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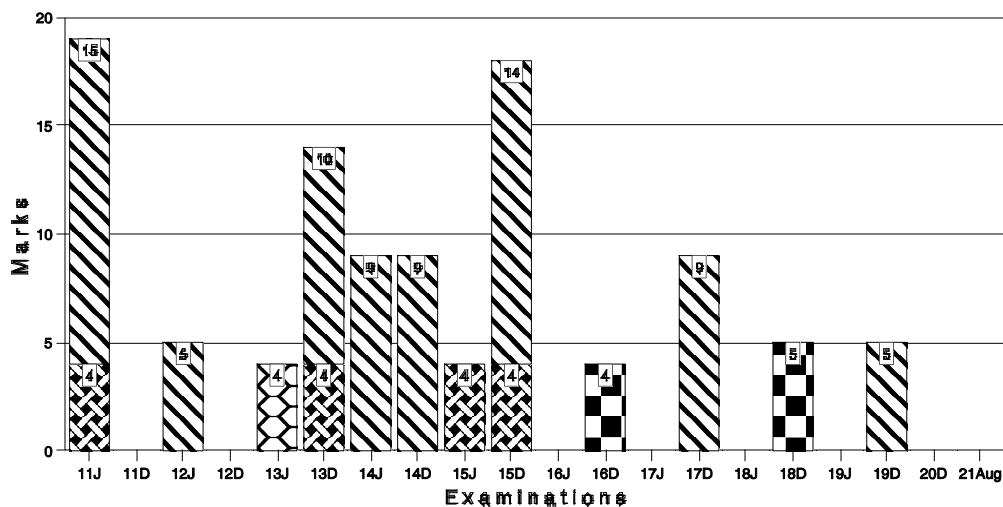
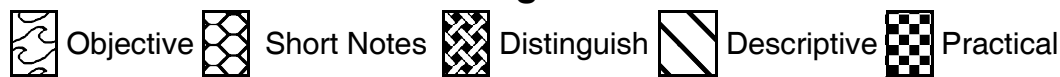
## INTRODUCTION

### THIS CHAPTER INCLUDES

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| <ul style="list-style-type: none"> <li>• Company as a business medium</li> <li>• Meaning and definition of term company</li> <li>• Nature and characteristics of a company</li> <li>• Historical Development of Concept of Corporate Law in India</li> <li>• Development of Company Law in India and England</li> <li>• Highlights of the Companies Act, 2013</li> </ul> | <ul style="list-style-type: none"> <li>• Companies <i>vis-a-vis</i> other Forms of business</li> <li>• Concept of Corporate Personality</li> <li>• Lifting of Corporate Veil</li> <li>• Citizenship</li> <li>• Personal liability of directors or members</li> <li>• Illegal association.</li> <li>• Formation and incorporation of Company</li> </ul> |
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Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

### Legend



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## CHAPTER AT A GLANCE

### **Company**

A company is an association of both natural and artificial persons incorporated under the existing law of a country. A company has a separate legal entity from the persons constituting it.

### **Characteristics of a company**

The main characteristics of a company are corporate personality, limited liability, perpetual succession, separate property, transferability of shares, common seal, capacity to sue and be sued, contractual rights, limitation of action, separate management, termination of existence etc.

### **Compared to other types of business associations**

As compared to other types of business associations, an incorporated company has the advantage of corporate personality, limited liability, perpetual succession, transferable shares, separate property, capacity to sue, flexibility and autonomy.

### **Disadvantages and inconveniences in incorporation**

There are, however, certain disadvantages and inconveniences in incorporation. Some of these disadvantages are formalities and expenses, corporate disclosures, separation of control from ownership, greater social responsibility, greater tax burden in certain cases, cumbersome winding-up procedure.

### **Doctrine of lifting of or piercing the corporate veil**

- (1) Sometime veil of corporate personality is used for some dishonest and fraudulent purpose in that case NCLT will look into reality and remove the corporate veil.  
In the following case the Tribunal have lifted the corporate veil.

- Prevention of fraud and misconduct [*Gilford Motor Co. Vs. Horne* [1933] Ch 935]
  - The company is in reality an agency or trust for someone else [*Re. F G Films Ltd. (1953)* 1 All E.R. 615]
  - Protection of public policy [*Connors Vs. Connors Ltd. (1940)* 4 All E.R. 179]
  - Enemy character of company [*Daimler Co. Ltd .Vs. Continental Tyre and Rubber Co. (1916)* 2 A.C. 307]
  - To protect labour welfare legislation [*Workmen of Associated Rubber Industries Ltd. Vs. Associated Rubber Industries Ltd. A.I.R. 1986 SC 1*]
  - Use of corporate veil for hiding criminal activities.
  - To punish for contempt of Court [*Jyoti Limited Vs. Kanwaljit Kavr Bhasin 32*] (1987) DLT 198]
- (2) Where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality.
- (3) The NCLT will break through the corporate shell and apply the principle/doctrine of what is called as “lifting of or piercing the corporate veil”.

### LLP

It is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership. LLP can continue its existence irrespective of changes in partners.

It is capable of entering into contracts and holding property in its own name. LLP is a separate legal entity, and is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.

**Corporation**

An organization formed under state law for the purpose of carrying on a business enterprise in such a manner as to make the enterprise distinct from its owners.

**Illegal association**

As per **Section 464 of Companies Act**, no association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force. The number of persons which may be prescribed under this section shall not exceed 100. **Rule 10 of Companies (Miscellaneous) Rules, 2014** prescribes 50 persons in this regard.

**Effects of an illegal association:** An illegal association:

- (i) Cannot enter into any contract.
- (ii) Cannot sue any member, or outsider, not even if the company is subsequently registered.
- (iii) Cannot be sued by a member, or an outsider for recovery of any debts.
- (iv) Cannot be wound up by an order of the Tribunal. In fact, the Tribunal cannot entertain a petition for winding up as an unregistered company, for if it did, it would be indirectly according recognition to the illegal association. [*Raghubar Dayal Vs. Sarafa Chamber A.I.R. 1954 All. 555*]

However, an illegal association is liable to be taxed. [*Kumara Swamy Chattiar Vs. Income Tax Officer (1957) I.T.R. 457*].

**Company as a Citizen**

- The company, though a legal person, is not a citizen under the **Citizenship Act, 1955** or under the Constitution of India.
- In ***State Trading Corporation of India Ltd. Vs. CTO AIR 1963 SC 1811***, the Supreme Court held that the State Trading Corporation though a legal person, was not a citizen and can act only through natural persons.

**Nationality & Residence**

- Though it is established through judicial decisions that a company cannot be a citizen, yet it has nationality, domicile and residence.
- In ***Gasque Vs. Inland Revenue Commissioners (1940) 2 K.B. 88***, it was held that a limited company is capable of having a domicile and its domicile is the place of its registration and that domicile clings to it throughout its existence.

**SHORT NOTES**

**2013 - June [6]** Write a note on the following:

(v) Illegal association.

**(4 marks) [CSEM - II]**

**Answer:**

**Illegal Association:**

<b>1. Provisions of Section 464 of Companies Act, 2013</b>	<b>Mandatory requirement of registration</b>	No association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act
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			or is formed under any other law for the time being in force. The number of persons which may be prescribed under this section shall not exceed 100.
		<b>Exceptions</b>	This section does not apply to: (a) Hindu Undivided Family or (b) An association or partnership formed by professionals who are governed by special Acts like LLP.
<b>2.</b>	<b>Rule 10 of Companies (Misc) Rules, 2014 as Notified on 1<sup>st</sup> April, 2014</b>	<b>Maximum number of members</b>	Any unregistered association shall be treated as illegal association provided such association has more than 50 members.
<b>3.</b>	<b>Companies Act, 2013</b>	<b>Maximum number of Partners</b>	Maximum number of partners of a partnership firm registered under Partnership Act other than LLP. should not exceed 50.
		<b>Limit for banking and other business</b>	As per Companies Act, 2013, no separate limit is specified for banking and other business, earlier it was 10 in case of banking business and 20 in case of other business.
<b>4.</b>	<b>Hindu Undivided Family Firms</b>	<b>Limit for members in Hindu Undivided Family</b>	If two or more joint Hindu family firms carry on business together and the combined number of major members exceeds 50, then their association will become illegal.

		<b>Minor members of Joint families</b>	In computing the number for illegal association, minor members of joint families are to be ignored.
		<b>Minor members on attaining majority</b>	If by reason of minor members of such joint families on attaining majority, the number of persons exceeds the statutory limit, it will become an illegal association.
<b>5.</b>	<b>Effects of an Illegal Association</b>	<b>Consequences</b>	<ol style="list-style-type: none"> <li>1. Cannot enter into any contract.</li> <li>2. Cannot sue any member, or outsider, not even if the company is subsequently registered.</li> <li>3. Cannot be sued by a member, or an outsider for recovery of any debts.</li> <li>4. Cannot be wound up by an order of the Tribunal. In fact, the Tribunal, cannot entertain a petition for winding up as an unregistered company, for if it did, it would be indirectly according recognition to the illegal association.</li> </ol>
<b>6.</b>	<b>Penalty</b>	<b>Fine</b>	Every member of an illegal association shall be punishable with fine which may extend to ₹ 1 lakh and shall also be personally liable for all liabilities incurred in such business.

**Note:** However, an illegal association is liable to be taxed. [Kumara Swamy Chattiari Vs. Income Tax Officer (1957) I.T.R. 457].

*The members of an illegal association are individually liable in respect of all acts or contracts made on behalf of the association; they cannot either individually or collectively, bring an action to enforce any contract so made, or to recover any debt due to the association. [Wilkinson Vs. Levison (1925)42 T.L.R. 97]*

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## DISTINGUISH BETWEEN

**2011 - June [3]** Distinguish between the following :

- (i) 'Company' and 'corporation'.

**(4 marks) [CSEM - II]**

**Answer:**

**Distinction between Company and Corporation.**

1.	Wider Concept of the Word "Corporation"	The term body corporate is much wider in concept than the word company because it includes:	
		(a) Companies	Formed and registered under the <b>Companies Act, 2013</b> that is all Indian Companies.
		(b) Foreign Companies	Companies incorporated outside India that is foreign companies.
		(c) Public Financial Institution	
		(d) Nationalized Bank	



		(e) Corporations formed under acts of Parliaments	
		(f) Limited Liabilities Partnerships	Registered under the Limited Liability <b>Partnership Act, 2008.</b>
		As per <b>Section 2 (11) of Companies Act, 2013</b> , the term body corporate does not include :	
		(a) Co-operative Society	Registered under any law relating to Co-operative Societies.
		(b) Any other body corporate, notified by Central Government in its official gazette	But not being a company as defined in this Act.

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**2013 - Dec [2]** Distinguish between the following:

(a) 'Company' and 'partnership firm'.

**(4 marks)**

**Answer:**

S. No.	Topic	Company	Partnership Firm
1	<b>Regulating Act</b>	A Company is regulated by the <b>Companies Act, 2013.</b>	While a partnership is governed by the <b>Indian Partnership Act, 1932.</b>

2	<b>Mode of Creation</b>	Registration is compulsory in case of company.	Whereas registration is optional in Partnership.
3	<b>Minimum Membership</b>	Whereas the minimum number of members in a private company are two and that in case of public company are seven members.	In partnership, the minimum number of partners are two.
4	<b>Maximum Membership</b>	Maximum number of member are: <ul style="list-style-type: none"> <li>• For private company: <b>200</b></li> <li>• For Public company : Unlimited</li> </ul>	A partnership with objects of acquisition for gains cannot be formed beyond 50 numbers of partners. [ <b>Section 464 read with Rule 10 of Companies (Miscellaneous) Rules, 2014</b> ]
5	<b>Legal Status</b>	A company has a separate legal personality distinct from that of its members.	Whereas partnership is not a distinct person, it comprises of several persons who compose it.
6	<b>Liability of Members</b>	In case of company, the liability of shareholders is limited to the extent of their share capital or upto the amount of guarantee given by them.	But in case of partnership the liability of partner is unlimited. Each partner is liable to an unlimited extent for the debt incurred in the ordinary course of business.

7	<b>Transfer of Share</b>	Shares of a Public Co. are freely transferable	But in case of partnership, no partner can transfer his share without the consent of other partner.
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**2015 - June [2]** Distinguish between the following :

(c) 'Limited liability partnership' and 'body corporate'.

**(4 marks)**

**Answer:**

**Limited Liability Partnership (LLP) and Body Corporate**

Sr. No.	Basis	Limited Liability Partnership (LLP)	Body Corporate
1.	<b>Regulation</b>	LLP is an alternative form of corporate business, not being a company, that gives the benefits of limited liability of a company and the flexibility of a partnership. LLP is covered under the <b>Limited Liability Partnership Act, 2008</b> .	While term "Body Corporate" as defined under <b>section 2(11) of Companies Act, 2013</b> includes a Company incorporated outside India but does not include: (i) a co-operative society registered under any law relating to co-operative societies; and (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.

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2.	<b>Incorporation as one person Company</b>	LLP can't be incorporated by One Person.	A body corporate may be a company incorporated by one person as One Person Company.
3.	<b>LLP as body corporate and Vice-Versa</b>	A LLP may be a body corporate.	But the <i>vice-versa</i> may not be true.
4.	<b>Compliance Requirements</b>	LLP will have lesser compliance requirements.	A body corporate will have more compliance requirements.

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**2015 - Dec [2]** Distinguish between the following:

(a) 'Company' and 'limited liability partnership'.

**(4 marks)**

**Answer:**

S. No.	Heading	Description
1.	<b>Regulation</b>	A basic difference between an LLP and a joint stock company lies in that the internal <b>governance structure</b> of a company is regulated by statute (i.e. <b>Companies Act, 2013</b> ) whereas for an LLP it would be by a contractual agreement between partners.
2.	<b>Management</b>	The <b>management-ownership divide</b> inherent in a company is not there in a limited liability partnership.

3.	<b>Compliance requirements</b>	LLP will have lesser compliance requirements as compared to a company.	
4.	<b>Benefit of limited liability and Flexibility</b>	(a) <b>Limited Liability</b>	<ul style="list-style-type: none"> <li>• LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.</li> <li>• LLP can continue its existence irrespective of changes in partners.</li> <li>• It is capable of entering into contracts and holding property in its own name.</li> <li>• LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.</li> </ul>
		(b) <b>Flexibility</b>	LLP will have more flexibility as compared to a company.
5.	<b>Enforcement of contracts</b>	LLP is a body corporate and a legal entity separate from its partners, having perpetual succession.	

6.	<b>LLP as a business model</b>	<p>LLP form is a form of business model which.</p> <ul style="list-style-type: none"> <li>(i) is organized and operates on the basis of an agreement in between partners;</li> <li>(ii) provides flexibility without imposing detailed legal and procedural requirements;</li> <li>(iii) enables professional/technical expertise and initiative to combine with financial risk taking capacity in an innovative and efficient manner.</li> </ul>
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## DESCRIPTIVE QUESTIONS

**2011 - June [1] {C}** Comment on the following :

- (ii) The managing director and other directors of a company are not liable to be sued for dues against a company. **(5 marks) [CSEM - II]**
- (iii) The competent Tribunal of law can entertain a petition for winding-up of an illegal association under company law. **(5 marks) [CSEM - II]**
- (iv) A company can be regarded as having enemy character under certain circumstances. **(5 marks) [CSEM - II]**

**Answer:**

(ii)

1.	<b>Authenticity of the statement</b>	A company being a juristic person, it can sue and can be sued by others in its own name.	
2.	<b>Case Law</b>	<b>Abdul Haq Vs. Das Mal</b>	If an employee was not paid his salary for several months. He may file a suit against the director of the company for the recovery of the amount of salary due to him. It is held

			that he will not succeed because the remedy lies against the company and not against the directors or members of the company.
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(iii)

1.	<b>No recognition to illegal association by Law</b>	The law does not recognize illegal association and therefore cannot be wound up by order of Tribunal.
2.	<b>Conclusion</b>	The Tribunal cannot entertain a petition for the winding up of a company formed in contravention of <b>Companies Act, 2013</b> .

(iv)

1.	<b>Authenticity of the Statement</b>	The statement is correct based on a case Law - <b>Daimler Co. Ltd. vs. Continental Tyre and Rubber Co. Ltd.</b>
2.	<b>Analysis of the case law</b>	<ul style="list-style-type: none"> <li>➤ The facts in question are similar to the facts in <b><i>Daimler Co. Ltd. Vs. Continental Tyre and Rubber Co. Ltd.</i></b> a company was incorporated in England to sell tyres manufactured by a German Company.</li> <li>➤ The bulk of the shares of the English Company were held by Germans and all the directors were Germans.</li> <li>➤ During world war, the English Company filed a suit to recover a trade debt.</li> <li>➤ It was held that the company though incorporated in England was an enemy company; and the company was not allowed to proceed with the action to recover its debts.</li> </ul>

	➤ It was laid down that a company may assume an enemy character when persons in defacto control of its affairs are residents of an enemy country or, wherever resident, are acting under the control of enemies.
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**2012 - June [1] {C}** Comment on the following:

- (ii) A shareholder who holds 99% of the share capital of a company can be held liable for the acts of the company. **(5 marks) [CSEM - II]**

**Answer:**

<b>1.</b>	<b>Authenticity of the statement</b>	The statement is not true.
<b>2.</b>	<b>Separate Legal Entity</b>	➤ A company is an artificial person. It is formed and registered under the Companies Act. It has distinct legal entity. Its personality is separate and distinct from its members. ➤ The company's money and property belong to the company and not to the members of company. Similarly, the members' personal property can not be held liable to pay the creditors of the company.
<b>3.</b>	<b>Characteristics of company</b>	In some cases company is treated as a natural person. (a) It can make contracts. (b) Open a bank account. (c) Can sue and be sued by others. (d) It can also own property.
<b>4.</b>	<b>Analysis of Case Law: Saloman Vs. Saloman Company Ltd.</b>	This point has clearly established the principle that once a company has been validly constituted under the <b>Companies Act, 2013</b> , it becomes a legal person distinct from its members and for this purpose, it is immaterial whether any member has



		a large or small proportion of the share capital, and whether he holds those shares beneficially or as a mere trustee.
5.	<b>Conclusion</b>	Hence, shareholders can not be held liable for the acts of the company.

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**2013 - Dec [1]** Comment on the following:

- (b) A shareholder is held personally liable for the acts of the company, if he holds virtually the entire share capital of the company.
- (d) Common seal acts as the official signature of a company.

(5 marks each)

**Answer:**

(b) *Please refer 2012 - June [1] {C} (ii) on page no. [32](#)*

(d)

S. No.	Heading	Description
1.	<b>Authenticity of the statement</b>	The statement is correct.
2.	<b>Contracts under the seal of the company</b>	<ul style="list-style-type: none"> <li>➤ On incorporation, a company acquires legal entity with perpetual succession and a common seal.</li> <li>➤ Since the company has no physical existence, it must act through its agents and all such contracts entered into by its agents must be under the seal of the company.</li> </ul>
3.	<b>Official signature of the company</b>	The common seal acts as the official signature of a company. The name of the company must be engraved on its common seal.

4.	<b>Authenticity of a document</b>	<ul style="list-style-type: none"> <li>➤ A rubber stamp of the company on a document does not make it authentic and legal unless such document bears the common seal of the company.</li> <li>➤ The Companies Act or the Articles of Association of a company may require certain instruments or documents to be executed under the common seal of the company.</li> </ul>
5.	<b>Safe custody of the common seal</b>	The person authorised to use the seal should ensure that it is kept under his personal custody and is used very carefully because any deed, instrument or a document to which seal is improperly or fraudulently affixed will involve the company in legal action and litigation.
6.	<b>Deeds or contracts to be under the common seal</b>	<p>According to the Companies Act, the following deeds and contracts are required to be under the common seal of the company:</p> <ul style="list-style-type: none"> <li>➤ Power of attorney</li> <li>➤ Share certificates</li> <li>➤ Share warrant</li> <li>➤ Any deed as required by articles</li> </ul>
7.	<b>Companies Amendment Act, 2015</b>	As per the said amendment, the mandatory requirement of Common seal has been removed.

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**2014 - June [1]** Comment on the following:

- (b) Common seal can be used by any employee of the company irrespective of his designation. **(5 marks)**

**Answer:**

(A)	Authenticity of the statement	Statement is not correct.		
(B)	Provisions of Companies Act	1. Resolution of Board is required for affixing common seal (if any) of the company on deed and contracts. 2. Common seal is affixed only in presence of two directors and Company Secretary or such other person as the Board may appoint for the purpose in accordance with the articles of association.		
Amendment Made by Companies (Amendment) Act, 2015				
Sr. No.	Section in which Amendment is made	Words to be omitted	Words to be substituted with	New Provisions to be inserted in the section
1.	Section 9	The words “and a common seal” shall be omitted	–	–
2.	Section 22 sub section (2)	–	(a) for the words “under its common seal”, the words “under its common seal, if any,” shall be substituted;	(b) <i>The following proviso shall be inserted, namely:— “Provided that in case a company does not have a common seal, the authorisation under this sub-section shall be made by two directors or by a</i>

				<i>director and the Company Secretary, wherever the company has appointed a Company Secretary."</i>
<b>3.</b>	Section 22 Subsection (3)	The words "and have the effect as if it were made under its common seal" shall be omitted	—	—
<b>4.</b>	Section 46, sub section (1)	—	<i>For the words "issued under the common seal of the company", the words "issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary" shall be substituted.</i>	

(c)	Seal when to be used	<ul style="list-style-type: none"> <li>➤ The article of association of a company provide for affixing the seal of the company on documents.</li> <li>➤ The company seal may be affixed on the following documents after authorisation from AOA &amp; Board resolution: <ul style="list-style-type: none"> <li>(i) Power of attorney.</li> <li>(ii) Deed of lease</li> <li>(iii) Share certificate</li> <li>(iv) Deed of mortgage</li> <li>(v) Promissory notes</li> <li>(vi) Share Warrant etc.</li> </ul> </li> </ul>
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**2014 - June [5]** Answer the following citing the relevant provisions of law/case law, if any:

- (c) “Separate personality of a company is a special privilege. In case of dishonest or fraudulent use of this privilege, corporate veil can be lifted”. Discuss. **(4 marks)**

**Answer:**

**Doctrine of lifting of or piercing the corporate veil:**

Sr. No.	Points	Description
1.	<b>Meaning of lifting or piercing the corporate veil</b>	<ul style="list-style-type: none"> <li>• The separate personality of a company is a statutory privilege and it must be used for legitimate business purposes only.</li> <li>• Where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality.</li> </ul>

		<ul style="list-style-type: none"> <li>• The Tribunal will break through the corporate shell and apply the principle/doctrine of what is called as “lifting of or piercing the corporate veil”.</li> <li>• The Tribunal will look behind the corporate entity and take action as though no entity separate from the members existed and make the members or the controlling persons liable for debts and obligations of the company.</li> </ul>	
2.	<b>When it is lifted</b>	<b>Concerned Case Law:</b> [BSN (UK) Ltd. v. Janardan Mohandas Rajan Pillai [1996] 86 Com Cases 371 (Bom).]	The corporate veil is lifted when in defence proceedings, such as for the evasion of tax, an entity relies on its corporate personality as a shield to cover its wrong doings.
3.	<b>Share-holders not permitted for the lifting of the veil for their purpose</b>	<b>Concerned Case Law:</b> <b>Premlata Bhatia v. Union of Indian (2004) 58 CL 217 (Delhi)</b>	This was held in wherein the premises of a shop were allotted on a licence to the individual licensee. She set up a wholly owned private company and transferred the premises to that company without the Government consent. She could not remove the illegality by saying that she and her company were virtually the same person.

In the following cases the Tribunal have lifted the corporate veil.

1	<b>Prevention of fraud and misconduct</b>	Where the medium of a company has been used for committing fraud or improper conduct, the Courts have lifted the veil and looked at the realities of the situation. <b><i>[Gilford Motor Co. Vs. Horne [1993] Ch 935]</i></b>
2	<b>Company acting as agent</b>	Where the company is in reality an agency or trust for someone else and the corporate facade is used to cover up that agency or trust. <b><i>[Re F G Films Ltd. (1953) 1 All E.R. 615]</i></b>
3	<b>Protection of public policy</b>	Where the doctrine conflicts with public policy, Tribunal have lifted the corporation veil for protecting the public policy. <b><i>[Connors Vs. Connors Ltd. (1940) 4 All E.R. 179]</i></b>
4	<b>Enemy Character of Company</b>	Tribunal will lift the corporate veil if the company has enemy character. <b><i>[Daimler Co. Ltd. Vs. Continental Tyre and Rubber Co. (1916) 2 A.C. 307]</i></b>
5	<b>Evasion of taxes</b>	Where the veil has been used for evasion of taxes and duties, the Tribunal upheld the piercing of the veil to look at the real transaction. <b><i>[Re. Dinshaw Maneckjee Petit A.I.R. 1927 Bombay 371]</i></b>
6	<b>To protect labour welfare legislation</b>	Where the purpose of company formation was to avoid the welfare legislation, the Tribunal will lift the corporate veil. Where it was found that the sole purpose for the formation of new company was to use it as a device to reduce the amount to be paid by way of bonus to workman the Supreme Court upheld the piercing of the veil to look at the transaction.

		<i>[Workmen of Associated Rubber Industries Ltd. Vs. Associated Rubber Industries Ltd. A.I.R. 1986 SC1]</i>
7	<b>Use of corporate veil for hiding criminal activities</b>	Where the defendant used the corporate structure as a device to conceal his criminal activities (evasion of customs and excise duties), the Tribunal could lift the corporate veil and treat the assets of the company as the realizable property of the shareholder.

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**2014 - Dec [1]** Comment with reasons on the following:

(a) Piercing through corporate veil.

**(5 marks)**

**Answer:**

***Please refer 2014 - June [5] (c) on page no. [37](#)***

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**2014 - Dec [2A] (Or)** (i) In an annual general meeting of Amar (Pvt.)Ltd., all the shareholders were killed in a bomb blast. State, whether the company is still in existence. If so, how? **(4 marks)**

**Answer:**

S. No.	Heading	Description
1.	<b>Perpetual Succession</b>	<ul style="list-style-type: none"> <li>Perpetual Succession, therefore, means that the membership of a company may keep changing from time to time, but that does not affect its continuity.</li> <li>A company, being a separate legal person is unaffected by death or departure of any member and remains the same entity, despite total change in the membership.</li> </ul>



2.	<b>Death only on winding of the company</b>	<ul style="list-style-type: none"> <li>An incorporated company never dies except when it is wound up as per law.</li> </ul>
3.	<b>Change in membership</b>	<ul style="list-style-type: none"> <li>The membership of an incorporated company may change either because one shareholder has transferred his shares to another or his shares devolve on his legal representatives on his death or he ceases to be a member under some other provisions of the Companies Act.</li> <li>Thus, perpetual succession denotes the ability of a company to maintain its existence by the constant succession of new individuals who step into the shoes of those who cease to be members of the company.</li> </ul>
4.	<b>Survival of company even after death of all the members during war</b>	<ul style="list-style-type: none"> <li>A company's life is determined by the terms of its Memorandum of Association. It may be perpetual or it may continue for a specified time to carry on a task or object as laid down in the Memorandum of Association.</li> </ul>

**Note:**

**Professor L.C.B. Gower rightly mentions,** “Members may come and go, but the company can go on forever. During the war all the members of one private company, while in general meeting, were killed by a bomb, but the company survived - not even a hydrogen bomb could have destroyed it”.

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**2015 - Dec [1]** Comment on the following:

- (a) A company incorporated under the Companies Act, 2013, being an artificial person, is not entitled to sue a natural person or to sue another company incorporated under the same Act. **(5 marks)**

- (d) A company incorporated under the Companies Act, 2013 never dies except when it is wound-up as per the law. **(5 marks)**

**Answer:**

**(a)**

S. No.	Heading	Description
1.	<b>Authenticity of the statement</b>	A Company being a body corporate, can sue and be sued in its own name.
2.	<b>Legal Framework</b>	<ul style="list-style-type: none"> <li>To sue, means to institute legal proceedings against (a person) or to bring a suit in a Tribunal of law.</li> <li>All legal proceedings against the company are to be instituted in its name.</li> <li>Similarly, the company may bring an action against anyone in its own name.</li> </ul>
3.	<b>Company's right to sue for damages</b>	<ul style="list-style-type: none"> <li>A company's right to sue arises when some loss is caused to the company, i.e. to the property or the personality of the company. Hence, the company is entitled to sue for damages for libel or slander as the case may be [<i>Floating Services Ltd. vs. MV San Fransceco Dipaloo</i> (2004) 52 SCL 762 (Guj)].</li> <li>A company, as a person distinct from its members, may even sue one of its own members.</li> </ul>
4.	<b>Conclusion</b>	Hence, a company is entitled to sue a natural person or to sue another company incorporated under the <b>Companies Act, 2013</b> in its own name.

**(d) Please refer 2014 - Dec [2A] (Or) (i) on page no. 40**

However in case of merger, the transferor company is dissolved without winding up.

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**2015 - Dec [2A] (Or) (i)** Explain clearly the meaning of ‘lifting of corporate veil’ in relation to a company incorporated under the Companies Act, 2013. Examining the judicial decisions, state whether ‘corporate veil’ can be lifted in the following cases:

- (a) Where the corporate veil has been used for improper conduct; and  
 (b) Where the acts of a company are opposed to workmen? **(4 marks)**

**Answer:**

S. No.	Heading	Description
1.	<b>Lifting of Corporate Veil under Judicial Interpretation</b>	Ever since the decision in <b><i>Salomon vs. Salomon &amp; Co. Ltd.</i>, (1897) A.C. 22</b> , normally Tribunal are reluctant or at least very cautious to lift the veil of corporate personality to see the real persons behind it. Nevertheless, Tribunal have found it necessary to disregard the separate personality of a company in the following situations:
	<b>(a) Where the corporate veil has been used for commission of fraud or improper conduct</b>	<p><b>Case Laws:</b>  <b>In Jones vs. Lipman,</b>  <b>(1962) I.W.-</b>  <b>L.R. 832</b></p> <ul style="list-style-type: none"> <li>➤ In this case the court lifted the veil and looked at the realities in the situation.</li> <li>➤ A agreed to sell certain land to B. Pending completion of formalities of the said deal, A sold and transferred the land to a company which he had incorporated with a nominal capital of £100 and of which he and a clerk</li> </ul>

			<p>were the only shareholders and directors. This was done in order to escape a decree for specific performance in a suit brought by B. The Tribunal held that the company was the creature of A and a mask to avoid recognition and that in the eyes of equity A must complete the contract, since he had the full control of the limited company in which the property was vested, and was in a position to cause the contract in question to be fulfilled.</p>
	<p><b>(b) Where the acts of a company are opposed to workmen</b></p>	<p><b>The Associated Rubber Industries Ltd. Bhavnagar &amp; another, AIR 1986 SC 1</b></p>	<ul style="list-style-type: none"> <li>➤ It has been decided in The Associated Rubber Industries Ltd. Bhavnagar &amp; another, AIR 1986 SC 1 that where the acts of the company are opposed to workmen the corporate veil may be lifted.</li> <li>➤ <b>Brief facts of the case:</b> In this case, a new company was created wholly by the principal company and with assets of its own except those transferred to it by the principal company and with</li> </ul>

			<p>no, business or income of its own except receiving dividends from share transferred to it by the principal company i.e. only for the purpose of splitting the profits into two hands and thereby reducing the obligation to pay bonus.</p> <p>The Supreme Court held that the new company was formed as a device to reduce the gross profits of the principal company and thereby reduce the amount to be paid by way of bonus to workmen.</p> <p>The amount of dividends received by the new company should, therefore be taken into account in assessing the gross profit of the principal company. The corporate veil, therefore was lifted in this case.</p>
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**2017 - Dec [1]** Comment on the following:

- (d) Three companies incorporated with the same set of shareholders are treated as same companies under the Companies Act, 2013.

**(5 marks)**

Answer:

1.	<b>Separate Legal Entity</b>	(i) <b>Separate Corporate Personality</b>	On incorporation, a company becomes a separate legal person in the eyes of law. The company is vested with a corporate personality distinct from individuals who are its members.
		(ii) <b>Own Name and acts</b>	Being a separate legal entity, it bears its own name and acts under a distinct corporate name.
		(iii) <b>Owned assets</b>	Its assets are separate and distinct from those of its members.
		(iv) <b>Different person from promoters</b>	It is also different 'person' from the members who compose it.
		(v) <b>Owned properties, borrowing money etc</b>	As such, it is capable of owning property, incurring debts, borrowing money, having a bank account, employing people, entering into contracts and suing or being sued in the same manner as an individual.
2.	<b>Conclusion</b>	Thus, the two companies which are incorporated with the same set of shareholders are nevertheless distinct and separate entities [ <i>Patinson v. Bindya Debi AIR 1933 Pat 196</i> ]. [ <i>Theory of Corporate veil; Saloman v. Saloman &amp; Co. Ltd.</i> ]	

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**2017 - Dec [3]** (c) One of the subscribers to Memorandum of Association of a company under process of incorporation is a foreign national residing outside India. State the provisions of Companies Act, 2013 regarding authentication of his signature and address. Will the requirement of business visa be applicable to his case if he is a person of Indian origin or overseas citizen of India? **(4 marks)**

**Answer:**

**Where subscriber to the memorandum is a foreign national residing outside India:**

- (a) in a country in any part of the Commonwealth, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary (Public) in that part of the Commonwealth.
- (b) in a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary (Public) of the country of his origin and be duly apostilled in accordance with the said Hague Convention.
- (c) in a country outside the Commonwealth and which is not a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity, shall be notarized before the Notary (Public) of such country and the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under **Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948** (40 of 1948) or, where there is no such officer by any of the officials mentioned in **Section 6 of the Commissioners of Oaths Act, 1889** (52 and 53 Vic.C.10), or in any Act amending the same;
- (d) visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa.

**Explanation:** For the purposes of this clause, it is hereby clarified that, in case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa shall not be applicable.

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**2019 - Dec [1]** Comment on the following:

- (a) The Companies Act, 2013 does not provide statutory recognition to the doctrine of lifting of corporate veil. Only judicial interpretations disregard the concept of separate personality. **(5 marks)**

**Answer:**

It is not correct to State that **the Companies Act, 2013** does not provide statutory recognition to the doctrine of lifting of corporate veil and only judicial interpretation disregard the concept of separate personality.

**The Companies Act, 2013** itself contains various provisions in **Sections 7(7), 251(1) and 339** which lift the corporate veil to reach the real forces of action. **Section 7(7) of Companies Act, 2013** deals with punishment for incorporation of company by furnishing incorrect information; **Section 251(1) of Companies Act, 2013** provides that liability for making fraudulent application for removal of name of company from the register of companies and **Section 339 of Companies Act, 2013** deals with liability for fraudulent conduct of business during the course of winding up.

Ever behind the decision in *Salomon v. Salomon & Co. Ltd.*, generally Courts are reluctant or at least very cautious to lift the veil of corporate personality to see the real persons behind it. Nevertheless, Courts have found it necessary to disregard the separate personality of a company in the different situations:

- (1) Fraud or Improper conduct:** Where the corporate veil has been used for commission of fraud or improper conduct. In this case, Courts have lifted the veil and looked at the realities of the situation. (*Case Law: Jones vs. Lipman*)
- (2) Company acting as an agent:** Where a corporate facade is really only an agency instrumentality. (*Case Law: R.G. Films Ltd.*)
- (3) Conflict with Public Policy:** Where the conduct conflicts with public policy, Courts lifted the corporate veil for protecting the public policy. (*Case Law: Connors Bros. v. Connors*)



- (4) **Enemy Character:** A company will be regarded as having enemy character, if the persons having de facto control of its affairs are resident in an enemy country or, wherever they may be, are acting under instructions from or on behalf of the enemy. (*Case Law: Daimler Co. Ltd. v. Continental Tyre & Rubber Co.*)
- (5) **Evasion of taxes:** Where it was found that the sole purpose for which the company was formed was to evade taxes the Court will ignore the concept of separate entity and make the individuals concerned liable to pay the taxes which they would have paid but for the formation of the company. (*Case Law : Sir Dinshaw Maneckjee Petit, Vodafone case*)
- (6) **Avoidance of welfare legislation:** Avoidance of welfare legislation is as common as avoidance of taxation and the approach in considering problems arising out of such avoidance has necessarily to be the same and, therefore, where it was found that the sole purpose for the formation of the new company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction. (*Case Law: The Workmen Employed in Associated Rubber Industries Limited*)
- (7) **Unjust and inequitable:** Where it is found that a company has abused its corporate personality for an unjust and inequitable purpose, the Court would not hesitate to lift the corporate veil.

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## PRACTICAL QUESTIONS

**2016 - Dec [4]** (d) Six persons are the only members of Tab (Pvt.) Ltd. All of them went to USA on a pleasure trip by aeroplane. On the way, the plane crashed and all the six members died. Does Tab (Pvt.) Ltd. still exist? Decide. **(4 marks)**

**Answer:**

1.	<b>Perpetual Succession</b>	<ul style="list-style-type: none"> <li>An incorporated company never dies, except when it is wound up as per law.</li> </ul>
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**2.50****Scanner CSEP M-I Paper 2 (2017 Syllabus)**

		<ul style="list-style-type: none"><li>• A company, being a separate legal person is unaffected by death or departure of any member and it remains the same entity, despite total change in the membership.</li><li>• A company's life is determined by the terms of its Memorandum of Association.</li><li>• It may be perpetual, or it may continue for a specified time to carry on a task or object as laid down in the Memorandum of Association.</li></ul>
<b>2.</b>	<b>Conclusion</b>	The Company has perpetual succession, therefore, means that the membership of a company may keep changing from time to time, but that shall not affect its continuity. Therefore, TAB PVT. LTD. still exist despite of the death of all its members.

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**2018 - Dec [1]** Comment on the following:

- (a) Raman Pvt. Ltd. has only two shareholders, X and Y. All shares were fully paid-up X sold all his shares to Y and the company carries on its business activities thereafter. **(5 marks)**

**Answer:**

<b>1.</b>	<b>Reduction in membership</b>	Under section 3A of Companies Act, 2013, if at any time the number of members of a company is reduced, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than two members, shall be severally liable for the
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		payment of the whole debts of the company contracted during that time, and may be severally sued therefor.
2.	<b>Analysis of Case Law</b>	<b>Therefore in the above case</b> of Raman Pvt. Ltd., out of the two shareholders X and Y, X sold all his shares to Y and the company carried on its business activities thereafter, pursuant to the referred section where the company carries its business for more than six months, Mr. Y shall be severally liable for the payment of the whole debts of the company contracted after those six months, and may be severally sued therefor.

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### TOPICS NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION

### SHORT NOTES

**Q1.** Write short note on one person company.

**Answer:**

1	<b>Section 2(62) of the Companies Act, 2013:</b>	define “one person company” as a company which has only one person as member. OPC is a sub – domain of Private Company as per Section 2(68).
2	<b>Rule 3 of the Companies (Incorporation) Rules 2014:</b>	say, only a natural person who is an Indian citizen and resident in India: (a) shall be eligible to incorporate a One Person Company; (b) shall be a nominee for the sole member of a One Person Company.

3	A person can incorporate only one “One Person Company”	<ul style="list-style-type: none"> <li>• The subscriber to the memorandum of a One Person Company shall nominate a person, after obtaining prior written consent of such person, who shall, in the event of the subscriber’s death or his incapacity to contract, become the member of that One Person Company.</li> <li>• The name of the person nominated shall be mentioned in the memorandum of One Person Company and such nomination in <b>Form SPICE-32</b> along with consent of such nominee obtained in <b>Form INC – 3</b> and fee as provided in the <b>Companies (Registration offices and fees) Rules, 2014</b> shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles.</li> <li>• <b>SPICE-32</b> is form for incorporation of one person company.</li> </ul>
4	Attachments:	<ul style="list-style-type: none"> <li>(i) Memorandum of Association</li> <li>(ii) Articles of Association</li> <li>(iii) Proof of identity of the member and the nominee</li> <li>(iv) Residential proof of the member and the nominee</li> <li>(v) Copy of PAN card of member and nominee</li> <li>(vi) Consent of Nominee in <b>Form INC – 3</b></li> <li>(vii) Declaration from the subscriber and first Director to the memorandum in <b>Form INC – 9</b></li> <li>(viii) List of all the companies (specifying their CIN) having the same registered office address, if any;</li> <li>(ix) Entrenched Articles of Association</li> </ul>

		<ul style="list-style-type: none"> <li>(x) Proof of Registered Office address (Conveyance/ Lease deed/Rent Agreement etc. along with rent receipts)</li> <li>(xi) Copies of the utility bills (not older than two months)</li> <li>(xii) Proof that the Company is permitted to use the address as the registered office of the Company if the same is owned by any other entity/Person (not taken on lease by company)</li> <li>(xiii) Consent from Director</li> <li>(xiv) Optional Attachments.</li> </ul>
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## DISTINGUISH BETWEEN

**Q2.** Distinguish between Hindu Undivided Family and company.

**Answer:**

Hindu Undivided Family Business	Company
A Hindu Undivided Family Business consists of homogenous (unvarying) members since it consists of members of the joint family itself.	A company consists of heterogeneous (varied or diverse) members.
In a Hindu Undivided Family business the Karta (manager) has the sole authority to contract debts for the purpose of the business, other coparceners cannot do so.	There is no such system in a company.

A person becomes a member of a Hindu Undivided Family business by virtue of birth.	There is no provision to that effect in the company.
No registration is compulsory for carrying on business for gain by a Hindu Undivided Family even if the number of members exceeds twenty [Shyamlal Roy v. Madhusudan Roy, AIR 1959 Cal. 380 (385)].	Registration of a company is compulsory.

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## DESCRIPTIVE QUESTIONS

**Q3.** Discuss the new concepts relates to types of companies under companies Act, 2013.

**Answer:**

<b>1</b>	<b>One-person company [Section 3(1)]</b>	The 2013 Act introduces a new type of entity to the existing list i.e. apart from forming a public or private limited company, the Act enables the formation of a new entity a 'one-person company' (OPC). An OPC means a company with only one person as its member.
<b>2</b>	<b>Private company [Section 2(68)]</b>	The 2013 Act introduces a change in the definition for a private company, <i>inter-alia</i> , the new requirement increases the limit of the number of members from 50 to 200.
<b>3</b>	<b>Small company [Section 2(85)]</b>	A small company has been defined as a company, other than a public company. (i) paid-up share capital of which does not exceed <b>fifty lakh</b> rupees or such higher amount as may be prescribed which shall not be more than <b>ten crore</b> rupees; and

		<p>(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed <b>two crore</b> rupees or such higher amount as may be prescribed which shall not be more than <b>one hundred crore</b> rupees:</p> <p>Provided that nothing in this clause shall apply to-</p> <p>(a) a holding company or a subsidiary company;</p> <p>(b) a company registered under section 8; or</p> <p>(c) a company or body corporate governed by any special Act.</p>
4	<b>Dormant company (Section 455)</b>	A company formed and registered under this 2013 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 for obtaining the status of a dormant company.
5	<b>Nidhi company (Section 406)</b>	Nidhi Company means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

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**Q4.** Describe the procedure for incorporation of private to public company.

**Answer:**

1	<b>Apply for Name Approval:</b>	<p><b>A. Login on MCA Website</b></p> <p>Applicant have to login into their account on MCA Website. (Pro-existing users can use earlier account or new users have to create a new account.)</p>
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		<p>After Login user have to click on the icon “RUN” in MCA Service. An online form shall be open. Applicants have to fill the information online. (This form can't be download)</p> <p><b>Note*</b> since 26<sup>th</sup> January, 2018 e-form INC-1 has been omitted from the Companies Act, 2013.</p>
		<p><b>B. Details required to be mentioned in online form:</b></p> <ul style="list-style-type: none"> <li>(i) Entity type (i.e. Part I, OPC, Section 8 etc.) (below table taken from MCA link: <a href="http://www.mca.gov.in/MinistryV2/runServiceFAQ.html">http://www.mca.gov.in/MinistryV2/runServiceFAQ.html</a>)</li> <li>(ii) CIN (Corporate Identification Number and it has to be entered only when an existing company wishes to change its name and is using RUN to reserve a new name)</li> <li>(iii) Proposed name (Auto Check Facility)</li> <li>(iv) Comment (Mention Objects of the proposed Company and any other relevant information Like Trade Mark etc.)</li> <li>(v) Choose File (Any attachment)</li> </ul> <p><b>C. Choose File:</b> This option is available to upload the PDF documents. If applicant want to attach any file, can be upload at this option.</p> <p><b>D. Submission of Form on MCA Website:</b> After completion of above steps user shall submit the Form with MCA website.</p> <p><b>E. Payment of Fees:</b> There is no option of pay later challan in RUN. Applicant has to pay fees immediately after submission of form. After payment challan shall be generated.</p>



		<b>F. Validity of Reserved Name:</b> Reserved name shall be valid for 20 days from the date of approval of Name.
2	<b>Preparation of Documents for Incorporation of Company:</b>	After approval of name or for Incorporation of Company applicant have to prepare the following below mentioned Documents; <b>INC-9</b> declaration by first subscriber(s) and director(s) (on duly authorized Stamp Papers). <b>DIR-2</b> declaration from first Directors along with Copy of Proof of Identity and residential address. NOC from the owner of the property. Proof of Office address (Conveyance/ Lease deed/ Rent Agreement etc. along with rent receipts); Copy of the utility bills (not older than two months) In case of subscribers/ Director does not have a DIN, it is mandatory to attach: Proof of identity and residential address of the subscribers All the Subscribers should have Digital Signature.
3	<b>Fill the Information in Form:</b>	Once all the above mentioned documents/ information are available. Applicant has to fill the information in the e-form "Spice" INC-32. <b>Features of SPICe (inc-32) form:</b> <ul style="list-style-type: none"> <li>• Maximum details of subscribers are SEVEN (7). In case of more subscribers, physically signed MOA &amp; AOA shall be attaching in the Form.</li> <li>• Maximum details of directors are TWENTY (20).</li> <li>• Maximum THREE (3) directors are allowed for filing application of allotment of DIN while incorporating a Company.</li> <li>• Person can apply the Name also in this form.</li> <li>• By affixation of DSC of the subscriber on the INC-33 (e-moa) date of signing will be appear automatically by the form.</li> </ul>

		<ul style="list-style-type: none"> <li>Applying for PAN / TAN will be compulsory for all fresh incorporation applications filed in the new version of the SPICe form.</li> <li>In case of companies incorporated, with effect from the 26th day of January, 2018, with a nominal capital of less than or equal to rupees ten lakhs or in respect of companies not having a share capital whose number of members as stated in the articles of association does not exceed twenty, fee on INC-32 (SPICe) shall not be applicable</li> </ul> <p><b>Single Window Form:</b> Earlier if a Person wants to incorporate Company then it has to apply for the DIN, Approval of the Name Availability, Separate form for first Director, Registered office address, PAN, TAN etc. But this form is a single window for Incorporation of Company.</p> <p><b>This form can be used for the following purposes:</b> Application of DIN (upto 3 Directors) Application for Availability of Name No need to file separate form for first Director (DIR-12) No need to file separate form for address of registered office (INC-22) No need to file separate form for PAN &amp; TAN</p>
4	<b>Preparation of MOA &amp; AOA:</b>	<p>After proper filing of SPICE form applicant has to download the e-form INC-33 (MOA) and IN-34 (AOA) from the MCA site. After downloading of form fill all the information in the forms as per requirement of Table A to J of Schedule I.</p> <p>After completely filing of the form affix DSC of all the subscribers and professional on subscriber sheet of the MOA &amp; AOA.</p>

<b>5</b>	<b>Fill details of PAN &amp; TAN:</b>	It is mandatory to mention the details of PAN & TAN in the Incorporation Form INC-32. Link to find out of Area Code to file PAN & TAN are given in Help Kit of SPICE Form.
<b>6</b>	<b>Submission of INC-32,33,34 on MCA:</b>	Once all the 3 forms ready with the applicant, upload all three document as Linked form on MCA website and make the payment of the same.
<b>7</b>	<b>Certificate of Incorporation:</b>	Incorporation certificate shall be generating with CIN, PAN & TAN.

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<b>Repeatedly Asked Questions</b>		
<b>No.</b>	<b>Question</b>	<b>Frequency</b>
<b>1</b>	What is 'illegal association'? 08 - Dec [8] (a), 13 - June [6] (v)	2 Times
<b>2</b>	Distinguish between 'Company' and 'corporation'. 10 - June [6] (i), 11 - June [3] (i)	2 Times