



COMPANY AND IT'S TYPES
(OVERVIEW)

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COMPANY

- ▶ 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 COME MEMBER MAY GO, BUT COMPANY GOES ON FOREVER”**

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

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:

- i. Persons who are in employment of the company;
- ii. 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=Notifications&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.

It is mandatory for all the private companies to use the word “Private Limited” as suffix.

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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.

SMALL COMPANY [SECTION 2(85)]

Small Company means a company, other than a public Company

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

▶ 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).

AMENDMENT IN DEFINATION OF SMALL COMPANY (CHANGE IN LIMIT)

Criteria	Old Definition	Definition w.e.f., 01.04. 2021	Definition w.e.f., 15.09. 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:

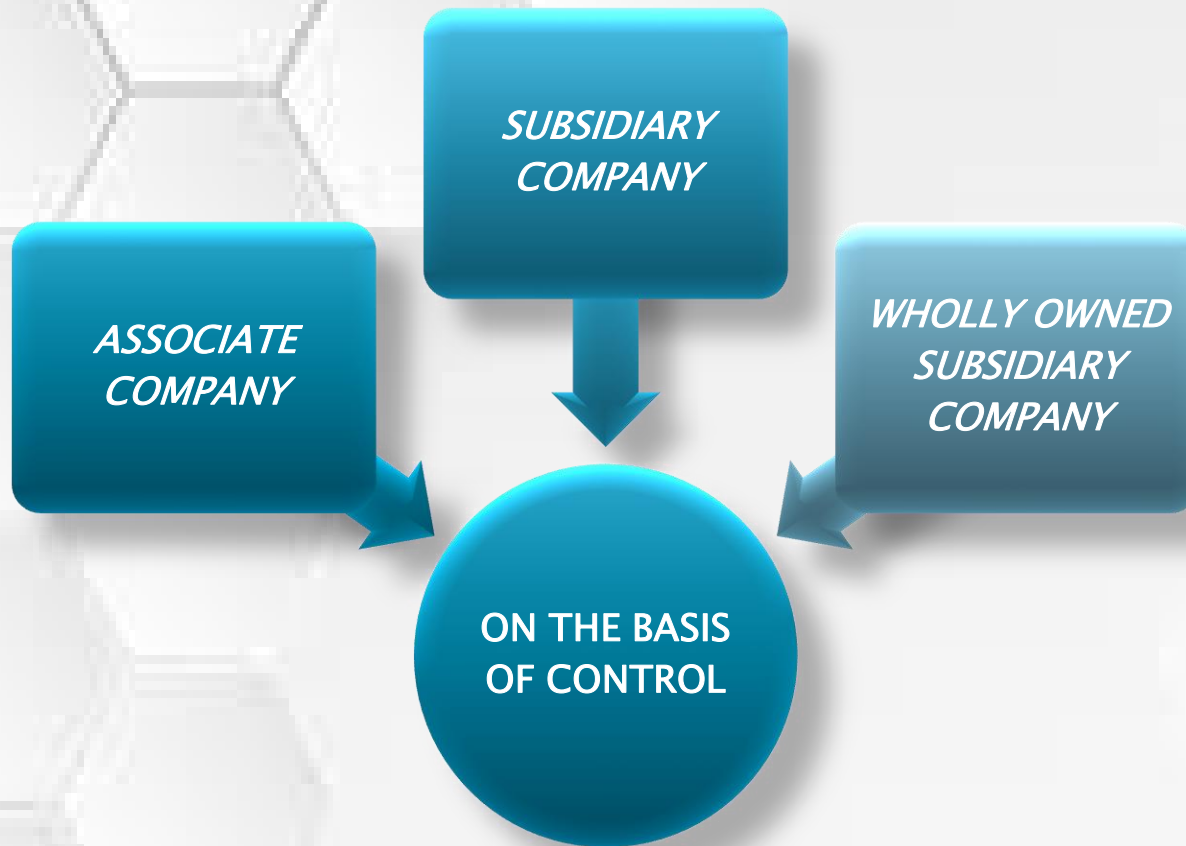
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM1MDM=&docCategory=Notifications&type=open>

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>

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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.

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.

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.

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 Central Government, State Government and Partly by Central and partly by one or more state Governments.
- ▶ **Note:** A company which is a subsidiary of a Government company is also covered under this section.
- ▶ 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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FOREIGN COMPANY [SECTION 2(42)]

- ▶ Foreign Company means a company or body corporate Incorporated outside India which

Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

Conducts any business activity in India in any other manner

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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SECTION 8 COMPANY [NOT FOR PROFIT ORGANISATION]

- ▶ 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—

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*

intends to apply its profits, if any, or other income in promoting its objects; and

intends to prohibit the payment of any dividend to its members ,

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 should have to taken care of following matters:
- ❖ 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.



If you need any further assistance, Feel free to contact us.

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