Kinds of Companies

Classification of Companies

- On the basis of Size
- On the basis of Liability
- On the basis of Control
- On the basis of Listing of shares in the stock market
- Other Companies

A. On the basis of Liability

- There are two types of liabilities:
  - Limited Liability
  - Unlimited Liability

i. Limited Liability Companies

1. Company limited by shares:
   - company having the liability of his members
   - limited by the MOA
   - to the amount, unpaid on the shares held by them.

2. Company limited by Guarantee

- Company having the liability of the members
- limited by the MOA
- to such amount as the members respectively undertake to contribute to the assets of the company
- in the event of its being winding up.

3. Company having share capital and Guarantee:

- It means a company which has capital as well as guarantee of its members.

ii. Unlimited Liability Company

- It means a company not having any limit on the liability of its members.
- The members are liable till liability of the company is paid off in full.

B. On the basis of Size

1. Private limited company
2. Public limited company

1. Private Limited Company

- It means a company having
- such minimum paid-up share capital
- as may be prescribed.
- (Companies Act, 2013 – Rs.1,00,000)
- (Companies Rules, 2015 – Nil)

- By its AOA,
  - Restrict the right to transfer its shares:
  - Limits the maximum numbers of its member:
    - **Not included in the calculation of the maximum members**
      - Past and present employee
      - Joint share holders
  - Prohibits any invitation to the public to subscribe for any securities of the company.

2. Public Company

1. Not private Company
2. Minimum capital as may be prescribed (Rs. 5,00,000)
3. Private company, the subsidiary of the Public company

- It means a company which –
  - Is not a private company
  - Has such minimum capital as may be prescribed
  - A company which is a subsidiary of a public company

Points	Public Company	Private Company
1. Minimum paid-up capital	Rs. 5 lakhs	Rs. 1 lakhs
2. Minimum members	7 members	2 members
3. Maximum members	Unlimited	200 members
4. Public deposits	Free to accept public deposits.	Can accept deposits only from its members, directors and relatives.
5. Transferability of shares	Freely transferability	Restrict but not prohibited.
6. Public issue	Can issue prospectus to public for issue of its shares, debentures and deposits.	Can not issue prospectus.

Points	Public Company	Private Company
7. Minimum number of directors	3 Directors	2 Directors
8. Director's consent	Directors shall file with ROC, their written consent to act as Director.	No such consent is requeired.
9. Increase in number of director	Where the numbers of directors are more than 15, special resolution is required.	Number of director can be increased without the permission of the CG.
10. Quorum for GM	5 members are required to present to form a quorum.	2 members are required to present to form a quorum.

One Person Company

- It means a company which has only one member as a member.
- It is a private company.
- All provisions applicable to private company is also apply to OPC.
- Certain provisions are only applicable to OPC.

Specific provisions applicable to OPC

- MOA must be subscribed by one person only.
- MOA shall state the name of the person, who, in case of death of the member, shall become the member of the OPC.
- 'One Person Company' shall be mentioned in brackets below the name.
- No. of Directors:
  - Private company: 2 directors
  - Public company: 3 directors
  - OPC: 1 director

Small Company

- Conditions:
  - Its paid-up share capital does not exceed:
    - Rs. 50 lakhs or
    - Such higher amount as may be prescribed (not being more than Rs. 5 crore)
  - Its turnover (as per last profit and loss account) does not exceed:
    - Rs. 2 crore or
    - Such higher amount as may be prescribed (not being more than Rs. 20 crore)

Certain companies not to be 'Small Companies'

- If it is a public company.
- If it is a holding company of any company.
- If it is a subsidiary of any company.
- If it is a company registered u/s 8.
- If it is a company governed by any other company.

Non-Profit Company

1. Conditions for formation of NPC

i. The objectives of the company are to promote
   - Commerce,
   - Art,
   - Science,
   - Sports,
   - Education,
   - Research,
   - Social welfare,
   - Religion,
   - Charity,
   - Protection of environment, or
   - Such other object

ii. The company intends to apply its profits in promoting its objects,
iii. The company intends to prohibit the payment of dividend to its members.

2. Issue of license by CG and Registration by Registrar

- When CG is satisfied that the Association fulfilled all the condition givetn u/s 8,
- CG may
  - Issue license
  - Allow that the company may be registered as a limited company, without using the word ‘limited’ or ‘private limited’.
- Upon issue of such a license by CG, the Registrar shall, on the application made to him, register such association of persons as a company u/s 8.

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3. Privileges and obligations

- A company registered u/s 8 shall have the same privileges and obligations as of any other limited company.

4. Can a firm be a member?

- A firm may become a member of a company registered u/s 8.

5. Alteration of Memorandum and Association

- A company registered u/s 8 may alter the provisions contained in its memorandum and articles by
  - Complying with the same legal requirements as are required to be complied with by any other limited company, and
  - Obtaining the previous approval of CG.

6. Conversion into any other company

- A company registered u/s 8 may get itself converted into a company of any other kind by complying with such conditions as may be prescribed.
- As per Rule 21 of Companies Rules, 2014 – such company shall pass a special resolution at a general meeting for approving such conversion.

7. Conversion of a company into a company u/s 8

8. Revocation of license by company

- **CG may revoke the license issued to the company, if –**
  - **The company contravenes**
    - Any provisions of the sec. 8 or
    - Conditions subject to which the license was issued
  - **The affairs of the company are carried on**
    - fraudulently or
    - violative to its objectives or
    - Prejudicial to public interest.
- Before passing any such order, CG may give reasonable opportunities to company of being heard.

9. Consequence of revocation of license

a. CG shall order the company to change its status.

b. The Registrar shall, on an application made to him in the prescribed form, register the company accordingly.

c. CG shall order the company to add word ‘private limited’ or ‘limited’ at the end of its name.

d. The company shall file with the Registrar, a copy of the order of CG.

10. Winding up or amalgamation as a consequence of revocation of license

a. **CG may order** such company shall be –

- Wound up, or
- Amalgamated with any other company registered u/s 8 and having similar objectives.

b. CG may make such an order only if –

- CG has revoked the license.
- CG is satisfied that such an order of winding up or amalgamation is necessary in public interest.
- The company has been given a reasonable opportunities of being heard.

c. The company formed by way of amalgamation, shall have same rights, obligations and powers as specified in the order made by CG.

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11. Use of surplus assets on winding up

i. Such assets transfer to any other company registered u/s 8 and having the same objectives.

ii. Surplus credited to the Rehabilitation and Insolvency Fund formed u/s 269.

Holding and Subsidiary Company

1. Definition of a Holding Company

- A company which has more than 50% of share capital of any other company.

2. Definition of Subsidiary Company

In which the holding company -

i. controls the composition of BOD, and

ii. controls more than one half (50%) of the total capital of the company.

↓

- **Equity Share Capital +**
- **Convertible Preference Share Capital**

Associate Company

- <u>Associated Company means</u>

In which other company has <u>significant influence</u>

BUT

Which is not a subsidiary company of the company having significant control

It means control of at least 20% of the total capital or of business decisions

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Nature of companies based on listing of its shares

Listed Company	Unlisted Company
A company which has any of its securities listed on any recognized stock exchange.	A company a company other than a listed company.

Foreign Company

Foreign company means any company incorporated outside India which -

Has a place of business in India

And

Conduct any business activity in India

Government Company

1. In which not less than 51% of the paid of capital is held by
   i. CG
   ii. SG
   iii. CG or SG
2. Which is a subsidiary of a Government company

Dormant Company

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1. Dormant Company

conditions for Application to Registrar

1. It was formed for future projects or to hold an asset or intellectual property.
2. It has no *significant accounting transactions.*
3. It is an inactive company.

It means the transactions other than –

a. **Payment of fees to the Registrar**
b. **Payments made for fulfillment of this Act or any other law**
c. **Allotment of shares to fulfillment of this Act**
d. **Payments for maintenance of its office and records.**

a. Not carrying on any business or operations, or
b. Not made any significant accounting transactions during the last 2 financial year, or
c. Not filed financial statements and annual returns during the last 2 financial years.

2. Grants of Status by the Registrar

- After considering the application, the Registrar shall allow the status of a Dormant company.
- The Registrar shall issue a certificate in the prescribed form.

Nidhi

- A company –
  - Which has been incorporated as a Nidhi
  - With the objectives of:
    - Cultivating the habit of thrift and saving amongst its members,
  - Receiving deposits from its members,
  - Lending to its members,
  - For the mutual benefits,
  - And which complies with such rules as are prescribed by CG.

Prohibition of Association or Partnership – Exceeding Certain Numbers

(Section 464)

1. Prohibition on large Partnership

- **Sec. 464** prohibits carrying on of business by any association or partnership if the number of persons are exceeding the prescribed limit.

a. The number of members are exceeding the prescribed limit.
b. It was formed for carrying on any business.
c. The objective of it, it the acquisition of gain.
d. It was not registered as a company.

2. Consequences of contravention

- If association or partnership contravene this section, the every member of such association or partnership –
  - Punishable with fine which may extend to Rs. 1 lakh, and
  - Shall be personally liable for all liabilities incurred in such business.

3. Non-applicability

- HUF
- As association or a partnership, formed by professionals who are governed by special Acts.

Body Corporate

a. It is incorporated under any law for the time being in force.
b. It has a separate legal identity.
c. It has a perpetual succession.
d. It has the capacity to sue and to be sued.