

# Ch-7 The Companies Act, 2013

470 Section + 7 schedules + 29 chapters

① Company → Latin word 
 ↗ Com [Together]  
 ↘ Panies [Breed]

"Let's have a meal together"

## Company

<p>Citizenship                  [Constitution +                  Citizen Ship Act, 1955]                  Only natural person                  can be a citizen</p>	<p>Nationality                  ↓                  Yes, Indian                  company</p>	<p>Domestic                  yes                  State in which                  RO of company                  is situated</p>	<p>Residence                  yes                  District in                  which RO                  is situated</p>
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Section 2(20) - Company means a company which is incorporated under Companies Act, 2013 or any <sup>or</sup> under any other previous law.

<p>C-Companies Act                  2013 or any                  other previous law</p>	<p>Applicability                  S-Special Act                  Eg:- ICAI Act                  ICST Act</p>	<p>[CBSE.IN]                  Insurance company                  Act 1938                  IRDA Act 199</p>
<p>Banking Companies                  Bank regulation                  act, 1949</p>	<p>Electricity                  Company                  ↓                  Electricity Act                  2003</p>	<p>central govn. may                  N-Notification</p>

## Classification of Companies

On the basis of member	On the basis of liability	On the basis of control	Other companies
2(62) OPC	2(21) Limited by Guarantee	2(46) Holding	-> Section 8
2(68) Pvt.	2(22) Limited by Share	2(87) Subs.	-> Foreign Co
2(71) Public	2(92) Unlimited Company	2(6) Associate Company	-> Nidhi
2(85) Small			-> Dormant (2(52))
			-> Govt Co. (2(45))

## Characteristics [Claps]

- \* Common Seal
- \* Limited liability
- \* Artificial legal entity
- \* Perpetual Succession
- \* Separate legal entity.

### \* Section 2(62) OPC


One person Company means a company which has only 1 member.

Min. Director  $\rightarrow$  1

$\rightarrow$  It is type of Pvt. company

$\rightarrow$  Taxan Pvt. Ltd [OPC]


$\rightarrow$  MOA  $\rightarrow$  Succession clause

(Nominee) 

On subscriber's death or incapacity  $\rightarrow$

  
nominee

$\downarrow$   
Prior consent  
+  
Filed with  
ROC

"Owner" 

$\rightarrow$  May change  
nominee

+ Intimate ROC

$\rightarrow$  No alteration  
in MOA

Only natural person who is citizen of India

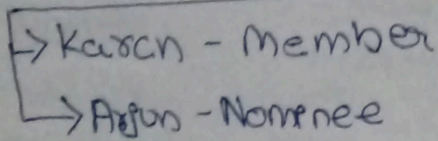
- May or may not be resident of India.

$\rightarrow$  Any person who stays  
in India for 120 days

Rules applies — Nominee  
for both — Member

\* A natural person shall not be a member of more than a OPC at any point of time. And said person shall not be a nominee of more than a OPC.

ABC [OPC] Pvt. Ltd.



Stick figure can be member of only one OPC

Stick figure can be nominee of only one OPC.

Stick figure can be member & nominee of 2 diffn. OPC at same time. [choose any one within 180 days]

Note: ① No minor can be a member or nominee or hold shares with beneficial interest in OPC

② OPC cannot be converted into Section 8.

③ OPC cannot carry out NBFC investment activities.

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ABC [OPC] Pvt. Ltd.

→ Karan - Member  
→ Arjun - Nominee

Stick figure can be member of only one OPC

Stick figure can be nominee of only one OPC.

Stick figure can be member & nominee of 2 diffn. OPC at same time. [choose any one within 180 days]

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## Limit by liabilities

① limited by shares → Liability Ltd to the amt if any, unpaid on the shares held by them.

② limited by guarantee → As per Section 2(21), a company limited by guarantee or a "guarantee company" is a company having the liability of its members limited to such an amt as its members may respectively thereby undertake by moa of the company, to contribute the assets of company.

Liability of member arises → only on winding up

③ Unlimited liability

★ Zaron Unlimited  
↓  
winding up  
↓  
1 cr

A - 25%

B - 25%

C - 25%

D - 25%

① Can creditors directly claim money from members?

→ NO

② Can company ask any member to pay entire liability

→ NO, even though liability is unlimited, Pt B Ltd. to extent of their stake.

## Basic types of companies

Private company - (2GS)

Test → AOA

→ Prohibits - It cannot go for public issue

→ Restriction - Transfer of shares

→ Limitation no. of member cannot exceed 200



Counting 206 - Following rules are applicable

(i) Employees & Ex-employees - shall be excluded  
Zyka Pvt. Ltd. - ESOP

Mohan - Subscribe ESOP - member - not wanted

↳ Resigned - Ex-employee - still holding share  
not counted

(ii) Joint ownership - counted as ①

\* Public Company (CPL) means a company which is not a PVT. company.

→ It can offer shares to public  
→ Freely transferable

→ no. limit of members

→ Private Co. → Holding [Public]

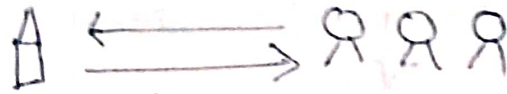


Deemed to be Public company

Exemption of PVT. Co. shall not be available

Public Company - Section 406

LIFTING OF corporate veil →



↓  
looking behind the company as legal person

↓  
Pasde ke adh mein jo log fayda utar raho hai → unko pakdo.

↓  
i.e., Disregarding the corporate entity and paying regard to the realities behind the legal facade.

### Cases

① When device of incorporation is adopted for some illegal or improper purpose

[Gulford motors co. v/s. Home]

② Trading with enemy

[Daimler co. Ltd vs. Continental Tyre & Rubber Co.]

③ When corp. entity is used to evade tax

[Sri Dinshaw manekji Petit v/s Income tax dept.]

④ To avoid legal obligation

[Workers employed in associated rubber industries] v/s [Associated rubber industries Ltd]

↓  
Payment of Bonus Act, 1965  
[20 workers]

### ⑤ Creation of Subsidiary agent

Merchandise Transport Ltd. v/s British Transport Commission

### Holding & Subsidiary Companies

#### Section 2(46) Holding Company

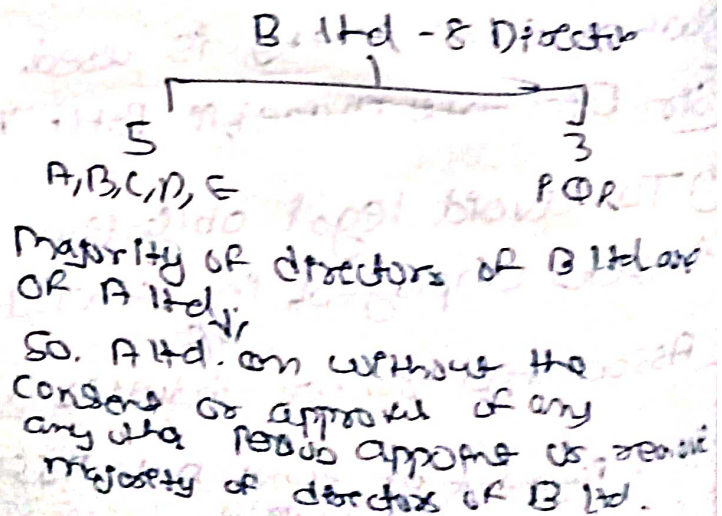
A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

#### Sec 2(87) Subsidiary Company

A company shall be subsidiary of another, if any of the following conditions are satisfied:

(a) That other controls the composition of its Board

A Ltd  
↓  
5 directors  
A, B, C, D, E



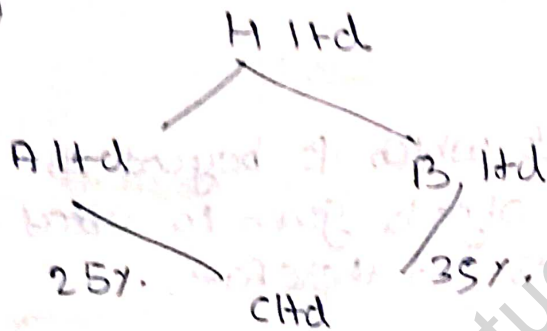
(b) That either exercises or controls more than one-half of the total voting power either on its own - (1) or Together with one or more of its subsidiary companies - (2)

① A Ltd → B Ltd

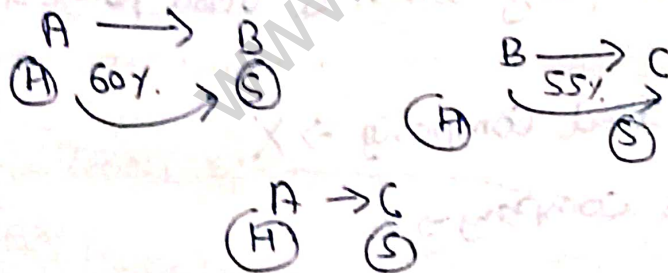
[ 50.1 = ✓  
49.9 = X ]

B is subsidiary of A

②



③ The first mentioned company is a subsidiary of any company which is that other's subsidiary



ment subsidiary of subsidiary → ment subsidiary

## \* Associate Company

Min. V.P. - 20%

Max. V.P. - 50%

[ Bcoz more than 50% V.P. will make it  
Subsidiary ]

## \* Doctrine of Ultra Vires

Ultra → Beyond

Vires → Powers

→ A company does any act which is beyond its powers and objects given in objects given in object clause of MoA is ultra vires and therefore Null and void.

(2) Transaction done by company which is ultra powers.

↓

Will this transaction Bind Company → X

Can 3rd Party sue company → X

④ Act which is beyond powers of directors but within the memorandum

↓

It can be ratified by passing special resolution

E.g. Director can borrow loan upto 10 lac.

But he borrowed 15L → Such act is ultra vires but it is for the purpose which is within MoA

↓

It can be ratified by passing S.R

⑤ An act which is ultra vires the articles but Intra vires [within the powers] of MoA

\* Doctrine of Constructive notice

- MoA & AOA when registered with ROC becomes public document
- It is therefore duty of every person dealing with a company to inspect its documents and make sure that his contract with the company is within MoA.

↓

Law here presume that notice is being already given to 3rd Party who is contracting with company

↓

whether a person reads them or not

↓

this doctrine protect the company against the outsider.