

Classification of Companies	
<b>On the basis of Statute:</b> There are three ways in which companies may be incorporated. 1. Chartered Companies 2. Statutory Companies and 3. Registered Companies	
<b>Chartered Company</b>	A company created by the grant of a charter by the Crown is called a Chartered Company and is regulated by that Charter.

<b>Statutory Companies</b>	A company formed by passing a Special Act in the Parliament is called a Statutory Company or Statutory Corporation
<b>Registered Companies</b>	Those companies which are incorporated under the Companies Act, 2013 or under any previous company law.

### STATUTORY COMPANIES / CORPORATIONS

A Company formed under a Special Act of Parliament or State Legislature is called a Statutory Company/ Corporation.

The special enactment contains its constitution, powers and scope of its activities.

Change in its structure is possible only by a legislative amendment.

Such companies are usually formed to carry on the work of some special public importance and for which the undertaking requires extraordinary powers, and privileges.

A major objective for incorporating statutory corporations is to serve public interest.

Such companies do not use the word “limited” as part of their names, e.g., Reserve Bank of India, LIC, ONGC, ICSI, ICAI, etc.

#### Characteristics of Statutory Companies / Corporations

- (i) **Owned:** It is owned by the State
- (ii) **Special Law:** It is created by a special law of Parliament or State Legislature.
- (iii) **Immunity from Parliamentary Scrutiny:** A statutory corporation is immune from Parliamentary enquiry into its day-to-day working, as distinct from matters of policy.
- (iv) **Freedom in regard to personnel:** Excluding the officers taken from the Government department on deputation, its employees are not civil servants and are not governed by Government regulations in respect of conditions of service.
- (v) **A body corporate:** Each statutory corporation is a body corporate and can sue and be sued, enter into contracts and acquire property in its own name.
- (vi) **Distinct relation with the Government:** The most important provision which regulate the relationship of public corporation and Government is the latter’s power to issue directions.
- (vii) **Commercial Audit:** Except in the case of the banks, the financial institutions and the LIC, where chartered accountants are auditors, in all the other corporations, the audit has been entrusted to the Comptroller and Auditor General of India (CAG).

### REGISTERED COMPANIES

The Companies Act, 2013 provides different kinds of companies that can be promoted and registered under the Act.

According to Section 3 (1) of the Companies Act 2013, a company may be formed for any lawful purpose as:

- (a) Private Companies;
- (b) Public Companies; and
- (c) One Person Company (to be formed as Private Limited).

A company formed under sub-section (1) may be either—

- (a) a company limited by shares; or
- (b) a company limited by guarantee; or
- (c) an unlimited company.

**On the basis of Liability:** Under this category there are three types of companies:

<b>Company Limited by Shares</b>	A company limited by shares may be defined as a “registered company” whether public or private company, having the liability of its members limited by its shares, if any, unpaid on the shares respectively held by them. In other words, a member of a company limited by shares is required to pay only the nominal amount of shares held by him and nothing more. If the shares are fully paid-up, he has nothing more to pay.
<b>Company Limited by Guarantee</b>	A company limited by guarantee is a registered company having the liability of its members limited by its memorandum to such an amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up.
<b>An Unlimited Liability Company</b>	An unlimited company is a company not having any limit on the liability of its members. Thus, the maximum liability of the members of such a company, in the event of its being wound up, might stretch up to the full extent of their properties to meet the obligations of the company by contributing to its assets. However, the members of an unlimited company are not liable directly to the creditors of the company, as in the case of partners of a firm. The liability of the members is only towards the company and in the event of its being wound up only the liquidator can ask the members to contribute to the assets of the company which will be used in discharging the debts of the company. A company registered as an unlimited company may subsequently convert itself as a limited company.

The name of an unlimited company is written as

**“XYZ (A Company with Unlimited Liability)”.**

The promoters of an unlimited liability company incorporate these companies for number of reasons, such as,

Availing bank loans with ease,

Availing credits without mortgage on the property of the company.

An unlimited liability company can be converted into a company with limited liability.

### **Other Forms of Companies**

- (a) Associations not for profit having license under Section 8 of the Companies Act, 2013 or under any previous company law;
- (b) Government Companies;
- (c) Foreign Companies;

- (d) Holding and Subsidiary Companies;
- (e) Associate Companies/Joint Venture Companies
- (f) Investment Companies
- (g) Producer Companies.
- (h) Dormant Companies

**Private Company [Section 2(68)]**

According to Section 2(68) of Companies Act, 2013 “private company” means a company which by its articles, –

- (i) **restricts** the right to transfer its shares;
- (ii) except in case of One Person Company, limits the number of its **members to two hundred:**

Provided that where two or more persons hold one or more shares in a company **jointly**, they shall, for the purposes of this clause, be treated as a **single member**.

Provided further that –

- (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,

Shall not be included in the number of members; and

- (iii) **prohibits** any invitation to the public to subscribe for any securities of the company;

According to Sec 2(81), the term Securities means the securities as defined in Securities Contracts (Regulation) Act, 1956.

The Companies Act, 2013 prohibits a private company from inviting the public to subscribe for ALL TYPES OF SECURITIES, as opposed to the prohibition in the Companies Act, 1956, being only on shares and debentures.

A private company can be registered with a minimum of 2 members and cannot have more than 200 members.

Section 149(1) lays down that a private company shall have a minimum number of two directors. The only two members may also be the two directors of the private company.

The words “Private Limited” must be added at the end of its name by a private limited company.

As per proviso to Section 14 (1), if a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, such company shall, as from the date of such alteration, cease to be a private company. In such a case, it shall be treated as a public company from the date of alteration of its articles.

	<p>A private company can <b>only</b> accept deposit <b>from its members</b> in accordance with section 73 of the Companies Act, 2013.</p> <p>The express prohibition on invitation/ acceptance of deposits except from directors or their relatives or from members as was given under the section 3(1)(iii)(d) of Companies Act, 1956, is omitted under the Companies Act, 2013.</p>
<b>Public Company [Section 2(71)]</b>	<p>“Public company” means a company which is not a private company.</p> <p>As per section 3 (1) (a), a public company may be formed for any lawful purpose by seven or more persons, by subscribing their names to a memorandum and complying with the requirements of this Act in respect of registration.</p>

### **Privileges and Exemptions of Private Company**

The Companies Act, 2013, confers certain privileges on private companies which are not subsidiaries of public companies. Such companies are also exempted from complying with quite a few provisions of the Act.

Some privileges and exemptions enjoyed by a private company are as:

Sec. 67(2)	Financial assistance can be given to its employees for purchase of or subscribing to its own shares or shares in its holding company.
Sec. 121(1)	Need not prepare a report on the Annual General Meeting.
Sec. 134(3)(p)	Need not prepare a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.
Sec. 149(4)	Need not appoint Independent directors on its Board.
Sec. 152(6)	A proportion of directors need not retire every year.
Sec. 190(4)	The provisions relating to contract of employment with managing or whole-time directors does not apply to a private company.
Sec. 197(1)	Total managerial remuneration payable by a private company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year may exceed eleven per cent of the net profits.

According to Sec. 462 (1), the Central Government may in public interest, by notification, direct that any of the provisions of this Act, shall not apply to such class or classes of companies or shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.

<b>Distinction between a Public and a Private Company</b>	
<b>Minimum number</b>	The minimum number of persons required to form a public company is 7. It is 2 in case of a private company.
<b>Maximum number</b>	There is no restriction on maximum number of members in a public company, whereas the maximum number cannot exceed 200 in a private company.
<b>Number of directors</b>	A public company must have at least 3 directors, whereas a private company must have at least 2 directors.
<b>Restriction on invitation to subscribe for shares</b>	A public company invites the general public to subscribe for the shares in, or the debentures of the company. A private company by its Articles prohibits any such invitation to the public.
<b>Transferability of shares</b>	In a public company, the shares are freely transferable. In a private company the right to transfer shares is restricted by the Articles.
<b>Privileges</b>	A private company enjoys some special privileges. A public company enjoys no such privileges.

<b>One Person Company (OPC)</b>	
<b>Meaning</b>	<p>As per section 2(62) of the Companies Act, 2013, “One Person Company” means a company which has only one person as a member.</p> <p>In other words, one-person company is a kind of private company.</p> <p>One-person company shall have a minimum of one director. Therefore, a One Person Company will be registered as a private company with one member and one director.</p>
<b>Formation</b>	<p>According to section 3(2), an OPC may be formed either as a company limited by shares or a company limited by guarantee; or an unlimited liability company.</p> <p>The memorandum of One Person Company is required to indicate the name of the other person, (i.e., nominee) with his prior written consent in the prescribed form, (<b>Form No. INC 3- Rule 4(2)</b>), who shall, in the event of the subscriber’s death or his incapacity to contract become the member of the company and the written consent of such person shall be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles.</p> <p>As per Rule 4(1), the subscriber to the MOA of OPC shall nominate a person after obtaining prior consent of such person who shall, in the event of the subscriber’s death or incapacity to contract, become the member of that OPC.</p> <p>As per Rule 4(2), the member shall make nomination in <b>Form No. INC 2</b>.</p>

	<p>As per Rule 4(3), the nominee may, withdraw his consent by giving a notice in writing to such (i) Sole member and to (ii) the One Person Company.</p> <p>Thereafter, the sole member shall nominate another person as nominee within 15 days of the receipt of the notice of withdrawal of consent, and shall send an intimation of such nomination in writing to the company, along with the written consent of such other person so nominated in <b>Form No. INC. 3</b>.</p> <p>As per Rule 4(4), thereafter, the co. shall within 30 days of receipt of the notice of withdrawal of consent from the nominee under Rule 4(3) file with the ROC, a notice of such withdrawal of consent and intimation of the name of another person nominated by the sole member in <b>Form No. INC. 4</b> along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014, and the written consent of such another person so nominated in <b>Form No. INC 3</b>.</p> <p>As per Rule 4 (5), the sole member of OPC may, by intimation in writing to company, change the name of nominee at any time for any reason (including death or incapacity to contract of nominee), and nominate another person after obtaining the prior consent of such other person in <b>Form No. INC. 3</b>.</p> <p><b>Summary of Usage of Different Forms</b>  <b>Form No. INC 2</b> - Application of Incorporation of OPC (The name of Nominee is given in Column 8).  <b>Form No. INC 3</b> – Nominee (or new nominee) gives his consent.  <b>Form No. INC 4</b> – Company gives intimation about nominee (or new nominee) to ROC.</p>
<p><b>Other conditions</b> for One Person Company are as under:</p>	
<p><b>Rule 3 -OPC</b>  As per Rule 3(1) (a), only a person who fulfils all the following three criteria can incorporate OPC-  (1) Only a natural person (2) who is an Indian citizen and (3) resident in India.</p> <p>As per Rule 3(1) (b), only a person who fulfils all the three criteria shall be a nominee for the sole member of OPC-  (1) Only a natural person (2) who is an Indian citizen and (3) resident in India.</p>	
<p>It may be noted that “resident in India” means a person who has stayed in India for a period of not less than one hundred and eighty-two days during the immediately preceding one calendar year.</p>	
<p>(2) No person shall be eligible to incorporate more than a One Person Company or become nominee in more than one such company. [Rule3 (2)]</p>	
<p>If a natural person, being a member in OPC in accordance with this rule becomes a member in another OPC by virtue of his being a nominee in that OPC, such person shall meet the eligibility criteria specified in Rule 3(2) with in a period of 180 days [Rule3 (3)].</p>	
<p><b>Four Restrictions on OPC</b></p>	

(3) No minor shall become member or nominee of the One Person Company. [Rule3 (4)]

(4) Such Company cannot be incorporated or converted into a company under section 8 of Companies Act, 2013(section 8 deals with Formation of company with charitable objects, etc.) [Rule3 (5)]

(5) Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporates. [Rule3 (6)]

(6) No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of One Person Company, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees. [Rule3 (7)]

### **Rule 5 – Penalty**

IF OPC or any officer of OPC contravenes of these rules, then OPC or any officer of the OPC shall be punishable with fine which may extend to Rs. 10,000 and a further fine which may extend to Rs. 1000 for every day after the first default during which such contravention continues.

### **Contract by One Person Company**

Section 193 (1) provides that where One Person Company limited by shares or by guarantee enters into a contract with the sole member of the company who is also the director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract are recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract.

However, above said provision shall not apply to contracts entered into by the one-person company in the ordinary course of its business.

As per section 193 (2), the company shall inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board of Directors under sub-section (1) within a period of fifteen days of the date of approval by the Board of Directors.

As per section 152 (1), in case of a One Person Company an individual being its member shall be deemed to be its first director until a director or directors are duly appointed by the member.

### **Privileges of a One Person Company**

The privileges and exemptions enjoyed by a one-person company are as follows:

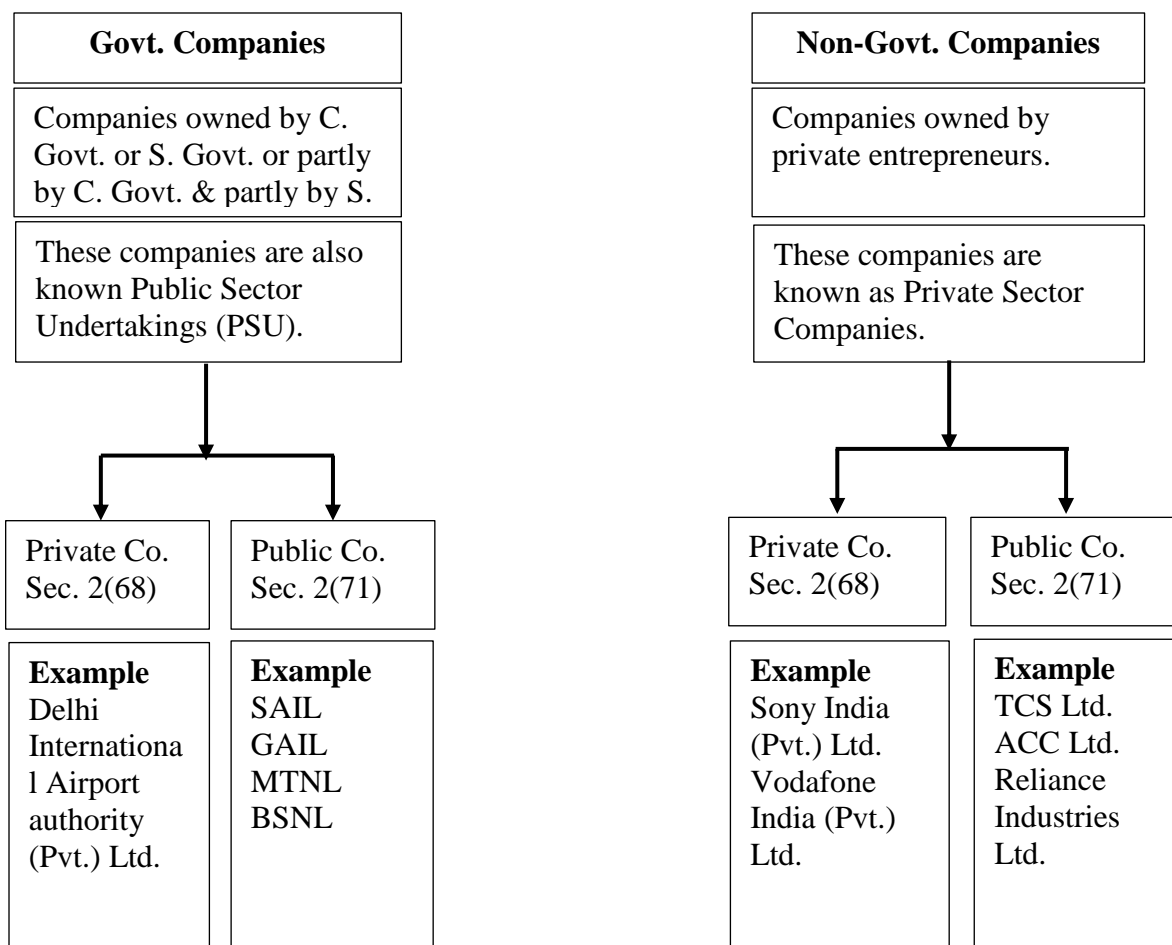
Sec. 67(2)	Financial assistance can be taken by the member from the OPC for purchase of its own shares.
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Sec. 92(1)	The annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company. In other words, it need not be signed by a company secretary in practice.
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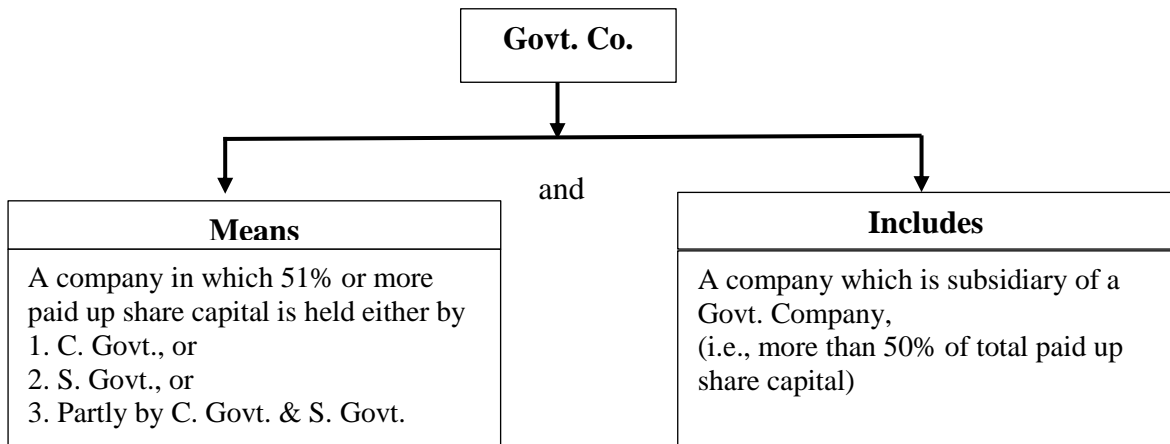
Sec. 96(1)	Need not hold Annual General Meeting.
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Sec. 121(1)	Need not prepare a report on Annual General Meeting.
Sec. 134(1)	Financial statement and Board's report can be signed only by one director.
Sec. 134(3)(p)	Need not prepare a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.
Sec. 149(1)	One-person company need not to have more than one director on its Board.
Sec. 149(4)	Need not to appoint Independent directors on its Board.
Sec. 152(6)	Retirement by rotation is not applicable.
According to Sec. 462 (1), the Central Government may in public interest, by notification, direct that any of the provisions of this Act, shall not apply to such class of companies; or shall apply to the class of companies with such exceptions, modifications and adaptations as may be specified in the notification.	

### Classification on the basis of Ownership



## Government Companies



Section 2(45) of the Companies Act, 2013 defines “Government Company” as any company 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 company of such a Government company.

All the provisions of the Act are applicable to Government Companies unless otherwise specified. A Government Company may be formed as a Private Limited Company or Public Limited Company.

The name of all Government Companies shall end with the word “Limited”, be it Public or a Private Company.”

**Name:** In case of Government Company, the word “STATE” is allowed in name.

### AUDIT REPORT

Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be prepared within three months of its annual general meeting, and laid before both Houses of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India.

Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared within three months of its annual general meeting and laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report, made by the Comptroller and Auditor- General of India.

Where the Central Government is not a member of a Government company, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual report on the working and affairs of the company to be prepared and as soon as may be after such preparation, laid before the House or both Houses of the State Legislature together with a copy of the audit report and comments upon or supplement to the audit report made by the Comptroller and Auditor-General of India.

**Important Cases relating to Govt. Company**

**Hindustan Steel Works Construction Co. Ltd. vs. State of Kerala**

Notwithstanding all the pervasive control of the Government, the Government company is neither a Government department nor a Government establishment.

**A.K. Bindal v. Union of India**

Since employees of Government companies are not Government servants, they have no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay scales should be met by the Government. It is the responsibility of the company to pay them the salaries.

**Andhra Pradesh Road Transport Corporation vs. ITO**

The Andhra Pradesh State Road Transport Corporation claimed exemption from taxation by invoking Articles 289 of the Constitution of India according to which the property and income of the State are exempted from the Union taxation. The Supreme Court, while rejecting the Corporation’s claim, held that though it was wholly controlled by the State Government, it had a separate entity and its income was not the income of the State Government.

**NOTE:** The employees of a Government Company are not the employees of the Central or State Government.

A Government Company may, in fact, be wound up like any other company registered under the Companies Act.

It may become insolvent or be unable to pay its debts. That does not mean that the Government holding the shares, i.e., Central or State, as the case may be, has become bankrupt.

**Company with charitable objects or an Association not for Profit (Sec 8)**

As per Section 4(1), the memorandum of a company shall state the name of the company with the last word “Limited” in the case of a public limited company, or the last words “Private Limited” in the case of a private limited company.

However, Section 8(1) permits the registration, under a licence granted by the Central Government, of associations not for profit with limited liability without being required to use the word “Limited” or the words “Private Limited” after their names.

Section 8 of the Companies Act, 2013 provides that where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered as a limited company –

- (a) has in its **objects** the promotion of art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- (b) intends to **apply its profits**, if any, or other income in promoting its objects; and
- (c) intends to **prohibit the payment of any dividend** to its members.

**Main Provisions**

(1) The Central Government may by issuing licence, on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company without the addition to its name of the word “Limited”, or as the case may be, the words “Private Limited”, and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.

[In this case, it is necessary for a company to obtain a licence from C. Govt. (ROC). For this purpose, powers are delegated to ROC. Application in **Form INC.12 and Rule 19 of Companies (Incorporation) Rules, 2014** apply.]

(2) The company registered under section 8 shall enjoy all the privileges and be subject to all the **obligations of limited companies**.

(3) A **partnership firm** may be a member of the company registered under this section.

(4) A company registered under Section 8 **shall not alter** the provisions of its memorandum or articles except with the previous approval of the Central Government.

(5) A company registered under Section 8 **may convert itself into company** of any other kind only after complying with such prescribed conditions.

(6) The Central Government may, by order, revoke the licence granted to a company registered under this section if --  
the company contravenes any of the requirements or any of the conditions subject to which a licence is issued or  
the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest,  
--direct the company to convert its status and change its name to add the word “Limited” or the words “Private Limited”, as the case may be, to its name and thereupon the Registrar shall register the company accordingly.

(7) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.

#### **Example- FICCI**

#### **Small Company**

Small company is a new form of private company under the Companies Act, 2013. A classification of a private company into a small company is based on its size i.e. paid up capital and turnover. In other words, such companies are small sized private companies.

As per section 2(85) “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;

(B) A company registered under section 8; or

(C) A company formed under any special Act.

### **MCA amends definition of Small Company [Section 2(85)]**

However, there were difficulties faced to ascertain whether a company is a Small Company based on the paid share capital or turnover as per last profit and loss account. MCA has listed some of the challenges as follows:

If the company breaches any one criterion for Small Company, it will not be eligible for the benefits of Small Company, for ex: a company that has a paid up capital Rs. 25 lacs and the turnover for a particular year is Rs 2.5 crores will not be classified as Small Company. The status of a company as a Small Company may change from year to year.

Holding Company and Subsidiary Company being exempted from the definition of Small Company will never be able to avail the special privileges of a Small Company even if they fulfill either (1) paid up share capital or (2) turnover requirement of a Small Company.

In order to overcome these difficulties, MCA passed an order **Companies (Removal of Difficulties) Order, 2015 on 13<sup>th</sup> Feb, 2015** to amend the definition of 'Small Company' as a company (other than Public Company) whose paid up capital does not exceed Rs. 50 lacs **and** turnover as per last profit and loss account does not exceed Rs. 2 crores.

With the change in the definition of Small Company, some of the companies who were falling under Small Company category will now move to non-small company category. As a result, the exemptions which were provided to these companies will not be applicable as mentioned below:

**1. Cash-flow Statement:** - The company which does not fall under Small Company category as per amended definition will have to prepare the cash flow statement as a part of their financial statement.

**2. Filing Annual Return:** - The company which does not fall under Small Company category as per amended definition or which is not a One Person Company (OPC has one shareholder), will have to get their annual returns signed both by the Director **and** the Company Secretary. In the case of Small Company, One Person Company or Unlisted Company, either the Company Secretary **or** the Director can sign the Annual Returns.

**3. Rotation of Auditor:** - . The company which does not fall under Small Company category as per amended definition will have to ensure the mandatory rotation of auditor, which is 5 years in the case of individual auditor and 10 years in the case of a firm of auditors. This is exempted for Small Company as per amended definition.

**4. Board meeting:** -The company which does not fall under Small Company category is required to hold at least 4 meetings every year and the gap between two consecutive meetings should not be more than 120 days. Small Company, One Person Company or Dormant Company

may hold only two board meetings in a year, i.e. half-yearly board meetings with a minimum gap of 90 days between two meetings.

As mentioned earlier, a company which is categorized as Small Company may move to non-small company category through its life term. In case a particular company does not meet the requirement as mentioned above, for one year, the benefits and exemptions will be withdrawn from the subsequent year.

### **Unincorporated Company**

According to Sec. 582 of Companies Act, 1956, a partnership firm having 8 or more partners (but within the limit of 50) shall be deemed / considered as an unincorporated company, and the partners of such firm have two options at the time of dissolution:

1. Either to dissolve the firm themselves under the Partnership Act, 1932, or
2. To file an application to the Court for the winding up by the liquidator.

### **Distinction between Unlimited Liability Co. and Unincorporated Co.**

<b>Basis</b>	<b>Unlimited Liability Co.</b>	<b>Unincorporated Co.</b>
<b>Registered</b>	Unlimited liability company is registered under Companies Act, 2013.	It is not registered under the Companies Act, 2013
<b>Certificate of Incorporation</b>	It has a Certificate of Incorporation.	It does not have a Certificate of Incorporation.
<b>No. of Members/ Partners</b>	It has minimum 2 members and maximum 200 members, in case of Private company; and in case of Public company, it has minimum of 7 persons and there is no maximum limit.	It is a partnership firm having minimum 8 members and maximum 50 partners.
<b>Governed</b>	It is governed by the provisions of Companies Act, 2013.	It is governed by the provisions of Partnership Act, 1932.
<b>Liability of</b>	Liability of members is unlimited.	Liability of partners is unlimited.

### **Foreign Companies**

As per section 2(42) of the Companies Act, 2013 “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.

### **Rule 2(1)(b) Companies Specification of Definition Details) Rules, 2014**

#### **Electronic Mode**

Electronic Mode for the purpose of Section (2(42) of the Act, means carrying out any electronically based activities, whether main server is installed in India or not, including activities given below;

- (i) Business to Business (B2B) and Business to Consumer (B2C) transactions, data interchange and other digital supply transactions;
- (ii) Offering to accept deposits or inviting deposits or accepting deposits OR subscription in securities in India OR from Citizen of India;
- (iii) Financial Settlements, Web based marketing, Advisory and Transactional Services, Database Services and Products, Supply Chain Management;
- (iv) Online services such as telemarketing, telecommuting, telemedicine, educational and information research; and
- (v) All related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

NOTE: According to Rule 2(1)(h), the list of activities given above is inclusive.

### **Document etc. to be filed with ROC by Foreign Companies**

Section 380 of the Act lays down that

- (1) Every foreign company which establishes a place of business in India must, within 30 days of the establishment of such place of business, file with the Registrar of Companies for registration:
  - (a) a certified copy of the memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;
  - (b) the full address of the registered or principal office of the company;
  - (c) a list of the directors and secretary of the company containing such particulars as may be prescribed;
  - (d) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
  - (e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
  - (f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
  - (g) declaration that none of the directors of the company or the authorized representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
  - (h) any other information as may be prescribed.
- (2) Every Foreign company existing at the commencement of this Act shall, if it has not delivered to the ROC before the commencement, the document and particulars specified in sub section (1) of Section 592 of the Companies Act, 1956, continue to be subject to the obligation to deliver those documents.
- (3) Where any alteration is made or occurs in the document delivered to the ROC under this section, the foreign company shall, within 30 days of such alteration, deliver to the ROC for registration, a return containing the particulars of the alteration in the prescribed form.

Section 381 requires a Foreign Company to maintain Books of Account and file a copy of balance sheet and profit and loss account in prescribed form with ROC every calendar year. Every foreign company has to ensure that the name of the company, the country of incorporation, the fact of limited liability of members is exhibited in the specified places or documents as required under Section 382.

Section 376 of the Companies Act, 2013 provides further that when a foreign company, which has been carrying on business in India, ceases to carry on such business in India, it may be wound up as an unregistered company under Sections 375 to 378 of the Act, even though the company has been dissolved or ceased to exist under the laws of the country in which it was incorporated.

As per Section 386(c), having a share transfer office or share registration office will constitute a place of business.

A representative of a foreign company in India was merely receiving orders from customers, it was held that it was not a “place of business” **P.J. Johnson v. Astrofiel Armadorn**

The following activities are held as not constituting “carrying on of business”:

- (1) carrying small transactions
- (2) conducting meetings of shareholders or even directors
- (3) operating bank accounts
- (4) transferring of shares or other securities
- (5) procuring orders

Where not less than fifty per cent of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Act as may be prescribed by the Central Government with regard to the business carried on by it in India, as if it were a company incorporated in India.

**On the basis of control**, companies can be classified into holding, subsidiary and associate companies.

**Holding company**

As per Section 2(46) of the Companies Act, 2013, holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

**Subsidiary company**

Section 2(87) of the Companies Act, 2013 provides that subsidiary company means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total share capital either at its own or together with one of more of its subsidiary companies.

**Meaning of Control:** According to section 2 (27), control shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons by virtue of their shareholding or management rights or shareholder’s agreements.

### **Meaning of Total Share Capital**

As per 2(1)(r) “total Share Capital”, means aggregate of the: -

- (a) paid-up equity share capital and
- (b) convertible preference share capital.

### **There are 3 ways to determine the relationship of holding and subsidiary company.**

1. If H Ltd. controls, the composition of BoDs of S Ltd.
2. If H Ltd. holds more than 50% of the Total Share Capital of S Ltd.
3. Chain Holding – If H Ltd is holding of S Ltd. And S Ltd. is holding of XYZ Ltd. then H Ltd. is holding of XYZ Ltd also.

**Note:** C. Govt. may prescribe in the rules the maximum number of layers of Subsidiary Companies that a particular class of holding Company may have.

**MCA Circular dated 27<sup>th</sup> Dec, 2013** has clarified the shares held by a company (i.e. Holding Co.) or power exercisable by it in another company (i.e., Subsidiary Co.) in “fiduciary capacity” shall not be counted for the purpose of determining the holding subsidiary relationship in terms of provisions of section 2(87) of the Companies act, 2013.

### **Subsidiary company not to hold shares in its holding company [Section 19]**

Section 19 (1) provides that subsidiary company shall not either by itself or through its nominees hold shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Following are the circumstances, where a subsidiary can hold the shares of its holding company:

- (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) where the subsidiary company holds such shares as a trustee; or
- (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company:

However, the subsidiary company referred above shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee, as referred to in item (a) or (b) aforesaid.

### **Associate Company**

As per Section 2(6), “Associate company”, in relation to another company, means a company in which that 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 to section 2(6) provides that “significant influence” means control of at least twenty percent of total share capital, or of business decisions under an agreement.

**Example:** A Ltd. is an associate company of B Ltd. If:

- (i) - B Ltd. has significant influence in A Ltd. and - B Ltd. is not a holding company of A Ltd.

or  
(ii) A Ltd and B Ltd. are joint venture companies.

### **Investment Companies**

As per explanation (a) to section 186, “investment company” means a company whose principal business is the acquisition of shares, debentures or other securities.

An investment company is a company, the principal business of which consists in acquiring, holding and dealing in shares and securities.

The word ‘investment’, no doubt, suggests only the acquisition and holding of shares and securities and thereby earning income by way of interest or dividend etc.

But investment companies in actual practice earn their income not only through the acquisition and holding but also by dealing in shares and securities i.e. to buy with a view to sell later on at higher prices and to sell with a view to buy later on at lower prices.

### **Producer Company**

Producer Companies are still governed by the Companies Act, 1956.

According to Section 581A(1) of the Companies Act, 1956,

"Producer Company" means a body corporate having objects or activities specified in section 581B and registered as Producer Company under this Act;

The membership of producer companies is open to such people who themselves are the primary producers, which is an activity by which some agricultural produce is produced by such primary producers.

The concept of *Producer Company* in India was introduced to allow cooperatives to function as a corporate entity under the Ministry of Corporate Affairs.

### **Objects of Producer Company (Section 581B (1) of the Companies Act, 1956)**

(1) The objects of the Producer Company shall relate to all or any of the following matters, namely:

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

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

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

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

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

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

(g) insurance of producers or their primary produce;

(h) promoting techniques of mutuality and mutual assistance;

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

(j) any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i)

(k) financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include extending of credit facilities or any other financial services to its Members.

Section 581 B (2) Every Producer Company shall deal primarily with the produce of its active Members for carrying out any of its objects specified in this section.

**Formation of Producer Company and its registration.**

Any ten or more individuals, each of them being a producer or any two or more producer institutions, or a combination of ten or more individuals and producer institutions, desirous of forming a Producer Company having its objects specified in section 581B and complying with the provisions of this Act in respect of registration, may form an incorporated Company as a Producer Company under this Act.

**DORMANT COMPANIES**

The Companies Act, 2013 has recognized a new set of companies called as dormant companies.

As per section 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.

Explanation appended to section 455(1) says that for the purposes of this section—

(i) “**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 statements and annual returns during the last two financial years;

(ii) “**significant accounting transaction**” means any transaction other than—

- (a) payment of fees by a company to the Registrar;
- (b) payments made by it to fulfil the requirements of this Act or any other law;
- (c) allotment of shares to fulfil the requirements of this Act; and
- (d) payments for maintenance of its office and records.

As per section 455(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.

Section 455(3) provides that the Registrar shall maintain a register of dormant companies in such form as may be prescribed.

According to section 455(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.

Further 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. [Section 455(5)]

**PUBLIC FINANCIAL INSTITUTIONS**

According to Section 2 (72), “Public financial institution” means—

- (i) the Life Insurance Corporation of India,
- (ii) the Infrastructure Development Finance Company Limited,
- (iii) Unit Trust of India;
- (iv) institutions notified by the Central Government;
- (v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

However, no institution shall be so notified unless—

- (A) it has been established or constituted by or under any Central or State Act; 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.

### **Unregistered Companies [Section 375]**

Section 375 of the Companies Act, 2013 defines an unregistered company to include:

- Any Partnership Firm,
- Limited Liability Partnership,
- Society,
- Cooperative Society,
- Association, or
- Company consisting of more than seven members.

### **Pre-emptive Right of Existing Shareholders**

According to Sec. 2(68) (i), the Articles of Association of all private companies provide that – if a particular shareholder of such company wants to sell off his shares, then he shall, first of all, offer his shares to all the remaining existing shareholders of such company and wait for such period of time as may be mentioned in AOA and if all the existing shareholders refuse to purchase his shares (or do not respond back in given time period, then only the concerned shareholder shall offer his shares to an outsider, i.e., who is not a shareholder of such company. This right of first refusal of existing shareholders is also called as Pre-emptive Right of Existing Shareholders.

## Conversion of Private Company Into a Public Company & Vice Versa

Section 14 (1) states a company may, by a special resolution and by altering its articles, may convert from

- (a) a private company into a public company; or
- (b) a public company into a private company:

### Conversion of Private Ltd. Co. into Public Ltd. Co.

According to Section 14, the following steps shall be necessary for conversion of a private company into a public company.

<b>Alteration of Articles</b>	When a private company alters its articles in such a manner that they no longer include any of the restrictions and limitations which are required to be included in the articles of a private company under section 2(68), the company shall, as from the date of such alteration, cease to be a private company. So, where AOA of a private company are amended to raise its membership beyond 200, or permitting free transferability of shares, or to extend invitation to public to subscribe to its shares or debentures, it becomes a public company, with effect from the date of such alteration.
<b>Special Resolution</b>	According to Section 14, a private company can amend its AOA for the purpose by passing a Special Resolution.
<b>Increase in Membership</b>	If the number of members is less than seven, it must increase to not less than seven.
<b>Increase in no. of directors</b>	If the number of directors is less than three, it must increase to not less than three.
<b>Filing of Altered Articles</b>	Every alteration of the articles under this section shall be filed with the Registrar in Form No. INC 27, together with printed copy of altered articles within period of 15 days.
<b>Privileges cease</b>	It also ceases to have the privileges and exemptions conferred on it by the Act as a private company.
<b>All provisions of public co. apply</b>	It becomes a public company and all the provisions of the Act applicable to such companies become applicable to it.

### Conversion of Public Ltd. Co. into Private Co.

For conversion of a public company into a private company, Section 14 provides that

<b>Passing of Special Resolution</b>	A special resolution at a general meeting of shareholders should be passed authoring the conversion of public company into a private company and altering its AOA, so as to contain the matter specified in section 2(68) namely the three
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	restrictions, i.e., limiting the total number of members to 200, restricting the transferability of shares and prohibiting invitation to public for subscribing of its shares debentures, etc.
<b>Changing the name of the co.</b>	Company's name ought to be changed by adding the word "private" before the word Limited. As per section 13, it does not require special resolution to be passed.
<b>Approval of Tribunal</b>	Any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit. A public company can be converted into a private company only after the approval of the Central Government. It cannot be treated as a private company till the Central Government accords its approval.
<b>Filing of Altered Articles</b>	Every alteration of the articles under this section shall be filed with the Registrar in Form No. INC 27, together with printed copy of altered articles within period of 15 days.
<b>Rule 33 of Companies (Incorporation) Rules 2014</b>	
(1) For effecting the conversion of a private company into a public company or vice versa, the application shall be filed in <b>Form No. INC-27</b> with fee.	
(2) A copy of order of the competent authority approving the alteration shall be filed with the Registrar in <b>Form No. INC-27</b> with fee together with the printed copy of the altered articles within fifteen days of the receipt of the order from the Central Government.	

### **CONVERSION OF SEC. 8 COMPANY INTO A COMPANY OF ANY OTHER KIND**

Section 8(4)(ii) provides that a company registered under section 8 i.e., companies with charitable objects may convert itself into company of any other kind only after complying with such conditions as may be prescribed.

#### **Rule 21 and 22 of Companies (Incorporation) Rules 2014**

<b>Passing of Special Resolution</b>	A company registered under section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion.
<b>Explanatory Statement to be annexed to the notice</b>	The explanatory statement annexed to the notice convening the general meeting shall set out in detail the reasons for opting for such conversion including the following, namely: - (a) the date of incorporation of the company; (b) the principal objects of the company as set out in the memorandum of association; (c) the reasons as to why the activities for achieving the objects of the company cannot be carried on in the current structure i.e. as a section 8 company;

	<p>(d) if the principal or main objects of the company are proposed to be altered, what would be the altered objects and the reasons for the alteration;</p> <p>(e) what are the privileges or concessions currently enjoyed by the company, such as tax exemptions;</p> <p>(f) details of impact of the proposed conversion on the members of the company including details of any benefits that may accrue to the members as a result of the conversion.</p>
<b>Certified copy of Special Resolution</b>	A certified true copy of the special resolution along with a copy of the Notice convening the meeting including the explanatory statement shall be filed with the Registrar in <b>Form No.MGT-14</b> along with the fee.
<b>Application to Regional Director</b>	The company shall file an application in <b>Form No. INC-18</b> with the Regional Director with the fee along with a certified true copy of the special resolution and a copy of the Notice convening the meeting including the explanatory statement for approval for converting itself into a company of any other kind and the company shall also attach the proof of the notice served to all the authorities prescribed.
<b>Copy to ROC</b>	A copy of the application with annexures as filed with the Regional Director shall also be filed with the Registrar.
<b>Publication of notice</b>	The company shall, within a week from the date of submitting the application to the Regional Director, publish a notice at its own expense, and a copy of the notice, as published, shall be sent forthwith to the Regional Director and the said notice shall be in <b>Form No. INC.19</b> and shall be published.
<b>Declaration to the effect that no dividend /bonus shares</b>	The Board of directors shall give a declaration to the effect that no portion of the income or property of the company has been or shall be paid or transferred directly or indirectly by way of dividend or bonus to persons who are or have been members of the company.
<b>NOC from relevant authorities, in case of special status</b>	Where the company has obtained any special status, privilege, exemption, benefit or grant(s) from any authority such as Income Tax Department, Charity Commissioner or any organization or Department of Central Government, State Government, Municipal Body or any recognized authority, a “No Objection Certificate” must be obtained.
<b>No failure in filing financial statements /Annual Return</b>	The company should have filed all its financial statements and Annual Returns up to the financial year preceding the submission of the application to the Regional Director.
<b>Attach certificate of compliance for conversion</b>	The company shall attach with the application a certificate from practicing Chartered Accountant or Company Secretary in practice or Cost Accountant in practice certifying that the conditions laid down in the Act and these rules relating to conversion of a company registered under section 8 into any other kind of company, have been complied with.

<b>Company to give up concessions enjoyed or being enjoyed</b>	On receipt of the application, for the conversion of the Sec. 8 company into a company of any other kind, the Regional Director shall issue an order for approving the conversion on terms and conditions such as: (i) The company shall give up and shall not claim any special status, exemptions or privileges. (ii) If the company had acquired any immovable property free of cost or at a concessional cost from any government or authority, it may be required to pay the difference between the cost at which it acquired such property and the market price of such property. (iii) Any accumulated profit or unutilized income of the company brought forward from previous years shall be first utilized to settle all outstanding statutory dues, amounts due to lenders claims of creditors, suppliers, etc.
<b>On receipt of Approval of Regional Director</b>	On receipt of the approval of the Regional Director, (i) the company shall convene a general meeting of its members to pass a special resolution for amending its memorandum of association and articles of association. (ii) the Company shall thereafter file with the Registrar- (a) a certified copy of the approval of the Regional Director within thirty days from the date of receipt of the order in <b>Form No. INC-20</b> along with the fee; (b) amended memorandum of association and articles of association of the company. (c) a declaration by the directors that the conditions, if any imposed by the Regional Director have been fully complied with.
<b>Issue of Fresh Certificate</b>	On receipt of the documents referred above, the Registrar shall register the documents and issue the fresh Certificate of Incorporation.

### CONVERSION OF OPC INTO A PUBLIC CO. OR PRIVATE CO.

#### Rule 6 of Companies (Incorporation) Rules 2014

<b>Paid up capital/ turnover of OPC exceed prescribed limits</b>	When the paid up share capital of a One Person Company exceeds fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as a One Person Company.  One Person Company where the paid up capital/turnover as the case may be exceeds the prescribed limits, shall be required to convert itself, within six months of the date on which its paid up share capital is increased beyond fifty lakh rupees or the last day of the relevant period during which its average annual turnover exceeds two crore rupees as the case may be, into either a private company with minimum of two members and two directors or a public company with at least of seven members and three directors in accordance with the provisions of section 18 of the Act.
<b>Alteration of Memorandum and Articles</b>	The One Person Company shall alter its memorandum and articles by passing a resolution to give effect to the conversion and to make necessary changes incidental thereto.

<b>Notice to Registrar</b>	The One Person Company shall within period of sixty days from the date of applicability, give a notice to the Registrar in <b>Form No. INC -5</b> informing that it has ceased to be a One Person Company and that it is now required to convert itself into a private company or a public company.
<b>Penalty for default</b>	If OPC or any officer of the OPC contravenes any of these rules, OPC or any officer of the OPC shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.
<b>Minimum no. of members/ directors to be complied on conversion</b>	A One Person company can get itself converted into a Private or Public company after increasing the minimum number of members and directors to two or minimum of seven members and two or three directors as the case may be.

<b>Rule 7- CONVERSION OF PRIVATE COMPANY INTO ONE PERSON COMPANY</b>	
<b>Passing of Special Resolution</b>	A private company (other than a company registered under section 8 of the Act) having paid up share capital of fifty lakhs rupees or less or average annual turnover during the relevant period is two crore rupees or less may convert itself into one-person company by passing a special resolution in the general meeting.
<b>No Objection</b>	Before passing such resolution, the company shall obtain No objection in writing from members and creditors.
<b>File Special Resolution with ROC</b>	The one-person company shall file copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in <b>Form No. MGT-14</b> .
<b>File an application for conversion</b>	The company shall file an application in <b>Form No. INC-6</b> for its conversion into One Person Company along with prescribed fees as provided in in the <b>Companies (Registration offices and fees) Rules, 2014</b> , by attaching the following documents, namely: - (i) The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital company is fifty lakhs rupees or less or average annual turnover is less than two crores rupees, as the case may be; (ii) the list of members and list of creditors; (iii) the latest Audited Balance Sheet and the Profit and Loss Account; and (iv) the copy of No Objection letter of secured creditors.
<b>Issue of Certificate</b>	On being satisfied and complied with requirements stated herein the Registrar shall issue the Certificate.