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VIRTUAL COACHING CLASSES ORGANISED BY BOS, ICAI

INTERMEDIATE LEVEL PAPER 2: CORPORATE AND OTHER LAWS

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SECTION 1: SHORT TITLE, EXTENT, COMMENCEMENT & APPLICATION

- **Title:** Companies Act, 2013 [S.1(1)]
- **Extent:** Whole of India [S.1(2)]
- **Notification:** The Companies Act, 2013 received the assent of the Hon'ble President of India on 29th August, 2013 and was notified in the Official Gazette on 30th August, 2013
- **Commencement:** Section 1 came into force on 30th August, 2013; 98 sections came into force on 12th September, 2013; 143 sections were enforced from 1st April, 2014 and so on.
- **Aim:** The Companies Act, 2013 aims to improve corporate governance, simplify regulations and strengthen the interests of investors

A STATISTICAL SNAPSHOT

Companies Act, 2013: A statistical snapshot

Number of schedules : 7

Number of chapters: 29

Number of sections: 470

470
Sections

7
Schedules

29
Chapters

For Examination:

Section 1 to Section 148 with relevant rules

APPLICABILITY OF COMPANIES ACT, 2013

The provisions of this Act shall apply to-

- (a) companies incorporated under this Act or under any previous company law*;
- (b) insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;
- (c) banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;
- (d) companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;

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- (e) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act, and
 - (f) such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.

Example: Food Corporation of India (FCI), National Highway Authority of India (NHAI) etc.

DEFINITIONS

S.2 (11) Body corporate or Corporation includes a company incorporated outside India, but does not include—

- (i) a co-operative society registered under any law relating to co-operative societies; and
- (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;

S. 2(20) Company means a company incorporated under this Act or under any previous company law;

So generally speaking Company means a Company which is registered under the Companies Act, 2013 and Body corporate includes all companies including companies incorporate outside India as well except for Co-operative society.

E.g. of Company: Reliance Industries Limited, Tata Steel Limited, Infosys Limited etc.

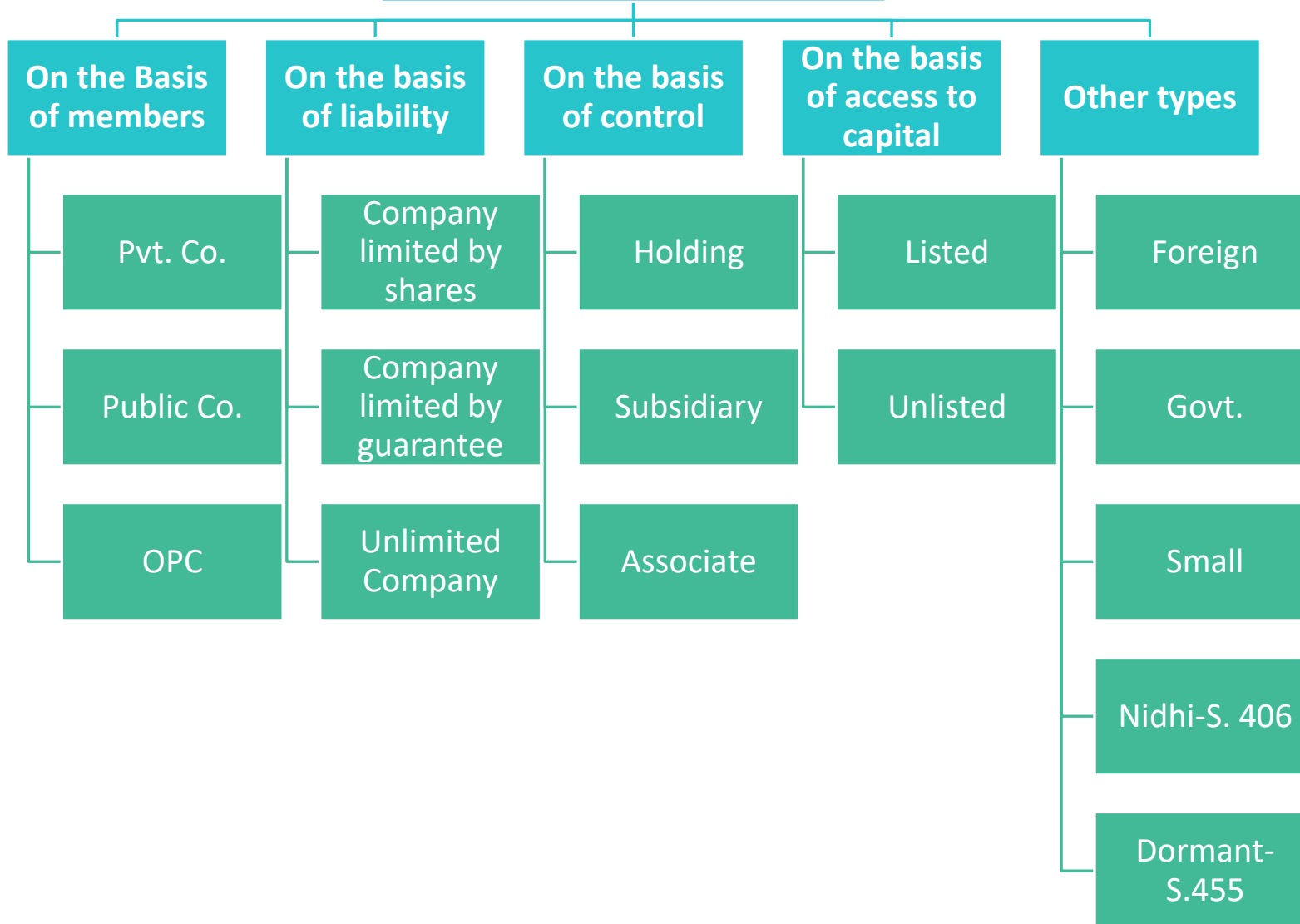
E.g. of Body Corporate: Alphabet Inc., Microsoft corporation, Facebook Inc. etc. a foreign companies which are not incorporated in India. However, a subsidiary of such companies (body corporate) if incorporated in India, will be called as Company as per Companies Act. E.g.; Google India Private Limited, PepsiCo India Private Limited etc.

CHARACTERISTIC FEATURES OF COMPANY

- Incorporated Association
- Artificial person
- Separate Legal Entity
- Perpetual Succession
- Limited Liability
- Common Seal
- Transferability of Shares
- Capacity to sue and be sued
- Separate Management and Property



Classification of Company



COMPANY LIMITED BY SHARES

Company Limited by Shares [Section 2(22)]: Liability of the members of a company is **limited** by its Memorandum of Association (MOA) **to the amount** (if any) **unpaid on the shares** held by them. i.e., The shareholder has to meet the debits of the company only to the extent that is unpaid on his shares and no separate property can be used to meet the debt.

- For example, a shareholder who has paid Rs. 75 on a share of face value Rs.100 can be called upon to pay the balance of Rs. 25 only.
- Companies limited by shares are by far the most common and may be either public or private.
- An advantage of choosing a limited liability company is if the company has financial difficulties, the personal assets of members are not at risk, and its debts do not become the debts of its shareholders.

COMPANY LIMITED BY GUARANTEE

Company Limited by Guarantee [Section 2(21)]: Liability of its members is 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.

- Unlike a company limited by shares, a company limited by guarantee has members and not shareholders.
- This limits the liability of members to a fixed amount which is the guarantee fixed by the company's constitution.
- Companies limited by guarantee are widely used for charities, community projects, clubs, societies and other similar bodies
- E.g.: Bharat Egg Producers Association, Open Source Pharma Foundation

Limited by Guarantee vs Limited by Shares



We Guarantee a nominal amount



We invest in Share

UNLIMITED COMPANY

Unlimited Company [Section 2(92)] a company having no limitation on the liability of its members is an unlimited company.

- The liability ceases when he ceases to be a member.
- Hence members or partners are required to meet the needs of the company in varied aspects or debts without any limit over their liability at the time of liquidation.
- They are liable to cover its debts fully. Therefore the personal property of members, partners and directors can be used for recovering the debts of the company.
- Directors are liable not to the creditors of the company rather only to the company and liquidators are appointed to ask the members to contribute their personal assets according to the requirement.

Cont....

- Thus, only by the calls of the liquidator, members use their personal assets for discharging the company's debts doing its winding up. In other words, the liability of an unlimited company is similar to that of partners, but unlike partners, no direct proceeding can be made over members
- E.g.: Amway India enterprises private limited

ONE PERSON COMPANY [S.2(62)]

Acc. to section 2(62) One Person Company mean a company which has only one person as member.

- **Provisions applicable to OPC**

- Shall have min 1 director
- Minimum paid up capital – no limit prescribed.
- The MOA shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company
- No person shall be eligible to incorporate more than one OPC
- No minor shall become member of the OPC

Cont....

- Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases
- Such Company cannot carry out NBFC activities including investment in securities of any body corporate
- The paid up share capital of OPC shall not exceed Rs.50 lakh and turnover shall not exceed Rs. 2Cr.

LIST OF EXEMPTIONS AVAILABLE TO OPC

Following sections are not applicable to OPCs-

- **98** (Power of Tribunal to call meetings of members, etc.)
- **100** (Calling of EGM)
- **101 & 102** (Notice of Meeting & Statements to be annexed to Notice)
- **103** (Quorum of Meetings)
- **104** (Chairman of Meetings)
- **105** (Proxies)
- **106** (Restriction on Voting Rights)
- **107 & 108** (Voting by show of Hands & by Electronic Mode)
- **109 & 110** (Demand for Poll & Postal Ballot)
- **111** (Circulation of Member's Resolutions)

PRIVATE COMPANY [S.2(68)]

Acc. To S.2(68)] Private company means a company having a minimum paid-up share capital as may be prescribed, and 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:

Cont...

- 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;
- * As of now, there is no minimum paid up share capital requirement for private company

PUBLIC COMPANY [S.2(71)]

- Acc. To [Section 2(71)]) Public company means a company which—
 - (a) is not a private company; and
 - (b) has a minimum paid-up share capital as may be prescribed:
- Provided that a company which is a subsidiary of a company, not being a private company, shall be **deemed to be public company** for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;
 - *“Subsidiary of a public company always a public company”*
 - *No minimum paid up share capital to form a public company has been prescribed.*
 - *E.g.: Bharat Heavy Electricals Ltd. NTPC Ltd, Coal India Ltd.*

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 be not allowed to avail exemptions provided to a private company.

HOLDING & SUBSIDIARY Co.[S.2(46) S.2(87)]

- Acc. To **[Section 2(46)] Holding company**, in relation to one or more other companies, means a company of which such companies are subsidiary companies.
- Explanation- for the purpose of this clause, the expression Company includes body Corporate.
- **Subsidiary company [Section 2(87)]**: means a company in which the holding company— **controls the composition of the Board of Directors; or 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. [2 layers]

HOLDING & SUBSIDIARY Co. [S.2(46) S.2(87)]

Explanation.—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 sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (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;

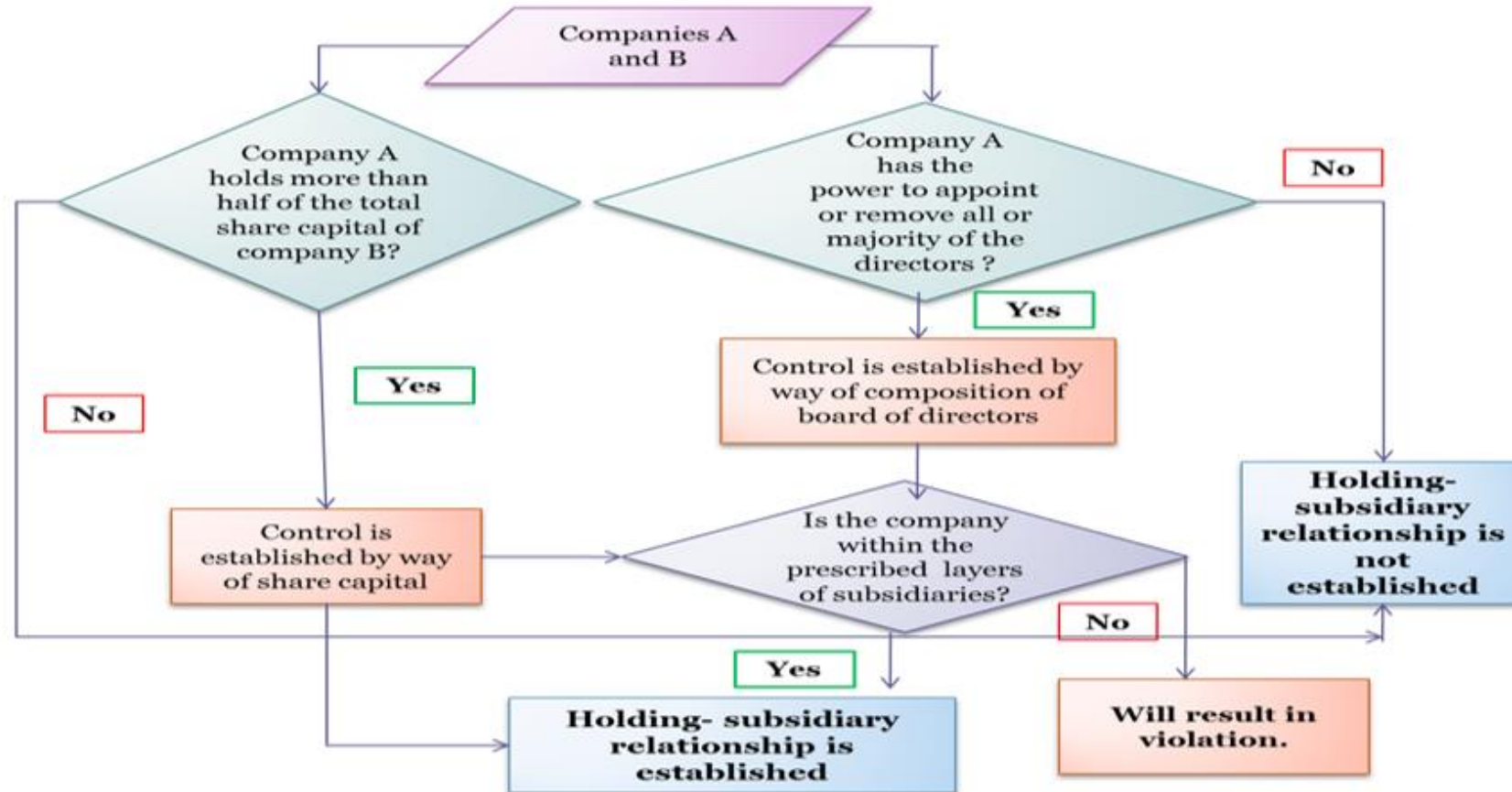
EXAMPLE OF HOLDING COMPANIES IN INDIA



SUBSIDIARIES OF TATA GROUP



HOLDING AND SUBSIDIARY RELATIONSHIP



LAYER OF SUBSIDIARIES

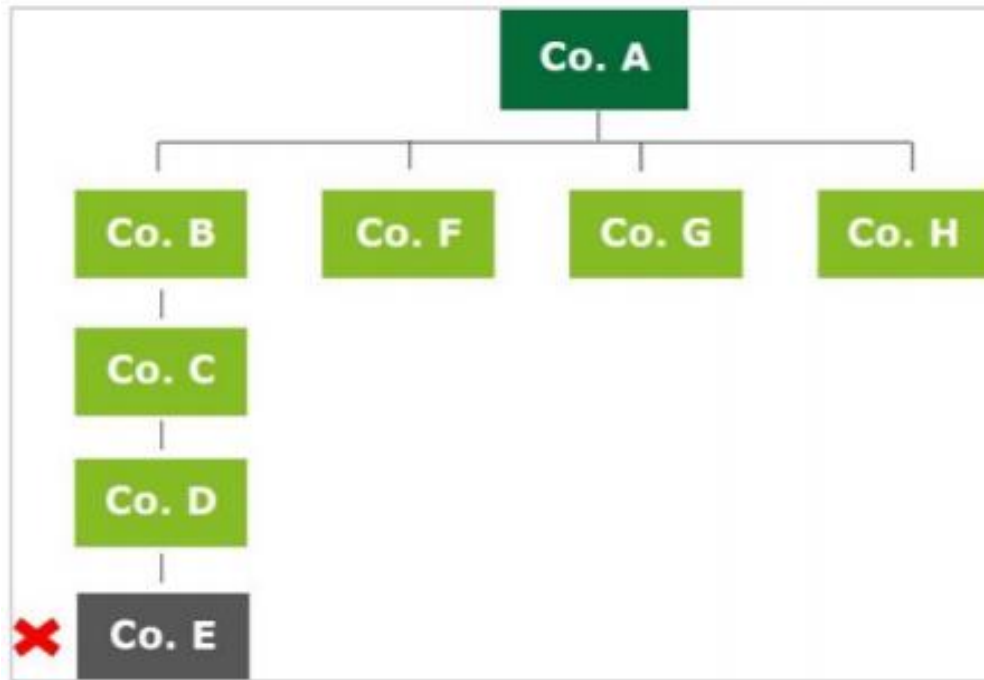
- In exercising the powers conferred under proviso to clause (87) of section 2 to restrict the number of layers of subsidiaries a holding company can have, the Ministry of Corporate Affairs on 20 September, 2017 notified Companies (Restriction on number of layers) Rules, 2017 (Rule). **As per the rule, a Company cannot have more than two layers of subsidiaries.**
- **EXCEPTIONS:** In computing the number of layers, **one layer which consists of one or more wholly-owned subsidiary or subsidiaries shall not be taken into account.**

Provided that the provisions of this Sub rule shall not affect a company from acquiring a company incorporated outside India subsidiaries beyond two layers as per the laws of such country .

EXCEPTION

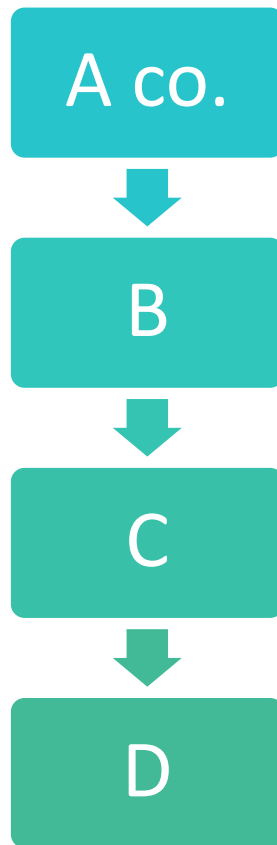
- The restriction does not affect a company from acquiring a company outside India with subsidiaries beyond 2 layers as per the laws of such country. According to the provisions, an Indian company can acquire a company incorporated outside India which may have several layers of subsidiaries beyond two but not beyond the limit permitted as per the law of the host country. Technically, this limit shall count with reference to the top layer of the foreign subsidiary in the host country. The language suggests that the exemption is only at the time of acquisition of the company and not otherwise. Therefore, if the Indian company freshly incorporates any subsidiary outside India or tries to acquire any further subsidiary/ies, it would have to adhere to this rule
- However, this rule is not applicable to a banking company, non-banking financial company, insurance company and a government company.

ILLUSTRATION



If Co. A is the holding company, it can have one wholly-owned subsidiary (Co. B) or subsidiaries (Co. F, Co. G and Co. H). Co. B in turn can have two step-down subsidiaries or layers of subsidiaries i.e. Co. C and Co. D. However, Co. D cannot have any subsidiary (Co. E). There is no restriction on Co. B having fellow subsidiaries which are directly held by Co. A i.e. Co. F, Co. G, Co. H and so on. Similarly Co. F, Co. G and Co. H may have step-down subsidiaries.

ILLUSTRATION



- ❑ **Case 1: A holding co. has multiple layers of subsidiaries i.e.. B, C, D**

In the aforesaid structure, an existing holding co, has 3 layers of subsidiaries and hence will not be able to float D.

- ❑ **Case 2: B is a WOS of A**

As per the rules, one layer of WOS shall not be counted for the purpose of computing the no. of layers. Therefore, if B is a wos of A, the structure is permissible.

- ❑ **Case 3: D is a LLP**

The new rule provides that restriction would apply to any company, other than exempted companies. As per the def. of subsidiary co., a company includes body corporate and LLP is body corporate. Thus, the restriction shall apply.

TOTAL VOTING POWER [S.2(89)]

Total Voting power[Section2(89)]:"total voting power", in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes

A company S. Ltd. has four classes of shares in its Capital Clause namely –

Class A (Equity Shares), 10,00,000 shares of Rs. 100 each (10 shares = 1 vote).

Class B (Equity Shares), 20,00,000 shares of Rs. 20 each (1 share = 1 vote).

Class C (Convertible Preference Shares), 10,00,000 shares of Rs. 10 each (No Voting Power).

Class D (Non-Convertible Preference Shares), 1,00,000 shares of Rs. 100 each (No Voting Power)

Total Votes = 1 Lacs + 20 Lacs = 21 Lacs.

Total Share Capital = 10 Crores + 4 Crores + 1 Crores = 15 Crores

CONTROL [S.2(27)]

Acc. to the Companies Act, 2013 : 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 acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

ASSOCIATE COMPANY

Associate Company [Section 2(6)]: 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.

"significant influence" means **control of at least twenty per cent.** of total voting power, or control of or participation in business decisions under an agreement;

"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;

Vide Circular dated 25/06/2014 it has been clarified that 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

LISTED AND UNLISTED COMPANY

On the basis of access to capital

- A. **Listed Company [Section 2(52)]** Which has any of its securities listed on any recognised stock exchange.
- B. **Unlisted Company:** An unlisted public company is one which is not listed on any stock exchange. Its shares are therefore not available for trading to the general public. Private limited companies are examples of unlisted companies.

GOVERNMENT COMPANY

- A. **Government company (GC) [Section 2(45)]** means any company in which not less than 51% 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;
- The name of all Government Companies shall end with the word “Limited”, be it Public or a Private Company.”
- Example: X is a company in which 50% of shareholding is held by Central Government. Here X 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.

FOREIGN COMPANY S.2(42)

- **Foreign company [Section 2(42)]** Any company or body corporate incorporated outside India which— has a place of business in India whether by itself or through an agent, physically or through electronic mode; **and** conducts any business activity in India in any other manner.
- As per Rule 2(1)(c) of the Companies (Registration of Foreign Companies) Rules 2014, for the purposes of clause (42) of Section 2 of the Companies Act 2013, **“electronic mode” means** carrying out electronically based ,whether main server is installed in India or not, including but not limited to
 - (i) business to business and business to consumer transactions, data interchange and other digital supply transactions;



MEANING OF ELECTRONIC MODE

- (ii) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens 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, education 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;

IMPACT OF THE DEFINITION OF FOREIGN COMPANY

- Companies Act 2013 has expanded the scope of the definition of Foreign Company .
- Companies in media and broadcasting business like Zee Entertainment Enterprise Limited which have foreign subsidiaries like Asia Today Limited which render satellite services to the group will now be covered under the new definition of Foreign Company under Companies Act 2013.
- Online travel companies with joint venture with several airlines selling tickets of those airlines on their online portal will now be covered under new definition of Foreign Company under Companies Act 2013
- Company or Body Corporate providing online coaching to Indian students will now be covered under new definition of Foreign Company under Companies Act 2013.
- Airline companies who operate through their booking agents in India will now be covered under new definition of Foreign Company under Companies Act 2013.

NIDHI COMPANY

- As per Section 406, a company which has been 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 and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.
- Their core business is borrowing and lending money between their members. They are also known as Permanent Fund, Benefit Funds, Mutual Benefit Funds and Mutual Benefit Company.

SECTION 8 COMPANY

- **C. Section 8 Company:** Formed for the promotion of commerce, art, science, religion, charity, protection of environment, sports, etc.
 - Uses its profits for the promotion of the objective for which formed
 - Does not declare dividend to members.
 - Operates under a special licence from Central Government
 - Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.
 - Licence revoked if conditions contravened
 - Can call its general meeting by giving a clear 14 days notice instead of 21 days
 - Requirement of minimum number of directors, independent directors etc. does not apply.

SMALL COMPANY S.2(85)

(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 ten crore rupees; and
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred 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 or body corporate governed by any special Act;

EXAMPLE

P Ltd. is a company registered under the Companies Act, 2013 with paid up capital of ` 10 Lacs and turnover 2 crore rupees.

According to section 2(85) a small company is a company other than a public company with the paid up of capital not exceeding fifty lakh rupees and turnover not exceeding two crore rupees. **Since, P Ltd. is a public company** though complying with other requirements, it cannot avail the status of a small company

OTHER IMPORTANT DEFINITIONS

S.2(8) Authorised capital or Nominal capital means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;

S.2(15) Called-up capital means such part of the capital, which has been called for payment;

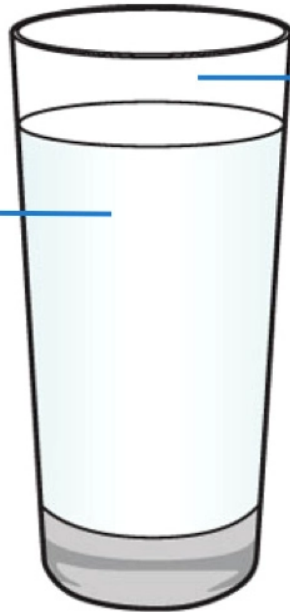
S2(50) Issued capital means such capital as the company issues from time to time for subscription;

S.2(64) Paid-up share capital or share capital paid-up means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;

S.2(86) Subscribed capital means such part of the capital which is for the time being subscribed by the members of a company;

Paid Up Capital

- Paid up capital is like water in the container.
- It is the amount of shares the company has issued to its shareholders.
- The company has the capacity to issue more shares upto the authorised capital of the company.



Authorised Capital

- Authorised Capital is like the container that holds the water.
- It is the maximum amount of shares a company can issue.
- To increase authorised capital, shareholder approval and payment of fee to Government is required.

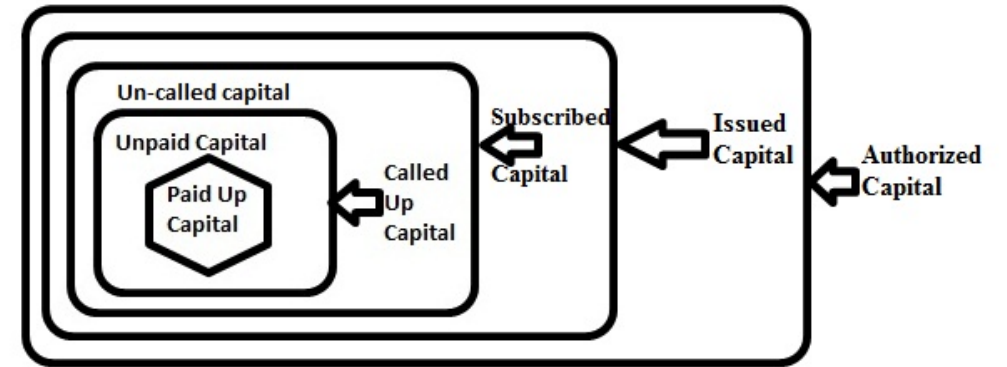


Fig:Type of capital

Authorized capital: The amount of capital with which a company is registered with the registrar of companies. It is the maximum amount of capital which a company can raise through shares.

Subscribed capital: The amount of capital (out of authorized capital) for which company has received applications from the general public who are interested in buying shares.

Issued capital: The amount of capital (out of subscribed capital) which has been issued by the company to the subscribers and thus are now shareholders.

Called-up capital: In some jurisdictions, company is permitted to ask for only part of the total issued capital i.e. company will require shareholders to pay only part of the amount of the shares they hold and not to pay fully. The partial amount (out of issued capital) so asked by the company from the shareholders out of the total value of shares is called-up capital.

Paid-up capital: The amount of capital (out of called-up capital) against which the company has received the payments from the shareholders so far.

EXAMPLE

ABC Ltd was registered with registrar with a registered capital of Rs. 20,000,000 where each share is of Rs. 10.

In response to the advertisements made by the company to buy shares in the company applications have been received for 1,000,000 shares but company actually issued 700,000 shares where company has called for Rs. 8 per share.

All the calls have been met in full except three shareholders who still owe for their 6000 shares in total.

SOLUTION

Solution:

Authorized capital = Rs. 2,00,00,000 (Rs.2 Cr.) ;

Subscribed capital = 10,00,000 x Rs. 10 = Rs. 1,00,00,000 (1 Cr.)

Issued capital = 7,00,000 x Rs.10 = Rs. 70,00,000

Called-up capital = 7,00,000 x Rs. 8 = Rs. 56,00,000

Paid-up capital = 56,00,000 – (6000 x Rs. 8) = Rs. 55,52,000

OTHER IMPORTANT DEFINITIONS

S.2(41)Financial year, in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up.

Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may(the power delegated to the RD), on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year:

OTHER IMPORTANT DEFINITIONS

S.2(55) Member, in relation to a company, means—

- (i) **the subscriber to the memorandum** of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members even if the subscription money has not been paid to the company;
- (ii) **every other person who agrees in writing** to become a member of the company and whose name is entered in the register of members of the company;
- (iii) **every person holding shares of the company** and whose name is entered as a beneficial owner in the records of a depository;

OTHER IMPORTANT DEFINITIONS

S.2(57) Net worth means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;

OFFICER S.2(59)

Officer includes

- any director,
- manager or
- key managerial personnel or
- any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;

S.2(60) OFFICER WHO IS IN DEFAULT

S.2(60) Officer who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

- (i) whole-time director (WTD);
- (ii) key managerial personnel (KMP);
- (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

S.2(60) OFFICER WHO IS IN DEFAULT

- (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
- (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

S.2(60) OFFICER WHO IS IN DEFAULT

- (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
- (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

RELATIVE S.2(77)

S.2(77) Relative, with reference to any person, means anyone who is related to another, if—

- (i) they are members of a Hindu Undivided Family;
- (ii) they are husband and wife; or
- (iii) one person is related to the other in such manner as may be prescribed;

Rule 4 given in the Companies (Specification of Definitions Details) Rules, 2014 provides of the List of Relatives in terms of Clause (77) of section 2.

Accordingly, a person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-

- (1) Father: Provided that the term “Father” includes step-father.
- (2) Mother: Provided that the term “Mother” includes the step-mother.
- (3) Son: Provided that the term “Son” includes the step-son.

RELATIVE S.2(77)

- (4) Son's wife.
- (5) Daughter.
- (6) Daughter's husband.
- (7) Brother: Provided that the term "Brother" includes the step-brother;
- (8) Sister: Provided that the term "Sister" includes the step-sister

EXCLUSIONS

- **Grand Parents**
- **Grand Children**
- **Step Daughter**
- **Brothers wife**
- **Sisters Husband**

RELATED PARTY

S.2(76) Related party, with reference to a company, means—

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager or his relative is a member or director;
- (v) a public company in which a director and manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager

RELATED PARTY

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any body corporate which is-

- (A) a holding, subsidiary or an associate company of such company;
- (B) a subsidiary of a holding company to which it is also a subsidiary; or
- (C) an investing company or the venturer of the company;

Explanation.- For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate

RELATED PARTY

Exemption - This Clause (viii) shall not apply with respect to section 188 to a private company

- (ix) such other person as may be prescribed

As per Rule 3 given in the Companies (Specification of Definitions Details) Rules, 2014, for the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director (other than an independent director) or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

EXAMPLE

Example: (1) XYZ Pvt. Ltd has two subsidiary companies, Y Pvt. Ltd and Z Pvt. Ltd. Here as per the section 2(76)(viii)(B), Y Pvt. Ltd and Z Pvt. Ltd. are related parties. However, as per the Notification No. G.S.R. 464(E) dated 5th June, 2015, clause (viii) shall not apply with respect to section 188 to a private company. Therefore Y Pvt. Ltd and Z Pvt. Ltd are not related parties for the purpose of section 188. However, if Y Pvt. Ltd and Z Pvt. Ltd. have common directors, then they will be deemed to be related parties because of section 2(76)(iv).

(2) Now suppose, XYZ Ltd. a public company, has two subsidiary companies, Y Pvt. Ltd and Z Pvt. Ltd. Here as per section 2(71), a private company which is a subsidiary of a public company will be deemed to be a public company, so Y Pvt. Ltd and Z Pvt. Ltd will not be eligible to avail exemption under the Notification No. G.S.R. 464(E) dated 5th June, 2015. Therefore, as per section 2(76)(viii)(B), Y Pvt. Ltd and Z Pvt. Ltd are related parties. In addition XYZ Ltd. will also be related Party to Y Pvt. Ltd and Z Pvt. Ltd.

REGISTER OF COMPANIES & REGISTRAR

S.2(74),(75)

(75) Registrar means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act;

(74) Register of companies means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act;

TURNOVER & VOTING RIGHT

(91) Turnover means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year;

(93) Voting right means the right of a member of a company to vote in any meeting of the company or by means of postal ballot;

QUESTION

1. HENRY LTD is a company registered in Thailand. It has no place of business establish in India, yet it is doing online business through telly-marketing in India having it's main server for online business outside India. State the status of the company under the provisions of the Companies Act 2013.
2. "SKP LTD" (registered in India) a wholly owned subsidiary company of Henry Ltd. He decided to follow different financial year for consolidation of its account outside India . State the procedure to be followed in this regard.
3. "TERESA LTD" is a company registered in New York, (USA).The company has no place of business establish in India but it is doing online business through data interchange in India. Explain with reference to relevant provision of Companies Act, 2013 whether "TERESA LTD" will be treated as a foreign company.



THANK YOU