Introduction:

COMPANY – IT'S MEANING

The word "company" is derived from the Latin (Com = with or together; panis = bread), and originally referred to an association of persons who took their meals together.

An incorporated company owes its existence either to a Special Act of Parliament or to company law. Public corporations like Life Insurance Corporation of India, SBI etc., have been brought into existence through special Acts of Parliament, whereas companies like Tata Steel Ltd., Reliance Industries Limited have been formed under the Company law i.e. Companies Act, 1956 which is replaced by the Companies Act, 2013.
In the legal sense, a company is an association of both natural and artificial persons and is incorporated under the existing law of a country

About Our Indian Companies Act 2013

Passed in Lok sabha	December 18, 2012
Passed in Rajya Sabha	August 08, 2013
President's assent	August 29, 2013
Total number of section	470
Total number of chapters	XXIX
Total number of schedules	VII

Section 1(3) The provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision. –**MCA** is issuing notifications under section 1(3) for bringing sections to force.

As Per Section 2(20)"company" means a company incorporated under this Act or under any previous company law

Applicability

This Act applies to Whole of India.(including Jammu & Kashmir)

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As Per Section 1(4) The provisions of this Act shall apply to—

(a) Companies incorporated under this Act or under any previous company law;

(b) Insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999

(c) Banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act,

(d) Companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003

(e) Any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act; and

(f) Such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.

Characteristics of a company

Corporate Personality	• Once a Company Is incorporated it is distinct from the persons incorporated it. • Members are different from the company • Salomon Vs Salomon Co Ltd • Lee Vs Lee air farming ltd
Limited Liability	The liability of the members is limited to NV of shares held by them Please NOTE it is the liability of the members which is limited but Not the Company
Perpetual Succession (Section 9)	• Members may come and members may go but the company goes on forever • Exists even if all the members die
Common Seal(optional Now)	• Signature of the company • Authorises the documents
Capacity to sue and be sued	• A Company Once incorporated can be sued by outsiders and it can sue outsiders to protect its rights • Outsiders cannot sue members in their individual Capacities
Separate property	• Can have own property

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Transferability of Shares(Section 44)	• Freely transferable • Restrictions in private company
Artificial Person	• Recognized in the eyes of law • Run by natural persons As Soon As A Company is incorporated a NEW artificial person was born in the eyes of law
Citizen or Not?	• The company, though a legal person, is **not** a citizen under the Citizenship Act, 1955 or the Constitution of India In simple a Company is NOT a Citizen
Company has Nationality and Residence	• Though it is not a citizen but it has Nationality and residence

What Is Corporate veil?

As Per Oxford dictionary **veil** means a thin transparent cloth that stops you from seeing beneath. In the same way corporate veil is a concept which says Once a Company is incorporated it becomes a legal entity different from the members constituting it.
It is clothed with separate status   Salomon Vs Salomon Co Ltd
In Simple Once a Company was duly incorporated a NEW artificial person was born .who has capacity to contract. It has Own rights and Powers like Human being in the eyes of law

Where it is found that a company has abused its corporate personality for an unjust and inequitable purpose, the court would not hesitate to lift the corporate veil. Further, the corporate veil could be lifted when acts of a corporation are allegedly opposed to justice, convenience and interests of revenue or workmen or are against public interest

Lifting & Piercing of corporate veil

As We Know once a company is incorporated it is a distinct legal entity from the members constituting it. However sometimes COURTS disregard the corporate veil status and look behind the actual persons of the company . This is Know as lifting of the corporate veil. Here are few circumstances under which courts disregard the corporate status and look behind the actual persons

To prevent illegal or improper activities	Horne Vs Gilford motors company ltd
To protect revenue of the government	Sir Dinshaw Maneckjee Petit
To prevent violation of welfare laws	Bhavnagar Vs Associated rubber industry ltd

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To determine the enemy character of the company	Diamler company ltd Vs Continental tyre and rubber company Ltd
To determine the technical competence of the company	New Horizons India Ltd Progressive aluminium ltd Vs ROC

How To form a Company?

The Companies Act, 2013 provides for the kinds of companies that can be promoted and registered under the Act. The three basic types of companies which may be registered under the Act are:

(a) Private Companies;

(b) Public Companies; and

(c) One Person Company (to be formed as Private Limited)

As Per Section 3 of the Act A company Can be formed for any lawful purpose by—

- ✓ Seven or more persons, where the company to be formed is to be a public company;
- ✓ Two or more persons, where the company to be formed is to be a private company;

  Or
- ✓ one person, where the company to be formed is to be One Person Company that is to say, a private company

By subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration

In the case of a subscriber, no application or allotment is necessary to become a member. By virtue of his subscribing to the memorandum, he is deemed to have agreed to become a member and he becomes *ipso facto* member on the incorporation of the company and is liable for the shares he has subscribed

A company formed under above may be either—

(a) a company limited by shares; or

(b) a company limited by guarantee; or

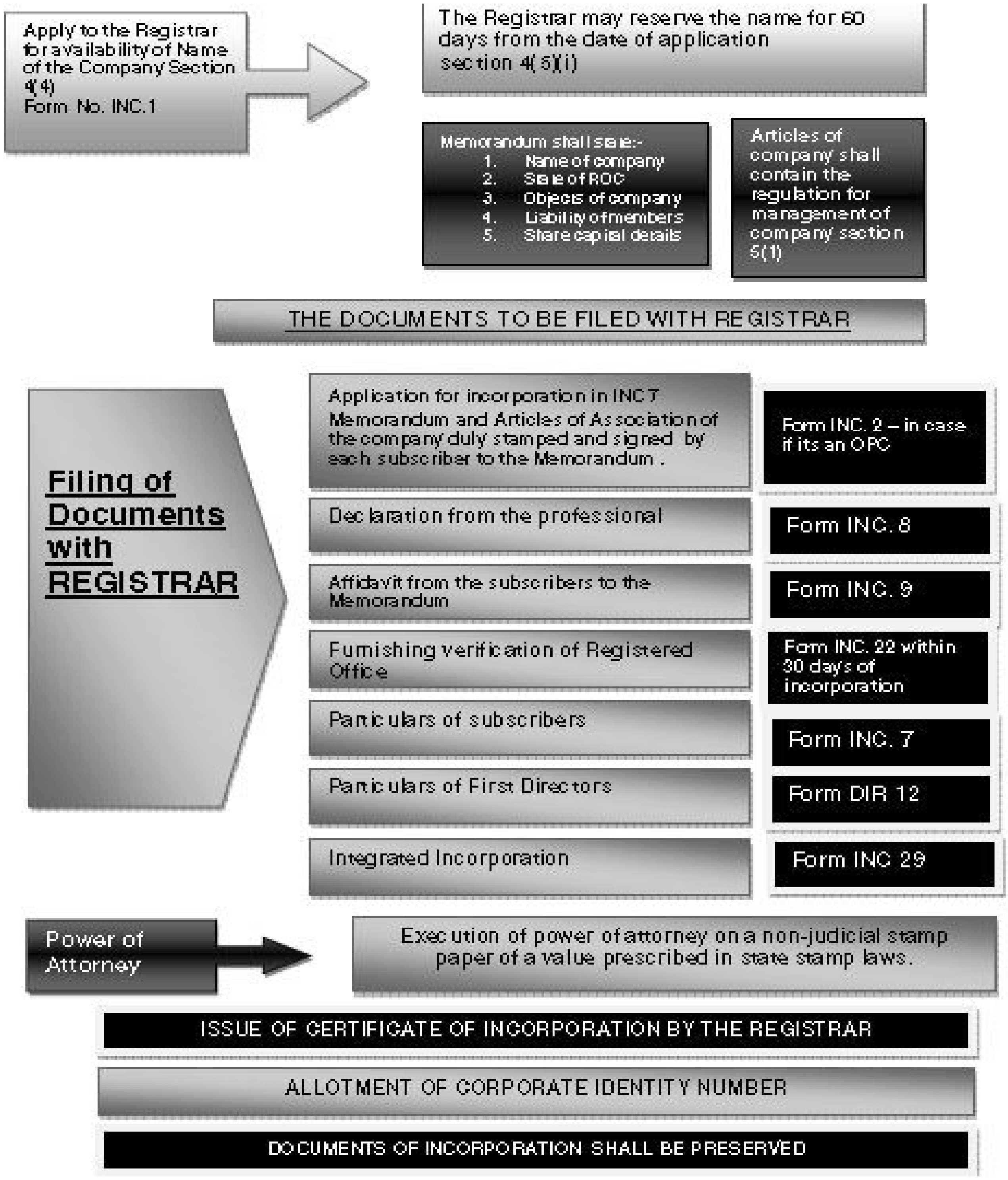
(c) an unlimited company.

A company can adopt Model memorandum and articles given in schedule I of companies act 2013 for MOA Table A, Table B , Table C , Table D , Table E For AOA Table F, Table G ,Table H , Table I , Table K Tables Depending upon the **type** of company proposing to be incorporated

The term 'Limited Company' means a company limited by shares or by guarantee. The liability of the members, in the case of a limited company, may be limited with

reference to the nominal value of the shares, respectively held by them or to the amount which they have respectively guaranteed to contribute in the event of winding up of the company.

Procedure for Incorporation of a company



Step1: Apply for DSC of Directors

Step2: Apply for DIN for minimum of 2 directors [refer Section 152(3)]

Step3: Register a DSC to the DIN on MCAs Website

Step4: eformINC-1 for companies name approval

SIX names can be chosen in the ORDER of preference.

Step5: Incorporation eformINC-7 (in case of OPC eformINC-2)

Attachments:

a.MOA } Schedule I can be adopted

b.AOA

c. Form INC-8 for Declaration by practicing professional

d. Form INC-9 Affidavit Declaration by the subscriber

e. PAN of all promoters and directors

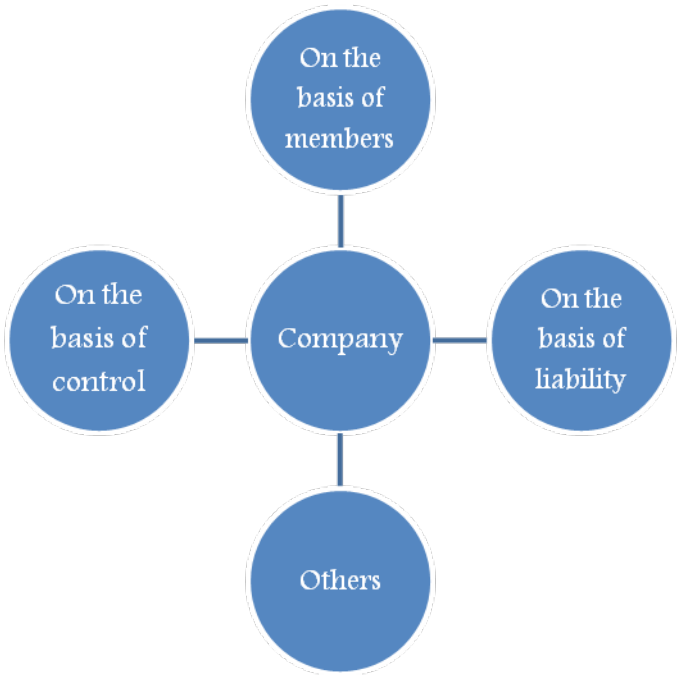
f. Residence proof of all promoters and directors

g. In case of OPC Nominee consent form INC 3

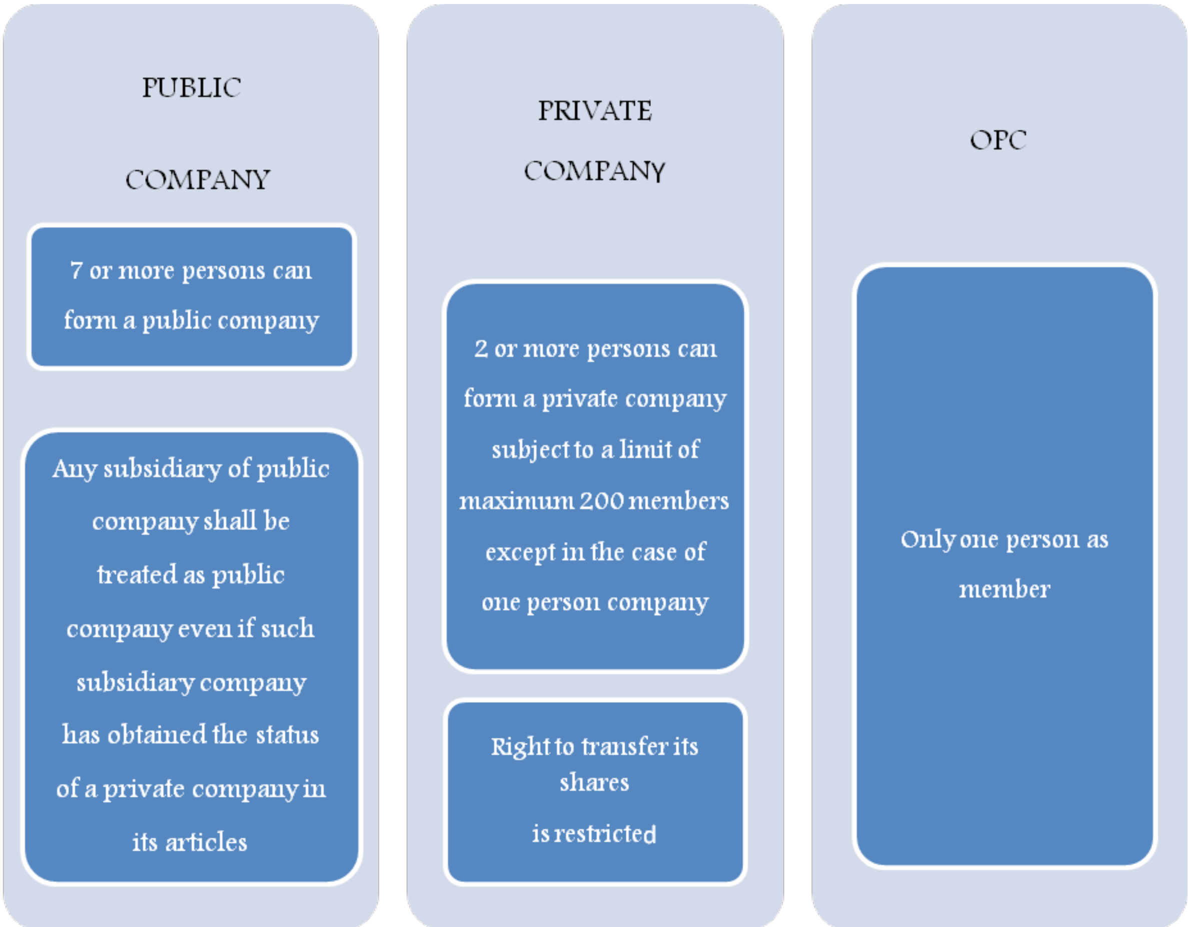
Step6: For Notice of situation of registered office Form INC22

Step7: Appointment of directors of the company

.step8: Apply for TAN/PAN



On the basis of members



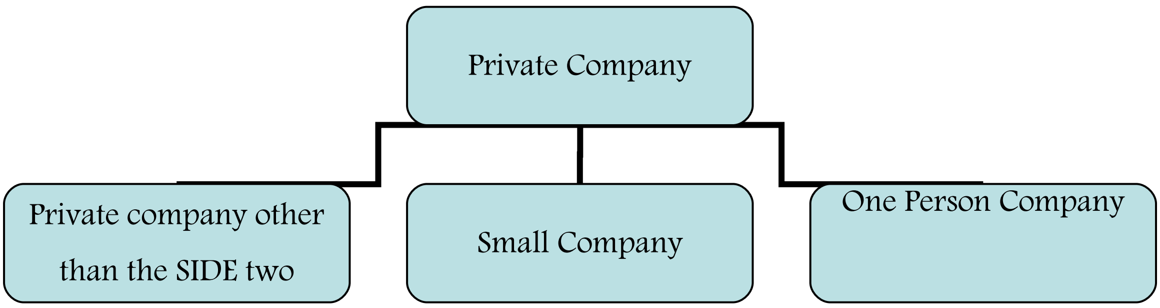
2(71) Public company

Public company means a company which—

(a) Is not a private company;

(b) Has a minimum paid-up share capital, as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private 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



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2(68) Private company

Private company means a company having a minimum paid-up share capital 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 where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

(A) persons who are in the employment of the company; and

(B) 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, shall not be included in the number of members; and

(iii) prohibits any invitation to the public to subscribe for any securities of the company;

Only restriction on transfer of shares NOT BAN
Private Companies can accept deposits from its members
No limit on debenture holders

2(62) One Person Company

(62) "One Person Company" means a company which has only one person as a member

Shares of OPC is Transferable. Subject to only ONE Person
OPC Cannot be an Unlimited Company
OPC Cannot be a Section 8 Company

As Per Rule 3 of Companies (Incorporation) Rules, 2014 - One Person Company

(1) Only a natural person who is an Indian citizen and resident in India-

(a) Shall be eligible to incorporate a One Person Company;

(b) Shall be a nominee for the sole member of a One Person Company.

Explanation-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 eighty two days during the immediately preceding one calendar year.

(2) No person shall be eligible to incorporate more than a One Person Company **or** become nominee in more than one such company.

(3) Where a natural person, being member in One Person Company in accordance with this rule becomes a member in another such Company by virtue of his being a nominee in that

One Person Company, such person shall meet the eligibility criteria specified in sub rule (2) within a period of **one hundred and eighty days**.

(4) No minor shall become member or nominee of the One Person Company or can hold share with beneficial interest.

(5) Such Company cannot be incorporated or converted into a company under section 8 of the Act.

(6) Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporates.

(7) No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of One Person Company, 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(Form INC5)

As per section 152 (1), in case of a One Person Company an individual being its member shall be deemed to be its first director until a director or directors are duly appointed by the member in accordance with the provisions of the section 152

Section 2(85) Small Company'

As per section 2(*85*) "small company" means a company, **other than a public company**,—

(i) having a 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; **and**

(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 defintion 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;.

As we know a company is an artificial person. Person includes the company. Hence a company can incorporate another company

On the basis of control

2(46) Holding company

Holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

2(87) Subsidiary company

"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—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total share capital 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.

[Note: Restriction on layers of investment companies is under section 186(1) of the Act.]

Explanation.—For the purposes of this clause,—

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

(c) the expression "company" includes any body corporate ;(LLP covered

(d) "layer" in relation to a holding company means its subsidiary or subsidiaries

2(6) Associate Company

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.

Explanation.—For the purposes of this clause, "significant influence" means control of **at least twenty per cent**. of total share capital, or of business decisions under an agreement;

[Term 'total share capital' means aggregate of the (a) paid-up equity share capital and (b) Convertible preference share capital – as per Rule 2(1) (r) of the Companies (Specification of definitions details) Rules, 2014.] **for the Purpose of 2(6) & 2(87)**

On the basis of liability

2(21) company limited by guarantee

"company limited by guarantee" means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

A guarantee company may or may not have a share capital.

As regards the funds, a guarantee company without share capital obtains working capital from other sources,
e.g. fees or grants. But a guarantee company having a share capital raises its initial capital from its members, while the normal working funds would be provided from other sources, such as fees, charges, subscriptions, etc
The Memorandum of a company limited by guarantee must state the amount of guarantee. It may be of different denominations.

In case of a guarantee company having share capital the shareholders have two-fold liability: to pay the amount which remains unpaid on their shares, whenever called upon to pay, and secondly, to pay the amount payable under the guarantee when the company goes into liquidation. The voting power of a guarantee company having share capital is determined by the shareholding and not by the guarantee

2(22) Company limited by shares

"Company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them

The Membership in a Company limited by shares is freely transferrable HOWEVER the membership in a guarantee company is NOT Transferrable

2(92) Unlimited company

"unlimited company" means a company not having any limit on the liability of its members;
An unlimited company may or may not have share capital

Other Companies

2(42) foreign company

[Term "electronic mode" defined under rule 2 (1) (h) of the Companies (Specification of definitions details) Rules, 2014]
(42) "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;

2 (45) Government company

Government company: " means any company in which not less than fifty- one per cent of the paid-up share capital is held by-
(i) the Central Government, or
(ii) by any State Government or Governments, or
(iii) partly by the Central Government and partly by one or more State Governments, And the section **includes** a company which is a subsidiary company of such a Government company

Non Profit Company Section 8

Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a ***limited company***—
(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
(b) intends to apply its profits, if any, or other income in promoting its objects; and
(c) intends to prohibit the payment of any dividend to its members,
The Central Government may, by licence issued in **Form No. INC-16**, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.[Section 4(1)(a) NOT applicable for section 8 company] ~~4(1)(a)~~

- ✓ A company registered under section 8 cannot be a small company 2(85)
- ✓ Section 8 Cannot be an UNLIMITED company
- ✓ Partnership firm can be a member in section 8 Company – refer section 8(3)
- ✓ Section 8 Company Cannot be Strike off under FTE mode – section 248
- ✓ Section 165 , 178 , 2(24) Not applicable(only 3 I Mentioned there are many)
- ✓ For the Companies under section 8 of the Act, the name shall include the words foundation, Forum, Association, Federation, Chambers, Confederation, council, Electoral trust and the like etc. Every company incorporated as a "Nidhi" shall have the last word 'Nidhi Limited' as part of its name.(Rule 8 of companies(incorporation) rules 2014)
- ✓ Section 8 Company Cannot be an OPC

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Dormant company.(Section 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.

[Form No. MSC-1]

Dormant company is a NEW concept. No such concept in 1956 Act

Explanation.—

(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.

A company which is not carrying on any business or operation for a period of Two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455, Can be removed by registrar Section 248

Illegal association 464

No association or partnership consisting of more than 50 persons 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:

Exceptions:

- Company
- Registered under any other Act
- Service motive (non profit)
- Single HUF
- Partnership formed by professionals.

Every member of an association or partnership carrying on business in contravention Of above shall be punishable with fine which may extend to one lakh rupees and shall also be personally liable for all liabilities incurred in such business

Even though it is illegal association it is still liable to pay INCOME TAX on profits earned by it.

MOA & AOA

2(56) Memorandum

Memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.

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Contents of MOA

Name clause Section 4(1)(a) NOT APPLICABLE FOR SEC 8 COMPANY	• Word Limited / Private Limited / OPC have to be added • Name must not be identical, undesirable, projecting connection to the Government, against Names & Emblems Act & RULE 8 • Clearly engraved outside every place of business and printed on all letter head, bills, vouchers along with RO – address • If name is written wrong then the officer signing the document is personally liable
Situation clause Section 4(1)(b)	State of the RO Example:-In the State Of Andhra Pradesh (NO need of complete address Just state name enough)
Objects Clause Section 4(1)(c)	•Not illegal • Main objects, Incidental objects & Other objects
Liability Clause Section 4(1)(d)	•Liability of the members whether limited or unlimited
Capital Clause Section 4(1)(e)	• Authorised share capital • Total number of shares • Nominal value of shares •The number of shares each subscriber to the memorandum intends to take, indicated opposite his name
Subscription Clause **It cannot be altered at any time**	• At least 2 (or) 7 as the case may be • Minor cannot sign as subscriber • Each subscriber agrees to take at least on share • First members of the company
Nomination clause Section 4(1)(f)	• Only for OPC

- ✓ The memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company.
- ✓ Any provision in the memorandum or articles, in the case of a company limited by guarantee and **not** having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be **void.**

If the proposed name is identical with the name of a company which is struck off in pursuance of action under section 248 of the Act. Then the same shall not be allowed before the expiry of twenty years from the publication in the Official Gazette being so struck off;

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The following words and combinations thereof shall not be used in the name of a company in English or any of the languages depicting the same meaning unless the previous approval of the Central Government has been obtained for the use of any such word or expression-

(a) Board;
(b) Commission;
(c) Authority;
(d) Undertaking;
(e) National;
(f) Union;
(g) Central;
(h) Federal;
(i) Republic;
(j) President;
(k) Rashtrapati;
(l) Small Scale Industries;
(m) Khadi and Village Industries Corporation;
(n) Financial Corporation and the like;
(o) Municipal;
(p) Panchayat;
(q) Development Authority;
(r) Prime Minister or Chief Minister;
(s) Minister;
(t) Nation;
(u) Forest corporation;
(v) Development Scheme;
(w) Statute or Statutory;
(x) Court or Judiciary;
(y) Governor;

Rule 8 Of Companies(Incorporation) Rules 2014

(z) the use of word Scheme with the name of Government (s) , State , India, Bharat or any government authority or in any manner resembling with the schemes launched by Central, state or local Governments and authorities; and
(za) Bureau

The names released on change of name by any company shall remain in data base and shall not be allowed to be taken by any other company including the group company of the company who has changed the name for a period of three years from the date of change

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subject to specific direction from the competent authority in the course of compromise, arrangement and amalgamation. Rule 8(8)

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