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CORPORATE REGULATIONS

EXAM REVISION NOTES

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MODULE I

NATURE, CLASSIFICATION, AND INCORPORATION OF COMPANIES

Concept and Jurisprudential Foundations of a Company: Under Section 2(20) of the Companies Act 2013, a company means a company incorporated under this Act or under any previous company law. In corporate jurisprudence, a registered company is recognized as an artificial legal person created by law, possessing distinct legal personality, perpetual succession, common seal (optional), limited liability, and capacity to hold property and sue in its own name. The cardinal doctrine of independent corporate personality was established in **Salomon v. Salomon & Co. Ltd. (1897)**, where the House of Lords held that upon valid registration, a company becomes an entirely separate legal persona from its promoter and shareholders, granting secured debentures held by the promoter priority over unsecured trade creditors.

Landmark Precedent of Lee v. Lee's Air Farming Ltd. (1961): Lee held 2,999 of 3,000 shares and acted as governing director of an aerial top-dressing company. He also served as the company's chief pilot. Following his death in an air crash on corporate duty, his widow claimed statutory workers' compensation. The Privy Council upheld the claim, establishing that an individual in one capacity as governing director can enter into a valid contract of employment with the company in another capacity as an employee, cementing the reality of independent corporate entity status.

Corporate Criminal Liability and Doctrine of Attribution: In **Standard Chartered Bank v. Directorate of Enforcement (2005)**, the Supreme Court of India established that a corporate entity can be prosecuted for offenses involving mens rea. Under the Doctrine of Attribution, the mental state and wrongful actions of the directing mind and will of the company (directors and managing personnel) are attributed directly to the corporate person, subjecting the entity to maximum financial penalties while culpable officers face imprisonment.

Essential Characteristics of Joint Stock Companies: Separate Legal Entity ensures property owned by the corporate person does not belong to individual members (**Macaura v. Northern Assurance Co. Ltd.**); **Perpetual Succession** dictates that corporate existence is unaffected by the death, insolvency, or mental incapacity of shareholders; **Limited Liability** restricts member financial exposure strictly to the unpaid nominal value on subscribed shares (or agreed guarantee); **Transferability of Shares** provides liquidity across capital markets under Section 44; **Separation of Ownership and Management** delegates operational administration to a representative Board of Directors; and **Capacity to Sue and Be Sued** enables legal proceedings in corporate name.

Comprehensive Statutory Classification of Companies: (1) **Liability Basis:** Companies limited by shares (Section 2(22)), companies limited by guarantee (Section 2(21)), and unlimited companies (Section 2(92)); (2) **Public Interest Basis:** Private Limited Companies (Section 2(68) - min 2, max 200 members, restricts share transfers, prohibits public invitations) versus Public Limited Companies (Section 2(71) - min 7 members, no upper limit, freely transferable shares); (3) **Scale and Economic Architecture:** Small Companies (Section 2(85) - paid-up capital ≤ ₹4 Crore, turnover ≤ ₹40 Crore, exempted from cash flow statements); One Person Companies (Section 2(62) - single natural Indian citizen member with mandatory nominee appointment); Section 8 Non-Profit Companies (promotes science, art, charity, zero dividends); Holding and Subsidiary Companies (Section 2(46) and 2(87) - control of Board composition or >50% voting power); and Dormant Companies (Section 455 - inactive entities holding IP or assets with zero significant accounting transactions).

Producer Companies and Foreign Companies: Producer Companies (Chapter XXIA, Sections 378A–378ZU) combine cooperative member democracy with corporate liability for agricultural producers, enforcing one-member-one-vote and patronage dividends. **Foreign Companies** (Section 2(42)) comprise entities incorporated outside India with a physical or electronic place of business in India, mandated to file charter documents, director lists, and principal office disclosures in Form FC-1 within 30 days under Section 380.

The Corporate Veil Doctrine and Judicial Lifting Grounds: The veil of incorporation insulates shareholders from corporate liabilities. However, courts will pierce, lift, or look behind the corporate veil when entity status is abused: **Prevention of Fraud or Improper Conduct** (**Gilford Motor Co. v. Horne**, where a company was formed as a mere cloak to breach a non-solicitation covenant); **Determination of Enemy Character** (**Daimler Co. Ltd. v. Continental Tyre Co.**, looking to effective German management control during wartime); **Protection of Public Revenue and Tax Evasion** (**Sir Dinshaw Maneckjee Petit**, disregarding fictitious private investment companies used as conduits to evade super-tax); **Avoidance of Welfare and Labour Obligations** (**Associated Rubber Industry Ltd.**, amalgamating subsidiary profits to compute statutory employee bonus); and **Economic Substance in Holding Structures** (**Vodafone International Holdings BV**).

Statutory Lifting of Corporate Veil under Companies Act 2013: Specific provisions impose unlimited personal liability: Section 34/35 (Misstatements in prospectus); Section 39 (Failure to repay application money within 15 days of issue failure); Section 251 (Fraudulent application for striking off company name); Section 216 (Investigation into beneficial ownership); and Section 339 (Conducting business with intent to defraud creditors during liquidation).

Company Promotion and Fiduciary Duties of Promoters: Under Section 2(69), a promoter conceives the business enterprise, prepares constitutional instruments, and steers incorporation. Promoters stand in a fiduciary relationship (uberrimae fidei) with the nascent company: they **must not make secret, undisclosed profits** on transactions with the company (**Erlanger v. New Sombrero Phosphate Co.**), and owe a **duty of full, frank disclosure** to an independent Board or prospective shareholders (**Gluckstein v. Barnes**). Pre-incorporation contracts are not binding on the company under common law (**Kelner v. Baxter**), but are enforceable under Sections 15(h) and 19(e) of the Specific Relief Act 1963 if entered into for warranted corporate purposes and formally adopted post-incorporation.

Procedural Incorporation Stages under SPICe+ Portal: (1) **Name Reservation (SPICe+ Part A):** Online reservation of up to two proposed names with NIC industrial activity codes, valid for 20 days; (2) **Execution of Documents (SPICe+ Part B):** Drafting e-MoA (INC-33), e-AoA (INC-34), non-conviction declarations in INC-9, registered office verification in INC-22, and CA/CS professional certifications; (3) **Integrated AGILE-PRO-S Services:** Allotment of DIN, PAN, TAN, EPFO, ESIC, Profession Tax, Corporate Bank Account, and GSTIN; (4) **Certificate of Incorporation (INC-11):** Conclusive evidence of valid incorporation containing the unique 21-digit Corporate Identity Number (CIN). Business commencement requires filing Form INC-20A within 180 days verifying full capital payment by subscribers.

MODULE II

CORPORATE CONSTITUTION AND REGISTRATION DOCUMENTS

Memorandum of Association (MoA) Architecture: The fundamental constitutional charter defining corporate boundaries and powers (Section 4). Contains six mandatory clauses: (1) **Name Clause:** Corporate name ending with 'Limited' or 'Private Limited'; (2) **Registered Office Clause:** State of domicile and judicial jurisdiction; (3) **Object Clause:** Permissible business pursuits and ancillary matters; (4) **Liability Clause:** Limited by shares or guarantee; (5) **Capital Clause:** Authorized share capital and division into fixed denomination shares; (6) **Subscription Clause:** Subscriber commitments to take minimum shares.

The Doctrine of Ultra Vires: Established in **Ashbury Railway Carriage and Iron Co. v. Riche (1875)**, any contract or transaction exceeding powers authorized in the Object Clause of the MoA is ultra vires the company, wholly void ab initio, and incapable of being validated even by unanimous shareholder ratification. Ultra vires actions incur: shareholder injunctions against directors; personal director liability for dissipated funds; and lender tracing remedies (or subrogation where funds discharged lawful corporate debts). Distinguished from acts ultra vires directors (which members can ratify) and acts ultra vires articles (ratified by special resolution).

Articles of Association (AoA) and Entrenchment Provisions: Internal administrative regulations governing operations, member rights, and officer conduct (Section 5). Subordinate to the Companies Act and the MoA. Under Section 5(3), articles may contain **entrenchment provisions** stipulating that specified clauses may only be altered if more restrictive conditions than a special resolution are satisfied (e.g. 90% or unanimous member consent). The registered articles bind the company to members and members inter se (Section 10), but create no enforceable contract with external third parties (**Eley v. Positive Government Security Life Assurance Co.**).

Procedural Rules for Constitutional Alterations: Alteration of Name Clause requires Special Resolution and Central Government approval; change of Registered Office from one State to another requires Special Resolution, Regional Director confirmation under Section 13(4), newspaper advertisements (INC-26), and creditor notices; alteration of Object Clause requires Special Resolution, with mandatory exit offers to dissenting public investors under Section 13(8). Articles alteration requires Special Resolution under Section 14, but cannot violate the Act, confiscate vested member rights retrospectively (**Allen v. Gold Reefs**), or perpetuate fraud on the minority (**Brown v. British Abrasive Wheel Co.**).

The Doctrine of Constructive Notice: Under Section 399, registered MoA and AoA are public documents accessible to all. The law irrebuttably presumes that every external person dealing with a company has read and understood these instruments; contracts conflicting with charter powers are unenforceable against the company.

The Doctrine of Indoor Management (Turquand's Rule): Mitigating equity established in **Royal British Bank v. Turquand (1856)**. While outsiders are bound to read public constitutional documents, they are not bound to investigate the internal regularity of company management and are entitled to presume internal procedural approvals have been duly fulfilled. **Exceptions:** Knowledge of irregularity (insiders/directors); suspicious circumstances exciting reasonable commercial doubt; and forgery (**Ruben v. Great Fingall Consolidated**, where a forged share certificate was held void ab initio).

Prospectus Typologies and Allotment Architecture: Under Section 2(70), an invitation to the public to subscribe for securities. Variants: **Shelf Prospectus (Section 31)** (single filing valid for multiple debt/equity offerings over one year, updated via Information Memorandum PAS-2); **Red Herring Prospectus (Section 32)** (contains quantum without price or price band without quantum for book-building price discovery); **Abridged Prospectus (Section 33)** (mandatory summary of salient features attached to share application forms); **Deemed Prospectus (Section 25)** (offer documents issued by issuing houses). Private Placements (Section 42) are restricted to max 200 identified persons via Form PAS-4 with bank transfers and 60-day allotment.

Golden Rule of Prospectus and Dual Liabilities: Dictum of Vice-Chancellor Kindersley in **New Brunswick Railway v. Muggeridge** demands scrupulous accuracy and total disclosure without suppressio veri or suggestio falsi (**Rex v. Kylsant**). Misstatements incur: **Civil Liability (Section 35)** (joint and several compensation to affected subscribers; allotment rescission; restricted to original subscribers under **Peek v. Gurney**); and **Criminal Liability (Section 34 & 447)** (imprisonment from 6 months to 10 years and fine up to three times fraud amount).

Statutory Underwriting and Green Shoe Options: Under Section 40(6), underwriting commissions are statutorily capped at 5% for equity shares and 2.5% for debentures, requiring explicit authorization in the Articles. Companies utilize the SEBI **Green Shoe Option** allowing stabilizing agents to over-allot up to 15% of shares to defend secondary market prices post-listing.

MODULE III

CORPORATE MANAGEMENT AND ADMINISTRATION

Board of Directors Legal Position: Fiduciary stewardship separating corporate ownership from managerial control. Directors act as: **Agents** (binding the company within corporate authority under **Ferguson v. Wilson**); **Trustees** (holding corporate funds and assets in fiduciary trust under **Percival v. Wright**); and **Managing Partners**. Boards must consist of natural individuals only (min 3 for public, min 2 for private, max 15, expandable via Special Resolution under Section 149).

Classification of Directors: Managing Director (MD) (Section 2(54) - entrusted with substantial powers of management; max 5-year term); **Whole-Time Director (WTD)** (executive salaried employee); **Independent Directors (ID)** (Section 149(6) - non-executive directors possessing zero pecuniary ties, representing 1/3 of listed boards, max two 5-year terms, selected via IICA databank); **Woman Director** (mandatory for listed and public companies with capital ≥ ₹100 Cr or turnover ≥ ₹300 Cr); **Resident Director** (stay in India ≥ 182 days); **Small Shareholders Director** (Section 151 - elected by small investors holding shares ≤ ₹20,000 nominal value); **Additional Director** (Section 161(1) - holds office till next AGM); and **Alternate Director** (acts during director absence from India >3 months).

Director Identification Number (DIN) and Appointment: Mandatory 8-digit identifier under Section 152. Procured via SPICe+ Part B or Form DIR-3. Every director must complete annual **DIR-3 KYC** by 30th September to prevent DIN deactivation. Appointed in general meetings via Ordinary Resolution. Public companies require not less than **two-thirds (2/3)** of directors to be rotational, of which **one-third (1/3)** retire at each AGM, longest in office retiring first (Section 152(6)). Independent directors are non-rotational.

Disqualifications, Vacation, and Removal: Disqualifications under Section 164(1) include unsound mind, insolvency, criminal conviction with imprisonment ≥ 6 months, and failure to pay share calls. **Section 164(2)** disqualifies directors for five years if their company fails to file financial statements/annual returns for three consecutive years or defaults on deposit/debenture repayments for one year. Vacation of office is automatic under Section 167 upon incurring disqualification, absenting from all board meetings for 12 months, or violating interest disclosures. Directors may resign via written notice (DIR-11/DIR-12), or be removed by shareholders via Ordinary Resolution with 14 clear days' special notice under Section 169 (excluding NCLT-appointed directors).

Codified Fiduciary Duties (Section 166): Mandatory statutory duties: (1) Act in accordance with Articles; (2) Act in good faith to promote company objects and ESG interests; (3) Exercise reasonable care, skill, and independent judgment; (4) Avoid conflicts of interest; (5) Abstain from making undue personal gain; (6) Never assign corporate office. Violation attracts fines up to ₹5,00,000.

Powers Reserved Exclusively for Board Meetings (Section 179): Making share calls; authorizing buy-backs; issuing securities; borrowing monies; investing funds; granting loans/guarantees; approving financial statements and Board Reports; and formulating CSR policies. Cannot be passed via circular resolutions.

Board Committees and Governance Protocols: Audit Committee (Section 177) (min 3 directors, independent majority, reviews financial statements, oversees internal controls and whistle-blower vigil mechanisms); **Nomination and Remuneration Committee (Section 178)** (independent majority formulating executive compensation); **Stakeholders Relationship Committee** (mandatory for companies with >1,000 security holders); **Corporate Social Responsibility (CSR - Section 135)** (mandatory for net worth ≥ ₹500 Cr, turnover ≥ ₹1,000 Cr, or profit ≥ ₹5 Cr; requires spending 2% average net profits on Schedule VII causes); **Related Party Transactions (Section 188)** (board/shareholder approval required; arm's length contracts exempt).

Managerial Remuneration Limits (Section 197): Public companies cannot pay total managerial remuneration exceeding **11% of net profits** (computed under Section 198), with individual executive caps of 5% (or 10% for multiple whole-time directors), adhering to Schedule V effective capital tiers during profit inadequacy.

MODULE IV

COMPANY MEETINGS, PROCEDURE, AND CORPORATE GOVERNANCE

Constitutional Role and Classification of Meetings: Meetings express the democratic collective will of corporate owners. Categorized into: (1) General Meetings (AGM, EGM, Class Meetings); (2) Board Meetings (Board of Directors, Specialized Committees); and (3) Creditors' Meetings.

Annual General Meeting (AGM) Architecture (Section 96): Mandatory annual assembly for all companies (except OPC). Timelines: First AGM within 9 months of financial year close; subsequent AGMs within 6 months of financial year close; max gap between consecutive AGMs ≤ 15 months (extendable up to 3 months by ROC). Held during business hours on non-national holidays at registered office. **Ordinary Business** transacted comprises: financial statements adoption; dividend declaration; director rotation election; and auditor appointment. All other business is **Special Business** requiring explanatory statements under Section 102.

Extraordinary General Meeting (EGM - Section 100): Convened for urgent matters: (1) By Board suo motu; (2) By Board on requisition of members holding ≥ 10% voting capital; (3) By requisitionists themselves upon Board's failure to call meeting within 21 days; or (4) By NCLT under Section 98.

Essentials of a Valid Meeting: (1) **Proper Authority:** Convened by Board resolution; (2) **Notice (Section 101):** Minimum 21 clear days' notice in writing or digital mode, specifying agenda, venue, and proxy rights; (3) **Quorum (Section 103):** Public companies require 5 members (≤ 1,000 members), 15 members (1,001–5,000 members), or 30 members (> 5,000 members); private companies require 2 members personally present. Dissolves if requisitioned; adjourns if general; (4) **Chairman (Section 104):** Presides, maintains order, exercises casting vote if authorized.

Voting Mechanisms and Shareholder Democracy: Show of Hands (Section 107) (one member, one vote; proxies excluded); **Demand for Poll (Section 109)** (demanded by members holding ≥ 10% voting power or ₹5,00,000 paid-up capital; proportional voting); **Electronic Voting (Section 108 & Rule 20)** (mandatory for listed entities and companies with ≥ 1,000 members; remote e-voting portal open ≥ 3 days, audited by Scrutinizer); **Postal Ballot (Section 110)** (mandatory for critical charter alterations, asset sales, and buy-backs).

Proxies and Representation: Under Section 105, a proxy attends and votes on a poll for a member. A proxy cannot speak, and one person can represent max 50 members holding ≤ 10% share capital. Proxy form **MGT-11** must be deposited at least 48 hours prior to meeting. Official representatives of corporations (Section 113) and President/Governor (Section 112) enjoy full member rights, including speaking and quorum presence.

Resolutions, Secretarial Standards, and Minutes: Ordinary Resolution (>50% majority); **Special Resolution** (≥ 75% majority, filed in Form MGT-14 within 30 days under Section 117). Observance of ICSI Secretarial Standards (**SS-1 for Board Meetings, SS-2 for General Meetings**) is mandatory under Section 118(10). **Minute Books (Section 118)** must record fair summaries within 30 days, serving as conclusive evidence of proceedings.

Dividend Regulations (Sections 123 to 127): Declared out of current/past profits after providing for depreciation. Must be deposited in a scheduled bank within 5 days of declaration. Unpaid dividends after 30 days transfer to **Unpaid Dividend Account** within 7 days. Unclaimed funds after **7 consecutive years** transfer to the **Investor Education and Protection Fund (IEPF)**. Default in distribution attracts 18% annual interest and director imprisonment up to two years.

MODULE V

WINDING UP OF COMPANIES AND REGULATORY TRIBUNALS

Concept and Distinction between Winding Up and Dissolution: Winding up represents the statutory process of realizing enterprise assets, paying off debts, and distributing surplus funds to contributories. It precedes **Dissolution**, which represents the final judicial extinction of the corporate legal personality. During winding up, the corporate persona remains intact and the company can sue and be sued; upon dissolution, the company ceases to exist in law.

The National Company Law Tribunal (NCLT) Framework: Unified quasi-judicial authority established under Section 408 exercising jurisdiction across company disputes, oppression petitions, mergers, and corporate insolvencies. Appeals lie to the **National Company Law Appellate Tribunal (NCLAT - Section 410)** within 45 days, and subsequent appeals lie exclusively to the **Supreme Court of India (Section 423)** within 60 days on substantial questions of law.

Compulsory Winding Up by Tribunal (Section 271): Ordered on five statutory grounds: (1) Company resolves by Special Resolution; (2) Company acts against sovereignty, integrity, or security of India; (3) Fraudulent conduct, misfeasance, or unlawful formation; (4) Default in filing financial statements or annual returns for **five consecutive financial years**; and (5) **Just and equitable grounds** (deadlock in management under **Yenidje Tobacco Co.**; loss of corporate substratum under **German Date Coffee Co.**; or oppression of minority).

Consequences and Liquidator Administration: Winding up orders operate as a statutory discharge of employees and impose an absolute stay of legal proceedings against the company under Section 279. The Tribunal appoints an **Official Liquidator (Section 275)** who takes custody of all corporate assets, books, and actionable claims (Section 283). The Liquidator realizes assets by public auction, verifies creditor claims, settles lists of contributories, and submits audited biannual accounts to the NCLT.

Contributory Liabilities and Fraudulent Clawbacks: List A Contributories (present members) are liable up to the unpaid share capital. **List B Contributories** (past members who ceased within one year) are liable only if List A fails to satisfy debts, and only for debts contracted before cessation. The Liquidator can claw back assets via **Fraudulent Preference (Section 328)** (transactions favoring select creditors within 6 months) and **Transfers not in Good Faith (Section 329)** (transfers within 1 year). Delinquent directors face misfeasance surcharges under Section 340.

Insolvency and Bankruptcy Code (IBC 2016) Paradigm: Corporate debt resolution shifted from the Companies Act to the IBC. **Corporate Insolvency Resolution Process (CIRP)** is triggered under Sections 7, 9, or 10 upon debt default ≥ ₹1 Crore. A statutory moratorium (Section 14) protects assets while the **Committee of Creditors (CoC)** evaluates revival plans within a strict 180 to 330-day timeline. If resolution fails, the NCLT orders liquidation under Section 33. Realized proceeds follow the **Section 53 Statutory Priority Waterfall**: (1) CIRP and liquidation costs; (2) Workmen dues (24 months) and secured creditors pari passu; (3) Employee wages (12 months); (4) Unsecured financial creditors; (5) Government taxes (2 years) and balance secured debt; (6) Operational creditors; (7) Preference shares; (8) Equity surplus.

Pre-Packaged Insolvency (PPIRP) and Striking Off: PPIRP (Chapter III-A) enables distressed MSMEs to restructure under a debtor-in-possession model within 120 days based on a pre-negotiated base plan. Defunct companies that have not operated for two consecutive years can be removed from the register via summary **Striking Off (Section 248)** by the ROC suo motu or through voluntary Form STK-2 with indemnity bonds and zero-liability certification, subject to NCLT restoration within 20 years under Section 252.

Legal Principles in Oppression and Just and Equitable Winding Up: The Supreme Court in **Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd. (2021)** confirmed that just and equitable winding up requires establishing functional deadlock or irreversible destruction of mutual confidence akin to partnership dissolution; mere lack of managerial consensus in a thriving enterprise does not justify corporate execution.

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