Chapter – 2
Kind of Companies

Classification on the basis of –

Incorporation	Owership	Membership	Control	Liability	Others
Chartered Companies	Govt. Companies	Private Companies	Holding Company	Limited by Share company	Foreign Companies
Statutory Companies	Non-Govt.	Public Companies	Subsidiary Company	Limited by Guarantee Company	Investment Companies
Registered Companies				Unlimited Company	Not for Profit Association
Body Corporate					Associate Company

Classification of Companies

	1. On the basis of Incorporation
A.	**Chartered companies** – Incorporated under a special charter granted by the king or queen of England.
B.	**Statutory Corporation** – ✓ These are created by a special act of the parliament/state assembly. ✓ Nature and powers of such companies are laid down in the special Act ✓ Audit is conducted under the control and supervision of the Comptroller Auditor General of India
C.	**Body Corporate – Same as discussed in Chapter – 1**
D.	**Registered Companies** – Which are registered under the companies Act, 1956 or under previous companies Acts. **[Section 2 (20) Co's Act, 2013]**
	2. On the Basis of Ownership
A.	**Government Companies** – Means any company in which a. 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, b. And includes a company which is a subsidiary company of such a Government company. **[Section 2 (45) Co's Act, 2013]**
B.	**Non – Government Companies –** Companies other than Government Co's.
	3. On the Basis of Membership
A.	**"Public Companies" means a company which—** (a) Is not a private company; (b) Has a minimum paid-up share capital of five lakh rupees or such higher up capital, as may be prescribed. (c) Is a subsidiary of a company, not being a private company, shall be deemed public company for the purposes of this act even where such subsidiary company continues to be a private company in its articles. **[Sec. 2 (71) Co's Act, 2013]**
B.	**"Private Company"** other than **ONE PERSON COMPANY – [Section 2 (68) Co's Act, 2013]** **1.** A Private Company as one which by its Article of Association – (a) Restricts the right to transfer its shares; (b) Limits the number of its members to 200 which will not include – ☞ Members who are employee of the company, and ☞ Members who were ex – employees of the company and were members while in such employment and who have continued to be members after employment ceased. **Note –** 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 (c) Prohibits any invitation to the public to subscribe for any securities of the company **2.** A private company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed.

Distinction between Private and Public Company

Basis	Private Company	Public Company
(a) Minimum Paid up Capital	₹ 5 Lakhs	₹ 1 Lakhs
(b) Acceptance of Public Deposits	Free to accept	Can't accept except from its members, directors & relatives
(c) Minimum Members	7 persons	2 persons
(d) Maximum Members	No restriction	200 persons
(e) Transferability of Shares	Freely Transferable	Restriction by its Articles

(f) Quorum	5 members personally present	2 members personally present
(g) Statutory Meeting	Compulsory	Not Applicable
(h) Director Consent	File written consent with ROC	Not Applicable
(i) Qualification Shares	Yes	Not Applicable
(j) Appointment of Directors	Separate Resolution for each	Single Resolution for All
(k) Increase in Directors	Approval from C.G. if no. exceeds 12	May increase without permission.
(l) Retirement of Directors	At least 2/3rd shall retire at each AGM by rotation	Directors need not to retire by rotation.
(m) Commencement of Business	'Certificate of Commencement of Business' from ROC	Immediately after Incorporation.

Note – There are 2 more concept i.e. **ONE PERSON COMPANY** and **SMALL COMPANY** **[Sec. 2 (62) & (85) respectively of Co's Act, 2013]**

Conversion of a Private into Public Company	
Conversion by Default [Section – 43]	➢ Where a default is made by a private company in complying with the essential requirements of a private company, the company ceases to enjoy the privileges and exemptions conferred on a private company. ➢ In such a case the provisions of the companies Act apply to it as if it were not a private company. ➢ The National Central Govt. may relieve the company from the consequences as aforesaid. ➢ If it is of opinion that the non-compliance was accidental or due to inadvertence or other sufficient cause. ➢ It may also grant relief if on some grounds it is just and equitable. ➢ It may however, impose such terms and conditions as seem to it just and expedient.
Conversion by Choice or Volition [Section – 44]	If a private company so alters its articles that they do not contain the provision, which make it a private company. It shall then file with the Registrar, within 30 days, either a prospectus or a statement in lieu of prospectus. When this is done, the company becomes a public company. ***A private company which becomes a public company shall also*** – a. File a copy of the resolution altering the Articles, within 30 days of passing thereof with the registrar. b. Take steps to raise its membership to at least 7 if it is below that number on the date of conversion and also increase number of its

	directors to more than 2 if it is below that number. c. After the regulations contained in the Articles which are inconsistent with those of a public company. ***The prospectus/statement in lieu of prospectus to be filed by a private company on its conversion.***
Conversion of a Public Company into Private Company	➢ It is possible only in case of a public company having number within the limit prescribed for a private company. ➢ A public company may be converted into a private company by passing a special resolution. ➢ The special resolution should be to change the articles of the company so as to include the condition as prescribed in which make the effect of converting a public company into a private company shall have effect only when such alteration has been approved by the Central Government. ➢ Where the alternation has been approved by CG a printed copy of the article shall be filed with ROC within 1 month of receipt of approval.

4. On the Basis of Control

A.	**Holding Company –** In relation to one or more other companies, means a company of which such companies are subsidiary companies. [**Section 2 (46) Co's Act, 2013]**
B.	**Subsidiary Companies** [**Section 2 (87) Co's Act, 2013] –** 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. ***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; (d) "layer" in relation to a holding company means its subsidiary or subsidiaries;
Note	**The Ministry has clarified that the shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for the purpose of determining whether the other company is subsidiary of the former. [Circular No. 20/2013 dated 27/12/2013]**

	5. On the Basis of Liability
A.	**Limited by Share Company –** 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. **[Section 2 (22) Co's Act, 2013]** **Note – Liability can be enforced during the lifetime of Company or upon winding up. Liability of members arises only in pursuance of Calls.**
B.	**Limited by Guarantee Company –** 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. **[Section 2 (21) Co's Act, 2013]** **Note – One will find companies limited by guarantee in the fields of associations of traders formed for trade promotion and protection and collection of relevant data and information or of associations formed for entertainment and promotion of cultural activities which are established for rendering service to members and not for earning profit.** **Company limited by guarantee can be formed with or without Share Capital. The liability of members is as under –**

Type of Company	**Member's Liability is limited to –**
Guarantee Company having no Share Capital	**Amount undertaken by the member in MOA.**
Guarantee Company having Share Capital	**Amount unpaid on Shares + Amount undertaken**

C.	**Unlimited Company –** Means a company not having any limit on the liability of its members. **[Section 2 (92) Co's Act, 2013]** **Note – Such Companies are uncommon and rare. The liability of each member extends to the whole amount of the company's liabilities. It may or may not have share capital. Must have its own AOA. Articles must state the amount of share capital and the amount of each share. Unlimited liability of members is towards creditors only, not towards company. May alter or reduce its share capital without any restriction.**
	6. On the Basis of Others
A.	**Foreign Companies – A** company incorporated outside India but having a place of business in India. **[Section 591]** A Company has a place of business in India if it carries on business at some specified or identified place such as office Godown or a storehouse. **Note – Within 30 days of establishment of business in India, a foreign company is required to file with ROC of the place where principal office of the company is situated and the ROC of New Delhi.**
B.	**Investment Company –** Principal business is the acquisition of shares, debentures etc.

C.	**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. [**Section 2 (92) Co's Act, 2013]** **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.**
D.	**Not for Profit Association – Section 25** **(a) Registration of an association not for profit – C.G. permission.** **(b) With limited liability without using "Limited"/ "Private Limited".** **(c) Conditions for grant of licence –** 1. For promoting commerce, art, religion etc. 2. Prohibits payment of any dividend. 3. A licence subject to other conditions as think fit by C.G. 4. can't alter its objects clause in MOA without the approval of C.G. **(d) C.G may also grant exemption for other provisions.** **(e) Revocation of licence –** ✓ The C.G. may revoke if objects clause changed without the approval of the C.G. ✓ Upon revocation, the registrar shall add the word "Limited" or "Pvt. Ltd". ✓ Before a licence is revoked, the C.G. shall give an opportunity of being heard.

Some Problems

<table>
<tr><th>Q.N.</th><th>Problems</th></tr>
<tr><td>P.1</td><td>BS & Co. Ltd. is registered as a Public Limited Company. The shareholding pattern of the Company is under –
<table>
<tr><th>Category</th><th>No.</th></tr>
<tr><td>Directors & their relatives</td><td>60</td></tr>
<tr><td>Employees</td><td>51</td></tr>
<tr><td>Ex-employees (shares were allotted when they were employees)</td><td>54</td></tr>
<tr><td>Twenty couples holding shares jointly in the names of husband and wife (20 x 2)</td><td>40</td></tr>
<tr><td>Others</td><td>05</td></tr>
<tr><td>Total</td><td>210</td></tr>
</table></td></tr>
<tr><td>P.2</td><td>The paid up share capital of Advanced Castings Pvt. Ltd is ₹ 1,00,00,000 consisting of 8,00,000 Equity shares of ₹ 10 each fully paid up and 2,00,000 cumulative Preference shares of ₹10 each fully paid up. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt. Ltd. are holding 3,00,000 Equity shares and 1,50,000 Equity shares respectively in Advanced Castings Pvt. Ltd. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt. Ltd are the subsidiaries of Unique Machineries Pvt. Ltd. Examine whether Advanced Castings Pvt. Ltd. is a subsidiary of Unique Machineries Pvt. Ltd. Will your answer be different, if Unique Machineries Pvt. Ltd. controls composition of Board of Directors of Advanced Casting Pvt. Ltd.?</td></tr>
<tr><td>P.3</td><td>On acceptance of deposits a private Company becomes a Public Company. True or False.</td></tr>
<tr><td>P.4</td><td>Two joint Hindu families carry on a business as joint-owners. The first family consists of 3 brothers and their respective sons being 12 in number. The second family consists of the father, 4 major sons and 2 minor sons. Is the association illegal?</td></tr>
<tr><td>P.5</td><td>In a private limited Company it is discovered that there are, in fact, 204 members. On an enquiry, it is ascertained that 6 of such members have been employees of the Company in the recent past and that they acquired their shares while they were still employees of the Company. Is it necessary to convert the Company into a public limited Company?</td></tr>
<tr><td>P.6</td><td>40% of Paid up Capital of Company A is held by C G and 11% by PFI like LIC and UTI. Is company A, a Government Co.?</td></tr>
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