

INTRODUCTION :

The Companies Act, 2013 was preceded by the Companies Act, 1956. The Companies Act, 2013 contains 470 sections and seven schedules. The entire Act has been divided into 29 chapters. This enactment seeks to make our corporate regulations more contemporary.

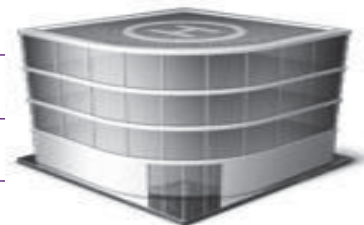
Applicability of the Companies Act, 2013 :

The provisions of the Act shall apply to-

- Companies incorporated under this Act or under any previous company law.
- **Insurance companies** (except where the provisions of the said Act are inconsistent with the provisions of the Insurance Act, 1938 or the IRDA Act, 1999)
- **Banking companies** (except where the provisions of the said Act are inconsistent with the provisions of the Banking Regulation Act, 1949)
- **Companies engaged in the generation or supply of electricity** (except where the provisions of the above Act are inconsistent with the provisions of the Electricity Act, 2003)
- **Any other company governed by any special Act** for the time being in force.
- Such body corporate which are incorporated by any Act for time being in force, and as the Central Government may by notification specify in this behalf.

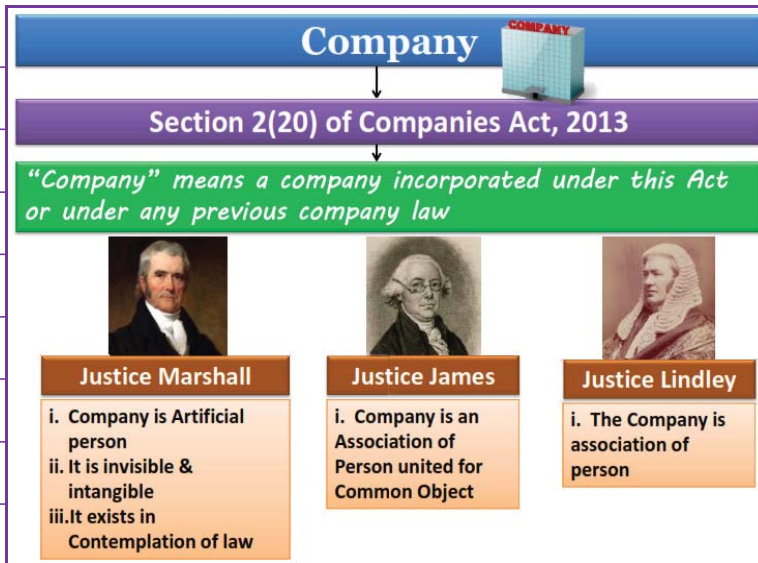
6.1**COMPANY: MEANING AND ITS FEATURES**

Meaning : According to Chief Justice Marshall, "a corporation is an artificial being, invisible, intangible, existing only in contemplation of law. Being a mere creation of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as accidental to its very existence.



In the words of professor Haney, "A company is an incorporated association, which is an artificial person created by law, having a separate entity, with a perpetual succession and a common seal."

Section 2(20) of the Companies Act, 2013 defines the term 'company'. "Company means a company incorporated under this Act or under any previous company law".



Features of a Company

- Separate Legal Entity**
 - Legally separate from the members
- Perpetual succession**
 - Change in members does not affect existence of Company
- Limited Liability**
 - Liability of Company is different from liability of members
- Artificial Juridical Person**
 - Company can act through human agency only
 - Company can contract, sue and be sued in its own name

I. Separate Legal Entity : When a company is registered, it is clothed with a legal personality. It comes to have almost the same rights and powers as a human being. Its existence is distinct and separate from that of its members. A company can own property, have bank account, raise loans, incur liabilities and enter into contracts.

(a) It is at law, a person which is different from the subscribers to the memorandum of association.

(b) Even members can contract with company, acquire right against it or incur liability to it. A company is capable of owning, enjoying and disposing of property in its own name. Although the capital and assets are contributed by the shareholders, the company becomes the owner of its capital and assets. The shareholders are not the private or joint owners of the company's property.

A member does not even have an insurable interest in the property of the company. The leading case on this point is of *Macaura Vs. Northern Assurance Co. Limited* (1925):

Fact of the case :

Macaura (M) was the holder of nearly all (except one) shares of a timber company. He was also a major creditor of the company. M insured the company's timber in his own name. The timber was lost in a fire. M claimed insurance compensation. Held, the insurance company was not liable to him as no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest in them. Hence in this case, since the **timber** was insured in the company's name, M could not claim the compensation from insurance company.

II Perpetual Succession : Members may die or change, but the company goes on till it is wound up on the grounds specified by the Act. The shares of the company may change hands infinitely but that does not affect the existence of the company. Since a company is an artificial person created by law, law alone can bring an end to its life. Its existence is not affected by the death or insolvency of its members.

Example 1: Many companies in India are in existence for over 100 years. This is possible only due to the fact that the company has perpetual existence. There was a company which has 7 members and all of them died in an aircraft. Despite this the company still exists unlike partnership form of business.

III Limited Liability : The liability of a member depends upon the kind of company of which he is a member.

(i) In the case of a limited liability company, the debts of the company in totality do not become the debts of the shareholders. The liability of the members of the company is limited to the extent of the nominal value of shares held by them. In no case can the shareholders be asked to pay anything more than the unpaid value of their shares.

(ii) In the case of a company limited by guarantee, the members are liable only to the extent of the amount guaranteed by them and that too only when the company goes into liquidation.

(iii) If it is an unlimited company, the liability of its members is unlimited as well.

IV Artificial Legal Person :

(1) A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual.

(2) The company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

(3) As the company is an artificial person, it can act only through some human agency, viz., directors. The directors cannot control affairs of the company and act as its agency, but they are not the "agents" of the members of the company. The directors can either on their own or through the common seal (of the company) can authenticate its formal acts.

(4) Thus, a company is called an artificial legal person.

V **Common Seal** : A company being an artificial person is not bestowed with a body of a natural being. Common seal is the official signature of a company, which is affixed by the officers and employees of the company on its every document. The common seal is a seal used by a corporation as the symbol of its incorporation.

The Companies (Amendment) Act, 2015 has made the common seal optional by omitting the words "and a common seal" from Section 9 so as to provide an alternative mode of authorization for companies who opt not to have a common seal. **In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.**

6.2 CORPORATE VEIL THEORY

(1) **Corporate Veil** : Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors. In other words, they enjoy corporate insulation.

Thus, the shareholders are protected from the acts of the company.

The **Salomon Vs. Salomon and Co Ltd.** laid down the foundation of the concept of corporate veil or independent corporate personality.

In Salomon vs. Salomon & Co. Ltd. the House of Lords laid down that a company is a person distinct and separate from its members. In this case one Salomon incorporated a company named "Salomon & Co. Ltd.", with seven subscribers consisting of himself, his wife, four sons and one daughter. This company took over the personal business assets of Salomon for £ 38,782 and in turn, Salomon took 20,000 shares of £ 1 each, debentures worth £ 10,000 of the company with charge on the company's assets and the balance in cash. His wife, daughter and four sons took up one £ 1 share each. Subsequently, the company went into liquidation due to general trade depression. The unsecured creditors to the tune of £ 7,000 contended that Salomon could not be treated as a secured creditor of the company, in respect of the debentures held by him, as he was the managing director of one-man company, which was not different from Salomon and the cloak of the company was a mere sham and fraud. **It was held by Lord Mac Naughten:**

"The Company is at law a different person altogether from the subscribers to the memorandum, and though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustees for them. Nor are the subscribers, as members, liable, in any shape or form, except to the extent and in the manner provided by the Act."

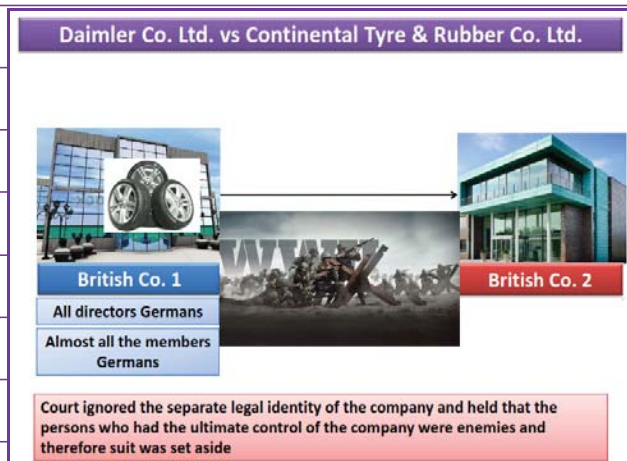
Thus, this case clearly established that company has its own existence and as a result, a shareholder cannot be held liable for the acts of the company even though he holds virtually the entire share capital. The whole law of corporation is in fact based on this theory of separate corporate entity.

Now, the question may arise whether this Veil of Corporate Personality can even be lifted or pierced.

The meaning of the phrase "lifting the veil". It means looking behind the company as a legal person, i.e., disregarding the corporate entity and paying regard, instead, to the realities behind the legal facade. Where the Courts ignore the company and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted. Only in appropriate circumstances, the Courts are willing to lift the corporate veil and that too, when questions of control are involved rather than merely a question of ownership.

(ii) Lifting of Corporate Veil : The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members :

(a) To determine the character of the company i.e. to find out whether co-enemy or friend: In the law relating to trading with the enemy where the test of control is adopted. The leading case in this point is **Daimler Co. Ltd. vs. Continental Tyre & Rubber Co.**, if the public interest is not likely to be in jeopardy, the Court may not be willing to crack the corporate shell. But it may rend the veil for ascertaining whether a company is an enemy company. It is true that, unlike a natural person, a company does not have mind or conscience; therefore, it cannot be a friend or foe. It may, however, be characterised as an enemy company, if its affairs are under the control of people of an enemy country. The Court may examine the character of the persons who are really at the helm of affairs of the company.

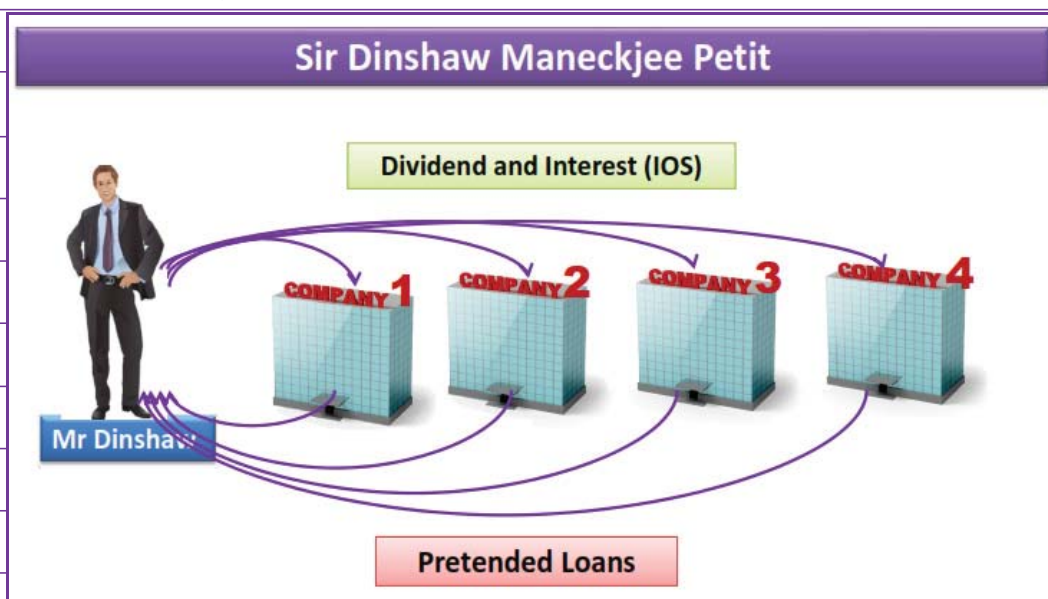


(b) **To protect revenue/tax:** In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue.

[S. Berendsen Ltd. vs. Commissioner of Inland Revenue]

(i) Where corporate entity is used to **evade or circumvent tax**, the Court can disregard the corporate entity [Juggilal vs. Commissioner of Income Tax AIR (SC)].

(ii) In [Dinshaw Maneckjee Petit], it was held that the company was **not a genuine company** at all but merely the assessee himself disguised under the legal entity of a limited company. The assessee earned huge income by way of dividends and interest. So, he opened some companies and purchased their shares in exchange of his income by way of dividend and interest. This income was transferred back to assessee by way of loan. The Court decided that the **private companies were a sham** and the corporate veil was lifted to decide the real owner of the income.



(3) **To avoid a legal obligation :** Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction (**The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar vs. The Associated Rubber Industries Ltd., Bhavnagar and another**).

Workmen of Associated Rubber Industry Ltd., v. Associated Rubber Industry

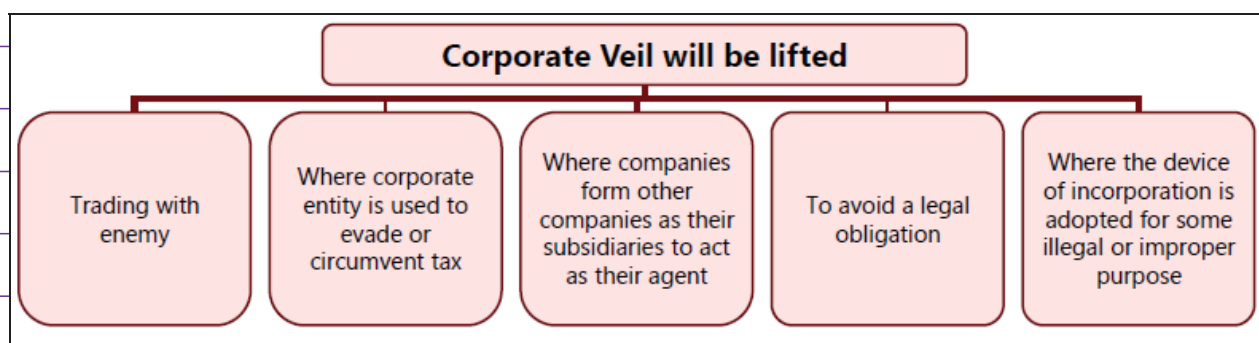
Ltd.: The facts of the case are that "A Limited" purchased shares of "B Limited" by investing a sum of ₹ 4,50,000. The dividend in respect of these shares was shown in the profit and loss account of the company, year after year. It was taken into account for the purpose of calculating the bonus payable to workmen of the company. Sometime in 1968, the company transferred the shares of B Limited, to C Limited a subsidiary, wholly owned by it. Thus, the dividend income did not find place in the Profit & Loss Account of A Ltd., with the result that the surplus available for the purpose for payment of bonus to the workmen got reduced.

Here a company created a subsidiary and transferred to it, its investment holdings in a bid to reduce its liability to pay bonus to its workers. Thus, the Supreme Court brushed aside the separate existence of the subsidiary company. The new company so formed had no assets of its own except those transferred to it by the principal company, with no business or income of its own except receiving dividends from shares transferred to it by the principal company and serving no purpose except to reduce the gross profit of the principal company so as to reduce the amount paid as bonus to workmen.

- (4) **Formation of subsidiaries to act as agents :** A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company.

In the case of **Merchandise Transport Limited vs. British Transport Commission (1982)**, a transport company wanted to obtain licences for its vehicles but could not do so if applied in its own name. It, therefore, formed a subsidiary company, and the application for licence was made in the name of the subsidiary. The vehicles were to be transferred to the subsidiary company. Held, the parent and the subsidiary were one commercial unit and the application for licences was rejected.

- (5) **Company formed for fraud/improper conduct or to defeat law:** Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations. [**Gilford Motor Co. vs. Horne**]



6.3 CLASSES OF COMPANIES UNDER THE ACT

Companies may be classified into various classes on the following basis:

1. On the basis of liability:

(a) Company limited by shares : Section 2(22) of the Companies Act, 2013, defines that when the liability of the members of a company is limited by its memorandum of association to the amount (if any) unpaid on the shares held by them, it is known as a company limited by shares.

His separate property cannot be encompassed to meet the company's debt.

It may be worthwhile to know that though a shareholder is a co-owner of the company, he is not a co-owner of the company's assets. The ownership of the assets remains with the company, because of its nature as a legal person. The extent of the rights and duties of a shareholder as co-owner is measured by his shareholdings.

(b) Company limited by guarantee: Section 2(21) of the Companies Act, 2013 defines it as the company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up.

Thus, the liability of the member of a guarantee company is limited upto a stipulated sum mentioned in the memorandum. Members cannot be called upon to contribute beyond that stipulated sum.

The **common features** between a 'guarantee company' and 'the company having share capital' are legal personality and limited liability. In the latter case, the member's liability is limited by the amount remaining unpaid on the share, which each member

holds. Both of them have to state in their memorandum that the members' liability is limited.

The point of distinction between these two types of companies is that in the former case the members may be called upon to discharge their liability only after commencement of the winding up and only subject to certain conditions; but in the latter case, they may be called upon to do so at any time, either during the company's life-time or during its winding up.

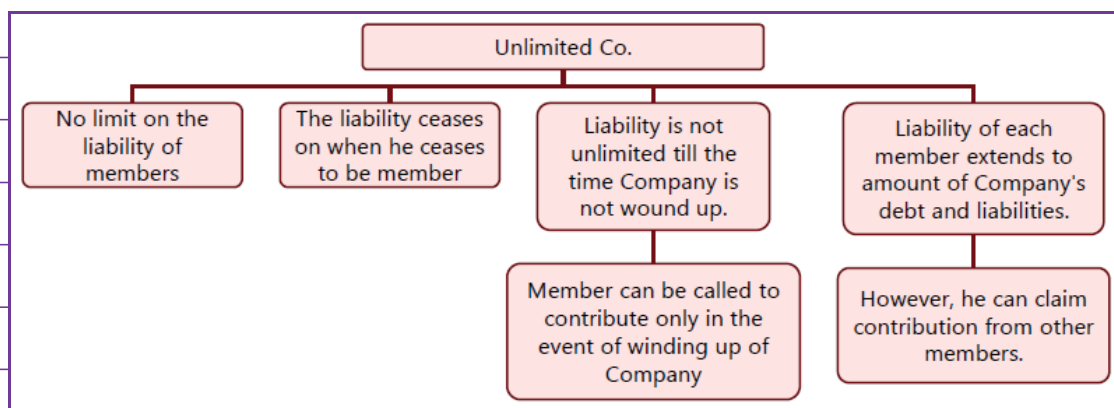
It is clear from the definition of the guarantee company that it does not raise its initial working funds from its members. Therefore, such a company may be useful only where no working funds are needed or where these funds can be held from other sources like endowment, fees, charges, donations, etc.

In **Narendra Kumar Agarwal vs. Saroj Maloo**,

The Supreme Court has laid down that the right of a guarantee company to refuse to accept the transfer by a member of his interest in the company is on a different footing than that of a company limited by shares. The membership of a guarantee company may carry privileges much different from those of ordinary shareholders.

(c) Unlimited company : Section 2(92) of the Companies Act, 2013 defines unlimited company as a company not having any limit on the liability of its members. In such a company, the liability of a member ceases when he ceases to be a member.

The liability of each member extends to the whole amount of the company's debts and liabilities but he will be entitled to claim contribution from other members. In case the company has share capital, the Articles of Association must state the amount of share capital and the amount of each share. So long as the company is a going concern the liability on the shares is the only liability which can be enforced by the company. The creditors can institute proceedings for winding up of the company for their claims. The official liquidator may call the members for their contribution towards the liabilities and debts of the company, which can be unlimited.



2. On the basis of members:

(a) **One person company** : The Companies Act, 2013 introduced a new class of companies which can be incorporated by a single person.

Section 2(62) of the Companies Act, 2013 defines one person company (OPC) as a company which has only one person as a member.

One person company has been introduced to encourage entrepreneurship and corporatization of business. OPC differs from sole proprietary concern in an aspect that OPC is a separate legal entity with a limited liability of the member whereas in the case of sole proprietary, the liability of owner is not restricted and it extends to the owner's entire assets constituting of official and personal.






The procedural requirements of an OPC are simplified through exemptions provided under the Act in comparison to the other forms of companies.




According to section 3(1)(c) of the Companies Act, 2013, OPC is a private limited company with the minimum paid up share capital as may be prescribed and having one member.

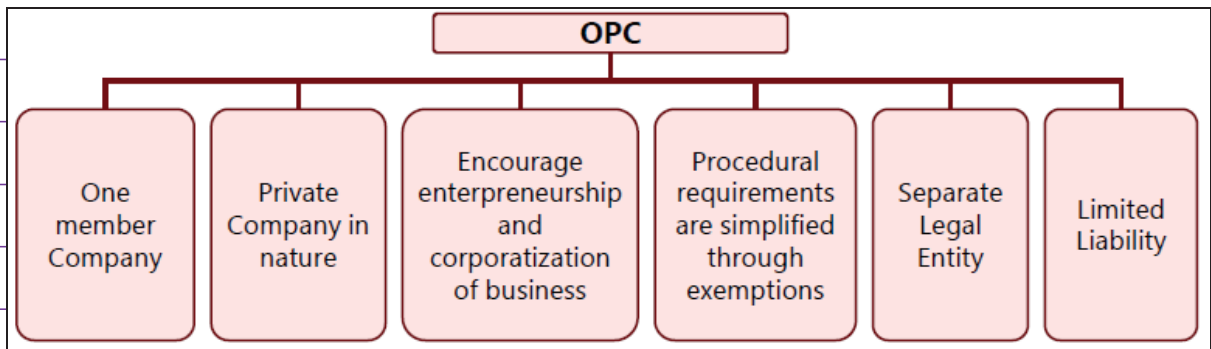
OPC (One Person Company) - significant points

- Only one person as member.
- Minimum paid up capital - no limit prescribed.
- The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at

- the time of incorporation of the company along with its e-memorandum and e-articles.
 - Such other person may be given the right to withdraw his consent.
 - The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
 - Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
 - Only a natural person who is an Indian citizen whether resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year
 - shall be eligible to incorporate a OPC;
 - shall be a nominee for the sole member of a OPC.
 - No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
 - No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
 - Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases.
 - Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporate.
- The member can be the sole member and director.

No. of Shareholders			
	Public	Private	OPC
Section No.	2(71)	2(68)	2(62)
Minimum	7 	2 	1 
Maximum	No Limit	200	1
Who can be	Any person	Any Person	Individual

No. of Directors			
	Public	Private	OPC
Section No.	149(1)		
Minimum	3 	2 	1 
Maximum	15 (AOA can provide lower amount)		
Who can be	Individual		



(b) Private Company [Section 2(68)]: "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—

- (i) restricts the right to transfer its shares;
- (ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

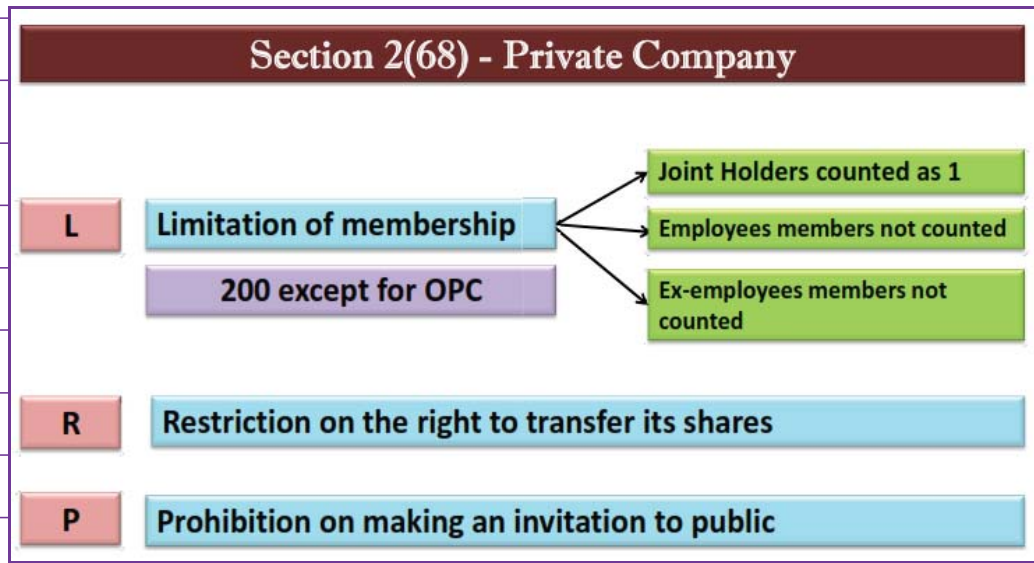
- (A) persons who are in the employment of the company; and
- (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

- (iii) prohibits any invitation to the public to subscribe for any securities of the company;

Private company - significant points

- No minimum paid-up capital requirement.
- Minimum number of members - 2 (except if private company is an OPC, where it will be 1).
- Maximum number of members - 200, excluding present employee-cum-members and erstwhile employee-cum-members.
- Right to transfer shares restricted.
- Prohibition on invitation to subscribe to securities of the company.
- Small company is a private company.

- OPC can be formed only as a private company.



Small Company : Small company given under the Section 2(85) of the Companies Act, 2013 which means a company, other than a public company—

- (i) **paid-up share capital** of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- (ii) **turnover** of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Exceptions: This clause shall not apply to:

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act.

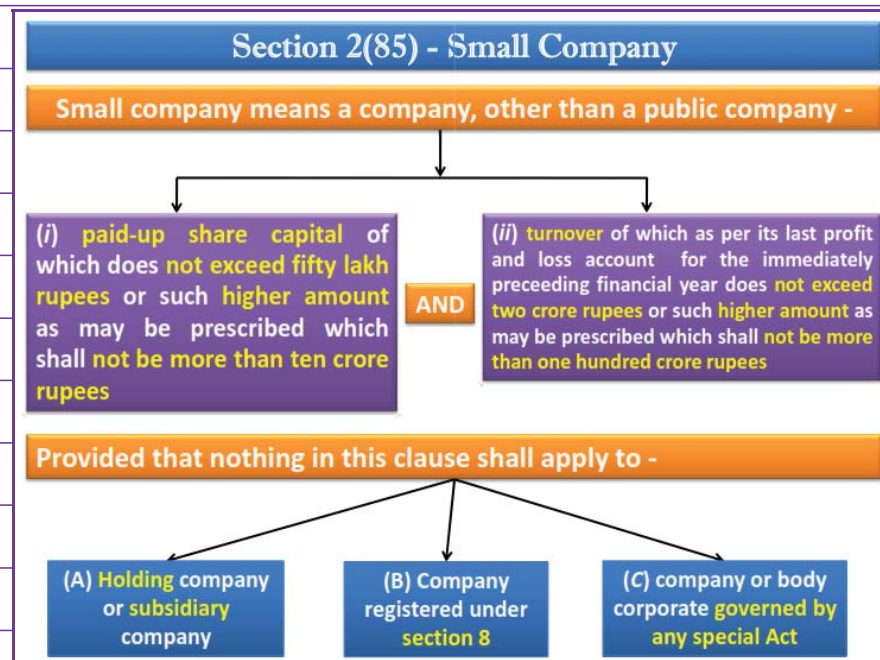
For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees four crores and rupees forty crores respectively. [Companies (Specification of definition details) Amendment Rules, 2022, w.e.f. 15th September, 2022]

Small Company –significant points

- A private company
- Paid up capital - not more than ₹ 50 lakhs
- Or
- Turnover - not more than ₹ 2 crores.

- Should not be - Section 8 company

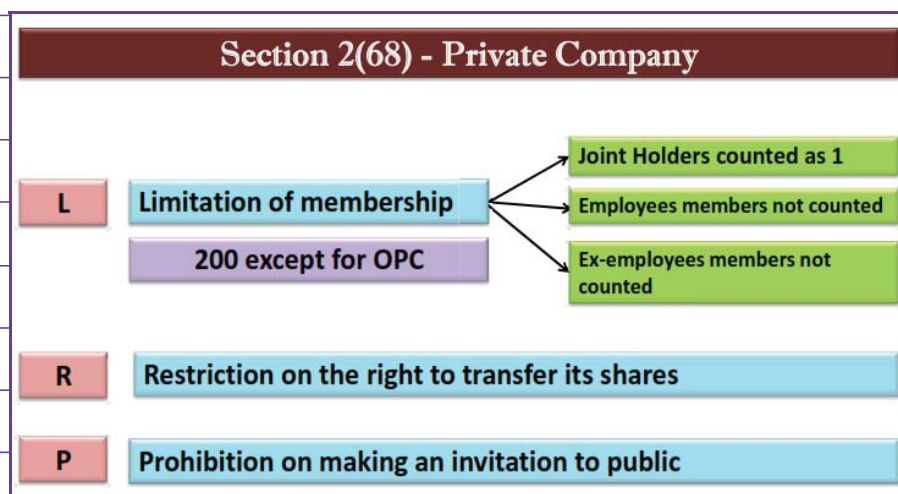
- Holding or a Subsidiary company



(c) **Public company [Section 2(71)]:** "Public company" means a company which—

- (i) is not a private company; and
- (ii) has a minimum paid-up share capital, as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles;



Public company - significant points

- Is not a private company (Articles do not have the restricting clauses).
- Shares freely transferable.

- No minimum paid up capital requirement.
- Minimum number of members - 7.
- Maximum numbers of members - No limit.
- Subsidiary of a public company is deemed to be a public company.

According to section 3(1)(a), a company may be formed for any lawful purpose by seven or more persons, where the company to be formed is to be a public company.

3. On the basis of control:

(a) Holding and subsidiary companies : 'Holding and subsidiary' companies are relative terms.

A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies. [Section 2(46)]

For the purposes of this clause, the expression "company" includes any body corporate.

Whereas section 2(87) defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

For the purposes of this section —

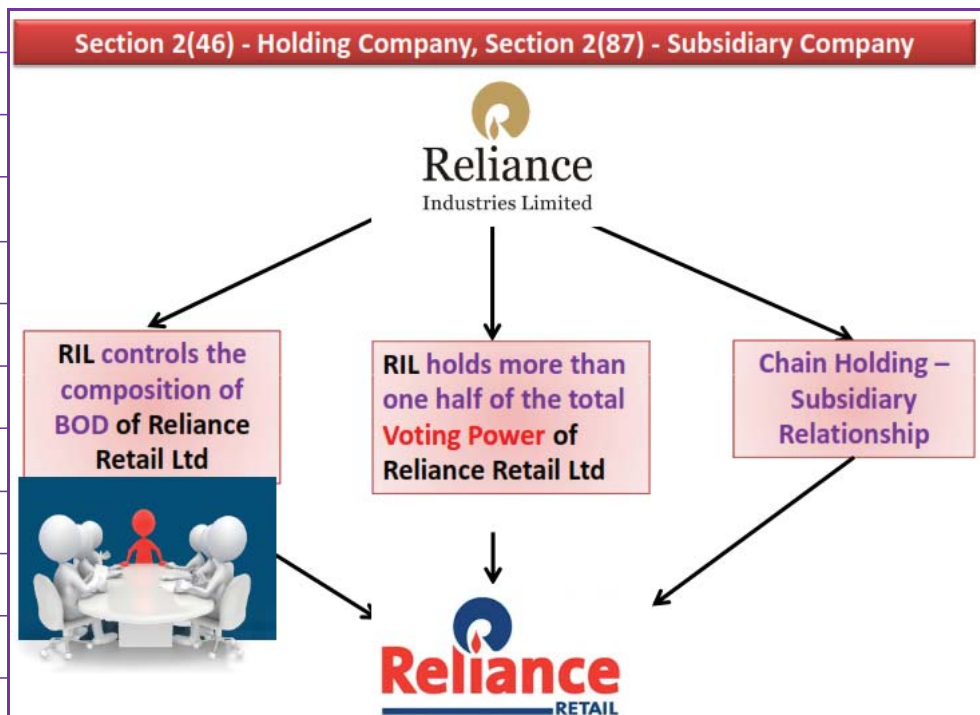
- (I) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (II) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (III) the expression "company" includes any body corporate;
- (IV) "layer" in relation to a holding company means its subsidiary or subsidiaries.

Example 2 : A will be subsidiary of B, if B controls the composition of the Board of Directors of A, i.e., if B can, without the consent or approval of any other person, appoint or remove a majority of directors of A.

Example 3 : A will be subsidiary of B, if B holds more than 50% of the share capital of A.

Example 4: B is a subsidiary of A and C is a subsidiary of B. In such a case, C will be the subsidiary of A. In the like manner, if D is a subsidiary of C, D will be subsidiary of B as well as of A and so on.

Status of private company, which is subsidiary to public company : In view of Section 2(71) of the Companies Act, 2013 a Private company, which is subsidiary of a public company shall be deemed to be public company for the purpose of this Act, even where such subsidiary company continues to be a private company in its articles.



(b) Associate company [Section 2(6)] : In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation. — For the purpose of this clause —

(a) the expression "significant influence" means control of at least twenty percent of total voting power, or control of or participation in business decisions under an agreement;

(b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

4. On the basis of access to capital :

(a) Listed company : As per the definition given in the section 2(52) of the Companies Act, 2013, it is a company which has any of its securities listed on any recognised stock exchange.

Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

Example 5 : Scan Steel Rods Limited is a Public Limited Company whose shares are listed in the Stock Exchange, Kolkata. Hence Scan Steel Rods Limited is a Listed Company. The reason for calling it "Listed" is because the company and the Stock Exchange have signed a Listing Agreement for trading of shares in the capital market.

(b) Unlisted company means company other than listed company.

5. Other companies :

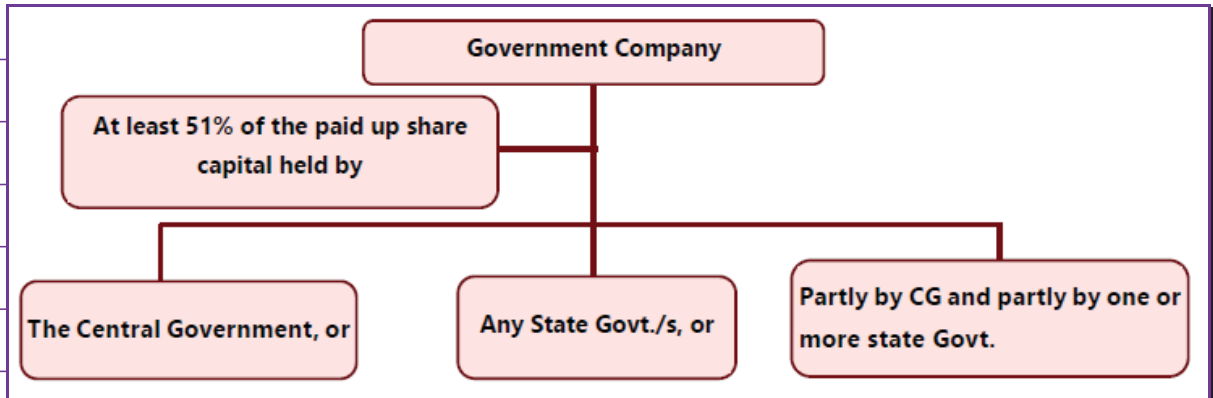
(a) Government company [Section 2(45)] : Government Company means any company in which not less than 51% of the paid-up share capital is held by-

(i) the Central Government, or

(ii) by any State Government or Governments, or

(iii) partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company.

Explanation : For the purposes of this clause, the "paid up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued.



(b) Foreign Company [Section 2(42)]: It means any company or body corporate incorporated outside India which :

- (i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (ii) conducts any business activity in India in any other manner.

(c) Formation of companies with charitable objects etc. (Section 8 company) :

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to

- promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
- Such company intends to apply its profit in
- promoting its objects and
- prohibiting the payment of any dividend to its members.

Examples of section 8 companies are FICCI, ASSOCHAM, National Sports Club of India, CII etc.

Power of Central government to issue the license–

- (i) Section 8 allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name, by issuing licence on such conditions as it deems fit.
- (ii) The registrar shall on application register such person or association of persons as a company under this section.
- (iii) On registration the company shall enjoy same privileges and obligations as of a limited company.

Revocation of license : The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

Order of the Central Government : Where a licence is revoked then the Central Government may, in the public interest order that the company registered under this section should be amalgamated with another company registered under this section having similar objects, to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order, or the company be wound up.

Penalty/punishment in contravention: If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees.

Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

Section 8 Company- Significant points

- Formed for the promotion of commerce, art, science, religion, charity, protection of environment, sports, etc.
- Requirement of minimum share capital does not apply.
- Uses its profits for the promotion of the objective for which it is formed.
- Does not declare dividend to members.
- Operates under a special licence from Central Government.

■	Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.
■	Licence revoked if conditions contravened.
■	On revocation, Central Government may direct it to <ul style="list-style-type: none"> ■ - Converts its status and change its name ■ - Wind - up ■ - Amalgamate with another company having similar object.
■	Can call its general meeting by giving a clear 14 days' notice instead of 21 days.
■	Requirement of minimum number of directors, independent directors etc. does not apply.
■	Need not constitute Nomination and Remuneration Committee and Shareholders Relationship Committee.
■	A partnership firm can be a member of Section 8 company.

Formation

- To promote Charitable objects

Application of profits

- To promote its objects
- No payment of dividends out of profits

Type of Co.

- Limited Liability
- Without the addition of words "Ltd" or "Pvt Ltd."

How status is granted

- The CG can grant such status
- However, CG has delegated the power to grant licence to ROC

Revocation of licence

- CG may revoke licence
- If conditions of section 8 are contravened, or
- affairs of the company are conducted fraudulently, or prejudicial to public interest

Effect of revocation of licence

- Co has to use words "Ltd." or "Pvt Ltd."

(d) **Dormant company (Section 455)** : Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

“Inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.

“Significant accounting transaction” means any transaction other than—

- (i) payment of fees by a company to the Registrar;
- (ii) payments made by it to fulfil the requirements of this Act or any other law;
- (iii) allotment of shares to fulfil the requirements of this Act; and
- (iv) payments for maintenance of its office and records.

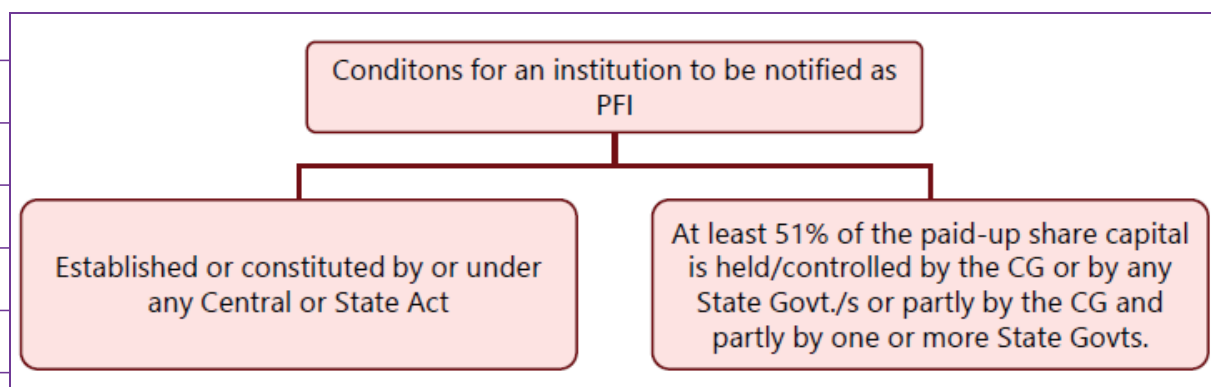
(e) **Meaning of Nidhi Companies [Section 406(1) of the Companies Act, 2013]**: In this section, “Nidhi” or “Mutual Benefit Society” means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be. Nidhi Companies are created mainly for cultivating the habit of thrift and savings amongst its members.

(f) **Public Financial Institutions (PFI)**: By virtue of Section 2(72) of the Companies Act, 2013, the following institutions are to be regarded as public financial institutions:

- (i) the Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;
- (ii) the Infrastructure Development Finance Company Limited,
- (iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;
- (iv) institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act;
- (v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Conditions for an institution to be notified as PFI: No institution shall be so notified unless—

- (A) it has been established or constituted by or under any Central or State Act other than this Act or the previous Companies Law; or
- (B) not less than fifty-one per cent of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.



6.4 **MODE OF REGISTRATION/INCORPORATION OF COMPANY**

PROMOTERS: The Companies Act, 2013 defines the term "Promoter" under section 2(69) which means a person—

- (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
- (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- (c) in accordance with whose advice, directions, or instructions the Board of Directors of the company is accustomed to act.

In simple terms we can say,

- Persons who form the company are known as promoters.
- It is they who conceive the idea of forming the company.
- They take all necessary steps for its registration.
- It should, however, be noted that persons acting only in a professional capacity e.g., the solicitor, banker, accountant etc. are not regarded as promoters.