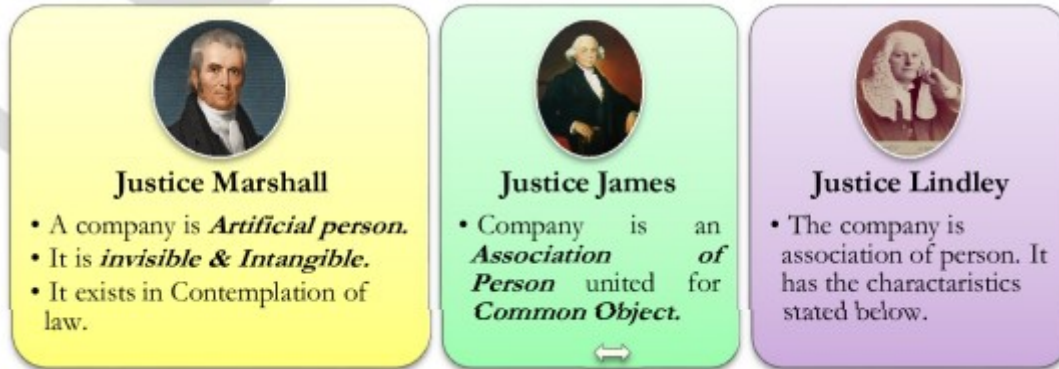


## THE COMPANIES ACT , 2013

### Definition of Company [Sec 2(20)]

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



### Characteristics of a company

**Incorporated association:** The company is not natural person like human, plant or animal. It is created by human. It is a creation for some specific object. So it will run for achieving the object and beyond for new objects.

**Artificial Judicial Person:** As the company is created by human, its not natural. Its an artificial entity which cannot be formed on its own. It has to be created. But creation will be judicial i.e. legal under any law in force in the territory of any country.

**Separate legal Entity:** Company have its own identity, its own legal existance like any other human. It is just that the company is intangible and exist only on paper. As company is separate legal entity, it has right to enter into contract on its own name. Everything which is done in the company will be known by the name of the company.

**Perpetual succession:** Members, owners, promoters. BOD, stakeholders may come and go but company will remain till eternity. The company does not have life equal to it promoters or members. Even after death of all, company can run for ages. The company will only cease to exist when it is dissolved.

**Limited liability:** The liability of the members of the company is normally limited up the amount of the share capital invested in the company. The personal assets of the owners of the company will not be liable for any payment to creditor.

**Common seal:** Human uses signature to show the authentication of document and to mention personal identity. For company signature means seal. The document is deemed to be signed by company if the document bears the seal of the company.

**Transfer of shares:** The ownership of the company is represented by the shares of the company. So for ease of transactions, the shareholders can transfer the shares of the company with its ownership & it does not affect the company in any way, it only changes the shareholding pattern.

**Separation of Ownership from Management:** The Company is combination of the three pillars: Investor, Management, Auditor. Investor invests the money which is used by management to run the business and is checked by auditor whether money is being properly used or not. Thus the investors need not enter in to day to day transaction of the company or management of the company.

**Separate Property:** As company is separate legal entity it has right to enter into contract on its own. Thus company can purchase or sale property on its own. Do transaction on its own. Its like company has its entire separate range of assets or liabilities.

The situation can be understood when we compare the advantages of the company with the closest option to do business that is partnership.

- Separate Legal Entity**
  - Legally separate from the members
- Perpetual succession**
  - Change in members does not affect existence of Company
- Limited Liability**
  - Liability of Company different from liability of members
- Artificial Juridical Person**
  - Company can act through human agency only
  - Company can contract, sue and be sued in its own name

**Separate Legal Entity: Land Mark Case Laws**  
**Salomon Vs. Salomon & Co. Ltd.**



In winding up of Salomon & Co asset Realised are only £ 6000/-



Salomon

99% Shareholder of Company & Debenture Holder



Other Creditors gave loan of £ 7000/-

Shares of Pound 1 each	£ 20,000
Secured Debentures	£ 10,000

The contention of the creditors was that Salomon is 99% shareholder of company. So company and Salomon are not different. So the asset realised of £ 6000 should only be paid to creditors.

**Facts of the case:**

Conversion of the Proprietorship in to Company:

Salomon was carrying on the business of boot manufacturing as a sole proprietor. He transferred the business to the new company incorporated by him called salmon & Co. Ltd.

Purchase Consideration:

Total Consideration Pound: 39,000

Cash Paid Pound 9,000

Shares of Pound 1 each Pound 20,000

Secured Debentures to Salomon Pound 10,000

Stake Holders of new Company:

In course of business company borrowed Pound 7,000. After some time company ran into financial difficulties and went into liquidation. The Assets realized Pound 6,000.

**Contention Unsecured Creditors:**

The creditors contended that as Salomon is the whole and sole of the company, he cannot owe the money to himself as debenture holder. And the Salomon & Co. Ltd is mere agent of Mr. Salomon.

**Supporting:**

The Salomon & Co. Ltd. Has a separate legal entity other than members itself. It has its own rights & responsibilities. Therefore it cannot be regarded as the agent of the member.

**Decision of the Court:**

As the Salomon & Co. Ltd. is different from its members i.e. Salomon family, the debenture held by them shall be paid in priority to unsecured creditors.

**Learning from Case law: Separate legal Entity**

1. There can be a transfer of property from a member to the company & vice-versa.
2. A person can be a member, director, employee and creditor of the company at same time. A company is not an agent of members or directors.




**Facts of case**

- a. the company was formed to manufacture aerial topdressing.
- b. lee was a qualified pilot & held all the shares except 1 share & was appointed as governing or chief director & chief Pilot.
- c. Lee was killed while piloting company' aircraft and window of Lee claimed compensation under Workmen's Compensation Act.
- d. The company opposed the claim stating that the same person cannot be an employer and an employee at the same time.


**Question:** Whether wife of the Lee can receive the compensation from the company?

**Decision of Court:** It was held that: there was a valid contract between the company and Lee of service as worker therefore contention of Mrs. Lee is right in law.



**Gramophone & Typewriter Co. Vs Stanley.**



Stanley,



Promoter and Shareholder

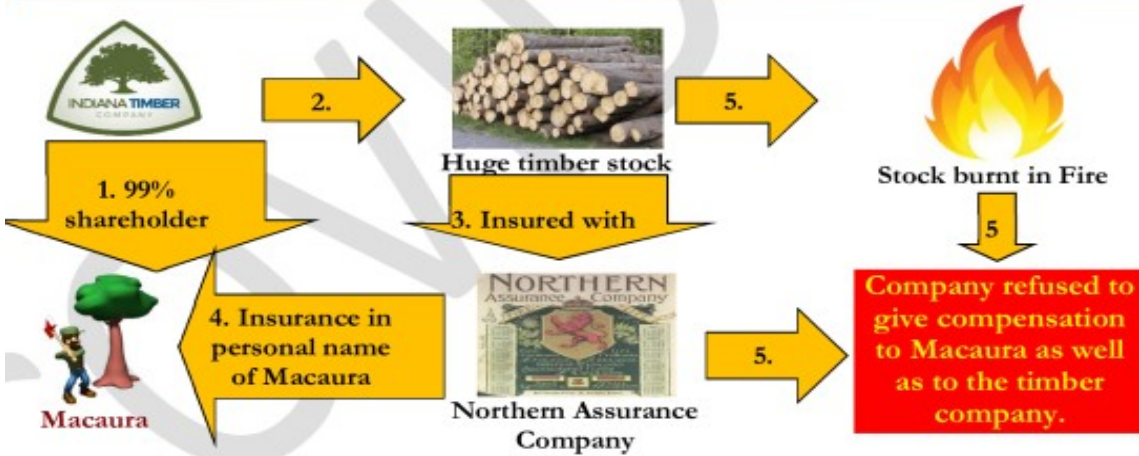
**Misused the typewriters of the company without any contract with company**

Facts of case
<p>(a) The shareholder of the company used the typewriters of the company for his personal use.</p> <p>(b) He did not enter into any contract with the company for such use and he did not pay any consideration to the company for the use of the same.</p>
Question
<p>Whether the shareholders of the company can use the property of the company for their own personal purpose?</p>
Decision

Assets of a company are separate from its owners, company will not use assets of shareholders and shareholders will not use assets of the company for their personal use



**Macaura Vs. Northern Assurance Co. Ltd.**



Facts of the case
a. Macaura held all the shares of the Timber Company except 1.
b. He insured the timber of the company in his own name.
c. The timber is destroyed by fire.
d. Macaura wants to claim the compensation for the timber destroyed from the company.
Question
Whether Macaura can claim the compensation from the insurance company for loss?
Decision
a. It was held that the insurance company is not liable to Macaura due to loss of Insurable Interest as the owner of the timber is company and the insurance is in the name of Macaura.
b. As the company is a separate legal entity, the timber should be insured in the name of the company.

**Lifting of Corporate Veil**



**Meaning**

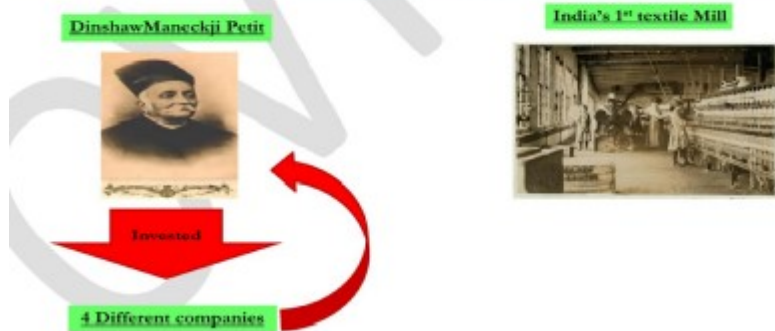
- A.** The company has a separate legal entity from its members. This principle is called the 'Veil of Incorporation'
- B.** All the directors and the members take the decision behind the veil. And it is considered as decision of the company.
- C.** This advantage of acting behind the veil is available to the members and directors or any other person belonging from the inner management of the company, only if he is acting for the benefit of the company & its members in legitimate manner.
- D.** Therefore, where there is fraudulent intention to misuse the veil for benefits of their own or conducting illegal act, such person will not get benefit of acting behind veil. In such case the veil will be removed and person responsible for the fraud shall be penalized and will be held personally liable.

**Cruz**

In short the person committing fraud of illegal activity or coercive activity inside the company shall be held personally liable for the acts done by setting aside the separate of the company.



**Dinshaw Maneckji Petit**



**Facts of the case:**

- a. The assessee earned huge income from dividend & interest from investments.
- b. He formed 4 private Companies and contributed his income as capital against: share of company.
- c. He took back all the income contributed by him in company as capital by way of pretended loan.

**Question**

Whether assessee is exempted from tax? Or he will be liable for the tax.

**Decision**

- a. It was held that companies and the assessee are no separate legal entity. These are created only for purpose of running from tax burden.
- b. As the company has done no business & is formed just for the purpose of converting dividend income into loan and avoid tax.

**Daimler Co. Ltd Vs. Continental Tyre & Rubber Co. (Great Britain) Ltd.**



**Facts of the case**

- a. The German company incorporated the company in London for selling its tyres.
- b. The German Company held entire share capital of London Company.
- c. During the first world war, the German company commenced an action of recovery of trade form English Company.

**Question**

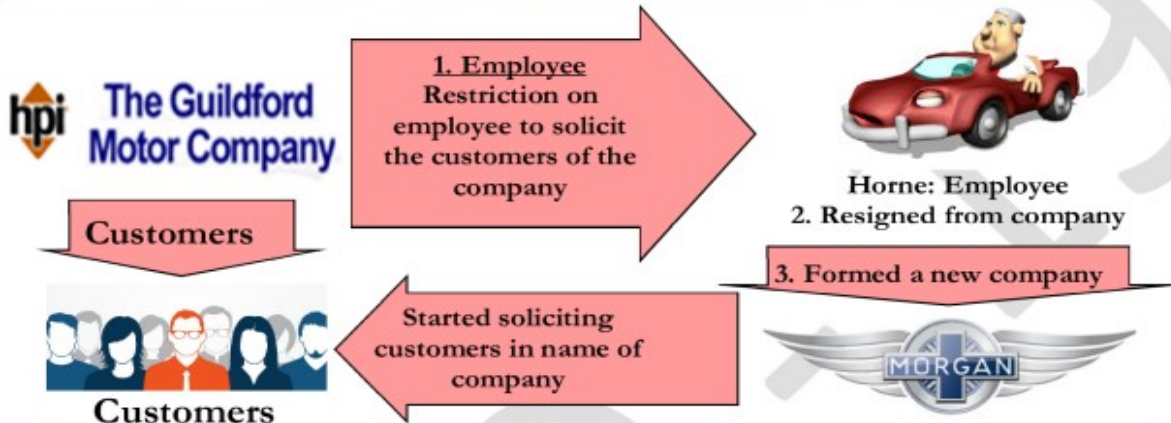
Determining the Character of Company – Whether enemy or not?

**Decision of Court**

It was held that the company was alien company & the payment of debt to it would amount to trading with enemy. Therefore the company is not allowed to proceed with action.



**Guildford Motors Company Vs. Horne**



**Facts of case**

- a. Horne as an employee entered in an agreement that he shall not solicit the company's customers or compete it for a certain period of time after leaving its employment.
- b. After cessation of his employment Horne formed a Company that carried on competing business.
- c. He allotted whole of the shares of the company to his wife & director of the company.

**Question**

Whether such company can solicit the customers?

**Decision of Court**

Horne is in fact controlling the company. Its formation was mere Cloak or Sham to break the agreement with plaintiff. The court issued the injunction against him. And his company was restrained from soliciting the Plaintiff's customer.

**Merchandise Transport Ltd. Vs. British Transport Commission**



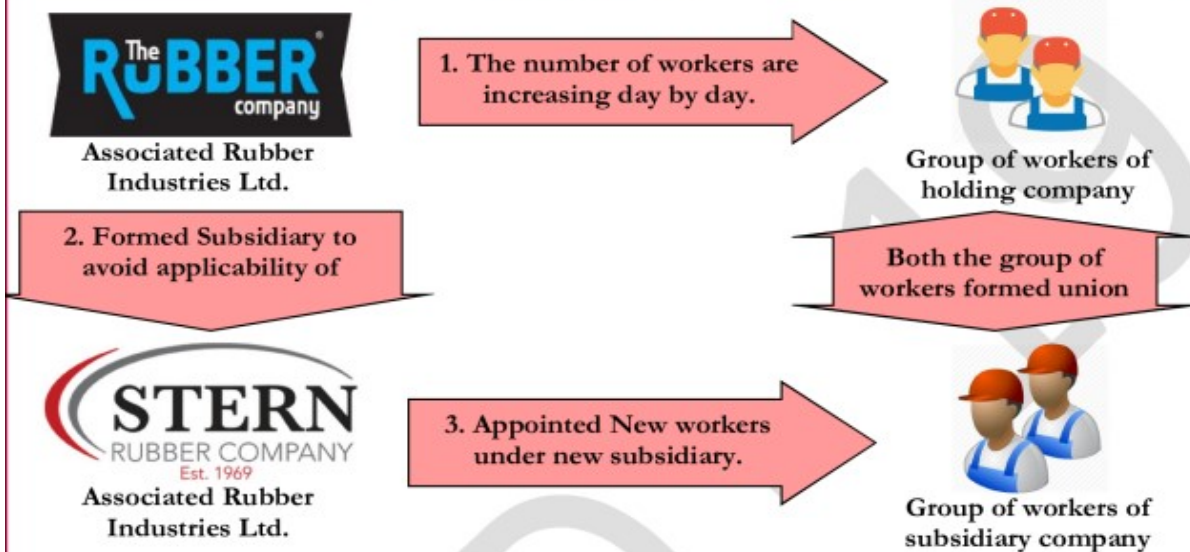
**Facts of case**

- a. The transport company could not obtain the licenses in its own name.
- b. Hence it formed the subsidiary company and made the application for licenses in the name of the subsidiary.
- c. Vehicles were to be transferred to subsidiary.



Question
Whether such licenses can be allotted to subsidiary company?
Decision of Court
Held that parent and subsidiary company is one commercial unit. And application for the license was rejected.

### Workman of Associated Rubber Industry Ltd. Vs. Associated Rubber Industry Ltd.



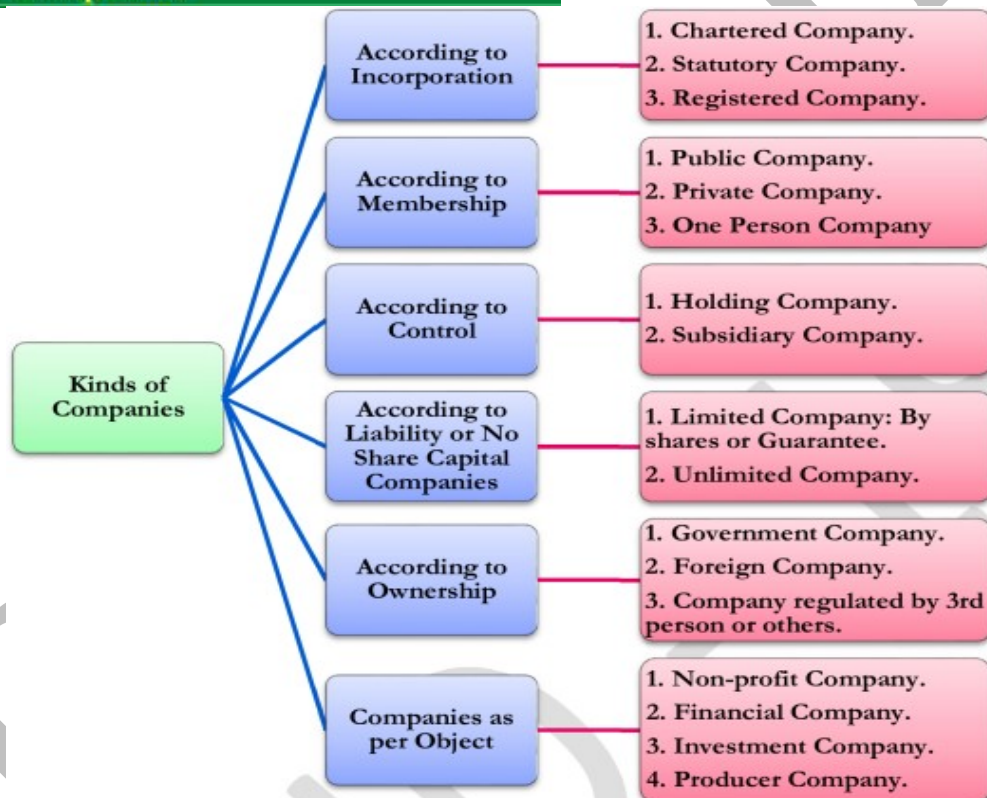
Facts of case
<ul style="list-style-type: none"> <li>a. The company attracted the provisions of the Payment of the Bonus Act, 1965 as the number of the employees exceeds the minimum employees required for the applicability of the act.</li> <li>b. So company to avoid the payment of bonus created the subsidiary and accepted new employees under the same.</li> </ul>
Question
Whether company need to pay bonus to its employees?
Decision of Court
<p style="text-align: center;"><b>Company avoiding legal obligation or welfare legislation</b></p> <p>Where the sole purpose of formation of a new company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Corporate veil should be pierced to look at the real transaction.</p>

### Applicability of Companies Act 2013

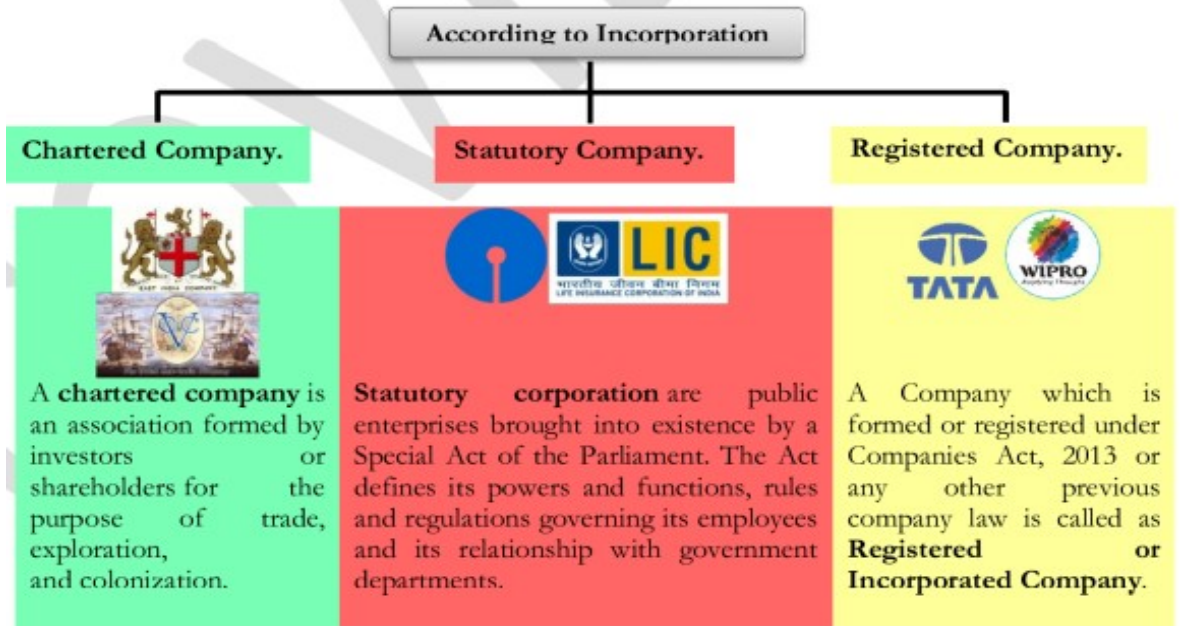
The provisions of the Act shall apply to-

- ◆ Companies incorporated under this Act or under any previous company law.
- ◆ Insurance companies (except where the provisions of the said Act are inconsistent with the provisions of the Insurance Act, 1938 or the IRDA Act, 1999)
- ◆ Banking companies (except where the provisions of the said Act are inconsistent with the provisions of the Banking Regulation Act, 1949)
- ◆ Companies engaged in the generation or supply of electricity (except where the provisions of the above Act are inconsistent with the provisions of the Electricity Act, 2003)
- ◆ Any other company governed by any special Act for the time being in force.
- ◆ Such body corporate which are incorporated by any Act for time being in force, and as the Central Government may by notification specify in this behalf.

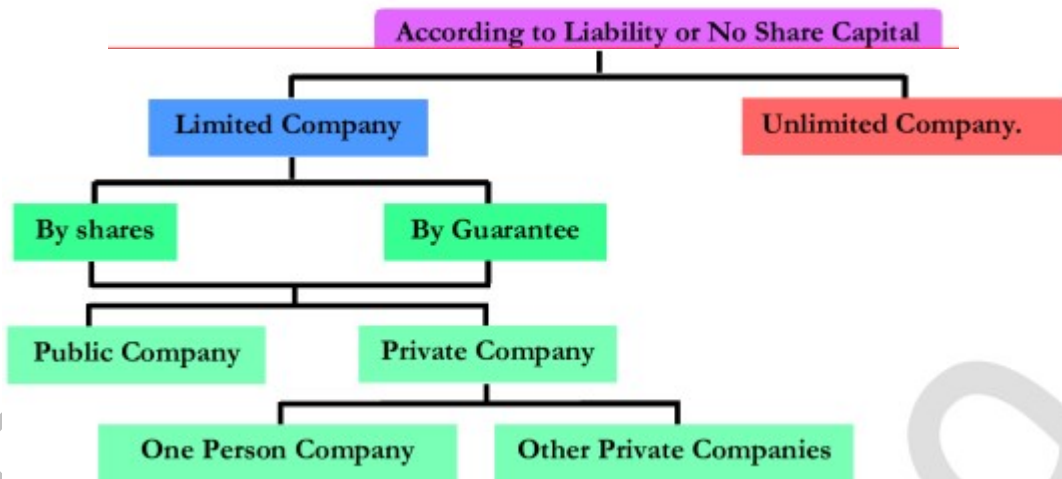
### **Kinds of Companies**



**According to Incorporation**



**According to liability and shareholding**



Heading	Limited Company	Unlimited Company
<b>Section</b>	2(21): Company Limited by Guarantee 2(22): Company Limited by shares	2(92) Unlimited Company
<b>Definition</b>	“Limited company” means a company having limit on the liability of its members.	“Unlimited company” means a company not having any limit on the liability of its members.
<b>Meaning</b>	In case of limited company members are liable to pay only predefined fixed amount during life on the company or during winding up irrespective of liability of the company.	In case of unlimited company the members are liable to the entire amount of liability existing at the time of the winding of the company from company’s assets as well as personal



		assets if necessary.
<b>Practical Concept</b>	The limited company is more practical and useful concept than the unlimited company.	The unlimited company is less practical and useful concept than the limited company.
<b>Types</b>	The limited company have many subtypes. But the main three subtypes are: a. Company limited by shares. b. Company limited by Guarantee. c. Company limited by shares as well as Guarantee	The unlimited company do not have any subtypes.

### Companies with Limited Liability

<b>Heading</b>	<b>Limited by Guarantee</b>	<b>Limited by shares</b>
<b>Section</b>	2(21) Company Limited by Guarantee	2(22) Company limited by shares
<b>Definition</b>	“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.	“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.
<b>Meaning</b>	The company in which the investor does not invest any amount at the incorporation or during the life of the company, but they invest the amount max upto amount agreed at the time of winding up of the company depending on the liability of the company is company limited by guarantee.	The company in which the investor invests the funds at the incorporation or/& during the life of the company or/& at the winding up against the instrument indicating ownership and part in capital of the company is company limited by shares.
<b>Owners</b>	In these companies the members or owners act as guarantor.	In these companies the shares are held by the shareholders.
<b>Practical use</b>	These companies are normally the non-profit making organisations.	These companies are normally profit making organisations.
<b>Classes</b>	There can be different	There can be different

	classes of members voting and non voting.	classes of members based on the shares.
<b>Capital Clause</b>	Company limited by guarantee do not have capital clause.	Company limited by shares have capital clause in its MOA

### Private Companies 2(68)

Means a company having a minimum paid-up share capital share-capital-as may be prescribed, and which by its articles, —

- (i) restricts the right to transfer its shares;
- (ii) limits the number of its members to two hundred (except in case of One Person Company):

The section provides that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member. However, following shall not be included in the number of members:

- ✓ persons who are in the employment of the company; and
- ✓ 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.
- (iii) prohibits any invitation to the public to subscribe for any securities of the company.

### Public Company 2(71)

The Companies Act, 2013, defines public company as a company which-

- ✓ is not a private company
- ✓ has a minimum paid up share capital as may be prescribed
- ✓ Seven or more members are required to form the company. This section provides that a company which is subsidiary of a company(not being a private company i.e public company) shall be deemed to be public company even where such subsidiary company continues to be a private company in its articles.

**One Person Company 2(62):** The Companies Act, 2013, defines One Person Company as a company which can be incorporated by a single person as one member

In case of OPC, the following provisions shall be compiled.

(a) **Nomination** Name of another person as nominee also will be mentioned in the memorandum who will be the subscriber of the company in case of death or incapacity of the subscriber.

(b) **Written Consent** of such nominee also has to be filed with the registrar at the time of filing memorandum and articles of association.

(c) **Withdrawal of consent** Also such person can withdraw his consent at any time as and when he thinks to do so but as per the rules governing such withdrawal.

(d) **Change in Nomination;** Also the member of the OPC has right to change the name of nominee as and when he thinks fit only by giving notice of such change in name.

(e) **Notice to ROC** Also, the member has to intimate the Registrar of company about the change in such name.

(f) **Alteration of Nomination clause of MOA;** Such change in name would not amount to any alteration in memorandum of the company. (As its small change)

### **Special Provisions for OPC**

1. **Resident Member and Nominee;** Only a natural person who is an Indian citizen and resident in India (person who has stayed in India for a period of not less than **120 days** during the immediately preceding one financial year)-

a. shall be eligible to incorporate a OPC.

b. shall be a nominee for the sole member of a OPC.

2. **Nominee of only one OPC:** No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.

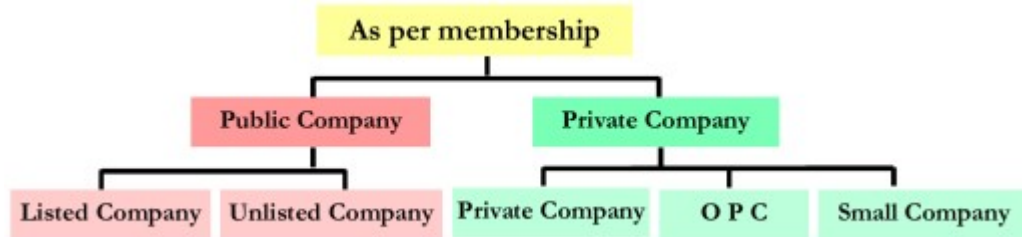
3. **Minor in OPC;** No minor shall become member or nominee of the OPC or can hold share with beneficial interest.

4. **OPC cannot be Sec 8 company,** Such Company cannot be incorporated or convened into a company under section 8 of the Act. Though it may be converted to private or public companies

5. **OPC cannot be NBFC or Investment Company;** Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporate.

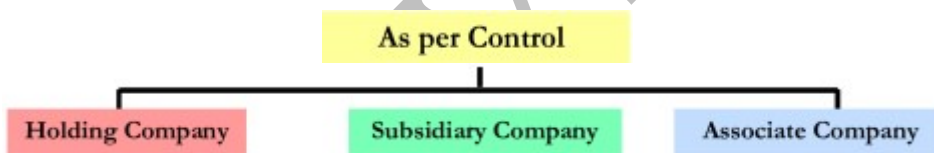
6. **Voluntary conversion;** OPC can convert voluntarily into any kind of company after complying with its required conditions





Heading	Listed Company	Unlisted Company
<b>Meaning</b>	Company whose share are traded on an official stock exchange. It must adhere to the listing requirements of that exchange, which may include how many shares are listed and a minimum earnings level.	The company which is not listed on stock exchange and the shares cannot be traded. But the company can issue shares to public and shares can be freely transferred to 3 <sup>rd</sup> parties.
<b>Governing law</b>	1 <sup>st</sup> : security exchange board of India Act, 1992 2 <sup>nd</sup> : Companies Act, 2013	Only Companies Act, 2013
<b>Share trading</b>	Shares of these companies are freely tradable	Shares of these companies are not freely tradable.
<b>Paid up value</b>	Shares of these companies are normally fully paid up.	Shares of these companies can be fully or partly paid up.
<b>Face value</b>	Face value of shares of these companies is Rs. 10 or less	These companies can have face value for the shares of the company.

As per membership				
	Public Company		Private Company	
	Listed Company	Unlisted Company	Private Company	O P C
Who can issue shares?	✓	✓	✓	✓
How many members?	Min 7 Max ∞	Min 7 Max ∞	Min 2 Max 200	Min 1 Max 1
Who can issue prospectus?	✓	✓	X	X
Who can make public issue?	✓	✓	X	X
Who can issue debentures?	✓	✓	X	X
Who can accept public Deposit?	✓	✓	X	X
Trading of shares allowed for:	✓	X	X	X
Whether employees can be members?	✓	✓	X	X



### **Holding Company 2 (46)**

'Holding and subsidiary' companies are relative terms. A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

**Subsidiary Company 2(87)** Section 2(87) defines "subsidiary company" 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 voting power 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.

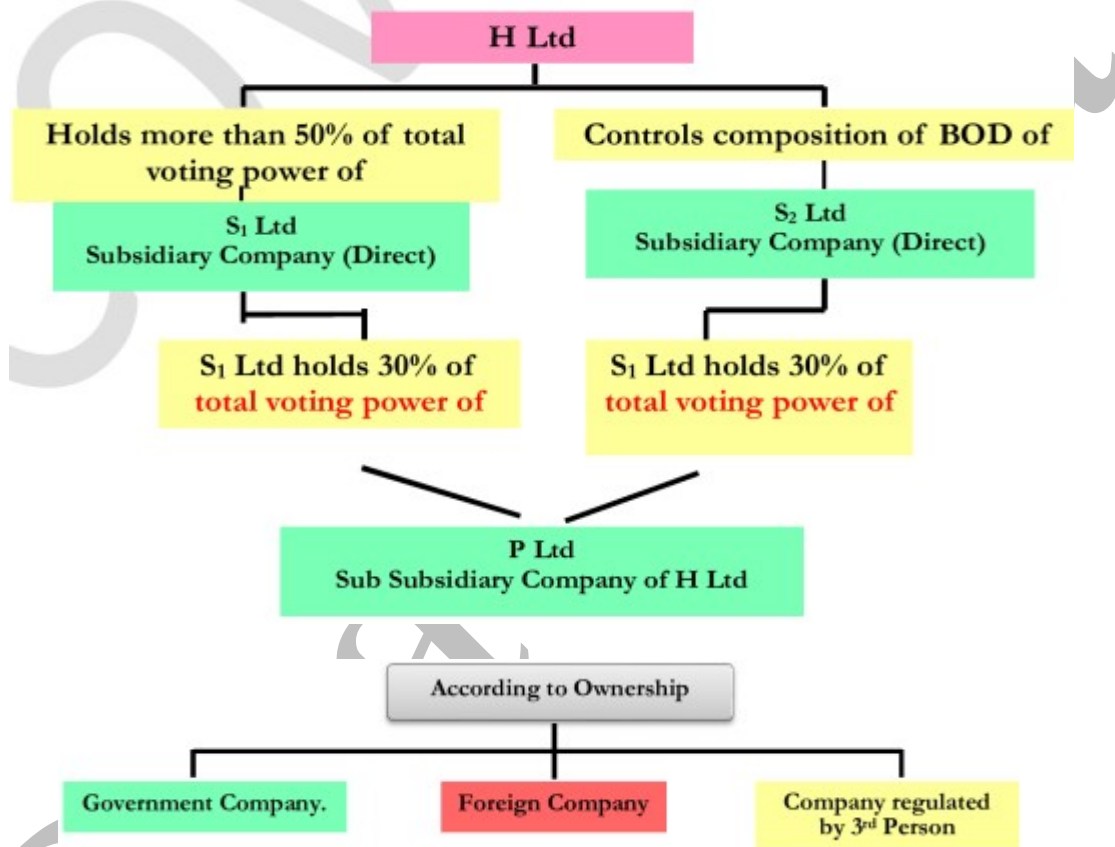
### **Associate Company 2(6)**

Associate 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.

Explanation. - For the purpose of this clause

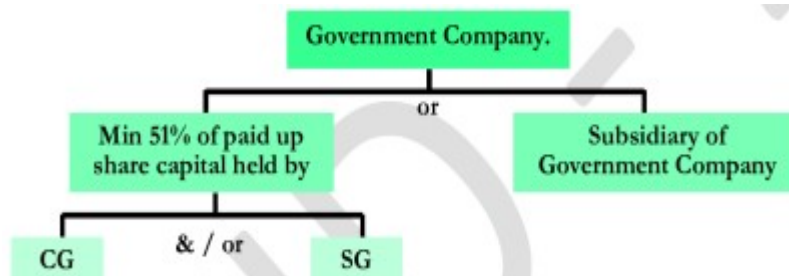
The term "significant influence" means control of at least 20% of total share capital total voting power, or of business decisions under an agreement control of or participation in business decisions under an agreement;  
the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

"total voting power", in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes;



**Government Company 2(45)**

means any company in which not less than 51% of the paid-up share capital is held by-  
(i) the Central Government, or  
(ii) by any State Government or Governments, or  
(iii) partly by the Central Government and partly by one or more State Governments, And the section includes a company which is a subsidiary company of such a Government company;





**Foreign Company 2(42)**

means any company or body corporate incorporated outside India which—

- (i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (ii) conducts any business activity in India in any other manner

**COMPANIES AS PER OBJECT**

**Investment Company**

An investment company is a company whose main business is holding securities for investment purposes. Investment companies invest money on behalf of their clients who, in turn, share the profits and losses.

**Non-Profit Company/Charitable Company/ Section 8 Company**

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc. Such company intends to apply its profit in promoting its objects and prohibiting the payment of any dividend to its members. Power of Central government to issue the license -This section allows the Central Government to re 'stet such person or association of persons as a company with limited liability without the addition of words 'Limited' or Private limited' to its name, by issuing license on such conditions as it deems fit. The registrar shall on application register such person or association of persons as a company under this section.

**Financial Company/Nidhi Company [Sec 406]**

Company which has been incorporated as a Nidhi with the object cultivating the habit of thrift (cost cutting) and savings amongst members, receiving deposits from, and lending to, its members o for their mutual benefits and which complies with such rules as prescribed by the Central Government for regulation of such of companies. [Section 406 of the Companies Act,2013]

**Banking Company**

According to Sec. 5 of the Banking Regulation Act, 1949, a banking company means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise and withdrawn by Cheque, Draft, Order, or otherwise.

**Insurance Company**

Insurance is a contract, represented by a policy, in which an individual or entity receives financial protection or reimbursement against losses from an insurance company. The company pools clients' risks to make payments more affordable for the insured.

**Sec 8: Non profit making Organisation / charitable organisation**

**Provisions**

I. **Condition for Licence:** When the Central Government is satisfied according to following points then may grant licence to such proposed company to get registered itself as a section 8 company:

- a) A company is to be registered with the object of promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any other related object, or
- b) Wants to apply its profit or other income in promoting its object, &
- c) Does not pay any dividend to its members, and
- d) the Central Government gives written consent to register a company under this section or
- e) In case where company gives application to registrar to register itself under this section and registrar can grant such permission if he is satisfied that all the provisions of this section are satisfied.

**2. Sec 8 company shall be limited.** Company registered under this section will have the status of a limited company as registered u/s 7.

**3. Membership.** A firm can become a member of the company not necessary that only individuals have to become members.

**4. Amendment of MOA or AOA** In order to make changes in memorandum Articles of the companies registered under this section prior approval from central government is required to be taken.

**5. Transition provisions.** If the Central government is satisfied that a limited company already registered under this act or any other previous law related to companies fulfils all the conditions required to call itself as section 8 company then CG may grant such company a licence to section 8 company subject to certain restrictions as discussed above in sub section (4).

**6. Cancel Licence:** If Central Government feels that:

- a) The Company is contravening some or any of the requirements of this section, or
  - b) Some fraudulent acts seem to be conducted by such company, or
  - c) While conducting its activity the company violates its object or harms public interest.
- Then Central Government may revoke/cancel the license so granted and Direct the company to convert itself from section 8 company to a Limited Company and change its name by adding words like "Limited" or "Private Limited" as the case may be. And the registrar has to act accordingly. But before passing any order under this sub section a Company found guilty must be given a reasonable opportunity of being heard.

**7. Amalgamation in Public Interest** If the licence once granted is revoked by the Central Government as mentioned above in sub section 6 then after such action if CG feels that it is good for the public interest it may order such Company to wound up or amalgamate with other company which is a section 8 company. But, the company should be given a reasonable opportunity of being heard.

**8. Punishment for Fraudulent Act :** If Company makes any default in complying any Of the section then the company Will be liable to:

- a) Fine of minimum 10 lakhs upto Rs. 1 crores, and
- b) Every director and any other officer who is found guilty for such default will be punishable with:
  - i. Imprisonment to the maximum of 3 yrs, or
  - ii. Fine of Rs. 25000 to 25 lakhs

**9. Exceptions:**

- (i) Can call its general meeting by giving a clear 14 days notice instead of 21 days
- (ii) Requirement of minimum number of directors, independent directors does not apply
- (iii) need not constitute Nomination and remuneration committee and shareholders relationship committee.

