

## 2. CLASSES OF COMPANIES

### QUESTION WISE ANALYSIS OF PREVIOUS EXAMINATIONS

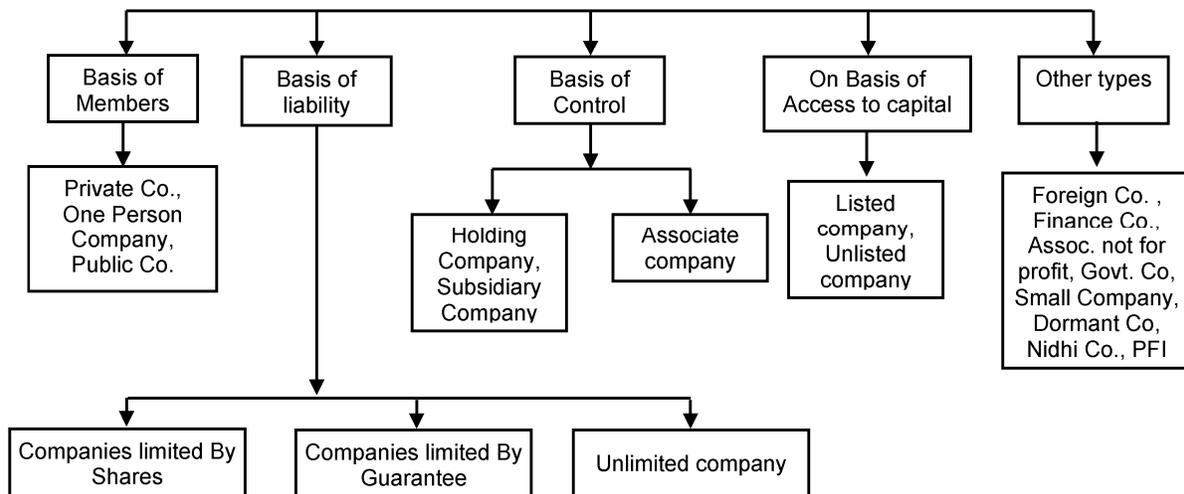
| No.                                          | M-14 | N-14 | M-15 | N-15 | M-16 | N-16 | M-17 | N-17 | M-18 (O) | M-18 (N) | N-18 (O) | N-18 (N) | M-19 (O) | M-19 (N) | N-19 (O) | N-19 (N) | N-20 (O) | N-20 (N) |
|----------------------------------------------|------|------|------|------|------|------|------|------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| THEORY QUESTIONS FOR CLASSROOM DISCUSSION    |      |      |      |      |      |      |      |      |          |          |          |          |          |          |          |          |          |          |
| 2.                                           | -    | -    | -    | -    | -    | -    | -    | -    | -        | -        | 4        | -        | -        | -        | -        | -        | -        | -        |
| PRACTICAL QUESTIONS FOR CLASSROOM DISCUSSION |      |      |      |      |      |      |      |      |          |          |          |          |          |          |          |          |          |          |
| 2.                                           | -    | -    | -    | -    | -    | -    | -    | -    | -        | 6        | -        | -        | -        | -        | -        | -        | -        | -        |

### CHAPTER OVERVIEW

| SECTION | TOPIC                                                | STARTING PAGE NO. |
|---------|------------------------------------------------------|-------------------|
| 1.      | THEORY FOR CLASSROOM DISCUSSION                      | 2.1               |
| 2.      | DIFFERENCES FOR STUDENTS SELF STUDY                  | 2.5               |
| 3.      | QUESTIONS FOR ACADEMIC INTEREST- STUDENTS SELF STUDY | 2.6               |
| 4.      | PRACTICAL QUESTIONS FOR CLASSROOM DISCUSSION         | 2.7               |
| 5.      | PRACTICAL QUESTIONS FOR STUDENTS SELF PRATCICE       | 2.10              |
| 6.      | TRUE OR FALSE STATEMENTS FOR CLASSROOM DISCUSSION    | 2.10              |
| 7.      | TRUE OR FALSE STATEMENTS FOR STUDENTS SELF PRACTICE  | 2.12              |

### SECTION 1: THEORY FOR CLASSROOM DISCUSSION

#### CLASSIFICATION OF COMPANIES



**Q.No.1. Write about classification of companies on the basis of its members (A) (NEW SM, OLD SM)**

**CLASSIFICATION OF COMPANIES - ON THE BASIS OF NUMBER OF MEMBERS:**

- 1) **Private company [Sec. 2(68)]:** Private Company means a Company having a minimum Paid-up Share capital as may be prescribed, and which by its articles:
- Restricts** the right to transfer its Shares (*and*)
  - Limits** the number of its members to 200 (in case of One Person Company - Only one member) (*and*)
  - Prohibits** any invitation to the public to subscribe for any securities of the Company.

**NOTES:**

- Where two or more persons hold one or more shares in a Company jointly, they shall be treated as a single member.
  - Following are excluded while counting limit of 200 members.
    - Persons who are in employment of the company (Existing Employees) become members
    - Persons who, having been formerly in the employment of the company, were members of the company while in that employment and continued to be members after the employment ceased. (Past Employees)
- 2) **Public company [Sec. 2(71)]:**
- A company which-
    - is not a private Company, and
    - has a minimum paid up share capital as may be prescribed by C.G.
  - A Company which is a Subsidiary of a Public company shall be deemed to be a Public Company<sup>1</sup>.
- 3) **One Person Company (OPC) [Sec. 2(62)]:** Means a Company which has only one person as Member.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 1)

**Q.No.2. Write about Small Company (A) (NEW SM, N18 (O) - 4M, MTP N16)**

**SMALL COMPANY [SEC. 2(85)]:** Small Company means a company, other than a public company with:

- Paid-up share capital not exceeding 50 LAKH rupees or such higher amount as may be prescribed - which shall not be more than 10 CRORES rupees and
- Turnover as per profit and loss account for the immediately preceding financial year does not exceed 2 CRORE rupees or such higher amount as may be prescribed - which shall not be more than 100 CRORE rupees.
- The following companies shall not be regarded as Small Companies:
  - A holding company of another company.
  - A subsidiary company of another company.
  - Section - 8 Companies.
  - A company or body corporate governed by any special Act.
  - A Public Company.

**EXAMPLE:** P Ltd. is a company registered under the Companies Act, 2013 with paid up capital of Rs.10 Lakhs and turnover of 2 crore rupees. Since, P Ltd. is a public company though complying with other requirements, it cannot avail the status of a small company.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 2)

1) Example: A Pvt. Ltd. is wholly owned subsidiary of AB Ltd. A Pvt. Ltd. wanted to avail exemptions as provided to Private Companies. In this case since A Pvt. Ltd. is subsidiary of AB Ltd., which is a Public Company, therefore A Pvt. Ltd. will be deemed to be a Public Company and will not be allowed to avail exemptions provided to a Private Company.

**Q.No.3. Write about Associate, Holding and Subsidiary companies under the companies act, 2013?  
(Or) How the companies are classified on the basis of Control? (NEW SM)**

1) **HOLDING COMPANY [SEC. 2(46)]:** Holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

**NOTE:** The expression "company" includes body corporate.

E.g: TATA SONS Private Limited is a Holding Company for More than 25 Subsidiary Companies.

2) **SUBSIDIARY COMPANY [SEC. 2(87)]:** Subsidiary company or Subsidiary, in relation to a Holding Company, means a company in which the holding company -

a) **Controls BOD:** Controls the composition of the Board of Directors or

b) **Controls Voting Power:** 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.

**NOTE:**

a) **Deemed Subsidiary:** A company shall be deemed to be a subsidiary company of the holding company even if the control referred as above is of another subsidiary company of the holding company.

b) If all or Majority of Directors can be appointed or removed by a company at its discretion, then such company is deemed to be controlling composition of BOD.

c) Shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be considered for determining the holding - subsidiary relationship.

3) **ASSOCIATE COMPANY [SEC. 2(6)]:**

a) 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.

b) The Term Associate Company includes Joint Venture.

**NOTE:**

a) "Significant influence" means:

i) control of at least 20 % of total voting power<sup>2</sup>, or

ii) Control of or Participation in business decisions under an agreement.

b) "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.

E.g., Taj Hotels, Voltas LTD. are associate companies for TATA Motors LTD.

**SIMILAR QUESTIONS:**

1) You are the company secretary of Lakhani Ltd. The chairman of the company seeks your views on the following. State your views with reasons:

Company XYZ Ltd. is a subsidiary of your company in which the holding of your company is 9,50,000 equity shares of Rs.10 each fully paid which constitutes 95% of its paid up capital. XYZ Ltd. desires to issue further 9,00,000 equity shares of Rs.10 each on which initially a sum of Rs.3 will be paid to ABC Ltd, to meet its long term capital requirements. On such an issue of further capital by XYZ Ltd, will XYZ Ltd continue to be the subsidiary of your company?

A) Yes, it will continue to be subsidiary

2) ABC Ltd holds 20% of equity shares, 10% of debentures and 32% of preference shares of PQR Ltd. Do ABC Ltd & PQR Ltd have holding subsidiary relationship? What would be your answer if ABC Ltd holds 55% of equity share capital along with other investment company? Comment.

A) No, not a subsidiary company in both the cases.

2) *The shares held by a company in another company in a fiduciary capacity shall not be counted for the purpose of determining the relationship of associate company.*

*The definition of Associate company as defined under AS 23/ Ind AS 28 (Accounting for Investments in Associates in Consolidated Financial Statements / Investment in Associates and Joint Ventures) is slightly different from the above definition as given in the Companies Act, 2013.*

- 3) All directors of Tata steel Ltd are directors in TCS Ltd, so they share holding subsidiary relation. One shareholder of TCS objected that as Tata steel do not hold majority number of equity shares in TCS it cannot be a holding company. Is that contention valid. Comment in the above content.
- A) No, the contention of member is invalid. Section 2(46) and 2(87)
- 4) A limited has entered into a contract with B limited by which the former will reserve 25% of their output to be sold to B limited or to a buyer at the direction of B Limited. Can B Limited be called an associate company of A Limited?
- A) B will not be an associate.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 3, 4)

**Q.No.4. What is a Foreign company, Government company and a Nidhi Company under the companies act? (A) (NEW SM)**

- 1) **FOREIGN COMPANY [SEC. 2(42)]:** A Body Corporate including a Company incorporated outside India and which has a:
- Place of Business in India whether by itself or through agent, Physically or electronic mode **and**
  - Conducts any business activity in India in any other manner.  
E.g., Amazon Incorporation, Germany ADIDAS. (Submitted its application to Director of Industry in Policy and Promotion and got 100% retail trading approval)
- 2) **GOVERNMENT COMPANY [SEC. 2(45)]:**
- Government Company means any company in which **not less than 51%**<sup>3</sup> 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.
  - Government Company includes a company which is a subsidiary company of such Government company. **E.g.:** BPCL, IOCL, HPCL, ITCL, BHEL, BDL, NLCL.
- 3) **NIDHI COMPANIES [SEC.406]:** Company which is incorporated as a Nidhi with the object of
- Cultivating the habit of thrift (cost cutting) and
  - Savings amongst its members,
  - Receiving deposits from, and lending to, its members only, for their mutual benefits.
  - Nidhi Company is required to comply with such rules as prescribed by Central Government.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 5, 6)

**Q.No.5. Write about types of companies having access to capital? (C) (NEW SM)**

- Listed company** means a company which has any of its securities listed on any recognized stock exchange;
- Unlisted company** means a company other than listed company

**Q.No.6. Write about types of companies based on liability? (NEW SM)**

- COMPANY - LIMITED BY SHARES [SEC. 2(22)]:** Means a company where the Liability of Members is Limited to the extent of unpaid value (if any) on the shares held by them.

**Note:** The Benefit of Limited Liability is only applicable to member and not applicable to company.

- 3) *Example: X ltd. is a company in which 50% of shareholding is held by Central Government. Here X ltd. is not a government company as there is no compliance of minimum holding of paid-up share capital i.e. at least 51 % by the Central Government, or by any State Government or Governments.*

- 2) **COMPANY - LIMITED BY GUARANTEE [SEC. 2(21)]:** Means a company where the Liability of Members is Limited 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.

**Note:** Here Members liability arises only in the event of windup.

- 3) **UNLIMITED COMPANY [SEC. 2(92)]:** Is a company in which there is no limit on the liability of members.

**Note:** Typically, these are private limited companies with unlimited liabilities.

**SECTION 2: DIFFERENCES FOR STUDENTS SELF STUDY**

**Q.No.7. What is meant by a Guarantee Company? State the dissimilarities between a Guarantee Company and a Company limited by shares. (C) (OLD PM)**

**GUARANTEE COMPANY:** In this company, member is liable to pay the amount of guarantee he has given at the time of becoming a member of the company.

**COMPANY LIMITED BY SHARES:** In this company, the liability of members is limited to the **amount unpaid** (if any) on the shares held by them.

**DIS-SIMILARITIES BETWEEN A GUARANTEE COMPANY AND A COMPANY HAVING SHARE CAPITAL:**

| BASIS                | COMPANY LIMITED BY GUARANTEE                                                                                                                                    | COMPANY LIMITED BY SHARES                                                                   |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| Share capital        | It may have share capital                                                                                                                                       | It must have share capital                                                                  |
| Liability of members | Limited to amount of guarantee. If such company has share capital also, the liability on unpaid amount of shares shall be in addition to the amount guaranteed. | Limited to amount unpaid on shares.                                                         |
| Demand on liability  | Guarantee amount can be demanded only when company goes into liquidation.                                                                                       | Unpaid amount on shares can be demanded at any time before winding up or during winding up. |
| Raising funds        | It cannot raise initial funds from members, unless it has a share capital too.                                                                                  | It can raise initial funds from members.                                                    |

**Q.No.8. Write the differences between Public company and Private Company. (B)**

| BASIS                     | PUBLIC COMPANY                                            | PRIVATE COMPANY                                                                             |
|---------------------------|-----------------------------------------------------------|---------------------------------------------------------------------------------------------|
| Minimum number of members | It should have at least 7 members.                        | It should have at least 2 members                                                           |
| Maximum number of members | No limit                                                  | Maximum number of members should not be more than 200 excluding past and present employees. |
| Transfer of shares        | Shares are freely transferable.                           | Transfer of shares is restricted.                                                           |
| Public offer of shares    | It can invite public to subscribe to shares of a company. | It cannot invite public to subscribe to shares of a company.                                |
| No. of directors          | It should have atleast 3 directors.                       | It should have atleast 2 directors.                                                         |
| Privileges                | It does not enjoy privileges.                             | It enjoys various privileges under Companies Act, 2013 as compared to public company.       |

Copyrights Reserved To **MASTER MINDS COMMERCE INSTITUTE PVT.LTD.**

### SECTION 3: QUESTIONS FOR ACADEMIC INTEREST ONLY

**Q.No.1. Write about Public Financial Institutions under the Companies Act, 2013. (B)**  
(OLD PM, RTP N13)

**PUBLIC FINANCIAL INSTITUTION [SEC 2(72)]:**

- 1) The following institutions are to be regarded as Public Financial Institutions.
  - a) LIC, IDFC ( Infrastructure Development Finance Company Limited)
  - b) Specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;
  - c) Institutions notified by the CG under various Act 1956.
  - d) Such other institution as may be notified by the CG in consultation with the RBI
- 2) However, **institution** should not be notified as public financial institution unless:
  - a) It shall be established by Special Act; or
  - b) Not less than 51% is held by state or central government.

**SIMILAR QUESTIONS:**

- 1) Which of the institutions are regarded as “Public Financial Institutions” under the Companies Act, 2013? (OLD PM)
- A) Refer Point No. 1. in the above question.
- 2) What are the criteria for notifying as Public Financial Institution Us 2(72) by CG?
- A) Refer Point No.2. in the above question.

**Q.No.2. State the conditions of restriction with which a private company is incorporated under the Companies Act, 2013.**  
(Or)  
The articles of association of a private limited company contain the provisions restricting the right to transfer shares and limiting the number of members to 200. What restrictions are generally incorporated in the Articles in restricting the right to transfer shares?

**GENERAL RULE:** One of the most important features of a company is that its shares are freely transferable. The Companies Act, 2013 empowers every shareholder to transfer his shares in a manner laid down in the AOA and in accordance with various provisions of law.

**PRIVATE COMPANY:**

- 1) In case of a Private Company the AOA contains a provision restricting the right to transfer its shares.
- 2) The object of such a provision is to confine the ownership and interest in the company to a close circle of friends and relatives [Sec 2(68) (ii) of Companies Act, 2013].
- 3) **The right of transfer is generally restricted in the following manner:**
  - a) **Communication in writing:** The member intends to transfer his shares must communicate his intention, with the directors in writing.
  - b) **Persons to whom:** By authorizing the directors to refuse transfer of shares to persons whom they do not approve.
  - c) **Preference:** By compelling the members to offer their shares to existing shareholders first.
  - d) **Calculation of the price:** By specifying the method for calculating the price at which the shares may be sold by one member to another member.
  - e) **Employees leaving the company:** Shareholders who are also employees of the company shall offer the shares to specified persons when they leave the company's service.

**Q.No.3. What will be the consequence in case a private company incorporated under the provisions of Companies Act, 2013 defaults in complying with the conditions for constituting a private company in terms of Sec 2(68) of the Companies Act, 2013.**

**CONSEQUENCE IN CASE OF PRIVATE COMPANY ACTING IN CONTRAVENTION OF SECTION 2(68) OF THE COMPANIES ACT 2013:**

Private Company means a Company having a minimum Paid-up Share capital as may be prescribed, and which by its articles:

- a) **Restricts** the right to transfer its Shares (*and*)
- b) **Limits** the number of its members to 200 (in case of One Person Company - Only one member) (*and*)
- c) **Prohibits** any invitation to the public to subscribe for any securities of the Company.

If contravention is made against complying with the provisions contained in Section 2 (68), the company shall lose all the privileges and exemptions conferred on it by the Act, and the provisions of the Act shall apply to it as if it were not a private company. However the CG, on being satisfied that the failure to comply with the conditions laid down was accidental or unintentional and it is just and equitable to grant relief, may, on the application of the Company or any other person interested and on such conditions as seem to the CG reasonable, order that the Company be relieved from such consequences as aforesaid.

**(IMMEDIATELY REFER PRACTICAL QUESTION CRD 7)**

**SECTION 4: PRACTICAL QUESTIONS FOR CLASSROOM DISCUSSION**

**Q.No.1.** Fortune Traders Ltd is registered as a Public Company. There are 300 members in the company as noted below-

|                                                                         |            |
|-------------------------------------------------------------------------|------------|
| Directors and their relatives                                           | 100        |
| Employees                                                               | 50         |
| Ex- employees (shares allotted when they were employees of the company) | 50         |
| 15 couples holding shares jointly in the names of Husband and Wife      | 30         |
| Others                                                                  | 70         |
| <b>Total Number of Members</b>                                          | <b>300</b> |

The Board of Directors of the company proposes to convert it into a private company. Advise the Board of Directors about the steps to be taken for converting it into a private company including reduction in the number of members, if necessary.

**PROVISION:**

**Private company [Sec. 2(68)]:** Private Company means a Company having a minimum Paid-up Share capital as may be prescribed, and which by its articles:

- a) **Restricts** the right to transfer its Shares (*and*)
- b) **Limits** the number of its members to 200 (in case of One Person Company - Only one member) (*and*)
- c) **Prohibits** any invitation to the public to subscribe for any securities of the Company

**ANALYSIS AND CONCLUSION:**

Effective Number of Members = 185 (Directors and Relatives = 100 + joint members taken as single members = 15 + others = 70). Total members exclude the present and past employee members.

A private company cannot have more than 200 members. In this case, the company has only 185 members. Hence, no further reduction in membership is called for, in order to convert it into a private company.

**Q.No.2.** MNP Private Ltd. is a company registered under the Companies Act, 2013 with a Paid up Share capital of Rs.45 lakhs and turnover of Rs.3 Crores. Explain the meaning of "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:

- a) Whether the MNP Private Ltd. can avail the status of small company?
- b) What will be your answer if the turnover of the company is Rs.1.50 crore? **(M18 (N) - 6M)**

**PROVISION:** According to Section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company -

- a) Paid-up share capital of which does not exceed 50 lakh rupees or such higher amount as may be prescribed which shall not be more than 10 crore rupees; and
- b) Turnover of which as per profit and loss account for the immediately preceding financial year does not exceed 2 crore rupees or such higher amount as may be prescribed which shall not be more than 100 crore rupees

Nothing in this clause shall apply to—

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

**ANALYSIS AND CONCLUSION:** In the above case MNP Pvt. Ltd. is a company registered under the Act with a paid up capital of 45 lacs and turnover of 3 crores. To be declared as small company the company must fulfill both the conditions. MNP Pvt. Ltd. fulfills the condition of paid up capital however the turnover exceeds the limits.

Thus

- a) The company shall not avail the status of a small company as it fulfills only one of the conditions.
- b) If the turnover of the company is 1.5 crores then the company fulfills both the conditions and in such a case the company shall be regarded as a small company.

**Q.No.3.** The paid-up share capital of Saras private limited is Rs.1 crore, consisting of 8 lacs Equity shares of Rs. 10 each, fully paid-up and 2 lacs Cumulative Preference shares of Rs. 10 each, fully paid-up. Jeevan private limited and Sudhir private limited are holding 3 lacs equity shares and 50,000 equity shares respectively in Saras private limited.  
Jeevan private limited and Sudhir private limited are the subsidiaries of Piyush private limited. With reference to the provisions of the companies act, 2013 examine whether Saras private limited is a subsidiary of Piyush private limited? Would your answer be different if Piyush private limited has 8 out of 9 directors on the board of Saras private limited? **(RTP M18)**

**PROVISION:** As per Sec. 2(87) of Companies Act, 2013, **Subsidiary company** or **Subsidiary**, in relation to a Holding Company, means a company in which the holding company:

- a) **Controls BOD:** Controls the composition of Board of Directors or
- b) **Controls Voting Power:** 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.

**Note:** However, such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such number as may be prescribed.

**ANALYSIS AND CONCLUSION:** In the Given Case JEEVAN LIMITED and SUDHIR LIMITED are Subsidiaries of PIYUSH LIMITED. Both these companies together control 3.5 Lac shares which is less than 50% of Total Share Capital. Therefore, PIYUSH LIMITED which is a holding company of Jeevan Limited and Sudhir Limited, cannot be treated as Holding Company of SARAS LIMITED.

However, if PIYUSH LIMITED APPOINTS 8 out of 9 directors of SARAS LIMITED which means controlling the Composition of major directors of SARAS Limited, PIYUSH LIMITED is treated as Holding Company of SARAS LIMITED.

**Q.No.4.** The paid-up share capital of XYZ (Private) Co. Limited is Rs.20 lakhs consisting of 2,00,000 Equity Shares of Rs.10 each fully paid up. ABC (Private) Limited and its subsidiary DEF (Private) Limited are holding 60,000 and 50,000 shares respectively in XYZ (Private) Co. Limited.  
Examine with reference to the provisions of the Companies Act, 2013, whether XYZ (Private) Limited is subsidiary of ABC (Private) Limited. Would your answer be different if DEF (Private) Limited is holding 1,10,000 shares in XYZ (Private) Co. Limited and no shares are held by ABC (Private) Limited in XYZ (Private) Co. Limited?

**PROVISIONS OF LAW:** As per Sec 2(46) of Companies Act, 2013 - Holding company and Sec 2(87) of Companies Act, 2013 - A subsidiary company or subsidiary in relation to any other company (that is to say the holding company), means a company in which the holding company.

- a) Controls the composition of the BOD; or
- b) Exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

For the purposes of this clause

- a) A Company shall be deemed to be a subsidiary company of the holding company even if the control referred to in point (i) &(ii) is of another subsidiary company of the holding company;
- b) Rule 2(1) (r) of Companies (Specification of definitions details) Rules, 2014 defines "Total share capital" for the purpose of Sec 2(87), means the aggregate of equity share capital and convertible preference share capital.

**ANALYSIS:** In the given situation ABC Pvt. Ltd is holding 60,000 shares in XYZ Pvt. Ltd and 50,000 shares held by DEF Pvt. Ltd.

Therefore, ABC Pvt. Ltd is deemed to hold 1,10,000 shares (60,000+50,000) in XYZ Pvt. Ltd. Since for the purpose of determining holding-sub subsidiary relationship, the share capital held in XYZ Pvt. Ltd by ABC (Private) Ltd on its own (Rs 6,00,000) together with share capital held in XYZ Pvt. Ltd by its subsidiary DEF Pvt. Ltd (Rs 5,00,000) shall be considered.

**CONCLUSION:**

- a) XYZ Pvt. Ltd is a subsidiary of ABC Pvt. Ltd as it holds more than half of the equity share capital of XYZ Pvt. Ltd.
- b) XYZ Pvt. Ltd would be a subsidiary of ABC Pvt. Ltd even if DEF Pvt. Ltd is holding 1,10,000 shares in XYZ Pvt. Ltd and no shares are held by ABC Pvt. Ltd in XYZ Pvt. Ltd.

**Q.No.5.** Bharath heavy electronics limited, a company incorporated under companies act, 2013. The detailed paid up capital structure is as below:

|                         |     |
|-------------------------|-----|
| Government of India     | 20% |
| Government of AP        | 10% |
| Government of Telangana | 10% |
| Government of UP        | 10% |
| Government Company      | 10% |

Rest of the Capital is held with public.

Explain whether the said company is called as a Government Company?

**PROVISION:** As per Sec. 2(45) of the companies act, 2013.

- a) Government Company means any company in which **not less than 51%** of the paid-up share capital is held by:
  - i) The Central Government, or
  - ii) By any State Government or Governments, or
  - iii) Partly by the Central Government and partly by one or more State Governments.
- b) Government Company includes a company which is a subsidiary company of such Government company.

**ANALYSIS AND CONCLUSION:** In the given case the share capital of BHEL is held by 50% from CG and SG together which is not exceeding 51% and BHEL is also not a subsidiary of Government Company and assuming the composition of BOD are not controlled by any government company. It is therefore a non-government company under the companies act, 2013.

**Q.No.6.** 40% of the paid up capital of A Ltd. is held by the central government and 11% by public institution like Life Insurance of India. Is A Ltd. is Government company?

**PROVISION:** As per Sec. 2(45) Government Company means any company in which not less than 51% of the Paid Up Share Capital is held by: Central Government; or by one or more State Governments; or partly by Central Government and partly by one or more State Governments.

A company which is subsidiary of a Government Company is also Government Company.

**ANALYSIS AND CONCLUSION:** The above definition does not include the shares held by public financial institution.

Therefore, in the given case, the capital held by CG is only 40% and accordingly A Ltd is not a government company.

**Q.No.7.** Due to oversight some of the share transfers were registered in the Company due to which the number of members in a private Company increased from 180 to 202. What is the effect of such transfers and what is the remedy available to the Company.

**PROVISION:** Applicable section 2(68)

Private Company means a Company having a minimum Paid-up Share capital as may be prescribed, and which by its articles:

- a) **Restricts** the right to transfer its Shares (*and*)
- b) **Limits** the number of its members to 200 (in case of One Person Company - Only one member) (*and*)
- c) **Prohibits** any invitation to the public to subscribe for any securities of the Company

**ANALYSIS & CONCLUSION:** In the given case, since the number of shareholder's has crossed 200, the Company will be named as public Company. However the CG, on being satisfied that the failure to comply with the conditions laid down was accidental or unintentional and it is just and equitable to grant relief, may, on the application of the Company or any other person interested and on such conditions as seem to the CG reasonable, order that the Company be relieved from such consequences as aforesaid.

### SECTION 5: TRUE OR FALSE STATEMENTS - FOR CLASSROOM DISCUSSION

- 1) A Firm may be a Member of a Company licensed under 8, but its Membership shall cease on dissolution of the Firm. (T).
- 2) Government Company means a company in which more than 50% of the capital is held by the CG/SG. (F).
- 3) A company is a holding company, if it controls not less than half of the total voting power of the subsidiary company (F).
- 4) If a private company alter its articles in such a manner that they do not include the restrictions and limitations as laid down in section 2(68), it shall cease to a private company from the date on which such alteration took place (T).

### SECTION 6: PRACTICAL QUESTIONS FOR STUDENTS SELF PRACTICE

**Q.No.1.** Masons Pvt. Ltd. is a private limited company as per the Articles of association of the Company. A Ltd, a public company acquired shares in Masons (Pvt.) Ltd. thereby Masons Pvt. Ltd. became subsidiary to A Ltd. State the impact of such acquisition of shares by a public company on Masons (Pvt.) Ltd.

**PROVISION:**

**PRIVATE COMPANY [SEC. 2(68)]:** Private Company means a Company having a minimum Paid-up Share capital as may be prescribed, and which by its articles:

- a) **Restricts** the right to transfer its Shares (*and*)
- b) **Limits** the number of its members to 200 (in case of One Person Company - Only one member) (*and*)
- c) **Prohibits** any invitation to the public to subscribe for any securities of the Company

**PUBLIC COMPANY [SEC. 2(71)]:** A company which is not a private Company, and has a minimum paid up share capital as may be prescribed by CG. A Company which is a Subsidiary of a Public company shall be deemed to be a Public Company.

**ANALYSIS AND CONCLUSION:** In the given case, A Ltd, a public company acquired shares in Masons (Pvt.) Ltd. thereby Masons Pvt. Ltd. became subsidiary to A Ltd. Masons (Pvt.) Ltd is treated as Public company.

**Q.No.2.** XYZ company private limited desirous of raising funds through acceptance of deposits from the public, seeks your advice on the matter. You being the financial adviser of the company, advise the company whether acceptance of deposits from the public in the given case be valid under the provisions of the companies act, 2013.

**PROVISION:**

**PRIVATE COMPANY [SEC. 2(68)]:** Private Company means a Company having a minimum Paid-up Share capital as may be prescribed, and which by its articles:

- a) **Restricts** the right to transfer its Shares (*and*)
- b) **Limits** the number of its members to 200 (in case of One Person Company - Only one member) (*and*)
- c) **Prohibits** any invitation to the public to subscribe for any securities of the Company

**CONCLUSION:** Private Company cannot accept deposits from public. Private company can accept deposits from its members and directors, subject to provisions of deposits.

**Q.No.3.** State whether ABC Private Limited has fulfilled all the conditions relating to a Private Company-

- a) Its AOA stipulates that in case of transfer of shares by any existing Member, it shall first be offered to another existing member.
- b) Total number of members is 209, including 6 present employees and 5 past employees who continue to hold shares in the company.
- c) Its Articles of Association prohibit invitation to the public to subscribe for any shares in or Debentures of, the Company.

**PROVISION:**

**PRIVATE COMPANY [SEC. 2(68)]:** Private Company means a Company having a minimum Paid-up Share capital as may be prescribed, and which by its articles:

- a) **Restricts** the right to transfer its Shares (*and*)
- b) **Limits** the number of its members to 200 (in case of One Person Company - Only one member) (*and*)
- c) **Prohibits** any invitation to the public to subscribe for any securities of the Company

**ANALYSIS AND CONCLUSION:** All conditions relating to private limited company are satisfied here.

**Q.No.4.** In a private limited company it is discovered that there are, in fact, 215 members. On an enquiry, it is ascertained that 20 of such members have been employees of the company in the recent past and they acquired their shares while they were still employees of the company. Is it necessary to convert the company into a public limited company?

**PROVISION:**

**PRIVATE COMPANY [SEC. 2(68)]:** Private Company means a Company having a minimum Paid-up Share capital as may be prescribed, and which by its articles:

- a) **Restricts** the right to transfer its Shares (*and*)
- b) **Limits** the number of its members to 200 (in case of One Person Company - Only one member) (*and*)
- c) **Prohibits** any invitation to the public to subscribe for any securities of the Company

**ANALYSIS AND CONCLUSION:**

No. since the number of members excluding the employee members is 195, it is not necessary to convert the company into a public limited company.

**Q.No.5.** A Company X Ltd., its managing Director and another director holds respectively  $\frac{1}{3}^{\text{rd}}$  number of shares in another company Y Ltd., and thus together they hold all the shares of company Y Ltd. Is Y Ltd. a subsidiary of company X Ltd.?

**PROVISION:** As per section is Sec 2(87) of the Companies Act, Subsidiary company or Subsidiary, in relation to a Holding Company, means a company in which the holding company -

- a) **Controls BOD:** Controls the composition of the Board of Directors or
- b) **Controls Voting Power:** 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.

**CONCLUSION:** No. Company X is holding 1/3<sup>rd</sup> of share capital of Y Ltd. Shares held by managing director and other directors are in their personal capacity and not on behalf of the company.

**Q.No.6.** The paid-up share capital of Advance Casting Pvt. Ltd is Rs. 1 Crore consisting of 8,00,000 Equity Shares of Rs.10 each fully paid up and 2,00,000 convertible preference shares of Rs. 10 each fully paid up. Quality Forgings Pvt Ltd and Supreme Engineering Pvt Ltd are holding 3,00,000 Equity shares and 2,50,000 Equity Shares respectively. Quality Forgings Pvt. Ltd and Supreme Engineering Pvt. Ltd are the subsidiaries of Unique Machineries Pvt Ltd. Examine-

- a) Whether Advanced Casting Pvt. Ltd is the subsidiary of Unique Machineries Pvt. Ltd.
- b) Will your answer be different if Unique Machineries Pvt. Ltd controls the composition of Board of Directors of Advanced Casting Pvt. Ltd? **(RTP M19)**

**PROVISIONS OF LAW:** As per Sec 2(46) of Companies Act, 2013 - Holding company and Sec 2(87) of Companies Act, 2013 -

- a) Subsidiary company or subsidiary in relation to any other company (that is to say the holding company), means a company in which the holding company.
- b) Controls the composition of the BOD; or
- c) Exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

For the purposes of this clause

- a) A Company shall be deemed to be a subsidiary company of the holding company even if the control referred to in point (i) &(ii) is of another subsidiary company of the holding company;
- b) Rule 2(1) (r) of Companies (Specification of definitions details) Rules, 2014 defines "Total share capital" for the purpose of Sec 2(87), means the aggregate of equity share capital and convertible preference share capital.

**ANALYSIS AND CONCLUSION:**

- a) Advanced Casting Pvt. Ltd is a subsidiary of Unique Machineries Pvt. Ltd as it holds more than half of the equity share capital of Advanced Casting Pvt. Ltd. through its subsidiaries Quality Forgings Pvt Ltd and Supreme Engineering Pvt. Ltd.
- b) If Unique Machineries Pvt. Ltd controls the composition of Board of Directors of Advanced Casting Pvt. Ltd. It will also be treated as Holding Company. The percentage of Shareholding is not required to be analyzed in such a case.

**SECTION 7: TRUE OR FALSE STATEMENTS - FOR STUDENTS SELF PRACTICE**

- 1) Private company and public company must have a minimum paid-up capital respectively of 1 lakh and 2 lakh respectively **(F)**.
- 2) The number of members of a private company is limited to 200 and public company is limited to 5,000 **(F)**.
- 3) The minimum number of members in a Private company and public company are Three and Seven respectively **(F)**.
- 4) Foreign company means a company which is incorporated inside India and has a place of business outside India **(F)**.
- 5) Paid-up share capital of small company exceed Rs.50 Lakhs and turnover does not exceed 2 crore **(F)**.
- 6) Voting power of a guarantee company having share capital is determined by the amount of guarantee given in Memorandum of Association. **(F)**.

**THE END**