

# Corporate Law

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# Evolution

- Barter system – sole trade – partnership firm – Companies.
- Industrial revolution
- Revolution in the modes of transportation and communication.
- Local markets converted into national and international markets.
- LPG adopted.
- Small scale Industries were substituted by large scale industries.

# History and Development

English Companies Act	Indian Companies Act	
JSC 1844	JSC 1850	Recognized as a <b>distinct legal entity</b> but did not grant the privilege of 'Limited Liability.'
JSC 1856	JSC 1857	Benefit of <b>Limited Liability</b> was first conferred (except Banking and Insurance Companies)
1858	JSC 1860	Provided relief to <b>banking and insurance companies</b> by extending the privilege of Limited Liability.
1862	1867	<b>Consolidated &amp; Amended</b> – incorporation, regulation, winding-up
1906	1913	1914, 1915, 1920, 1926, 1930, 1932
In 1950 a Committee was constituted, chaired by Shri H.C. Bhaba. The primary goal was to recast the Indian Companies Act so that the growth of trade and industry in India could be aligned to it. The report was submitted in March 1952, following which the Companies Act of 1956 was enacted.		
1948	1956	1 <sup>st</sup> April, 1956, XIII parts with 658 sections, 6 tables, 15 schedules. 1960, 62, 63, 64, 65, 66, 67, 69, 74, 77, 85, 88, 91
Company Bill 1993 to Company Act 2013		Aug 30, 2013. 2015, 2017, 2019

# Act does not apply to:

- Companies registered under special act of parliament.
- Partnership firm.
- Cooperative societies.
- Societies governed by Societies Registration Act 1860.
- Trusts governed by Indian Trust Act 1882.

# Company Act 2013

Section 2(20) Act No. 18 of 2013 a “company means a company incorporated under this Act or under any previous company law”.

# Company

“A company is an incorporated association which is an artificial person created by law, having a separate entity, with perpetual succession and a common seal” – L. H. Haney.

# Characteristics

- Incorporated association
- Artificial Person
- Separate entity: Solomon vs. Solomon & Co Ltd. (1897)
- Perpetual succession
- Common Seal
- Limited Liability
- Transferability of shares
- Limitation of Work
- Representative Management
- Termination of existence

# Discussion Points

- Nationality, Domicile, Residence & Citizenship
- Company as a partner in partnership firm



# Body Corporate 2(11)

- Body Corporate / corporation / corporate aggregate

Body Corporate or corporation includes a company incorporated outside India, but does not include (i) a co-operative society registered under any law relating to co-operative societies; and (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;

“Every company is a Body corporate but every body corporate isn't a company” – Madras Central Urban Bank Ltd. vs Corporation of Madras (1932).

# Partnership Act 1932

- Sec 4 of Partnership Act 1932

Partnership is an agreement between two or more persons, to share profits of the business carried on by all or any one of them acting for all.

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- Maximum number: Sec 464 of Companies Act 2013: 100 / 50?

# Partnership Act 1932

Section 464: Prohibition of association or partnership of persons exceeding certain number.

(1) No association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force: Provided that the number of persons which may be prescribed under this sub-section shall not exceed **one hundred**.

# Partnership Act 1932

Section 464: Prohibition of association or partnership of persons exceeding certain number.

(1) No association or partnership consisting of more than such number of persons **as may be prescribed** shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force: Provided that the number of persons which may be prescribed under this sub-section shall not exceed **one hundred**.

# Partnership Act 1932

Companies Miscellaneous Rules 2014: No association or partnership shall be formed, **consisting of more than 50 persons** for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force.

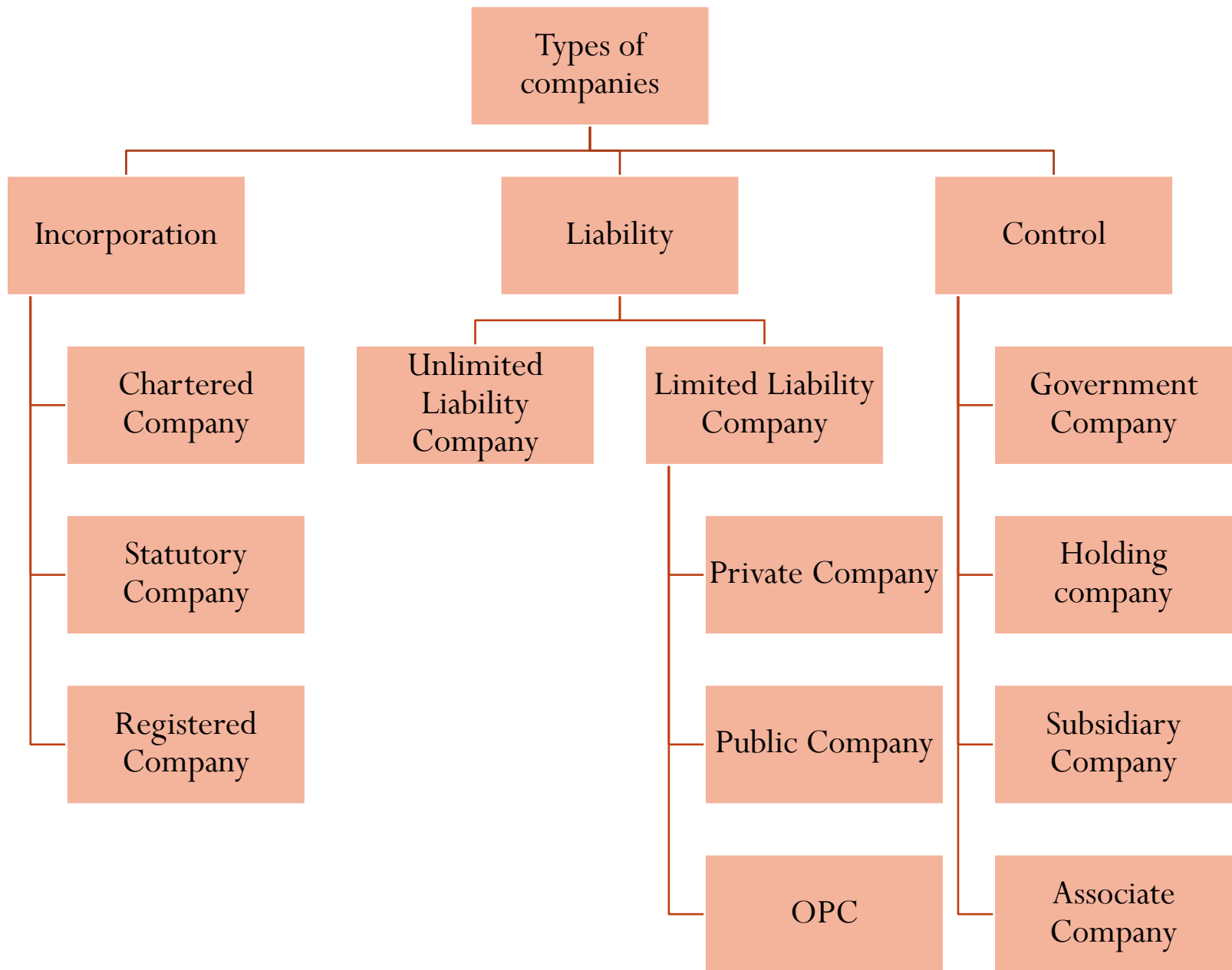
# Company vs. Partnership

- Number of members
- Act
- Registration
- Participation in mgt
- Collection of capital
- Distribution of profits
- Contract
- Liability
- Transferability of shares
- Perpetual Succession
- Separate Legal Entity
- Artificial person
- Created by law
- Rights over assets
- Relationship of agency
- Audit
- Decision making process
- Winding up



# Company vs. LLP

- Act
- Hybrid form
- Management & ownership
- Act & Contract
- Compliance
- Members & shareholders



# Kinds of Companies

- Chartered Companies
- Statutory Companies: enterprise of social & national importance
- Unregistered Companies
- Registered Companies

# Kinds of Companies

- Chartered Companies:
  - Bank of England,
  - East India Company,
  - British Broadcasting Corporation (BBC)
- Statutory Companies: enterprise of social & national importance
  - Life Insurance Corporation is created under Life Insurance Corporation Act, 1956.
  - Oil and Natural Gas Corporation Limited is created under Oil and Natural Gas Commission Limited, 1959.
  - Reserve Bank of India is created under Reserve Bank of India Act, 1934.
  - National Hydroelectric Power Corporation (NHPC)

# Kinds of Companies

- Unregistered Companies:

- Sec 582: CA 1956

- **Sec 366: Companies capable of being registered:**

(1) For the purposes of this Part, the word —company includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force which applies for registration under this Part.

# Kinds of Companies

- Registered Companies 2(20)
  - Unlimited Liability Company 2(92)
    - GlaxoSmithKline Services Unlimited
    - Land Rover is an unlimited company till 4th October 2013
- Limited Liability Company
  - Company limited by guarantee 2(21)
    - May or may not have share capital
    - Formed for the promotion of Arts, science, culture, religion
    - Guarantee in nature of capital reserve & cannot be withdrawn except the time of winding up
  - Company limited by shares 2(22)
    - Private Company
    - Public Company

# Kinds of Companies

- Private Company 2(68)
  - Restricts the right to transfer its shares
  - Limit the number of members to 200 except OPC
  - Prohibits invitation to the public to subscribe any security
    - \* past and present employees
    - \* Min capital requirement omitted CA Amendment Act 2015.
- Public company 2(71)
  - Not a private company
  - Pvt. Company which is subsidiary of public company
  - Use of words limited or Ltd.
    - \* Min capital requirement omitted CA Amendment Act 2015.

# One Person Company (OPC)

- Sec 2(62): “One Person Company” means a company which has only one person as a member”.
- Eg: Arkan Diary (OPC)
- Private Company
- Company limited by shares / a company limited by guarantee / an unlimited liability company
- One director but it can only be formed by a natural person who is an Indian citizen and resident in India.
- There shall be a nominee for the sole member of a One Person Company.
- A minor shall become member or nominee of the One Person Company or can hold share with beneficial interest.
- One Person Company cannot be incorporated or converted into a company under Section 8 of the Companies Act, 2013.



# One Person Company (OPC) Contd.

- OPC cannot carry out Non-Banking Financial Investment activities including investment in securities of any 'body corporates.
- OPC can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of OPC, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.
- OPC may not include the cash flow statement, financial assistance can be taken by the member from the OPC for purchase of or subscribing to its own shares.
- The annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company. In other words, it need not be signed by a company secretary in practice.
- Need not hold annual general meeting and prepare a report on Annual General Meeting

# Holding & Subsidiary Companies

- Holding Companies: Sec. 2 (46) “holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies”.
- Subsidiary Companies: Sec. 2 (87): “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:
  - Controls the composition of the Board of Directors; or
  - Exercises or controls more than one-half of the total share capital (Paid-up + convertible Pref) either at its own or together with one or more of its subsidiary companies

Provided that such class or classes of holding companies, shall not have layers of subsidiaries beyond the prescribed limit”.

Eg: Alphabet and Google

Tata Motors Finance Holdings Limited and Tata Motors Finance Limited

# Associate Companies Sec. 2(6)

An “Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company”.

Eg: Mahindra and Mahindra Limited owns 26.04% holding in Tech Mahindra Ltd. (as per Annual Report 2019-20).

# Government Company Sec. 2(45)

“any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary company of such a government company”.

Eg: PSUs

- Coal India Limited (CIL)
- Gas Authority of India Limited (GAIL)

# Other Companies

# Small Company (85)

Small company“ means a company, other than a public company,

- (i) 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 five crore rupees; or
- (ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to:

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

# Foreign 2(42) & Domestic Company

Foreign company means any company or body corporate incorporated outside India which—

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

# Nidhi Company (406)

“*Nidhi*” means a company which has been incorporated as a *Nidhi* with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

Eg:

Saralseed Nidhi Limited

Suryodaya Urban Nidhi Limited



# Companies not for profit (Section 8)

Section 8 companies are registered under a license issued by the Central Government. They are associations and companies that operate on a not-for profit basis with limited liability, exempted from using the terms "Limited" or "Private Limited" in their names.

Such companies are established with the purpose of engaging in business activities without any profit motive. Their registration is aimed at promoting commerce, art, science, sports, education, research, social welfare, religion, charity, environmental protection, or other similar objectives.

These companies are prohibited from distributing dividends to their members, as their profits or income are intended to be utilized for the advancement of their stated objectives.

Eg: Advertising Standards Council of India (ASCI)

# Investment Companies (186)

- Refer to companies whose primary business involves acquiring shares, debentures, or other securities. Furthermore, as per Section 2(10A) of the Insurance Act, 1938, an investment company is described as a company whose principal focus lies in acquiring shares, stocks, debentures, or other securities.
- The term 'investment' denotes the act of acquiring and holding shares and securities to generate income through interest, dividends, and similar means. In addition, a company is defined as an association of individuals formed and registered under the provisions of the Act. It is an artificial legal entity with a separate legal existence from its owners or members acquiring and holding, investment companies also earn income by engaging in the buying and selling of shares and securities. This involves purchasing with the intention of selling at higher prices and selling with the intention of buying at lower prices. However, if a company is significantly involved in any other business apart from investment activities, it will not be considered an investment company.
- Eg: Barclays Capital: As a subsidiary of Barclays Bank Plc., this investment company primarily focuses on fulfilling the needs of both corporate clients and Small and Medium Enterprises (SMEs) within India. Additionally, they also cater to Indian companies seeking globalexpansion opportunities.

# Producer Company

- According to the Companies Act 2013, a Producer Company is a company that is established and registered under the Companies Act. Its main purpose is to engage in activities such as production, harvesting, procurement, grading, pooling, handling, marketing, selling, and export of primary produce from its members, or import of goods or services for their benefit.
- Primary produce encompasses various products derived from farming, agriculture, horticulture, animal husbandry, fisheries, dairy, beekeeping, or any other primary produce specified by the central government.
- To form a Producer Company, a minimum of 10 individuals or two or more institutions must come together, and there must be at least 5 directors.
- The Producer Company has a distinct legal identity and is considered a separate entity.
- The members of the company have limited liability.
- The management of the Producer Company is entrusted to a board of directors, who are elected by the company's members. The board has the authority to make decisions and take actions that serve the best interests of the company and its members.

# Dormant Company (455)

Where a company 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, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

- i. 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;
- ii. significant accounting transaction|| means any transaction other than:
  - a) payment of fees by a company to the Registrar;
  - b) payments made by it to fulfil the requirements of this Act or any other law;
  - c) allotment of shares to fulfil the requirements of this Act; and
  - d) payments for maintenance of its office and records.