As per the Revised Syllabus of Mumbai University for B.Com., (Banking and Insurance), Semester IV

Corporate and Securities Law

K.R. Bulchandani

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CORPORATE AND SECURITIES LAW

(As per the Revised Syllabus of Mumbai University for B.Com., [Banking and Insurance], Semester IV)

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PREFACE TO THE FIRST EDITION

It gives me a great pleasure to present to my readers the first edition of Corporate and Securities Law for B. Com. (Banking and Insurance).

The study of the subject has been made interesting with selected topics. It was equally challenging for me to compile the study material adequately within limits.

Development of Company Law in India from birth of a company to Companies Act, 2013 as amended, is restricted to essential features of a company, types of companies and procedures for inter-conversions. Coupled with doctrines governing corporates, the reader would get the insight of not only the real nature of companies but also effects on governance of corporates under the application of doctrines, based on the facts and circumstances of each case. All applicable doctrines have been discussed with case law as most of the doctrines are originated from judicial activism. Limited study also includes the extent to which Company Law is applicable to Banking and Insurance sectors, the two important institutions in the development, existence and growth of corporate sector.

Stock Exchanges and Securities as regulated by the Securities Contracts (Regulation) Act, 1956 and Rules thereto provide for complementary study to corporates in public issues. With law on corporatization and demutualization, contracts in securities, powers and functions of regulatory authorities, namely, stock exchanges in case of public offer of securities with listing agreements and obligations including redressal mechanism, is a comprehensive but a selective study which adds to the knowledge of corporates for compliances before entering the capital market and thereafter. To this, study of powers of Securities and Exchange Board of India (the Board) under the Securities and Exchange Board of India Act, 1992 is a feature of the study in this text.

With corporate scams and investors being duped of their life savings, regulations and guidelines have been issued for investor protection by enactment of Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 and Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018. Not only the investor is educated before plunging in capital market but corporates are guarded from acting against the interest of the investors for otherwise huge liability in the form of penalties and prosecutions is attracted.

And finally, with shares, debentures, mutual funds required to be dematerialized and to be held by the investors in demat form, study of Depositories Act, 1996 cannot be left out.

For a change and rightly, I laud the enactors of the syllabus of Corporate and Securities Law of having kept first and foremost the interest of the students budding into the study of Corporate and Securities Law. This compiled text, I am sure, would adequately help my readers of not only accumulating the knowledge on the subjects discussed in the text, but practically also those who venture into capital market, this text would be a boon and a must for regular study on the subjects. Though the topics are discussed in brief, yet every effort has been put in by me to make it a composite study to be complementary with apt syllabus on Corporate and Securities Law.

I wish my readers all success and educative journey through the text. However, before parting, let me thank my publishers for entrusting to me the challenging task of compiling the study in limited format. I thank my wife, Kavita, for sparing me and tolerating my obsession of taking up the writings on unexplored ventures. The assistance of my daughter, Loshika, Advocate and Solicitor, England and South Wales, Mr. George for bearing with my temperament while preparing the text material, my staff members and last but not the least, all my readers and well-wishers needs to be applauded, who pump my energy and are a source of inspiration.

With best wishes.

K.R. BULCHANDANI

February, 2019

SYLLABUS

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1. Company Law – An Overview

(A) Development of Company Law in India

(B) Doctrines Governing Corporates — Lifting the Corporate Veil, Doctrine of Ultra Vires, Constructive Notice, Indoor Management, Alter Ego. The Principle of Non-interference (Rule in Foss v/s. Harbottle) — Meaning , Advantages, Disadvantages and Exceptions, Majority and Minority Rights under Companies Act.

(C) Application of Company Law to Banking and Insurance Sector

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- Power of Central Government to Direct Rules or Make Rules.
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- Books and Accounts to be Maintained by Recognised Stock Exchange.
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QUESTION PAPER PATTERN

Maximum Marks: 75

Questions to be Set: 05

Duration: 2½ Hours

All questions are compulsory carrying 15 Marks each.

Question No.	Particulars	Marks
Q. 1	Objective Questions (A) Sub-questions to be asked (10) and to be answered (any 08) (B) Sub-questions to be asked (10) and to be answered (any 07) (*Multiple Choice/True or False/Match the Columns/Fill in the Blanks)	15 Marks
Q. 2	Full Length Question	15 Marks
	OR	
Q. 2	Full Length Question	15 Marks
Q. 3	Full Length Question	15 Marks
	OR	
Q. 3	Full Length Question	15 Marks
Q. 4	Full Length Question	15 Marks
	OR	
Q. 4	Full Length Question	15 Marks
Q. 5	(A) Theory Questions (B) Theory Questions	08 Marks 07 Marks
	OR	
Q. 5	Short Notes To be asked (05) To be answered (03)	15 Marks

Note: Theory question of 15 Marks may be divided into two sub-questions of 7/8 and 10/5 Marks.

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I(A)

DEVELOPMENT OF COMPANY LAW IN INDIA

[CHAPTER-II OF THE COMPANIES ACT, 2013 & COMPANIES (INCORPORATION) RULES, 2014 AS LAST AMENDED BY COMPANIES (INCORPORATION) (THIRD AMENDMENT) RULES, 2018]

INTRODUCTION TO LAW

What is law?

'Law' in simple term means 'rules'. Law means Acts, Rules, Regulations and other enactments to the Act. It is a very wide term and includes different sets of acts, rules and regulations regulating external human actions and conduct of individuals in their dealings with other individuals and with the Government.

With the growth of society and welfare State, civilisation has demanded a reformed set of law, time and again. Law has, therefore, been often subject to changes to meet the practical needs of society and at the same time, attempting to achieve some sort of security and uniformity in its application. In simple words, the term 'law' denotes 'rules of conduct enforced by the State'.

Legally, a set of rules alone is not sufficient unless:

(i) it is enforced by the State;

(ii) the State to enforce law is a Sovereign State;

(iii) it receives due recognition;

(iv) it attempts to achieve some sort of security and uniformity in its application.

Rules which have above characteristics are called 'law'. Law includes all the rules, regulations and principles which regulate our relations with other individuals and with the State.

Definition of law:

Austin has defined law in the following words: "A law is a rule of conduct imposed and enforced by the Sovereign".

Salmand defined law as "the body of principles recognised and applied by the State in the administration of justice".

Holland defined law as "rule of external human actions enforced by Sovereign Political Authority".

Woodrow Wilson defined law as: "that portion of the established habit and thought of mankind which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of the Government".

According to *Anson:* "The object of law is order and the result of order is that men are enabled to look ahead with some sort of security as to the future. Although human actions cannot be reduced to the uniformities of nature, men have now endeavoured to reproduce by law something approaching to this uniformity".

Law when enacted has to observe the following principles:

(i) it should as far as possible be in conformity with custom and usage of the people, *i.e.*, it should not offend local customs and usages of the society;

(ii) it should move with the society, *i.e.*, it should be vulnerable to changes. It should not be a static or rigid piece of legislation. Law, therefore, is not static. It changes with times, customs and needs of the society.

The primary object of law is to regulate human relations with other individuals and with the State. As a social being, man comes in contact with people in different capacities; with landlord as a tenant, with a trader as a customer, with Government as a tax payer and so on and so forth. In all these associations he is expected to observe a code of conduct or a set of rules. This set of rules embodied in 'Law' and enforced by State makes human associations possible and conducive to the welfare of the State and its people.

Sources of Indian Law:

The following are the sources of Indian Law:

1. **English Law:** The English Law is the principal source of Indian Law. English law originates from the following sources:

(*i*) *Maritime Usages or Law of Merchant:* During the 14th and 15th centuries, maritime law based on customs and usages came to be recognised as the primary basis of English Mercantile Law.

(*ii*) *English Common Law:* English Common Law was based on justice, equity and good conscience, which was developed on the customs, usages and traditions prevalent from centuries. Common Law was found to be inadequate as it was unwritten and its principles were applied whenever subsequent disputes of similar nature arose.

(*iii*) *Roman Law:* Where customs and usages did not exist, Roman Law was applied.

(*iv*) *Rules of Equity:* Where common law was harsh and oppressive, Judges applied rules of justice in their decisions which became precedents. Rules of Equity were the codification of these rules of justice in the form of precedents. Rules of Equity and Common Law were applied simultaneously.

(*v*) *Statutes of British Parliament:* British Parliament enacted laws which were enforced by the Courts. British Statutes override the rules of Common Law and rules of equity.

(*vi*) *English Judicial Decisions:* Judicial decisions or British Common Law or precedents form a very important source of law today. Decisions in future cases with similar facts are based on already decided cases.

In *B.O.I. Finance Ltd. v. The Custodian* [AIR 1997 SC 1952], Supreme Court has observed that the decision of the Courts in England, based on common law principles have been applied and followed by the Courts in India.

2. **Indian Statutes:** The Central and State Legislatures enact laws in India, which are applied by the Courts in India.

Prior to 1872, English Courts used to apply personal law of the parties to the suit. In 1872, the Indian Contract Act was passed which is one of the oldest enactments in India. The Indian Contract Act is based on English Common Law Rules.

3. **Judicial Decisions:** Interpretation of Statutes by Judges and their application depending on the facts of each case, meting out justice to the aggrieved parties has today formed a very important source of law. Where Indian Statutes, customs or usages are silent, Courts apply law based on English judgements which came to be recognised as an important basis of law in our country. Application of judicial decisions in previous cases to subsequent similar cases forms a very important source of law today.

4. **Customs and Usages:** Customs and usages in practice for a long time, in the absence of any statutory rules or which are not opposed to any statutory rules, are binding on the parties to the contract. Customs and usages should be ancient, reasonable and constant. Customs when accepted by the Court and incorporated in a judicial decision become a legal custom.

BIRTH OF A COMPANY

Between 11th to 13th centuries, the 'merchant guilds' in London, formed business associations under Charters obtained from the Crown. This charter created security for the members of the guild trading in a particular commodity. The guilds operated mainly on partnership terms. As the merchant guilds in and around 14th century extended their trading overseas, and to identify their territories of overseas trade, Royal Charters were granted by the end of 16th century identifying a particular territory for such merchant guilds, which by then had adopted the word 'company', facilitating overseas trading.

By a Charter of 1600, the popularly known East India Company was formed and regulated under the Charter, with monopoly of trade in India, distributing profits amongst its members, etc. These members subscribed a fund which came to be called as joint fund or joint stock of the company. By the end of 17th century, several such companies were formed and regulated under the Charter granted by the Crown. The joint stock fund was freely saleable and transferrable.

In 18th century, such companies came to be incorporated either by Royal Charter or by an Act of Parliament. Many companies were also formed by an agreement. The companies formed by agreement created speculative and fraudulent schemes and also speculation in shares and securities. This prompted the British Parliament to check such frauds and speculations by enacting Bubble Act, 1720. Though there was a check on such frauds, schemes and speculations, however, to escape the rigours of the Act, large partnerships were formed. However, unlimited liability of the partners, restricted the capital inflow. Bubble Act was replaced by Trading Companies Act, 1834 which in turn was re-enacted as Chartered Companies Act, 1837, replaced by Joint Stock Companies Act, 1844.

In India, growth of business and rapid industrialisation in early 19th century witnessed considerable changes in types of business organisations. Proprietary organisation though an ideal type of organisation for a small-scale business or for an enterprise which has grown from bits had its own limitations. It could not suit large type of organisations and meet the growing needs of expanding business. Partnership type of organisation, where two or more persons join hands and pool their resources both in the form of labour and capital is in a way suited to the requirements of the business. But a partnership type of organisation has the greatest disadvantage of *unlimited liability* of the partners.

Business continued to expand and capital to an unlimited extent was required. Introduction of corporate sector proved a boon to society, specially to the business organisation. Company

legislation in India owes its origin to English Company Law. First law regulating companies took its birth in 1850, as Joint Stock Companies, based on Joint Stock Companies Act, 1844. However, it was only in 1857 with enactment of the Joint Stock Companies Act, 1856, replacing the Joint Stock Companies Act, 1844, for the first time introduced the principle of limited liability. Principle of limited liability was extended to banking companies by Joint Stock Companies Act, 1860.

Based on the English Joint Stock Companies Act, 1862, the Companies Act, 1866, replaced the Joint Stock Companies Act, 1860, which consolidated the law relating to incorporation, regulation and winding up of trading companies. 1866 Act was recast in 1882, replaced by Companies Act, 1929 and then by Companies Act, 1948.

Indian Companies Act, 1913: With the introduction of limited liability, corporate sector achieved more and more importance. Following English Companies Consolidation Act of 1908, Indian Companies Act, 1913 was passed. As the Indian Law regulating the companies was based on the English Law, several judgements passed by English courts were followed by the Indian courts. However, the Act of 1913 proved inadequate despite several amendments in 1914, 1915, 1920, 1926, 1930, 1932 and extensive amendment in 1936 to the 1913 Act based on English Companies Act, 1929.

Indian Companies Act, 1956: World War II witnessed many changes in the organisation and management of Joint Stock Companies. Government of India, therefore, appointed a committee under the chairmanship of Mr. H.L. Bhabha on 25-10-1950 of 12 members representing various interests. Committee submitted its report in April, 1952. Based on this report, Companies Act, 1956 was enacted on the lines of English Companies Act, 1948. Companies Act, 1956, regulated entire organisation and management of the companies in India, with limited liability.

However, the Act of 1956 was not free from loopholes. This necessitated vast amendments by Amendment Act, 1960, 1962, 1963, 1964, 1965, 1966, 1967, 1969, 1974, 1977, 1985, 1988 and 1991. As a result of introduction of Depositories Act, 1996 and amendment thereto by Amendment Act, 1997, consequential changes and amendments were made in the Companies Act, 1956 by Companies (Amendment) Act, 1996. Several provisions of the Companies Act, 1956 were either amended or introduced by the Companies (Amendment) Act 1999, like, provisions relating to company deposits, application for premiums received on issue of shares, power to issue redeemable preference shares, nature of shares, unpaid dividend to be transferred to special dividend account, payments of unpaid dividend, form and contents of Balance Sheet and Profit and Loss Account, Boards' report, powers and duties of Auditors, loans, etc., to companies under the same management, purchase by company of shares, etc., of other company, power of company to purchase its own shares, transfer of certain sums to capital redemption reserve account, prohibition of buy back in certain circumstances, issue of sweat equity, nomination of shares, transmission of shares, establishment of Investor Education and Protection Fund, Constitution of National Advisory Committee and Accounting Standards, inter corporate loans and investments.

By Companies (Amendment) Act, 2000, SEBI was entrusted with powers to administer in case of listed public companies and also those companies likely to be listed on all matters relating to public issues and transfers including the power to prosecute defaulting companies and their directors. Strict penal provisions by increasing fines, penalties and prosecutions were introduced in an attempt at protecting investor interests and enhancing the level of good corporate practices. Provisions relating to managing agents, secretaries and treasurers were deleted. Other important changes related to payment of dividend and interim dividend, minimum paid up capital, company deposits, end of deemed public company, postal ballot, change of registered office, directors'

accountability, boards' report, protection of small shareholders, role of SEBI, good corporate governance and audit committee. These amendments introduced comprehensive changes both as regards external and internal regulation of companies and in the system of company jurisprudence.

Companies (Amendment) Act, 2002 and Companies (Second Amendment) Act, 2002 comprehensively once again amended the Companies Act, 1956. Some of the amendments were given effect from 01.04.2003 but for some of the amendments, effective date was never notified. Though the provisions relating to Constitution of National Company Law Tribunal, Appellate Tribunal and other allied provisions came into effect from 01.04.2003, but the implementation was never done in view of stay granted by Madras High Court in the case of *Thiru R. Gandhi v. Union of India* [(2004) 52 SCL 79 (Mad.)], as Executive took over judicial functions and therefore certain provisions in respect of National Company Law Tribunal (NCLT) were declared as unconstitutional. Company Law Board and High Court continued with their jurisdiction as and where provided under the Act.

Companies (Amendment) Act, 2006, provided for Director Identification Number (DIN) as a pre-condition for the appointment of a director by insertion of proviso to sections 253 and 266A to 266G. Amendment Act also introduced filing of application, documents, inspection, etc., through electronic form with effect from 16.09.2006 by inserting sections 610B to 610E.

The concept of limited liability has been carried to the partnership firm. To encourage capital participation in a partnership firm, Limited Liability Partnership Act, 2008 was enacted. As the Act suggests, the liability of partners was limited if registered under Limited Liability Partnership Act, 2008.

Companies Act, 1956 with amendments after amendments became the most complicated legislation with overlapping provisions difficult to implement. Need arose to streamline the legislation and reduce regulations. The prime concern was the governance as the main anchor for the future of Corporate India, to ensure sharper focus and proper applicability of various provisions. Liabilities and responsibilities of auditors required to be balanced vis-à-vis freedom of the board to function. This resulted into evolution of new Companies' Act in 2013 to ensure less regulation, more voluntary compliance and facilitate doing business in India more efficiently.

COMPANIES ACT, 2013

Applicability:

The provisions of Companies Act, 2013 shall apply to:

(a) companies incorporated under 2013 Act or under any previous company law;

(b) insurance companies, except the provisions which are inconsistent with the Insurance Act, 1938 or Insurance Regulatory and Development Authority Act, 1999;

(c) banking companies, except the provisions which are inconsistent with the Banking Regulation Act, 1949;

(d) companies engaged in the generation or supply of electricity, except the provisions which are inconsistent with the Electricity Act, 2003;

(e) any other company governed by any Special Act, except the provisions which are inconsistent with the Special Act;

(f) such body corporate incorporated by any Act under notification issued by Central Government, subject to such exceptions, modifications or adaptation, as may be specified in the notification [Sec.1(4)].

The provisions applicable to producer company under Companies Act, 1956 shall continue to be applicable until a Special Act is enacted for producer companies. No Special Act has been enacted till date.

On and from 15.12.2016 all matters, proceedings or cases pending before the Company Law Board, District Court or High Court shall stand transferred to Tribunal [Sec.434].

Since 2014, the Central Government has notified not less than 42 set of Rules under the Act along with several circulars and notifications. Added to this are several amendments, both to the Act and the Rules from time to time, last of such amendment to the Act being in 2017 and to the Rules being in 2018.

Amendments to Companies Act, 2013:

With the introduction of Insolvency & Bankruptcy Code, 2016, section 255 read with Eleventh Schedule thereto amends Companies Act, 2013, interalia providing for winding up of a company by National Company Law Tribunal (NCLT) with changes in the provisions relating to the winding up of a company.

Companies Act, 2013 has been further amended by Companies Act, 2015 and Companies (Amendment) Act, 2017. Many a provisions have been amended by Companies (Amendment) Act, 2017. All relevant amendments to the Act and to the Rules as amended till date have been coupled in the text to make a composite reading.

Author's comments:

Companies Act, 1956 with several amendments till the enactment of Companies Act, 2013 had become voluminous, encumbersome and too complicated. The promise was to introduce a simplified and condensed Act. But a total mess has been created by equally voluminous Companies Act, 2013. Merely reducing the total sections in the company law from 658 sections in Companies Act, 1956 to 470 sections in Companies Act, 2013, is eyewash. The extent of lengthy and encumbersome 42 Rules to the Companies Act, 2013, complementing the statutory provisions with further several amendments, makes the reading of company law worst and a nightmare. The Act and the Rules overlap and transgress each other with several repetitions and duplications.

Recently introduced Companies (Amendment) Act, 2017 which incorporates 93 amendments followed by repeated amendments to the rules in 2015, 2016, 2017 and 2018, add to the confusion. The fact that in a span of about five years, Companies Act, 2013 with 93 amendments and likewise regular amendments to the rules, speaks volumes of the calibre of enactors. At the time of going to the press fear of further amendments always daunts.

The tall claims of simplifying the law with a vision of promoting ease of doing business, in the opinion of the author, is a far cry with such a voluminous law along with other complementary legislations equally voluminous and complicated.

COMPANY

Definition:

A 'company' means a company formed and registered under this Act or under any previous Company Law [Sec.2(20)].

This definition in no way helps one to know what is a company? Let us therefore look at outside attempts made and judicial decisions to define and understand the nature of a company.

Company is defined as "a voluntary incorporated association which is an artificial person, created by law with limited liability having a common seal and perpetual succession".

A company is a form of business organisation in which the funds of a large number of investors are managed by a few persons for the purpose of earning profits which are shared by all the investors. In common usage, a company means an association of persons associated for some common purpose. It is, therefore, defined as an association of persons united for a common object.

Where numerous persons join hands and the number exceeds the limits of partnership, they get incorporated under the Companies Act. On incorporation, such an association of persons becomes a body corporate as the Company. It has a separate legal existence from its members, with its perpetual succession and a common seal. It is a legal person with no physical existence. It can enter into contracts with its members and outside parties under its common seal. It is an artificial person but not a citizen and therefore can neither enjoy rights under Constitution of India nor under Citizenship Act [*State Trading Corporation of India v. C.T.O.* 1963 (2) Comp. L.J. 234].

If an association is not so incorporated under the Companies Act, neither it enjoys independent and distinct existence nor does it become a body corporate. It remains an 'illegal association'.

Characteristics or essential features and nature of a company:

1. **Registration:** A company is to be compulsorily registered under the Companies Act.

2. **Distinct person – Separate legal entity:** On registration, a company is a distinct person possessing its own identity. It is altogether a separate legal entity, independent from its members, though controlled by the Board of Directors.

In *Salomon v. A. Salomon & Co. Ltd.* [(1897) AC 22], it has been held that in common law, a company is a 'legal person or has a legal entity separate from its members and is capable of surviving beyond the lives of its members.' In this case, one Salomon was a shoe manufacturer. He incorporated a company named Salomon and Co. Ltd. He took over the entire business of a running concern. Salomon and the seven subscribers to the memorandum were he and his family members. Salomon with his two sons were the Directors of the Company. The business of the company was transferred for £40,000. Salomon took 20000 share of £1 each and debentures worth £10,000 in consideration.

The Company went into liquidation within a year. On winding up, the unsecured creditors contended that the company was not having independent existence as Salomon was the Managing Director of the company and the entire company was under his control. They further contended that Salomon was holding majority of the shares and therefore, the company was merely a sham. However, it was held that Salomon and Co. Ltd., fulfilled all the requirements of the legislature. It was therefore, treated as a company, distinct and independent corporation. A company has, therefore, a separate legal existence, and is altogether a different person from its directors and members.

This principle of separate legal entity of a company has been, in fact, recognised much earlier than in Salomon's case. In *Re. Kondoi Tea Co. Ltd.* [(1886) ILR 13 Cal. 43], it was held by Calcutta High Court that a company was a separate person, a separate body altogether from its shareholders. In *Re. Sheffield etc. Society* [(1889) 22 Q.B.D. 470], it has been held that a corporation is a legal person, just as much as an individual, but with no physical existence.

A company incorporated under the Companies Act is a non-statutory body. There is neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of writ of mandamus nor is there, in its workmen, any corresponding legal right

for enforcement of any such statutory or public duty [*Ramsingh v. Fertilizer Corporation of India* (1980) 50 Comp. Cas. 553].

Gujarat High Court has distinguished a limited company from its shareholder. Limited company is a separate legal entity distinct from its shareholder. Merely because there is only one shareholder, the entities which are otherwise distinct, one is natural person and the other is an artificial juristic person, it cannot be contended that the said entities merge and one can act for and on behalf of the other [*Floating Services Ltd. v. MV San Fransceco Dipalola* (2004) 52 SCL 762 (Guj.)].

3. **Perpetual succession:** A company incorporated never dies. It has a perpetual succession. Its members may come and go but the company can go on forever and remain the same entity. The death or insolvency of the members does not affect the corporate existence of the company. It may be wound up. On winding up, it ceases to exist.

Prof. Grover in his book on Modern Company Law says that "A company continues to exist even if all the members are dead. During the war all the members of one private company while in general meeting were killed by a bomb. But the company survived. Not even a hydrogen bomb could destroy it".

4. **Artificial person but not a citizen:** The company is an artificial person. It functions through its Board of Directors. However, it is not a citizen as it cannot enjoy the rights under the Constitution of India or Citizenship Act. In *State Trading Corporation of India v. C.T.O.* [1963 (2) Comp. L.J. 234], it was held that neither the provisions of the Constitution nor the Citizenship Act apply to it. It may have a domicile. Though a company does not possess fundamental rights, yet it is a person in the eyes of law. It can enter into contracts with its Directors, its members and outsiders. Company being on artificial person, its nationality is to be determined in reference to the law of country where it is incorporated [*TDM Infrastructure (P) Ltd. v. UE Development India (P) Ltd.* (2008) 14 SCC 271].

Justice Hidayatullah once remarked that if all the members are citizens of India, the company does not become a citizen of India any more than, if all are married, the company would be a married person.

5. **Transferable shares:** A company has the greatest advantage of its shares/stock being easily transferable. Unlike a partnership concern, where against the will of the partners, the transferee does not become a partner, the members in an incorporated company can easily transfer their shares. Section 44 of the Companies Act provides that the shares or debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company. However, in a private limited company, there are certain restrictions on the transferability of its shares.

6. **Limited liability:** The novel idea of limited liability was for the first time introduced in 1857 by the Joint Stock Companies Act, 1856. Any person can participate in the share capital of an incorporated company and limit his liability to the extent of his participation.

Limited liability, in other words, means, the members cannot be called upon, in case of liquidation or winding up of the company, to contribute more than what has been agreed by them to subscribe, by way of participation in the share capital of the company. Unlike a partnership concern where the liability of each partner is unlimited and he can be called upon to shell out the last penny in his pocket to meet the liabilities of the partnership concern; in an incorporated company, the members can be called upon to contribute only to the extent of their unpaid up capital on the shares subscribed

by them. This secures the members and encourages large-scale investments in an incorporated form of organisation.

7. **Common seal:** The company has a separate legal existence under its own common seal. It can enter into contracts with outsiders, with its Directors or with its members. The common seal of the company gives it an independent existence.

8. **Separate property:** The company being a distinct and legal personality can own, enjoy and dispose off property in its own name. It is the owner of its capital and assets though contributed by its members. The shareholders are not the owners of the company's property. In *Hyderabad (Sind) Electric Supply Co. v. Union of India* [AIR 1959 Punj. 199], it was held that the property of the company is not the property of the shareholders. It is the property of the company.

There is nothing to warrant the assumption that a shareholder has any interest in the property of the company, which is a juristic person and which is entirely distinct from the shareholders [*K.S. Mothilal v. K.S. Kasimaris Ceramique (P) Ltd.* (2004) 50 SCL 116 (Mad.)].

9. **Capacity to sue and be sued:** A company can sue and be sued in its corporate name.

The company's right to sue arises when some loss is caused to the company, or the property or the personality of the company, as distinct from a loss occasioned to the directors of the company. A company is a person separate from its members, may even sue one of its own members for libel [*Floating Services Ltd. v. MV San Fransceco Dipalola* (2004) 52 SCL 762 (Guj.)].

Both in England and India, it is well established, that the range of functions that may be performed by a company incorporated under the Companies Act is extremely wide. Public companies and private companies, functioning under the Companies Act 2006 in England, the Companies Act 1956 in India, (now under the Companies Act, 2013) have considerable social and economic importance, but public companies are more highly regulated than private companies. Private companies are not authorized to offer any securities to the public. Financial Services and Market Act, 2000 (FSMA) in England generally deals with issue of securities to the public, including listing Rules, the Prospectus Rules, and continuing obligation contained in the Disclosure and Transparency Rules etc.

The Companies Act 1956 in India was enacted with the object to protect the interests of a large number of shareholders, safeguard the interests of the creditors to attain the ultimate ends of social and economic policy of the Government. Provisions have also been incorporated making provisions for prospectus, allotment and other matters relating to issue of shares and debentures etc. (Parliament has now repealed the Companies Act, 1956 with the Companies Act, 2013 with similar Regulations on Public Companies). Parliament has also enacted the Securities and Exchange Board of India (SEBI) Act to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market. SEBI was established in the year 1988 to promote orderly and healthy growth of the securities market and for investors' protection. SEBI Act, Rules and Regulations also oblige the public companies to provide high degree of protection to the investor's rights and interests through adequate, accurate and authentic information and disclosure of information on a continuous basis [*Sahara India Real Estate Corporation Limited v. Securities and Exchange Board of India* (2013) 1 SCC 1].

Types of companies:

1. **Royal Charter or Chartered Companies:** These companies are incorporated under special Royal Charter issued by the King or Queen. Their powers and actions are governed by the Charter *for example*, East India Company, Bank of England, etc. Such companies are treated as foreign companies in India.

2. **Statutory Companies:** These companies are formed under the Special Statutory Act of the Parliament or State Legislature, *for example*, Reserve Bank of India, State Bank of India, Industrial Finance Corporation of India, Life Insurance Corporation of India, State Trading Corporation, etc. These companies are governed by the Act of Parliament or by State Legislature. These companies are mostly public undertakings and are formed with the main object of public utilities and not for profits. Any change in the working of these companies is regulated by Parliament or Legislative amendments only.

3. **Registered Companies under the Act:** Companies registered under the Companies Act, 2013 or under any previous Companies Act, are companies registered under the Companies Act.

Types of registered companies:

Companies registered under the Companies Act are as follows:

1. **Companies limited by shares** [Secs.2(22) and 3(2)(a)]:

Companies limited by shares is 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. These types of companies have a share capital and the liability of each member of the company is limited by the Memorandum to the extent of face value of shares subscribed by him. In other words, during the existence of the company or in the event of winding up, a member can be called upon to pay the amount remaining unpaid on the shares subscribed by him. Such a company is called company limited by shares. A company limited by shares may be a public company or a private company. These are the most popular types of companies.

A. Private company [Secs.2(68), 2(91) and 3(1)(b)]:

'Private company' means a company which has a minimum share capital as may be prescribed (the condition of having a minimum paid up share capital of Rs.1 lac is omitted w.e.f. 29.05.2015). A private company by its articles:

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to 200;

(iii) prohibits any invitation to the public to subscribe for any securities of the company.

Where two or more persons hold one or more shares in a company jointly, they shall be treated a single member. 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, shall not be included in the number of members. A private company may be limited by shares, or limited by guarantee and having share capital or limited by guarantee and having no share capital.

Advantages of a private limited company: A private limited company can be started with just two members. Liability of each shareholder/member is limited to the extent of the unpaid amount on his shares. Personal assets of a shareholder cannot be attached. A private limited company can have a minimum of only two directors. However, at least one director on the Board of Directors must have stayed in India for a total period of not less than 182 days in the previous calendar year.

A private limited company has a perpetual succession. It need not issue prospectus for issue of its shares as the shares are allotted by private placement.

Disadvantages of a private limited company: The transfer of shares is restricted as its shares are not traded in the market. Public cannot be invited to subscribe to its shares. As private limited company is owned by private owners, it faces difficulties in raising finances from banks and financial institutions. Inviting deposits is also restricted.

Conversion of private company into One Person Company: A private company having a paid up capital of Rs.50 lacs or less and average annual turnover during the relevant period is Rs.2 crore or less, may convert itself into One Person Company by passing a special resolution in the general meeting after following the procedure under Rule 7 of Companies (Incorporation) Rules, 2014 (*discussed below*). 'Turnover' means the gross amount of revenue recognized in the profit and loss account from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year.

B. Public company [Secs.2(71) and 3(1)(a)]:

'Public company' means a company which is not a private company and has a minimum share capital as may be prescribed. The condition of having a minimum paid-up share capital of Rs.5 lacs is omitted with effect from 29.05.2015.

Seven or more persons may form a public company for any legal purpose by subscribing their names to a memorandum and complying with the provisions of the Act in respect of the registration. A public company may be limited by shares, or limited by guarantee and having share capital or limited by guarantee and having no share capital.

Advantages of a public limited company: A public limited company can raise capital from the public by issuing shares through stock markets and by issue of bonds and debentures by way of unsecured debts. However, the raising of capital is based on the financial performance and integrity of the company. The shares of a public limited company are freely transferable as they are purchased, sold and traded in the market. Its minimum directors are 3 and maximum 15 elected from the shareholders by the shareholders of the company in annual general meetings. A bigger Board of Directors benefits all shareholders in terms of transparency.

Disadvantages of a public limited company: Public limited companies are strictly regulated. It is required to publish its complete financial statements quarterly and annually for total transparency in its operations. The market value of the shares is accordingly determined. The issue of prospectus is mandatory to invite public to subscribe to its securities. The costs involved are huge and heavy as it has to also prepare reports and make disclosures under Securities and Exchange Board of India (SEBI) Regulations besides engaging specialist accountants, underwriters, etc. The management has to protect and safeguard its interest as company owners by holding at least 51% of the shares in a company.

No independent decisions can be taken. Majority shareholders are accountable to minority shareholders on the management and finances of the public limited company. Compliances under SEBI Regulations place restrictions both on the Board composition and its management. The management is answerable to several regulatory authorities including Stock Exchange with which it is registered. All internal business information is to be made public by regular reports. The managerial remuneration is also restricted. The liability for mismanagement of the affairs of the company by officers and directors is much more than the management of the private limited company to its shareholders and other stakeholders including banks and financial institutions. Management is expected to make and distribute profit which is an added burden on the public limited company to maintain its goodwill in the market which determines the price of its shares.

Deemed public company [Proviso to Sec.2(71)]:

A company which is a subsidiary company, not being a private company shall be deemed to be a public company, where such subsidiary company continues to be a private company by its articles.

Procedure for conversion of a private company to a public company and vice-versa [Secs.14, 15, 18 & Rule 33]:

A private company may convert itself into a public company or a public company may convert itself into a private company by a special resolution altering its articles subject to the conditions contained in its memorandum. A private company shall alter its articles in such a manner that no longer the restrictions and limitations which are required to be included in the articles of a company are included. A private company, from the date of such alteration, shall cease to be a private company.

Conversion of a public company into a private company shall not take effect except with the approval of the National Company Law Tribunal (Tribunal).

For effecting the conversion of a private company into a public company or vice-versa, an application shall be filed with the registrar along with fee. In case of conversion of public company into a private company, a copy of order of the Tribunal approving the alteration shall be filed with the registrar with fee together with printed copy of altered articles within fifteen days from the date of the receipt of the order from the Tribunal.

Any alteration of the articles after being registered with the Registrar shall be valid as if it were originally in the articles. Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be.

In *Hindustan Lever Ltd. v. Bombay Soda Factory* [AIR 1964 Mys. 173], it has been held that on such conversion, no new company springs into existence. When a private limited company is converted into a public limited company, apart from the change in its name, the constitution and the entity of the company is not affected in any other manner and legal proceedings instituted by its former name can be continued by its new name [*Solvex Oils and Fertilizers v. Bhandari Cross-fields (P) Ltd.* (1978) 48 Comp. Cases 260].

Conversion of registered companies [Sec.18]:

Any registered company may convert itself as a company of other class by alteration of memorandum and articles of the company on compliance of the provisions applicable for registration of such company of other class. The Registrar shall, on an application made by the company after satisfying himself that the provisions applicable for registration of company have been complied with, close the former registration of the company and after registering the documents, issue a certificate of incorporation in the same manner as its first registration. Such a conversion shall not affect any debts, liabilities, obligations or contracts entered into by or on behalf of the company before conversion. Such debts, liabilities, obligations and contracts may be enforced in the manner as if such conversion had not been done.

Distinction between private company and public company:

The incorporation of a public and a private company depends on the nature of project and requirement of funds. A private company is owned by private owners while a public company has public in general as shareholders. Liability of each shareholder/member is limited to the extent of individual shareholding only. Many of privileges enjoyed by a private company under Companies

Act, 1956 have been withdrawn under Companies Act, 2013. Introduction of Limited Liability Partnership under the Limited Liability Partnership Act, 2008 has introduced more regulations on a private limited company under Companies Act, 2013. The distinguishing features between the two are:

(i) ***Name:*** Words 'private limited company' is affixed to the name of the private company. The word 'limited' is affixed to the name of the public company.

(ii) ***Extent of members:*** In a private limited company, minimum number of members are two and maximum are 200. In a public limited company, minimum number of members are seven and maximum unlimited.

(iii) ***Extent of directors:*** Minimum number of directors in a private limited company are two and in public limited company, minimum number of directors are three and maximum are fifteen.

(iv) ***Independent directors:*** In case of a public limited company, which is listed, at least $1/3^{rd}$ of its directors are required to be independent directors, while a private limited company, is not required to do so.

(v) ***Capital:*** Minimum capital for the registration of a private limited company is Rs.1 lac while the minimum capital for the registration of a public limited company is Rs.5 lacs. Subsidiary of public limited company is deemed to be a public limited company.

(vi) ***Raising of capital:*** A public limited company can raise capital from public by issuing shares, bonds and debentures. A private limited company can raise capital by private placement of shares or only by Rights issue.

(vii) ***Subscribers:*** A public limited company can invite the general public to subscribe to its share capital through Initial Public Offer (IPO), while a private limited company cannot do so.

(viii) ***Listing:*** Securities offered in public offer by a public limited company to be listed in recognised Stock Exchange. This provision is not applicable to a private limited company.

(ix) ***Trading of shares:*** The shares of a public limited company are traded in the market at least on one recognised Stock Exchange, while the shares of a private limited company are not traded.

(x) ***Dematerialisation of shares:*** A public limited company on public offer of its securities, can issue securities only in dematerialised form. This is not applicable to a private limited company.

(xi) ***Prospectus:*** A public limited company has to issue a prospectus for public issue of shares or its securities by way of initial public offer (IPO), Right issue or Bonus issue, while the private limited company need not issue any prospectus as it does not invite public to subscribe its shares.

(xii) ***Transfer of shares:*** In a public limited company shares can be sold in the market under Stock Exchange Board of India (SEBI) regulations and restrictions, while in a private limited company transfer of shares is restricted and the regulations of SEBI are not applicable.

(xiii) ***Business information:*** A public limited company is required to make public all internal business information by quarterly and annual reports about business operations, financial

position with complete financial statements, remuneration of directors and officers, etc., while a private limited company is not required to do so.

(xiv) ***Quorum at general meetings:*** The quorum for a public limited company is 5 members present in case where the public limited company has 1000 members, 15 where members are more than 1000 and upto 5000 and 30 in case of members exceeding 5000, while in case of private limited company, 2 members personally present form a quorum.

(xv) ***Managerial remuneration:*** Managerial remuneration in a public limited company is restricted to 11% of net profits subject to conditions or at least Rs.30 lacs per annum depending upon the paid up capital of a public limited company. There is no such restriction in a private limited company.

(xvi) ***Deposits:*** A public limited company is allowed to invite deposits if its share capital is Rs.100 crore or more or turnover is Rs.500 crore or more. Private limited company is not allowed to invite deposits from public.

(xvii) ***Internal audit:*** In case of a public limited company, where paid up capital is Rs.50 crore in a preceding financial year or turnover is of Rs.200 crore in a preceding financial year or loans from banks or non-banking financial companies (NBFCs) is Rs.100 crore in a preceding financial year or public deposit is of Rs.25 crore in previous financial year, provisions of internal audit are applicable. In case of a private limited company, internal audit provisions are applicable where turnover is of Rs.200 crore in previous financial year or loans from banks or NBFCs is Rs.100 crore in a preceding financial year.

(xviii) ***Annual evaluation:*** In a public limited company, where a paid up share capital is Rs.25 crore or more, the details of annual evaluation of the affairs of the company to be set out in the Board's report. This is not applicable to a private limited company.

(xix) ***Rotation of auditors:*** In the case of a public limited company, where paid up capital is Rs.20 crore or more, provisions of rotation of auditors is applicable. This provision is applicable to a private limited company, where its paid up capital is Rs.10 crore or more.

(xx) ***Retirement by rotation:*** In a public limited company, at least 2/3^{rds} of total numbers of directors are liable to retire by rotation at every annual general meeting, but are eligible of being reappointed in the annual general meeting. This provision is not applicable to a private limited company.

(xxi) ***Contract of employment:*** In case of a public limited company, it is required to enter into contract of employment with Managing Director and Whole-time Director. In case of a private limited company, this provision is optional.

(xxii) ***Small company:*** If a paid up share capital of a private limited company does not exceed Rs.50 lacs and its turnover as per last audited accounts does not exceed Rs.2 crore, a private limited company is classified as a small company. There is no such concept in a public limited company.

C. Listed company [Sec.2(52)]:

Listed company is a company which has any of its securities listed on any recognized stock exchange is a listed company.

D. Holding company and subsidiary company [Secs.2(46), 2(87) & 19]:

In relation to one or more other companies, a holding company means a company of which such companies are subsidiary companies. 'Company' includes any body corporate.

A subsidiary company means a company in which the holding company either controls the composition of the Board of Directors or 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. Prescribed classes of holding companies shall not have layers of subsidiaries beyond the prescribed numbers. Layer in relation to a holding company means its subsidiary or subsidiaries. Total share capital is aggregate of paid-up equity share capital and convertible preference share capital.

Deemed subsidiary company: A 'subsidiary company' in relation to the holding company means a company in which the holding company controls the composition of the Board of Directors or exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies. A company shall be deemed to be a subsidiary company of the holding company even if the control of Board of Directors or control of total voting power is of another subsidiary company of the holding company. 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 majority of the directors.

Subsidiary company not to hold shares in its holding company: No company shall, either by itself or through its nominees, hold any shares in its holding company. No holding company shall allot or transfer its shares to any of its subsidiary companies. Any such allotment or transfer of shares of a company to its subsidiary company shall be void. However, in following cases such a restriction shall not apply:

(a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

(b) where the subsidiary company holds such shares as a trustee; or

(c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Such a subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or a trustee. Shares of a holding company which is a company limited by guarantee or an unlimited company not having a share capital shall be construed as a reference to the interest of its members, whatever be the form of interest.

It is well accepted that a subsidiary and its parent company are totally distinct tax payers. Even though a subsidiary may normally comply with the request of a parent company, it is not just the puppet company. The difference is between having power or having a persuasive position. The decisive criteria is whether the parent company's management has such steering interference with the subsidiary's core activities that subsidiary can no longer be regarded to perform those activities on the authority of its own executive directors [*Vodafone International Holdings B.V. vs. Union of India* (2012) 6 SCC 613].

E. Small company [Sec.2(85)]:

A small company is a company other than a public company where:

(a) paid-up share capital does not exceed Rs.50 lacs or such higher amount as may be prescribed which shall not be more than Rs.10 crore;

(b) turnover as per profit and loss account for the immediately preceding financial year does not exceed Rs.2 crore or such higher amount as may be prescribed which shall not be more than Rs.100 crore.

However, the provisions of small company shall not apply to:

(a) a holding company or a subsidiary company;

(b) a company registered with charitable objects, etc.;

(c) a company or body corporate governed by any Special Act.

F. Associate company [Sec.2(6)]:

A company in which another company has a significant influence, but which is not a subsidiary company of the company having such influence is an associate company. A joint venture company is also an associate company. A 'joint venture company' means a joint arrangement whereby the parties that have joint control of the arrangement and have rights to the net assets of the arrangement. 'Significant influence' means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.

G. Body corporate [Sec.2(11)]:

A body corporate or a corporation includes a company incorporated outside India but does not include:

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

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

2. **Company limited by guarantee** [Secs.2(21), 3(2)(b) and 4(7)]:

Company limited by guarantee is 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 it being wound up. These types of companies may or may not have a share capital. Each member promises to pay a fixed sum of money specified in the Memorandum in the event of liquidation of the company for payment of the debts and liabilities of the company. This amount promised by him is called 'Guarantee'.

The provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

The Articles of Association of the company state the number of members with which the company is to be registered. Such a company depends for its existence on entrance and subscription fees. The liability of the members is limited to the extent of the guarantee and the face value of the shares subscribed by him, if the company has a share capital. It may be a public company or a private company or One Person Company. The amount guaranteed by each member is in the nature of reserve capital. This amount cannot be called upon except in the event of winding up of the company.

Non-trading or non-profit companies formed to promote culture, art, science, religion, commerce, charity, sport, etc., are generally formed as companies limited by guarantee under section 8 of the Companies Act, 2013.

Procedure for conversion of a company limited by guarantee into a company limited by shares [Rule 39 of Companies (Incorporation) Rules, 2014]:

A company limited by guarantee may convert into a company limited by shares, provided it is not a company registered under section 25 of the Companies Act, 1956 or under section 8 of the Companies Act, 2013, by following procedure:

(i) a special resolution is passed by its members authorising such a conversion omitting the guarantee clause in its memorandum of association and altering the articles of association to provide for the articles as are applicable for a company limited by shares;

(ii) shall have a share capital equivalent to the guarantee amount;

(iii) a copy of the special resolution and an application with the altered memorandum of association and altered articles of association, a list of members with the number of shares held aggregating to a minimum paid-up capital which is equivalent to the amount of guarantee hitherto provided by its members, shall be filed with the Registrar of Companies within thirty days from the date of passing of the same along with fee.

The Registrar of Companies shall take a decision on the application within thirty days from the date of receipt of the application complete in all respects and upon approval, the company shall be issued with a certificate of incorporation.

3. **One person company** [Sec.2(62), 3(1)(c), Proviso to 3(1) and Rules 3 & 4 of Companies (Incorporation) Rules, 2014 as amended by Companies (Incorporation) Amendment Rules, 2016] [*Fees referred herein and elsewhere in the text are as prescribed in the Companies (Registration Offices and Fees) Rules, 2014*]:

One Person Company (OPC) is a company which has only one person as member. One person may form a company for any lawful purpose as OPC which is a private company by subscribing his name to a memorandum and complying with the provisions of the Act in respect of registration. Only a natural person who is an Indian citizen and resident in India shall be eligible to incorporate an OPC and shall be a nominee for the sole member of OPC. A natural person shall not be a member of more than one OPC at any point of time and the said person shall not be a nominee of more than one OPC. Thus, no person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.

A person 'resident in India' means a person who has stayed in India for a period of not less than 182 days during the immediately preceding financial year.

OPC as a private company may be limited by shares having a share capital, or limited by guarantee and having share capital or limited by guarantee and having no share capital. Such a company cannot be incorporated or converted into a company under section 8 of the Act (*Company registered with charitable objects below*). Thus, OPC either has share capital or has no share capital. Such a company cannot carryout Non-Banking Financial Investment activities including investment in securities of any body corporate. OPC can convert itself voluntarily into any kind of a company only after two years from the date of incorporation of OPC.

When a single person holds almost all the shares of the company it is called one man company. Such a company has its legal personality if it complies with the necessary requirements of registration [*Salomon v. A. Salomon & Co. Ltd. - discussed above*]. Such companies may be public or private companies, though usually they are private companies.

The memorandum of OPC shall indicate the name of the other person as nominee, with his prior written consent, who shall, in the event of the subscriber's death or his incapacity to contract become the member of OPC. The written consent of such person shall also be filed with the Registrar at the time of incorporation of OPC along with its memorandum and articles. Such other person may withdraw his consent. The sole member of OPC may nominate another person as nominee within fifteen days of receipt of notice of withdrawal and send such intimation to the company by indicating the name in the memorandum along with written consent of such other person nominated. The company shall intimate the Registrar any such change within thirty days of receipt of notice of withdrawal of consent and intention of the name of another person nominated by the sole member with fee. Any such change in the name of the person shall not be deemed to be an alteration in the memorandum. A person so nominated shall, in the event of incapacity or death of sole member shall become member of OPC. Company shall file within thirty days of such conversion, nomination with the Registrar and intimation to that effect.

One Person Company to convert itself into a public company or a private company [Rule 6 of Companies (Incorporation) Rules, 2014]:

Where the paid-up share capital of an OPC exceeds Rs.50 lacs or its average annual turnover during the relevant period exceeds Rs.2 crore, it shall cease to be entitled to continue as OPC and shall be required to convert itself into a private company or a public company within six months of the date on which its paid-up share capital is increased beyond Rs.50 lacs or the last day of the relevant period during which its average annual turnover exceeds Rs.2 crore. OPC can get itself converted into a private company with minimum of two members and two directors or a public company with at least seven members and three directors.

Within a period of sixty days from the above applicability, the OPC shall alter its memorandum and articles by passing a resolution to give effect to the conversion and to make necessary changes incidental thereto. OPC shall also give a notice to the Registrar within the said period of sixty days of the OPC having seized to be OPC and that it is required to convert itself into a private company or a public company by virtue of its share capital or average annual turnover exceeding the above limits.

Procedure for conversion of a private company into One Person Company [Rule 7 of Companies (Incorporation) Rules, 2014]:

A private company, other than a company registered under section 8 of the Act (company formed for charitable objects), having a paid up share capital of Rs.50 lacs or less and average annual turnover during the relevant period is Rs.2 crore or less, may convert itself into OPC by passing a special resolution in the general meeting. Before passing such resolution, the company shall obtain no objection in writing from members and creditors. The OPC shall file copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution. The company shall file an application for its conversion into OPC along with fees, by attaching the following documents:

(i) a declaration of the directors of the company by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, that the paid-up share capital company is Rs.50 lacs or less or average annual turnover is less than Rs.2 crore, as the case may be;

(ii) the list of members and list of creditors;

(iii) the latest Audited Balance Sheet and the Profit and Loss Account; and

(iv) the copy of No Objection letter of secured creditors.

On being satisfied of compliance of above requirements, the Registrar shall issue the certificate.

Contract by One Person Company [Sec.193]:

In case of One Person Company limited by shares or by guarantee entering into a contract with the sole member of the company who is also the director of the company, then unless the contract is in writing, the company shall ensure that the terms of the contract or offer are contained in a memorandum or are recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract. This provision will not apply to OPC where contracts are entered into by OPC in the ordinary course of its business. The company shall inform the Registrar about every contracts entered into by the company and recorded in the minutes of the meeting of its Board of Directors within a period of fifteen days of the date of approval by the Board of Directors.

4. **Company with unlimited liability** [Sec.2(92)]:

Company with unlimited liability is the company where the liability of the members is unlimited like an ordinary partnership firm, in proportion to his interest in the company. A company not having any limit on the liability of its members is called an 'unlimited company'. An unlimited company may or may not have a share capital. If it has a share capital it may be a public company or a private company. The articles of an unlimited company shall state the number of members with which the company is to be registered.

Procedure for conversion of unlimited liability company into a limited liability company by shares or guarantee [Sec.65 and Rule 37 of Companies (Incorporation) Rules, 2014 as amended by Companies (Incorporation) Amendment Rules, 2016]:

An unlimited company having a share capital may, by a resolution for conversion/registration as a limited company:

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up; and/or

(b) provides that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up [Sec.65].

An unlimited liability company with or without share capital may convert itself into a limited liability company by shares or guarantee, by passing a special resolution in a general meeting and thereafter an application shall be filed as under:

(i) within seven days from the date of passing of the special resolution in a general meeting publish a notice of such conversion in two newspapers (one in English and one in vernacular language) in the district in which the registered office of the company is situated;

(ii) place the notice on the website of the company, if any, inviting objections to be intimated to the Registrar and the company within twenty one days of the date of publication and cause a copy of such notice to be dispatched to its creditors and debenture holders;

(iii) file an application with the Registrar within forty five days of passing of the special resolution along with the fees by attaching following documents:

(a) notice of the general meeting along with explanatory statement;

(b) copy of the resolution passed in the general meeting;

(c) copy of the newspaper publication;

(d) certified copy of altered memorandum of association and articles of association;

(e) declarations signed by not less than two directors of the company on the affairs, debts, liabilities, solvency, etc. of the company;

(f) complete list of creditors and debenture holders;

(g) solvency certificate obtained from the auditors;

(h) no objection certificate from sectoral regulator, if applicable;

(i) no objection certificate from all secured creditors, if any.

The Registrar shall, after considering the application and objections, if any, received within thirty days from the date of receipt of application complete in all respects, decide on approval or rejection of conversion. If approved the certificate of incorporation of conversion shall be issued by the Registrar.

Conditions to be complied with subsequent to conversion:

(i) the company shall not change its name for a period of one year from the date of such conversion;

(ii) the company shall not declare or distribute any dividend without satisfying past debts, liabilities, obligations or contracts incurred or entered into before conversion, which shall not include secured debts due to banks and financial institutions.

When conversion shall not be allowed?

In following cases an unlimited liability company shall not be eligible for conversion into a company limited by shares or guarantee:

(a) its net worth is negative; or

(b) an application is pending either under Companies Act, 1956 or Companies Act, 2013 for striking off its name; or

(c) the company is in default of any of its annual returns or financial statements; or

(d) a petition for winding up is pending against the company; or

(e) the company has not received amount due on calls in arrears, from its directors for a period of not less than six months from the due date; or

(f) an inquiry, inspection or investigation is pending against the company.

Net worth [Sec.2(57)]: 'Net worth' means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account and debit or credit balance of profit and loss account.

5. **Producer company** [Sec.465(1) first proviso]:

Sections 581-A to 581-ZT inserted by Companies (Amendment) Act, 2002 to Companies Act, 1956, introducing the registration of producer company limited by shares as if it is a private

company, shall continue until a Special Act is enacted for producer companies. However, till date no Special Act is enacted for producer companies.

The introduction of producer company by Companies (Amendment) Act, 2002 with effect from 06.02.2003 provides for corporate governance of members joining together to achieve specified objects. The registration of a producer company enables incorporation of co-operatives as companies and conversion of existing co-operatives into companies on optional basis.

Producer company means a body corporate registered under the Companies Act, 1956 as a 'producer company' having following objects:

(a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the members or import of goods or services for their benefit;

(b) processing, including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its members;

(c) manufacture, sale or supply of machinery, equipment or consumables mainly to its members;

(d) providing education on the mutual assistance principles to its members and others;

(e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its members;

(f) generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce;

(g) insurance of producers or their primary produce;

(h) promoting techniques of mutuality and mutual assistance;

(i) welfare measures or facility for the benefit of members as may be decided by the Board;

(j) any other activity, ancillary or incidental to any of the above activities or other activities which may promote the principles of mutuality and mutual assistance amongst the members in any other manner;

(k) financing of procurement, processing, marketing or other above specified activities which include extending of credit facilities or any other financial services to its members.

Every producer company shall deal primarily with the produce of its active members for carrying out any of the above objects. 'Active member' is a member who fulfils the quantum and period of patronage of the producer company as may be required by the articles. 'Producer' means any person engaged in any activity connected with or relatable to any primary produce. A 'member' means a person or producer institution (whether incorporated or not) admitted as member of a producer company and who retains the qualification necessary for continuance as such. 'Producer institution' means a producer company or any other institution having only producers or producer company as its members whether incorporated or not having any of the above objects and which agree to make use of the services of the producer company as provided in its articles.

'Patronage' means the use of services offered by the producer company to its members by participation in its business activities. 'Patronage bonus' is the payment made by a producer company out of its surplus income to the members in proportion to their respective patronage [Secs.581-A(a,d,h,i,k,l,m) & 581-B of 1956 Act] [Secs.581-F to 581-I, 581-O to 581-Y, 581-ZA, 581-ZE to 581-ZP of 1956 Act].

Primary produce: 'Primary produce' means:

(i) produce of farmers arising from agricultural (including animal husbandry, horticulture, floriculture, pisciculture, viticulture, forestry, forest products, re-vegetation, bee raising and farming plantation products), or from any other primary activity or service which promotes the interest of the farmers or consumers; or

(ii) produce of persons engaged in handloom, handicraft and other cottage industries;

(iii) any product resulting from any of the above activities, including by-products of such products;

(iv) any product resulting from an ancillary activity that would assist or promote any of the aforesaid activity or anything ancillary thereto;

(v) any activity which is intended to increase the production of any of the above products or improve the quality thereof [Sec.581A(j) of 1956 Act].

Formation of producer company and its registration: Any ten or more individuals, each of them being a producer, or any two or more producer institutions or a combination of 10 or more individuals and producer institutions having above objects may form an incorporated company as a producer company.

If the Registrar is satisfied that all the requirements have been complied with in respect of registration and matters precedent and incidental thereto, within 30 days of the receipt of the documents required for registration, register the memorandum, the articles and other documents, if any, and issue a certificate of incorporation.

The producer company shall be a company limited by shares. On registration, the producer company shall become a body corporate as if it is a private company, without however, any limit to the number of members thereof. The producer company shall not under any circumstances, whatsoever, become or deemed to become a public company [Sec.581C of 1956 Act].

Option to Inter-State co-operative societies to become producer companies: Inter-State co-operative society means a multi-State co-operative society. It includes any co-operative society registered under any other law for the time being in force, which has, subsequent to its formation, extended any of its objects to more than one State by enlisting the participation of persons or by extending any of its activities outside the State, whether directly or indirectly or through an institution of which it is a constituent.

An Inter-State co-operative society with objects not confined to one State may make an application to the Registrar for registration as a producer company. On compliance with the requirements for registration, the Registrar shall, within a period of 30 days of the receipt of application, register such a society as a producer company. When an inter-State co-operative society is registered as a producer company, the words 'Producer Company Limited' shall form part of its name. Upon registration, the inter-State co-operative society shall stand transformed into a producer company. All properties and assets, moveable and immoveable including debts, liabilities, interests, privileges, obligations and all contracts entered into and belonging to inter State co-operative society, as on transformation date, shall vest in the producer company and/or shall be deemed to have been incurred, entered into, or engaged to be done by, with, or, for producer company. All fiscal and other concessions, licences, benefits and exemptions granted to inter State co-operative society shall be deemed to have been granted to the producer company. All directors in the inter State co-operative society shall continue in office for a period of one year from the transformation date. Every officer shall continue to hold his office with same tenure and privileges.

Any producer company may make an application to the High Court for re-conversion to the inter-State co-operative society [Secs.581-A(e), 581-J, 581-L, 581-M, 581-N & 581-ZS of 1956 Act].

Effect of incorporation of inter-State co-operative society as producer company: Every shareholder of the inter-State co-operative society, immediately before the date of registration of the producer company, shall be deemed to be registered on and from that date as a shareholder of the producer company to the extent of the face value of the shares held by such shareholder [Sec.581K of 1956 Act].

Membership of producer company — Rights, obligations and voting rights: Membership is open to all. However, a member of a producer company shall necessarily be a 'primary producer', that is a person engaged in an activity connected with, or relatable to primary produce. A member should participate and avail of the facilities or services of the society and should accept his duties. Spirit of mutual co-operation and assistance is the basis for membership of a producer company.

No person who has any business interest which is in conflict with the producer company shall become a member of that company. A member who acquires any such business interest shall cease to be a member of that company and be removed as a member in accordance with the articles.

Share capital shall consist of equity shares only. Shares of a member shall be in proportion to the patronage of that company. The liability of its members shall be limited by the memorandum to the amount, if any, unpaid on the shares respectively held by each member. The voting rights of a member shall be based on a single vote for every member, irrespective of his shareholding. In case of equality of votes, the Chairman or the person presiding shall have a casting vote. The voting rights of a producer institution shall be determined on the basis of its participation in the business of the producer company in the previous year, as may be specified in the articles. However, during the first year of registration of a producer company, the voting rights shall be determined on the basis of the shareholding of such producer institution.

Where the membership consists of individuals and producer institutions, the voting rights shall be computed on the basis of a single vote for every member. Any producer company, if authorised by its articles, may provide for special rights to active members in any special or general meeting.

Members' equity may be transferred with the previous approval of the Board of Directors, but only to active member at par value. In case of death, shares will be transferred to his nominee provided he is a producer, failing which, the nominee will have to surrender the shares at value determined by the Board.

Every member shall initially receive only such value for the produce or products pooled and supplied as the Board may determine. The withheld price which is part of the price due and payable may be disbursed later in kind or by allotment of equity shares in proportion to the produce supplied to the producer company during the financial year as may be decided by the Board.

Every member shall, on the share capital contributed, receive only a limited return. Every such member may be allotted bonus shares upon recommendation of the Board and passing of resolution in general meeting by capitalisation of amounts from general reserves in proportion to the shares held by the member. The surplus, if any, after providing for payment of limited returns and reserves, may be distributed as patronage bonus amongst the members in proportion to their participation in the business of the producer company, either in cash, or by way of allotment of equity shares, or both, as may be decided by the members at the general meeting [Secs.581-D, 581-E, 581-Z, 581-ZB to 581-ZD & 581-ZJ of 1956 Act].