THE COMPANIES ACT 2013

- The Companies Act 2013 extends to whole of India
- The Provisions of this act apply to
  - A company registered under the act
  - Insurance Companies (except when in conflict with the IRDA Act)
  - Banking Companies (except when in conflict with the Banking Regulation Act)
  - Electricity Companies except when in conflict with the Electricity Act)
  - Company Governed by Special Acts (e.g. RBI, SBI)

What is a Company?

A company is an association of persons who contribute money to a common stock and employ it in business and share the profits thereof. Characteristics of a company are:-

- Separate Legal Entity
- Artificial Person
- Perpetual Succession
- Common Seal
- Transferability of Shares
- Limited Liability

Lifting of Corporate Veil

- Company is an entity distinct from its members.
- Where there is a dishonest and fraudulent intention to use the facility of incorporation the law can remove the Corporate Veil and identify the persons behind the Company Fraud, hold such persons liable. This is called lifting of corporate veil.
- Case:- Salomon v Salomon & Co Ltd
- Lifting of Corporate Veil means – Disregarding the Corporate Entity and paying regard to the realities behind the legal façade

Cases

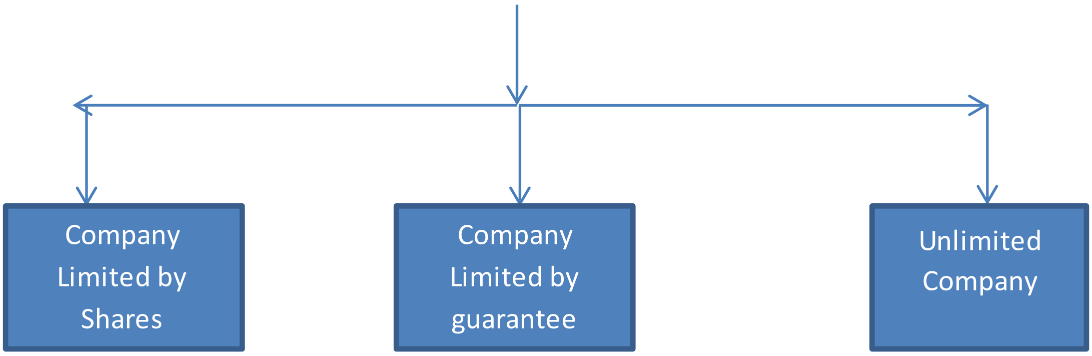
Name of Case	Facts and decision
Daimler Co Ltd Vs Continental Tyre and Rubber Co. Ltd	A company was incorporated in England having entire share capital held by a German Company. All Directors were German Residents and during the first world war the company was considered an alien enemy and the company was not able to recover a debt from English Company.
Dinshaw Maneckjee Petit	Formed Companies for the purpose of Tax Evasion. Dividends and Interest Income earned by the company was returned to the person as a loan

Other Cases

- Companies forming subsidiaries to act as their agent
- Law relating to exchange control
- For illegal or improper purpose, i.e., circumvent or defeat law, to defraud creditors or to avoid legal obligations.

Classification of Companies under the Act

On the Basis of Liability



Company Limited by Shares

- A company in which the liability of the members is limited by the Memorandum of Association, to the amount unpaid on the shares respectively held by them.

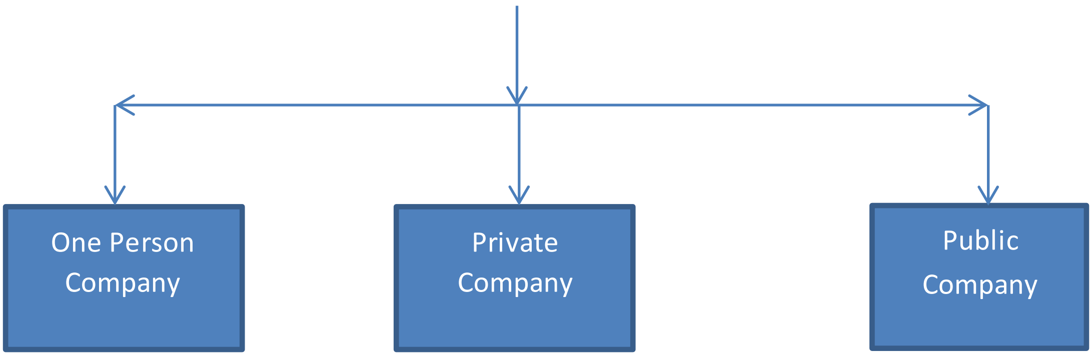
Company Limited by Guarantee

- Liability of the members is limited to the amount which they undertake to contribute to the assets of the company in the event of its winding up

Unlimited Companies

- A company not having any limit on the liability of the members.
- The Liability of each member extends to the whole amount of the company's debts and liabilities

On the Basis of Members



One person Company

- Only One Person as a Member
- It is a private Company
- Minimum Paid up share Capital of Rs. 1 Lakh.

Private Company

- Minimum Paid Up Share Capital Rs. 1 Lakh or higher amount prescribed
- Restrict the right to transfer the shares
- Limits the Number of Members to 200
- Prohibits any invitation to the public to subscribe to the securities of the company

The **Companies (Amendment) Act, 2015** has *withdrawn the Minimum paid up capital requirement of a Private Company*. Hence the First point is of no relevance now.

Public Company

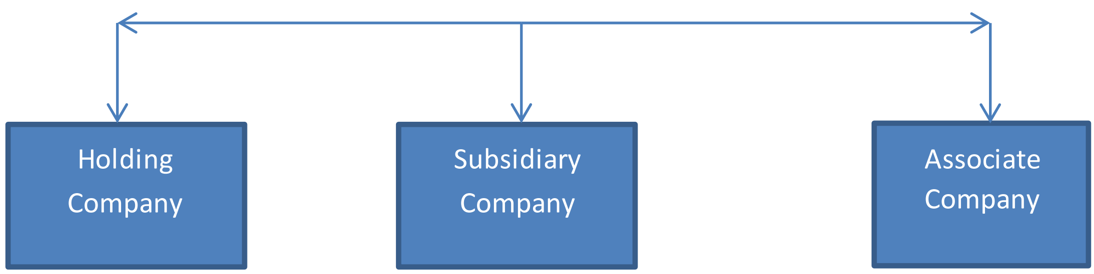
- Which is not a private company
- Has a minimum paid up share capital of Rs. 5 Lakhs or such higher prescribed amount.
- Minimum Number of Members-7

The **Companies (Amendment) Act, 2015** has *withdrawn the Minimum paid up capital requirement of a Public Company*. Hence the Second point is of no relevance now.

Small Company

- A company other than a public company
- Paid up Share Capital –not exceed Rs. 50 lakhs or higher prescribed-extend to Rs. 5 Crores
- Turnover as per the last Profit and Loss Account does not exceed Rs. 2 Crores or a higher prescribed amount-not more than Rs. 20 Crores
- Provisions of small company shall not apply to
  - Holding Company or a subsidiary Company
  - Company Registered Under Section 8
  - Company or body Governed by any special act

On the Basis of Control



Holding Company

- It means a company in which such companies are subsidiary companies

Subsidiary Company

- It means a company in which the Holding Company
    - Controls the composition of board of directors , or
    - Exercises or controls more than half of the share capital on its own or with any of its subsidiaries

Associate Company

- It means a company in which other company has a significant influence but not a subsidiary company of the company having influence
- Significant influence means control of atleast 20% of the share capital or of business decisions under an agreement
- Share capital includes paid up equity share capital and convertible preference share capital

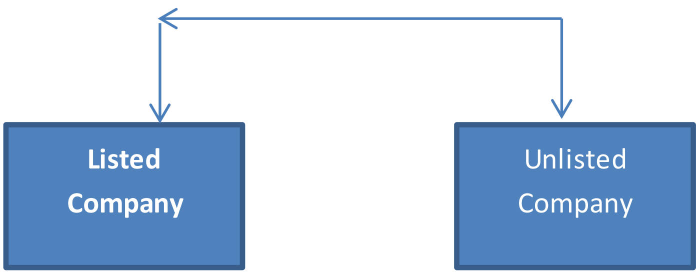
Subsidiary Company not to hold shares in its holding company

Subsidiary company cannot hold shares in the holding company.

Exceptions are as follows:-

- Subsidiary Company held shares before it became subsidiary
- Shares held as a legal representative of a deceased member
- Shares held as a trustee

On the Basis of Access to Capital



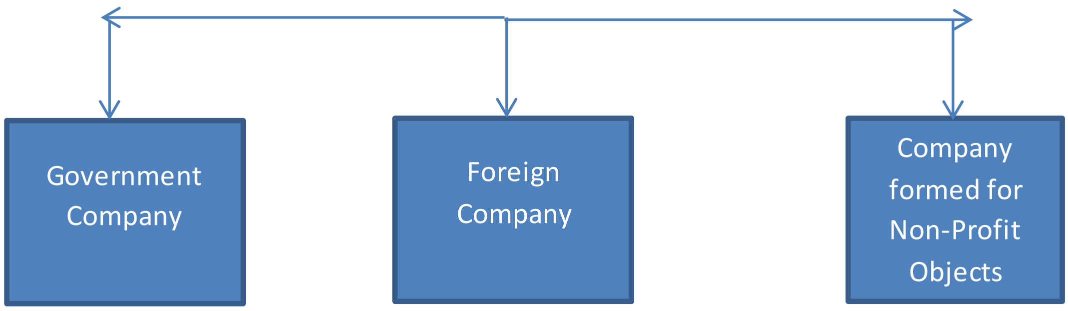
Listed Company

- A Company which has its securities listed in any of the recognised stock exchanges

Un-Listed Company

- A company other than a listed Company

Other Companies



Government Company

- A company in which not less than 51% of the paid up share capital is held by
  - The Central Government , or
  - Any State Government, or
  - Partly by Central Government and by one or more State Governments.

Foreign Company

- A company incorporated outside India which
  - Has a place of business in India or
  - Conducts its business in India in any other manner

Company formed for Non Profit Objects (Sec.8 Company)

- Such a company is formed
  - For the promotion of charitable objects (Commerce, art, sports, education, research)
- Company intends to apply the profit for its objects
- Company prohibits payment of dividend to its members
- Central Government has the power to grant the licence with conditions prescribed
- Central Government may revoke licence on the following grounds
  - Contravenes conditions
  - Fraudulent conduct of affairs
  - Prejudicial to public interest
- Before such revocation, an opportunity of being heard shall be given to the company
- On revocation, Central Government shall order the company to be amalgamated with a company having similar objects if it deems fit in public interest

- Penalty for contravention+
  - To the Company-Rs. 10 Lakhs to Rs. 1 Crore
  - To the Directors-Rs.25,000 to Rs. 25 Lakhs (With imprisonment –Maximum 3 years)

Dormant Company :- A company formed and registered under the act for

Future Project

OR

Hold an asset or intellectual property

And has no significant accounting transaction it shall apply for obtaining status of a dormant company

Significant accounting transaction not to include

- Payment of fees to the registrar
- Payment to fulfil the requirements of the Act
- Allotment of shares
- Payments for office maintenance

Nidhi Company

- Company incorporated with the object of cultivating the habit of savings amongst its members, receiving deposits from members and lending to members only

Public Financial Institutions

- Following institutions have been notified –LIC, Infrastructure Development Finance Company

Conversion of Companies

- Public Company can be converted into Public Company by
  - Passing a Special Resolution
  - Altering Articles of Association
  - Permission from the National Company Law Tribunal
    - Private Company can be converted into a Public Company

REGISTRATION

Any Association or Partnership consisting of more than 100 persons shall be formed for carrying business for earning profit unless it is registered as a company under this act. Exceptions are:-

- HUF carrying on any business

- Association or Partnership, if formed by professionals Governed by special acts.

Association formed with more than such members will be deemed an illegal association under the act

Minimum Number of Members

Private Company- 2, Public Company-7 One Person Company –ONE

One Person Company

- Memorandum of Association shall state the Nominee's name
- Nominee to give his consent and same to be filed with Registrar
- Nominee to be given option to withdraw his consent
- Member of OPC can change Nominee by giving notice to Company, who in turn will intimate Registrar, Change in name not deem as alteration of memorandum
- Natural Person resident in India (stayed more than 182 days in the preceeding previous year) shall incorporate an OPC and also be nominee for OPC
- No person-incorporate more than one OPC or become nominee in more than one OPC
- No minor become member of OPC or become a nominee
- Restrictions for an OPC
  - Not Convert itself into a Sec. 8 Company
  - Not Carry out Non-Banking Finance Activity (NBFC)
  - Not convert Voluntarily into any other company within 2 years from incorporation
- Compulsory Conversion of OPC
  - When the Paid up share Capital exceeds Rs. 50 Lakhs, OR
  - Average Annual Turnover during the immediately preceeding 3 Financial Years exceeds Rs. 2 Crores
- Contravening Provisions for OPC
  - Company- Punishable with a fine –Rs. 10,000 maximum and further fine of Rs. 1000 per day for the further period of contravention.

INCORPORATION OF COMPANIES

- The following documents to be filed with the Registrar for Registration
  - Memorandum and Articles of Association duly signed by all the subscribers
  - Declaration by person engaged in formation (CA/CS/CWA) and person named in articles (Director, manager or secretary) all requirements of act relating to registration have been met
  - Affidavit from the subscribers of memorandum and first directors that
    - They have no previous instances of offence in connection with the formation, promotion or management
    - Not found guilty of any fraud or misfeasance or breach of duty to any company for last 5 years

        - Documents filed with registrar for registration are true and complete and correct
    - Address for correspondence till establishment of registered office
    - Particulars of subscribers to the Memorandum of Association including their ID proof
    - Particulars of Directors including DIN
    - Particulars of Interest of Directors in other firms or body corporates along with their consent to act as directors

The Registrar shall

    - Issue a Certificate of Incorporation
    - Allot a CIN (Corporate Identity Number)
- The Company will maintain all the documents and information at its Registered Office

Commencement of Business

A company having share capital shall not commence any business or exercise any borrowing powers unless:-

- A declaration is filed with ROC stating
    - Subscribers to MoA has paid the value for the shares
    - Paid up Share Capital is not less than the minimum prescribed
    - Verification of the Registered Office
- Default for compliance
    - Company-maximum Rs.5,000
    - Officer- extend to Rs. 1,000 for each day
- No declaration is filed within 180 days of incorporation –Registrar has reason to believe company is not carrying on any business, he may
    - Impose penalties and
    - May Initiate action for the removal of the name of the company from the register of companies

REGISTERED OFFICE

- From the 15th day of its incorporation, , a company shall have a registered office – for receiving the communications and notices
- Within 30 days of incorporation- furnish to the registrar- a verification of registered office
- Change of registered office –Intimate to the Registrar within 15 days of the change
- Provisions relating to Change of Registered office

Within Local Limits of the city	➢ Board Resolution ➢ Special Resolution in Shareholders Meeting

	➢ Intimate to the ROC ➢
Outside the Local Limits of the City	➢ Board Resolution ➢ Special Resolution in Shareholders Meeting ➢ Intimate to the ROC ➢
From One state to another	➢ Board Resolution ➢ Special Resolution in Shareholders Meeting ➢ Intimate to the ROC ➢ Approval of Regional Director ➢ Consent of Creditors and Debenture Holders ➢ Fresh Certificate of Incorporation to be issued

- Confirmation of change shall be communicated within 30 days by Regional Director
- Company-file confirmation with ROC within 60 days of confirmation from the RD
- ROC to certify the registration within 30 days from filing such confirmation, Such a certification-deemed as compliance of all formalities relating to change

LABELLING OF A COMPANY

- Paint or affix the name, and the address of its registered office-same to be painted or affixed on every place business is carried on-in conspicuous position and legible letters-
- Name engraved in common seal
- Name, address and registered office, CIN and contact details-telephone no. fax and other details in letterheads, bills and notices and official communications
- Name printed in negotiable instruments- promissory notes, bill of exchange, etc.
- Change of name during the last 2 years- paint/affix/print along with the new name, the former name or names changed during last 2 years
- One person Company-mentioned in brackets below the name of the company

The **requirements of a Common Seal** has been **dispensed away with** by the Companies (Amendment) Act 2015. No more compulsory requirement for the Common Seal

Provisions of the Act will override the provisions of the Memorandum and Articles:- Anything inconsistent with the provisions of the act will be void

MEMORANDUM OF ASSOCIATION

- Defines the Constitution and scope of powers of the company
- Registering Memorandum-Purpose

  - Intending investor –knows how his funds will be utilised
  - Persons transacting with company- whether the company is authorised to enter into a particular transaction
  - Anything done beyond the memorandum- deemed ultra-vires (beyond the powers) and void
- Contents of the Memorandum
  - Name of the Company
    - Public Company-end with "Limited"
    - Private Limited-end with "Private Limited"
    - Name of a Company
      - Not to be identical or bear resemblance to name of existing Co.
      - Not to be offensive and be undesirable
      - Not have word or expression giving impression that company is connected or having patronage of the Central Government or State Government or local authority
      - Not to have certain words or expressions-unless approval of Central Government received
    - Reservation of Name
      - Company to apply to Registrar and Registrar to reserve the name for 60 days from application
      - If found later on, that the name was applied by furnishing wrong information, then
        - Company has not been incorporated- reserved name be cancelled and applicant be liable for penalty
        - Company has been incorporated, ROC may
          - Direct to change the name within 3 months
          - Take action for striking off the name from the register of members
          - Make petition for winding up
    - Change of name of company
      - Approval of Central Government is needed
      - If it is only related to change by addition of "Private" or change of class of company- no such approval necessary
      - No Name change allowed for a company-defaulted in filing the returns with Registrar or repayment of Interest on Debentures or repayment of deposits on maturity
      - ROC will issue a fresh certificate of Incorporation
      - Central Government can direct the company to change the name if :-
        - It resembles the name of an existing co –within 3 months
        - It resembles a similar trade mark-within 6 months
  - Registered office – State In which the same shall be located
  - Objects for which the company is to be incorporated-

        - If company changes activities –not reflected in name, change the name in line with the activities
        - Change in Objects- if company has raised money from public and there is still un-utilised amount- it shall not change objects unless
            - Details Circulated in Newspapers- one English and one Local Paper where the Registered office is situated
            - Dissenting Shareholders-given an exit option
            - Registrar will certify the alteration of Memorandum within 30 days of filing the resolution.
    - Liability of the Members
        - In case of company limited by shares- liability of members limited to the unpaid amount on shares held by them
        - In case of a company limited by guarantee- amount member undertakes to contribute
            - To assets of the company in the event of winding up
            - To costs, charges and expenses of winding up
    - Capital Clause
        - Case of company having share capital- amount of share capital with which the company is to be registered and division into shares
    - Subscriber Clause
        - Name of the subscriber and the number of shares against the name of the person
- In case of OPC, the same shall state the name of the Nominee Member
- Memorandum of Association to be in the format prescribed under the Tables A,B, C, D and E in schedule as applicable to the company
- Provision in Memorandum and Articles of a Guarantee Company and not having share capital to share profits with a person other than as a member, shall be void
- When a company changes the name, it shall give notice to the ROC of the change along with the order of the Central Government

ARTICLES OF ASSOCIATION

- Rules and Regulations framed to manage the internal affairs of the company
- These are considered the bye-laws of the company according to which directors and other officers are required to perform the functions
- These shall contain additional matters as prescribed necessary for the management. It may also contain provisions for entrenchment (More restrictive). These provisions to be informed or notice to be given to registrar
- Entrenchment Provisions shall be made
    - On the formation
    - Or amendment in the articles
- Model Articles specified in Table F , G, H, I and J in Schedule 1 as may be applicable
- Alteration of articles

  - By Passing Special Resolution
  - Conversion of Private Company to Public Company-Change the restrictions applicable
  - Conversion of Public Company to Private Company- With permission of the Tribunal
- Every alteration of articles and copy of order of Tribunal –to be filed with ROC within 15 days
- Alteration in the articles, to be noted in every copy

Copies of Memorandum and Articles to be given to members

On Request from a member, a Company shall send copies of the Memorandum and Articles and Specified resolutions within seven days of the request and on the payment of the prescribed fees

Doctrine of Constructive Notice

Persons dealing with the company are deemed to have notice of the contents of the Memorandum of Association e.g. if someone supplies goods to a company which the company cannot deal as per the objects clause the person will not be able to recover the amount from the person

Doctrine of Indoor Management

- Outsiders need not have notice of the internal affairs of the company
- If an act is authorised by the Articles or Memorandum, then the outsider is entitled to assume all formalities are complied with e.g. if the company is authorised to issue bonds via special resolution, when company comes for an issue of bonds, outsiders can assume that the internal procedures are complied with
- Exceptions
  - When person dealing with the company has the notice of irregularity
  - Doctrine not protect people those who behave negligently
  - When the instrument itself is forged

Conversion of Companies already registered

- Alteration of Memorandum and Articles of Association
- Application made to the ROC
- New Certificate of Incorporation to be issued
- Post conversion, there shall not be any effect on debts, liabilities, etc.

PRE-INCORPORATION CONTRACTS

- Contracts entered into before the company came into existence are known as Prelimnary or pre-incorporation contracts
- Company comes into existence from the date of incorporation and contracts prior to the date has no effect on it

- Any vendor cannot sue or be sued by the company after the incorporation
- Persons who have acted on behalf of company are personally liable to the vendor, unless agreement provides that
    - Liability shall cease if company adopts the agreement
    - Either party may rescind the agreement, if co does not adopt
- Company may adopt the agreement by novation (replacing a party to an agreement with a new party). A Company can adopt the same if it is warranted by terms of incorporation

PROMOTERS

- Persons who initiate the promotion of a company are known as promoters
- Companies act defines Promoters as:-
    - Named in Prospectus as such person
    - Control over the affairs of the company as shareholder, director or otherwise
    - Accordance with whose advice, directions or instructions Board of Directors are accustomed to act
- Persons acting merely in professional capacity-not to be considered as promoter. E.g.:- Solicitor, Banker, Accountant
- Until the incorporation of a company, promoter stands in a fiduciary capacity towards the company and prospective shareholders. Promoter should not make any profit out of such trust and disclose interest in any transaction entered into on behalf of the company
- Promoter Can sell property to the company, provided he makes a proper disclosure
- No right to demand remuneration unless there is a contract to the contrary

SERVICE OF DOCUMENTS

- Service of Document to the company by- Registered Post, Speed Post, Courier or leaving it at Registered Office, electronic means as prescribed
- Securities held with a depository, the records of beneficial interest shall be served on the depository by means of electronic mode
- Service of Documents to the Registrar or Members:-Post, Registered Post, Speed Post, Courier or delivering at the office or address or by electronic mode as prescribed
- Documents to be

Delivery by post, service deemed to be effected:-

- Notice of a meeting- expiry of 48 hours after the letter containing the same is posted
- Any other case:- letter would be delivered in the ordinary course of post

Authentication of Documents

- By any Key Management Personnel
- Officer of the Company duly authorised by the Board in this behalf