

“Education for Knowledge, Science and Culture.”

— Shikshanmaharshi Dr. Bapuji Salunkhe

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Department of Commerce

Company Act -2013



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INTRODUCTION TO COMPANIES ACT 2013

Companies Act 2013 is an Act of the Parliament of India which regulates incorporation of a company, responsibilities of a company, directors, and dissolution of a company. The 2013 Act is divided into 29 chapters containing 470 sections as against 658 Sections in the Companies Act, 1956 and has 7 schedules. The Act came into force on 12 September 2013 with few changes like earlier private companies maximum number of member was 50 and now it will be 200. A new term of "one person company" is included in this act that will be a private company and with only 98 provisions of the Act notified.

Important highlights of Companies

Act, 2013:

- 1. New definitions have been introduced, some of which are auditing standards, associate company, CEO, CFO, control, employee stock option, financial statement, global depository receipt, Indian depository receipt, independent director, interested director, key managerial personnel, promoter, one person company, small company, turnover, voting right, etc.
- 2. Number of existing definitions have been modified, for example, definitions of abridged prospectus, body corporate, director, expert, managing director, officer in default, etc.
- 3. Definition of private company changed - the limit on maximum number of members increased from 50 to 200.
- 4. The concept of One Person Company introduced. It will be a private limited company.
- 5. The concept of Small Company introduced. It will be subject to lesser stringent regulatory framework

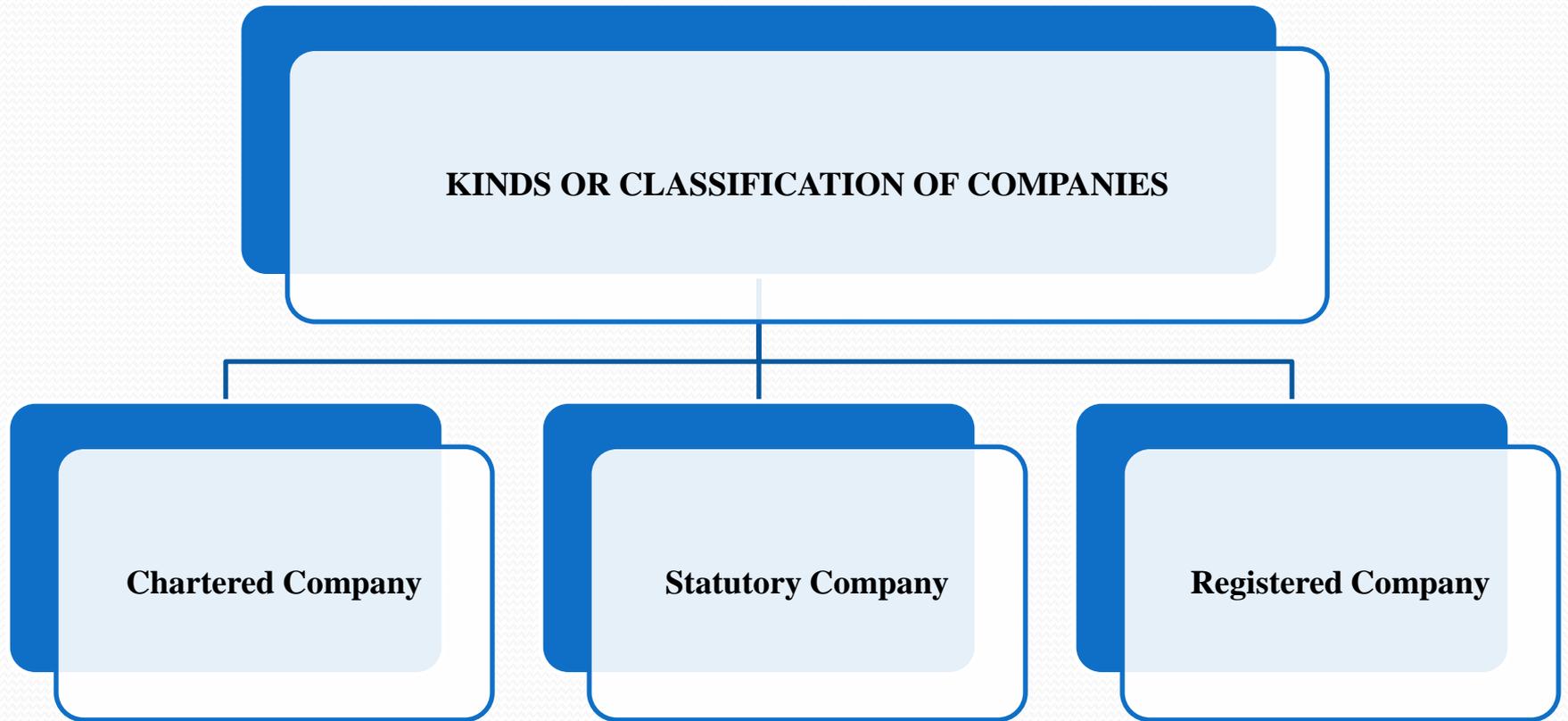
Meaning- Company

- **Company:** sec.3 (1)(i)- “ Company means a company formed and registered under this Act or an existing company” clause (ii) of Sec.3 (1) defines an existing company as follows :
- “Existing company” means a company formed and registered under any of the previous companies’ laws...”
- **Lord Justice Lindley:** “A company is an association of persons who contribute money to a common stock and employed in some trade or business and who share the profit and loss arising there from. The common stock so contributed is denoted in money and is the capital of the company”.
- **Haney:** “A Company is an artificial person created by law having separate entity with a perpetual succession and common seal.”
- **According to Section 2(20) of Companies Act, 2013,** company means a company incorporated (formed and registered) under this Act or under any of the previous companies’ laws.

Features /Characteristics of a Company

- 1. Separate Legal Entity
- 2. Limited Liability.
- 3. Perpetual Succession:
- 5. Transferability of Shares:
- 6. Common Seal:
- 7. Capacity to sue and being sued:
- 8. Separate Management
- 9. One Share-One Vote:

KINDS OR CLASSIFICATION OF COMPANIES



KINDS OR CLASSIFICATION OF COMPANIE

- **A. Chartered Company**
- The company which have formed and incorporated under a special charter granted by the king or queen. Eg East India Company, Bank of England.
- **B. Statutory Company**
- These are companies which are created by means of a special Act of Parliament or any state legislature. Eg RBI, Railway
- **C. Registered Company**
- Company formed and registered under companies Act 1956 is called registered companies. Registered companies are further classified as under –
- **1. On the basis of Constitution**
 - a. Associate
 - b. Dormant
 - c. One Person Company (OPC)
 - d. Private
 - e. Public
 - f. Small
- **2. On the basis of Liability of Members:**
 - a. Limited Company by Shares
 - b. Limited Company by Guarantee
 - c. Unlimited Company
- **3. On the basis of control:**
 - a. Government Company
 - b. Foreign Company
 - c. Holding and Subsidiary Company
- **4. Others:**
 - a. Investment Company
 - b. Non-Trading Company
 - c. Producer Company

Difference between private co. and Public co.

No.	Private Co.	Public Co.
1.	Minimum no of members is 2	Minimum no of members is 7
2.	Maximum no members is 200	No maximum limit
3.	Minimum paid up capital is Rs 1 lakh	Minimum paid up capital is 5 lakh
4.	Name must end with the word 'Pvt Ltd'	Name must end with the word 'Ltd'
5.	Can commence business immediately after incorporation	It shall have to wait until it receives the certificate for commencement of business.
6.	It cannot invite public to subscribe its shares and debentures	It can invite public to subscribe its shares and debentures
7.	Minimum subscription is not required for allotment of shares.	Minimum subscription is required for allotment of shares.
8.	Need not hold statutory meeting of the members.	It has to hold a statutory meeting and file a stat: report.
9.	Quorum required for a meeting is 2.	Quorum required for a meeting is 5
10.	There is restriction of transfer of shares	Shares can be freely transferred.
11.	Not required to issue prospectus.	Must issue prospectus.
13.	Two directors	Three directors

Advantages and Disadvantages of Public and Private Company

- **Private Limited Company - Advantages**
- 1. **Members:**
- 2. **Limited liability:**
- 3. **Perpetual succession:**
- 4. **Prospectus.**
- 5. **Number of directors:**
- 5. **Capital:**
- **Disadvantages of a Private Limited Company**
- 1. The shares in a **private limited company** cannot be sold or transferred to anyone unless other shareholders agree on the same.
- 2. There is no option to invite public to subscribe to the shares.
- 3. It is mandatory that you should mention Pvt. Ltd. at the end of a company name.
- 4. A private limited company can have a maximum of only 200 members. Thus it cannot enjoy more financial facilities as can be enjoyed by having more members.

Advantages and Disadvantages of Public and Private Company

- **Advantages of a Public Limited Company**

- 1. The shareholders have limited liability.
- 2. A company can raise additional capital by issuing more shares or debentures.
- 3. Greater borrowing power.
- 4. A board of directors with experience/ expertise can be appointed.
- 5. Shareholders can sell/transfer their shares freely.

- **Disadvantages of a Public Limited Company**

- 1. There is a loss of overall ownership.
- 2. There is a loss of control of the business.
- 3. Decisions take longer and there may be disagreement.
- 4. The personal touch may be lost.
- 5. When setting up a company, significant expenses are incurred.
- 6. There are more statutory regulations to conform.
- 7. Profits are shared amongst a far greater number of people.
- 8. Public disclosure of the financial affairs is necessary.
- 9. Published accounts have to be prepared.

Incorporation of company

- A company is an association of both natural and artificial persons incorporated under the existing law of a country. In terms of the Companies Act, 2013 a “company means a company incorporated under the Companies Act, 2013 (the Act) or under any of the previous company law” [Section 2(20)]. In common law, a company is a “legal person” or “legal entity” separate from, and capable of surviving beyond the lives of its members.

Process of Incorporation of company

- 1. Application for obtaining Director Identification Number (DIN) from the Ministry of Corporate Affairs.
- 2. Search for a company name – This step requires search of company name and the availability of names can be checked at the website of Ministry of Corporate Affairs (MCA). Availability of company names can be checked
<http://www.mca.gov.in/DCAPortalWeb/dca/MyMCALogin.do?method=setDefaultProperty&mode=16>
- 3. Application of proposed name – An application for proposed company name is to be filed with the Registrar of Companies (ROC)
- 4. Drafting of Memorandum of Association (MOA) and Articles of Association (AOA) – Some of the most critical documents involved in incorporation of a company are MOA and AOA. MOA covers the fundamental provisions involved in the company's formation and an AOA covers the rules and regulations governing the internal management of a company.
- 5. Filing of forms with the ROC – The procedure for incorporation of company requires filing of some essential Forms with the ROC, like Form INC -1 (form for incorporation of Company), Form INC -22 (form for notice of situation of registered office), Form DIR -12 (providing information about particulars of appointment of Directors)
- 6. ROC fees and Stamp Duty payment.
- 7. Thereafter, documents filed for incorporation of company will be verified by ROC.
- 8. Pursuant to verification of documents, the ROC will issue a “Certificate of Incorporation” to the Company. Thereafter, the company can commence functioning.

Memorandum of Association

- **Definition**
- As per Section 2(56) of the Companies Act, 2013
“memorandum” means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.
- **Contents:**
- 1. Name clause
- 2. Registered Office Clause
- 3. Liability Clause
- 4. Capital Clause
- 5. Objects Clause

Articles of Association

- An article of Association (AOA) is the secondary document, which defines the rules and regulations made by the company for its administration and day to day management. In addition to this the articles contain the rights, responsibilities, powers and duties of members and directors of the company. It also includes the information about the accounts and audit of the company.
- Every company must have its own articles; however, a public company limited by shares can adopt Table A instead of Articles of Association. It comprises of all the necessary details regarding the internal affairs and the management of the company. It is prepared for the persons inside the company, i.e. members, employees, directors, etc. The governance of the company is done according to the rules prescribed in it. The companies can frame its articles of association as per their requirement and choice.
- **Definition**
- As per Section 2(5) of the Companies Act, 2013 “articles” means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act.

Distinction between Memorandum and Articles

Basis	Memorandum of Association	Articles of Association
Condition	The memorandum contains the conditions upon which alone the company is granted incorporation. These conditions are fundamentals and unalterable.	The articles are the internal regulations of the company and over these the members have full control and they can be easily altered.
Power	The memorandum cannot give the company power to do anything contrary to the provision of the Companies Act.	The articles are not only limited by the act, but they are also subsidiary to the memorandum and cannot exceed the powers contained therein
Contract	The memorandum is in the nature of a contract between the company and the outsider dealing with it.	The articles do not create a contract between the company and the outsiders.
Objectives	The memorandum contains the objectives and powers of the company.	The articles provide the regulations by which those objectives and powers are to be carried into effect.
Provision	A person dealing with a company is supposed to know the provisions of its memorandum	A person dealing with a company is supposed to know the provision of its articles, if there is a breach of those provisions.
Alteration	The memorandum cannot be altered except as regards certain specified particulars and in accordance with the provisions of the law.	The articles can be altered by a special resolution at any time.
Relation	The memorandum limits the area beyond which articles cannot go.	In this sense, articles are subsidiary to the memorandum.
Validity	The memorandum is the dominant instrument and controls articles.	Any provision, contrary to memorandum of association, is invalid.
Deed of the company	Every company must have its memorandum of association	A company limited by shares may have its own articles of association
Registration	Memorandum must be registered at the time of incorporation.	The articles may or may not be Registered
Scope	The memorandum is the charter, which defines and confines powers and limitations of the company	The articles indicate duties, rights and powers of members, who are entrusted with the responsibility of running the administration and management

PROSPECTUS

- **Concept-**
- According to Companies Act, 2013 define “prospectus” means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate [Clause (70) of Section 2 of this Bill].
- In other words, it is a document which invites deposits from the public or invites offers from the public for the subscription of shares or debentures of a company.

KINDS OF PROSPECTUS

- 1. Red Herring Prospectus
- 2. Abridged Prospectus
- 3. Shelf Prospectus
- 4. Deemed Prospectus
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CONTENTS OF PROSPECTUS

- The prospectus contains the main objectives of the company, the name and addresses of the signatories of the memorandum of association and the number of shares held by them.
- The name, addresses and occupation of directors and managing directors.
- The number and classes of shares and debentures issued.
- The qualification share of directors and the interest of directors for the promotion of company.
- The number, description and the document of shares or debentures which within the two preceding years have been agreed to be issued other than cash.
- The name and addresses of the vendors of any property acquired by the company and the amount paid or to be paid.
- Particulars about the directors, secretaries and the treasures and their remuneration.
- The amount for the minimum subscription.
- If the company carrying on business, the length of time of such businesses.
- The estimated amount of preliminary expenses.
- Name and address of the auditors, bankers and solicitors of the company.
- Time and place where copies of balance sheets, profits and loss account and the auditor's report may be inspected.
- The auditor's report so submitted must deal with the profit and loss of the company for each year of five financial years immediately preceding the issue of prospectus.
- If any profit or reserve has been capitalized, the particulars of such capitalization will be stated in the prospectus.