

**OPC [Sec 2(62)] + Sec 3 + Rule 3 & 4 of Companies
(Incorporation) Rules, 2014**

- 1) OPC means a company which **has only one person as member**.
- 2) The OPC will have **one member and one nominee** who will become member of OPC in case of death or incapacity of original member to **support going concern & perpetual succession**.
- 3) The name of the nominee shall be given in the memorandum of OPC and his **written consent shall be obtained in INC 4**.
- 4) Only following persons can be member or nominee of OPC:
 - a) Only natural person (**Individual**)
 - b) Other than minor (**Major** Age \geq 18 years)
 - c) Who is an **Indian citizen**
 - d) Whether resident in India or otherwise (**Resident** = Stay in India \geq 120 days during PFY, however it is **irrelevant condition but recommended**)
- 5) The nominee of the OPC can **withdraw his consent** at any point of the time by giving notice to **sole member as well as to OPC**.
- 6) In above case the sole member shall nominate the **new person within 15 days** of withdrawal of above nomination and shall give intimation to company along with **written consent in form INC 4**.
- 7) The sole member may **change the name of the nominee** due to any reason including death or incapacity etc. and nominate new person with his written consent.
- 8) The **intimation** of change of nomination as **above shall be given to company**.
- 9) In case sole member cease to member of the OPC and **nominee becomes the new member** then such new member shall give **new nomination within period of 15 days**.
- 10) In all of the above cases of change (which are also listed below) an **intimation shall be sent to ROC within 30 days** of such event with the consent of the nominee in INC 4.

Analysis & Institute Special Points

- 1) The name of such nomination shall be given in E-form **SPICe -32** (INC-32) and his consent shall be obtained in **INC 4**. (Old INC 3 of consent is deleted)
- 2) **OPC cannot be** incorporated as or converted to Sec 8 company.
- 3) OPC cannot carry any **Non-Banking Financial** or **investment activity** or **investment in securities** of anybody corporate.
- 4) **Individual neither** shall be a **member of more than one OPC but he can be nominee of more than one OPC at same time (Rule 3(2))**.
- 5) But if **Individual is member in one OPC and Nominee in other** and becomes of member of 2nd OPC due to death of original member then he shall **select any membership within the period of 180 days** from such event.
- 6) Change in nomination or change in the name of existing nominee **shall not be considered as alteration of memorandum**.
- 7) The intimation for change of nominee is prior intimation and not afterwards.

Relaxation given to OPC as per ICAI

(Author Note: You will understand these things only after completion of entire syllabus as it involves many detailed sections from your syllabus.)

- 1) **Not required** to prepare a **cash-flow** statement with effect of section 2(40).
- 2) The **annual return** to be furnished under section 92 can be **signed by the Director** and not necessarily a Company Secretary, even an abridged annual return may be prescribed.
- 3) Further, following the similar line, section 134 provides it would suffice if **one director signs the audited financial statements** and an abridged form of director report may be prescribed.
- 4) **Holding annual general meeting** as required under section 96 is **not necessary** in case of OPC. Moreover, certain specific provisions related to general meetings and extraordinary general meetings, specified under sections 100 to 111 are not applicable to OPC.
- 5) Even **relaxation is also there in convening board meetings**. **Section 173** requires an OPC to hold only one meeting of the Board of Directors in each half of a calendar year.
- 6) Vide section 137, the **OPC are allowed to file financial statements within six months** from the close of the financial year as against 30 days.

Private Company [Sec 2(68)]

Definition:

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

- 1) **Restricts** the right to transfer its shares;
- 2) Limits the number of its **members to two hundred** (except in case of One Person Company):
 - i) The section provides that where two or more persons hold one or more shares in a company **jointly**, they shall, for the purposes of this section, be treated as a **single member**.
 - ii) However, following shall **not be included** in the number of members:
 - a) Persons who are in the **employment** of the company; and
 - b) Persons who, having been **formerly in the employment** of the company, were members of the company while in that employment and have continued to be members after the employment ceased.
- 3) Prohibits **any invitation to the public** to subscribe for any securities of the company.

Analysis & Institute Special Points:

- 1) There is **restriction** on transfer of shares and **not prohibition**. So, the shares can be transferred as follows:
 - a) From one **member to another member**
 - b) From one member **to his relative** (sec 2(77)), friends, connections, acquaintance. (you will better understand this in prospectus chapter)
 - c) To group of persons in **private placement**.
- 2) The person if he is shareholder before his employment or purchase the shares after his employment will be counted as member. Only **shares allotted during the employment will not be considered** to be shareholder.
- 3) **Joint holding means** all the holders will have **equal or defined rights** over all the shares and they are not divisible.
- 4) **The private company** cannot make invitation to public for subscribing shares but it can do so for subscribing non-convertible debentures and preference shares and they can be **listed also on recognized stock exchange**. (You will understand this better under sec 2(52) definition of listing.)

Public Company [Sec 2(71)]

Definition:

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

- 1) is **not a private company**
- 2) has a **minimum paid up** share capital as may be prescribed
- 3) **Seven or more members** are required to form the company.

This section provides that a company which is subsidiary of a company (not being a private company) shall be **deemed to be public** company even where such subsidiary company continues to be a private company in its articles.

Analysis & ICAI Special Points:

- 1) The term **“public company is not private company”** is not just irrelevant thing. It is having a **hidden meaning** that all the restrictions of the private company which are given below are not applicable to public company:
 - a) **Transfer of share is not restricted** in public company. It is freely allowed rather tradable.
 - b) The maximum limit of **200 members is not applicable** to public company it can have infinite members.
 - c) The public company can **issue prospectus to public** for subscribing shares as well as debentures or any other form of security.
- 2) The last paragraph of the definition states that the private company which is subsidiary of public company will **be deemed public** company and all the section of the public company are applicable to it.

Small Company [Sec 2(85)]

Definitions

“Small company” means a company, **other than a public company**:

- 1) 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 ten crore rupees**; and
- 2) turnover of which as per profit and loss account for the immediately preceding financial year 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 one hundred crore rupees**:

Provided that nothing in this clause shall apply to:

- a) A **holding company or a subsidiary company**;
- b) A company registered under **section 8**; or
- c) A company or body **corporate governed by any special Act**;

As per the definition of the small company currently the paid-up capital and turnover of the company shall not exceed Rs. 4 cr and Rs. 40 cr respectively.

Analysis & Institute Special Points:

- 1) The limit given for small company in original definition is **not actually the limit it is just the range** and the MCA shall decide the limit of the small company on year-on-year basis.
- 2) The question arises **why the definition and the limit of the small company is required?** The reason is:
 - a) Small company gets the maximum exemptions from the companies act. So, it have more **freedom of the business**.

- b) By increasing the limit of the small company the MCA want to exempt more number of companies to give them the freedom of business to **boost the economy** and MCA reduce the limit so less number of companies will have exemption or freedom which shall apply more restriction **hence, economy and inflation will be controlled.**
- 3) However, the MCA do not have power to reduce the limit then the range given below. So, the company below paid up capital of Rs. 50 lakh and below turnover of Rs 2 cr. will **always remain small** and Company having paid up capital above Rs. 10 cr or turnover above Rs. 100 cr. will **always remain big.**

Holding company [2(46)], Subsidiary Company [2(87)], Associate Company [2(6)], Sister Concern (No Sec)

Definitions

Holding Company:

Holding and subsidiary¹ are relative terms. A company in relation to one or more other companies, means a company of **which such companies are subsidiary company.**

Explanation: For the purposes of this clause, the expression "Company" includes any body-corporate.

Subsidiary Company:

Section 2(87) "subsidiary company" defines in relation to any other company (that is to say the holding company), means a company **in which the holding company:**

- (I) **Controls composition Board** of Directors; or
- (II) Exercises or **controls more than one-half of total voting power** on its own or together with one or more subsidiary companies.

Provided that as may be prescribed such class or classes of holding companies **shall not have layers of subsidiaries** beyond such numbers as may be prescribed.

Associate Company:

"Associate Company" means a company in which other company has a **significant influence**, but which is **not a subsidiary company** of the company having such influence and **includes a joint venture** company.

Explanation. - For the purpose of this clause :

- 1) The term "**significant influence**" means control of at least **20% of total voting power**, or of business decisions under an agreement control of or participation in business decisions under an agreement;
- 2) The expression "**joint venture**" means a joint arrangement whereby the parties that have **joint control of the arrangement have rights to the net assets** of the arrangement.
- 3) "**Total voting power**", in relation to any matter, means the **total number of votes which may be cast** in regard to that matter on a poll at a meeting of a company if all the members there of or their proxies having a right to vote on that matter are present at the meeting and cast their votes.

Sister Concerns:

There is no specific section on the definition of sister concern however the concept is used in reality (substance) many times. It simply means if one holding company have 2 subsidiaries then those 2 subsidiaries are called as sister concerns of each other.

Analysis & Institute Special Points:

- 1) Control the composition of the BOD means exercise of some power exercisable by it at its discretion **can appoint or remove all or a majority of the directors.**
- 2) **Voting power means mainly equity shareholding** unless and until preference shares have voting power as per sec 47.
- 3) **Layers** can be explained with example as: If A Ltd is holding and B Ltd is subsidiary then it is one layer. And if

B Ltd also have subsidiary C Pvt Ltd its is 2nd layer and so on. (The concept is not usable in this syllabus though it is usable under other section of companies act e.g. Sec 186 Loans and investments by company).

- 4) If 2 companies are under common BOD those are not subsidiary or holding those are just **companies under common management**.
- 5) The **shares held in fiduciary capacity** shall not be considered for purpose of finding the associate company. (Fiduciary capacity means as legal representative, official assignee, etc.).
- 6) The definition of the associate company given here is slightly different than the definition given under AS 23 and IND AS 28. So it is advisable to students not to use this definition in such Standards.

Government Company [Sec 2(45)]

Definitions

“Government company” means any company:

- a) in which **not less than 51% 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
- b) includes a company which is a **subsidiary company of such a Government company**;

Explanation. - For the purposes of this clause, the "**paid-up share capital**" shall be construed as "**total voting power**", where shares with differential voting rights have been issued.

Analysis & Institute Special Points:

- 1) The imp point to be remembered is the **government company can be created by holding 51%** of voting power, which is unlike **subsidiary company which can be created by holding Majority** of voting power (50% + 1 vote).
- 2) So, while calculation of government holding importance shall be given to 51% government holding and while calculating government subsidiary the importance shall be given to majority of voting power (i.e. 50% + 1 vote).
- 3) If you **cross refer this definition with PFI [sec 2(72)]** you will understand that PFI creation (apart form LIC, UTI, IFCI) is nothing but creation of government company only just a government acquiring shares of financial institution.

Public Financial Institution [Sec 2(72)]

Definitions

“Public financial institution” means:

- 1) The **Life Insurance Corporation of India**, established under section 3 of the Life Insurance Corporation Act, 1956;
- 2) **The Infrastructure Development Finance Company Limited**, referred to in clause (vi) of sub-section (1) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act;
- 3) Specified company referred to in the **Unit Trust of India** (Transfer of Undertaking and Repeal) Act, 2002;
- 4) Institutions **notified by the Central Government** under sub-section (2) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act;
- 5) Such other institution as may be notified by the **Central Government in consultation with the Reserve Bank of India**;

Provided that no institution shall be so notified unless

- A) It has been established or **constituted by or under any Central or State Act** other than this Act or the previous company law; or

- B) Not less than **fifty-one per cent of the paid-up share capital is held or controlled 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.

Foreign Company [Sec 2(42)]

The definition shall be better be discussed in foreign company chapter for its technicality and better understanding. It is being discussed in that chapter of this book.

Listed company [Sec 2(52)]

Definitions

Listed company means a company which has **any of its securities listed on any recognised stock exchange**; Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, **shall not be considered as listed companies.**

According to rule 2A of the Companies (Specification of definitions details) Rules, 2014, the **following classes of companies shall not be considered as listed companies**, namely:

- a) **Public companies** which have **not listed their equity shares** on a recognized stock exchange but have listed their –
 - (I) Non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
 - (II) Non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
 - (III) Both categories of (I) and (II) above.
- b) **Private companies** which have **listed their non-convertible debt securities** on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;
- c) **Public companies** which have not listed their **equity shares on a recognized stock** exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.

Analysis & Institute Special Points:

- 1) In the simple words the public company who have listed its equity shares only on recognized stock exchange will only be considered as listed company. (currently 6 stock exchange are Recognized and others are unrecognized, it may change in future).
- 2) **So, ultimately which companies shall not be considered as listed company ?**
Ans : The following companies will not be considered as listed companies.
 - a) Public company only listed its Debentures or preference shares on any stock exchange (Non-Convertible).
 - b) Private company only have listed Non-convertible debentures on any stock exchange.
 - c) Any company listed any shares on unrecognized stock exchange.
- 3) **Then question arises why such listing requirement is so specific?**
Ans : The answer is the **very imp sections of the companies act** given as follows **are applicable to listed companies** so as to provide major compliance requirement for ethical conduct of business. So, accurate specification of listed companies is required for same.
 - a) Internal Auditor [Sec 138 from syllabus];

- b) Rotation of auditors [Sec 139 from syllabus];
 - c) Independent director [Sec 149 CA Final];
 - d) Woman director [Sec 149 CA Final];
 - e) Audit Committee [Sec 177 relevant in audit chapter and subject];
 - f) Remuneration committee [Sec 178 CA Final];
 - g) Many more such sections are there (we are just covering bit relevant sections above).
- 4) If you **read above definition with the definition of the private company** [Sec 2(68)] then you will only understand that the private company can issue the prospectus for debentures or debt instrument which are not convertible in to equity shares which ultimately means that private company can also be listed but it will not be covered for applicability of the sections of the companies act as stated above. So the question can also be asked on private company listing is debentures is subject to application of above sec? answer is no as it is out of the scope of listed company.

Financial Statement [Sec 2(40)]

Financial statement in relation to a company, includes :

- 1) A **balance sheet** as at the end of the financial year;
- 2) A **profit and loss account**, or in the case of a company carrying on any activity not for profit, an **income and expenditure** account for the financial year;
- 3) **cash flow statement** for the financial year;
- 4) A statement of **changes in equity**, if applicable; and
- 5) Any **explanatory note** annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv).

Analysis & Special Points:

- 1) Provided that the financial statement, with respect to **one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement;**
- 2) The exceptions, modifications and adaptations shall be applicable to a private company which has not committed a default in filing its financial statements under **section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.**

Financial Year [Sec 2(41)]

Financial year, in relation to any company or body corporate :

- a) means the **period ending on the 31st day of March** every year; and
- b) where it has been **incorporated on or after the 1st day of January** of a 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.

Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a **company incorporated outside India** and is required to follow a different financial year for consolidation of its accounts outside India, the **Central Government may**, on an application made by that company or body corporate in such form and manner as may be **prescribed**, allow any period as its financial year, whether or not that period is a year.

Key Managerial Personnel [Sec 2(51)]

Key Managerial Personnel, in relation to a company, means:

- 1) The **Chief Executive Officer** or the **managing director** or the **manager**;
- 2) The **company secretary**;
- 3) The **whole-time director**;
- 4) The **Chief Financial Officer**;
- 5) **Such other officer**, not more than **one level below the directors** who is in whole-time employment, **designated as key managerial personnel** by the Board; and
- 6) **Such other officer** as may be prescribed;

Dormant Company & Active Company [Sec 455]

- 1) Where a company is formed and **registered under this 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 company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
- 2) **The Registrar** on consideration of the application shall allow the **status of a dormant company** to the applicant and issue a certificate in such form as may be prescribed to that effect.
- 3) The Registrar shall **maintain a register of dormant companies** in such form as may be prescribed.
- 4) In case of a company which has **not filed financial statements or annual returns for two financial years consecutively**, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.
- 5) A dormant company shall have **such minimum number of directors**, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.
- 6) The Registrar shall **strike off the name of a dormant company from the register of dormant** companies, which has failed to comply with the requirements of this section.

Explanation: For the purposes of this section:

- a) **“Inactive company”** means a company which has not been carrying on any business or operation, or has not made any **significant accounting transaction** during the last two financial years, or has not filed financial statement and annual returns during **the last two financial years**;
- b) **“Significant accounting transaction”** means any transaction other than:
 - (i) **payment of fees** by a company to the **Registrar**;
 - (ii) **payments made** by it to fulfil the requirements of this **Act or any other law**;
 - (iii) **allotment of shares** to fulfil the requirements of this Act; and
 - (iv) **payments for maintenance** of its office and records.

Important note :

There are much more definitions under companies act other than given in this chapter. Either such definitions are not relevant from exam point of view or those are discussed in chapters afterwards in this book. However if student wish to read such a definitions they can refer institute module.