

THE COMPANIES ACT,

2013



INTRODUCTION

Companies Act, 2013 was preceded by the Companies Act, 1956.

Why?

- due to changes in national & international environment
- facilitate expansion & growth of our economy

Companies Act, 2013 contains -

- 470 sections and 7 schedules
- divided into 29 chapters.

Aim?

- to improve corporate governance, simplify regulations, strengthen the interests of minority investors.

APPLICABILITY OF THE COMPANIES ACT, 2013

- 1) Companies incorporated under this act or under any previous company law.
- 2) Insurance companies
- 3) Banking Companies
- 4) Companies engaged in the generation or supply of electricity
- 5) Any other company governed by any special Act
- 6) Such body corporate - the Central govt. may by notification specify in this behalf.

DEFINITION OF COMPANY

According to Prof. Haney,

"A company is an incorporated association, which is an artificial person created by law, having a separate entity, with a perpetual succession and a common seal."

According to section 2(20) of the Companies Act, 2013,

"A company means company incorporated under this act or under any previous company law."

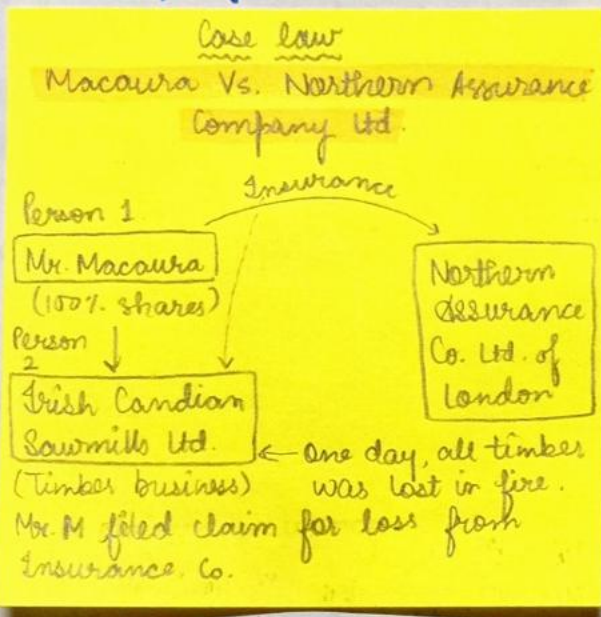
FEATURES OF A COMPANY

(1) Separate legal entity

Its existence is distinct and separate from that of its members.

A company can own property, have bank account, raise loans, incur liabilities and enter into contracts.

- (a) It is at law, a person which is different from the subscribers to the memorandum of association.
- (b) Even members can contract with company, acquire right against it or incur liability to it. For the debts of the company, only its creditors can sue it and not its members.



Court held that shareholder & company are separate persons in the eyes of law.

Mr. Macaura does not have any insurable interest in the property owned by company.

He is not eligible for any compensation.

(2) Perpetual Succession

Members may die or change, but the company goes on till it is wound up. Its existence is not affected by the death or insolvency of its members.

Example -

There was a Co. which has 7 members and all of them died in an aircraft. Despite this the company still exists unlike partnership form of business.

(3) Limited liability

- The liability of the members of the company is limited to the extent of the nominal (unpaid) value of shares held by them.
- In the case of Co. limited by guarantee, the members are liable only to the extent of the amount guaranteed by them and that too only when the company goes into liquidation.

→ If it is an unlimited company, the liability of its members is unlimited as well.

(4) Artificial legal person

A company is an artificial person as it is created by a process other than natural birth. It is legal as it is created by law. It is a person since it is clothed by all the rights of an individual. (not only through human agency, viz. directors)

(5) Common seal

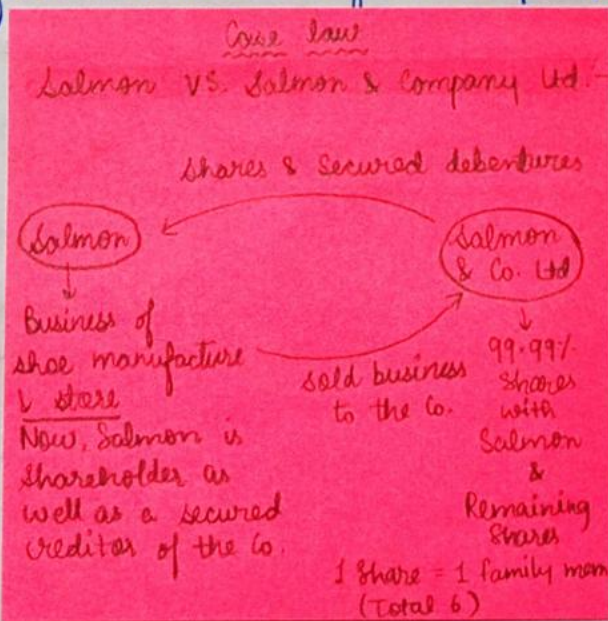
→ It is the official signature of a company, which is affixed by the officers & employees of the Co. on its every document.

→ The Companies (Amendment) Act, 2015 has made the common seal optional.

→ In case a company does not have a common seal, the authorisation shall be made by two directors or by a director and the company secretary, wherever the company has appointed a company secretary.

• CORPORATE VEIL THEORY (company का पर्दा)

→ refers to a legal concept whereby the company is identified separately from the members of the company.



→ laid down the foundation of concept of corporate veil or independent corporate personality.

After some days,

Market - depression phase

Company went under liquidation process
Salmon & Co. Ltd.

→ unsecured creditors
→ Secured debentureholders
→ shareholders

} Co.'s liab. to pay off

Because Salmon was a secured creditor, he was to be paid first by unsecured creditors raised objection.

Held by Lord Mac Naughten,

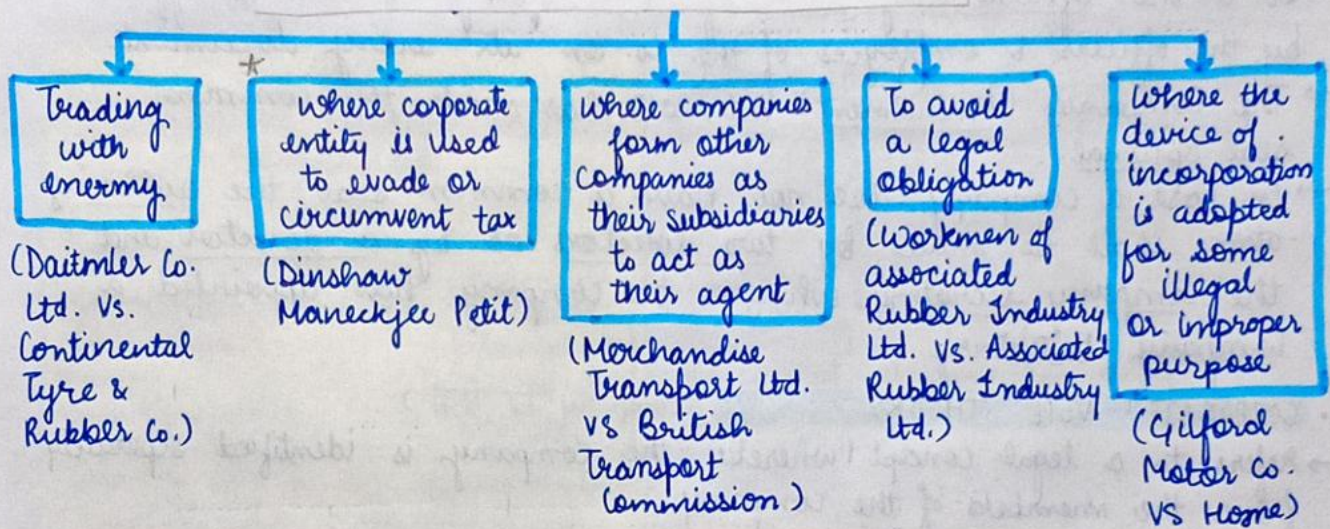
The Co. is at law a different person altogether from the subscribers to the memorandum, and though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers

and the same hands receive the profits, the company is not in law the agent of the subscribers or trustees for them. Nor are the subscribers, as members, liable, in any shape or form, except to the extent and in the manner provided by the Act.

LIFTING OF CORPORATE VEIL

general rule - company & its members are separate (Corporate Veil)
 Exception - Co. & its members are same person

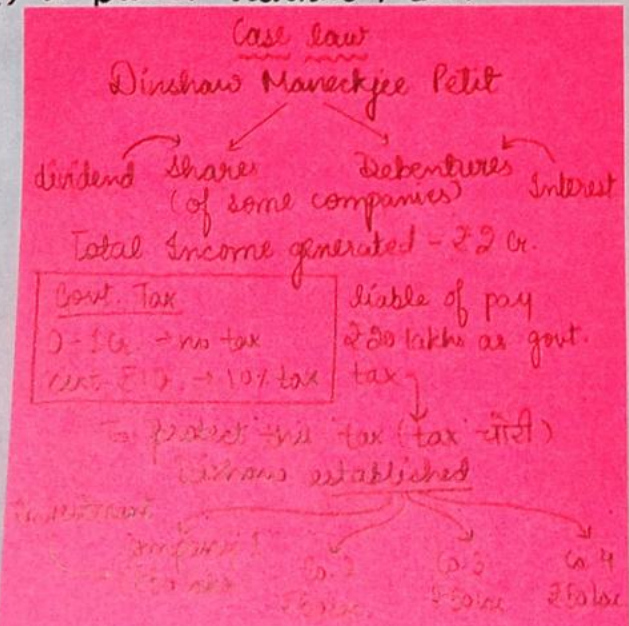
LIFTING A CORPORATE VEIL



(1) To determine the character of a company, i.e. to find out whether Co - enemy or friend:

A company can be characterised as an enemy company, if its affairs are under the control of people of an enemy country.

(2) To protect revenue / tax:



The income (₹2 Cr.) he was earning was invested in all four companies as ₹50 lakhs each

→ Now, no govt. tax was to be paid

→ He transferred his income back by way of loan.

→ Income authorities saw that the sole purpose of these companies was to protect tax.

→ Corporate veil was lifted.

→ Now the owner of income will be Dinshaw so he is liable to pay taxes

(3) To avoid a legal obligation: where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court held the piercing of the veil to look at the real transaction.

(4) Formation of subsidiaries to act as agents:

A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to have lost its individuality in favour of its principal. Here, the principal will be held liable for the acts of that company.

(5) Company formed for fraud / improper conduct or to defeat law: where the device of incorporation is adopted for some illegal or improper purpose.

MODE OF REGISTRATION / INCORPORATION OF A COMPANY

PROMOTERS:-

The Companies Act, 2013 defines the term 'Promoter' under Section 2(69) which means a person -

- who has been named as such in a prospectus or is identified by the company in the annual return referred to in Sec 92
- who has control over the affairs of the company, directly or indirectly by the company in the whether as a shareholder, director or otherwise, or
- in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

FORMATION OF A COMPANY

Section 3 of the Companies Act, 2013

↳ basic requirements for constitution of a company:-

Public Co. - 7 or more persons

Private Co. - 2 or more persons

One Person Co. - 1 Person

} can form a company
by subscribing their names
to memorandum

Incorporation of company:-

- Filing of the documents and information with the registrar
For the registration of the company following documents and information are required to be filed with the registrar -

- The memorandum and articles duly signed by all the subscribers to the memorandum.
- a declaration by person who is engaged in the formation of the company (an advocate, a CA, cost accountant or CS in practice) and by a person named in the articles (director, manager or secretary of the company), that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with.
- a declaration from each of the subscribers and from persons named as the first directors stating that -
 - he is not convicted of any offence in connection with the promotion, formation or management of any company, or
 - he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company during the last five years.
 - that the documents filed with the Registrar contain information that is correct and complete
- the address for correspondence till its registered office is established.
- the particulars of every subscriber to the memorandum along with proof of identity.
- the particulars of the persons mentioned in the articles as first directors
- the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors

(2) Issue of certificate of incorporation on registration :-

The Registrar shall register all the documents and information in the Register and issue a certificate of incorporation.

(3) Allotment of Corporate Identity Number (CIN) :-

Registrar shall allot to the Company a corporate identity number.

(4) Maintainance of copies of all documents and information :-

The company shall maintain and preserve at its registered office copies of all documents and information as originally filed, till its dissolution under this Act.

(5) Furnishing of false or incorrect information or suppression of material fact at the time of incorporation (i.e. at the time of incorporation):-

that person will be liable for action for fraud under Sec 447.

(6) Company already incorporated by furnishing any false or incorporated incorrect information or representation or by suppressing any material fact (i.e. post incorporation):-

The promoters, persons named as the first directors of the company & the persons making declarations under this section shall be each liable for action for fraud under Sec 447.

(7) Order for the tribunal:-

- pass such orders, as it may think fit, for regulation of the management of the company.
- direct that liability of the members shall be unlimited
- direct removal of the name of the company from the register of companies
- pass an order for the winding up of the company
- pass such other orders as it may deem fit

Effect of Registration:-

A registered Co. shall be capable of exercising all the functions of an incorporated Co. under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract or to sue or to be sued, by the said name.

- It has perpetual existence until it is dissolved by liquidation or struck out of the register
- A company on registration acquires a separate existence and the law recognises it as a legal person separate and distinct from its members.

Effect of Memorandum and Articles :-

The memorandum and articles when registered, shall bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and an agreement to observe all the provisions of the memorandum of its articles.

• MEMORANDUM OF ASSOCIATION

Definition :-

- charter of the company
- defines power & limitations on the power of a company
- contains fundamental conditions upon which company is incorporated.

Purpose :-

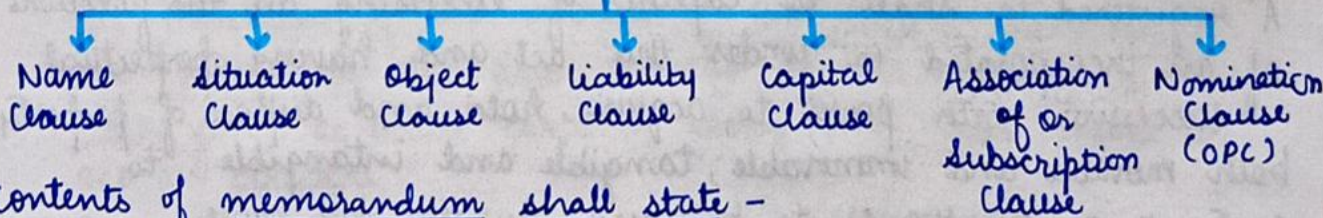
→ 3rd Parties

To provide information to the parties as to whether the contracts they are intending to enter into with the company are within the objects clause of the company or not.

→ Shareholders

To provide information to the intending shareholder regarding the purpose for which his money is going to be used by the company and the amount of risk he is making in the investment.

Contents



Contents of memorandum shall state -

(a) Name Clause

last word 'limited' in the case of a public limited company, or the last words 'private limited' in the case of a private limited company.

In the case of a one person company, the words 'One Person Company' should be included below its name.

(b) Registered Office Clause

The state in which the registered office of the company (Registered office clause) is to be situated.

(c) Object Clause

The objects for which the company is proposed to be incorporated.

(d) Liability Clause

The liability of members of the company, whether limited or unlimited, and also state -

- The case of a company, 'limited by shares' that the liability of its members is limited to the amount unpaid, if any, on the shares held by them, &
- In the case of a company, 'limited by guarantee' the amount up to which each member undertakes to contribute -
 - (i) To the assets of the Co. in the event of its being wound up while he is a member.
 - (ii) To the costs, charges & expenses of winding-up & for adjustment of the rights of the contributories among themselves.

(e) Capital Clause

The amount of authorized capital divided into share of fixed amounts and the no. of shares with the subscribers to the memorandum have agreed to take, indicated opposite their names, which is not less than 1 share.

(f) Association or Subscription Clause

Every subscriber to the Memorandum shall take at least one share & shall write against his name, the no. of shares taken by him.

(g) Nomination Clause (OPC)

In the case of OPC, the name of the person who in the event of death of the subscribers, shall become the member of the company.

→ A Co. being a legal person can through its agents, subscribe to the memorandum. However, a minor cannot be a signatory to the memorandum as he is not competent to the contract.

The guardian of minors, who subscribes to a memorandum on his behalf, will be deemed to have subscribed in his personal capacity.

ARTICLES OF ASSOCIATION

The articles of association of a company are its rules & regulations, which are formed to manage its internal affairs. The articles are the internal regulations of the company. The articles play a part subsidiary to the memorandum of association. It regulates domestic management of a company & creates certain rights & obligations between the members & the company.

Contents & Models of AOA:-

(1) Contains Regulations

The articles of a company shall contain the regulations for the management of the company.

(2) Inclusion of matters

The articles shall also contain such matters, ~~are~~ as are prescribed under the rules.

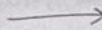
(3) Contain provision for entrenchment

The articles may contain provision for entrenchment (to protect something) to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

(4) Manner of inclusion of the entrenchment provision

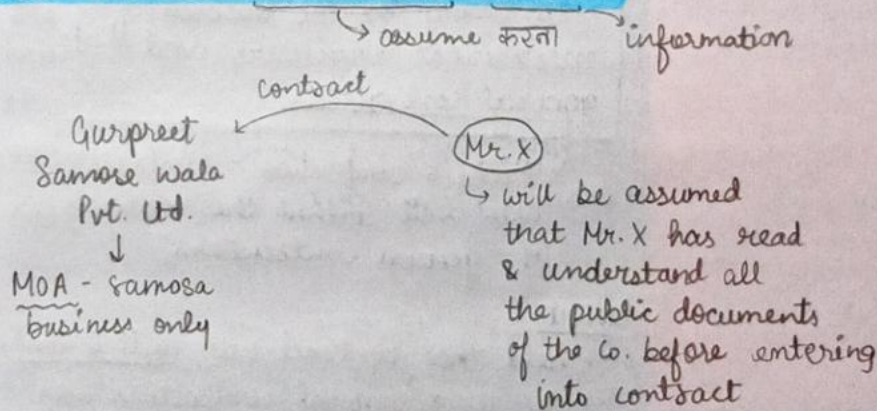
The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special so resolution in the case of a public company.

DIFFERENCE BETWEEN MOA & AOA



| Basis | Memorandum of Association | Articles of Association |
|--------------|--|--|
| Objectives | MOA defines and delimits the objectives of the company. | AOA lays down the rules & regulations for the internal management of the company. Articles determine how the objectives of the company are to be achieved. |
| Relationship | defines the relationship of the company with outside world. | defines the relationship between the company & its members. |
| Alteration | Can be altered only under certain circumstances and in the manner provided for in the act. In most case, permission of the Regional Director, or the Tribunal is required. | can be altered simply by passing a special resolution of the shareholders. |
| Ultravires | Acts done by the company beyond the scope of the memorandum are ultra vires and void. These cannot be ratified even by the unanimous consent of all shareholders. | The acts ultravires the articles can be ratified by a special resolution of the shareholders, provided they are not beyond the provisions of the memorandum. |

DOCTRINE OF CONSTRUCTIVE NOTICE



Section 399 of the Companies Act, 2013 provides that -

- any person can inspect by electronic means any document kept by the Registrar,
- or make a record of the same,
- or get a copy or extracts of any document
- including certificate of incorporation of any company on pay of prescribed fees.

By Constructive notice is meant:-

- whether a person reads the documents or not, he is presumed to have knowledge of the contents of the documents.
- He is not only presumed to have read the documents but also understood them in their true perspective, and
- Every person dealing with the company not only has the constructive notice of the memorandum and articles, but also of all the other related documents, such as financial statements etc which are required to be registered by the Registrar.

DOCTRINE OF ULTRA VIRES

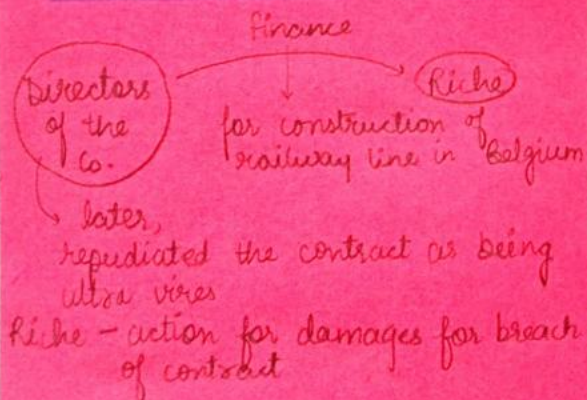
The meaning of the term ^{beyond power} ultra vires is simply 'beyond (their) powers'.

Any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.

The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor it can sue on it.

Case law

ASHBURY RAILWAY CARRIAGE & IRON CO. LTD. Vs RICHE (1875)



Main object of the company
- to carry on the business of mechanical engineers and general contractors.

→ Riche's contention - contract was well within the meaning of 'general contractors'.

Court

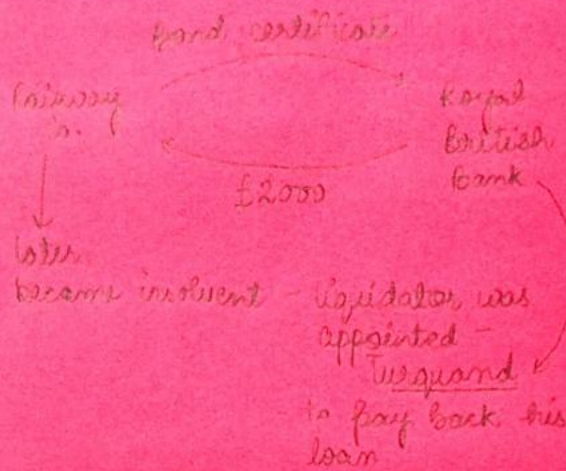
- held that contract was null & void.
- the terms general contractors was associated with mechanical eng.
- to be read in connection with the Company's main business.

DOCTRINE OF INDOOR MANAGEMENT

- exception to the doctrine of constructive notice.
- popularly known as 'Turquand Rule'.

Case law

ROYAL BRITISH BANK VS. TURQUAND



Acc. to the AOA of company,

directors had power to borrow up to an amount authorized by company resolution.

- Resolution was passed but did not specify how much the director could borrow

Held,

→ Bond was valid

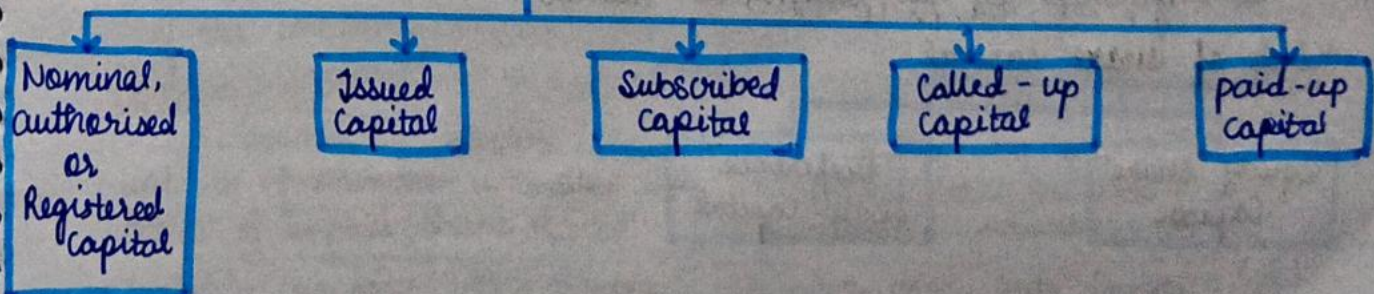
→ Bank was not aware of the ordinary resolution passed, because these were not registerable.

Indoor Management rule, that the company's indoor affairs are the company's problem.

Exceptions to the doctrine of Indoor Management :-

- (1) Actual or constructive knowledge of irregularity
does not protect any person when the person dealing with the Co. has notice, whether actual or constructive, of the irregularity.
- (2) Suspicion of irregularity
no way rewards those who behave negligently. Where the person dealing with the Co. is put upon an enquiry, for example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.
- (3) Forgery
applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery which must be regarded as nullity.

CLASSIFICATION OF CAPITAL



(1) Nominal / Authorised / Registered Capital :

→ such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the co. Thus, it is the sum stated in the memorandum as the capital of the co. with which it is to be registered being the maximum amount which it is authorised to raise by issuing shares.

(2) Issued capital :

→ such capital as the company issues from time to time for subscription.

(3) Subscribed capital :

→ that part of capital which is for the time being subscribed by the members of the co.

(4) Called - up capital :

→ that part of capital which has been called for payment. It is the total amount called up on the shares issued.

(5) Paid - up capital :

→ total amount paid or credited as paid up on shares issued. It is equal to called up capital less calls in arrears.

SHARES

'Share' means a share in the share capital of a capital company and includes stock.

Nature of shares :-

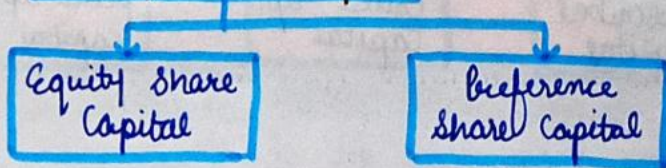
Shares are a movable property

→ shares or debentures of any member in a co. shall be movable property transferable in the manner provided by the articles of the company.

Shares shall be numbered

→ Every share in the co. having a share capital, shall be distinguished by its distinctive number.

Kinds of share capital





(1) Equity share capital

- with voting rights
- with differential rights

Equity share capital means all share capital which is not preference share capital.

(2) Preference share capital

means that part of the issued share capital of the Co. which carries or would carry a preferential right with respect to -

- Payment of dividend
- Repayment in the case of winding up

CLASSES OF COMPANIES UNDER THIS ACT

On the basis of liability

Company limited
by shares

Co. limited
by guarantee

Unlimited
Company

(a) Company limited by shares

→ When the liability of the members of a company is limited by its memorandum of association to the amount unpaid on the shares held by them.

→ The shareholder may be called upon to contribute only to the extent of the amount which remains unpaid on his shareholdings.

(b) Company limited by guarantee

The company having liability of its members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up.

SIMILARITIES BTW LIMITED SHARES & GUARANTEE

- In both cases, liability of member is limited.
- In both cases, liability can arise only during winding up of the company.

DIFFERENCES :-

| limited by shares | limited by guarantee |
|---|---|
| • liability of members is limited upto extent of unpaid share capital. | • limited upto the extent of guaranteed amount. |
| • liability can arise either during the life time or during winding up. | • liability arises only during winding up. |

(c) Unlimited Company

- A Co. not having any limit on the liability of its members.
- The liability of a member ceases when he ceases to be a member.
- The liability of each member extends to the whole amount of the company's debts and liabilities but he will be entitled to claim contribution from other members.

On the basis of members

One Person
Co. (OPC)

Private
Company

Public
Company

Small
Company

(a) One Person Company

Sec 2(62) of this act, defines OPC as a company which has only person as a member.

significant points :-

- Only one person as member.
- The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity, to contract, become the member of the co. (Nominee clause)
- Such other person may be given the rights to withdraw his consent.
- Only a natural person who is an Indian citizen whether resident in India or otherwise
 - shall be eligible to incorporate a OPC
 - shall be nominee for the sole member of a OPC.

(b) Private Company (Sec 2(68))

means a company having a minimum paid up share capital as may be prescribed, and which by its articles -

- restricts the right to transfer its shares.
- except in case of OPC, limit the no. of its members to two hundred.
- prohibits any invitation to the public to subscribe for any securities of the company.
- Max. no. of members - 200 (excluding present employee-cum-members and erstwhile employee-cum-members)

(c) Small Company

→ means a co. which is not a public co. whose paid up share capital does not exceed £4 Cr. and whose turnover does not exceed £40 Cr.

→ However, following companies cannot be classified as small co.

(a) Holding Co.

(b) Subsidiary Co.

(c) Section 8 Co.

(d) Any other co. governed by special Act

(d) Public Company (Sec 2(71))

→ means a company which is not a private company.

→ Significant points :-

- Is not a private co. (articles do not have the restricting clauses)
- Shares freely transferable.
- No minimum paid up capital requirement.
- Min. no. of members - 7
- Max. no. of members - no limit
- Subsidiary of a public co. is deemed to be a public co.

On the basis of Control

Holding & Subsidiary Co.

Associate Co.

(a) Holding & Subsidiary companies

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

'subsidiary company' means a company in which the holding company -

- (i) controls the composition of the Board of Directors, or
- (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

(b) Associate company (Sec 2(6))

In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary

company of the company having such influence and includes a joint venture company.

→ the expression 'significant influence' means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement.

On the basis of access to capital

listed
Company

Unlisted
Company

(a) listed company

- Company which has any of its securities listed on any recognised stock exchange.
- Co. which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed Co.

(b) Unlisted Company

→ means company other than listed company.

Other Companies

Government
Co.

Foreign
Co.

Section 8
Co.

Dormant
Co.

Nidhi
Co.

Public
Financial
Institutions

(a) Government Companies

- Central govt.
- Any state govt.
- Partly by CG & Partly by one or more state govt.

} holds at least 51% of the paid up share capital

(b) Foreign Company

- means any Co. or body corporate incorporated outside India which -
- has a place of business in India whether by itself or through an agent, physically or through electronic mode, and
 - conducts any business activity in India in any other manner.

(c) Formation of companies with charitable objects etc.

(Section 8 company):

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to -

- promote the charitable objects of commerce, arts, science, sports, education, research, social welfare, religion, charity, protection of environment etc.

Such co. intends to apply to its profit in -

- (i) promoting its objects &
 - (ii) prohibiting the payment of any dividend
- Need not use the word Ltd. / Pvt. Ltd. in its name & adopt a more suitable name such as club, chambers of commerce etc.
 - Central govt. issues license to incorporate such companies.
 - License revoked if conditions contravened
 - On revocation, Central govt. may direct it to
 - (1) converts its status and change its name
 - (2) wind-up
 - (3) Amalgamate with another co. having similar object
 - Can call its general meeting by giving a clear 14 days notice instead of 21 days.
 - Requirement of minimum number of directors, independent directors, etc does not apply.
 - Need not constitute Nomination & Remuneration Committee & Shareholders Relationship Committee.
 - A partnership firm can be a member of a section 8 company.

(d) Dormant Company

- Where a co. is formed and registered under this Act for a future project or to hold an asset or intellectual project and has no significant accounting ~~info~~ transaction.
- Such a company or an inactive co. may make an application to the Registrar in such a manner as may be prescribed for obtaining the status of a dormant co.
- 'significant accounting transaction' means any transaction other than -
 - i) payment of fees by a company to the Registrar.
 - ii) Payments made by it to fulfil the requirements of this Act or any other law.
 - iii) Allotment of shares to fulfil the requirements of this Act.
 - iv) Payments for maintenance of its office & records.

(e) Nidhi Companies (Sec 406(1))

'Nidhi' means a company which the Central govt., by notification in the Official Gazette declare to be a Nidhi Co.

(f) Public Financial Institutions (PFI)

→ Life Insurance Corporation of India

→ Infrastructure Development Finance Co. Ltd.

→ specified Co. referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002

→ institutions notified by the Central govt. under Companies Act, 1956

→ such other institution as may be notified by the Central govt. in consultation with the RBI.