



**CA INTERMEDIATE**

**CORPORATE AND  
OTHER LAW**

**CA Chaitanya Jain**

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# PREFACE

A highly skilled professional team of CA Wallah works arduously to ensure that the students receive the best content for their CA-Intermediate exams.

A plethora of CA Study Material is available in the market but CA Wallah professionals at PW are continuously working to provide supreme quality study material for the CA-Intermediate students.

From the beginning, the content team comprising Subject Matter Experts, Content Creators, Reviewers, DTP operators, Proofreaders, and others is involved in shaping the material to their best knowledge and experience to produce powerful content for the students.

CA Wallah Faculties have adopted a novel style of presenting the content in easy-to-understand language and have provided the content team with expert guidance and supervision throughout the creation and curation of this book.

PW's CA Wallah strongly believes in conceptual and fun-based learning. CA Wallah provides highly exam-oriented content to bring quality and clarity to the students.

This book adopts a multi-faceted approach to mastering and understanding the concepts by having a rich diversity of questions asked in the CA-Intermediate examination and equipping the students with the knowledge for this highly competitive exam.

The main objective of this book is to provide an edge to your preparation with short & crisp yet high-quality content.

## BOOK FEATURES

This book, especially designed & amended for CA-Foundation aspirants, contains:

- Syllabus coverage strictly as per ICAI study Material
- ICAI Study Material Questions
- Latest RTP & MTP Questions

# ABOUT THE AUTHOR

Chaitanya Jain, also known as CJ Sir, is a Chartered Accountant with a B.Com degree from Sydenham College, Mumbai and completed his schooling from Delhi Public School. With over 7 years of teaching experience, he has taught 'Business Laws' at CA Foundation and 'Corporate and Other Laws' at CA Intermediate levels. His popular series "Kanoon Ka Junoon" at CA Wallah by PW has earned him a loyal following. CJ Sir has also led financial literacy programs in the USA and UK region, making law and finance accessible to students worldwide. CJ Sir strongly believes that Chartered Accountancy equips you with unparalleled credibility and the prefix 'CA' gives you the kind of confidence that is truly empowering.

He began his CA journey in 2012, and after thorough research, knew that he had made the right choice. After clearing his final exams in November 2016, he realized he had true passion for Law. He vividly remembers an intense study session when he started scribbling on chart papers stuck on the walls of his home, with one chart for each chapter.

He created concise summaries to simplify complex legal concepts, which he also used, to teach his friends and classmates. Their positive feedback further boosted his love for teaching, and he knew he wanted to make Law the most enjoyable part of the CA journey for others, as it can be dry and vast at the same time. And that's how his journey as an Educator began.

8 years in, and his passion continues to drive him as he teaches more students with each growing day.

## About the Book

This book is a work of compilation, carefully assembled with ICAI's study material as the base for the respective attempt, combined with material from past years, RTPs & MTPs as well as my creative inputs conceptualised from scratch. I like to call this book 'Super Notes by CJ' and its key features are:

- **Overview:** A bird's eye view of each chapter for quick comprehension.
- **Mind Maps:** Case laws presented in mind map diagrams for simplified understanding.
- **Star-Marked Topics:** Important and expected topics highlighted with stars for focused study.
- **Bold Key Words:** Essential keywords and sentences in bold for easy recall.
- **Key Word Tables:** Summarized tables for quick learning of key terms.
- **Engaging Techniques:** Fun learning through mnemonics, acronyms and stories.
- **Question Bank Named "Problem Kya Hai?":** Featuring practice questions from ICAI's Study Material (SM), Mock Tests Paper (MTPs), Revision Tests Paper (RTPs) & Past Year Papers (PYPs).

Happy learning!

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## Chapter I

# PRELIMINARY

## 1. INTRODUCTION

KEY TABLE	
Name of the Act	The Companies Act, 2013
Purpose	To consolidate and amend company law; align with national and international changes; promote economic growth
Assent Date	29 <sup>th</sup> August 2013
Gazettee Notification Date	30 <sup>th</sup> August 2013
Enforcement Provision	Different provisions notified on different dates
Key Enforcement Dates	Section 1 : 30 <sup>th</sup> August 2013 98 Sections : 12 <sup>th</sup> September 2013 143 Sections : 1 <sup>st</sup> April 2014
Structure	470 Sections, 7 Schedules, 29 Chapters
Nature of Law	Rule-based legislation
Objective	Improve corporate governance, simplify regulations, protect investors' interests

## 2. SHORT TITLE, EXTENT, COMMENCEMENT AND APPLICATION

Section 1 of the Act	
Title	This Act may be called – The Companies Act, 2013
Extent	The Act extends to the whole of India
Commencement	Section 1 came into force immediately on 30 <sup>th</sup> August 2013 – Other provisions to commerce on dates notified by the Central Government through the Official Gazette.
Power to Notify	Central Government may appoint different dates for enforcement of different provisions
Interpretation Clause	Any reference to the “Commencement of this Act” shall be construed as reference to commencement of that specific provision

This Section furthermore states of the Applicability of the Act.

The provisions of this Act shall apply to-



Companies incorporated under this Act or under any previous company law.	Insurance companies except those provisions inconsistent with The Insurance Act, 1938 or the IRDA Act, 1999)	Banking companies except those provisions inconsistent with The Banking Regulation Act, 1949	Electricity Companies (generation or supply) except those provisions inconsistent with The Electricity Act, 2003	Companies governed by any special Act,
--	--	--	--	--

**Example 1:**

- (a) ABC Ltd. was incorporated on 1.1.1972 under the Companies Act, 1956. So, the Companies Act, 2013 shall also be applicable on ABC Ltd.*
- (b) insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;*
- (c) banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;*
- (d) companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;*
- (e) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act, and*
- (f) such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.*

**Example 2:**

*Food Corporation of India (FCI), National Highway Authority of India (NHAI) etc,*

**Note:** The term “except in so far as” shall mean excluding to the extent of i.e. if any provision of the Companies Act is inconsistent with any of the provisions of other Act (Insurance Act, Banking Regulation Act, Electricity Act, etc.) to which the company is regulated than that company shall comply with the provisions of respective Act/Acts to which it is governed and regulated by

1. The provisions of Companies Act, 2013 apply to:
  - (a) XYZ Ltd., a company incorporated under Indian Companies Act, 1913
  - (b) ABC Private Limited, incorporated under Companies Act, 1956
  - (c) Both (a) and (b)
  - (d) Neither (a) nor (b)

### 3. DEFINITIONS

Section 2 is the Definition Section of the Companies Act, 2013.

It provides meanings of various terms and expressions used throughout the Act.

These definitions act as internal aids to construction helping in interpretation and understanding of the law.

According to Clause 95 of Section 2 - Words and expressions used but not defined in this Act, and which are defined in:

Securities Contracts (Regulation) Act, 1956

SEBI Act, 1992

Depositories Act, 1996\*\*

Shall carry the \*\*same meaning as defined in those respective Acts

When a term is defined under this Act, it must be interpreted only in that defined sense, unless it contradicts the context.

Let's understand the important and related definitions first, which are –

**What is a company ?**

**What is Body Corporate ?**

**Classification of Share Capital**

**Types of Companies**

**Some other related important definitions**

#### 3.1 Section 2(20) - COMPANY

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

**Example:** *Reliance Industries Limited incorporated in year 1973, Tata Steel Limited incorporated in year 1907, Infosys Limited incorporated in year 1981. Such companies are incorporated under Companies Act, 1956 (previous company law) are also included in the above definition for being treated as a Company*

**Which means Foreign company or company incorporated outside India is not included in this definition.**

#### 3.2 Section 2(69) – PROMOTER

Means a person—

- (A) who has been **named as such in a prospectus** or is identified by the company in the annual return referred to in section 92, or
- (B) who has **control over the affairs of the company**, directly or indirectly whether as a shareholder, director or otherwise; or
- (C) in accordance with whose **advice, directions or instructions** the Board of Directors of the company is accustomed to act:  
Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;



### 3.3 Section 2(11) – BODY CORPORATE

**Body corporate** or **Corporation** includes a company incorporated outside India but does not include-

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

**Note –**

1. **Body corporate has all the features of a company and**
2. **It includes –**
  - a. **Foreign company or company incorporated outside India**
  - b. **LLPs**
  - c. **Public Financial Institutions.**
  - d. **Nationalised banks.**

## 4. CLASSIFICATION OF SHARE CAPITAL

TYPES OF SHARE CAPITAL			
TYPE	SEC.	Meaning	Example
Authorised / Nominal Capital	2(8)	Maximum capital a company is authorised to raise as per its Memorandum of Association (MOA)	₹10,00,000 (as stated in MOA)
Issued Capital	2(50)	Portion of authorised capital offered to the public for subscription	₹6,00,000 worth of shares issued
Subscribed Capital	2(86)	Portion of issued capital that is subscribed (taken up) by investors/members	₹5,00,000 out of ₹6,00,000 issued
Called-up Capital	2(15)	Portion of subscribed capital that the company has called for payment	₹4,00,000 out of ₹5,00,000 subscribed
Paid-up Capital	2(64)	Amount actually received or credited as received from shareholders against called-up capital	₹3,80,000 received out of ₹4,00,000 called-up
Calls in Arrears		Difference between called-up and paid-up capital	₹4,00,000 – ₹3,80,000 = ₹20,000



**Example :**

ABC Ltd. was registered with Registrar with an Authorised capital of Rs. 2,00,00,000 where each share is of Rs. 10.

In response to the advertisements made by the company to buy shares in the company, applications have been received for 10,00,000 shares but company actually issued 700,000 shares where company has called for Rs. 8 per share.

All the calls have been met in full except three shareholders who still owe for their 6000 shares in total.

Amount of various share capital

Authorized share capital = Rs. 2,00,00,000 (2 crore) Subscribed capital = 10,00,000 x 10 = Rs. 1,00,00,000 (1 Crore)

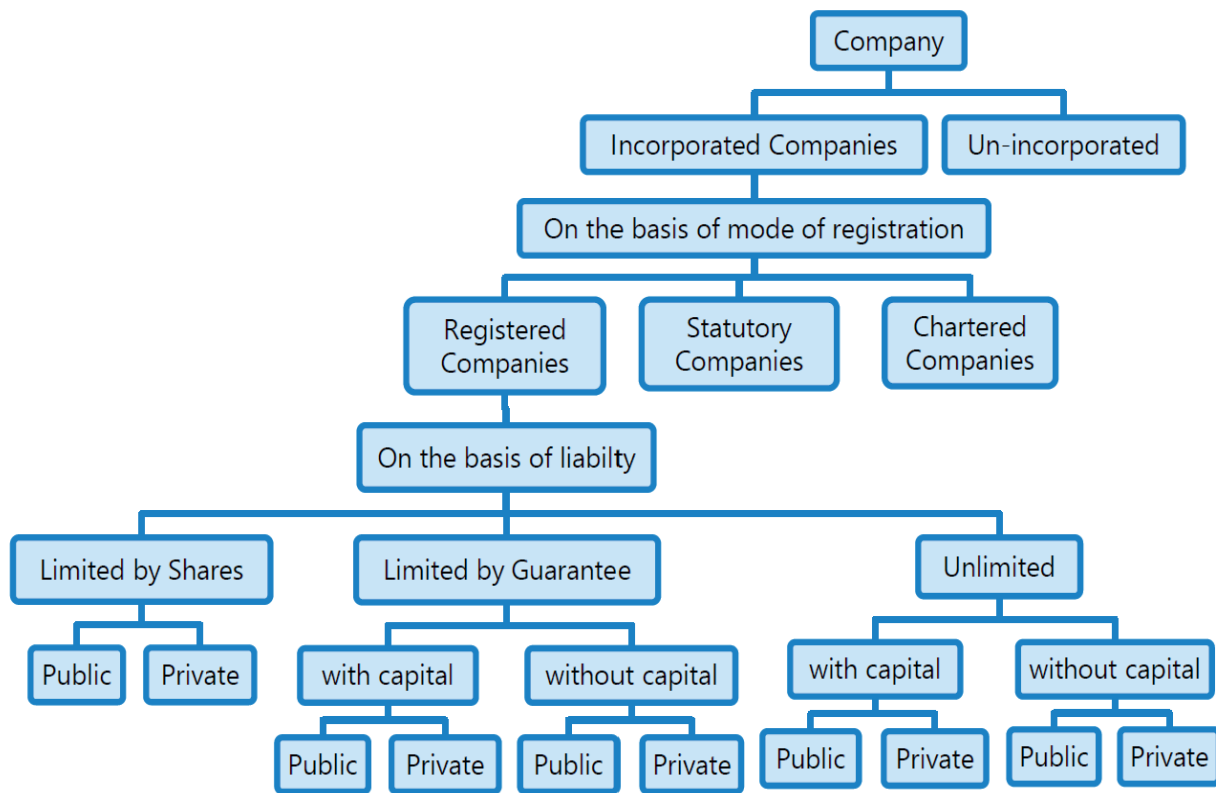
Issued capital = 7,00,000 x 10 = Rs. 70,00,000

Called-up capital = 7,00,000 x 8 = Rs. 56,00,000

Paid-up capital = 56,00,000 – (6000 x Rs. 8) = Rs. 55,52,000

## 5. TYPES OF COMPANIES

TYPES OF COMPANIES – ON BASIS OF -				
LIABILITY	SIZE (Members)	CONTROL	LISTING	OTHERS
Unlimited	Public	Holding	Listed	Foreign
<b>Limited –</b> 1. By Shares 2. By Guarantee 3. By Both	Private	Subsidiary		Unlisted
	OPC	Associate	Section 8	
	Small Co		Dormant Co.	
			Nidhi Co	
			PFI	



## 5.1 ON THE BASIS OF LIABILITY

### 5.1.a Section 2(22) – COMPANY LIMITED BY SHARES

- When the liability of the members of a company is limited by its memorandum of association to the amount (if any)
  - unpaid on the shares held by them,
  - it is known as a company limited by shares.
- It is implied that for meeting the debts of the company, the shareholder may be called upon to contribute only
  - to the extent of the amount, which remains unpaid on his shareholdings.
  - His separate property cannot be encompassed to meet the company's debt.
- Though a shareholder is a co-owner of the company, he is not a co-owner of the company's assets.
- The ownership of the assets remains with the company, because of its nature as a legal person.

### 5.1.b Section 2(21) – COMPANY LIMITED BY GUARANTEE

- As the company having the liability of its members limited by the memorandum to such amount
- as the members may respectively undertake by the memorandum
- to contribute to the assets of the company
- **in the event of its being wound up**
- Thus, the liability of the member of a guarantee company is limited upto a stipulated sum mentioned in the memorandum.
- Members cannot be called upon to contribute beyond that stipulated sum.
- The **common features** are -
  - legal personality and
  - limited liability.
  - To be stated in their memorandum that the members' liability is limited.
- The **point of distinction** between these two types of companies -

BASIS	GUARANTEE Company	SHARE CAPITAL Company
<b>Meaning</b>	When MOA says that liability of members shall be restricted to the amount they have guaranteed.	When memo says that liability of members shall be restricted to the unpaid amount on the shares held by them.
<b>SC</b>	May or may not have SC	Must have SC
<b>Quantum of Liability</b>	In case of Winding up liability of every member: - Guaranteed amount and If SC - Unpaid amount of shares	Liability of every member: Unpaid amount on the shares held by them.
<b>When does liability arise ?</b>	Only in the case of Winding up	When valid call is made by co.
<b>Suitability</b>	Where huge Initial capital is not required & funds can be arranged by way of borrowings, fees charged etc.	Where huge Initial capital is required & financial resources cant be arranged by way of borrowings

**Example :** A shareholder who has paid rupees 75 on a share of face value rupees 100 can be called upon to pay the balance of rupees 25 only.

### 5.1.c Section 2(92) – UNLIMITED COMPANY

- Unlimited company as a company not having any limit on the liability of its members.
- In such a company, the liability of a member ceases when he ceases to be a member.
- **The liability of each member extends to the whole amount of the company's debts and liabilities but he will be entitled to claim contribution from other members.**
- In case the company has share capital, the Articles of Association must state the amount of share capital and the amount of each share.
- **So as long as the company is a going concern the liability on the shares is the only liability which can be enforced by the company.**
- The creditors can institute proceedings for winding up of the company for their claims.
- The official liquidator may call the members for their contribution towards the liabilities and debts of the company, which can be unlimited.

## 5.2 ON THE BASIS OF CONTROL

### 5.2.a Section 2(46) and 2(87) – HOLDING and SUBSIDIARY COMPANY

- Holding means Who - **(either a or b)**.
  - controls the composition of the Board of Directors  
**What do you mean by controlling BOD ?**  
HC at its discretion can appoint or remove all or a majority of the directors;
  - OR**
  - exercises or controls more than one-half of the total voting power or 50% or more of total Share Capital either at its own or together with one or more of its subsidiary companies.

*As per the notification dated 27th December 2013, Ministry clarified that the shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for the purpose of determining the holding –subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.*

- |  |   |
|--|---|
| <p>1. A Ltd. is the holding company of B Ltd. Another company C Ltd. is the subsidiary company of B Ltd. Is there any relationship between A Ltd. and C Ltd. (RTP MAY 2019)</p> <p>(a) There is no relationship between A Ltd. and C Ltd.</p> <p>(b) C Ltd. is deemed to be the subsidiary of A Ltd.</p> | <p>(c) A Ltd. shall be deemed to be the holding company of C Ltd. provided A Ltd. acquires at least 10% stake in C Ltd.</p> <p>(d) C Ltd. shall be deemed to be the subsidiary of A Ltd. if the latter company acquires minimum 10% stake in the former company within six months after C Ltd. becomes subsidiary of B Ltd.</p> |
|--|---|

2. Aman Pvt. Ltd. was incorporated in 2009 with 10 members having equal amount of equity shares. Subsequently, eight shareholders sold their holding to another company Chaman Ltd. In view of provisions of Companies Act, 2013, which of the following statement is correct?
- (a) Since the identity of company is distinct from its members, the status of Aman Pvt. Ltd. will not change with the change in the shareholders.
  - (b) Since Chaman Ltd. holds more than 50% of voting power of Aman Pvt. Ltd., Aman Pvt. Ltd. will be deemed to be a public company.
  - (c) Aman Ltd. will have to amalgamate with Chaman Ltd. since it holds more than 50% of its capital.
  - (d) None of the above
3. A Ltd. is the holding company of B Ltd. Another company C Ltd. is the subsidiary company of B Ltd. Is there any relationship between A Ltd. and C Ltd.?
- (a) A Ltd. and C Ltd. have separate legal entities and there is no relationship between them.
  - (b) C Ltd. is deemed to be the subsidiary of A Ltd.
  - (c) A Ltd. shall be deemed to be the holding company of C Ltd. provided A Ltd. acquires at least 10% stake in C Ltd.
  - (d) A Ltd. shall be deemed to be the holding company of C Ltd. provided A Ltd. acquires at least 51% stake in C Ltd.
4. H Ltd., its Managing Director and its Company Secretary hold 33.33% equity shares each in S Ltd. Which of the following statement is correct?
- (a) S Ltd. will be treated as subsidiary of H Ltd.
  - (b) S Ltd. will be joint venture of H Ltd., its Managing Director and its Company Secretary.
  - (c) Both (a) and (b)
  - (d) None of the above
5. A Limited held equity shares in B Limited. Later on, A Limited became subsidiary company of B Limited. Decide under the Companies Act, 2013, what will be the requirement as to shares held by A Limited in B Limited.
- (a) A Limited, which is now a subsidiary of B Limited will have to surrender thqueequity shares of B Limited.
  - (b) A Limited will continue to hold the equity shares of B Limited but it cannot exercise voting rights in respect of these shares.
  - (c) A Limited will continue to hold the equity shares of B Limited and can exercise voting rights in respect of these shares.
  - (d) None of the above

### 5.2.b Section 2(6)– ASSOCIAE COMPANY

- A company where holding company has a **significant influence, but which is not a subsidiary company** of the company and includes a joint venture company.
- **Atleast 20% but Max 50% of Total Voting Powers**  
Explanation. — For the purpose of this clause —
- **Significant influence = Control of at least 20% of total voting power**, or control of or participation in business decisions under an agreement;
- **Joint venture = A joint arrangement** whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

*Vide Circular dated 25/06/2014 it has been clarified that the shares held by a company in another company in a fiduciary capacity (a fiduciary is a person who holds a legal or ethical relationship of trust with one of more parties (persons or group of persons. Typically, a fiduciary prudently takes care of money or other assets for another person) shall not be counted for the purpose of determining the relationship of associate company.*

**Note: Students may please note that the definition of Associate company as defined under AS 23/ Ind AS 28 (Accounting for Investments in Associates in Consolidated Financial Statements/ Investment in Associates and Joint Ventures) is slightly different from the above definition as given in the Companies Act, 2013.**

- |   |  |
|---|--|
| <p>1. “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. Here, the words ‘significant influence’ means:</p> | <ul style="list-style-type: none"> <li>(a) Control of at least 10% of total voting power</li> <li>(b) Control of at least 15% of total voting power</li> <li>(c) Control of at least 20% of total voting power</li> <li>(d) Control of at least 25% of total voting power</li> </ul> |
|---|--|

## 5.3 ON THE BASIS OF MEMBERS (SIZE)

### 5.3.a Section 2(62) – ONE PERSON COMPANY



- Section 2(62) - A new class of companies which can be incorporated by a **single person**.
- One person company (OPC) as a company which has **only one person as a member**.
- One person company has been introduced to encourage entrepreneurship and corporatization of business.
- OPC - A type of Company so it is a separate legal entity with a limited liability of the member
- Sole proprietary concern the liability of owner is not restricted and it extends to the owner's entire assets constituting of official and personal.
- Section 3(1)(c) - **OPC is a private limited company**
- **All OPCs are private but all private are not OPCs**
- with NO minimum paid up share capital and having one member.

#### Provisions related to Member and Nominee

- The memorandum of OPC shall have- the name of the other person, who in the event of -
  - the subscriber's death or
  - his incapacity to contract, become the member of the company.
- His **prior written consent** is required in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation of the company along with its e-memorandum and e-articles.
- He has been given **right to withdraw** his consent by giving notice to sole member & to OPC
- **Change in the name** of such other person **can be done** by a members by giving **notice** to -
  - the company and
  - the company shall intimate the same to the Registrar (INC-4)
- Where a natural person, being member in One Person Company in accordance with this rule [Rule 3(2)] becomes a member in another such Company by virtue of his being a nominee in that One Person Company, such person shall meet the above specified criteria (can be member of only one OPC) within a period of 180 days.

KEY TABLE - OPC				
Case	Situation	Action Required	Timeline	Form/Procedure
1	Withdrawal of Consent by Nominee	Sole member must nominate a new nominee and obtain their written consent.	Within <b>15 days</b> of receipt of withdrawal notice	Send intimation to company with new nominee's declaration in <b>Form INC-4</b>
2	Replacing Nominee with Another	Member may replace nominee for any reason (e.g., death/incapacity) with prior consent of new nominee.	Give intimation to company; change <b>not considered alteration of Memorandum</b> . File <b>Form INC-4</b> with declaration.	
3	When Nominee Becomes Member	New member (former nominee) must nominate a fresh nominee.	Within <b>15 days</b> of becoming member	New nomination and consent to be submitted in <b>Form INC-4</b>
Registrar Filing Requirement In all 3 cases above		Company must notify Registrar of the change and submit details of new nominee.	Within <b>30 days</b> of receipt of notice or change	File <b>Form INC-4</b> with requisite <b>fee</b> and written consent of <b>new nominee</b> in <b>INC-3</b>

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

#### Who can be a Member and Nominee ?

- Only a natural person
- who is an Indian citizen
- whether resident in India or otherwise.
- For the purpose of this rule, the term resident in India means a person who has stayed in India for a period of not less than 120 days during the immediately preceding financial year
- shall be eligible to incorporate a OPC; and shall be a nominee for the sole member of a OPC.

#### Example :

Ms. Madhu formed an OPC wherein Mr. Sudan is nominee as his name is specified in MOA along with his consent. Ms. Madhu declared insolvent, pending to discharge insolvency, she becomes incompetent to contract, hence, Mr. Sudan becomes the member of such OPC.



**Example : Illustration (True/False)**

**Statement :** *Even a Non-Resident Indian can form and become member of OPC.*

**Answer :** *True. [As per Rule 3(1) of the Companies (Incorporation) Rules, 2014.] Only a natural person, other than minor; who is an Indian citizen and whether resident in India or otherwise shall be eligible to incorporate a One Person Company.*

**What are the DONT'S ?**

- Involvement in TWO OPCs - NO means More than ONE not allowed - Neither for Member nor for Nominee.
- Minor ≠ Member or nominee.
- OPC ≠ cannot be incorporated or converted into a Section 8 **NO**  
OPC = May be converted to private or public companies. **YES**
- OPC ≠ cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporate.
- Here the member can be the sole member and director as well.

**Additional Points -**

- *Despite name of such other (old nominee) and another person (new nominee) specified in memorandum, any such change in the name of the person shall not be deemed to be an alteration of the memorandum.*

**Relaxations Available to OPC:**

- *Cash Flow Statement - Not required as per Section 2(40).*
- *Annual Return (Section 92) - Can be signed by the Director alone (Company Secretary not mandatory).*
- *Abridged annual return may be prescribed.*
- *\*Financial Statements & Director's Report (Section 134) - One Director's signature is sufficient.*
- *Abridged form of Director's Report may be allowed.*
- *\*Annual General Meeting (Section 96) - AGM is not required for OPC.*
- *General Meetings (Sections 100 to 111) - Provisions relating to GM & EGM not applicable to OPC.*
- *Board Meetings (Section 173) - OPC must hold only one Board Meeting in each half of the calendar year.*
- *Gap between meetings must be at least 90 days.*
- *Filing of Financial Statements (Section 137) - Allowed to file within 6 months from the close of the financial year (instead of 30 days).*



### 5.3.b Section 2(68)– PRIVATE COMPANY

- **PP - Prohibits** any invitation to the **public** to subscribe for any securities of the company
- **R - Restricts** the right to transfer its shares
- Articles Restricts but do not Prohibit
- Uniform rights to all the members. No discrimination
- **Lim - Limits** the number of its members to 200 (Except OPC)
- Joint members - Counted as ONE
- For counting 200 members - Do not include -
  - A. Existing employees cum members and
  - B. Former employees who were members of the company while in that employment and have continued to be members after the employment ceased. (employees cum members)
- Minimum members – 2 (except OPC) and Maximum - 200

*The requirement of having a minimum paid up share capital shall not apply to a section 8 company (Formation of companies with charitable objects, etc.) vide notification dated 5th June 2015.*

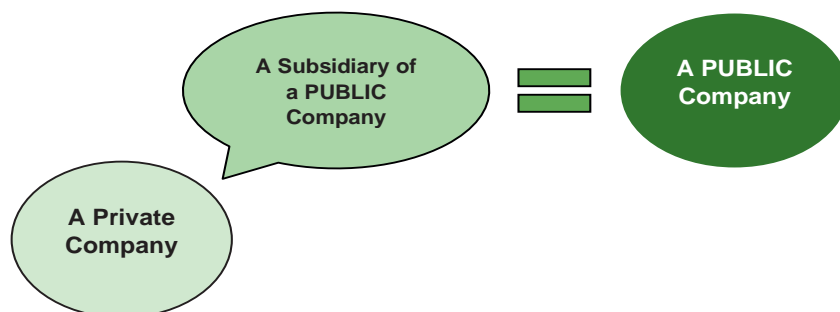
*The above-mentioned exemption shall be applicable to a section 8 company which has not committed a default in filing its financial statements under section 137 of the Companies Act, 2013, or annual return under section 92 of the said Act with Registrar. [Vide amendment notification G.S.R. 584(E) dated 13th June 2017.]*

1. A private company has 210 members including 11 members who have been employees of the company and acquired shares while in employment of the company. In view of provisions of Companies Act, 2013, which of the following statement is correct?
  - (a) The private company has to convert to a public company since the number of members exceed 200.
  - (b) The private company will have to forfeit the shares of 10 members so that the number of members can be limited to 200.
  - (c) For the purposes of reckoning the limit of 200, the shares held by ex-employees of the company are excluded.
  - (d) None of the above.

### 5.3.c Section 2(71)– PUBLIC COMPANY

- “Public company” means a company which—
  - Is not a private company (Articles do not have the restricting clauses).
  - Shares are freely transferable.
  - No minimum paid up capital requirement.

- Minimum number of members – 7.
- Maximum numbers of members – No limit.
- **Status of private company, which is subsidiary to public company:**



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

**Example :**

*A Pvt. Ltd. is wholly owned subsidiary of AB Ltd., a public company incorporated under the Companies Act, 2013. A Pvt. Ltd. wanted to avail exemptions as provided to private companies. In this case, since A Pvt. Ltd. is subsidiary of AB Ltd., which is a public company, therefore A Pvt. Ltd. will be deemed to be a public company and will be not allowed to avail exemptions provided to a private company.*

### 5.3.d Section 2(85)– SMALL COMPANY

- Small company is a private company. It means a company whose -
  - Paid up capital – not more than Rs. 4 Crores
  - Or
  - Turnover – not more than Rs. 40 crores.
- **Exceptions: This clause shall not apply to:**
  - a) a public company
  - b) a holding company or a subsidiary company;
  - c) a company registered under section 8; or
  - d) a company or body corporate governed by any special Act.

1. Roma along with her six friends has incorporated Roma Trading Ltd. in May 2023. The paid-up share capital of the company is ₹ 2 crore. Further, in April 2024, she noticed that in the last financial year, turnover of company was well below ₹ 40 crore. Advise whether the company can be treated as a 'small company'.

(a) Roma Trading Ltd. is definitely a 'small company' since its paid-up capital is much below ₹ 4 crore and also its turnover has not exceeded the threshold limit of ₹ 40 crore.

(b) The concept of 'small company' is applicable only in case of a private limited company/OPC and therefore, despite meeting the criteria of 'small company' it being a public limited company it cannot enjoy benefits of 'small company'.

(c) Unlike a private limited company/OPC which automatically becomes a 'small company' as soon as it meets the criteria of 'small company', Roma Trading Ltd. being a public limited company has to maintain the norms applicable to a 'small company' continuously for two years so that, thereafter, it will be treated as a 'small company'.

(d) If all the shareholders of Roma Trading Ltd. give an undertaking to the ROC stating that they will not let the paid-up share capital and also turnover exceed the limits applicable to a 'small company' in the next two years, then it can be treated as a 'small company'.

2. Abhilasha and Amrita have incorporated a 'not for profit' private limited company which is registered under Section 8 of the Companies Act, 2013. One of their friends has informed them that their company can

be categorized as a 'small company' because as per the last profit and loss account for the year ending 31st March, 2024, its turnover was less than ₹ 40 crore and its paid up share capital was less than ₹ 4 crore. Advise.

(a) A section 8 company, which meets the criteria of 'turnover' and 'paid-up share capital' in the last financial year, can avail the status of 'small company' only if it acquires at least 5% stake in another 'small company' within the immediately following financial year.

(b) If the acquisition of minimum 5% stake in another 'small company' materializes in the second financial year (and not in the immediately following financial year) after meeting the criteria of 'turnover' and 'paid-up share capital' then with the written permission of concerned ROC, it can acquire the status of 'small company'.

(c) The status of 'small company' cannot be bestowed upon a 'not for profit' company which is registered under Section 8 of the Companies Act, 2013.

(d) A section 8 company, if incorporated as a private limited company (and not as public limited company) can avail the status of 'small company' with the permission of concerned ROC, after it meets the criteria of 'turnover' and 'paid-up share capital'.

3. As on 31st March 2023, paid up capital of ABC Pvt. Ltd. was 2.5 crores and turnover was 36 crores. For categorizing it a small company, ABC Pvt. Ltd. needs to have following paid up capital and turnover which shall not exceed, as per clause (85) of section 2 of the Companies Act, 2013 : **(Nov 23)**

- (a) Paid up capital Rupees two crores or turnover Rupees twenty crores.
- (b) Paid up capital Rupees two crores and turnover Rupees twenty crores.
- (c) Paid up capital Rupees four crores or turnover Rupees forty crores.
- (d) Paid up capital Rupees four crores and turnover Rupees twenty crores.
3. The paid-up capital of Akash Ltd. is 25 Lakh and its turnover as per profit and loss account for the year ended 31st March, 2020 is 1.80 Crore. In view of Companies Act, 2013, which of the following statement is correct?

- (a) Akash Ltd. is a 'small company' since it fulfils both, the paid-up capital and turnover criteria.
- (b) The concept of 'small company' is applicable only to private companies and therefore, Akash Ltd. cannot be categorised as a small company.
- (c) The paid-up capital and turnover criteria has to be fulfilled for minimum 2 successive years. Therefore, Akash Ltd. cannot be categorised as a small company.
- (d) None of the above

## 5.4 ON THE BASIS OF LISTING

### 5.4.a Section 2(52)– LISTED COMPANY

- **Listed company** means a company which has any of its securities listed on any recognised stock exchange
- Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.
- Rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:-

S. No.	Type of Company	Condition	Status
1	Public Company	Equity shares <b>not listed</b> in India, but <b>non-convertible debt securities (NCDs)</b> issued on private placement basis are listed under SEBI (ILDS) Regulations, 2008	<b>Not a listed company</b>
2	Public Company	Equity shares <b>not listed</b> , but <b>non-convertible redeemable preference shares (NCRPS)</b> issued on private placement basis are listed under SEBI (NCRPS) Regulations, 2013	<b>Not a listed company</b>
3	Public Company	Equity shares <b>not listed</b> , but <b>both NCDs and NCRPS</b> listed as per (1) and (2) above	<b>Not a listed company</b>
4	Private Company	Listed only <b>non-convertible debt securities</b> on private placement basis under SEBI (ILDS) Regulations, 2008	<b>Not a listed company</b>
5	Public Company	Equity shares <b>not listed in India</b> , but listed on <b>stock exchange in foreign jurisdiction</b> under Section 23(3)	<b>Not a listed company</b>

1. Newage Private Limited issued 9% Non-convertible Debentures worth ₹ 10 lakh and thereafter, the directors contemplated to get them listed. After due formalities, these privately placed non-convertible debentures of ₹ 10 lakh were listed. Which of the following options is applicable in the given situation: **(RTP Nov 23)**

(a) Newage Private Limited shall be considered as a listed company.

(b) Newage Private Limited shall not be considered as a listed company.

(c) Newage Private Limited shall be considered as a listed company only when minimum amount of listed privately placed non-convertible debentures is ₹ 15 lakh.

(d) Newage Private Limited shall be considered as a listed company only when minimum amount of listed privately placed non-convertible debentures is minimum ₹ 20 lakh.

## 5.5 OTHER TYPES OF COMPANIES

### 5.5.a. Section 2(45)– GOVERNMENT COMPANY

- Government Company means any company in which -
  - Not less than 51% of the paid-up share capital (with Voting rights) is held by-
    - Central Government, or
    - State Government or Governments, or
    - Partly by the CG and partly by one or more SG, and

- Includes a company which is a subsidiary company of such a Government company.

Explanation:

The “paid up share capital” shall be construed as “total voting power”, where shares with differential voting rights (DVRs) have been issued.

**Example:**

*X Industries Ltd. is a company in which 25% of shareholding is held by Central Government; 10% shareholding is held by Government of Maharashtra and 15% shareholding is held by Central Government and Government of Rajasthan. Here, X Industries Ltd. is not a government company as there is no compliance of minimum holding of paid-up share capital i.e. at least 51 % by the Central Government, or by any State Government or Governments or partly by the Central Government and partly by one or more State Government.*

### 5.5.b. Section 2(42)– FOREIGN COMPANY

- It means any company or body corporate
- incorporated outside India
- which has a place of business in India
- whether by itself or through an agent, physically or through electronic mode; and
- conducts any business activity in India in any other manner

### 5.5.c. Section 8– COMPANY

#### Formation of companies with charitable objects etc.

Section 8 are formed to -

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

#### Examples -

**of section 8 companies are FICCI, ASSOCHAM, National Sports Club of India, CII, Reliance Research Institute, Reliance Foundation, TATA Foundation, and Infosys Foundation etc.**

**Power of Central government to issue the license–**

- Central Government registers -
  1. such person or association of persons
  2. as a company with limited liability

3. without the addition of words 'Limited' or 'Private limited' to its name,
4. by issuing licence on such conditions as it deems fit.
5. On registration the company shall enjoy same privileges and obligations as of a limited company.

#### Revocation of license:

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

#### Order of the Central Government:

After a licence is revoked -

- **Notice & Opportunity:**
  - i. Before revocation, **written notice** must be served on the company and
  - ii. **reasonable opportunity of being heard** must be given.
- **Post Revocation Actions by Central Govt (in public interest):**

If licence is revoked, CG may **order**:

  - i. **Winding up of the Company** under the Companies Act.
    - **Excess assets**, after settling debts and liabilities, may be:
      - Transferred to another Section 8 company with **similar objects** (subject to Tribunal conditions), or
      - **Sold**, and proceeds credited to **Insolvency and Bankruptcy Fund** (u/s 224 of IBC, 2016).
  - ii. **Amalgamation** with another Section 8 company having similar objects.
    - Central Govt may provide for a **new single entity** with such:
      - Constitution, properties, powers, rights, obligations, etc.,
      - As may be specified in the order.

#### Penalty/punishment in contravention:

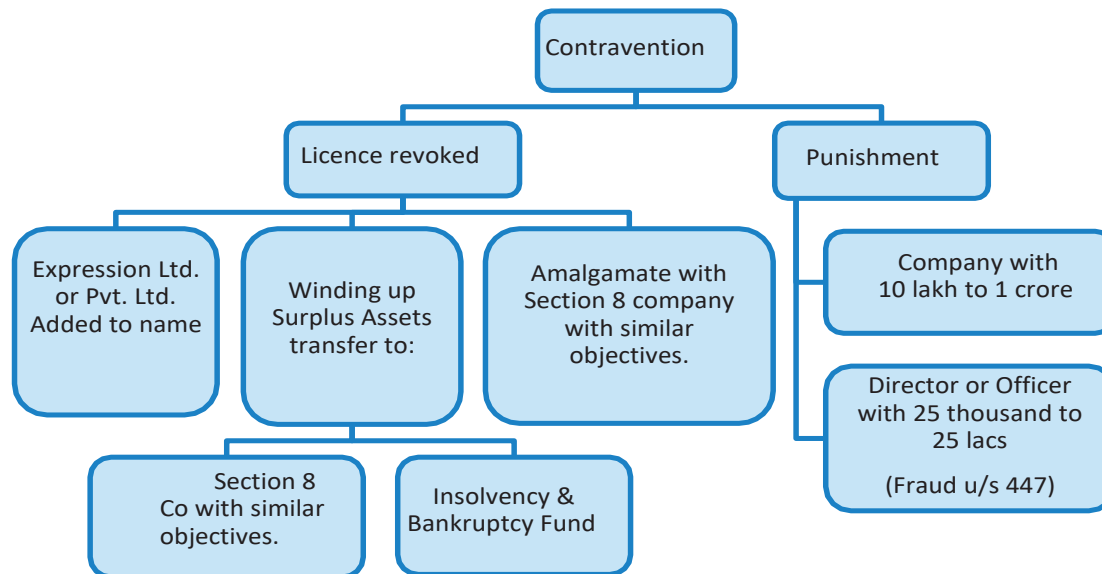
- If a company makes any default in complying with this section be punishable with -

**Fine on the company - 10 lakh to 1 crore rupees**

**and**

**Fine on the directors and every officer of the company Rs 25,000 to 25 lakh rupees.**

If proved that the affairs of the company were conducted fraudulently then Section 447 on every officer in default.

**Note :****1) SOME important point about Sec. 8 company :**

- **Requirement of minimum share capital does not apply.**
- **Uses its profits for the promotion of the objective for which it is formed.**
- **Does not declare dividend to members.**
- **Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.**
- **A partnership firm can be a member of Section 8 company.**

**Relaxations available to a Section 8 Company include:**

- **Can call its general meeting by giving a clear 14 days' notice instead of 21 days.**
- **Requirement of minimum number of directors, independent directors etc. does not apply.**
- **Need not constitute Nomination and Remuneration Committee and Shareholders Relationship Committee.**

**2) The requirement of having a minimum paid up share capital shall not apply to a section 8 company vide notification dated 5th June 2015.**

1. Mr. Anurag and Mr. Sumit, both are teacher of Mathematics and want to open a coaching academy for poor children. They seek to raise money for their operational expenses by way of sponsorship from some like-minded friends and reinvest any surplus left for this noble cause only. In your

opinion, what kind of entity should be incorporated for this purpose?

- (a) A One Person Company
- (b) A Private Limited Company
- (c) A Section 8 Company
- (d) A Limited Liability Partnership

### 5.5.d. Section 455– DORMANT COMPANY

- Where a company is formed for a **future project or**
- **to hold an asset or intellectual property** and
- has **no significant accounting transaction** or
- **an inactive company**
- may make an application to the Registrar
- for obtaining the status of a dormant company.

#### **Inactive company =**

A company which **has not been** -

- carrying on **any business or operation**, or
- has not made any **significant accounting transaction** during
- the last **two financial years**, or
- has not filed **financial statements and annual returns**
- during the last **two financial years**

**“Significant accounting transaction** - Any transaction other than—

( **ये Significant accounting transaction नहीं है** )

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

### 5.5.e. Section 406 (1)– NIDHI COMPANY

- Nidhi” or “Mutual Benefit Society” -
- A company which the CG may
- by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society.

**Nidhi Companies are created mainly for cultivating the habit of thrift and savings amongst its members.**

### 5.5.f. Section 2 (72)– PUBLIC FINANCIAL INSTITUTIONS

The following institutions are to be regarded as PFI :-

1. The Life Insurance Corporation of India (**LIC**),
2. The Infrastructure Development Finance Company Limited, (**IDFC Ltd**)
3. Company in Unit Trust of India (**UTI**)
4. Institutions under **section 4A(2)** of the Companies Act, 1956
5. Such other institution as may be notified by the CG in consultation with the RBI

**Conditions -**

1. Established or constituted by or under any Central or State Act other than this Act or the previous Companies Law;  
or  
Not less than 51% per cent of the paid-up share capital is held or controlled by the CG or by any SG or partly by the CG and partly by one or more SGs.

The following institutions are to be regarded as PFI :-

6. The Life Insurance Corporation of India (LIC),
7. The Infrastructure Development Finance Company Limited, (IDFC Ltd)
8. Company in Unit Trust of India (UTI)
9. Institutions under section 4A(2) of the Companies Act, 1956
10. Such other institution as may be notified by the CG in consultation with the RBI

**Conditions -**

1. Established or constituted by or under any Central or State Act other than this Act or the previous Companies Law;  
or  
Not less than 51% per cent of the paid-up share capital is held or controlled by the CG or by any SG or partly by the CG and partly by one or more SGs.

## 6. OTHER IMPORTANT DEFINITIONS

### 6.1. FINANCIAL STATEMENT

**Financial statement** in relation to a company, includes—

1. a **balance sheet** as at the end of the financial year;
2. a **profit and loss account**, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
3. **cash flow statement** for the financial year;
4. a statement of changes in **equity**, if applicable; and
5. any **explanatory note** annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

**Provided** that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement

**Exemption :**

*For private companies, the proviso to section 2(40) shall be read as follows:*

*“Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement;*

**Explanation :** *For the purposes of this Act, the term “start-up” or “start-up company” means a private company incorporated under the Companies Act, 2013 or the Companies Act, 1956 and recognised as start-up in accordance with the notification issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.”*

*The exceptions, modifications and adaptations shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.*

**Note:** *Students may note that ‘Profit and Loss Account’ may also be referred as ‘Statement of Profit and Loss’ under the Act at some places.*

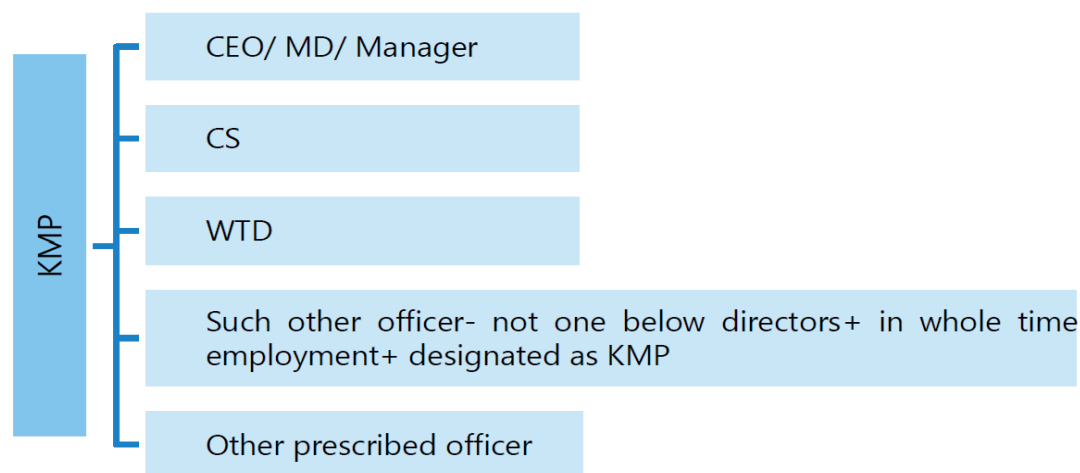
## 6.2. FINANCIAL YEAR

- **Financial year**, in relation to any company or body corporate, means 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 a 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.
- Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and
- is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.

**Note:** *The term “company incorporated outside India” refers to Foreign Company incorporated under any applicable laws for the constitution of company outside India.*

### 6.3. KEY MANAGERIAL PERSONNEL

- A. the Chief Executive Officer or the managing director or the manager;
- B. the company secretary;
- C. the whole-time director;
- D. the Chief Financial Officer;
- E. such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and such other officer as may be prescribed;



**Note:** However, till now no other officers have been prescribed.

### 6.4. MANAGER

- **Manager** means an individual who, subject to the superintendence, control and direction of the Board of Directors,
- has the management of the whole, or substantially the whole, of the affairs of a company, and
- includes a director or any other person occupying the position of a manager, by whatever name called,
- whether under a contract of service or not;

### 6.5. MANAGING DIRECTOR

- **Managing Director** means a director who, by virtue of the articles of a company or an agreement with the company or
- a resolution passed in its general meeting, or

- by its Board of Directors,
  - is entrusted with substantial powers of management of the affairs of the company and
  - includes a director occupying the position of managing director, by whatever name called.
- Explanation:** For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as:
- a. the power to affix the common seal of the company to any document or
  - b. to draw and endorse any cheque on the account of the company in any bank or
  - c. to draw and endorse any negotiable instrument or
  - d. to sign any certificate of share or to direct registration of transfer of any share,
- shall not be deemed to be included within the substantial powers of management;
- Explanation :** For any individual to be called as managing director, an individual shall first be a director duly appointed by the Company under the provisions of the Companies Act, 2013.
- This also implies that an individual who is not a director in the company cannot be appointed as Managing Director of that company.

## 6.6. NET WORTH

- **Net worth** means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of profit and loss account,
  - **after deducting -**
  - the aggregate value of the accumulated losses,
  - deferred expenditure and
  - miscellaneous expenditure not written off, as per the audited balance sheet,
- but does not include** reserves created out of revaluation of assets, write-back of depreciation and amalgamation;

### **Example:**

*The statutory auditors of a company were required to issue a certificate on the net worth of the company as per the requirement of the management as on 30th September 2024 computed as per the provision of section 2(57) of the Companies Act, 2013.*

*The company had fair valued its property, plant and equipment in the current year which was mistakenly taken into retained earnings of the company in its books of accounts. Advise whether this fair valuation would be covered in the net worth of the company as per the legal requirements.*

**Answer:** *As per sec 2(57) of the Companies Act 2013, any reserves created out of revaluation of assets doesn't form part of net worth. The company fair valued its property, plant and equipment and took that to retained earnings.*

*Even if the company has taken the fair valuation to the retained earnings in its books of accounts, the resultant credit in reserves (by whatever name called) would be in the category of 'reserves created out of revaluation of assets' which is specifically excluded in the definition of 'net worth' in section 2 (57) and hence should be excluded by the company.*

*Further the auditors should also consider the matter related to accounting of this reserve separately at the time of audit of books of accounts of the company.*

## 6.7. OFFICER

- **Officer** includes any director, manager or key managerial personnel or
- any person in accordance with whose directions or instructions
- the Board of Directors or any one or more of the directors is or are accustomed to act;

## 6.8. OFFICER WHO IS IN DEFAULT

- **Officer who is in default**, for the purpose of any provision in this Act which enacts that an officer of the company
- who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise,
- means any of the following officers of a company, namely:—
  - a. whole-time director (WTD);
  - b. key managerial personnel (KMP);
  - c. where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
  - d. any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
  - e. any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
  - f. every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
  - g. in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

**Example:**

*In a company, a default was committed with respect to the allotment of shares by the officers. In company there were no managing director, whole time director, a manager, secretary, a person charged by the Board with the responsibility of complying with the provisions of the Act, and neither any director/directors specified by the board. Therefore, in such situation, all the directors of the company may be treated as officers in default.*

**6.9. RELATED PARTY**

**Related party**, with reference to a company, means—

- a **director** or his relative;
- a **key managerial personnel** or his relative;
- a **firm**, in which a director, manager or his relative is a partner;
- a **private company** in which a director or manager or his relative is a member or director;
- a **public company** in which a director or manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;
- any **body corporate** whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- **any person** on whose advice, directions or instructions a director or manager is accustomed to act:  
Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity
- **any body corporate** which is-
  - a holding, subsidiary or an associate company of such company;
  - a subsidiary of a holding company to which it is also a subsidiary; or
  - an investing company or the venturer of the company;

**Explanation :** For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

**Exemption :** This Clause (viii) shall not apply with respect to section 188 (Related Party transactions) to a private company vide Notification No. G.S.R. 464(E) dated 5th June, 2015.

- such other person as may be prescribed;
- As per Rule 3 given in the *Companies (Specification of Definitions Details) Rules, 2014*, for the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director (other than an independent director) or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

**Example:**

*XYZ Pvt. Ltd. has two subsidiary companies, Y Pvt. Ltd. and Z Pvt. Ltd. Here as per the section 2(76)(viii)(B), Y Pvt. Ltd and Z Pvt. Ltd. are related parties. However, as per the Notification No. G.S.R. 464(E) dated 5th June, 2015, clause (viii) shall not apply with respect to section 188 to a private company. Therefore Y Pvt. Ltd and Z Pvt. Ltd are not related parties for the purpose of section 188. However, if Y Pvt. Ltd and Z Pvt. Ltd. have common directors, then they will be deemed to be related parties because of section 2(76)(iv).*

**Example:**

*Now suppose, XYZ Ltd. a public company, has two subsidiary companies, Y Pvt. Ltd and Z Pvt. Ltd. Here as per section 2(71), a private company which is a subsidiary of a public company will be deemed to be a public company, so Y Pvt. Ltd and Z Pvt. Ltd will not be eligible to avail exemption under the Notification No. G.S.R. 464(E) dated 5th June, 2015. Therefore, as per section 2(76)(viii)(B), Y Pvt. Ltd and Z Pvt. Ltd are related parties. In addition, XYZ Ltd. will also be related Party to Y Pvt. Ltd and Z Pvt. Ltd.*

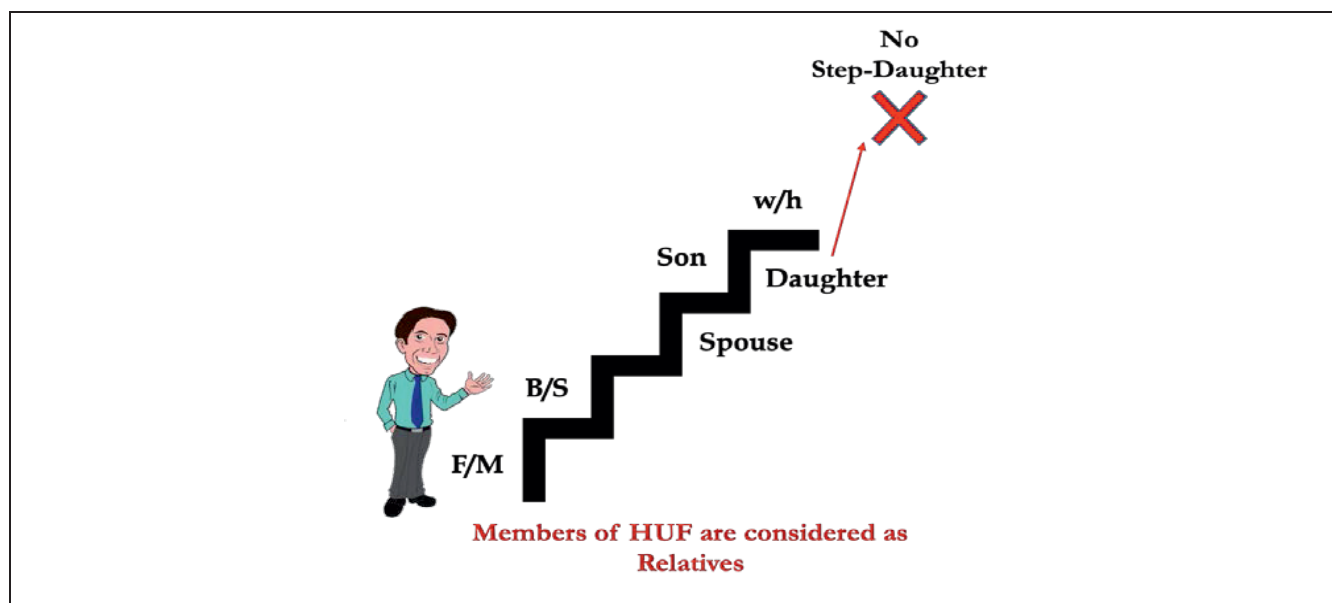
## 6.10. RELATIVE

**Relative**, with reference to any person, means anyone who is related to another, if

1. they are members of a Hindu Undivided Family;
2. they are husband and wife; or
3. one person is related to the other in such manner as may be prescribed; Rule 4 given in the *Companies (Specification of Definitions Details) Rules, 2014* provides of the List of Relatives in terms of Clause (77) of section 2.

Accordingly, a person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-

1. Father: Provided that the term "Father" includes step-father.
2. Mother: Provided that the term "Mother" includes the step-mother.
3. Son: Provided that the term "Son" includes the step-son.
4. Son's wife.
5. Daughter. (Will not include step-daughter)
6. Daughter's husband.
7. Brother: Provided that the term "Brother" includes the step-brother;
8. Sister: Provided that the term "Sister" includes the step-sister.



1. Under the provisions of Companies Act, 2013, a person, with reference to another person, shall be considered as 'relative' if:
- (a) He is a member of a Hindu Undivided Family
  - (b) He is spouse (husband or wife) of that another person
  - (c) He is related in the manner prescribed in Rule 4
  - (d) All of the above

## 7. DEFINITIONS FOR REFERENCE

### 7.1. COVERED IN THE RESPECTIVE CHAPTERS AS WELL

Sec 2 (Clause No.) Term		Meaning
(5)	Articles	<ul style="list-style-type: none"> <li>● The articles of association of a company as originally framed</li> <li>● Or as altered from time to time</li> <li>● Or applied in pursuance of any previous company law</li> <li>● Or applied in pursuance of this Act</li> </ul>
(10)	Board of Directors or Board	The collective body of the directors of the company

(12)	<b>Book and Paper Book or Paper</b>	<ul style="list-style-type: none"> <li>Includes books of account, deeds, vouchers, writings, documents, minutes and registers</li> <li>Maintained on paper or in electronic form</li> </ul>
(13)	<b>Books of Account</b>	<ul style="list-style-type: none"> <li>Records maintained in respect of:</li> <li>All sums of money received and expended by a company and matters related thereto</li> <li>All sales and purchases of goods and services</li> <li>The assets and liabilities of the company</li> <li>The items of cost as may be prescribed under Section 148(2) for specific classes of companies</li> </ul>
(16)	<b>Charge</b>	<ul style="list-style-type: none"> <li>An interest or lien created on the property or assets of a company or any of its undertakings or both as security- Includes a mortgage</li> </ul>
(18)	<b>Chief Executive Officer (CEO)</b>	<ul style="list-style-type: none"> <li>An officer of a company, who has been designated as such by it</li> </ul>
(19)	<b>Chief Financial Officer (CFO)</b>	<ul style="list-style-type: none"> <li>A person appointed as the Chief Financial Officer of a company</li> </ul>
(27)	<b>Control</b>	<ul style="list-style-type: none"> <li>Includes the right to appoint majority of the directors or to control the management or policy decisions</li> <li>Exercisable by a person or persons acting individually or in concert, directly or indirectly</li> <li>Includes control by virtue of shareholding, management rights, shareholder agreements, voting agreements, or in any other manner</li> <li>It is an inclusive definition and relevant for the provisions relating to subsidiary and holding companies</li> </ul>
(35)	<b>Dividend</b>	Includes any interim dividend
(36)	<b>Document</b>	<ul style="list-style-type: none"> <li>Includes summons, notice, requisition, order, declaration, form and register</li> <li>Whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise</li> <li>Maintained on paper or in electronic form</li> </ul>

(43)	<b>Free Reserves</b>	<ul style="list-style-type: none"> <li>● Such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend. Provided that— <ul style="list-style-type: none"> <li>○ Any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise</li> <li>○ Any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value shall not be treated as free reserves</li> </ul> </li> </ul>
(44)	<b>Global Depository Receipt</b>	<ul style="list-style-type: none"> <li>● Any instrument in the form of a depository receipt, by whatever name called</li> <li>● Created by a foreign depository outside India</li> <li>● Authorised by a company making an issue of such depository receipts</li> </ul>
(56)	<b>Memorandum</b>	<ul style="list-style-type: none"> <li>● The MOA of a company as originally framed</li> <li>● Or as altered from time to time</li> <li>● Or applied in pursuance of any previous company law</li> <li>● Or applied in pursuance of this Act</li> </ul>
(70)	<b>Prospectus</b>	<ul style="list-style-type: none"> <li>● Any document described or issued as a prospectus- Includes red herring prospectus or shelf prospectus</li> <li>● Also includes any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate</li> </ul>
(88)	<b>Sweat Equity Shares</b>	<ul style="list-style-type: none"> <li>● Equity shares issued by a company to its directors or employees- Issued at a discount or for consideration other than cash</li> <li>● For providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called</li> </ul>
(89)	<b>Total Voting Power</b>	<ul style="list-style-type: none"> <li>● The total number of votes which may be cast in regard to a matter on a poll at a meeting of a company</li> <li>● If all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes</li> </ul>

<b>(90)</b>	<b>Tribunal</b>	<ul style="list-style-type: none"><li>• The National Company Law Tribunal constituted under Section 408</li></ul>
<b>(91)</b>	<b>Turnover</b>	<ul style="list-style-type: none"><li>• The gross amount of revenue recognised in the profit and loss account</li><li>• From the sale, supply, or distribution of goods or on account of services rendered, or both</li><li>• By a company during a financial year</li></ul>

## Problem Kya Hai? Question Bank

### ICAI Module Descriptive Questions

#### Section 2(85) Small Company

1. MNP Private Ltd. is a company registered under the Companies Act, 2013 with a paid-up share capital of ₹ 2 crore and turnover of ₹ 60 crore. Explain the meaning of the “Small Company” and examine the following in accordance with the provisions of the Companies Act, 2013:
  - (i) Whether the MNP Private Ltd. can avail the status of small company?
  - (ii) What will be your answer if the turnover of the company is ₹ 30 crore?

#### Solution:

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

- (1) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- (2) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

Nothing in this clause shall apply to—

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

As per the Companies (Specification of Definitions Details) Rules, 2014, for the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees four crore and rupees forty crore respectively.

- (i) In the present case, MNP Private Ltd., is a company registered under the Companies Act, 2013 with a paid up share capital of ₹ 2 crore and having turnover of ₹ 60 crore. Since only one criteria of share capital not exceeding ₹ 4 crore is met, but the second criteria of turnover not exceeding ₹ 40 crore is not met and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.
- (ii) If the turnover of the company is ₹ 30 crore, then both the criteria will be fulfilled and MNP Ltd. can avail the status of small company.

#### Section 2(68) Private Company

2. Flora Fauna Limited was registered as a public company. There are 230 members in the company as noted below:
  - (a) Directors and their relatives 50
  - (b) Employees 15
  - (c) Ex-Employees (Shares were allotted when they were employees) 10



(d) 5 couples holding shares jointly in the name of husband and wife (5\*2) 10

(e) Others 145

The Board of Directors of the company propose to convert it into a private company. Also advise whether reduction in the number of members is necessary.

**Solution :**

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, except in case of One Person Company, limits the number of its members to two hundred.

However, 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.

It is further provided 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.

In the instant case, Flora Fauna Limited may be converted\* into a private company only if the total members of the company are limited to 200. Total Number of members

(i) Directors and their relatives 50

(ii) 5 Couples (5x1) 5

(iii) Others 145

Total 200

Therefore, there is no need for reduction in the number of members since existing number of members are 200 which does not exceed maximum limit of 200.

\*The provisions relating to conversion of public company to private company is covered in the Chapter 2 – Incorporation of Company and Matters incidental thereto.

### RTP, MTP and PYQ Descriptive Questions

#### Section 2(43) Free Reserves

1. MNO Limited are finalising its financial statements and found that the value of one of its properties has increased. The company came across certain other transactions also and got confused as to what should be included as 'free reserves' The company has approached you to define to them the meaning of the term "free reserves" for dividend distribution as per the provisions of the Companies Act, 2013. (5 Marks)

(MTP Nov 24)

#### **Solution: Law : Free Reserves 2(43)**

According to section 2(43) of companies act,2013, Free reserves mean such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

Provided that—

- (i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
- (ii) any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves.

#### Section 2(57) Net Worth

2. The statutory auditors of a company were required to issue a certificate on the net worth of the company as per the requirement of the management as on 30th September 2024 computed as per the provision of section 2(57) of the Companies Act, 2013. The company had fair valued its property, plant and equipment in the current year which was mistakenly taken into retained earnings of the company in its books of accounts. Advise whether this fair valuation would be covered in the net worth of the company as per the legal requirements. (module)

**Solution: Law:** According to section 2(57) "Net worth" means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of profit and loss account after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

**Conclusion:** In present case, even if the company has taken the fair valuation to the retained earnings in its books of accounts, the resultant credit in reserves (by whatever name called) would be in the category of 'reserves created out of revaluation of assets' which is specifically excluded in the definition of 'net worth' in section 2 (57) and hence should be excluded by the company.



**Section 2(62) One Person Company**

1. Prashant incorporated a "One Person Company" making his sister Priya as the nominee. Priya is an Indian citizen. She was born and brought up in Kanpur. However, now Priya and her husband are leaving India permanently to stay with their son who is settled abroad for the last 15 years. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.
- (i) If Priya is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?
  - (ii) In case Priya withdraws her nomination as a nominee to the OPC, whether Prashant can appoint his minor son Rushang as the nominee of the OPC?

**(RTP sep24)****Solution: Law:** According to Rule 3 of the Companies (Incorporation) Rules, 2014 and Sec 2(62)

- (i) only a natural person who is an Indian citizen whether resident in India or otherwise shall be eligible to incorporate a One Person Company.
- (ii) The memorandum of One Person Company shall also indicate the name of the natural person, other than minor; who is an Indian citizen, whether resident in India or otherwise (as nominee), along with his prior written consent, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company.
- (iii) Minor cannot be member or nominee in OPC

**Conclusion:** In present situation

- (i) In the given question Priya is an Indian citizen and a resident of India. Thus, if Priya is able to maintain her Indian citizenship status in India after moving abroad then she can remain as nominee in OPC of Prashant irrespective of her residential status.
- (ii) A minor cannot be appointed as a nominee/ member of OPC. Hence, Prashant cannot appoint his son Rushang as a nominee to his OPC.

**Section 2(85) Small Company**

2. Define the term 'Small Company' as contained in the Companies Act, 2013.

**(MAY 2015)****Solution: Law:** Small Company

- (i) According to sec 2 (85) A company shall be a small company only if it satisfies both the following conditions:
  - (a) Its paid-up share capital does not exceed Rs. 4 crore or such higher amount as may be prescribed which shall not be more than ten crore rupees; and



- (b) Its turnover (as per profit and loss account for the immediately preceding FY) does not exceed Rs. 40 crore or such higher amount as may be prescribed which shall not be more than one hundred crore rupees
- (ii) A company shall not be a small company, if:
- a. is a public company; or
  - b. It is a holding or a subsidiary company; or
  - c. It is a company registered u/s 8; or
  - d. It is a company or body corporate governed by any special Act.

### Section 2(85)

3. MNP Private Ltd. is a company registered under the Companies Act, 2013 with a Paid up Share Capital of 2cr and turnover of 60cr crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:
- (i) Whether the MNP Private Ltd. can avail the status of small company?
  - (ii) What will be your answer if the turnover of the company is 30 crore?

**(MTP NOV 2020) (module)**

**Solution: Law:** According to sec 2 (85) A company shall be a small company only if it satisfies both the following conditions:

- (i) Its paid-up share capital does not exceed Rs. 4 crore or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- (ii) Its turnover (as per profit and loss account for the immediately preceding FY) does not exceed Rs. 40 crore or such higher amount as may be prescribed which shall not be more than one hundred crore rupees

**Conclusion:** In present case-

- (i) MNP pvt ltd cannot avail status of small company as its turnover is 60 cr which exceeds 40 cr.
- (ii) If turnover of company is 30 cr, MNP can avail status of small company as both conditions specified in sec 2(85) has been compiled.



**Section 2(85)**

4. Ram Pvt. Ltd. is the holding company of Laxman Pvt. Ltd. As per the last profit and loss account for the year ending 31st March, 2023 of Laxman Pvt. Ltd., its turnover was ₹ 1.80 crore; and paid up share capital was ₹ 80 lakh. The Board of Directors wants to avail the status of a small company. The Company Secretary of the company advised the directors that the company cannot be categorized as a small company. In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of Company Secretary is correct, explaining the relevant provisions of the Act.

**(RTP May24)**

**Solution: Law:** As per section 2(85) of the Companies Act, 2013, small company means a company, other than a public company:

- (i) paid-up share capital of which does not exceed four crore rupees, and
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees:

Provided that nothing in this clause shall apply to—

- a) a holding company or a subsidiary company;
- b) a company registered under section 8; or
- c) a company or body corporate governed by any special Act.

**Conclusion:** In the instant case, as per the last profit and loss account for the year ending 31st March, 2023 of Laxman Pvt. Ltd., its turnover was to the extent of ₹ 1.80 crore, and paid-up share capital was ₹ 80 lakh. Though Laxman Pvt. Ltd., as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' but it cannot be categorized as a 'small company' because it is the subsidiary of another company (Ram Pvt. Ltd.).

Hence, the contention of the Company Secretary is correct.

**Section 2(87) Subsidiary Company**

5. Cross Limited is a company incorporated under the erstwhile the Companies Act, 1956 while XYZ Private Limited is a company registered under the Companies Act, 2013. XYZ Private Limited has issued ₹ 1,00,000 convertible preference shares (carrying right to vote) of Z 100 each and 10,00,000 equity shares of Z 10 each fully paid. Cross Limited is holding all the preference share and 1,00,000 equity shares of XYZ Private Limited. Examine whether:
- (i) The provisions of the Companies Act, 2013 are applicable on Cross Limited?
  - (ii) XYZ Private Limited is a public company as per the Companies Act, 2013?(5 Marks)

**(MTP April 24)**

**Solution: Law:**

- (i) Section 1 of the Companies Act, 2013, provides that the provisions of this Act shall apply to companies incorporated under this Act or under any previous company law.
- (ii) According to section 2(71) of the Companies Act, 2013, public company means a company which is not a private company.



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

(iii) According to section 2(87) of the Companies Act, 2013, "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:

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

**Conclusion:** In the given question,

- (i) the provisions of the Companies Act, 2013 are also applicable on Cross Limited.
- (ii) Cross Limited holds more than one-half of the total voting power [(Rs 10,00,000 equity shares+ Rs 1,00,00,000 preference shares (since carrying voting rights) out of Rs 2,00,00,000]. Therefore, XYZ Private Limited is a subsidiary of Cross Limited. Further in terms of the provisions of section 2(71), XYZ Private Limited being subsidiary of Cross Limited (a public company), shall also be deemed to be a public company.

### Section 2(87)

6. The paid-up share capital of Saras Private Limited is ₹ 1 crore, consisting of 8 lacs Equity Shares of ₹ 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of ₹10 each, fully paid-up. Jeevan (JVN) Private Limited and Sudhir Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Saras Private Limited. Jeevan Private Limited and Sudhir Private Limited are the subsidiaries of Piyush Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Saras Private Limited is a subsidiary of Piyush Private Limited? Would your answer be different if Piyush Private Limited has 8 out of 9 Directors on the Board of Saras Private Limited?

**(RTP MAY 2018)**

**(RTP MAY 2019)**

**Solution: Law:**

- (i) According to sec 2(46) Holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.
- (ii) Section 2(87) provides that a company shall be deemed to be a subsidiary of another, if any of the following conditions are satisfied:
  - (a) That other controls the composition of its board of directors;
  - (b) That other exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies; or through its Subsidiaries



**Conclusion:** In present case –

- (i) Saras Private Limited is a not subsidiary of Piyush Private Limited because subsidiaries of piyush pvt ltd , Jeevan Private Limited and Sudhir Private Limited only holds 3.5 lacs equity shares whereas in pursuant to sec 2(87) they should hold more than more than half of 8 lac equity shares i.e more than 4 lac shares.
- (ii) Yes our answer be different if Piyush Private Limited has 8 out of 9 Directors on the Board of Saras Private Limited as now it controls composition of board of directors of saras pvt ltd.

### Section 2(87)

7. The State Government of X, a state in the country is holding 48 lakh shares of Y Limited. The paid up capital of Y Limited is ₹ 9.5 crore (95 lakh shares of ₹ 10 each). Y Limited directly holds 2,50,600 shares of Z Private Limited which is having share capital of ₹ 5crore in the form of 5 lakh shares of ₹ 100 each. Z Private Limited claimed the status of a subsidiary company of ₹ 100 each. Z Private Limited claimed the status of a subsidiary company of Y Limited as well as a Government company. Advise as a legal advisor, whether Z Private Limited is a subsidiary company of Y Limited as well as a Government company under the provisions of the Companies Act, 2013?

**[Dec 2023(4 Marks)]CA Foundation**

**Solution: Law:** According to Section 2(45) of the Companies Act, 2013, Government Company means any company in which not less than 51% of the paid-up share capital is held by-

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

As per Section 2(87) of the Companies Act, 2013, “subsidiary company” in relation to any other company (that is to say the holding company), means a company in which the holding company—

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

**Conclusion:** In the instant case, the State Government of X, a state in the country is holding 48 Lakh shares in Y Limited which is below 51% of the paid up share capital of Y Limited i.e. 48.45 Lakh shares (51% of 95 Lakh shares). Hence Y Limited is not a Government Company.

Further, Y Limited directly holds 2,50,600 shares in Z Private Limited, which is more than one-half of the total shares of Z Limited i.e. 2,50,000 shares (50% of 5 Lakh shares). Thus, the Company controls more than one-half of the total voting power of Z Limited. Hence Z Private Limited is a subsidiary of Y Limited.

Therefore, we can conclude that Z Private Limited is a subsidiary of Y Limited but not a Government Company since Y Limited is not a Government Company.



**Section 2(92) Unlimited Company**

8. Nolimit Private Company is incorporated as unlimited company having share capital of ₹ 10,00,000. One of its creditors, Mr. Samuel filed a suit against a shareholder Mr. Innocent for recovery of his debt against Nolimit Private Company. Mr. Innocent has given his plea in the court that he is not liable as he is just a shareholder. Explain whether Mr. Samuel will be successful in recovering his dues from Mr. Innocent?

**CA Foundation (MTP May 24) (4 Marks) (RTP Sep 24)**

**Solution: Law:** Section 2(92) of Companies Act, 2013, provides that an unlimited company means a company not having any limit on the liability of its members. The liability of each member extends to the whole amount of the company's debts and liabilities, but he will be entitled to claim contribution from other members.

A Company is a separate legal entity which can sue or be sued in its own name

**Conclusion:** On the basis of above, it can be said that Mr. Samuel cannot directly claim his dues against the company from Mr. Innocent, the shareholder of the company even the company is an unlimited company. Mr. Innocent is liable upto his share capital. His unlimited liability will arise when official liquidator calls the members for their contribution towards the liabilities and debts of the company at the time of winding up of company.

**Section 8 Company**

9. P Cricket Club was formed as a Limited Liability Company under Section 8 of the Companies Act, 2013 with the object of promoting cricket by arranging introductory cricket courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. Mr. Y, a member decided make a complaint with Regulatory Authority to curb the fraudulent activities by cancelling the licence given to the company.

- (i) Is there any provision under the Companies Act, 2013 to revoke the licence? If so, state the provisions.
- (ii) Whether the Company may be wound up?
- (iii) Whether the P Cricket Club can be merged with Z Net Private Limited, a company engaged in the business of networking? (5 Marks)

**(MTP Oct. 22)**

**Solution:** (i) According to section 8(6) of the Companies Act, 2013, the Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of section 8 subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or in violation of the objects of the company or prejudicial to public interest, and on revocation, the Registrar shall put 'Limited' or 'Private



Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

Hence, in the instant case, the Central Government can revoke the license given to P Cricket Club as section 8 company, as the affairs of the company are conducted fraudulently and dividend was paid to its members which is in contravention to the conditions given under section 8.

- (ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such order shall be made unless the company is given a reasonable opportunity of being heard. [Section 8(7)] Hence, the stated company may be wound up.
- (iii) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects. [Section 8(10)] In the instant case, P Cricket Club cannot be merged with Z Net Private Limited as the objects of both the companies are different and not similar.

### Section 8

10. Sai along with his six friends desires to incorporate a Section 8 Company under the Companies Act, 2013. He is seeking your advice in the following matters:

- (i) What is the minimum paid-up capital requirement in case of a Section 8 Company?
- (ii) Whether a firm can be member of the Section 8 Company?
- (iii) Whether the Section 8 Company can pay dividend to its members?

Advise, Sai with reference to the provisions of Companies Act, 2013.

**(April 22) (5 Marks)**

**Solution: Law:** (i) A company may be formed u/s 8 if

- (a) the objects of the company are to promote commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or such other object;
- (b) the company intends to apply its profits in promoting its objects; and
- (c) the company intends to prohibit the payment of dividend to its members.

(ii) Further it must be noted that even a firm can be member of sec 8 company

**Conclusion:** (i) The requirement of having a minimum paid up share capital shall not apply to a section 8 company.

- (ii) Yes, under section 8(3) of the Companies Act, 2013, a firm may be a member of the company registered under section 8.
- (iii) According to Section 8(1)(c) of the Companies Act, 2013, section 8 company cannot pay dividend to its members as it prohibits the payment of dividends to its members.

**Section 8**

11. One of the matters contained in the articles of Dhimaan Foundation, incorporated as a limited company under section 8 of the Companies Act, 2013, was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies. However, such alteration in the articles was opposed by Dhwanj & Co., a partnership firm which is its member that there such alteration was not valid.

Advise, as per the provisions of the Companies Act, 2013, whether the contention of Dhwanj & Co. was valid and whether it can be a member in such company?

**(RTP May 2022)****Solution: Law:**

(i) According to section 8 of the Companies Act, 2013, a company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government (the power has been delegated to Registrar of Companies).

(ii) Also, a firm may be a member of the company registered under section 8

Conclusion: Here, one of the matters of articles of Dhimaan Foundation was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies.

**Conclusion:** As per the provisions of the Act, it is necessary to take previous approval of the Registrar of Companies for the same which was not done in the present case and thus the contention of Dhwanj & Co. was valid.

Also, section 8 allows a firm to be a member of such company and hence, Dhwanj & Co. can be its member.

**Section 8**

12. Trinity school started imparting education on 1st April, 2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 30th March 2024, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Trinity school, in such a case? (5 Marks)

**(MTP Dec 24)****Solution: Law:**

(i) A company may be formed u/s 8 if

- (a) the objects of the company are to promote commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or such other object;
- (b) the company intends to apply its profits in promoting its objects; and
- (c) the company intends to prohibit the payment of dividend to its members.



- (ii) The CG (R.D) may revoke the licence issued to the company if the company:
  - (a) contravenes any of the provisions of Sec. 8; or
  - (b) contravenes any condition subject to which the licence was issued; or
  - (c) the affairs of the company are carried on fraudulently or not as within the object of the company.
- (iii) Where a licence is revoked and the Central Government is satisfied, that it is essential in the public interest; then after giving a reasonable opportunity of being heard; by order it may direct that
  - (a) wound up; or
  - (b) amalgamated with any other company registered u/s 8 and having similar objects

**Conclusion:** In present case, C.G can ask trinity school to wind up or amalgamate with other company having similar object

### Section 8

13. Explain the provisions of the Companies Act, 2013- who can get a licence to operate as a section 8 company (non-profit organization)? (5 Marks)

**(MTP Nov 24)**

**Solution:** As per section 8 of the Companies Act, 2013, the Central Government (ROC in its behalf) may grant a licence (to operate as a non profit organisation) if it is proved to the satisfaction that a person or an association of persons proposed to be registered under the Companies Act, 2013, as a limited company

- (i) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- (ii) intends to apply its profits (if any) or other income in promoting its objects; and
- (iii) intends to prohibit payment of any dividend to its members.

### Section 8

14. A group of enthusiastic women is planning to establish the Nursing Medicare Association, a limited liability company with the objective of providing comprehensive theory and practical training to aspiring nurses. The association aims to operate under the provisions of section 8 of the Companies Act, 2013, with a core objective of education. The intended duration for the association's operation is set at ten years, after which a dissolution will be initiated. In the event of dissolution, any remaining assets exceeding liabilities will be allocated among the members according to the standard procedures permitted by the Companies Act. Assess the viability of the proposal and offer guidance to the promoters, taking into account the regulations outlined in the Companies Act, 2013. 5 M

**(Nov 23)**

**Solution:****Law:**

- (i) A company may be formed u/s 8 if
  - (a) the objects of the company are to promote commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or such other object;
  - (b) the company intends to apply its profits in promoting its objects; and
  - (c) the company intends to prohibit the payment of dividend to its members.
- (ii) The CG (R.D) may revoke the licence issued to the company if the company:
  - (a) contravenes any of the provisions of Sec. 8; or
  - (b) contravenes any condition subject to which the licence was issued; or
  - (c) the affairs of the company are carried on fraudulently or not as within the object of the company.

**Conclusion:** In present case, our guidance to promoters will be that proposal to allocate surplus to members is not viable as sec 8 company cannot distribute surplus or profits to members. If they do so, this is contravention of sec 8 and their license will be revoked by central government (Regional director)

**Section 8**

15. Alpha Ltd., a Section 8 company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2020. Mr. Chopra is holding 800 equity shares as on date. State whether the act of the company is according to the provisions of the Companies Act, 2013.

[May 2018 2M]

**Solution: Law:** A company may be formed u/s 8 if

- (a) the objects of the company are to promote commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or such other object;
- (b) the company intends to apply its profits in promoting its objects; and
- (c) the company intends to prohibit the payment of dividend to its members.

**Conclusion:** In present case, Act of Alpha Ltd, a section 8 company is not in compliance of sec 8 of companies act as sec 8 company cannot distribute dividend to its members.

**Section 455 Dormant Company**

16. MTK Private Limited is a company registered under the Companies Act, 2013 on 5th January, 2021. The company has not started its business till now. On 7th April, 2023, a notice has been received from ROC for non-filing of FORM No-INC-20A. Identify under which category MTK Private Limited company is classified. Explain the definition of the category of the company in detail.

[Dec 2023(3 Marks)]CA Foundation



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

[Explanation (i) to Section 455 of the Companies Act, 2013]

“Significant accounting transaction” means any transaction other than—

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

[Explanation (ii) to Section 455 of the Companies Act, 2013]

**Conclusion:** In the instant case, MTK Private Limited was registered on 5th January, 2021 and has not started its business till now. On 7th April, 2023, a notice has been received from ROC for non-filing of Form No. INC-20A. Since the Company has not started its business and a period of more than two years have already elapsed, it will be treated as an inactive company.