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Unit- 1

THE INDIAN COMPANIES ACT, 2013

BASIC TERMS WITH CONCEPT

INDIAN COMPANIES ACT, 2013

**COMPANIES
ACT 2013**



The **Companies Act 2013** is an Act of the Parliament of India on Indian company law which regulates incorporation of a company, responsibilities of a company, directors, dissolution of a company. The 2013 Act is divided into 29 chapters containing 470 sections as against 658 Sections in the Companies Act, 1956 and has 7 schedules. However, currently there are only 438 (470-39+7) sections remains in this Act.^[1] The Act has replaced The Companies Act, 1956 (in a partial manner) after receiving the assent of the President of India on 29 August 2013. The Act came into force on 12 September 2013 with few changes like earlier private companies maximum number of members were 50 and now it will be 200. A new term of "one-person company" is included in this act that will be a private company and with only 98 provisions of the Act notified.^{[2][3]} A total of another 184 sections came into force from 1 April 2014.

The Ministry of Corporate Affairs thereafter published a notification for exempting private companies from the ambit of various sections under the Companies Act. The 2013 legislation has stipulations for increased responsibilities of corporate executives in the IT sector, increasing India's safeguards against organised cyber crime by allowing CEO's and CTO's to be prosecuted in cases of IT failure.

Features & Characteristics Of A Company

- (i) Incorporated Association:-** A company comes into existence when it is registered under the Companies Act (or other equivalent act under the law). A company has to fulfil requirements in terms of documents (MOA, AOA), shareholders, directors, and share capital to be deemed as a legal association.
- (ii) Artificial Legal Person:-** In the eyes of the law, A company is an artificial legal person which has the rights to acquire or dispose of any property, to enter into contracts in its own name, and to sue and be sued by others.
- (iii) Separate Legal Entity:-** A company has a distinct entity and is independent of its members or people controlling it. A separate legal entity means that only the company is responsible to repay creditors and to get sued for its deeds. The individual members cannot be sued for actions performed by the company. Similarly, the company is not liable to pay personal debts of the members.

(iv) Perpetual Existence:- Unlike other non-registered business entities, a company is a stable business organisation. Its life doesn't depend on the life of its shareholders, directors, or employees. Members may come and go but the company goes on forever.

(v) Common Seal:- A company being an artificial legal person, uses its common seal (with the name of the company engraved on it) as a substitute for its signature. Any document bearing the common seal of the company will be legally binding on the company.

(vi) Limited Liability:- A company may be limited by guarantee or limited by shares. In a company limited by shares, the liability of the shareholders is limited to the unpaid value of their shares. In a company limited by guarantee, the liability of the members is limited to the amount they had agreed upon to contribute to the assets of the company in the event of it being wound up.

Classification of Companies



(1) Public Company (or Public Limited Company)

A public company is a corporation whose ownership is open to the public. In other words, anyone can buy the shares of a public company. There are no restrictions to the number of members of a public company or to the transferability of shares. However, there are some other restrictions:

- (i) (In UK) A public limited company should have at least 2 shareholders and 2 directors, have allotted shares to the total value of at least £50,000, be registered with company house, and have a qualified company secretary.
- (ii) (In India) A public company should have at least 7 members and 3 directors, and issue a prospectus or file a statement in lieu of prospectus with the Registrar before allotting shares.

(2) Private Company (or Private Limited Company)

A private company cannot be owned by the public; it restricts the number of members, the right to transfer its shares and prohibits any invitation to the public to subscribe for any shares or debentures of the company.

- (i) (In UK) A private company is a separate legal entity with a suitable company name, an address, at least one director, at least one shareholder, and memorandum of association and article of association.
- (ii) (In India) A private company is a separate legal entity with a suitable company name, an address, at least 2 members and at most 200 members, and at least two directors with one being an Indian resident.



(3) One Person Company

One person company is a company which has only one member (as per Companies Act, 2013 rules three).

An OPC must mention (One Person Company) at the last of its name wherever it puts its signature.

The member of OPC must be the citizen and resident of India.

No person can be the member of more than one OPC or the Nominee of more than one OPC.



An OPC must convert itself into a Private Company and Public Company in the following :-

- (i) If its paid up capital exceeds ₹5,00,000 .
- (ii) If its average annual turnover for the relevant period exceeds ₹2 crores .

Difference between Public Company and Private Company:



Following are the main points of difference between a public company and a private company:

1. **Minimum Paid-up Capital-** A company to be incorporated as a Private Company must have a minimum paid-up capital of Rs. 1, 00,000, whereas a Public Company must have a minimum paid-up capital of Rs. 5, 00,000.
2. **Minimum Number of Members-** Minimum number of members required to form a private company is 2, whereas a Public Company requires at least 7 members.
3. **Maximum Number of Members-** Maximum number of members in a Private Company is restricted to 50, there is no restriction of maximum number of members in a Public Company.
4. **Number of Directors-** A Private Company may have 2 directors to manage the affairs of the company, whereas a Public Company must have at least 3 directors.

5. Transferability of Shares- There is complete restriction on the transferability of the shares of a Private Company through its Articles of Association, whereas there is no restriction on the transferability of the shares of a Public Company.
6. Issue of Prospectus- A Private Company is prohibited from inviting the public for subscription of its shares, i.e. a Private Company cannot issue Prospectus, whereas a Public Company is free to invite public for subscription i.e., a Public Company can issue a Prospectus.
7. Qualification of Shares- The Directors of a Private Company need not sign an undertaking to acquire the qualification shares, whereas the Directors of a Public Company are required to sign an undertaking to acquire the qualification shares of the public Company.
8. Consent of the Directors- There is no need to give the consent by the directors of a Private Company, whereas the Directors of a Public Company must have file with the Registrar a consent to act as Director of the company.
9. Share Warrants- A Private Company cannot issue Share Warrants against its fully paid shares, whereas a Private Company can issue Share Warrants against its fully paid up shares.

Memorandum Of Association

The Memorandum of Association or MOA of a company defines the constitution and the scope of powers of the company. In simple words, the MOA is the foundation on which the company is built. In this article, we will look at the laws and regulations that govern the MOA. Also, we will understand the contents of the Memorandum of Association of a company.

Object of registering a Memorandum of Association or MOA:-

- (i) The MOA of a company contains the object for which the company is formed. It identifies the scope of its operations and determines the boundaries it cannot cross.
- (ii) It is a public document according to Section 399 of the Companies Act, 2013. Hence, any person who enters into a contract with the company is expected to have knowledge of the MOA.
- (iii) It contains details about the powers and rights of the company.

Format of Memorandum of Association (MOA)

According to Section 4 of the Companies Act, 2013, companies must draw the MOA in the form given in Tables A-E in Schedule I of the Act. Here are the details of the forms:

- (i) Table A:** Form for the memorandum of association of a company limited by shares.
- (ii) Table A:** Form for the memorandum of association of a company limited by shares.
- (iii) Table C:** Form for the memorandum of association of a company limited by guarantee and having a share capital.
- (iv) Table D:** Form for the memorandum of association of an unlimited company.
- (v) Table E:** Form for the memorandum of association of an unlimited company and having share capital.

Contents of the Memorandum of Association



1. Name Clause

- (i) For a public limited company, the name of the company must have the word 'Limited' as the last word
- (ii) For the private limited company, the name of the company must have the words 'Private Limited' as the last words.

2. Registered Office Clause

It must specify the State in which the registered office of the company will be situated.

3. Object Clause

It must specify the objects for which the company is being incorporated. Further, if a company changes its activities which are not reflected in its name, then it can change its name within six months of changing its activities. The company must comply with all name-change provisions.

4. Capital Clause

This is valid only for companies having share capital. These companies must specify the amount of Authorized capital divided into shares of fixed amounts. Further, it must state the names of each member and the number of shares against their names.

4. Liability Clause

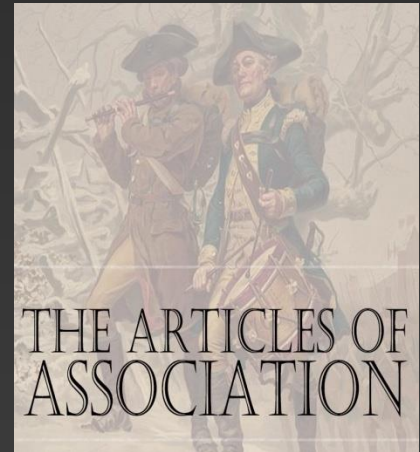
It should specify the liability of the members of the company, whether limited or unlimited. Also,

- (i) For a company limited by shares** – it should specify if the liability of its members is limited to any unpaid amount on the shares that they hold.
- (ii) For a company limited by guarantee** – it should specify the amount undertaken by each member to contribute to:
 - (a) The assets of the company when it winds-up. This is provided that he is a member of the company when it winds-up or the winding-up happens within one year of him ceasing to be a member. In the latter case, the debts and liabilities considered would be those contracted before he ceases to be a member.
 - (b) The costs, charges, and expenses of winding up and the adjustment of the rights of the contributors among themselves.

5. Association Clause

The MOA must clearly specify the desire of the subscriber to form a company. This is the last clause.

Articles of Association



Articles of Association contains rules and regulations regarding the management of a company's internal affairs. It defines the powers, duties and right of managers, officers and the board of directors.

Generally all the companies prepare their own Article of Association. In case companies do not want to prepare their own article of association, then they can select any one articles of association given in Table F of the Companies Act. In Table F of Companies Act 99 model sets of articles of associations are given. Companies can select any one from these ninety-nine sets. The Articles of Association must be signed by all the directors of the company. It must be duly attested by any two witnesses. Articles of Association is also known as byelaws of a company or Doctrine of Indoor Management.

Contents of Articles of Association

- 1.The amount of share capital and different classes of shares.
- 2.Right of each type of shareholder.
- 3.Procedure for making allotment of share.
- 4.Procedure for issuing share certificates.
- 5.Procedure for transfer of shares.
- 6.Procedure of forfeiture of shares.
- 7.Procedure for reissue of forfeited shares.
- 8.Procedure for conducting meetings
- 9.Procedure for appointment and removal of directors.
- 10.Duties, powers and remuneration of directors.
- 11.Procedure for declaration and payment of dividend.
- 12.Procedure regarding winding up the company.
- 13.Procdure regarding keeping of books of accounts and their audit.
- 14.Seal of the company.



**CONTENT OF
ARTICLE OF
ASSOCIATION**

Prospectus of a Company

After getting the company incorporated, promoters will raise finances. The public is invited to purchase shares and debentures of the company through an advertisement. A document containing detailed information about the company and an invitation to the public subscribing to the share capital and debentures is issued. This document is called 'prospectuses. Private companies cannot issue a prospectus because they are strictly prohibited from inviting the public to subscribe to their shares. Only public companies can issue a prospectus. According to the Companies Act, 1956, defines prospectus as, "A prospectus means any document described or issued as prospectus and includes any notice, circular, advertisement or other documents invent deposits from public or inviting offers from the public for the subscription or purchase of any shares in or debentures of a body corporate."

The prospectus is not an offer in the contractual sense but only an invitation to offer. A document constructed to be a prospectus should be issued to the public.



A prospectus should have the following essentials:-

- (i) There must be an invitation offering to the public.
- (ii) The invitation must be made on behalf of the company or intended company.
- (iii) The invitation must to be subscribed or purchase.
- (iv) The invitation must relate to shares or debentures.

Contents

- 1.Name and full address of the company.
- 2.Full particulars about the signatories to the memorandum of association and the number of shares taken up by them.
- 3.The number and classes of shares. The interest of shareholders in the property and profits of the company.
- 4.Name, address and occupations of members of the Board of Directors or proposed Directors.
- 5.The minimum subscription fixed by promoters after taking into account all financial requirements at the beginning.
- 6.If the company acquires any property from vendors, their full particulars are to be given.

- 7.The full address of underwriters, if any, and the opinion of directors that the underwriters have sufficient resources to meet their obligations.
- 8.The time of opening of the subscription list.
- 9.The nature and extent of interest of every promoter in the promotion of the company.
- 10.The amount payable on application, allotment and calls.
- 11.The particulars of preferential treatment given to any person for subscribing shares or debentures.
- 12.Particulars about reserves and surpluses.
- 13.The amount of preliminary expenses.
- 14.The name and address of the auditor.
- 15.Particulars regarding voting rights at the meeting of the company.
- 16.A report by the auditors regarding the profits and losses of the company.

