Companies Act 1956

Company

- Com- together
- Pany- Bread

- "company" means a company formed and registered under this Act or an existing company as defined in clause (ii).

Characteristics

1. Incorporated Association
2. Separate legal entity
3. Limited liability
4. Separate property
5. Perpetual Succession
6. Transferability of shares
7. Common Seal
8. Capacity to sue and be sued.

Types of Companies

A) On the basis of Incorporation

1 Statutory Companies

2 Registered Companies

B) On the basis of liability

1 Companies with limited liability

by shares

by guarantee

2 Companies with unlimited liability

C) On the basis of Number of Members

(i) Private Company (2) (<50)

(ii) Public Company (7)

(iii) One Person company (1)

D) On the basis of Control

(i) Holding Company

(ii) Subsidiary Company

U/s 3(1)(iii)

private company" means a company which, by its articles –

(a) **restricts** the right to transfer its shares, if any;

(b) **limits** the number of its members to fifty not including –

(i) persons who are in the employment of the company, and

(ii) 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; and

(c) **prohibits** any invitation to the public to subscribe for any shares in, or debentures of, the company:

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

Definition

(ii) "existing company" means a company formed and registered under any of the previous companies laws specified below

(a) Any Act or Acts relating to companies in force before the Indian Companies Act, 1866 (10 of 1866.)and repealed by that Act;

(b) The Indian Companies Act, 1866 (10 of 1866);

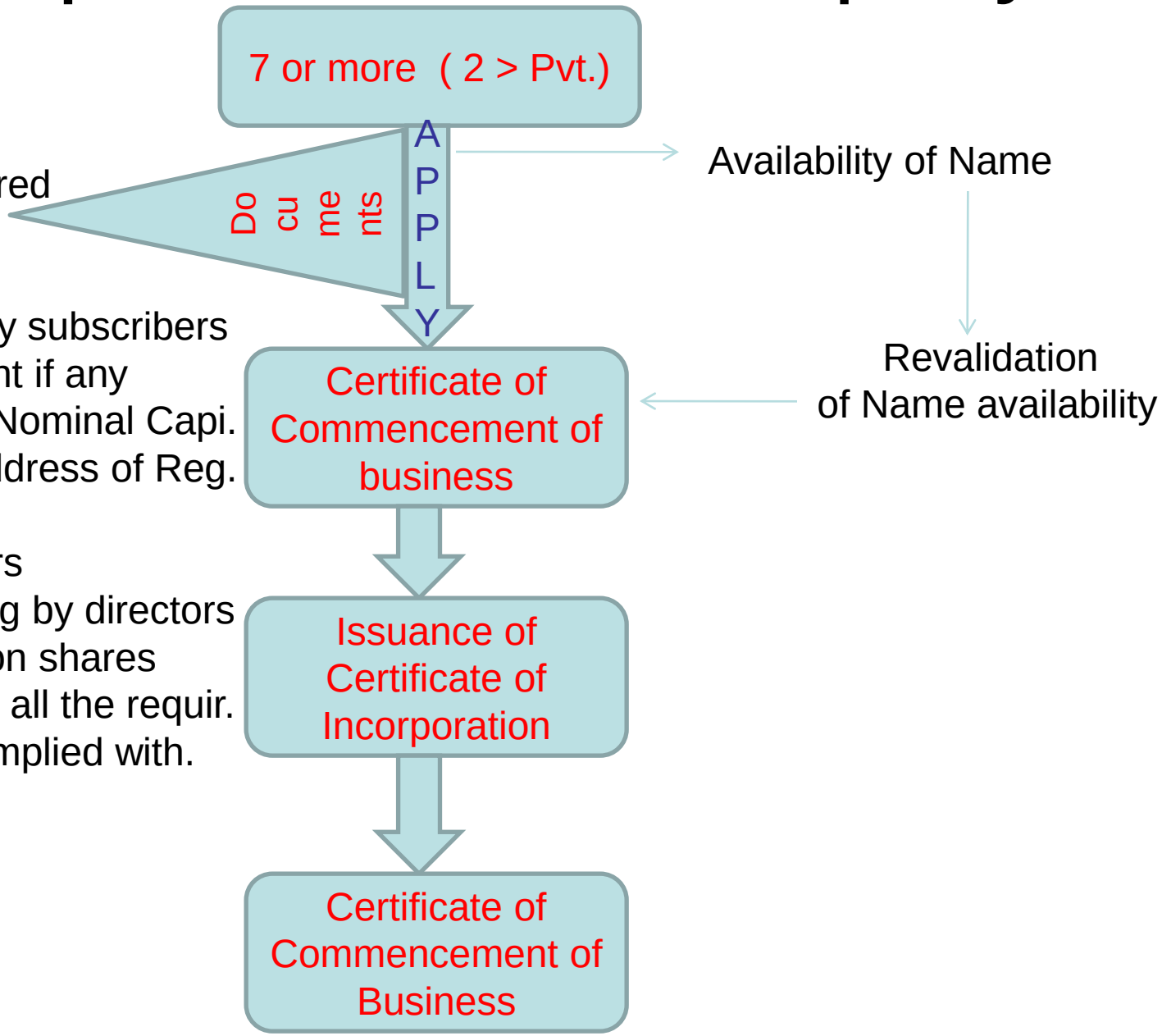
(c) The Indian Companies Act, 1882 (6 of 1882);

(d) The Indian Companies Act, 1913 (7 of 1913);

(e) The Registration of Transferred Companies Ordinance, 1942 (54 of 1942); and

2[(f) Any law corresponding to any of the Acts or the Ordinance aforesaid and in force

Incorporation of A Company



Documents required
With Application.

1. MOA
2. AOA signed by subscribers
3. The agreement if any
4. Statement of Nominal Capi.
5. A Notice of Address of Reg. office
6. List of directors
7. An undertaking by directors for qualification shares
8. Declaration of all the requir. as par act complied with.

Memorandum of Association

- MOA is , the charter of the company. It defines the area of incorporation of the company. It enables the shareholders and those who deals with the company to know the permitted area of enterprise.

Purpose Of MoA

There are two purposes

1. The prospective shareholder should know the field or the purpose for which their money is going to be use by the company.
2. The outsider who are dealing with the company shall know the object and they should be assured that the contract entered into with company is within the objects of company

- The Memorandum of Association shall be-

1. Printed
2. Divided into paragraphs.
3. Signed by 7 subscribers(2 in case of P)
4. The signature should be attested by at least one witness.

Contents Of Memorandum

1. Name Clause
2. Registered office Clause
3. Object Clause
4. Capital Clause
5. The Liability Clause
6. The Association Clause (subscribers).

Articles of Association

- The Articles of Association of a company are its rules and regulations which are framed to manage its internal affairs.

Following companies must have AoA

Unlimited Companies

Companies limited by guarantee

Private company

Content of Articles

1. Share Capital, rights of share holders, variation of these rights, payment of commissions, share certificates.
2. Lien on shares
3. Calls on shares
4. Transfer of shares
5. Transmission of shares
6. Forfeiture of shares
7. Conversion of shares into stock
8. Share warrants

Sr. No.	Basis of Difference	Private Company	Public Company
1.	**Definition**	A private company is a company which by its articles restricts the right to transfer its shares, if any, limits the number of its members to 50.	A public company means a company which is not a private company.
2.	**Number of Directors**	In a Private limited company a minimum number of 2 directors is essential.	In a Public limited company a minimum number of 3 directors is essential.
3.	**Transfer of Shares**	Shares in private limited company are not transferable.	Public company can invite public for issuing its shares and debentures.
4.	**Number of Members**	The minimum numbers of members are 2 and maximum 50.	The minimum numbers of members are 7 and there is no maximum limit of members.
5.	**Name**	It is compulsory to add the word 'Private Limited' after the name if the Private Company.	It is compulsory to add the word 'limited' after the name of public company.
6.	**Issue of Prospectus**	It is not compulsory to issue the prospectus and statement in lieu of prospectus.	It is compulsory to issue of prospectus and in the absence of prospectus to sent statement in lieu to the registrar.
7.	**Minimum Capital**	Minimum paid-up capital is one lakh rupees.	Minimum paid up capital is five lakh rupees.

CORPORATE VEIL THEORY

- The Corporate Veil Theory is a legal concept which separates the identity of the company from its members.
- Hence, the members are shielded from the liabilities arising out of the company's actions.
- Therefore, if the company incurs debts or contravenes any laws, then the members are not liable for those errors and enjoy corporate insulation.
- In simpler words, the shareholders are protected from the acts of the company.

- **Piercing the Corporate Veil** means looking beyond the company as a legal person. Or, disregarding the corporate identity and paying regard to humans instead.

- In certain cases, the Courts ignore the company and concern themselves directly with the members or managers of the company. This is called piercing the corporate veil.

- Usually, Courts choose this option when the case involves a question of control rather than ownership.

DOCTRINE OF CONSTRUCTIVE NOTICE / KNOWLEDGE

- Every outsider dealing with a company is deemed to have notice of the contents of the Memorandum and the Articles of Association. These documents, on registration with the Registrar, assume the character of public documents. This is known as 'constructive notice' of Memorandum and Articles.
- The Memorandum and the Articles are open and accessible to all. It is the duty of every person dealing with a company to inspect these documents and see that it is within the powers of the company to enter into the proposed contract.
- Section 399, 2013 provides the inspection, production and evidence of documents kept by Registrar. It provides that the memorandum and articles when registered with Registrar of Companies becomes public document and then they can be inspected by anyone on payment of a nominal fee.

- Any person who contemplates entering into a contract with the company has the means of ascertaining and is thus presumed to know the powers of the company has the means of ascertaining and is thus presumed to know the powers of the company and the extent to which they have been delegated to the directors.

- In other words, every person dealing with the company is presumed to have read these documents and understood them in their true perspective. known as **doctrine of constructive notice.**

- As criticisms of the doctrine of constructive notice, the new theory called the doctrine of indoor mgt. has been evolved by the courts.

- **The doctrine of constructive notice seeks to protect the company against the outsider; the other doctrine operates to protect outsiders against the company.**

DOCTRINE OF INDOOR MANAGEMENT

- The rule of indoor management is based upon obvious reasons of convenience in business relations.
- Firstly, the memorandum and articles of association are public documents, open to public documents. But, the details of internal procedures are not thus open to public inspection.
- Hence, an outsider is presumed to know the constitution of a company; but not what may or may not have taken place within the doors that are closed to him.

- Hence, if an act is authorized by the Memorandum or Articles of Association, then the outsider can assume that all detailed formalities are observed in doing the act. This is the Doctrine of Indoor Management or the Turquand Rule.

- This is based on the landmark case between The Royal British Bank and Turquand. In simple words, the doctrine of indoor management means that a company's indoor affairs are the company's problem.

Exceptions to the Doctrine of Indoor Management

- The outsider has actual or constructive knowledge of an irregularity
- The outsider behaves negligently
- Forgery

TYPES OF CAPITAL

1.Nominal or Authorised Capital: It refers to the amount stated in the Memorandum of Association as the capital of the company with which it is to be registered. This is the maximum amount of capital which a company is authorised to raise by issuing the shares. This is also known as ‘registered capital’.

2. Issued Capital: It is that part of the authorised capital which is issued to the public for subscription. It is not necessary for a company to issue all the nominal capital in the beginning itself. In fact, the term ‘issued capital’ means that part of the share capital which has been actually issued or offered by the company. The balance of nominal capital remaining to be issued is called ‘unissued capital’.

3) Subscribed Capital: It is that part of nominal value of issued capital which has been actually subscribed by the public. In other words, it is that part of issued capital for which the applications have been received from the public and shares allotted to them. A company cannot accept for subscription an amount greater than the issued amount. Where the shares issued for subscription are wholly subscribed, issued capital will be the same as the subscribed capital.

4) Called-up Capital: It is that part of nominal value of issued capital which has been called-up or demanded on the shares by the company. Many times, a company does not collect the full amount on shares it has allotted. It collects it in installments known as application money, allotment money, first call, second call and so on. The amount of installments which have been demanded for the time being are termed as ‘called-up capital’ and the amount not yet demanded is termed as ‘uncalled capital’ and the shareholders continue to be liable to pay this amount as and when called.

5) Paid-up Capital: It is that part of the called-up capital which has actually been received from the shareholders. For example, a company has called up Rs.5 lakhs, but it has actually received Rs.4,90,000 then Rs.4,90,000 is the paid-up capital of the company.

The amount not paid in respect of allotment and calls made is known as ‘calls in arrears’. In the above example, Rs.10,000 is the amount of calls in arrears. In case there are no calls in arrears, the paid-up capital will be the same as the called-up capital.

TYPES OF SHARES

- Types of Shares As per the Companies Act, 2013, only two kinds of shares can be issued by a company. Section 43 of the Act provides that the share capital of a company limited by shares shall be of two kinds only, namely :

a) Equity share

i) with voting rights, or

ii) with differential rights as to dividend, voting or otherwise in accordance with such rules and subject to such conditions as may be prescribed;

b) Preference share

EQUITY SHARES

- The equity shares are those shares which are not preference shares. In other words, shares which do not enjoy any preferential right in the matter of payment of dividend or repayment of capital are known as equity shares.
- After satisfying the rights of preference shares, the equity shares shall be entitled to share in the remaining amount of distributable net profits of the company.
- The dividend on equity shares is not fixed and may vary from year to year depending upon the amount of profits available.
- The rate of dividend is recommended by the Board of directors of the company and declared by shareholders in the annual general meeting.

PREFERENCE SHARES

Preference Shares or Preference Share Capital means that part of the share capital of the company which fulfils both the following requirements:

1) During the life of the company it must be assured of a preferential dividend. The preferential dividend may consist of a fixed amount (say, one lac rupees) payable to preference shareholders before anything else is paid to the equity shareholders. Alternatively, the amount payable as preferential dividend may be calculated at a fixed rate, e.g., 10% of the nominal value of each share.

2) On the winding-up of the company it must carry a preferential right to be paid, i.e., amount paid up on preference shares must be paid back before anything is paid to the equity shareholders.

WINDING UP OF COMPANY

Modes of Winding up

1. Winding up by the court
2. Voluntary winding up.

    a) Members' voluntary winding up, or

    b) Creditors' voluntary winding up

3. Winding up subject to the supervision of the court.

WINDING UP BY COURT
(COMPULSORY WINDING UP)

1. If the company by special resolution , to court.
2. If default is made in delivering the statutory report to Registrar of company.
3. If company does not commence its business within 1 year or suspends for whole year
4. Company is unable to pay its debt
5. If court is of opinion that it is just and equitable