Holding Subsidiary Relationship

Holding Company **[Section 2(46)]**

In relation to one or more company means a company of which such companies are subsidiary

Subsidiary company **[Section 2(87)]**

Company in which the holding Company:

1. Can appoint or Remove majority of BOD

2. Exercise or control more than half of share capital

3. Subsidiary of a subsidiary shall also be included as subsidiary of 1st holding company

Subsidiary cannot hold shares of holding company unless **[Section 19]**

- Held as *legal representative* of deceased member
- Holds such shares *as trustee* even if beneficiary of both holding asn subsidiary is the same
- Was a shareholder *before becoming a subsidiary*

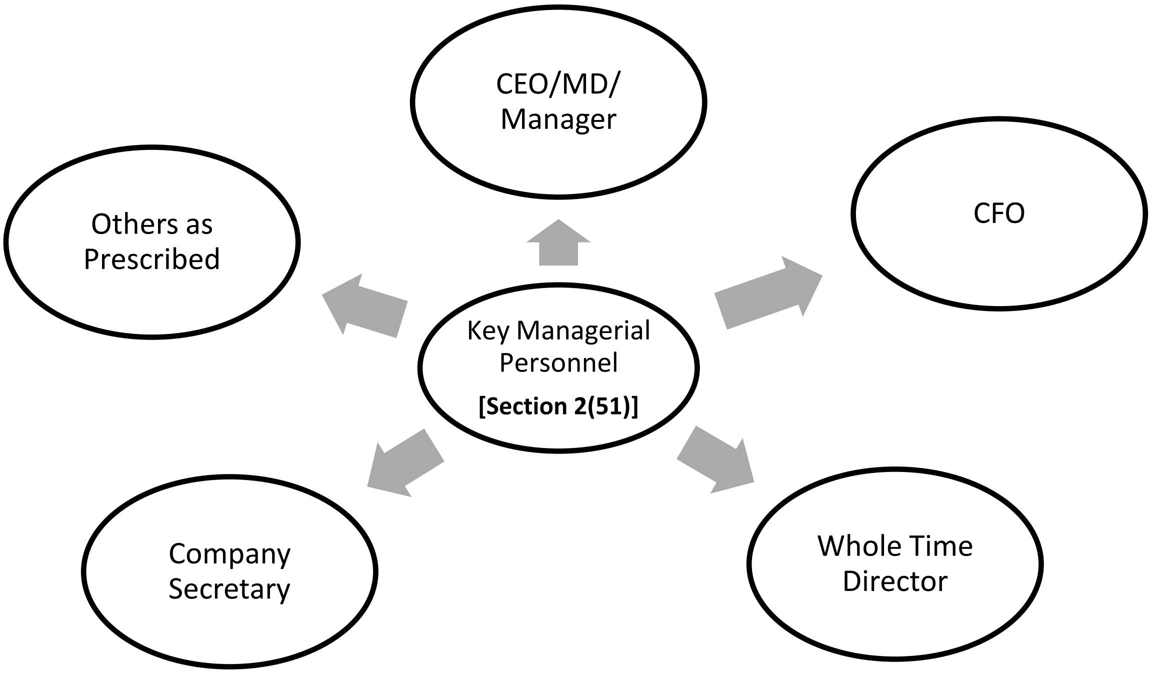
*Company includes body corporate (as clarified in **Section 2(87)**)

[Section 67]	➔ No Company can give *any financial assistance* to its subsidiary to purchase its own shares. ➔ However such assistance can be given for purchase as trustee or to employees as Employee Benefit Scheme

-**CA. Sumit L. Sarda**

New Definitions

Promoter [Section 2(69)]	1. Person *named in the Prospectus* as such 2. Identified by company in Annual Return 3. Has control over affairs of the company, directly or indirectly WHETHER as DIRECTOR, SHAREHOLDER or otherwise 4. In accordance to whom BoD accustomed to act (*Person working in Professional Capacity is not a PROMOTER*)



-CA. Sumit L. Sarda

One Person Company

Section 2(62)	Company which has only one person as member
Section 2(40)	Financial statements does not include cash flow statement

It is like a private company

Section 3	1. Memorandum shall *indicate* name of another person (let's say Person 2) 2. with his prior consent 3. who shall *in the event of subscriber's* (the director of company) *death or incapacity* to contract 4. shall become the member of such company to carry out activities (mostly winding up)
Section 12	One person company shall be mentioned in the brackets below the name of the company
Section 92	Annual return shall be filed by the Company Secretary(CS) of the company and where there is no CS, by the director

AGM not required to be help by One Person Company

-CA. Sumit L. Sarda

Paid up Capital

[Section 2(64)]

- ➔ Means aggregate amount of money credited as paid up equivalent to amount received
    - o Equity shares called & Paid
    - o Preference Share Capital
- ➔ Also includes any amount credited as paid up
    - o Shares issued as ESOP
    - o Shares issued to Promoters for their work
    - o Shares issued in exchange of Fixed Assets
    - o Bonus Shares
- ➔ Does not include any other amount received in respect of such shares
    - o Securities Premium
    - o Calls in Advance
    - o Calls in Arrears

-CA. Sumit L. Sarda

Private Company

Meaning [Section 2(68)]	→ Company having minimum *paid up capital of Rs.1 lakh* → Maximum no. of *members 200*, however does not include ○ *Employees* of the company being member ○ *Ex employees* of the company who continue to be the member → *Prohibits invitation* to the public to subscribe for securities
[Section 3]	→ *Minimum no. of members 2*

[Section 2(71)]	Private company which is a subsidiary of Public Company is deemed to be Public Company

Commencement of Business [Section 11]	Private Company cannot commence business unless it files a declaration that its *paid up capital with which it is registered is paid* by subscribers

Alteration of Articles [Section 14]	→ Can be altered by Special Resolution → However conversion of Pvt. Into Public company or vice versa requires *permission of Tribunal*

[Section 23]	Private Company is not required to issue Prospectus for issue of shares *(only offer details to be registered)*

Repayment of Deposits [Section 74] *IMP*	All *deposits/loans* accepted from its members/ relatives before commencement of the act have *to be repaid on or before 30th June 2014*

Conversion into One Person Company	Existing Private Company may be converted into One Person Company provided → Turnover is **less than Rs.2 Crores** *OR* → Paid up Capital **less than Rs.50 lakhs**

-CA. Sumit L. Sarda

Prospectus

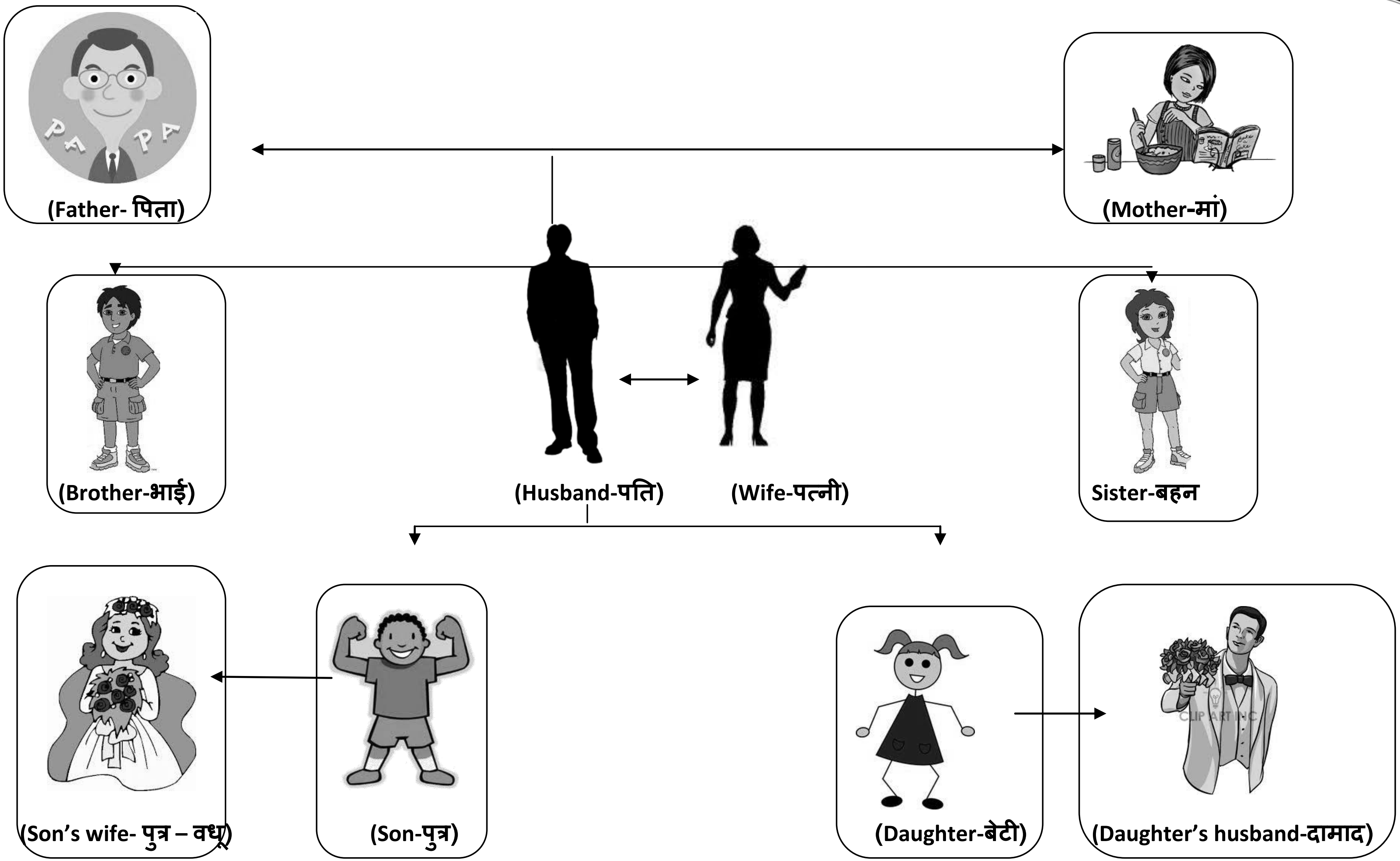
Section 2(70)

Document issued & described as prospectus & *includes* Red Herring Prospectus or Shelf Prospectus or Deemed Prospectus

- Not Issued **[Section 23]**
  - *Private Placement* by Public Company or Pvt. Company
  - Rights issue or Bonus Issue by Public Company or Pvt. Company
- Issued **[Section 23]**
  - Public Company makes public offer
  - Pvt. Placement to *more than 50 persons* EXCLUDING Qualified Institutional Buyers whether by Pvt. or Public Company shall be deemed to be Public offer **[Section 42]**

-CA. Sumit L. Sarda

Definition of Relatives [Section 2(77)]



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Shelf Prospectus & Red herring Prospectus

Shelf Prospectus	Red Herring Prospectus
[Section 31]	[Section 32]
➔ *Any class of company* prescribed by SEBI ➔ May File with Registrar at first offer of Securities ➔ Which shall be *valid for a period of 1yr* ➔ For subsequent issue of similar securities *Information Memorandum to be filed* with the Registrar *for any changes in Financial Position* ➔ If any application received for allotment before making such changes, such person to be intimated about the changes	➔ Prospectus which does not include complete *particulars of quantum of price* of securities therein ➔ Maybe issued prior to issue of prospectus and shall be filed at least 3 days prior to opening of subscription ➔ *Any variations between RHP & Prospectus shall be highlighted as variations in Prospectus* ➔ Upon closing of offer, details not included in RHP to be filed with Registrar & SEBI

-CA. Sumit L. Sarda

Small Company

Section 2(85)

Other than Public Company

Paid up Capital does not exceed **Rs.50 lakhs**

may be prescrived upto Rs.5 crore

Turnover of last P&L does not exceed **Rs. 2 crore**

May be prescribed upto Rs.20 crore

Does not include Holding, Subsidiary or not for Profit Companies

Section 2(40)	Financial statements does not include cash flow statement

Section 92	Annual return shall be filed by the Company Secretary(CS) of the company and where there is no CS, by the director

-CA. Sumit L. Sarda