

Lesson 02

Incorporation of a Company

1. Types of Companies

There are three types of companies that can be incorporated under the Act.

- i. Limited Company - a company that issues shares, the holders of which have the liability to contribute to the assets of the company, if any, specified in the company's articles as attaching to those shares.
- ii. Unlimited Company - a company that issues shares, the holders of which have an unlimited liability to contribute to the assets of the company under its articles.
- iii. Company limited by guarantee- a company that does not issue shares, the members of which undertake to contribute to the assets of the company in the event of its being put into liquidation, in an amount specified in the company's articles.

Under the Act, a limited company which has listed its shares on the stock exchange is referred to as a 'Public Limited Company' or by the abbreviation 'PLC'. A limited company which has not listed its shares in the stock market must use the words 'Limited' at the end of its name or the abbreviation 'Ltd'.

Selecting a company type involves determining the legal structure that most effectively supports a business's operational, financial, and governance objectives. The aim is to adopt a corporate form that provides an optimal balance of liability protection, capital-raising potential, regulatory compliance, and stakeholder alignment from the very beginning.

a) Public Limited Companies

Any company incorporated under the Companies Act No. 7 of 2007, or any other statutory corporation established under the laws of Sri Lanka, as well as entities incorporated under the laws of another state (subject to Exchange Control approval), may apply for a listing on the Colombo Stock Exchange to raise debt or equity capital.

Companies seeking admission to the official list of the Exchange, and the listing of their securities, must comply with the applicable provisions of the Companies Act, the Securities and Exchange Commission of Sri Lanka Act No. 19 of 2021 (as amended), and the Listing Rules of the Colombo Stock Exchange.

Shares of a Public Limited Company (also referred to as a “Public quoted Company”) can be purchased by any member of the general public through a licensed stockbroker.

Prospectus

When raising capital through public offerings, the company must prepare and register a comprehensive prospectus that includes all information required under Parts I and II of the Fourth Schedule to the Companies Act.

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The Fourth Schedule creates a standardized disclosure regime divided into two categories: specific information requirements that must be disclosed about the company and its offering, and expert reports that must accompany the prospectus to provide independent verification and analysis.

Section 36

A prospectus issued by or on behalf of a company or in relation to a company to be formed shall bear a date, and such date shall unless the contrary is proved, be taken as the date of publication of such prospectus.

Section 37 (1)

Every prospectus issued by or on behalf of a company or by or on behalf of any person who is or has been engaged or interested in the formation of the company, shall contain the information specified in Part I of the Fourth Schedule hereto and set out the reports specified in Part II of that Schedule. The provisions of Parts I and II shall have effect, subject to the provisions contained in Part III of that Schedule.

This provision applies when a company (or its promoters) issues a prospectus, which is a formal document inviting the public to subscribe for shares or debentures.

Part I of Schedule 4 - Information Requirements:

- Company Particulars - Full company name, registered office address, and detailed business objectives and activities
- Share Capital Structure - Complete details of authorized share capital, issued capital, and all outstanding securities
- Key Personnel Disclosure - Names and addresses of all directors, promoters, and appointed auditors
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- Securities Rights and Features - Voting rights, dividend entitlements, redemption provisions, and any special rights attached to securities
- Material Contracts and Transactions - Details of significant contracts, asset acquisitions or disposals, and related party arrangements
- Financial Planning and Use of Funds - Minimum subscription requirements and detailed application of proceeds raised

Part II of Schedule 4 - Report Requirements:

- Independent Auditor's Report - Comprehensive auditor's analysis of company accounts, financial position, and performance
- Professional Asset Valuations - Expert valuation reports for any assets being acquired and revaluation reports for existing assets
- Expert Financial Analysis - Reports from qualified accountants and financial experts who have contributed to the prospectus preparation
- Historical Performance Documentation - For new companies, detailed past performance reports of any acquired businesses and merger-related projections
- Underwriting Documentation - Complete disclosure of underwriting agreements, including terms, guarantees, and compensation arrangements.

b) Private Limited Companies

Private Limited Companies are entities with a limited number of shareholders, typically held closely by members of a family or a small group. A core principle governing such companies is that their shares cannot be offered to the public, and the number of shareholders must not exceed fifty.

The Companies Act No. 7 of 2007 provides private companies with a significant degree of flexibility. Under Section 31, the unanimous agreement of shareholders may be used to dispense with certain formalities in relation to major company transactions, including the issuance of shares and the making of distributions.

Summary of characteristics of a Private Company;

- i. There can be a maximum of fifty members (Sec.27)
- ii.
- iii.
- iv. The name should end in the words “(Private) Limited” or by the abbreviation “(Pvt) Ltd” (Sec.6)
- v. It need not deliver financial statements to the Registrar (Sec.170).
- vi. As per Sec.30, it may by unanimous resolution of its shareholders dispense with (avoid) the keeping of an interests register.
- vii. Unanimous agreement of shareholders (Sec.31)

c) Unlimited Companies

Under Section 3(1)(b) of the Act, Unlimited Companies are entities in which shareholders bear unlimited liability. This means that if the company is unable to meet its debts, the personal assets of the shareholders may be used to satisfy the company’s obligations. Such companies are rarely incorporated, as they do not offer the key benefit typically associated with incorporation—limited liability.

d) Companies Limited by Guarantee

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These companies are suitable for charities and non-profit organizations. It is significant to note that where a company limited by guarantee is formed for the purpose of promoting commerce, arts, charity, sports etc. as specified in section 34 of the Act, such a company is given the opportunity of dispensing the word “Limited” from its name.

e) Overseas Companies

An “overseas company” means any company or body corporate incorporated outside Sri Lanka, which

- (i) after the appointed date, established a place of business within Sri Lanka, or
- (ii) has, before the appointed date, established a place of business within Sri Lanka and continues to have an established place of business within Sri Lanka on the Appointed date. (Section 488)

A place of business in this definition has been defined to include a share transfer or share registration office. An overseas company which has delivered, or is deemed to have delivered, to the Registrar, the documents and particulars required under section 489 of the Act is a “registered overseas company”.

The registration process requires submission of certified copies of the company’s charter, statutes, or memorandum and articles of association defining the company’s constitution. Further a certified translation if the document is not in an official language of Sri Lanka or in English. A complete list of directors with their particulars must be provided, along with the appointment of at least one authorized person resident in Sri Lanka to accept service of legal process and notices on behalf of the company. Statement of addresses containing registered or principal office of the company and the principal place of business of the company in Sri Lanka. Company shall file annual financial statements with the Registrar.

f) Off-Shore Companies

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Offshore companies provide several strategic advantages, including reduced tax exposure and streamlined operations resulting from lighter compliance and reporting obligations. They are commonly utilized for effective tax planning, asset protection, and broader structuring purposes.

Comparative Analysis of Sri Lankan Company Types

Features	Private Limited Company	Public Limited Company	Listed Public Company	Off shore Company	Overseas Company
Governing Legislation	Companies Act No. 7 of 2007	Companies Act No. 7 of 2007	Companies Act No. 7 of 2007 & CSE Rules	Companies Act No. 7 of 2007 Part XI	Companies Act No. 7 of 2007 & Home Jurisdiction
Shareholder Numbers	1-50 (excluding employees)	Minimum 7, no maximum	Minimum 7, no maximum	No specific limit	As per home jurisdiction
Share Transferability	Restricted by Articles	Freely transferable	Freely transferable on exchange	Freely transferable	As per home jurisdiction
Public Capital Raising					
Business Operations	Permitted in Sri Lanka	Permitted in Sri Lanka	Permitted in Sri Lanka	Prohibited in Sri Lanka	Permitted with registration
Disclosure Requirements					
Name Suffix	(Pvt) Ltd or (Private) Limited	Limited or Ltd	PLC (Public Limited Company)	As specified in Articles	As per home jurisdiction
Regulatory Oversight	Registrar of Companies	Registrar of Companies	Registrar & Securities Exchange Commission	Registrar of Companies	Registrar of Companies
Tax Treatment	Subject Sri Lankan tax legislation	Subject Sri Lankan tax legislation	Subject Sri Lankan tax legislation	Tax advantages / exemptions	Subject to Sri Lankan tax on local income

Primary Case	Use	SMEs, family businesses, startups	Large enterprises, pre-IPO companies	Listed corporations seeking public investment	International business, holding companies, tax planning	Multinational operations
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2. Company Incorporation

A company is an artificial legal person, that is, a ‘person’ created by operation of law. The process of creating such an artificial legal person is known as incorporation. In Sri Lanka, there are two methods through which artificial legal persons may be established.

- By an Act of Parliament – if a Law is made by Parliament declaring a particular organization, entity or body as a legal person, it will be treated as a legal person.

Eg: Sri Lanka Broadcasting Corporation, Petroleum Corporation etc.

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3. Application for incorporation

Section 4: Method of incorporating a Company

A company can be incorporated by any person by making an application to the Registrar General of Companies in the prescribed form (i.e. Form 1) signed by each of the initial shareholders, together with the articles signed by each of the initial shareholders (if they are to be different from model articles contained in the First Schedule of the Act), consent from each director (Form 18) and initial secretary (Form 19).

(1) Subject to the provisions of subsection (2), any person or persons may apply to incorporate a company, other than a company limited by guarantee, by making an application for the same to the Registrar in the prescribed form signed by each of the initial shareholders, together with the following documents :

(a) a declaration stating that to the best of such person or persons knowledge, the name of the company is not identical or similar to that of an existing company;

(b) the articles of association of the company, if different from the articles set out in the First Schedule hereto, and signed by each of the initial shareholders;

(c) consent from each of the initial directors under section 203, to act as a director of the company; and

(d) consent from the initial secretary under subsection (2) of section 221, to act as secretary of the company.

Section 5 – Incorporation of a Company

(1) On receipt of a properly completed application for incorporation in the prescribed form, the Registrar shall—

- (a) enter the particulars of the company on the Register ;*
- (b) assign a unique number to that company as its company number ;*
- (c) issue a certificate of incorporation in the prescribed form to the applicant company; and*
- (d) notify the general public within sixty working days of incorporation by notice published in newspaper.*

(2) The certificate of incorporation issued under subsection (1) shall specify—

- (a) the name and number of the company;*
- (b) the date on which the company was incorporated;*
- (c) whether the company is a limited company, an unlimited company or a company limited by guarantee;*
- (d) whether the company is a private company ; and*
- (e) whether the company is an off shore company ;*

The following prescribed forms and documents must be perfected for incorporation of a Private Limited Company:

- Name Approval
- Form 01 : Application for Registration of a Company
- Form 18 : Consent and Certificate of Director
- Form 19 : Consent and Certificate of Secretary/Secretaries
- Articles of Association

Unlike the previous Companies Act under the 2007 Act, companies are not required to submit a memorandum. Further, the applicants can adopt model articles which appear in the First Schedule.

Upon submission of the aforementioned documents and relevant payments, if the registrar of companies is satisfied that all requirements have been fulfilled, the incorporation certificate will be issued.

Jubilee Cotton Mills Vs Lewis

In this case a certificate of incorporation was dated 6th January 1923, but in fact it was signed and issued on 8th January 1923. On the 6th January 1923 the directors allotted shares to a person called Lewis. Later when the company demanded money, he refused to pay stating that the company was not in existent on the 6th January 1923.

But the court held that the company came into existence on the date mentioned in the certificate and therefore Lewis should pay for the shares.

Step-by-Step Incorporation via eROC

The introduction of Sri Lanka's e-ROC portal has transformed company incorporation from a manual, paper-based system into a streamlined digital process. It enhances efficiency, transparency, and accessibility in business registration.



1. User Registration:

- Visit the eROC portal (eroc.drc.gov.lk) and register as a new user (Director, Secretary, etc.) using your email. Verify your email to activate your account.

2. Name Reservation:

- Submit your proposed company name(s) via the system for approval. Once approved, you can proceed with incorporation.

3. Initiate Incorporation:

- Log in to your dashboard and select the "Incorporate" option after name approval.

4. Enter Company Details:

- Provide the company's registered address, email, and business objectives (selecting from dropdowns).

5. Add Stakeholders:

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6. Prepare & Upload Documents:

- The system generates required forms (Form 1, 18, 19).
- Print, sign by relevant parties (Directors, Secretary, Shareholders), scan, and upload these forms and Articles of Association as PDFs.

7. Payment:

- Pay the required incorporation fees online using a credit/debit card.

8. Submission & Approval:

- Submit the complete application.
- Receive your digital Certificate of Incorporation via email and the portal once approved.

4. Company Names

According to the Companies Act every company must have a name.

Section 6 provides that, the name of every—

- a) Limited company other than a listed company, shall end in the word “Limited” or by the abbreviation “Ltd”;
- b) Private company, shall end in the words “(Private) Limited” or by the abbreviation “(Pvt) Ltd”; and
- c) Limited company which is a listed company, shall end in the words “Public Limited Company” or by the abbreviation “PLC”.

Section 7(1) – Prohibited names:

- a) A name that is identical to a name of another company;
- b) A name that contains the words “Chamber of Commerce” unless it is a company limited by guarantee incorporated for the purpose of promoting art, science, religion, charity, sport or any other like useful object;
- c) A name that is misleading in the opinion of the Registrar General of Companies (RGOC).

Section 7(2) – The consent of the Minister, having regard to the national interest, is required, to use:

- (a) “President”, “Presidential” or other words which in the opinion of the Registrar suggest or are calculated to suggest, the patronage of the President or connection with the Government or any Government Department ;
- (b) “Municipal”, “incorporated” or other words which in the opinion of the Registrar suggest or are calculated to suggest, connection with any Municipality or other local authority or with any society or body incorporated by an Act of Parliament;
- (c) “Co-operative” or “Society” ; or
- (d) “National”, “State” or “Sri Lanka” or other words which in the opinion of the Registrar suggest or are calculated to suggest, any connection with the Government or any Government Department.

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As per section 9 (2) if a company changes its name, it should give public notice within twenty working days of such change specifying—

- a. the former name of the company;
- b. the company number;
- c. the address of the registered office of the company; and
- d. the new name of the company.

5. Articles of Association

Under the Companies Act No.17 of 1982, which was modeled on the English Companies Act of 1948, the constitution of the company was contained in two documents;

- i. Memorandum of Association and
- ii. Articles of Association.

Under the Companies Act No. 7 of 2007, a company's constitution consists of a single document, the Articles of Association. The Act does not require companies to have a separate Memorandum of Association. However, in terms of section 486, companies incorporated under the Companies Act No. 17 of 1982 or any earlier statutes may continue to retain both a memorandum and articles.

The articles of association contain the provisions for the domestic regulation of a company, that is internal regulations of the management of the affairs of the company and the conduct of its business over which the shareholders have full control.

a) The doctrine of ultra vires and object clause

The term 'ultra vires' is latin expression used to describe acts undertaken beyond (ultra) the legal powers (vires) of those who have purported to undertaken them.

Under the Act of 1982 the legal personality of a company existed only for a particular purpose of its incorporation as defined and described in the object clause of the memorandum of association. Transactions that did not fall within the objects of the company were declared

null and void. Accordingly, anyone dealing with the company was deemed to have notice of the contents of the articles of association and memorandum. The difficulties faced by third parties due to doctrine of ultra vires resulted in the abolition of this doctrine in many jurisdictions.

b) Ultra vires doctrine under the Companies Act No.07 of 2007

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If the articles do not provide for the objects, the company will have the same freedom to contract similar to a natural person and it can carry on any business or it can make any contract.

Section 17 of the Companies Act provides that,

(1) Where the Articles of a company sets out the objects of the company, there shall be deemed to be a restriction placed by the Articles in carrying on any business or activity that is not within those objects, unless the articles expressly provide otherwise.

(2) Where the Articles of a company provide for any restriction on the business or activities in which the company may engage:

(a)

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(b) no act of the company, no contract or other obligation entered into by the company and no transfer of property by or to the company, shall be invalid by reason only of the fact that it was done in contravention of such restriction.

(3) Nothing in subsection (2) shall affect:

(a) the ability of a shareholder or director of the company to make an application to court under section 233 to restrain the company from acting in a manner inconsistent with a restriction placed by the Articles, unless the company has entered into a contract or other binding obligation to do so; or

(b) the liability of a director of the company for acting in breach of the provisions of section 188.

Section 17(1) imposes a statutory obligation on the company and its directors to confine their activities to the objects specified in the company's objects clause.

Nevertheless, Section 17(2) provides that any such restriction does not limit the company's legal capacity or powers.

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Thus, while Section 17(1) underscores the expectation that the company should operate within its declared objects, Section 17(2) simultaneously ensures that transactions executed beyond those objects retain full legal effect.

As per Section 233 (2) before an ultra vires contract is made, a director or a shareholder of the company may file a case restraining (preventing) a company or a director from engaging in that contract. However, as per Section 233 (4) if the contract or act has already been done, no remedy is available to the company or shareholders.

c) Contents of Articles

As per section 13 of the Act the articles of association of a company may provide for any matter that is not inconsistent with the provisions of the Act and in particular may provide for (a) the objects of the company; (b) the rights and obligations of shareholders of the company; and (c) the management and administration of the company.

d) Application of Model Articles

Under the Act of 1982, Table A provided a set of model articles for companies limited by shares.

According to section 14 of the 2007 Act, the articles of association set out in the First Schedule to the companies act (which is referred to as "model articles") shall apply in respect of any company other than a company limited by guarantee, except to the extent that the company adopts articles which exclude, modify or are inconsistent with the model articles.

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Accordingly, a company may adopt the “model articles” set out in the First Schedule to the Companies Act, or it may modify or amend those model articles to suit its requirements. A company may also choose to prepare an entirely new set of articles, thereby excluding the application of the model articles altogether.

e) Adoption of amendment of Articles

Subject to the provisions of this Act and any conditions contained in its articles, a company may at any time by special resolution ;

- i. adopt new articles;
- ii. if it has articles which differ from the articles of association set out in the First Schedule, adopt such articles as its articles; or
- iii. alter its articles.

Where a company by a special resolution alters its articles, it shall give notice of such resolution to the Registrar (by way of Form 39) within ten working days, setting out in full the text of the resolution and of any new articles or of any alterations to the company’s articles.

f) The legal effect of Articles

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In particular, all money payable by any shareholder to the company under the Articles shall be a debt due from that shareholder to the company.

According to section 89, Notwithstanding anything to the contrary in the articles of the company, a shareholder shall not be—

(a) bound by a resolution altering its articles ; or

(b) required to acquire or hold more shares in the company,

where that resolution or the holding of those shares would increase the liability of the shareholder to the company, unless the shareholder agrees in writing to be bound by the resolution or to accept the shares, as the case may be.

- General remedies for breach of contract do not apply in interpreting the articles of association of the company.

Articles cannot be set aside on the grounds of misrepresentation, undue influence or duress and cannot be rectified on the grounds of mistake (Bratton Seymour Services Co Ltd v. Oxborough (1992) BCLC 693).

- Hickman v Kent or Romney Marsh Sheep-Breeders' Association (1915)**

In this case, the articles provided that any disputes between the company and its members must be referred to arbitration. A member who had been removed from membership filed an action in court seeking an injunction against his removal.

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Since the articles required disputes to be resolved through arbitration, the matter had to be referred to arbitration rather than litigated in court.

- Beattie v E & F Beattie Ltd (1938)**

The company's articles contained an arbitration clause, requiring disputes between the company and its members to be referred to arbitration. A dispute arose involving a director who was also a member of the company. The dispute related to his conduct as a director, not as a member. The company attempted to compel him to submit to arbitration under the articles.

The court held that:

The articles form a contract only in the capacity of membership.

A director's rights and obligations arise from a separate contract of service, not from the articles. Therefore, the arbitration clause could not be enforced against him in relation to a dispute concerning his role as a director.

g) Articles of a Private Company

Section 27 provides that the articles of a private company shall include provisions which—

- (a) Prohibit the company from offering shares or other securities issued by the company to the public; and
- (b) Limit the number of its shareholders to fifty, not including shareholders who are—
 - (i) employees of the company; or
 - (ii) former employees of the company who became shareholders of the company while being employees of such company and who have continued to be shareholders after ceasing to be employees of the company.

h) Articles of a Company Limited by Guarantee

Section 33 (1) provides that the articles of a company limited by guarantee shall state—

- (a) the objects of the company; and
- (b) the amount which each member of the company undertakes to contribute to the assets of the company, in the event of such company being put into liquidation.

i) Digital Management of Articles

Modern corporate governance increasingly relies on digital platforms to manage constitutional documents efficiently and securely. Traditional paper-based systems are prone to version control errors, loss, and unauthorized access, creating compliance risks and operational inefficiencies.

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Version control systems should track all amendments, creating a clear audit trail that demonstrates compliance with legal requirements.

Controlled access should be provided to authorized stakeholders - directors, shareholders, and auditors - through secure portals, ensuring they always reference the current, valid version of the document.

Some platforms also facilitate electronic voting for resolutions, streamlining the amendment process while maintaining security and legal compliance.

It is vital to establish and manage a secure system that preserves one authoritative version and tracks all historical changes.

Required procedures are:

- Store the official Articles in a secure, access-controlled digital repository with encryption.
- Implement version control to track all amendments, including dates, authorizations, and audit trails.
- Conduct regular audits to confirm the digital version aligns with filings at the Registrar of Companies.

j) Executing Digital Amendment Processes

Amending the Articles requires a formal, auditable process of shareholder approval through a special resolution. Traditional paper-based processes can be slow, costly, and may reduce shareholder participation.

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Steps to be followed:

- i. Circulate proposed amendments and meeting notices to members using a secure electronic platform.
- ii. Employ a verified digital voting system to capture and record shareholder resolutions accurately.
- iii. File the approved special resolution and amended Articles with the Registrar using the e-ROC system

k) Ensuring Document Security and Integrity

Digital storage exposes corporate documents, especially a company's legal constitution, to risks such as unauthorized access and data corruption. To preserve integrity and avoid governance disputes, strong security measures are essential.

Key safeguards include encrypting data at rest and in transit, implementing role-based access controls to limit who can edit documents, and routinely reviewing system access logs to detect suspicious activity and potential breaches.

6. Company Contracts

Contracts made by a company can be divided into two categories:

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- Company Contract (After incorporation)

a) Company Contracts (After incorporation)

A company as a legal person has the capacity to contract in the manner provided in law. Since company is not a natural person but acts through its natural agents, the powers are given to the board of directors to do such acts and enter into contracts on behalf of the company.

b) Method of contracting – Section 19

According to sec 19(1) a contract may be entered into by a company as follows:—

- a) an obligation which, if entered into by a natural person is required by law to be in writing signed by that person and be notarially attested, may be entered into on behalf of the company in writing signed under the name of the company by
 - i. two directors of the company;
 - ii. if there be only one director, by that director ;
 - iii. if the articles of the company so provide, by any other person or class of persons; or
 - iv. one or more attorneys appointed by the company, and be notarially executed.

- Making written contracts

an obligation which, if entered into by a natural person is required by law to be in writing and signed by that person, may be entered into on behalf of the company in writing signed by a person acting under the company's express or implied authority;

- Making oral contracts

an obligation which if entered into by a natural person is not required by law to be in writing, may be entered into on behalf of the company in writing or orally, by a person acting under the company's express or implied authority.

- **Company seal is not mandatory**

As per section 19, the company seal (common seal) is not compulsory for a contract to be made by a company. This is a major change introduced by the Companies Act No.7 of 2007. However, if a company wishes to maintain a company (common) seal, it can do so.

- **Appointment of Attorneys (Section 20)**

Subject to its articles, a company may by an instrument in writing, appoint a person as its attorney either generally or in relation to a specified matter. Any act of the attorney carried out in accordance with such instrument, shall be binding on the company.

7. The Turquand case – Indoor Management rule

Royal British Bank Vs Turquand (1856)

The common law principle of 'indoor management' was first laid down in Turquand, Turquand case.

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The case involved a company issuing a bond under its common seal signed by two directors. The articles of a company provided that the directors might borrow on bond such sums as they would be authorized by an ordinary resolution of the company. No such resolution was passed. It was held that the bond was binding on the company as the lenders were entitled to assume that a resolution authorizing the borrowing had been passed.

Accordingly, when acts which are intra vires the company but outside the authority of the directors are in question a third party is protected by the common law rule in Turquand case.

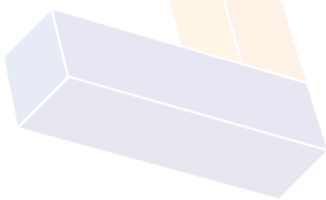
This 'indoor management rule' has now been codified in section 21 of the Act.

Section 21

(1) A company or a guarantor of an obligation of the company or any person claiming under the company, may not assert against a person dealing with that company or with any person who has acquired rights from the company, that —

- (a) the articles of the company have not been complied with ; or
- (b) the persons named in the most recent notice filed under section 223 or the annual return delivered under section 131 of this Act, are not the directors or the secretary of the company, as the case may be ; or
- (c) a person held out by a company as a director, officer or agent of the company—
 - (i) has not been duly appointed; or
 - (ii) does not have authority to exercise the powers and perform the duties that are customary in the business of the company or are normal for a director, officer or agent of a company carrying on business of the kind carried on by that company; or
- (d) a document issued by any director, the secretary of the company or by any officer or agent, with actual or normal authority to issue the document, is not valid or genuine, unless that person has, or by virtue of that person's position with or relationship to the company, ought to have knowledge to the contrary.

(2) The provisions of subsection (1) shall apply even in a situation where a person referred to in paragraphs (b) to (d) of that subsection acts fraudulently or forges a document that appears to have been signed on behalf of the company, unless the person dealing with the company or who has acquired rights from the company, has actual knowledge of such fraud or forgery.



8. Constructive Notice

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It is the duty of the outsiders to check the public documents (Articles of Association, Form 1, 18, 19, 20, annual return (Form 15) etc) and verify that the proposed contract is authorized by the public documents.

According to the common law doctrine of ‘constructive notice’ even though the outsiders do not check the public documents, the law presumes that they checked the public documents and know their contents and therefore if public documents do not authorize a contract, that prohibition will affect the validity of the contract, and therefore the outsider had no protection in the law.

- **No constructive notice under the Companies Act**

As per Section 22 - a person shall not be affected by or deemed to have notice or knowledge of the contents of the articles of a company or any other document relating to a company, by reason only of the fact that it has been delivered to the Registrar for filing or is available for inspection at any office of the company.

But regarding Register of Charges, there is constructive notice as per section 105(3).

9. Pre incorporation contracts

As per Section 23 (1), “pre-incorporation contract” means-

- (a) a contract purported to have been entered into by a company before its incorporation; or
 - (b) a contract entered into by a person on behalf of a company before and in contemplation of its incorporation.
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Example: purchasing a property in the name of the company before the company is registered.

Is pre-incorporation contract valid and binding on the company?

a) Position before Companies Act No.07 of 2007

Before the enactment of the Companies Act No. 07 of 2007, Sri Lankan law followed the English common law position on pre-incorporation contracts.

According to the principle established in *Kelner v Baxter* (1866), a pre-incorporation contract is neither valid nor binding on the company. The company cannot ratify such a contract after incorporation because it did not exist at the time the contract was made and therefore could not have been a party to it.

The landmark English case of Kelner v Baxter [1866] LR 2 CP 174 established the foundational common law principle governing pre-incorporation contracts and promoter liability. In this case, promoters contracted to purchase wine on behalf of the Gravesend Royal Alexandra Hotel Company before its incorporation, and when the company subsequently failed to pay, the supplier successfully sued the promoters personally.

b) Position after Companies Act No.07 of 2007

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Section 23(2) states that notwithstanding anything to the contrary in any law, a pre-incorporation contract may be ratified by a company within the period specified in the contract or if no such period is specified, within a reasonable time after the incorporation.

Section 23 (3) states that a pre-incorporation contract that is ratified shall be as valid and enforceable as if the company had been a party to the contract at the time it was entered into.

c) Warranties Implied in Pre-Incorporation Contracts (Section 24)

In a pre-incorporation contract, the promoter or any other person who makes a contract on behalf of a proposed company gives two warranties (undertakings) to the other party to the contract

- i. that the company will be incorporated; and
- ii. that the company will ratify the contract after the incorporation

If a person is liable for breach of an implied warranty relating to a pre-incorporation contract, the damages recoverable from that person are equivalent to the damages that would have been recoverable from the company had it ratified the contract. However, if after incorporation the company enters into a new contract on the same terms as, or replacing, the pre-incorporation contract (without ratifying the original under section 23), the individual's liability under the implied warranty is extinguished.

d) Failure to ratify (Section 25)

A company that acquires property under a pre-incorporation contract which it has not ratified after incorporation may be subject to court intervention. On application by the party who transferred the property, the court may order the return of the property, validate the contract (in whole or in part), or grant any other appropriate relief relating to that property.

e) Method of ratification

A pre-incorporation contract may be ratified by a company in the same manner as a contract may be entered into on behalf of a company under section 19.

10. Digital Contract Management

- Modern companies increasingly use digital contract management systems and electronic signatures.

Example:

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- These tools are legally recognised under laws such as the Electronic Transactions Act.

Example: An electronically signed contract is enforceable in Sri Lanka because it meets the requirements of the Electronic Transactions Act No. 19 of 2006 (as amended).

- Key benefits include greater efficiency, improved version control, and secure audit trails.

Example: A digital system automatically tracks who signed a contract, when they signed it, and any changes made to the document.

- Legal validity requires strong internal systems and controls.

Example: A company implements multi-factor authentication for all digital signatories to prevent unauthorized signing.

- Companies should use compliant and reputable e-signature platforms.

-

Example: All signed agreements are stored in a secure cloud-based contract management system like ContractSafe or SharePoint with role-based access.

- Clear internal policies must define digital signing authority and approval workflows.

Example: A policy stating that only the CFO may digitally sign loan agreements, while department heads may sign vendor contracts up to a specified value.

11. ESG and Sustainability

a) Integrating ESG Principles

Modern corporate structures increasingly embed ESG principles into their core strategy to meet rising stakeholder expectations for responsible and sustainable business conduct. Incorporating ESG at the point of formation signals a long-term commitment to ethical and socially conscious operations.

Companies can operationalize ESG governance by;

-
- Establishing board-level committees to oversee sustainability and ESG risks.
- Adopting robust reporting systems to monitor and disclose non-financial ESG performance.

b) Sustainability-Focused Ventures and ESG Integration

A company's structure can reflect its values. We now explore the growing trend of designing companies to achieve not just financial returns, but also positive environmental, social, and governance outcomes.

.....

You apply this framework when structuring ventures to create long-term value for all stakeholders—shareholders, employees, communities, and the environment.

Companies that ignore ESG factors face escalating risks from regulatory penalties, consumer boycotts, and restricted access to capital as investors increasingly prioritize sustainable investments. Your work in structuring ESG-aligned companies directly

addresses these risks while positioning the venture to attract responsible investment, enhance brand reputation, and capture emerging market opportunities in the sustainability economy.

c) ESG Governance Frameworks

Corporate governance structures serve as the foundation for embedding ESG principles into a company's DNA.

The Articles of Association and board composition determine whether sustainability remains a peripheral concern or becomes central to strategic decision-making. You must ensure these constitutional documents create legally binding commitments to stakeholder value creation beyond pure profit maximization.

The required procedures are:

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- Establish board-level sustainability committees with formal charters defining oversight responsibilities for ESG risks and opportunities.
- Integrate ESG performance metrics into executive remuneration policies to align leadership incentives with long-term stakeholder value.

d) Sustainability Reporting and Transparency

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This transparency builds trust with investors, regulators, and consumers who increasingly demand evidence of genuine environmental and social impact. You must structure reporting systems that meet recognized standards while avoiding the reputational damage of “greenwashing”—making unsubstantiated sustainability claims.

Key areas to examine include:

- Identify applicable reporting frameworks such as the Global Reporting Initiative (GRI) Standards or Sustainability Accounting Standards Board (SASB) Standards that align with the company's industry and stakeholder expectations.
- Implement robust internal controls for collecting and verifying ESG data, ensuring reported metrics trace back to source documentation
- Establish oversight mechanisms for reviewing and approving sustainability disclosures to ensure balanced presentation of both achievements and ongoing challenges.

“ESG-focused investing is gaining momentum globally as governments, funding agencies, and investors seek to minimize irresponsible corporate practices that harm the environment, infringe on human rights, and encourage corruption. Effective ESG policies are vital for attracting talent, retaining employee loyalty, and ensuring sustainable growth. JKH believes that prioritizing ESG fosters a comprehensive analysis of performance, enabling a sustainable business model that benefits all stakeholders. Efforts include managing natural resources, reducing environmental impact, enhancing stakeholder well-being, and ensuring robust governance. ESG metrics are regularly reviewed during decision making to stay ahead of developments and integrate ESG elements into strategy, operations, and reporting.”

(Annual Report 24/25 – John Keels PLC)

Our commitment to Environmental, Social, and Governance (ESG) practices is unwavering, as we diligently work towards understanding, mitigating, and eliminating any detrimental impacts on the environment. Concurrently, we strive to identify opportunities to create value for our Company and stakeholders.

Building on a legacy of 15 years of adherence to the GRI standards, which is recognized as a gold standard for sustainability reporting worldwide, Dialog also adopted the SASB and GSMA standards in 2023, which are specifically designed to address the unique challenges and opportunities within the telecommunications industry. By embracing these additional reporting frameworks, Dialog aims to further enhance its ESG agenda and reporting practices. As a leading ESG champion, Dialog is committed to driving positive change, exemplified by the Company's ambitious sustainability goals, including achieving Net Zero CO2 emissions by 2030.

(Sustainability Report 2023 – Dialog Axiata PLC)

12. Code of Best Practice on Corporate Governance

Public Limited Companies, unlike Private Limited Companies, are expected to adhere to the Code of Best Practice on Corporate Governance. Although compliance with this Code is not mandatory, organizations that voluntarily adopt and implement its principles are widely regarded as responsible and reputable corporate citizens.

Good corporate governance is universally recognized as a cornerstone of organizational competitiveness, long-term growth, and sustainability. In contemporary governance frameworks, boards of directors place significant emphasis on fulfilling their duties with integrity, ethical conduct, and a heightened sense of accountability. This commitment to principled governance not only strengthens stakeholder confidence but also reinforces the organization's capacity to operate responsibly, transparently, and in alignment with globally accepted best practices.

Strong business ethics, sound policies and procedures, effective and efficient monitoring systems are considered as ingredients of a good corporate governance system.

The Securities and Exchange Commission of Sri Lanka, as the chief regulator of the capital market, promotes high standards of corporate governance to safeguard market integrity. To advance this objective, the SEC and the Institute of Chartered Accountants of Sri Lanka jointly issued the Code of Best Practices on Corporate Governance in 2008. The Code currently in force is the revised 2023 version.



FORM 1 (Page1)

(Section 4(1))

Application for
REGISTRATION OF A COMPANY

Section 4(1) of Companies Act No. 7 of 2007 ("the Act")

[If there is insufficient space on the form to supply the information required, attach a separate sheet containing the information set out in the prescribed format]

No. of Company **					
Type of the Company					
	Please see Section 3(1) of the Act				
Name of Proposed Company					Name Approval number
Registered Address					(This must be a physical address in Sri Lanka and must not be a PO Box address)

DECLARATION UNDER SECTION 4(1)(a) OF THE ACT

I/We* declare that to the best of my/our* knowledge the name of this proposed company is not identical or similar to that of any existing company.

ARTICLES OF ASSOCIATION

- The Articles of Association of the proposed Company shall be as set out in the first schedule to the Act.
- The Articles of Association of the proposed company shall be as set out in the Annexure "A" signed by each of us *

INITIAL DIRECTORS

The following persons are the initial directors of the proposed company and signify their consent by signing below and certify that each one of them is not disqualified from being appointed or holding office as a director of a company :

Full name ***	NIC No/Passport No.* (Specify Country)	Residential Address	Email Address [optional]	Signature

Presented by

Email (Optional)

Telephone:

Facsimile :

* Delete what is not applicable

** To be completed by the Registry

***Please give first name(s) followed by surname in BLOCK letters.

INITIAL SHARE HOLDERS

The following persons are the initial shareholders of the proposed company

Full Name ***	NIC No/Passport No.* (Specify Country)	Address **	Signature	Number of Shares (Please indicate if shares are held jointly.)

TOTAL NUMBER OF SHARES

INITIAL SECRETARY / SECRETARIES

The following person(s) shall be the initial Secretary/Secretaries* of the proposed company and he/they* signify his/their* consent by signing below:-

Full Name	Address	Registration No.	Signature

Signature of initial shareholders:

1.

2.

Date :

Day Month Year

* Delete what is not applicable

** In the case of a natural person, please give residential address. In the case of a body corporate, please give the address or, if it does not have a registered office, of its principal place of business.

*** In the case of a natural person, please give first name(s) followed by surname in BLOCK letters.

registered office

FORM 18

(Section 203)

CONSENT AND CERTIFICATE OF DIRECTOR

Section 203 of the Companies Act No. 7 of 2007

[If there is insufficient space on the form to supply the information required, attach a separate sheet containing the information set out in the prescribed format]

No. of Company

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Company

Name

--

Last name of Director

First Name of

Director

--

--

Residential Address

Occupation

--

--

NIC No/ Passport No*

(Specify Country)

--

--	--

Day

--	--

Month

--	--

Year

LILAN WICKRAMARATHNE

Date of Appointment

I consent to be a director of the above company and certify that I am not disqualified from being appointed or holding office as a Director of a company.

Signature :

Full Name :

Date :

Day		Month		Year	

Presented by

Email (Optional)

Telephone:

Facsimile :



*

Delete what is not applicable

FORM 19

(Section 221(2))

CONSENT AND CERTIFICATE OF SECRETARY/ SECRETARIES

Section 221(2) of the Companies Act No. 7 of 2007

[If there is insufficient space on the form to supply the information required, attach a separate sheet containing the information set out in the prescribed format]

No. of Company

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Company
Name

--

First Name(s) of

Secretary/ Secretaries*

--

Last Name(s) of

Secretary/ Secretaries

--

Residential Address

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We/I consent to be Secretary/ Secretaries of the above company and certify that we/I* are/am* qualified to be appointed to hold office of Secretary/Secretaries

Date of Appointment

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--	--

--	--

Day Month Year

Registration No.

(If applicable)

Signature :

Full Name :

Date :

--	--

--	--

--	--

Day Month Year

Presented by

Email (Optional)

Telephone:

Facsimile :

* Delete if not applicable

Test Your Knowledge

1. Which of the following is NOT a type of company recognized under the Companies Act No. 7 of 2007?

- a. Limited Company
- b. Unlimited Company
- c. Company Limited by Guarantee
- d. Company Limited by Shares and Debentures

2. A company limited by guarantee:

- a. Issues shares to raise capital
- b. Has members who contribute a fixed amount upon liquidation
- c. Must be listed on the stock exchange
- d. Is prohibited from engaging in charitable activities

3. An overseas company is defined as a company:

- a. Incorporated in Sri Lanka but operating abroad
- b. Incorporated outside Sri Lanka but having a place of business in Sri Lanka
- c. That has more than 50 shareholders
- d. That is registered under Part XI of the Act

4. Which of the following must be specified in a Certificate of Incorporation issued under section 5(2)?

- a. The names of the initial shareholders
- b. Whether the company is a private company
- c. The registered office address
- d. The names of the first directors

5. In Jubilee Cotton Mills v. Lewis, what principle did the court affirm regarding the Certificate of Incorporation?

- a. A company comes into existence only when the Registrar physically signs and issues the Certificate of Incorporation.
- b. A company comes into existence only after its first board meeting is held.
- c. The date stated on the Certificate of Incorporation is conclusive, and the company is deemed incorporated from that date.
- d. Share allotments made before the physical issue of the Certificate are automatically void.

6. As In-house Legal Counsel for GAMA Tech Ltd., you are reviewing a contractual matter. The CEO Mr. Silva recently signed an IT Equipment Procurement Agreement, valued at Rs. 200 million, on behalf of the “GAMA AI Lab” a subsidiary - a special purpose vehicle for the company’s new IT project.

However, this contract was executed One month before the subsidiary was formally incorporated. The value of IT equipment has since dropped by 10%, due to exchange rate appreciation and market competition. The main board now wishes to withdraw from the deal, arguing that contract is invalid because the subsidiary – “GAMA AI Lab” did not exist at the time of signing the contract.

The board has asked for your legal advice on the following matters;

- a. Is GAMA AI Lab legally bound by the Agreement signed Mr. Silva, CEO of GAMA Tech Ltd?
- b. What would be the legal repercussions on Mr. Silva if GAMA AI Lab does not adopt the above contract by ratification?

You must analyze the contract’s enforceability and advise the board on the legal position.