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## COMPANY LAW - 1

**MEANING & DEFINITION OF COMPANY [SECTION 2(20)]**

A Company means a company incorporated under this Act or under any previous company law.

In common law, a company is a “legal person” or “legal entity” separate from, and capable of surviving beyond the lives of its members. However, an association formed not for profit also acquires a corporate character and falls within the meaning of a company by reason of a licence issued under Section 8(1) of the Act.

An incorporated company owes its existence either to a special Act of Parliament or to company law. Public corporations like Life Insurance Corporation of India, SBI etc., have been brought into existence through special Acts of Parliament, whereas companies like Tata Steel Ltd., Reliance Industries Limited have been formed under the Company Law i.e. Companies Act, 1956 which is being replaced by the Companies Act, 2013.

**PRIVATE COMPANY [SEC 2(68)]**

“private company” means a company having such paid-up share capital as may be prescribed, and which by its articles :

- i) Restricts the right to transfer its shares;
- ii) Except in case of One Person Company, limits the number of its members to two hundred;

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member;

Provided further that the following persons shall not be included in the number of members:

- A) Persons who are in the employment of the company; and

- B) 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, and
- iii) Prohibits any invitation to the public to subscribe for any securities of the company; It must be noted that it is only the number of members that is limited to two hundred. A private company may issue debentures to any number of persons, the only condition being that an invitation to the public to subscribe for debentures is prohibited.

The words "Private Limited" must be added at the end of its name by a private limited company.

Section 149(1) further lays down that a private company shall have a minimum number of two directors. The only two members may also be the two directors of the private company.

### **PUBLIC COMPANY [SEC 2(71)]**

A public company means a company which:

- a) Is not a private company.
- b) Has such paid-up capital, as may be prescribed.

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company.

### **ONE PERSON COMPANY (OPC)**

- As per section 2(62) of the Companies Act, 2013, "One Person Company" means a company which has only one person as a member.
- It shall have a minimum of one director. Therefore, a One Person Company will be registered as a private company with one member and one director.
- An OPC may be formed either as a company limited by shares or a company limited by guarantee; or an unlimited liability company.
- Where a natural person, being member in One Person Company becomes a member in another such Company by virtue of his being a nominee in that One Person Company, such person shall meet the eligibility criteria within a period of one hundred and eighty two days.

- 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.
- No person shall be eligible to incorporate more than a One Person Company or become nominee in more than one such company.
- No minor shall become member or nominee of the One Person Company or can hold share with beneficial interest.
- Such company cannot be incorporated or converted into a company under section 8 of the Act or can be converted into any other kind of company only if a period of 2 years is required from date of incorporation unless threshold limit of paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

**Benefits of One Person Company:**

It gives the individual entrepreneurs all the benefits of a company, which means they will get credit, bank loans, and access to market, limited liability, and legal protection available to companies.

One Person Company (OPC) would provide tremendous opportunities for small businessmen and traders, including those working in areas like handloom, handicrafts and pottery.

The amount of compliance by a one person company is much lesser in terms of filing returns, balance sheets, audit etc.

**SMALL COMPANY [SEC 2(85)]**

‘Small company’ means a company, other than a public company:

- i) Paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
- ii) Turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees. :

**Exceptions:**

- (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.

**GOVERNMENT COMPANIES [SEC 2(45)]**

“Government Company” means any company in which not less than fifty one per cent, of the paid-up share capital is held 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, and includes a company which is a subsidiary company of such a Government company.

Notwithstanding all the pervasive control of the Government, the Government company is neither a Government department nor a Government establishment.

Since employees of Government companies are not Government servants, they have no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay scales should be met by the Government. It is the responsibility of the company to pay them the salaries.

**FOREIGN COMPANIES [SEC 2(42)]**

A ‘foreign company’ means any company or body corporate incorporated outside India which:-

- a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- b) Conducts any business activity in India in any other manner.

**ASSOCIATION NOT FOR PROFIT [SEC 4(1)]**

The Central Government may grant such a licence if :

- i) It is intended to form a company for promoting commerce, art, science, sports, education, research, social welfare, religion, charity protection of environment or any such other object; and
- ii) The company prohibits payment of any dividend to its members but intends to apply its profits or other income in promotion of its object.

The company is registered without paying any stamp duty on its Memorandum of Articles.

A company, which has been granted licence under Section 8 cannot alter the provisions of its Memorandum or articles except with the previous approval of the Central Government.

As per Section 4(1), the memorandum of a company shall state the name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company. However, Section 8(1) permits the registration, under a licence granted by the Central Government, of associations not for profit with limited liability without being required to use the word "Limited" or the words "Private Limited" after their names. This is of great value to companies not engaged in business like bodies pursuing charitable, educational or other purposes of great utility.

A firm may be a member of the company registered under this section.

The Central Government may by order at any time revoke the licence whereupon the word "Limited" or "Private Limited" as the case may be, shall have to be used as part of its name and the company will lose the exemptions that might have been granted by the Central Government. However, the Central Government can do so only after providing such association an opportunity to be heard.

**LIMITED COMPANY**

As per section 3(2), a company formed under this Act may be either (a) a company limited by shares; or (b) a company limited by guarantee or (c) an unlimited company.

**Company Limited by Shares :**

As per section 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. Accordingly, no member of a company limited by shares, can be called upon to pay more than the nominal value of the shares held by him.

**Company Limited by Guarantee :**

As per section 2(21) '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 Clubs, trade associations and societies for promoting different objects are examples of such a company. A company limited by guarantee having share capital share capital on incorporation and it receives the guaranteed amount from its members on liquidation.

A company limited by guarantee not having share capital receives the guaranteed amount from its members on liquidation.

**HOLDING, SUBSIDIARY COMPANIES & ASSOCIATE COMPANIES****Holding Company:**

As per Section 2(46), holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

**Subsidiary Company :**

Section 2 (87) provides that 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 :

- i) Controls the composition of the Board of Directors; or
- ii) Exercises or controls more than one half of the total share capital either at its own or together with one or more of its subsidiary companies;

Provided that such class or classes of holding companies, shall not have layers of subsidiaries beyond the prescribed limit.

For the above purpose a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company.

## PRODUCER COMPANIES

Proviso to section 465(1) provides that the provisions of Part IX A of the Companies Act, 1956 shall be applicable mutatis mutandis to a Producer Company in a manner as if the Companies Act, 1956 has not been repeated until a special Act is enacted for Producer Companies.

## NATURE AND CHARACTERISTICS OF A COMPANY

### 1) Corporate Personality:

A company incorporated under the Act is vested with a corporate personality which bears its own name, acts under that name, has a seal of its own and its assets are separate and distinct from those of its members. It is a different person from the members who compose it. Therefore 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. Its members are its owners however they can be its creditors simultaneously. In effect of corporate personality, a member can be the master and servant at the same time and enjoy the advantages of both [Ref. Lee v/s Lee's Air Farming Ltd.]. A shareholder cannot be held liable for the acts of the company even if he holds virtually the entire share capital. The shareholders are not the agents of the company and so they cannot bind it by their acts.

### Case on Corporate Personality - Salomon v/s. Salomon and Co. Ltd.,

Salomon carried on a prosperous business as leather merchant & boot manufacturer. But soon he formed a limited company consisting of himself, his wife, his daughter & his four sons, each of whom subscribed to 1 share making the actual cash paid as capital of the company as Pound 7. He sold the business to the company for Pound 38,782. The Company's nominal capital was Pound 40,000 in Pound 1 share. Salomon was holding debentures secured by a floating charge of Pound 10,000 &

20,000 Pound 1 fully paid shares. The remaining amount of Pound 8,782 was paid to him in cash.

The company went into liquidation due to some difficulties and the total assets amounted to Pound 6050, liabilities were Pound 10,000 secured by debentures, Pound 8,000 owing to unsecured trade creditors. The trade creditors claimed the whole of the assets viz. pound 6050 on the grounds that the company was a mere agent of Salomon & thus they were entitled to payment in priority to the debenture holders who was Salomon itself.

**Pronouncement: Lordships of the House of Lords observed:**

“The company is a different person altogether from the subscribers of memorandum. Thus even if after incorporation, the same persons are the managers and receive the profits from the company, it is not their agent or trustee”.

**2) Limited Liability:**

The privilege of limited liability for business debts is one of the principal advantages of doing business under the corporate form of organization.” The company, being a separate person, is the owner of its assets and bound by its liabilities. The liability of a member as shareholder extends to the contribution to the capital of the company up to the nominal value of the shares held and not paid by him. For example, if A holds shares of the total nominal value of Rs. 1,000 and has already paid Rs. 500/- (or 50% of the value) as part payment at the time of allotment, he cannot be called upon to pay more than Rs. 500/-, the amount remaining unpaid on his shares. If he holds fully-paid shares, he has no further liability to pay even if the company is declared insolvent. In the case of a company limited by guarantee, the liability of members is limited to a specified amount of the guarantee mentioned in the memorandum.

**3) Perpetual Succession:**

An incorporated company never dies, except when it is wound up as per law. 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. Members may come and go, but the company can go on forever.



**4) Separate Property:**

A company being a legal person and entirely distinct from its members, is capable of owning, enjoying and disposing of property in its own name. The company is the real person in which all its property is vested, and by which it is controlled, managed and disposed off. As per a decided case, dividend received from a company engaged in agricultural business is not exempt from tan in the hands of the shareholder. Only the company enjoys certain exemptions in taxation.

**5) Transferability of Shares:**

The capital of a company is divided into parts, called shares. The shares are said to be movable property and, subject to certain conditions, freely transferable, so that no shareholder is permanently or necessarily wedded to a company.

**6) Common Seal:**

Upon incorporation, a company becomes a legal entity with perpetual succession and a common seal. Since the company has no physical existence, it must act through its agents and all contracts entered into by its agents must be under the seal of the company. The Common Seal acts as the official signature of a company. The name of the company must be engraved on its common seal. A rubber stamp does not serve the purpose.

**7) Capacity to sue and be sued:**

A company being a body corporate, can sue and be sued in its own name. To sue, means to institute legal proceedings against (a person) or to bring a suit in a court of law. All legal proceedings against the company are to be instituted in its name. Similarly, the company may bring an action against anyone in its own name.

**8) Contractual Rights :**

A company, being a legal entity different from its members, can enter into contracts for the conduct of the business in its own name. A shareholder cannot enforce a contract made by his company; he is neither a party to the contract, nor is entitled to the benefit derived from of it, as a company is not a trustee for its shareholders. Likewise, a shareholder cannot be sued on contracts made by his company.

**ADVANTAGES OF A COMPANY**

1. **Corporate Personality:** Unlike a partnership firm, which has no existence apart from its members, a company is a distinct person. An incorporated company is a distinct entity, from its shareholders.
2. **Limited Liability:** The Companies Act provides that in the event of the company being wound-up, the members shall have liability to contribute to the assets of the company in accordance with the Act. In the case of companies limited by shares, no member is bound to contribute anything more than the nominal value of the shares held by him which remains unpaid.
3. **Perpetual Succession:** The death or insolvency of individual members does not in any way, affect the corporate entity, its existence or continuity. The company shall continue to exist indefinitely till it is wound-up in accordance with the provisions of the Companies Act. "Members may come and members may go but the company can go on forever".
4. **Transferable Shares:** The Companies Act, 2013 provides the shares or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company. It provides liquidity to the investors as shares could be sold in the open market and in stock exchange.
5. **Separate Property:** A company as a legal entity is capable of owning its funds and other assets. "The property of the company is not the property of the shareholders, it is property of the company"
6. **Capacity to Sue:** As a juristic legal person, a company can sue in its name and be sued by others. The managing director and other directors are not liable to be sued for dues against a company.
7. **Flexibility and Autonomy:** The company has an autonomy and independence to form its own policies and implement them, subject to the general principles of

law, equity and good conscience and in accordance with the provisions contained in the Companies Act, Memorandum and Articles of Association.

### DISADVANTAGES OF A COMPANY

1. **Formalities and expenses:** Incorporation of a company is coupled with complex, cumbersome and detailed legal formalities and procedures, involving considerable amount of time and money. Even after the company is incorporated, its affairs and working must be conducted strictly in accordance with legal provisions. Certain books and registers are compulsorily required to be maintained by a company. Approval and sanction of the Company Law Board/National Company Law Tribunal / National Company Law Appellate Tribunal , the Government, the Court, the Registrar of Companies or other appropriate authority is necessarily required to be obtained for certain corporate activities. Other forms of business organisations are comparatively free from these legal complexities and procedural formalities.
2. **Corporate disclosures:** Notwithstanding the elaborate legal framework designed to ensure maximum disclosure of corporate information, the members of a company are having comparatively restricted accessibility to its internal management and day-to-day administration of corporate working.
3. **Separation of control from ownership:** Members of a company are not having as effective and intimate control over its working as one can have in other forms of business organisation, say, a partnership firm. No member of a company can act in his individual capacity for and on behalf of the company. The members may not have an active and complete control over the company's working as the partners may have over the firm's affairs.
4. **Greater social responsibility:** Having regard to the enormous powers wielded by the companies and the impact they have on the society, the companies are called upon to show greater social responsibility in their working

5. **Greater tax burden in certain cases:** In certain circumstances, the tax burden on a company is more than that on other forms of business organisation. A company is liable to tax without any minimum taxable limit as is prescribed in the cases of registered partnership firms and others. Also it has to pay income-tax on the whole of its income at a flat rate whereas others are taxed on a graduated scale or slab system.
6. **Detailed winding-up procedure:** The Act provides an elaborate and detailed procedure for winding-up of companies which is more expensive and time-consuming than that which is applicable to other forms of business organisation.

### DISTINCTION BETWEEN PARTNERSHIP, COMPANY AND LLP

Sr. No.	Partnership	Company	LLP
1.	Unlimited Liability	Limited Liability	Limited Liability
2.	No separate legal entity	Separate legal entity	Body corporate
3.	Registration is not compulsory	Compulsory registration.	Compulsory registration
4.	Limit – Min 2 Max. 10/20	Unlimited members	Unlimited members
5.	Partnership Deed	MOA and AOA	LLP Agreement
6.	Partners	Directors	Partners/ Designated partner
7.	Personal assets can be utilized in case of losses	Not allowed	Not allowed.
8.	No perpetuity.	Perpetual succession.	Perpetual succession.

9.	No cost	Cost is too high	Cost is too high
10.	No compliance	Compliance is strict	No compliance.

### DISTINCTION BETWEEN COMPANY AND HINDU JOINT FAMILY BUSINESS

1. A **company** consists of **heterogeneous members**, whereas a **Hindu Undivided Family Business** consists of **homogenous** members since it consists of members of the joint family itself.
2. In a Hindu Joint 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**.
3. A person becomes a member of Joint Hindu Family business by virtue of birth. There is no provision to that effect in the company.
4. **No registration is compulsory** for carrying on business for gain by a Hindu Joint Family even if the number of members exceeds twenty. Registration of a company is compulsory.

### DISTINCTION BETWEEN A COMPANY AND A CLUB

1. A company is a trading association. A club, on the other hand, is a non-trading association.
2. Registration of a company is compulsory. Registration of a club is not compulsory.

### DISTINCTION BETWEEN A COMPANY AND A CORPORATION (BODY CORPORATE)

“Body corporate” or “corporation” 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;

**DOCTRINE OF LIFTING OF OR PIERCING THE CORPORATE VEIL**

The separate personality of a company is a statutory privilege and it must be used for legitimate business purposes only. 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. The Court will break through the corporate shell and apply the principle/doctrine of what is called as lifting of or piercing the corporate veil. The Court 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.

However, the shareholders cannot ask for the lifting of the veil for their purposes.

**Case Example:****a) Gilford Motor Co. v. Horne**

Where the corporate veil has been used for commission of fraud or improper conduct, Courts have lifted the veil and looked at the realities of the situation. A former employee of a company made a covenant not to solicit its customers. He formed a company which undertook solicitation. The company was restrained by the Court.

**b) R. G. Films Ltd.**

In the said case, an American company produced a film in India through a British company. In this British company, 90% of the capital was held by the President of the American Company which financed the making of the film. Lifting the corporate veil, BOT refused to register the film as American companies were not allowed to produce film in India and the British company was an instrument of the American company,

**c) Connors Bros. v/s. Connors**

In the given case, a company whose affairs were de facto with the persons, residents of Germany was at war with England. The corporate veil of the company was lifted & the alien company was not allowed to proceed with the action as it was against public policy.

**d) Sir Dinshaw Manekjee Petit**

In the above mentioned case, the assessee formed four private companies and agreed to hold a block of investment as an agent for it. The dividend & interest income received on such investment was further given to Sir Dinshaw as a prehanded loan. This way his income was divided in four parts which in turn reduced his tax liability lifting the corporate veil, it was seen that these companies did not do any business and were just the means to evade tax.

**e) The workmen Employed in Associated Rubber Industries Limited, Bhavnagar v/s. The Associated Rubber Industries Ltd. Bhavnagar**

In this case, the principal company was liable to pay bonus to its employee as a percent of its Gross Profits under the Bonus Act or any other applicable law. In order to reduce its liability the Principal company formed a new company which had no business or income of its own except receiving dividends from the shares transferred to it by the principal company.

The SC held that the new Company was formed to reduce the gross profits & thereby reduce the amount to be paid by way of bonus to workmen.

**PROMOTERS [SEC 2(69)]**

Promoter means a person:

- a) Who has been named as such in a prospectus or is identified by the company in the annual return 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.

Provided that sub-clause (c) shall not apply to a person who is acting merely in a professional capacity.

**IS A DIRECTOR /OFFICER/EMPLOYEE OF THE ISSUER A PROMOTER?**

A director/officer/employee who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise is considered as a promoter.

As per section 2(27), 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.

However, a director or officer or employee of the issuer or a person, if acting as such merely in his professional capacity, shall not be deemed as a promoter.

**PROMOTER'S CONTRACT – RATIFICATION THEREOF**

As regards ratification of promoters' contracts, the company could not ratify contract made by a promoter before its incorporation. Specific performance of a contract may be enforced against a company in respect of contracts entered into by promoters on behalf of the company, if such a contract is warranted by the terms of incorporation and the company has accepted the contract and communicated the acceptance to the other party. Specific Relief Act, 1963 provides that the other party can also enforce the contract if the company has adopted it after incorporation and the contract is within the terms of incorporation.

As long as the company does not ratify, as required by the Specific Relief Act, 1963 the position remains the same as under the common law.

**LEGAL POSITION OF PROMOTER**

While the accurate description of a promoter may be difficult, his legal position is quite clear. A promoter is neither an agent of, nor a trustee for, the company because it is not in existence. But he occupies a fiduciary position in relation to the company and therefore requires making full disclosure of the relevant facts, including any profit made by him.



**INCORPORATION OF A COMPANY****A) Application for availability of name of company**

- 1) A person may make an application in Form No. INC1 along with the prescribed fee, to the Registrar for setting out in the application :
  - a) The name of the proposed company.
  - b) The name to which the company proposes to change its name.
- 2) The name stated in the MOA shall not :
  - a) Be identical or resemble too nearly to the name of an existing company.
  - b) Constitute an offence under any law for the time being in force.
  - c) Be undesirable in the opinion of the Central Government.
  - d) Be any word or expression which is likely to give impression that the company is in any way connected with the central government or state government.
- 3) The Registrar reserves the name for a period of 60 days if all the information and documents are in place.

**B) Preparation of Memorandum and Articles of Association**

1. The memorandum of association is the charter of a company.
2. The memorandum of association states the following:
  - a) Name clause (N)
  - b) Registered office clause (R)
  - c) Objects clause (O)
  - d) Liability clause (L)
  - e) Capital clause (C)
  - f) Subscription / Association clause (A)
  - g) In case of OPC, the name of the person who, in the event of death of the subscriber, shall become the member of the company.
3. Memorandum of association and articles of association shall be signed by each subscriber to the memorandum, who shall add his name, address, description & occupation, if any, in the presence of at least one witness. Where a subscriber is illiterate, he shall affix his thumb impression or mark.
4. Where the subscriber to the memorandum and articles is a body corporate, the memorandum of association and articles of association shall be signed by

director, officer or employee of the body corporate & in case the subscriber is a LLP, it shall be signed by a partner of the LLP.

Provided that the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of association.

5. Where the subscriber to the memorandum of association is a foreign national residing outside India, the authentication shall be as follows:
  - 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
  - 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.
6. An application for incorporation shall be filed with ROC in form SPICE-32 or INC-7 in case of other companies.

**C) Declaration from the professional:**

The act requires a declaration in Form No. INC 8 by an Advocate, CA, CWA or CS in practice, who is engaged in the formation of the company & by a person named in the articles as a director, manager or secretary of the company that all the requirements of this Act & the values made there under have been complied with.

**D) Affidavit from the subscribers to the Memorandum:**

An affidavit in Form No. INC 9 from each of the subscriber to the memorandum & from the first directors, if any, name in the articles that he is not convicted of any offence with the promotion formation or management or has not been guilty of any fraud or misfeasance or of any breach of duty to any company has to be filed with the Registrars.

**E) Furnishing verification of registered office:**

1. A verification of such registered office shall be filed within 30 days with the ROC in Form No. INC 22.
2. Where the location of such registered office is finalized prior to incorporation, the aforesaid form may be filed along with memorandum of association and articles of association.

**F) Particulars of first directors along with their consent to act as directors:**

1. The particulars of the first directors like their names, DIN, residential address, nationality etc. along with his consent to act as directors should be filed in Form No. DIR 12.
2. Besides, no person shall be appointed as a director of a company unless he has been allotted the Director Identification Number. The individual who intends to be a director must mandatory be in possession of DIN first.
3. Every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number in Form DIR 3. Any individual who intends to be a director of a company will have to mandatorily apply for DIN before commencing the incorporation.

**G) Power of Attorney:**

1. The promoters may appoint an attorney to fulfill the various formalities that are required for incorporation of a company through execution on a non judicial stamp paper of a value prescribed in the respective state stamp Laws.

**H) Certificate of Incorporation :**

The Registrar shall on the basis of all documents & information issue a certificate of incorporation in form no. INC 11. On receipt of the certificate of incorporation the subscribers to the memorandum of association become members of the company & the incorporated company capable of exercising all functions under this Act.

1. A certificate of incorporation given by the ROC shall be conclusive evidence that all the requirements of the Act have been complied with in respect of incorporation and matters incidental thereto. The validity of the registration cannot be questioned after the issue of the certificate.
2. However, such certificate of incorporation cannot legalize any illegal object contained in the memorandum of association thus when the object of a company is unlawful, it has been held that the certificate of incorporation is not conclusive for this purpose.

**I) Corporate Identification Number (CIN) :**

On & from the date mentioned in the certificate of incorporation, the Registrar shall allot to the company a CIN, which shall be a distinct identity for the company & which shall also be included in the certificate of incorporation.

**J) Conclusive Evidence:**

A Certificate of Incorporation given by the Registrar shall be conclusive evidence that all the requirements of the Act have been complied with in respect of registration and that the association is a company authorised to be registered and duly registered under the Act. The Certificate of Incorporation is conclusive evidence that everything is in order as regards registration and that the company has come into existence from the earliest moment of the day of incorporation. The validity of the registration cannot be questioned after the issue of the certificate.

In **Moosa v. Ebrahim**, the Memorandum of Association of a company was signed by two adults and by a guardian of the other 5 subscribers, who were minors. The Registrar, however, registered the company and issued under his hand a Certificate of Incorporation. It was contended that this Certificate of Incorporation should be declared void.

It is for the purpose of incorporation only that the certificate was made conclusive by the legislature and the certificate cannot legalise the illegal object contained in the Memorandum. Where the object of a company is unlawful, it has been held that the certificate of registration is not conclusive for this purpose, [Performing Right Society Ltd. v. London Theatre of Varieties (1992) 2 KB 433]

## CORPORATE IDENTIFICATION NUMBER

Corporate Identification Number is a 21-digit number assigned to every company incorporated on or after November 1, 2000. The Corporate Identification Number allotted to a company indicates listing status, economic activity (industry), State, year of incorporation, ownership and sequential number assigned by ROC (Registration number).

1st Digit	Listing Status
Next 5 digits	Economic Activity (industry)
Next 2 digits	State
Next 4 digits	Year of Incorporation
Next 3 digits	Ownership
Next 6 digits	Sequential number assigned by ROC (Registration Number)