



Practical Learning Series

CORPORATE & OTHER LAW

For CA Inter New Syllabus 2023

Applicable for May 2024 Examination and onwards

Highlights of this Book

- Full Coverage as per new ICAI Syllabus
- Complete Discussion of Acts and applicable Rules
- Lucid Structure for easy understanding and revision
- Use of Tables and Flow Charts for easy memory
- Chapter overview for easy navigation
- Additional Practical Questions with Answer for Conceptual clarity
- Scenario Based Questions for Practice
- Questions for Revision in each Chapter

**Updated with Latest amendments
including MCQs for practice**

Covering Topic wise MCQ's with Answers

CA G. Sekar

**1st
EDITION
August
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Commercial Law Publishers (India) Pvt. Ltd.



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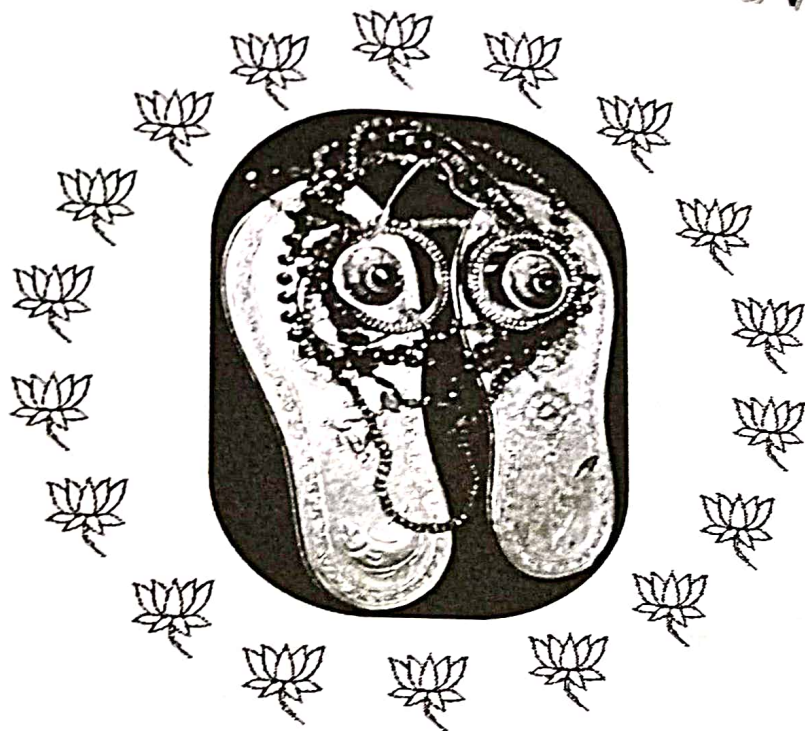
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PRANAMS
TO
THE ACHARYAS OF KANCHI



PREFACE

This First Edition of “**Practical Learning Series Corporate and Other Law**” comes to your hands with the following unique feature for **CA Intermediate level New Syllabus applicable from MAY 2024 exam onwards**—

- **Complete Coverage of Syllabus:** This Book from your trusted **Padhuka's publications** has been released in compliance with ICAI New syllabus exhaustively covers all relevant Corporate and other Law includes Companies Act, 2013, LLP Act, FEMA, General clause Act with interpretation of Statutes.
- **Companies Act, 2013:** Full Coverage of Companies Act 2013 as per ICAI New Syllabus is given in the Book, along with relevant **Rules, Practical Questions, Illustrations and Theory Questions for Practice.**
- **Refreshing Format and Structure:** All principles / procedures / techniques / concepts and ideas have been arranged neatly in easy-to-read form, and numbered into Topics / Sub-Topics so that the Student can understand the subject easily.
- **Explanation and Improved Presentation:** The presentation in each question has been revisited and explained better, to help the student remember the ideas / concepts / points more easily.
- **Questions for Revision:** A detailed list of **Past Exam Questions** in each Topic / Point / Concept, with the **Para reference for Answers**, is appended at the end of every topic, so that the student can correlate the question and answer, more easily in the examinations.
- **Multiple Choice Questions** which is a main component in the Exams contributing **30 marks** of weightage is exclusively dealt with and topic wise MCQs with answers are included for conceptual clarity and Exam preparations.
- **True or False / Multiple Choice / Practical Questions:** A list of **True or False Questions, Multiple Choice Questions and Practical Questions with Hint Answers** are appended in every Chapter, to confirm concept knowledge, and also to keep in need with the recent exam requirements.
- **Chapter Overview:** Chapter Overview at the beginning of every Chapter will help the student to navigate through each Chapter-Topic-Sub-topic-Question in an organized and phased manner.
- **Single Point Referencer:** This Book will be a single point reference for Students' requirements to learn the subject effectively and perform well in his Exams.

Our sincere thanks to the **Institute of Chartered Accountants of India** for their permission to give references to questions from Past Examinations and Revision Test Papers (RTP).

Many thanks to the Users of the Padhuka's publications for their positive Response, which reflects the benefits they have reaped from us, and also their keen interest to reciprocate with constructive suggestions.

I thank the efforts and co-operation of the various Service Providers in bringing out this First Edition including the support of the Publishers, in quickly getting this Book in the current form.

Constructive Suggestions and Feedback from Users would be highly appreciated, gratefully acknowledged and suitably incorporated.

Chennai

With Best Wishes

July 2023

G Sekar

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Chapter 1A

THE COMPANIES ACT, 2013 - OVERVIEW

1A.1 Applicability

Extent	The Companies Act, 2013 extends to the whole of India. [Sec.1(2)]
Commencement [Sec.1(3)]	<ol style="list-style-type: none"> 1. Sec.1(3) shall come into force at once. 2. Any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.
Application [Sec.1(4)]	<p>The provisions of this Act shall apply to—</p> <ol style="list-style-type: none"> 1. Companies incorporated under this Act or under any previous Company Law; 2. Insurance Companies, except if the provisions are inconsistent with the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999; 3. Banking Companies, except if the provisions are inconsistent with the Banking Regulation Act, 1949; 4. Companies engaged in the generation or supply of electricity, except if the provisions are inconsistent with the Electricity Act, 2003; 5. Any other Company governed by any Special Act for the time being in force, except if the provisions are inconsistent with special Act; and 6. Body Corporates, incorporated by any Act, or the Central Government may specify, subject to such exceptions, modifications or adaptation, as specified in the notification.

1A.2 Structure of Companies Act 2013

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Definitions

" Branch Office ", in relation to a Company, means any establishment described as such by the Company. [Sec.2(14)]
" Called-Up Capital " means such part of the capital, which has been called for payment. [Sec.2(15)]
" Certifying Authority " for the purposes of Digital Signature Certificate means a person who has been granted Licence to issue a Digital Certificate u/s 24 of the Information Technology Act, 2000 and the Certified Filing Center (CFC) under the Act. [Rules]
" Charge " means an interest or lien created on the property or assets of a Company or any of its undertakings or both as security and includes a mortgage [Sec.2(16)]
" Chartered Accountant " means a Chartered Accountant as defined in Sec.2(1)(b) of the Chartered Accountants Act, 1949 who holds a valid Certificate of Practice u/s 6(1) of that Act. [Sec.2(17)]
" Chief Executive Officer " (CEO) means an Officer of a Company, who has been designated as such by it. [Sec.2(18)]
" Chief Financial Officer " (CFO) means a person appointed as the Chief Financial Officer of a Company. [Sec.2(19)]
" Company " means a Company incorporated under this Act or under any previous Company law. [Sec.2(20)]
" Company limited by Guarantee " means a Company having the liability of its Members limited by the Memorandum to such amount as the Members may respectively undertake to contribute to the Assets of the Company in the event of its being wound-up. [Sec.2(21)]
" Company limited by Shares " means a Company having the liability of its Members limited by the Memorandum to the amount, if any, unpaid on the Shares respectively held by them. [Sec.2(22)]
" Company Liquidator " means a person appointed by the Tribunal as the Company Liquidator in accordance with the provisions of Sec. 275 for the winding up of a Company under this Act. [Sec.2(23)] [w.e.f 15.12.2016]
" Company Secretary " or " Secretary " means a Company Secretary as defined u/s 2(1) (c) of the Company Secretaries Act, 1980 who is appointed by a Company to perform the functions of a Company Secretary under this Act. [Sec.2(24)]
" Company Secretary in practice " means a Company Secretary who is deemed to be in practice u/s 2(2) of the Company Secretaries Act, 1980. [Sec.2(25)]
" Contributory " means a person liable to contribute towards the assets of the Company in the event of its being wound up. [Sec.2(26)] Note: A person holding fully Paid-Up Shares in a Company shall be considered as a Contributory, but shall have no liabilities of a Contributory under the Act whilst retaining rights of such a Contributory.
" Control " shall include the right to appoint majority of the Directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their Shareholding or management rights or Shareholders agreements or voting agreements or in any other manner. [Sec.2(27)]
" Cost Accountant " means a Cost Accountant as defined u/s 2(1)(b) of the Cost & Works Accountants Act, 1959 and who holds a valid certificate of practice u/s 6(1) of that Act. [Sec.2(28)]
" Court " means— (a) the High Court having jurisdiction in relation to the place at which the Registered Office of the Company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court under Point (b) below, (b) the District Court , in cases where the Central Government has, by notification, empowered any District Court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a Company whose Registered Office is situate in the district, (c) the Court of Session having jurisdiction to try any offence under this Act or under any previous Company Law, (d) the Special Court established u/s 435, [w.e.f 18.05.2016] (e) any Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous Company Law, [Sec.2(29)]
" 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. The following shall not be treated as "Debenture" – (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. [Sec.2(30)]
" Deposit " includes any receipt of money by way of Deposit or Loan or in any other form by a Company, but does not include such categories of amount as prescribed by Government in consultation with RBI. [Sec.2(31)]
" Depository " means a Depository as defined in Sec.2(1)(e) of the Depositories Act, 1996. [Sec.2(32)]
" Derivative " means the Derivative as defined u/s 2(ac) of the Securities Contracts (Regulation) Act, 1956. [Sec.2(33)]
" Digital Signature " means the Digital Signature as defined u/s 2(1)(p) of the Information Technology Act, 2000. [Rules]
" Digital Signature Certificate " means a Digital Signature Certificate as defined u/s 2(1)(q) of the Information Technology Act, 2000. [Rules]

Definitions

"**Director**" means a Director appointed to the Board of a Company. [Sec.2(34)]

"**Director Identification Number (DIN)**" means an Identification Number allotted by the Central Government to any Individual, intending to be appointed as Director or to any Existing Director of a Company, for the purposes of his identification as a Director of a Company.

Note:

- DIN obtained under Companies Act 1956, shall be the DIN for the purpose of Companies Act, 2013.
- DIN includes the Designated Partnership Identification Number (DPIN) issued u/s 7 of the Limited Liability Partnership Act, 2008 and Rules thereunder. [Rules]

"**Dividend**" includes any Interim Dividend. [Sec.2(35)]

"**Document**" includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other prevalent law or otherwise, maintained on paper or in electronic form. [Sec.2(36)]

"**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. [Rules]

"**Electronic Mail**" means the message sent, received or forwarded in Digital Form using any Electronic Communication Mechanism that the message so sent, received or forwarded is storable and retrievable. [Rules]

"**Electronic Record**" means the Electronic Record as defined u/s 2(1)(t) of the Information Technology Act, 2000. [Rules]

"**Electronic Registry**" means an Electronic Repository or Storage System of the Central Government in which the information or documents are received, stored, protected and preserved in electronic form. [Rules]

"**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. [Sec.2(37)]

"**Executive Director**" means a **Whole-Time Director** as defined u/s 2(94). [Rules]

"**Expert**" includes an Engineer, a Valuer, a Chartered Accountant, a Company Secretary, a Cost Accountant and any other person who has the power or authority to issue a Certificate in pursuance of any law for the time being in force. [Sec.2(38)]

"**Fees**" means the fees as specified in the Companies (Registration Offices and Fees) Rules, 2014. [Rules]

"**Financial Institution**" includes a Scheduled Bank, and any other Financial Institution defined or notified under the Reserve Bank of India Act, 1934. [Sec.2(39)]

"**Financial Statement**" in relation to a Company, includes – [Sec.2(40)]

- a Balance Sheet as at the end of the financial year,
- a Profit and Loss Account, or in the case of a Company carrying on any activity not for profit, an Income and Expenditure Account for the financial year,
- Cash Flow Statement for the financial year,
- a Statement of Changes in Equity, if applicable, and
- any Explanatory Note annexed to, or forming part of, any document referred to above.

Note (a): For OPC, Small Co., Dormant Co. & Start-Up Private Co, Fin. Statement may **not include CFS**. For this purpose, Private Company should have no default in filing its Fin. Stmts or Annual Return). [Notfn GSR 583(E) dated 13.06.17]

Note (b): "Start-Up" or "Start-Up Company" means a Private Company incorporated under COA and recognised as Start-Up by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry.]

"**Financial Year**", for a Company or Body Corporate, means the period ending on 31st day of March every year, in respect whereof Financial Statement of the Company or Body Corporate is made up. [Sec.2(41)]

Notes:

- Where the Entity 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 (i.e. 15 months period).
- A Company or Body Corporate, existing on the commencement of this Act, shall, within a period of **2 years** from such commencement, align its Financial Year as per the above provisions.
- 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, may be permitted by the Central Govt. on an application made by Company or Body Corporate to have any period as its Financial Year, whether or not that period is a year.
- Any application pending before the Tribunal as on the date of commencement of the Companies(Amendment) Act, 2019 shall be disposed of by the Tribunal as per the provisions applicable to it before such commencement.

"**Foreign Company**" means any Company or Body Corporate incorporated outside India which–

- has 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 in any other manner. [Sec.2(42)]

Definitions

Rule: For this purpose, "Electronic Mode" means, carrying out electronically based, whether Main Server is installed in India or not, including, but not limited to –

- (a) B2B and B2C transactions, Data Interchange and other Digital Supply Transactions,
- (b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India,
- (c) Financial Settlements, Web Based Marketing, Advisory and Transactional Services, Database Services and Products, Supply Chain Management,
- (d) Online Services such as Telemarketing, Telecommuting, Telemedicine, Education and Information Research, and
- (e) all related Data Communication Services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

"Form" means a form set forth in the Act / Rules, which shall be used for the matter to which it relates. **[Rules]**

"Free Reserves" means such Reserves which, as per the latest audited Balance Sheet of a Company, are available for distribution as dividend. **[Sec.2(43)]**

Note: The following shall not be treated as Free Reserves – (a) any amount representing Unrealized Gains, Notional Gains or Re-valuation of Assets, whether shown as a Reserve or otherwise, or (b) any change in the Carrying Amount of an Asset or of a Liability recognized in Equity, including Surplus in Profit and Loss Account on measurement of the Asset or the Liability at Fair Value.

"Global Depository Receipt" means any instrument in the form of a Depository Receipt, by whatever name called, created by a Foreign Depository outside India and authorized by a Company making an issue of such Depository Receipts. **[Sec.2(44)]**

"Government Company" means any Company in which not less than 51% of Paid-Up Share Capital is held –

- (a) by the Central Government, or
- (b) by any State Government or Governments,
- (c) or partly by the Central Government and partly by one or more State Governments,

and includes a Company which is a Subsidiary Company of such a Government Company. **[Sec.2(45)]**

"Holding Company", in relation to one or more other Companies, means a Company of which such Companies are Subsidiary Companies. **Note:** For the purposes of Sec.2(46), the expression "Company" includes any Body Corporate. **[Sec.2(46)]**

"Independent Director" means an Independent Director referred to u/s 149(5). **[Sec.2(47)]**

"Indian Depository Receipt" means any instrument in the form of a Depository Receipt created by a Domestic Depository in India and authorized by a Company incorporated outside India making an issue of such Depository Receipts. **[Sec.2(48)]**

"Interested Director" means a Director who is in any way, whether by himself or through any of his relatives or Firm, Body Corporate or other Association of Individuals in which he or any of his relatives is a Partner, Director or a Member, interested in a Contract or Arrangement, or proposed Contract or Arrangement, entered into or to be entered into by or on behalf of a Company. **[Sec.2(49)] Note: This Definition is NOT APPLICABLE w.e.f. 09.02.2018**

"Issued Capital" means such Capital as the Company issues from time to time for subscription. **[Sec.2(50)]**

"Key Managerial Personnel", (KMP) in relation to a Company, means– **[Sec.2(51)]**

- (a) the Chief Executive Officer or the Managing Director or the Manager,
- (b) the Company Secretary,
- (c) the Whole-Time Director,
- (d) the Chief Financial Officer,
- (e) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board, and
- (f) such other officer as may be prescribed.

"Listed Company" means a Company which has any of its Securities listed on any Recognised Stock Exchange. **[Sec.2(52)]**

Note: the Central Government to exclude certain class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with SEBI from the definition of listed companies.

For the purpose of the proviso to sec.2(52) of the Act, 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
- 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 section 23(3) of the Act. **[N. No.123(E) dt.19.02.2021]**

Definitions

"Manager" means an Individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a Company.
"Manager" includes a Director or any other person occupying the position of a Manager, by whatever name called, whether under a Contract of Service or not. **[Sec.2(53)]**

"Managing Director" (MD) means a Director who is entrusted with substantial powers of management of the affairs of the Company, by virtue of –

- (a) the Articles of a Company, or
- (b) an agreement with the Company, or
- (c) a resolution passed in its General Meeting, or by its Board of Directors.

MD includes a Director occupying the position of Managing Director, by whatever name called.

Note: Substantial Powers of Management does **not** include the power to do administrative acts of a **routine nature** when so authorized by the Board, e.g. the power –

- (a) to affix the Common Seal, if any, of the Company to any document, or
- (b) to draw and endorse any Cheque on the account of the Company in any Bank, or
- (c) to draw and endorse any Negotiable Instrument, or
- (d) to sign any Certificate of Share, or
- (e) to direct registration of transfer of any Share. **[Sec.2(54)]**

"Member", in relation to a Company, means – **[Sec.2(55)]**

- (a) the subscriber to the Memorandum of the Company who shall be deemed to have agreed to become Member of the Company, and on its registration, shall be entered as Member in its Register of Members,
- (b) every other person who agrees in writing to become a Member of the Company and whose name is entered in the Register of Members of the Company,
- (c) every person holding Shares of the Company & whose name is entered as a Beneficial Owner in the records of a Depository.

"Memorandum" means the Memorandum of Association of a Company as originally framed or as altered from time to time in pursuance of any previous Company Law or of this Act. **[Sec.2(56)]**

"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. **Net Worth** does not include Reserves created out of revaluation of assets, write-back of depreciation and amalgamation. **[Sec.2(57)]**

"Notification" means a Notification published in the Official Gazette and the expression "notify" shall be construed accordingly. **[Sec.2(58)]**

"Officer" includes any Director, Manager or Key Managerial Personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the Directors is or are accustomed to act. **[Sec.2(59)]**

"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 – **[Sec.2(60)]**

- (a) Whole-Time Director, (WTD)
- (b) Key Managerial Personnel, (KMP)
- (c) 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,
- (d) 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, authorizes, actively participates in or knowingly permits, or knowingly fails to take active steps to prevent, any default,
- (e) 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,
- (f) every Director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention and who, in the course of the 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,
- (g) 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.

"Official Liquidator" means an Official Liquidator appointed u/s 359(1). **[Sec.2(61)]**

"One Person Company" (OPC) means a Company which has only one person as a Member. **[Sec.2(62)]**

"Ordinary / Special Resolution" means an Ordinary / Special Resolution as referred to in Sec.114. **[Sec.2(63)]**

"Paid-Up Share Capital" or "Share Capital Paid-Up" means such aggregate amount of money credited as Paid-Up Capital which is equivalent to the amount received as paid-up in respect of Shares issued. **[Sec.2(64)]**

Definitions

It also includes any amount credited as paid-up in respect of Shares of the Company.

It does not include any other amount received in respect of such Shares, by whatever name called.

“**Postal Ballot**” means voting by post or through any electronic mode. [Sec.2(65)]

“**Pre-fill**” means the automated process of data input by the Computer System from the Database maintained in Electronic Registry of the Central Government. [Rules]

“**Prescribed**” means prescribed by rules made under this Act. [Sec.2(66)]

“**Previous Company Law**” means any of the laws specified below – [Sec.2(67)]

- (a) Acts relating to companies in force before the Indian Companies Act, 1866,
- (b) the Indian Companies Act, 1866,
- (c) the Indian Companies Act, 1882,
- (d) the Indian Companies Act, 1913,
- (e) the Registration of Transferred Companies Ordinance, 1942,
- (f) the Companies Act, 1956, and
- (g) any law corresponding to any of the aforesaid Acts or the Ordinances and in force –
 - in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913, or
 - in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956, in so far as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968, in so far as other corporations are concerned,
- (h) the Portuguese Commercial Code, in so far as it relates to sociedades anonimas, and
- (i) the Registration of Companies (Sikkim) Act, 1961.

“**Private Company**” means a Company having a minimum Paid-Up Share Capital of prescribed amount, and which by its Articles – [Sec.2(68)]

- (a) restricts the right to transfer its Shares,
- (b) except in case of One Person Company, limits the number of its Members to 200,
- (c) prohibits any invitation to the public to subscribe for any Securities of the Company.

Note:

- Where two or more persons hold one or more Shares in a Company jointly, they shall be treated as a single member for this purpose.
- Persons who are in the employment of the Company, and 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, shall not be included in the number of Members.

“**Promoter**” means a person – [Sec.2(69)]

- (a) who has been named as such in a Prospectus or is identified by the Company in the Annual Return referred u/s 92, or
- (b) who has control over the affairs of the Company, directly or indirectly whether as a Shareholder, Director or otherwise, or
- (c) in accordance with whose advice, directions or instructions the Board of Directors of the Company is accustomed to act. [Note: This shall not apply to a person who is acting merely in a professional capacity.]

“**Prospectus**” means any document described or issued as a Prospectus. Prospectus includes –

- (a) Red Herring Prospectus referred u/s 32, or
- (b) Shelf Prospectus referred u/s 31, or
- (c) any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any Securities of a Body Corporate. [Sec.2(70)]

“**Public Company**” means a Company which – [Sec.2(71)]

- (a) is not a Private Company and,
 - (b) has a minimum Paid-Up Share Capital of prescribed amount.
- Note:** A Company which is a Subsidiary of a Company, not being a Private Company, shall be deemed to be Public Company for the purposes of this Act even where such Subsidiary Company continues to be a Private Company in its Articles.

“**Public Financial Institution**” means – [Sec.2(72)]

- (a) the Life Insurance Corporation of India, established u/s 3 of the Life Insurance Corporation Act, 1956,
- (b) the Infrastructure Development Finance Company Limited, referred to Sec.4A(1)(vi) of the Companies Act, 1956 so repealed under Sec.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 u/s 4A(2) of Companies Act, 1956 so repealed under Sec.465 of this Act,
- (e) such other institution as may be notified by the Central Government in consultation with RBI.

Definitions

Note: No institution shall be so notified unless—

- it has been established or constituted by or under any Central or State Act other than this Act or the provisions company law, or
- not less than 51% 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.

"Recognised Stock Exchange" means as defined in Sec.2(f) of the Securities Contracts (Regulation) Act, 1956. **[Sec.2(73)]**

"Registrar's Front Office" means an office maintained by the Central Government or an Agency authorized by it to facilitate e-filing of documents into the electronic registry and their inspection and viewing. **[Rules]**

"Regional Director" means the person appointed by the Central Government in the MCA as a Regional Director.

"Register of Companies" means the Register of Companies maintained by the Registrar on paper or in any electronic mode under this Act. **[Sec.2(74)]**

"Registrar" means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering Companies and discharging various functions under this Act. **[Sec.2(75)]**

"Related Party", with reference to a Company, means— **[Sec.2(76)]**

- (a) a Director or his relative,
- (b) a Key Managerial Personnel or his relative,
- (c) a Firm, in which a Director, Manager or his Relative is a Partner,
- (d) a Private Company in which a Director or Manager or his Relative is a Member or Director,
- (e) a Public Company in which a Director or Manager is a Director **and** holds along with his relatives, more than 2% of its Paid-Up Share Capital,
- (f) any Body Corporate whose Board of Directors, Managing Director or Manager is accustomed to act in accordance with the advice, directions or instructions of a Director or Manager,
- (g) any person on whose advice, directions or instructions a Director or Manager is accustomed to act,
- (h) any Body Corporate which is — **[Note: For Sec.188, Item (h) not applicable for a Private Company.]**
 - a Holding, Subsidiary or an Associate Company of such Company,
 - a Subsidiary of a Holding Company to which it is also a Subsidiary, or
 - an Investing Company or the Venturer of the Company (refer note below).

Explanation: (iii) above means a Body Corporate whose Investment in the Company would result in the Company becoming an Associate Company of the Body Corporate.

- (i) such other person as may be prescribed.

Note:

- Points (f) and (g) shall not apply to the advice, directions or instructions given in a professional capacity.
- A Director (other than Independent Director) or Key Managerial Personnel of the Holding Company or his Relative with reference to a Company, shall be **deemed** to be a Related Party. **[Rules]**

"Relative", with reference to any person, means anyone who is related to another, if — **[Sec.2(77)]**

- (a) they are Members of a Hindu Undivided Family,
- (b) they are Husband and Wife, or
- (c) one person is related to the other as under —

• Father (including Step-Father)	• Daughter.
• Mother (including Step-Mother)	• Daughter's Husband.
• Son (including Step-Son)	• Brother (including Step-Brother).
• Son's Wife.	• Sister (including Step-Sister).

"Remuneration" means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-Tax Act, 1961. **[Sec.2(78)]**

"Schedule" means a Schedule annexed to this Act. **[Sec.2(79)]**

"Scheduled Bank" means the Scheduled Bank as defined u/s 2(e) of the RBI Act, 1934. **[Sec.2(80)]**

"Securities" means the Securities as defined in Sec.2(h) of the Securities Contracts (Regulation) Act, 1956. **[Sec.2(81)]**

"Securities and Exchange Board" (SEBI) means the Securities and Exchange Board of India established u/s 3 of the Securities and Exchange Board of India Act, 1992. **[Sec.2(82)]**

"Serious Fraud Investigation Office" means the Office referred to in Sec.211. **[Sec.2(83)]**

"Share" means a Share in the Share Capital of a Company and includes Stock. **[Sec.2(84)]**

Definitions

"Small Company" means a Company, other than a Public Company, – [Sec.2(85)]

- (i) Paid-Up Share Capital of which does not exceed ₹ 4 crores AND
- (ii) Turnover of which as per Profit and Loss Account for the immediately preceding financial year does not exceed ₹ 40 Crores

Note: This Clause shall **not** 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.

"Subscribed Capital" means such part of the Capital which is for the time being subscribed by the Members of a Company. [Sec.2(86)]

"Subsidiary Company" or **"Subsidiary"**, in relation to any other Company (that is to say the Holding Company), means a Company in which the Holding Company – [Sec.2(87)]

- (a) controls the composition of the Board of Directors, or
- (b) exercises or controls more than one-half of the Total Voting Power either at its own or together with one or more of its Subsidiary Companies.

Note:

- A Company shall be deemed to be a Subsidiary Company of the Holding Company even if the control referred to above is of another Subsidiary Company of the Holding Company.
- The composition of a Company's Board of Directors shall be deemed to be controlled by another Company, if that other Company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the Directors.
- The expression "Company" includes any Body Corporate.
- Shares held by a Company or power exercisable by it in another Company in a 'fiduciary capacity' shall **not** be counted for the purpose of determining the Holding-Subsidiary relationship. [General Circular No. 20/2013, dated 27.12.2013]

Layer: "Layer" in relation to a Holding Company means its Subsidiary or Subsidiaries. The following principles shall apply–

1. **Restriction:** No Company shall have more than 2 Layers of Subsidiaries. However,
 - (a) For computing the number of Layers, 1 Layer which consists of one or more Wholly-Owned Subsidiary(ies) shall not be taken into account.
 - (b) A Company may acquire another Company incorporated outside India with Subsidiaries beyond 2 Layers as per the laws of such country.

Note: Provisions of this Rule shall **not** be in derogation of the Proviso to Sec.186(1) of the Act.

2. **Duties:** Every Company existing on or before the commencement of Rules dated 20.09.2017, which has number of Layers of Subsidiaries in excess of the Layers as specified above –

- (a) shall file Form CRL-1 with ROC, disclosing the required details, within 150 days from 20.09.2017,
- (b) shall not, after 20.09.2017, have any additional layer of Subsidiaries over & above the Layers existing on such date, &
- (c) shall not, in case one or more Layers are reduced by it subsequent to 20.09.2017, have the number of Layers beyond the number of Layers it has after such reduction or maximum Layers allowed, whichever is **more**.

3. **Contravention:** The Company and every Officer in default shall be punishable with fine upto ₹ 10,000 + ₹ 1,000 per day, in case of continuing contravention.

4. **Exceptions:** Restriction on number of Layers shall **not** apply for the following Companies –

- (a) Banking Company u/s 5(c) of Banking Regulation Act, 1949,
- (b) NBFC u/s 45-I(f) of RBI Act, 1934 which is registered with the RBI and considered as Systematically Important NBFC by RBI,
- (c) Insurance Company carrying on Insurance Business as per Insurance Act, 1938 and IRDA Act, 1999,
- (d) Government Company u/s 2 (45) of COA 2013.

[As per Companies (Restriction on Number of Layers) Rules, 2017 vide GSR 1176(E) dated 20.09.2017]

"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. [Sec.2(88)]

"Total Voting Power", in relation to any matter, means the total number of votes which may be cast in regard to that

Definitions

matter on a poll at a meeting of a Company if all the Members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes. [Sec.2(89)]

"Tribunal" means the National Company Law Tribunal constituted u/s 408. [Sec.2(90)]

"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. [Sec.2(91)]

"Unlimited Company" means a Company not having any limit on the liability of its Members. [Sec.2(92)]

"Voting Right" means the right of a Member of a Company to vote in any meeting of the Company or by means of Postal Ballot. [Sec.2(93)]

"Whole-Time Director" includes a Director in the Whole-Time employment of the Company. [Sec.2(94)]

"Winding up" means winding up under this Act or liquidation under the Insolvency & Bankruptcy Code, 2016, as applicable. [Sec.2(94A)]

"Words and Expressions" used and not defined in Companies Act but defined in the following Acts, or Rules / Regulations thereunder, shall have the meanings respectively assigned to them in those Acts [Sec.2(95)] –

- (a) The Securities Contracts (Regulation) Act, 1956,
- (b) The Securities and Exchange Board of India Act, 1992,
- (c) The Depositories Act, 1996.

MULTIPLE CHOICE QUESTIONS

1. The provisions of Companies Act, 2013 applies to
 - (a) Companies incorporated under this Act
 - (b) Companies incorporated under any previous company Law
 - (c) Companies governed by any special Act in force
 - (d) All of the above
2. In the first schedule of the Act, there are _____ no of table related to MOA
 - (a) 6
 - (b) 7
 - (c) 5
 - (d) 10
3. In the first schedule of this Act, there are _____ no of tables related to AOA
 - (a) 6
 - (b) 7
 - (c) 5
 - (d) 10
4. Schedule _____ to the Companies Act, discusses with activities which may be included under corporate social responsibility (CSR)
 - (a) II
 - (b) IV
 - (c) VII
 - (d) V
5. Schedule _____ to companies Act discusses code for Independent directors.
 - (a) III
 - (b) IV
 - (c) VI
 - (d) V
6. Authorized capital is authorized by _____ of a company to be maximum amount of share capital of
 - (a) AOA
 - (b) MOA
 - (c) ROC
 - (d) Directors
7. Free reserve ever includes
 - (a) Notional gains
 - (b) Unrealized gains
 - (c) Reserves available for distribution
 - (d) All of the above
8. Any change in carrying amount of an asset or liability can be treated as fire reserves
 - (a) True
 - (b) False
9. _____ is a depository receipt created by foreign depository outside India and authorized by a company making an issues of DR.
 - (a) Indian Depository Receipt
 - (b) Global Depository Receipt
 - (c) English Depository Receipt
 - (d) Republic Depository Receipt
10. Key managerial performed in relation to company means _____
 - (a) Whole time Director
 - (b) Promoter
 - (c) Company secretary / Cost Accountant Chartered Accountant
 - (d) All of the above
11. Managing director is executed with substantial power of management of _____

- (a) Affairs of Company
 (b) Routine value of company by virtue of Articles / Agreement / Resolution
 (c) Both (a) and (b)
 (d) Either (a) or (b)
12. Net worth does not include _____
 (a) Revolution Reserve
 (b) Free Reserves
 (c) Offered Expenditure
 (d) Accumulated Losses
13. Net worth does not include _____
 (a) Free Reserve
 (b) Write back to depreciation of Amalgamation
 (c) Misc Expenditure
 (d) All of the above
14. _____ is a person who has been named in prosperity (or) identified by company in Annual return U/S 92.
 (a) Key management performed
 (b) Executive officer
 (c) Promoter
 (d) Chief operating officer
15. Any notice / Circular / Advertisement inviting offers from public to subscribe or purchase shares of a Body corporate is _____
 (a) Prospectus
 (b) MOA
 (c) AOA
 (d) Depository Receipt
16. Relative U/S 2(77) Means _____
 (a) Members of HUF
 (b) Only male members of HUF
 (c) Only kartha of HUF
 (d) All of the Above
17. A Person relative to another does not include _____
 (a) Son including step Son
 (b) Daughter including step Daughter
 (c) Son's Wife
 (d) Daughter's Husband
18. Sweat Equity share can be issued to _____
 (a) Whole time Directors
 (b) Directors or Employees
 (c) Promoters only
 (d) Only to key management performed
19. Sweat Equity shares are issued by company at _____
 (a) Discount only
 (b) For Cash only
 (c) For Consideration other than Cash
 (d) None of the Above
20. Can the company issue sweat Equity shares for providing know - how / IPRIGHTS / Value additions
 (a) True
 (b) Partially True
 (c) False
 (d) Partially False
21. _____ means a memorandum containing salient feature of a prospectus as specified by SEBI.
 (a) Red herring prospectus
 (b) Abridged prospectus
 (c) Shelf prospectus
 (d) Prospectus
22. _____ mean a person liable to contribute towards assets of the company in the event of wound up company
 (a) Liquidator
 (b) All directors
 (c) Depository
 (d) Contributory
23. DIN has been issued by _____ to any individual including to be appointed as Director
 (a) Central Government
 (b) State Government
 (c) ROC
 (d) None
24. Can DIN obtained U/S co. Act 1956 Shall be Same DIN for Co/ Act 2013?
 (a) True
 (b) False
25. A company existing on commencement of this Act shall align in financial year within a period of _____ from such commitment
 (a) 6 month
 (b) 12 month
 (c) 18 month
 (d) 24 month
26. Who is not Key managerial personnel in the company?
 (a) the company secretary
 (b) the whole time director
 (c) the CFO
 (d) accountant
27. What is the extent of applicability of the Companies Act 2013?
 (a) All states except Jammu & Kashmir.
 (b) All states except Bihar.
 (c) Whole of India.
 (d) All states except Sikkim.
28. Which of the following include a Public Financial Institution?
 (a) LIC.
 (b) IDFC.
 (c) LIC&IDFC.
 (d) IBFC.

- (a) Affairs of Company
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 (b) the whole time director
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 (d) accountant
27. What is the extent of applicability of the Companies Act 2013?
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 (b) All states except Bihar.
 (c) Whole of India.
 (d) All states expect Sikkim.
28. Which of the following include a Public Financial Institution?
 (a) LIC.
 (b) IDFC.
 (c) LIC&IDFC.
 (d) IBFC.

29. _____ means the aggregate value of the paid up share capital & all reserves created out of profits & securities premium a/c.
- (a) Net worth.
 - (b) Sales worth.
 - (c) Turn over.
 - (d) Gross over.
30. Who is a Key Managerial Person in relation to a company?
- (a) Whole Time Director
 - (b) Preference shareholder
 - (c) Debenture holder
 - (d) Stock Broker

Answers

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.
d	d	c	c	b	b	c	b	b	a	a	a	b	c	a	a	b	b	c	a
21.	22.	23.	24.	25.	26.	27.	28.	29.	30.										
b	d	a	a	d	d	c	c	a	a										

Chapter 1B

COMPANY – BASIC CONCEPTS

CHAPTER OVERVIEW

(1)	(2)	(3)	(4)	(5)
Preliminaries	Lifting of Corporate Veil	Company Special Features	Classification of Companies	Private vs Public Company
<ol style="list-style-type: none"> 1. Company – Definition 2. Characteristic Features of a Company 3. Advantages of Incorporation 4. Disadvantages of Incorporation 	<ol style="list-style-type: none"> 1. Company is a Separate Corporate Personality 2. Meaning 3. Cases under Judicial Interpretations 4. Cases under Statutory Provisions 	<ol style="list-style-type: none"> 1. Company being a Partner in Firm 2. Company being a Member of its Holding Co. 3. Member's Liab.– Limited vs Unlimited 4. Body Corporate vs Company 5. Citizenship & Residential Status of a Co. 6. Illegal Assocn. 	<ol style="list-style-type: none"> 1. Kinds of Companies 2. Public Financial Institutions 3. Government Company 4. Holding, Subsidiary and Associate Co. 5. Company limited by – (a) Shares, (b) Guarantee & Unlimited Company 6. Limited by Shares vs Limited by Guarantee 7. Other Types of Companies 	<ol style="list-style-type: none"> 1. Meaning 2. Differences 3. Special Privileges of a Private Company 4. Restricting the right to transfer Shares 5. IFSC Public & Private Company.

Note: Sec.75–Fraud w.r.t Deposits have been excluded from ICAI Syllabus w.e,f Nov 2019 exam onwards.

1B.1 PRELIMINARIES

1B.1.1 Company – Definitions

A. Definitions as per Judicial Decisions

Lindley	<ul style="list-style-type: none"> • A Company is an association of many persons, who contribute money or money's worth to a common stock, and employ it in some common trade or business, and who share the profit or loss (as the case may be) arising therefrom. • The Common Stock so contributed is denoted in money, & is the Capital of the Company. • The Persons who contribute it, or to whom it belongs, are Members. • The Proportion of Capital to which each member is entitled is his Share. • Shares are always transferable although the right to transfer them is often more or less restricted.
Haney	A Company is an Incorporated Association, which is an Artificial Person created by law, having a Separate Entity, with a Perpetual Succession and a Common Seal.
Marshall	A Company is a person, artificial, invisible, intangible and existing only in the eyes of Law. Being a mere creature of law, it possesses only those properties which the Charter of its creation confers upon it, either expressly or as incidental to its very existence.

B. Definitions as per Companies Act, 2013

Sec.2(20)	A Company means a Company incorporated under this Act or any previous Company Law.
Sec.2(67)	<p>"Previous Company Law means any of the Laws specified below –</p> <ol style="list-style-type: none"> (i) Acts relating to Companies in force before the Indian Companies Act, 1866, (ii) the Indian Companies Act, 1866, (iii) the Indian Companies Act, 1882, (iv) the Indian Companies Act, 1913, (v) the Registration of Transferred Companies Ordinance, 1942, (vi) the Companies Act, 1956, and

	<p>(vii) any Law corresponding to any of the aforesaid Acts or the Ordinances and in force—</p> <p>(a) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913, or</p> <p>(b) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956, in so far as Banking, Insurance and Financial Corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968, in so far as other Corporations are concerned,</p> <p>(viii) the Portuguese Commercial Code, in so far as it relates to sociedades anonimas, and</p> <p>(ix) the Registration of Companies (Sikkim) Act, 1961,</p>
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1B.1.2 Characteristic Features of a Company (Sec.9)

1. Artificial Person:

- (a) A Company comes into existence by the operation of law.
- (b) After incorporation, a Company is granted certain rights and obligations as that of a person. Thus, Company is an artificial person.

2. Separate Legal Entity:

- (a) The Company is a separate legal entity and an artificial person known by its own name. Members cannot in any way, claim to be the same as that of Company.
- (b) Upon Registration, the Association of Persons becomes a Body Corporate, by the name contained in the Memorandum of Association.
- (c) A Company is **distinct and separate** from the Members who constitute it.

<p>S sold his boots business to a newly formed Company for £ 30,000. His wife, one daughter and four sons took up one share of £1 each. S took 23,000 shares of £1 each and £10,000 debentures in the Company. The debentures gave S a charge over the assets of the Company as the consideration for the transfer of the business. Subsequently when the Company was wound up, its assets were found to be worth £6,000 and its liabilities amounted to £17,000 of which £10,000 was due to S (Secured by Debentures) and £7,000 due to Unsecured Creditors. The Unsecured Creditors claimed that S and the Company were one and the same person and that the Company was a mere agent for S and hence they should be paid in priority to S.</p> <p>Held, the Company was, in the eyes of the law, a separate person independent from S and was not his agent. S, though virtually the holder of all the Shares in the Company, was also a Secured Creditor and was entitled to repayment in priority to the Unsecured Creditors.</p>	<p>Solomon vs Solomon & Co. Ltd.</p>
<p>A Company was formed for the purpose of manufacturing aerial topdressing. Lee, a qualified pilot, held nearly all shares except one in the Company, and by its Articles was appointed Governing Director and Chief Pilot. Lee was killed while piloting Company's aircraft, and his widow claimed compensation under Workmens Compensation Act. The Company opposed the claim stating that Lee was not a worker as the same person could not be Employer and Employee. Held: There was a valid contract of service between Lee and Company, and Lee was, therefore, a worker. Mrs. Lee's contention was upheld.</p>	<p>Lee vs Lee Air Farming Limited</p>

3. Perpetual Succession:

- (a) A Company is an artificial person and has a separate legal entity.
- (b) Hence, death, insolvency or retirement of its Members does not affect the Company.
- (c) The Shares of a Company being transferable, Members may change during the lifetime of the Company. However, that does not change the status of the Company.
- (d) The Company goes on forever and continues to exist, till it is wound up and dissolved.

4. Separate Property:

- (a) In the eyes of the law, the Shareholders of a Company are not, part owners of the undertaking.
- (b) The Company, being a separate entity, is entitled to hold property in its **own name**.
- (c) Members of the Company cannot claim ownership of Company's property.
- (d) Dealings by or with the Company are carried out in its own name and not as the collective agent of its Shareholders.

Property of the Company is not the property of its Shareholders, it is the property of the Company.	Gramophone & Type-writer Co. vs Stanley
Even where a Shareholder held almost entire Share Capital, he does not have an insurable interest in the Company's property. Macaura, who held all except one share of a Timber Company insured the Company's timber in his personal name. Timber being destroyed by fire, his claim was rejected for want of insurable interest. Applying the principle of separate legal entity, it was held the Insurance Company was not liable to Macaura.	Macaura vs Northern Assurance Co. Ltd.

5. **Common Seal:**
- A Company is an artificial person having perpetual existence and capable of holding property in its own name. To substantiate its existence and power of holding property, it has to sign on documents, deeds, etc. Since the Company cannot sign like natural persons, it uses a Common Seal, if any.
 - Common Seal is the **official signature** of a Company. The Company's name is engraved on the Seal.
 - The Articles of Association may provide for the documents that require the signature of the Company, i.e. the Common Seal. Where any document is affixed with the Common Seal, it amounts to being signed by the Company.
 - The Common Seal shall be kept in safe custody. The Company shall maintain a Register as to use of the Common Seal.
6. **Capacity to Sue:** The Company is a separate legal entity known by its name and hence all actions of the Company shall be done in its name. In any suit, the Company shall sue or be sued in its **own name**.
7. **Transferability of Shares:**
- Shares in the Company are always transferable, although the right to transfer them is often more or less restricted.
 - Since Shares are transferable, Members can dissociate themselves from the Company by transferring their Shares at any time, in the manner provided in its Articles.
 - However, any change in membership does not affect the working of the Company. Hence, Members may come and go, but the Company goes on forever.
 - In a Private Company, there are certain **restrictions** and not prohibition on transfer of Shares.
8. **Management:** The Board of Directors is the elected representative body of the Shareholders of the Company, and manages the affairs of the Company. Every Shareholder / Member does not participate in the day-to-day affairs of working and administration of the Company.
9. **Limitation of Action:** When the Creditors remain unpaid, their action as to claim stops with the Company. They cannot proceed against the Shareholders, individually or as a Group.
10. **Limited Liability:**
- The liability of the Company is that of its own and not that of its Members.
 - A Company's liability may be limited by Shares or Guarantee, or unlimited as per its Memorandum.
 - In some cases, however, the limited liability of Members may be rendered unlimited.

1B.1.3 Advantages of Company Incorporation

- A Company is a **distinct** legal or juristic person independent of its Members.
- Death, Insolvency, Insanity or Separation of Members will not affect the **continuity** of the business of the Company.
- Company can have **property** in its own name.
- Members can contribute to Share Capital with **minimum risk**. The liability of Members is **limited** to the extent of capital contribution, in case of a Company limited by Shares.
- Shares** in a Company shall be **movable property**, transferable in the manner provided by its Articles.
- There is no limit to the maximum number of Members in a Public Limited Company.
- Huge amounts can be mobilized through a Public Issue, to undertake all sorts of business ventures including those requiring very **high capital investments**.
- Elected representatives of Members (known as Directors) manage the Company's affairs. Thus, there is **ease in control** and management.
- Documents filed with ROC are "**Public Documents**" and available for inspection. Hence, there is a **transparency** in business operations.

1B.1.4 Disadvantages of Company Incorporation

1. Incorporation of a Company involves detailed **legal formalities** and related expenses.
2. All documents, returns, resolutions, etc. filed with the ROC (Registrar of Companies) become public, and are open for inspection at the ROC's Office upon payment of a fee. Hence, there is a total **loss of privacy** upon registration.
3. All members cannot have effective and intimate **control** over the working of the Company.
4. Winding up of Companies is more expensive and time-consuming than applicable to other forms of business organisations.
5. As control of economic resources is in few hands, it is possible for them to **defraud** unsuspecting other people who have contributed either as Shareholder / Debenture Holder / Creditor / Lender, etc.
6. A Public Limited Company has great **public accountability**.
7. Affairs and Working of a Company are to be conducted strictly in accordance with applicable **legal provisions**.
8. It cannot act against public interest. It has to undertake certain **social responsibility** towards the society in which it functions, which adds to total expenditure.

1B.2 LIFTING OF CORPORATE VEIL

1B.2.1 Company is a 'Separate Corporate Personality'

1. **Separate Corporate Personality:**
 - (a) A Company is in law, different from its members. It is regarded as an entity separate from its members.
 - (b) It has an **independent corporate existence**.
 - (c) It is an artificial person, known by its Name, with capacity to own money & property, sue & be sued in its own name, contracting with others and holding itself liable to others i.e. contracting debts of its own.
2. **Consequences:**
 - (a) Members cannot in any way, claim to be the same as that of Company.
 - (b) Assets and liabilities belong to the Company and not to the Members.
 - (c) Dealings by or with the Company are carried out in its own name and not as collective agent of its members.
 - (d) Shareholders do not have any insurable interest in Company's property. (**Macaura vs Northern Assurance Co. Ltd**)
 - (e) There is no bar on any Member entering into a contract with the Company.
 - (f) Members may also be the Company's Creditors or Employees. (**Lee vs Lee Air Farming Co. Ltd.**)
 - (g) The Company continues to exist, till it is wound up.
 - (h) Death, insanity, insolvency, etc. of Shareholders does not affect the Company's existence.
 - (i) Nationality of the Company does not depend on the nationality of its Shareholders. (**Janson vs Driefontein Mines Ltd**)
 - (j) The Company can be punished for wrongs done, in its own name.

1B.2.2 'Lifting of Corporate Veil' – Meaning

1. The Company is a distinct person separate from its Members. This principle is called "Veil of Incorporation".
2. The advantages of incorporation can be enjoyed only by those who honestly use the Veil of Company, for the collective benefit of the Company and also of its members.
3. Where there is a dishonest and fraudulent intention to utilise the facility of incorporation, the law can remove the "Corporate Veil" and identify the persons who are behind and responsible for commission / perpetration of fraud, and hold such persons as personally liable. This concept is called "**Lifting of Corporate Veil**".

A Corporation will be looked upon as a separate legal entity as a general rule but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime, the law will disregard the Corporate Entity, and consider the Company and its Members as one and the same.

United States vs Milwaukee Refrigerator Co.

SITUATIONS WHEN CORPORATE VEIL CAN BE LIFTED

Under Judicial Interpretations	Under Statutory Provisions
<ol style="list-style-type: none"> 1. Protection of Revenue. 2. Determination of character, i.e. whether enemy Company or not. 3. Protection of Public Policy. 4. Prevention of Fraud or Improper conduct. 5. Company is a mere sham, i.e. false Company. 6. Floating Subsidiary Companies to act as Agents. 7. Company avoiding legal obligations or welfare legislations. 8. Company acting as mere agents / trustees of Shareholders. 9. Determination of Company's technical competence. 10. Contempt of Court, i.e. Disobeying Court Order. 	<ol style="list-style-type: none"> 1. Mis-statement in Prospectus [Sec.34] 2. Failure to Return Minimum Subscription [S.39] 3. Fraud with respect to Deposits [Sec.75] 4. Holding & Subsidiary Company [Sec.129] 5. For facilitating task of Inspector [Sec.219] 6. For investigation into Ownership of Company [Sec.216] 7. Fraudulent Conduct u/s 447. 8. Illegal Association [Sec.464] 9. Reduction below Statutory Minimum [Sec.3A] 10. Liability under Other Statutes. 11. Ultra Vires acts.

1B.2.3 Lifting of Corporate Veil under Judicial Interpretations

1. **Protection of Revenue:** In order to protect revenue to the State, the Courts shall pierce the Corporate Veil and punish the perpetrators who defraud revenue.

A millionaire earning huge income by dividends and interests formed 4 Private Companies and transferred his investments in exchange of their Shares. Dividends and Interest Income were handed back to him as pretended loan. Held, Company was formed purely and simply as a means of avoiding tax and the Company was nothing more than Assessee himself. It did no business, but was created simply as a legal entity to ostensibly receive dividends and interest and hand them over to the assessee as pretended loans.

**Re. Dinshaw
Maneckjee
Petit**

2. **Determining enemy character of Company:** A Company is an artificial person and cannot be an enemy or friend. But during war, the Corporate Veil may be lifted to identify the persons behind and determine whether they are enemies or friends.

A Company was incorporated in London for selling tyres manufactured in Germany by a German Company. The German Company virtually held the entire Share Capital in the English Company. All the Directors were German residents. During the First World War, the said Company commenced an action for recovery of a trade debt from English Company. It was held that the Company was an alien Company and the payment of debt to it would amount to trading with the enemy and therefore the Company was not allowed to proceed with the action.

**Daimler Co. Ltd
vs Continental
Tyre & Rubber
Co. (Great
Britain) Ltd.**

3. **Protection of Public Policy:** Courts shall lift the Corporate Veil without hesitation to protect the public policy and prevent transactions contrary to public policy.

Where there is a conflict with public policy, Courts ignore the form and take into account only the substance.

**Connors vs Connors
Ltd.**

4. **Prevention of Fraud or Improper Conduct:** Where a Company is used for committing fraud, or for a fraudulent purpose, say defrauding Creditors or circumventing law, the corporate veil shall be lifted.

L agreed to sell a certain piece of land to J for £ 5,250. He subsequently changed his mind and to avoid specific performance of the contract, he sold it to a Company (with a capital of £ 100), which was formed especially for this purpose. The Company had L and a clerk of his solicitors as the only members. J brought an action against L and the Company for specific performance of the contract. The Court looked into the reality, ignored the transfer, and ordered the Company to convey / transfer the land to J.

**Jones vs
Lipman**

5. **Company mere sham or cloak:** Where the Company is a mere sham, i.e. falsity, the Courts lift the veil to protect the interests of those affected.

<p>Horne was employed under an agreement that he shall not solicit the Company's customers or compete with it for a certain period of time after leaving its employment. After cessation of employment, Horne formed a Company that carried on a competing business, and allotted the whole of its Shares to his wife and an Employee of the Company, who were appointed as its Directors. Held, Horne in fact controlled the Company. Its formation was a mere 'cloak or sham' to enable him to break his agreement with the Company (Employer – Gilford Motor). An injunction was issued against him and his Company restraining them from soliciting the customers of Gilford Motor.</p>	<p>Gilford Motor Company vs Horne</p>
<p>The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where, the corporate character is employed for the purpose of committing illegality or for defrauding others, the Court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned.</p>	<p>Delhi Dvelopment Authority vs Skipper Construction Company (P) Ltd.</p>

6. **Floating Subsidiaries merely to act as Agents:** When a Company floats Subsidiaries merely to act as its own Agent, then Corporate Veil shall be lifted, and both regarded as same entity, though in eyes of the law the Subsidiary Company is a distinct entity.

<p>A Transport Company wanted to obtain licences for its vehicles, but it could not do so if it made application in its own name. Hence, it formed a Subsidiary Company and made applications in the name of subsidiary. Vehicles were to be transferred to the Subsidiary. Held, Parent and Subsidiary Company was one commercial unit and application for licences was rejected.</p>	<p>Merchandise Transport Ltd vs British Transport Commission</p>
<p>Government of U.P. announced certain subsidies to Companies which produced power for their own use. Renusagar Power Supply Company was a 100% Subsidiary of Hindalco and supplied its entire power output to Hindalco and none else. Held, where Holding Company holds 100% Shares in a Subsidiary and the latter is created only for the purpose of Holding Company, Corporate Veil can be lifted. Hindalco and Renusagar Power Supply Company were considered as one entity, and thus Hindalco was entitled to the subsidies. Note: This decision had been an advantage to the Company.</p>	<p>State of UP. vs Renusagar Power Co.</p>

7. **Company avoiding legal obligations or welfare legislations:** When a Company tries to avoid its legal obligations or intends to avoid its obligations on welfare measures, the Corporate Veil shall be lifted, to look at the real situation.

<p>Where the sole purpose for formation of a new Company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Corporate Veil shall be pierced to look at the real transaction.</p>	<p>Workmen of Associated Rubber Industry Ltd vs Associated Rubber Industry Ltd.</p>
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8. **Company acting as mere Agents/Trustees of its Shareholders:** If there is an arrangement between the Shareholders and Company to the effect that Company will act as their agent for carrying on the business, then, business is essentially that of the Shareholders. In an arrangement where the Company acts as mere agents of its Shareholders, the individual Shareholders may be identified for fixing their liability.

<p>An American Company financed the production of a Film in India in the name of a British Company. The President of American Company held 90% of Shares of British Company. The Film was refused to be registered as a British Film. Held, the decision was valid since the British Company acted as the Nominee of the American Company.</p>	<p>Re. F G Films Ltd.</p>
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9. **Determining Technical Competence:** Since the Company comes into existence only upon incorporation, the technical competence of its Promoters can be considered to be that of the Company's by lifting the corporate veil. In such a situation, the lifting of veil is an advantage to the Company.

<p>The experience of Promoters could well be considered as experience of Company in determining its technical competence.</p>	<p>New Horizons Ltd vs Union of India</p>
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10. **Contempt of Court – Disobeying Court Order:**

Company being an artificial person cannot disobey the orders of the Court. Court shall pierce the Corporate Veil and shall make the person behind it liable if it is ascertained that the Company is used for sham / false purpose.

<p>A Firm of two Partners agreed to sell two floors to a party, but cancelled the agreement. The High Court restrained the Firm from selling the Property. In the meantime a Private Company was floated by the two Partners being the only two Shareholders and they became its Chairman and Managing Director respectively and the Property was transferred to the Company which despite the High Court's restraint order sold off the two floors. The Partners of the Firm took the plea that the sale had been made by the</p>	<p>Jyoti Limited vs Kanwaljit Kaur</p>
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