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Companies Act, 2013

Structure of the Law.

Companies Act, 2013

The Act

This is the primary law made in PARLIAMENT. Hence whenever any amendment is required it has to be passed in parliament

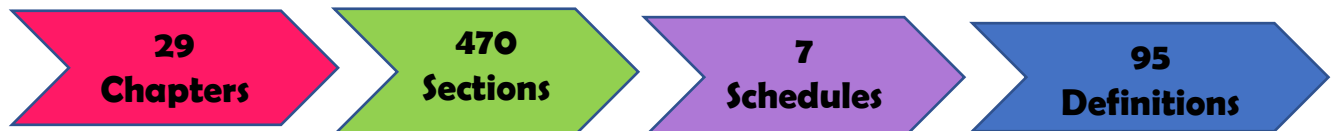
Subordinate Legislation

These are the Rules, notifications & circulars issued by MCA. Any amendment therein is made by MCA by official Gazette

Case laws

These are the judgements of courts this helps in interpretation of law

❖ The Companies Act, 2013 is a comprehensive piece of legislation that covers incorporation, dissolution and running of companies in India.



❖ The Companies Act, 2013 aims to improve corporate governance, simplify regulations and strengthens minority investors.

Notes



1.1 MEANING & TYPES OF COMPANY

Meaning:

- ❖ Company is derived from the Latin word **Com – Together & Panis – Bread**. Originally it meant association of person who had their meals together.
- ❖ In popular parlance, a company denotes an association of persons formed for the purpose of carrying on some business or undertaking
- ❖ **According to Companies Act, 2013 a “company” means a company incorporated under this Act or under any previous company law**
- ❖ “By a company is meant an. association of many persons who contribute money or money's worth to a common stock and employ it in some trade or business, and who share the profit and loss(as the case may be) arising therefrom

LET'S UNDERSTAND SOME KEY TERMS W.R.T COMPANY.

- ❖ **Capital – Money contributed by members towards common stock of Co.**
- ❖ **Members – Person who contribute their capital to the company**
- ❖ **Shares – proportion of capital to which each member is entitled**



Features of Company:

Separate legal entity	Company is a separate legal person and artificial person. It is distinguished from the shareholders of the company. It has its own independent corporate existence
Limited liability	The liability of the members of a limited company having share capital is limited to the extent of the nominal value of the shares held by them. The shareholders cannot be called upon to pay more than the unpaid value of his shares, whatever may be the indebtedness of the company
Perpetual succession	The Company has its existence from the time of incorporation to winding up. Members may come and members may go but the company survives up to the winding up;
Separate property	The company is having right to acquire and transfer properties in its own name
Common seal	The common seal is used by the company for affixing it in the documents such as contract etc., since it is an artificial person and cannot sign on its own in the documents Now according to amendment in companies act in 2015 the use of common seal has been made optional. The Companies Act, 2013 required common seal to be affixed on certain documents now are required to be signed by two directors or one director and a company secretary of the company
Transferability of shares	The shares of the members, except in the private company, may be freely transferable.
Capacity to sue and be sued	Being a separate legal entity the company is having capacity to sue others and it can be sued by others.

Corporate Veil & Lifting of Corporate veil

❖ Corporate Veil:

⇒ **Meaning:** By fiction of law, a company is seen as a distinct entity but however it is a association of people who are ultimately the beneficial owner of the company. This fiction between the members & the company is created by veil called as corporate veil.



⇒ **Effect of corporate veil:** Only the company is liable for the acts and defaults done in the name of company even though the same is committed by its members, directors, officers or employees

❖ Lifting of corporate veil:



▪ It means ignoring separate identity of a company & looking behind company, paying regard to real person behind legal façade who are in control of company.

▪ Where Courts ignore company & concern themselves directly with members or managers, corporate veil is said to be lifted.

▪ The Court will look behind the corporate entity and take action as though no entity separates from the members existed and make the members or the controlling persons liable for debts and obligations of the company.

- The Court will break through the corporate shell and apply the principle/doctrine of what is called as **“lifting of or piercing the corporate veil”**.

⇒ **Circumstances Where court can lift the corporate veil**

(a) Protection of Revenue

The Court may ignore the Separate Legal Entity status of a Company, where it is used for tax invasion or circumventing tax obligation

Case Law: *Dinshaw Maneckjee Petit*

Facts: The assessee earned huge income by way of dividends & interest. So, he opened some companies & purchased their shares in exchange of his income by way of dividend & interest. This income was transferred back to assessee by way of loan.

Decision: It was held that company was not a genuine company at all but merely assessee himself disguised under legal entity of a limited company. Court decided that private companies were a sham & corporate veil was lifted to decide real owner of income.

(b) Determination of enemy character of the Company

Company being an artificial person cannot be enemy or friend. But during war, it may become necessary to lift the corporate veil and see the persons behind it to determine whether they are friends or enemy. This is due to the reason that though a company enjoys Separate Legal Entity but its affairs are run by individuals.

Case Law: Daimler Co. Ltd. Vs Continental Tyre & Rubber Co. Ltd.

Continental Tyre & rubber Co. was formed in England but majority of its share holders were Germans. This company supplied tyres to Daimler Co. ltd. Daimler co. at the time of payment claimed that the contract was void ab initio as Continental tyre co was an enemy company (during world War I). During the proceedings the court concluded, however a company is a separate legal entity and the company is formed in England, in order to determine the enemy character, corporate veil is lifted and nationalities of shareholders are considered

(c) Prevention of fraud

Where a Company is used for committing frauds or improper conduct, the Court may lift the corporate veil and look at the realities of the situation.

(Jones vs Lipman)

(d) Protection of public policy

The Court shall lift the Corporate Veil without any hesitation to protect the public policy and prevent transaction opposed to public policy.

(e) Company mere sham or cloak

Where the Company is a mere sham and was really a ploy used for committing illegalities and to defraud people, the Court shall lift the Corporate Veil.

Case Law: Gilford Motor Company vs Horne

Gilford motors and Co. had a by law, that whenever the employee leaves the company it cannot solicit the customers otherwise heavy penalty is to be paid. Horn was the managing director of the company, when he left the co. as usual he was not able to solicit customers, so he incorporated a co. Horne & Co ltd. in this case Court concluded that Horne incorporated the Co. to misuse it for soliciting the customers. Hence court lifted the veil

(f) Where a Company acts as an agent of its shareholders

If there is an arrangement between the shareholders and a Company to the effect that the Company will act as agent of shareholders for the purpose of carrying on the business, the business is essentially of that of the shareholders and will have unlimited liability.

(g) Avoidance of Welfare Legislation

Where a Company tries to avoid its legal obligations, the corporate veil shall be lifted to look at the real picture.

Case Law: Workmen of Associated Rubber Industry ltd. Vs. Associated Rubber Industry Ltd

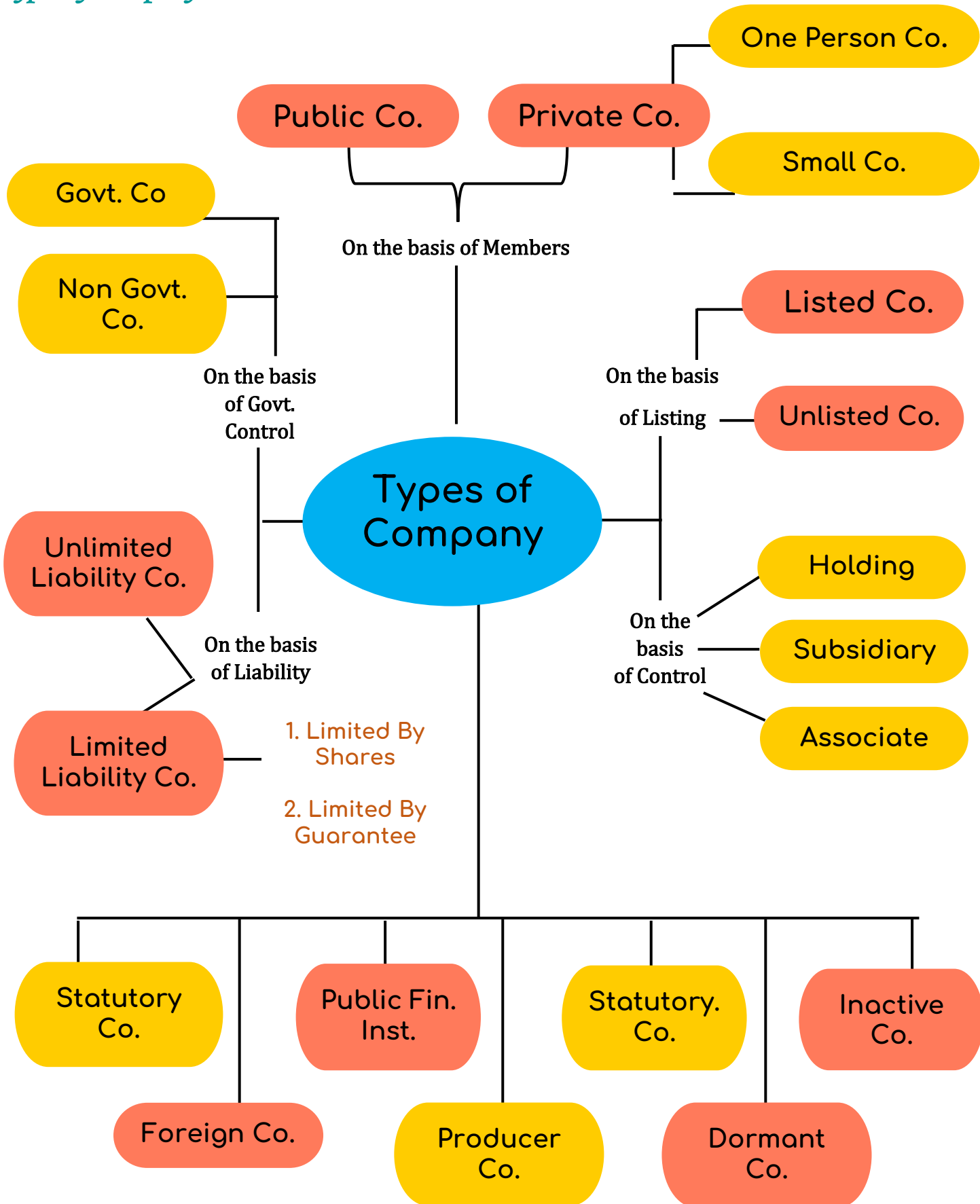
Facts: A Ltd. purchased shares of B Ltd. by investing a sum of Rs. 4,50,000. The dividend in respect of these shares was shown in P&L A/c of company, year after year. It was taken into account for purpose of calculating bonus payable to workmen of company. Sometime in 1968, company transferred shares of B Ltd. to C Ltd a WOS Subsidiary. Thus, dividend income did not find place in P&L A/c of A Ltd., & surplus available for payment of bonus to workmen got reduced.

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

(h) To punish for contempt of Court

Company being an artificial person cannot disobey the orders of the Court. Therefore, the persons at fault should be identified.

Types of Company



On the basis of members

(a) Private Company:

Private company means a company having a minimum paid-up share capital as may be prescribed, and which by its articles — **(Sec 2(68))**

- (a) Restricts the right to transfer its shares;
- (b) Limits the number of its members from 2 to 200 (except for Opc)

Provided that:

⇒ Where 2 or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that:

- ⇒ persons who are in the employment of the company; and
- ⇒ persons who, having been formerly in the employment of the company, were members during employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

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

The minimum paid-up share capital required for a private company has been done away with as per the Companies (Amendment) Act, 2015

Analysis:

- The AoA restricts (i.e subject to some conditions & not prohibition) the transfer of shares.
- Accordingly, the articles of association empower directors to decline registration of transfer of any share, whether fully paid up or partly paid up, by exercising their absolute discretion over such matters.
- The exemption cannot be claimed by first being enrolled as the member and then inducted as an employee.
- No minimum paid-up capital requirement.
- Min. no. of members: 2 (Except if private company is an OPC, where it will be 1).
- Max. no. of members: 200 (Except Present & Former employee-cum-member).
- The cap on the number of members do not affect the number of debenture holders that a private company can have
- Prohibition on invitation to subscribe to securities of company
- If 2 or more persons hold one shares jointly, they shall be treated as single member

(b) Public Company

Public company means a company which: **(Sec 2(71))**

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

Provided that

⇒ a company which is a subsidiary of a public Co. shall be deemed to be public Co

The minimum paid-up share capital required for a private company has been done away with as per the Companies (Amendment) Act, 2015

Analysis:

- It is not a private company i.e there is no restriction on transfer of shares of public co.
- According to Section 44, the shares of any member in a company shall be movable property transferable in the manner provided by the articles of the company.
- Minimum 7 members & No limit for maximum members.
- It has the liberty to make public offers inviting general public to subscribe to its shares.
- Public companies have more scrutiny and regulations levied on them
- A public company can be converted to a private company and vice-versa

(c) One Person Company

Meaning:

- OPC means a type of private company which has only one person as a member. **Sec 2(62)**
- An OPC may be registered as 'limited by shares' or 'limited by guarantee'.

Eligibility for incorporating OPC & being a Nominee – Rule 3

- Only a natural person who is an Indian Citizen and Resident in India shall be eligible.

('Resident in India' means a person who has stayed in India for 182 days or more during the immediately preceding one financial year)

Benefits of One Person Company

- It gives the individual entrepreneurs all the benefits of a company, which means they will get credit, bank loans, and access to market, limited liability, and legal protection.
- Tremendous opportunities for small businessmen and traders, including those working in areas like handloom, handicrafts and pottery.
- Number of compliances are less.
- The new concept would also boost the confidence of small entrepreneurs.

Conditions for formation of OPC

- The natural person can incorporate only one OPC or become nominee in one OPC;
- Where a natural person, being a member of OPC, becomes a member in another OPC by virtue of his being a nominee, such person shall meet the eligibility criteria in 182 days.
- No minor shall become member or nominee of OPC or can hold share with beneficial interest;
- Such company cannot be incorporated or converted into Section 8 Co.
- Such company cannot carry out Non Banking Financial Investment activities including investment activities in securities of any body corporate;
- Company cannot convert voluntarily into any kind of company unless 2 years have expired Subject to threshold limit – (Discussed later)

Nominee

- Nominee shall be the other person who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company
- MOA of OPC shall indicate the name of the other person as nominee. **Proviso to Section 3(1)**
- The prior written consent of the other person shall be obtained in the Form No. INC.3 & shall be filed with the Registrar at the time of incorporation along with MOA & AOA

- **Withdrawal of consent by nominee:**
 - ⇒ By giving a notice in writing to such sole member and to OPC. The sole member shall nominate another person as nominee within 15 days of the notice of the withdrawal.
 - ⇒ He shall send an intimation of such nomination in writing to the company, along with the written consent of such other person so nominated in Form No. INC.3.
- **Change of nominee:**
 - ⇒ Changed by subscriber or member at any time due of death or incapacity of nominee.
 - ⇒ He may nominate another person after obtaining the prior consent in Form No. INC-3.
- **If member ceases to be member due to death or incapacity.**
 - ⇒ Nominee becomes the member
 - ⇒ Such new member shall nominate within 15 days, a nominee.
- *In the above all situations:*
 - ⇒ *The company shall within 30 days of receipt of the notice file with Registrar*
 - (a) *a notice of such withdrawal of consent and*
 - (b) *the intimation of the name another person nominated in Form No. INC.4 along with the fee prescribed and the written consent of nominee in Form No. INC-3.*

Penalty (Rule 7A)

- Rule 7A provides that if a OPC or any Officer of such company contravenes any of the provisions they shall be punishable with fine which may extend to Rs. 5,000 and with a further fine which may extend to Rs. 500 for every day till the contravention continues

Share certificate

- Every share certificate shall be issued under the seal, which shall be affixed in the presence of and signed by 1 Director or a person authorized by them and the CS, or any other person authorized by the Board for the purpose and
- in case the OPC does not have a common seal, the share certificate shall be signed by the person in the presence of whom the seal is required to be affixed in this proviso

Management and administration (Sec 122)

- Following provisions shall not apply to OPC

Sec 98 – Power of Tribunal to call meetings of members	Sec 105 – Proxies;
Sec 100- Calling of extraordinary general meeting;	Sec 106 –Restriction on voting rights;
Sec 101- Notice of meeting;	Sec 107 –Voting by show of hands;
Sec 102 – Statement to be annexed to notice;	Sec 108 –Voting through electronic means;
Sec 103 – Quorum for meetings;	Sec 109 – Demand for poll;
Sec104 –Chairman of meetings	Sec 111 –Circulation of members' resolution

- **Annual General Meeting** (Sec 122 (3))
 - ⇒ Any business which is required to be transacted at an AGM or other general meeting
 - ⇒ by means of an ordinary or special resolution,
 - ⇒ it shall be sufficient if the resolution is communicated by the member
 - ⇒ to the company and entered in the minutes book required u/s 118 along with sign & date
 - ⇒ and such date shall be deemed to be the date of meeting for all purposes under this Act.

▪ **Board Meeting**

(Sec 122(4))

- ⇒ Notwithstanding anything in this Act, where there is only one director on the Board
- ⇒ any business which is required to be transacted at Board Meeting,
- ⇒ it shall be sufficient if, the resolution by director is entered in the minutes book u/s 118 and signed and dated
- ⇒ and such date shall be deemed to be the date of Board Meeting
- OPC is not required to transact any business through postal ballot.

Conversion OPC into a Public Company or a Private Company

(Rule 6)

- Where the paid up share capital exceeds Rs 50 lakhs and its average annual turnover exceeds Rs. 2 crores, it shall cease to be entitled to continue as OPC.
- Such company is mandatorily to be required to convert into either a public or private limited company within 6 months
- Minimum number of members – Private Co = 2 member & Public Co. = 7 members
- The OPC has to alter its memorandum and articles by passing a resolution according to Section 122(3) to give effect to the conversion and to make necessary changes incidental thereto.
- The OPC shall from the date of the applicability give a notice to the Registrar in Form No. INC-5 within a period of 60 days informing that it has ceased to be a OPC and that it is now required to convert itself into a private or a public company.
- **Punishment**
 - ⇒ OPC or any officer of the OPC contravenes the provisions of these rules, OPC or any officer of the OPC shall be punishable with fine which may extend to Rs 10,000 and with a further fine which may extend to Rs 1000 for every day after the first during which such contravention continues.

Conversion of private company into a OPC (Rule 7)

- A private company other than Sec 8 company, having paid up share capital of Rs. 50 lakh or less and average annual turnover during the relevant period is Rs 2 crores or less may convert itself into OPC by passing a special resolution in the general meeting.
- Before passing such resolution, the company shall obtain 'No Objection Certificate' in writing from the members and creditors.
- The OPC shall file copy of the resolution with the Registrar of Companies within 30 days from the date of passing such resolution in Form No. MGT-14.
- The company shall file an application in Form No. INC-6 for its conversion into OPC along with fees.
- **The following documents are to be attached:**
 - ⇒ the directors of the company shall give an affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital or average annual turnover is below the threshold limit
 - ⇒ the list of members and creditors;
 - ⇒ the latest Audited Balance sheet and the Profit and Loss Account;
 - ⇒ the copy of No objection letter of secured creditors.
- On being satisfied and complied with the requirements the Registrar shall issue the certificate

(d) Small Company

A small company means and covers the Co. which satisfies the following two conditions-

- Paid-up capital of the company should not exceed Rs. 2 Crores; and
- Turnover of the company should not exceed Rs. 20 Crores. (Sec 2(85))

Following companies cannot be called as small companies even though they fulfill the above requirements-

- A public company,
- A holding company,
- A subsidiary company,
- Company registered under section 8,
- A company that is governed by any special act

From the FY 2020-2021, the small company is required to file their annual return in new e-Form MGT-7A. Notably, the due date for filing the annual return in e-Form MGT-7A will be 60 days from the date of an annual general meeting

On the basis Listing

(a) Listed Company:

- Company which has any of its securities listed on stock exchange (Sec 2(52))

(b) Unlisted Company

- Company which does not has any of its securities listed on stock exchange

On the basis Government Control

(a) Government Company:

A Government company is any company in which

(Sec 2(45))

- not less than 51% of the paid-up share capital is held by the CG, or SG or Governments, or partly by the CG & partly by one or more SG and
- includes a company which is a subsidiary company of such a Government company

Other Points

- Government companies are different from statutory companies.
- A Government company is not a department of the Government & hence Employees of Government company are not the employees of the CG or SG
- The legal status of a Government company is not affected just because the share capital of the company has been contributed by the CG and all its shares are held by the President of India or the Governor of the State and certain nominated officers of the Government –
[Case Law: Heavy Engineering Mazdoor Union vs. State of Bihar]
- Since majority of shareholding of such companies is in the hands of the CG, they control majority of the decisions

(b) Non-Government Company

- Company where either of the governments do not have share capital.

On the basis of Liability

(a) Limited Liability Company

(1) Liability Limited by shares:

- A company having the liability of its members limited by the memorandum, to the amount, if any unpaid on shares respectively held by them is termed “a company limited by shares”.
- A company’s liability is never limited. The liability of shareholders/members is limited.
- The liability of members can be enforced at any time during the existence and also during the winding-up of the company.
- Such a company must have share capital as the extent of liability is determined by the face value of shares.
- However, except where the articles otherwise provide, there is no liability to pay any balance amount due on the shares, except in pursuance of calls duly made in accordance with law and the articles while the company is a going concern or of calls made in the event of winding-up of the company

(b) Liability Limited by Guarantee

- A company limited by guarantee may be defined as a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute.
- This contribution could be to the assets of the company in the event of it being wound-up while he is a member within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be.
- Moreover, this contribution could be to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves u/s 4(1) (d) (ii).
- Companies may sometimes choose to be limited by guarantee despite having share capital. the liability of a member of a guarantee company having share capital is not merely limited to the amount as stated above in respect of guarantee companies not having share capital; he may be called upon to also contribute to the extent of any sums remaining unpaid on the shares held by him u/s 285.

(b) Unlimited Liability Company

- A company having no limit on the liability of its members is an Unlimited Co. **(Sec 2(92))**
- Thus, the liability of each member extends to the whole amount of the company’s liabilities.
- It may be seen that the liability of members of an unlimited company is similar to that of the partners but the members of the company cannot be directly proceeded against.
- Company being a separate legal entity, the claims can be enforced only against the company. Thus, creditors shall have to institute proceedings for winding-up of the company for their claims
- Members or shareholders have a joint and several non-limited obligation to meet any insufficiency in the assets of the company to enable settlement of any outstanding financial liability in the event of the company's formal liquidation.

On the basis of Control

(a) Holding Company (HC)

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

(b) Subsidiary Company (SC)

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: (Sec 2(87))

- ⇒ controls the composition of the Board of Directors; or
- ⇒ exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies

Provided that

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

Explanations:

- A company is a subsidiary even if the control is of another subsidiary of the holding company;
- The composition of a company's BOD shall be deemed to be controlled if that other company by exercise of some power can appoint or remove all or a majority of the directors;
- Different Situations for formation of subsidiary:
 - ⇒ It may be that acquiring sufficient share capital of a company, sufficient control may be obtained over that company to enable control in the composition of board of directors.
 - ⇒ Such control can be obtained without making such an investment by reason of an agreement such as where one company may agree to advance funds to another company and in return may, under the terms of an agreement, gain control over the right to appoint all or a majority of the board of directors.

(c) Associate Company

An associate company, in relation to another company, means (Sec 2(6))

- a company in which that other company has a significant influence,
- but which is not a subsidiary company having such influence
- and includes a joint venture company

Explanation:

- For the purposes of this clause, significant influence means control of at least 20% of total share capital, or of business decisions under an agreement.
- Joint venture means a joint arrangement whereby the parties that have joint control of the arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement

Other Types of Companies

(a) Statutory Company

- Bodies with special types of objects found desirable for encouragement may be formed under certain pieces of legislations passed by the Parliament. Eg., LIC , RBI, etc. ,
- These bodies covered by these Acts do not necessarily require to have a MOA.
- However, as per Section 1(4), the provisions of the Companies Act, 2013 apply to them to the extent that the same are not inconsistent with the special Acts under which these companies are formed

(b) Registered Company

- A company registered under the Companies Act, 2013 or previous company laws, is known as a registered company.
- They can be incorporated as limited liability companies or as unlimited liability companies. or public companies or as private companies.
- A registered company is an organization which is formed and registered with the appropriate statutory authority of the country as a company.
- Companies that do not fall under the aforementioned category are called unregistered entities

(c) Foreign Company

Foreign company means any company incorporated outside India which: **(Sec 2(42))**

- 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.

Explanations

- A company incorporated outside India having shareholders who are all Indian citizens and having its business outside India is not covered. Contrarily, a company incorporated in India but having all foreign shareholders shall be an Indian company and not a foreign company
- **Place of business:** (foreign companies are defined in terms of its place of incorporation)
 - ⇒ share transfer office or share registration office will constitute a place of business
 - ⇒ where representatives of a foreign company frequently visited and stayed in a hotel for looking after purchase of machinery and other articles, it was held that the company had a place of business in the hotel Case law Tovarishestvo Manufacture Liudvig Rabenek
 - ⇒ mere holding of property cannot amount to having a place of business.
- **Annual return:** Sec 92, relating to filing of the annual return with the ROC are also applicable
- **Sec 379** specifically mentions that where 50% or more of the paid-up share capital is held by
 - ⇒ one or more citizens of India or
 - ⇒ by one or more companies or bodies corporate incorporated in India,
 - ⇒ or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate,

such company will have to comply with the provisions of Chapter XXII along with all incidental provisions as may be prescribed as if it were a company incorporated in India

(d) Producer Company

- A producer company can be defined as a legally recognized body of farmers/ agriculturists with the aim to improve the standard of their living and ensure a good status of their available support, incomes and profitability
- A Producer Company can be formed by 10 individuals (or more) or 2 institutions (or more) or by a combination of both (10 individuals and 2 institutions)
- Business objective w.r.t Primary produce of members.

▪ Procurement	▪ Grading	▪ Marketing
▪ Production	▪ Pooling	▪ Selling, or
▪ Harvesting	▪ Handling	▪ Export

- Primary produce arising from agriculture by a farmer which includes animal husbandry, floriculture, horticulture, viticulture, pisciculture, re-vegetation, bee raising, forestry, forest products and farming plantation products, produce of hand-loom, handicraft and other cottage industries.
- The main objective is to facilitate the formation of co-operative business as companies and to make it possible to convert the existing co-operative business into companies

(e) Public Financial Institutions

Public financial institution has been meant to be:

- the LIC , established u/s 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);
- the Infrastructure Development Finance Company Limited, u/s 456 of Co. act 2013
- specified company referred to in the UTI (Transfer of Undertaking and Repeal) Act, 2002
- Institutions notified by the CG u/s 465 of Co. Act 2013;
- such other institution as may be notified by the CG in consultation with the RBI

Provided that no institution shall be so notified unless:

- ⇒ it has been established or constituted by or under any Central or State Act; or
- ⇒ not less than 51%. of the paid-up share capital is held or controlled by the CG SG or partly by the CG and partly by one or more SG.
- ⇒ The Central Government has also specified institutions to be public financial institutions

(f) Dormant Company

Where a company is formed and registered under this act for a future project or to hold an asset or intellectual property & has no significant accounting transaction, such company or an inactive company may make an application to ROC for obtaining the status of dormant company

(g) Inactive Company

A company which has been not carrying out business or operation or has made any significant accounting transaction during last two financial years, or has not filed any financial statements or annual returns from last two financial years

(h) Company With Charitable Objectives –

Sec 8

Associations not for profit: Companies that do not have a share capital.

Formation of Company:

- Where CG is satisfied that a person or an association of persons proposed to be registered under this Act as a limited company -
 - (a) 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;
 - (b) intends to apply its profits, if any, or other income in promoting its objects; and
 - (c) intends to prohibit the payment of any dividend to its members,
- CG may allow that person or association of persons to be registered as a company under this section.

Other Provisions

- Such Registered Co. enjoys all the privileges and is subject to all the obligations of Co
- These Co. shall alter the provisions of its MOM & AOA after previous approval of the CG.
- In India, a non-profit organization can be registered as

Trust by executing a Trust deed	as a Society under the Registrar of Societies	as a private limited non-profit company u/s 8
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- **Exemptions enjoyed by the company:**
 - ⇒ Appointment of a qualified company secretary is not mandatory
 - ⇒ A general meeting can be held by giving 14 days' notice instead of the mandatory 21 days'
 - ⇒ The provisions relating to appointment of directors u/s 149 regarding maximum and minimum number of directors is not applicable.
 - ⇒ Multiple compliance aspects have also been relaxed for such companies.

Procedure to obtain License to New Company

Rule 19 – Co. (Incorporation Rules), 2014

- Person or an association of persons shall make an application in Form No. INC-12 along with the fee & MOA in Form No. INC-13.
- The application shall be accompanied by the following documents
 - ⇒ the draft MOA & AOA of the proposed company;
 - ⇒ declaration in Form No. INC – 14 by an Advocate, a CA/CMA/CS in practice, that the draft MOA & AOA have been drawn up in conformity & All the requirements u/s 8 of act & rules have been complied with;
 - ⇒ an estimate of the future annual income and expenditure of the company for next 3 years, specifying the sources of the income and objects of the expenditure;
 - ⇒ the declaration by each of the persons making the application in Form No. INC-15
- If CG is Satisfied that the proposed company has its objects as enshrined u/s 8 may, may issue the license & allow the person or association of persons to be registered as a limited company without the addition to its name of the word 'Limited' or 'private limited'.
- Thereupon the Registrar shall, on application in the prescribed form register such person or association of persons as a company under Section 8.

Procedure to obtain license for existing company Rule 20– Co. (Incorporation Rules), 2014

- A limited company registered under this Act or under any previous company law, with any of the objects u/s 8 and the restrictions and prohibitions and which is desirous of being registered U/s 8 shall make an application in **Form No. INC – 12** along with the prescribed fee.
- **The application shall be accompanied by the following documents**
 - ⇒ the memorandum and articles of association of the company;
 - ⇒ **Declaration in Form No. INC – 14** by an Advocate, a CA/CMA/CS in practice, that the draft MOA & AOA have been drawn up in conformity & all the requirements u/s 8 of act & rules have been complied with;
 - ⇒ the **financial statements, the Board’s Reports and audit reports of the previous 2 FY,**
 - ⇒ a statement showing **details of assets with the values and the liabilities** as on the date of the application or within 30 days preceding that date
 - ⇒ an **estimate of the future annual income and expenditure** of the company for next 3 years specifying the sources of the income and the objects of the expenditure;
 - ⇒ the **certified copy of the resolutions** passed in general/board meetings approving registration of the company u/s 8; and
 - ⇒ a **declaration** by each of the persons making the application in **Form No. INC-15.**
- **A notice of conversion:**
 - ⇒ should be published **in the newspaper** (one in the vernacular language newspaper and one in English newspaper) by the Company of the application made for Conversion.
 - ⇒ The **Co. should bear the expenses** of the publication of notice in the newspaper.
 - ⇒ It should be **published within a week from the date of application** is made to the Registrar.
 - ⇒ The Registrar should be given the copy of these publications **as per Form INC-26** immediately after their publication in the newspaper
- The Registrar shall, after considering the objections, if any, received by it **within 30 days** from the date of publication of the notice, and after consulting any authority, regulatory body, Department or Ministry of the CG/SG as it may, in its discretion, **decide whether the licence should or should not be granted.**
- The **licence shall be in Form No. INC-16 or Form No. INC-17,** as the case may be. The Registrar shall have the power to include in the licence such other conditions as may be deemed necessary by him.
- The Registrar may direct the company to insert in its MOA or AOA, or partly in one and partly in the other, such conditions of the license as may be prescribed by the Registrar in this behalf

Revocation of License:

Sec 8(6)

- CG may, by order, revoke the licence granted to the company registered under this section-
 - ⇒ if the company contravenes any of the requirements of this section; or
 - ⇒ any of the conditions subject to which a licence is issued; or
 - ⇒ the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest.
- The CG shall direct the company to convert its status and change its name to add the words ‘Limited’ or ‘Private Limited’ to its name after giving opportunity of being heard.

- A copy of such order shall be given to the Registrar. The Registrar shall, without prejudice to any action taken, on application, in the prescribed form, register the company accordingly.

Winding up	Amalgamation
CG may direct the company to be wound up if it is satisfied that it is essential in the public interest after giving reasonable opportunity of being heard. If on the winding up or dissolution, after the satisfaction of its debts and liabilities, any asset remains – it shall be transferred to another company with same objects subject to conditions imposed by Tribunal	CG on revocation of License may direct amalgamation on such company with another company to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and the obligations as may be specified in the order.

Punishment

Sec 8(11)

If a Co. makes any default in complying with any of the requirements laid down in this section

Company	Fine – Rs. 10 lakhs to 1 cr
Directors & officers	Fine – Rs. 25000 to Rs. 25 lakhs Imprisonment – extending to 3 years

When it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action U/s 447

Conversion of Section 8 Company

Sec 8(4) & Rule 21 &22

Co. registered u/s 8 may convert itself into any other Co. only after complying with such conditions

Rule 21(1)	Co. shall pass a special resolution at a general meeting for approving such conversion
Rule 21(2)	Explanatory statement should be annexed to the notice of the meeting & shall set out in detail the reasons for opting for such conversion including the following; <ul style="list-style-type: none"> ⇒ the date of incorporation of the company; ⇒ the principal objects of the company as set out in the MOA; ⇒ Reasons why the objectives of the company cannot be carried as per sec 8 & if the principal or main objects are proposed to be altered, then what would be the altered objects and the reasons for the alteration; ⇒ What are the privileges or concessions currently enjoyed by the company, details of any donation or bequests received by the company with conditions attached to their utilization etc., ⇒ Details of impact of the proposed conversion on the members of the company including the details of any benefits that may accrue to the members as a result of the conversion.
Rule 21(3)	a certified true copy of the special resolution + copy of the notice including explanatory note shall be filed with the Registrar in Form No. MGT-14 along with the fee
Rule 21(4)	file an application in Form No. INC-18 with the Regional Director along with the fee and a certified copy of special resolution and a copy of the notice & explanatory note

Rule 21(5) a copy of the application with annexures as filed with Regional Director shall also be filed with the Registrar.

Other Conditions

Rule 22(1) Co. shall, in a week from the date of submitting the application to the Regional Director, publish a notice in newspaper (one in vernacular language of the district where registered office is situated & one in English language) & at the website of CG at its own expense. A copy of the notice as published shall be sent to the Regional Director in Form No. INC-19

Rule 22(2) the company shall send a copy of the notice along with a copy of the application and all attachments by registered post or hand delivery to-

- The Chief Commissioner of Income Tax;
- The Charity Commissioner;
- The Chief Secretary of the State;
- Any other Department of the CG/SG under whose jurisdiction the company has been operating

If any of these authorities wish to make any representation to the Regional Director, it shall do so within 60 days of the receipt of the notice, after giving an opportunity to the company.

Rule 22(3) Copy of proof of serving such notice shall be attached to the application

Rule 22(4) BOD shall give a declaration that no portion of the income or has been or shall be paid or transferred directly or indirectly by way of dividend or bonus to persons who are or have been members.

Rule 22(5) If the Co. has obtained special status, privilege, exemption, benefit or grant from any authority, the company has to obtain 'No Objection Certificate' from such authority if the terms and conditions of the said special status etc., so require. The said NOC shall be filed with the Regional Director along with the application.

Rule 22(6) The Co. should have filed all its financial statements and Annual Returns up to the financial year preceding the submission of the application to the Regional Director. In the event the application is made after the expiry of 3 months from the date of preceding financial year to which the financial statement has been filed, a statement of the financial position duly certified by a CA made up to a date not preceding 30 days of filing of the application shall be attached.

Rule 22(7) Co. shall attach a certificate from CA/CS/CMA in practise, that the conditions are being complied along with the application

Rule 22(8) Regional Director may require the applicant to furnish approval or concurrence of any particular authority for grant of his approval for the conversion. He may also obtain the report from the Registrar.

Order of Conversion – Rule 22(9) & Rule 22(10)

If the Regional Director, is satisfied it shall issue an order approving the conversion of the company subject to following conditions:

- Co. shall not claim any special status, exemptions or privileges w.e.f the date of its conversion;

