

**UNIT- 1****INTRODUCTION TO COMPANY****SYLLABUS**

**Introduction - Meaning and Definition Features- Highlights of Companies Act 2013- Kinds of Companies - One Person Company - Private Company - Public Company - Company Limited by Guarantee- Company Limited by Shares -Holding Company - Subsidiary Company-Government Company-Associate Company-Small Company- Foreign Company -Global Company-Body Corporate-Listed Company**

**INTRODUCTION**

The word 'Company' is an amalgamation of the Latin word 'Com' meaning "with or together" and 'Pains' meaning "bread". Originally, it referred to a group of persons who took their meals together. A company is nothing but a group of persons who have come together or who have contributed money for some common person and who have incorporated themselves into a distinct legal entity in the form of a company for that purpose.

Company is voluntary association of persons formed for the purpose of doing business having distinct name and limited liability.

It is an association or collection of individual real persons and/or other companies, who provide some form of capital. This group has a common purpose or focus and an aim of gaining profits.

**MEANING OF COMPANY:**

A company is a legal entity formed by a group of individuals or shareholders who come together to engage in business activities. The primary purpose of a company is to conduct business, generate profits, and provide goods or services to customers.

Companies can take various legal forms, such as corporations, partnerships, or sole proprietorships, depending on the jurisdiction and the preferences of the founders. Each type of company has its own characteristics and legal obligations.

**DEFINITION OF COMPANY:**

**According to Section 2(20) of the Companies Act, 2013** provides that "company means a company incorporated under this Act or under any previous company law."

**According to Lord Justice Lindley**, "A company is an association of many persons, who contribute money or money's worth, to a common stock and, employed for a common purpose The common stock so contributed is

denoted in money and is capital of the company. The persons who contribute it or to whom it belongs are members. The proportion of capital to which each member is entitled is his

share. Shares are always transferable although the right to transfer is often more or less restricted."

### **CHARACTERISTICS OF A COMPANY**

The main characteristics of a company include:

1. **Incorporated Association**: A company comes into existence on incorporation or registration under the Companies Act. A joint stock company may be incorporated under the Act either as a **private** or a **public company**. Minimum number of persons required for the purpose of incorporation is seven in the case of a public company and two in the case of a private company. However, Section 3 of the Company Act, 2013 permits formation of "**One Person Company**" also.
2. **Separate Legal entity**: The main feature of a company is its independent corporate existence. A company formed and registered under the Companies Act is a distinct legal entity. A company is considered a separate legal entity from its owners. It can enter into contracts, own assets, and be held liable for its debts and obligations.
3. **Limited liability**: In many cases, the liability of the shareholders or owners is limited to the amount they have invested in the company. This means that their personal assets are generally protected from the company's debts and losses.  
 "**Limited Liability**" means "**you have to pay as much as you have agreed to pay.**"  
 "**Unlimited Liability**" means "**you have to pay as much as you Owe.**"
4. **Separate property**. Another characteristic of the company capable is that enjoying and disposing of property in its own name. It is a consequence of the fact that the company legal person. The property of the company will not be considered as the joint property of the members constituting the company, although the capital and assets of the company are contributed by members. Member does not even have an insurable interest in the property of the company.
5. **Perpetual succession**: Unlike a natural person a company never dies. Under Section 9 of the Companies Act, 2013. It is an entity with a perpetual succession. This means that the company being an entity separate and distinct from its shareholders, the life of a company is not measured by the life of any member; it is independent of the lives of its members. The death or insolvency of a member does not affect the corporate existence of the company. A company is an immortal person. Members may come and members may go, but the company continues its operations unless it is wound up
6. **Transferability of shares**. Under **Section 56 of the Companies Act, 2013**. The shares of a company are freely transferable and can be sold or purchased in the share market. This is one of the reasons why people prefer to form companies than partnerships. A shareholder is therefore not permanently wedded to a company.  
**Section 44 of the Companies Act, 2013** provides that, "the shares, debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company." A shareholder can transfer his securities to any person without the consent of other members. In a private company, there are certain restrictions and not prohibition on transfer of securities.
7. **Common seal**: As a company is an artificial person it cannot sign its name on a contract. So, it functions with the help of a seal. Common seal is used as a substitute for its signature. Every company must have a seal with its name engraved on it. A rubber stamp does not

serve the purpose. Anything done under an agreement between the company and the third party requires recognition of the company in the form of an official seal unless exempted by the Act. A document not bearing the common seal of the company is not authentic and as such is not binding on the company.

8. **Ownership and governance:** Companies have shareholders or owners who hold shares or equity in the company. Shareholders appoint a board of directors to oversee the company's operations and make key decisions on their behalf.
9. **Profit motive:** Companies are primarily driven by the goal of generating profits and maximizing the return on investment for their shareholders. However, some companies, such as non-profit organizations, may have different objectives, such as providing charitable services or advancing a particular cause.
10. **Capacity to sue and be sued:** On incorporation a company acquires a separate and independent legal personality. As a legal person it can sue and be sued in its own name. A company may be sued for infringement of copyrights, negligence and contempt of court. A company may sue for an injury done to its business reputation by defamation.
11. **Separate Management:** A company is administered and managed by its managerial personnel, i.e., the Board of Directors. The shareholders are simply the holders of the shares in the company and need not be necessarily the managers of the company.
12. **One Share-One Vote:** The principle of voting in a company is one share-one vote. I.e., if a person has 10 shares, he has 10 votes in the company. This is in direct contrast to the voting principle of a co-operative society where the "One Member-One Vote" principle applies, i.e., irrespective of the number of shares held, one member has only one vote

### **HIGHLIGHTS OF COMPANIES ACT 2013**

The 1956 Act has been in need of a substantial revamp for quite some time now, to make it more contemporary and relevant to corporates, regulators and other stakeholders in India. While several unsuccessful attempts have been made in the past to revise the existing 1956 Act, **there have been quite a few changes in the administrative portion of the 1956 Act.** The most recent attempt to revise the **1956 Act was the Companies Bill, 2009** which was introduced in the Lok Sabha, one of the two Houses of Parliament of India, on 3 August 2009. This Companies Bill, 2009 was referred to the Parliamentary Standing Committee on Finance, which submitted its report on 31 August 2010 and was withdrawn after the introduction of the Companies Bill, 2011. The Companies Bill, 2011 was also considered by the Parliamentary Standing Committee on Finance which submitted its report on 26 June 2012. Subsequently, the Bill was considered and approved by the Lok Sabha on 18 December 2012 as the Companies Bill, 2012 (the Bill). The Bill was then considered and approved by the Rajya Sabha too on 8 August 2013. It received the President's assent on 29 August 2013 and has now become the Companies Act, 2013.

**The changes in the 2013 Act have far-reaching implications that are set to significantly change the manner in which corporates operate in India. This Act highlights the major changes as compared to the 1956 Act and the potential implications of these changes.**

**The 2013 Act has introduced several new concepts and has also tried to streamline many of the requirements by introducing new definitions.**

## 1. COMPANIES

- a) **One-person company:** The 2013 Act introduces a new type of entity to the existing list, i.e., apart from forming a public or private limited company. The 2013 Act enables the formation of a new entity a 'one-person company' (OPC). An OPC means a company with only one person as its member [section 3(1) of 2013 Act].
- b) **Private company:** The 2013 Act introduces a change in the definition for a private company, inter alia, the new requirement increases the limit of the number of members from **50 to 200** [Section 2(68) of 2013 Act].
- c) **Small company:** A small company has been defined as a company other than a public company.
  - ✓ **Paid-up share capital** of which does not exceed 50 lakh INR or such higher amount as may be prescribed which shall not be more than five crore INR.
  - ✓ **Turnover** of which as per its last profit-and-loss account does not exceed two crore INR or such higher amount as may be prescribed which shall not be more than 20 crore INR:

As set out in the 2013 Act, this section will not be applicable to the following:

- A holding company or a subsidiary company
- A company registered under Section 8
- A company or body corporate governed by any special Act [section 2(85) of 2013 Act]

d) **Dormant company:** The 2013 Act states that a company can be classified as dormant when it is formed and registered under this 2013 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 one may apply to the ROC in such manner as may be prescribed for obtaining the status of a dormant company [Section 455 of 2013 Act].

## 2. ROLES AND RESPONSIBILITIES

a) **Officer:** The definition of officer has been extended to include promoters and key managerial personnel [Section 2(59) of 2013 Act].

b) **Key managerial personnel:** The term 'key managerial personnel' has been defined in the 2013 Act and has been used in several sections, thus expanding the scope of persons covered by such sections [Section 2(51) of 2013 Act].

c) **Promoter:** The term 'promoter' has been defined in the following ways:

- A person who has been named as such in a prospectus or is identified by the company in the annual return referred to in Section 92 of 2013 Act that deals with annual return; or
- who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

The provision to this section states that sub-section (c) would not apply to a person who is acting merely in a professional capacity [Section 2(69) of 2013 Act].

d) **Independent Director:** The term 'Independent Director' has now been defined in the 2013 Act, along with several new requirements relating to their appointment, role and

responsibilities. Further some of these requirements are not in line with the corresponding requirements under the equity listing agreement [Sections 2(47) and 149(5) of 2013 Act].

- e) **Resident Director:** Every company shall have at least one director who has stayed in India for a total period of not less than 182 days in previous calendar year.
- f) **Women Directors:** Every listed company shall appoint at least one-woman director on its board. Any other public company having paid-up share capital of Rs. 100 crores or more or turnover of. Rs. 300. crore or more as on the last date of latest audited financial statements, shall also appoint at least one-woman director within 1 year from the commencement of business according to companies act 1956.
- g) **Director elected by Small Shareholders:** According to section 151 of the Act every listed company may have one director elected by small shareholders. For the purpose of this section, small shareholder means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

### **3. INVESTMENTS**

**Subsidiary:** The definition of subsidiary as included in the 2013 Act states that certain class or classes of holding company (as may be prescribed) shall not have layers of subsidiaries beyond such numbers as may be prescribed. With such a restrictive section, it appears that a holding company will no longer be able to hold subsidiaries beyond a specified number [Section 2(87) of 2013 Act].

### **4. FINANCIAL STATEMENTS**

- a) **Financial year:** It has been defined as the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of current year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up [Section 2(41) of 2013 Act]. While there are certain exceptions included, this section mandates a uniform accounting year for all companies and may create significant implementation issues.
- b) **Consolidated financial statements:** The 2013 Act now mandates consolidated financial statements (CFS) for any company having a subsidiary or an associate or a joint venture, to prepare and present consolidated financial statements in addition to standalone financial statements.
- c) **Conflicting definitions:** There are several definitions in the 2013 Act divergent from those used in the notified accounting standards, such as a joint venture or an associate, etc. which may lead to hardships in compliance.

### **5. AUDIT AND AUDITORS**

- a) **Mandatory auditor rotation and joint auditors:** The 2013 Act now mandates the rotation of auditors after the specified time period. The 2013 Act also includes an enabling provision for joint audits.
- b) **Non-audit services:** The 2013 Act now states that any services to be rendered by the auditor should be approved by the board of directors or the audit committee. Additionally, the auditor is also restricted from providing certain specific services.

- c) **Auditing standards:** The Standards on Auditing have been accorded legal sanctity in the 2013 Act and would be subject to notification by the NFRA. Auditors are now mandatorily bound by the 2013 Act to ensure compliance with Standards on Auditing.
- d) **Cognisance to Indian Accounting Standards (Ind AS):** The 2013 Act, in several sections, has given cognisance to the Indian Accounting Standards, which are standards converged with International Financial Reporting Standards, in view of their becoming applicable in future. For example, the definition of a financial statement includes a 'statement of changes in equity' which would be required under Ind AS [Section 2(40) of 2013 Act].
- e) **Secretarial audit for bigger companies:** In respect of listed companies and other class of companies as may be prescribed, the 2013 Act provides for a mandatory requirement to have secretarial audit. The draft rules make it applicable to every public company with paid-up share capital > ` 100 crores. As specified in the 2013 Act, such companies would be required to annex a secretarial audit report given by a Company Secretary in practice with its Board's report [Section 204 of 2013 Act].
- f) **Secretarial Standards:** The 2013 Act requires every company to observe secretarial standards specified by the Institute of Company Secretaries of India with respect to general and board meetings [Section 118 (10) of 2013 Act], which were hitherto not given cognizance under the 1956 Act.
- g) **Internal Audit:** The 2013 Act now moves a step forward and mandates the appointment of an internal auditor who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company. The class or classes of companies which shall be required to mandatorily appoint an internal auditor as per the draft rules are as follows:
- Every listed company
  - Every public company having paid-up share capital of more than 10 crore INR
  - Every other public company which has any outstanding loans or borrowings from banks or public financial institutions more than 25 crore INR or which has accepted deposits of more than 25 crore INR at any point of time during the last financial year
- h) **Audit of items of cost:** The central government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept by that class of companies. By virtue of this Section of the 2013 Act, the cost audit would be mandated for certain companies [Section 148 of 2013 Act]. It is pertinent to note that similar requirements have recently been notified by the central government.

## **6. REGULATORS**

- a) **National Company Law Tribunal (Tribunal or NCLT):** In accordance with the Supreme Court's (SC) judgement, on 11 May 2010, on the composition and constitution of the Tribunal, modifications relating to qualification and experience, etc. of the members of the Tribunal has been made. Appeals from the Tribunal shall lie with the NCLT. Chapter XXVII of the 2013 Act consisting of Sections 407 to 434 deals with NCLT and appellate Tribunal.
- b) **National Financial Reporting Authority (NFRA):** The 2013 Act requires the constitution of NFRA, which has been bestowed with significant powers not only in issuing the authoritative pronouncements, but also in regulating the audit profession.

- c) **Serious Fraud Investigation Office (SFIO)**: The 2013 Act has bestowed legal status to SFIO.

## **7. MERGERS AND ACQUISITIONS**

The 2013 Act has streamlined as well as introduced concepts such as reverse mergers (merger of foreign companies with Indian companies) and squeeze-out provisions, which are significant. The 2013 Act has also introduced the requirement for valuations in several cases, including mergers and acquisitions, by registered valuers.

## **8. CORPORATE SOCIAL RESPONSIBILITY**

The 2013 Act makes an effort to introduce the culture of corporate social responsibility (CSR) in Indian corporates by requiring companies to formulate a corporate social responsibility policy and at least incur a given minimum expenditure on social activities.

## **9. CLASS ACTION SUITS**

The 2013 Act introduces a new concept of class action suits which can be initiated by shareholders against the company and auditors.

## **10. PROHIBITION OF ASSOCIATION OR PARTNERSHIP OF PERSONS EXCEEDING CERTAIN NUMBER**

The 2013 Act puts a restriction on the number of partners that can be admitted to a partnership at 100. To be specific, the 2013 Act states that no association or partnership consisting of more than the given number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this 1956 Act or is formed under any other law for the time being in force:

**As an exception, the aforesaid restriction would not apply to the following:**

- A Hindu undivided family carrying on any business
- An association or partnership, if it is formed by professionals who are governed by special acts like the Chartered Accountants Act, etc. [Section 464 of 2013 Act].

## **11. POWER TO REMOVE DIFFICULTIES**

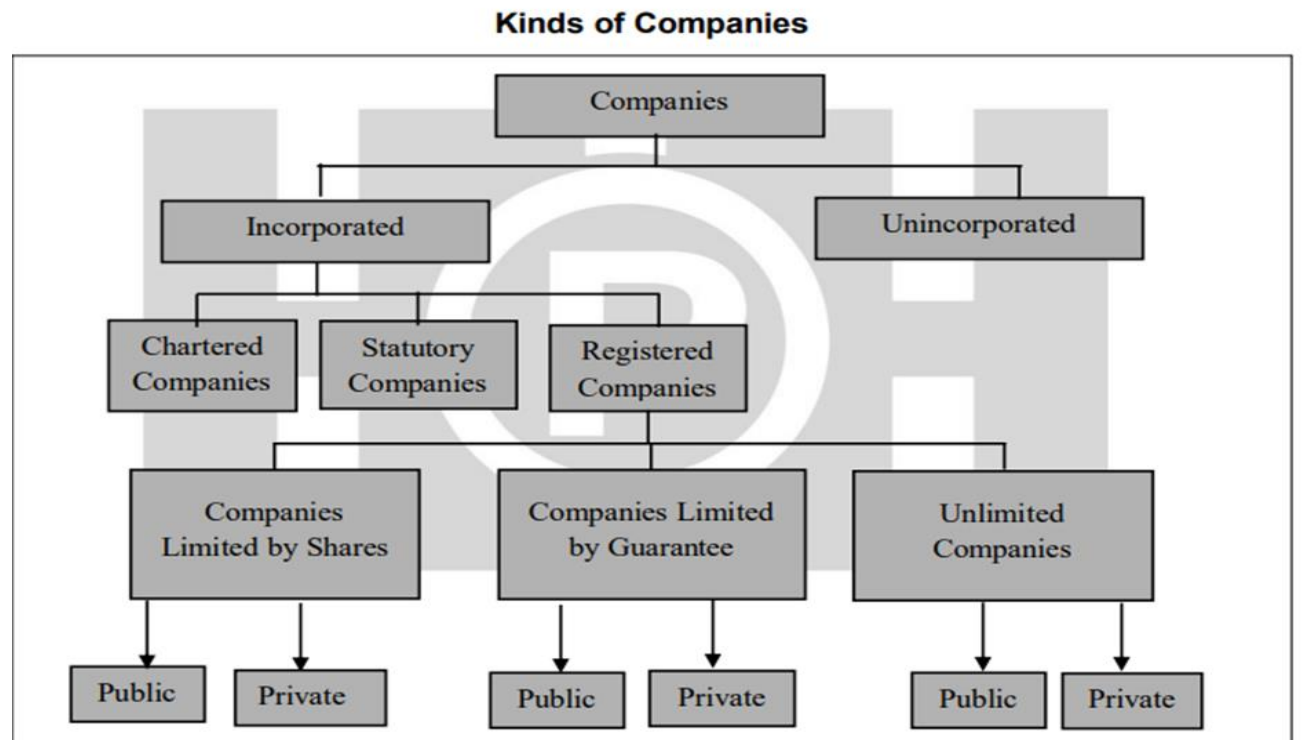
The central government will have the power to exempt or modify provisions of the 2013 Act for a class or classes of companies in public interest. Relevant notification shall be required to be laid in draft form in Parliament for a period of 30 days. The 2013 Act further states no such order shall be made after the expiry of a period of five years from the date of commencement of Section 1 of the 2013 Act [Section 470 of 2013 Act].

## **12. INSIDER TRADING AND PROHIBITION ON FORWARD DEALINGS**

The 2013 Act for the first time defines 'insider trading and price-sensitive information and prohibits any person including the director or key managerial person from entering into insider trading [Section 195 of 2013 Act]. Further, the Act also prohibits directors and key

managerial personnel from forward dealings in the company or its holding, subsidiary or associate company [Section 194 of 2013 Act].

## **KINDS OF COMPANIES**



The companies can be broadly classified into three types based on the mode of incorporation.

They are:

1. Chartered Companies
2. Statutory Companies
3. Registered Companies

### **1. Chartered Companies**

Companies incorporated under a special Royal charter issued by the King or Queen is called “Chartered Companies”. They are regulated by the provisions of that charter. Such companies were generally started in the 17th and 18th centuries. The East India Company and Bank of England are some examples of chartered companies. In India, Chartered Companies are not in existence now, because there is no monarchy.

### **2. Statutory Companies**

Companies incorporated under the Special Act of Parliament or legislature are called “Statutory Companies”. For example, The Reserve Bank of India, The State Bank of India,



Life Insurance Corporation, The Indian Airlines and The State Trading Corporation of India. The activities of Statutory Companies are governed by the Special Act under which they are established.

### **3. Registered Companies**

Companies incorporated through registration with Registrar of Companies under the provisions of the Companies Act, 1956 and the provisions of Companies Act, 2013 or both are called "Registered Companies". They are also called 'Incorporated Companies'.

#### **Registered Companies are of three types:**

Based on the liability of the member's, registered companies are divided into the following types:

- A. Unlimited companies;
- B. Companies limited by guarantee; and
- C. Companies limited by shares

**A. Unlimited companies:** A company which do not have any limit on the liability of its members is called an unlimited company. The members of unlimited companies are like a sole proprietor or partners of a firm, liable for its debts without any limit. The concept of unlimited liability does not conform to corporate concept which necessarily postulates limited liability. Hence, unlimited companies are rare but not extinct.

#### **B. Companies limited by guarantee**

Companies limited by guarantee are formed to promote art, culture, science, religion, trade and sports. A guarantee company may be formed with or without share capital. Where the company is without share capital, it raises needed funds through entrance fees and subscriptions. Where the company has share capital, the liability of members, in addition to the shares held by them, is extended to certain additional amount guaranteed by them to pay company's debts in the event of winding up. The additional amount to be paid is laid down in Memorandum or Articles of Association.

#### **C. Companies limited by shares**

In a limited company, the liability of the members is limited to the amount of the shares held by them. In the event of its winding up, a shareholder can be called upon to pay only the unpaid amount (if any) on shares held by him, and no even a paise more, whatever may be the debts of the company.

#### **The companies limited by shares and guarantees may be classified into two types:**

##### **(a) Private Limited Companies**

##### **(b) Public Limited Companies**

**A Private Limited Company** is a company in which the minimum number of shareholders is 2 and the maximum can be 200 shareholders. No invitation can be made to the public for subscription of shares or debentures. They cannot make or accept deposits from public and

there are restrictions on the transfer of shares. The liability of each shareholder is limited to the extent of the unpaid amount of the shares' face value and the premium thereon in respect of the shares held by him. However, the liability of a director or Manager of such a company can at times be unlimited.

**B Public Limited Company** is a company in which the minimum number of shareholders is 7 and there is no restriction on the maximum number of shareholders, transfer of shares and acceptance of public deposits. The liability of each shareholder is limited to the extent of the unpaid amount of the share face value and the premium thereon in respect of the shares held by him. However, the liability of a Director/Manager of such a company can at times be unlimited.

### **ONE PERSON COMPANY**

The Companies Act, 2013 completely revolutionized corporate laws in India by introducing several new concepts that did not exist previously. On such game-changer was the introduction of One Person Company concept. This led to the recognition of a completely new way of starting businesses that accorded flexibility which a company form of entity can offer, while also providing the protection of limited liability that sole proprietorship or partnerships lacked.

### **Meaning of One Person Company**

One Person Company (OPC) is a company incorporated by a single person. According to Section 2(62) of the Companies Act 2013, One Person Company means a company which has only one person as a member. It is a one shareholder corporate entity. where legal and financial liability is limited to the company only. Thus, a company can be formed with just 1, Director and 1 member.

### **Definition of One Person Company**

**Section 2(62) of Companies Act** defines a one-person company as a company that has only one person as to its member. Furthermore, members of a company are nothing but subscribers to its memorandum of association, or its shareholders. So, an OPC is effectively a company that has only one shareholder as its member.

Such companies are generally created when there is only one founder/promoter for the business. Entrepreneurs whose businesses lie in early stages prefer to create OPCs instead of sole proprietorship business because of the several advantages that OPCs offer.

### **Difference between OPCs and Sole Proprietorships**

A sole proprietorship form of business might seem very similar to one-person companies because they both involve a single person owning the business, but they're actually exist some differences between them.

The main difference between the two is **the nature of the liabilities they carry.**

- Since an **OPC** is a separate legal entity distinguished from its promoter, it has its own assets and liabilities. The promoter is not personally liable to repay the debts of the company.

- On the other hand, **sole proprietorships** and their proprietors are the same persons. So, the law allows attachment and sale of promoter's own assets in case of non-fulfilment of the business' liabilities.

### **Features of a One Person Company**

The general features of a one-person company are:

1. **Private company:** Section 3(1)(c) of the Companies Act says that a single person can form a company for any lawful purpose. It further describes OPCs as private companies.
2. **Single-member:** OPCs can have only one member or shareholder, unlike other private companies.
3. **Nominee:** A unique feature of OPCs that separates it from other kinds of companies is that the sole member of the company has to mention a nominee while registering the company.
4. **No perpetual succession:** Since there is only one member in an OPC, his death will result in the nominee choosing or rejecting to become its sole member. This does not happen in other companies as they follow the concept of perpetual succession.
5. **Minimum one director:** OPCs need to have minimum one person (the member) as director. They can have a maximum of 15 directors.
6. **No minimum paid-up share capital:** Companies Act, 2013 has not prescribed any amount as minimum paid-up capital for OPCs.
7. **Special privileges:** OPCs enjoy several privileges and exemptions under the Companies Act that other kinds of companies do not possess.

### **Formation of One Person Companies**

A single person can form an OPC by **subscribing his name to the memorandum of association and fulfilling other requirements prescribed by the Companies Act, 2013**. Such memorandum must state **details of a nominee** who shall become the company's sole member in case the original member dies or becomes incapable of entering into contractual relations.

This memorandum and the nominee's consent to his nomination should be filed to the Registrar of Companies along with an application of registration. Such nominee can withdraw his name at any point in time by submission of requisite applications to the Registrar. His nomination can also later be cancelled by the member.

### **Membership in One Person Companies**

Only **natural persons who are Indian citizens and residents** are eligible to form a one-person company in India. The same condition applies to nominees of OPCs. Further, such a natural person cannot be a member or nominee of more than one OPC at any point in time.

It is important to note that only **natural persons can become members of OPCs**. This does not happen in the case of companies wherein companies themselves can own shares and be members. Further, the law prohibits minors from being members or nominees of OPCs.

### **Conversion of OPCs into other Companies**

Rules regulating the formation of one-person companies expressly **restrict the conversion of OPCs** into Section 8 companies, i.e., companies that have **charitable objectives**. OPCs also cannot voluntarily convert into other kinds of companies **until the expiry of two years** from the date of their incorporation.

### **Provisions applicable to the formation of One Person Company [Rule 3]**

1. Only a natural person who is an Indian citizen and resident of India (Resident in India means a person who has stayed in India for a period of 182 days or more during the immediately preceding one calendar year)
  - shall be eligible to incorporate a One Person Company;
  - shall be a nominee for the sole member of a One Person Company.
2. No person shall be eligible to incorporate more than a 'One Person Company' or become nominee in more than one such company. (One person cannot incorporate more than one OPC or become nominee in more than one OPC)
3. If a member of OPC becomes a member in another OPC by virtue of his being nominee in that OPC then within 180 days he shall have to meet the eligibility criteria of being Member in one OPC.
  - Nominee' name should be mentioned in the Memorandum.
  - Written Consent of nominee is necessary.
  - Nominee's name along with his consent is to be filed with the ROC.
  - Minor shall not be made as nominee of such company or can hold share with beneficial interest.
  - Nominee may withdraw his consent by giving notice to the Sole Member of the Company. In such a case, the sole member shall give another nomination in the same way and shall file the withdrawal and fresh inclusion to the ROC within 30 days
  - When the sole member of the OPC dies or becomes incapacitated from contracting and the nominee becomes the sole member, he has to nominate another natural person as his nominee.
4. Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporates.
5. No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of One Person Company.
6. One Person Company shall get itself compulsorily converted into a private company or public company on in the following circumstances within 6 months (exception for two years period)
  - I. Where the paid-up capital exceeds to ₹ 50 Lakhs or
  - II. Where the average annual turnover for the past three financial years exceeds ₹ Two crores.

- III. Where the Balance Sheet total exceeds ₹ 1 Crore within 30 days, the OPC shall give notice of its conversion to the ROC.

### **Privileges of One Person Companies**

OPC enjoy the following privileges and exemptions under the Companies Act:

- The most significant reason for shareholders to incorporate the 'single-person company' is certainly the desire for the limited liability.
- They do not have to hold annual general meetings
- Their financial statements need not include cash flow statements.
- A company secretary is not required to sign annual returns; directors can also do so.
- Provisions relating to independent directors do not apply to them.
- Their articles can provide for additional grounds for vacation of a director's office.
- Several provisions relating to meetings and quorum do not apply to them.
- They can pay more remuneration to directors than compared to other companies.
- Minimum and maximum number of members for One Person Company is one only.

### **Advantages of One Person Company**

1. **Legal status:** The OPC receives a separate legal entity status from the member. The separate legal entity of the OPC gives protection to the single individual who has incorporated it. The liability of the member is limited to his/her shares, and he/she is not personally liable for the loss of the company. Thus, the creditors can sue the OPC and not the member or director.
2. **Easy to obtain funds:** Since OPC is a private company, it is easy to go for fund raising through venture capitals, angel investors, incubators etc. The Banks and the Financial Institutions prefer to grant loans to a company rather than a proprietorship firm. Thus, it becomes easy to obtain funds.
3. **Less compliances:** The Companies Act, 2013 provides certain exemptions to the OPC with relation to compliance. The OPC need not prepare the cash flow statement. The company secretary need not sign the books of accounts and annual returns and be signed only by the director.
4. **Easy incorporation:** It is easy to incorporate OPC as only one member and one nominee is required for its incorporation. The member can be the director also. The minimum authorised capital for incorporating OPC is Rs.1 lakh but there is no minimum paid-up capital requirement, Thus, it is easy to incorporate as compared to the other forms of company.
5. **Easy to manage:** Since a single person can establish and run the OPC, it becomes easy to manage its affairs. It is easy to make decisions. and the decision- making process is quick. The ordinary and special resolutions can be passed by the member easily by entering them into the minute book and signed by the sole member.
6. **Perpetual succession:** The OPC has the feature of perpetual succession even when there is only one member. While incorporating the OPC. the single-member

needs to appoint nominee. Upon the member's death, the nominee will run a company in the member's place.

### **Disadvantages of OPC:**

1. **Suitable for small business:** OPC is suitable for small business structure. The maximum number of members the OPC can have been one at all times. More members or shareholders cannot be added to OPC to raise further capital. Thus, with the expansion and growth of the business, more members cannot be added.
2. **Restriction of business activities:** The OPC cannot carry out Non-Banking Financial Investment activities, including the investments in securities of anybody corporates. It cannot be converted to a company with charitable objects mentioned under Section 8 of the Companies Act, 2013.
3. **Ownership and management:** Since the sole member can also be the, director of the company, there will not be a clear- distinction between ownership and management, The sole member can take and approve all decisions, The line between ownership and control is blurred, which might result in unethical business practices.

## **PRIVATE COMPANY**

### **Definition of Private Company**

**Private Company [Sec. 2(68)]** A private company is a very suitable form for carrying on the only business of family and small concerns as the minimum number members required two.

**[Sec. 2(68)] of the Companies Act, 2013 deals with the definition of a private company.**

**According to Sec 2(68) of Company's Act 2013 defines Private Company as," It means a company which has a minimum paid-up capital as may be prescribed, and by its articles:**

- i. restricts the right to transfer its shares;
- ii. limits the numbers of its members to two hundred (excluding members who are or were in the employment of the company); [Maximum no. has been increased from 50 to 200 as per Companies Act, 2013].
- iii. prohibits any invitation the public to subscribe for any shares or debentures of the company; and
- iv. prohibits any invitation or acceptance from persons other than its members, directors or their relatives.

### **Features of Private Company**

1. **Ownership:** Private companies are owned by individuals, groups, or other private entities. The ownership is not publicly traded on stock exchanges, and shares are typically held by a limited number of shareholders. The owners have greater control over the company's operations and decision-making compared to public companies.

2. **Limited Liability:** Like public companies, private companies are typically structured as separate legal entities, such as limited liability companies (LLCs) or corporations. This structure provides owners with limited liability, meaning their personal assets are generally protected in the event of company debts or legal liabilities.
3. **Minimum capital required:** A private company can be formed with a minimum paid-up share capital as prescribed by the Act, which can be as low as INR 1 Lakh (Indian Rupee) or any higher amount specified in the company's memorandum of association.
4. **Minimum number of members:** A private company must have a minimum of two members. There is 200 members as maximum limit on the number of members in a private company.
5. **Restrictions on transfer of shares:** The shares of a private company are subject to certain restrictions on transferability. Generally, the shares cannot be freely transferred or traded on the stock exchange. The company's articles of association typically contain provisions regarding the transfer of shares, such as giving the existing shareholders a right of first refusal.
6. **Prohibition on invitation to the public for subscription:** A private company is prohibited from inviting the public to subscribe for any shares or debentures of the company. It cannot issue a prospectus or make public offers to raise funds.
7. **Number of directors:** A private company must have a minimum of two directors, and in case of a one-person company, it must have a minimum of one director.
8. **Name of the company:** The name of a private company must end with the words "Private Limited" or "Pvt. Ltd."
9. **Statutory meetings and resolutions:** A private company is not required to hold statutory meetings or file certain resolutions with the Registrar of Companies.

#### **Advantages of Private Limited Company:**

1. **Ownership:** In the case of a public company, the shares owned can be sold to the public in the open market. However, in the case of Private Limited company shares can be sold or transferred by the owner as per his wish. Shares of the private limited company are owned by founders, management and private investors. The shares of a private limited company cannot be sold in the open market.
2. **A minimum number of shareholders:** In the case of Private Limited Company, a minimum of 2 shareholders is required. However, in the case of Public Limited Company, a minimum of 7 shareholders are required.
3. **Legal Compliances:** The legal compliances in the case of a private limited company are lesser in case of a private limited company compared to public limited company. As the number of shareholders is less in case of a private limited company the decision making becomes easy and smooth.
4. **Minimum Share Capital:** In the case of Private Limited Company, the minimum share capital requirement is Rs.1,00,000. Also, note there is no such minimum requirement compulsion.

5. **Continued Existence:** Another advantage of Private Limited Company is its continued existence even after the owner dies or leaves the business. As Private Limited Company is incorporated it becomes an independent legal entity.

### **Disadvantages of Private Limited Company:**

1. **limited members:** The first and most common disadvantage is its members are limited in few numbers. As the upper limit is restricted, it creates some disadvantages for the company. Because when the company needs another or more experienced and skilful Owners, it has no option to expand the business.
2. **Restriction on transfer of shares:** The basic disadvantage of a private limited company is that shares are not flexibly transferable. The members of private limited company are not able to transfer the shares according to the Company Act
3. **Difficulties in the expansion:** It is not so easy to transfer or expand the business of private limited company due to limited numbers of members, small or shortage of capital, provision of not to transfer or sale of shares etc. However, the economic growth may also be lined because maximum shareholders allowed are only 200.
4. **Misrepresentation and Fraudulent Accounts:** As it is not necessary to publish the financial statement of the company or other statements to the registrar or public, there may be chances of making or conducting fraudulent and misrepresentation in the accounting or other financial transaction. Sometimes, the accountants misuse their knowledge and try to show the income lower to get rid of the tax payment to the Government.
5. **Centralized Authority:** As the power and responsibility of managing the organization are confined into the hand of few members of the board of directors, it creates a centralized system of power. Therefore, the owners who are not related to the operation or management of the company may sometimes be deprived of their rights.

### **PUBLIC COMPANY**

Public Company [Sec. 2(71)]. The definition of a public has undergone a substantial change with passing of the companies (Amendment) Act 2015. According to the Section 2(71) of the Companies Act, 2013, A public company means a Company which

- (a) is not a private company
- (b) has a minimum paid-up capital, as may be prescribed
- (c) is a private company which is a subsidiary of a public company.

Thus, a public company is one that is not a private company.

Note. As per Companies (Amendment) Act 2015, there is no requirement of minimum paid up capital for a Public Company (w.e.f. 29/5/15).

Further, a private company which is a subsidiary of a public company will also be a public company. All private companies that are subsidiaries of public companies shall continue to avail the privileges of a private company.



### Characteristics of a Public Limited Company

1. **Directors:** As per the provisions of the Companies Act, 2013 to start a public limited company, a minimum of 3 directors are required and there is no restriction on the maximum number of directors.
2. **Limited Liability:** The liability of each shareholder is limited. In simple words, a shareholder of a public limited company isn't personally responsible for any loss or debts of the company for any amount greater than the amount invested by them; contrary to partnerships and sole proprietorships, where the partners and business owners are jointly and severally liable for the debts of the business.
3. **Paid-up Capital:** A public limited company is required to have a minimum paid-up capital of Rs 5 lakh or such a higher amount as prescribed under the act.
4. **Prospectus:** A prospectus is a comprehensive statement of the affairs of the company issued by a public limited company for its public and there is a requirement under the Act for public limited companies to issue a prospectus. However, there are no such provisions for Private Limited Companies. This is because private limited companies cannot invite the public to subscribe to their shares.
5. **Name:** It is a compulsory requirement under the Companies Act, 2013 for all public companies to add the word 'limited' after their name.

### Advantages Of Public Company

1. **Limited Liability of the shareholders:** In Public Company registration, the liability of the shareholder and Directors is limited to the extent of the shares they hold in the company. For example, if the company suffers from any financial contingencies because of primary business activity, then in such case personal assets of shareholders and Directors will not be snatched by the Banks, creditors, and government.
2. **Raising the capital through Public Issue:** In the case of Public Company Registration, the proposed company can raise funds through the Public.
3. **Separate Legal Entity:** Shareholders and Directors may come and go, but the existence of the company continues to exist. i.e., the absence or movement of any shareholder in the company will not affect the existence of the company.
4. **Unlimited source of raising fund:** The company has an unlimited source of raising fund through Public which results in pursuance of new projects and for capturing the new market.
5. **Easy Transferability:** The shares of a public limited company are easily transferable. Shares of the company are listed on a stock exchange; the shareholders find it is easy to transfer the share in the company. In the case of Public Company Registration, shareholders are less bound to remain with the company, which results in making people more willing to invest.
6. **Maintains the Transparency:** Because of Public involvement, the company publishes its statutory details and reports to maintain greater transparency and also to provide accurate information of its current financial position.

7. **Maintains the Brand Position**: Being registered as a Public Company, it improves the brand position of the Company. Listing the shares of the company in the stock exchange enhances the brand position and reputation of the company.

### **Disadvantages Of Public Company**

1. **Lack of Flexibility**: Flexibility always acts as strength to every organization, but in the case of the public company, there is no such advantage. Every public company is bind by the rules and regulations, which results in a lack of flexibility in its operations.
2. **Lack of secrecy**: To maintain the transparency and trust of the shareholders, the company provides full disclosure to the public due to which secrecy cannot be maintained. The Public is involved in decision making, the company cannot maintain the secrecy.
3. **Suitability**: A public limited company is only favourable to large scale a business which is a disadvantage to small scale industries.
4. **High Costs**: Registering the company as a Public Company requires a huge cost. To start a public company huge investment, time and procedural things are required to be complied with. The profit of the company depends upon the investment you have done.

### **The following privileges and exemptions are available to a Private company and Public Company**

1. **Number of Members**: A private company may consist of two members only except in the case of one person company, as against seven persons in case of public company.
2. **Minimum Number of Directors**: A private company need not have more than two directors whereas a public company must have minimum three directors. (Section 149).
3. **Quorum for General Meeting**: Unless Articles provide for a higher number, quorum required for the general meeting of the shareholders of a private company is two persons personally present as against five persons in case of a public company. (Section 103).
4. **Rotation of Directors**: Directors of a private company need not retire by rotation every year whereas directors of a public company have to retire by rotation every year. (Section 152)
5. **Managerial Remuneration**: No restrictions have been imposed on the remuneration payable to the directors of a private company. But certain restrictions have been imposed on the remuneration payable to the directors of a public company. Section 197 of the Companies Act, 2013 provides that total managerial remuneration payable to the directors of a public company cannot exceed 11 percent of the net profits.
6. **Special disqualifications for appointment as directors**: A private company may, by its articles of association, provide for special disqualifications for appointment of directors in addition to those contained in section 164(1 and 2) [Section 164(3)].
7. **Deferred Shares**: A private company can issue deferred shares whereas a public company is not allowed to issue deferred shares.

8. **Financial Assistance:** In a private company, any person can get financial assistance for the purchase company's own shares. But a public company is disallowed from providing financial assistance for the purchase of its own shares.

### **Difference Between Public Company and Private Company**

<b>BASIS</b>	<b>PUBLIC COMPANY</b>	<b>PRIVATE COMPANY</b>
Minimum Member	7 Member	2 Member
Maximum Member	No restriction	200 Members
Minimum No: of Directors	Three	Two Member (one for OPC)
Restriction on Invitation to subscribe to shares	No restriction	Prohibited
Transferability of Shares	It is freely transferable	Restricted
Quorum	Varying between 5 to 30 depending on the number of members	Two members personally present
Managerial Remuneration Ceiling	Yes	Not applicable
Retirement of Directors by rotation	Minimum Two thirds' directors retire by rotation	Not applicable
Minimum paid up capital	₹5lakhs	₹1lakhs
Commencement of Business	It shall commence after the grant of certificate of commencement of business.	It can commence immediately after incorporation.
Statutory meeting	A public company must hold a statutory meeting and file with the register a statutory report.	For Private company, there are no such obligations
Managerial remuneration	The total managerial remuneration in case of public company cannot exceed 11% of net profits and in case of inadequacy of profit a minimum of ₹50,000 per month can be paid.	These restrictions do not apply to a private company
Suffix used	A public company has to use only the word 'Limited' or Ltd. at the end of its name.	A private Company has to use words ' Private Limited' or Pvt. Ltd. at the end of its name

Consent of the Directors	The Directors of a Public Company must file with the Registrar a consent to act as Director of the company	The Directors of a private company need not give their consent.
Qualification Shares	The directors of a Public Company are required to sign an undertaking to acquire the qualification shares of the Public Company.	The directors of a private company need not sign an undertaking to acquire the qualification shares.
Shares Warrants	A Public Company can issue share warrants against its fully paid-up shares.	A Private Company cannot issue Share warrants against its fully paid shares

## **CONVERSION OF COMPANIES**

### **I. CONVERSION OF A PUBLIC COMPANY INTO A PRIVATE COMPANY**

Section 14 of the Companies Act, 2013, lays down the following procedure for conversion of a public company into a private company.

**1. Special Resolution:** A special resolution shall be passed authorizing the conversion of a public company into a private company altering the articles so as to remove the restrictions contained in Section 2(68).

**2. Name of the Company:** Company's name shall be changed by adding the words "Private" before the word 'limited'

**3. Approval of the Tribunal:** Section 14(1) of the Companies Act, 2013 provides that any alteration made in the articles which has the effect of converting a public company into a private company shall have effect unless such alteration has been approved by the Tribunal and the Tribunal shall make such orders as it may deem fit.

**4. Filing with the Registrar:** A copy of the approval along with a printed copy of the altered Articles are to be filed with the Registrar within a period of fifteen days in the prescribed manner and the Registrar shall register the same. [Section 14(2)].

Any alteration of the articles registered under section 14(2) shall, subject to the provisions of this Act, be valid as if it were originally in the articles.

### **II. CONVERSION OF A PRIVATE COMPANY INTO A PUBLIC COMPANY**

According to Section 14 of the Companies Act, 2013, a private company can be converted into a public company by undertaking the following steps:

- 1. Special Resolution:** A private company can convert itself into a public amending its articles of association. Section 14 of the Companies Act provides that C private

company can amend its articles by passing 9 special resolutions altering the articles so as to delete the restrictions specified in section 2(68).

2. **Changing the Name:** Company's name shall be changed by adding the word 'Private' Before the word "limited"
3. **Approval of the Tribunal:** Section 14(1) of the Companies Act stipulates that no alteration made in the articles which has the effect of converting a public company into a private company shall have effect unless such alteration has been approved by the Tribunal which shall make such order as it may deem fit.
4. **Filing with the Registrar:** Every alteration of the articles under this section and a copy of the order of the Tribunal approving the alteration shall be filed with the Registrar, together with a printed copy of the altered articles, within fifteen days in such manner as may be prescribed, who shall register the same. [Section 14(2)].

Any alteration of the articles registered under this section shall, subject to the provisions of this Act, be valid as if it were originally in the articles

### **III. CONVERSION OF COMPANIES ALREADY REGISTERED**

Section 18 of the Companies Act, 2013 provides that a company of any class registered under this Act may re-register itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of Chapter II of the Act.

The registration of a company under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before re-registration and such debts, liabilities, obligations and contracts may be enforced in the manner as if such registration had not been done.

### **IV. CONVERSION OF OPC INTO PRIVATE COMPANY OR PUBLIC COMPANY**

**One Person Company to convert itself into a public company or a private company in certain cases.**

1. Where the paid-up share capital of an One Person Company exceeds fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as a One Person Company.
2. Such One Person Company shall be required to convert itself, within six months of the date on which its paid-up share capital is increased beyond fifty lakh rupees or the last day of the relevant period during which its average annual turnover exceeds two crore rupees as the case may be, into either a private company with minimum of two members and two directors or a public company with at least of seven members and three directors in accordance with the provisions of section 18 of the Act.
3. The One Person Company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.
4. The One Person Company shall within period of sixty days from the date of applicability of sub-rule (1), give a notice to the Registrar in **Form No. INC. 5** informing that it has ceased to be One Person Company and that it now required

to convert itself into a private company or a public company and that it is now required to convert itself into private company or a public company by virtue of its paid up share capital or average annual turnover, having exceeded the threshold limit.

5. A One Person company can get itself converted into a Private or Public company after increasing the minimum number of members and directors to two or minimum of seven members and two or three directors as the case may be, and by maintaining the minimum paid-up capital as per requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.

#### V. CONVERSION OF PRIVATE COMPANY INTO ONE PERSON COMPANY

1. A private company other than a company registered under section 8 of the Act having paid up share capital of fifty lakhs rupees or less or average annual turnover during the relevant period is two crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting.
2. Before passing such resolution, the company shall obtain No objection in writing from members and creditors.
3. The one-person company shall file copy of the special resolution with the Registrar of Company within thirty days from the date of passing such resolution in **Form No. MGRT. 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 paid-up share capital company is fifty lakhs' rupees or less or average annual turnover is less than two crores' rupees, as the case may be;
  - 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 Certificate.

#### COMPANY LIMITED BY GUARANTEE

According to Section 2(21) of the Companies Act 2013, the company limited by guarantee refers to a type of company in which members are bound to contribute a nominal amount as cited in the MOA in case of the company's wind up. It is a kind of company structure widely preferred by companies with charitable objectives.

Guarantee Company is another name for a company limited by guarantee. It refers to a business that has no shareholders but is controlled by members known as guarantors who promise to make a small payment in the event of a winding up. It is a particular form

used by non-profit organisations, or NPOs. In this arrangement, a company's profits are reinvested to benefit the objectives of other businesses.

It is now a functional legal structure for clubs, NPOs, charity trusts, and other similar organisations. A company limited by guarantee operates as a separate legal entity and has a unique legal personality.

It can carry out tasks in the company's name, such as obtaining financing, using human resources, purchasing and selling real estate, and utilising legal processes in the event

### **Noteworthy Facts Pertaining to A Company Limited By Guarantee**

- Member will have security for being held accountable in their personal capacity for the sum borrowed for business in the company's name.
- The company's members are only entitled to pay the assured amount as cited in the company's MOA.
- Members are accountable to pay only in the event of the winding-up of the company.

### **An Overview on The Types of Guarantee Company**

Companies limited by guarantee or Guarantee companies are categorized into two types.

#### **A. Company limited by guarantee having share capital:**

Company will be set in motion with some initial capital or working funds from its members as an initial working capital is not available through grants, subscriptions, fees, endowments or any other sources. But later, once the operation is started, normal working funds can be received from the services rendered in the form of fees, charges and subscriptions.

#### **B. Company limited by guarantee not having share capital:**

Such type of guarantee companies does not obtain initial capital or working funds from its members instead, the company raise the working funds through various other sources like endowments, Grants, subscriptions and fees etc. For example, non-profit companies or charitable institutes started public donations or government grants.

### **Underlying Benefits and Key Features of Company Limited by Guarantee**

1. **Separate from owner:** An entity limited by guarantees has a distinct legal identity from its owner/guarantor. The company, personally is accountable for its debts.
2. **Liability:** Guarantors are not liable for repayment against any of the company's debts. Henceforth, their personal assets remain untouched. They are only accountable to pay out the agreed sum as per their guarantee in the case of the company's insolvency.
3. **Guarantor:** Any individual or corporate body can serve the role of a guarantor. It requires an individual director and an individual guarantor to get established. The same individual can serve both positions, making it convenient for any to commence a company. But multiple guarantors and directors can also fit into this context.

4. **Profits:** A company limited by guarantee is typically established for charitable causes or non-profit purposes. Any profit earned is reinvested and leveraged for advocating its non-profit activities.
5. **Name:** Entity limited by guarantee may affix the term 'limited' in its name. This word garners a sense of trust among investors and clients.

### **COMPANY LIMITED BY SHARES:**

As per section 2(22). "Company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them. Accordingly, no member of a company limited by shares, can be called upon to pay more than the nominal value of the shares held by him. If his shares are fully paid-up, he has nothing more to pay. But in the case of partly-paid shares, the unpaid portion is payable at any time during the existence of the company on a call being made, whether the company is a going concern or is being wound up.

### **Features of Company Limited by Shares:**

1. **liability is limited:** The company shareholders will only be liable for any debt the company accrues according to their own level of investment and no more. This emerges as one of the biggest advantages of running a business in the form of a limited company. Even if a situation of financial difficulty arises in the company, the personal finances, as well as the personal assets of shareholders, are protected.
2. **No taxation of profit:** A shareholder in such a company is at an advantaged position because whatever accrues from the shares in the form of dividends is not taxable. Also, limited companies are only taxed on their profits and therefore they are not liable to pay higher tax rates which are usually placed on sole traders or partnerships.
3. **Separate entity:** The limited company is deemed to be a separate entity from its owners. Therefore, the company has the advantage to existing beyond the life of its members.
4. **Better Status:** Limited liability helps to boost professional status and reputation as it creates an impression that the business is other grounded, dedicated and reliable. A company limited by shares will help an individual to sell shares to other people to raise finance and supports growth of the business.

### **HOLDING COMPANY - SUBSIDIARY COMPANY**

Holding and subsidiary companies are relative terms. A company which controls another company is known as the '**holding company**' and the company so controlled is called as '**subsidiary company**'.

**A Holding Company is one which holds more than 50% of the nominal value of the equity share capital of another company or which controls the composition of the Board of Directors of another company. Company Such other company is known as Subsidiary Company. In other words, a subsidiary company is one whose majority of share that is over 50% are held by the holding company (Sec. 4)**



**Holding Company:** According to section 2(46) of the Companies Act, 2013, "holding company" in relation to one or more other companies, means a company of which such companies are subsidiary companies.

**Subsidiary Company.** According to section 2(87) of the Companies Act, a "subsidiary company" or "subsidiary", 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 share capital either at its own or together with one Or more of its subsidiary companies. Total share capital means paid up equity share capital and paid-up preference share capital.

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

**A holding company and a subsidiary company are distinct entities that are related in terms of ownership and control.**

**The key features of holding and subsidiary companies:**

**Holding Company:**

1. **Ownership:** A holding company is a corporation that owns a controlling interest in one or more other companies, known as its subsidiaries.
2. **Control:** The holding company exercises control over its subsidiaries by owning a majority of the voting shares or having the power to appoint the majority of the subsidiary's board of directors.
3. **Investment and Divestment:** The primary purpose of a holding company is to hold and manage investments in other companies rather than engage in day-to-day operations.
4. **Risk Management:** Holding companies provide a structure for risk management and asset protection by separating the assets and liabilities of different businesses.
5. **Strategic Planning:** Holding companies often engage in strategic planning, capital allocation, and overall management coordination among its subsidiaries.
6. **Tax Advantages:** Holding companies may enjoy certain tax advantages, such as consolidated tax reporting and the ability to offset profits and losses among subsidiaries.
7. **Limited Liability:** Typically, the liability of the holding company is limited to its investment in the subsidiaries, which helps protect the holding company's assets.

**Subsidiary Company:**

1. **Ownership:** A subsidiary company is a separate legal entity that is controlled by another company, known as its parent or holding company.
2. **Control:** The parent company exercises control over the subsidiary through ownership of a majority of the subsidiary's voting shares or by having the power to appoint the majority of its board of directors.

3. Operations: Subsidiaries can be fully operational companies engaged in various business activities, such as manufacturing, sales, services, or research and development.
4. Independence: Although a subsidiary is controlled by its parent company, it generally has its own management structure, board of directors, and financial reporting.
5. Liability: Subsidiaries have their own legal identity and are generally liable for their own debts and obligations. However, in certain circumstances, the parent company may provide guarantees or be jointly liable with the subsidiary.
6. Financial Reporting: Subsidiaries prepare their own financial statements, but they may be consolidated with the parent company's financial statements for reporting purposes.
7. Synergies: Subsidiaries can benefit from synergies with the parent company and other subsidiaries, such as shared resources, knowledge transfer, and economies of scale.

### **GOVERNMENT COMPANY**

A government company means any company in which not less than 51% of the paid-up share capital is held by the Central Government and/or by any State Government(s) or partly by the Central Government and partly by one or more State Government.

Examples: Hindustan Machine Tools, Oil and Natural Gas Commission etc.

### **Features of a Government Company:**

1. It is a separate legal entity.
2. It is incorporated under Companies Act 1956 & 2013.
3. The management is governed and regulated by the provisions of Companies Act.
4. The Memorandum of Association and Articles of Association govern the appointment of employees.
5. A government company gets its funding from government shareholding and other private shareholdings. The company can also raise money from the capital market.
6. A government company is audited by the agency appointed by the central government. This agency is mainly Comptroller and Auditor General of India (C&AG).

### **Merits Government Company:**

1. To incorporate a government company, all the provisions of the Companies Act are to be followed.
2. The government organization enjoys all autonomy in management decisions and flexibility in day-to-day activities.

### **Limitations of a Government Company:**

1. These companies face a lot of government interference and involvement of government officials, ministers and politicians.
2. As these companies are financed by the government, so these companies evade all constitutional responsibilities of not answering to the parliament.

3. The efficient operations of the company are hampered, as the board of the company comprises mainly of politicians and civil servants.

### **ASSOCIATE COMPANY**

According to Section 2(6) of Companies Act, 2013, “Associate company”, 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 purposes of this clause, –” **significant influence**” means **control** of at least **twenty per cent.** of total share capital, or of business decisions under an agreement.

The meaning of term “control” used in the above explanation provided under the Act.

As per section 2(27) of Companies Act, 2013 the term control means and shall include:

“**Control**” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

### **Features**

1. Parent company holds minimum 20% but not more than 50% of the total voting power.
2. Parent company has a significant influence to participate in the financial and operating decisions of the associate company.
3. The parent and associate company may have certain board members in common.
4. Investment in associate company is done to hold significant ownership for a longer period of time.
5. The parent company may or may not get involved in the day-to-day business of the associate company.

### **SMALL COMPANY**

According to section 2(85) of the Companies Act, 2013, a small company means a company that meets the following criteria:

- **Condition 1:** Paid-up capital of the company should not exceed INR 4 Crores; and
- **Condition 2:** Turnover of the company should not exceed INR 40 Crores.

**Small Company [Section 2(85)]:** A Small Company” means company other than public company

- I. Whose paid-up capital does not exceed ₹50 lakhs
- II. Whose turnover as per the latest accounts does not exceed ₹2 Crores.
- III. This will not include
  - Holding or subsidiary company
  - Section 8 Company (i.e., Charitable Company)

- Company or body corporate government by Special Acts.

### Comparison of Small Company New Definition with Old Definitions

The amendment proposed in the Companies (Specification of Definition details) Amendment Rules 2022 to the definition of a small company increased the maximum limit of Turnover and paid-up Capital. The boundaries were expanded so that more firms could be covered within the ambit of a small company, making them eligible to get more benefits than a small company provided under the Companies Act 2013.

A simple comparison of the old and new definitions of a small company is explained

Criteria	Old Definition	Old Definition 2021	New Definition 2022
Paid-up share capital	Maximum paid-up share capital of <b>Rs.50 lakh</b>	Maximum paid-up share capital of <b>Rs.2 Crores</b>	Maximum paid-up share capital of <b>Rs.4 Crores</b>
Turnover	Maximum turnover of <b>Rs.2 crore</b>	Maximum turnover of <b>Rs.20 Crores</b>	Maximum turnover of <b>Rs.40 Crores</b>

### The major exemptions available to small companies under companies Act 2013 are:

1. **Board Meeting:** The small company must have at least one meeting of the board of directors in each of half of a calendar year and the gap between the two meetings is not less than ninety days.
2. **Cash flow statement:** Preparation of financial statements has been specifically excluded for small company.
3. **Certification by professionals:** Many of the forms like INC-22, INC-28 etc is not required for pre certification by Chartered. Accountant or company secretaries or cost accountants in wholetime practices.
4. **Fees to be paid to registrar on incorporation:** Fee that has to be paid during incorporation is reduced to nearly half when compare to large entities.
5. **Signing of Financial statements:** The signing of annual statements can be done by single director in case if there is no company secretary.
6. **Disclosure in annual report:** Disclosure of details remuneration drawn by director's company. are not required for small

7. **Rotation of auditors:** It is not necessary for small companies to follow the condition laid in section 139(2) of the companies Act 2013 which mandates the rotation of auditors every 5 years.
8. **Exemption in auditor report:** Auditors do not have to report on adequacy of internal control and their operational effectiveness the auditor's report.

### **FOREIGN COMPANY**

**Section 2(42), Companies Act, 2013 defines Foreign Company as.” 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.

**Sections 379 to 393 of the Act deal with such companies:** Section 380 of the Act lays down that every foreign company which establishes place of business in India must, within 30 days of the establishment of such place business, file with the Registrar of Companies for registration:

- a) Certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting defining the constitution the company and, if the instrument is not in the English language, a certified translation thereof in the English language.
- b) The full address of the registered principal office of the company;
- c) A list of the directors and secretary of the company containing such particulars as may be prescribed;
- d) the name and address or the names and address of one or more person's resident in India authorized to accept on behalf of the company service of process and any notices or other documents required to be served on-the company;
- e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
- f) particulars of opening and closing of a place of business in India on earlier occasion or
- g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
- h) any other information as may be prescribed.
- i) Every foreign company has to ensure that the name of the company, the country of incorporation, the fact of limited liability of members is exhibited in the specified place or document as required under Section 382.
- j) Section 381 requires a Foreign Company to maintain books of Account and file a copy of balance sheet and profit and loss account in prescribed form with ROC every calendar year. These accounts should be accompanied by list of places of business established by the foreign company in India.
- k) Section 376 of the Companies Act 2013 provides further that when foreign company, which has been carrying on business in India, ceases to carry on such business in India, it may be wound up as an unregistered company under Sections

375 to 378 of the Act, even though the company has been dissolved or ceased to exist under the laws of the country in which it was incorporated.

### **GLOBAL COMPANIES**

A global company refers to a company that operates in more than one country or that operates in foreign countries. It can also be referred to as a multinational company or a transnational company. Global companies plan activities on a global basis. By operating in more than one country benefits from savings or economies on activities such as R&D, marketing, operations and direct investment. Global companies have invested and are present in many countries. They market their products through the use of the same coordinated image/brand in all markets. Generally, one corporate office that is responsible for global strategy. These companies emphasize on volume, cost management and efficiency.

### **BODY CORPORATE**

Body corporate broadly means a corporate entity which has a legal existence. According to **Section 2(11) of the Companies Act, 2013** includes a private company. public company. one personal company, small company. Limited Liability Partnerships, foreign company etc. The term "Body corporate" or "corporation" also includes a company incorporated outside India.

According to Section 2(11): **Body Corporate includes the following-**

1. A private company
2. A public company
4. Small company
3. One person company
5. Limited liability partnership
6. Foreign company or a company incorporated outside India.

However, **body corporate does not include-**

- i. a co-operative society registered under any law relating to co-operative societies;
- ii. and any other body corporate (not being a company as defined in the Companies Act 2013), which the Central Government may, by notification, specify in this behalf;

### **LISTED COMPANY**

According to the Companies Act, "a listed company means a company that has any of its securities listed on any recognized 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"

If any security issued by a company is traded on any recognized stock exchange, the company can be described as Listed Company. Listed company is a company whose shares are traded on an official stock exchange.

It must adhere to the listing requirements of that exchange, which may include how many shares are listed and a minimum earnings level. This would be a company whose stock is listed on a stock exchange. This is a matter of buying and selling shares of ownership in the company. A new company or a small company might not be listed; such a company would want to get listed as a sign that its business is significant.

**Unlisted Company:** Any company whose shares are not listed on an exchange is called Unlisted Company. Unlisted Company is a company with stock that is not traded on an exchange. Very often, unlisted companies are very small and do not trade on an exchange because they do not meet market capitalization requirements. Unlisted companies may be traded informally (theoretically, one may stand on a street corner and sell his/her stocks), but the term usually refers to companies traded through a dealer network

### **Listing Procedure**

**The company concerned must apply in the prescribed form along with the following documents and details:**

1. Certified copies of Memorandum and Articles of Association, Prospectus or Statement in lieu of Prospectus, Underwriting agreements, agreements with vendors and promoters, etc.
2. Specimen, copies of shares and debenture certificates, letter of call, allotment, acceptance and renunciation.
3. Copies of balance sheet and audited accounts for the last 5 years.
4. Copies of offers for sale and circulars or advertisements offering any securities for subscription or sale during the last 5 years
5. Certified copies of agreements with managerial personnel
6. Particulars of dividends and bonuses paid during the last 10 years.
7. A statement showing dividends or interest in arrears, if any
8. brief history of the company since its incorporation giving details of its activities Particulars regarding its capital. structure.
9. Particulars of shares and debentures for which permission to deal is applied for and their issue.
10. A statement showing the distribution of shares along with a list of highest 10 holders of each class or kind of securities of the company stating the number of securities held by them.
11. Certified copies of agreements if any with the Industrial Finance Corporation, ICICI, etc.
12. Particulars of shares forfeited.
13. Listing agreement with the necessary initial and annual listing fee.

### **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 for the last 2 years. Such a company or an inactive company can make an application to ROC for obtaining the Status of a dormant company.

**Significant accounting transaction mentioned above means transaction other than the following:**

1. Payment of fees by the company to ROC.
2. Payment made by it to fulfil the requirements of this Act or any other law.
3. Allotment of shares
4. Payment for maintenance of its office and records.

**Other Points:**

1. The ROC may allow the status of a Dormant Company to the application.
2. ROC shall maintain a register of Dormant Companies
3. The ROC on its own, shall issue a notice to such company when the Annual Return has had not been filed for 2 years and enter the company's name in the Register maintained for the Purpose.
4. The Dormant Company shall have such minimum directors, file such documents and pay
5. such fees as may be required to retain its Dormant character.
6. It can become active on making an application and on Payment of the required fees to the ROC.
7. The ROC may strike off the name of the Dormant Company if it fails to comply with the specified requirements.



**ASSIGNMENT QUESTIONS****SECTION - A**

1. Define Joint Stock Company?
2. What is separate legal entity?
3. What is company limited by shares?
4. What is a common seal?
5. Define One Person Company.
6. Write the meaning of Companies Limited by Guarantee
7. What is a Holding company?
8. What is a Subsidiary company
9. What is a Government Company
10. Define associate company.
11. Define private company.
12. Define public company.
13. What is a foreign company?
14. What is a listed company?
15. What is company?
16. Define Company.

**NOTE: Meaning of Any Companies may be asked.**

**SECTION - B**

1. Give a brief note on One Person Company under the Companies Act 2013.
2. Differentiate Private and Public Company.
3. Write short note on small companies and state major exemptions.
4. State the provisions related to Companies Act 2013 related to Foreign Companies.
5. State the provisions related to Companies Act 2013 related to Associate Companies.

**NOTE: Any company can be individually asked to explain for 6 Marks**

**SECTION -C**

1. Explain the features of a Joint Stock Company (Company).
2. Explain Salient features/ Highlights of the Companies Act 2013.
3. Explain the kinds of company in detail.
4. Differentiate between Private and public company under companies Act 2013.
5. What are the special privileges and exceptions enjoyed by the private company under the Companies Act,2013.

**NOTE: Any company can be individually asked to explain for 12 Marks**