

1) M Ltd. is a large corporate group. The following complex structure exists among various companies:

(1) PQR Ltd. (Target Company)

- Total Directors on Board → 10
- As per Articles:
  - Alpha Ltd. can appoint 4 directors
  - Beta Ltd. can appoint 2 directors
  - Remaining 4 directors are to be elected in the AGM

(2) Shareholding and Voting Pattern in PQR Ltd.

PQR Ltd. has the following capital:

- 1,00,000 Equity Shares → 1 vote each
- 50,000 Preference Shares → each preference share carries 1 vote on poll (Sec. 47(2))

Shareholding:

Company	Equity	Preference	Total Votes
Alpha Ltd.	18,000	6,000	24,000
Beta Ltd.	22,000	4,000	26,000
Public	60,000	40,000	1,00,000

Alpha holds 18% equity, 12% preference, combined 16% voting power.

Alpha Ltd. (which has right to appoint 4 directors in PQR) is a subsidiary of C Ltd. (because C Ltd. controls 60% voting power in Alpha Ltd.).

Based on the above facts:

(A)

Whether Alpha Ltd. becomes the Holding Company of PQR Ltd., considering:

1. Its contractual right to appoint 4 out of 10 directors, and
2. Its 16% combined voting power (Equity + Preference).

(B)

Would your answer change if Alpha Ltd. had the contractual right to appoint 6 out of 10 directors in PQR Ltd.?

**PART (A) – Is Alpha Ltd. a Holding Company of PQR Ltd.?**

**Relevant Law: Section 2(87) (Subsidiary) & Section 2(46) (Holding)**

**A company becomes a Holding Company only if it:**

1. Controls the composition of the Board of Directors, OR
2. Exercises or controls >50% of the total voting power.

**Test 1 — Control of Board Composition**

- Total directors = 10
- Majority = 6 directors
- Alpha Ltd. can appoint only 4 directors

Since Alpha does not appoint majority:

Alpha does NOT control the Board composition.

**Test 2 — Control of Voting Power (Equity + Preference)**

**Voting computation:**

- Equity votes = 18,000
- Preference votes on poll = 6,000
- Total votes = 24,000 out of 1,50,000 votes

Voting power =  $24,000 \div 1,50,000 \times 100 = 16\%$

Threshold = more than 50%

Alpha holds only 16% voting power → NOT enough.

**Conclusion (A):**

✓ Alpha Ltd. is NOT the Holding Company of PQR Ltd.

**PART (B) – If Alpha can appoint 6 out of 10 directors**

If Alpha Ltd. gets contractual right to appoint 6 directors out of 10, then:

- It now controls majority of Board
- Control test is fully satisfied, regardless of low voting power
- Under Sec. 2(87), control of Board alone is sufficient Alpha Ltd. WOULD become the Holding Company of PQR Ltd.

Q2) XYZ is a company incorporated under the Companies Act, 2013.

The paid up share capital of the company is held by others as on 31.03.2024 in as under:

- (1) Government of India 20%
- (2) Life Insurance Corporation of India (Public Institution) 8%
- (3) Government of Tamil Nadu 10%
- (4) Government of Rajasthan 10%
- (5) ABC Limited (owned by Government Company) 15%

As per above shareholding, state whether XYZ limited be called a Government Company under the provisions of the Companies Act, 2013. (4 Marks)

What will be your Answer if ABC Limited (owned by Government Company) hold 50.90% Holding? (2 Marks)

2)

**Under the Companies Act, 2013, a Government company is defined in Section 2(45) as a company in which not**

**less than 51% of the paid-up share capital is held by:**

- ☒ **The Central Government, or**
- ☒ **Any State Government or Governments, or**
- ☒ **Partly by the Central Government and partly by one or more State Governments,**

**And includes a company which is a subsidiary company of such a Government company.**

**In the instant case, total Government Shareholding is 40% [i.e. 20% (Government of India) + 10%**

**(Government of Tamil Nadu) + 10% (Government of Rajasthan)] = 40%**

**The holding of the Life Insurance Corporation of India i.e. 8% and ABC Limited i.e. 15%, total amounting to 23%**

**cannot be taken into account while counting the prescribed limit of 51%.**

**Since the total shareholding held by the Central Government and State Governments combined is 40%, which is**

**less than 51%, XYZ Limited does not qualify to be a Government company under the provisions of the**

**Companies Act, 2013.**

**B) Yes - Gov Company - Subsidiary of Gov Co**

Q3) Q. Xeon Ltd.'s Memorandum of Association authorizes it to borrow up to ₹ 100 Crores for its core business of infrastructure development. The Board of Directors, under its Articles of Association, can borrow up to ₹ 50 Crores without shareholder approval.

The company took the following loans:

1. Loan A: ₹ 60 Crores from Apex Bank for building a highway. This was approved by a shareholder resolution.
2. Loan B: ₹ 40 Crores from BizFunds LLP (a private lender) to pay outstanding wages and utility bills. This was approved only by the Board.
3. Loan C: ₹ 15 Crores from Mr. Sharma (an individual investor) to invest in the stock market, a activity explicitly prohibited by Xeon Ltd.'s MOA. This was also approved by the Board.

Xeon Ltd. utilized the loans as follows:

- Loan A (₹60Cr): Fully used for the highway project.
- Loan B (₹40Cr): ₹ 35 Crores was used to pay wages and bills. The remaining ₹ 5 Crores was transferred to the personal account of its Managing Director, who has since absconded.
- Loan C (₹15Cr): The entire amount was lost in trading losses.

The company is now in financial distress and refuses to repay any of the loans, citing the following reasons:

- For Loan A: It claims the shareholder resolution was passed without a proper quorum.
- For Loan B: It claims the loan was ultra vires the Board's powers and the funds were misappropriated.
- For Loan C: It claims the loan was ultra vires the company's objects.

In light of the doctrines of Ultra Vires and Constructive Notice, and the provisions of the Indian Contract Act, 1872, examine the liability of Xeon Ltd. towards each lender. What remedies are available to the lenders?

(6 Marks)

3)

1. Liability towards Apex Bank (Loan A - ₹60 Cr):

- Liability: YES. The loan is for an intra vires object (infrastructure). The shareholder resolution, even with a quorum defect, is an internal irregularity. Apex Bank is protected by the Doctrine of Indoor Management (Turquand's Rule) and can assume all internal procedures were followed. The company is fully liable to repay ₹60 Cr.

2. Liability towards BizFunds LLP (Loan B - ₹40 Cr):

- Liability: PARTIAL. The purpose (paying wages) is intra vires the company. The loan is ultra vires the Board's power but intra vires the company's objects.
  - For ₹35 Cr (used for wages): The company is liable under the doctrine of restitution; it cannot unjustly enrich itself by using borrowed funds to pay its lawful debts.
  - For ₹5 Cr (misappropriated): The company is not liable. Since the company itself did not benefit from these funds, BizFunds' remedy is against the Managing Director for fraud, not against the company.

3. Liability towards Mr. Sharma (Loan C - ₹15 Cr):

- Liability: NO. The loan is ultra vires the company's objects (expressly prohibited by the MOA). An ultra vires contract is void. The doctrine of indoor management does not apply to acts that are wholly outside the company's objects.
- Remedy: Mr. Sharma cannot sue on the contract. His only remedy is to trace his money and seek an injunction if the company still holds it, which it does not. He bears the loss.

4) Justice Private Limited has 9 directors on its Board of Directors. The company's Articles of Association currently state that the quorum for board meetings shall be 1/3rd of the total strength or 2 directors, whichever is higher. The company now intends to amend this article to specify that the quorum for board meetings shall be 1/3rd of the total strength or 4 directors, whichever is higher. Advise the company on the procedure for including this entrenchment provision in its Articles, in accordance with the provisions of the Companies Act, 2013. Would your advice differ if the company were a public company? (3 Marks)

4) Section 5(4) and (5) of the Companies Act, 2013 contains the following provisions:

**Manner of inclusion of the entrenchment provision:** The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

**Notice to the registrar of the entrenchment provision:** Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

In the instant case, Justice Private Limited can follow the above procedure i.e. with the consent of all the members and notice to the registrar to include the entrenchment provision in its Articles.

Yes, the advice will differ, if the company is a public company, since it has to pass a Special Resolution and also inform to the registrar.

5) Mr. Aarav, a resident of India, incorporates Aarav Innovations OPC Pvt. Ltd. on 1 June 2024.

The following events occur over the next two years:

1. The paid-up share capital reaches ₹60 lakhs and average annual turnover becomes ₹2.5 crores in FY 2025–26.
2. Aarav wants to convert the OPC into:
  - (i) a Private Company,
  - (ii) a Public Company,
3. During this period, Aarav shifts abroad for work
4. He wishes to transfer all shares of the OPC to his minor son, who has a legal guardian.
5. Separately, another company, TechFlow Pvt. Ltd., is interested in converting itself into an OPC and wants Aarav Innovations OPC to acquire 100% of its shares after conversion.

**Mr Aarav need the following advice!**

1. Is conversion of Aarav Innovations into a Private Company, Public Company ?
2. Is transfer of OPC shares to a minor permissible?
3. Can TechFlow Pvt. Ltd. convert into an OPC even though it wishes to be owned 100% by Aarav Innovations OPC?

**5) OPC → Private Co**

✓ Yes

**Voluntary conversion allowed anytime**

**OPC → Public Co**

✓ Yes

**Minor as member/ nominee**

✗ No

**Minor cannot be member/nominee of OPC**

**Company converting into OPC when OPC will hold 100%**

✗ No

**Sole member must be natural person**

6) ) Jagannath Oils Limited is a public company and having 220 members. Of which 25 members were employed in the company during the period 1st April 2006 to 28th June 2016. They were allotted shares in Jagannath Oils Limited first time on 1st July 2007 which were sold by them on 1st August 2016. After some time, on 1st December 2016, each of those 25 members acquired shares in Jagannath Oils Limited which they are holding till date. Now the company wants to convert itself into a private company. State with reasons: (a) Whether Jagannath Oils Limited is required to reduce the number of members. (b) Would your answer be different, if above 25 members were the employee in Jagannath Oils Limited for the period from 1st April 2006 to 28th June 2017? (7 Marks)

6)  
According to Section 2(68) of the Companies Act, 2013, “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;  
(a) Following the provisions of Section 2(68), 25 members were employees of the company but not during present membership which was started from 1st December 2016 i.e. after the date on which these 25 members were ceased to be employee in Jagannath Oils Limited. Hence, they will be considered as members for the purpose of the limit of 200 members. The company is required to reduce the number of members before converting it into a private company.  
(b) On the other hand, if those 25 members ceased to be an employee on 28th June 2017, they were employee at the time of getting present membership. Hence, they will not be counted as members for the purpose of the limit of 200 members and the total number of members for the purpose of this sub-section will be 195. Therefore, Jagannath Oils Limited is not required to reduce the number of members before converting it into a private company