Introduction to company law

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Introduction

- Why we need to study Law?
- Necessity to Study Corporate Laws
- What we are going to discuss?

History of Company Law

- Companies Act, 1956
- Securities Contracts Regulation Act, 1956
- SEBI Act, 1992
- Depositories Act, 1996
- Companies Bill, 2008
- Companies Act, 2013

Meaning and Definition of Company

- Section 2(20) a company incorporated under this Act or under any previous company law.
- Lord Justice Lindley has defined a company as “an association of many persons who contribute money or money’s worth to a common stock and employ it in some trade or business and who share the profit and loss arising therefrom. The common stock so contributed is denoted in money and is the capital of the company. The persons who contributed in it or form it, or to whom it belongs, are members. The proportion of capital to which each member is entitled is his “share”. The shares are always transferable although the right to transfer them may be restricted

Characteristic features of a company

- Corporate personality
    - Salomon v. Salomon and Co. Ltd
    - Lee v Lee's Air Farming Ltd
- Incorporated Association
- Artificial Person
- Limited Liability
- Separate Property
- Transferability of Shares
- Perpetual Succession
- Common Seal

Whether Company is a Citizen??

RC Cooper v. UOI

Advantages of Incorporation

- Corporate Personality
- Limited Liability
- Perpetual Succession
- Transferable shares
- Separate Property
- Capacity to sue
- Flexibility and Autonomy

Disadvantages of Incorporation

- Formalities and Expenses
- Corporate disclosure
- Separation of control from ownership
- Greater social responsibility
- Greater Tax Burden in certain cases
- Detailed winding up procedure

Lifting of Corporate Veil

- Under Statutory Provisions
  - Mis-Statement in prospectus (Section 34 & 35)
  - Failure to Return Application (Section 39)
  - Misdescription of Name (Section 12)
- Under Judicial Interpretations
  - Protection of Revenue (Sir Dinshaw Maneckjee Petit, Re)
  - Prevention of fraud or improper conduct (Gilford Motor Company v. Horne)
  - Determination of Enemy Character of a company (Daimler Company Ltd V. Continental Tyre & Rubber Co.(Great Britain) Ltd
  - Formation of Subsidiary to act as an agent (Merchandise Transport Limited v. British Transport Commission)

Types of Companies

- Under Act
    - Private Company (Section 2(68))
        - One Person Company (Section 2(62))
        - Small Company (Section 2(85))
    - Public Company (Section 2(71))
- Based on Control
    - Holding Company & Subsidiary Company
    - Associate Company
    - Government Company
- Based on Liability
    - Limited by Shares
    - Limited by Guarantee
    - Unlimited Companies
- Others
    - Statutory Companies
    - Registered Companies
    - Association not for Profit (Section 8)
    - Foreign Company
    - Listed Company
    - Unlisted Company

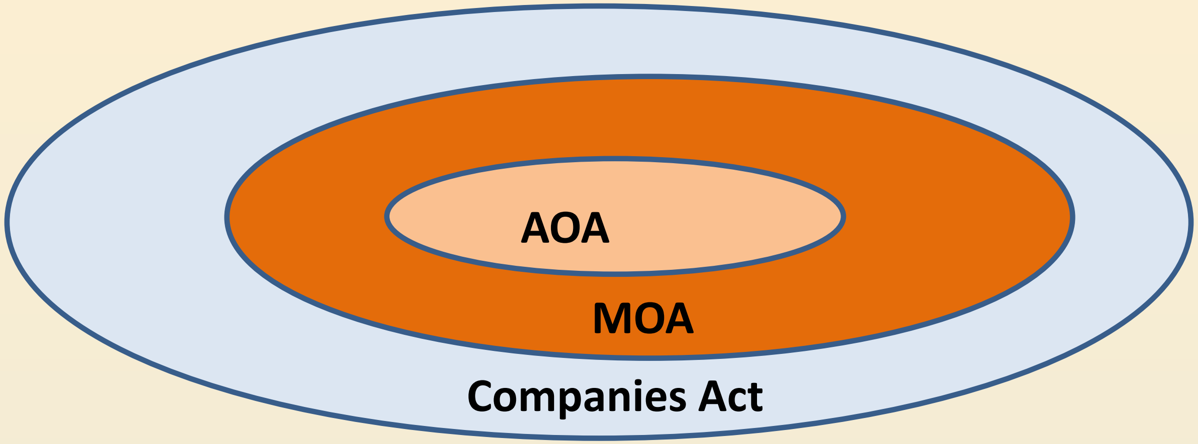
MOA & AOA

- Section 2(56) “Memorandum” Means the memorandum of association of a company as originally framed and altered from time to time in pursuance of any previous company or this Act
- According to Palmer “ The Memorandum of association is a document of great importance in relation to the proposed company. It contains the objects for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go. It defines as well as confines the powers of the company. If anything is done beyond these powers that will be ultra vires of the company and so void”
- **Clauses**
    - Name Clause
    - Situation Clause
    - Objective Clause
    - Liability Clause
    - Capital Clause
    - Subscription Clause
    - Nomination Clause (In case of OPC)

Continue…

- Section 2(2) Articles Means the articles of Association of a company as originally framed or as altered from time to time in pursuance of any previous company laws or of the present Act
- *Ashbury Railway Carriage and Iron Co. Ltd. v. Riche, (1875) L.R. 7 H.L. 653'* as follows: "The articles play a part that is subsidiary to the memorandum of association. They accept the memorandum of association as the charter of incorporation of the company, and so accepting it, the articles proceed to define the duties, rights and powers of the governing body as between themselves and the company at large, and the mode and form in which business of the company is to be carried on, and the mode and form in which changes in the internal regulations of the company may from time to time be made... The memorandum, is as it were. the area beyond which the action of the company cannot go; inside that area shareholders may make such regulations for the governance of the company as they think fit"

Relationship between MOA & AOA



- The Doctrine of Ultra Vires (Ashbury Railway Carriage and Iron Co Ltd v. Riche)
- The Doctrine of Constructive Notice
- The Doctrine of Indoor Management (Royal British Bank v. Turquand)

Procedure for Incorporation of Company

Through Spice+

- Can give only one Name
- INC 32 (Application for Incorporation of Company)
- INC 33 (MOA)
- INC 34 (AOA)
- INC 8 (Declaration by Professional)
- Consent to Act as Director (DIR 2)


Thank You