

VMK PROFESSIONALS PRIVATE LIMITED



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COMPANY AND ITS TYPES (OVERVIEW)

SECTION 2 (20) OF THE COMPANY ACT 2013:



GENERAL MEANING DEFINED BY JUSTICE LINDELY:

- Company is an **association of persons**;
- These persons contribute money or money's worth to **common stock**;
- The common stock so contributed is denoted in money called as **Capital** of Company;
- The persons who contribute the capital known as **Members** of Company;
- The Capital so employed in some common **trade or business**;
- The members share the **profit or losses** arising from such business;
- The proportion of Capital to which each member is entitled is called his **share**;
- The shares are always **transferable** though the right to transfer is often more or less restricted.

CRUX:

A company is an artificial person, created by law that has a **separate legal entity***, **perpetual succession***, and **common seal*** and has limited liability.

*Separate legal entity: A company is legal person in the eyes of laws having its own rights and obligations.

Case references- **Saloman v. Saloman & Co. Ltd**

*Perpetual Succession: Death, insolvency or insanity of any members does not affect the continuity of Company. Thus, it is said that:

"MEMBER MAY MEMBER MAY GO, BUT COMPANY GOES ON FOREVER"

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**Common Seal:* Common seal means official signature of Company, now optional by Companies Amendment Act, 2015 (For more details please refer:

https://www.mca.gov.in/Ministry/pdf/AmendmentAct_2015.pdf

EXPERIENCE OF SHAREHOLDER IS EXPERIENCE OF COMPANY

Case References: *New Horizons Ltd v. Union of India*

Provision: The tender of Company, New Horizon Ltd., for publication of telephone directory was not accepted by Tender Evaluation committee on ground of no technical experience. The judgement of this case by Supreme Court is that if promoters of Company having experience in a particular work it will be considered the experience of Company as well.

ADVANTAGES AND DISADVANTAGES OF COMPANY

ADVANTAGES

- Corporate Personality
- Limited Liability
- Perpetual Succession
- Transferable shares
- Separate entity
- Capacity to Sue

DISADVANTAGES

- Formalities and Expenses
- Separation of control from ownership
- Corporate disclosures
- Detailed winding up procedure
- Greater social responsibility

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TYPES OF COMPANY

1. ON THE BASIS OF STATUE

- **Chartered Companies** (A chartered company is a business that is incorporated and granted rights by royal charter)
- **Statutory Companies** (Companies are constituted by a special Act of Parliament or State Legislature)
- **Registered Companies** (Companies registered under the Companies Act, 2013 or under any previous Company Law)

2. ON THE BASIS OF REGISTRATION

- **Private Company** [Section 2(68)]
- **Public Company**: Section [Section 2(71)]

3. ON THE BASIS OF LIABILITY

- **Limited by Shares** (Section 2(22) of the Companies Act, 2013 provides that “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)
- **Unlimited Company** (Section 2(92) of the Companies Act, 2013 provides that unlimited company means a company not having any limit on the liability of its members)
- **Limited by Guarantee** (Section 2(21) of the Companies Act, 2013 provides that a company that has the liability of its members limited to such amount as the members may respectively undertake, by the memorandum, to contribute to the assets of the company in the event of its being wound-up)

4. OTHER TYPES OF COMPANY

- **Foreign Company** [Section 2(42)]
- **Nidhi Company** [Section 406]
- **One person Company** [Section 2(62)]
- **Section 8 Company** [Section 8]
- **Government Company** [Section 2(45)]
- **Small Company** [Section 2(85)]
- **Producer Company** [Section 378A]
- **Holding Company** [Section 2(46)]
- **Subsidiary Company** [Section 2(87)]

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- Associate Company [Section 2(6)]
- Listed Company [Section 2(52)]
- Wholly Owned Subsidiary Company [Section 187]

DESCRIPTION:

1. PRIVATE COMPANY [SECTION 2(68)]:

Private Company means a company which has minimum paid up share capital (~~of one lac rupees or such higher amount~~)* as may be prescribed and it's articles:

- Restriction on right to transfer its shares;
- limits the number of its members to 200*;
- Prohibits any **invitation to public** to subscribe for any securities of Company.

*Limit of 200 excludes:

- Persons who are in employment of the company;
- Persons who having formerly in the employment of the Company were members of the Company while in employment and have continued membership after employment ceased.

Note: Companies Amendment Act, 2015 has omitted the requirement of minimum paid up share capital of Rs. 1 lac on Private Company.

The Ministry of Corporate Affairs has by way of notifications dated 5th of June 2015 released the exemptions for Private Companies. For more details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NzY1Mg==&docCategory=Notificatio ns&type=open>

It must be noted that it is only the number of members that is limited to two hundred. A private company may issue debentures to any number of persons, the only condition being that an invitation to the public to subscribe for debentures is prohibited.

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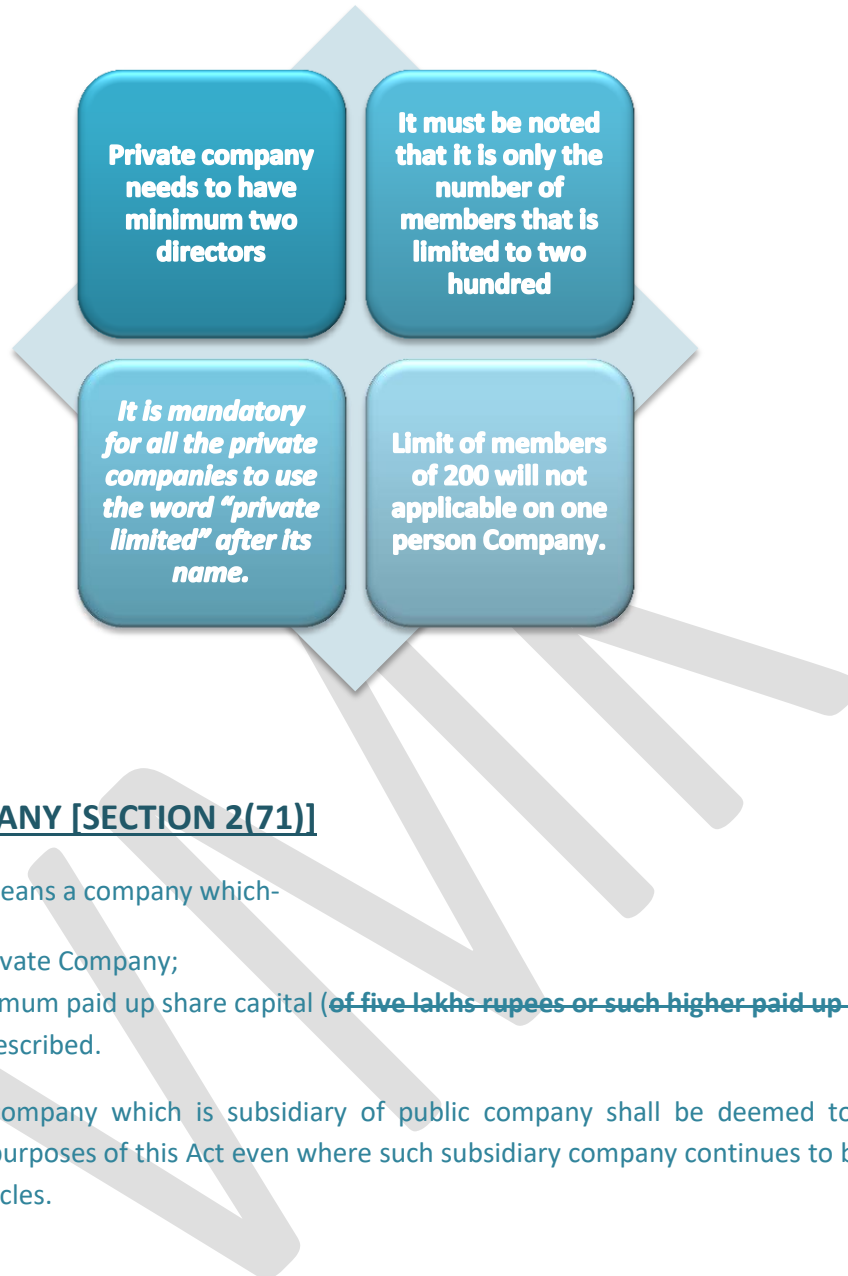


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2. PUBLIC COMPANY [SECTION 2(71)]

Public Company means a company which-

- Is not a private Company;
- Has a minimum paid up share capital (~~of five lakhs rupees or such higher paid up capital~~) as may be prescribed.

Provided that a company which is subsidiary of public 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.

Note: Companies Amendment Act, 2015 has omitted the requirement of minimum paid up share capital of Rs. 5 lac.

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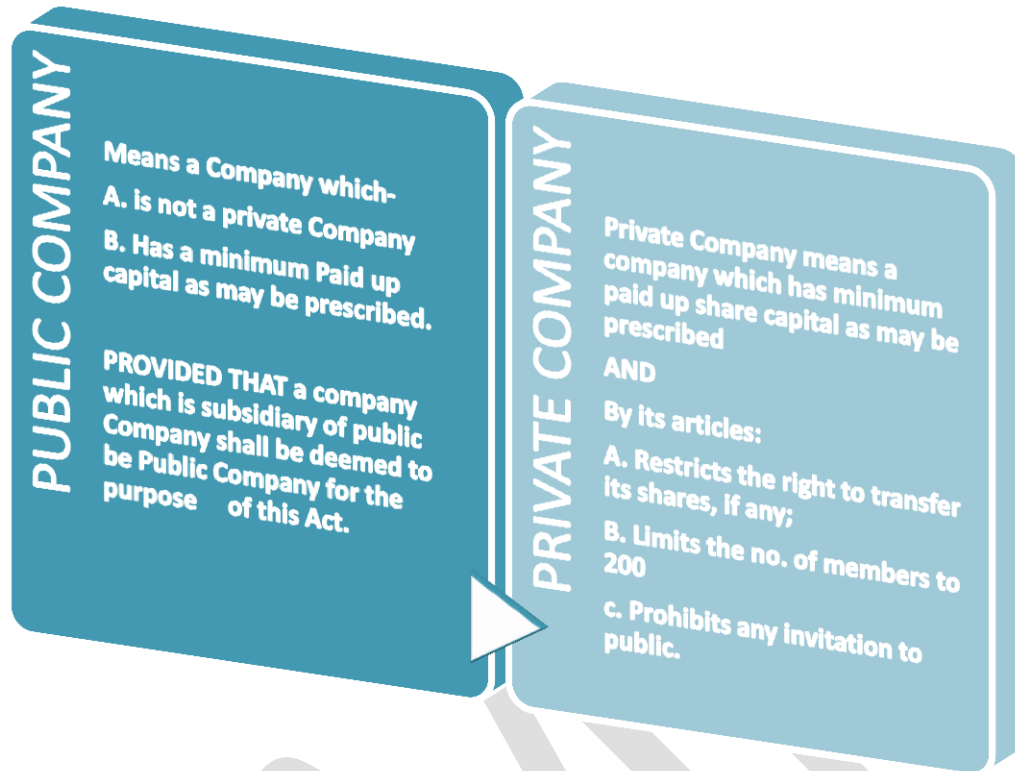


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3. SMALL COMPANY [SECTION 2(85)]

Small Company means a company, other than a public Company

- Paid up share capital of which **does not exceed INR 4 Crores**; and
- Turnover of the Company **not exceed INR 40 Crores**.

Criteria	Old definition	Old definition 2021	New definition 2022
Paid up share Capital	50 lac	2 Crore	4 Crore
Turnover	2 Crore	20 Crore	40 Crore

The Ministry of Corporate Affairs (MCA) had earlier, vide *the Companies (Specification of Definition details) Amendment Rules 2021*, revised the definition of small companies by increasing their thresholds for paid up Capital from not exceeding INR 50 lakh **to not exceeding INR 2 crore** and Turnover from not exceeding INR 2 crore to **not exceeding INR 20 Crores** . For more details kindly refer:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM1MDM=&docCategory=Notifications&type=open>

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This small company definition has now been further revised by increasing such thresholds for paid-up Capital from “not exceeding Rs. 2 Crores” to “not exceeding Rs. 4 Crores” and Turnover from “not exceeding Rs. 20 Crores” to “not exceeding Rs. 40 Crores”.

For more details kindly refer:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTgwNDY3Mzc5&docCategory=Notifications&type=open>

Provided that nothing in this clause shall apply to:

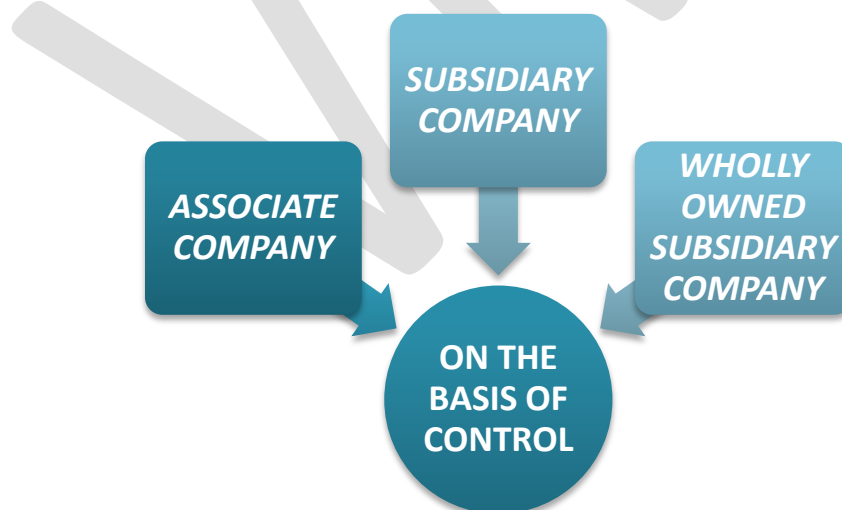
- Holding Company
- Subsidiary Company
- Company registered under Section 8 (non-profit organization)
- Company or body corporate governed by any Special Act

Note: It is clear from definition that small company shall be a private Company limited by shares and hence it will limit its members to 200 as per Section 2(68)(ii).

4. HOLDING COMPANY [SECTION 2(46)]

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

*Here Company includes Body Corporate.



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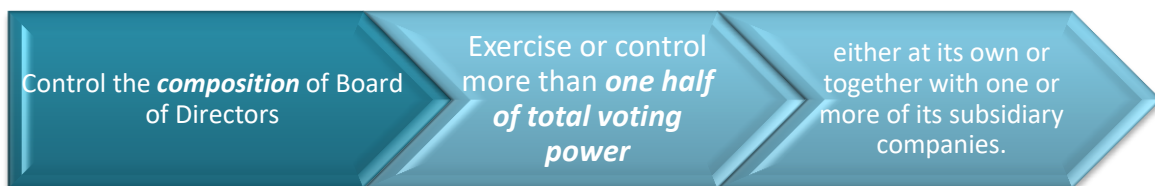
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5. SUBSIDIARY COMPANY [SECTION 2 (87)]

Subsidiary Company in relation to any other company means a company in which the holding Company:



Provided that such class of holding companies as may be prescribed shall not have **layers of subsidiaries*** beyond such numbers as may be prescribed.

Note: The term “Company” includes any Body Corporate and layer in relation to a holding company means its subsidiary or subsidiaries.

***COMPANIES (RESTRICTION ON NUMBER OF LAYERS) RULES, 2017** defines that no company, other than a company belonging to a class specified under sub rule (2), shall have more than two layers of subsidiary.

These provisions are not applicable on:

- Company acquiring a company incorporated outside India with subsidiaries beyond two layers as per the laws of such country
- On following companies namely banking Company, Non-banking Financial Company, Insurance Company, and a Government Company.

Provided further that for computing the number of layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account

6. ASSOCIATE COMPANY [SECTION 2(6)]

Associate company in relation to other company means a company, in which-

- 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.

***Significant influence** here means control of at least 20 % of total voting powers, or control of or participation in business decisions under an agreement.

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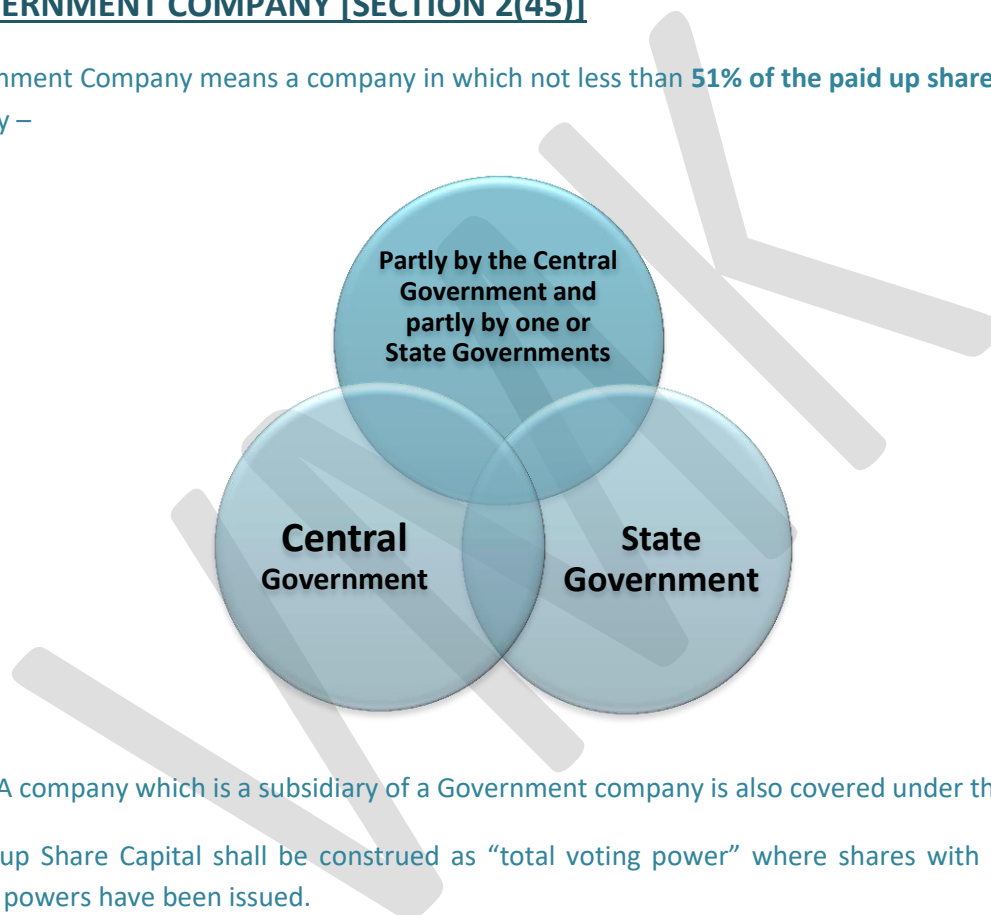
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7. WHOLLY OWNED SUBSIDIARY [SECTION 187]

In General terms, a wholly-owned subsidiary is a corporation with **100% shares** held by another corporation, the parent company. Although a corporation may become a wholly-owned subsidiary through take over by the parent company or split off from the parent company. The parent company holds a normal subsidiary from 51% to 99%.

8. GOVERNMENT COMPANY [SECTION 2(45)]

Government Company means a company in which not less than **51% of the paid up share Capital*** is held by –



Note: A company which is a subsidiary of a Government company is also covered under this section.

*Paid up Share Capital shall be construed as “total voting power” where shares with Differential voting powers have been issued.

The Ministry of Corporate Affairs has by way of notifications dated 5th of June 2015 released the exemptions for Government Companies.

For more details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Nzc0Ng==&docCategory=Notifications&type=open>

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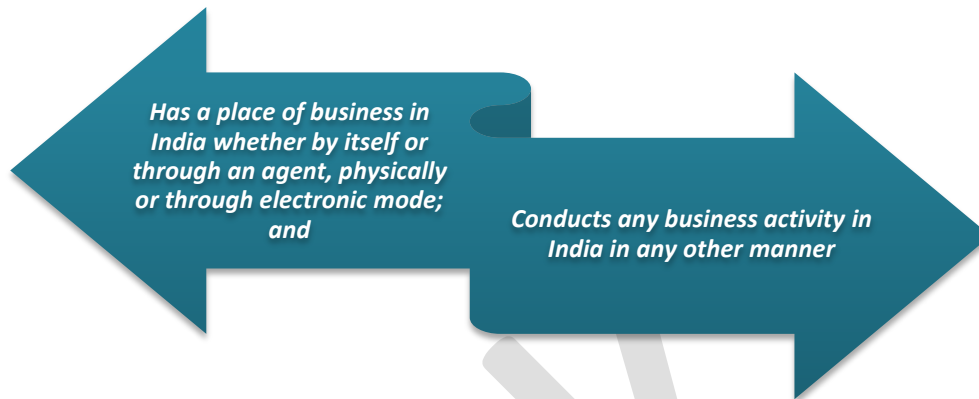
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9. FOREIGN COMPANY [SECTION 2(42)]

Foreign Company means a company or body corporate incorporated outside India which



10. BODY CORPORATE OR CORPORATE [SECTION 2(11)]

Generally body corporate means an association of persons having following characteristics:

- Incorporated under any law for the time being in force
- Perpetual succession
- Separate legal identity
- Common seal
- Capacity to sue and it can be sued in its own name.

Body Corporate includes a company incorporated outside India, ***but does not include:***

- A co-operative society registered under any law relating to co-operative societies; and
- Any other body corporate which the Central Government may, by notification, specify in this behalf.

11. LISTED COMPANY [SECTION 2(52)]

Listed Company means a company which has any of its securities listed on any recognized Stock Exchange.

COMPANIES (SPECIFICATION OF DEFINATIONS DETAILS) RULES, 2014

Rule 2A: For the purposes of the proviso to clause (52) of section 2 of the Act, the following classes of companies **shall not be considered as listed companies**, namely:-

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* Section 23(3) says that: Such class of public companies may issue such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.

12. NIDHI COMPANY [SECTION 406]

As per Companies Nidhi Rules 2014, Rule 3(1)(da) defines meaning of Nidhi Company:

“Nidhi” means a company which has been incorporated as Nidhi with the object of cultivating the habit of thrift and saving among its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with the rules made by the Central Government for regulation of such class of companies.

The Ministry of Corporate Affairs has by way of notifications dated 5th of June 2015 released the exemptions for Government Companies.

For more details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NzY1MQ==&docCategory=Notifications&type=open>

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13. PRODUCER COMPANY [SECTION 378A]

“**Producer Company**” means a body corporate having objects or activities specified in section 378B and registered as Producer Company under this Act (Companies Act, 2013) or under the Companies Act, 1956;

**The Companies Amendment Act, 2020 has introduced a separate Chapter (Section 378A to 378ZU) relating to Producer Companies under the Companies Act, 2013. [Amendment effective from 11th February 2021]*

14. ONE PERSON COMPANY [SECTION 2(62)]

One person Company means a company which has only one person as a member.

As per Rule 3 of Company (Incorporation) Rules, 2014:

- Only a natural person who is an Indian Citizen (Resident of India*)-
 - A. Shall be eligible to incorporate a One Person Company;
 - B. Shall be a nominee for sole member of a One Person Company.
- A natural person shall not become member in more than a One Person Company at any point of time
- Such Company cannot be converted into Company under Section 8 of the Act.
- Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporate.
- Where a natural person is member in One person Company and become member of another OPC by virtue of his being a nominee in that OPC, such person shall meet the eligibility criteria* within 180 days.
- No minor shall become member or nominee of the One Person Company or can hold beneficial interest.

***Eligibility Criteria** means as per Rule 3 a person can become member in one OPC and where a person become member in more than one he has to cease his position his position as member from any one (One Person Company) within 180 days.

***Resident of India** here means a person who has stayed in India for a period of **not less than 120 days** during the immediately preceding financial year. (Companies (Incorporation) Third Amendment Rules, 2018, 182 days get substituted by 120 days.

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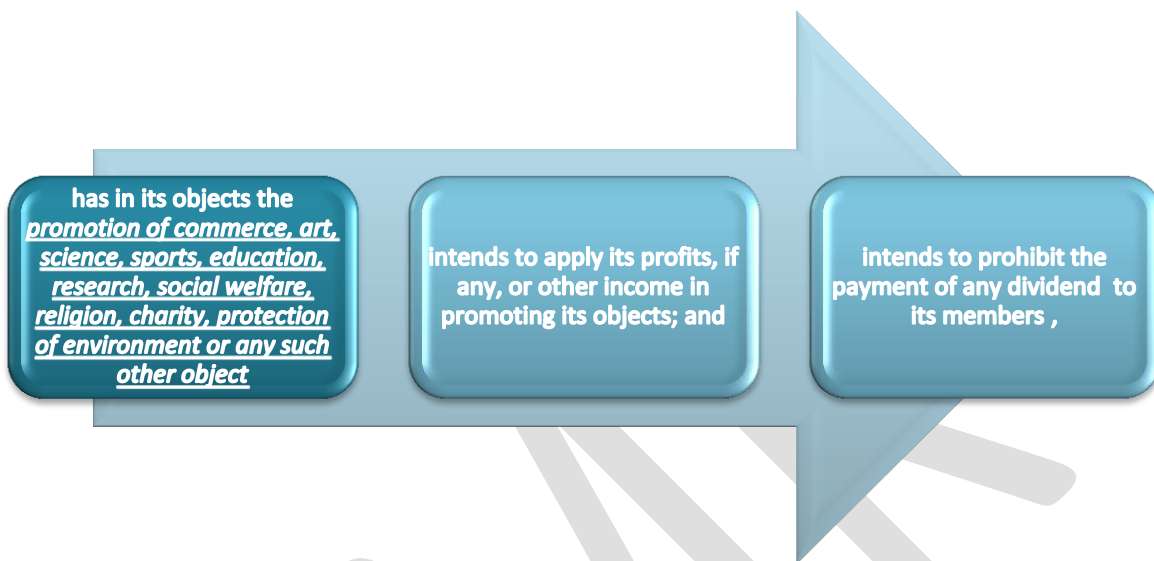
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15. SECTION 8 COMPANY [SECTION-8]

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—



the **Central Government** may, by license issued in such manner as may be prescribed, 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.

16. INVESTMENT COMPANY

"Investment Company" includes a company whose principal business is-

- the acquisition of shares, debentures or other securities and;
- company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities,
- If its assets in the form of investment in shares, debentures or other securities constitute **not less than fifty per cent** of its total assets; or
- If its income derived from investment business constitutes **not less than fifty per cent** as a proportion of its gross income.



CONCLUSION

From reading and observing all these types of Company we have to face some issues in practical life:

- A **detailed planning** should be made before deciding the type of company to be formed.
- The name should be selected very carefully. The rules governing name must be followed carefully as any objection coming on the name will delay the application.
- Before applying for the name, **check all information/requirements** are in place. Special care should be taken for having **digital signatures & Director Identification Number** of all persons proposed to be appointed as members / directors, other IDs like PAN, Aadhar, Passport, and Residential Proof etc.
- In case the persons who will be signatories to the memorandum of association and the proposed directors are **non-resident Indians or foreign nationals**, relevant documents which are required.

The Companies Act, 2013 provides for the kinds of companies that can be promoted and registered under the Act;

A public or private will have to comply with all the laws, rules and regulations as applicable, including but not limited to the Companies Act, 2013, Foreign Exchange Management Act, 1999, Shops and Establishment Act, Income Tax Act, etc., failing to which may result in heavy penalties;

Central Government (Ministry of Corporate Affairs) has exempted applicability of various provisions of the Companies Act, 2013 to Private Company, Nidhi Company, Section 8 Company and Government Company.