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# Stratification of Companies

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## ABSTRACT

*The Great problem of having corporate citizens is that they aren't like the rest of us. As Baron Thurlow in England is supposed to have said, "They have no soul to save, and they have no body to incarcerate"- Robert Monks*

*In this article we will enhance our knowledge regarding Company and its stratification as per Companies Act, 2013. We will be dealing with enormous section under this article. Meanwhile, Companies functions and composition will also be tackled in the same. As of now, Companies Act has been amended a lot of times before coming to a certain.*

**Keywords:** *Company, Limited, Companies Act 2013 and Corporation.*

## I. INTRODUCTION

Companies are classified on several basis and to name few they are on the basis of their incorporation, size basis of motive and control, number of members.

On the basis of incorporation the companies may be classified into charter companies, Statutory Companies and Registered companies. On the basis of liability, it may be Companies limited by share/guarantee and unlimited liability companies. Furthermore, on the basis of number of their members, they may be classified into One Person Company (OPC), private company and public company respectively. On the basis of size, they are further divided into small companies and other companies. On the basis of control, they are classified into holding company associate company and subsidiary company. Besides companies may be non-profit licenced under Section-8, Government companies and foreign companies, investment companies and, producer companies, etc.

## II. CLASSIFICATION ON THE BASIS OF INCORPORATION

There are three ways through which company can be incorporated-

### (A) Statutory Company

These are constituted by special Act of Parliament or State Legislature. The provision of company act, 2013 does not apply to them. Examples of these types of companies are Reserve

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of India, Life Insurance Corporation of India, Unit Trust of India, etc. Statutory companies are not required to have memorandum of association. The word 'Limited' is not a part of their names.

### **(B) Registered Companies**

The companies which are incorporated under the Companies Act, 2013 or under any previous company law, with ROC fall under this category. Except statutory companies all the existing companies in India fall under this category.

## **III. CLASSIFICATION ON THE BASIS OF LIABILITY**

On the basis of liability there are three types of companies.

### **(A) Unlimited Liability Company**

In this type of company, the member is liable for company's debts in proportion to their respective interest in the company and their liability is unlimited. Unlimited Liability Company may or may not have share capital and they may be either a public company or a private company as per their liability.

### **(B) Companies Limited by Guarantee**

A company that has the liability of its members limited to such amount as the members may respectively undertake, by the memorandum, to contribute to the asset of the company in the event of its being wound-up is known as a company limited by guarantee. The members of a guarantee company are placed in the position of guarantors of the company's debt up to the agreed amount.

### **(C) Companies Limited by Share**

A company which has the liability of its members limited by the memorandum to the amount unpaid on the shares respectively held by them is termed as a company limited by share. For example, a shareholder who has paid ₹75 on a share of face value of ₹100 can be called upon to pay the balance of ₹25. Companies limited by shares are by far the most common in India and may be either public or private.

## **IV. CLASSIFICATION ON THE BASIS OF REGISTRATION AND NUMBER OF MEMBERS**

### **(A) Private Company**

A private company is normally what the Americans call 'close corporation' "private company" means a company having a minimum paid up share capital of one lakh rupees or such higher paid-up capital as may be prescribed and which by its articles,

(i) restricts the right to transfer its shares

(ii) except in the case of One Person Company, limits the number of its members to two hundred<sup>2</sup>

Provided that where two or more members hold one or more shares in a company jointly for the purpose of its definition will be treated as a single member.

Provided further that the following persons shall not be included in the number of members-

- person who are in employment of the company
- persons who, having been formerly in the employment of the company, were the members of the company while in that employment and having continued to be member after the employment ceased and,

(iii) prohibits any invitation to public to subscribe for any securities of the company  
It must be noted that it is only the number of members that is limited to two hundred. A private company may issue debentures to any number of persons, the only condition being that invitation to the public to subscribe for debentures is prohibited.

As per section 3(1), a private company may be formed for any lawful purpose by two or more person, by subscribing their names to a memorandum and complying with the requirements of this act in respect of registration.<sup>3</sup> A private company should have minimum of two directors. The only two members may also be the two directors of a private company.

### **(B) Public company**

‘Public Company’ means a company which is not private company and has a minimum paid up capital of five lakh rupees.

Provided that an organization that is subsidiary of an organization, not being a personal company, shall be deemed to be public company for the needs of this act even wherever such subsidiary company continues to be a private company in its article.<sup>4</sup>

The provision clarifies that if a private company is a subsidiary of a public company then it shall be deemed to be a public company for the purpose of this act, although it continues to be private company of its articles.

A public company could also be aforementioned to be Associate in Nursing association consisting of not but seven members, that is registered beneath this act in essence, any member

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<sup>2</sup> Section 2(68) of Companies Act,2013

<sup>3</sup> Section 3(1) of Companies Act,2013

<sup>4</sup> Section 2(71) of Companies Act,2013

of the general public WHO is willing to pay worth might acquire share in debentures of it. The securities of the general public company could also be quoted on an exchange. It may be noted in the case of public company the articles do not contain the restrictions provided in Section-2(68) of the Act.

### **(C) One-Person Company**

This act introduces a new type of entity to the existing list i.e. apart from forming a public or private company limited company, the 2013 Act enables the formation of a new entity a ‘one person company’ (OPC). An OPC means a company with one person as its member section 3(1). It may have only one director and one shareholder.

The introduction of OPC in the legal system is move that would encourage corporatisation of micro business and entrepreneurship. This concept of OPC was first counselled by the professional committee of Dr. JJ Iran in 2006. It had instructed that such any entity is also supplied with less complicated legal regime through exemptions in order that the tiny businessperson isn’t compelled to devote extensive time, energy and resources on the complex legal compliance.

One person company provides an entire new bracket of opportunities for those that have forestall to start out their own ventures with a structure of organized business. OPC could be a one investor company entity, wherever legal and monetary liability to the corporate solely. Though the idea of OPC is new in India however it is a really prospering type of business in United Kingdom and several other European countries since a really very long time currently. Various countries permit this kind of a corporate entity in which the promoting individual is both the director and the shareholder. An “OPC” can be incorporated for ‘charitable purpose’

### **(D) Small Company**

Small company may be a new type of private company beneath the companies Act, 2013. A classification of a private company into a small company is based upon its size i.e. paid up capital and turnover. In different words, such companies square measured “small sized private company”. It is not a public company.

As recommended by the Dr. JJ Irani Committee, The idea of little firms has been introduced within the Companies Act,2013.<sup>5</sup> “The Company see no reason why little firms ought to should suffer the implications of regulation that will be designed to confirm equalization of interest of stakeholders of enormous, wide command corporates. Company law ought to alter simplified

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<sup>5</sup> Adv. Potla Sukhavani Rao, *Introduction to company law, SLIDESHARE (May 29, 2021, 08:10 AM)* <https://www.sli deshare.net/PotlaSukhavani1/company-law-98044126>

deciding procedure by relieving such companies from choose statutory internal body procedure. Such companies should also be subjected to reduce financial reporting and audit requirements and simplified capital maintenance regimes. Primarily the regime for small companies ought to alter them to realize transparency at an occasional price through simplified needs. Such a framework is also applied to little corporation through exemptions, consolidated within the variety of a schedule to the Act.<sup>6</sup>

A small company has been defined [section-2(85)] as a company, other than public company:

(i) paid-up share capital of which does not exceed ₹50 lakhs or such higher amount as may be prescribed which shall not be more than ₹5 crore,

(ii) Turnover of which as per its last profit and loss account does not exceed ₹2 crore or such higher amount as may be prescribed which shall not be more than ₹20 crore.

This Section will not be applicable to a holding company or subsidiary company. A company registered under section-8 and a company or body corporate governed by special act.<sup>7</sup>

### **(E) Limited Company**

The Limited Company means a company limited by share or by guarantee. The liability of members, in the case of limited company, may be limited with reference to the nominal value of the share, respectively held by them or to the amount that they severally sure to contribute within the event of completing of an organization. Consequently, a limited is additional classified into

(a) company limited by shares and;

(b) company limited by guarantee.

A ‘company restricted by share’ suggests that an organization having the liability of its members restricted by the memoranda to the quality, if any, unpaid on the shares severally control by them. Companies ‘limited by share’ are most common.<sup>8</sup> A company limited by shares has a share capital, and the liability of each member is limited to the value of shares held by him. If he already paid part of the value, his liability remains to the extent of the unpaid amount. If shares are fully paid, the liability of the members in respect of such share is no more there. ‘company restricted by guarantee’ suggests that an organization having the liability of its members restricted by the memoranda to such quality as members could severally undertake

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<sup>6</sup> PARUL GUPTA, LEGAL ASPECTS OF BUSINESS: CONCEPTS AND APPLICATIONS, 2E, (ISBN: 9789353386443, Vikas Publishing House), [https://books.google.co.in/books?id=Ohu7DwAAQBAJ&redir\\_esc=y](https://books.google.co.in/books?id=Ohu7DwAAQBAJ&redir_esc=y)

<sup>7</sup> Section 2(85) of Companies Act, 2013

<sup>8</sup> Section 2(22) of Companies Act, 2013

to contribute to the assets of the corporate within the event of its being tense. <sup>9</sup>Clubs, trade associations and societies for promoting different objects are example of such a company. Companies 'limited by guarantee' are not formed for the purposes of profit but for the promotion of art, science, culture etc. These companies may or may not have as share capital. If it has share capital, then for the reduction of share capital of such company, the same rules are applicable as to company limited by shares.

### **(F) Unlimited Company**

'Unlimited Company' means a company not having a limit on the liability of its members. Thus, the most liability of the member of such company, within the event of its being tense, would possibly stretch up until full extent of their assets.<sup>10</sup> However, the members of the unlimited company are not liable directly to the creditors of the company, as in the case of partners of the firm. The liability of members solely towards the corporate and within the event of being wounded up only the Liquidator will raise the members to contribute to assets of the company which will be use in discharge of the debts of the company. One the main purpose of the Companies act is to confer upon the business community the privilege of trading with the limited liability. However, a company may be incorporated with the unlimited liability. The right of limited liability is desirable bit not a necessary adjunct to incorporation. A company not having any limit on the liability of its members is an 'unlimited company'; the liability of its members is enforceable only at the time of winding up.

Such companies are rare these days. The disadvantage is obvious. If, A, a trader, carries on business under the name of A& Company Limited, without being incorporated as a company with limited liability, then A is personally liable for all liability incurred in the business. The benefits square measure that such an organization needn't have any share capital. Even if it has, it may increase or reduce its capital without any restriction. And, it may purchase its own share. It may pay back the members and but their shares.

### **(G) Holding Company and Subsidiary Company**

On the basis of control companies can be classified into holding, subsidiary and associate companies. When the relationship between two companies is such that one of them is in a position to exercise a certain kind of control over the other, the controlling company is known as the holding company and the controlled one as the subsidiary company.<sup>11</sup>

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<sup>9</sup> Section 2 (21) of Companies Act,2013

<sup>10</sup> Section 2(29) of Companies Act,2013

<sup>11</sup> Section 2(46) of Companies Act,2013

Holding company, in respect to one or lot of different firms, suggests that an organization of that such firms area unit subsidiary firms.

Subsidiary company or subsidiary, in relation to any other company, means a company in which holding company (i) controls the composition of the Board of Directors (ii) exercise or controls more than one-half of the total of the total share capital either at its own or together with one or more of its subsidiary companies.<sup>12</sup>

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

### **(H) Foreign Company**

A ‘Foreign Company’ means any company incorporated outside India which has a place of business in India. “Foreign Company” means any company or body corporate and incorporated outside India which

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode and

(b) conducts any business activity in India in any other manner.<sup>13</sup>

Likewise, where representation of foreign company frequently come and stay in hotel in India for purchasing machinery and cotton. It can be said that the foreign company has place of business in India. In *South India corporation Limited vs EXIM Bank of Korea* (1985) 2 all ER219, an overseas bank hired premises in England, had some staff there for purpose of conducting external trade and financial relation, that was held to be a place of business, though no actual banking transaction were taken up.

But where a foreign company posted a representation in India only for the purpose of eliciting orders from the company’s customers that has held to be not establishing a place of business in India. The court said that there should be fixed and definite place where the business like operation are carried on for reasonable long period of time. *Johnson vs Astrofiel Armadorn* 1983)

### **(I) Government Company**

A Government company, according to section 2(45), means any company in which at least 51

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<sup>12</sup> Section 2(87) of Companies Act, 2013

<sup>13</sup> Section 2(42) of Companies, 2013

per cent of paid share capital is held by the Central Government or by any State Government or Governments, or partially by central governments and partially by one or more State Government.<sup>14</sup> For example, State Trading Corporation of India, Minerals and Metals Trading Corporation of India, Banks, Hospital these all are government companies. The subsidiary of a government is also a Government company.

When the Government engages itself in commercialism ventures, significantly as Government firms beneath the corporate law, it doesn't do as a state however it will in essence of an organization. A Government is not a department of state. Notwithstanding all the pervasive control of the Government, the Government company is neither a Government department nor Government establishment, it is just an agency of the Government<sup>15</sup>

The employee of State company don't seem to be the worker of the central or authorities. A Government company in fact, be wound like any other company registered under the Companies act, 2013. It may become insolvent or be able to pay its debts. That does not mean that Government is holding shares in other words Central or State has become bankrupt. Since worker of the Government firms don't seem to be the Government servant, they need no right to say that the Government ought to pay their earnings or the extra expenditure incurred on account of revision of their pay scales ought to be met by the Government it is responsibility of company to pay them their salaries. It is the responsibility of company to pay them the salaries.<sup>16</sup>

The advantage of forming a Government company is that it gives a little freedom which is enjoyed by the private companies and the Government companies may escape the rules and the principle that hampered action once it is done by the Government department rather than Government firms. It may be noted that Government company may be incorporated as a private company and it is not required to add its name "Private".

### **(J) Dormant Companies**

The Companies act, 2013 has recognized a fresh set of companies called as dormant companies or dormant firms. The 2013 act states that an organization are often classified as dormant once it is registered Associate in Nursing fashioned beneath this act for a future project or to carry a quality or holding and has no vital accounting dealing. Such an organization or Associate in nursing inactive one should apply to mythical monster in such manner as is also prescribed for

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<sup>14</sup> Section 2(45) of Companies, 2013

<sup>15</sup> Hindustan steel works construction company limited vs State of Kerala (1998)

<sup>16</sup> A.K. Bindal vs Union of India (2003)

getting of the dormant company.

“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 filed financial statement and annual returns during the last two financial years.<sup>17</sup>

The registrar shall maintain a register of a dormant firms in such kind as is also prescribed. Further a dormant company shall have such minimum number of directors, file such document and pay such annual fee as prescribed to the registrar to retain its dormant standing in register and should become active company on an application created during this behalf in the middle of such documents and fee as is also prescribed beneath section 455(5). The registrar shall strike take out the name of dormant company from register of dormant corporations that has didn't suits the necessities of this section.

## **V. CONCLUSION**

What we can conclude after studying this article is the various type of Companies or Corporation available as per Companies Act, 2013. Meanwhile, recent research shows that the Companies act has established equilibrium in the society in all and in equal means as a result this is also considered as the reliable source when it comes to better understanding of the Companies Act. However, there are still some matters which meant to be discussed more deliberately. Consequently, it is easier and reliable for a comparison between the previous act and in the amended act thereafter. The amended act often deals with very small knowledge which were not discussed previously.

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<sup>17</sup> *Inactive company definition, LAW INDISER (May 29, 2021, 08:12 AM)*, <https://www.lawinsider.com/dictionary/inactive-company>