STUDY MATERIAL

EXECUTIVE PROGRAMME

COMPANY LAW & PRACTICE

GROUP 1
PAPER 2

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EXECUTIVE PROGRAMME

COMPANY LAW & PRACTICE

In view of increasing emphasis on adherence to norms of good corporate governance, Company Law assumes greater importance in the corporate legislative milieu, as it deals with structure, management, administration and conduct of affairs of Companies. The Companies Act, 2013 was enacted with a purpose to consolidate and amend the law relating to companies and making Indian law at par with the best International Standards. It was one of the most significant legal reforms in India in the recent past. The law is focused at easing the process of doing business in India and improving corporate governance by making companies more accountable. The Companies Act aimed to improve the Corporate Governance and better transparency in the corporate sector which is important to infuse confidence amongst the investors in Indian market and abroad and to strengthen the regulations for the companies, keeping in view the changing economic environment as well as the growth of the economy.

Paper on Company Law & Practice is divided into two parts:- Part I deals with Company Law-Principles & Concepts, Part II deals with Company Administration and Meetings.

Part I emphasis on the provisions of Company Law that provide an outline of the way in which a company must do business and be managed so as to ensure that there are no defaults that may disrupt the smooth functioning of a business enterprise, and to uphold transparency and accountability. This part also covers the principles and legal fundamentals with respect to the raising of capital through various sources, allotment of securities, maintaining of records, disclosure and transparency, members and their shareholding, concerns of stakeholders. This also guides on the secretarial and strategic work involved in above stated matters.

Part II relates to the key practical issues for companies to consider when convening and holding a board or general meetings either virtually or physically or in hybrid mode, including an Annual General Meeting of the company. The fundamental role that a board of directors play in supporting, guiding the management team in generating long term added value for the shareholders and society at large and to account to the shareholders for companies long term performance. Right decision making is important for company's growth, board meetings leads to greater strategic decision making whereas the shareholder meetings leads to greater transparency and accountability. Company Secretary plays a vital role in preparation, Convening and conducting of the meetings. A key expectation of members of self-governing professions is that they accept legal and ethical responsibility for their work and hold the interest of the public and society as paramount. One of the essential traits of a profession is to be subject to strict codes of conduct enshrining rigorous ethical and moral obligations.

This study material is published to aid the students in preparing the paper on Company Law & Practice for Executive Programme. It is part of the educational kit and takes the students step by step through each phase of preparation emphasizing key concepts, principles, pointers and procedures. Company Secretaryship being a professional course, the examination standards are set very high, with focus on knowledge of concepts, their application, procedures and case laws, for which sole reliance on the contents of this study material may not be enough. This study material may, therefore, be regarded as the basic material and must be read along with the Bare Acts, Rules, Regulations, Case Laws.

The legislative changes made upto November, 2025 have been incorporated in the study material. The students are advised to refer to the updations at the Regulator's website, Supplement relevant for the subject issued by ICSI and ICSI Journal Chartered Secretary and other publications. Specifically, students are advised to read **"Student Company Secretary" e-Journal** which covers regulatory and other relevant developments relating to the subject. In the event of any doubt, students may contact the Directorate of Academics at **academics@icsi.edu**.

The amendments to law made upto 31st May of the Calendar Year for December Examinations and upto 30th November of the previous Calendar Year for June Examinations shall be applicable.

Although due care has been taken in publishing this study material, the possibility of errors, omissions and/or discrepancies cannot be ruled out. This publication is released with an understanding that the Institute shall not be responsible for any errors, omissions and/or discrepancies or any action taken in that behalf.

Important Note:

The new criminal laws i.e. Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023 and Bharatiya Sakshya Adhiniyam 2023 have repealed Indian Penal Code 1860, Criminal Procedure Code 1973 and Indian Evidence Act 1872 (old criminal laws) respectively.

Therefore, by virtue of Section 8 of General Clauses Act 1897, the references to the old criminal laws, unless a different intention appears, be construed as references to the provision of new criminal laws.

EXECUTIVE PROGRAMME

Group 1

Paper 2

COMPANY LAW & PRACTICE

SYLLABUS

OBJECTIVES:

- **To provide conceptual understanding on the principles and provisions of the Company Law.**
- **To equip the students with working knowledge about management and administration of companies.**

Level of Knowledge: Working Knowledge

Part I : Company Law - Principles & Concepts (60 Marks)

1. **Introduction to Company Law**: ● Jurisprudence of Company Law ● Doctrine of *Ultra-vires* ● Doctrine of Indoor Management ● Doctrine of Constructive Notice ● Concept of Corporate Veil ● Applicability of the Companies Act ● Definitions and Key Concepts ● MCA 21.
2. **Legal Status and Types of Registered Companies:**

   Legal Status of Registered Companies: ● Corporate Personality ● Perpetual succession ● Separate property ● Transferability of shares ● Capacity to sue or be sued.

   Types of Registered Companies: ● Private Company ● Public Company ● Small Company ● Holding Company ● Subsidiary Company ● Associate Company ● Dormant Company ● Government Company.
3. **Memorandum and Articles of Association and its Alteration**: ● Memorandum of Association and Articles of Association ● Incorporation Contracts ● Alteration in MOA & AOA.
4. **Shares and Share Capital-Concepts**: ● Meaning and Types of Capital ● Issue and Allotment ● Issue of Share Certificates ● Further Issue of Share Capital ● Issue of shares on Private and Preferential basis ● Rights issue and Bonus Shares ● Sweat Equity Shares and ESOPs ● Issue and Redemption of Preference Shares ● Transfer and Transmission of Securities ● Buyback of Securities ● Reduction of Share Capital ● Payment of Stamp Duty ● Registers and Records.
5. **Members and Shareholders:** ● How to become a Member ● Register of Members ● Declaration of Beneficial Interest ● Significant Beneficial Owner ● Rectification of Register of Members ● Rights of Members ● Variation of Shareholders' Rights.
6. **Debt Instruments-Concepts**: ● Issue and Redemption of Debentures and Bonds ● Creation of Security ● Debenture Redemption Reserve ● Debenture Trust Deed ● Conversion of Debentures into Shares ● Overview of Company Deposits.
7. **Charges**: ● Creation of Charges ● Registration, Modification and Satisfaction of Charges ● Register of Charges ● Inspection of Charges ● Punishment for Contravention ● Rectification by Central Government in Register of Charges ● Purpose, Objective, Drafting and Issuing of Search Report.
8. **Distribution of Profits** : ● Profit and Ascertainment of Divisible Profits ● Declaration and Payment of Dividend ● Unpaid Dividend Account ● Investor Education and Protection Fund ● Right to Dividend ● Rights Shares and Bonus shares to be held in abeyance ● Secretarial Standards on Dividend ● Dividend Distribution Policy.

9. **Accounts and Auditors**: ● Books of Accounts ● Financial Statements ● National Financial Reporting Authority ● Auditors- Appointment, Resignation and Procedure relating to Removal, Qualification and Disqualification ● Rights, Duties and Liabilities, ● Audit and Auditor's Report ● Cost Audit ● Secretarial Audit ● Internal Audit.

10. **Compromise, Arrangement and Amalgamations-Concepts**: ● Introduction of Compromises ● Arrangement and Amalgamation

11. **Dormant Company**: ● Legal framework for Dormant Companies ● Procedure to obtain the status of a Dormant Company ● Pre-requisite for obtaining the status of Dormant Company ● Benefits / exemptions provided to a Dormant Company ● Compliance requirements by Dormant Company ● Procedure to obtain the status of an Active Company from Dormant Company.

PART II: Company Administration and Meetings (40 Marks)

12. **General Meetings:** ● Annual General Meeting ● Extraordinary General Meetings ● Other General Meetings ● Types of Resolutions ● Notice, Quorum, Poll, Chairman, Proxy ● Meeting and Agenda ● Process of conducting meeting ● Voting and its types-vote on show of hands, Poll, E-Voting, Postal ballot ● Circulation of Members' Resolutions ● Signing and Inspection of Minutes ● Secretarial Standard – 2 ● Duties of Company Secretaries before, during and after General Meeting ● Virtual Meetings : Technological Advancement in conduct of General Meetings ● Drafting of Notice and Minutes of Annual General Meeting and Extra-Ordinary General Meeting.

13. **Directors:** ● DIN requirement ● Types of Directors ● Appointment / Reappointment, Disqualifications, Vacation of Office, Retirement Resignation and Removal ● Loans to Directors ● Disclosure of Interest ● Duties of Directors ● Rights of Directors.

14. **Board Composition and Powers of the Board:** ● Board composition ● Powers of Board ● Restrictions on Powers of Board ● Board Committees, Overview of Inter-Corporate Loans, Investments, Guarantees and Security ● Related Party Transactions.

15. **Meetings of Board and its Committees** : ● Frequency, Convening and Proceedings of Board and Committee meetings ● Agenda Management ● Meeting Management ● Resolution by Circulation ● Types of Resolutions ● Duties of Company Secretaries before, during and after Board/ Committee Meeting ● Virtual Meetings :Technological Advancement in conduct of Board Committee ● Need and Scope of Secretarial Standards ● Secretarial Standard – 1 ● Drafting of Notice, Agenda and Minutes of Board and Committee Meetings.

16. **Annual Report-Concepts**: ● Board's Report ● Annual Return ● Annual Report ● Secretarial Standard on Report of the Board of ● CSR Committee ● Policy ● Activities

17. **Key Managerial Personnel (KMP's) and their Remuneration** : ● Appointment of Key Managerial Personnel ● Managing and Whole-Time Directors, Manager, Chief Executive Officer and Chief Financial Officer ● Company Secretary – Appointment, Role and Responsibilities, Company Secretary as a Key Managerial Personnel ● Functions of Company Secretary ● Officer who is in default ● Remuneration of Managerial Personnel.

ARRANGEMENT OF STUDY LESSONS
COMPANY LAW & PRACTICE
GROUP 1 • PAPER 2

PART I : COMPANY LAW - PRINCIPLES & CONCEPTS

PART II: COMPANY ADMINISTRATION AND MEETINGS

LESSON WISE SUMMARY
COMPANY LAW & PRACTICE

Lesson 1: Introduction to Company Law

A Company is a legal entity, allowed by legislation, which permits a group of people, as shareholders, to apply to the regulators for an independent organization to be created, which can then focus on pursuing set objectives, and empowered with legal rights which are usually only reserved for individuals, such as to sue and be sued, own property, hire employees or loan and borrow money.

A company is regarded as a distinct legal entity and is said to cast a veil between the company and its human constituents, 'the corporate veil'. This veil can be pierced for the purpose of imposing some form of liability on a company's shareholders and / or directors. There are many court cases and exceptions to this which have been discussed in detail in this Lesson.

To understand a piece of legislation it is important to understand what was the need of this legislation?, what practices were being followed?, what were the expectation of the stakeholders?, what led to creation of legislation?

Company Legislation in India owes its origin to the English Company Law. The Companies Acts passed from time to time in India have been following the English Companies Acts, with certain modifications. Even the Companies Act, 1956, was based on the U.K. Companies Act, 1948.

The first legislative enactment for registration of Joint Stock Companies in India was passed in the year 1850 which was based on the English Companies Act, 1844. This Act recognised companies as distinct legal entities but did not introduce the concept of limited liability. The concept of limited liability, in India, was recognised for the first time by the Companies Act, 1857 closely following the English Companies Act, 1856 in this regard. Till 1956, the business companies in India were regulated by this Act of 1913. Based on Bhabha committee report Companies Act, 1956 was introduced.

As the business evolved need was felt to introduce the Company Law in a fresh manner considering the changes in the systems and procedures worldwide. The Companies Act, 2013 was passed after decade long deliberations with stakeholders.

This Lesson gives an overview of the developments of company law and discusses the features of a company form of business alongwith the various principles of company law like doctrine of *ultra-vires*, Doctrine of Indoor Management, Doctrine of constructive notice, etc.

Lesson 2: Legal Status and Types of Registered Companies

A company is a "legal person" or "legal entity" separate from, and capable of surviving beyond the lives of its members. A company is rather a legal device for the attainment of social and economic end. It is therefore, a combined political, social, economic and legal institution. Thus, the term company has been described in many ways. "It is a means of cooperation and organisation in the conduct of an enterprise". It is "an intricate, centralised, economic and administrative structure run by professional managers who hire capital from the investor(s)".

Since a corporate body (i.e. a company) is the creation of law, it is not a human being, it is an artificial juridical person (i.e. created by law) and it is clothed with many rights, obligations, powers and duties prescribed by

law. It can, however, do everything what a natural person can do except certain acts which require personal execution. Thus, a company cannot marry or divorce; it cannot vote in an election.

On incorporation, the company acquires a separate legal entity status distinct from and independent of its members. Unlike a partnership, which has no separate existence from its partners, a company has a separate corporate existence. It is different from the members who constitute it.

This lesson highlights and explains the characteristics of various forms of companies like Private Limited Company, Public Limited Company and Inactive Companies. It also provides an overview of certain other types of companies, such as Small Company, Holding Company, Subsidiary Company and Associate Company.

Further, the lesson covers the concepts of various types of companies, their legal basis, special provisions and privileges for some classes of companies, distinction between different types of companies etc. It further explains what is a Government Company and the exemptions available to them. Companies may be classified on the basis of their incorporation, number of members, size, basis of control and motive. Company Secretary should be aware of the distinctive features of different entities.

Lesson 3: Memorandum and Articles of Associations and its Alteration

The memorandum and articles of association of a company are the most important documents for the formation of a company and for its functioning thereafter. These are the charter documents of the company.

The memorandum of association contains the name, situation of registered office, objects, capital and liability and subscription clauses. The articles are its bye-laws or rules and regulations that govern the management and internal affairs and the conduct of its business. Both the documents are required to be registered with the Registrar of Companies at the stage of incorporation of the company. Before dealing with a company, it is advisable to read the memorandum and articles of the company to understand aspects, such as powers of Board, scope of company's activities etc. and its relationship with the outside world.

Since Memorandum sets out the constitution of a company and is therefore the foundation on which the structure of the company is built. It defines the scope of the company's activities and its relations with the outside world. Company Secretary in employment should work within the four walls of the MOA and also subject to the provisions of AOA.

This chapter includes the concept of Memorandum of Association and Articles of Association, their purpose, contents and registration. Alterations that can be carried out in the Memorandum and Articles of Association and effect of such alterations. It also explains the legal effect of these documents.

Company Secretary who is holding key position in the company must be aware of the procedural aspects of alteration of various clauses contained in the Memorandum of Association and of various regulations of Articles of Association of the Company which may be permissible under the provisions contained in Section 13 and Section 14 of the Companies Act, 2013 to be read with relevant Rules framed thereunder.

Lesson 4: Share and Share Capital - Concepts

Importantly share capital refers to the funds that a company raises in exchange for issuing an ownership interest in the company in the form of shares. "Share capital" may also describe the number and types of shares that compose a company's share structure. There are two general types of share capital, which are equity and preference shares.

For running a company it is important to understand the options available to fund the projects of the company. The Company Law permits various options which can be availed to generate funds. There are various ways to raise capital which include preferential allotment, employee stock option, issue of rights shares and issue of shares with differential voting rights. It involves various approvals, disclosures, filings, maintenance of records,

etc. which are prescribed under Chapter IV of the Companies Act, 2013 read with Companies (Share Capital and Debentures) Rules, 2014.

There are several compliances that need be done pre and post the securities are issued such as issue of share certificates, dematerialization, register of members, allotment of securities. The Lesson also introduces to the basic modalities of issue of securities and allotment thereunder.

Lesson 5: Members and Shareholders

Member is subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company or every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository. A person whose name is entered in the register of members of a company becomes a member of that company. The register includes every single detail about the member like name, address, occupation, date of becoming a member, etc. It also includes every person who holds company's shares and whose name is entered as the beneficial owners in depository records. An individual who owns the share of a public or a private company is known as a 'Shareholder.'

The terms shareholders and members are commonly used as synonyms, as one can become a member of the company, except by way of holding shares. In this way, a member is a shareholder and a shareholder is a member. The statement is true but not completely, as it is subject to certain exceptions, i.e. a person can become the holder of shares through transfer, but is not a member, until the transfer is entered in the register of members.

This Lesson gives an insight on secretarial practices expected to be known by the prospected Company Secretaries on maintaining register of members, declaration of beneficial interest, significant beneficial owner, variation of shareholoders' rights, etc.

Lesson 6: Debt Instruments - Concepts

The word 'debenture' has been derived from a Latin word '*debere*' which means to borrow. Section 2(30) of the Companies Act, 2013 define "debenture" which includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not. An issue of debenture plays a great role in long-term planning and decision-making. In modern competitive business era, every company needs fund for any business opportunity. This financing can be fulfilled only by issuing owner's capital and debt capital. The issue of debenture, in one side creates the obligation for the payment of interest at a fixed rate and in another side, it causes an increase in ' earning per share' due to comparatively less number of shares issued.

The power to issue debentures can be exercised on behalf of the Company at a meeting of the Board under the provisions of Section 179 (3) of the Companies Act, 2013. Further, Section 71 read with Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014, deals with the provisions relating to the issuance of debentures. Companies need to follow certain procedures for issue of debentures to raise money. These have been elaborated under the Companies Act, 2013 and have been discussed in this Lesson.

Deposits have been defined under the Companies Act, 2013 ("2013 Act") to include any receipt of money by way of deposit or loan or in any other form by a company. However what shall not constitute deposits has been prescribed under law in consultation with the Reserve Bank of India. The Lesson provides an overview of the issue and redemption of debentures and bonds, creation of security, debenture redemption reserve, debenture trust deed, conversion of debentures into shares and company deposits.

Lesson 7: Charges

A charge is a right created by any person including a company referred to as "the borrower" on its assets and properties, present and future, in favour of a financial institution or a bank, referred to as "the lender", which has agreed to extend financial assistance.

Section 2(16) of the Companies Act, 2013 defines charges so as to mean an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage. The following are the essential features of the charge which are as under:

1. There should be two parties to the transaction, the creator of the charge and the charge holder.
2. The subject-matter of charge, which may be current or future assets and other properties of the borrower.
3. The intention of the borrower to offer one or more of its specific assets or properties as security for repayment of the borrowed money together with payment of interest at the agreed rate should be manifested by an agreement entered into by him in favour of the lender, written or otherwise.

Almost all the business entities depend upon share capital and borrowed capital for financing their projects. Borrowed capital may consist of funds raised by issuing debentures, which may be secured or unsecured, or by obtaining financial assistance from financial institution or banks. Section 77 of the Companies Act, 2013 specifies that every company creating a charge shall register the particulars of charge signed by the company and its charge – holder together with the instruments creating. Important points in the Act relating to charge creation is:

Any charge created within or outside India on property or assets or any of the company's undertakings, whether tangible or otherwise, situated in or outside India shall be registered.

Hence, all types of charges are required under the Act to be registered whether created within or outside India.

The Companies Act, 2013 details the procedure for creation, modification and satisfaction of a charge. As a prospected Company Secretary you are expected to advise the management on the subject and ensure compliance to the same. Under this lesson, one understands the basic concept of creation, registration, modification and satisfaction of charges alongwith drafting and issuing search report.

Lesson 8: Distribution of Profits

Dividend is a return on the investment made in the share capital of a company, as distinct from the return on borrowed capital, which is in the form of interest. In commercial usage, the term "Dividend" refers to the share of profits of a company that is distributed amongst its Members. Profit or a portion of profit that can be legally distributed as a dividend to the shareholders is known as Divisible Profit. Considering the small shareholders and their concerns with regard to failure to transfer the dividend to the shareholders the Companies Act, 2013, provides for elaborate mechanism where the shareholders can claim the shares through an authority constituted for the purpose i.e. Investor Education and Protection Fund (IEPF). A company may pay dividend out of the profits of the company for that year arrived at after providing for depreciation or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation and remaining undistributed, or out of both; or out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government; or out of the accumulated profits earned by it in previous years and transferred by the company to the reserves in case of inadequacy or absence of profits in any financial year.

The Act clearly enunciates the procedure for transfer of unpaid dividend to separate account and thereafter after particular time period to the authority. The company has to mandatorily comply with the legal requirement, failure may attract penal provisions, as well as this may also be reflected in the Board's report.

A Company Secretary is also an investor relation officer of the company, he acts as a bridge between the shareholder and company management. This Lesson shall enable the readers to understand the procedures with respect to ascertainment of divisible profits, declaration & payment of dividend , treatment with respect to rights share and bonus shares to be held in abeyance and implement the same while practically operating it.

Lesson 9: Accounts and Auditors

Section 128 of Companies Act, 2013 states that every company need to maintain its registered office, books of accounts and other relevant papers and books for every financial year which states the true and fair view of state of affair of company including its all branches. Private Limited Company, One Person Company and Limited Company including Small Companies are required to maintain proper book of accounts. Further, the Books of Accounts of a Company is the basis on which financial statements of a Company are prepared for company annual return filing. Therefore, maintenance of proper company account is both mandatory and necessary.

According to the Companies Act, 2013, a Company's Book of Accounts is considered to be maintained properly if it satisfies the following two conditions:

- Books which are necessary to give a true and fair view of the state of affairs of the company is kept along with the documents required to explain the transactions.
- Books are kept on accrual basis and according to the double entry system of accounting.

Having an effective audit system is important for a company because it enables it to pursue and attain its various corporate objectives. Business processes need various forms of internal control to facilitate supervision and monitoring, prevent and detect irregular transactions, measure ongoing performance, maintain adequate business records and to promote operational productivity.

Auditing is a means of evaluating the effectiveness of a company's internal controls. Maintaining an effective system of internal controls is vital for achieving a company's business objectives, obtaining reliable financial reporting on its operations, preventing fraud and misappropriation of its assets, and minimizing its cost of capital. Both internal and independent auditors contribute to a company's audit system in different but important ways. Every company shall at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting (AGM) and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as prescribed under the Act.

The Lesson details the maintenance of accounts in the company and how the auditors have to be appointed, role of auditors and legal provisions relating to the same including cost audit, secretarial audit and internal audit.

A company has to undertake secretarial audit, cost audit, statutory audit as per the threshold requirement under law. As a company secretary this is an important area and must be well understood by the readers.

Lesson 10 : Compromise, Arrangement and Amalgamations - Concepts

Compromise and Arrangement are form of corporate restructuring which is an inorganic business strategy where one or more aspects of a business are redesigned to improve commercial efficiency, manage competition effectively, drive faster pace of growth, ensure effective utilization of resource, and fulfilment of stakeholders' expectations. It serves different purpose for different companies at different points of time and may take up various forms.

'Compromise' is an amicable agreement between the parties in which they make mutual concessions in order to solve the differences between them. Whereas, 'arrangement' is the process by which the share capital of the company is reorganized either by consolidating or division of the shares or doing both.

Lesson 11 : Dormant Company

Companies are generally classified on the basis of their incorporation, number of members, size, basis of control and motive. Additionally, companies can also be classified based on their status. Sometimes, the promoters of

a company may feel the need to temporarily close down the company due to various reasons, but they do not want to dissolve it. In such cases, the company may become dormant as against an active company which is carrying on business. Thus, on the basis of its status, companies may be classified into active, dormant, under liquidation, under process of striking off, strike off, dissolved, amalgamated, etc. The 'status' of the company signifies the current state of the company - Whether it is active and operating OR dormant OR it has been struck off and closed.

As a Company Secretary, one must be aware of the procedure of obtaining status of dormant company, active company, the compliances involved for a dormant company etc.

This lesson outlines the legal framework for Dormant Companies, the procedure to obtain the status of a dormant company from active company and *vice-versa*, compliance requirements by dormant companies, prerequisites for obtaining the status of dormant company, etc.

Lesson 12: General Meetings

A company may have many kinds of meetings; general meetings are one among them. In very simple terms, a meeting of general body may be called general meeting. A general meeting may be Annual General Meeting (AGM), Extraordinary General Meeting (EGM) and class meetings. The new Act permits for meeting of Board of directors through video conferencing or audio conferencing. The Lesson discusses the broad parameters of holding such meetings and the restrictions thereat. E-voting at a general meeting has now been practiced and well recognized by the law. The fundamental principles with respect to General Meetings are laid down in the Act. SS-2 facilitates compliance with these principles by endeavouring to provide further clarity where there is ambiguity or establishing benchmark standards to harmonise prevalent diverse practices. SS-2 requires the Company Secretary (ies) to over-see the vital process of facilitating and recording the decision making process in a company besides maintaining the integrity of the Meetings. Where there is no Company Secretary in the company or in absence of the Company Secretary, any Director or other Key Managerial Personnel (KMP) or any other person authorised by the Board for this purpose may discharge such of the functions of the Company Secretary as given in SS-2.

A Company Secretary plays a critical role in preparation, convening, holding and conducting a meeting. This Lesson gives an overall idea of not only legal framework but also secretarial work involved in conducting a meeting.

Lesson 13: Directors

The directors play a very important role in the day to day functioning of the company. It is the board, who is responsible for the company's overall performance. Only individuals can be appointed as directors of a company. The subscribers to the memorandum who are individuals are deemed to be the first directors of the company. Thereafter the shareholders or in many cases the board of directors appoint the directors. The Act has brought in many new provisions such as appointment of women director, resident director, independent director by certain class of companies. As a Company Secretary you should be in know of the subject.

The Lesson discusses the procedure for appointment, re-appointment and removal of the various types of directors, the rights, and duties of a director.

Lesson 14: Board Composition and Powers of the Board

The Board of director is the ultimate decision – making body and determines the delegation of powers throughout the company; it is considered to be the primary organ of the company. The role of the Board is summarized as:

- Providing entrepreneurial leadership;
- Setting strategy;

- Ensuring the human and financial resources are available to achieve objectives;
- Reviewing management performance;
- Setting up company's values and standards;
- Ensuring robustness of financial controls and risk management.

Section 149(1) of the Companies Act, 2013 requires that every company shall have a minimum number of 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company. A company can appoint maximum 15 fifteen directors.

As per Securities and Exchange Board of India (Listing Obligations and Disclosure Requirement), 2015 the composition of Board of Directors in a listed company shall have a combination of executive and non-executive directors with at least one woman director and not less than fifty per cent of the board of directors shall constitute of non-executive directors and if the chairperson of the board of directors is a non-executive director, then at least one-third of the board of directors shall constitute of independent directors and if the listed entity has an executive chairperson, then at least half of the board of directors shall comprise of independent directors.

This Lesson guides on the constitution of the Board, its powers and restrictions. Board committees are constituted in accordance with Companies Act, 2013 and SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015.

This Lesson also discusses about Inter corporate loans and investments which play a vital role in the growth of Industries since they result in flow of funds to group companies or other companies in need of funds. The Companies Act, 2013 (Act) has come up with a change in the concept of 'Loan and Investment by Company'. The new Act provides that inter-corporate investments not to be made through more than two layers of investment companies.

Related party transactions adopted by the companies could be a possible tool for corporate abuse. Transfer of economic resources to the related party at less than arm's length price is necessitated for host of reasons ranging from evasion/avoidance of tax liability to siphon-off the resources. That's why various laws and regulations stipulate the deeper scrutiny and the greater disclosures of such transactions. The Companies Act, 2013 does provide for a framework for transactions in which directors, etc., are interested with a view to avoid situation of conflict of interest. The lesson examines the legal provisions with respect to related party transaction; inter corporate loans, investments, guarantees and security.

Lesson 15: Meetings of Board and its Committees

Under Companies Act, 2013 the Board has to meet at least four times in a year and not more one hundred and twenty days shall intervene between two consecutive Board meetings. Section 173 of the Act deals with Meetings of the Board and Section 174 deals with quorum. A board committee is a small working group identified by the board, consisting of board members, for the purpose of supporting the board's work. Committees are generally formed to perform some expertise work. Members of the committee are expected to have expertise in the specified field. However, the Board of Directors are ultimately responsible for the acts of the committee. Board is responsible for defining the committee role and structure. The committees have to meet in accordance with the terms of reference of the committee.

A Board can set up committees with particular terms of reference when it needs assistance (for example a New project sub-committee) or when an issue requires more resources and attention (review of effect of legislative changes on organizational programs). They can be set up for a specific purpose or to deal with general issues such as 'development'. They can be established on a short-term or temporary basis, or they can be formed as a permanent body for ongoing work.

As a Company Secretary you need to guide the members on the conduct of affairs of the company and facilitate the convening of meetings and attend Board and Committee meetings and maintain minutes of these meetings.

This Lesson gives the basic idea of holding a meeting of the board or committee, holding virtual board meetings, Secretarial Standards-1 and drafting of notice, agenda and minutes of board and committee meetings.

Lesson 16: Annual Report - Concepts

Annual reports are the summarized statements of the financial position and all the material events took place in the business entity in the previous financial year. It is a mandatory requirement for every company whether the company is listed or not. Whereas, the Board's Report is an important means of communication by the Board of Directors of a company with its stakeholders. The Board's Report provides the stakeholders with both financial and non-financial information, including the performance and prospects of the company, relevant changes in the management and capital structure, recommendations as to the distribution of profits, future and on-going programmes of expansion, modernisation and diversification, capitalisation of reserves, further issue of capital and other relevant information.

The "Secretarial Standard on Report of the Board of Directors" (SS-4), formulated by the Secretarial Standards Board (SSB) of the Institute of Company Secretaries of India (ICSI) and issued by the Council of the ICSI, has been effective from 1st October, 2018. Adherence to SS-4 is recommendatory. SS-4 prescribes a set of principles for making disclosures in the Report of the Board of Directors of a company and matters related thereto. SS-4 is in conformity with the provisions of the Companies Act, 2013.

This lesson outlines the concepts of annual reports, board's report, annual return and understanding of Secretarial Standards on report of board of directors.

Lesson 17: Key Managerial Personnel (KMP's) and their Remuneration

The executive management of a company is responsible for the day to day functioning of the company. The Companies Act, 2013 has used the term key managerial personnel to define the executive management. The key managerial personnel are the point of first contact between the company and its stakeholders. While the Board is responsible for providing the oversight, it is the key management personnel who are responsible for not just laying down the strategies as well as its implementation.

The Companies Act, 2013 has introduced a new concept for appointment of the Key Managerial Personnel at top level of the organizational structure. In the new Act the position of company secretary has been enhanced multifold, from record keeper to key managerial personnel. A present day Company Secretary is expected to do statutory, administrative, managerial and strategic functions.

Sections 203 of the Companies Act, 2013 read with rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides that the every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel i.e. MD or CEO or Manager and in their absence a WTD, CS and CFO.

This Lesson guides on the appointment, procedure for appointment and role to be undertaken as KMP.

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Introduction to Company Law

Lesson 1

KEY CONCEPTS

■ *Ultra Vires* ■ Indoor Management ■ Constructive Notice ■ Lifting of Corporate Veil ■ MCA-21 ■ Types of Definitions ■ E-Governance

Learning Objectives

To understand:

- Concept and principles of Company Law
- Background and evolution of corporate legislation in India
- Agencies under MCA
- Applicability of Companies Act, 2013 and Key Concepts
- MCA website and its features
- MCA Services
- Pre-requisites for E-Filing on MCA-21

Lesson Outline

- Introduction - Jurisprudence of Company Law
- History and development of Company Law in India
- Meaning and definition of Company
- Nature and characteristics of a Company
- Doctrine of *Ultra Vires* and Indoor Management
- Doctrine of Constructive Notice
- Doctrine of lifting of or piercing the corporate veil
- Important aspects and benefits of MCA-21
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
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INTRODUCTION – JURISPRUDENCE OF COMPANY LAW

Company Law in India, is the cherished child of the English parents. Our various Companies Acts have been modelled on the English Acts. Following the enactment of the Joint Stock Companies Act, 1844 in England, the first Companies Act was passed in India in 1850.

The Indian Companies Act, 1866, the Indian Companies Act, 1882, the Companies Act, 1913, and the Companies Act, 1956 was earlier law passed in India. The Companies Act, 2013 received the assent of the President on August 29, 2013 and was notified in the Gazette of India on August 30, 2013. Every Companies Act introduced new concepts. Like, before notifying the Companies Act, 2013 there were no concepts regarding Corporate Social Responsibility, One Person Company and internal/secretarial audit based on threshold limits etc.

HISTORY AND DEVELOPMENT OF THE CONCEPT OF COMPANY LAW IN INDIA

Joint Stock Company Act, 1850		
Based on Company Legislation Act, 1844	Registration for companies only in Madras, Calcutta & Bombay	Limitation - only includes Unlimited Liability Company

↓

Joint Stock Company Act, 1857	
Includes both Limited & Unlimited liability Company	Limitation - Banking & Insurance Company can only be registered as Unlimited liability Company

↓

Joint Stock Company Act, 1860
Banking and Insurance Company can also be Limited Liability Company

↓

Joint Stock Company Act, 1866
Altogether new law governing incorporation, regulation and winding up of Company

↓

The Companies Act, 1913
Also includes the functioning of commercial organizations, institution of private company apart from company

↓

The Companies Act, 1936
Includes the functions of directors, managing agents & provisions for investigation of any fraudulent activity and guarantying the security & payment of provident fund to its employees

↓

The Companies Act, 1956		
Introduced after World War II (1944) & Independence (1947) on the report of HC Bhabha Committee in 1952	It applies to whole of India except Nagaland, J&K and Goa, Daman & Diu subject to some exceptions	Based on social & economic needs of the Company

↓

The Companies Act, 2013
To encourage transparency and high standards of corporate governance

Important Committees recommending changes to the Companies Act

1952 Bhabha Committee	The Government of India appointed a Committee of twelve members representing various interests under the chairmanship of Shri C. H. Bhabha,to go into the entire question of the revision of the Companies Act, 1913.
1957 Sastri Committee	The Government of India appointed a Committee of six members under the chairmanship of Shri A.V. Visvanatha Sastri to overcome such practical force, to remove such drafting defects and obscurities as may have interfered purposes underlying the Act and to consider what changes in the form or structure of the Act, if any.
1978 Sachar Committee	This Committee was constituted by Government under the Chairmanship of Shri Rajindar Sachar to consider and report on what changes are necessary which are required to be made in the form and structure of the Companies Act, 1956, so, as to simplify them and to make them more effective, wherever necessary.
1997 Chandratre Committee	Chandratre Committee was formed under the Chairmanship of Dr. K. R. Chandratre. The main objective of the Group was to re-write the Companies Act, 1956 to facilitate a healthy growth of the Indian corporate sector under a liberalised, fast changing and highly competitive environment.
2000 Eradi Commitee	The Eradi Committee was set up under the chairmanship of Justice V. Balkrishna Eradi consisting of experts to examine the existing law relating to winding up proceedings of companies in order to remodel it in line with the latest developments and innovations in the corporate law and governance.
2002 Joshi Committee	The Committee was constituted under the Chairmanship of Shri R.D. Joshi to examine the remnants of the Companies Bill, 1997.
2003 Naresh Chandra Committee	This Committee was constituted by Government under the Chairmanship of Shri. Naresh Chandra, to Regulate Private Companies and Partnerships.
2005 Irani Committee	The Irani Committee was constituted under the chairmanship of Dr. J. J. Irani, Director, Tata Sons, with the task of advising the Government on the proposed revisions to the Companies Act, 1956.
2005 Vaish Committee	The Government of India appointed a Committee under the Chaimanship of Shri O.P. Vaish to streamline the prosecution mechanism under the Companies Act, 1956 to make it more effective.
Company Law Committee	The government of India has constituted a Company Law Committee for examining and making recommendations to the Government on various provisions and issues to implementation of the Companies Act, 2013 and the Limited Liability Partnership Act, 2008.

CONCEPT PAPER ON COMPANY LAW, 2004 & J.J. IRANI REPORT

Background

A Concept Paper on Company Law drawn up in the legislative format was exposed for public viewing on the electronic media so that all interested parties may not only express their opinions on the concepts involved but may also suggest formulations on various aspects of Company Law.

On August 4, 2004 the Ministry of Company Affairs had published a Concept Paper on Company Law on its website to enable a broad-based examination of various Company Law issues requiring revision. A large number of comments and suggestions were received on the Concept Paper. Later, on December 2, 2004, the Government constituted an Expert Committee on Company Law under the Chairmanship of Dr. J J Irani, the then Director, Tata Sons, with the task of advising the Government on the proposed revisions to the Companies Act, 1956 with the objective to have a simplified compact law that will be able to address the changes taking place in the national and international scenario, enable the adoption of internationally accepted best practices as well as provide adequate flexibility for timely evolution of new arrangements in response to the requirements of ever- changing business models. The Committee submitted its report to the Government on 31st May 2005. The report was charting out the road map for a flexible, dynamic and user-friendly new company law.

The Report of the Committee had also sought to bring in multifarious progressive and visionary concepts and endeavored to recommend a significant shift from the "Government Approval Regime" to a "Shareholder Approval and Disclosure Regime". Broad recommendations of the Expert Committee include:

- Private and small companies need to be given flexibilities and freedom of operations and compliance at a low cost
- Companies with higher public interest should be subject to a stricter regime of Corporate Governance
- Government Companies and Public Financial Institutions should be subject to similar parameters with respect to disclosures and Corporate Governance as other companies
- Simplified regulatory regime backed by strengthened disclosure
- To attune the Indian Company Law with the global reforms taking place in the arena

The Companies Act, 2013

The Companies Act, 2013 received the assent of the President on August 29, 2013 and was notified in the Gazette of India on August 30, 2013. It empowers the Central Government to bring into force various sections from such date(s) as may be notified in the Official Gazette.

The Companies Act, stipulates enhanced self-regulations coupled with emphasis on corporate democracy coupled with following attributes:

The Companies Act, 2013 introduced new concepts supporting enhanced disclosure, accountability, better board governance, better facilitation of business and so on. It includes associate company, one person company, small company, dormant company, independent director, women director, resident director, special court, secretarial standards, secretarial audit, class action, registered valuers, rotation of auditors, vigil mechanism, corporate social responsibility, E-voting etc.

Reforms brought under the Companies Act, 2013 for Ease of Doing Business

The enactment of the Companies Act, 2013 allowed India to have a modern legislation for growth and regulation of corporate sector in India. The Act was enacted in light of the changing economic and business environment both domestically and globally to facilitate business-friendly corporate regulations, improve corporate governance norms, enhances accountability on the part of corporates and auditors, raise levels of transparency and protect interests of investors, particularly small investors. The objective of the Companies Act, 2013 is to provide business friendly corporate regulation/ pro-business initiatives; e-Governance Initiatives; good corporate governance and CSR; enhanced disclosure norms; enhanced accountability of management; stricter enforcement of laws; audit accountability; Protection for minority shareholders; Investor protection and Shareholder activism; Robust framework for insolvency regulation; and Institutional structure. Initially, it seems that changes in the Companies Act, 2013 will brought out the significant changes in the manner of doing business in India. It becomes true, when the initial unrest of business community was taken to the Government and to address the practical difficulties faced by the business community upon notification of the various provisions of the Act and Rules made thereunder and the term “Ease of Doing Business” was popularised in India.

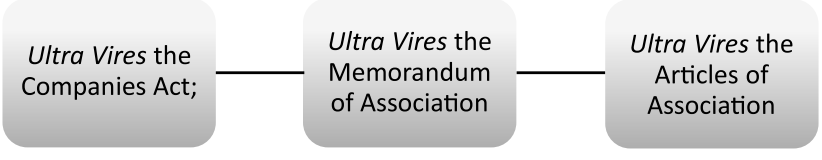
On Ease of Doing Business front, the Government of India has enacted the series of amendments, relaxation, exemptions and simplification in the various Acts, Rules, Regulations etc. covering various business related issues and processes and also extends support to facilitate ease of doing business. In the series the Companies

Act, 2013 has also been amended to extend relief to the business entities governed under the Companies Act, 2013. The amendments were brought through the Companies (Amendment) Act, 2015, the Insolvency and Bankruptcy Code, 2016, the Companies (Amendment) Act, 2017, and the Companies (Amendment) Act, 2019 and the Companies (Amendment) Act, 2020.

DOCTRINE OF *ULTRA VIRES*

Ultra vires is a Latin term made up of two words "ultra" which means beyond and "vires" meaning power or authority. *Ultra vires* acts are any acts that lie beyond the authority of a company to perform.

Any activity done in contrary to or in excess of the scope of activity of the Companies Act, Memorandum of Association or Articles of Association will be *ultra vires*. *Ultra vires* activities can be divided into the following three divisions:



Ultra Vires the Companies Act:

The power of a company is derived from the law governing it. Section 6 of the Companies Act, 2013 expressly provides that the provisions of the Companies Act, 2013 shall prevail notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act.

Any act done contrary to or in excess of the scope of activity of the Companies Act will be *ultra vires* the Companies Act. **Such an act is void and cannot be ratified even by unanimous resolution of all the shareholders**.

For Example; If board members are appointed or removed without following statutory provisions; payment of dividend out of capital or reduced the share capital of the company without complying with the legal formalities.

It also declares a provision contained in the memorandum, articles, agreement or resolution void if it's repugnant to any of the provisions in the Act.

Ultra Vires the Memorandum of Association:

What is Memorandum of Association?

The Memorandum of Association (MOA) is a document listing out the constitution of a company, essentially represents the foundation stone on which the structure of the company is built. It contains clauses detailing the boundaries of the company's activities and its relations with the outside world.

The important attribute of the MOA is considered to be its "objects clause". Section 4(1)(c) of the Companies Act, 2013 requires every company to state in their MOA, the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

The memorandum of association of a company restrict the powers of the company while defining the object of the company. A company cannot do anything, which is beyond the purview of the object clause. **Any act done in contrary to the object clause of the memorandum of association will be *ultra vires* the memorandum of association.**

In the case of a company whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of *ultra vires.* As a result, an act which is *ultra vires* is void, and does not bind the company. Neither the company nor the contracting party can sue on it. **Such an act is void and cannot be ratified even by unanimous resolution of all the shareholders.**

Ultra Vires the Articles of Association:

What is Articles of Association:

In terms of Section 5(1) of the Companies Act 2013, the Articles of Association (AOA) of a company shall contain the bye-laws and regulations for the management of the internal affairs of the company. It plays a vital role in governing a company's affairs and also defines the rights of its members inter-se.

If a company acts which are *ultra vires* the Articles of Association but *intra vires* the memorandum of association (i.e. outside the scope of articles but within the powers conferred by the memorandum) will be *ultra vires* the Articles of Association. That is, payment of interest on 'advance calls' at a rate higher than allowed by articles. **These acts are also void, but the company in general meeting may alter the Articles by a special resolution and ratify the unauthorized acts.**

CASE LAW

In *Re. South Durham Brewery Company [(1875) LR 7 HL 653],* the MoA of the company was unclear as to the classes of shares to be issued by it, but the AoA of the company gave power to issue shares of different classes as described therein. The Hon'ble Court held that Articles can be used to explain the ambiguity contained in the memorandum.

".....their Lordships agree that in such cases the two documents must be read together at all events so far as may be necessary to explain any ambiguity appearing in the terms of the memorandum, or to supplement it upon any matter as to which it is silent."

Also, as stated earlier, the company cannot make it valid, even if every member assents to it. The general rule is that an act which is *ultra vires* the company is incapable of ratification. An act which is *intra vires* the company but outside the authority of the directors may be ratified by the company in proper form *[Rajendra Nath Dutta v. Shilendra Nath Mukherjee, (1982) 52 Com Cases 293 (Cal.)].*

The rule is meant to protect shareholders and the creditors of the company. If the act is *ultra vires* (beyond the powers of) the directors only, the shareholders can ratify it. If it is *ultra vires* the Articles of Association, the company can alter its articles in the proper way and thereby such acts can be duly ratified.

CASE LAW

The doctrine of *ultra vires* was first enunciated by the House of Lords in a classic case, *Ashbury Railway Carriage and Iron Co. Ltd. v. Riche, (1878) L.R. 7 H.L. 653.*

The memorandum of the company in the said case defined its objects thus: "The objects for which the company is established are to make and sell, or lend or hire, railway plants to carry on the business of mechanical engineers and general contractors. "

The company entered into a contract with M/s. Riche, a firm of railway contractors to finance the construction of a railway line in Belgium. On subsequent repudiation of this contract by the company on the ground of its being *ultra vires*, Riche brought a case for damages on the ground of breach of contract, as according to him the words "general contractors" in the objects clause gave power to the company to enter into such a contract and, therefore, it was within the powers of the company. More so because the contract was ratified by a majority of shareholders.

The House of Lords held that the contract was *ultra vires* the company and, therefore, null and void. The term "general contractor" was interpreted to indicate as the making generally of such contracts as are connected with the business of mechanical engineers. The Court held that if every shareholder of the company had been in the room and had said, "That is a contract which we desire to make, which we authorize the directors to make", still it would be *ultra vires*. The shareholders cannot ratify such a contract, as the contract was *ultra vires* the objects clause, which by Act of Parliament, they were prohibited from doing.

However, later on, the House of Lords held in other cases that the doctrine of *ultra vires* should be applied reasonably and unless it is expressly prohibited, a company may do an act which is necessary for or incidental to the attainment of its objects. Section 13(1)(d) of the Companies Act, 1956 [Corresponds to section 4(1)(c) of the Companies Act, 2013] provides that the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof be stated in the memorandum. However, even when the matters considered necessary in furtherance of the objects are not stated, they would be allowed by the principle of reasonable construction of the memorandum.

CASE LAW

Justice Shah (afterwards C.J.) in the case *A. Lakshmanaswami Mudaliar v. L.I.C., A.I.R. 1963 S.C. 1185,* upheld the doctrine of *ultra vires*. In this case, the directors of the company were authorized "to make payments towards any charitable or any benevolent object or for any general public or useful object". In accordance with shareholders' resolution the directors paid Rs. 2 lacs to a trust formed for the purpose of promoting technical and business knowledge. The company's business having been taken over by L.I.C., it had no business left of its own.

The Supreme Court held that the payment was *ultra vires* the company. Directors could not spend company's money on any charitable or general objects. They could spend for the promotion of only such charitable objects as would be useful for the attainment of the company's own objects. It is pertinent to add that the powers vested in the Board of directors, e.g., power to borrow money, is not an object of the company. The powers must be exercised to promote the company's objects. Charity is allowed only to the extent to which it is necessary in the reasonable management of the affairs of the company. Justice Shah held: "There must be proximate connection between the gift and the company's business interest". Thus "gifts to foster research relevant to the company's activities" and "payments to widows of ex-employees on the footing that such payments encourage persons to enter the employment of the company" have been upheld as valid and *intra vires.*

In this regard the Act provides for bonafide charitable spending by the company. Section 181 of the Companies Act, 2013 authorizes the Board of directors to contribute to bona fide charitable and other funds. However, prior consent of the company in general meeting shall be required for such contribution, in case any amount the aggregate of which, in any financial year, exceed five percent of its average net profits for the three immediately preceding financial year.

The power of the Board as regards contribution to funds, which do directly relate to business of the company is unrestricted. It should not be inferred from the language of the section that with the consent of the company in general meeting, the board of directors may contribute to charitable funds to an unlimited extent, unless MoA and AoA authorizes such expenditure. If it does not authorize so it will be *ultra vires* the powers of the company.

A bank or any other person lending to a company, for purposes *ultra vires* the memorandum, cannot recover *[National Provincial Bank v. Introductions Ltd., (1969) 1 All. E.R. 887].*

Further, in the case of *Bell Houses Ltd. v. City Wall Properties Limited (1966) 36 Com Cases 779*, the objects clause included a power to "carry on any other trade or business whatsoever which can, in the opinion of the Board of directors, be advantageously carried on by the company." The Court has held the same to be in order.

Loans, Borrowings, Guarantees and *Ultra Vires* Rule

An *ultra vires* borrowing does not create a relationship of a debtor and creditor. In a case, a company had accepted deposits from outsiders which was outside the scope of the Memorandum. When the company was ordered to be wound up, a question was raised whether the depositors were creditors of the company and whether the contributories could be asked to contribute towards payment of deposits. The Court held that the relationship between the company and the depositors was not that of debtor and creditor. But if the lender had lent the amount for discharging lawful expenses, he may recover the amount.

Whether a transaction is *ultra vires* the company can be decided on the basis of the following:

1. if a transaction entered into by a company falls within the objects, it is not *ultra vires* and hence not void;
2. if a transaction is outside the capacity (objects) of the company, it is *ultra vires*;
3. if a transaction is in excess or abuse of the company's powers, it is *ultra vires* and such transaction will be set aside by the shareholders or even ratification by the shareholders would not validate the acts done beyond the authority of the company itself.

Implied Powers

The powers exercisable by a company are to be confined to the objects specified in the memorandum. While the objects are to be specified, the powers exercisable in respect of them may be express or implied and need not be specified.

Every company may necessarily possess certain powers which are implied, such as, a power to appoint and act through agents, and where it is a trading company, a power to borrow and give security for the purposes of its business, and also a power to sell. Such powers are incidental and can be inferred from the powers expressed in the memorandum. *[Oakbank Oil Co. v. Crum (1882) 8 App Cas 65].* The principle underlying the exercise of such powers is that a company, in carrying on the business for which it is constituted, must be able to pursue those things which may be regarded as incidental to or consequential upon that business. [*Egyptian Salt and Soda Co. v. Port Said Salt Association*].

Powers which are not implied

The following powers have been held not to be implied and it is, therefore, prudent to include them expressly in the objects clauses:

1. acquiring any business similar to the company's own business. *[Ernest v. Nicholls, (1857) 6 HLC 40];*

2. entering into an agreement with other persons or companies for carrying on business in partnership or for sharing profit, joint venture or other arrangements. Very clear powers are necessary to justify such transactions [*Re. European Society Arbitration Act (1878) 8 Ch 679];*
3. taking shares in other companies having similar objects. *[Re. Barned's Banking Co., ex parte and The Contract Corporation (1867) 3 Ch. App. 105. Re. William Thomas & Co. Ltd. (1915) 1 Ch 325];*
4. taking shares of other companies where such investment authorizes the doing indirectly that which will not be intra vires if done directly;
5. promoting other companies or helping them financially *[Joint Stock Discount Co. v. Brown, (1869) LR 8 EQ 381];*
6. a power to sell and dispose of the whole of a company's undertaking;
7. a power to use funds for political purposes;
8. a power to give gifts and make donations or contribution for charities not relating to the objects stated in the memorandum;
9. acting as a surety or as a guarantor.

Shareholder's right in respect of *ultra vires* acts

A shareholder can get back the money paid by him to the company under an *ultra vires* allotment of shares. A transferee of shares from him would not have been so allowed. [*Margarate Linz v. Electric Wire Co. of Salestine Ltd. (1948) 18 Com Cases 201, 205 : AIR 1949 PC 51].*

Effects of *ultra vires* Transactions

(i) ***Void ab initio*** – The *ultra vires* acts are null and void ab initio. The company is not bound by these acts. Even the company cannot sue or be sued upon [*Ashbury Railway Carriage and Iron Company v. Riche].*

Ultra vires contracts are *void ab initio* and hence cannot become *intra vires* by reason of estoppel or ratification.

(ii) **Injunction:** The members can get an injunction to restrain a company wherein *ultra vires* act has been or is about to be undertaken *[Attorney General v. Gr. Eastern Rly. Co., (1880) 5 A.C. 473].*

(iii) **Personal liability of Directors:** It is one of the duties of directors to ensure that the corporate capital is used only for the legitimate business of the company and hence if such capital is diverted to purposes alien to the company's memorandum, the directors will be personally liable to replace it. *In Jehangir R. Modi v. Shamji Ladha, [(1866-67) 4 Bom. HCR (1855)],* the Bombay High Court held, "A shareholder can maintain an action against the directors to compel them to restore to the company the funds of the company that have by them been employed in transactions that they have no authority to enter into, without making the company a party to the suit".

In case of deliberate misapplication, criminal action can also be taken for fraud.

However, a distinction must be drawn between transactions which are *ultra vires* the company and the transactions which are *ultra vires* the directors. Where the directors exceed their authority the same may be ratified by passing the resolution in the general body meeting of the shareholders. Provided the company has the capacity to do that transaction as per its memorandum of association.

(iv) Where a company's money has been used *ultra vires* to acquire some property, the company's right over such property is held secure and the company will be the right party to protect the property. This is because, though the property has been acquired for some *ultra vires* object, it represents the money of the company.

(v) *Ultra vires* borrowing does not create the relationship of creditor and debtor *[In Re. Madras Native Permanent Fund Ltd., (1931) 1 Com Cases 256 (Mad.)].*

(vi) ***Ultra vires* torts:** A company will not be liable for torts committed outside its objects.

In order to make the company liable for the torts/crime of its employees, it will have to be proved that:

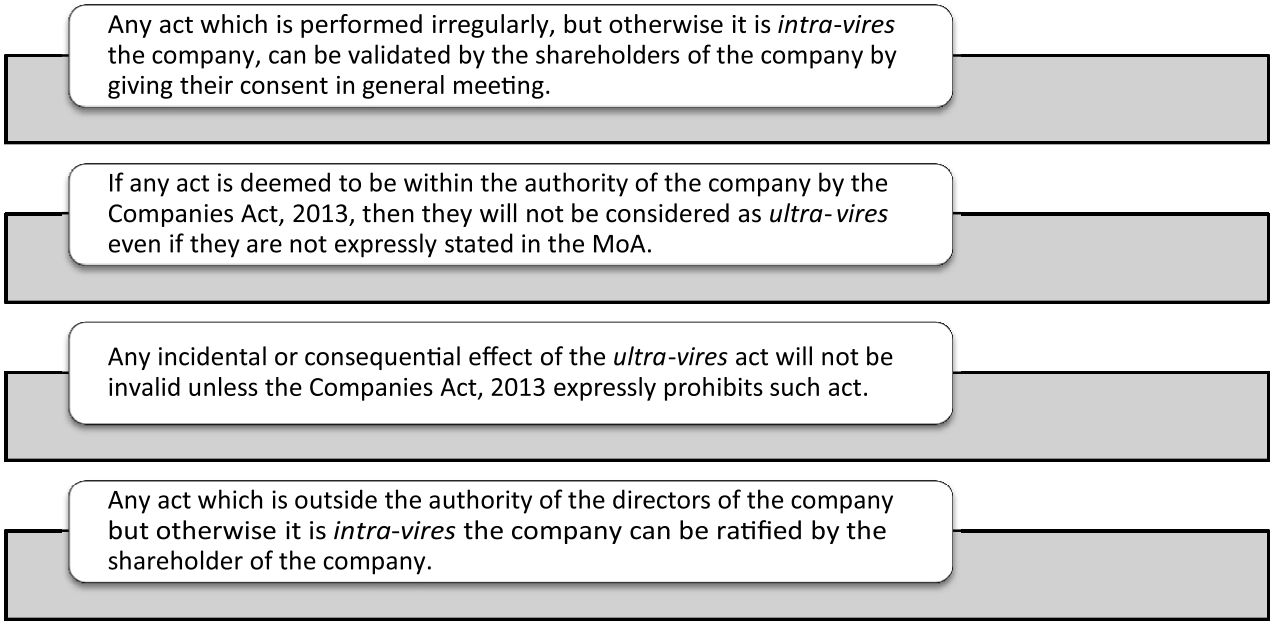
i) the tort was committed in the course of an activity which is in the purview of company's memorandum, and

ii) it was committed by the employee within the course of his employment.

(vii) ***Ultra vires* grants and guarantees:** Directors cannot make an unauthorized grant unless object is to promote prosperity of the company or the grant is incidental to carrying out of the object of the company. *[In Re LEE Behrens & Co., (1932) 2 Comp Cas 588 (Ch. D).]*

A Guarantee for the payment of dividends, which enables the guarantee to bring an action against the company for reimbursement even when there are no profit, is *ultra vires* and void. [In Re Walter's Deed of Guarantee, (1933) 3 Comp Cas 308 (CD)].

Exceptions to the doctrine of *ultra vires*



DOCTRINE OF INDOOR MANAGEMENT

While the doctrine of, 'constructive notice" seeks to protect the company against the outsiders, the principal of 'indoor management' operates to protect the outsiders against the company. This doctrine emphasizes on the concept that an outsider whose actions are in good faith and has entered into a transaction with a company can have a presumption that there are no irregularities internally and all the procedural requirements have been complied with by the company.

The doctrine of indoor management, also known as the Turquand rule is an around one fifty years old concept, which protects outsiders against the actions done by the company.

CASE LAW

In *Royal British Bank v. Turquand,* the directors of a banking company were authorized by the articles to borrow on bonds such sums of money as should from time to time, by resolution of the company in general meeting, be authorized to borrow. The directors gave a bond to Turquand without the authority of any such resolution. It was held that Turquand could sue the company on the strength of the bond, as he was entitled to assume that the necessary resolution had been passed. *Lord Hatherly* observed: "Outsiders are bound to know the external position of the company but are not bound to know its indoor management".

Section 176 of the Companies Act, 2013 provides for the Validity of Acts of Directors - No act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the Articles of the company:

Provided that nothing in this section shall be deemed to give validity to any act done by the director after his appointment has been noticed by the company to be invalid or have been terminated.

The object of the section is to protect persons dealing with the company - outsiders as well as members by providing that the acts of a person acting as director will be treated as valid although it may afterwards be discovered that his appointment was invalid or that it had terminated under any provision of this Act or the Articles of the company [*Ram Raghubir Lal v. United Refineries (Burma) Ltd., (1932) 2 Com Cases 359; AIR 1931 Rang 139].*

Example of Indoor Management:

Question: *Planet Limited received a cheque from Earth Limited. The Articles of Association of Earth Limited provided that cheques issued by the company need to be signed by two directors and countersigned by the secretary. The directors nor the secretary who signed the cheque was appointed properly and thus the cheque issued was not valid. Planet Limited sued the company for the irregularities in the procedure. Is Planet Limited liable for relief?*

Answer: *Planet Limited is entitled to relief and the company has to pay the amount of the cheque since the appointment of directors is a part of the internal management of the company and a person dealing with the company is not required to enquire about it.*

Relation of company with members and outsiders

The validation of the acts of unqualified directors may apply to circumstances from two different angles:

(1) as between outsiders, strangers and the company as in *Royal British Bank v. Turquand, (1856) 5 E&B 327, British Asbestos Co. Ltd. v. Boyd. (1903) 2 Ch 439 : (1900-3) All ER Rep 323; and Ram Buran Singh v. Mufassil Bank Ltd. AIR 1925 All 206;* and

(2) in relation to the internal affairs of the company as in *Dawson v. African Consolidated Land & Trading Co., (1898) 1 Ch 6 (CA),* where calls made by unqualified directors were held valid. Even if the public documents of the company, and the facts which are apparent, would make it clear that a director was not duly qualified to act, this will not oust the effect of the Section 176 (British Asbestos case) (supra). Similarly in *Boschoek Proprietary Co. Ltd. v. Fuke, (1906) 1 Ch 148*, a resolution of a general meeting convened by de facto directors was upheld.

Forgery and incompetent acts

This section does not apply where the act itself is not in the competence of the Board of directors, e.g. compromising unpaid calls under the guise of forfeiture, the transaction being *ultra vires* and *invalid [Bhagirath Spinning & Wvg. Co. v. Balaji Bhavani Pawar, AIR 1930 Bom. 267].*

Directors not aware of their disqualification

The allotment and forfeiture of shares made by the directors who continued to act even after they were disqualified but were not aware of it, were saved by the Section 176. *[Shiromani Sugar Mills Ltd. v. Debi Prasad, (1950) 20 Com Cases 296: AIR 1950 All 508].* Where this section does not save the situation, the company may in general meeting ratify allotment of shares even if made by de facto directors with mala fide intentions *[Bamford v. Bamford, (1969) 39 Com Cases 838 : (1969) 2 WLR (1107) (CA) and an appeal (1969) : 1All ER 969].*

Where the directors in question were not aware of the fact that by virtue of certain provisions in the articles, they had vacated their office, their acts in passing resolutions for starting certain business transactions were held to be valid *[Seth Mohan Lal v. Grain Chambers Ltd., (1968) 38 Com Cases 543 : AIR 1968 SC 772; Shiromani Sugar Mills Ltd. v. Debi Prasad, (Supra)].*

It is important to remember that the doctrine of "constructive notice", can be invoked by the company and it does not operate against the company. It operates against the person who has failed to inquire but does not operate in his favour. But the doctrine of "indoor management" can be invoked by the person dealing with the company and cannot be invoked by the company.

An outsider is entitled to act on a certified copy of the resolution of the Board of directors delegating the powers of borrowing money to the managing director subject to the limitation mentioned therein *[C.K. Siva Sankara Panicker v. Kerala State Financial Corporation, (1980) 50 Com Cases 817 (Ker.)].*

Exceptions to the Doctrine of Indoor Management

The above noted 'doctrine of indoor management' is, however, subject to certain exceptions. In other words, relief on the ground of 'indoor management' cannot be claimed by an outsider dealing with the company in the following circumstances.

1. **Where the outsider had knowledge of irregularity –** The rule does not protect any person who has actual or even an implied notice of the lack of authority of the person acting on behalf of the company. Thus, a person knowing fully well that the directors do not have the authority to make the transaction but still enters into it, cannot seek protection under the rule of indoor management. In *Howard v. Patent Ivory Co. (38 Ch. D 156),* the articles of a company empowered the directors to borrow upto one thousand pounds only. They could, however, exceed the limit of one thousand pounds with the consent of the company in general meeting. Without such consent having been obtained, they borrowed 3,500 pounds from one of the directors who took debentures. The company refused to pay the amount. Held that, the debentures were good to the extent of one thousand pounds only because the director had notice or was deemed to have the notice of the internal irregularity.

2. **No knowledge of Memorandum and Articles –** Again, the rule cannot be invoked in favour of a person who did not consult the memorandum and articles and thus did not rely on them. In *Rama Corporation v. Proved Tin & General Investment Co. (1952) 1All. ER 554,* T was a director in the company. He, purporting to act on behalf of the company, entered into a contract with the Rama Corporation and took a cheque from the latter. The articles of the company did provide that the directors could delegate their powers to one of them. But Rama Corporation people had never read the articles. Later, it was found that the directors of the company did not delegate their powers to T. The Plaintiff relied on the rule of indoor management. Held, they could not because they even did not know that power could be delegated.

3. **Forgery –** The rule of indoor management does not extend to transactions involving forgery or to transactions which are otherwise void or illegal ab initio. In the case of forgery it is not that there is absence of free consent but there is no consent at all. The person whose signatures have been forged is not even aware of the transaction, and the question of his consent being free or otherwise does not arise. Consequently, it is not that the title of the person is defective but there is no title at all. Therefore, howsoever clever the forgery might have been, the personates acquire no rights at all. Thus, where the secretary of a company forged signatures of two of the directors required under the articles on a share certificate and issued certificate without authority, the applicants were refused registration as members of the company. The certificate was held to be nullity and the holder of the certificate was not allowed to take advantage of the doctrine of indoor management *[Rouben v. Great Fingal Consolidated (1906) AC 439].*

   Forgery, in the case of a company, can take place in different forms. It may, besides forgery of the signatures of the authorized officials, include the execution of a document towards the personal discharge of an official's liability instead of the liability of the company. Thus, a bill of exchange signed by the manager of a company with his own signature under words stating that he signed on behalf of the company, was held to be forgery when the bill was drawn in favour of a payee to whom the manager was personally indebted *[Kreditbank Cassel v. Schenkers Ltd. (1927) 1 KB 826].* The bill in this case was held to be forged because it purported to be a different document from what it was in fact; it purported to be issued on behalf of the company in payment of its debt when in fact it was issued in payment of the manager's own debt.

4. **Negligence –** The 'doctrine of indoor management', in no way, rewards those who behave negligently. Thus, where an officer of a company does something which shall not ordinarily be within his powers, the person dealing with him must make proper enquiries and satisfy himself as to the officer's authority. If he fails to make an enquiry, he is estopped from relying on the Rule. In the case of *Underwood v. Benkof Liverpool (1924) 1 KB 775,* a person who was a sole director and principal shareholder of a company deposited into his own account cheques drawn in favour of the company. Held, that, the bank should have made inquiries as to the power of the director. The bank was put upon an enquiry and was accordingly not entitled to rely upon the ostensible authority of director.

   Similarly, in the case of *Anand Behari Lal v. Dinshaw & Co. (Bankers) Ltd. AIR 1942 Oudh 417,* an accountant of a company transferred some property of a company in favour of Anand Behari. On an action brought by him for breach of contract, the Court held that the transfer to be void. It was observed that the power of transferring immovable property of the company could not be considered within the apparent authority of an accountant.

5. Again, the doctrine of indoor management does not apply where the question is in regard to the very existence of an agency. In *Varkey Souriar v. Keraleeya Banking Co. Ltd. (1957) 27 Com Cases 591 (Ker.),* the Hon'ble Kerala High Court held that the 'doctrine of indoor management' cannot apply where the question is not one as to scope of the power exercised by an apparent agent of a company but is with regard to the very existence of the agency.

6. This Doctrine is also not applicable where a pre-condition is required to be fulfilled before company itself can exercise a particular power. In other words, the act done is not merely *ultra vires* the directors/ officers but *ultra vires* the company itself – *Pacific Coast Coal Mines v. Arbuthnot (1917) AC 607.*

   In the end, it is worthwhile to mention that section 6 of the Companies Act, 2013 gives overriding force and effect to the provisions of the Act, notwithstanding anything to the contrary contained in the memorandum or articles of a company or in any agreement executed by it or for that matter in any resolution of the company in general meeting or of its board of directors. A provision contained in the memorandum, articles, agreement or resolution to the extent to which it is repugnant to the provisions of the Act, will be regarded as void.

A corporation, organization or other entity set up to provide a legal shield for the person actually controlling the operation.

Illustration:

Question: *Butterfly Limited receives a share certificate of Flower Limited issued under the seal of the company. The company secretary issues the certificate after affixing the seal and forging the signature of the two directors. Butterfly Limited files a lawsuit claiming that the forging of signatures is a part of the internal management of the company. Is the claim by Butterfly Limited valid and is liable to get relief?*

Answer: *According to the exceptions to the doctrine of indoor management, a transaction involving forgery is null and void. Since the document issued to Butterfly Limited is null and void, the claim made by him is not valid. Thus, he is not entitled to any relief.*

DOCTRINE OF CONSTRUCTIVE NOTICE

In companies law the doctrine of constructive notice is a doctrine where all persons dealing with a company are deemed (or "construed") to have knowledge of the company's Articles of Association and Memorandum of Association.

The Memorandum and Articles, when registered, become public documents and can be inspected by anyone on payment of nominal fee. Therefore, every person who contemplates entering into a contract with a company has the means of ascertaining and is consequently presumed to know, not only the exact powers of the company but also the extent to which these powers have been delegated to the directors, and of any limitations placed upon the exercise of these powers. In other words, every person dealing with the company is deemed to have a "constructive notice" of the contents of its memorandum and articles. In fact, he is regarded not only as having read those documents but also as having understood them according to their proper meaning *[Griffith v. Paget, (1877) Ch. D. 517]*. Consequently, if a person enters into a contract which is beyond the powers of the company, as defined in the memorandum, or outside the limits set on the authority of the directors, he cannot, as a general rule, acquire any rights under the contract against the company *[Mohony v. East Holyfrod Mining Co., (1875) L.R. 7 H.L. 869]*. For example, if the articles provide that a bill of exchange to be effective must be signed by two directors, a person dealing with the company must see that it is so signed; otherwise he cannot claim under it.

A common example of Constructive Notice is when a court is unable to directly reach someone and publishes summons in the public newspaper and it is assumed that everybody has read it.

In another case, the articles required that all documents should be signed by the managing director, secretary and the working director on behalf of the company. A deed of mortgage was executed by the secretary and the working director only and the Court held that no claim would lie under such a deed. The Court said that the mortgagee should have consulted the articles before the deed was executed. Therefore, even though the mortgagee may have acted in good faith and the money borrowed applied for the purpose of the company, the mortgage was nevertheless invalid *[Kotla Venkataswamy v. Rammurthy, AIR 1934 Mad 579]*. The doctrine of indoor management protects third parties who are entitled to an assurance that all the procedural aspects of a transaction are carried out.

Outsiders dealing with incorporated bodies are bound to take notice of limits imposed on the corporation by the memorandum or other documents of constitution. Nevertheless, they are entitled to assume that the directors or other persons exercising authority on behalf of the company are doing so in accordance with the internal regulations as set out in the Memorandum & Articles of Association.

The impact of this doctrine on practical relations is thus stated in HALSBURY: "A company is subject to the rule that, where the conduct of a party charged with a notice shows that he had suspicions of a state of facts the knowledge of which would affect his legal rights, but that he deliberately refrained from making inquiries, he will be treated as having had notice, though he is not entitled to claim for his own advantage," *[Jones v. Smith, (1841) 1 Hare 43].*

DOCTRINE OF *ALTER EGO*

The term "*Alter Ego*" is a Latin word. Literally translated, it means the "Other I". More idiomatic it can be understood as the identical copy or a person's clone. It is a common tenet that a company is a separate legal entity from its shareholders and directors. This common law principle grants immunity to the shareholders and directors from being held liable for the debts as well as criminal liabilities of the corporation. The doctrine of *alter ego*, however, provides for an exception to this presumption in law. *Alter ego* is the doctrine which prevents the stakeholders of the corporation, i.e., shareholders and directors from taking the refuge of doctrine of separate legal entity. Hence, the Doctrine of *alter ego* is based on lifting of the corporate veil between the directors/ shareholders and the corporation and treating both as one entity.

The doctrine of *alter ego* is based on the assumption that the company as well as the shareholders and the managing directors are the *alter ego*s of each other, i.e., one is the shadow or reflection of the other or can be understood as two sides of the same coin. Hence, the courts can rely on *alter ego* doctrine when they find that there is a very thin line of distinction between the shareholders/ directors and the corporation or a limited liability corporation.

It is used by the courts to ignore the status of shareholders, officers, and directors of a company in reference to their liability in their respective capacity so that they may be held personally liable for their actions when they have acted fraudulently or unjustly.

In *Lennards Carying Co. Ltd. v. Asiatic Petroleum Co. Ltd. [1915] AC 705,* Viscount Haldane propounded the "*alter ego*" theory and distinguished it from vicarious liability. The House of Lords stated that the default of the managing director who is the "directing mind and will" of the company, would be attributed to him and he be held for the wrong doing of the company.

CASE LAW

The Supreme Court of India, in the judgment of *Sunil Bharti Mittal v. Central Bureau of Investigation AIR 2015 SC 923*, clarified the law of "*alter ego*". In the instant case the Special Judge had summoned and proceeded against the Directors of the Company. The Special Judge, had held "On the other hand, the reason for summoning these persons and proceeding against them are specifically ascribed in this para which, prima facie, are:

i. These persons were/are in the control of affairs of the respective companies.

ii. Because of their controlling position, they represent the directing mind and will of each company.

iii. State of mind of these persons is the state of mind of the companies. Thus, they are described as "*alter ego*" of their respective companies.

The Apex Court while overruling the decision of the Special Judge, observed that while the Special Judge had applied the principle of *alter ego*, it had done so in reverse. The criminal mens rea had been attributed to the directors on the assumption that they are the directing minds behind the acts of the Company. The Supreme Court observed that the Special Judge had ignored the fact that such an interpretation of the *alter ego* doctrine would go against the position of law that there is no vicarious liability in criminal law, unless expressly provided in the statute.

DOCTRINE OF LIFTING OF OR PIERCING THE CORPORATE VEIL

The separate personality of a company is a statutory privilege and it must be used for legitimate business purposes only. Where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. The Court will break through the corporate shell and apply the principle/doctrine of what is called as "lifting of or piercing the corporate veil". The Court will look behind the corporate entity and take action as though no entity separate from the members existed and make the members or the controlling persons liable for debts and obligations of the company.

The corporate veil is lifted when in defence proceedings, such as for the evasion of tax, an entity relies on its corporate personality as a shield to cover its wrong doings. *[BSN (UK) Ltd. v. Janardan Mohandas Rajan Pillai [1996] 86 Com Cases 371 (Bom)].*

However, the shareholders cannot ask for the lifting of the veil for their purposes. This was held in *Premlata Bhatia v. Union of India (2004) 58 CL 217 (Delhi)* wherein the premises of a shop were allotted on a licence to the individual licencee. She set up a wholly owned private company and transferred the premises to that company without Government consent. She could not remove the illegality by saying that she and her company were virtually the same person.

Statutory Recognition of Lifting of Corporate Veil

The Companies Act, 2013 itself contains some provisions [Sections 7(7), 251(1) and 339] which lift the corporate veil to reach the real forces of action. Section 7(7) deals with punishment for incorporation of company by furnishing false information; Section 251(1) deals with liability for making fraudulent application for removal of name of company from the register of companies and Section 339 deals with liability for fraudulent conduct of business during the course of winding up.

Lifting of Corporate Veil under Judicial Interpretation

Ever since the decision in *Salomon v. Salomon & Co. Ltd.,* (1897) A.C. 22, normally Courts are reluctant or at least very cautious to lift the veil of corporate personality to see the real persons behind it. Nevertheless, Courts have found it necessary to disregard the separate personality of a company in the following situations:

(a) Where the corporate veil has been used for commission of fraud or improper conduct. In such a situation, Courts have lifted the veil and looked at the realities of the situation.

CASE LAW

In Jones v. Lipman, (1962) I. W.L.R. 832

A agreed to sell certain land to B. Pending completion of formalities of the said deal, A sold and transferred the land to a company which he had incorporated with a nominal capital of £100 and of which he and a clerk were the only shareholders and directors. This was done in order to escape a decree for specific performance in a suit brought by B. The Court held that the company was the creature of A and a mask to avoid recognition and that in the eyes of equity A must complete the contract, since he had the full control of the limited company in which the property was vested, and was in a position to cause the contract in question to be fulfilled.

(b) Where a corporate facade is really only an agency instrumentality.

CASE LAW

In Re. R.G. Films Ltd. (1953) 1 All E.R. 615

An American company produced a film in India technically in the name of a British Company, 90% of whose capital was held by the President of the American company which financed the production of the film. Board of Trade refused to register the film as a British film which stated that English company acted merely as the nominee of the American corporation.

(c) Where the conduct conflicts with public policy, courts lifted the corporate veil for protecting the public policy.

CASE LAW

In Connors Bros. v. Connors (1940) 4 All E.R. 179

The principle was applied against the managing director who made use of his position contrary to public policy. In this case the House of Lords determined the character of the company as "enemy" company, since the persons who were de facto in control of its affairs, were residents of Germany, which was at war with England at that time. The alien company was not allowed to proceed with the action, as that would have meant giving money to the enemy, which was considered as monstrous and against "public policy".

(d) ***Further, In Daimler Co. Ltd. v. Continental Tyre & Rubber Co.,*** **(1916) 2 A.C. 307, it was held that a company will be regarded as having enemy character, if the persons having de facto control of its affairs are resident in an enemy country or, wherever they may be, are acting under instructions from or on behalf of the enemy.**

(e) Where it was found that the sole purpose for which the company was formed was to evade taxes the Court will ignore the concept of separate entity and make the individuals concerned liable to pay the taxes which they would have paid but for the formation of the company.

CASE LAW

Re. Sir Dinshaw Maneckjee Petit, A.I.R. 1927 Bombay 371

The facts of the case are that the assessee was a wealthy man enjoying large dividend and interest income. He formed four private companies and agreed with each to hold a block of investment as an agent for it. Income received was credited in the accounts of the company but the company handed back the amount to him as a pretended loan. This way he divided his income in four parts in a bid to reduce his tax liability.

But it was held "the company was formed by the assessee purely and simply as a means of avoiding super- tax and the company was nothing more than the assessee himself. It did no business, but was created simply as a legal entity to ostensibly receive the dividends and interests and to hand them over to the assessee as pretended loans". The Court decided to disregard the corporate entity as it was being used for tax evasion.

Vodafone case

One of the landmark case of the Supreme Court, is its decision in the case of *Vodafone International Holdings B.V. v. Union of India & Another [S.L.P. (C)* No. 26529 of 2010]. In judgment, the Supreme Court set aside the Bombay High Court's judgment directing Vodafone International Holdings BV ("Vodafone"), to pay INR 110 billion, as withholding tax in a transaction that took place off-shore.

The facts, as briefly put, are that in May 2007, Vodafone, incorporated in the Netherlands, acquired from Hong Kong based Hutchison Group, the entire share capital of CGP Investments (Holdings) Limited ("CGP"), a company incorporated in the Cayman Islands, which in turn controlled a 67% interest in Hutchison-Essar Limited ("HEL"), Hutchison's Indian mobile business. The Indian income tax authorities contended that capital gains were made by Hutchison in India and that Vodafone was therefore liable to pay withholding tax thereon, amounting to approximately INR 110 billion (the sale price being USD 11.2 billion).

Vodafone challenged the tax demand in the Bombay High Court, which ruled in favour of the income tax authorities, holding that the essence of the transaction was a change in the controlling interest in HEL, which constituted a source of income in India. Vodafone appealed to the Supreme Court, which overruled the High Court and held that the transaction fell outside India's territorial tax jurisdiction and was hence not taxable.

The judgment was not only important in the context of taxation, but also covers other issues of corporate law. One of these are in the context of the principle of the corporate veil, and the circumstances under which it may be lifted, particularly in the context of commercial cross-border transactions and tax avoidance.

The Court recognised the fundamental principle of the corporate veil by noting that, "The approach of both the corporate and tax laws, particularly in the matter of corporate taxation, generally is founded on the abovementioned separate entity principle, i.e., treat a company as a separate person. The Indian Income Tax Act, 1961, in the matter of corporate taxation, is founded on the principle of the independence of companies and other entities subject to income-tax." It observed in the context of parent / subsidiary relationships, that it is generally accepted that the group parent company would give guidance to group subsidiaries, but that by itself would not justify piercing the veil or imply that the subsidiaries are to be deemed residents of the State in which the parent company resides, and that "a subsidiary and its parent are totally distinct tax payers".

Six factors that may be considered to determine whether the transaction is a bogus and whether in a specific case, the corporate veil may be lifted, are: "(i) the concept of participation in investment, (ii) the duration of time during which the Holding Structure exists; (iii) the period of business operations in India; (iv) the generation of taxable revenues in India; (v) the timing of the exit; and (vi) the continuity of business on such exit."

In the final analysis, the Supreme Court decided against lifting the corporate veil in Vodafone, as the tax authorities failed to establish that the transaction was a bogus or tax avoidance scheme.

(f) Avoidance of welfare legislation is as common as avoidance of taxation and the approach in considering problems arising out of such avoidance has necessarily to be the same and, therefore, where it was found that the sole purpose for the formation of the new company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction.

CASE LAW

The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar v. The Associated Rubber Industries Ltd., Bhavnagar and another, A.I.R. 1986 SC 1.

The facts of the case were that a new company was created wholly by the principal company with no assets of its own except those transferred to it by the principal company, with no business or income of its own except receiving dividends from shares transferred to it by the principal company i.e. only for the purpose of splitting the profits into two hands and thereby reducing the obligation to pay bonus. The Supreme Court of India held that the new company was formed as a device to reduce the gross profits of the principal company and thereby reduce the amount to be paid by way of bonus to workmen. The amount of dividends received by the new company should, therefore, be taken into account in assessing the gross profit of the principal company.

(g) Another instance of corporate veil arrived at by the Court arose in *Kapila Hingorani v. State of Bihar.*

CASE LAW

Kapila Hingorani v. State of Bihar, 2003 (4) Scale 712

In this case, the petitioner had alleged that the State of Bihar had not paid salaries to its employees in PSUs etc. for long periods resulting in starvation deaths. But the respondent took the stand that most of the undertakings were incorporated under the provisions of the Companies Act, 1956, hence the rights etc. of the shareholders should be governed by the provisions of the Companies Act and the liabilities of the PSUs should not be passed on to the State Government by resorting to the doctrine of lifting the corporate veil. The Court observed that the State may not be liable in relation to the day-to-day functioning of the PSUs but its liability would arise on its failure to perform the constitutional duties and the functions of these undertakings. It is so because, "life means something more than mere ordinal existence. The inhibition against deprivation of life extends to all those limits and faculties by which life is enjoyed".

(h) Where it is found that a company has abused its corporate personality for an unjust and inequitable purpose, the court would not hesitate to lift the corporate veil. Further, the corporate veil could be lifted when acts of a corporation are allegedly opposed to justice, convenience and interests of revenue or workmen or are against public interest.

Thus, in appropriate cases, the Courts disregard the separate corporate personality and look behind the legal person or lift the corporate veil.

Lifting the Corporate Veil of Small Scale Industry

Where small scale industries were given certain exemptions and the company owning an industry was controlled by some group of persons or companies, it was held that it was permissible to lift the veil of the company to see whether it was the subsidiary of another company and, therefore, not entitled to the proposed exemptions *[Inalsa Ltd. v. Union of India, (1996) 87 Com Cases 599 (Delhi)].*

Use of Corporate Veil for Hiding Criminal Activities

Where the defendant used the corporate structure as a device or facade to conceal his criminal activities (evasion of customs and excise duties payable by the company), the Court could lift the corporate veil and treat the assets of the company as the realisable property of the shareholder.

For example, in a case, there was a prima facie case that the defendants controlled the two companies, the companies had been used for the fraudulent evasion of excise duty on a large scale, the defendant regarded the companies as carrying on a family business and that they had benefited from companies' cash in substantial amounts and further no useful purpose would have been served by involving the companies in the criminal proceedings. In all these circumstances it was therefore appropriate to lift the corporate veil and treat the stock in the companies' warehouses and the companies' motor vehicles as realisable property held by the defendants. The Court said that the excise department is not to be criticized for not charging the companies. The more complex commercial activities become, the more vital it is for prosecuting authorities to be selective in whom and what they charge, so that issues can be presented in as clear and short form as possible. In the present case, it seemed that no useful purpose would have been served by initiating criminal proceedings. *[H. and Others, Restraint Order : Realisable Property), Re, (1996) 2 BCLC 500 at 511, 512 (CA)].*

APPLICABILITY OF THE COMPANIES ACT, 2013 AND KEY CONCEPTS

Applicability

According to section 1 of the Companies Act, 2013, the Act extends to whole of India and the provisions of the Act shall apply to the following:-

(a) companies incorporated under this Act or under any previous company law;

(b) insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;

(c) banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;

(d) companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;

(e) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act; and

(f) such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.

The Companies Act, 2013 is not applicable to unincorporated companies.

By virtue of section 464 of the Companies Act, 2013 r/w Rule 10 of the Companies (Miscellaneous) Rules, 2014, no association or partnership consisting of more than 50 persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force. The maximum number of persons which may be prescribed under this section shall not exceed 100.

Section 464 of the Act does not apply to –

(1) In the case of a Hindu undivided family carrying on any business whatever may be the number of its members.

(2) In case of an association or partnership, if it is formed by professionals who are governed by special Acts.

Every member of an association or partnership carrying on business in contravention of sub-section (1) of Section 464 shall be punishable with fine which may extend to one lakh rupees and shall also be personally liable for all liabilities incurred in such business.

Interpretation of Definitions under the Companies Act, 2013

A definition is a statement of the meaning as of a word or phrase.

Usually, every statute has a definitions sections (also called 'interpretation clause') which provides definitions of various words and phrases used in the statute (e.g. Section 2 of the Companies Act, 2013).

Definition:

- *To Define :* The Act of making something definite, distinct or clear.
- *Definition :* An exact statement or description of the nature, scope, or meaning of something (Oxford dictionary)
- *In relation to a Statute :* Definitions given in a statute are those of certain words or expressions used elsewhere in the Statute.
- *Object of using Definitions :* - To avoid frequent repetitions - To aid interpretation of words for that specific statute

Types of Definitions

Restrictive Definitions	***Extensive Definitions***
- Use of the word "mean"	- Use of the word "include"

When in a definition the word "**mean**" is used, it means word is restricted to the scope indicated in the definition section. It means definition is hard and fast definition and no other meaning can be assigned to the expression than is put down in definition.

For Example:

- **"Director"** means a director appointed to the Board of a company

The word "**include**" gives a wider meaning to the words or phrases in the statute. The legislature does not intend to restrict the definition, it makes the definition enumerative but not exhaustive. This is to say, the term defined will retain its ordinary meaning may or may not compromise. The word "includes" by the legislature shows the intention of the legislature that it wanted to give extensive and enlarged meaning to such expression.

For Example:

- **"Body Corporate or Corporation"** includes a company incorporated outside India, but does not include:
  - (i) a co-operative society registered under any law relating to co-operative societies; and
  - (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.

'Explanations' in Statutes:

Object and Purpose of explanations:

- To explain/clarify the meaning of words contained in the particular section,

- Part and Parcel of the enactment,
- Does not widen the scope of the word explained.

For eg: "Holding Company", in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Explanation.—For the purposes of this clause, the expression "company" includes any body corporate.

Definitions and Key Concepts under the Companies Act, 2013

Section 2 of the Companies Act, 2013 contains definitions:

- Clause (20) **"Company"** means a company incorporated under this Act or under any previous company law.
- Clause (21) **"Company Limited by Guarantee"** means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.
- Clause (22) **"Company Limited by Shares"** means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.
- Clause (46) **"Holding Company"**, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

  Explanation : For the purpose of this Clause, the expression "Company" includes any Body Corporate.
- Clause (71) **"Public Company"** means a company which –

  (a) is not a private company;

  (b) has a minimum paid-up share capital , as may be prescribed:

  Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.
- Clause (87) **"Subsidiary Company"** or **"Subsidiary"**, in relation to any other company (that is to say the holding 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:

  Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

  Explanation. — For the purposes of this clause,—

  (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

  (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company, if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the Directors.

- Clause (62) "**One-person Company"-** The Companies Act, 2013 introduces a new type of entity to the existing list i.e. apart from forming a public or private limited company, the Act enables the formation of a new entity a 'one-person company' (OPC). An OPC means a company with only one person as its member.
- Clause (68) **"Private Company"** means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—

  (i) restricts the right to transfer its shares;

  (ii) except in case of One Person Company, limits the number of its members to two hundred:

  Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

  Provided further that—

  (a) persons who are in the employment of the company; and

  (b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

  shall not be included in the number of members; and

  (iii) prohibits any invitation to the public to subscribe for any securities of the company.
- Clause (85) **"Small Company"-** Rule 2(1)(t) of the Companies (Specification of definitions Details) Rules, 2014 with effect from September 15, 2022 has amended the definition of Small Company stating that for the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees four crore and rupees forty crore respectively.

  Thus, the definition of "small company" under Section 2(85) read with Rule 2(1)(t) of the Companies (Specification of definitions Details) Rules, 2014 with effect from September 15, 2022 is given hereunder:

  A small company has been defined as a company, other than a public company.

  (i) paid-up share capital of which does not exceed 4 Crore rupees or such higher amount as may be prescribed which shall not be more than 10 crore rupees; and

  (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed 40 crore rupees or such higher amount as may be prescribed which shall not be more than 100 crore rupees:

  Provided that nothing in this clause shall apply to –

  (a) a holding company or a subsidiary company;

  (b) a company registered under section 8; or

  (c) a company or body corporate governed by any special Act.
- **Dormant company:** A company formed and registered under this 2013 for a future project or to hold an asset or intellectual property and has no significant accounting transaction such a company or an inactive company may make an application to the Registrar for obtaining the status of a dormant company.(Section 455)
- **Nidhi company:** means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members

only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies. (Section 406).

- Clause (52) **"Listed Company"** means a company which has any of its securities listed on any recognised stock exchange;

  Provided that such class of companies, 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 companies.

  Companies not to be considered as listed companies [Rule 2A of the Companies (Specification of definitions details) Rules, 2014].

  The following classes of companies shall not be considered as listed companies, namely:-

  a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –

     (i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or

     (ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or

  b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

  c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in section 23(3) of the Companies Act, 2013.

- Clause (45) **"Government Company"** means any company in which not less than fifty-one percent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

- Clause (42) "**Foreign Company**" means any company or body corporate incorporated outside India which,—

  (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

  (b) conducts any business activity in India in any other manner.

Roles and Responsibilities under the Companies Act, 2013

1. **Officer:** "officer" includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act [section 2(59)].

2. **Key Managerial Personnel:** The term 'key managerial personnel' has been defined in the Act which means :

   (i) the Chief Executive Officer or the Managing Director or the Manager;

(ii) the Company Secretary;

(iii) the Whole-Time Director;

(iv) the Chief Financial Officer;

(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and

(vi) such other officer as may be prescribed [section 2(51)].

The role and liability have been defined at various places under the Companies Act, 2013.

3. **Promoter:** The term 'promoter' means a person –

(a) who has been named as such in a prospectus or is identified by the company in the annual return; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity. [section 2(69)].

4. **Independent Director:** The term 'Independent Director' has been defined in the Act, along with several new requirements relating to their appointment, role and responsibilities. "Independent Director" means an independent director referred to in sub-section (6) of section 149 of the Companies Act, 2013. [Section 2(47) & Section 149(6)].

5. **Audit and Auditors**

a. **Mandatory auditor rotation and joint auditors:** The Act mandates the rotation of auditors after the specified time period. (Section 139).

b. **Secretarial audit:** The Act mandates Secretarial Audit for the following:

i. Listed companies;

ii. every public company having a paid-up share capital of fifty crore rupees or more;

iii. every public company having a turnover of two hundred fifty crore rupees or more;

iv. every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more.

The Secretarial Audit Report is required to be annexed to the Board's Report (Section 204).

c. **Secretarial Standards:** The Act requires every company to observe secretarial standards specified by the Institute of Company Secretaries of India with respect to general and board meetings [Section 118 (10)].

6. **Class Action Suits-** The Act introduces a new concept of class action suits which can be initiated by members or depositors against the company (Section 245).

E-GOVERNANCE AND MCA-21

With the advent of Information and Communication Technology in all sectors today, Governments across the globe including the Government of India are taking major initiatives to integrate IT in all their processes. Electronic Governance (e-Governance) is the application of Information Technology to the Government functioning in order to bring about Simple, Moral, Accountable, Responsive and Transparent (SMART) Governance. e-Governance is a highly complex process requiring provision of hardware, software, networking and re-engineering of the procedures for better delivery of services.

Earlier the businessmen and professionals had to visit MCA offices to file the statutory forms, to review public documents or to fulfil any compliance in physical mode. It was very hectic and time consuming. People had to stand in long queue which often led to inadvertent missing of filing of statutory e-forms leading to Non-Compliance and levy of fine or imprisonment.

So keeping in tune with the e-Governance initiatives the world over, Ministry of Corporate Affairs (MCA), Government of India, has initiated the MCA-21 project, to enable an easy and secure access to MCA services in a manner that best suits the corporate entities and professionals besides the public.

MCA-21 is an ambitious e-Governance initiative of Government of India that builds on the Government's vision of National e-Governance in the country. As part of the Government's focus on governance norms to meet the expectations arising from globalization, MCA project was launched as a flagship initiative of Ministry of Corporate Affairs (MCA). MCA-21 has resulted in improved procedures for better delivery of services by the MCA. This reform of administration has not only improved efficiency and transparency in the government operations, but has also enabled the Ministry to concentrate more on policy matters. The portal is designed to fully automate all processes related to enforcement and compliance of legal requirements under the Companies Act, 2013, Limited Liability Partnership Act, 2008 & other allied Acts and Rules & Regulations framed there-under mainly for regulating the functioning of the corporate sector in accordance with law.

MCA21 has been part of Mission Mode projects of the Government of India. Bagging several accolades in past, the project has now reached its 3rd version. MCA21 version-3.0 is a technology-driven forward-looking project, envisioned to strengthen enforcement, promote Ease of Doing Business and enhance user experience. MCA21 version-3.0 rollout has been planned in phases to ensure minimum disruption in regulatory filings.

All LLP e-filing and Company forms are available live at MCA V3 portal.

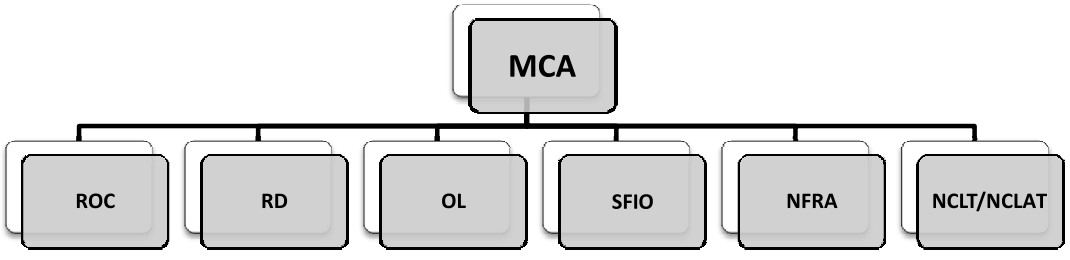
The MCA vide issuing notification dated March 17, 2023 has established the Centre for Processing Accelerated Corporate Exit (C-PACE). The C-PACE be located at the Indian Institute of Corporate Affairs (IICA), Manesar, Gurugram. It is effective from 01st April, 2023. C-PACE is a significant step towards providing ease to companies for closing their business and getting their names removed from the Register of Companies. It caters to make the process of removal of names more streamlined and efficient, saving time and effort for companies.

In a noteworthy development, the Ministry of Corporate Affairs (MCA) vide notification dated February 02, 2024, has established the Central Processing Centre (CPC) at the Indian Institute of Corporate Affairs (IICA), Manesar, Gurugram. This centre will be pivotal in processing and disposing of all e-forms filed under the Companies Act, 2013.

AGENCIES UNDER MCA-21

The Ministry of Corporate Affairs (MCA) is primarily concerned with administration of the Companies Act 2013, the Limited Liability Partnership Act, 2008 & other allied Acts alongwith rules & regulations framed there-under mainly for regulating the functioning of the corporate sector in accordance with law. Besides, it exercises supervision over the three professional bodies, namely, Institute of Chartered Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI) and the Institute of Cost Accountants of India which are constituted under three separate Acts of the Parliament for proper and orderly growth of the professions concerned.

The Ministry also has the responsibility of carrying out the functions of the Central Government relating to administration of Partnership Act, 1932 and the Societies Registration Act, 1980 etc.



Registrar of Companies (ROC) as defined under Section 2 (75) of the Companies Act, 2013 means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act.

Registrars of Companies (ROC) appointed in the various States and Union Territories are vested with the primary duty of registering companies and LLPs floated in the respective states and the Union Territories and ensuring that such companies and LLPs comply with statutory requirements under the Act. These offices function as registry of records, relating to the companies registered with them, which are available for inspection by members of public on payment of the prescribed fee. The Central Government exercises administrative control over these offices through the respective Regional Directors.

Regional Director (RD) is in-charge of the respective region, each region comprising a number of States and Union Territories. They supervise the working of the offices of the Registrars of Companies and the Official Liquidators working in their regions. They also maintain liaison with the respective State Governments and the Central Government in matters relating to the administration of the Companies Act and LLP Act. Certain powers of the Central Government under the Act have been delegated to the Regional Directors.

Official Liquidators (OL) means an Official Liquidator appointed under sub-section (1) of section 359 of the Companies Act, 2013.

As per Section 359 (1) of the Companies Act, 2013, for the purposes of this Act, so far as it relates to the winding up of companies by the Tribunal, the Central Government may appoint as many Official Liquidators, Joint, Deputy or Assistant Official Liquidators as it may consider necessary to discharge the functions of the Official Liquidator.

The liquidators appointed shall be whole-time officers of the Central Government. The salary and other allowances of the Official Liquidator, Joint Official Liquidator, Deputy Official Liquidator and Assistant Official Liquidator shall be paid by the Central Government.

Serious Fraud Investigation Office

As per the Companies Act, 2013, Serious Fraud Investigation Office (SFIO) has been established through the Government of India vide Notification No. S.O.2005(E) dated 21.07.2015. It is a multi-disciplinary organization under the Ministry of Corporate Affairs, consisting of experts in the field of accountancy, forensic auditing, banking, law, information technology, investigation, company law, capital market and taxation, etc. for detecting and prosecuting or recommending for prosecution white-collar crimes/frauds. As per Section 212(1) Investigation into the affairs of a company is assigned to SFIO, where Government is of the opinion that it is necessary to investigate into the affairs of a company –

1. on receipt of a report of the Registrar or inspector under section 208 of the Companies Act, 2013.
2. on intimation of a special resolution passed by a company that its affairs are required to be investigated.
3. In the public interest; or
4. On request from any department of the Central Government or a State Government.

The National Financial Reporting Authority (NFRA) was constituted on 01st October, 2018 by the Government of India under Sub Section (1) of section 132 of the Companies Act, 2013.

As per Sub Section (2) of Section 132 of the Companies Act, 2013, the duties of the NFRA are to:

- Recommend accounting and auditing policies and standards to be adopted by companies for approval by the Central Government;
- Monitor and enforce compliance with accounting standards and auditing standards;
- Oversee the quality of service of the professions associated with ensuring compliance with such standards and suggest measures for improvement in the quality of service;
- Perform such other functions and duties as may be necessary or incidental to the aforesaid functions and duties.

Sub Rule (1) of Rule 4 of the NFRA Rules, 2018, provides that the Authority shall protect the public interest and the interests of investors, creditors and others associated with the companies or bodies corporate governed under Rule 3 by establishing high quality standards of accounting and auditing and exercising effective oversight of accounting functions performed by the companies and bodies corporate and auditing functions performed by auditors.

National Company Law Tribunal/National Company Law Appellate Tribunal (NCLT/NCLAT) - The setting up of the NCLT and NCLAT are part of the efforts to move to a regime of faster resolution of corporate disputes, thus improving the ease of doing business in India. The Ministry of Corporate Affairs (MCA) on 1st June, 2016 notified the Constitution of National Company Law Tribunal (NCLT) & The National Company Law Appellate Tribunal (NCLAT) in exercise of powers conferred under section 408 and 410 of the Companies Act, 2013.

The constitution of NCLT & NCLAT was a step towards improving and easing all the judicial matters relating to the Company law under one roof.

MCA-21

With the advent of Information and Communication Technology in all sectors today, Governments across the

globe including the Government of India are taking major initiatives to integrate IT in all their processes. Electronic Governance (e-Governance) is the application of Information Technology to the Government functioning in order to bring about Simple, Moral, Accountable, Responsive and Transparent (SMART) Governance. e-Governance is a highly complex process requiring provision of hardware, software, networking and re-engineering of the procedures for better delivery of services.

So keeping in tune with the e-Governance initiatives the world over, Ministry of Corporate Affairs (MCA), Government of India, has initiated the MCA-21 project, to enable an easy and secure access to MCA services in a manner that best suits the corporate entities and professionals besides the public.

IMPORTANT ASPECTS OF MCA-21

Organization of ROC Office under MCA

The ROC office working from its present address has virtually became the Back Office of the Ministry. Since the number of companies/entities found it difficult to switch over to e-Filing at the initial stage, Facilitation Centers known as Physical Front Offices (PFOs) were set up throughout the Country to provide requisite comfort for e-Filing to such companies.

Front Office and Back Office

Front Office

The major components involved in this comprehensive e-governance project are front office and back office.

Front Office represents the interface of the corporate and public users with the MCA-21 system. This comprises of Virtual Front Office and Registrar's Front Office.

Virtual front office

Virtual front office is one of the various channels available to stakeholders (companies and the professionals) to enable them to do the statutory filing with ROC Offices across the Country. It merely represents a computer facility for filing of digitally signed e-forms by accessing the MCA portal through internet *(www.mca.gov.in)*. It also pre- supposes availability of related facilities to convert documents into PDF format and scanning of documents wherever required.

Registrar's Front Office (RFO)

To facilitate the change over from Physical Document Filing to Digital Document Filing, the Ministry started offices known as the Registrar Front Office. It is one of the various channels available to stakeholders to enable them to do the statutory filing with ROC Offices across the Country. Registrar's Front Offices are managed and operated by the operator RFO has all facilities which are required for online filing like trained manpower, broadband connectivity, scanner, printer and related computer accessories.

Back Office

Back Office represents the offices of Registrar of Companies, Regional Directors and Headquarters and takes care of internal processing of the forms filed by the corporate user as per MCA norms and guidelines. The e-forms are routed dynamically to the concerned authority for processing depending upon the assigned role. All the e-forms along with attachments are stored in the electronic depository, which the staff of MCA can view depending upon the access rights.

Certified Filing Centre (CFC)

In order to provide the Companies to do their e Filing, Professional Institutes (ICSI, ICAI, ICAI-cost), their Regional Councils/Local chapters, individual practicing members and firms of professionals were authorised to create and set-up the required facilities for facilitating the e Filing process. The Certified Filing Centers, thus set-up by

the Professionals are over and above the Registrar's Front Office set-up by the Ministry under the programme. While the services available from the Facilitation Centers set-up by the Ministry are without any charge, the services provided by these Certified Filing Centers entail payment of service charges.

SUBSTANTIAL BENEFITS OF MCA21

➢ Elimination of interface with the offices of ROCs, RDs and the MCA

MCA-21 has been designed virtually to eliminate the physical interface between the companies and the offices of ROCs, RDs and even MCA. It has not only saved time and energy of the company representatives but also enabled them to focus on other creative tasks. Time consuming works of professionals i.e. the tasks of incorporation of new companies, conducting searches of important documents, obtaining certificates of creation, modification and satisfaction of charges, filing of statutory forms and returns etc. have now become very quick and easy.

➢ Effective use of database

With the help of database collected, the vital information has been collected, segregated in such a way that it can be used by various stakeholders for various purposes. It will help in transparency in operations and benefits to players in stock markets as well as easy and prominent exposure of defaulters.

The following websites are created:

Website for Investor Education and Protection Fund: *http://iepf.gov.in*

It would provide information about IEPF and the various activities that have been undertaken/funded by it. It would also provide information relevant for investors, including about various instruments for investment, regulatory system and grievance redressal mechanism.

Awareness to Investors – www.watchoutinvestors.com

It is a national web-based registry covering entities including companies and intermediaries and, wherever available the persons associated with such entities, who have been indicted for an economic default and/or for non-compliance of laws/guidelines and/or who are no longer in the specified activity.

CSR portal-https://www.csr.gov.in/

The National Corporate Social Responsibility Data Portal is an initiative by Ministry of Corporate Affairs, Government of India to establish a platform to disseminate Corporate Social Responsibility related data and information filed by the companies registered with it.

Security Clearance Online Portal: https://esahajmcaservices.nic.in/

Security Clearance is a pre-requisite for granting permission to individuals who are citizens of countries sharing land borders with India and intending to apply for issuance of Director Identification Number (DIN)/appointment of director in new/existing company.

E-Sahaj Seva offers online service for security clearance of applications seeking issuance of Director Identification Number (DIN)/appointment of Director in new/existing company from MCA.

➢ Better supervision and monitoring of compliance

MCA-21 has ensured better supervision and control of the MCA over Companies with regard to compliance with the provisions of the Companies Act. Thus, enforcement of law has become easier and will ultimately benefit the investors, the stakeholders and the concerned Regulatory bodies.

➢ Mutually beneficial system

The focus of the MCA-21 program is on bringing about a fine balance between trade facilitation on one hand and enforcement requirements on the other.

➢ Speed, transparency and efficiency

MCA-21 project aims to bring speed, transparency and efficiency in the delivery of the services rendered by the MCA to all the stakeholders through a set of pre-defined service levels.

➢ Effective due diligence

Banks and Financial Institutions can conduct a thorough scrutiny of the documents filed by the company before advancing loan(s) and other financial assistance to such a company.

➢ Efficient services by professionals

Professionals will be able to offer efficient services to their client companies.

➢ Environment Friendly

MCA-21 has also proved to be environment friendly since paper work involved in filing of forms and documents has been eliminated.

➢ Integration with NSWS

The Ministry of Corporate Affairs vide issuing notification dated October, 2023 has informed that it has integrated with National Single Window System (NSWS) for the incorporation of Companies and LLPs.

MCA SERVICES

The MCA-21 application is designed to fully automate all processes related to the proactive enforcement and compliance of the legal requirements under the Companies Act, 2013 and Limited Liability Partnership Act, 2008. This helps the business community to meet their statutory obligations.

(1) Register Digital Signature Certificate - The Information Technology Act, 2000 has provisions for use of Digital Signatures on the documents submitted in electronic form in order to ensure the security and authenticity of the documents filed electronically. This is secure and authentic way to submit a document electronically. As such, all filings done by the companies/LLPs under MCA-21 e-Governance programme are required to be filed using Digital Signatures by the person authorised to sign the documents. An user can register DSC and update particulars of the DSC through the MCA Portal.

(2) Apply for Director Identification Number (DIN) - The concept of a Director Identification Number (DIN) was introduced for the first time with the insertion of Sections 266A to 266G of Companies (Amendment) Act, 2006, since then the system has evolved and Companies Act, 2013 also makes a provision for obtaining DIN.

(3) View Master details of any Company/LLP registered with Registrar of Companies - A facility has been made available to the general public to view master details of any company/LLP registered with Registrar of Companies. This facility may be availed by clicking “View Company Master Data”. A user can view Master Data of a Company or an LLP, signatory details of a particular company, details of companies and directors under prosecution, details of Companies and LLP’s registered in the last 30 days, master data of directors specifying the name of Companies/LLP’s they are director/partner in, director/designated partner’s details, etc.

(4) **Index of Charges -** A similar facility has also been made available in respect of the 'Register of Charges' for the Companies/LLPs by clicking on to the 'View Index of Charges' and for the viewing the details of the signatories of any company/LLP by clicking on 'View Signatory Details'.

(5) **LLP Services -** A user can check LLP name, find LLPIN (Limited Liability Partnership Identification Number), avail services related to incorporation of an LLP, services related to annual e-Filing for an LLP, services related to change in LLP information and services related to closure of an LLP.

(6) **LLP E-Filing -** to be used if the user wants to avail LLP e-filing services. LLP e-filing services are available in the V3 system**.**

(7) **FO Services -** A user can verify DIN, PAN details of directors, enquire DIN status, find LLPIN, CIN, associate DSC, Track Payment status at NTRP, enquires fees etc.

(8) **Company Services -** A user can check company name, find CIN (Corporate Identity Number), services related to incorporation of a company, avail services related to compliance filing of a company, services related to change in company information, services related to charge management, informational services and services related to closure of a company.

(9) **Company E-filing Services -** A user can have all e-filing services related to all incorporation, DIN, charge, deposit, nidhi services, foreign company services, etc.

(10) **Complaints -** A user can raise service related complaints, track the complaints created, create investor/ serious complaint, track the status of complaints created as 'investor/serious complaint', give feedback or suggestions to MCA-21 and raise employee grievances.

(11) **Document Related Services -** A user can get certified copies of forms and documents of a company, view forms and documents online etc.

(12) **Fee and Payment Services -** A user can avail services through Enquire Fees, pay later, link NEFT payment, pay miscellaneous fee, pay stamp duty and track the payment status.

(13) **Public Search of Trademark -** A user can search whether trademark has been registered or applied for a particular name by a company.

(14) **Investor Services -** A user can search amount unclaimed/unpaid amount due to be transferred to the Investor Education and Protection Fund (IEPF), upload investor details, confirm uploaded files.

(15) **Track SRN/Transaction Status -** A user can track the transaction status of the uploaded forms i.e., whether they are approved or pending for approval or required for resubmission or are rejected.

(16) **Independents Director Database Services:** It includes individual and Corporate Registration.

(17) Applicable MHA Security clearance.

Besides above mentioned services, to align with global best practices and aided by emerging technologies such as AI, MCA-21 Version 3.0 is envisioned to transform the corporate regulatory environment in India. The key components of MCA-21 are:

- **e-Scrutiny:** MCA is in process of setting up a Central Scrutiny Cell which will scrutinise certain Straight Through Process (STP) forms filed by the corporates on the MCA-21 registry and flag the companies for more in depth scrutiny.
- **e-adjudication:** E-adjudication module, has been conceptualised to manage the increased volume of adjudication proceedings by Registrar of Companies (RoC) and Regional Directors (RD) and will facilitate end to end digitisation of the process of adjudication, for the ease of users. It will provide a platform for conducting online hearings with stakeholders and end to end adjudication electronically.

  In exercise of the powers conferred by section 454 read with section 469 of the Companies Act, 2013,

the Central Government has notified Companies (Adjudication of Penalties) Amendment Rules, 2024 which has come into force from the 16th day of September, 2024.

A new section 3A after Rule 3 is being inserted in Companies (Adjudication of Penalties) Rules, 2014 in order to enable e-adjudication platform developed by the Central Government.

1. Section 3A states that:

   Adjudication Platform.-

   (1) On the commencement of the Companies (Adjudication of Penalties) Amendment Rules, 2024, all proceedings (including issue of notices, filing replies or documents, evidences, holding of hearing, attendance of witnesses, passing of orders and payment of penalty) of adjudicating officer and Regional Director under these rules shall take place in electronic mode only through the e-adjudication platform developed by the Central Government for this purpose.

   (2) In case the e-mail address of any person to whom a notice or summons is required to be issued under these rules is not available, the adjudicating officer shall send the notice by post at the last intimated address or address available in the records and the officer shall preserve a copy of such notice in the electronic record in the e-adjudication platform referred to in sub-rule (1):

   Provided that in case no address of the person concerned is available, the notice shall be placed on the e-adjudication platform."

2. For the Annexure to the said rules, the Annexure shall be substituted by Form No. ADJ (Memorandum of Appeal)

- **e-Consultation:** To automate and enhance the current process of public consultation on proposed amendments and draft rules etc., e-consultation module of MCA-21 V 3.0 will provide an online platform wherein, proposed amendments/draft legislations will be posted on MCA's website for external users/ comments and suggestions pertaining to the same in a structured digital format. Further, the system will also facilitate AI driven sentiment analysis, consolidation and categorization of stakeholders' inputs and creation of reports on the basis thereof, for reference of MCA.
- **Compliance Management System (CMS):** CMS will assist MCA in identifying non-compliant companies/ LLPs, issuing e-notices to the said defaulting companies/LLPs, generating alerts for internal users of MCA. CMS will serve as a technology platform/solution for conducting rule based compliance checks and undertaking enforcement drives of MCA wherein e-notices will be issued by MCA for effective administration of corporates.
- **MCA Lab:** As part of MCA21 V 3.0, a MCA LAB is being set up, which will consist of corporate law experts. The primary function of MCA Lab will be to evaluate the effectiveness of Compliance Management System, e-consultation module, enforcement module, etc. and suggest enhancements to the same on an on-going basis. The Lab will help MCA in ensuring the correctness of results produced by these key modules in view of the dynamic corporate ecosystem.

Additionally, MCA-21 V 3.0 will have a cognitive chat bot enabled helpdesk, mobile apps, interactive user dashboards, enhanced user experience using UI/UX technologies, and seamless data dissemination through APIs.

Online Inspection of Documents

The documents filed online, once taken on record by ROC Offices are available for public viewing on payment of requisite fees. These documents, which are in domain of public documents, include documents relating to

incorporation, charges, annual returns and balance sheets and change in directors. A certified copy of the documents can also be obtained by any one so interested. For this purpose there is also an option to mention the number of pages in the document for which a certified copy is required as well as the number of copies required.

ALL ABOUT FILING AND FILING OF E-FORMS

E-Forms

An e-form is only a re-engineered conventional form notified and represents a document in electronic format for filing with MCA authorities through the Internet. This may be either a form filed for compliance or information purpose or an application seeking approval from the MCA. Due to technical updates, these forms updates regularly, even though their user interface may not change. User always uses latest e-forms from the MCA Portal.

Filling and filing of forms is an important part of the secretarial function of a Company Secretary. Normally, where Company appoints a Company Secretary, he is designated as the officer responsible for compliance under the Companies Act and other allied legislations. Therefore, for any lapse in complying with the various provisions of the Companies Act or such other legislations, for the compliance of which the Company Secretary has been made responsible, he becomes liable as "officer in default".

Filling and filing of forms, returns and applications under various provisions demand intimate knowledge of substantive as well as procedural law. The Registrar of Companies (RoC) registers the documents filed with them within the prescribed time, if found in order. Often, a large number of documents filed with the RoC are not taken on record due to technical lapses which result in avoidable correspondence and frequent visits to the office of RoC. In order to avoid such errors, every care should be taken to ensure that the forms are properly filled and adequate documents are attached to them before filing.

Company Secretaries, under electronic filing system are required to be familiar with computer, internet, MCA-21 electronic filing system, pdf files and using digital signatures.

PREREQUISITES FOR E-FILING ON MCA-21

Digital Signature certificate (DSC) of either Class 2 and Class 3 signing certificate category issued by a licensed Certifying Authority (CA) needs to be obtained for e-Filing on the MCA Portal.

Digital Signatures are legally admissible in a Court of Law, as provided under the provisions of IT Act, 2000. The Certifying Authorities are authorized to issue a Digital Signature Certificate with a validity of one or two years.

Hardware and Software Requirements under e-filing

The minimum system requirement for e-filing on MCA-21 are as under:

- Computer System/laptop with Windows 2000 or later installed;
- JRE (Java Runtime Environment) -Java version 8 is suggested;
- Internet connection to access the MCA website;
- Internet Explorer 10 or above / Chrome 49 or above /Firefox 45 or above;
- Adobe Acrobat 11 or above version;
- Scanner for scanning paper attachments;

- Printer for printing bank challan or service fee payment receipt;
- Pop-ups from MCA21 Portal must be enabled in your browser.

Necessity of Pre-certification of E-Forms

Introduction of pre-certification by an independent professional in the e-form aimed at reducing the workload of the Registrar of Companies. Once an e-form has been pre-certified by a professional towards its authenticity based on the particulars contained in the books of accounts and records of the company, ROC is entitled to take on record the e-form. Professionals are responsible for submitting/certifying documents (to be signed digitally by them) and system would accept most of these documents online without approval by Registrar of Companies or other officers of the Ministry. If a professional gives a false certificate or omits any material information knowingly, he is liable to punishment under Section 447 and 448 of the Companies Act, 2013 besides disciplinary action by the Institute which issued the Certificate of Practice.

Fees [Rule 12 of the Companies (Registration Offices and Fees) Rules, 2014]

The documents required to be submitted, filed, registered or recorded or any factor information required or authorized to be registered under the Act shall be submitted, filed, registered or recorded on payment of the fee or on payment of the fee or on payment of such additional fee as applicable, as mentioned in Table annexed to Rule 12 of The Companies (Registration Offices and Fees) Rules, 2014.

For the purpose of filing the documents or applications for which no e-form is prescribed under the various rules prescribed under the Act, the document or application shall be filled through Form No.GNL.1 or GNL.2 along with fee as applicable and in case a single form is prescribed for multiple purposes, the fee shall be paid for each of the purpose contained in the single form.

For the purpose of filing information to sub-clause (60) of Section 2 of the Act, such information shall be filed in Form No. GNL.3 along with fee as applicable.

Mode of Payment [Rule 13 of the Companies (Registration Offices and Fees) Rules, 2014]

The fees, charges or other sums payable for filing any application, form, return or any other document in pursuance of the Act or any rule made there under shall be paid by means of credit card; or internet banking; or remittance at the counter of the authorized banks or any other mode as approved by the Central Government.

LESSON ROUND-UP

- The Companies Act, 2013 received the assent of the President on August 29, 2013 and was notified in the Gazette of India on August 30, 2013. It empowers the Central Government to bring into force various sections from such date(s) as may be notified in the Official Gazette.
- Major Developments in the Company Law in India.
- The objective of the Companies Act, 2013 is to provide business friendly corporate regulation/ pro-business initiatives; e-Governance Initiatives; good corporate governance and CSR; enhanced disclosure norms and enhanced accountability of management.
- There are various agencies under the Ministry of Corporate Affairs such as ROC, RD, OL, SFIO, NFRA and NCLT/NCLAT.
- Any activity done in contrary to or in excess of the scope of activity of the Companies Act, Memorandum of Association or Articles of Association will be *ultra vires*.

- Doctrine of "constructive notice" seeks to protect the company against the outsiders, the principal of "indoor management operates" to protect the outsiders against the company.
- Where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. The Court may break through the corporate shell and apply the principle of what is known as "lifting of or piercing the corporate veil".

GLOSSARY

Jurisprudence : The study of law and the principles on which law is based.

Bill : A bill is proposed legislation under consideration by a legislature. A bill does not become law until it is passed by the legislature. Once a bill has been enacted into law, it is called an act of the legislature, or a statute.

Indoor Management : It operates to protect outsiders against the company. It protects innocent parties who are doing business with the Company and are not in a position to know if some internal rule or procedural requirement has not been complied with.

Rule of Constructive Notice : To protect the company against outsiders. The rule of constructive notice is confined to the external position of the company and, therefore, it follows that there is no notice as to how the company's internal machinery is handled by its officers. It is a presumption in favour of the company which mean that an outsider has a knowledge of the Memorandum and Articles of Association of the company with which he/ she is about to entering into the contract.

E Form : Is a computer program of a paper form.

Incorporation : The formation.

TEST YOURSELF

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation).

1. What do you understand by corporate veil and when is it disregarded?
2. The Ministry of Corporate Affairs (MCA) is primarily concerned with administration of the Companies Act 2013, the Limited Liability Partnership Act, 2008 & other allied Acts, in view of the same elucidate the agencies fall under the purview of MCA.
3. Discuss e-Governance and MCA-21.
4. What are the modes of payment under filing of forms under the Companies Act, 2013?
5. Any activity done in contrary to or in excess of the scope of activity of the Companies Act, Memorandum of Association or Articles of Association will be *ultra vires*. Discuss.
6. The Articles of Association of M/s ZXY Limited states that all the company documents needs to be signed by the managing director, Company secretary and the executive director on behalf of the company. A mortgage deed was executed by the secretary and the executive director. Choose the correct answer:

    a) Such mortgage is valid

b) Such mortgage is invalid

c) It can be valid by passing Board Resolution

d) It is valid if the funds are utilized for the purpose of company.

7. M/s SFPL Pvt. Ltd. has issued NCDs for Rs. 20 Crores on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and got them registered on stock exchange. Suggest the correct option:

a) M/s SFPL Pvt. Ltd. is listed company
b) It will be treated as unlisted company
c) M/s SFPL Pvt. Ltd. is government company
d) None of the above

LIST OF FURTHER READINGS

- Company Law Exploring Procedural Dimensions VOL I / II / III – by ICSI
- Bare Act- The Companies Act, 2013
- Company Law Procedures by CS K.V. Shanbhogue-Bharat's Publication
- Company Law by Dr. G.K. Kapoor

OTHER REFERENCES (INCLUDING WEBSITES/VIDEO LINKS)

https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks.html