

# COMPANY LAW

## REVISION BOOK

CS Vikas Vohra *Corporate BaBa*

### WHY THIS BOOK?

- Last day quickest revision in detail.
- Helps you revise Co Law anytime.
- Not just points, it has details of every topic.
- Covers the entire subject.

**EXE  
SHIELD**





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# CHAPTER 1

# INTRODUCTION TO

# COMPANY LAW

## MEANING & DEFINITION OF COMPANY [SECTION 2(20)]

- ❖ A Company means a company incorporated under this Act or under any previous company law.
- ❖ Common law – It is a “legal person” or “legal entity” separate from its members.
- ❖ An association formed not for profit is also a company.
- ❖ An incorporated company owes its existence either to a special Act of Parliament or to company law.

# NATURE AND CHARACTERISTICS OF A COMPANY

## Limited Liability

- The liability of a member - extends to the contribution to the capital up to the nominal value of the shares held and not paid by him.
- Company limited by guarantee- the liability is limited to a specified amount of the guarantee mentioned in the memorandum.

## Exceptions to the Principle of Limited Liability

1. Co. incorporated by furnishing any false or incorrect information.
2. While winding up- it occurs intension was to defraud creditors or any other persons.
3. Co. incorporated as an Unlimited Company.
4. Prospectus intended to defraud the applicants.
5. Co. fails to repay the deposit/any interest - within the time specified and it is proved that the deposits had been accepted to defraud.

## Perpetual Succession

A company is unaffected by death or departure of any member or all the member.

## Separate Property

A company being a legal person and entirely distinct from its members, is capable of owning, enjoying and disposing of property in its own name.

## Transferability of Shares

Shares of the Co. are freely transferable, subject to certain conditions.

# NATURE AND CHARACTERISTICS OF A COMPANY

## Capacity to sue and be sued

A company can sue and be sued in its own name.

## Contractual Rights

A company can enter into contracts in its own name. A shareholder is neither a party to the contract, nor is entitled to the benefit derived from it.

## Voluntary Association for Profit

A company is a voluntary association for profit. Formed for accomplishment of stated goals. Only a Section 8 co. can be formed with no profit motive.

## Limitation of Action

A co. cannot go beyond the power stated in its MOA i.e. the co. is administered and managed by its managerial personnel.

## Termination of Existence

Co. is created by law and ultimately is effaced by law i.e. it is terminated by means of winding up.

## Corporate Personality

- Has its own name, acts under it, has its own seal and its assets are separate and distinct from those of its members.
- Members are owners but simultaneously can be its creditors.
- The shareholders are not the agents of the company and so they cannot bind it by their acts - [Ref. Lee v/s Lee's Air Farming Ltd. & Salomon v/s. Salomon and Co. Ltd]

## Common Seal

- The Common Seal acts as the official signature of a company.
- However, maintaining a common seal is now optional.
- Co. not having common seal – shall get documents attested by - an authorized person or CS.

# DOCTRINE OF LIFTING OF OR PIERCING THE CORPORATE VEIL

❑ If any fraudulent and dishonest use is made of the legal entity, the individual concerned will not be allowed to take shelter behind the corporate personality. The court will break the corporate shell and will take action against the wrong doers as if no entity separate from the members existed. Individual will be liable for debts obligations.

❑ **Note: Shareholders cannot ask for piercing the veil**

## CASES

(i) Gilford Motor Co V/s Horne: The corporate veil has been used for the commission of fraud.

(i) R.G. Films Ltd.: British Company acted as an agent of American Company Without having any principal business.

(i) Connors Bros V/s Connors: The given case was against the public policy.

(i) Sir Dinshaw Maneckjee Petit: The given action was done with a view of evasion of tax.

The Workmen Employed in Associated Rubber Industries Ltd. V/s The Associated Rubber Industries Ltd.: The corporate veil has been used for avoidance of welfare legislation.



## COMPANY AS A PERSON:

Co is an artificial person, but it acts through human beings. It is considered as a legal person as it enters into contracts, have properties in its own name, can sue and be sued by others etc.

## NATIONALITY AND RESIDENCE OF A COMPANY

Company cannot be a citizen but it has nationality, domicile and residence. Domicile is the place of its registration

## IS COMPANY A CITIZEN?

- Co. is not a citizen under the Citizenship Act or the Constitution of India.
- ❖ - In State Trading Corporation of India Ltd. V/s. C.T.O. A.I.R. 1963 S.C. 1811 – Sc held that Co. though a legal person is not a citizen.
- ❖ - Though Corporation are citizen- they cannot hold passports or vote in elections, but they do share in some of the same practices such as paying taxes, engaging in free speech, and expecting certain protections from the state.



# ILLEGAL ASSOCIATION

**Section 464** - Any association of persons or partnership or any unregistered company, which has 100 or more persons as its members if not registered as a company- becomes illegal association. As per Rules, number of persons applicable is 50.

i) Cannot enter into any contract.

i) Cannot sue any member, or outsider (even if co. is subsequently registered)

i) Cannot be sued by a member, or an outsider.

i) Cannot be wound up by an order of the Court. (Raghubar Dayal v/s Sarala Chamber A.I.R. 1954 All. 555).

# PRIVATE COMPANY [SECTION 2(68)]

Means Co. having such paid-up share capital as prescribed, and its articles :

Restricts the right to transfer its shares;

- ❖ Min. 2 members; Max. 200 (Exception-OPC)
- ❖ If 2 or more persons hold shares jointly- treated as a single member.

Prohibits any invitation to the public.

- Following persons shall not be included in the no. of members:
  - Persons - in the employment of the co. and
  - Persons – in former employment- were members and continued to be members after employment ceased, and
  - Note: Restriction is only on members. No max. limit on issue of debentures, condition being an invitation to the public is prohibited.
- Word “Private Limited” – to be added at the end of its name.
- Sec 149(1)- Private Co. to have min. 2 directors. 2 members can be 2 directors.

# ONE PERSON COMPANY (OPC) [SECTION 2(62)]

Co. which has only 1 person as a member.



Min. 1 director.



Registered as a private Co.



Section 3(2)- formed either as a Co. limited by shares or a Co. limited by guarantee or an unlimited liability co.



It can be converted into any kind of Co. (except Sec 8 Co.), condition being:  
2 years has expired from its incorporation & threshold limit of paid up share capital is increased beyond 50 lakhs  
or average annual t/o exceeds Rs. 2 crore.

# ONE PERSON COMPANY (OPC) [SECTION 2(62)]

- ❑ If a member in OPC become member in another OPC by virtue of being a nominee- such person to meet eligibility criteria within 180 days.
- ❑ Only a natural person who is an Indian citizen and whether resident in India or otherwise
  - Eligible to incorporate OPC.
  - Shall be a nominee for the sole member of a One Person Company.
- ❑ Person can incorporate only 1 OPC or can become nominee in only 1 OPC.
- ❑ Minor- cannot become member or nominee or hold share with beneficial interest.
- ❑ Name of nominee to be mentioned in MOA & such nomination – to be filled- in Form No.INC-32 (SPICe+) + consent (Form No.INC-3) + fees - with ROC during incorporation of with MOA & articles.

## Note:

- **Resident in India:** means a person - who has stayed in India - for not less than 120 days during the immediately preceding financial year.
- **For FY 2018-19:** Period between 01.01.2018 till the date of notification of this rule be counted

## PUBLIC COMPANY [SECTION 2(71)]

Means a company which:

Is not a private company;

Has paid up capital as prescribed.

Subsidiary of public Co- deemed as a public company.

Section 3(1) (a) - formed for lawful purpose - by 7 or more persons- by subscribing their names to MOA.

## SMALL COMPANY [SECTION 2(85)]

It is other than a public company:

Paid-up share capital < Rs. 2 crores or amount prescribed (not more than Rs. 10 crore)

&

Turnover < Rs. 20 crores or amount prescribed (not more than Rs. 100 crore).

### Exceptions

1. A holding co. or a subsidiary co.
2. Section 8 Co.
3. Company or body corporate.

## GOVERNMENT COMPANIES [SECTION 2(45)]

Means a Co. – in which not less than 51% of paid up share capital is held by CG or SG or Governments or partly by CG & partly by SG and includes- co. which is a subsidiary of Government co.

- ❖ Govt. Co.- neither a Govt dept/ Govt. establishment.
- ❖ Employees of Govt. Co.- not Govt. servants – hence, have no legal right to claim that govt should pay salary- it shall be responsibility of the company.

- ❖ Audit- by Comptroller and Auditor General of India (CAG).
- ❖ CAG appoints auditors and submit their audit report to CAG.
- ❖ CAG presents report before parliament/state legislative assembly.

# FOREIGN COMPANIES [SECTION 2(42)]

- ❖ Means a Co./ body corporate - incorporated outside India which:
  - ✓ Has place of business in India – by itself/ through agent- physically/ electronically.
  - ✓ Conducts any business activity in India in any other manner.
- ❖ Foreign Co. - which have place of business in India- to file with ROC for registration- within 30 days of the establishment.

## LIMITED COMPANY

Company may be either

a company limited by shares

Liability of members is limited by MOA up to the amount unpaid on shares if any

a company limited by guarantee

Liability of member is limited by MOA upto the amount as the members may undertake to contribute to the assets of the company in the event of its being winding up.

an unlimited company.



# HOLDING, SUBSIDIARY COMPANIES & ASSOCIATE COMPANIES

## HOLDING COMPANY

Section 2(46)- in relation to 1 or more other co., where such co. are subsidiary companies.

## ASSOCIATE COMPANY

- ❖ Section 2 (6) Co. in which other Co. has a significant influence, but such co. is not a subsidiary co. & it includes a JV co.
- ❖ Significant influence: means control of at least 20% of total voting power or control of business decisions under an agreement.

## SUBSIDIARY COMPANY

- ❖ Section 2 (87) – Co. in which the holding co.:
  - ✓ Controls the composition of BOD or
  - ✓ Exercises or controls more than ½ of the total voting power – on its own or together with one or more of its subsidiary Co.
- ❖ Subsidiary company not to hold shares in its holding company
- ❖ Holding co. having layers of subsidiary beyond prescribed limit – will be void

### CONTROL [SECTION 2(27)]

Section 2(27) – includes right to appoint majority of the directors or control the management or policy decisions exercisable by virtue of – shareholding/management rights/shareholders agreements/ voting agreements/ any other manner.



## ASSOCIATION NOT FOR PROFIT [SECTION 8]

- ❖ CG may grant such a licence if:
  - Intended to form a co. for Promoting – Commerce, Arts, Science, Sports, Research, social welfare etc.
  - Prohibits payment of dividend & apply profit for promotion of its object.
- ❖ Registered- without paying any stamp duty on its MOA.
- ❖ Alteration of MOA or AOA can be done only with prior approval of CG.
- ❖ MOA- to state name of co. with last word “Limited” if public Co. or “Private Limited” if private co. However, Section 8(1) permits the registration- under a licence granted by CG- with limited liability without being required to use the word “Limited” or “Private Limited” after their names.
- ❖ Firm may be member of the co.
- ❖ CG may revoke license where word Limited” or “Private Limited” shall have to be used as part of its name and the company will lose the exemptions. It can be done after giving OBH.

## PUBLIC FINANCIAL INSTITUTIONS

According to Section 2(72) “Public Financial Institution” means:

- The Life Insurance Corporation of India,
- The Infrastructure Development Finance Company Limited.
- Unit Trust of India, (Transfer of Undertaking and Repeal) Act, 2002.
- Institutions notified by the CG u/s 4A(2) of the Companies Act, 1956.
- Other institution as notified by CG in consultation with RBI.

## BODY CORPORATE [SECTION 2(11)]

- ❖ It also includes a Company incorporated outside India.
- ❖ Does not include-
  - Co-operative society and
  - Any other body corporate (not being a company) as specified by CG.

## **LISTED COMPANY [SECTION 2(52)]**

It means a company which has any of its securities listed on any recognised stock exchange.

However, such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the SEBI - not be considered as listed companies.]

### **Rule 2A- Companies not to be considered as listed companies :**

For the Section 2(52) following classes of companies shall not be considered as listed companies:

- a) Public companies which have not listed their equity shares on a recognized SE but have listed their –
  - (i) non-convertible debt (NCD) 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
  - (iii) both categories of (i) and (ii) above.
- b) Private companies which have listed their NCD 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 SE but whose equity shares are listed on a SE in a jurisdiction as specified in Section 23(3) of the Companies Act, 2013.

## INCORPORATION OF A COMPANY

- ❖ Section 3(1) – Co. may be formed for any lawful purpose by:
  - 7 or more persons- If public co.
  - 2 or more persons- private co.
  - 1 person- if OPC.
- ❖ A company formed under Section 3(1) may be either:
  - a company limited by shares; or
  - a company limited by guarantee; or
  - an unlimited company.

## RESERVATION OF NAME DURING INCORPORATION

- Application of name of Reservation using form RUN (Reserve Unique Name) (+) Fees Rs. 1000/- to ROC.
- DSC & DIN are not required for filing of RUN form.
- The name shall not be
  - identical to existing company's name
  - constitute an offence or
  - undesirable in the opinion of CG.
- Reserved name valid for 20 days / 60 days in case of change in name
- Only one Name can be mentioned in RUN form.
- Co. can either apply in RUN or directly in SPICE form.

# PREPARATION OF THE DOCUMENTS FOR INCORPORATION

## Declaration by Professionals

By an advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice shall be in Form No INC 8.

## Declaration from Subscribers and First Directors

By subscribers to the MOA & first directors named in the AOA in Form No INC9.

## Particulars of First Directors of the Company and their consent

in Form No DIR12.

## APPLICATION FOR INCORPORATION OF COMPANY

After aforesaid documents are made available- applicant to fill the information - in e-form- Spice+ INC-32.

## SINGLE WINDOW FORM

This form can be used for the following purposes:

- Application of DIN (upto 3 Directors)
- Application for Availability of Name
- No need to file separate form for first Directors (DIR-12)
- No need to file separate form for address of registered office (INC-22)
- No need to file separate form for PAN & TAN



## Features of SPICe+ (INC-32) Form

- Max. 7 subscribers' details. For more- physically signed MOA & AOA shall be attached.
- Max. 20 directors' details.
- Max. 3 directors are allowed - for filing application of allotment of DIN while incorporating a Company.
- Person can apply the Name also in this form.
- By affixation DSC of the subscriber on the INC-33 (e-MOA) date of signing will be appear automatically by the form.
- Applying for PAN / TAN will be compulsory for all fresh incorporation.

### SIGNING OF THE MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION

- ❖ After filing of SPICE form - applicant has to download the e-form INC-33 (MOA) and INC-34 (AOA).
- ❖ After filing of the form – to affix DSC of all the subscribers and professional on subscriber sheet of the MOA & AOA.

### SUBMISSION OF INC-32, 33, 34 ON MCA

Once all forms are ready – applicant to upload all three documents on MCA website and make the payment.

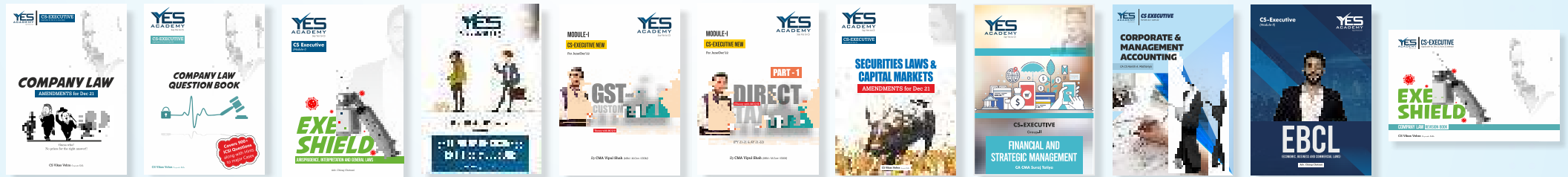
### CERTIFICATE OF INCORPORATION AND ALLOTMENT OF CORPORATE IDENTIFY NUMBER

Issued by ROC- in Form No INC-11 and Certificate shall mention PAN of co. - if it is issued by the Income-tax Department.



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## **CS Vikas Vohra, Founder - YES Academy**

Vikas is a Commerce and Law Graduate and a Company Secretary by profession. He has to his credit, few other Certifications and specialisations in Corporate and Securities Laws. On the teaching side, he has taught more than 10,000 students.

He is also a speaker at various Management Institutes and ICSI on various Corporate matters and Entrepreneurship. In his previous assignments, he worked as an Associate Vice President with LexValueAdd Consulting Private Limited, an Investment Banking firm based out of Mumbai.

He has significant hands on experience in Mergers and Acquisitions, Public Offerings and consequent listing of the Shares and GDR's on the Bourses, fund raising and Deal Structuring. Before that he also worked with Kirloskar Brothers Investments Limited & Bajaj Auto Limited wherein, he was deeply involved in various M&A activities.


Vikas is presently the Founder of YES Academy for CS, Pune He is also a Co-Founder of PapaZapata (Mexican food chain) & GujjuKhakhra (Indian Breads). He enjoys writing poetry and doing meditation in his free time.





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