CORPORATE ADMINISTRATION
(Including Skill Development)

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Corporate Administration

(Including Skill Development)

(As per New Syllabus (CBCS) for First Semester, B.Com., Bangalore University w.e.f. 2014-15)

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Preface

It gives us immense pleasure in presenting the second edition of the book titled “Corporate Administration” under the new CBCS syllabus of first semester B.Com. of Bangalore University. The book is not the new one with the fulcrum of the subject information which is added by Bangalore University on the revised syllabus under new dispensation.

The present book adequately takes care of the amendments of the Companies Act, 2013. The matter is presented in a lucid manner considering the ease of learning for the beginners in Corporate Administration phenomenon. The five chapters relating to Introduction to Company, Dimensions of Formation of Company, Company Administration, Corporate Meetings and Global Companies are comprehensively covered. The book is simple but profound and rich in comprehending all aspects of Corporate Administration. Every chapter begins with learning objectives and subsequently methodological arrangement of syllabus contents with the living examples. The chapter ends with objective, analytical and essay questions. The added feature of the book is giving skill development component materials and exercises. The book is more worthy to own and the constructive suggestions from the reading communities are expected to further strengthen the present edition.

We thank all the well-wishers, reading community and Almighty for the grace, encouragement and support. We also thank the Himalaya Publishing House Pvt. Ltd. for their keen interest in the book.

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OBJECTIVE
The objective is to enable the students to get familiarized with the existing Company Law and Secretarial Procedure.

Unit 1: INTRODUCTION TO COMPANY  

Unit 2: FORMATION OF A COMPANY  
Promotion Stage: Meaning of Promoter, Position of Promoter and Functions of Promoter, Incorporation Stage – Meaning and Contents of Memorandum of Association and Articles of Association, Distinction between Memorandum of Association and Articles of Association, Certificate of Incorporation, Subscription Stage – Meaning and Contents of Prospectus, Statement in Lieu of Prospects and Book Building, Commencement Stage – Document to be Filed, e-filing, Register of Companies, Certificate of Commencement of Business.

Unit 3: COMPANY ADMINISTRATION  
Key Managerial Personnel – Managing Director, Wholetime Directors, Companies Secretary, Chief Financial Officer, Resident Director, Independent Director, Auditors – Appointment – Powers – Duties and Responsibilities. Managing Director – Appointment – Powers – Duties and Responsibilities. Audit Committee, CSR Committee. Company Secretary – Meaning, Types, Qualification, Appointment, Position, Rights, Duties, Liabilities and Removal or Dismissal.

Unit 4: CORPORATE MEETINGS  
Corporate Meetings – Types of Meetings – Annual General Meeting – Extraordinary General Meetings – Board Meetings and Resolutions – Requisites of a Valid Meeting.

Unit 5: FORMATION OF GLOBAL COMPANIES  
Meaning – Types – Features – Legal Formalities – Administration.
SKILL DEVELOPMENT

- Drafting of Memorandum of Association, Drafting Articles of Association.
  Drafting Notice of Company Meetings – Annual, Special, Extraordinary and Board meetings.
- Drafting Resolutions of various meetings – different types.
- Chart showing Company’s Organization Structure.
- Chart showing different types of Companies.
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1.1 A BRIEF HISTORY ON INDIAN COMPANY LAW

Indian Company Law has a long history. In our country, a form of Joint Stock Company had come into existence in the middle of the 17th Century in South India; understandably, as it was here the Indian first came into contact with the European merchants. During the 17th century, there was a considerable expansion of trade between India and Europe and European companies were competing with each other in South India to buy Indian merchandise of which cotton textiles constituted a very important part. Then came the East India Company to India in the latter part of the 18th century. From then onwards, there was no going back and as times went by, numerous companies with huge capital investments came to be registered.

The Companies Act, 1956, is the successor to the Indian Companies Act of 1913 and is a consolidation of many successive Amendment Acts, Statutory rules and principles laid down in the decisions of the courts in India and in England. Several Acts were passed from 1850 onwards. The First Act, passed in 1850, was known as the Joint Stock Companies Act. This was followed by two Acts of 1857 and 1860; but the Act of 1866, which followed soon after, repealed all the previous enactments; and this Act itself was repealed in turn by the Act of 1882. This last mentioned Act remained on the statute book up to 1913, though, in the meantime, it was Indian Companies Act of 1913 was passed with the object of consolidating and amending the law relating to trading companies, and was mainly based upon the English Companies Act of 1908, with certain additional provisions to meet the peculiar business conditions obtaining in this country. Since the Indian Act closed followed the English Company Law, the decisions of the English Courts under the latter were also generally followed by the courts in India. This Act of 1913, however, did not provide for certain peculiarities of the Indian commercial world, such as the managing agency, and was therefore, found to be highly unsatisfactory in several respects in the course of its working. Eventually, extensive amendments were introduced in the Act by the Indian Companies (Amendment) Act of 1935, which came into operation on 15th January 1937. The vast number of amendments introduced by this Act of 1937, however,
involved a few omissions; but they were sought to be removed by frequent amendments in the subsequent years.

The Act of 1913 was, however, repealed by the present Companies Act (1956) which brought into force from 1st April 1956. This followed the acceptance by the Government of the recommendations of what is known as the Bhabha Committee which consisted of some Members of Parliament. This Committee submitted a detailed report in 1952 and a Bill incorporating the amendments suggested by it was introduced in the Lok Sabha in 1953 and became subsequently Act I of 1956. This Act, while adopting the scheme and most of the provisions of the UK Companies Act of 1948, marked a distinct improvement of the Act of 1913 in several respects and sought to ensure an efficient and honest management of companies governed by the Act.

The Companies Act, 1956, was amended several times. The most significant amendment so far was effected by the Companies (Amendment) Act, 2000.

1.2 GOVERNING ACT

The Companies Act, 1956 is an Act to consolidate and amend the law relating to companies and certain other associations. It has 658 Sections and 15 Schedules. It provides for the formation of company, powers and responsibilities of the directors and managers, raising of capital, holding company meetings, maintenance and audit of company accounts, powers of inspection and investigation of company affairs and regulating other affairs of the companies in India.

The Act applies to the whole of India and to all types of companies, whether registered under this Act or an earlier Act. But it does not apply to universities, co-operative societies, unincorporated trading, scientific and other societies.

1.3 OBJECTIVES OF THE COMPANIES ACT 1956

The following are the main objects as declared by C.D. Deshmukh, the then Financial Minister of Union Government.

1. Minimum standard of business integrity and conduct in promotion and management of companies;
2. Full and fair disclosure of all reasonable information relating to the affairs of the company;
3. Effective participation and control by the shareholders and the protection of their legitimate interests;
4. Enforcement of proper performance of their duties by the company management; and
5. Powers of intervention and investigation into the affairs of the companies where they are managed in a manner prejudicial to the interest of shareholders or to the interest of the public.

Administration

The Companies Act is administered by the Central Government through Department of Company Affairs and the Offices of Registrar of Companies, Official Liquidators, Public Trustees, Company Law Board, Director of Inspection, etc. The Registrar of Companies controls the task of incorporation of new companies and the administration of running companies.
The Companies Act, 1956, is a control measure used by the Government to regulate the functioning of the ‘Corporate Sector’ in India. A company incorporated in India under the Companies Act, 1956, being a legal personality, has to obey all the laws enacted by the Government of India for its creation, continuation and association with the parties of the outside world.

The main laws which will impinge upon the existence of a company in the corporate sector are:

- The Indian companies Act, 1956;
- Foreign Exchange Management Act, 1999;
- Laws on Foreign Investment in India;
- Laws on Financial Systems and Capital Markets;
- Immigration Laws; and
- Taxation laws of India.

1.4 COMPANIES ACT, 1956

In India, laws governing Companies are mainly to be found in the Companies Act, 1956. Voluminous and containing 658 Sections, 15 Schedules and several Rules, the Companies Act, 1956 is modeled on the English Companies Act.

The existence of a legal framework is perhaps the most significant aspect of the corporate environment. Not being an exception, the Indian company law, largely based on its English counterpart, streamlines the procedure for regulation of Indian companies and branches of foreign companies operating in India.

As understood under Companies Act, 1956, a company is an incorporated association registered under the Act, having an independent entity distinct from the members constituting it. Companies so incorporated can exist as public or private companies with or without limited liability.

1.5 MEANING AND DEFINITION OF A COMPANY

A company is an association of many persons who contribute money or money's worth to a common stock and employs it in some trade or business; and who shares the profit and loss (as the case may be) arising therefrom.

Under Halsbury’s Laws of England, the term “company” has been defined as a collection of many individuals united into one body under special domination, having perpetual succession under an artificial form and vested by the policies of law with the capacity of acting in several respects as an individual, particularly for taking and granting of property, for contracting obligation and for suing
and being sued, for enjoying privileges and immunities in common and exercising a variety of political rights, more or less extensive, according to the design of its institution or the powers upon it, either at the time of its creation or at any subsequent period of its existence. However, the Supreme Court of India has held in the case of State Trading Corporation of India v/s CTO that a company cannot have the status of a citizen under the Constitution of India.

Section 3 of the Companies Act, 1956 defines the word ‘Company’ as a company formed and registered under the Act or an existing company formed and registered under any of the previous company laws.

“Company” means a company formed and registered under the Companies Act of 1956 or an existing company as defined in the Act.

“Existing company” means a company formed and registered under any of the previous companies laws (i.e., Act of 1866, 1882 and 1913).

Company is a voluntary association of persons formed for the purpose of doing business, having a distinct name and limited liability. It is a juristic person having a separate legal entity distinct from the members who constitute it, capable of rights and duties of its own and endowed with the potential of perpetual succession.

The Indian Companies Act, 1956 defines a joint stock company as “a company limited by shares having a permanent paid-up or nominal share capital of fixed amount divided into shares also of fixed amount, held and transferable as stock and formed on the principle of having in its members only the holders of those shares or stocks and no other persons”.

Lord Lindley has described the company as “an association of many persons who contribute money or money’s worth to a common stock and employ it in some trade or business; and who share the profit and loss (as the case may be) arising therefrom”. The common stock so contributed is denoted in money and is ‘the capital’ of the company. The persons who contribute it, or to whom it belongs, are members. The proportion of capital to which each member is entitled is his ‘share’. The member may sell his share in the company, thus withdrawing himself and making someone else a member to whom he transfers shares. Thus, shares in a company are made transferable. As a natural consequence of transferability of share, the company has what is commonly known as perpetual succession. With the withdrawal of death of a member of a company, the latter does not come to an end. The life of the company is independent of lives of the members of the company. Members may come and members may go, the company continues until it is dissolved. This means that a company has its own status and personality distinct from that of its members.

Since the company is created with sanction of law and it not itself a human being, it is called ‘artificial’ and since it is clothed with certain rights and duties, it is called a person. A company is accordingly an artificial person, having its own personality, name, perpetual succession and a common seal.

A company has separate legal personality distinct from its members, the latter are not liable for the debts of the former except to the extent of the amount remaining unpaid on the shares which they have purchased. The liability of a member is limited by the nominal amount of shares.
1.6 FEATURES OR CHARACTERISTICS OF A COMPANY

A company as an entity has several distinct features which together make it a unique organization. The following are the defining characteristics of a company:

1. Separate Legal Entity

On incorporation under law, a company becomes a separate legal entity as compared to its members. The company is different and distinct from its members in law. It has its own name and its own seal, its assets and liabilities are separate and distinct from those of its members. It is capable of owning property, incurring debt, and borrowing money, having a bank account, employing people, entering into contracts and suing and being sued separately.

2. Limited Liability

The liability of the members of the company is limited to contribution to the assets of the company up to the face value of shares held by him. A member is liable to pay only the uncalled money due on shares held by him when called upon to pay and nothing more, even if liabilities of the company far exceeds its assets. On the other hand, partners of a partnership firm have unlimited liability, i.e., if the assets of the firm are not adequate to pay the liabilities of the firm, the creditors can force the partners to make good the deficit from their personal assets. This cannot be done in case of a company once the members have paid all their dues towards the shares held by them in the company.

3. Perpetual Succession

A company does not die or cease to exist unless it is specifically wound up or the task for which it was formed has been completed. Membership of a company may keep on changing from time to time but that does not affect life of the company. Death or insolvency of member does not affect the existence of the company.

4. Separate Property

A company is a distinct legal entity. The company’s property is its own. A member cannot claim to be owner of the company's property during the existence of the company.

5. Transferability of Shares

Shares in a company are freely transferable, subject to certain conditions, such that no shareholder is permanently or necessarily wedded to a company. When a member transfers his shares to another person, the transferee steps into the shoes of the transferor and acquires all the rights of the transferor in respect of those shares.

6. Common Seal

A company is an artificial person and does not have a physical presence. Therefore, it acts through its Board of Directors for carrying out its activities and entering into various agreements. Such contracts must be under the seal of the company. The common seal is the official signature of the company. The name of the company must be engraved on the common seal. Any document not bearing the seal of the company may not be accepted as authentic and may not have any legal force.

7. Capacity to Sue and Being Sued

A company can sue or be sued in its own name as distinct from its members.
8. Separate Management

A company is administered and managed by its managerial personnel, i.e., the Board of Directors. The shareholders are simply the holders of the shares in the company and need not be necessarily the managers of the company.

9. One Share-One Vote

The principle of voting in a company is one share-one vote. I.e., if a person has 10 shares, he has 10 votes in the company. This is in direct contrast to the voting principle of a co-operative society where the “One Member-One Vote” principle applies, i.e., irrespective of the number of shares held, one member has only one vote.

1.7 DISTINCTION BETWEEN COMPANY AND PARTNERSHIP

1. A Partnership firm is sum total of persons who have come together to share the profits of the business carried on by them or any of them. It does not have a separate legal entity. A company is association of persons who have come together for a specific purpose. The company has a separate legal entity as soon as it is incorporated under law.

2. Liability of the partners is unlimited. However, the liability of shareholders of a limited company is limited to the extent of unpaid share or to the tune of the unpaid amount guaranteed by the shareholder.

3. Property of the firm belongs to the partners and they are collectively entitled to it. In case of a company, the property belongs to the company and not to its members.

4. A partner cannot transfer his shares in the partnership firm without the consent of all other partners. In case of a company, shares may be transferred without the permission of the other members, in absence of provision to contrary in articles of association of the company.

5. In case of partnership, the number of members must not exceed 20 in case of banking business and 10 in other businesses. A Public company may have as many members as it desires subject to a minimum of 7 members. A Private company cannot have more than 50 members.

6. There must be at least 2 members in order to form a partnership firm. The minimum number of members necessary for a public limited company is seven and two for a private limited company.

7. In case of a partnership, 100% consensus is required for any decision. In case of a company, decision of the majority prevails.

8. On the death of any partner, the partnership is dissolved unless there is provision to the contrary. On the death of the shareholder, the company existence does not get terminated.

1.8 ILLEGAL ASSOCIATION

Any association which does not comply with the norms of Companies Act is called illegal association.

Under the Companies Act, 1956, not more than 10 persons can come together for carrying on any banking business and not more than 20 persons can come together for carrying on any other business, unless the association is registered under the
Companies Act or any other Indian law. Any association which does not comply with the above norms is an illegal association. Therefore, a partnership of more than 10 or 20 members, as the case may be, is an illegal association unless the registered under the Companies Act or any other Indian law.

However, this provision does not apply in the following cases:

1. A Joint Hindu Family business comprising of family members only. But where two or more Joint Hindu families come together for business through partnership, the total number of members cannot exceed 10 or 20 as the case may be, but in computing the number of persons, minor members of such family will be excluded.
2. Any association of charitable, religious, scientific trust or organization which is not formed with a profit motive.
3. Foreign companies.

When the number of members exceeds the prescribed maximum, members must register it under Companies Act or any other Indian law.

Consequences of Non-registration

An illegal association is not recognized by law. An illegal association cannot enter into any contract, cannot sue any members or any outsider, and cannot be sued by any members or outsiders for any of its debts. The members of the illegal association are personally liable for the obligations of the illegal association. A member may be liable to a fine of ` 1000. Any member of an illegal association cannot sue another member in respect of any matter connected with the association.

1.9 LIFTING OF CORPORATE VEIL

The advantages of incorporation are allowed to be enjoyed only by those who want to make an honest use of the ‘company’. In case there is a dishonest and fraudulent use of the facility on incorporation, the law lifts the Corporate Veil and identifies the members/persons who are behind the scene and are responsible for the perpetration of fraud.

In reality the business of the artificial person is always carried on for the benefit of some individuals. Since an artificial person is not capable of doing anything illegal or fraudulent, the notion of corporate personality might to be abandoned to identify the persons who are really guilty. This may be called as ‘Lifting the Corporate Veil’.

1.10 STEPS IN FORMATION OF JOINT STOCK COMPANY

It is very easy to establish a sole proprietorship business or a partnership firm as there is a few regulations to meet. But for the establishment of a company, a lot of formalities are to be complied with. The registration of the company is mandatory before starting its operation. The formation of a company, right from the origin of idea to establish a company goes through four different stages, like:

Step – I : Promotion
Step – II : Incorporation
Step – III : Raising of Capital
Step – IV : Commencement of Business
Step I: Promotion

Promotion of a business simply refers to all those activities that are required to be undertaken to establish a new business unit for manufacturing or distribution of any product or provide any service to the people. It starts with conceiving an idea of business or discovers an opportunity for doing a business, assess its feasibility and then take the necessary steps to launch the business unit. This involves ascertaining as to whether all the basic requirements such as land, building, raw material, machine, equipments etc. are available or not. If they are available one can assemble them, arrange the necessary funds and set up the business unit to give shape to the initial idea of establishing the business. The whole process is called business ‘promotion’ and the person who does it is called the ‘promoter’.

Step II: Incorporation

A sole proprietorship or partnership firm can be formed to carry out its business even without any registration. But a company cannot be formed or permitted to run its business without registration. In fact, a company comes into existence only when it is registered with the Registrar of Companies.

Step III: Raising of Capital

After the company is incorporated, the next stage is to raise the necessary capital. In case of a private limited company, funds are raised from the members or through arrangement from banks and other sources. In case of a public limited company, the share capital has to be raised from the public.

Step IV: Commencement of Business

In case of a private limited company, it can immediately start its business as soon as it is registered. However, in case of public limited company, a certificate known as ‘certificate of commencement of business’, must be obtained from the Registrar of Companies before starting its operation.

The details of each step in formation of Joint Stock Company have been elaborated in the next chapter.

1.11 HIGHLIGHTS OF COMPANIES ACT 2013

The 1956 Act has been in need of a substantial revamp for quite some time now, to make it more contemporary and relevant to corporates, regulators and other stakeholders in India. While several unsuccessful attempts have been made in the past to revise the existing 1956 Act, there have been quite a few changes in the administrative portion of the 1956 Act. The most recent attempt to revise the 1956 Act was the Companies Bill, 2009 which was introduced in the Lok Sabha, one of the two houses of Parliament of India, on 3 August 2009. This Companies Bill, 2009 was referred to the Parliamentary Standing Committee on Finance, which submitted its report on 31 August 2010 and was withdrawn after the introduction of the Companies Bill, 2011. The Companies Bill, 2011 was also considered by the Parliamentary Standing Committee on Finance which submitted its report on 26 June 2012. Subsequently, the Bill was considered and approved by the Lok Sabha on 18 December 2012 as the Companies Bill, 2012 (the Bill). The Bill was then considered and approved by the Rajya Sabha too on 8 August 2013. It received the President’s assent on 29 August 2013 and has now become the Companies Act, 2013.
The changes in the 2013 Act have far-reaching implications that are set to significantly change the manner in which corporates operate in India. This Act highlights the major changes as compared to the 1956 Act and the potential implications of these changes.

The 2013 Act has introduced several new concepts and has also tried to streamline many of the requirements by introducing new definitions. This chapter covers some of these new concepts and definitions in brief.

1. Companies

1.1 One-person company: The 2013 Act introduces a new type of entity to the existing list, i.e., apart from forming a public or private limited company. The 2013 Act enables the formation of a new entity a ‘one-person company’ (OPC). An OPC means a company with only one person as its member [section 3(1) of 2013 Act].

1.2 Private company: The 2013 Act introduces a change in the definition for a private company, interalia, the new requirement increases the limit of the number of members from 50 to 200 [Section 2(68) of 2013 Act].

1.3 Small company: A small company has been defined as a company other than a public company.
   (i) Paid-up share capital of which does not exceed 50 lakh INR or such higher amount as may be prescribed which shall not be more than five crore INR.
   (ii) Turnover of which as per its last profit-and-loss account does not exceed two crore INR or such higher amount as may be prescribed which shall not be more than 20 crore INR:

   As set out in the 2013 Act, this section will not be applicable to the following:
   - A holding company or a subsidiary company
   - A company registered under Section 8
   - A company or body corporate governed by any special Act [section 2(85) of 2013 Act]

1.4 Dormant company: The 2013 Act states that a company can be classified as dormant when it is formed and registered under this 2013 Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction. Such a company or an inactive one may apply to the ROC in such manner as may be prescribed for obtaining the status of a dormant company [Section 455 of 2013 Act].

2. Roles and responsibilities

2.1 Officer: The definition of officer has been extended to include promoters and key managerial personnel [Section 2(59) of 2013 Act].

2.2 Key managerial personnel: The term ‘key managerial personnel’ has been defined in the 2013 Act and has been used in several sections, thus expanding the scope of persons covered by such sections [Section 2(51) of 2013 Act].

2.3 Promoter: The term ‘promoter’ has been defined in the following ways:
   - A person who has been named as such in a prospectus or is identified by the company in the annual return referred to in Section 92 of 2013 Act that deals with annual return; or
• who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
• in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

The provison to this section states that sub-section (c) would not apply to a person who is acting merely in a professional capacity [Section 2(69) of 2013 Act].

2.4 Independent Director: The term ‘Independent Director’ has now been defined in the 2013 Act, along with several new requirements relating to their appointment, role and responsibilities. Further some of these requirements are not in line with the corresponding requirements under the equity listing agreement [Sections 2(47) and 149(5) of 2013 Act].

3. Investments

3.1 Subsidiary: The definition of subsidiary as included in the 2013 Act states that certain class or classes of holding company (as may be prescribed) shall not have layers of subsidiaries beyond such numbers as may be prescribed. With such a restrictive section, it appears that a holding company will no longer be able to hold subsidiaries beyond a specified number [Section 2(87) of 2013 Act].

4. Financial statements

4.1 Financial year: It has been defined as the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of current year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up [Section 2(41) of 2013 Act]. While there are certain exceptions included, this section mandates a uniform accounting year for all companies and may create significant implementation issues.

4.2 Consolidated financial statements: The 2013 Act now mandates consolidated financial statements (CFS) for any company having a subsidiary or an associate or a joint venture, to prepare and present consolidated financial statements in addition to standalone financial statements.

4.3 Conflicting definitions: There are several definitions in the 2013 Act divergent from those used in the notified accounting standards, such as a joint venture or an associate, etc. which may lead to hardships in compliance.

5. Audit and auditors

5.1 Mandatory auditor rotation and joint auditors: The 2013 Act now mandates the rotation of auditors after the specified time period. The 2013 Act also includes an enabling provision for joint audits.

5.2 Non-audit services: The 2013 Act now states that any services to be rendered by the auditor should be approved by the board of directors or the audit committee. Additionally, the auditor is also restricted from providing certain specific services.

5.3 Auditing standards: The Standards on Auditing have been accorded legal sanctity in the 2013 Act and would be subject to notification by the NFRA. Auditors are now mandatorily bound by the 2013 Act to ensure compliance with Standards on Auditing.
5.4 Cognisance to Indian Accounting Standards (Ind AS): The 2013 Act, in several sections, has given cognisance to the Indian Accounting Standards, which are standards converged with International Financial Reporting Standards, in view of their becoming applicable in future. For example, the definition of a financial statement includes a ‘statement of changes in equity’ which would be required under Ind AS [Section 2(40) of 2013 Act.

5.5 Secretarial audit for bigger companies: In respect of listed companies and other class of companies as may be prescribed, the 2013 Act provides for a mandatory requirement to have secretarial audit. The draft rules make it applicable to every public company with paid-up share capital > ₹ 100 crores. As specified in the 2013 Act, such companies would be required to annex a secretarial audit report given by a Company Secretary in practice with its Board’s report [Section 204 of 2013 Act].

5.6 Secretarial Standards: The 2013 Act requires every company to observe secretarial standards specified by the Institute of Company Secretaries of India with respect to general and board meetings [Section 118 (10) of 2013 Act], which were hitherto not given cognizance under the 1956 Act.

5.7 Internal Audit: The importance of internal audit has been well acknowledged in Companies (Auditor Report) Order, 2003 (the ‘Order’), pursuant to which auditor of a company is required to comment on the fact that the internal audit system of the company is commensurate with the nature and size of the company’s operations. However, the Order did not mandate that an internal audit should be conducted by the internal auditor of the company. The Order acknowledged that an internal audit can be conducted by an individual who is not in appointment by the company.

The 2013 Act now moves a step forward and mandates the appointment of an internal auditor who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

The class or classes of companies which shall be required to mandatorily appoint an internal auditor as per the draft rules are as follows:

- Every listed company
- Every public company having paid-up share capital of more than 10 crore INR
- Every other public company which has any outstanding loans or borrowings from banks or public financial institutions more than 25 crore INR or which has accepted deposits of more than 25 crore INR at any point of time during the last financial year

5.8 Audit of items of cost: The central government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept by that class of companies. By virtue of this Section of the 2013 Act, the cost audit would be mandated for certain companies [Section 148 of 2013 Act]. It is pertinent to note that similar requirements have recently been notified by the central government.

6. Regulators

6.1 National Company Law Tribunal (Tribunal or NCLT): In accordance with the Supreme Court’s (SC) judgement, on 11 May 2010, on the composition and constitution of the Tribunal, modifications relating to qualification and experience, etc. of the members of the Tribunal has been
made. Appeals from the Tribunal shall lie with the NCLT. Chapter XXVII of the 2013 Act consisting of Sections 407 to 434 deals with NCLT and appellate Tribunal.

6.2 National Financial Reporting Authority (NFRA): The 2013 Act requires the constitution of NFRA, which has been bestowed with significant powers not only in issuing the authoritative pronouncements, but also in regulating the audit profession.

6.3 Serious Fraud Investigation Office (SFIO): The 2013 Act has bestowed legal status to SFIO.

7. Mergers and acquisitions

The 2013 Act has streamlined as well as introduced concepts such as reverse mergers (merger of foreign companies with Indian companies) and squeeze-out provisions, which are significant. The 2013 Act has also introduced the requirement for valuations in several cases, including mergers and acquisitions, by registered valuers.

8. Corporate social responsibility

The 2013 Act makes an effort to introduce the culture of corporate social responsibility (CSR) in Indian corporates by requiring companies to formulate a corporate social responsibility policy and at least incur a given minimum expenditure on social activities.

9. Class action suits

The 2013 Act introduces a new concept of class action suits which can be initiated by shareholders against the company and auditors.

10. Prohibition of association or partnership of persons exceeding certain number

The 2013 Act puts a restriction on the number of partners that can be admitted to a partnership at 100. To be specific, the 2013 Act states that no association or partnership consisting of more than the given number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this 1956 Act or is formed under any other law for the time being in force:

As an exception, the aforesaid restriction would not apply to the following:

- A Hindu undivided family carrying on any business
- An association or partnership, if it is formed by professionals who are governed by special acts like the Chartered Accountants Act, etc. [Section 464 of 2013 Act].

11. Power to remove difficulties

The central government will have the power to exempt or modify provisions of the 2013 Act for a class or classes of companies in public interest. Relevant notification shall be required to be laid in draft form in Parliament for a period of 30 days. The 2013 Act further states no such order shall be made after the expiry of a period of five years from the date of commencement of Section 1 of the 2013 Act [Section 470 of 2013 Act].
12. Insider trading and prohibition on forward dealings

The 2013 Act for the first time defines ‘insider trading and price-sensitive information and prohibits any person including the director or key managerial person from entering into insider trading [Section 195 of 2013 Act]. Further, the Act also prohibits directors and key managerial personnel from forward dealings in the company or its holding, subsidiary or associate company [Section 194 of 2013 Act].

1.12 KINDS OF COMPANIES

The companies can be broadly classified into three types based on the mode of incorporation. They are:

1. Chartered Companies
2. Statutory Companies
3. Registered Companies

1. Chartered Companies

Companies incorporated under a special Royal charter issued by the King or Queen is called “Chartered Companies”. They are regulated by the provisions of that charter. Such companies were
generally started in the 17th and 18th centuries. The East India Company and Bank of England are some examples of chartered companies. In India, Chartered Companies are not in existence now, because there is no monarchy.

2. Statutory Companies

Companies incorporated under the Special Act of Parliament or legislature are called “Statutory Companies”. For example, The Reserve Bank of India, The State Bank of India, Life Insurance Corporation, The Indian Airlines and The State Trading Corporation of India. The activities of Statutory Companies are governed by the Special Act under which they are established.

3. Registered Companies

Companies incorporated through registration with Registrar of Companies under the provisions of the Companies Act, 1956 are called “Registered Companies”. They are also called ‘Incorporated Companies’. Registered companies are of three types:

A. Unlimited companies;  
B. Companies limited by guarantee; and  
C. Companies limited by shares

A. Unlimited companies

A company which does not have any limit on the liability of its members is called an unlimited company. The members of unlimited companies are like a sole proprietor or partners of a firm, liable for its debts without any limit. The concept of unlimited liability does not conform to corporate concept which necessarily postulates limited liability. Hence, unlimited companies are rare but not extinct.

B. Companies limited by guarantee

Companies limited by guarantee are formed to promote art, culture, science, religion, trade and sports. A guarantee company may be formed with or without share capital. Where the company is without share capital, it raises needed funds through entrance fees and subscriptions. Where the company has share capital, the liability of members, in addition to the shares held by them, is extended to certain additional amount guaranteed by them to pay company’s debts in the event of winding up. The additional amount to be paid is laid down in Memorandum or Articles of Association.

C. Companies limited by shares

In a limited company, the liability of the members is limited to the amount of the shares held by them. In the event of its winding up, a shareholder can be called upon to pay only the unpaid amount (if any) on shares held by him, and no even a paisa more, whatever may be the debts of the company.
The companies limited by shares and guarantees may be classified into two types:

(a) Private Limited Companies
(b) Public Limited Companies

A Private Limited Company is a company in which the minimum number of shareholders is 2 and the maximum can be 200 shareholders. No invitation can be made to the public for subscription of shares or debentures. They cannot make or accept deposits from public and there are restrictions on the transfer of shares. The liability of each shareholder is limited to the extent of the unpaid amount of the shares’ face value and the premium thereon in respect of the shares held by him. However, the liability of a Director or Manager of such a company can at times be unlimited.

A Public Limited Company is a company in which the minimum number of shareholders is 7 and there is no restriction on the maximum number of shareholders, transfer of shares and acceptance of public deposits. The liability of each shareholder is limited to the extent of the unpaid amount of the share face value and the premium thereon in respect of the shares held by him. However, the liability of a Director/Manager of such a company can at times be unlimited.

1.13 ONE PERSON COMPANY

One person company is a new concept in India which has been introduced by the Companies Act 2013. In the old Companies Act 1956, a minimum of two directors and shareholders were required to form a private limited company. However, in case of a one person company, only one person is required who can be a shareholder as well as the Director. Hence, the name is One Person Company.

The concept opens up spectacular possibilities for sole proprietors and entrepreneurs who can take the advantages of limited liability and corporatization but were held back in doing so because of the requirements of finding a second director or second shareholder.

The biggest difference between a sole proprietor and a One Person Company would be that in case of a One Person Company, your liability in case the business fails, is limited to only the business assets. In case of a proprietorship, the liability is unlimited and the creditors of your business can even take hold of your home and personal assets like your house, personal bank accounts, jewellery, etc. which can be used to settle the business liabilities.

An OPC is a hybrid structure, wherein it combines most of the benefits of a sole proprietorship and a company form of business. It has only one person as a member who will act in the capacity of a director as well as a shareholder.

Hence, One Man Company consists of:

- One Director
- One Shareholder
- One Person Company
1.14 PRIVATE AND PUBLIC COMPANIES

Private Companies

‘Private Company’ means a company which has a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed, and by its articles.

(i) restricts the right to transfer its shares, if any;
(ii) limits the number of its members to fifty not including
   - persons who are in employment of the company; and
   - persons who, having formerly in the employment of the company, were members of the company which in that employment and have continued to be members after the employment ceased;
(iii) prohibits any invitation to the public to subscribe for any shares in, or debentures of the company;
(iv) prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

A Private Limited Company must have a minimum number of 2 and a maximum number of 50 shareholders. A Private Company can commence its business and exercise borrowing powers immediately upon its incorporation. The shares of a private limited company are not freely transferable and it cannot offer its shares or debentures to public for subscription. However, there are major exemptions and privileges enjoyed by a Private Limited Company under the Companies Act, 1956.

If a private company contravenes any of the aforesaid three provisions, it ceases to be private company and loses all the exemptions and privileges which a private company is entitled.

Following are some of the privileges and exemptions of a private limited company:

1. Minimum number is members is 2 (7 in case of public companies).
2. Prohibition of allotment of the shares or debentures in certain cases unless statement in lieu of prospectus has been delivered to the Registrar of Companies does not apply.
3. Restriction contained in Section 81 related to the rights issues of share capital does not apply.
   A special resolution to issue shares to non-members is not required in case of a private company.
4. Restriction contained in Section 149 on commencement of business by a company does not apply. A private company does not need a separate certificate of commencement of business.
5. Provisions of Section 165 relating to statutory meeting and submission of statutory report do not apply.
6. One (if 7 or less members are present) or two members (if more than 7 members are present) present in person at a meeting of the company can demand a poll.
7. In case of a private company which not a subsidiary of a public limited company or in the case of a private company of which the entire paid-up share capital is held by the one or more body corporate incorporated outside India, no person other than the member of the company concerned shall be entitled to inspect or obtain the copies of profit and loss account of that company.

8. Minimum number of directors is only two (3 in case of a public company).

The Company Law Board on being satisfied that the infringement of the aforesaid 3 conditions was accidental or due to inadvertence or that on other grounds, it just an equitable to grant relief, may grant relief to the company from the consequences of such infringement. The infringement of the aforesaid 3 conditions does not automatically convert a private company into a public company. It continues to remain a private company; it merely ceases to be entitled to the privileges and exemptions available to a private company.

**Exemptions to Private Limited Companies**

1. Financial assistance can be given for the purchase of or subscribing for its own shares or shares in its holding company – Sec. 77(2).

2. Further shares can be issued without passing a special resolution or obtaining the Central governments approval and without offering the same necessarily to existing shareholders – Sec. 81(3).

3. Provisions as to the kinds of share capital (Sec. 85), the further issue of share of capital (Sec. 86), voting rights (Sec. 87), the issue of shares with disproportionate rights (Sec. 88) and the termination of disproportionate excessive rights (Sec. 89) do not apply to private companies – Sec. 90(2).

4. Business can be commenced immediately on incorporation without obtaining a certificate of commencement from Registrar – Sec. 149(7).

5. It is not necessary to hold a statutory meeting and to send a statutory report to shareholders and file the same with the Registrar – Sec. 165(10).

6. Articles of a private company may provide for regulations relating to general meetings which need not conform to the provisions of Sec. 171 to 186 – Sec. 170(1).

7. Any amount can be paid to the directors as remuneration and the same is not restricted to any particular proportion of the net profits – Sec.198(1).

8. A private company need not have more than two directors – Sec. 252(2).

9. A proportion of directors need not retire every year – Sec.255(1).

10. Statutory notice etc., is not required for a person to stand for election as a director – Sec. 257(2).

11. The Central Government’s sanction is not required to effect an increase in the number of directors beyond 12 or the number fixed by the articles of association- Sec. 259.

12. The Central Government’s sanction is not required to modify any provision relating to the appointment of managing, whole-time or non-rotational directors – Sec. 268.
(13) The Central Government’s approval is not required for appointment of managing or whole-time director or manager – Sec. 269(2).

(14) Directors of a private company need not possess any share qualifications, in terms of Section 270 – Sec. 273.

(15) Restrictive provisions regarding the total number of directorships which any person may hold do not include directorships held in private companies which are not subsidiaries of public companies – Secs. 275 to 279.

(16) Certain restrictions on powers of board of directors do not apply – Sec. 293(1).

(17) The prohibition against loans to directors does not apply – Sec. 295(2).

(18) The prohibition against participation in board meetings by interested directors does not apply – Sec. 300(2).

(19) The date of birth of director need not be entered in the register of directors – Sec. 303(1).

(20) There is no restriction on the remuneration payable to directors – Sec. 309(9).

(21) There is no restriction on any change in remuneration of directors – Sec. 310.

(22) Any increase in the remuneration not being sitting fees beyond the specified limit of directors on appointment or reappointment does not require the Central Government’s approval – Sec. 311.

(23) There’s also no restriction on the appointment of a managing director – Secs. 316(1) and 317(4).

(24) There is no restriction on making loans to other companies – Sec. 370(2).

(25) There is no prohibition against the purchase of shares, etc. in other companies – Sec. 372(14).

(26) The Central Government cannot exercise its power to prevent change in the board of directors, which is likely to affect the company prejudicially – 409(3).

PUBLIC COMPANY

‘Public Company’ means a company which:

(i) is not a private company;

(ii) has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed;

(iii) is not private company which is subsidiary of a company which is not a private company

A Public Company needs a minimum number of 7 shareholders with no upper limit. Before commencing any business, a Public Company is obliged to obtain a certificate from the Registrar of Companies.

Every private company, existing on the commencement of the Companies (Amendment) Act, 2000, with a paid-up capital of less than one lakh rupees shall, within a period of two years from such commencement, enhance its paid-up capital to one lakh rupees.
Every public company existing on the commencement of the Companies (Amendment) Act, 2000, with a paid-up capital or less than five lakh rupees shall, within a period of two years from such commencement, enhance its paid-up capital to five lakh rupees.

Where a private company or a public company fails to enhance its paid-up capital within the stipulated period of two years, such company shall be deemed to be a defunct company within the meaning of Section 560 of the Act and its name shall be struck off from the register by the Registrar.

A company registered under Section 25 before or after the commencement of Companies (Amendment) Act, 2000 shall not be required to have minimum paid-up capital as specified above.

**DISTINCTION BETWEEN A PRIVATE COMPANY AND A PUBLIC COMPANY**

<table>
<thead>
<tr>
<th>Private Company</th>
<th>Public Company</th>
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</thead>
<tbody>
<tr>
<td>1. Requires minimum paid-up capital of one lakh rupees</td>
<td>1. Requires minimum paid-up capital of five lakh rupees</td>
</tr>
<tr>
<td>2. Requires minimum two members</td>
<td>2. Requires minimum seven members</td>
</tr>
<tr>
<td>3. Maximum limit of fifty members</td>
<td>3. No maximum limit</td>
</tr>
<tr>
<td>4. At least two directors required</td>
<td>4. At least three directors required</td>
</tr>
<tr>
<td>5. Consent of directors need not be filed with the Registrar</td>
<td>5. Consent of directors is to be filed with the Registrar</td>
</tr>
<tr>
<td>6. Raises Capital by private arrangement, public subscription is not allowed</td>
<td>6. Raises capital by inviting public subscriptions or by private arrangement</td>
</tr>
<tr>
<td>7. Shares not transferable except for the provisions in the Articles</td>
<td>7. Shares are freely transferable, and may be even quoted on a Stock Exchange</td>
</tr>
<tr>
<td>8. No restriction on managerial remuneration</td>
<td>8. Restrictions on total managerial remuneration</td>
</tr>
<tr>
<td>9. The words ‘Private Limited’ are added to the company’s name</td>
<td>9. The word ‘Limited’ is added to the company’s name</td>
</tr>
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</table>

**Private Company to Become Public Company in Certain Cases**

*(Deemed Public Company)*

Under Section 43-A, if 25% or more of the paid-up share capital of a private company is held by one or more bodies corporate (which does not include co-operative societies), the private company shall automatically become a public company from the date of capital so held. For this purpose, shares held by a bank under a trust under certain conditions are not be reckoned.

If the paid-up capital held by bodies corporate falls below 25%, the company will again become private; provided consent of the Central Government has been obtained and other provisions of the Act observed.

Further,

(i) A private company become public, when not less than 25% of the paid-up share capital of a public company is held by that private company; and

(ii) When the average turnover of a private company during the last three financial years equals or exceeds rupees five crore, it becomes public on the expiry of three months from the end of the three years.
(iii) When a private company becomes public, it invites, accepts or renews deposits from the public. Acceptance of deposits by a private company from its members, directors or their relatives is excluded from the purview of this Section.

**Conversion of Private Company Into Public Company**

A private limited company is converted into a public limited company, by any of three modes, namely, by default, by operation of law and by an act of volition.

Private company imposes three characteristics restrictions, namely:

(a) Restriction on transfer of shares

(b) Restrictions on public invitation to subscribe to its shares and debentures and

(c) Restriction on the maximum number of its members which should not exceed 50.

If default is made in complying with any of these restrictions, the company shall cease to be a private company and all provisions applicable to public company shall apply to that company.

The Company Law Board may, however, on an application grant relief in committing the default, and from the date of such order, the company will gain be entitled to all the privileges and exemptions available to a private company.

**Conversion of Operation of Law**

A private company is deemed to be public company in the following cases:

(a) When 25% or more of its paid-up share capital is held by one or more bodies corporate;

(b) When its average annual turnover (during the last 3 years) exceeds `10 crores;

(c) When it holds 25% or more of the paid-up share capital of a public company;

(d) When it accepts or renews deposits from the public after making an invitation by an advertisement.

Within 3 months after any of the above contingency arises, the fact should be notified to the Registrar.

The Registrar then makes necessary amendments in records and documents of the company, the word ‘private’ is deleted from the name of the company, a new certificate of incorporation is issued, the company makes necessary amendments in its memorandum and articles, and the company is deemed to be a public company.

**Conversion by an Act of Volition**

A private company may get itself voluntarily converted into a public company by following the procedure given below:

(a) Convene a Board Meeting and decide the time, place and agenda for convening a General Meeting to alter the name and Articles of Association or to adopt new set of Articles applicable to a public company.

(b) Send notice for the General Meeting proposing the Special Resolutions along with Explanatory Statement.
(c) Ensure that the quorum is fulfilled at the General Meeting and the Special Resolutions are passed to the following effect:

(i) To delete the articles applicable to a private company only and insert new articles that shall be necessary for a public company.
(ii) To delete the word ‘private’ from the name of the company.
(iii) To permit rising of capital from public.

(d) Prepare and file a Prospectus/Statement in lieu of Prospectus, in the prescribed form, within 30 days of passing the above resolutions.

(e) File the Special Resolutions passed and the Explanatory Statement, in the prescribed form along with prescribed fee, within 30 days of their passing.

(f) Apply to the Registrar, for issue of a fresh certificate of incorporation, after deleting the word ‘private’ from its name.

(g) The number of directors should be raised to a minimum of three, if necessary.

Secretarial Duties for Conversion of a Private Company into a Public Company

The following steps are to be taken by the secretary of the private company to convert into public company.

1. Secretary has to convene a Board Meeting in consultation with the directors in order to fix the date, time, place and agenda of the general meeting.
2. Secretary need to make the necessary arrangements for the issue of notice and agenda of the general meeting to the members of the private company for passing a special resolution for converting the company into public company.
3. He should file the special resolution to the Registrar of Companies passed at the general meeting within 30 days from the date of passing special resolution.
4. A copy of the prospectus must be filed with the Registrar within 30 days. If prospectus is not issued, he should file a statement in lieu of prospectus to the Registrar, within 30 days of the passing of special resolution.
5. Secretary has to submit an application with the Registrar for the fresh issue of ‘Certificate of Incorporation’ making necessary changes in the name of the company. The change in name will become effective only during the issue of new certificate of incorporation.

The resolution can be prepared in the following manner

“Resolved that Thomas and Company Private Ltd., be and hereby converted into ‘Thomas and Company Ltd.,’ a public limited company, the articles and memorandum of association has been altered accordingly.”

Conversion of a Public Company into Private Company

The procedure of conversion of a public company into private company is similar to that for voluntary conversion of a private company into public company, except for the following:
(1) The Articles shall be suitably amended to include the three basic restrictions applicable on a private company, and other provisions necessary thereto.

(2) The name of the company shall be amended to include the word ‘private’ on all documents.

It may be noted that no resolution amending the articles, which has the effect of converting a public company into a private company, shall be effective unless it has been approved by the Central Government.

After such alteration has been approved, a printed copy of the Articles as altered shall be filed with the Registrar within one month of the date of receipt of the order of approval.

Secretarial Duties for Conversion of a Public Company into Private Company

The following steps are to be taken by the secretary of the public company to convert into private company.

1. Secretary has to convene a Board Meeting in consultation with the directors in order to fix the date, time, place and agenda of the general meeting where special resolution is to be passed to alter the articles for changing the name of the company.

2. Secretary has to issue the notice and agenda of general meeting and the get the special resolution passed.

3. Filing the special resolutions passed with the Registrar along with the explanatory statements within 30 days from the date of passing special resolution.

4. To submit an application to the Central Government for approval of name change of the company in their article.

5. Once he obtains the approval of the Central Government, he must file a printed copy of the new or altered articles of association with the Registrar within one month.

The Resolution for Converting into Private can be Prepared in the Following Manner

“Resolved that Cockburn Company Ltd., be and hereby converted into ‘Cockburn Company Private Ltd.,’ a private company. Resolved further that the Memorandum and Articles of association have been altered accordingly.”

Section 25 Companies: Under the Companies Act, 1956, the name of a public limited company must end with the word ‘Limited’ and the name of a private limited company must end with the word ‘Private Limited’. However, under Section 25, the Central Government may allow companies to remove the word “Limited/Private Limited” from the name if the following conditions are satisfied:

1. The company is formed for promoting commerce, science, art, religion, charity or other socially useful objects.

2. The company does not intend to pay dividend to its members but apply its profits and other income in promotion of its objects.
1.15 OTHER FORMS OF COMPANIES

The other forms of company ownership are:
1. Government Company
2. Foreign Company
3. Holding and Subsidiary Company
4. Associate Company
5. Small Company
6. Global Company
7. Body Corporate
8. Listed Company

1. Government Company

Section 617 of Companies Act, defines a Government Company as one in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary of a Government Company.

Government Companies are also governed by the provisions of the Companies Act. However, the Central Government may direct that certain provisions of the Companies Act shall not apply or shall apply only with such exceptions, modifications and adoptions as may be specified to such government companies.

2. Foreign Company

Foreign Company means any company or body corporate incorporated outside India which, (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (b) conducts any business activity in India in any other manner.

Companies falling under the following two classes are called foreign companies, namely:
(a) Companies incorporated outside India, which, after the commencement of this Act, establish a place of business within India; and
(b) Companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act.

In brief, a foreign company is one which is registered outside India but has a place of business in India. The operations of these companies (in the territory of India) are governed by the regulations laid down by the Indian Companies Act.
Part XI of the Companies Act, 1956 containing Sections 591 to 608 deals with the Companies incorporated outside India, i.e., a “Foreign Company.” The provisions of this part of the Companies Act, 1956 prescribes that its Sections 592 to 602 shall be applicable to companies who are incorporated outside India which after the commencement of the Companies Act, 1956 establishes a place of business within India and companies incorporated outside India having established place of business within India prior to the commencement of the Companies Act, 1956 and continue to have the said establishment. It says that a company incorporated outside India and having an established place of business in India in which 50% or more paid up share capital is held by Indians, then provisions of those sections shall apply to such companies also.

Sections 592 to 602 applicable to such foreign companies provide that they have to file with the Registrar of Companies:
- Various documents giving particulars,
- Returns regarding any alterations in the company,
- Balance sheet and Profit and Loss Accounts of the company,
- Charges on any of the companies’ properties in India.

It also provides that the following provisions shall apply to Indian business of a Foreign Company:
- Registration of charges,
- Right to obtain copies of and inspect the trust deed,
- Books of accounts to be kept by the company,
- Annual returns to be made by the company,
- Inspection of books of accounts,
- Power of Central Government to direct special audit,
- Audit of cost accountants,
- Power of Registrar to call for inspection and investigation.

(Contained in Sections 124 to 145, 125, 127, 118, 209, 159, 209-A, 233-A, 233B, and 234 to 246 of the Companies Act)

Section 603 of the said Part XI puts certain restriction on a foreign company offering documents for subscriptions in India.

Though under the Companies Act, 1956, no formalities are required to be carried out for a Foreign Company establishing place of business in India except the filing of the documents provided for in Part XI; under the provisions of Section 29 of the Foreign Exchange Regulation Act, 1973 general or special permission of the Reserve Bank of India for continuing any place of business or establishing any place of business for carrying on activities of trade and Commercial nature by a foreign company is required.

The limit of the foreign equity in an Indian Company is now increased up to 51% from the earlier 40%. In certain cases, 100% foreign equity participation is also now allowed. The Government of India has entered into agreements with major foreign countries including USA for avoiding double taxation.

3. Holding and Subsidiary Company

A Holding Company is one which holds more than

A Holding Company is one which holds more than 50% of the nominal value of the equity share capital of another company or which controls the composition of the Board of Directors of another company.
50% of the nominal value of the equity share capital of another company or which controls the composition of the Board of Directors of another company. Such other company is known as Subsidiary Company. In other words, a subsidiary company is one whose majority of share that is over 50% are held by the holding company (Sec. 4)

A company shall be deemed to be subsidiary of another company if:
1. That other company controls the composition of its board of directors; or
2. That other company holds more than half in face value of its equity share capital; or
3. Where the first mentioned company is subsidiary company of any company which is of others subsidiary e.g., Company B is subsidiary of the Company A and Company C is subsidiary of Company B, therefore Company C is subsidiary of Company A.

The control of the composition of the Board of Directors of the company means that the holding company has the power at its discretion to appoint or remove all or majority of directors of the subsidiary company without consent or concurrence of any other person.

4. Associate Company

A corporation whose parent company possesses only a minority stake in the ownership of the corporation. An associate company is partly owned by another company or group of companies. The parent company or companies do not consolidate the associate company’s financial statements. The parent company typically owns 20 to 50% of the voting shares; if more than 50% of the shares are owned by a parent company, it creates a subsidiary (where the parent company consolidates the financial statements). Typically, the parent company records the associate company’s value as an asset in its balance sheet. This is also called Associate.

Associate companies are not fully consolidated. Consolidated financial statements are the combined financial statements of a parent company and its associated company or subsidiaries. Rather than being consolidated, the revenue and profits from associate companies appear separately on the parent company’s profit and loss (P&L) statements. Associate companies are sometimes created in host countries in the case of foreign direct investments to reduce any negative stigma connected to the foreign ownership.

5. Small Company

The concept of “small company” has been introduced for the first time in the Companies Act, 2013. Here, we take a look at the definition and what relaxations has been afforded to a small company under the Companies Act, 2013.

Section 2(85) defines a Small company as

“small company” means a company, other than a public company,—

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or

(ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;
Corporate Administration

(B) a company registered under Section 8; or

(C) a company or body corporate governed by any special Act;

As can be seen it is a very complicated definition. In the first sentence itself, a public company has been removed from the definition of a small company. Therefore, a public company with 7 shareholders and minimum of 5 lakh share capital will not be considered as a “Small Company”.

Secondly, the proviso states that a Private company which is a holding company or a subsidiary company will also not be considered as a “Small Company”. Public Company has anyway been eliminated from the definition of a Small Company. So, the proviso (A) applies only to a private company which is a holding or subsidiary company. In case of subsidiary private company, it obviously means subsidiary to another private company because a private company which is subsidiary to a public company is considered as a public company as per the definition of “public company” in Section 2(71) of the Act.

Small Company is defined as any company which has a paid-up share capital of not exceeding 50 lakhs or such higher amount as may be prescribed but not exceeding 5 crores OR turnover as per last profit and loss account which does not exceed 2 crores or such higher amount as may be prescribed but does not exceed 20 crores. So, the criteria for inclusion of a company as a small company is on the dual basis of either paid-up share capital or turnover as per last profit and loss account. So, if the company breaches any one limit, it goes out of the ambit of Small Company, for eg, if the paid-up share capital is only 25 lakhs but if the turnover goes to 2.5 crores, then it automatically gets struck off as a Small Company.

6. Global Company

A global company refers to a company that operates in more than one country or that operates in foreign countries. It can also be referred to as a multinational company or a transnational company.

Global companies plan activities on a global basis. By operating in more than one country benefits from savings or economies on activities such as R&D, marketing, operations and direct investment.

Global companies have invested and are present in many countries. They market their products through the use of the same coordinated image/brand in all markets. Generally, one corporate office that is responsible for global strategy. These companies emphasize on volume, cost management and efficiency.

7. Body Corporate

The Companies Act has used an excluding definition for body corporate, defining it as “Body corporate” or “corporation” includes a company incorporated outside India but does not include: (a) a corporation sole, (b) a co-operative society registered under any law relating to co-operative societies and (c) any other body corporate (not being a company as defined in this Act), which the Central Government may, by a notification in the Official Gazette, specify in this behalf. Now, the concept of Corporation Sole is not defined anywhere in the Act. But concisely, apart from those excluded specifically, a body corporate means any entity that has its separate legal existence apart from the persons forming it. It enjoys a completely different legal status apart from its members. So, a body corporate shall include: a company, a foreign company, a corporation, a statutory company, a statutory body, etc. and such bodies that have separate legal existence.
In simple, Body corporate is a person, association, or group of persons legally incorporated; corporation.

8. Listed Company

If any security issued by a company is traded on any recognized stock exchange, the company can be described as Listed Company.

Listed company is a company whose shares 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.

This would be a company whose stock is listed on a stock exchange. This is a matter of buying and selling shares of ownership in the company. A new company or a small company might not be listed; such a company would want to get listed as a sign that its business is significant.

Unlisted Company: Any company whose shares are not listed on an exchange is called Unlisted Company. Unlisted Company is a company with stock that is not traded on an exchange. Very often, unlisted companies are very small and do not trade on an exchange because they do not meet market capitalization requirements. Unlisted companies may be traded informally (theoretically, one may stand on a street corner and sell his/her stocks), but the term usually refers to companies traded through a dealer network.

QUESTIONS

Section A: Objective Type Questions (2 marks)

1. Define Company.
2. What is Joint Stock Company?
3. What is the meaning of ‘Perpetual Succession’?
4. What are the different types of companies?
5. Give the meaning of Private Company.
6. What do you mean a Public Company?
7. What is Chartered Company?
8. What is Foreign Company?
9. What do you mean by ‘Companies Limited by Guarantee’?
10. What do you mean by ‘Limited Liability’?
11. Give the meaning of Statutory Company.
12. What is a Holding Company?
13. What do you mean by ‘One Person Company’?
14. What is meant by Foreign Company and Global Company?
15. Give the meaning of Associate Company and Small Company.
16. What is Body corporate?
17. Differentiate between Listed Company and Unlisted Company.
Section B: Analytical Type Questions (8 marks)
1. ‘A company is an artificial person created by law with a perpetual succession and common seal.’ Comment on the statement.
2. What is Joint Stock Company?
3. What are the main characteristics of a company?
4. Bring out the differences between a company and partnership firm.
5. Distinguish between Public Company and Private Company.
6. What are the legal provisions applicable for conversion of Private Company into Public Company?
7. Briefly explain the steps involved in formation of Joint Stock Company.

Section C: Essay Type Questions (15 marks)
1. Explain the various types of companies which are registered under Companies Act.
2. State important privileges and exemptions available to a private company.