



# Chapter I



## PRELIMINARY

Q	Section	Topic
1	2(85)	Small company
2	2(85)	Small company
3	2(87)	Holding and Subsidiary Company
4	8	Sec 8 Company
5	8	Sec 8 Company
6	8	Sec 8 Company
7	8	Sec 8 Company
8	2(57)	Net Worth
9	2(43)	Free Reserves
10	2(62)	Opc
11	2(68)	Private Company
12	2(85)	Small company
13	2(71),1	Public co
14	2(85)	Small company
15	8	Sec 8 Co
16	8	Sec 8 Co
17	8	Sec 8 Co
18	2(92)	Unlimited Company
19	2(45)	Government Company
20	455	Inactive Company
21	2(60)	Officer in default
22	2(52)	Listed company

	<b>Q1. Define the term 'Small Company' as contained in the Companies Act, 2013. (MAY 2015)</b>
	<p><u>Small Company</u></p> <p>(i) According to sec 2 (85) A company shall be a small company only if it satisfies both the following conditions:</p> <p>(i) Its <b>paid-up share capital</b> does not exceed <b>Rs. 4 crore</b> or such higher amount as may be prescribed which shall not be more than ten crore rupees; <b>and</b></p> <p>(ii) Its <b>turnover</b> (as per profit and loss account for the immediately preceding FY) does not exceed <b>Rs. 40 crore</b> or such higher amount as may be prescribed which shall not be more than one hundred crore rupees</p> <p>(ii) A company <b>shall not</b> be a small company, if:</p> <p>a. is a public company; or</p> <p>b. It is a holding or a subsidiary company; or</p> <p>c. It is a company registered u/s 8 ; or</p> <p>d. It is a company or body corporate governed by any special Act.</p>

<b>PRACTICAL QUESTION</b>	
<b>Question 2</b>	<p><b>1 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:</b></p> <p>(i) <b>Whether the MNP Private Ltd. can avail the status of small company?</b></p> <p>(ii) <b>What will be your answer if the turnover of the company is 30 crore? (MTP NOV 2020)(module)</b></p>
<b>Law:</b>	<p>According to sec 2 (85) A company shall be a small company only if it satisfies both the following conditions:</p> <p>(i) Its <b>paid-up share capital</b> does not exceed <b>Rs. 4 crore</b> or such higher amount as may be prescribed which shall not be more than ten crore rupees; <b>and</b></p> <p>(ii) Its <b>turnover</b> (as per profit and loss account for the immediately preceding FY) does not exceed <b>Rs. 40 crore</b> or such higher amount as may be prescribed which shall not be more than one hundred crore rupees</p>
<b>Conclusion:</b>	<p>In present case</p> <p>(i) MNP pvt ltd cannot avail status of small company as its turnover is 60 cr which exceeds 40 cr</p> <p>(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 complied</p>

PRACTICAL QUESTION	
<b>Question 3</b>	<b>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)</b>
<b>Law:</b>	<p>(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.</p> <p>(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:</p> <p style="padding-left: 20px;">(a) That other controls the <b>composition of its board of directors</b>;</p> <p style="padding-left: 20px;">(b) That other exercises or controls <b>more than one-half</b> of the <b>total voting power</b> either at its own or together with one or more of its subsidiary companies; or through its Subsidiaries</p>
<b>Conclusion:</b>	<p>In present case –</p> <p>(i) Saras Private Limited is a <b>not subsidiary</b> 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 .</p> <p>(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.</p>

	<b>4.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)</b>
	<p>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</p> <p>(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;</p> <p>(ii) intends to apply its profits (if any) or other income in promoting its objects; and</p> <p>(iii) intends to prohibit payment of any dividend to its members.</p>

PRACTICAL QUESTION	
<b>Question 5</b>	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)
<b>Law:</b>	<p>(i) A company may be formed u/s 8 if</p> <p>(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;</p> <p>(b) the company intends to apply its profits in promoting its objects; and</p> <p>(c) the company intends to prohibit the payment of dividend to its members.</p> <p>(ii) The CG (R.D) may revoke the licence issued to the company if the company:</p> <p>(a) contravenes any of the provisions of Sec. 8; or</p> <p>(b) contravenes any condition subject to which the licence was issued; or</p> <p>(c) the affairs of the company are carried on fraudulently or not as within the object of the company.</p>
<b>Conclusion:</b>	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 )

PRACTICAL QUESTION	
<b>Question 6</b>	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]
<b>Law:</b>	<p>A company may be formed u/s 8 if</p> <p>(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;</p> <p>(b) the company intends to apply its profits in promoting its objects; and</p> <p>(c) the company intends to prohibit the payment of dividend to its members.</p>

<b>Conclusion:</b>	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.
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**PRACTICAL QUESTION**

<b>Question 7</b>	<b>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)</b>
<b>Law:</b>	<p>(i) A company may be formed u/s 8 if</p> <p>(a) the objects of the company are <b>to promote commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or such other object;</b></p> <p>(b) the company intends to <b>apply its profits in promoting its objects;</b> and</p> <p>(c) the company intends to <b>prohibit the payment of dividend</b> to its members.</p> <p>(ii) The <b>CG (R.D)</b> may revoke the licence issued to the company if the company:</p> <p>(a) <b>contravenes any of the provisions of Sec. 8; or</b></p> <p>(b) <b>contravenes any condition subject to which the licence was issued; or</b></p> <p>(c) <b>the affairs of the company are carried on fraudulently or not as within the object of the company.</b></p> <p>(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</p> <p>(a) <b>wound up; or</b></p> <p>(b) <b>amalgamated with any other company registered u/s 8 and having similar objects</b></p>
<b>Conclusion:</b>	In present case , C.G can ask trinity school to wind up or amalgamate with other company having similar object

**PRACTICAL QUESTION**

<b>Question 8</b>	<b>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</b>
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	<b>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)</b>
<b>Law:</b>	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, <b>securities premium account and debit or credit balance of profit and loss</b> 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.
<b>Conclusion:</b>	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.

	<b>9. 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)</b>
	<b>Free Reserves 2(43)</b> According to section 2(43) of companies act,2013,Free reserves means 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.

## Some Extra Questions for Practice

### PRACTICAL QUESTION

<b>Question 10</b>	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.
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	<p>(i) If Priya is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?</p> <p>(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? <b>(RTP sep24)</b></p>
<b>Law:</b>	<p>According to Rule 3 of <i>the Companies (Incorporation) Rules, 2014 and Sec 2(62)</i></p> <p>(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.</p> <p>(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.</p> <p>(iii) Minor cannot be member or nominee in OPC</p>
<b>Conclusion:</b>	<p>In present situation</p> <p>(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.</p> <p>(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.</p>

### PRACTICAL QUESTION

<b>Question 11</b>	1. ABC Limited is a registered public company having the following:		
	i	Directors and their Relatives	20
	ii	Employees	15
	iii	Ex-Employees (Shares were allotted during employment)	20
	iv	Members holding shares jointly (10 shares x 2 joint- holders each)	20
	v	Other Members	150
	<p>The Board of Directors of ABC Limited proposes to convert the company into a private limited company. Referring the provisions of the Companies Act, 2013, advise:</p> <p>(i) Whether the company can be converted into a private company?</p> <p>(ii) Whether existing number of members need to be reduced for the proposed conversion into a private company?<b>(5 Marks) (MTP sep 24)</b></p>		

<b>Law:</b>	<p>According to section 2(68) of the Companies Act, 2013,</p> <p>(i) "Private company" means a company having prescribed minimum paid-up share capital, and which by its articles, limits the number of its members to 200.</p> <p>(ii) 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.</p> <p>(iii) It is further provided that following shall not be included in the number of members -</p> <p>(A) persons who are in the employment of the company; and</p> <p>(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.</p>												
<b>Conclusion:</b>	<p>According to calculation of Sec 2(68), total Number of members in ABC Limited are:</p> <table border="1" style="margin-left: 20px;"> <tr> <td style="width: 5%;">(i)</td> <td style="width: 75%;">Directors and their relatives</td> <td style="width: 20%; text-align: right;">20</td> </tr> <tr> <td>(ii)</td> <td>Joint shareholders (10x2)</td> <td style="text-align: right;">10</td> </tr> <tr> <td>(iii)</td> <td>Other Members</td> <td style="text-align: right;">150</td> </tr> <tr> <td></td> <td><b>Total</b></td> <td style="text-align: right;"><b>180</b></td> </tr> </table> <p>(i) ABC Limited may be converted into a private company only if the total members of the company are limited to 200. In the instant case, since existing number of members are 180 which is within the prescribed maximum limit of 200, so ABC Limited can be converted into a private company.</p> <p>(ii) There is no need for reduction in the number of members for the proposed private company as existing number of members are 180 which does not exceed maximum limit of 200.</p>	(i)	Directors and their relatives	20	(ii)	Joint shareholders (10x2)	10	(iii)	Other Members	150		<b>Total</b>	<b>180</b>
(i)	Directors and their relatives	20											
(ii)	Joint shareholders (10x2)	10											
(iii)	Other Members	150											
	<b>Total</b>	<b>180</b>											

### PRACTICAL QUESTION

<b>Question 12</b>	<p><i>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)</i></p>
<b>Law:</b>	<p>As per section 2(85) of the Companies Act, 2013, small company means a company, other than a public company:</p> <p>(i) paid-up share capital of which does not exceed four crore rupees, and</p>

	<p>(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees:</p> <p>Provided that nothing in this clause shall apply to—</p> <p>a) a holding company or a subsidiary company;</p> <p>b) a company registered under section 8; or</p> <p>c) a company or body corporate governed by any special Act.</p>
<b>Conclusion:</b>	<p>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.).</p> <p>Hence, the contention of the Company Secretary is correct.</p>

### PRACTICAL QUESTION

<b>Question 13</b>	<p><i>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></p> <p><i>(i)The provisions of the Companies Act, 2013 are applicable on Cross Limited?</i></p> <p><i>(ii)XYZ Private Limited is a public company as per the Companies Act, 2013?(5 Marks)</i> <i>(MTP April 24)</i></p>
<b>Law:</b>	<p>(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.</p> <p>(ii) According to section 2(71) of the Companies Act, 2013, public company means a company which is not a private company.</p> <p>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.</p> <p>(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:</p> <p>(1) controls the composition of the Board of Directors; or</p> <p>(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.</p>
<b>Conclusion:</b>	<p>In the given question,</p> <p>(i) the provisions of the Companies Act, 2013 are also applicable on Cross Limited.</p>

	(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.
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**PRACTICAL QUESTION**

<b>Question 14</b>	<b>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 – May 24)</b>
<b>Law:</b>	According to sec 2 (85) A company shall be a small company only if it satisfies both the following conditions: <ul style="list-style-type: none"> <li>(i) Its <b>paid-up share capital</b> does not exceed <b>Rs. 4 crore</b> or such higher amount as may be prescribed which shall not be more than ten crore rupees; <b>and</b></li> <li>(ii) Its <b>turnover</b> (as per profit and loss account for the immediately preceding FY) does not exceed <b>Rs. 40 crore</b> or such higher amount as may be prescribed which shall not be more than one hundred crore rupees</li> <li>(iii) A company <b>shall not</b> be a small company, if: <ul style="list-style-type: none"> <li>a. is a public company; or</li> <li>b. It is a holding or a subsidiary company; or</li> <li>c. It is a company registered u/s 8 ; or</li> <li>d. It is a company or body corporate governed by any special Act.</li> </ul> </li> </ul>
<b>Conclusion:</b>	In given Question , contention of company secretary is correct , Laxman pvt ltd is not a small company as subsidiary of a company cannot be catogerised as small company

**PRACTICAL QUESTION**

<b>Question 15</b>	<i>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>
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	<p>(i) <i>Is there any provision under the Companies Act, 2013 to revoke the licence? If so, state the provisions.</i></p> <p>(ii) <i>Whether the Company may be wound up?</i></p> <p>(iii) <i>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)</i></p>
<b>Conclusion:</b>	<p>(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.</p> <p>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.</p> <p>(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.</p> <p>(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.</p>

**PRACTICAL QUESTION**

<b>Question 16</b>	<p><i>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></p> <p>(i) <i>What is the minimum paid-up capital requirement in case of a Section 8 Company ?</i></p> <p>(ii) <i>Whether a firm can be member of the Section 8 Company ?</i></p> <p>(iii) <i>Whether the Section 8 Company can pay dividend to its members ?</i></p> <p><i>Advise, Sai with reference to the provisions of Companies Act, 2013. (April 22)(5 Marks)</i></p>
<b>Law:</b>	<p>(i) A company may be formed u/s 8 if</p> <p>(a) the objects of the company are <b>to promote commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or such other object;</b></p> <p>(b) the company intends to <b>apply its profits in promoting its objects;</b> and</p> <p>(c) the company intends to <b>prohibit the payment of dividend</b> to its members.</p> <p>(ii) Further it must be noted that even a firm can be member of sec 8 company</p>

<b>Conclusion:</b>	<p>(i) The requirement of having a minimum paid up share capital shall not apply to a section 8 company</p> <p>(ii) Yes, under section 8(3) of the Companies Act, 2013, a firm may be a member of the company registered under section 8.</p> <p>(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.</p>
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### PRACTICAL QUESTION

<b>Question 17</b>	<p><i>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 Dhway &amp; Co., a partnership firm which is its member that there such alteration was not valid.</i></p> <p><i>Advise, as per the provisions of the Companies Act, 2013, whether the contention of Dhway &amp; Co. was valid and whether it can be a member in such company? (RTP May 2022)</i></p>
<b>Law:</b>	<p>(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).</p> <p>(ii) Also, a firm may be a member of the company registered under section 8</p>
<b>Conclusion:</b>	<p>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.</p> <p>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 Dhway &amp; Co. was valid.</p> <p>Also, section 8 allows a firm to be a member of such company and hence, Dhway &amp; Co. can be its member.</p>

### PRACTICAL QUESTION

<b>Question 18</b>	<p><i>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)</i></p>
<b>Law:</b>	<p>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.</p>

	A Company is a separate legal entity which can sue or be sued in its own name
<b>Conclusion:</b>	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.

### PRACTICAL QUESTION

<b>Question 19</b>	<i>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 ₹ 5 crore 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</i>
<b>Law:</b>	<p>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-</p> <ul style="list-style-type: none"> <li>(i) the Central Government, or</li> <li>(ii) by any State Government or Governments, or</li> <li>(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.</li> </ul> <p>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—</p> <ul style="list-style-type: none"> <li>(i) controls the composition of the Board of Directors; or</li> <li>(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.</li> </ul>
<b>Conclusion:</b>	<p>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.</p> <p>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.</p> <p>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.</p>

PRACTICAL QUESTION	
<b>Question 20</b>	<i>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</i>
<b>Law:</b>	<p>“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]</p> <p>“Significant accounting transaction” means any transaction other than—</p> <ol style="list-style-type: none"> <li>payment of fees by a company to the Registrar;</li> <li>payments made by it to fulfil the requirements of this Act or any other law;</li> <li>allotment of shares to fulfil the requirements of this Act; and</li> <li>payments for maintenance of its office and records.</li> </ol> <p>[Explanation (ii) to Section 455 of the Companies Act, 2013]</p>
<b>Conclusion:</b>	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.

PRACTICAL QUESTION	
<b>Question 21</b>	<i>Johnson Ltd goes public for share issue. Issue is over subscribed . A default was committed with respect to allotment of shares by officers of the company . There is no M.D , WTD or any person designated by board with responsibility of complying with provisions of Act. State who are persons considered as officer in default under Companies Act,2013 (5M) (J</i>
<b>Law:</b>	<p><b>Officer who is in default [Section 2(60)]</b></p> <p>"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 <b>shall be liable</b> to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—</p> <ol style="list-style-type: none"> <li>whole-time director;</li> <li>key managerial personnel;</li> <li><b>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;</b></li> <li><b>Charged person-</b> 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</li> </ol>

	<p>participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;</p> <p>(v) <b>Promoters</b> - 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;</p> <p>(vi) <b>Aware but no Action</b> - 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;</p> <p>(vii) <b>Merchant Bankers</b> – 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.</p>
<b>Conclusion:</b>	In given case , since there is no M.D , WTD or <i>any person designated by board with responsibility of complying with provisions of Act then all directors will be officer in default.</i>

Q22 Following are some of the securities, issued by different companies related with each other, as follows:-

Company	Securities Issued	Remarks
Kleshrahit Ltd.	Listed non-convertible redeemable preference shares issued on private placement basis in terms of relevant SEBI Regulations.	Has the power to appoint 2/3rd directors in Indriyadaman Ltd.
Indriyadaman Ltd	Listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations.	Holding 60% voting power in Sajagta (P) Ltd.
Sajagta (P) Ltd.	Listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations.	Holding 60% voting power in Sajagta (P) Ltd.

Equity shares issued by the Kleshrahit Ltd. and Indriyadaman Ltd. are not listed in any of the recognized stock exchanges.

In the context of aforesaid facts, answer the following question(s):-

- Whether the aforesaid companies can be considered as listed company(ies)?
- Explain the relationship between the aforesaid companies? (RTP May 2022)

#### Solution-

According to section 2(52) of the Companies Act, 2013, 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.

According to rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:-

(a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –

(i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or

(ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or

(iii) both categories of (i) and (ii) above.

(b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;

(c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.

<b>Company Name</b>	<b>Analysis and Conclusion</b>
Kleshrahit Ltd.	Equity shares issued by the company are not listed. However, the company has issued listed non-convertible redeemable preference shares issued on private placement basis in terms of relevant SEBI Regulations which falls in the exceptions to the listed company, given as per clause (a)(ii) to Rule 2A, as aforesaid, and accordingly, Kleshrahit Ltd. shall not be considered as a listed company.
<b>Indriyadaman Ltd.</b>	Equity shares issued by the company are not listed. However, the company has issued listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations which falls in the exceptions to the listed company, given as per clause (a)(i) to Rule 2A, as aforesaid, and accordingly, Indriyadaman Ltd. shall not be considered as a listed company.
<b>Sajagta (P) Ltd.</b>	The company has issued listed non-convertible debt securities issued on private placement basis on a recognised Stock Exchange in terms of relevant SEBI Regulations which falls in the exceptions to the listed company given as per clause (b) to Rule 2A, as aforesaid, and accordingly, Sajagta (P) Ltd. shall not be considered as a listed company.

(i) **Relationship between Kleshrahit Ltd. & Indriyadaman Ltd.**

It is given that Kleshrahit Ltd. has the power to appoint 2/3rd directors in Indriyadaman Ltd. i.e. majority of the directors can be appointed by Kleshrahit Ltd.

Accordingly, as per sub-clause (i) to section 2(87) read with the Explanation given in point (b), it can be understood that Indriyadaman Ltd. is the subsidiary company of Kleshrahit Ltd. while the latter is the holding company of Indriyadaman Ltd.

**(ii) Relationship between Indriyadaman Ltd. & Sajagta (P) Ltd.**

It is given that Indriyadaman Ltd. is holding 60% voting power in Sajagta (P) Ltd.

Accordingly, as per sub-clause (ii) to section 2(87), it can be understood that Sajagta (P) Ltd. is the subsidiary company of Indriyadaman Ltd. while the latter is the holding company of Sajagta (P) Ltd. as Indriyadaman Ltd. controls more than one-half of the total voting power of Sajagta (P) Ltd.

**(iii) Relationship between Kleshrahit Ltd. & Sajagta (P) Ltd.**

It is given that Indriyadaman Ltd. is holding 60% voting power in Sajagta (P) Ltd. and it has been derived that Indriyadaman Ltd. is the subsidiary company of Kleshrahit Ltd. and Sajagta (P) Ltd. is the subsidiary company of Indriyadaman Ltd., respectively.

Accordingly, as per sub-clause (ii) to section 2(87) read with the Explanation given in point (a), that a company shall be deemed to be a subsidiary company of the holding company even if the control is of another subsidiary company of the holding company i.e. subsidiary of subsidiary company will be deemed to be a subsidiary of the holding company.

Hence, it can be understood that Sajagta (P) Ltd. is deemed to be subsidiary company of Kleshrahit Ltd. while the latter would be considered as the holding company of Sajagta (P) Ltd.

**(iv) Relationship between Sajagta (P) Ltd. & Pratibodh Ltd.**

It is given that Sajagta (P) Ltd. holds 52% equity shares in Pratibodh Ltd. as an investment on behalf of another company in a capacity of a trustee i.e. in a fiduciary capacity.

As per the notification dated 27th December 2013, Ministry (MCA) 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.

Accordingly, Sajagta (P) Ltd. & Pratibodh Ltd. do not share any holding– subsidiary relationship as the former holds shares in latter just in a fiduciary capacity on behalf of another company.

**Case Scenario 1 (MTP Jan 25)**

Mr. V started a new venture of on-line business of supply of grocery items at the door- step of consumers. Initially it was having the area of operations of Saharanpur city only. He employed some young boys having their own bikes and allocated the areas which they were accustomed of it, for making delivery of the grocery items as per their orders. He also got developed a website and Mobile App to receive the orders on-line. His friend Sundaram who is a Chartered Accountant, suggested him to corporatize this business form, from proprietorship business to a One Person Company (OPC). Mr. V agreed and a OPC was incorporated in the name of “Ask V Online Grocery (OPC) Pvt Ltd.” (for short OPC-1). In this OPC Mr. V became the member and director and Sudha (the mother of Mr. V) was made as nominee.

After a year Mr. V got married with Vani. Since the business of on-line supply of grocery was on rising trend, day by day, he thought to start a new business of supply of Milk and Milk Products and another OPC in the name of “Vani Milk Products (OPC) Pvt Ltd” (for short OPC-2) was incorporated with the help of his professional friend Sundaram. In this OPC-2, Vani (his wife) became the member and director and Mr. V was named as Nominee.

To summarise the position, the information is tabulated as under:

Name of OPC	Ask Mr. V4Online Grocery (OPC) Pvt Ltd [OPC-1]	Vani Milk Products (OPC) Pvt Ltd [OPC-2]
Member and Director	Mr. V	Vani
Nominee	Sudha (Mother of Mr. V)	Mr. V (Husband of Vani)

After some time, Sudha (the mother of Mr. V) passed away. However, before the death, Sudha had made a WILL, in which she mentioned that after her demise, her another son Krishh be made nominee in the OPC-1. When Krishh came to know this fact, he argued with Mr. V to fulfil the wish of Sudha as per her WILL (Mother of Mr. V and Krishh), but Mr. V denied this and appointed Vani (his wife) as nominee.

Aggrieved from the decision of Mr. V for not nominating him (Krishh), Krishh threatened Mr. V to take appropriate legal action against him for not honouring the WILL of Sudha and consulted his lawyer. Meanwhile due to continuous threatening and unpleasant conversation between Krishh and Mr. V, Vani became mentally upset and became insane, as certified by the medical doctor, so lost her capacity to contract. In this situation, Mr. V being the nominee in OPC-2 became member and director of this OPC-2.

One of the friends of Mr. V advised him to do some charitable work of providing free education to the girl children of his native village near by Saharanpur. Mr. V thought about this proposal and asked his professional friend Sundaram to convert this OPC-2 into Section 8 company.

On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 1-5, of **2 marks each**) given herein under:

- Since Vani, being insane, lost the capacity to contract, Mr. V (who was nominee) became the member of OPC-2. Now who will make nomination for this OPC:
  - Mr. V in the capacity of husband of Vani can nominate any person as Nominee of OPC-2
  - Mr. V (who was nominee) of OPC-2 has now become member of this OPC and now as a member of this OPC he can nominate any person as per his choice as Nominee for this OPC.
  - When no person is nominated, the Central Govt. will make nomination of such OPC-2.
  - When no person is nominated the Registrar shall order the company to be wound up.
- Whether conversion of OPC-2 into a company governed by Section 8 is permissible?
  - Yes, OPC can be converted into Section 8 company
  - No, OPC cannot be converted into Section 8 company
  - This OPC-2 can be converted into section 8 company, provided the Central Govt give license
  - Providing of free education to girl child do not come under the specified objects mentioned for eligibility incorporation of section 8 company
- Mr. V is a member in OPC-1 and became a member in another OPC-2 (on 2<sup>nd</sup> April, 2024) by virtue of his being a nominee in that OPC-2. Mr. V shall, by what date, meet the eligibility criteria that an

individual can be a member in only one OPC:

- (a) 17<sup>th</sup> May 2024
  - (b) 25<sup>th</sup> August 2024
  - (c) 26<sup>th</sup> August 2024
  - (d) 29<sup>th</sup> September 2024
4. After the demise of Sudha (the mother of Mr. V), Vani was nominated by Mr. V for OPC-1 as Nominee. But now Vani has become insane, so what recourse you will suggest to Mr. V:
- (a) Mr. V is required to nominate another person as nominee
  - (b) Mr. V should wait till Vani becomes good of her health and able to have the capacity to contract
  - (c) Although Vani has become insane, but if she is able to sign, her nomination in OPC-1 may continue
  - (d) Sundaram (the Chartered Accountant) who helped in incorporation of OPC-1, may act as legal consultant on behalf of Vani
5. Mr. V is preparing the financial statements for "Ask V Online Grocery (OPC) Pvt Ltd" for the financial year. Which of the following statements is correct regarding compliance with section 129 of the Companies Act, 2013?
- (a) Financial statements of OPC-1 must include a cash flow statement.
  - (b) The financial statements must be presented and approved by a general meeting of members.
  - (c) Mr. V, as the sole director, is responsible for approving the financial statements before filing with the RoC.
  - (d) Consolidated financial statements must be prepared for OPC-1.
1. (b)
2. (b)
3. (d)
4. (a)
5. (c)