

CA FOUNDATION NOTES PART- 2

The Companies Act, 2013

Classification of Company Based on Members:

1. One person company
2. Private company
3. Public company

One Person Company (OPC):

- Section 2(62) of the Companies Act defines a one-person company as a company that has only one person as to its member.
- Such companies are generally created when there is only one founder/promoter for the business.
- A sole proprietorship form of business might seem very similar to one-person companies because they both involve a single person owning the business.
- The main difference between the two is the nature of the liabilities they carry. Since an OPC is a separate legal entity distinguished from its promoter, it has its own assets and liabilities.
- On the other hand, sole proprietorships and their proprietors are the same persons.

Features of OPC:

- Only one person as a member.
- Minimum paid up capital – No limit prescribed.
- OPC has a separate legal entity from its member, and thus the liability of the member is limited.
- According to Section 3(1)(c) of the Companies Act, and OPC is a private limited company.
- **About Nominee:**
 - The member of an OPC is required to appoint a nominee (other person) at the time of incorporation who will take over the affairs of the company in case of the member's death or incapacity.

- The other person shall give his prior written consent in the prescribed form and the same shall be filed with the Registrar of Companies at the time of incorporation of the company.
- The other person may be given the right to withdraw his consent.
- The member of the OPC may at any time change the name of the other person by giving notice to the company and shall intimate the same to the Registrar.
- **Who can be a member of an OPC:** Only a natural person who is an Indian citizen whether resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year
 - shall be eligible to incorporate an OPC.
 - shall be a nominee for the sole member of an OPC.
- No person shall be eligible to incorporate more than one OPC or become a nominee in more than one such company.
- No minor can become a member or nominee of the OPC.
- Such a company cannot be incorporated or converted into a company under Section 8 of the act.
- It may be converted into private or public companies in certain cases.
- Such company cannot carry out non-banking financial investment activities including investment in securities of any body corporate.

On the Basis of Control:

1. Holding and Subsidiary Company
2. Associate Company

Holding and Subsidiary Company:

- Holding and subsidiary companies are relative terms.
- Section 2(46), A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.
- Section 2(87) defines Subsidiary Company in relation to any other company, in which the holding company –
 - (i) Controls the composition of board of directors

- (ii) Exercises or controls more than one half of the total voting power either at its own or together with one or more of its subsidiary companies.
- Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.
- Explanation — For the purposes of this clause,
 - (a) A firm will be considered a subsidiary of the holding company even if another holding company's subsidiary holds the control mentioned in subclause (i) or subclause (ii);
 - (b) The composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.
 - (c) the expression "company" includes any body corporate.
 - (d) "layer" in relation to a holding company means its subsidiary or subsidiaries
- According to section 2(71) of the Companies Act, 2013, a private company that is a subsidiary of a public company is considered a public company for the purposes of the act, even if the subsidiary company remains private in its articles.
- Examples:
 - A will be subsidiary of B, if B controls the composition of the board of directors of A, and B can without the consent or approval of any other person, appoint or remove a majority of directors of A.
 - A will be subsidiary of B, if B holds more than 50% of the share capital of A.
 - B is a subsidiary of A and C is a subsidiary of B. in such case, C will be the subsidiary of A.

Associate Company:

Section 2(6) "Associate Company", in relation to another Company, means a company in which another 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:

- (a) the expression “**significant influence**” means control of at least twenty percent of total voting power, or control of or participation in business decisions under an agreement.
- (b) the expression “**joint venture**” means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

On the Basis of Liability:

1. Company limited by Shares:

- Section 2(22) of the Companies Act defines that a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them, is known as a company limited by shares.
- Even if a firm goes bankrupt and has outstanding debt, a shareholder's liability is limited to the amount they invested in the business. Despite this, the shareholders can fully participate in the company's growth.
- Also, a shareholder is considered to be a co-owner of a company, he is not a co-owner of the company's assets.

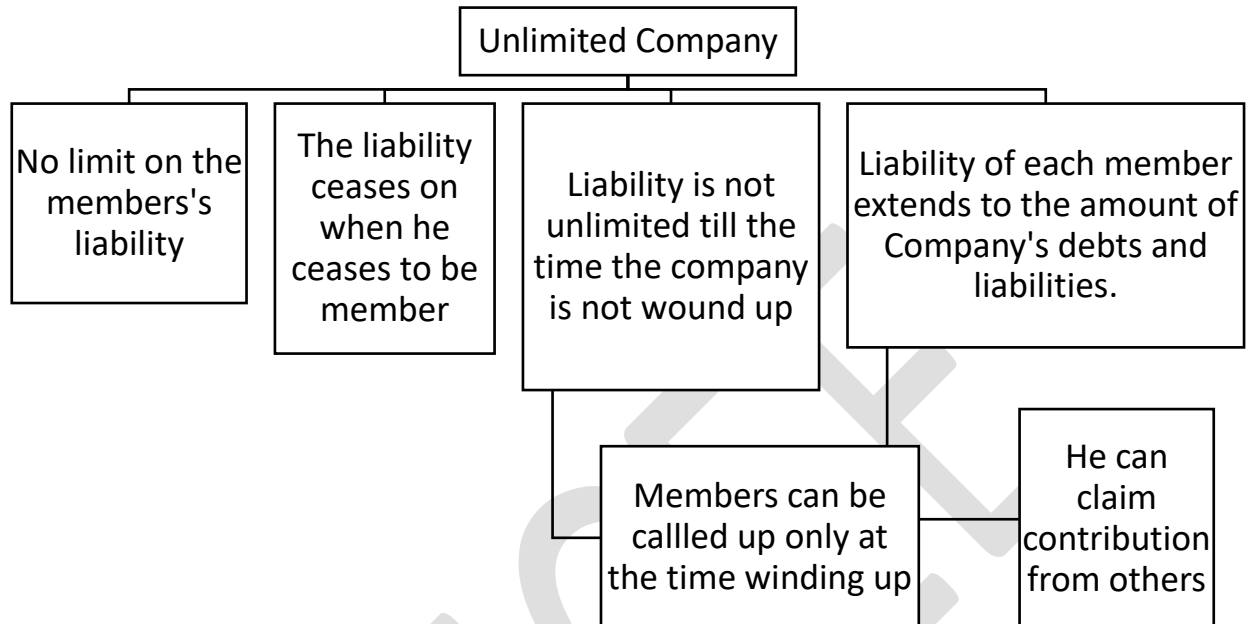
2. Company limited by Guarantee:

- Section 2(21) of Companies Act 2013 defines companies limited by guarantee as "a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.
- This type of company does not raise its initial working funds from the members.

Distinction between Company limited by guarantee and Company having share capital:

- The common features between a ‘guarantee company’ and ‘the company having share capital’ are legal personality and limited liability.

- In the case of companies having share capital, the member's liability is limited by the amount remaining unpaid on the share, which each member holds.



- In a Company limited by guarantee, The members may be called upon to discharge their liability only after commencement of the winding up, but in case of Company having share capital, they may be called to do so at any time, wither during the company's lifetime or winding up.

3. Unlimited Company:

- Section 2(92) defines "Unlimited Company" means a company not having any limit on the liability of its members.
- The liability of each member extends to the whole amount of the company's debts and liabilities, but he will be entitled to claim the contribution from other members.

On the Basis of Access to Capital:

1. Listed Company:

- Section 2(52) defines "**Listed Company**" means a company which has any of its securities listed on any recognized stock exchange.
- Companies Act 2013 provides that such class of companies, which have listed or intend to list such class of securities, as may be

prescribed in consultation with SEBI, are not to be considered as listed companies.

2. Unlisted Company: A company other than Listed Company.

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