UNIT – 2

Incorporation of Company

Procedure • Certificate • MOA • AOA • Indoor Management • Prospectus

Company Law – Course I

SYNOPSIS

Unit Overview

This unit covers the complete procedure of incorporation of a company, the significance of the Certificate of Incorporation, the Memorandum of Association (MOA) and Articles of Association (AOA), the Doctrine of Indoor Management, and the law relating to Prospectus including its contents, liability for misstatements and types.

LEARNING OBJECTIVES

What You Will Learn

01 Procedure

Explain the steps for incorporation of a company

02 Certificate

Understand the conclusive nature of Certificate of Incorporation

03 MOA

Describe the clauses of Memorandum of Association

04 AOA

Explain Articles of Association and their alteration

05 Indoor Mgmt

Apply the Doctrine of Indoor Management

06 Prospectus

State the law relating to prospectus and liability for misstatements

PROCEDURE

Procedure of Incorporation

Name Approval	Apply for reservation of name through RUN / SPICe+
Documents	MOA, AOA, declarations, consent of directors, address of registered office
Filing	File SPICe+ form with ROC along with required documents and fees
Scrutiny	Registrar examines the documents
Certificate	On satisfaction, Certificate of Incorporation is issued

CERTIFICATE

Certificate of Incorporation

The Certificate of Incorporation is conclusive evidence that all the requirements of the Act in respect of registration have been complied with.

Conclusive Evidence	Courts cannot go behind the certificate (Section 9 / judicial principles)
Effect	Company comes into existence from the date mentioned in the certificate
Corporate Identity Number	CIN is allotted to the company

MOA 1

Memorandum of Association – Meaning & Importance

Meaning	Charter of the company; defines its objects and scope of activities
Importance	Company cannot go beyond the objects stated in MOA (ultra vires doctrine)
Binding	Binds the company and the members

MOA 2

Clauses of Memorandum of Association

Name Clause	Name of the company with last word Limited / Private Limited
Registered Office Clause	State in which the registered office is situated
Objects Clause	Main objects and other objects
Liability Clause	Nature of liability of members
Capital Clause	Authorised share capital and its division
Subscription Clause	Declaration by subscribers to form the company

AOA

Articles of Association

Meaning	Bye-laws / internal regulations of the company
Contents	Rules regarding share capital, meetings, directors, accounts, etc.
Relationship with MOA	AOA are subordinate to MOA; cannot override MOA
Alteration	Can be altered by special resolution subject to the Act and MOA
Binding Force	Bind the company and members inter se

Doctrine of Indoor Management

Outsiders dealing with the company are entitled to assume that the internal requirements of the company have been properly complied with (Royal British Bank v. Turquand).

Turquand Rule	Person dealing with company need not enquire into internal irregularities
Protection	Protects bona fide outsiders
Exceptions	Knowledge of irregularity, suspicion of irregularity, forgery, ultra vires acts

PROSPECTUS 1

Prospectus – Meaning and Types

Meaning	Any document described or issued as a prospectus inviting offers from the public for subscription or purchase of securities
Types	Prospectus, Red Herring Prospectus, Shelf Prospectus, Abridged Prospectus, Deemed Prospectus
When Required	When company invites public to subscribe for its securities

PROSPECTUS 2

Contents and Liability for Misstatements

Contents	Matters specified in the Act and rules – financial information, risk factors, objects, etc.
Civil Liability	Compensation to persons who suffered loss due to untrue statement
Criminal Liability	Imprisonment and fine for knowingly issuing prospectus with untrue statement
Defences	Statement was immaterial, or person withdrew consent, or had reasonable ground to believe it true

Doctrine of Ultra Vires

Meaning	Any act beyond the objects stated in the MOA is ultra vires and void
Effect	Cannot be ratified even by unanimous consent of all members
Consequences	Directors may be personally liable; property acquired may still belong to company
Leading Case	Ashbury Railway Carriage Co. v. Riche

SUMMARY POINTS

Must-Remember Points

- Incorporation is completed by filing prescribed documents and obtaining Certificate of Incorporation.
- Certificate of Incorporation is conclusive evidence of compliance with registration requirements.
- MOA is the charter; AOA are the internal regulations.
- Doctrine of Indoor Management protects bona fide outsiders (Turquand Rule).
- Prospectus must contain prescribed particulars; civil and criminal liability arises for misstatements.
- Ultra vires acts are void and cannot be ratified.