1 *INTRODUCTION TO COMPANY LAW*

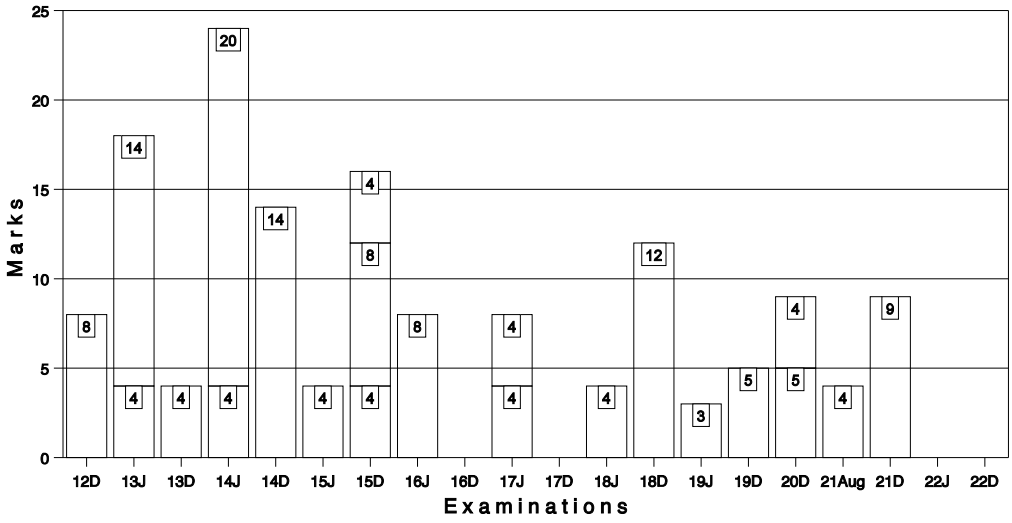
THIS CHAPTER INCLUDES

- Jurisprudence of Company Law
- Doctrine of Ultra-vires
- Doctrine of Indoor Management
- Doctrine of Constructive Notice
- Concept of Corporate Veil
- Applicability of the Companies Act
- Definitions and Key Concepts
- MCA 21

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend

Objective | Short Notes | Distinguish | Descriptive | Practical



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CHAPTER AT A GLANCE

1. 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.
2. Doctrine of Constructive Notice
As per **doctrine of constructive notice**, every person dealing with the company is deemed to have a "constructive notice" of the contents of its memorandum and articles. Outsiders dealing with incorporated bodies are bound to take notice of limits imposed on the corporation by the memorandum articles or any other or other documents of constitution. Nevertheless, they are entitled to assume that the directors or other persons exercising authority on behalf of the company are doing so in accordance with the internal regulations as set out in the Memorandum and Articles of Association.
3. Doctrine of Indoor Management
While the doctrine of constructive notice seeks to protect the company against the outsiders, the doctrine of indoor management operates to protect the outsiders against the company. While persons contracting with a company are presumed to know the provisions of the contents of the memorandum and articles, they are entitled to assume that the provisions of the articles have been observed by the officers of the company. However, there are certain exceptions to doctrine of indoor management.
4. Doctrine of *Ultra Vires*
In the case of a company whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of *ultra vires* (The word 'ultra' means beyond and the word 'vires' means powers).

5. Doctrine of Alter Ego
It is used by the courts to ignore the status of shareholders, officers, and directors of a company in reference to their liability in their respective capacity so that they may be held personally liable for their actions when they have acted fraudulently or unjustly.
6. E-form
An e-form is a re-engineered conventional form, represents a document in electronic format.
7. Feature of e-governance
Director Identification Number (DIN), Corporate Identity Number (CIN) and Digital Signature Certificate (DSC) are the important features under e-governance mode (MCA-21).
8. MCA-21
MCA-21 system provides for the facility of payment of statutory fees through multiple modes i.e. (i) Off-line payment through a challan generated by the system and payment of fees at the counter of the notified bank branches through DDs/ Cash; (ii) on-line payments through Internet Banking and Credit Cards [Master Card/ VISA].
9. SRN
Each transaction under e-filing is uniquely identified by a Service Request Number (SRN). On filing of an e-form, the system will generate and provide a Service Request Number (SRN). A user can check the status of the document/ transaction, by entering the SRN.
10. Stamp duty on documents
If the stamp duty on documents which are required to be filed on non-judicial stamp paper is paid electronically through Ministry of Corporate Affairs portal www.mca.gov.in, in such case, the company shall not be required to make physical submission of such documents, in addition to their submission in the electronic form.

11. MCA Services

1. LLP Services
2. LLP Services for Business User
3. E-Filing
4. Company Services
5. Complaints
6. Document Related Services
7. Fee and Payment Services
8. Public Search of Trademark
9. Investor Services

12. Corporate Identity Number(CIN)/ Foreign Company Registration Number (FCRN)

Every company is allocated a Corporate Identity Number (CIN). CIN can be found from the MCA-21 portal through search based on:

- ROC Registration No.
- Existing Company Name
- Old Name of Company (in case of change of name, user is required to enter old name and the system displays corresponding current name).
- Inactive CIN [In case of change of CIN, the user is required to enter previous (inactive) CIN Number]

13. Foreign Company Registration Number (FCRN)

Every foreign company has been allocated a Foreign Company Registration Number (FCRN).

14. Director Identification Number (DIN)

DIN is an identification number which the Central Government may allot to any individual, intending to be appointed as director or to any existing directors of a company, for the purpose of his identification

All existing and any person intending to be appointed as a director are required to obtain the Director Identification Number (DIN). DIN is also

mandatory for directors of Indian Companies who are not citizens of India. However, DIN is not mandatory for directors of foreign company having branch offices in India. Every individual, who is intending to be appointed as Director of a company or designated partner of a limited liability partnership is required to make an application electronically in Form DIR -3 to Central Government for obtaining Director Identification Number (DIN) or in case the company is being incorporated through Form SPICe, a maximum of three directors can apply for DIN. DIN is a unique identification number and once obtained is valid for life time of a director. A single DIN is required to be obtained irrespective of the number of directorships.

15. Digital Signature Certificate (DSC)

For MCA-21, the following four types of users are identified as users of Digital Signatures and are required to obtain digital signature certificate:

1. MCA (Government) Employees.
2. Professionals (Company Secretaries, Chartered Accountants, Cost Accountants and Lawyers) who interact with MCA and companies in the context of Companies Act.
3. Authorized signatories of the Company including Managing Director, Directors, Manager or Secretary.
4. Representatives of Banks and Financial Institutions.

16. e-forms

An e-form is only a re-engineered conventional form notified and represents a document in electronic format for filing with MCA authorities through the Internet. This may be either a form filed for compliance or information purpose or an application seeking approval from the MCA. Due to technical updates, these forms updates regularly, even though their user interface may not change. User always use latest e- forms from the MCA Portal.

17. XBRL Extensive Business Reporting Language

XBRL Filing

XBRL (Extensible Business Reporting Language) is a language for the

electronic communication of business and financial data which is revolutionizing business reporting around the world. It helps in the preparation, analysis and communication of business information. It offers cost savings, greater efficiency and improved accuracy and reliability to all those involved in supplying or using financial data.

The Ministry of Corporate Affairs has mandated the following select class of companies mentioned below to file financial statements in XBRL (extensible Business Reporting Language) mode and by using the XBRL taxonomy:

(i) all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or

(ii) all companies having paid-up capital of Rupees five crore and above; or

(iii) all companies having turnover of Rupees one hundred crore and above; or

(iv) all companies who were required to file their financial statements for FY 2010-11, using XBRL mode.

However, the companies in banking, insurance, power sector, non-banking financial companies and housing finance companies are exempted from XBRL filing till further orders.

18. 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".

OBJECTIVE TYPE QUESTIONS FOR PRACTICE

1. Whether a transaction is *ultra vires* the company can be decided on the basis of the following:
   (a) if a transaction is outside the capacity (objects) of the company, it is *ultra vires*
   (b) if a transaction is in excess or abuse of the company's powers, it is *ultra vires* and such transaction will be set aside by the shareholders or even ratification by the shareholders would not validate the acts done beyond the authority of the company itself.
   (c) if a transaction entered into by a company falls within the objects, it is not ultra vires and hence not void;
   (d) Both (a) and (b)
2. Mr Mathur was summoned at his residence. The Door was locked so the summon was placed on the gate and as the court was unable to reach him directly, published the summon in English and Vernacular

newspaper and assumed that the notice is read by everyoned. This is an example of :

(a) Doctrine of Alter Ego
(b) Doctrine of Indoor Management
(c) Doctrine of Constructive Notice
(d) Doctrine of Court Notice

3. The term "Alter Ego" is a Latin word. Literally translated, it means the "Other I". Which one of these terms correctly refer to Doctrine of Alter Ego
   (a) that the company as well as the shareholders and the managing directors are the alter egos of each other, i.e., one is the shadow or reflection of the other or can be understood as two sides of the same coin. Hence, the courts can rely on alter ego doctrine when they find that there is a very thin line of distinction between the shareholders/ directors and the corporation or a limited liability corporation
   (b) 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.
   (c) every person who contemplates entering into a contract with a company has the means of ascertaining and is consequently presumed to know, not only the exact powers of the company but also the extent to which these powers have been delegated to the directors, and of any limitations placed upon the exercise of these powers
   (d) All of the Above
4. The Ministry of Corporate Affairs (MCA) is primarily concerned with administration of the Companies Act 2013, the Limited Liability Partnership Act, 2008 & other allied Acts alongwith rules & regulations framed thereunder mainly for regulating the functioning of the corporate sector in accordance with law. Which of the below mentioned Agencies falls under MCA-21

(a) Register of Companies, Regional Director, Supreme Court
(b) Official Liquidator, Serious Fraund Investigation Authority, The National Financial Reporting Authority
(c) National Company Law Appellat Tribunal, Registar of Companies, Official Liquidator, The National Financial Reporting Authority
(d) (a) and (b)

5. XYZ Ltd was formed in Maurities a tax heaven country by promoters namely X, Y, Z, after a searching holding company ABC Ltd it was found that XYZ was formed solely for evading Tax. The court ignored the concept of Seprate entity and made individual concerned liable to pay tax. The above case is an example of :
   (a) Doctrine of Alter Ego
   (b) Doctrine of Indoor Management
   (c) Piercing the Corporate Veil
   (d) Doctrine of Tax Evasion
6. There are various types of companies like Holding Company, Subsidiary Company, Associate Company, Public Company, Private Company, Company Limited by Guarantee. Which one of the below best defines company limited by Guarantee.
   (a) means a company incorporated under this Act or under any previous company law
   (b) 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.
   (c) 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.
   (d) means a company which is not a private company and has a minimum paid-up share capital , as may be prescribed:
7. According to section 1 of the Companies Act, 2013, the Act extends to whole of India and the provisions of the Act shall apply to the following Companies. Speicify the same from below mentioned List of Entities

(a) companies incorporated under this Act or under any previous company law and insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;
(b) banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949 and companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003
(c) HUF, Partnership Firm and LLPs
(d) Both (a) and (b)

ANSWERS

1.	(d)	2.	(c)	3.	(a)	4.	(c)	5.	(c)
6.	(b)	7.	(d)						

SHORT NOTES

2013 - Dec [6] Write a note on the following:
(c) Doctrine of alter ego. **(4 marks)**
Answer:

Doctrine of alter ego		
1.	**Personal liability of shareholders, officers and directors of the company**	It is used by the **Tribunal** to ignore the status of shareholders, officers and Directors of a Company in reference to their liability in their respective capacity so that they may be held personally liable for their actions when they have acted fraudulently or unjustly.

2.	**Managing Director liable for wrong doing of company**	In ***Lennards Carrying Co. Ltd. Vs. Asiatic Petroleum Co. Ltd. [1915].*** Viscount Haldane propounded the 'alter ego' theory and distinguished from vicarious liability. The house of Lord stated that the default of the MD who is the "directing mind and will" of the company would be attributed to him and he be held for the wrong doing of the company.

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2014 - June [3A] (Or) Write notes on the following:

(i) XBRL **(4 marks)**

Answer:

Extensible Business Reporting Language (XBRL) is a language for the electronic communication of business and financial data revolutionizing business reporting around the world. It provides major benefits in the preparation, analysis and communication of business information. It offers cost savings, greater efficiency and improved accuracy and reliability to all those involved in supplying or using financial data.

The Ministry of Corporate Affairs has mandated for selected class of companies to file their Balance Sheet and Profit and Loss Account and other documents as required under **Section 137** of **Companies Act, 2013** with the Registrar of Companies in XBRL (Extensible Business Reporting Language) mode and by using the XBRL taxonomy.

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2015 - June [3A] (Or) Write notes on the following:

(iv) XBRL filing. **(4 marks)**

Answer:

The applicability of e-form AOC-4 XBRL on classes of companies has been amended.

Filing of financial statements with Registrar.- The following class of companies shall file their financial statements and other documents under **Section 137** of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I:

(i) companies listed with stock exchanges in India and their Indian subsidiaries;
(ii) companies having paid up capital of five crore rupees or above;
(iii) companies having turnover of one hundred crore rupees or above;
(iv) all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015:

Provided that the companies preparing their financial statements under the **Companies (Accounting Standards) Rules, 2006** shall file the statements using the Taxonomy provided in Annexure-II and companies preparing their financial statements under **Companies (Indian Accounting Standards) Rules, 2015,** shall file the statements using the Taxonomy provided in Annexure-II A:

Provided further that non-banking financial companies, housing finance companies and companies engaged in the business of banking and insurance sector are exempted from filing of financial statements under these rules.

Key benefits of XBRL filing are as under:

Relevant data has tags and selective information can be fetched for specific purposes by various government and regulatory agencies.

It is in conformity with Global Reporting Standards, which helps in improved data mining and relevant information search.

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2015 - Dec [3A] (Or) Write notes on the following:

(iii) Keeping documents, records, registers, minutes, etc., of the company in electronic form **(4 marks)**

Answer:

According to **Section 120,** the documents, records, registers, minutes etc. may be kept and inspected in electronic form.

Rule 27 of Companies (Management and Administration) Rules, 2014 initially mandated every listed company or a company having not less than one thousand shareholders, debentureholders and other security holders may maintain its records, as required to be maintained under the Act or Rules made thereunder in electronic form.

According to **Rule 27(2)** the records in electronic form shall be maintained in such manner as the Board of Directors of the company may think fit, provided that:

(a) the records are maintained in the same formats and in accordance with all other requirements as provided in the Act or the rules made thereunder;
(b) the information as required under the provisions of the Act or the rules made thereunder should be adequately recorded for future reference;
(c) the records must be capable of being readable, retrievable and reproducible in printed form;
(d) the records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules made thereunder;
(e) the records, once dated and signed digitally shall not be capable of being edited or altered;
(f) the records shall be capable of being updated, according to the provisions of the Act or the rules made thereunder and the date of updating shall be capable of being recorded on every updating.

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2017 - June [3A] (Or) Write notes on the following:

(ii) Pre-certification of e-forms **(4 marks)**

Answer:

Pre-certification of e-forms

Apart from authentication of e-forms by authorized signatories using digital signatures, certain e-forms are also required to be pre-certified by practicing

professionals who are members of professional bodies namely ICAI, ICSI or ICWAI with the responsibility of ensuring correctness, completeness and integrity of documents filed by them with MCA in electronic mode including filing of financial statements in XBRL mode. Pre-certification is not required in the case of one person companies and small companies.

Once an e-form has been pre-certified by a professional towards its authenticity based on the particulars contained in the books of accounts and records of the company, MCA21 system takes that e-form on file by way of straight through process. Professionals are responsible for certifying documents through digital signature and the system would accept the documents online without approval by ROC.

This process of taking the forms on record by way of straight through process requires professionals to be extra cautious and vigilant towards the information, he/she certifies in the forms. If a professional certifies incorrect information or omits any material information, which later on proves that the same was done knowingly, he/she will be liable for the punishment under **Section 448 read with Section 447 of the Companies Act, 2013**, besides disciplinary action by the respective Institute, which issued the certificate of practice to the professionals.

Space to write important points for revision

DISTINGUISH BETWEEN

2013 - June [4] Distinguish between the following:

(iii) 'Pre-scrutiny' and 'check form'. **(4 marks)**

Answer:

Pre-Scrutiny	Check Form
It is a functionality that is used for checking whether certain core aspects are properly filled in the e-	By clicking "**CHECK FORM"** the user will be in a position to find out whether the mandatory fields in an

Form. Before submitting the e-Form for pre-scrutiny the user has to make the necessary attachments in PDF format.	e- Form are duly filled - in. For example, if the user enters alphabets in "Date of appointment of director" field, he/she will be asked to correct that.

Space to write important points for revision

2018 - June [2] Distinguish between the following:

(d) XBRL tags and XBRL taxonomies. **(4 marks)**

Answer:

In XBRL, information is not treated as a static block of text or set of numbers. Instead, information is broken down into unique items of data (e.g. total liabilities = 100). These data items are then assigned mark-up tags that make them computer-readable. For example, the tag<Liabilities>100</Liabilities> enables a computer to understand that the item is liabilities, and it has a value of 100.

Computers can treat information that has been tagged using XBRL 'intelligently'; they can recognize, process, store, exchange and analyze it automatically using software.

Because XBRL tags are formed in a universally-accepted way, they can be read and processed by any computer that has XBRL software XBRL tags are defined and organized using categorization schemes called taxonomies.

XBRL Taxonomies:

Different countries use different accounting standards. Reporting under each standard reflects differing definitions. The XBRL language uses different dictionaries, known as 'taxonomies', to define the specific tags used for each standard. Different dictionaries may be defined for different purposes and types of reporting. Taxonomies are the computer-readable 'dictionaries' of XBRL. Taxonomies provide definitions for XBRL tags, they provide information about the tags, and they organize the tags so that they have a meaningful structure.

As a result, taxonomies enable computers with XBRL software to:

— understand what the tag is (e.g. whether it is a monetary item, a percentage or text);
In tagging Section, "N" refers to navigation, "A" refers to attaching the disclosures "T" refers to text entry etc.

— what characteristics the tag has (e.g. if it has a negative value);

— its relationship to other items (e.g. if it is part of a calculation).

Taxonomies differ according to reporting purposes, the type of information being reported and reporting presentation requirements.

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DESCRIPTIVE QUESTIONS

2012 - Dec [2] (b) In relation to e-form CRA - 2, state the:

(i) Reasons for filing this form
(ii) Particulars required to be filled in the form
(iii) Documents required to be enclosed with the form
(iv) Person who is to sign and certify the form. **(1 mark each)**

Answer:

(i) Reasons for filling this form

This is a form of application to the Central Government for appointment of cost auditor.

(ii) Particulars required to be filled in the form

1. Corporate Identity Number (CIN) or Foreign Company Registration Number (FCRN) of the company;
2. Name of the company;
3. Category of cost audit order;
4. Details of the cost auditor proposed to be appointed;
5. Proposed remuneration of the cost auditor; and
6. Date of Board Meeting of Directors proposing the name of the cost auditor.

(iii) Documents required to be enclosed with the form

(i) Copy of the board resolution of the company sanctioning the proposal for which the Government approval has been sought.

(ii) Copy of the certificate obtained from cost auditor.

(iv) Person who is to sign and certify the form

The form is required to be digitally signed by Managing Director or Director or Manager or Secretary of the company (in case of Indian Company) or an authorized representative (in case of a Foreign Company).

Space to write important points for revision

2012 - Dec [4] (ii) Who are the persons required/obliged to use digital signature for filing/certifying e-forms? **(4 marks)**

Answer:

Digital signature certificate is essential for every users who is required to sign in e-form for submission with MCA. For **MCA - 21** there are four types of users that is given below are identifies as user of digital signature and are required to obtain digital signature certificate:

(1) MCA (Government) Employee.

(2) Professional (Company Secretaries, Chartered Accountants, Cost Accountants).

(3) Authorised signatories of the company including managing director, directors, manager or secretary.

(4) Representatives of Banks and Financial Institutions.

Space to write important points for revision

2013 - June [4] (b) When a Director Identification Number (DIN) application is rejected by the Ministry of Corporate Affairs portal, does the applicant necessarily need to apply for a fresh DIN? Discuss. **(4 marks)**

(c) Is online viewing of public documents of a company open to any member of the public? How one (who is eligible) can view online public documents of a company? Is a copy of a public document available to

the public? Give two examples of company documents filed online with the Registrar of Companies. **(6 marks)**

Answer:

(b) Common causes of Rejection for Director Identification Number (DIN)

(i) The applicant details are not as per the PAN.

(ii) The particulars filed in form **DIR 3** do not match with the details given in the supporting documents submitted along with DIN application.

(iii) Residence proof like :

(a) Bank statement (b) Electricity bill

(c) Telephone bill (d) Utility bill etc.

Submitted are older than **2** months of submitting the application for verification.

(iv) The supporting document are not duly attested that is :

(a) Name

(b) Designation

(c) Membership

(d) Practicing certificate number etc. are not clearly indicated

(v) Passport/Driving License/Identity proofs etc. attached are expired only such documents which are currently valid should be attached.

(c) Viewing public documents is open to any member of public because the very term 'public document' means a document to which a member of public has access. There is no issue on eligibility to view public document. Any member of public or citizen can access MCA portal for viewing public documents of any company registered with ROC. The feature of viewing is available after login. One who wishes to view will select the company concerned after login. Then the documents under each category will come on the screen. Contents of the documents can be seen only after payment of requisite fee. Once payment is made the person can view the documents during the next 7 days and once the view is started then it is available for a maximum of 3 hours. The documents can be viewed from anywhere i.e. from any online facility available without visiting Registrar of Companies' office, using the 'My

documents' tab available after logging into the portal. Apart from viewing public documents, a person can also obtain certified copies of documents of payment. In this regard, an application is to be made to the concerned ROC within whose jurisdiction the company's registered office is situated. Examples of public documents are:

(i) Documents relating to incorporation of a company
(ii) Annual returns and balance sheets

Note: *Examples of public documents are given below:*
(i) Documents relating to incorporation of company.
(ii) Annual returns and financial statement.

Space to write important points for revision

2013 - June [5] (d) What is the general structure of e-filing process under MCA-21? **(4 marks)**

Answer:

1.	**Features of E-Filling**	E-filing or electronic filing is a Key feature of the MCA 21 System. An e-form contains certain standardized features. Each e-form contains guidelines for filling up the form.	
2.	**On-Line/Off-Line filling**	An e-form may be filled in either on line or off line.	
		On Line filling	**Off Line Filling**
		On line filling implies that the e-form is filled while being connected to My MCA portal through the internet.	Off line filling denotes that the e-form is downloaded into users computer and filled later without being connected to internet.
3.	**Other requirements**	• E-form requires some mandatory attachments, declaration to the effect that the information and attachments are correct and complete, digital signatures of third parties may be	

		required. • Prescribed fees as application will be made either on-line or off line. • After completion of filling e-form duly signed (Digital Signature) an acknowledgment e-mail is sent to user regarding its approval/rejection.

Space to write important points for revision

2014 - June [2A] (Or) (iii) While the doctrine of constructive notice seeks to protect the company against the outsiders, the doctrine of indoor management operates to protect the outsiders against the company. Elucidate. **(4 marks)**

Answer:

1. Doctrine of Constructive Notice		
1.	**Protection against the outsiders**	The Doctrine of constructive notice seeks to protect the company against the outsiders. The Doctrine of constructive notice assumes that the person has been notified whether they know it or not.
2.	**MOA and AOA to be in public domain**	➢ The Memorandum and Article of Association of every company are required to be registered with the Registrar of company. The office of Registrar is a public office and consequently the Memorandum of Association on registration of these document became public document. These documents are available for public inspection either in the office of the company or in the office of the Registrar of Companies on payment of nominal fees for inspection. ➢ Every one dealing with the company, whether a shareholder or an outsider is presumed to have read the two documents. He will be presumed to

		know the content of these documents ***[Oak Bank Oil Co Vs. Crum]***. This is known as Doctrine of Constructive notice.
2. Doctrine of Indoor Management		
1.	**Exception to the doctrine of Constructive Notice**	The doctrine of Indoor Management is an exception to the rule of constructive notice, persons dealing with the company should read these documents and satisfy themselves that the company has the power to enter into the contract, and they are not required to do further inspection.
2.	**Assumption of outsiders for regularity**	The outsider dealing with the company are entitled to assume that as far as the internal proceedings of the company are concerned every thing has been regularly done. He is not required to examine whether the internal proceedings have been complied with or not. They need not enquire into the regularity of the internal proceeding required by the Memorandum and Article. They can presume that all is being done regularly. In other words outsiders can safely assume that provisions of the Articles have been complied with by the company in its internal working.
3.	**Doctrine of Indoor Management Vs. Doctrine of Constructive Notice Management**	*Thus, where as doctrine of constructive notice protect the company against outsiders the doctrine of Indoor Management seek to protect outsider against the company. The doctrine had its in the leading case of* ***Royal British Bank V. Turquand.***

4.	**CASE LAW ANALYSIS Royal British Bank V. Turquand**	**(i) Points decided**	The outsiders dealing with the company are entitled to presume that as far as the internal proceeding of the company are concerned, every thing has been regularly done.
		(ii) Fact of the cases	In this case, The directors of a company had issued a bond to T. They had power under the Articles to issue such bond provided they were authorised by a resolution passed by the shareholders at a general meeting of the company. No such resolution was passed. It was held that T could sue on the bond as he was entitled to assume that the resolution must have been passed. Lord Hatherly observed "Outsiders are bound to know the external position of the company, but are not bound to know its Indoor Management."
5.	**Exception to the doctrine of Indoor Management**	The doctrine is subject to the following exception.	
		(i) Knowle-dge of irregula-rity	Where a person dealing with a company has actual or constructive notice of the irregularity as - regard internal management. He can not claim the benefit of the rule in the ***Turquands case Haward V.***

			Patent Ivory manufacturing Co.
		(ii) Negligence	Where the circumstances are of a suspicious nature as to invite further inquiry and the person had failed to enquire into it, he shall not be entitled to protection under this rule of ***Indoor Management [Underwood V. Bank of Liver pool (1924) K. B. 775].***
		(iii) Forgery	The rule in Turquands case will not apply where a document on which the person seek to rely is a forgery. A company is not liable for forgeries committed by its officers. ***Rouben V. Great Fingall Ltd.***
		(iv) Acts outside the apparent authority	The rule in Turquands case does not apply where a person acting on behalf of the company exceeds any actual or ostensible authority given to him. If the act of the officer is beyond the scope of his authority the company is not bound. The plaintiff can not claim the protection of the ***Turquands rule Anand Bihari Lal V. Dinshaw and Company (Bankers) Ltd.***
		(v) Void or Illegal Transac-tion	The doctrine of indoor Management shall not apply to those transaction which are illegal or *void ab-initio*.

Space to write important points for revision

2014 - June [3A] (Or) (ii) "XBRL offers major benefits at all stages of business reporting and analysis". Discuss. **(4 marks)**

Answer:

1	**Benefits of XBRL**	XBRL offers major benefits at all stages of business reporting and analysis. The benefits are seen in automation, cost saving, faster, more reliable and more accurate handling of data, improved analysis and in better quality of information and decision-making. 1. It saves costs and improves efficiency in handling business and financial information. 2. It is extensible and flexible which can adapt any changes according to the requirements. 3. It enables producers and consumers of financial data to switch resources away from costly manual processes, typically involving time-consuming comparison, assembly and re-entry of data. 4. The users of financial data are able to make more effort on analysis.

Space to write important points for revision

2014 - June [4] (b) In the case of a company whatever is not stated in the memorandum of association as objects of the company is prohibited by the doctrine of *ultra vires*. Discuss with relevant case law. **(8 marks)**

Answer:

Doctrine of *Ultra Vires*		
1.	**What does this doctrine say?**	In the case of a company whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of *ultra vires* . As a result, an act which is *ultra vires* is void, and does not bind the company. Neither the company nor the contracting party can sue on it. Also, as stated earlier, the company cannot make it valid, even if

		every member assents to it.	
2.	**General Rule**	The general rule is that an act which is ultra vires the company is incapable of ratification. An act which is intra vires the company but outside the authority of the directors may be ratified by the company in proper form ***[Rajendra Nath Dutta v. Shilendra Nath Mukherjee, (1982) 52 Com Cases 293 (Cal.)].***	
3.	**Protection to Shareholders and Creditors of the Company**	The rule is meant to protect shareholders and the creditors of the company. If the act is ultra vires (beyond the powers of) the directors only, the shareholders can ratify it. If it is ultra vires the articles of association, the company can alter its articles in the proper way.	
4.	**Case Law Analysis Ash-bury Railway Carriage and Iron Co. Ltd. V. Riche, (1878) L.R.7.H.L. 653**	The doctrine of *ultra vires* was first enunciated in this case.	
		Facts of the case	The memorandum of the company in the said case defined its objects thus: "The objects for which the company is established are to make and sell, or lend or hire, railway plants..... to carry on the business of mechanical engineers and general contractors.....". The company entered into a contract with M/s. Riche, a firm of railway contractors to finance the construction of a railway line in

			Belgium. On subsequent repudiation of this contract by the company on the ground of its being *ultra vires*, Riche brought a case for damages on the ground of breach of contract, as according to him the words "general contractors" in the objects clause gave power to the company to enter into such a contract and, therefore, it was within the powers of the company. More so because the contract was ratified by a majority of shareholders.
		Point decided	The House of Lords held that the contract was *ultra vires* the company and, therefore, null and void. The term "general contractor" was interpreted to indicate as the making generally of such contracts as are connected with the business of mechanical engineers. The Tribunal held that if every shareholder of the company had been in the room and had said, "That is a contract which we desire to make, which we authorise the directors to make", still it would be *ultra vires*. The shareholders cannot ratify such a contract, as the contract was ultra vires the objects clause, which by Act of Parliament, they were prohibited from doing.

Space to write important points for revision

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.	**Meaning of lifting 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 Tribunal will break through the corporate shell and apply the principle/doctrine of what is called as "lifting of or piercing the corporate veil". • 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.	
2.	**When it is lifted**	**Concerned Case Law:** [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.	**Share-holders not permitted for the lifting of the veil for their purpose**	**Concerned Case Law: Premlata Bhatia v. Union of Indian (2004) 58 CL 217 (Delhi)**	This was held in wherein the premises of a shop were allotted on a licence to the individual licencee. 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	**Prevention of fraud and misconduct**	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. ***[Gilford Motor Co. Vs. Horne [1993] Ch 935]***
2	**Company acting as agent**	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. ***[Re F G Films Ltd. (1953) 1 All E.R. 615]***
3	**Protection of public policy**	Where the doctrine conflicts with public policy, Tribunal have lifted the corporation veil for protecting the public policy. ***[Connors Vs. Connors Ltd. (1940) 4 All E.R. 179]***
4	**Enemy Character of Company**	Tribunal will lift the corporate veil if the company has enemy character. ***[Daimler Co. Ltd. Vs. Continental Tyre and Rubber Co. (1916) 2 A.C. 307]***

5	**Evasion of taxes**	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. ***[Re. Dinshaw Maneckjee Petit A.I.R. 1927 Bombay 371]***
6	**To protect labour welfare legislation**	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. ***[Workmen of Associated Rubber Industries Ltd. Vs. Associated Rubber Industries Ltd. A.I.R. 1986 SC1]***
7	**Use of corporate veil for hiding criminal activities**	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.

Space to write important points for revision

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. 40

Space to write important points for revision

2014 - Dec [1] Comment with reasons on the following:
(b) Acts done outside the limits of memorandum are ultra vires. **(5 marks)**

Answer:

Doctrine of Ultra Vires		
1	**What does this doctrine say?**	In the case of a company, whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of ultra vires. The word 'ultra' means beyond and the word 'vires' means the powers. As a result, an act which is ultra vires is void, and does not bind the company. Neither the company nor the other contracting party can sue on it. Also, as stated earlier, the company cannot make it valid, even if every member assents to it.
2	**General Rule**	The general rule is that an act which is ultra vires the company is incapable of ratification. An act which is intra vires to the company may be ratified by the company in proper form ***[Rajendra Nath Dutta v. Shilendra Nath Mukherjee, (1982) 52 Comp. Cas. 293 (Cal.)]***.
3	**Protection to Shareholders and Creditors of the Company**	The rule is meant to protect shareholders and the creditors of the company. But if the act is ultra vires (beyond the powers) of the directors only, the shareholders can ratify it or if it is ultra vires the articles of association, the company can alter its articles in the proper way. The doctrine of ultra vires was first enunciated by the House of Lords in the classic case, ***Ashbury Railway Carriage and Iron Co. Ltd. v Riche, (1878) L.R.7 H.L.653.***
4	***Utlra Vires* contract is null and void**	An *ultra vires* contract is null and void as that of contract with a minor ***[Steel Equipment & Construction Co. (P) Ltd. Re (1968)38 Com. Cases 82, (1967) 1 Comp LJ 172 (Cal.).]***

5	**Remedy for *Ultra Vires* allotment of shares**	A shareholder can get back the money paid by him to the company under an *ultra vires* allotment of shares. A transferee of shares from him would not have been so allowed. ***[Margarate Linz v. Electric Wire Co. of Salestine Ltd. (1948) 18 Com. Cases 201, 205 : AIR 1949 PC 51]*.**
6	**Relief through Injunction**	The members can get an injunction to restrain the company wherein ultra vires act has been or is about to be undertaken.
7	**Restoration of Company's funds**	In ***Jehangir R. Modi v Shamji Ladha, [(1866-67) 4 Bom. HCR (1855)],*** the Bombay High Court Held: "A shareholder can maintain an action against the directors to compel them to restore to the company the funds of the company that have been employed in transactions that they have no authority to enter into, without making the company a party to the suit."

Space to write important points for revision

2014 - Dec [2A] (Or) (iv) List out the resolutions which require filing of e-Form MGT-14 with the Registrar of Companies. **(4 marks)**

Answer:

Section 117 of the Companies Act, 2013 provides that a copy of every resolution and an agreement in respect of matters specified therein together with a explanatory statement shall be filed in Form No. **MGT-14** with the Registrar within thirty days of its passing.

Resolutions and agreements to be filed with the Registrar are as under:

(a) special resolutions;

(b) resolutions which have been agreed to by all the members of a company, but which if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;

(c) any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or

renewal of the appointment or variation of the terms of appointment, of a managing director;

(d) resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;

(e) resolutions passed by a company according consent to be exercised by its Board of Directors of any of the powers under clause (a) and clause (c) of **Sub-Section (1)** of **Section 180;**

(f) resolutions requiring a company to be wound up voluntarily passed in pursuance of **Section 304;**

(g) resolutions passed in pursuance of **Sub-Section (3)** of **Section 179,** and

(h) any other resolution or agreement as may be prescribed and placed in the public domain.

Space to write important points for revision

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.	**Lifting of Corporate Veil under Judicial**	Ever since the decision in ***Salomon vs. Salomon & Co. Ltd.,*** **(1897) A.C. 22,** normally Tribunal are reluctant or at least very cautious to lift the veil of

	Interpretation	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:	
	(a) Where the corporate veil has been used for com-mission of fraud or improper conduct	**Case Laws: In Jones vs. Lipman, (1962) I.W.- L.R. 832**	➢ In this case the court lifted the veil and looked at the realities in the situation. ➢ 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 were the only shareholders and directors. This was done in order to escape a decree for specific perform- ance 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.

	(b) Where the acts of a company are opposed to workmen	**The Associated Rubber Industries Ltd. Bhavnagar & another, AIR 1986 SC 1**	➢ It has been decided in The Associated Rubber Industries Ltd. Bhavnagar & another, AIR 1986 SC 1 that where the acts of the company are opposed to workmen the corporate veil may be lifted. ➢ **Brief facts of the case:** 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 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. 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. 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.

Space to write important points for revision

2015 - Dec [2A] (Or) (iv) Mention the classes of companies which are mandated by the Ministry of Corporate Affairs to file their financial statements in extensible Business Reporting Language (XBRL) mode with its key benefits. State exceptions, if any. **(4 marks)**

Answer:

Please refer 2015 - June [3A] (Or) (iv) on page no. 25

Space to write important points for revision

2017 - June [4] (b) CIN, issued by MCA, the unique identifier, provides the key profile of companies – Explain. **(4 marks)**

Answer:

Every company incorporated on or after Nov 1, 2000 is allotted a 21 digit Corporate Identity Number (CIN) by the ROC, which indicates the listing status, economic activity (industry), State, Year of incorporation, ownership and sequential number assigned by the ROC. This number is to be quoted in all e-forms and once the number is typed, MCA site automatically pre-fills the essential particulars.

CIN is structured as under to indicate the profile of the company:

1st digit	Listing Status
Next 5 digits:	Economic activity (industry to which the company belongs)
Next 2 digits:	State in which Company is registered
Next 4 digits:	Year of incorporation
Next 3 digits:	Ownership

Next 6 digits: Sequential number assigned by the ROC (Registration Number)

CIN can also be searched in MCA site based on ROC registration number, existing company name or old name, if any. Keeping in view the said specifications, CIN can be considered the unique identifier.

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2018 - Dec [2] (d) Explain the Doctrine of 'ALTER EGO' with suitable case law. **(4 marks)**

Answer:

Doctrine of ALTER EGO

It is used by the courts to ignore the status of shareholders, officers and directors of a company in reference to their liability in their respective capacity so that they may be held personally liable for their actions when they have acted fraudulently or unjustly.

In Lennards Carrying Co, Ltd v. Asiatic Petroleum Co, Ltd. [1915] AC 705, Viscount Haldane propounded the "alter ego" theory and distinguished it from vicarious liability. The House of Lords stated that the default of the managing director who is the "directing mind and will" of the company, would be attributed to him and he be held for the wrong doing of the company.

—— Space to write important points for revision ——

2018 - Dec [2] (e) Filing of financial statements in XBRL mode and by using XBRL taxonomy is mandatory to certain companies. Discuss, referring to the provisions of the Companies Act, 2013. **(3 marks)**

Answer:

As per Rule 3 of the Companies (Filling of Documents and Forms in Extensive Business Reporting Language) Rules, 2018 mandates the following select class of companies mentioned below to file financial statements in XBRL (eXtensible Business Reporting Language) mode and by using the XBRL taxonomy:

(i) All companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
(ii) All companies having paid-up capital of Rupees five crore and above; or
(iii) All companies having turnover of Rupees one hundred crore and above; or
(iv) All companies who were required to file their financial statements for F.Y. 2010-11, using XBRL mode.

But, the companies in banking, insurance, power sector, non-banking financial companies and housing finance companies are exempted from XBRL filing till further orders.

—— Space to write important points for revision ——

2018 - Dec [6] (a) Shalini, practicing Company Secretary, has disclosed information acquired in the course of her professional engagement to a person other than the client, without the consent of such client. Can she do so? Can she retain the digital signature of her client for uploading e-forms on MCA portal? **(5 marks)**

Answer:

Clause 1 of Part I of Second Schedule to the Company Secretaries Act, 1980 provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he discloses information acquired in the course of his professional engagement to any person other than the client so engaging him, without the consent of such client, or otherwise than as required by any law for the time being in force. This clause indicates the position of trust and confidence reposed by the client in a Company Secretary in practice. Therefore, Shalini is guilty under the above mentioned clause.

It is suggested that Shalini may retain digital signature of client after obtaining a formal letter signed by his client authorising PCS to make use of his Digital signature.

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2019 - June [2A] (Or) (iii) Who are all the persons required to obtain Digital Signature Certificates? **(3 marks)**

Answer:

The e-forms are required to be authenticated by the authorized signatories using Digital Signature Certificate (DSC) as defined under the Information Technology Act, 2000. A digital signature is the electronic signature duly issued by a certifying authority that shows the authority of the person signing the same. It is an electronic equivalent of a written signature. Every user who is required to sign an e-form for submission with MCA is required to obtain a Digital Signature Certificate. For MCA-21, the following four types of users are identified as users of Digital Signatures and are required to obtain digital signature certificate:

1. MCA (Government) Employees.
2. Professionals (Company Secretaries, Chartered Accountants, Cost Accountants and Lawyers) who interact with MCA and companies in the context of Companies Act.
3. Authorized signatories of the Company including Managing Director, Directors, Manager or Secretary.
4. Representatives of Banks and Financial Institutions.

All companies (Public Company, Private Company, Company not having share capital, Company limited by share or guarantee, Unlimited Company) must comply with this requirement of registration of DSC by the director, manager and secretary. Foreign directors are required to obtain Digital Signature Certificate from an Indian Certifying Authority (List of Certifying Authorities is available on the MCA portal).The process of registration of DSC is same as applicable to others.

Space to write important points for revision

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.

Space to write important points for revision

2020 - Dec [3] (c) Every company is required to get pre-scrutiny and pre-certification of e-forms by a practising professional before filing with the Registrar of Companies (ROC). Is this true ? Explain the relevant legal provisions. **(5 marks)**

Answer:

Pre-Scrutiny: Pre-scrutiny is a functionality that is used checking whether certain core aspects are properly filled in the e-form. It can be done by the company itself and no professional is required. Pre scrutiny function is available for all forms and is to be done by all class of companies.

Pre-Certification: Apart from authentication of e-forms by authorized signatories using digital signatures, some e-forms are also required to be pre-certified by practicing professionals. Pre-certification means certification of correctness of any document by a professional before the same is filed with the Registrar of Companies. E-forms mentioned in Rule 8(12) of the Companies (Registration Offices and Fees) Rules, 2014 such as INC-22, AOC-4, MGT- 14, DIR-12 etc., are required to be pre-certified by Company

Secretaries or Chartered Accountants or Cost Accountants who are in whole-time practice by all class of companies except One Person Company and Small Companies.

Consequently, every company is required to do pre-scrutiny of e-forms but pre-certification of certain forms is not mandatory for every class of company.

Space to write important points for revision

PRACTICAL QUESTIONS

2015 - Dec [3A] (Or) (ii) Surprise Ltd. was incorporated under the **Companies Act, 2013.** The memorandum of association of the company in its objects clause stated that the company was established to make and sell or to carry on the business of mechanical engineers and general contractors. The company entered into a contract with Prominent Ltd., a firm of railway contractors to finance the construction of a railway line in Mumbai. The contract was ratified by the shareholders in general meeting. Subsequently, the contract was repudiated by the company on the ground that the contract was *ultra vires* the objects clause. Prominent Ltd. filed a suit claiming damages for the breach of contract.

Explaining the meaning of doctrine of ultra vires, decide whether Prominent Ltd. will succeed. **(4 marks)**

Answer:

In the case of a company whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of *ultra vires*. As a result, an act which is *ultra vires* is void, and does not bind the company. Neither the company nor the contracting party can sue on it. The company cannot validate such an act even if every member's assent to it.

- The rule is meant to protect shareholders and the creditors of the company. If the act is *ultra vires* (beyond the powers of) the directors only but intra vires the Memorandum of Association, the shareholders can ratify it. If it is *ultra vires* the articles of association, the company can alter its articles in the proper way.

- The doctrine of *ultra vires* was first enunciated by the House of Lords in a classic case, ***Ashbury Railway Carriage and Iron Co. Ltd. Vs. Riche*, (1878).** The facts of the case were that the memorandum of the company in the said case defined its objects thus:
- "The objects for which the company is established are to make and sell, or lend or hire, railway plants..... to carry on the business of mechanical engineers and general contractors.....".
  In this case, The House of Lords held that the contract was ultra vires the company and, therefore, null and void.
  In the given case, the Prominent Ltd. will not succeed, since the contract itself was ultra vires.

Space to write important points for revision

2016 - June [3] (a) Prudent General Insurance Company Ltd. is engaged in the general insurance business. The company is not listed in any stock exchange in India but is a subsidiary of Reliable General Insurance Company Ltd., listed at Bombay Stock Exchange. The turnover of Prudent General Insurance Company Ltd. is ₹ 330 crore. Examining the provisions of the **Companies Act, 2013,** state whether the company is required to file XBRL enabled balance sheet. **(4 marks)**

Answer:

1	**XBRL Filing**	The Ministry of Corporate Affairs has mandated the following select class of companies mentioned below to file financial statements in XBRL (Extensible Business Reporting Language) mode and by using the XBRL taxonomy: (i) all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or (ii) all companies having paid-up share capital of Rupees five crore and above; or (iii) all companies having turnover of Rupees one hundred crore and above; or (iv) all companies who were required to file their financial statements for FY 2010-11, using XBRL

		mode. However, banking companies, insurance companies, power companies and Non-Banking Financial Companies (NBFCs) are exempted from XBRL filing till further orders.
2	**Conclusion**	*In present case Prudent General Insurance Company Ltd. is engaged in general insurance business, thus XBRL filing is not applicable to the company.*

Space to write important points for revision

2016 - June [4] (a) In relation to filing of financial statements of a company in XBRL mode and by using the XBRL taxonomy, decide whether the following companies are required to file the financial statements in the said mode:

(i) Grand Ltd., the subsidiary company of Tiny Ltd. which is listed at Kolkata Stock Exchange.
(ii) Prime Ltd., a company which has paid-up share capital of ₹ 100 crore.
(iii) Crafty Ltd., a company which has a turnover of ₹ 400 crore.
(iv) Comfort Ltd., a non-banking financial company. **(4 marks)**

Answer:

XBRL Filing: The Ministry of Corporate Affairs has mandated the following select class of companies mentioned below to file financial statements in XBRL (Extensible Business Reporting Language) mode and by using the XBRL taxonomy:

(i) all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
(ii) all companies having paid-up share capital of rupees five crore and above; or
(iii) all companies having turnover of rupees one hundred crore and above; or
(iv) all companies who were required to file their financial statements for F.Y. **2010-11**, using XBRL mode.

However, banking companies, insurance companies, power companies and Non-Banking Financial Companies are exempted from XBRL filing till further orders.

(i) Yes, Company is required to file financial statements through XBRL mode.

(ii) Yes, Company is required to file financial statements through XBRL mode.

(iii) Since in this case the turnover is more than ₹ **100** crore, the company is required to file the financial statements through XBRL mode.

(iv) This company is exempted from filing the financial statements through XBRL mode.

Space to write important points for revision

2020 - Dec [2] (d) The Paid-up Capital of X Ltd. is ₹ 10 Crore and Reserve and Surplus are negative (due to huge losses since previous few years) amounting ₹ 300 Crore. To pay the dues to Creditors, the Board of Directors passed the resolution for borrowing of ₹ 50 Crore and got funded through Financial Institution in term of Medium Term Loan for 3 years. Entire amount was utilized to pay the Debts.

The Financial Institution when got the information that such act was *ultra vires* transaction, filed a suit against the Directors of the Company. The Plea of the Directors were that Shareholders and Directors have limited liability and doctrine of indoor management is applicable. Therefore, they are not personally liable. Comment. **(4 marks)**

Answer:

According to **Section 180(1)(c)** read with **Section 179 of the Companies Act, 2013,** provides that the Board of Directors can only with the consent of the company by a special resolution at general meeting would borrow money, where the money to be borrowed, together with the money already borrowed by the company exceeds aggregate of its paid-up share capital, free reserves and securities premium, amount apart from temporary loans obtained from the company's bankers in the ordinary course of business.

Now, whether a transaction is ultra vires the company can be decided on the basis of the following:

(a) If a transaction entered into by a company falls within the objects, it is not ultra vires and hence not void
(b) If a transaction is outside the capacity (objects) of the company, it is ultra vires
(c) If a transaction is in excess or abuse of the company's powers, it is ultra *vires* and such transaction will be set aside by the shareholders or even ratification by the shareholders would not validate the acts done beyond the authority of the company itself.

Personal liability of Directors : It is one of the duties of directors to ensure that the corporate capital is used only for the legitimate business of the company and hence if such capital is diverted to purposes alien to company's memorandum, the directors will be personally liable to replace it.

In ***Jehangir R. Modi v. Shamji Ladha, [(1866-67) 4 Bom. HCR (1855)],*** the Bombay High Court held, "A shareholder can maintain an action against the directors to compel them to restore to the company the funds of the company that have by them been employed in transactions that they have no authority to enter into, without making the company a party to the suit".

In case of deliberate misapplication, criminal action can also be taken for fraud.

While the doctrine of 'constructive notice" seeks to protect the company against the outsiders, the principal of indoor management operates to protect the outsiders against the company.

Therefore, in the present case, the Board has taken loan exceeding the prescribed limit **under section 180(1)(c) of the Companies Act, 2013,** therefore, Directors are personally liable to repay the loan to financial institution.

Space to write important points for revision

2021 - Aug [2] (b) The Article of Association of XYZ Ltd. provides that the Board of directors has authority to issue bonds provided such issue is authorized by the shareholders by a necessary resolution in the general meeting of the company. The company was in dire need of funds and

therefore it issued the bonds to X without passing any such resolution at general meeting. Can X recover the money from the company? Decide referring the relevant case laws and provisions of the Companies Act, 2013?
(4 marks)

Answer:

The principal of indoor management operates to protect the outsiders against the company. According to this doctrine, as laid down in ***Royal British Bank v. Turquand. (1856) 119 E.R. 886,*** persons dealing with a company having satisfied themselves that the proposed transaction is not in its nature inconsistent with the memorandum and articles, are not bound to inquire the regularity of any internal proceedings. In other words, while persons contracting with a company are presumed to know the provisions of the contents of the memorandum and articles, they are entitled to assume that the provisions of the articles have been observed by the officers of the company. It is not a part of the duty of an outsider to see that the company carries out its own internal regulations.

As based on the above case it is inferred that outsiders are bound to know the external position of the company but are not bound to know its indoor management. So, in the given case X could sue the company and recover his money, as he was entitled to assume that the necessary resolution had been passed and the required formalities have been duly complied.

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2021 - Dec [1] (a) The Articles of Association of BC Ltd. empowered the directors to borrow money within the limit of ₹50 lakh. The Articles further provided that the directors can also exceed the borrowing limit of ₹50 lakh with the consent of the Company in general meeting. The directors of BC Ltd. took the loan of ₹75 lakh from R being one of the directors of BC Ltd. without obtaining the consent of the Company in general meeting. The Company, BC Ltd. refused to repay the loan amount to R. In the light of decided case law, state whether R will be able to get his money back from the Company.
(5 marks)

Answer:

In the given case relates to the exceptions to the Doctrine of Indoor Management. The relief on the ground of 'Indoor Management cannot be claimed by an outsider dealing with the company where the outsider had knowledge of irregularity.

The rule does not protect any person who has actual or even an implied notice of the lack of authority of the person acting on behalf of the company.

So, a person knowing fully well that the directors do not have the authority to make the transaction but still enters into it, cannot seek protection under the rule of indoor management.

Note:

In *Howard v. Patent Ivory Co. (38 Ch. D 156),* the articles of a company empowered the directors to borrow upto one thousand pounds only. They could, however, exceed the limit of one thousand pounds with the consent of the company in general meeting. Without such consent having been obtained, they borrowed 3,500 pounds from one of the directors who took debentures. The company refused to pay the amount. Held that, the debentures were good to the extent of one thousand pounds only because the director had notice or was deemed to have the notice of the internal irregularity.

Conclusion:

In the above, R will be able to get only ₹ 50 lakh from BC Ltd. He will not be able to get the remaining amount of ₹ 25 lakh as he being the director of BC Ltd. is deemed to have knowledge of the authority of Board of Directors of the Company to borrow money as per the provisions of Articles of Association (AoA) of the Company.

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2021- Dec [2A] (Or) (iv) ABC Ltd. has not satisfied any conditions specified as per section 137 of the Companies Act for current financial year. The company has filed financial statement as per XBRL Taxanomy for the previous financial year. Is ABC Ltd. still required to file financial statements as per XBRL. Taxanomy for the current financial year? **(3 marks)**

Answer:

Rule 3 of the Companies (Filing of Documents and Forms in XBRL) Rules, 2015

(1) The following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-Form AOC-4 XBRL:
   (i) companies listed with stock exchanges in India and their Indian subsidiaries
   (ii) companies having paid up capital of five crore rupees or above;
   (iii) companies having turnover of one hundred crore rupees or above;
   (iv) all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015.

(2) **Provided that** the Companies preparing their financial statements under the Companies (Accounting Standards) Rules, 2006 shall file the statements using the Taxonomy provided in Annexure-II and companies preparing their financial statements under Companies (Indian Accounting Standards) Rules, 2015, shall file the statements using the Taxonomy provided in Annexure-II A of the Companies (Filing of Documents and Forms in XBRL) Rules, 2015

(3) Further non-banking financial companies, housing finance companies and companies engaged in the business of banking and insurance sector are exempted from filing of financial statements under these rules.

(4) The companies which have filed their financial statements under sub-rule (1) of Rule 3 of XBRL Rules, shall continue to file their financial statements and other documents though they may not fall under the class of companies specified therein in succeeding years. The companies which have filed their financial statements under the erstwhile rules, namely the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011, shall continue to file their financial statements and other documents as prescribed in Rule 3(1) of XBRL Rules though they do not fall under the class of companies specified therein.

Therefore, as per the above provisions ABC Ltd. though has not satisfied any conditions specified as per **Section 137 of the Companies Act, 2013** for current financial year, yet the company is required to file financial statements as per XBRL Taxonomy for the current financial year as it has filed the financial statements as per XBRL Taxonomy for the previous financial year.

Space to write important points for revision

Repeatedly Asked Questions		
No.	**Question**	**Frequency**
1	Mention the classes of companies which are mandated by the Ministry of Corporate Affairs to file their financial statements in extensible Business Reporting Language (XBRL) mode with its key benefits. State exceptions, if any. 15 - June [3A] (or) (iv), 15 - Dec [2A] (iv)	2 Times