

Commercial's

A Handbook on
**CORPORATE AND
OTHER LAWS**

CA Inter – New Syllabus 2023

Applicable for May 2024 & onwards Examination

CA Abhishek Bansal

(B.Com, FCA, CS, PGDFM)

**2024
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Phones: 43502007, 43502008, 43011562, 43452009

e-mail: commercialhouse@yahoo.co.in

naveen.commercialhouse@gmail.com

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∞ Preface ∞

It gives me immense pleasure in presenting the Handbook on "Corporate & Other Laws" for CA Intermediate examination.

The book has been written keeping in view the requirements of CA Inter examination of the Institute of Chartered Accountants of India.

My heartfelt and sincere thanks to publishers COMMERCIAL LAW PUBLISHERS INDIA PRIVATE LTD. for trusting me with this responsibility.

Salient Features:

- ✦ As per syllabus approved by ICAI.
- ✦ Upto date amendments including Companies Act, 2013.
- ✦ Charts for proper understanding.
- ✦ Key words are highlighted.
- ✦ Question / Answer format for better understanding.
- ✦ Covers Past ICAI Paper, RTP & Mock Paper Questions.

Suggestions from all readers would be highly appreciated and acknowledged.

You can mail your suggestions, advice and comments on abhibansal3@gmail.com.

For latest updates, visit www.letslearnindia.in/8448448919.

Finally, I hope that students will find this book beneficial from exam point of view.

My heartfelt thanks to my beloved wife Ria Teniwal for helping me in drafting this book.

Wishing every success to the readers.

Enjoy reading and all the best.



CA Abhishek Bansal
25th September, 2023

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DEFINITIONS

1. **Private Company [Sec. 2(68)]:**

- Company having minimum paid up share capital (PUSC) of as may be prescribed with following restrictions:
- T – Restrictions on transferability of shares
- R – Restriction on membership i.e. Max 200
- P – Prohibition on issuing prospectus / public issues.



Figure 1 Logo of American Express (India) Pvt. Ltd. - A Private Limited Company

2. **Public Company [Sec. 2(71)]:**

- Company other than private company is a public company.
- Minimum PUSC – may be prescribed
- A subsidiary of a public ltd. Co. shall be deemed to be a public Co. even when such subsidiary company continues to be a private company in its articles.



Figure 2 Logo of Reliance Industries Limited - A Public Limited Company

3. **Company Limited by Shares [Sec. 2(22)]:**

A registered company whether public or private company having the liability of its members limited by its memorandum to the amount, if any unpaid on shares respectively held by them.

4. **Company Limited by Guarantee [Sec. 2(21)]:**

A registered company having the liability of its members limited by its memorandum to such an amount as the members may respectively undertake by the memorandum to contribute to assets of the company in the event of winding up.

5. **Unlimited Company:**

An unlimited Co. is a Co. not having any limit on the liability of its members. A company registered as an unlimited company may subsequently convert itself as a limited company, subject to the condition that any debts, liabilities, obligations or contracts incurred or

entered into, by or on behalf of the unlimited company before such conversion are not affected by such changed registration.

6. One Person Company (OPC) [Sec. 2(62)]:

As per section 2(62) of the Companies Act, 2013, "One Person Company" means a company which has only one person as a member. The memorandum of One Person Company is required to indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract to become the member of the company and the written consent of such person shall be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles. Such Company is also a Private Company. All the Rules as applicable to a private company shall equally apply to a OPC except for specific provision applicable to OPC.

Other conditions for One Person Company are as under:

- ◆ The memorandum of OPC shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- ◆ The other person (nominee) whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation along with its Memorandum of Association and Articles of Association.
- ◆ Such other person (nominee) may be given the right to withdraw his consent.
- ◆ The member of OPC may at any time change the name of such other person (nominee) by giving notice to the company and the company shall intimate the same to the Registrar.
- ◆ Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- ◆ Only a natural person who is an Indian citizen *whether resident in India or otherwise-*
 - (a) shall be eligible to incorporate One Person Company (OPC);
 - (b) shall be a nominee for the sole member of One Person Company (OPC).

Explanation I - For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than **120 days** during the immediately preceding financial year.

- ◆ A natural person shall not be a member of more than one OPC at any point of time and the said person shall not be a nominee of more than one OPC.
- ◆ Where a natural person being member in OPC becomes member in another such company by virtue of his being a nominee in that OPC, such person shall meet eligibility criteria (as given in point above) within a period of 180 days.
- ◆ No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- ◆ Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases. The procedure of conversion is given in the rules 6 & 7 of Chapter II of the Companies Act, 2013.
- ◆ Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.

Example 1: Rajesh has formed a 'One Person Company (OPC)' with his wife Roopali as nominee. For the last two years, his wife Roopali is suffering from terminal illness and due to this hard fact he wants to change her as nominee. He has a trusted and experienced friend

Ramnivas who could be made nominee or his (Rajesh) son Rakshak who is of seventeen years of age. In the instant case, Rajesh can appoint his friend Ramnivas as nominee in his OPC and not Rakshak because Rakshak is a minor.

7. Association not for Profit [Sec. 8]:

The Central Govt may grant such a license if:

- It is intended to form a company for promoting commerce, art, science, religion, charity or any other useful object.
- Company prohibits payment of dividend to its members but intends to apply its profits or other income in promotion of its objects. Such Cos. are called Non-Profit Organisation. These Cos. are registered without the word 'Pvt. Ltd.' or 'Ltd'
- A firm may be a member of the company registered under this section.
- A company registered under section 8 shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.
- A company registered under section 8 may convert itself into company of any other kind only after complying with such prescribed conditions.
- If a company makes any default in complying with any of the requirements laid down in this section, the company shall, be punishable with fine varying from ten lakh rupees to one crore rupees and the directors and every officer of the company who is in default shall be punishable with fine varying from **twenty-five thousand rupees to twenty-five lakh rupees** And where it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

→

8. Small Company [Sec. 2(85)]:

→ Small company is a new form of private company under the Companies Act, 2013. A classification of a private company into a small company is based on its size i.e. paid up capital and turnover. In other words, such companies are small sized private companies.

"Small company" means a company, other than a public company,—

- (i) paid-up share capital of which **does not exceed four crore rupees** or such higher amount as may be prescribed which shall not be more than ten crore rupees and
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year **does not exceed forty crore rupees** or such higher amount as may be prescribed which shall not be more than one hundred 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;

9. Government Company [Sec. 2(45)]:

→ A Govt. co. is one in which min 51% of PUSC is held by Central Govt., or by State Govt. or partly by CG, partly by one or more SG.

→ Explanation. - For the purposes of this clause, the "paid-up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued.

→ A subsidiary of a Govt. Co. is also a Govt. Co.

→ Auditor of Govt. Co. is appointed by Comptroller and Auditor General of India. (CAG)

→ Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be prepared within three months of its annual general meeting, and laid before both

- Houses of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India.
- Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared within three months of its annual general meeting and laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India.

10. Foreign Company [Sec. 2(42)]:

- Foreign Co. is a Co. which is incorporated in a country outside India under law of that other Country and has established a place of business in India whether by itself or through an agent, physically or through electronic mode and conducts any business activity in India.
- Every Foreign Co. which establish a place of business in India must within 30 days of establishment of such place of business, file with ROC of New Delhi.
 - ☞ A certified copy of Charter, MOA, AOA → in English, if not in English a certified translation thereof.
 - ☞ Full address of registered or principal office.
 - ☞ List of directors and secretary of Co's with their names, address, nationality.
 - ☞ Name and address of person resident in India who is authorized to accept service of documents.
 - ☞ Full address of principal place of business in India.

Rule 2(c) of the Companies (Registration of Foreign Companies) Rules, 2014 defines 'electronic mode' as carrying out electronically based, whether main server is installed in India or not, including but not limited to-

1. Business to business and business to consumer transactions, data interchange and other digital supply transactions;
2. offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities in India or from citizens of India;
3. financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
4. online services such as telemarketing, telecommuting, telemedicine, education and information research; and
5. all related data communication services.
6. These transactions may be conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

→ Sec. 379: If in foreign co. $\geq 50\%$ of PUSC (ESC+PSC) is held singly/ jointly held by:

- (1) Indian citizen Or
- (2) Body corporate incorporated in India

(3) Such foreign co. will be treated = as if it were a co. incorporated in India

11. Holding Company [Sec. 2(46)] & Subsidiary Company [Sec. 2(87)]:

- A Company including body corporate will be a holding Co. if it holds more than 50 % of nominal value of total voting rights.
- A company will be Holding Co. if it controls the composition of board of directors.
- S. Co. of a S. Co. is the S. of H. Co. (S-Subsidiary, H-Holding)
- If the H. Co. along-with its S. Co. or S. Cos. holds more than 50 % of Nominal value of Total voting power in another Co., then that another Co. becomes subsidiary of the main holding Co. reason being shares held by the S. Co. are assumed to be held by H. Co.

12. Producer Company [Sec. 581A]:
According to the provisions as prescribed under Section 581A(l) of the Companies Act, 1956, a producer company is a body corporate having objects or activities specified in Section 581B and which is registered as such under the provisions of the Act. The membership of producer companies is open to such people who themselves are the primary producers, which is an activity by which some agricultural produce is produced by such primary producers.

13. Dormant Company [Sec. 455]:
→ Where a company is formed and registered under this Act 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 in such manner as may be prescribed for obtaining the status of a dormant company.
→ For the purpose of this definition, "significant accounting transaction" means any transaction other than –
(a) payment of fees by a company to the Registrar;
(b) payments made by it to fulfil the requirements of this Act or any other law;
(c) allotment of shares to fulfil the requirements of this Act; and
(d) payments for maintenance of its office and record

14. Authorised capital or Nominal capital means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company

15. Book and Paper and Book or Paper include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;

As per the Companies (Specification of definitions details) Rules, 2014, "e- Form" means a form in the electronic form as prescribed under the Act or the rules made thereunder and notified by the Central Government under the Act;

"Books of account" includes records maintained in respect of—

- (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
- (ii) all sales and purchases of goods and services by the company;
- (iii) the assets and liabilities of the company; and
- (iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;

Section 148 of the Companies Act, 2013 authorises Central Government to Specify Audit of Items of Cost in Respect of Certain Companies.

16. Debenture 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;

Provided that—

- (a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and
- (b) such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company, **shall not be treated as debenture**

17. Document includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or

in electronic form;

18. **Employees' stock option** means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price;

19. **Financial year**, in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:2

Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a **company incorporated outside India** and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year:

20. **Net worth** means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;

21. **Officer who is in default**, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

- (i) whole-time director (WTD);
- (ii) key managerial personnel (KMP);
- (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
- (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
- (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
- (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
- (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

Example: In a company, a default was committed with respect to the allotment of shares by the officers. In company there were no managing director, whole time director, a manager, secretary, a person charged by the Board with the responsibility of complying with the

provisions of the Act, and neither any director/directors specified by the board. Therefore, in such situation, all the directors of the company may be treated as officers in default.

22. **Sweat equity shares** means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.
23. **Turnover** means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year.
24. **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.

According to rule 2A of the Companies (Specification of definitions details) Rules, 20146, 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
 - (iii) both categories of (i) and (ii) above.
- (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 sub-section (3) of section 23 of the Act.

25. **Relative** Sec.2(77): Relative, with reference to any person, means anyone who is related to another, if

- ☞ they are members of a Hindu Undivided Family;
- ☞ they are husband and wife; or
- ☞ one person is related to the other in such manner as may be prescribed

A person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-

- ☞ Father: Provided that the term 'Father' includes step-father.
- ☞ Mother: Provided that the term 'Mother' includes step-mother.
- ☞ Son: Provided that the term 'Son' includes step-son.
- ☞ Son's wife.
- ☞ Daughter.
- ☞ Daughter's Husband
- ☞ Brother: Provided that the term 'Brother' includes step-brother.
- ☞ Sister: Provided that the term 'Sister' includes step-sister.

CONCEPTS

Q. 1 Company and its characteristics.

Answer:

Sec. 2(20) of Companies Act, 2013 Company is an organization formed and registered under the act or any of the previous companies' laws.

Characteristics:

1. **Separate legal entity:**
 - In **Salomon vs. Salomon & Co. Ltd.**: It was held that a co. is a separate legal entity in the eyes of law.
 - The property of the co. is separate from the property of the members/directors.
 - Members/directors can contract with the company but they cannot be held personally liable for the debts of the company.
 - A company can sue others & be sued only in its own name. i.e. even if a member/director hold almost the entire share capital, outsiders can sue only the company not the member/director. Member/director are not the agents of the company.
 - Members cannot participate in the day to day management of the company.
 - They have to elect the BOD (Board of Directors) who have ultimate control over the affairs of the company.
 - There is a fictional veil between the members and the BOD which is called the Corporate veil.
2. **Co. has perpetual succession**
 - It is an artificial person formed by law and therefore it can be wound only as per the law.
 - Death, insanity, insolvency etc. of any member does not affect the existence of the company.
 - Perpetual existence means that the company continues to exist irrespective of any change in the composition of its members.
 - It is generally said that "members may come and go but the company goes on forever." Thus, a company never dies.
3. **Extent of liability of members depends upon the nature of the company**
 - IRO (in respect of) a Company limited by shares: The liability is limited to the extent of amount unpaid on the shares.
 - IRO a Company limited by guarantee: The liability is limited to the amount guaranteed by every member.
 - IRO a Company limited by guarantee and having share capital: The Liability is limited to the aggregate of the amount unpaid on shares and the amount guaranteed.
 - IRO an unlimited company: every member is liable to contribute to the assets of company until all the debts of the company are paid in full.

4. The common seal is the official signature

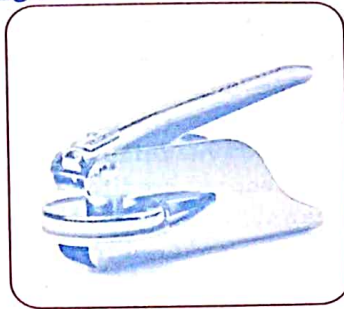


Figure 1 Sample Picture of Common Seal

- It should be affixed on all formal documents like share certificates, debenture certificates, loan agreements, property agreements, negotiable instruments, etc.
- Any document bearing the common seal is deemed to be signed by the company.
- A special person is authorized to use the common seal.
- The common seal should contain the name of the place where it is used
- IRO co. having business in foreign countries, an exact copy of the common seal should be maintained.
- **Now**, a company may have common seal.

5. Transferability of shares (instruments) depends upon the nature of the company

- IRO (In respect of) public co., shares are freely transferable whereas IRO private co. there is a restriction.
- Shares are moveable property (Sec. 44 of Companies' Act, 2013)

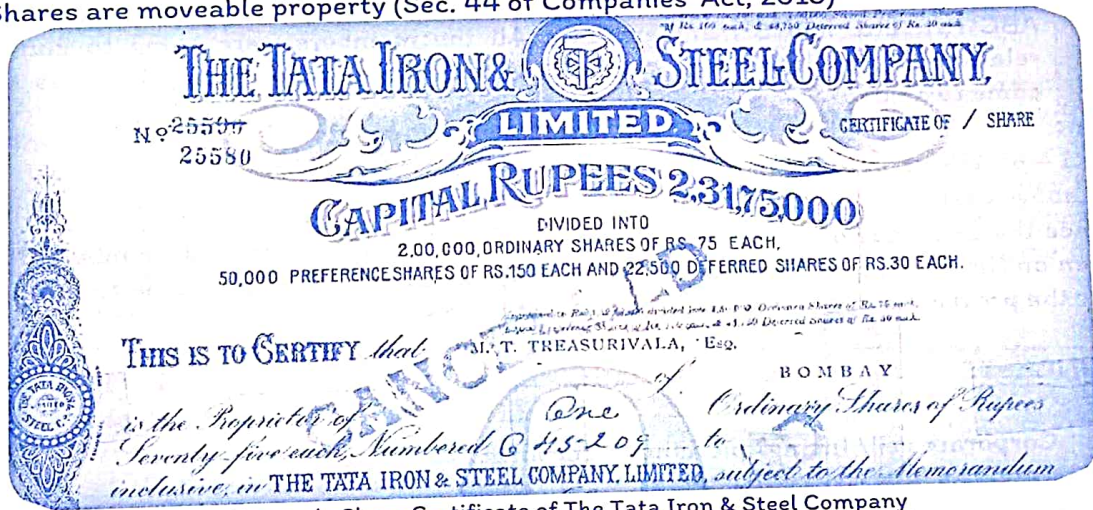


Figure 2 Sample Share Certificate of The Tata Iron & Steel Company

6. Co. is an artificial person but managed by natural persons in BOD.

7. Legal position

A company can sue others in its own name & can be sued in its own name only.

TEST YOURSELF

A

Mr. S had a sole proprietary business. He transferred all his assets and liabilities to a co. formed by him called S Ltd. His family members were the other co members. Mr. S was a member, employee, director & creditor in the co. The co. ran into losses and eventually went into liquidation. The unsecured creditors claim was ₹ 25 lakh & the assets realized ₹ 10 lac. Mr. S held debenture worth ₹ 10 lakh. The amount of ₹ 10 lakh was paid to Mr. S. unsecured creditors called S Ltd. a one man company and contented that the owner cannot owe money to himself. Is the contention valid? Can Mr. S be paid in priority to unsecured creditors?

Answer:

Salomon vs Salomon Ltd. (Refer Q 1- Point1)

- Above case Mr. S is member, director, employee and also a secured creditor. His existence as a debenture holder is separate from its existence of the company.
- Therefore, the contention of the unsecured creditors is invalid & Mr. S has a right to be paid in priority to unsecured creditors.

B

Mr. L was a qualified pilot. He virtually held all shares & he was the only director. He was also the chief pilot & received salary from the Co. L Ltd. He was killed in an air accident while working for the Co. Can Mr. L's widow sue the Co. L Ltd. for claiming compensation?

Answer:

- Same facts in Lee vs. Lee Air Farming Ltd.
- In above case ...
- Mrs. L can claim compensation from L Ltd.

C

ABC Pvt. Ltd. had 5 members only. All the members were going to Mumbai in relation to some business. An accident took place, all of them died. Has the Co. come to an end?

Answer:

- (Q.1 - pt. 2) - perpetual succession.
- In above case...
- Since the existence of a Co. does not depend upon the life of any/all members of the co. , even on the death of all members. The co. is still in existence. It can come to an end only as per the provisions of the law i.e. liquidation of the co.

CONCEPTS

Q. 2 Corporate veil/ lifting/ piercing of corporate veil? (LOCV)

Answer:

(Q.1-Pt no.1) Saloman vs. Saloman Ltd.: Lifting/ piercing of corporate veil is done only as per statutory provisions/ at discretion of court.

A. LOCV as per statutory provisions:

- If it appears to the court at the time of winding up of the co. that the intention of the co. was to defraud its creditors/ others, then the court can order that all the directors or officers who are parties to the fraud will be personally liable.
- Reduction in membership below the statutory limit (2/7) makes all the members personally liable if the business is carried on with the less membership for more than 6 months severally liable for the payment of the whole debts of the company *contracted during that time, and may be severally sued therefor.* (CAA,2017)
- IRO any ultra vires Act, all directors shall be personally liable.

→ Mis-description of name of the co. by any officer while signing any contract or negotiable instrument shall make him personally liable for the same.

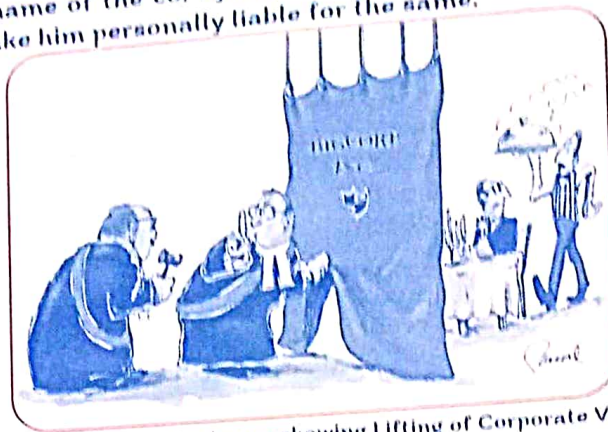


Figure 3 Illustrative image showing Lifting of Corporate Veil

B. LOCV under judicial decisions:

- The LOCV can be done for prevention of fraud.
- The LOCV can be done for protection of revenue.
- The LOCV can be done for checking avoidance of welfare legislations.
- The LOCV can be done for determining whether the co. is genuine just a sham/ useless/ bogus/ fake.
- The LOCV can be done for determining the true character of a co. i.e. whether it is an enemy co.

TEST YOURSELF

A

An assessee Mr. D was receiving huge dividend and interest income on certain investments. He formed 4 private companies & transferred all the investments to these pvt.co. The interest income received was well within the exempted limits under the income tax act. These companies did not have any business nor did they have any asset other than these investments. The income received by the co. was diverted to Mr. D as loan which he never repaid. Can the court order that the income of all these Pvt. Co. should be treated as income of Mr. D?

Answer:

- Ans. 2, point B, 2 & 4
- In above case, the only purpose for incorporating these pvt.co. was to evade taxes. The co. = sham. Therefore, the income of these co. = income of the assessee.

B

X Ltd. has only 7 shareholders, all the shares are fully paid up. All the shares of one such shareholder sold by the court in an auction and purchased by another shareholder. The company continues to carry on business thereafter. Discuss the liability of the shareholders of the co. as per the provisions of the companies Act, 2013.

Answer:

- Ans. 2 point A, 2
- In above case, no. of members has gone below 7, the business is carried on with the reduced membership for more than 6 months.
- Therefore, all the members during that time will have unlimited liability for the payment of the whole debts of the company *contracted during that time, and may be severally sued therefor.*

- The purpose of incorporating the co. was to solicit customers of the employer which was not allowed.
- Therefore, LOCV applicable, the co. should be restrained from soliciting the customers of the employer.

CONCEPTS

Q. 3 Explain Private companies

Answer:

Sec 2(68) of Companies Act, 2013 A private company is a company with minimum PUSC of as may be prescribed by Central Govt. The PUSC could consist of ESC/ PSC/ both.

The AOA of a pvt.co. contain following restrictions:

Memory Map

TRP

1. Restriction on Transferability of shares.
2. Max. 200 members are allowed. Employee – members & ex-employee members are excluded. Joint holders are counted as single member.
3. Prohibition on public issue.

Q. 4 How is transferability of shares restricted in a pvt. Co.?

Answer:

[Sec. 2(68): 3 restrictions (same in ans 1)]

Restrictions on transferability of shares is regulated in following manner:

- Member has to communicate in writing with BOD before transfer his shares.
- BOD may compel the member to transfer his shares to a particular member only.
- The co. and auditor may decide the transfer price.

Q. 5 Explain Public company

Answer:

Sec. 2(71) of Companies Act, 2013:

- A public co. is not a Pvt. Co.
- A public co. is a company with min. PUSC of as may be prescribed by CG.
- The PUSC could consist of ESC/PSC/both.
- Subsidiary of public co. is public co.

Q. 6 Conversion of Pvt. Co. into public co. by choice?

Answer:

Conversion of Private Company into a Public Company

The Companies Act 2013 vide section 14 lays down the provisions for the conversion of a Private Company into a Public Company and vice versa.

Section 14(1) provides that subject to the provisions of the Act and the conditions in the memorandum, a company may by passing a special resolution alter its Articles including alterations having the effect of converting a private company into a public company and vice versa.

1. A private company may alter its Articles in such a manner that the restrictions and limitations, which are required for a private company under this Act, are removed and no longer exist in the Articles; the company shall from the date of such alteration cease to be a private company.

2. Further, no resolution passed to convert a private company into a public company shall not take effect until it is approved by the **Central Government** which shall make such orders as it may deem fit.
3. Section 14(2) provides that an alteration of the Articles along with the copy of the order of the Tribunal shall be filed with the Registrar, together with a copy of the altered Articles, within 15 days, in such manner as may be prescribed. On receipt of the above documents the Registrar shall register the same.
4. Section 14(3) provides that any alteration in the Articles duly registered shall, subject to the provisions of the Act, be valid as if it were in the original Articles.

From the above provisions of the Companies Act, the following procedure for conversion of a private company into a public company is applicable:

- (1) The BOD should fix date for GM to change in MOA & AOA.
- (2) At the GM, SR should be passed and CG approval should be obtained.
 - to delete restriction in **Sec. 2(68)**
 - to delete the words 'Pvt. Ltd.'
 - to increase the no. of members to 7
 - to increase the no. of directors to 3
- (3) ROC will check the copies of SR, altered MOA & AOA & if he is satisfied, he will issue a fresh COI containing the changed name of company. Fresh COI is conclusive evidence that all the legal formalities have been complied with.

Q. 7 Conversion of public co. into Pvt. Co.

Answer:

Procedure for conversion of a Public Company into a Private Company:

Section 14(1) states that subject to the provisions of the Companies Act 2013 and the conditions contained in the Memorandum, a company may, by special resolution, alter its Articles including alterations which may have the effect of converting a public company into a private company (or vice versa).

Further any alteration which has the effect of converting a public company into a private company will not have any effect except with the approval of the Central Government which may pass such order as it deems fit.

Hence, the broad procedure for conversion of a public company into a private company would comprise of the following steps:

1. Check that the Memorandum of Association does not contain any restrictive clause. If yes, alteration of the Memorandum will be necessary through a special resolution;
2. Alteration of the Articles to incorporate the restrictions required u/s 2(68) by a special resolution.
3. Application to the Central Government for approval of the change
4. After the approval of the Central Government, every alteration of the articles and a copy of the order of the Central Government approving the alteration shall be filed with the Registrar, within a period of fifteen days, who shall register the same.
5. Any alteration of the articles registered as above shall be valid as if it were originally in the articles.

Q. 8 Distinguish between Private Company and Public Company**Answer:**

Private Company	Public Company
1. Restrictions applicable i.e. TRP.	Restrictions not applicable.
2. Minimum members: 2 Minimum directors: 2 Quorum: 2	Minimum members: 7 Minimum directors: 3 Quorum: 5, 15, 30
3. Name ends with Pvt. Ltd.	Name ends with limited.
4. Min. subscription is not applicable.	Min. subscription is applicable.

Q. 9 Holding Company**Answer:**

Sec. 2(46)

- A company is a holding company if it controls the composition of BOD of other company i.e. subsidiary company.
- Holding company has the power to appoint/ remove the majority of BOD of subsidiary company or
- Holding company has the right to nominate the director in subsidiary company.
- Director / officer/ manager/ employee of holding company is appointed as a director of subsidiary company.
- Holding company holds more than 50% voting powers in the subsidiary company.
- Subsidiary company of the subsidiary company is the subsidiary company of holding company.
- Shares held by a subsidiary company in any other company deemed as shares held by holding company.
- i.e. if holding company along with subsidiary company holds more than 50% of voting power in another company, that another company becomes the subsidiary company of holding company.
- Note: Shares held by H. CO in fiduciary capacity shall not be counted for 50% (Ref.: This is called deemed investment by holding company.)

TEST YOURSELF

- A. The PUSC of XYZ Pvt. Ltd. is ₹ 20,00,000, Equity shares of ₹ 10 each fully paid up. ABC Pvt. Ltd. & its subsidiary DEF Pvt. Ltd. are holding 60000 ES & 50000 ES respectively in XYZ Pvt. Ltd.
- (a) Is XYZ Pvt. Ltd. a subsidiary company of ABC Pvt. Ltd.?
- (b) What if DEF Pvt. Ltd. is holding one lakh five thousand equity shares in XYZ Pvt. Ltd. & no shares are held by ABC Pvt. Ltd.?

Answer:

[Refer answer of Que. 9]

- (a) ₹ 6,00,000 + ₹ 5,00,000 = ₹ 11,00,000, which is more than 50% of ₹ 20,00,000. Therefore, XYZ Pvt. Ltd. is a subsidiary company of ABC Pvt. Ltd.
- (b) Even then ans. will be same

- B. The PUSC of Advanced Casting Pvt. Ltd. is ₹ 1 crore consisting of 8 lac equity shares of ₹ 10 each and 2 lac preference shares of ₹ 10 each fully paid up. Quality forgings Pvt. Ltd. & Supreme Eng. Pvt. Ltd. are holding 4 lac & 50,000 equity shares respectively in advanced casting Pvt. Ltd. Quality forgings Pvt. Ltd. & Supreme Eng. Pvt. Ltd. are subsidiary companies of Unique Mach Pvt. Ltd.
- (a) is Advanced Casting Pvt. Ltd. subsidiary company of Unique Mach Pvt. Ltd.?
- (b) what if Unique Mach Pvt. Ltd. controls composition of BOD of Advanced Casting

Pvt. Ltd.?
Answer:

[Refer answer of Que. 9]

In above case, ₹ 40 lac + 5 lac = 45 lac, which is more than 50% of 80 lac.

- (a) Advanced Casting Pvt. Ltd. is subsidiary company of Unique Mach Pvt. Ltd.
(b) even then ans. will be same.

Q. 10. What is Associate Company?

Answer:

Associate Company [Sec. 2(6)]

In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company (JVC).

Whereas the term "Significant influence" used in the definition means control of at least 20% of total *Voting Power, or control of or participation* of business decisions under an agreement.

Note: The shares held by a company in another company in a 'fiduciary capacity' shall not be counted for the purposes of determining the relationship or 'associate company' u/s 2(6) of the Companies Act, 2013.

The expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;

Q. 11. Public Financial Institution

Answer:

Meaning of Public Financial Institution [Sec. 2(72)]:

- (a) the Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;
- (b) the Infrastructure Development Finance Company Limited, referred in section 4A(1)(vi) of the Companies Act, 1956 so repealed under section 465 of this Act;
- (c) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;
- (d) institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act;
- (e) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless—

- (a) it has been established or constituted by or under any Central or State Act; or
(b) not less than fifty-one per cent of the paid-up share capital is held or controlled 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.

Q. 12. Explain: Non-profit companies, Licensed Companies and Sec. 8 Companies as per Companies Act, 2013.

Answer:

1. Name of a Pvt. Co. should end with 'Pvt. Ltd.' and name of a public co. should end with 'Ltd.'
2. Sec 8 gives the power to CG to grant a license to certain non-profit co. to be reg. as co. but without the words ltd or Pvt. ltd.

Such NPO should have following objectives:

- (a) promotion of arts, commerce, science, charity, religion or any other useful object.
 (b) income should be applied for promoting the objects and not for payment of dividend.
4. Such NPO can alter the object clause of MOA only with the prior approval of CG.
 5. Such NPO also enjoys certain exemptions. E.g.: only 14 days' notice instead of 21 days' notice, only 1 BM in every half year instead of 4BMs in one year.
 6. Such NPO also enjoys certain privileges. e.g.: a firm may become a member of sec 8 company unless it is dissolved.
 7. If 3 / 4 is violated, then 5 & 6 cancelled. i.e. license granted by CG is revoked. The revocation can be done only after giving an opportunity to be heard.
 8. Once the license is revoked, exemptions and privileges are cancelled & Pvt. Ltd. or ltd. are to be inserted at the end of the name.
 9. Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.
 10. If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016
 11. If a company makes any default in complying with any of the requirements laid down in this section, the company shall, be punishable with fine varying from ten lakh rupees to one crore rupees and the directors and every officer of the company who is in default shall be punishable with fine varying from twenty-five thousand rupees to twenty-five lakh rupees, and where it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

Q. 13. Procedure for registration for obtaining license under Sec. 8.

Answer:

Section 8 gives the power to CG to grant a license to certain non-profit company to be registered as company but without the words ltd or Pvt. Ltd.

Procedure:

Memory Map

CHARITY

- ▶▶ Only competent persons (major, sound mind) should be the promoters or sign the MOA & AOA
- ▶▶ It has to be limited by shares / guarantee.
- ▶▶ Approval of name should be obtained from ROC choice of 3 names should be given. Also, approval of draft MOA & AOA should be obtained from regional director.
- ▶▶ It should be registered with certain objective
- ▶▶ Promotion of arts, commerce, science, charity, religion or any other useful object.
- ▶▶ Income should be applied for promoting the objects and not for payment of dividend.
- ▶▶ For collecting COI, a power of attorney in favour of practicing CA/ CS/ CWA should be given to ROC.
- ▶▶ Total documents like MOA, AOA, prescribed form along with prescribed fees should be submitted to ROC.
- ▶▶ Yay! ROC will check and if satisfied, issue COI which is conclusive evidence that all the legal formalities have been complied with.

Q. 14. Company Ltd. by Shares vs Company Ltd. by Guarantee.

Answer:

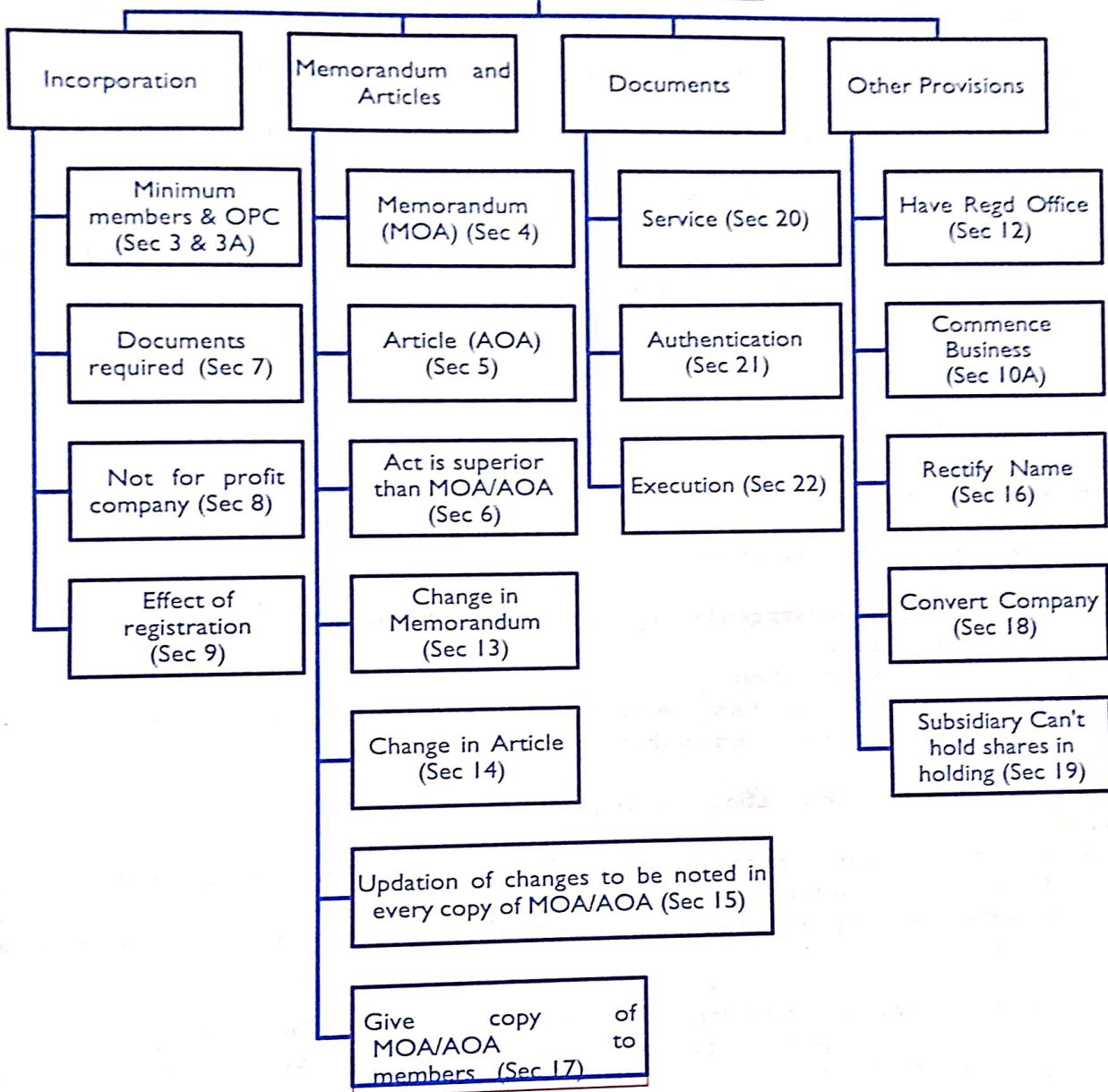
	Company Ltd. by Shares	Company Ltd. by Guarantee
1.	Liability is limited to the extent of amount unpaid on shares.	Liability is limited to the extent of guaranteed amount.
2.	Amount can be called up any time during going concern or liquidation.	Amount can be called up only at the time of liquidation.
3.	Liability of members can be increased only with the consent of members.	Liability of members can be increased without the consent of members.
4.	Sources of funds are share capital, loans, debentures etc.	Sources of funds are grants, donations etc.

Q. 15. Is Company a Citizen?

Answer:

No, Citizenship under the Citizenship Act is available only to an individual. Therefore, no company can be a citizen of India.

Incorporation of company and related matters



Q. 16 Explain: Promoter as per Sec. 2(69) of Companies Act, 2013.

Answer:

Promoter means a person —

- who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
- who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.
- Promoter is a person involved in the formation of the co. He is not the agent of the co, since the co. has not yet come into existence.
- The promoters should not make a secret profit from the co. He can make profit IRO any transaction with the co. only if he makes a full & fair disclosure of such profit to the BOD.
- If the co. becomes aware of secret profit made by the promoters after entering into transaction, co. can cancel such contract & recover the secret profit made by them or co. can also sue the promoters for breach of trust.

Q. 17 Right of promoters to receive remuneration?

Answer:

Promoters do not have any right to receive remuneration or recover expenses incurred IRO incorporation of the co. Even if the AOA provide for payment of remuneration or reimbursement of expenses, it is not binding on the co.

Remuneration to the promoters can be paid in any of the following ways:

- issue of shares at discount.
- paying lumpsum remuneration.
- paying commission to promoters on purchase of any property purchased by the co.
- paying commission to promoters on shares sold by them.

Q. 18 Procedure for incorporation of a company

Answer:

Mode of registration/incorporation of company: In terms of section 3(1)(a) a public company may be formed for any lawful purpose with 7 or more persons by subscribing their names to a memorandum and complying with the requirements of the Companies Act for the registration of companies.

In exactly the same way, under section 3(1)(b), 2 or more persons can form a private company. Under section 3(1)(c) a one-person company may be formed by one person in which case the company will be a private company.

Persons who conceive the idea of forming the company and form the same under the provisions of the Act are known as promoters. They take all necessary steps for its registration.

1. **Lawful purpose:** The essence of validly incorporated company is that it must consist of a particular number of persons and must be set up for a lawful purpose. Unless the purpose appears to be unlawful ex facie or is transparently illegal or prohibited by way of statute, it cannot be regarded as an unlawful purpose.
2. **Applying for the name:** The promoters of the company should decide upon at least three suitable names in order of preference in order to afford flexibility to the Registrar in deciding on the availability of the best possible available name.

3. **Documents to be filed:** After getting the name approved, the Registrar will reserve the name for **20 days only and 60 days from the date of approval if in case of it includes a change in the name of an existing company.**; certain documents along with the application in form no INC 7 (other than OPC) and INC 2 (for OPC) and prescribed fees, should be filed with the Registrar.
4. **Subscribing their names:** Subscribing the names means signing the names in the Memorandum signifying their intention to jointly form a company and take up the number of shares mentioned against each. If the Subscriber is already holding a valid DIN, and the particulars therein have been updated as on the date of application, and the declaration to this effect is given in the application, the Proof of Identity and Residence need not be attached.
5. **Certificate of incorporation:** Upon the registration of the documents mentioned earlier under the head "Documents to be filed for registration of the company" and the payment of the necessary fees, the Registrar of Companies issues a certificate that the company is incorporated, and in the case of a limited company that it is limited.

Filing of document with the Registrar of Companies:

After getting the name approved, the following documents along with the application and prescribed fee, are to be filed with the Registrar:

1. Memorandum of Association
2. Articles of Association
3. a declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that—
 - a. he is not convicted of any offence in connection with the promotion, formation or management of any company, or
 - b. he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law **during the last five years,**
 - c. and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;
4. the address for correspondence till its registered office is established;
5. the particulars (names, including surnames or family names, residential address, nationality) of every subscriber to the memorandum along with proof of identity, and in the case of a subscriber being a body corporate, such particulars as may be prescribed.
6. the particulars (names, including surnames or family names, the Director Identification Number (DIN), residential address, nationality) of the persons mentioned in the articles as the first directors and such other particulars including proof of identity as may be prescribed; and
7. the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.
8. A company shall, on and from the 30th day of incorporation and all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.