

Types of Companies

(20) “Company” means a company incorporated under this Act or under any previous company law;

(21) “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.

Key ingredients are:

- Liability of its members limited
- By the memorandum
- To such amount
- As members respectively undertake to contribute
- To the assets of the company
- In event of its being wound up.

The contribution from members are postponed to the event called winding up.

(22) “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;

Key ingredients are:

- Liability of its members limited
- By the memorandum
- To the amount unpaid
- On shares
- Respectively held by them

The contribution from members is current requirement at the time of incorporation or call.

There is no liability for members holding fully paid up shares.

This companies limited by share may be private company or public company. Oh! There is an addition called “One Person Company” also. :

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

This is in fact is a sub – domain of private companies.

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(68) "Private Company" means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,—

(i) restrict the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

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;

Key ingredients are:

- Minimum paid – up share capital of one lakh rupees or higher (hence no guarantee company)
- Restrict the right to transfer its shares
- Minimum one member in case of one person company
- Maximum two hundred members subject to proviso
- Prohibits any invitation to the public to subscribe for any securities of the company

(71) "Public Company" 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 paid-up 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;

Key ingredients are:

- Not a private company
- Minimum paid – up share capital of five lakh rupees or higher

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- Not a subsidiary of a company which is not a private company

(46) “Holding Company”, in relation to one or more other companies, means a company of which such companies are subsidiary companies;

(87) “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.

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;

Key ingredients are:

- A company in which holding company
- Control the composition of the Board, or
- Control more than one half of the total share capital
- Company include Body Corporate
- Layer are to be limited by the Ministry

Before going to discuss Body Corporate, it is prudent to discuss associate companies.

(6) "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.

Key ingredient:

- Not a subsidiary company
- Under significant influence
- Include joint venture companies
- (company include body corporate, in my view)
- Significant influence means
 - Twenty percent of total share capital
 - Business decision under an agreement

(11) "Body Corporate" or "Corporation" includes a company incorporated outside India, but does not include—

(i) a co-operative society registered under any law relating to co-operative societies; and

(ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.

Key ingredients:

- Include a company incorporated outside India
- Not include
 - Co – operative society
 - Any notified body corporate.

(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.

Key Ingredients are:

- Company or body corporate incorporate outside India
- A place of business (physical or electronic) in India,

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- Conduct any business activity in India in any manner

Any web presence or even opening of their web – site through Indian Internet Service Provider (ISP) may be included.

(52) “Listed Company” means a company which has any of its securities listed on any recognized stock exchange;

(85) “Small Company” means a company, other than a public company,—

(i) 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; or

(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 clause 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.

Key Ingredients are:

- A company other than public company
- Paid up capital not exceeding fifty lakh rupees
- Turnover not exceeding two crore rupees

(45) “Government Company” means any company in which not less than fifty-one percent 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 company of such a Government company.

Key Ingredients are:

- Any company (one person, private, public, listed or small)
- Not less than fifty-one percent of the paid – up share capital
- Held by central and/or state government(s)
- Include a subsidiary of a government company

(9) "Banking Company" means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949.

(39) "Financial Institution" includes a scheduled bank, and any other financial institution defined or notified under the Reserve Bank of India Act, 1934.

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