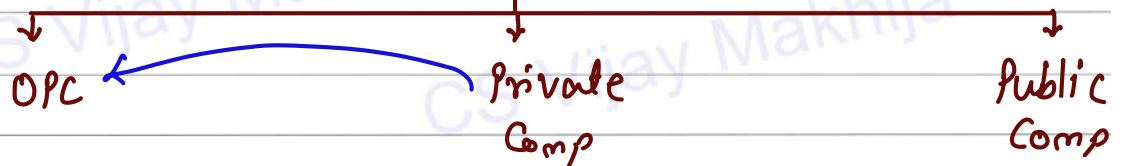


Total Section = 470

Companies Act, 2013

Total Chap = 29
Sch = I to VII

Company



Section :: 2 (62) 2 (68) 2 (71)

Min Member :- 1 2 7

Max Member : 1 200 Unlimited

Min Dir 1 2 3

Max Dir 15 15 15
149(1)

Suffix ABC (OPC) Pvt LTD Pvt LTD Limited

Min paid up Capital - - -



Sec 1 Applicability of Companies Act, 2013

The provision of the Act shall apply to

1. Company
2. Insurance comp
3. Banking Comp
4. Electricity comp
5. Comp governed by any Special Act
6. Any BC prescribe by G a

Meaning of Comp

1. Meaning :- According to Chief Justice Marshall, a Corporation is an artificial being, invisible, intangible, existing only in contemplation of law.

2. Definition :- See 2(120) of Companies Act, 2013. Company means a comp incorporated under this Act or any previous Company law.



Features of Comp.

1. **Separate legal Entity**

Comp existence is distinct from its Member

Macaura vs Northern Assurance Co Ltd

mom

2. **Perpetual Succession** : Members may die or change, but the comp goes on till it is wound up on the grounds specified by Act

3. **Limited liability**

4. **Common Seal**

↓
optional

↓
Two dir





Corporate veil

It refers to legal concept whereby the comp is identified separately from the member of comp
Salomon v's Salomon sale me Co. LTD

Exception of SLE / Lifting of CV / Exception of Salome case

1. To determine the character of Comp (friendly or friendly)

Daimler Co LTD vis Continental Tyre & Rubber Co

2. To protect revenue / Tax :-

Dinshaw Maneckjee Petit

3. To avoid legal obligation (Bones) → Payment of Bonus Act of Bong

worken of Associated Rubber Industries LTD, Bhavancy Bhavancy

4. Formation of Subsidiaries to act as agent

Merchandise Transport LTD vis BTC

5. Company formed for fraud & improper Condu

Gilford motor Co vis Home



Classes of Companies under the Act

(A) on the basis of Liability

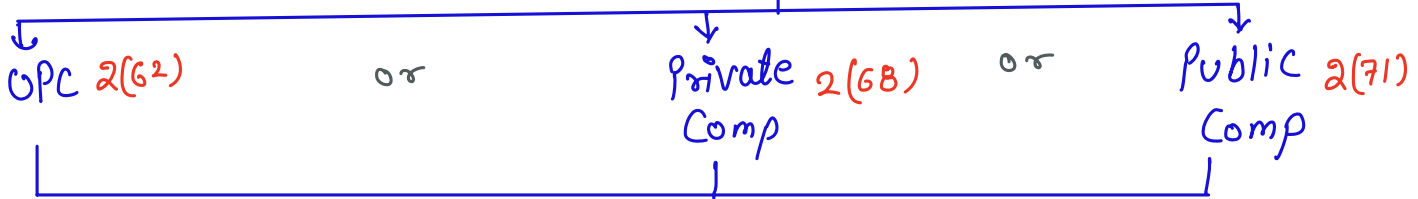
1. Limited by Share Sec 2(22) :- liability of members is limited by MoA to the amount unpaid on share held by them.

2. Limited by guarantee Sec 2(21) :- liability of members are limited upto a sum mentioned in MoA.

3) unlimited Comp Sec 2(92) :

Concept Summary

sec 3 - Formation of Comp



Limited Liability

2(92) unlimited Liability

✓ Limited by share 2(22)

Limited by guarantee 2(21)

Liability :- unpaid

having a share Capital

Liability :- Guarantee Amount + unpaid

NOT having a share Capital

↓
Liability
↓
Guarantee Amount

③ on the basis of Members

1. one person Comp :-

a) Definition :- Sec 2 (62), OPC as a Comp which has only one person as a member.

(b) Significant points (the Member can be sole member and direct)

1. As per Sec 3(C)(c) OPC is a Pvt Limited Company.
2. only one person as member.
3. The MOA of OPC shall indicate the name of other person (nominee), who shall, in the event of subscriber's death or in Capacity to Contract, become the member of Comp.
[i.e. total 7 clauses in MOA]
4. Nominee shall give his prior written Consent.
5. Nominee may be given the right to withdraw his Consent.
6. The Member at any time change the Nominee by giving notice to Comp and Comp shall intimate to ROC.

Change in the Name of Nominee shall not be deemed alteration of MOA

9

7. Condition For Member or Nominee :-

- Natural person
- Indian citizen
- whether RII or otherwise (12 days ^{min})
- Not a Minor

8. Person shall not be eligible to incorporate more than one OPC and become nominee in More than one Op. (180 days)

ABI (OPC) Pvt 17A

Xyz (Ops) Pvt LTD

MaA

Member

AND

Mrc

Member

MaB

Nominee

M & A

Nominee

9. OPC cannot be incorporated or converted into a See 8 Comp.

10. OPC cannot carry out

Non Banking financial activities

investment in securities of BC

2 Private Comp 2(68) :- means a comp having min PSC as may be prescribe, and by its AOA -

a) Restrict the right to transfer its shares.

b) Max Member 200 (Except OPC)

Provided that Joint holder shall be treated as single.

Provided further that,

(A) Person who are in employment and

(B) Person who, having been formerly in employment, were member while in employment and have cont. to be members after the employment ceased.

shall not be included in 200 Members.

(c) Prohibit any invitation to public to subscribe for any securities of Comp.

3. Small Comp. :- As per Sec 2(85) of Comp Act, 2013, means a Comp, other than Public Comp

(i) PSC of which does not exceed ₹ 50 Lakh or such higher as may be prescribe i.e. ₹ 10 Cr, which shall not be more than ₹ 10 Cr

, AND

(ii) Turnover of which as per P2L a/c for immediately preceding FY does not exceed ₹ 2 Cr or such higher amount as may be prescribe i.e. ₹ 100 Cr which shall not be more than ₹ 100 Cr.

1. ~~ABCPTLI~~

PSC = 867

T/O = 7012

✓

2. ~~1117~~

PSC = 967

710 = 10592

✗

3. ~~Chaman (S)~~

PSC = E

T/O = 5028

✗

4. ~~TEREID~~

T/O = 450

✗

~~shame~~

PSC - 412

710 - 3516

✗

- Exception :-
1. Holding Comp
 2. Subsidiary Comp
 3. Statutory Comp
 4. Sec 8 Comp

4. Public Comp ²⁽⁷¹⁾ :- mean a Comp which is not a Pvt Comp.

Deemed Public Comp :- Comp which is sub of Public Comp.
(Cont. to be a Pvt Comp in its AOA)

eg:-
ABC LTD (H)
↓
xyz Pvt LTD (S) → deemed Public Comp

© on the basis of Control

1. Holding Comp :- 2(46)

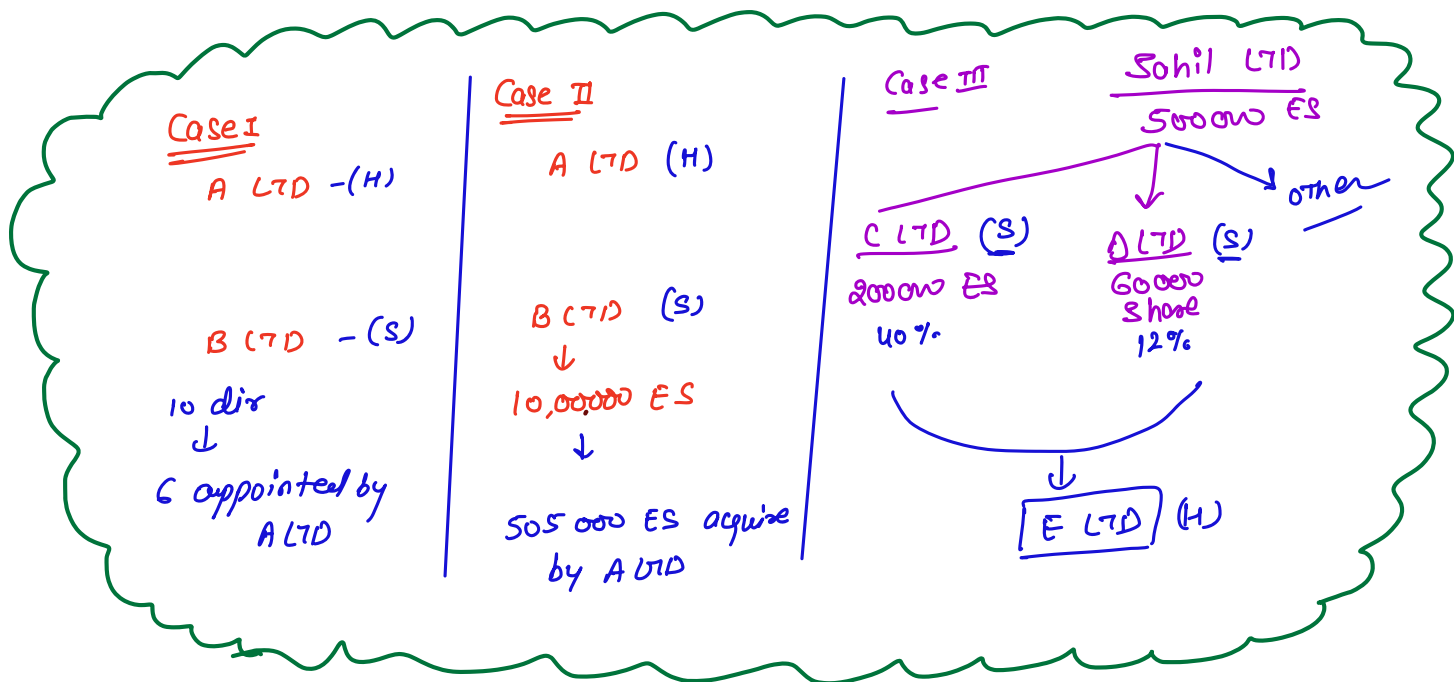
A Comp is a holding Comp in relation to one or more other Companies, means a Comp of which such Companies are subsidiary Companies.

2. Subsidiary Comp :- 2(87)

Subsidiary Comp in relation to any other Company (holding Comp) means a Comp in which the holding Comp -

a) Control the Composition of BOD, or

b) Control more than 50% Voting Power either at its own or together with one or more of its Sub-Comp.



3. Associate Comp 2 (6) :- in relation to another Comp, mean a Comp in which that other Comp has a significant influence but which is not a subsidiary Comp and includes a J.V.C.

Note :- SI means Control of at least 20% of VR or participation in business decision under an agreement.

(D) on the basis of Capital

1. Listed Comp 2 (52) :- it is a Comp which has any of its securities listed on any RSE.

2. unlisted Comp means Comp other than listed Comp.

(E) Other Companies

1. Govt Comp :- means a Comp in which min 51% of PSC is held by CG or SG or both, includes a Comp which is a subsidiary of Govt Comp.

2. Foreign Comp :- mean any Comp/B/C incorporated o/s India which -

a) has POB in India whether by itself or through Agent, Phy or through e-mode, and

b) conduct business activity in India.

3. Company with charitable object etc (see Comp) :-

a. object :- see 8 of Companies Act, 2013 deals with the formation of Companies which are formed to -

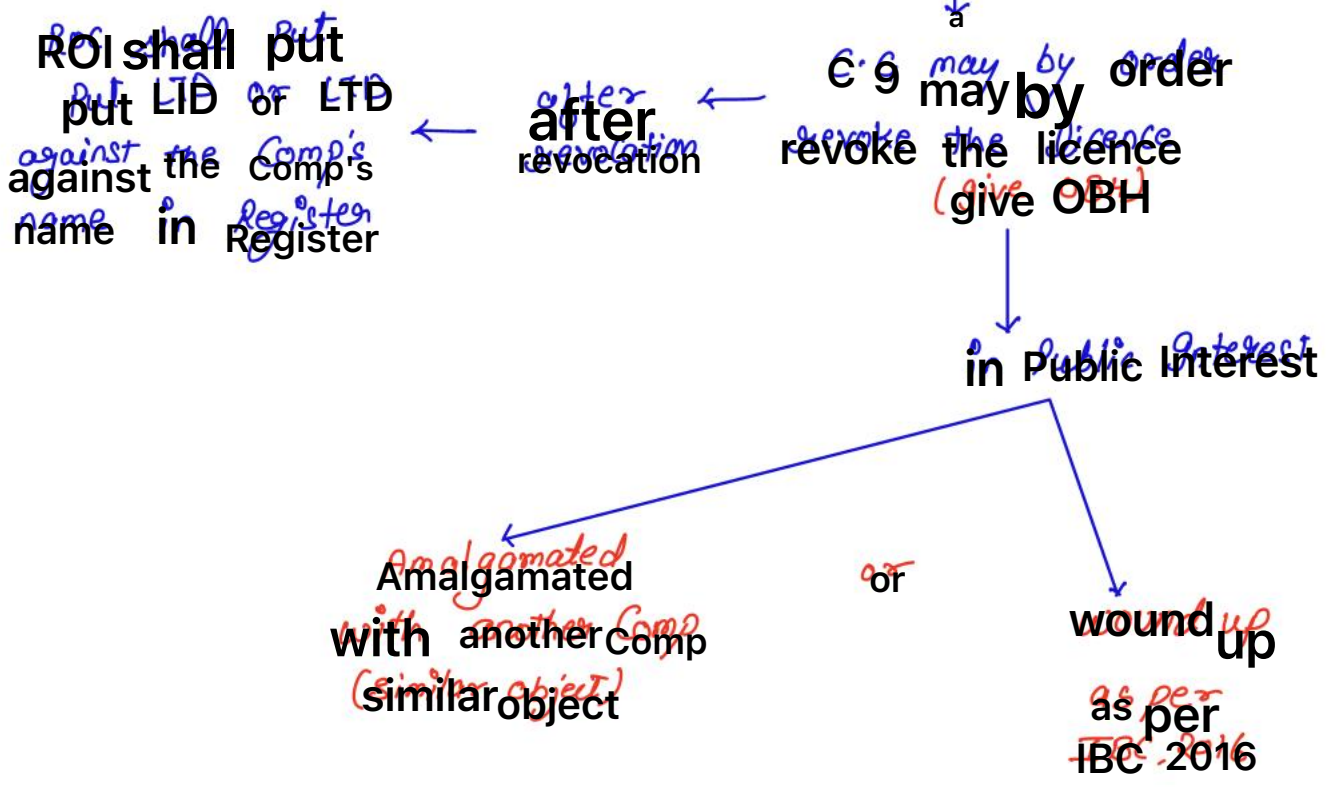
- promote the charitable object of commerce, art, science, sports, education, social welfare, religion, protection of environment etc.
- such comp intends to apply its profit in promoting its objects

B. Prohibition :- such comp cannot distribute profit or dividend to members

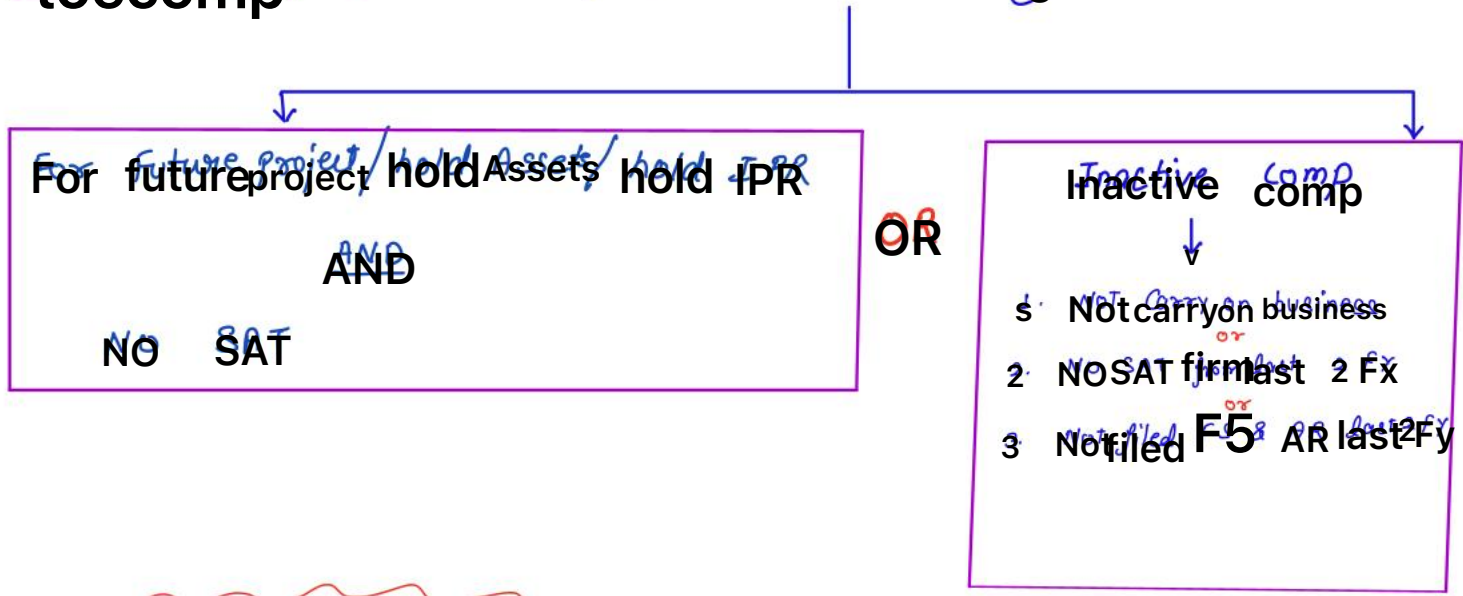
c. License :- sees allow the CG to register association of persons as Comp with limited liability without addition of words 'limited' or 'GP' to its name, by issuing licence on such condition as it deems fit.

d. Name :- Can use words like "Association", "Foundation", etc instead of LTD or PVT LTD

E. Revocation of license :- If comp contravenes the condition of this section



4. toecomp :- it comp is formed and registered under this Act



SAT ⇒ means any transaction other than

- Payment of Fee by Comp to ROC
- Payment made to fulfill the requirement
- Allotment of share
- Payment for maintenance of office and record

Payee iq

fulfill the requirement

5. Nidhi Comp :- [also known as Mutual Benefit Society]

a. It must be incorporated as public limited comp with "Nidhi Limited" in its Name.

b. Nidhi Comp is a type of NBFC that operates on the principle of mutual benefit, accepting deposit and lending money exclusively to its members.

c. While an NBFC, it's governed by MCA, not directly by RBI.

d. Nidhi Companies are created mainly for cultivating the habit of thrift and savings amongst its members.

6. Public Financial Institutions [PFI] :- As per Sec 2(72) of CA 2013

the following institutions are to be regarded as PFI -

1. LIC
2. UTI
3. IDFC

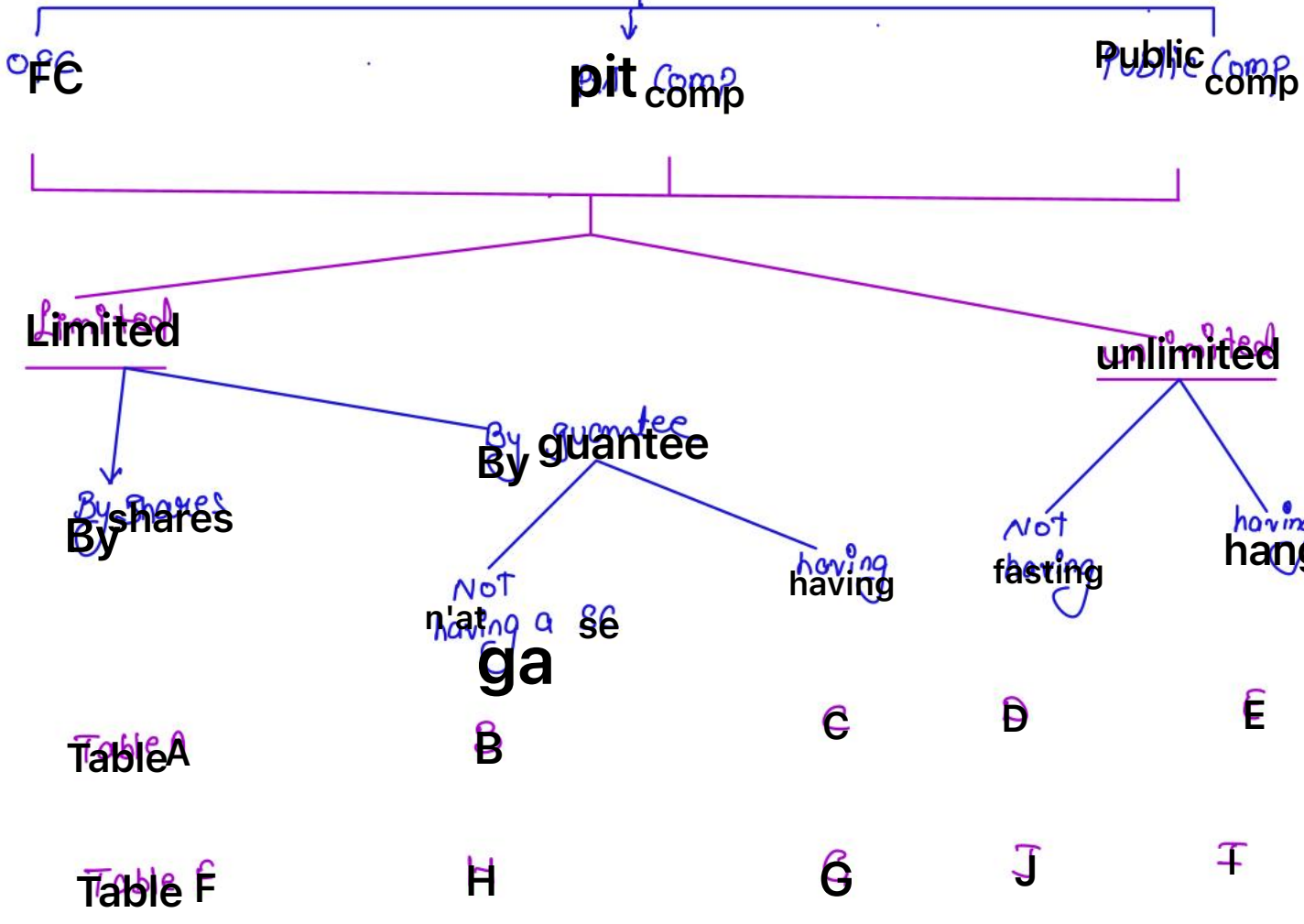
4. institutions notified by CG u/s 4A of Companies Act 1956

5. Ca in Consult with RBI

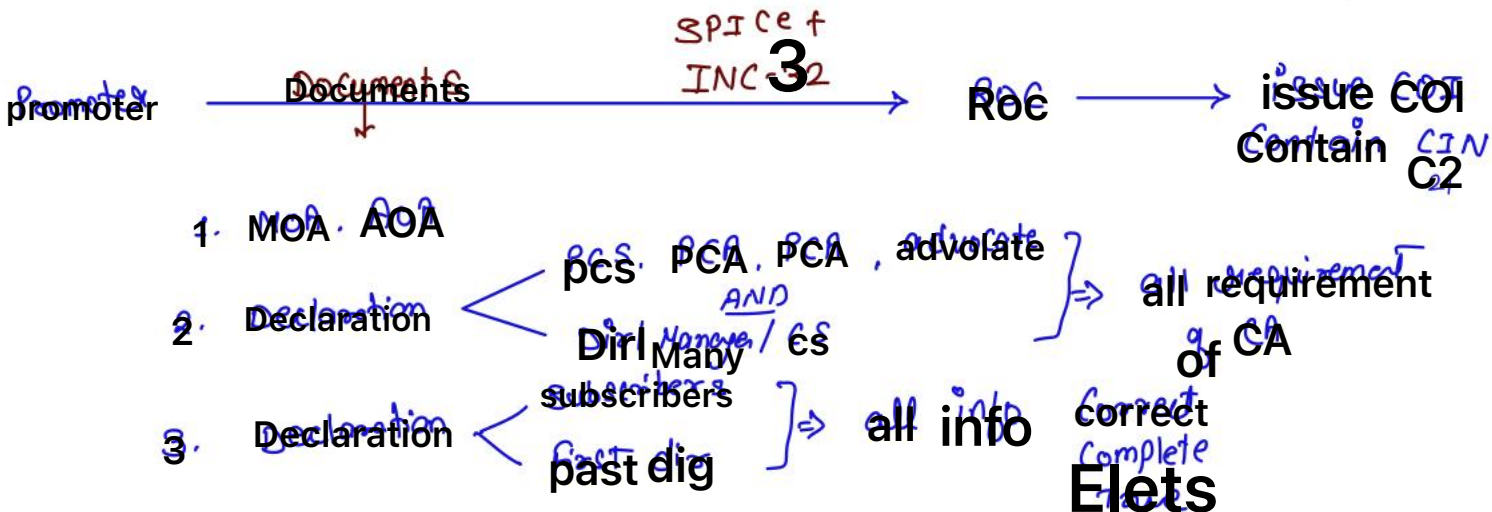
establish under central / state Act
or
Govt comp (51%)

Sec 3

Formation of Company



Dec 7 :- Incorporation of Company



1. Documents with ROC :- For Registration of Comp following documents are required to be filed with ROC.

a) MOA & AOA

b) Declaration by PCA/PCA/PCS/Advocate who engaged in formation AND by a director/manager/cs named in AOA, that all requirements of this Act have been complied with.

(c) Address of R.O.

(d) Particulars of subscriber & Directors

(e) Declaration from each subscribers and first dir. that all documents & info. is correct, complete and true.

2. Issue of COI :- The ROC shall register all the docum. and issue Certificate of Incorporation.

3. Allotment of CIN :- on and from the date mentioned in COI, ROC shall allot to Comp a Corporate identity number which shall be a distinct identity for the Comp.

Incorporation of Comp by false info

5.01/17
hearing

NCLT

At the time of incorporation

Post Incorporation

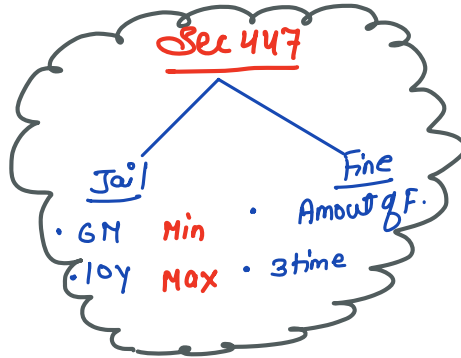
where after incorporation

it is proved

that Comp got incorporated by false info etc

Promoter, first Dir, person making declaration

liable for sec 447



If any person furnish false/incorrect info

Filed with ROC

liable for Sec 447

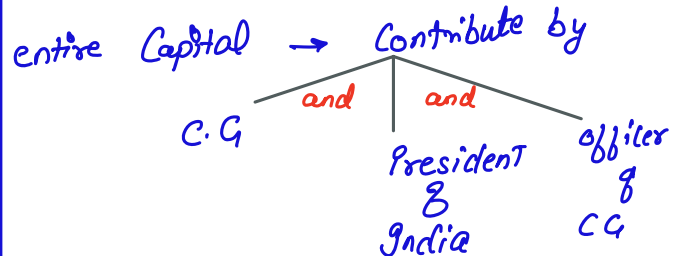
Sec 9

Effect of Registration

from the date mentioned in COI

- subscribers become members
- shall be BC
- PS, to sue and be sued etc

Govt owned Comp



State trading Corporation of India v/s CTO

Heavy Electrical Union v/s state of Bihar

Sec 10 Effect of MOA & AOA

after registration of MOA & AOA



- MOA & AOA bind the Comp & member
- All monies payable by member to the Comp under MOA or AOA shall be debt due from him to Comp.

Kinds of Share Capital

1. Sec 2(84) :- share means share in S.C.
2. Sec 43 :- There two type of SC
 - Equity share Capital
 - Pref. share Capital
3. Sec 44 :- share / debenture → Movable Property
4. Sec 45 :- having distinctive Number
(not apply in case of demate)

Classification of Capital

1. Authorised
2. Issued
3. Subscribed
4. Called up
5. Paid up - Called up - Calls in Arrear

Sec 4 MOA

1. Name clause :- The name of Comp with last word
 - Pvt Comp : Private Limited
 - Public Comp : Limited
 - Sec 8 Comp : Foundation, Forum, Council, Electoral Trust etc.
2. Registered office clause : name of State
3. Object clause : the object for which the Company is proposed to be incorporated and incidental thereto.
If Comp has changed its activities which are not reflected in its name, it shall change its name in line with activities within 6 months
4. Liability clause
5. Capital clause :- Authorised Share Capital
6. Association clause : Every subscriber shall take at least one share

note : In case of OPC, the name of Nominee



Sec 5 AOA for insider

1) Contents - Divisio

Call on share, forfe. of share, Redeeming PS, ...
Appoint of Dir Remun of Dir
Remun of Dir Re appointment of Dir
winding up

2) Case study

Guinness vis Land Corporation of Ireland

a) rules & regulation
b) Internal regulation

ss Rajkumar vis Perfect Casting Put 1717

Magna Carta

3) entrenchment provision :-

entrenchment Provision in aon. fi. qu. [means a particular decision can be taken by a higher authority than the specified authority.]
conditional entrenchment

atnetintmf.no

eisitiol

SPICE (INC32)

Consent of all members

Public Comp consent is 7

intimate to n/c within 3 days

eg:- for winding up, SR in GM is required. but if AOA mention that at least 90% of votes must be in favour for winding up then it is called Entrenchment provision.





Doctrine of ultra vires

1. MOA shall state the object for which Comp. is proposed to be incorporated.

2. A Comp can't depart away to do anything beyond or outside its objects stated in MOA and if act done beyond that will be ultra vires and void, same can't be ratified even by assent of all shareholders.

3. Act (MHA) ultra vires to the directors may be ratified by the Comp. eg:- one of director is authorised to issue cheque of ₹ 10,000, but he issued for ₹ 1000, Company can ratify.

Ashbury Railway Carriage & Iron Co. LTD

V/S

Riche

1. The object clause of Ashbury Comp:- making, hiring, selling railway plants, mechanical engineering and General Contractors

2. Ashbury entered into a contract with Riche to finance.

3. Such contract as ultravires, null & void.



4. Court applied the rule of Edjusdem Gencies which mean general word will take its meaning from preceding specific words



Summary

Doctrine of ultra vires :- Any activity done in Excess of the scope of activity of Companies Act, Moa, AoA will be ultra vires.

a) ultra vires the Companies Act ⇒

(i) Companies Act shall prevail

(ii) such act is void

(iii) Cannot be ratified by SH (10% Consent)

But ultra vires the MOA :-

(i) Beyond the object clause of MOA

(ii) such act is void

(iii) cannot be ratified by SH (100% Consent)

(c) ultra vires the AoA :-

(i) beyond the AoA but intra vires the MOA

(ii) such act is void but ratify by SH

effect of Ultra vires

void ab initio

void ab initio ✓

injunction (stay order) ✓

3. lawful debt → subyoute

4. Property → relive

5. Court \$





Doctrine of Constructive Notice

against side. ES

Kotta Venkataswamy v. Chintarama murthy

- a) The office of ROC is public office
- b) public documents (MOA/AOA etc) are accessible to all for inspection
- c) Therefore the AOA are open to any person to read & ensure that his contract is in keeping with AOA provision
- d) This doctrine protect the company against outsider.
- e) So, as per doctrine, outsider is presumed to be known all the power of Comp & director (MOA) (AOA)

See 399 - Public documents (MOA, AOA)

see 17 Person → API to Comp → COPY of MOA & AOA





Doctrine of Indoor Management

Royal British bank v Turguard



- 1- The dir of Comp was authensed by AoA to borrow on band & by a resolution of Comp's GM
 - 2- The dir gave a bond to Turguard without resolution
 - 3- The ques arose whether the Comp was liable
 - u- Held, the Comp was liable on the bond as Turguard was entitled to assume that resolution in GM had been passed
- a) This doctrine is Exception to doctrine of Constantive notice booz it protect the outsider against comp
 - b) It is also called Turguard Rule
(Royal brit bank V Turguard)
 - c) It says that it is not a part of the duty of outsider to see that Comp carries out its own internal regulation
 - d) outsiders are bound to know the External position Power of Comp but not bound to know its Internal Management
 - e) The benefit of this doctrine will be available only if outsider have head the MOA and AoA and transaction is intra vires to Comp



Exceptions :-

1. Forgery
2. Knowledge of Forgery
3. Negligence

