

THE COMPANIES ACT, 2013

Total Sections 470

Total chapters 29

Total Schedules 7

Definition
Section 2 (20) - "Company" means a company incorporated under this Act or under any previous company law.

Meaning
Word "Company" is derived from two Latin word 'Com' meaning 'together' and 'panis' meaning 'bread'. It means association of person which took meal together.

CHAPTER - I Kinds of Companies

Private Company	Public Company	gout Co. 2(45)
2(68)	2(71)	Holding Co. 2(46)
Co. Ltd by shares 2(22)	Co. Ltd by guarantee 2(21)	Subsidiary Co. 2(87)
Unlimited	Associate Co. 2(6)	O.P.C 2(62)
Co. 2(92)	P.F.I Co. 2(72)	Small Co. 2(85)
		Foreign Co. 2(42)
		Dormant Co. 455
		Nidhi Co. 406
		Association Not for Profit 8

PRIVATE COMPANY SECTION 2 (68)

"Private company" means a company having a minimum paid up share capital of such amount as may be prescribed, and which by its articles,-

- (i) Restricts the right to transfer its shares;
- (ii) except in case of One Person Company, limits the number of its members to 200.

Provided that joint members are counted as single.

Provided further that -

- persons who are in the employment of company and become a member of the company shall not be included in the number of members; and
 - persons who are in the employment of company and become a member of the company, now employment ceased but have continued to be member of the company shall ^{not} be included in the number of members.
- (iii) Prohibits to make invitations to the public to subscribe for any securities of the company.

Q1. ABC Limited was registered as a public company. There were 245 members in the company. Their details are as follows:

The BODs of the co. propose to convert it into a pvt. comp. Advice whether reduction in the no. of members is necessary for conversion.

• Directors & their relatives	190
• Employees	15
• Ex-employees (shares were allotted when they were employees)	20
• Others	25
• 5 joint holders holding shares jointly in the name of father & son (5^2)	10

Answer. As per section 2(68) of Companies Act, 2013

Facts - Following members are counted in limit of 200 members

- Directors & their relatives at max 190 (i)
- Others (incl. unpaired members) = 52 in total (ii)
- 5 Joint holders (iii) at 5

Conclusion

Accordingly, ABC Ltd when converted to pvt. co. shall not be required to reduce the no. of members as the no. of members as per requirement of a pvt. co., is fulfilled i.e. of max. 200 members.

Private Company - significant points

1. No min. paid up capital requirement
2. Min. no. of memb. - 2 (except if pvt. co. in an OPC, where it will be 1)
3. Max. no. of memb. - 200, excluding present employees - cum - members & ex-employee - cum - members.
4. Right to transfer shares restricted.
5. Prohibition on invitation to subscribe to securities of the comp.
6. Small co. is a pvt. co.
7. OPC can be formed only as pvt. co.

PUBLIC COMPANY SECTION 2 (71)

"Public company" means a company which -
is not a private company ; and
has a minimum paid up share capital of such
amount as may be prescribed :

Provided that a company which is a subsidiary of
Public 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.

Public Company - significant points

1. Is not a private company
2. Shares freely transferable
3. No minimum paid up capital requirement
4. Minimum number of members - 7
5. Maximum number of members - No limit
6. subsidiary of a public company is deemed to be a
public company .
7. According to section 3(1)(a) , a company may be formed
for any lawful purpose by seven or more
persons , where the company to be formed is to be
a public company .

- Q2. Examine the following whether they are correct or
incorrect along with reasons : A pvt. limited co.
must have a min^m of 2 members , while a public
ltd . co. must have at least 7 members .

Ans. Correct: Sect. 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the co. In the case of a pub. co: any 2 or more persons can form a comp. for any lawful purpose by subscribing their names to memorandum and complying with the requirements of this act in respect of registration. In exactly the same way, 2 or more persons can form a priv. comp.

GOVERNMENT COMPANY (SECTION 2(45))

Govt. co. means any co. in which not less than 51% of the paid up sh. cap. is held by -

- The Central Govt or
 - by any State Govt. or Govts. or partly by one or more State Govt.
- Provided that a co. which is subsidiary of Govt. comp. is also deemed as Govt. Co.

Eg.

Cent. Govt. Govt. of Raj. Govt. of Guj.

25%

15%

25%

= 65%

A Ltd.

(Govt. Co.)

	Pvt. Sect.	Pub. Sect.	Priv. Co	Pub Co.	Govt. Co. sp.
Bata Class Pvt Ltd.	✓		✓		
TISCO / TCS	✓			✓	
ICICI Bank	✓			✓	
Reliance	✓			✓	
HDFC	✓			✓	

	Pvt. Sect.	Pub. Sect.	Pvt. Co.	Pub. Co.	Govt. Co.
BHEL		✓		✓	✓
SAIL		✓		✓	✓

Q3. SK Infrastructure Ltd. has a paid up sh. cap. divided into 600000 eq. sh. of INR 100 each 200000 eq. sh. of the co. are held by Cent. Govt & 120000 eq. sh. are held by Govt. of Maha. Explain with reference to relevant provisions of the Co. Act 2013, whether SK Infra Ltd can be treated as Govt. Co.?

Ans. As per section 2 (45) of Companies Act, 2013 —

In the instant case, paid up sh. cap. of SK Infra Ltd is 600,000 eq. sh. of 100 each. 200000 eq. sh. are held by Cent. Govt. and 1,20,000 eq. sh. are held by Govt. of Maha. The holding of eq. sh. by both govt. is 320,000 which is more than 51% of total paid up eq. sh.

Hence, SK Infra Ltd is a Govt. Co.

ONE PERSON COMPANY [SECTION 2(62)]

Section 2(62) of the companies Act 2013 defines one person comp. (OPC) as a comp. which has only one person as a member. Eg. Solution (OPC) Pvt. Ltd.

Section 4(1)(f) - The memorandum of an OPC shall indicate the name of the person who in case of death, insanity etc. of the member, shall become the member of the co.

→ Minor can be a member of other companies ²⁹⁰ but not viable
in OPC
Partnership & OPC cannot be for Non profit.
Date 1/1

viable
india
GROW UP

Rule 3 of Companies (Incorporation) Rules, 2014.

1. Only a natural person who is an Indian citizen & resident of India.
(a) shall be eligible to incorporate an OPC.
(b) shall be a nominee for the sole member of an OPC.

For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and twenty days ~~but~~ 182 (amendment) during the immediately preceding financial year.
2. A natural person shall not be member of more than a OPC at any point of time & the same person shall not be a nominee of more than a OPC.
3. Where a natural person, being member in OPC in accordance with this rule becomes a member in another such co. by virtue of his being a nominee in that OPC, such person shall meet the eligibility criteria specified in sub rule (2) within a period of one hundred & eighty days.
4. No minor shall become member or nominees of the OPC or can hold share with beneficial interest.
5. No minor shall become member or nominee.

Road, bridges - Infrastructure co.
Malls etc - Real estate co
Buying & selling sh. of another co. - Investing co

Date 1/1

5. Such company cannot be incorporated or converted into a co. under section 8 of the Act.
6. Such co. can not carry out Non-Banking Financial Investment activities including invest. in securities of any body corporatis.
7. OPC cannot convert voluntarily into any kind of co. unless two years have expired from the date of incorporation, except where paid up share capital is incurred beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.
8. The other person (Nominee) whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
9. Such other person (Nominee) may be given the right to withdraw his consent.
10. The member of OPC may at any time change the name of such other person by giving notice to the co. & the co. shall intimate the same to the registration.

Penalty - If OPC or any officer of such company contravenes the provisions, they shall be punishable with fine which may extend to ten thousand rupees & with a further fine which may extend to one thousand rupees for every day after the first which such contravention continues.

Q4. Mr. Anil formed an OPC on 16 April 2018 for manufacturing electric cars. The turnover of the OPC for the financial year ended 31/3/19 was about Rs 2.25 Crores. His friend Sunil wanted to invest in his OPC, so they decided to convert it voluntarily into a private Ltd. co. Can Anil do so?

Ans. As per provisions of Rule 3 of the Companies Act 2013 (Incorporation) Rules, 2014, an OPC cannot Point 7 -
In the instant case, Mr. Anil formed an OPC on 16th April, 2018 and its turnover for the financial year ended 31st March 2019 was Rs 2.25 crores. Even though 2 years have not expired from the date of its incorporation, since its average annual turnover during the period starting from 16th April 2018 to 31st March 2019 has exceeded Rs 2 Cr.
Mr. Anil can convert the OPC into a pvt. Ltd. co. along with Sunil.

P5 Naven incorporated a OPC making his sister Navita as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said OPC. Taking into considerations the provisions of the Companies Act, 2013 answer the following questions.

- If Navita is leaving India permanently, is it mandatory for her to withdraw her nomination in the said OPC?
- If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said OPC?

Ans. Rule 3 → Point 1.

- A. Yes, it is mandatory for Navita to withdraw her nomination in the said OPC as she is leaving India permanently as only a natural person who is an Indian citizen & resident in India shall be a nominee in OPC.
- B. Yes, Navita can continue her nomination in the said OPC, if she maintained the status of Resident of India after her marriage by staying in India for a period of not less than 182 days (Amendment) during the immediately preceding financial year.

FOREIGN COMPANY [SECTION 2(42)]

It means any company or body corporate incorporated outside India which

- has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- conducts any business activity in any other manner.

Q6: Mike limited company incorporated in India having liaison office at Singapore. Explain in detail meaning of Foreign Co. & analysis on whether Mike limited would be called as foreign co. as it established a liaison office at Singapore as per the provisions of the Co. Act. 2013?

Ans.

since Mike Ltd. is a co. incorporated in India, hence, it cannot be called as foreign co. Even though, liaison was officially established at Singapore, it would not be called as a foreign co. as per the provisions of the Co. Act 2013.

OR

A Ltd incorporated in USA having branch office in Ind.

Ans.

It is a foreign co.
OR
Co. incorporated in USA having all members are Indians

Ans. It is not a foreign co.

SMALL COMPANY [SECTION 2(85)]

means a company, other than a public company -

- Paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than 10 crore rupees ~~5 crore~~ (Amendment) and ~~100~~ (Amendment)
- Turnover of which as per profit & loss A/c for the immediately preceding financial year does not exceed two crore rupees or such higher amt. as may be prescribed which shall not be more than 100 crore rupees ~~20 crore~~ (Amendment)

Exceptions: This clause shall not apply to

- a holding co. or a subsidiary co.
- a co. registered under section 8 or
- a co. or body corporate governed by any special Act

Eg. LIC Act 1956.

HOLDING COMPANY [SECTION 2(46)]

A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies

SUBSIDIARY COMPANY [SECTION 2(87)]

"subsidiary company" means a company in which the holding company -

controls the composition of the BODs or

Note - It means power to appoint or remove majority of directors.

old boy

baba

Date 1/1

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.

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.

Ex: (i) A Ltd

60% of
Total
voting power

B Ltd.

(ii) A Ltd

60%

B Ltd

55%

C Ltd.

B Ltd. is subsidiary of A Ltd

= 60% (direct)

B Ltd is sub. of A Ltd = 60% (direct)

C Ltd. is sub. of B Ltd = 55% (direct)

C Ltd. is sub. of A Ltd = 55% (Indirect)

(iii)

A Ltd
60%
↓
B Ltd 35% → C Ltd
35%

B Ltd is sub of A Ltd = 60% (Direct)

C Ltd is sub. of A Ltd = 35% + 35%
(Direct) (Indirect)

= 70%

(iv)

A Ltd
60%
↓
B Ltd 35% → E Ltd
35%
D Ltd 5% ↓
C Ltd 35% ←

B Ltd is sub of A Ltd = 60% (Direct)

D " " " " " = 65% (Direct)

= 55% (Direct)

E " " " = 35% + 5% + 35%
= 75%
(Indirect)

(v)

A Ltd.

B Ltd.

More than half

Control BOD

12,00,000 = 100000 C Ltd

C Ltd is sub of Both A Ltd & B Ltd.

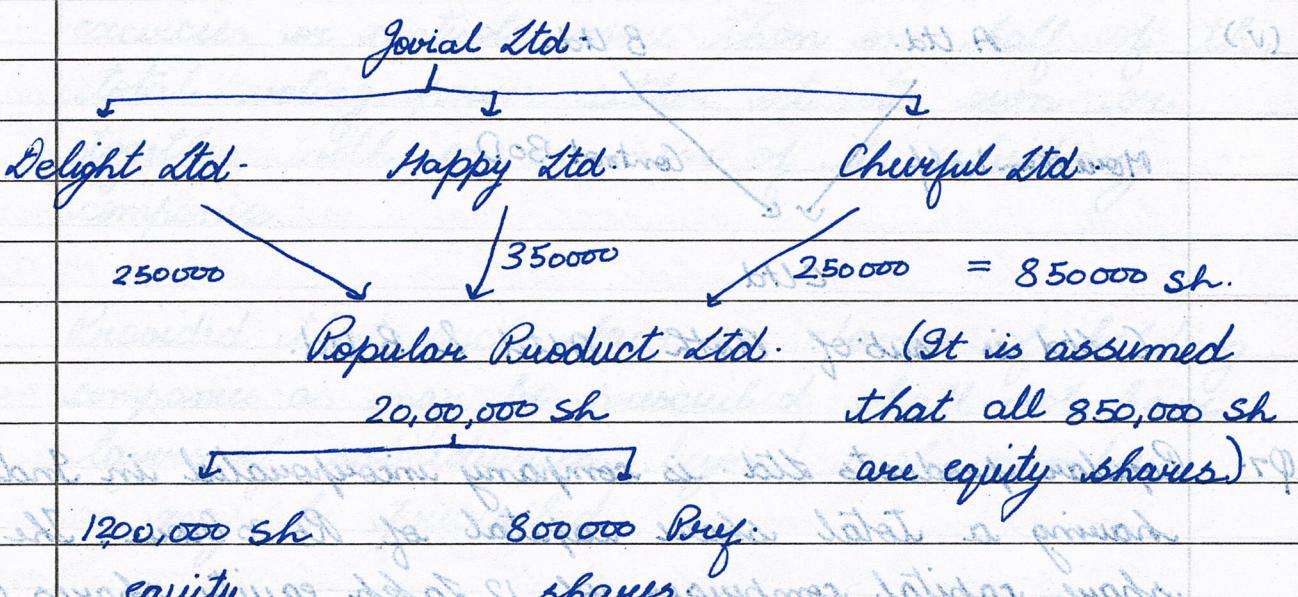
Q7. Popular products Ltd. is company incorporated in India, having a total share capital of Rs 20 Crore. The share capital comprises of 12 lakh equity shares of Rs 100 each & 8 lakhs preference shares of Rs 100 each. Delight products Ltd & Happy products Ltd. hold 250,000 & 350,000 shares respectively in Popular Products Ltd. Another company Cheerful products Ltd. holds 250,000 shares in Popular Products Ltd. & Jovial Ltd. is the holding company for all above three comp. namely Delight Products Ltd. Happy Products Ltd. Cheerful Products Ltd. Can Jovial Ltd. be treated as subsidiary company of Popular products Ltd. If, it controls composition of directors of Popular prod. Ltd. State the related provisions in favour of your answer.

Ans

Hence, Jovial Ltd by virtue of share holding is a holding co. of Popular Prod. Ltd. Secondly, it is given that Jovial Ltd. controls the composition of directors of Popular Prod. Ltd., hence, Jovial Ltd. is a holding co. of Popular Prod. Ltd & not a subsidiary co.

[Section 2(87) of the Co. Act (2013) (1956)]

(1)



(2)

Jovial Limited

Composition
of BOD

Popular Product Ltd.

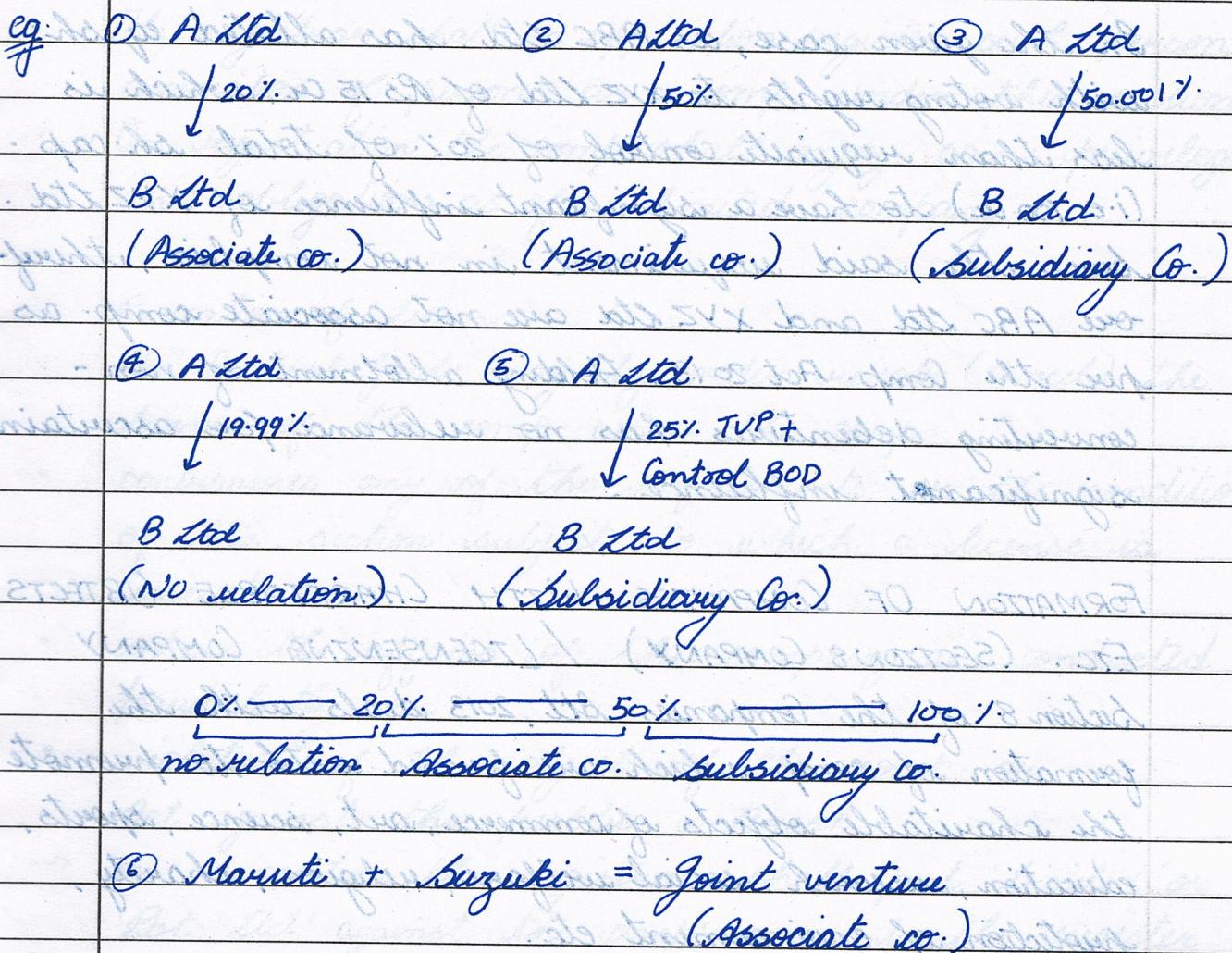
ASSOCIATE COMPANY [SECTION 2(6)]

In relation to another co., means a company in which that other comp. has a significant influence, but which is not a subsidiary comp. and includes a joint venture company.

Explanation - For the purpose of this clause -

the expression "significant influence" means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.

[Sect 2(6) (20) of Act 1956 (58) inserted]



- Q8. ABC Ltd has allotted eq. shares with voting rights to XYZ Ltd worth Rs 5 Crores & issued non convertible Debentures worth Rs 40 Crores during the financial year 2019-20. After that total paid up eq. share cap. of the co. is Rs 100 Cr. & non convertible debentures stands as Rs 120 Cr. Define the meaning of associate co. & comment on whether ABC Ltd & XYZ Ltd would be called Associate Co. as per the provisions of the Comp. Act, 2013?

Ans.

In the given case, as ABC Ltd. has allotted eq. sh. with voting rights to XYZ Ltd of Rs 15 Cr, which is less than requisite control of 20% of total sh. cap. (i.e. 100 Cr) to have a significant influence of XYZ Ltd. since the said requirement is not complied, therefore ABC Ltd and XYZ Ltd are not associate comp. as per the Comp. Act 2013. Holding allotment of non-converting debentures has no relevance for ascertaining significant influence.

FORMATION OF COMPANIES WITH CHARITABLE OBJECTS ETC. (SECTION 8 COMPANY) / LICENSING COMPANY

Section 8 of the Companies Act, 2013 deals with the formation of comp. which are formed with to promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.

- such comp. intends to apply its profit in promoting its objects and prohibiting the payment of any dividend to its members.

Power of central govt. to issue the license
 Section 8 allows the Central govt. to register such person or associate of persons as a company with limited liability without the addition of words 'limited' or 'Pvt. Ltd' to its name, by issuing license on such conditions as it deems fit.

Date 1/1

- The registrar shall on application register such person or association of persons as a comp. under this section.
- On registration the comp. shall enjoy same privileges and obligations as of a limited company.

Revocation of license

The Central Govt. may by order revoke (cancel) the license of the comp. where the comp.

- contravenes any of the requirements or the conditions of this section subject to which a license is issued or
 - where the affairs of the company are conducted fraudulently, or
 - violative of the objects of the comp. or
 - act against the public interest.
- on revocation the registrar shall put 'Limited' or 'Pvt. Ltd' against the comp's name in the register
- the Cent. Govt. must give it a written notice of its intention to revoke the license and opportunity to be heard in this matter.

Order of the Cent. Govt.

Where a license is revoked then the Cent. Govt. may, in the public interest order that the comp. registered under this section ^{should} be

- amalgamated with another co. registered under this section having similar objects or
- the co. be wound up.

Penalty Co. - 10 lakh - 1 crore

Defaulting filer - 25000 - 25 lakh

In case of fraud also liable under section 447

Q9. A co. registered under sect 8 of the Co. Act 2013, earned huge profit during the financial year ended on 31/3/18 due to some favourable policies declared by the Govt of India & implemented by the co. Considering the development, some members of the co. wanted the co. to distribute dividends to the members of the co. They approached you to advise them about the maximum amt. of dividend that can be declared by the co. as per the provisions of Co Act 2013. Examine the relevant provisions of the Co Act 2013 & advise the members accordingly.

What do you mean by "Comp. with charitable purpose" (section 8) under the Co Act 2013? Mention the cond. of the issue & revocation of the license of such co. by the Govt.

Ans. - - - - -

Q10. What are the significant points of Sect 8 Co. which are not applicable for other co? Briefly explain with reference to provisions of the Co. Act 2013.

Ans. Following are the significant point of Sect 8 Co. which are not applicable for other cos.

1. Formed for the promotion of commerce, art, science, religion, charity, social welfare, protection environment, sports etc.
2. Uses its profits for the promotion of the objective for which formed.
3. Does not declare dividend to members.
4. Operates under a special license from Govt.
5. Need not use the word Pvt Ltd in its name & adopts a more suitable name such as club, chambers of commerce, foundation etc.
6. License revoked if cond's contravened.
7. On revocation, Govt may direct it to
 - Converts its status & change its name
 - Wind up
 - Amalgamate with another co. having similar object
8. Can call its general meeting by giving a clear 14 days notice instead of 21 days.
9. Requirement of minimum no. of directors, independent directors etc. does not apply.
10. A Partnership firm can be a member of section 8 co. only

DORMANT COMPANY (SECTION 455)

When a company is formed and registered under this act

- for a future project
- to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive comp. may make an application to registrar in such manner as may be prescribed for obtaining the status of a dormant comp.

"Inactive comp" means a co. which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.

"significant accounting transactions" means any transaction other than -

- payment of fees by a co. to the Registrar eg filing fees
- payment made by it to fulfill the requirements of this Act or any other law eg audit fees
- allotment of shares to fulfill the requirements of this Act
- payment for maintenance of his office and records eg. electricity bill.

NIDHI COMPANIES (SECTION 406)

"Nidhi Company" or "Mutual Benefit Society" means a co. which the Central Govt may, by notification in the official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.

Date 1/1

A Ltd.	B Ltd	C Ltd.
2(22)	2(21)	2(92)
Shares - 100000 @ £10/sh	↳ Members liable upto amount of guarantee	↳ No limit on liability of members
Paid up - 100000 @ £5/	↓	↓
Sh. cap. Sh.	Sh. unpaid	No shares
Unpaid - £500000	amt +	"
Sh. cap	↓	Guaranteed amt. Guaranteed amt.
Members liable		

COMPANY LIMITED BY SHARES (SECTION 2(22))

Means a comp. which by its memorandum limit liability of its members upto the amount unpaid on the shares held by them.

COMPANY LIMITED BY GUARANTEE [SECTION 2(21)]

Means a comp. which by its memorandum limit liability of its members upto the amount undertaken by them to contribute to the assets of the comp. in the events of its wound up.

Basis	Comp. Limited by Shares (S)S	Comp. Limited by Guarantee (G)S
Section	Section 2(22)	Section 2(21)
liability upto	The amt. unpaid on the share held by them upto the amt. undertaken by them to contribute to discharge the assets of the comp. + in the event of its being wound up.	Upto the amt. undertaken by them to contribute to discharge the assets of the comp.
Share Capital	Must have sh. capital	May or may not have sh. capital
Liability	Members may be called upon to do so at any time, either during the comp's life time or during its winding up.	Members may be called upon to discharge their liability only after commencement of the winding up.
UNLIMITED COMPANY [SECTION 2(92)]		
→	Unlimited co. means a comp. not having any limit on the liability of its members. In such a co., the liability of a member ceases when he ceases to be a member.	
→	The liability of each member extends to the whole amount of the co.'s debts & liabilities but he will be entitled to claim contribution from other members.	
→	Liability is not unlimited till the time co. is not wound up means member can be called to contribute only in the event of winding up of the co.	

Co. mai members ki liab. limited bhi ho sakti hai or unlimited bhi
max time - limited
Partnership mai liab-unlimited but partners can liable
liability of one partner unlimited except all

viable
make
india
GROW UP

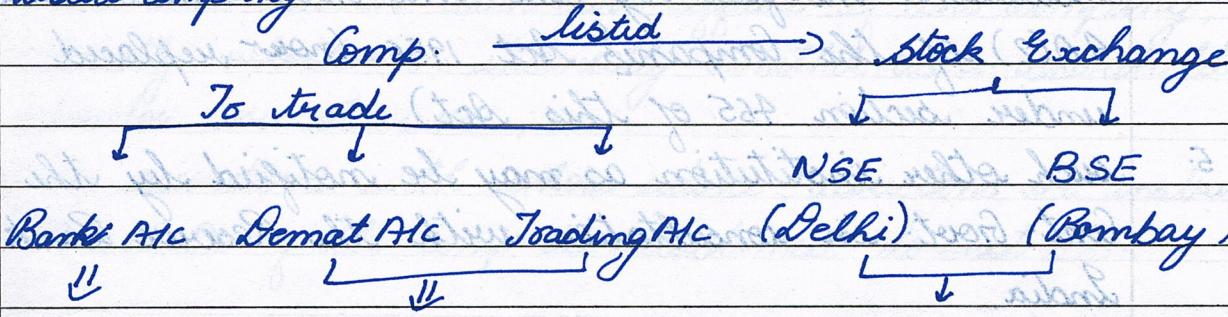
LISTED COMPANY [SECTION 2(52)]

It is comp. which has any of its securities listed on any recognised stock exchange.

UNLISTED COMPANY

Means comp. other than listed company.

Listed Company



Bank A/c Demat A/c Trading A/c (Delhi) (Bombay)

Bank Depository [NSDL Public Cos.]
 [CDSL]

and minimum as set forth in the Schedule and it will remain so long as
the said institution is continuing to function and is viable
and the said institution is not being dissolved or merged with another
institution.

Date _____
public sector

PUBLIC FINANCIAL INSTITUTIONS (PFI) [SECTION 2(72)]

The following institutions are to be regarded as PFIs:

1. The Life Insurance Corporation of India, established under the LIC Act 1956
2. The Infrastructure Development Finance Co. Ltd.
3. Unit Trust of India referred to in the Unit Trust of India Act 2002
4. Institutions notified by the Cent. Govt under section 4A(2) of the Companies Act 1956 (now replaced under section 465 of this Act)
5. such other institution as may be notified by the Cent. Govt. in consultation with the Reserve Bank of India.

Conditions for an institution to be notified as PFI

- Established or constituted by or under any Central or state Act.
- At least 51% of the paid up share capital is held/controlled by the CG or by any state Govt/s or partly by one or more st. Govt.