

INTRODUCTION TO COMPANIES ACT, 2013

.....
We, at Marksup (Acads.ai), do not believe in making our material ugly by posting ads/banners.

Please visit us on

Acads.com

SEBI Course available at sebi.acads.ai. Signup on acads.com for more free materials

We advise all SEBI aspirants to stay away from any lengthy /bulky material. You have 30 days with us and 10-11 subjects, that means roughly 2-3 days per topic. Read only what you can revise multiple times.

We are a team of IITB, IIMA, SRCC, CFA, FRM alumni working day and night to equip you with the best material for SEBI. Grade A exam. Please do not waste your time in researching on it.

Acads brings to you the most compact (but comprehensive) notes for SEBI exam. The focus is on trying to cover each subject in 60-70 pages, enabling you to retain the content and then reproduce in the exam.

Understand and accept the limitation of your brain. You won't be able to retain anything unless you are not reading it 5-7 times. Do not commit the same mistakes that 99% of aspirants commit - Reading everything and retaining nothing.

Structure of Co. Act 2013

- New Company Law has been framed on Skeleton Approach => Laws remain relevant in dynamic economic environment
- It consists of 29 chapters, 470 Sections, 7 schedules, 95 definitions.

Applicability of Co. Act 2013 (Sec 1)

Sec 1(2)

It applies to Whole of India

Sec 1(4)

It applies on -

- Companies as per co. Act 2013
- Banking Co.
- Insurance Co.
- Electricity Co.
- Other Co. by Special Act
- Notified body Corporate

Definition

- Section 2(20) of the Companies Act, 2013, provides that a 'company' means a company incorporated under this Act or under any previous company law.

Features of a Company [Important]

Incorporated Association

A Company is a registered group of persons. Minimum 7 members are required in case of Public Company, 2 in case of Private Company and 1 in case of OPC.

Artificial Person

A Company is artificial legal person created with the sanction of law. It is not a human being but it acts through human beings. Thus, a Company is

artificial person but not fictitious. It is called an artificial person since it is invisible, intangible, existing only in the contemplation of law.

Separate Legal Entity

A company is a legal person entirely distinct and independent from its members. It has its own rights and obligations. (Salomon v Salomon & Company Ltd- 1897)

Separate Property

A Company can hold property in its own name. Thus, the property of the company belongs to the company itself and not to its members.

Capacity to sue and to be sued

A Company can sue others and be sued in its own name. The creditors can make their claim only against the Company and cannot proceed against the shareholders of the company.

Separate ownership and Management

The members of a Company do not participate in the day to day affairs of the Company. The Company is managed by elective representatives of the shareholders known as Board of Directors. The directors are appointed as well as removed by the shareholders

Common Seal

Need to have common seal, has been abolished in any company (w.e.f 25th May 2015)

Transferability Shares

The shares (movable property) of a Company are freely transferable in the manner provided in the Articles of the Company. .

Perpetual Succession

The term perpetual succession means continued existence. Life of the company does not depend upon the life of its members.

Limited Liability

Company limited by shares

Limited to the amount remaining unpaid on the shares held by them.

Company limited by Guarantee without share capital

Limited to the amount guaranteed by them.

Company limited by Guarantee having share capital

Limited to the aggregate of the amount remaining unpaid on the shares and the amount guaranteed by them.

Company with Unlimited Liability

Unlimited i.e. they have to contribute till the entire debt of the Company is paid.

One-man Company

One-man company is a company in which almost the entire share capital of a company is held by one person

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.

Limitation of Action

A company cannot go beyond the powers of its Charter - the Memorandum of Association.

Voluntary Association for Profit

A company is a voluntary association for profit, It is formed for the accomplishment of some public goals and whatsoever profit is gained is divided among its shareholders.

Termination of Existence

It has the existence only in contemplation of law. It is created by law, carries on its affairs according to law throughout its life and ultimately is dissolved by law. Generally, existence of a company is terminated by means of winding up.

Advantage of a Company	There is no point in listing these points. Please read the features of companies carefully. Once you have understood these points, you can easily derive advantages of a company from these points. E.g. members are not personally liable, investments are easier (due to property of transferability of shares) It's an objective exam. Prepare accordingly. Study Smart, Not Hard.																																								
Disadvantages.	- Will cover only non-obvious ones - Formalities, legal compliance => Expenses - Disclosure requirements => No secrecy - Separation of control from ownership - Tax burden - Detailed winding up process - Tax burden																																								
Differences																																									
Company Vs Partnership Firm	 <table> <tr> <th>Basis</th><th>Company</th><th>Partnership</th></tr> <tr> <td>Distinct</td><td>Distinct legal person</td><td>Not distinct from persons who form partnership</td></tr> <tr> <td>Property</td><td>Belong to company not to individual</td><td>Is of individual</td></tr> <tr> <td>Creditors</td><td>Can only proceed against company not against the</td><td>Creditors of individual partners</td></tr> <tr> <td>Agents</td><td>Members are not agents of company</td><td>Partners are agents</td></tr> <tr> <td>Disposal of property</td><td>Member has no such power</td><td>Partners have</td></tr> <tr> <td>Transfer of shares</td><td>Member of company can transfer shares (freely or restricted)</td><td>Partners generally cannot transfer (always restricted)</td></tr> <tr> <td>Liability</td><td>Limited or unlimited</td><td>Unlimited</td></tr> <tr> <td>Perpetual succession</td><td>Death or insolvency does not effect</td><td>Partnership may be dissolved</td></tr> <tr> <td>Accounts</td><td>Audited by Chartered Accountant (mandatory)</td><td>At discretion of partners (mandatory if turnover Exceeds Rs.1 crore)</td></tr> <tr> <td>Dissolution</td><td>Dissolved by operation of law</td><td>Can be dissolved by agreement among partners</td></tr> <tr> <td>Regulating Act</td><td>Companies Act, 2013</td><td>Indian Partnership Act, 1932</td></tr> <tr> <td>Mode of creation</td><td>Registration is compulsory</td><td>Registration is optional</td></tr> </table>		Basis	Company	Partnership	Distinct	Distinct legal person	Not distinct from persons who form partnership	Property	Belong to company not to individual	Is of individual	Creditors	Can only proceed against company not against the	Creditors of individual partners	Agents	Members are not agents of company	Partners are agents	Disposal of property	Member has no such power	Partners have	Transfer of shares	Member of company can transfer shares (freely or restricted)	Partners generally cannot transfer (always restricted)	Liability	Limited or unlimited	Unlimited	Perpetual succession	Death or insolvency does not effect	Partnership may be dissolved	Accounts	Audited by Chartered Accountant (mandatory)	At discretion of partners (mandatory if turnover Exceeds Rs.1 crore)	Dissolution	Dissolved by operation of law	Can be dissolved by agreement among partners	Regulating Act	Companies Act, 2013	Indian Partnership Act, 1932	Mode of creation	Registration is compulsory	Registration is optional
Basis	Company	Partnership																																							
Distinct	Distinct legal person	Not distinct from persons who form partnership																																							
Property	Belong to company not to individual	Is of individual																																							
Creditors	Can only proceed against company not against the	Creditors of individual partners																																							
Agents	Members are not agents of company	Partners are agents																																							
Disposal of property	Member has no such power	Partners have																																							
Transfer of shares	Member of company can transfer shares (freely or restricted)	Partners generally cannot transfer (always restricted)																																							
Liability	Limited or unlimited	Unlimited																																							
Perpetual succession	Death or insolvency does not effect	Partnership may be dissolved																																							
Accounts	Audited by Chartered Accountant (mandatory)	At discretion of partners (mandatory if turnover Exceeds Rs.1 crore)																																							
Dissolution	Dissolved by operation of law	Can be dissolved by agreement among partners																																							
Regulating Act	Companies Act, 2013	Indian Partnership Act, 1932																																							
Mode of creation	Registration is compulsory	Registration is optional																																							
Company Vs HUF	<table> <tr> <th>Basis</th><th>Company</th><th>HUF</th></tr> <tr> <td>Members</td><td>Heterogeneous</td><td>Family Members</td></tr> <tr> <td>Authority</td><td>BOD or members</td><td>Karta</td></tr> <tr> <td>Membership</td><td>No provision</td><td>By virtue of birth</td></tr> <tr> <td>Registration</td><td>Compulsory</td><td>Not Compulsory</td></tr> </table>		Basis	Company	HUF	Members	Heterogeneous	Family Members	Authority	BOD or members	Karta	Membership	No provision	By virtue of birth	Registration	Compulsory	Not Compulsory																								
Basis	Company	HUF																																							
Members	Heterogeneous	Family Members																																							
Authority	BOD or members	Karta																																							
Membership	No provision	By virtue of birth																																							
Registration	Compulsory	Not Compulsory																																							

	Stakeholders	Members	Coparceners
Company Vs LLP	Basics Act Number of Members Management Documents Identification No Liability Audit Meetings	Company Company Act, 2013 Private Min = 1, Max = 200 Public Min = 7, Max Unlimited BOO - Management AOA DIN Limited or unlimited liability Audit - Mandatory Quarterly BM and AGM are mandatory.	LLP LLP Act, 2008 Min = 2, Max = Unlimited Designated Partners Management LLPA DPIN Limited liability If its annual turnover in a financial year exceeds Rs.40 lakhs OR its contribution exceeds Rs.25 lakhs. No such meeting is required.
Legal Status of a company			
Citizenship	Although, a company is regarded as a legal person (though artificial), it is not a citizen either under the Constitution of India or the Citizenship Act, 1955		
Body Corporate	- Superset of company i.e. every company is a body corporate but not the other round. Body corporate includes a private company, public company, one person company, small company, limited liability partnership, foreign company etc. Cooperatives and Societies are not body corporates.		
Illegal Association	- Section 464: If any association has more than 100 persons and is carrying on any business with the object of acquisition of gain will have to get registered as company under Companies Act 2013. Otherwise illegal Not applicable to HUF, Associations governed by special acts - The sole test to determine an illegal association is whether it carries on business for the purpose of gain. - Every member of Illegal association is personally liable + punishable up to 1 lakh rupees		
Corporate veil	The effect of this Corporate Veil is that only Company can be held liable for the acts and defaults done in the name of the company, even though members, Directors, officers or employees had acted on behalf of the company		
Lifting of Corporate Veil	- It refers to the situation where a shareholder is held liable for its corporation's debts despite the rule of limited liability and/of separate personality. The veil doctrine is invoked when shareholders blur the distinction between the corporation and the shareholders. - Corporate veil can be lifted under following situations. Read the list once. Statutory Provision Section 5 of the Companies Act defines the individual person committing a wrong or an illegal act to be held liable in respect of offenses as 'officer who is in default'. This section		

gives a list of officers who shall be liable to punishment or penalty under the expression 'officer who is in default' which includes a managing director or a whole-time director.

Section 45

Reduction of membership below statutory minimum:

Section 147-

Misdescription of name:

Section 239-

Power of inspector to investigate affairs of another company in same group or management:

Section 275

no person can be a director of more than 15 companies at a time.

Section 542

Fraudulent conduct:

Judicial Interpretation

Protection of Revenue

The Court may ignore the Separate Legal Entity status of a Company, where it is used for tax evasion

Determination of enemy character of the Company

A company may assume an enemy character when persons in DE-FACTO control of its affairs are residents in an enemy country.

Prevention of fraud

Where a Company is used for committing frauds or improper conduct, Court may lift the corporate veil and look at the realities of the situation

Avoidance of Welfare Legislation

Contempt of court

Using subsidiary as agent

E.g. Forming a subsidiary to accomplish certain action which original company is not allowed to perform

SCHEDULES

Schedule 1	Formant of MOA and AOA
Schedule 2	Useful life to compute depreciation
Schedule 3	General instruction for preparation of balance sheet and statement of profit and loss of a company
Schedule 4	Code for independent directors
Schedule 5	Conditions to be fulfilled for the appointment of a MD, WTD or a Manager without the approval of the central Govt.
Schedule 6	Infrastructural projects or infrastructural facilities
Schedule 7	Activities which may be included in CSR policy.



CLASSIFICATION OF COMPANIES

We, at Marksup (Acads.ai), do not believe in making our material ugly by posting ads/banners.

Please visit us on

MarksUp.in

SEBI Course available at sebi.acads.ai. Signup on marksup.in for more free materials

We advise all SEBI aspirants to stay away from any lengthy /bulky material. You have 30 days with us and 10-11 subjects, that means roughly 2-3 days per topic. Read only what you can revise multiple times.

We are a team of IITB, IIMA, SRCC, CFA, FRM alumni working day and night to equip you with the best material for SEBI. Grade A exam. Please do not waste your time in researching on it.

MarksUp brings to you the most compact (but comprehensive) notes for SEBI exam. The focus is on trying to cover each subject in 40-50 pages, enabling you to retain the content and then reproduce in the exam.

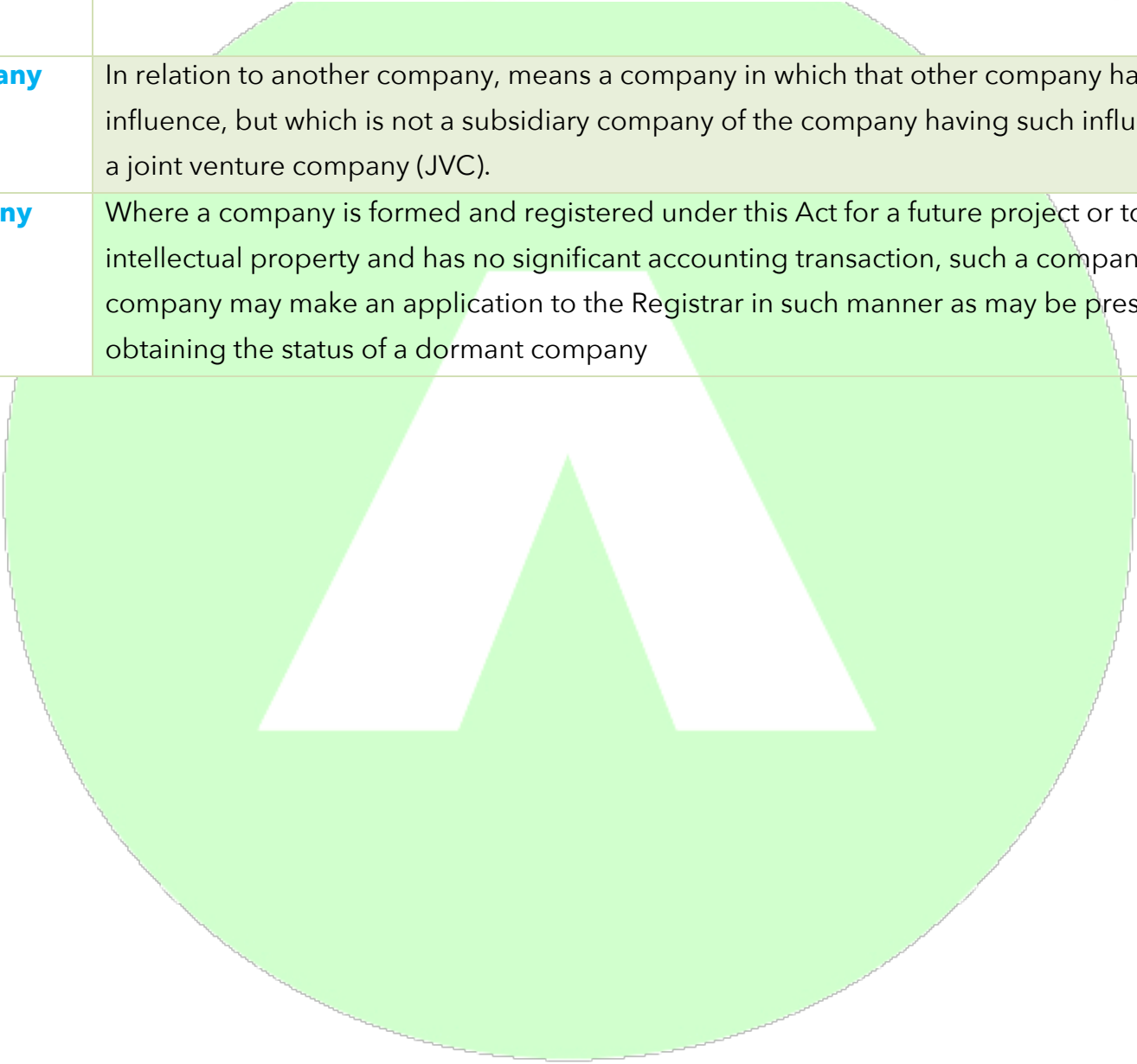
Understand and accept the limitation of your brain. You won't be able to retain anything unless you are not reading it 5-7 times. Do not commit the same mistakes that 99% of aspirants commit - Reading everything and retaining nothing.

This chapter has not been explicitly mentioned in syllabus. However, we feel various types of companies is an important topic and therefore giving notes for this.

Private company Vs Public Company	BASIS	PUBLIC COMPANY	PRIVATE COMPANY
	Mini members Max members Public deposits	7 members Unlimited Free to accept public deposits.	2 members 200 members Can accept deposits only from its members, Directors and their relatives.
	Transferability of Shares	Freely transferable	Restricted but not prohibited.
	Public Issue	Can issue prospectus to invite general public to subscribe to its shares, debentures and deposits.	Cannot issue prospectus
	Directors	3 Directors -Minimum 15 Directors - Maximum	2 Directors- Minimum 15 Directors- Maximum
	Increase in number of Directors	Special resolution is required to be passed.	Central Government approval is not required.
Private Company	- See the table below - Extra Points - Name must end with Pvt Ltd		

Public Company	• See table below • Extra Points: • A private Company which a subsidiary of a public Company shall also be deemed to be a public company for the purpose of Co. Act.
OPC	• A company which has only one person as a member. • It is basically a private company with some unique features. • As regards the name of an OPC, the act provides that the words —one person companyll or —OPCll shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved. • The concept of OPC provides a more flexible structure and less compliance requirements of a company. • Only a natural person who is an Indian citizen and resident in India shall be eligible to incorporate a one person company; Resident in India”àa person who has stayed in India for a period of not less than 182days during the immediately preceding one calendar year.
Small Company	“Small Company” means a company, other than a public company,— i. Paid-up share capital of which does not exceed Rs.50 Lakhsor such higher amount as may be prescribed which shall not be more than Rs. 10 cr. Rs.5 Cr.; or ii. Turnover of which as per P & L account for the immediately preceding FY does not exceed Rs.2 Cr. or such higher amount as may be prescribed which shall not be more than Rs. 100 Cr. Rs.20 Cr.
Non Profit Companies	• Section 8 • A person or an association of persons may be registered under this Act as a limited company if the following conditions are satisfied: • Object: Its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object. • Application of Profits: It intends to apply its profits, if any, or other income in promoting its objects; and • Prohibition on Payment of Dividends: It intends to prohibit the payment of any dividend to its members, etc.
Government Company	A Government Company is a Company in which not less than 51% of the paid up share capital is held by: 1. Central Government, or 2. Any State Government or Governments, or Partly by Central Government and partly by one or more State Government
Investment Companies	A Company whose primary business is the acquisition of shares, stock, debentures or other securities of other companies is an investment Company
Producer Companies	Producer Companies are still governed by the Companies Act, 1956.

Subsidiary Company and WOSC	Wholly Owned Subsidiary Company • Shareholding Pattern: • 99.99% shareholding shall be of Holding Company • 0.1% shareholding is with the nominee of Holding Company (Individual/Company) Subsidiary Company • Shareholding Pattern: • More than 50% shareholding shall be of Holding Company • Rest shareholding is with another shareholders (Individual/Company)
Associate Company	In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company (JVC).
Dormant Company	Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company



ANY INTELLIGENT FOOL CAN MAKE
THINGS **BIGGER** AND MORE COMPLEX.
IT TAKES A TOUCH OF **GENIUS** - AND A
LOT OF COURAGE TO MOVE IN
OPPOSITE DIRECTION

-EINSTEIN



SEBI 2022

PHASE I IS JUST **42 DAYS** AWAY!

Don't waste your time reading 1600+ pages long bulky
book. Read crisp, to the point and High Rol **ACADS**
Compact SEBI Combo 2022

Acads

FINISH PHASE I
SYLLABUS **3 TIMES** IN
42 DAYS WITH
ACADS.AI



t.me/marksup



[/marksup](https://www.youtube.com/channel/UCmarksup)



[/acads.ai](https://www.instagram.com/acads.ai)



[/marksup.edu](https://www.facebook.com/marksup.edu)