

A. What is a public company limited by shares?

In terms of section 3(1)(iv) of the Companies Act, 1956 a public company means a company which is not a private company and has a minimum paid-up capital of five lakh rupees or such higher paid-up capital as may be prescribed. A private company which is subsidiary of a public company is also a public company.

- At least 7 persons are required to form a public company.
- A prospectus or a statement in lieu thereof has to be filed with the Registrar of Companies before allotment of shares.
- It has to obtain Certificate of Commencement of Business from the Registrar of Companies before it can commence business on incorporation.
- It has to hold a statutory meeting of members and file a Statutory Report with the Registrar of Companies.
- Any member of the public who is willing to pay the price may acquire its shares or debentures.
- Its shares are easily transferable and since these can be quoted on a recognised stock exchange, their liquidity is enhanced.
- It can have any number of members and it is easy for it to raise capital through public subscriptions.
- It can obtain loans from financial institutions and banks.
- It shall have at least three Directors.

B. What is Private company limited by shares?

A private company, in terms of section 3(1)(iii) of the Act, means a company which has a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed, and by its articles :

1. restricts the right to transfer its shares, if any;
2. limits the number of its members to fifty;
3. prohibits any invitation to the public to subscribe for any shares in, or debentures of the company; and
4. prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

For calculating the number of members as per (b) above, joint holders of shares are counted as single member and the members who are employees of the company including those who continue to be members after their employment ceased are excluded.

- It can be registered with a minimum number of 2 members and cannot have more than 50 members (excluding employee and ex-employee members).

- It cannot invite the public to subscribe to its share capital and has to obtain capital by private arrangement.
- It cannot allow free transfer of its shares.
- Its shares are not quoted on a recognised stock exchange.
- It cannot invite or accept deposits from persons other than its members, directors or their relatives.
- Only two signatories to the memorandum of association are sufficient to form a private company.
- Any number of employees of a private company can become its members and their number is not counted for the purpose of maximum number of members even when the employees have left the company on retirement or otherwise.
- It can commence business immediately on incorporation.
- It shall have at least two Directors.

C. What is Unlimited company?

An unlimited company is a company having no limit on the liability of its members. The members of such a company are liable to the full extent of their fortunes to meet the obligations of the company by contributing to its assets in the event of its being wound up. Thus, such a company does not carry the benefit of limited liability which is available to the members of all the other types of company. So far as the risk of the members is concerned, there is no difference between a partnership firm and an unlimited company.

- The limitation of an unlimited company is that it does not enjoy the benefit of limited liability for its members.
- If the business to be carried on by the company does not entail much risk, then such a company has all other advantages of a corporate personality.
- An unlimited company can, at any time, re-register as a limited company under section 32 of the Act. The re-registration, however, shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by, to, with or on behalf of, the company before re-registration.
- Directorships in an unlimited company are not be counted for the purpose of calculating the maximum number of 15 directorships which a person can hold in terms of section 275 of the Act.

D. What makes a company a Government company?

If 51 per cent or more of the paid-up share capital of a company is held by the Central Government and/or any one or more State Governments, the company becomes a Government company. A subsidiary of a Government company is also a Government company. The holding of shares by municipal and other local authorities or statutory corporations is, however, not to be taken into consideration for calculating the extent of Government shareholding. A Government company may be a private company or a public company. Law requires minimum of two members to float a private company, one

of whom can be the President or the Governor, as the case may be, and the other any officer of the Government. All Government companies are treated as public sector companies.

- Under section 620 of the Act, the Central Government may, by notification in the Official Gazette, exempt any Government company from complying with such provisions of the Act as may be specified in the notification.
- The auditors of a Government company has to be appointed or re-appointed by the Controller and Auditor-General of India who can conduct supplementary/test audit also.

E. What is Mutual benefit company?

As per sub-section (1) of section 620A of the Act, 'Nidhi' or 'Mutual Benefit Society' means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case maybe. Thus, for an association or a body corporate to become a 'Nidhi' or a 'Mutual Benefit Society', the following conditions laid down by section 620A of the Act must be fulfilled:

- It must be a company as defined under section 3 of the Act.
- It must be declared to be a 'Nidhi' or 'Mutual Benefit Society' by a notification in the Official Gazette by the Central Government.

F. What is Company limited by guarantee or a guarantee company?

A guarantee company is a company having the liability of its members limited by its memorandum of association to such an amount as the members may thereby undertake to contribute to the assets of the company in the event of its being wound up. Guarantee companies are of two types, viz., guarantee company not having share capital and guarantee company having share capital.

- Guarantee company not having share capital - A guarantee company not having share capital does not obtains initial and working funds from its members, but from some other sources, such as grants, endowments, fees, subscriptions, etc. Institutions started by Government grants or donations from the public can be run by such companies.
- Guarantee company having share capital - Where initial working capital is not available through grants, etc., but once the company is set in motion, the normal working funds would be available through fees, subscriptions, charges, etc., received from the services rendered, a guarantee company having share capital may be formed.

G. What is a 'section 25 company'?

Where a company -

- is formed for promoting commerce, art, science, religion, charity or any other useful object, and
- does not intend to pay any dividend to its members but to apply its profits or other income in promoting its objects, it may apply to the Central Government (now Regional Director, Ministry of Corporate Affairs as a delegate of the Central Government) for licence under section 25 of the Act for its registration as a company with limited liability without the addition to its name of the word 'Limited' or the words 'Private Limited', as the case may be.

H. Partnership firm and other associations: Registration as a company under Part IX of the Act.

- Part IX of the Act provides an opportunity to an association of seven or more persons formed in pursuance of any other law in force in India to get itself registered under the Act as a company limited by shares, or as a company limited by guarantee or as an unlimited company. Even a partnership firm having seven or more partners with a permanent share capital divided into shares of a fixed amount and duly constituted according to the provisions of the Indian Partnership Act, 1932 can be registered as a company under this Part.

I. Incorporation of co-operatives as producer companies.

- Part IXA added by the Companies (Amendment) Act, 2002 provides for incorporation of co-operatives as producer companies and also for registration of inter-State co-operative societies as producer companies. Any ten or more individuals, each of them being a producer or any two or more producer institutions or a combination of ten or more individuals and producer institutions, desirous of forming a producer company having specified objects and otherwise complying with the requirements of Part IXA and other provisions of the Companies Act, 1956 in respect of registration, may form an incorporated company as a producer company.