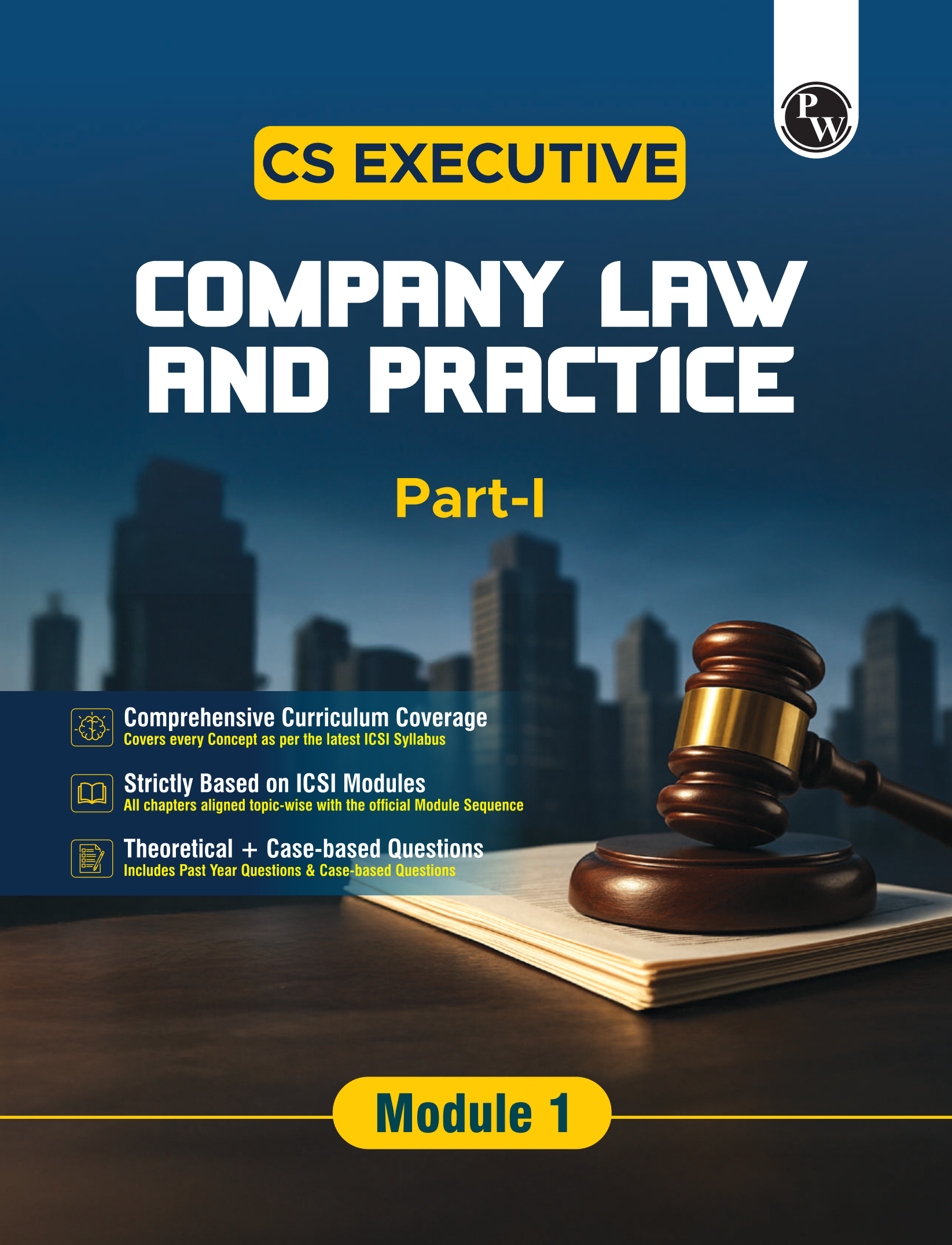
CS EXECUTIVE

COMPANY LAW AND PRACTICE

Part-I



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Module 1

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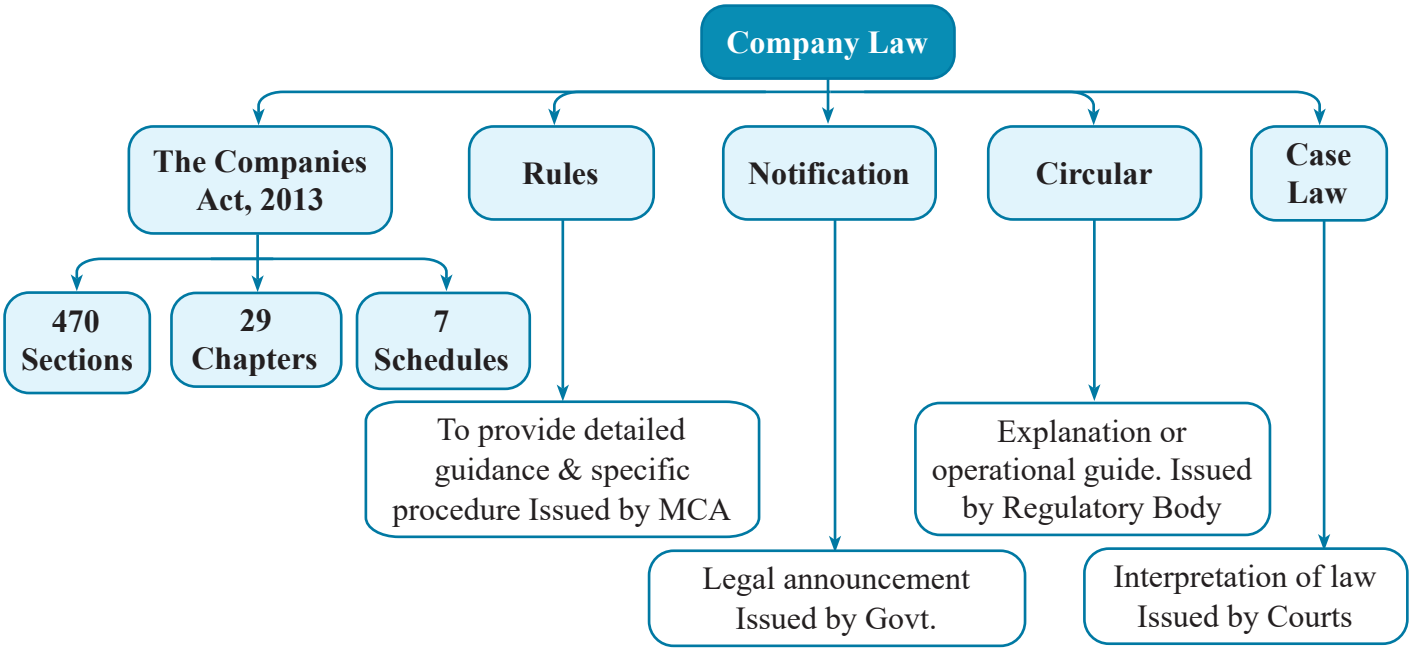


Company Administration

With over 1.5 million registered companies in India, the role of regulatory bodies becomes indispensable in ensuring that corporate entities adhere to legal and ethical norms. Below Mentioned are Regulatory Authorities that are entrusted with power to Regulate the Compliance of the Companies Act,2013:

Authorities	Their Functioning
MCA	✦ The Ministry of Corporate Affairs (MCA) is entrusted with rule making power. ✦ It regulates corporate entities and ensures compliance with corporate laws. ✦ Manages the **MCA21 portal**, facilitating online company registration and compliance filings.
Regional Director (RD)	✦ The seven Regional Directors (RD) are in-charge of the respective regions, each region comprising a number of States and Union Territories. ✦ They supervise the working of the offices of the Registrars of Companies and the Official Liquidators working in their regions. ✦ They also Review and approve applications related to company name changes, especially in cases of similarity or conflict with existing names or trademarks.
Registrars of Companies (ROC)	✦ Registrars of Companies (ROC) are vested with the primary duty of registering companies floated in the respective states and the Union Territories. ✦ It also ensures that such companies comply with statutory requirements under the Act. ✦ There are 25 ROC offices across India, each responsible for a specific state or union territory.

CHAPTER 1

INTRODUCTION TO COMPANY LAW

BASICS OF COMPANY LAW

Short Title, Extent, Commencement and Application [Section-1]	
Title	This Act may be called **"The Companies Act, 2013".** **Long Title:** "An Act to consolidate and amend the law relating to companies".
Came into force	✦ The Companies Act, 2013 received the assent of the Hon'ble President of India on **29th August 2013** and ✦ Was notified in the Official Gazette on **30th August 2013** for public information stating that different dates may be appointed for enforcement of different provisions of the Companies Act, 2013, through notifications.
Application [Section 1(4)]	The provisions of this Act shall apply to: (a) Companies defined u/s 2(20); (b) Insurance Companies, except if inconsistent with Insurance Act, 1938 or IRDA Act, 1999; (c) Banking Companies, except if inconsistent with Banking Regulation Act, 1949; (d) Companies engaged in the generation or supply of electricity, except if inconsistent with Electricity Act, 2003; (e) Statutory Companies unless inconsistent with its Special Act; (f) Body corporate, incorporated by any Act for the time being in force, as the CG may, by notification, specify on this behalf.
Company	✦ Company means a voluntary organization of persons who are contributing their money in the common stock of the company and who agree to invest the same for a common goal/purpose, and to share the profits & the losses arising therefrom. ✦ Such persons are called as shareholders or members and the common stock is called as the share capital of the company. ✦ The word "Company" is derived from the Latin words 'Com & Panis' Com means 'Together' and Panis means 'Bread'. ✦ Company means association of person who took their meal together.
'Company' Under [Section 2(20)]	As per Section 2(20) of the Companies Act, 2013 Company means a company incorporated: (a) Under this Act; or (b) Under any previous company law. **Note:** The word "Company" when used in Companies Act, does NOT include Foreign Companies or Company Incorporated Outside India.

Body Corporate or Corporation [Section 2(11)]	Section 2(11) of the Companies Act, 2013 provides that body corporate or corporation **includes a company incorporated outside India**, **but does not include-**
	(i) A **co-operative society** registered under any law relating to co- operative societies; and (ii) **Any other body corporate** (not being a company as defined in this Act), which the **Central Government** may, by **notification**, specify on this behalf.
	Note: Body Corporate is an entity which has these characteristics: ✦ Incorporated under its own Act ✦ Separate Legal Entity (Artificial Person) ✦ Perpetual Succession. ✦ Can sue or can be sued.

1. REFORMS BROUGHT UNDER THE COMPANIES ACT, 2013 FOR EASE OF DOING BUSINESS

The Companies Act of 2013 introduced several significant reforms over the Companies Act of 1956, aiming to modernize corporate governance and enhance transparency. Here are some concepts incorporated first time under the Companies Act, 2013:

I. **Introduction of One Person Company (OPC)**:
The 2013 Act introduced the concept of OPC, allowing a single individual to form a company with limited liability, promoting entrepreneurship.

II. **Mandatory Corporate Social Responsibility (CSR)**:
Companies meeting certain criteria are required to spend at least 2% of their average net profits from the preceding three years on CSR activities, integrating social responsibility into corporate operations.

III. **Enhanced Role of Independent Directors**:
The Act mandates the appointment of independent directors in certain companies to improve corporate governance and ensure unbiased decision-making.

IV. **Mandatory Appointment of Women Directors**:
Specified classes of companies are required to appoint at least one-woman director, promoting gender diversity in corporate leadership.

V. **Establishment of National Company Law Tribunal (NCLT)**:
The NCLT was established to handle corporate disputes, mergers, and acquisitions, streamlining the adjudication process.

VI. **Introduction of Class Action Suits**:
Shareholders and depositors can collectively sue a company for fraudulent or wrongful acts, enhancing investor protection.

VII. **Stricter Auditor Rotation and Independence**:
The Act mandates the rotation of auditors and restricts them from providing certain non-audit services to the same client, ensuring auditor independence.

VIII. **Simplification of Merger and Amalgamation Processes**:
The Act introduced provisions for fast-track mergers and cross-border mergers, making corporate restructuring more efficient.

IX. **E-Governance and Digitalization**:
The Act facilitates electronic filing of documents, e-voting, and maintenance of records in electronic form, promoting transparency and efficiency.

2. DOCTRINES UNDER COMPANY LAW

In the context of company law, the term **'doctrine'** refers to a set of established legal principles that serve as foundational guidelines for corporate operations and governance. These doctrines have been developed through judicial decisions and legislative enactments to address various aspects of corporate behavior and relationships. Under the Companies Act, 2013, several key doctrines play a crucial role in ensuring transparency, accountability, and fairness in corporate dealings. Understanding these doctrines is essential for comprehending how companies are expected to operate within the legal framework and how stakeholders are protected under the law.

WE ARE GOING TO STUDY 4 DOCTRINES

- **Doctrine of Ultra Vires**
- **Doctrine of Constructive Notice**
- **Doctrine of Indoor Management**
- **Doctrine of Alter Ego**

2.1 DOCTRINE OF ULTRA VIRES

Meaning	Ultra vires is a Latin term made up of two words "ultra" which means beyond and "vires" meaning power or authority. Ultra vires acts are any acts that lie beyond the authority of a company to perform. Any activity done in contrary to or in excess of the scope of activity of the Companies Act, Memorandum of Association or Articles of Association will be ultra vires.
Ultra Vires the companies Act	Section 6 of the Companies Act, 2013 expressly provides that the provisions of the Companies Act, 2013 shall prevail notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act. Any act done contrary to or in excess of the scope of activity of the Companies Act will be ultra vires the Companies Act. **Such an act is void and cannot be ratified even by unanimous resolution of all the shareholders.** **For Example:** If board members are appointed or removed without following statutory provisions; payment of dividend out of capital or reduced the share capital of the company without complying with the legal formalities.
Ultra Vires the 'MOA'	The memorandum of association of a company restricts the powers of the company while defining the object of the company. A company cannot do anything, which is beyond the purview of the object clause. **Any act done in contrary to the object clause of the memorandum of association will be ultra vires the memorandum of association.** 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. **Such an act is void and cannot be ratified even by unanimous resolution of all the shareholders**

Ultra Vires the 'AOA'	If a company acts which are ultra vires the Articles of Association but intra virus the memorandum of association (i.e. outside the scope of articles but within the powers conferred by the memorandum) will be ultra vires the Articles of Association. That is, payment of interest on 'advance calls' at a rate higher than allowed by articles. These acts are also void, but the company in general meeting may alter the Articles by a special resolution and ratify the unauthorized acts.
Case Law: **Ashbury Railway Carriage and Iron Company Ltd. v/s Richie, (1878)**	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. 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. **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 the making generally of such contracts as are connected with the business of mechanical engineers. The Court held that if every shareholder of the company cannot ratify such a contract, as the contract was ultra vires the objects clause, which by Act of Parliament, they were prohibited from doing.

2.2 LOANS, BORROWINGS, GUARANTEES AND ULTRA VIRES RULE

An ultra vires borrowing does not create a relationship of a debtor and creditor. In a case, a company had accepted deposits from outsiders which was outside the scope of the Memorandum. When the company was ordered to be wound up, a question was raised whether the depositors were creditors of the company and whether the contributories could be asked to contribute towards payment of deposits. The Court held that the relationship between the company and the depositors was not that of debtor and creditor. But if the lender had lent the amount for discharging lawful expenses, he may recover the amount.

Whether a transaction is ultra vires the company can be decided on the basis of the following:

- If a transaction entered into by a company falls within the objects, it is not ultra vires and hence not void;
- If a transaction is outside the capacity (objects) of the company, it is ultra vires;
- 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.

2.3 IMPLIED POWERS

The powers exercisable by a company are to be confined to the objects specified in the memorandum. While the objects are to be specified, the powers exercisable in respect of them may be express or implied and need not be specified.

Every company may necessarily possess certain powers which are implied, such as, a power to appoint and act through agents, and where it is a trading company, a power to borrow and give security for the purposes of its business, and also a power to sell. Such powers are incidental and can be inferred from the powers expressed in the memorandum. [Oak bank Oil Co. v. Crum (1882) 8 App Cas 65]. The principle underlying the exercise of such powers is that a company, in carrying on the business for which it is constituted, must be able to pursue those things which may be regarded as incidental to or consequential upon that business.

2.6 EXCEPTIONS TO THE DOCTRINE OF ULTRA VIRES

1. Any act which is performed irregularly, but otherwise it is intra-vires the company, can be validated by the shareholders of the company by giving their consent in general meeting.
2. If any act is deemed to be within the authority of the company by the companies Act, 2013 then they will not be considered as ultra-vires even if they are not expressly stated in the MOA
3. Any incidental or consequential effect of the ultra-vires act will not be invalid unless the companies Act, 2013 expressly prohibits such act.
4. Any act which is outside the authority of the directors of the company but otherwise it is intra-vires the company can be ratified by the shareholders of the company.

3. DOCTORINE OF CONSTRUCTIVE NOTICE

Applicability	This doctrine operates in **favor of the company**, i.e. it creates a presumption in favor of the company. **It operates against the persons dealing with the company.**
Effect of the doctrine	(i) Once registered the memorandum and articles become public documents (Sec. 399). **Therefore, every person dealing with the company is presumed to have read the memorandum and articles**. Further, it is presumed that he has understood the provisions of memorandum and articles correctly, i.e. in the right sense (ii) The doctrine **prevents** any person dealing with the company from **alleging that he did not know the provisions contained in the articles or memorandum.** (iii) If a person enters into a contract with the company in contravention of the provisions of the memorandum and articles, **he cannot enforce such a contract.** (iv) Any person entering into a contract with company which is in contravention of provisions of MOA or AOA cannot present a defense later on, that he did not knew the provisions in these documents.
Case Law: Kotla Venkataswamy v. Chinta Ramamurthy	In this case, the court emphasized the importance of adhering to a company's internal regulations as outlined in its **Articles of Association (AOA)**. The AOA specified that certain documents required signatures from the Managing Director, Secretary, and Working Director to be valid. In this instance, a mortgage bond was executed without the Managing Director's signature, rendering it invalid. The court held that individuals dealing with a company are presumed to have knowledge of its public documents, such as the AOA, and must ensure compliance with its stipulated procedures.
Example	A common example of Constructive Notice is when a court is unable to directly reach someone and publishes summons in the public newspaper and it is assumed that everybody has read it.

4. DOCTRINE OF INDOOR MANAGEMENT (TURQUAND RULE)

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. This doctrine emphasizes on the concept that an outsider whose actions are in good faith and has entered into a transaction with a company can have a presumption that there are no irregularities internally and all the procedural requirements have been complied with by the company.

The doctrine of indoor management, also known as the Turquand rule is an around one fifty years old concept, which protects outsiders against the actions done by the company.

7. DOCTRINE OF ALTER EGO

The term **"Alter Ego"** is a Latin word. Literally translated, it means the **"Other I"**. More idiomatic it can be understood as the **Identical copy or a person's clone**. It is a common tenet that a company is a separate legal entity from its shareholders and directors. This common law principle **grants immunity to the shareholders and directors** from being held liable for the debts as well as criminal liabilities of the corporation. The doctrine of alter ego, however, provides for an exception to this presumption in law.

Alter ego is the doctrine which **prevents the stakeholders of the corporation, i.e., shareholders and directors from taking the refuge of doctrine of separate legal entity.**

Hence, the Doctrine of **alter ego is based on lifting of the corporate veil** between the directors/ shareholders and the corporation and treating both as one entity.

The doctrine of alter ego is based on the assumption 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.

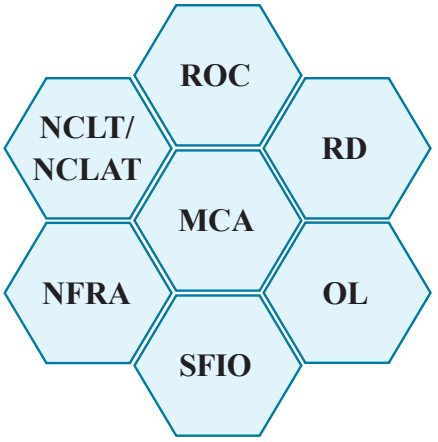
Hence, the courts can rely on alter ego doctrine when they find that there is a very thin line of distinction between the shareholders/directors and the corporation or a limited liability corporation. It is used by the courts to ignore the status of shareholders, officers, and directors of a company 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.

Case Law: In Case **Lennard's 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 wrongdoing of the company.

8. E-GOVERNANCE AND MCA-21

Topic	Details
Definition of e-Governance	Electronic Governance (e-Governance) is the application of Information Technology to the Government functioning in order to bring about Simple, Moral, Accountable, Responsive and Transparent (SMART) Governance. e-Governance is a highly complex process requiring provision of hardware, software, networking and re-engineering of the procedures for better delivery of services. It's part of the National e-Governance Plan (NeGP).
Need for e-Governance in MCA	Earlier: Manual filing of forms, long queues, risk of non-compliance, penalties & delays.
Initiative Taken	Launch of MCA-21 Project by the Ministry of Corporate Affairs, Government of India.
Objective of MCA-21	Easy & secure access to MCA services. Suitable for companies, professionals & the public.
Benefits of MCA-21	Improved efficiency, transparency, accountability. Shift from administrative work to policymaking.
Scope	Automation of processes under: ✦ Companies Act, 2013 ✦ LLP Act, 2008 ✦ Other allied laws & regulations
Outcome	Better compliance enforcement and service delivery in the corporate sector.

9. AGENCIES UNDER MCA-21



- The Ministry of Corporate Affairs (MCA) is primarily concerned with administration of the Companies Act 2013, the Limited Liability Partnership Act, 2008 for regulating the functioning of the corporate sector in accordance with law.
- Registrar of Companies (ROC) as defined under Section 2 (75) of the Companies Act, 2013 means a Registrar, having the duty of registering companies and discharging various functions under this Act.
- Regional Director (RD) is in-charge of the respective region, each region comprising a number of States and Union Territories. They supervise the working of the offices of the Registrars of Companies and the Official Liquidators working in their regions.
- National Company Law Tribunal/National Company Law Appellate Tribunal (NCLT/NCLAT)– The setting up of the NCLT and NCLAT are part of the efforts to move to a regime of faster resolution of corporate disputes, thus improving the ease of doing business in India.

10. IMPORTANT ASPECTS OF MCA-21

Organization of ROC Office under MCA The ROC office working from its present address has virtually become the Back Office of the Ministry. Since the number of companies/entities found it difficult to switch over to e-Filing at the initial stage, Facilitation Centers known as Physical Front Offices (PFOs) were set up throughout the Country to provide requisite comfort for e-Filing to such companies.

The major components involved in this comprehensive e-governance project are front office and back office.

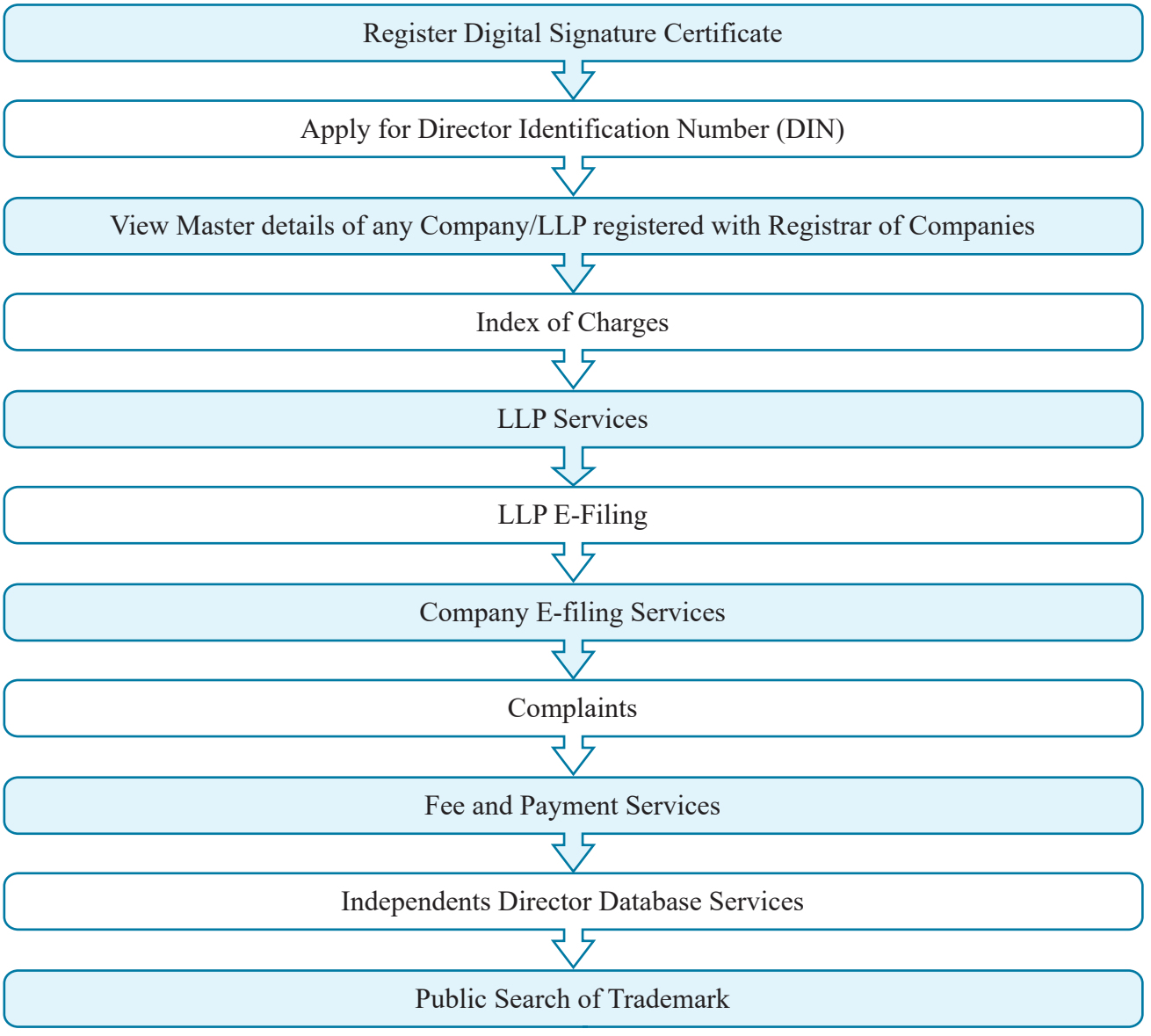
Front Office represents the interface of the corporate and public users with the MCA-21 system. This comprises of Virtual Front Office and Registrar's Front Office. virtual front office Virtual front office is one of the various channels available to stakeholders (companies and the professionals) to enable them to do the statutory filing with ROC Offices across the Country. It merely represents a computer facility for filing of digitally signed e-forms by accessing the MCA portal through internet (www.mca.gov.in).

Back Office represents the offices of Registrar of Companies, Regional Directors and Headquarters and takes care of internal processing of the forms filed by the corporate user as per MCA norms and guidelines. The e-forms are routed dynamically to the concerned authority for processing depending upon the assigned role. All the e-form along with attachments are stored in the electronic depository, which the staff of MCA can view depending upon the access rights.

11. CERTIFIED FILING CENTRE (CFC)

In order to provide the Companies to do their e Filing, Professional Institutes (ICSI, ICAI, ICAI-cost), their Regional Councils/Local chapters, individual practicing members and firms of professionals were authorized to create and set-up the required facilities for facilitating the e Filing process. The Certified Filing Centers, thus set-up by the Professionals are over and above the Registrar's Front Office set-up by the Ministry under the programme. While the services available from the Facilitation Centers set-up by the Ministry are without any charge, the services provided by these Certified Filing Centers entail payment of service charges.

12. MCA SERVICES



12.1 ALL ABOUT FILING AND FILING OF 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 purposes or an application seeking approval from the MCA. Users always use the latest e-forms from the MCA Portal.

Filling and filing of forms are an important part of the secretarial function of a Company Secretary is designated as the officer responsible for compliance under the Companies Act and other allied legislations.