

COMPANY LAW

UNIT 1 : INTRODUCTION

TOPIC- Types of Companies

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Chapter - Kinds of Companies

According to mode of incorporation

- Statutory Company
- Registered Company

According to number of members

- Private Company
- Public Company
- One person Company

According to liability of members

- Company limited by shares
- Company limited by guarantee
- Unlimited Company

According to purpose

- Companies not for profit
- Producer companies

According to controlling interest

- Foreign Company
- Government Company
- Holding Company and Subsidiary Company
- Associate Company

According to size and functionality

- Small Company
- Dormant Company

Miscellaneous Topics

- Conversion of Private companies into Public Companies and vice-versa
- Privileges of private companies
- Difference between private and public companies
- Difference between private and producer companies

Statutory Companies eg. LIC, RBI, UTI, FCI etc.

- Incorporated by a Special Act passed by Central or State legislature
- Such Companies carry on some business of national importance
- Governed by their Special Act but Companies Act is also applicable in so far as its provisions are not inconsistent with the provisions of Special Act
- Exempted from having MOA or using 'limited' word in their name.
- Their audit supervision and guidance by CAG and Annual reports are to be placed before Central or State Legislature

Registered Companies

- These are the companies which are registered under the Companies Act 2013 or earlier Companies Acts.
- Most of the companies are formed this way
- On the basis of no. of members, registered Companies can be # private,# public or #one person Company
- On the basis of liability of members, registered Companies can be# limited by shares, #limited by guarantee or #unlimited companies
- If some Insurance, Banking or Electricity Supply companies are incorporated under the Companies Act, then on operational matters they will be governed by their Special Acts and on other matters by the provisions of Companies Act.

TPDDL i.e. Tata Power Delhi Distribution Lmt.- it an electricity supply company
Bharti Axa Life Insurance Company Lmt.-it is an insurance company. Both of them are registered companies and therefore end with word limited. But on operational matters they are governed by the Electricity Act, 2003 or the Insurance Act, 1938 respectively. Similarly IDBI Bank Lmt. Is a registered co .

Private Company , Sec2(68)

A private company is one , which by its Articles of Association-

- **Restricts** the right of members to transfer its shares
- **Limits** the number of members to 200. *(Joint members are treated as a single member . Also persons who are/ were in the employment of the company when they became members are not included in this limit)*
- **Prohibits** any invitation to public to subscribe it's securities
- These companies must add "**Private**" word with its name.
- These companies enjoy certain **exemptions and privileges**

Public Company , Sec.2(71)

- Shares are **freely transferable**
- Minimum membership required is 7 but **maximum no limit**
- Can **invite public for subscription** of its securities
- Subsidiary of a public company will be deemed to be public company (even when the subsidiary is a private company and has those three restricting clauses in its AOA)
- These companies are required to **comply with lot of formalities** and procedures

One Person Company, Sec.2(62)

- OPC is a private company by nature which has just **one member who shall be a natural person and citizen of India whether resident or not**. But it is necessary to indicate in the MOA of the OPC, the name of another person (nominee) who shall become the member in case the only member dies or is incapacitated. Resident in India means that his period of stay in India has been **120** days or more during the preceding financial year. The nomination can be changed by the member at any time and the OPC shall have to intimate the Registrar about such change. Eg Okava Seed (OPC) Private Limited.^{5r}
- **Minor cannot become member or nominee of an OPC. One person allowed to incorporate only one OPC and to be a nominee of only one OPC**, at any point of time.
- Necessary to mention the words **'One Person Company'** in **brackets below** the company's name wherever printed/engraved/affixed
- Such company enjoys **certain additional exemptions** like-
 - ✓ no. of directors can range from 1 - 15, no need of their rotational retirement,
 - ✓ no compulsion to conduct board meetings if there is just 1 director. If more than 1 director, then it can manage with just 2 board meetings one in each half year with a gap of at least 90 days between them
 - ✓ no need to hold AGM/ EGM,
 - ✓ the Financial Statements may not include cash flow statement
 - ✓ Board Report as well as Annual Return can be in abridged form. Further Annual return can be signed by the CS or a director if there is no Company Secretary.
 - ✓ Lesser monetary penalties (i.e. half of the normal penalty) are imposed on them on their failure to comply with provisions of Companies Act.
- **An OPC can be converted into any kind of company (except section 8 company)**, at any time it wants. Steps for conversion of OPC into a private or public co. are as follows
 - ✓ Pass a resolution for conversion and accordingly alter its MOA and AOA
 - ✓ Make necessary changes like increasing no. of directors or members as the case may be .
 - ✓ File with the RoC , an application in **e- Form INC-6** for conversion along with necessary fees
 - ✓ If RoC is satisfied with documents submitted and the procedural formalities, he shall approve the form and issue the new Certificate of Incorporation.

Companies limited by shares

- In such companies liability of members is limited by the memorandum to the amount remaining unpaid on shares held by them
- This liability can be enforced at any time during the existence of the company or during the winding up of company
- Most of the companies in India belong to this category
- Such companies are also known as limited liability companies
- If shares are fully paid, the liability of members will be nil

Companies Limited by guarantee

- In such companies, liability of members is limited by memorandum to the amount guaranteed by them (such amount as they have respectively undertaken to contribute to assets of the company to meet the deficiency at the time of its winding up)
- This liability/ guarantee can be enforced(demanded) only at the time of winding up and not before
- Non- trading companies formed for the promotion of art, science, commerce, sports, culture etc. are incorporated as guarantee companies. Eg. Chambers of Commerce, sports clubs, trade associations
- Memorandum of Association of such companies states what amount each member has guaranteed and this amount may differ from member to member
- Such companies may or may not have share capital. If it has share capital, liability of members will be two fold .i.e. they are liable for amount remaining unpaid on shares as well as amount payable under guarantee

Unlimited Companies

- Such companies have no limit on the liability of its members i.e. their liability may extend to their personal property to pay off the liabilities of the company
- Memorandum of such companies must state that liability of its members is unlimited
- Liability of members is enforceable only at the time of winding up
- Every member is liable to contribute in proportion of his interest in the company
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- Such companies are very rare .Eg. Nova Scotia (Canada) Unlimited Liability Company, Cyber Ventures

Companies not for Profit/Licensed Companies (Sec.8)

- These companies are meant for promoting science, art, commerce, sports, religion, charity, social welfare, environmental protection or other useful objects. Eg. FICCI, CII, ASSOCHAM, National Sports Club of India etc.
- Such companies have to apply to the Central Govt. for a license which shall be granted on prescribed terms and conditions (this licence can be revoked by CG anytime this company contravenes any prescribed term\ condition)
- These companies are required to apply its income for promoting its objects and are not allowed to pay any dividends to its members. Even on winding up, if any surplus assets are left after paying off all the debts and liabilities, those surplus assets will either be transferred to another Licensed company having similar objects or may be sold and proceeds shall be credited to Insolvency and Bankruptcy Fund.
- These companies have limited liability but are exempted from using words 'limited' or 'private limited' with their name
- These companies are subject to certain exemptions in form of tax benefits, procuring land and immovable at concessional rates, permission to receive donations etc. Further certain notified Sections of the Companies Act, 2013 do not apply to such companies or apply but with some exceptions, modifications and adaptations.

Foreign Companies (Sec.379 to 393)

- Foreign Company is a company incorporated outside India but which has a place of business in India (either by itself/agent/physically/electronically) and conducts any business activity in India in any manner. The provisions of Companies Act that will be applicable on them and the special provisions applicable on them has been prescribed .
- **Obligations regarding filing of documents.** Within 30 days of establishment of business in India, such companies have to furnish to the Registrar the Charter, Memorandum and Articles of the Company; address of the Registered office, particulars of directors and secretary; address of principal place of business in India, particulars of persons in India who will receive notices on behalf of the company etc.
- **Obligation regarding Accounts and Audit** - Every foreign company has to file every year with the Registrar ,the copy of its Balance Sheet, Profit and Loss Account and other documents as required under the Act . Further, it is required to get proper audit done of its accounts pertaining to the Indian business operations .
- **Obligation regarding Exhibition of the Name-** A foreign company is required to exhibit its name and country of its Incorporation outside its every office in India (in English and regional language) and also on all its business letters ,bills, advertisements, notices and its all other official publications (in English language)
- In case of contravention of any of the above provisions, foreign company shall be punishable with fine(ranging from 1 to 3 lakhs), additional fine(up to 50000 per day) in case of continuing default in addition to its punishment of imprisonment and\or fine of its officers in default. Further such defiant company is liable to be sued by others but it cannot file suit on others for counter claim or enforcement of its rights.
- However, if 50% or more paid up share capital of a foreign company is held by citizens of India or Indian body corporates, then such a company will be treated like an Indian Company and will have to comply with the provisions applicable to foreign co. as well as such other provisions of the Companies Act applicable to Indian companies as may be prescribed, with regard to the business carried on by it in India.

Government Company eg. SAIL (Steel Authority of India Lmt.), BHEL (Bharat Heavy Electricals Limited) etc.

- A Govt. Company is one in which not less than 51% paid up share capital is held singly or in combination by the Central Govt and/ or one or more State govts. A subsidiary of a Govt. Co. is regarded as a Govt . Co.
- It is to be registered under the Companies Act and their names must end with the word 'Limited'.
- These companies are governed by the Companies Act like any other limited company but may be granted by the Central Government exemptions from application of certain sections of the Companies Act or applications of such provisions with certain modifications/exceptions/adaptations
- **Special provisions as regards audit.** CAG of India appoints / reappoints the auditor of such co; CAG can also give directions to such auditors regarding manner of audit; CAG can get supplementary test audit of such Co. being conducted by persons appointed by him; auditor is required to submit copy of his audit report to the CAG ;and the CAG can give his comments on that report which shall also be placed before the annual general meeting (AGM) along with the audit report.
- **Special provisions as regards annual reports.** An Annual Report on working and affairs of such company shall be prepared within 3 months of AGM (where audit report stated above was laid) by the Central Govt.(if it is member of such govt Co) or by the member State Govt (if Central govt is not member of such Co).Then the concerned govt (CG and/or SG) shall lay before both its Houses (Parliament or Legislature as the case may be)-the **annual report**(prepared by the CG/SG as the case may be) + copy of **audit report** + **comments** of CAG.

Holding and Subsidiary Company

- Holding Company is one which **exercises control over the other company**. This control may be by virtue of either controlling the composition of BOD of other company or because of controlling (either itself or together with its subsidiaries) more than half(50%) of the total voting power of the other company.
- A company which is subsidiary of a subsidiary company shall also be a subsidiary of the holding company(This is called **chain holding**). *Holding Company shall not have layers of subsidiaries beyond 2.*
- A private company which is subsidiary of a public company will be deemed to be a public company(*)
- A subsidiary company is prohibited from holding shares in the holding company(Sec.19 of Companies Act,2013 prohibits **cross holding**). *However, where the subsidiary company is a shareholder even before it became subsidiary of the holding company, it can keep holding such shares.*
- As per sec.129(3), every holding company is required to prepare, in addition to its own financial statements, a consolidated financial statement(of the holding company together with all its subsidiaries)to present the picture of the group as a whole.

Associate Company

- This concept of associate company is new and has been introduced by Companies Act 2013.
- An associate company is one in which that other company has significant influence, but which is not a subsidiary company of that other company. Significant influence means control of at least 20% of total voting power or of business decisions under an agreement
- A joint venture company will be an associate company
- Control of at least 20% translates to actually 20% to 50% because on exceeding 50%, the associate will actually become the subsidiary company
- A parent company is not required to consolidate the associate company's financial statements. Rather the parent company records the associate company's value as an asset in its Balance sheet

Small Company

- A small company is new class of private limited company (introduced for the first time in Companies Act 2013 via sec.2(85)) whose paid up share capital does not exceed Rs. 4 crores **and** turnover as per P&L account of the preceding financial year, does not exceed 40 crores.
- However a Holding or a Subsidiary company, a licensed company or a company governed by any Special Act will not be regarded as small company even if its capital or turnover is \leq prescribed limits
- These companies enjoy additional exemptions and privileges in addition to those enjoyed by private companies. Eg. their financial statements may not include cash flow statement, they may hold just 2 board meetings in a year compared to at least 4 board meetings per year for other companies, exemption from mandatory rotation of auditors , lesser monetary penalties, abridged annual return etc. Further, the requirement of **issue of securities in demat form by private companies** is not applicable to Small Companies.
- The Central Govt is empowered to notify those sections of the Companies Act which shall not apply to small companies or shall apply with modifications, adaptations or exceptions
- The status of a company as 'small company' may change from year to year depending upon changes in capital or turnover. Accordingly benefits which are available in a particular year may stand withdrawn in subsequent year and become available again the next year.

Dormant Company (Sec.455)

- The Companies Act ,2013 introduced for the first time , the concept of dormant company by virtue of Sec.455. This concept is relevant where a company is not presently active because say, promoters have incorporated a company but there is either a dispute among them, or the ultimate project for which company was formed has failed through or company has been formed for holding some asset or IPR for some business activity to be undertaken in future. In such cases, by obtaining dormant status, the legal status of the company remains intact and the name is available to the company for future business programs and at the same time it has to comply with some minimum prescribed legal formalities.
- A dormant company is one which is- formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction or -is an inactive company . An inactive company is that which, from the last two years, has not been carrying any business or operation or has not made significant accounting transaction or has not filed financial statements and annual returns.
- Such a company has to apply to ROC in prescribed manner to obtain status of dormant company. Even ROC, on not having received financial statements and annual returns for two consecutive years, may suo motto issue notice to the defaulting company and accord it dormant status.e.g.20th Century Orient Leasing Pvt Lmt.
- When the ROC grants the dormant status to a company , it records its name in the register of dormant companies and issues it a certificate to that effect .Once the company gets a dormant status, it is just required to have minimum directors, hold minimum two Board meetings and file minimum one annual financial document with the ROC .On failing to comply even with these requirements, the ROC can strike off the company's name from the register of dormant companies
- A dormant company can enjoy this status for max. 5 years. It should make an application to Registrar to revert to an active status within 5 years .

PRODUCER COMPANIES

- Provisions governing Producer Companies are contained in Chapter XXIA of Companies Act, 2013 under sections 378A to 378ZU. Eg. Coconut Producer Company Limited, Madhya Bharat Consortium of Farmers Producer Co.Ltd.etc.
- Producer Companies come into existence either by incorporation under the Companies Act as a private limited company or by conversion of existing Cooperatives into private limited companies on optional basis. These companies work on cooperative principles of **mutual assistance, patronage and limited return** and their names must end with words 'Producer Company Limited'. These companies enable farmers and primary producers to formulate collective production and marketing strategies, negotiate better terms with buyers, buy inputs and fertilizers in bulk and receive technical guidance at their doorsteps. A producer company is a hybrid between a cooperative society and a private limited company and thus enjoys advantages of limited company with minimal administrative control of the government.
- The members of a producer company must necessarily be primary producers i.e..persons engaged in an activities such as agriculture, beefarming, cattle rearing, dairy farming , floriculture, horticulture, handloom, handicrafts, cottage etc.A minimum of 10 Individual producers or 2 Producer Institutions or any combination of them can form a Producer Company. But despite being incorporated as a private company there is no limit on maximum number of members. For registration it is required to submit prescribed documents such as AOA and MOA to the registrar, who shall after scrutinizing the documents issue it a Certificate of Incorporation and thereafter it become a body corporate.Like an ordinary company, the liability of its members shall be limited to the amount unpaid on shares but its equity cannot be publicly traded and can only be transferred with the approval of BODs. Such a company can never become or deemed to become a public limited company under any circumstance.
- A Producer Company can only carryout the objects as specified in Sec 378 B of the Act like production\processing\marketing\selling\export of primary produce of its members, manufacture\sale\supply of machinery requirements & consumables to its members, providing educational\technical\consultancy services to members, providing financial\credit facilities to members , arranging electricity\water\power to its members etc.
- Producer Company differs from a private company on various grounds.

	Private Company	Producer Company
Section	Defined in Sec.2(68) of Companies Act,2013	Defined in Sec 378A of Companies Act,2013
Definition	A company which by its AOA restricts the right to transfer its shares, limits membership to 200 and prohibits any invitation to public for subscription of its securities.	A body corporate registered under Companies Act and having objects specified in Sec.378B
Name	Name must end with words "pvt Lmt" eg. XYZ pvt Ltd.	Name must end with words "Producer Company Limited" .eg. Coconut Producer Company Lmt.
Purpose	Profit or gain	Mutual assistance
Objects	Can carry out any object provided its not against provisions of Co. Act, public policy or any law	Can carry only those objects as are specified in Sec. 378B
Members	Min. 2 Max 200	Min. 10 Individuals\ 2Prod. Inst. Max. No limit
Members hip criteria	No such criteria	Members must be primary producers
Directors	Min. 2 Max. as fixed by AOA	Min.5 Max. 15
Voting Rights	Voting rights of members are in proportion to the paid up capital held by them i.e. one share one vote	If only producer institutions are members, then voting power depends on their participation rate in the business of Producer Company .In all other cases i.e.where only individual are members or combination of individuals and Producer Institutions then one member one vote.
Conversion	Pvt company can be easily converted into public limited company. <small>Monika Arya, Associate Professor, Bharati College, Delhi University</small>	Producer Company can never become a public limited company

Conversion of private co. into public co.& vice versa

PRIVATE CO. CONVERSION INTO PUBLIC CO.	PUBLIC CO. CONVERSION INTO PRIVATE CO.
Passing of SR deleting from AOA the three compulsory restrictions u/s2(68)	Passing of SR incorporating into AOA the three compulsory restrictions u/s2(68) + Obtaining approval of CG (power now delegated to Regional Director) on alteration of AOA
Filing with ROC the copy of SR and copy of altered AOA within 15 days of SR	Filing with ROC, the copy of SR +copy of altered AOA + approval letter of CG within 15 days of approval + Declaration by KMP on compliance
Company becomes public from date of passing SR altering AOA	Company becomes private from date of approval from CG
ROC will close the former registration and issue a new Certificate of Incorporation	ROC will close the former registration and issue a new Certificate of Incorporation.
Company will have to increase the number of members to at least 7; increase directors to at least 3; and delete word 'Private' from its name and make other necessary alterations in MOA	Company will have to reduce members to 200; delisting by a listed company, and add the word 'Private' in its name

Privileges/exemptions of a private co.

- Only 2 persons may form themselves into a private co.
- It can allot shares without receiving the minimum subscription
- It is not required to prepare and file prospectus with the Registrar
- May work with only 2 directors
- Directors can be appointed en bloc.
- Directors of a private company are not required to retire by rotation. All its directors can be permanent.
- It is not required to appoint independent directors, woman directors, small shareholders directors etc.
- It may by its AOA, provide special disqualifications for appointment of directors .
- No restriction on payment of remuneration to directors, managing directors etc.
- Exempted from constituting committees like Audit Committee, Nomination and Remuneration Committee.
- Exempted from Secretarial Audit
- Not required to rotate auditor/ audit firm
- Unless AOA provide for a larger no., quorum for general meeting -2 members personally present

PRIVATE COMPANY 2(68)	PUBLIC COMPANY 2(71)
Minimum no. of members – 2 Maximum no. of members-200	Minimum no. of members -7 Maximum no. of members- No limit
There must be restrictions on transfer of shares of the company.	No restrictions on transfer of shares.
Any invitation to public to subscribe for any securities of the company is prohibited.	A public company can invite public for subscription of its securities.
It can issue securities only through private placement, or by way of rights or bonus issue	It can issue securities to public through prospectus, private placement or by way of rights or bonus issue
It can allot shares without receiving the minimum subscription	It cannot allot shares without receiving minimum subscription
A private company must have atleast 2 directors	A public company must have atleast 3 directors
Directors are not required to retire by rotation. All its directors can be permanent.	Atleast 2/3 directors of a public company shall be rotational directors .
Directors can be appointed enbloc i.e . All the directors can be appointed through a single resolution.	The directors cannot be appointed enbloc i.e. they must be voted separately.
It is not required to appoint independent directors.	A public company which is listed or otherwise prescribed must appoint independent directors

PRIVATE COMPANY	PUBLIC COMPANY
It may by its AOA, provide special disqualifications for appointment of directors .	It cannot prescribe additional disqualifications in its AOA for appointment of directors.
No restriction on payment of remuneration to directors, managing directors etc.	Overall maximum managerial remuneration is fixed at 11% of annual net profits of a public company.
Exempted from constituting committees like Audit Committee, Nomination and Remuneration Committee.	Public companies (listed/prescribed) are required to constitute Audit Committee, Nomination and Remuneration Committee
Exempted from Secretarial Audit	Public companies(listed/prescribed) are required to get Secretarial audit by a practicing Company Secretary
Not required to rotate auditor/ audit firm	Public companies (listed/prescribed) required to rotate auditor/ audit firm
Unless AOA provide for a larger no., quorum for general meeting -2 members personally present	Quorum shall be 5 to 30 members personally present depending upon the number of members in the co.
Must have word ‘Pvt./Private’ in its name.	Must end with word ‘Lmt./Limited’