

The Companies Act, 2013

Notes:-

Company :-

① What :- A company means is a company incorporated under this Act or any previous Act [1913, 1956, 2013]. CLAPS

② Why :- Because of advantages over other forms [sole-proprietorship, partnership, LLP etc.].

③ When :- Anytime [when you want]

④ Where :- Anywhere in India

⑤ How :- By following the provisions of The Companies Act, 2013.

• Chief Justice Marshall → a corporation is an artificial being, invisible, intangible, existing only in contemplation of law.

• Haney → A company is a incorporated association, which is an artificial person created by law, having separate entity with a perpetual succession & a common seal.

Incorporated → registration → जन्म लेना by law

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Concept

The Companies Act, 2013 →

Company means a company incorporated under this Act or under any previous company law.

Features of A company :- [CLAPS]

① Separate Legal Entity :-

• Ownership is separated from Management.



Members

BODs

[Shareholders]

- It is capable of owning, enjoying and disposing of property in its own name.
- It can buy assets, have bank a/c, raise loans, incur liabilities & enter into a/cs in its own name.
- Shareholders are not the private or joint owners of the company's property.

② Perpetual Succession :-



↳ Existence

Continuous

- Members die or change, but the company goes on till it is wound up on the grounds specified by the Act.
- Its existence is not affected by the death or insolvency of its members.

It is dissolved by law

Salmon vs Salmon & Co Ltd

Company is distinct from its ownership & management

The liability of members is limited upon the company

It is not a...

Secured Deb → Unsecured Deb →
① red deb → ② unsecured deb
Equity ④ Prob ③

Limited Liability :-

The liability of member is limited depending upon the type of company.

• The liability of a member depends upon the kind of company of which he is a member.

• Kinds of Company

- ① limited liability company
- ② Company limited by guarantee
- ③ Unlimited Company

④ Artificial Legal Person :-

• It is legal or judicial as it is created by law and can only be dissolved by law.

• A company can own property, incur liabilities and enter into contracts, can sue and be sued in its own name.

• Artificial person → can act only through some human agency [that is BOD.]

• Artificial person = Legal person / corporate entity / legal entity / judicial person / entity / corporate body / judicial entity.

It is real not fictitious [Imaginary X]

⑤ Common seal :-

• It is the official signature of a company

• Common seal → assumed to be → consent [approved]

• The Companies Act, 2015 it become optional

• The company does not have common seal → the authorization shall be made by two directors or by a director & the Company Secretary.

Company aag members aag
 Company aag Directors aag
 company aag from members & directors.

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Corporate Veil Theory →

Company →
 related hai

The Law has

legal

• We have [Law] given a separate status to company from its members & directors. and this separation is called Corporate veil.

• Corporate veil refers to a legal concept whereby the company is identified separately from members of the company.

• Corporate veil refers to the concept that members of a company are shielded from liability connected to the company's action.

means of

अलग अलग
 की Company
 अलग अलग
 की members & directors

means
 the directors
 members will
 not be liable
 for company's
 action.

Salmon Vs Salmon & Co

Case law: secured deb. holder

Lifting the Veil →

उसका उदाहरण - येन जो separate-separate status hai use disregard [अपनी हीनता] kiya jay ga.

Means it disregard the principle of corporate veil

• It means looking behind the company as a legal person i.e. disregarding the corporate entity & paying regard, instead, to the realities behind the legal facade.

Sham →
 a person
 to be so
 they a

LLP Act

Sham → a person who pretends to be something that they are not

evade → A way to avoid the law
{ Income tax law }

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* when we lift the corporate veil, we disregard [importance] the separate status of the company from its members/directors.
 ∴ ~~But~~, we treat the company and its members/directors as one.

Lifting of Corporate veil :-

Cases where company law disregarded :-

① To determine the character of the company
i.e. to find out whether company - enemy or friend :-

Daimler Co. Ltd vs Continental Tyre & Rubber Co.

Enemy Country → Enemy Company.

② To protect revenue / Tax :-

• where corporate entity is used to evade → disregard corporate entity.

~~★~~ Dinshaw Maneckjee Petit

company was not a genuine company. Court decided were a ~~Sham~~ ^{Sham} & the corporate veil was lifted to decide the real owner of the income.

③ To avoid a legal Obligation :-

responsibility.

Workmen of Associated Rubber Industry Ltd vs Associated Rubber Industry

Bonus to Workmen
Suprem Court

Scam — दौख → साजिश

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④ Formation of subsidiaries to act as agent.

⑤ Company formed for fraud / improper conduct / to defeat law.

eg. Ramling Raja was sent to jail in the Satyam Scam.

Subrata Roy share was sent to jail for 3 yrs for the scam he did in the company.

#

Classification of Companies on the following basis

① On the Basis of Liability :-

(a) Company limited by shares :-

FOV = ₹10	₹10
PVSC = ₹6	₹10
₹4	-

- the liability of members is limited upto unpaid shares capital.
- Once shares are fully paid up then liability is end.
- It can be called during life time or during winding up.

(b) Company limited by guarantee :-

- the liability of members is limited upto guaranteed amount acc to MOA.
- It can only be called during winding up.

* Common feature between (a) & (b)

- Both companies are of lia that is limited
- they both can call amounts during winding up

* diffⁿ feature between (a) & (b)

- Shares → can call during lifetime also but guarantee → can not.
- Shares → limited upto unpaid shares
Guarantee → limited upto guaranteed amount.

(c) Unlimited liability company:→

- Company not having any limit on liability.
- Whatever assets are falling short to repay the liability, will be the amount called from the members collectively.
- It can only be called during winding up.

examples:-

$$\textcircled{1} \frac{L}{10,00,000} - \frac{A}{500,000} = \frac{500,000}{10,00,000} = 50$$

$$\textcircled{2} \frac{L}{10,00,000} - \frac{A}{1,00,000} = \frac{900,000}{10,00,000} = 90$$

$$\textcircled{3} \frac{L}{10,00,000} - \frac{A}{0} = \frac{10,00,000}{10,00,000} = 100$$

$$\text{Shares of member} = \frac{L-A}{\text{na of member}}$$

② on the Basis of members:→

(a) OPC [One Person Company]:→

- OPC as a company which has only one person as a member [owner].
- OPC is a separate legal entity with limited liability.
- OPC is a private limited company.
- Nomination is compulsory.

	Member	Director	Nominee
Minimum	1	1	1
Maximum	1	15	1

- Member & Nominee should be
 - (i) Natural Person
 - (ii) Major
 - (iii) Indian citizen
 - (iv) Whether a resident or otherwise.
- In case of death, insolvency or incapacity of actual member.
Then, nominee becomes member.
- ~~OPC~~ cannot incose → NPO
OPC cannot convert
- OPC cannot incose → NIBFC
OPC cannot convert
- OPC cannot invest in other company.
- Member has right to change ~~the~~ & choose the nominee.
- Nominee has right to withdraw his consent
- Nominee has to give written consent & shall be filed with Registrar of companies

(b) Private Company

- (i) Restrict the right to transfer its shares
 - Company cannot transfer
 - Company shares are not

Restrict → Allowed to do but certain condition attached to follow.

Prohibit → to Ban [Forbidden]

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(b) Private Company :-

(R) (i) Restricts the rights to transfer its shares :-
• Its shares are not freely transferable.

(L) (ii) Limits of membership :-
maximum - 200 except OPC

→ Joint holders counted as 1.

→ Employees members not counted.
ex → ESOP [the motive was not to raise money]

→ Ex-employees members are not counted.

[not employees but still members.]

(P) (ii) Prohibit on making an invitation to public :-

• Cannot go to public for issue of shares or debenture.

* minimum → 2 [except OPC]

maximum → 200 [except employees members & Ex-employees members].

* Shares cannot be transferred freely [restriction].

* Small company = Private company

* OPC can be formed only as Private Company.

* Private CO = Private affairs = ETR⁻² etc etc

■ Small Company :-

- Other than public company [mean it is a private company].

① Paid up share capital should not be more than 2 crore.

② Turnover should not be more than 200 crore.

• Exception :-

- (i) a holding company or subsidiary company
- (ii) Company registered under section 8 (NPO)
- (iii) Company or body corporate governed by special Act.

	Case ①	Case ②	Case ③	Case ④
Name	X Pvt Ltd	Y Pvt Ltd	Z Pvt Ltd	A Ltd
PUSC [2cr]	20 Lakhs	50 Lakhs	8 Cr	10 Lakhs
T/O [200cr]	50 Lakhs	2 Cr	7 Cr	20 Lakhs
Small Co?	✓	X	X	X

(C) Public Company :-

- It means a company which is not a private company.
- freely transferable shares
- Free of Entry & Exit
- Can issue shares in public
- Minimum - 7
- Maximum - Unlimited (no limit)

③ On the Basis of Control:-

(a) Holding Company:-

• A company is holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

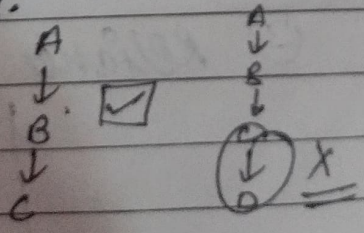
(b) Subsidiary Company:-

• It is in relation to any other company
• Subsidiary company means a company in which holding company:-

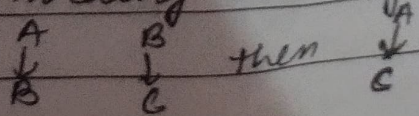
(i) Controls the Composition of the BODs:-
Holding company can appoint or remove all or a majority of the directors.

(ii) Exercises / Controls more than one-half (more than 50%) of the total voting powers directly or indirectly. →
own or together with one or more of its subsidiary companies

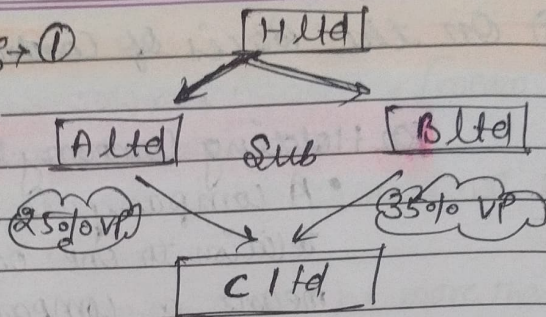
* Holding companies can not have ~~more than 2 layers~~ more than 2 layers according to rules.



* Chain Holding Subsidiary Relationship



examples → ①

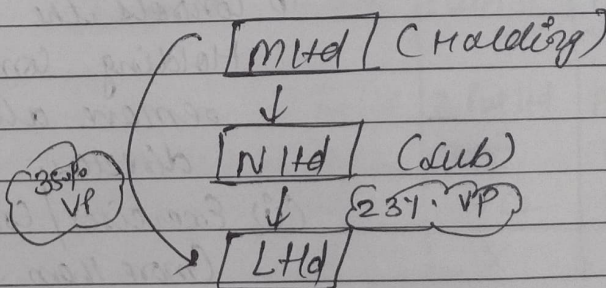


Here, H Ltd will be considered as the Holding Co. for C Ltd.

BC:

Indirectly it holding $25 + 35 = 60\%$ of voting power in C Ltd.

②

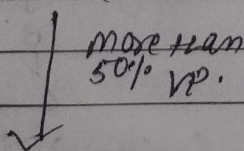


M Ltd will be considered as Holding Co. for L Ltd

BC:

Indirectly it is holding $35 + 23 = 58\%$ of voting power in L Ltd.

③ Reliance Industries Ltd → Holding Co.



Reliance Retail Ltd → Subsidiary Co.

* Private Co, which is subsidiary of a public Co. shall be deemed to public Co for the purpose of this Act

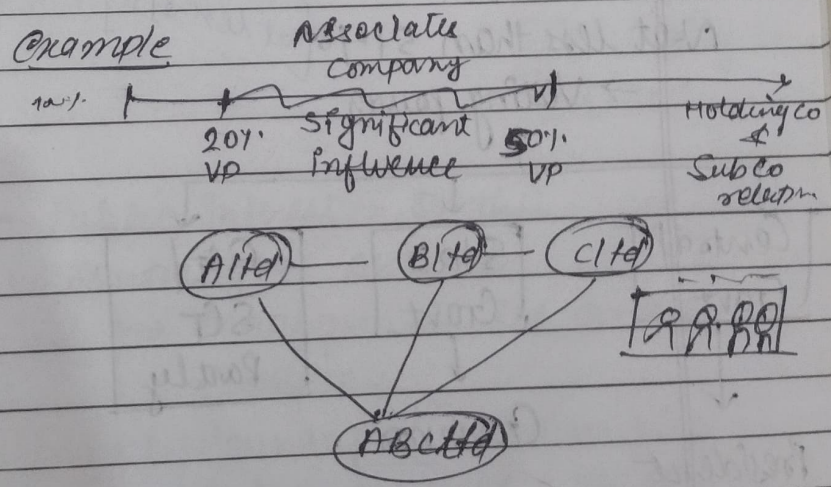
Public Co.

↓
Private Co.

→ Acc. to law it is Public Co.

(c) Associate Company:

- Associate Company means a company in which that other company has a significant influence [means control of at least 20% of voting power], but which is not a subsidiary company having such influence & includes a joint venture [came together for a particular purpose] company.
- minimum VP = 20%
maximum VP = 50%
[Bez more than 50% VP will make it subsidiary].



(4) On the basis of access to Capital

(a) Listed Company:

- The Companies Act, 2013. it is a company which has any of its securities [shares, deb, bonds] listed on any recognised stock exchange. [Company Act + SEBI] follow.

(b) Unlisted Company :->

- means company other than listed company. Company Act, 2013.
- e.g -> SPC Pvt Ltd.

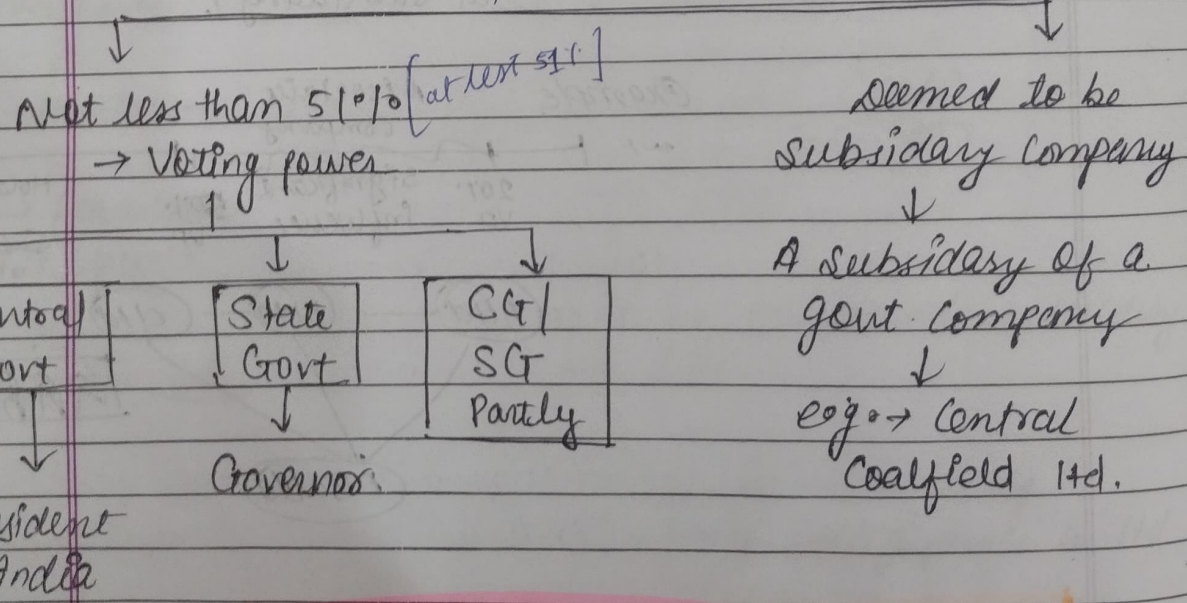
(5) Other Companies :->

(a) Govt Company :->

- It means any company in which not less than 51% * voting power.

Govt Company

e.g -> Coal India Ltd [66% is held by central Govt]



(b) Foreign Company :->

- It means any company incorporated outside India which has a place of business in India -> physically [e.g -> Mc Donalds] or electronic mode [e.g -> Amazon]