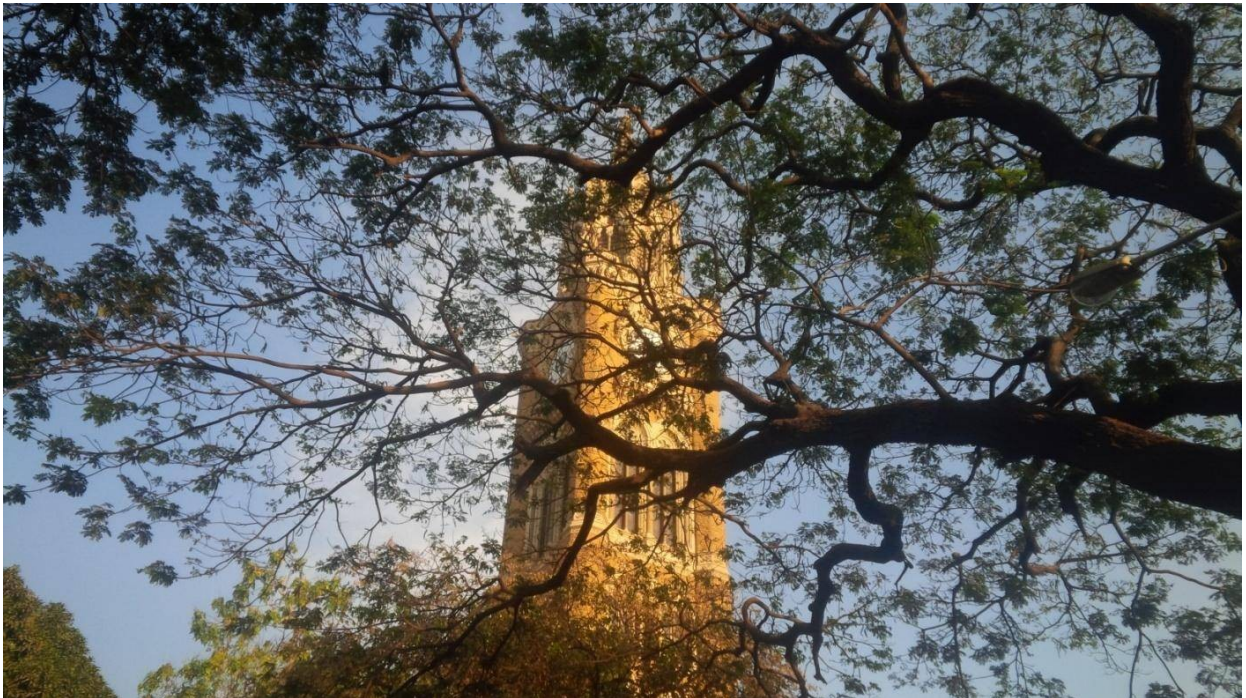


PRIVATE LIMITED COMPANY

AN INTRODUCTION



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Note: Provisions of Companies Act, 2013 are considered for the purposes of this note/circulation.

I. MEANING AND FEATURES OF A COMPANY

A “Company” is an association of individuals formed for some common purpose. It is incorporated and registered under the Companies Act, 2013 or previous Companies Acts. It has a legal identity which is separate from that of its members.

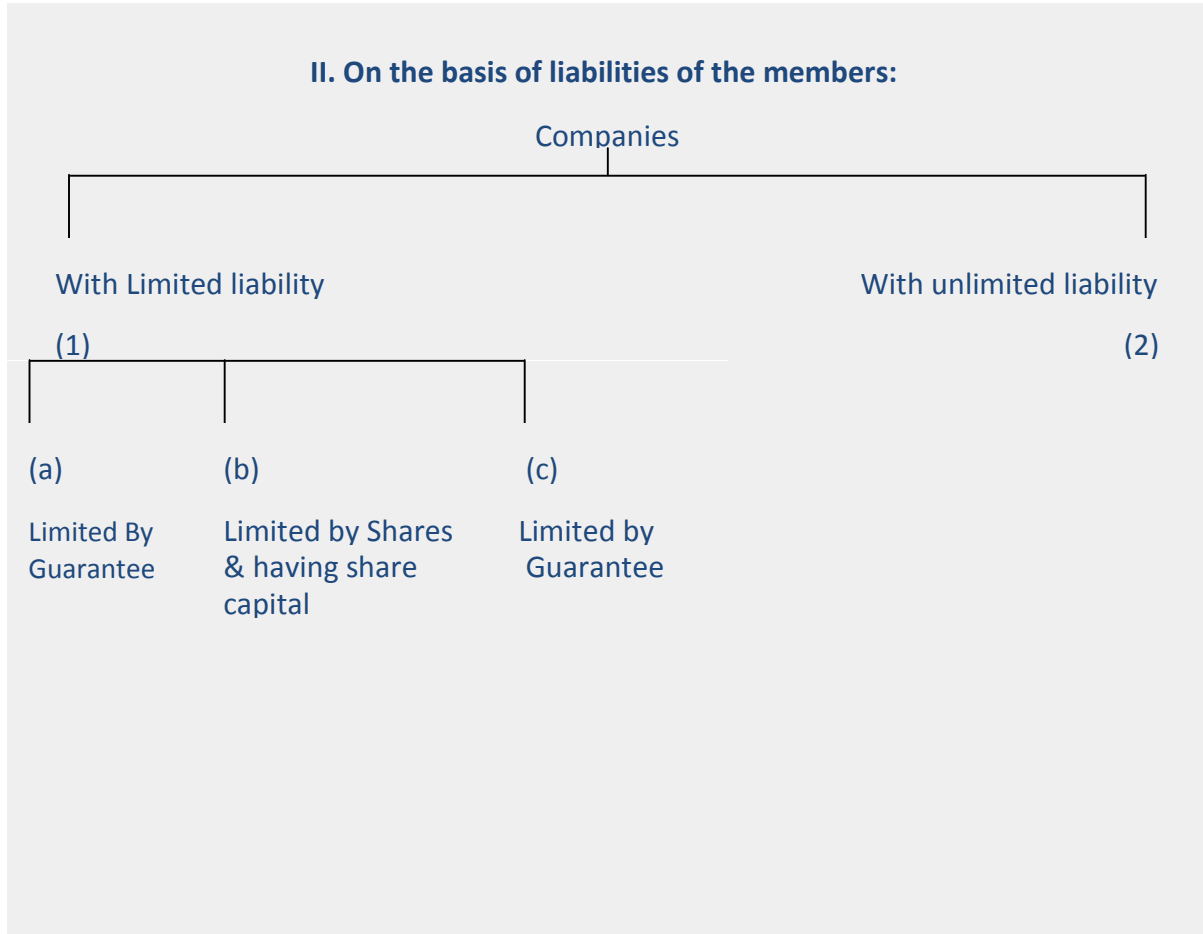
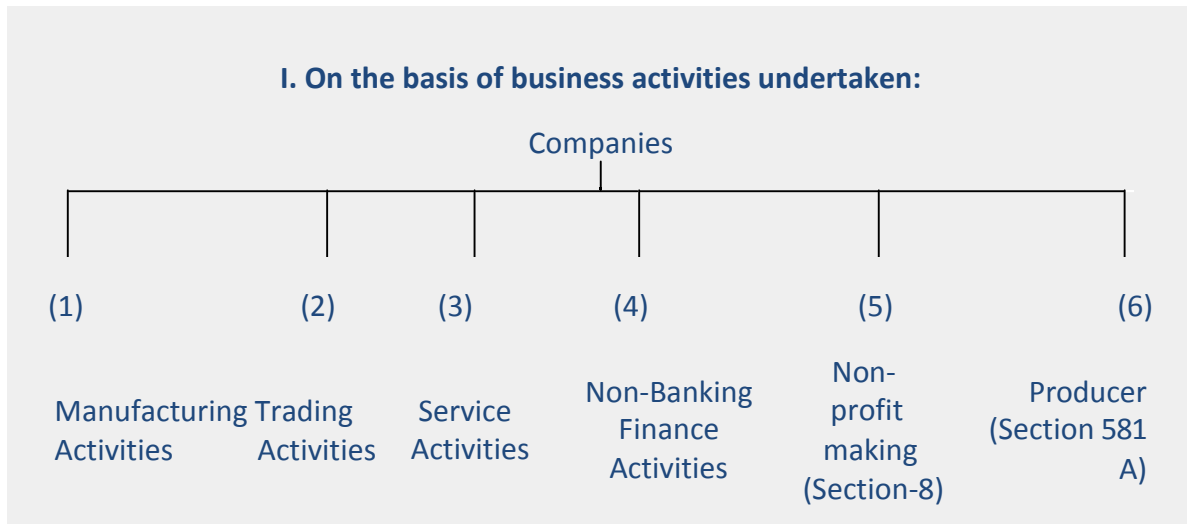
In India, a Company is incorporated by complying with the procedure stated in the Companies Act 2013. A Company thus incorporated is registered with the Registrar of Companies which is governed by The Ministry of Corporate Affairs.

Characteristics of a Company

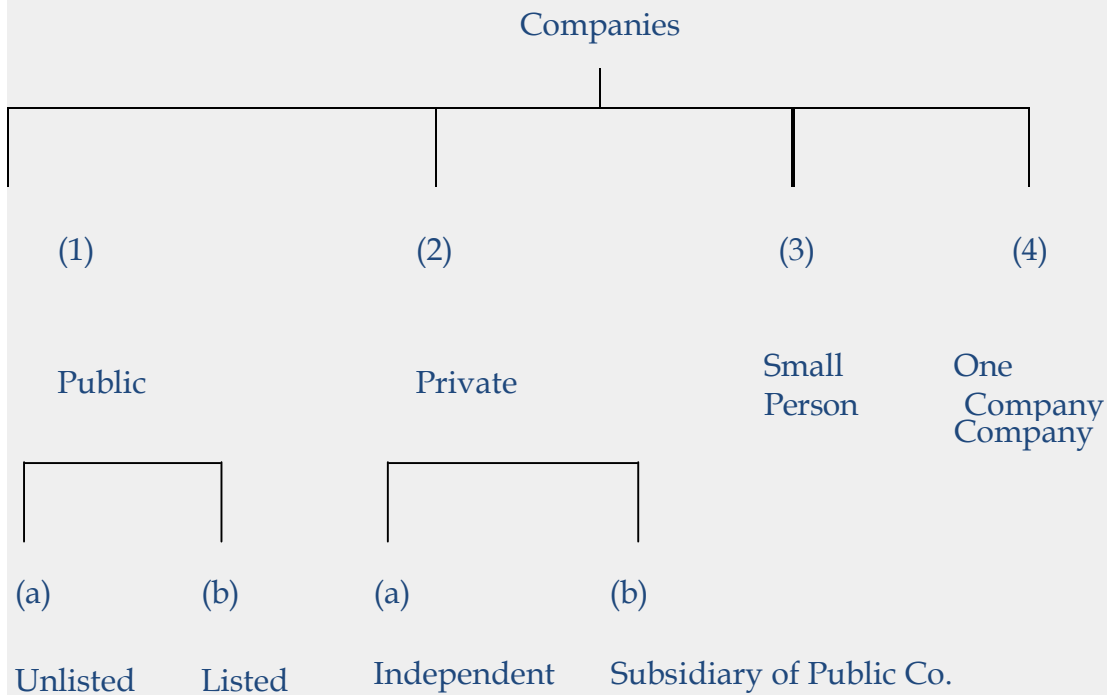
1. A company has a *separate legal entity* from its owners. The members of a company have no liability to the creditors of a company for debts incurred by the company.
2. A company has *perpetual succession*, i.e. continued or uninterrupted existence until it is legally dissolved. It continues in existence irrespective of the changes in membership.
3. The *liability of the members is limited* either to the extent of the face value of shares taken up by them or by the memorandum to a certain amount.
4. Shares of a company limited by *shares are transferable* by a shareholder to any other person.
5. A company can acquire, own, enjoy and alienate *property in its own name*.
6. A company has the *capacity to sue and be sued*.
7. It is possible for a company to *make a valid and effective contract with any of its members and other entities*.
8. A company *enjoys better avenues for borrowing funds*. It can issue debentures, secured as well as unsecured and can also accept deposits from the public etc.

Types of Companies under Companies Act 2013

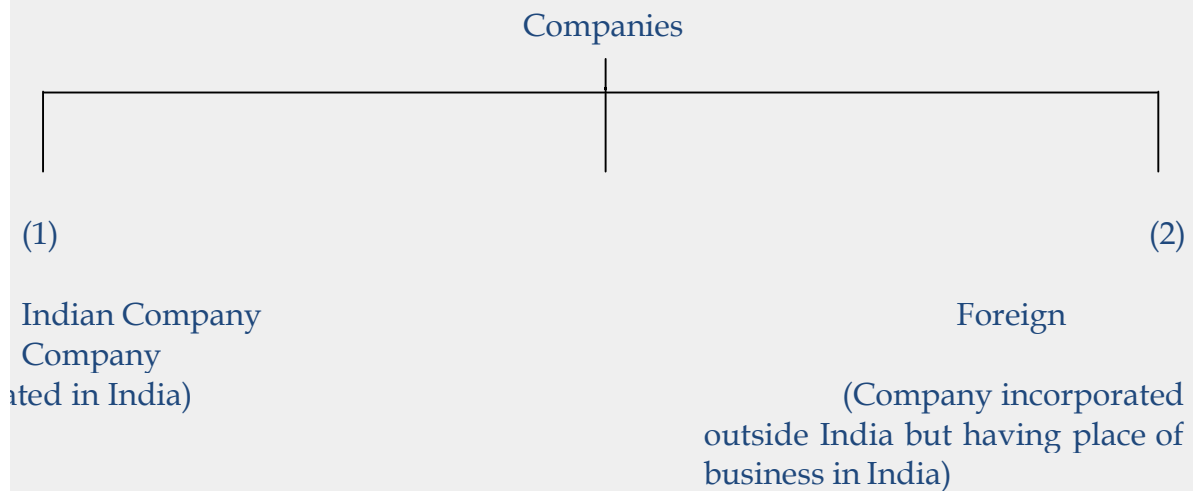
Companies under the Companies Act, 2013 may be classified based on various factors.



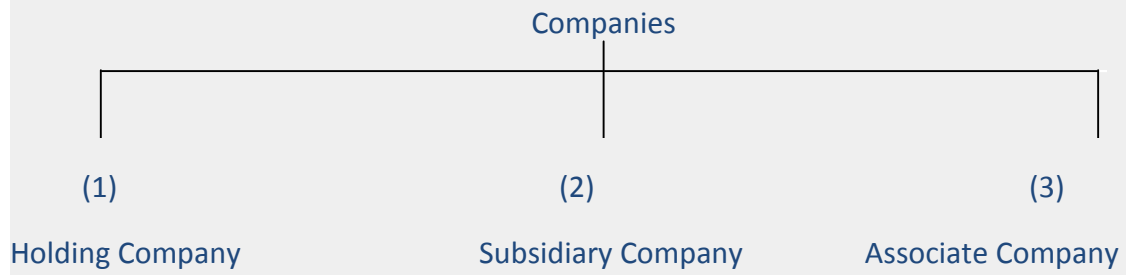
III. On the basis of membership pattern/size



IV. On the basis of place of registration:



V. On the basis of control over the management:



II. INCORPORATION OF A PRIVATE LIMITED COMPANY

The process of incorporation of a Private Limited Company in India is through e-filing to Ministry of Corporate Affairs.

The main steps for incorporation are:

- A] Initial Core Decision
- B] Applying for Digital Signature Certificate (DSC) and Director Identification Number (DIN)
- C] Name Application
- D] Incorporation Forms to be e-filed with Ministry of Corporate Affairs
- E] Other Registrations
- F] Commencement of Business

There are several steps involved in the process of incorporation of a private limited company in India as detailed below.

A] Initial Core Decisions

- o Selection of the type of company
- o Deciding the share holding pattern and first directors
- o Drafting the Main Objects
- o Selection of the name for the proposed company

Once these main decisions are in place the process of incorporation can be initiated. This will involve submissions of relevant documents, getting attestations, filling of forms and getting the required approvals and certificates.

B] Name Application

The Name Application can be done through RUN Service or directly through the Spice Form.

The name of a company should be stated in the memorandum of the company.

The name stated in the memorandum shall not:

- o be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law or
- o be such that its use by the company:
 - will constitute an offence under any law for the time being in force or
 - is undesirable in the opinion of the Central Government (Rule 8).

Some of the key points while choosing the name for a proposed company

- The name should not resemble too nearly the name of any existing company or a registered trade mark of any other person under the Trade Marks Act 1999.
- It should be in consonance with the Main Objects of the proposed company
- It should not contain any word which is considered as offensive to any section of the people
- It should not be an exact translation in Hindi of any existing reputed Company's English name.
- Should not bear phonetic resemblance with any existing company
- It should not be too generic e.g. "Travel and Tours Private Limited"
- It should not resemble and popular abbreviation of an existing company

C] Applying for Director Identification Number (DIN) and Digital Signature Certificate (DSC)

As per section 152, "no person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under section 154".

The Directors need to provide their KYC documents which have to be attested and submitted with the DIN application. For Foreign Nationals the documents need to be notarized by a public notary of their country of residence or by the Indian Embassy in that country. The documents of the director who is a foreign national can be attested by a practicing Chartered Accountant or Company Secretary if they are visiting India and the copy of a valid visa is also attached.

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III. PRIVATE LIMITED COMPANY

Definition and Conditions

“Private Company” means a Company as may be prescribed, and which by its Articles,-
{Section 2(68)}

1. restricts the right of transfer of its share;
2. except in case of One Person Company, limits the number of its members to 200 not including:
 - a) persons who are employees of the company; and
 - b) persons, who have formerly been in employment of the company, were members of the company and have continued to be members after the employment ceased.
3. prohibits any invitation to the public to subscribe for any securities of the company.

Small Company means a Company other than a Public Company having

- Paid-up Share Capital < 50 lacs and
- Turnover < 2 Crores

Provided that nothing in this clause shall apply to –

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

One Person Company" means a company which has only one person as a member

Subsidiary and Holding Company

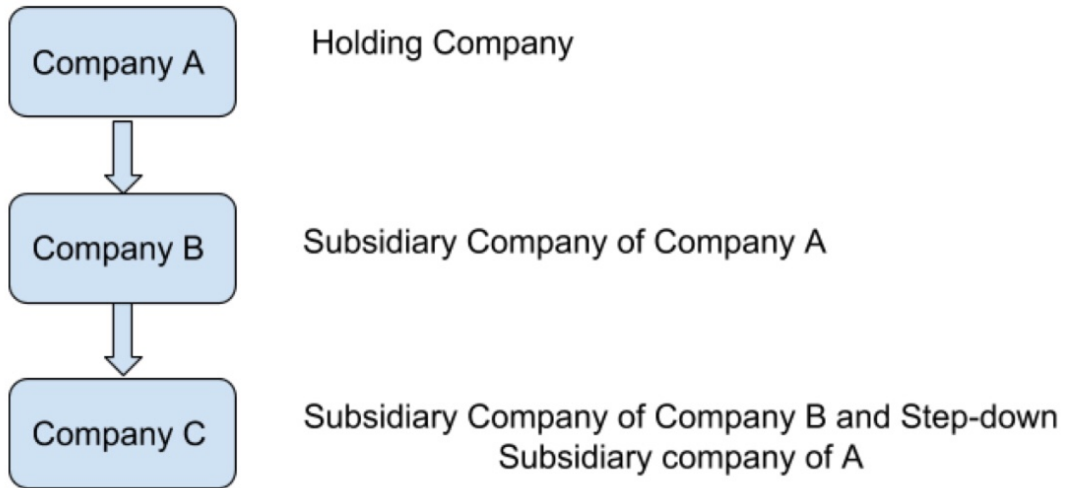
A company controlled by another company is called a **Subsidiary Company** and the controlling company is called the **Holding Company**.

Determination & Control

The tests to find out whether two companies are related to one another as holding and subsidiary company are as follows [Section 2(87)]:

- i. Holding company *controls the composition of the Board of Directors* of the Subsidiary Company.
- ii. Holding company *exercises or controls more than half of the total share capital either at its own or together with one or more of its subsidiaries* in Subsidiary Company.
- iii. As per section 2(87)(a), if the Holding Company is the subsidiary of another company, then the original subsidiary company will be the subsidiary of the other company.

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IV.MEMORANDUM AND ARTICLES OF ASSOCIATION

Memorandum of Association (MOA)

'Memorandum' means the memorandum of association of the company as originally framed or as altered from time to time in pursuance of any previous companies law or this act [section 2(56)].

It is *a document that regulates a company's external activities* and must be drawn up on the formation of a company. As the company's charter, MOA (together with the company's articles of association) forms the company's constitution.

The MOA & AOA is a public document and may be inspected by anyone, usually at the public office where it is lodged.

Articles of Association (AOA)

The articles are the regulations for the management of registered companies that governs the running of a company. It sets out the voting rights of the shareholders' and directors' meetings, powers of the management, etc.

The articles constitute a contract between the company and its members. Directors or any outsiders cannot use the articles to enforce their rights.

V. SHARES

Types of Shares

- Equity Shares
 - with voting rights or
 - with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed
- Preference Shares

Provided that nothing contained in the Companies Act 2013 shall affect the rights of preference shareholders who are entitled to participate in the proceeds of winding up before the commencement of this Act.

Issue

Private Limited Companies are free to include in their Articles of Association any provisions in regard to voting rights of their members, holding equity shares or preference shares. The share capital of a company limited by shares may be of two kinds only- [equity share capital](#) and [preference share capital](#).

A private limited company cannot offer its shares or debentures to the public for subscription.

Transfer

The right of transfer of shares in a private company is to be restricted by the articles of such companies. Any restrictions imposed by the articles are binding on the members of the company by virtue of Section 10 of the Companies Act.

The two main restrictions found in the articles of most private limited companies are:

1. the directors are given absolute and uncontrolled discretion in the matter of approval of transfers for registration and
2. The members are given the right of pre-emption for purchasing the shares offered by any member.

Buyback

Any company limited by shares or guarantee and having a share capital, can buy back its own securities. The term “buyback” means the buying by a company of its own shares or securities from the holders of those shares or securities. The share capital bought back has the effect of reduction of share capital to the extent of the face value of the shares bought back and there is cash outflow from the company to the extent of the price of the shares paid to the shareholders. The buyback of shares results into cessation of membership of the shareholders whose shares are bought back and their names are deleted from the Register of Members.

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VI. BOARD OF DIRECTORS

Meaning & Number of Directors

As per the provisions of Section 152 and 153 of the Companies Act, *only an individual can be appointed as directors* and no Body Corporate, association and firm can be appointed as director of any company. Board of Directors of a company means a group of individuals who are directors of the company.

Every company *must have at least two directors. The Act specifically provides that a company may have a maximum of fifteen directors.*

Appointment

- The first directors assume the office from the date of incorporation of a company. They are designated as directors by the promoters of the company.
- The Companies Act enables a person, other than the retiring directors, to stand for directorship, at any general meeting [section 102].

Retirement, Resignation & Removal

- Directors of a private company are not compulsorily required to retire by rotation according to the Companies Act.
- A director may resign at any time on giving notice to the company or as per the contract with the company.
- Section 169 of the Companies Act gives shareholders of a company the right to remove a director from his office, not being a director appointed by the Tribunal under section 242, by ordinary resolution before the expiry of his period of office.

Remuneration

A private company is free to pay remuneration to its directors, including managing and whole time directors, subject to the provisions of the Articles of Association.

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VII. SHAREHOLDERS' MEETINGS

TYPES OF MEETINGS

General Meeting

As per the provisions in the Companies Act, the term “general meeting” includes all kinds of shareholders’ meetings, that is Extra-Ordinary General Meeting (EGM) and Annual General Meeting (AGM).

Annual General Meeting (AGM)

An AGM is a meeting of the members of a company held once a year each year. The first AGM needs to be held within 9 months of the closing of the first financial year. Subsequent AGMs needs to be held within 6 month of the closing of the financial year.

An AGM needs to be held between 9 am and 6 pm. It cannot be held on a national holiday and it has to be at the registered office or in the city in which the registered office is situated.

Extraordinary General Meeting (EGM)

All general meetings of members of a company, other than AGMs, are called Extra-ordinary general meeting (EGM).

The board of directors may call an EGM at any time it thinks fit and may do so by passing a resolution at a board meeting or by a circular resolution and by giving a Notice of 21 clear days or as mentioned in the Articles of the company. All business transacted at any EGM shall be special business.

VIII. CONVENING AN ANNUAL GENERAL MEETING (AGM)

a. Notice

Notice is an announcement or intimation of something impending.

Notice Period: Notice to be sent at least clear 21 days prior to the Annual General Meeting. A meeting can be held at a shorter notice if at least 95% of the members give a written consent in favor of holding the meeting at a shorter notice.

Notice to be sent to: Notice has to be sent to all members including a legal representative of a deceased member, auditors, and every director of the Company.

The notice of a general meeting must contain the following:

- a) Type of meeting
- b) Place of meeting
- c) Day & Date of meeting
- d) Hour of meeting
- e) Statement of business
- f) Type of business
- g) Type of resolution
- h) Explanatory Statement (if required)

b. Quorum

Quorum means the minimum number of persons who must be present at a meeting in order for business to be transacted, without which, no business can be transacted at the meeting and, if transacted, will be invalid.

The statutory quorum for general meetings for a private company is 2 members, personally present.

c. Chairman

The articles usually provide that the chairman of the board shall preside as chairman at every general meeting of the company. Articles lay down the procedure for the election of the chairman. Following are the duties and powers of a chairman:

- i. Make sure that meeting is properly convened in accordance with the AOA.
- ii. Ensure that all requirements are duly complied and observed.
- iii. Take up items of business to be transacted at the business

- iv. Prevent irrelevant discussions, ensure everyone is given an opportunity to speak and allow no discussions unless there is some motion before the meeting.

d. Proxies / Representatives

A proxy is a person who represents a member of the company at a general meeting at which one or more votes are taken. Proxy denotes the person appointed and authorized to act as the agent or substitute for another and a written authorization or the form appointing and empowering another person to vote or act for the signer at a general meeting.

e. Resolutions

If a motion is passed by a required majority of members of the company, it becomes a resolution.

- I. **Ordinary Resolution:** An ordinary resolution is a resolution passed by a simple majority, i.e. more than 50% votes of members of a company voting in person or by proxy.
- II. **Special Resolution:** A Resolution passed by more than 75% votes of members of a company voting in person or by proxy. It is a resolution, which is passed by a special majority of votes. To but simply for every one negative vote, if there are more than 3 positive votes, resolution is said to be carried.

f. Adjournment

To adjourn a meeting means to defer or suspend the meeting to a future time, with no appointed date or indefinitely or as decided by the members present at the scheduled time of the meeting.

If within half an hour from the time appointed for holding a general meeting, a quorum is not present, the meeting may be adjourned to the same day in the next week at the same time and place, or to such other place or to such other time and place as the Board may determine.

When a meeting is sought to be adjourned, a motion to that effect must be moved.

IX. DIRECTORS' MEETING & POWERS OF DIRECTORS

Statutory Provisions

The companies act requires that every company to hold a minimum number of meetings of its board of directors. Section 173 requires a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.

Quorum

A minimum of 2 directors or one-third of the total number of directors, whichever is higher, is required for quorum. A quorum at meetings of directors must be present not only at the beginning, but throughout the meeting.

Circular Resolution

The board of directors of a company may take decisions by resolutions passed by circulation, instead of assembling at a board meeting. Such a resolution is called 'circular resolution'. Such a resolution shall be noted at a subsequent meeting of the Board or the committee thereof and made a part of the minutes of such meeting.

Minutes

'Minutes' mean fair and correct summary of the proceedings of the meeting (including decisions taken and resolutions passed).

Under section 118 of the companies act, every company is required to keep minutes of all proceedings of every Board Meeting, General Meeting and Meeting of every committee of the Board.

Minutes of every meeting must be prepared and signed in such manner as may be prescribed and shall be entered in the Minutes Book within 30 days from the date of conclusion of the Meeting.

Section 118 requires minutes to be recorded in books kept for that purpose with their pages consecutively numbered, which must be kept at the registered office of the company.

- The members of a company may inspect the minutes books
- Furnish copy of minutes of any general meeting on payment of such sum as may be specified in the articles of association of the company, but not exceeding a sum of ten rupees for each page or part of any page.
- As per section 119, if the company refuses inspection or does not furnish a copy demanded within the time specified, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who

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is in default shall be liable to a penalty of five thousand rupees for each such refusal or default.

Powers

Subject to the provisions of the Act, the Board of directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorized to exercise and do.

The board has the power to:

- Make calls on shareholders in respect of money unpaid on their shares
- Authorize buy-back of securities under section 68
- Issue securities, including debentures, whether in or outside India
- Borrow monies
- Invest the funds of the company
- Grant loans or give guarantee or provide security in respect of loans
- Approve financial statement and the Board's report
- Diversify the business of the company
- Approve amalgamation, merger or reconstruction
- Take over a company or acquire a controlling or substantial stake in another company

X. CORPORATE SOCIAL RESPONSIBILITY

Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director (section 135).

XI. BENEFITS/ ADVANTAGES OF A PRIVATE LIMITED COMPANY

- A Private Company has no obligation to call the Statutory Meeting of the member
- No restriction on payment of Managerial Remuneration
- No minimum share capital is required to incorporate private limited company.
- Only 2 persons are required to form a Private Limited Company.
- The directors need not retire by rotation.

XII. OBLIGATIONS OF A PRIVATE LIMITED COMPANY

- Filing of Financial Statements in Form no. AOC-4 and Annual Return in Form no. MGT-7
- Complying with Statutory laws such as Excise Duty, Sales Tax, Service Tax, etc.
- Maintaining a register containing minutes of every general meeting and every meeting of Board of Directors
- Every private company having turnover of Rs. 200 crores or more during the preceding financial year shall be required to appoint an internal auditor or a firm of internal auditors
- Private limited companies are required to keep cost records if their turnover is Rs. 25 crores or more & also do cost audit if their turnover is Rs. 100 crores or more

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