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Company Law

Ms. Nayanathara Guruge

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Definition of company

- The companies Act No 07 of 2007 : No definition
- "Company" means a company incorporated under this Act or an existing company



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- A company is a legal entity with limited liability and perpetual succession, formed by a group of individuals to engage in and operate a business, commercial or industrial enterprise.

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Characteristics of the companies

- Separate legal personality
- Perpetual Succession
- Limited liability
- Transfer ability of shares

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Veil of Incorporation

Lifting of Veil of incorporation

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Separate Legal Personality

- The company is distinct and different from its members in eyes of the law.
- A company is an entity distinct from its owners, employees, or directors.



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Separate Legal Personality

Due to the characteristic of separate legal entity, a company can do following in its own name.

- sue another and being sued by another
- enter into contracts
- own properties
- take insurance and pay rent

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Separate Legal Personality

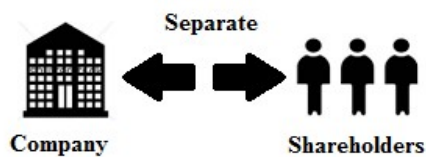
Paul Coir (pvt) Ltd v Waas, Wigneswaran

- "Only different between a natural person and a company is the fact that the companies are not a legal entity consisting of flesh and bones".

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Separate Legal Personality

Section 02 of Companies Act no 07 of 2007
Concept of separate legal personality



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Separate Legal Personality

- The provisions of section 13 of the Act.

- the capacity to carry on or undertake any business or activity both within and outside Sri Lanka , do any act, or enter into any transaction.

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Separate Legal Personality

- section 87 of the Act
- A shareholder shall not be liable for any act, default , or an obligation of the company, by reason only of being a shareholder.

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Separate Legal Personality

- The principal of separate legal personality
- **Salomon V Salomon & co. Ltd 1897**
- Solamon incorporated a company by making his wife, daughter and sons as shareholders. He obtained debentures of value 10,000 pounds from the company as a security for the shares of value 20,000 pounds. Due to different financial crises that occurred in business bankrupt. The assets of the company were insufficient to satisfy both the creditors and the debenture holders. It was questioned whether the loans or debentures should be given priority in payments. The creditors argued that since Salomon and the company was truly the same person, his rights should not have priority. Court held that Salomon's Company was a separate legal entity from Salomon and thus, debentures the company has issued to Salomon was a secured debt, which should gain priority over the unsecured debts owed to the creditors.

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Separate Legal Personality

- The concept of separate legal personality Macaura v Northern Assurance 1952 AC 619 was discussed. In this case M had a timber business and he had an insurance cover under his name. Later the business was incorporated as a company and sold to a stock company. Two weeks later, there was a fire and company requested to pay for damages from company, and that because

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Separate Legal Personality

- Concept of separate legal personality was accepted by Sri Lankan courts

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Separate Legal Personality

- Trade exchange (Ceylon) Ltd v Asian Hotels Corporation
- In this case a writ was filed against a decision made by Asian Hotel Corporation. A writ order can be requested only in a case against a government or semi government body. However, it was decided that even though 95% of the shares were held by a Government corporation, the company did not become an agent of the government since the company and its shareholder were distinct legal entities. It was held that even though government is holding majority shares, it is not an agent of the government, so that a writ order cannot be issued against the company decision.

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Separate Legal Personality

- DFCC Bank Ltd v Muditha perera
- "The parate execution cannot be exercised against a director of a corporate entity, who mortgages his property as security for loans obtained by that corporate entity. Because the company has a separate legal personality and is distinct from its shareholders and board of directors.

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Lifting of veil

- An exception for the concept of separate legal personality.
- There are instances where court makes members of a company personally liable for their actions under statutory provisions.
- It helps to bring into light frauds and illegal activities a company does under the right of separate legal personality.

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Lifting of veil

Lifting of veil could be done in the following circumstance by courts.

- In fraud causes done under the corporate veil
(Gilford Motors v Home (1993) CH 935, Jhones v Lipman (1962) 1 AER 442)
- In national emergency cases (Deitler v Continental Tyres (1962) 1 AER 442)
- In tax evasion
- Directors who breached duties in case of insolvency (**Exception: section 219 of the companied Act**)
- When directors breach duty to prepare financial statements (**Exception: section 152 of the Act**).
- Making of documents that create or is evidence of a legal obligation of a company incorrectly (**12 (4) of the Act**).

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Lifting of veil

Gilford Motors v Horne (1993) CH 935

- In this case H worked as an employee of Gilford Motor Company (GMC). In the employment contract there was a condition, which prevented the employees from having contacts with the customers after the termination of the employment. After the termination of his employment H established a new company and has approached / contacted few of previous customers. GMC company requested the courts to make an injunction order to H from doing so. Meanwhile, H argued that since his company is having a separate legal personality, he is not guilty of breach of the prior contract.
- Court held that he was responsible, and he has misused this concept of separate legal personality.

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Lifting of veil

• Jhones v Lipman (1962) 1 AER 442

- In this case L came to a contract with J to sell his house. However, his idea of selling the house was changed later. Therefore, he transferred the ownership of the house to a company owned by him. Later he informed K that this house no longer belongs to him. However, courts lifted the veil of incorporation and issued a specific performance order to sell the house to J, as contracted.

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Lifting of veil

• Deitler v Continental Tyres (1962) 1 AER 442

- In this case, it was held even though the company is incorporated in England, if the company is governed by citizens of an enemy country such company should be considered as an enemy corporation.

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Perpetual succession

- The existence of the company is not affected by the life of the share owners.
- The death of a shareholder, insanity, insolvency, complete impotency will not have any impact on the existence of the company.

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Limited liability

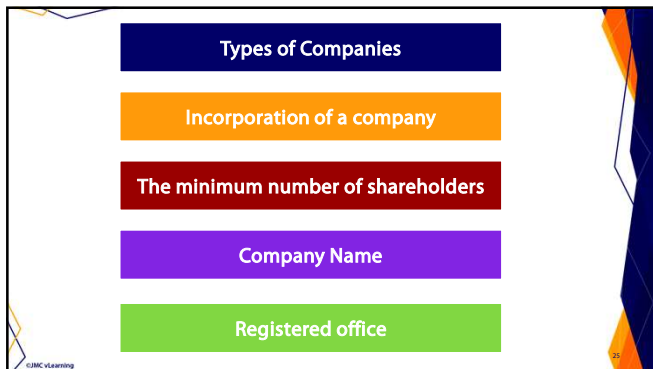
- The shareholders are not personally liable for the external debts of the company.
- Therefore, in winding up of the company, the maximum loss that will on a shareholder will be limited to the value of his shares/capital. (this is relevant only for a limited company)

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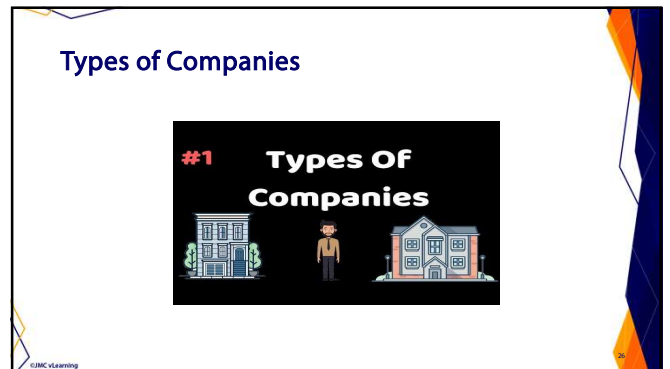
Transferability of shares

- Shareholder can transfer the ownership of his/her shares to anyone without taking any permission from existing shareholders.
- A transfer of shares by an owner does not have any impact on the existence of the company.

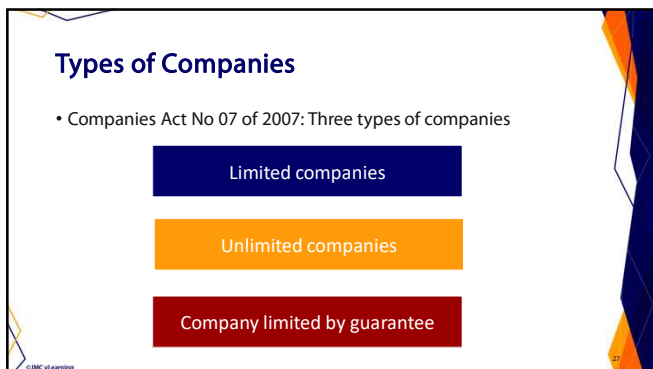
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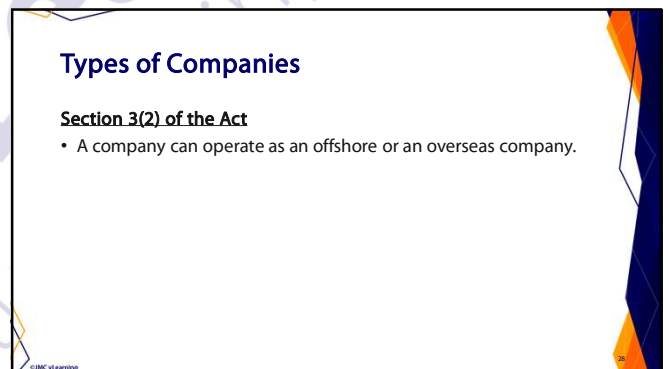
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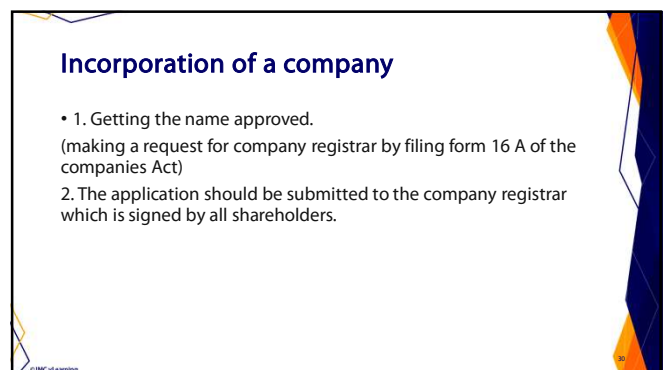
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Incorporation of a company

The documents shall be submitted along with the aforesaid application signed by all shareholders are,

- A declaration, stating that to the best of such person's knowledge, the name of the company is not identical or similar to that of an existing company.
- 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.
- Consent from each of the initial directors, under section 203 of the Act, to act as a director of the company; and
- Consent from the initial secretary under subsection (2) of section 221 of the Act, to act as secretary of the company/

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Incorporation of a company

- The process of incorporation of a company shall be done online through Department of the Registrar of companies E-ROC online platform.

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Incorporation of a company

- When relevant documents, forms and fees are handed over to the company registrar, he will commence the incorporation of the company

The certificate of incorporation



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Incorporation of a company

- The company is considered to be incorporated in the day, which is stated in the certificate of incorporation.

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Incorporation of a company

- A legally incorporated company should make a public notice of incorporation within 30 days of incorporation, with the details of company name, company registration number, registered company address and nature of the company.

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The minimum number of shareholders



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The minimum number of shareholders

- Companies Act No 07 of 2007: The restrictions on minimum number of shareholders in the previous Act was repealed.
- Except for a company limited by guarantee, any other limited company can operate with a one shareholder.

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Company name



COMPANY NAME
SLOGAN HERE

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Company name

- Section 6 - 12 in the companies Act

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Company name

- Company name cannot be identical or similar to name of other company
- Company name should not be misleading
- The nature of the company should be depicted present in fully or in abbreviations in the name of the company
- Having regards to the national interest, following names cannot be used as companies' name without the consent of the Minister.
- A company shall not register by a name, which contains the words "Chamber of Commerce" unless the company is a company, which is to be registered under a license granted under section 34 of the Act.

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Company name

- Use of company name and company number a company shall ensure that its name and its company number are clearly stated in
 - a) all business letters of the company
 - b) all notices and other official publications of the company
 - c) all bills of exchange, promissory notes, endorsements, cheques and orders form money of goods signed on behalf of the company
 - d) all invoices, receipts , and letters of credit of the company
 - e) all other documents issued or signed by the company, which creates or is evidence of a legal obligation of the company.

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Registered office



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Registered office

- Every company incorporated in Sri Lanka should have a registered office.
- Company can have its registered office at anywhere in the country.
- The registered office can be changed by the board of directors of the company provided that notice of articles of association and accurate form is communicated to the registrar.

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Registered office

Statutory books and registers

- Minutes of all including Annual General Meetings and passed resolutions of directors
- The register for monitoring attendance of directors and secretaries
- The registration numbers of shareholders
- Share registry
- The register of directors and secretaries
- The registry of fees
- Interests register, unless it is a private company, which is dispensed with the need to keep such a register

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Articles of Association

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Articles of Association

- The document consisting of objectives of the company and rights and obligations of the members.



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Articles of Association

- **Section 02 of the companies Act**
- A company should undertake any business or activity, do any act or enter into any transaction based on Articles of Association of the company.

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Articles of Association


Section 13 of the Act

- Articles of Association in particular may provide for,
- The objects of the company
 - The rights and obligations of shareholders of the company
 - The management and administration of the company

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Articles of Association

- Articles of Association can consist of anything unless it is not contrary to the Act.



Articles of Association

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Articles of Association

Adoption or amendment of the Articles of Association

Section 15

Any company may alter, modify its Articles of Association by a special resolution and such alteration or modification should be noticed to the registrar of companies within 10 days of the modification. If any company failed to comply, such a company will be guilty of an offence.

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Articles of Association

- Inclusion of company objectives in Articles of Association



Articles of Association

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Articles of Association

- Companies Act No 07 of 2007 can be considered as an Act, which subjected company law legal concepts into a significant change

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Articles of Association

Companies Act No 07 of 2007	Previous Act
Either to include or exclude the objective clauses in the Articles of Association	it was mandatory to have objective clauses in their Articles of Association

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Articles of Association

- Section 07 of the companies Act No 07 of 2007**
- If company has include objectives in the Articles of Association then it should work accordingly. However, 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 company's objectives. Any director who permits any other obligation entered into by the company and transfer of property by or to the company that contravenes the objectives will considered as a breach of directors duty.

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Articles of Association

- Example
- In the Articles of the Association of the Araliya Limited company, the objective clause contains that this company is incorporated with the objective of cultivation of Banana and selling them in local and foreign markets. But, if the company took a gem mine in Rathnapura area for a lease value of 100 million such act contravenes the company objectives. However, the company is liable to pay the lease value of 100 million. But if company has to face any loss due to this action, directors of company will be made personally liable.

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Articles of Association

- **Articles of Association as a contract between company and shareholders**
- **Section 16 of the Act**
- Articles of Association shall bind the company and its shareholders, as if there was a contract between the company and its shareholders. Therefore, both company and its shareholders are bound to the Articles of association.

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Articles of Association

- **Hickman v Romney Mash Sheep Breeder (1938 Ch, 708)**
- Articles of association contained a clause, which stated that any dispute between members of the company and company should be solved by arbitration. But the dispute went to the courts. Court held that since the Article of Association acts as a contract between members and the company, parties are bound by it. Therefore, the dispute should be directed to arbitration.

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Articles of Association

- **Requesting a copy of Articles of Association**
- **Section 18 of the Act**
- Any shareholder may request copy of the Articles and the company shall comply with such request within five working days of the request.

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Contracts by the Company

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Contracts by the Company

Company enter into contracts in following ways

- Company entering into a contract which required to be signed by a natural person before a notary.
- Company entering in to a contract which requires to be signed by a natural person.
- Company entering into a contract, which does not require to be signed by a natural person.

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Directors of company

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Directors of company

- The main personnel who control and manage the company are the directors



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Directors of company

- **Section 529 of the Act**
- Any person doing administration or controlling of the company shall be considered a director of that company



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Directors of company

- A public company: at least two directors
- Private company: at least one.



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Directors of company

Persons are not qualified to be appointed as directors

- A person who is under 18 years of age
- A person who is an undischarged insolvent
- A person who is adjudged to be of unsound mind
- A person who is not a natural person
- Any person who does not comply with any qualifications for directors contained in articles of association of the company
- A person who is prohibited from being a director under companies Act No. 17 of 1982
- A person who is prohibited from being a director under section 213 or 214 of companies Act No. 07 of 2007
- According to section 213 of the Act, any person during the five years after the conviction or adjudication of the following actions shall be prohibited from managing the company/
 - Where a person -
 - has been convicted of any offence under this act which is punishable by imprisonment
 - has been convicted of an offence involving dishonest or fraudulent acts.
 - is adjudged insolvent under the insolvency ordinance
 - is adjudged to be of unsound mind

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Directors of company

Appointment of Directors

- The first directors---→ named in the application for incorporation or in the amalgamation proposal
- Subsequent directors --→ by an ordinary resolution unless Articles provide otherwise

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Directors of company

The office of a director of company will be vacated due to following reason

- if the director resigns
- if the director vacates
- becomes disqualified in terms of provisions of section 2020
- death of a director
- Vacation of the office in accordance with section 210(2)
- Director vacating, removing from office in accordance with the provision of the articles of the company.

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Directors of company

• Age limit

Section 2020 of the Act

- Minimum: eighteen years
- Maximum: no age limit (except a public company)

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Directors of company

• Section 210 (2) of Companies Act

- Age limit: public company or a subsidiary of a public company is seventy years
- Such director can be reappointed by a resolution at Annual General meeting.

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Directors of company

• Validity of acts of directors

- The acts of a director will be valid notwithstanding the fact that, the person's appointment was defective, or the person is not qualified for such appointment.

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Directors of company

Section 186 of the Act

- The board of directors could delegate the powers in terms



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Directors of company

Following powers of the directors may not be delegated(6th schedule to the Act)

- Issue of shares
- Consideration for issue of shares
- Distribution
- Reduction of stated capital
- Reduction option of company
- Retractions on giving financial assistance
- Change of registered office
- Approval of amalgamation proposal
- Power of board to appoint administrator

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Directors of company

Duties of directors

- Duty of directors to act in good faith and in the interests of company (section 187)
- Duty of directors to comply with Act and Articles of Association of the company. (section 188)
- Duty of exercise the degree of skill and care that may reasonably be expected of a person of knowledge and experience and shall not act in a manner which is reckless or grossly negligent. (section 189)
- Director of a company may rely use correct information on reports, statements, and financial data and other sources. (section 190)
- Duty to disclose the interest (section 192)
- Duty not to disclose company information (section 200)
- Approval of remunerations and other benefits of directors only in compliance with section 216 of the Act.
- Not Providing loans, entering into any guarantee or provide any security to directors if not approved under section 217 of the Act.
- Directors should act in compliance of section 219 is an event of insolvency.
- Duty to call an extra ordinary general meeting in case of serious loss of capital.

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Directors of company

- **Dorchester Finance Co v Stebbing (1989) BCLC 498**
- In this case, a director of a company signed a blank cheque made by auditors. The court held that the director has breached the duty to act in due diligence.

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Companies Dispute Board

Companies Dispute Board

- Alternative dispute resolution build by companies Act No 07 of 2007.
- Even a dispute heard at courts can also be directed for mediation to Companies Dispute Board.
- The board will be appointed by the minister in charge.

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Winding up of a company

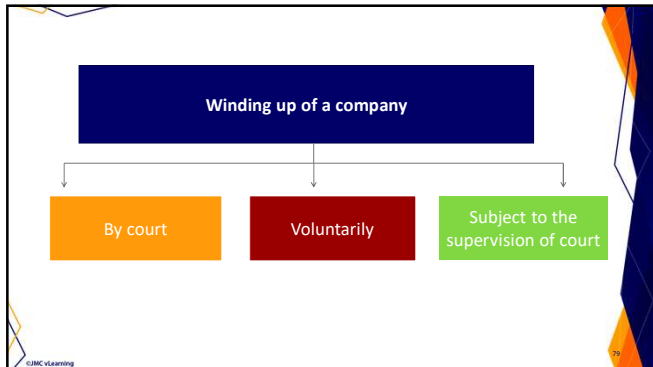
Winding up of a company

- Company's demise - 266-426 of the Act



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JANUARY 2020

Q. Which one of the following is not included in the Articles of Association?

- (1) The objectives of the company.
- (2) Rights and obligations of shareholders of the company.
- (3) The management and administration of the company.
- (4) Consent of Directors.

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JULY 2019

Q. Piumi and Namal are children of late Perera who was a well-known business personality of the country. Currently Namal is performing as a Director of Perera (Pvt) Ltd., a private limited company owned by Perera and he wants to appoint Piumi and Sri Lal as Directors of Perera (Pvt) Ltd. Piumi is 16 years old. However, Thilak, an existing Director objects to Namal's decision stating that Sri Lal has been convicted of an offence of cheque fraud and insider dealing about 3 years ago.

You are required to:

- Discuss the suitability of Piumi and Sri Lal as Directors of Perera (Pvt) Ltd. (05 marks)

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