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Types of Companies in Company Law

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Introduction

There are various types of companies in India, each with its own set of rules. Indian Company Law governs these regulations. Whether an individual is starting a large or small company, it is critical to understand the kinds of companies protected by Indian law. These types decide who owns the company, who is liable if a factor goes incorrect, how the company runs, and what standards it must follow.

Section 2(20) of the Companies Act 2013 defines a "company" as one that was established under the Companies Act 2013 or any previous company law. The Companies Act of 2013 supplanted the Companies Act of 1956. The Companies Act of 2013 governs all publicly traded and privately held businesses in the country. The Companies Act 2013 added many new sections and canceled the associated parts of the Companies Act 1956. This is historic legislation with far-reaching implications for all companies established in India.

Types of Companies in Company Law

Types of companies on the basis of size or number of members in a company

Private company

According to Section 2(68) of the Companies Act, 2013 (as amended in 2015), a "private company" is defined as a company with a minimum paid-up share capital as may be prescribed and whose articles limit the right to transfer its shares. It can have up to 200 members. According to this Section, the private company comprises the following rules:

1. A private company must have a minimum amount of money invested in its shares. The Act sets this amount, but it was previously specified as one lakh rupees or more as prescribed by the government, but it was removed following an amendment in 2015.
2. In a private company, the Articles of Association (AoA) govern how shares can be offered or transferred to others. This means that shareholders can't freely sell their shares to anybody outside the company unless they follow the procedures outlined in the company's Articles of Association.
3. A private company typically has no more than 200 members. Yet, there is an exemption for one-person businesses, which can only have one employee. Shares owned by multiple people are treated as if they were owned by one person.
4. Employees and former employees who still own shares are not included in this limit.
5.
6. Private companies are not permitted to publicly solicit buyers for their ownership interests or other types of securities. They are unable to market or solicit investments from the general public. These rules are intended to provide particular advantages and safeguards to shareholders while also governing the company's operations. They make sure private companies operate in an orderly manner while maintaining a close-knit structure.

Public Company

Section 2(71) of the Companies Act of 2013 defines a "public company" as one that does not qualify as a private company and has a minimum paid-up share capital as required by law. According to this Act, a public company includes a number of aspects:

1. 2. According to Section 3(1) of the Companies Act 2013, a public company must have at least seven members, with no limit on the maximum number of members. Section 149(1) of the Act requires a public company to have at least three directors.

2. Section 4(1) of the Act requires a public company with limited liability to include the word "limited" at the end of its name. Shares of a public company are transferable without restriction.
3. A public company is distinct from a private one in several ways. Unlike private companies, with limitations on transfers of stock, public companies can trade their shares more freely and have a greater number of shareholders. This distinction has an impact on the company's operations, governance structure, and obligations to shareholders and regulators.
4. Previously, public companies had to have a specific amount of money invested in their shares. This is referred to as the paid-for share capital. The law sets a minimum threshold of five lakh rupees, but government agencies can set a higher amount. It ensures that public companies have the necessary financial resources and equilibrium to operate on a larger scale. However, the minimal requirement for paid capital of five lakh was omitted in the Amendment Act of 2015.
5. If a company is owned through another non-private company, such as a public company, yet it is still classified as private under its own rules, it is considered a public company.

Registration of a public company

In order to register the public company, the following aspects need to be considered:

1. 1. To form a public limited company, at least seven shareholders and three directors are required. Shareholders can be individuals, corporations, or Limited Liability Partnerships (LLPs), but directors must be individuals.
2. Directors require a Director Identification Number (DIN) that can be obtained by applying online with the Ministry of Corporate Affairs. Indian nationals must have a PAN card for this.
3. To submit online documents, every promoter and director must have a digital signature certificate. These certificates are issued by certifying authorities in India. For a Director's Identification Number (DIN), Indian nationals must provide a copy of their PAN card that has been self-attested, as well as proof of tackle utility bills that are no more than two months old or their passport.
4. Choose an address for the corporate headquarters and the company's authorized capital. A public limited company has no minimum capital threshold and can have any identifiable address as its registered office.
5. The company's name should end in 'Limited'. Apply for approval of names from the Registrar of Companies (ROC) via the Ministry of Corporate Affairs website. Submit multiple names in order of preference, and make sure they follow the guidelines.
6. Once a company name has been approved, the Memorandum of Association (MOA) and Articles of Association (AOA) must be prepared in the format specified. These documents are now created electronically (eMoA and AOA). Fill out the eMoA and eAOA to the ROC to register the company.
7. Following due verification, the ROC will register the company and issue a Certificate of Incorporation (COI). Following the issuance of the certificate of incorporation, the company will be assigned a Corporate Identification Number. Application forms for the Digital Signature Certificate (DSC) must be completed and signed, as well as ID proof (passport, driving license, PAN card, etc.) and address proof.
8. A newly incorporated company has to submit a form within six months, or 180 days, of its official incorporation date.

Small company

Section 2(85) of the Act defines a small company as a non-public company. Two primary variables define a small company:

1. Paid-Up Share Capital: The total worth of the shares distributed to shareholders. This amount shouldn't be considered excessively high. It used to be fifty lakh rupees, but currently, it can reach ten crore rupees or five crore Indian rupees.

2. Turnover refers to a company's total revenue from business activities. Small businesses should not have a high turnover from the previous year. It used to be two crore rupees, but currently, it can go up to four crore or forty crore rupees.

Exceptions

There are some exceptions to the above-mentioned amount requirements. Companies listed below are exempt from these requirements, including:

1. Holding or Subsidiary Companies: These are companies controlled or owned by a holding company that manages its subsidiaries.
2. Section 8 Companies are nonprofit organizations formed for specific purposes.
3. Companies Regulated by Special Acts: These are businesses that are governed by special laws for specific industries.

Recent changes in the definition of small company

The definition of a small business has recently changed. The Companies Act of 2013 established the concept of small businesses based on paid-up share capital and turnover. The Ministry of Corporate Affairs recently amended the definition of a small company, effective September 15, 2022. The previous thresholds for classifying a company as tiny based on turnover and paid-up share capital were two crore rupees and twenty crore rupees, respectively. However, with this amendment, the limit was raised to four crore rupees for paid-up capital and 40 crore rupees for turnover.

Effect of amendment

The new definition of a small company reduces the certification requirements for e-forms submitted to the Register of Companies (ROC) by practicing experts such as Chartered Accountants, Company Secretaries, and Cost Accountants. However, having a Certificate of Practice (COP) provides fresh possibilities beyond ROC compliance, such as intellectual property litigation and investment banking.

One Person Company

The Companies Act of 2013 also introduces a new type of business entity in the form of a company, in which only one person owns the entire company. It's like a one-man army. Section 2(62) defines One Person Company (OPC) as a company with only one member. The features of OPC include:

1. As both owner and director, one person can establish and manage the entire business.
2. An OPC can have up to 15 directors, but it must be owned by a single person.
3. A minimum of one director must be a resident of India who spent at least 182 days in the country during the previous fiscal year.
4. There is no minimum capital required to register an OPC. The owner can invest as much or as little as they want, and government fees are calculated accordingly.
5. The owner's liability is restricted to the amount they have invested. This means that their personal belongings will be safe even if the company suffers losses or incurs debts.
6. OPCs are ideal for small businesses and startups with revenues under Rs. 2 crores and capital investments under Rs. 50 lakhs.
7. Only Indian citizens can register for an OPC. Foreign investment is not permitted, guaranteeing full ownership by Indian residents.
8. According to Section 3(1)(c) of the law, the company's name must include the phrase "One Person Company" in brackets.

Types of companies on the basis of control

Holding company

A holding company is an organization that owns one or more other businesses. These other companies are referred to as subsidiary companies since they are overseen by the parent company. As a result, the holding company functions similarly to the parent company, with subsidiaries serving as smaller entities. Such a company either directly or indirectly regulates the composition of another company's Board of Directors or holds more than half of its equity share capital.

Definition of holding company

A holding company is defined in Section 2(46) of the Companies Act 2013 as "a holding company, in regard to a number of different companies, means an organization of which such companies are subsidiary companies."

Offered that such classes or courses of holding corporations as may be prescribed do not have more than the number of subsidiaries specified.

1. The composition of a company's Board of Directors would be deemed to be under the control of another business if that other company, by exercising some power exercisable at its own discretion, might select or remove any or all of the directors.
2. "Company" refers to any corporate entity.
3. "Layer" refers to a holding company's subsidiary or subsidiaries.

A company can become the holding company of another company in any of the following ways:

1. By owning more than half of the company's issued equity capital,
2. Holding more than 50% of the company's voting rights,
3. by holding the power to select a majority of the company's directors.

How it works

A corporation can become a holding firm in two different ways. One way is to purchase sufficient stock in another business to gain control of it. The other option is to start a new company and keep some or all of the company's shares. Even if the holding company owns only a small percentage of another company's stock, say 10%, it can still influence its decisions.

Types of holding companies

In general, these companies can be classified into the following categories:

1. A pure holding company just owns stock in other companies and doesn't run any other business.

2. A mixed holding company additionally owns additional businesses but also runs its own operations.

3. Immediate: An immediate holding company acquires another company, even if it has previously been owned by somebody else.

4. Intermediate holding companies serve as both holding companies and subsidiaries of larger corporations.

It may not be required to share financial records as a traditional holding company would.

Subsidiary company

A subsidiary company is one that is owned and managed by another company. A parent company or holding company is a company that owns another. A subsidiary company's parent may be its sole owner or one of several owners. A "wholly-owned subsidiary" is a company in which a parent or holding company owns 100% of the shares. A parent company and a holding company differ in their operations. A holding company does not conduct its own operations but owns the majority of the shares and assets of its subsidiary companies. It is essentially a company that works one business while also owning another, known as a subsidiary.

The holding company conducts its own operations, whereas the subsidiary may engage in a related business. In order to keep their liabilities separate, the subsidiary may own and manage the holding company's property assets.

Definition of a subsidiary company

A subsidiary company is defined in Section 2(87) of the Act as one that is controlled by another company, known as the holding company. A subsidiary company is one that conducts business under the control of another (holding) company. Tata Capital, for example, is a wholly-owned subsidiary of Tata Sons Limited. This control can occur in two ways.

- The holding company determines who serves on the subsidiary company's Board of Directors.
- The holding company holds over fifty percent of the total shares in the subsidiary company.

Even if control is transferred to another subsidiary company of the holding company, the subsidiary continues to be regarded as a member of the group. For example, if the holding company's subsidiary controls the Board of Directors or owns more than half of another company's shares, that company is also a subsidiary.

Types of Subsidiary Companies

1. In general, the subsidiary company can be classified into the following categories:
2. A wholly owned subsidiary company is one in which the holding company owns 100% of the voting power. This means that the holding company owns 100% of the subsidiary's shares.
3. A deemed subsidiary company is one that is considered to be under the oversight of a holding company, regardless of whether that control is provided by a different subsidiary of the holding company.

Types of companies on the basis of ownership

On the basis of ownership, companies can be divided into two categories:

Government company

"Government company" pursuant to Section 2(45) of the Companies Act, 2013, is broadly defined to mean "any company in which not less than 51% of the paid-up share capital is owned by the Central Government, or any State Government or Governments, or partly by the Central Government and partially by any number of State Governments, which includes a company which is a subsidiary company of such a Government company." The definition ensures that any company falling within the scope of equal to or over 51 percent ownership by the central government, any state government or authorities (which includes multiple state governments), or a combination of central and state ownership is recognized as a government entity. Furthermore, this classification includes subsidiary companies under the control or ownership of such government entities.

Some examples of government companies include National Thermal Power Corporation Limited (NTPC), Bharat Heavy Electricals Limited (BHEL), and Steel Authority of India Limited.

Features of a government company

1. Separate legal entity
2. Incorporation under the Companies Act 1956 & 2013
3. Management as per provisions of the Companies Act
4. Appointment of employees
5. Fundraising

Appointment of directors

Section 134L(3)(p) of the Act requires listed and certain public companies to report on how they assessed their boards, committees, and individual directors.

Section 149(1)(b) allows government companies to have more than 15 directors without requiring a special resolution to name them.

Section 149(6)(c), which states the requirements for choosing independent directors, typically requires that these directors have no financial ties to the company or its affiliates.

When the Central or State Government appoints a director, they are not required to formally consent to their appointment or file documents with the Registrar of Companies within 30 days.

Section 196 exempts government companies from certain provisions relating to the appointment or reappointment of managing directors, whole-time directors, or managers for a period of more than five years. Sections 196(2), 196(4), and 196(5) are also free from the requirement to obtain board and member approval for such appointments if they are not by Schedule V.

Foreign companies

A foreign company, as per Section 2(42) of the Companies Act

Furthermore, having an online presence or doing business electronically counts. Section 2(42) of the Companies Act, 2013, and Rule 2(c) of the Companies (Registration of Foreign Companies) Rules, 2014 define 'electronic mode' as conducting activities electronically, regardless of whether the main server is in India. This includes:

1. Business transactions between businesses and consumers, including data exchanges and other digital supply transactions.
2. Accepting deposits, subscriptions, or offerings of assets in India or to Indian citizens.
3. Financial settlements, online marketing, helpful and transactional services, database management, and supply chains.
4. Online services include telemarketing, telecommuting, telemedicine, which schooling, and study.
5. Any data communication services, including email, mobile devices, social media, cloud computing, storage of documents, and voice and data transmission.

Offering securities electronically, signing up for them, or identifying securities in International Financial Services centers under the Special Economic Zones Act of 2005 are not considered 'electronic mode' under the Companies Act of 2013.

Section 8 Companies (nonprofit companies)

Section 8 Companies, as defined by the Companies Act of 2013, are organizations that promote a variety of goals such as commerce, art, science, education, research, social welfare, religion, charity, and environmental protection. Instead of paying dividends to shareholders, these companies use their profits to benefit society. If the Central Government is convinced that a person or group intends to form a company under the Companies Act 2013 for purposes such as promoting commerce, art, science, sports, education, charity, etc.,

Characteristics of Section 8 Company

Section 8 corporations are formed with the primary goal of social welfare and charitable activities rather than profit-making.

Section 8 companies, unlike other types of businesses, are not required to have a minimum paid-up capital.

These companies are licensed by the central government.

Under Section 8 of the Companies Act of 2013, they are required to work for the benefit of society.

These organizations frequently receive donations from the general public for their charitable projects.

Section 8 Companies operate with limited liability, akin to private or public limited companies, in which members' liability is limited to the amount of their share subscription.

Eligibility requirements for registration

To be eligible for registration, the primary goal must be to promote social welfare, the arts, education, science, and commerce or provide financial assistance to underserved communities. All profits must be used to further the organization's goals and objectives. No dividends may be paid to any members or directors, either directly or indirectly. Directors and promoters are not allowed to receive any form of compensation. A clear vision and project plan for the company's operations over the next three years are required.

Nidhi companies

Nidhi companies are a type of non-banking financial organization (NBFI) established under the Companies Act of 2013 that primarily lends and borrows among its members. Nidhi companies are mutual benefit societies, which means they are owned by members who both contribute to and benefit from the business. A Nidhi company's primary activity is to instill in its members the value of thrift and savings, as well as to lend funds to them for mutual benefit.

Section 406 of the Act addresses the power of the Central Government to modify the application of the Companies Act to Nidhi companies.

Conclusion

The Companies Act of 2013 is critical in regulating various types of businesses and ensuring that they follow the rules. This law benefits not only the companies but also their employees, customers, and society as a whole. This defined scope benefits end users by providing companies with a legal framework within which to operate. As a result, these companies remain within a certain boundary, and they do not abuse their power. Thus, it benefits in a variety of ways, including employees being protected in terms of their labor rights, end users receiving high-quality products, and society as a whole facing fewer company-related fraudulent issues because the law has it all under control.

References

- *http://www.economicsdiscussion.net/company/types-of-companies/31784*
- *https://www.caclubindia.com/articles/an-overview-on-associate-company-27387.asp*
- *https://www.setindiabiz.com/learning/associate-company/*
- *https://www.toppr.com/guides/business-laws/companies-act-2013/doctrine-of-ultra-vires/*
- *https://accountlearning.com/under-what-circumstances-a-pvt-company-be-converted-to-public-company*
- *https://www.businessmanagementideas.com/organisation/types/conversion-of-a-private-company-into-a-public-company/8936*
- *http://www.mca.gov.in/SearchableActs/Section381.htm*
- *https://blog.ipleaders.in/information-prospectus-company/*
- *https://www.toppr.com/guides/business-studies/private-public-and-global-enterprises/government-company/*
- *http://www.arthapedia.in/index.php?title=Government_Company*
- *https://smallbusiness.chron.com/relationship-between-holding-subsidiary-company-14683.html*
- *https://blog.ipleaders.in/difference-between-holding-and-subsidiary-company/*
- *https://www.owlgen.com/question/write-a-note-on-illegal-association*
- *https://www.clearias.com/indian-companies-act-2013-salient-features/*
- *https://corporatefinanceinstitute.com/resources/management/holding-company/*
- *https://taxguru.in/company-law/implication-amendment-definition-associate-company-companies-amendmentact-2017.html*
- *https://companykayda.com/subsidiary-company-definition/*
- *https://taxguru.in/company-law/government-company-companies-act-2013.html*
- *https://cleartax.in/s/one-person-company-registration-procedure-india*

- *https://cleartax.in/s/foreign-company-india-registration*
- *https://taxguru.in/company-law/foreign-companies-companies-act-2013.html*
- *https://taxguru.in/company-law/rules-regulations-section-8-company.html*
- *https://taxguru.in/company-law/section-8-companies-under-companies-act-2013.html*
- *https://blog.ipleaders.in/section-8-of-companies-act-2013/*
- *https://investguiding-com.custommapposter.com/article/what-are-the-disadvantages-of-a-public-company*

Referred books

- Avtar Singh, Company Law, 15th Edition, Easter Book Company.