

I

PRELIMINARY

1.1 Definition of Company

The term 'company' has been defined under Section 2(20) of the Companies Act, 2013. As per this, 'company' means a company incorporated under Companies Act, 2013 or under any of the previous laws relating to companies.



1.2 Formation of Company [Section 3]

A company may be formed for any lawful purpose by—

- (a) 7 or more persons, where the company to be formed is to be a public company;
- (b) 2 or more persons, where the company to be formed is to be a private company; or
- (c) 1 person, where the company to be formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

1.3 Act applicable to:

The provisions of this Act shall apply to—

1. Companies incorporated under this Act or under any previous company law.
2. Insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;
3. Banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;
4. Companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;
5. Any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act, and
6. Such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf. **Example:** Food Corporation of India (FCI), National Highway Authority of India (NHAI) etc.

1.4 Characteristics of Company

1. **Separate legal entity:** A company is an artificial person having a personality which is distinct from the members constituting it. Thus, a company has got an entity which is separate from its members.

2. **Limited liability:** A company limited by shares is a registered company having the liability of its members limited to the amount, if any, unpaid on the shares respectively held by them. If his shares are fully paid - up, he has nothing more to pay.
3. **Perpetual Succession:** An incorporated company never dies. Perpetual succession, therefore, means that the membership of a company may keep changing from time to time but does not affect its continuity.
4. **Separate Property:** No member can claim himself to be the owner of the company's properties either during its existence or in its winding up. A member does not even have an insurable interest in the property of the company.
5. **Transferability of Shares:** The capital of a company is divided into parts called shares. The shares are said to be movable property and subject to certain conditions, freely transferable for that. No shareholder is permanently or necessarily wedded to a company. It may be noted that this right of shareholder is restricted in the case of a private company.
6. **Common Seal:** Since a company has no physical existence, it must act through its agents. All the important documents of a company must be under the seal of the company. The common seal, thus, acts as the official signature of a company. The Companies (Amendment) Act, 2015 has made the common seal optional. The documents which need to be authenticated by a common seal will be required to be so done, only if the company opts 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.
7. **Capacity to sue and be sued:** A company, being a body corporate, can sue and be sued in its own name.
8. **Separate Management:** The members of a company may derive profits without being burdened with the management of the company. The company is administered and managed by its own managerial personnel.
9. **Voluntary Association for Profit:** A company is a voluntary association for profit. It is formed for the accomplishment of some public goals and whatsoever profit is gained is divided among its shareholders.

1.5 Is Company a Citizen?

Although, a company is regarded as a legal person (though artificial), it is not a citizen either under the Constitution of India or the Citizenship Act, 1955.

1.6 Does a Company have Nationality and Residence?

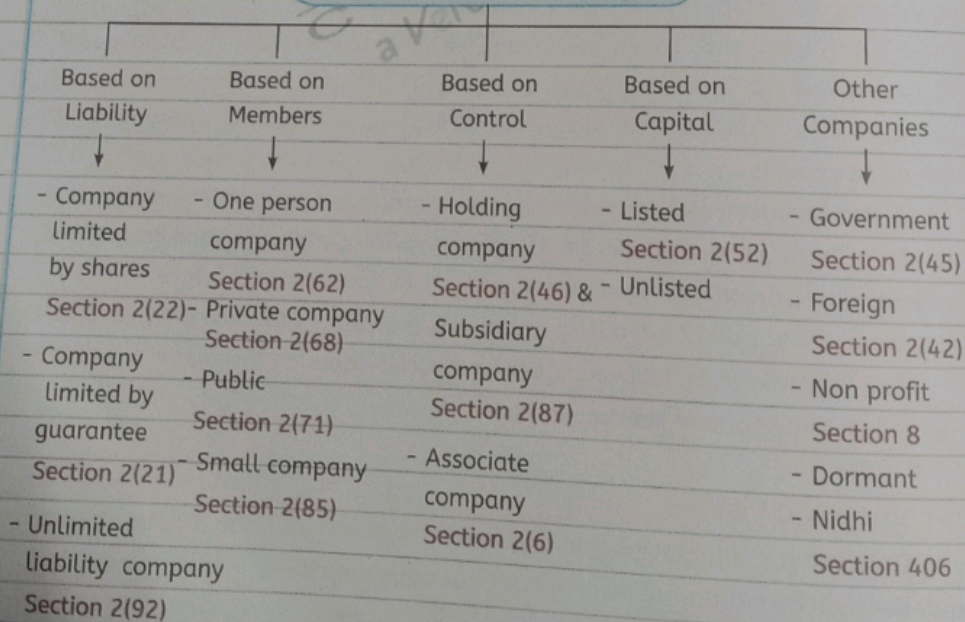
It is established through judicial decisions that a company cannot be a citizen, yet it has nationality, domicile and residence.

1.7 Lifting or Piercing the Corporate Veil

- Corporate veil: It refers to a separate legal existence enjoyed by the company which is distinct from people who own & manage it. It is an artificial curtain created by law which separates the company from the people who own and manage it.
- Effect of corporate veil: Only Company is liable for the acts/defaults done in name of company, even though directors/employees acted on behalf of company.
- Lifting of corporate 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 shall lift the corporate veil.

1.8 Classification of Company

CLASSIFICATION OF COMPANIES



A. BASED ON LIABILITY

1. **Company limited by shares:** As per Section 2(22), A company limited by shares is a registered company having the liability of its members limited to the amount, if any, unpaid on the shares respectively held by them. The unpaid amount can be called anytime. If his shares are fully paid - up, he has nothing more to pay.

2. **Company limited by guarantee:**
 - As per Section 2(21), a company limited by guarantee or a "guarantee company" is a company having the liability of its members limited to such an amount as the members may respectively thereby undertake, by the memorandum of association of the company, to contribute to the assets of the company in the event of its being wound up.
 - A special feature of this type of company is that the liability of members to pay their guaranteed amounts arises only when the company has gone into liquidation and not when it is a going concern.
 - Clubs, trade associations and societies for promoting different objects are examples of companies limited by guarantee.
 - A guarantee company without share capital does not obtain its initial and working funds, from its members, but from some other source or sources e.g. grants, endowments, fees, subscriptions and the like.
 - But a guarantee company having a share capital raises its initial capital from its members, while the normal working funds would be provided from other sources, such as fees, charges, subscriptions.

If a guarantee company has share capital, the shareholders have two-fold liability; to pay the amount which remains unpaid on their share whenever called upon to pay, and secondly, to pay the amount payable under the guarantee when the company goes into liquidation.

3. **Unlimited Company:**
 - As per Section 2(92), unlimited company is 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.
 - Thus, the maximum liability of the members of such a company could extend to their entire personal property to meet the debts and obligations of the company.

- The members of an unlimited company are not liable directly to the creditors of the company, unlike in the case of partners of a firm. The liability of the members is only towards the company, so long it is a going concern; and in the event of its being wound up, only the Liquidator can ask the members to contribute to the assets of the company.

B. BASED ON MEMBERS

1. Private Company:

- As per Section 2(68), private company is a company which by its articles,—
 - (i) Restricts the right to transfer its shares;
 - (ii) Limits the number of its members to two hundred (except in case of One Person Company):

The clause provides that where two or more persons hold one or more shares in a company jointly, they shall be treated as a single member:

However following shall not be included in the number of members:

- ◆ Persons who are in the employment of the company; and
- ◆ 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.

(iii) Prohibits any invitation to the public to subscribe for any securities of the company.

- There should be at least two persons to form a private company i.e., the minimum number of members in a private company is 2. A private company should have at least 2 directors. The name of a private limited company must end with the words "Private Limited".

2. Public Company:

- As per Section 2(71), public company is a company which—
 - ◆ is not a private company and
 - ◆ Seven or more members are required to form the company.
 - ◆ a private company which is a subsidiary of a public company shall also be deemed to be a public company for the purposes of this Act, even where such subsidiary company continues to be a private company in its articles (three restrictions).
- **Example:** A Pvt. Ltd. is wholly owned subsidiary of AB Ltd. A Pvt. Ltd. wanted to avail exemptions as provided to private companies. In this

case since A Pvt. Ltd. is subsidiary of AB Ltd., which is a public company, therefore A Pvt. Ltd. will be deemed to be a public company and will be not allowed to avail exemptions provided to a private company.

- There should be at least 7 persons to form a public company i.e., the minimum no. of members in a public company is 7. A public company should have at least 3 directors. The name of a public limited company must end with the word "Limited".

- Insertion of a new Section 3A as per Notification dated 3rd Jan, 2018:

If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than 6 months

while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those 6 months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued there for."

3. One Person Company:



- Definition: As per Section 2(62), one person company is a company which- One Person Company' means a company which has only one person as a member.

It is basically a private company with some unique features.

As regards the name of a One Person Company, the Act provides that the words "One Person Company" or 'OPC' shall be mentioned in brackets below the name of such Company, wherever its name is printed, affixed or engraved.

- Logic and Advantages of New Concept OPC: To encourage unorganized proprietorship business to enter into organized corporate world, the concept of "one person company" (OPC) was recommended by J.J. Irani Committee. As the name suggests, it means a company which has only one person as member. The concept is widely accepted in countries like China, Pakistan, Singapore, US. In the case of India, if you wish to set up a private company, minimum two shareholders are required. In many cases, because of this legal requirement a second shareholder is forcefully roped in. This second shareholder at times takes advantage of his position. Having recognized this problem the concept of OPC has been introduced.
- Relaxation for OPC:
 - a) An OPC is primarily a private company. However, certain provisions which are applicable to a private company will not apply to an OPC. For instance, only one director is sufficient (as against two in the case of private company).
 - b) OPC is not required to hold annual general meeting.
 - c) Information to be provided in the directors' report has been significantly reduced (as compared to a private company).
 - d) Annual return in other companies shall be signed by director and company secretary and in case of no company secretary by a practicing company secretary whereas in the case of OPC annual return shall be signed by company secretary and in case of his absence it will be signed by director of the company.
 - e) The requirement of a minimum number of Board meetings to be convened shall not apply to an OPC having one director. However, in case of OPC having more than one director, the OPC shall hold at least one meeting of the Board of directors in each half of calendar year and the gap between two meetings is not less than ninety days.
 - f) One Person Company need not have a Cash Flow Statement.
- Law with respect to formation of OPC provides that—
 - ✓ 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 Form No. INC-3.
- Who can form one person company?
 - ✓ Only a natural person, other than minor; who is an Indian citizen and whether resident in India or otherwise shall be eligible to incorporate

a One Person Company.

Resident in India means a person who has stayed in India for a period of not less than one hundred and twenty days during the immediately preceding financial year.

- Indicate Name & Consent Nominee

- ✓ The memorandum of One Person Company shall also indicate the name of the natural person, other than minor; who is an Indian citizen, whether resident in India or otherwise (as nominee), along with his prior written consent in the Form No. INC-3, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company.

Note: This provision is to ensure perpetual succession of legal existence of OPC.

- ✓ The name of such nominated person in Form No. INC-32 (SPICe) along with consent of such nominee obtained in Form No. INC-3 and fee as provided in the Companies (Registration offices and fees) Rules, 2014 shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles.
- ✓ Where a natural person, being member in One Person Company in accordance with this rule becomes a member in another such Company by virtue of his being a nominee in that One Person Company, such person shall meet the above specified criteria (can be member of only one OPC) within a period of one hundred and eighty days.

- Withdraw of Consent by Nominee

- ✓ Such other person (nominee) may withdraw his consent by giving a notice in writing to such sole member and to the One Person Company. In this case, the sole member shall nominate another person as nominee within fifteen days of the receipt of the notice of withdrawal and shall send an intimation of such nomination in writing to the Company, along with the written consent of such other person so nominated in Form No. INC-3.

- Replacing Nominee with another one

- ✓ The member may change the name of the person nominated by him at any time for any reason including in case of death or incapacity to contract of nominee and nominate another person (new nominee) after obtaining the prior consent of such other person in Form No.

- INC-3. Member can do so by intimation in writing to the company.
- ✓ This is not specified, either in Act or rules whether intimation shall be prior to making change or can be made afterward, but if we consider reasonable construction the intimation shall be 'Prior Intimation'.
 - ✓ Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- When Nominee become Member
 - ✓ Where the sole member ceases to be the member and nominee become new member, then such new member shall nominate within fifteen days of becoming member, a person (new nominee) who shall in the event of his death or his incapacity to contract become the member of such company.
 - Notice of change to Registrar
 - ✓ In all the three case of change discussed above (Withdraw of Consent by Nominee, Replacing Nominee with another one and When Nominee become Member) the company within thirty days of receipt of notice of withdrawal of consent by nominee, intimation of change of nominee from member, or cessation; shall file the notice with the Registrar of such withdrawal of consent, change or cessation respectively and intimate the name of such another person (new nominee) in Form No. INC-4 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 along with the prior written consent of such another person.
 - ✓ Only a natural person who is an Indian citizen and whether resident in India or otherwise (person who has stayed in India for a period of not less than 120 days during the immediately preceding one financial year)-
 - a) Shall be eligible to incorporate a OPC;
 - b) Shall be a nominee for the sole member of a OPC.
 - ✓ A natural person shall not be a member of more than a OPC at any point of time and the said person shall not be a nominee of more than a OPC.
 - ✓ 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. The procedure of conversion is given in the rules 6 & 7 of the Chapter II.

- ✓ Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.

Example 1: Rajesh has formed a 'One Person Company (OPC)' with his wife Roopali as nominee. For the last two years, his wife Roopali is suffering from terminal illness and due to this hard fact he wants to change her as nominee. He has a trusted and experienced friend Ramnivas who could be made nominee or his (Rajesh) son Rakshak who is of seventeen years of age. In the instant case, Rajesh can appoint his friend Ramnivas as nominee in his OPC and not Rakshak because Rakshak is a minor.

4. Small Company:

- Definition: As per Section 2(85), small company means a company, other than a public company,-

(i) Paid-up share capital of which does not exceed 4 crore 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 as per profit and loss account for the immediately preceding financial year does not exceed 40 crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

- Provided that nothing in this clause shall apply to-
 - (i) a holding company or a subsidiary company;
 - (ii) a company registered under section 8; or
 - (iii) a company or body corporate governed by any special Act.

It is basically a private company meeting prescribed threshold.

- Logic and Advantages of New Concept Small Company: The 2013 Act provides for a new entity in the form of Small Company, empowering the Central Government to provide for a simpler compliance regime for small companies.

Because of their size, they cannot be burdened with the same level of compliance requirements. The small companies have to be enabled to take quick decisions, be adaptable in the changing economic environment,

- yet be encouraged to comply with the essential requirements of the law through low cost of compliance cost.
- Following are some of the important relaxations provided to a small company:
 - (i) Financial statements of small company may not include the cash flow statement.
 - (ii) Small company shall be deemed to have complied with the provisions relating to Board meeting if at least one meeting of the Board of directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days.
 - (iii) Merger or amalgamations between two or more small companies have been simplified without the requirement of court process.

C. BASED ON CONTROL

1. Holding & Subsidiary Company

- As per Section 2(87) provides that a company shall be a subsidiary of another, if any of the following conditions are satisfied :-
 - (a) That other controls the composition of its Board of Directors;
For the purpose of clause (a) above, the control of the composition of the Board of directors of a company means that the holding company has power, at its discretion, to appoint or remove all or majority of the directors of the subsidiary company without the consent of the other persons.
 - (b) That other exercises or-controls more than one-half of the total voting power either on its own or together with one or more of its subsidiary companies; or
 - (c) The first-mentioned company is a subsidiary of any company which is that other's subsidiary.
- 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.
- It should be noted that holding and subsidiary companies are incorporated companies and each is a separate legal entity.
- For the purpose of this clause, the term 'company' includes any body corporate. Thus, holding and subsidiary relationship can be established between an Indian Company and a Foreign Company.

As per Section 2(46), 'Holding Company', in relation to one or more other companies, means a company of which such companies are 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.

Example 1: 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 2: A will be subsidiary of B, if B holds more than 50% of the share capital of A.

Example 3: B is a subsidiary of A and C is a subsidiary of B. In such a case, C will be the subsidiary of A.

Subsidiary company not to hold shares in its holding company: Section 19 deals with the restrictions on the subsidiary company with respect to holding of shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiaries companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Following are the exceptions -

- (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) where the subsidiary company holds such shares as a trustee; or
- (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

The subsidiary company referred to in the above exceptions shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee, as referred to in clause (a) or clause (b) of the said exceptions.

2. Associate company

- As per 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.
- The expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business

- decisions under an agreement;
- 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;
 - This is a new definition inserted in the 2013 Act.

D. BASED ON CAPITAL

1. Listed company:

As per the definition given in the Section 2(52), it is a company which has any of its securities listed on any recognised stock exchange.

Following classes of companies shall not be considered as listed companies, namely:-

- (a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –
 - (i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
 - (ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
 - (iii) both categories of (i) and (ii) above.
- (b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;
- (c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in section 23(3) of the Act.™

2. Unlisted company: Means a company other than listed company.

E. OTHER COMPANIES

1. Government Company

- As per Section 2(45), government company means any company in which not less than fifty- one per cent. 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
- "Paid-up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued.

Foreign Company

As per Section 2(42), foreign company means any company or body corporate incorporated outside India which-

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

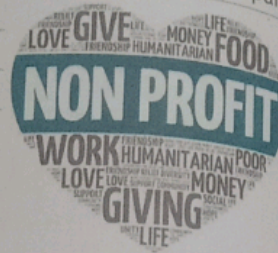
Note : Detailed explanation to be given under Chapter Companies Incorporated Outside India

Company not for profit/Non-Profit companies

- Object of formation of 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.
- Restrictions on such company:
 - Such company is prohibited from declaring any dividend to its members
 - Such company has to apply its surplus only in promoting its objects
- Power of Central government to issue the license :
 - ✓ This section 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. The registrar shall on application register such person or association of persons as a company under this section.
 - ✓ Central Government has delegated its powers to the ROC. The Central Government may revoke such delegation of powers or may itself exercise the powers & functions, if in its opinion, such course of action is necessary in the public interest.
- Privileges of Limited Company: On registration the company shall enjoy same privileges and obligations as of a limited company.
- A firm may be a member of the company registered under section 8.
- Alteration of Memorandum and Articles: A company registered under this section shall not alter the provisions of its memorandum or articles

except with the previous approval of the Central Government.

- Conversion into any other kind of Company: A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed. A company registered under section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion.
- A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.



- Application for registration

A person or an association of persons desirous of incorporating a company with limited liability under section 8(1), shall make an application to registrar in Form SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC- 32) along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

- Supporting document along with Application

The application furnished as specified above shall be accompanied by the following documents;

- a. The memorandum and articles of association of the proposed company in the Form No. INC-13 and Form No. INC-31, respectively;
- b. An estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;
- c. The declaration in by an Advocate, a Chartered Accountant, cost accountant or Company Secretary in practice Form No. INC-14 and by each of the persons making the application in Form No. INC-15, that;
 - the memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and
 - all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;

Conversion into any other kind of Company
A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed in rule 21 and 22 of the Companies (Incorporation) Rule 2014 as described below;

- a. A company shall pass a special resolution at a general meeting for approving such conversion
- b. An explanatory statement to notice of such general meeting must contain the details on reason of such conversion.
- c. The company shall file an application in Form No. INC-18 with the Regional Director with the fee along with a certified true copy of the special resolution and a copy of the Notice convening the meeting including the explanatory statement for approval for conversion. Also attach the proof of serving of the notice served by registered post or hand delivery, to:
 - the Chief Commissioner of Income Tax having jurisdiction over the company,
 - Income Tax Officer who has jurisdiction over the company,
 - the Charity Commissioner,
 - the Chief Secretary of the State in which the registered office of the company is situated,
 - any organisation or Department of the Central Government or State Government or other authority under whose jurisdiction the company has been operating.

Note: If any of these authorities wish to make any representation to Regional Director, it shall do so within sixty days of the receipt of the notice, after giving an opportunity to the Company.

- d. A copy of the application with annexures as filed with the Regional Director shall also be filed with the Registrar.
- e. The company shall, within a week from the date of submitting the application to the Regional Director, publish a notice at its own expense, and a copy of the notice, as published, shall be sent forthwith to the Regional Director and the said notice shall be in Form No. INC-19 and shall be published;
 - at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the

company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper and at least once in English language in that district; and having a wide circulation in that district; and

- on the website of the company, if any, and as may be notified or directed by the Central Government.

f. The company should have filed all its financial statements and Annual Returns upto the financial year preceding the submission of the application to the Regional Director and all other returns required to be filed under the Act up to the date of submitting the application to the Regional Director

Note: In the event the application is made after the expiry of three months from the date of preceding financial year to which the financial statement has been filed, a statement of the financial position duly certified by chartered accountant made up to a date not preceding thirty days of filing the application shall be attached.

9. On receipt of the application, and on being satisfied, the Regional Director shall issue an order approving the conversion of the company into a company of any other kind subject to such terms and conditions as may be imposed in the facts and circumstances of each case.

h. Before imposing the conditions or rejecting the application, the company shall be given a reasonable opportunity of being heard by the Regional Director

i. On receipt of the approval of the Regional Director, the company shall convene a general meeting of its members to pass a special resolution for amending its memorandum of association and articles of association and the Company shall thereafter file these with the Registrar (with declaration to adhere conditions if any, imposed by Regional Director)

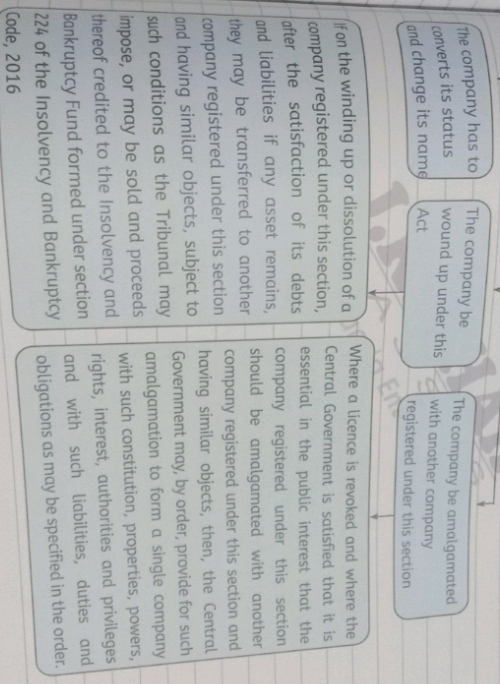
j. On receipt of the documents referred above, the Registrar shall register the documents and issue the Fresh Certificate of Incorporation.

- 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.

The Companies Act, 2013

- 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.
 - ✓ The Central Govt. has delegate to the Regional Directors, subject to the condition that the Central Govt. may revoke such delegation of powers or may itself exercise the powers & functions under this section if in its opinion, such course of action is necessary in the public interest.
 - ✓ Such order shall be made only after the company is given a reasonable opportunity of being heard
 - ✓ Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that:



if on the winding up or dissolution of a company registered under this section, after the satisfaction of its debts and liabilities if any asset remains, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016

Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, the Central Government may, by order, provide for such amalgamation 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.

- 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, be punishable with
 Fine: Minimum ₹10 lakhs upto ₹1 crore

and

The directors and every officer of the company who is in default shall be punishable with:

Fine: Minimum ₹25000 upto ₹25 lakhs rupees,

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

- Exceptions :

- ✓ 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.

4. Dormant company:

- 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.
- "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.

5. Nidhi company:

As per Section 406, a company which has been incorporated as a nidhi with the object of cultivating the habit of thrift (cost cutting) and savings amongst its members, receiving deposits from, and lending to, its members only, for their

mutual benefits and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

6. Public financial institutions

As per Section 2(72), 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;

Provided that 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 company 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

1.9 Conversions of Companies

- Private company into Public Company and vice versa (section 18)

Conversion of a Private Company into a Public Company:

1. Pass special resolution for alteration of its articles thereby deleting the three restrictions of a private company
2. Pass special resolution for alteration of its memorandum for changing its name thereby deleting the word 'private' from its name
3. File following documents with ROC within 15 days:
 - (i) Copy of altered Articles
 - (ii) Copy of altered Memorandum
4. File copy of the special resolution with the Registrar of Companies within 30 days from the date of passing such resolution in Form No. MGT. 14.
5. The Registrar of Companies shall register and issue fresh certificate of incorporation
6. Further, if the number of members is below 7, steps should be taken to increase the number of members to atleast 7 and that the number of directors should be increased to atleast 3, if they are only 2 directors.

Conversion of a Public Company into a Private Company:

1. Pass special resolution for alteration of its articles thereby adding the three restrictions of a private company + Obtain Central Government (CG) Approval
2. Pass special resolution for alteration of its memorandum for changing its name thereby adding the word 'private' from its name
3. File following documents with ROC:
 - (i) Copy of altered Articles
 - (ii) Copy of altered Memorandum
 - (iii) Copy of CG Approval
4. File copy of the special resolution with the Registrar of Companies within 30 days from the date of passing such resolution in Form No. MGT. 14.
5. Registrar of Companies shall register and issue fresh certificate of incorporation
6. Further, if the number of members exceeds 200 then steps should be taken to reduce the number of members to 200.

Conversion Of OPC To Private/ Public Company (Section 18)

1. OPC can get itself converted into a Private or Public company after increasing the minimum number of members to 2/7 and directors to 2/3 as the case may be.
2. Pass resolutions for alteration of memorandum and articles
3. File an application to the Registrar
4. The Registrar, who shall after satisfying himself that the provisions applicable for registration of companies have been complied with, close the former registration of the company and issue fresh certificate of incorporation

Conversion of Private Company to OPC (Section 18)

1. A private company other than a company registered under section 8 (non-profit company) of the Act may convert itself into one person company by passing a special resolution in the general meeting.
2. Obtain No objection in writing from members and creditors.
3. File copy of the special resolution with the Registrar of Companies within 30 days from the date of passing such resolution in Form No. MGT. 14.
4. The company shall file an application in Form No. INC.6 for its conversion into One Person Company along with fees as provided in the Companies (Registration offices and fees) Rules, 2014, by attaching the following documents, namely:-
 - The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and Creditors of the company have given their consent for conversion,
 - The list of members and list of creditors;
 - The latest Audited Balance Sheet and the Profit and Loss Account; and
 - The copy of No Objection letter of secured creditors.
5. On being satisfied and complied with requirements stated herein the Registrar shall issue the Revised Certificate of Incorporation, mentioning that now it has become a One Person Company.

List of Sections

SR. NO	SECTION NUMBER	NAME OF SECTION	PAGE NUMBER (To be filled by students)
1.1	2(20)	Definition of company	
1.2	3	Formation of Company	
1.3		Applicability of the Act	
1.4	-	Characteristics of company	
1.5	-	Company's Citizenship	
1.6		Company's Nationality & Residence	
1.7	-	Lifting/Piercing the corporate veil	
1.8		Classification of Companies	
	2(22)	Company limited by shares	
	2(21)	Company limited by guarantee	
	2(92)	Unlimited company	
	2(68)	Private company	
	2(71)	Public company	
	3A	Effects of number of members falling below minimum	
	2(62)	One Person Company	
	2(85)	Small Company	
	2(87)	Subsidiary Company	
	2(46)	Holding Company	
	19	Restriction on Subsidiary company to be a member of Holding Company	
	2(6)	Associate Company	
	2(52)	Listed Company	
	2(45)	Government Company	
	2(42)	Foreign Company	
	8	Non-Profit Company	
	406	Nidhi Company	
	2(72)	Public Financial Institutions	
1.9	18	Conversion of Companies	
		Private company into Public Company and vice versa	
		Conversion Of OPC To Private/ Public Company	
		Conversion of Private Company to OPC	

SUMMARY

1. Meaning of Company. Association of persons contributing money to a common stock and employ it in business and share the profit, thereof.
2. Definition – Company: Company means a Company incorporated under this Act or any previous Company Law.
3. Characteristics of Company: Artificial Person, Separate Legal Entity, Perpetual Succession, Separate Property, Common Seal (if any), Capacity to Sue, Transferability of Shares, Management, Limitation of Action, Limited Liability
4. Lifting of Corporate Veil - “Veil of Incorporation”: Principle: Company is distinctly separate from its Members. Where there is a dishonest and fraudulent intention to utilise the facility of incorporation the law can remove the Corporate Veil and identify the persons behind the Company Fraud, hold such persons personally liable.
5. Lifting of Corporate Veil under Statutory Provision
 - Mis-statement in Prospectus
 - Failure to Refund Application Money
 - Fraud with respect to Deposits
 - Holding - Subsidiary Co.
 - Protection of revenue
 - Investigation of Ownership
 - Fraudulent Conduct
 - Liability under other Statues
 - Ultra Vires Acts
6. Kinds of Company: Incorporation - (a) Chartered Companies; (b) Statutory Companies; (c) Registered Companies
 - Ownership - (a) Government Companies (b) Registered Companies
 - Membership - (a) Public; (b) Private; (c) One Person Company
 - Control - (a) Holding; (b) Subsidiary; (c) Associate Company
 - Liability - (a) Limited by shares / guarantee; (b) Unlimited Companies
 - Share Capital - (a) With Capital; (b) Without Share Capital
 - Others - (a) Foreign Companies; (b) Listed Companies; (c) Non - Profit Association; (d) Small Company

7. **Public Financial Institution:** The following are PFI's: LIC; IDFC; UTI; institution already notified companies act 1956; institution notified by CG in consultation with RBI. Any Other institution can be notified by CG after consulting RBI, if any of the following conditions are satisfied - (a) Established under Central or State Act or (b) not less than 51% of paid up capital is held or controlled by CG or SG or partly by CG and partly by SG.
8. **Government Company:** Any Company in which not less than 51% of the paid-up share capital held by CG or SG or partly by CG and partly by SG. It includes Subsidiary of Government Company.
9. **Holding Company:** Deemed to be the Holding Company if other Company is its Subsidiary.
10. **Subsidiary Company:** Deemed to be subsidiary (S) of Holding (H) - (a) H Controls the composition of Board of Directors of S, (b) H exercises or controls more than 50% of the Total Voting right (together with all its subsidiary), (c) Subsidiary's Subsidiary (SS) (deemed to be subsidiary of Holding)
 Subsidiary Company not to hold shares in its Holding Company. EXCEPTION(S.19)
- Subsidiary company acting as a trustee
 - Subsidiary company holds share, prior to holding subsidiary relationship.
 - It acts as legal representative of a deceased member of its holding Company.
11. **Associate Company:** Company in which, other Company has significant influence i.e. control of at least 20% of Total Voting right or of business decision under an agreement
12. **Liability of Companies:**
 Limited by Share - Liable only for the amount unpaid on Shares
 Limited by Guarantee - Liability only for amount undertaken in MOA
 Unlimited Company - Liability extends to the entire debt of the Company, in the ratio of their interest in the Company.
13. **Foreign Company:** Company or body corporate incorporated outside India having place of business in India has having business activity in India.

14. Listed Company: Company, any of its securities listed in a Recognized Stock Exchange.

15. Small Company

- Company other than Public Company
- Paid-up share Capital does not exceed 4 Crores or higher prescribed amount (which shall not exceed 10 Crores), and
- Turnover as per its last P&L not exceed 40 Crores or higher prescribed amount (which shall not exceed 100 Crores)
- Not applicable for company which is a holding, subsidiary, NPO, governed under special Act

16. Private Company:

- (a) Minimum Paid-Up Capital - Prescribed Amount.
- (b) Restriction in AOA: Right to transfer its shares / number of members to 200 (excluding present and past employee members)
- (c) Prohibition in AOA: Invitation to public for subscription of Securities of the Company

18. Public Company:

- (a) Not a private company (Not subject to restrictions / prohibitions)
- (b) Minimum Paid-Up Capital - Prescribed Amount.
- (c) It includes a Private Company which is a subsidiary of a Public Company.

19. One Person Company

- (a) Formed by one person subscribing his name to MOA
- (b) One person shall appoint a nominee
- (c) Qualification for Member / Nominee: Natural Person, Indian Citizen, resident in India, Not a Minor.
- (d) One Person = One OPC / Nominee in 1 OPC
- (e) Nominee becomes member, pursuant to death or incapacity, intimation to ROC.
- (g) Nominee Details to be furnished in respective form.
- (h) Prior consent of nominee required.

10 Conversion of Private to Public company.

SR + intimate ROC in prescribed manner within 15 days + follow the provision of

Public Company

- 11 Conversion of Public to Private Company:
SR + Approval from CG (RD) + Intimate ROC within 15 days of approval in prescribed
manner + follow 2(68) provision.