TYPES OF COMPANIES

1. **"Private company"** is defined in **section 3(1)(iii)** of the Act and it 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,

   a. restricts the right to transfer its shares, if any;

   b. limits the number of its members to fifty (50) not including —

      i. persons who are in the employment of the company; and

      ii. 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; and

   c. prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company; and

   d. prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives ;

   Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member.

2. **"Public company"** is defined in **section 3(1)(iv)** of the Act and it means a company which —

   a. is not a private company;

   b. has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed;

   c. is a private company which is a subsidiary of a company which is not a private company.

3. **"Government company"** is defined in **section 617** of the Act and it means any company in which not less than fifty-one per cent 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 of a Government company as thus defined.

   As provided by **section 620(1)** of the Act, the Central Government may, by notification in the *Official Gazette*, direct that any of the provisions of this Act (other than sections 618, 619 and 619A specified in the notifications:—

a. Shall not apply to any Government company; or

Shall apply to any Government company, only with such exceptions, modifications and adaptations, as may be specified in the notification.

4. **"Foreign company**" is defined in **section 591** of the Act and it means a company which

   a. is incorporated outside India and

   b. has established a place of business within India.

   Within 30 days of establishment of such place of business within India, the Foreign Company is required to submit documents/details under section 592. Alterations and changes in these documents/details are required to be notified within 30 days.

   The provisions of Section 108C on restrictions of transfer of shares of foreign companies, sections 118 (right to obtain copies of trust deed), 124 to 145 (registration of charges), 159 (annual returns to be made by company), 209 (books of account to be kept by company), 209A (inspection of books of account of company), 233A (power of Central Government to direct special audits in certain cases), 233B (audit of cost accounts in certain cases), 234 to 246 (power of Registrar to call for information, etc.), 295 (loans to Directors), 297 (Board's sanction to be required in certain contracts in which Directors are interested), apply to such foreign company.

5. **"Company limited by guarantee"** is defined in **section 12(2)(b)** of the Act and it means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up. Such company could be a **"company limited by guarantee and not having share capital"** or a **"company limited by guarantee and having a share capital".**

   The Memorandum and Articles of Association of such companies are as per Tables C and D of Schedule I of the Act, respectively.

6. **"Unlimited Company"** is defined in **section 12(2)(c)** of the Act and it means a company not having any limit on the liability of its members. The liability of a member extends to the whole amount of company's debts and liabilities but the member will be entitled to claim contribution from other members. The Memorandum and Articles of such company is as per Table E of Schedule I of the Act.

7. **"Producer Company"** is defined in **section 581A** of the Act and it means a body corporate having objects or activities specified in **section 581B** and registered as Producer Company under this Act.

   Section 581B

   1. The objects of the producer company shall relate to all or any of the following matters, namely—

      a. production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit.

      Provided that Producer Company may carry on any of the activities specified in this clause either by itself or through other institution.

      b. processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its members.

      c. manufacture, sale or supply of machinery, equipment or consumables mainly to its members.

      d. providing education on the mutual assistance principles to its members and others;

      e. rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interest of its members;

f. generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce;

g. insurance of producers or their primary produce;

h. promoting techniques of mutuality and mutual assistance;

i. welfare measures or facilities for the benefit of members as may be decided by the Board;

j. any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) or other activities which may promote the principles of mutuality and mutual assistance amongst the members in any other manner;

k. financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include extending of credit facilities or any other financial services to its members.

2. Every Producer Company shall deal primarily with the produce of its active Members for carrying out any of its objects specified in this section.

8. Companies with licence under section 25

1. Where it is proved to the satisfaction of the Central Government that an association—

    a. is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object, and

    b. intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Central Government may, by licence, direct that the association may be registered as a company with limited liability, without the addition to its name of the word "Limited" or the word "Private Limited".

2. The association may thereupon be registered accordingly and on registration shall enjoy all the privileges and (subject to the provisions of this section) be subject to all the obligations, of limited companies.

Such companies are generally associations, clubs or chambers of commerce.

The Central Government has conferred powers under **section 25(6)** to exempt or modify certain provisions of the Act in relations to such companies.

9. Holding & Subsidiary Company

According to **Sec. 2(19)** "holding company" means a holding company within the meaning of section 4 of the Act;

According to **Sec. 2(47)** "subsidiary company" or "subsidiary" means a subsidiary company within the meaning of Section 4 of the Act.

Sec. 4 of the Act states,

1. For the purposes of this Act, a company shall, subject to the provisions of sub-section (3), **be deemed to be a subsidiary** of another if, but only if—

    a. that other controls the composition of its Board of directors; or

    b. that other —

        i. where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company;

ii. where the first-mentioned company is any other company, holds more than half in nominal value of its equity share capital; or

c. the first-mentioned company is a subsidiary of any company which is that **other's subsidiary.**

Provisions affecting holding subsidiary relationship

a. Holding company as shadow Director (under Sec. 7)
b. Subsidiary's membership of its Holding company (Sec. 42 & 372A)
c. Obligation on the part of holding company to furnish certain information to its shareholders about the subsidiary e.g.Annual Accounts of all the subsidiaries to be attached with the Annual Accounts of the holding company (Sec. 212)
d. Financial year of Holding & Subsidiary Company (Sec. 213)
e. Rights of Holding Company's representatives & members (Sec. 214)
f. Investigation of the affairs of the Subsidiary's Holding Company (Sec. 239 & 247)

10. Limited Liability Partnership (LLP)

It may be noted that LLP is not a Company under the Companies Act, 1956 but it is defined under section 2(1)(n) of the Limited Liability Partnership Act, 2008 as a "partnership formed and registered under the Limited Liability Partnership Act, 2008".

LLPs are bound to pay Income Tax under IT Act on lines similar to general partnerships. They are not required to pay dividend distribution tax or surcharge.

11. Vanishing Companies (applicable in case of Public Listed Companies)

A Vanishing Company is one which has

- Failed to file returns with Stock Exchange (if listed) & with ROC for 2 years.
- None of the Directors are traceable.
- Not maintaining the registered office at the address provided with ROC & Stock Exchange.