

# Categorization of Corporation under Business Commandment

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**Abstract:** *The Indian economy has a variety of companies existing in its market such as public companies, private companies, investment companies, limited liability companies etc. These numerous entities in the market may look different from each other on the surface, but based upon certain identifiable common characteristics they can be grouped into below-mentioned classifications. This article aims to draw your attention towards the conventional classification of the companies that are made based upon factors such as liability, control, incorporation, transferability of shares etc.*

**Keywords:** Companies, Classification, Legislation, Regulate, Homogeneity

## I. INTRODUCTION

The word ‘company’ has no strictly technical or legal meaning. It may be described to imply an association of persons for some common object or objects. The purposes for which people may associate themselves are multifarious and include economic as well as non-economic objectives. But, in common parlance, the word ‘company’ is normally reserved for those associated for economic purposes, *i.e.*, to carry on a business for gain.

Used in the aforesaid sense, the word ‘company’, in simple terms, may be described to mean a voluntary association of persons who have come together for carrying on some business and sharing the profits there from.

Indian Law provides two main types of organisations for such associations:

- ‘partnership’
- ‘company’.

Although the word ‘company’ is colloquially applied to both, the statute regards companies and company law as distinct from partnerships and partnership law. Partnership Law in India is codified in the Partnership Act, 1932 and Limited Liability Partnership Act, 2008. Both these legislations are based on the law of agency, each partner becoming an agent of the other(s), and it, therefore, affords a suitable framework for an association of a small body of persons having trust and confidence in each other.

A more complicated form of association, with a large and fluctuating membership, requires a more elaborate organisation which ideally should confer corporate personality on the association, that is, should recognise that it constitutes a distinct legal person, subject to legal duties and entitled to legal rights separate from those of its members. This can be obtained easily and cheaply by registering an association as a company under the Act.

As defined under **Section 2(20) of the Companies Act, 2013**, registered companies are the companies which get registered under the statute of the Companies Act. Companies are also provided with a certificate of incorporation by the Registrar of the Company.

### **1.1 Classification of Companies**

#### **A. Classification of Companies on the basis of incorporation**

##### **Royal Charter Company**

It may be better understood as the company born out of the authorization of the sovereign or the crown. This was the mode of incorporation which was followed earlier to the Registration under the Companies Act. A charter is granted by the crown to the people requesting to form a cooperative or a company. To name a few, **The Bank of England (1694)**, **The East India Company (1600)** were formed by the means of charters passed by the then Crown of England. The authorization given by the sovereign gives legal existence to these companies by means of the body of the charter. This mode of incorporation is no more recognised in any Companies Act to incorporate new Companies.

##### **Statutory Company**

As the name suggests, these are the companies that are formed by the means of a special statute passed by the Parliament or the State Legislature. The examples of statutory companies in India are **the Reserve bank of India, the Life Insurance Corporation of India Act**, etc.

The Statutory origins of these companies provide power to such companies to be bound by their own statute, i.e. whenever there is any dispute between statute under which these companies were formed and the Companies Act 2013, the statute being special legislation persists over the general law of Companies Act. The parliaments both State and Centre are empowered to make such legislation for incorporation under the power endowed to them by the Constitution of India.

##### **Registered Company**

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#### **B. Classification of Companies on the basis of liability of members**

The liability upon the members is also used to classify the companies, it describes the limit to which member will be liable if such liability were to befall upon the company. On the **basis of liability of the members**, the companies may be classified into:

##### **Companies Limited by Shares**

These types of companies are mentioned in **Section 2(22) of the Companies Act, 2013**. The liability of the members of such a company is based upon the number of shares kept unpaid. This liability against the shares kept may be brought to the authority. Once the payment towards the security is made by the shareholder or member then no liability beyond that is placed upon such

member. The liability may be enforced during the company's existence and even during its winding-up process.

### **Companies Limited by Guarantee**

These types of companies are mentioned in **Section 2(21) of the Companies Act, 2013**. In a Company where the liability is limited by guarantee, it means the member of the Company has agreed on the Memorandum of Association to repay the same amount during winding up of such Company. In such companies, the liability of the members is limited to the undertaking given by them. Trust research associations, etc. are examples of companies liability limited by guarantee.

### **Unlimited Liability Company**

These companies as defined under **Section 2(92) of the Companies Act, 2013** do not have a cap on the amount of liability that may add on their members in case the company has to repay any debt. For any amount that the company owes these members, the unlimited liability company shall be liable to the extent of their interest in the company. These companies do not draw any popularity when it comes to Indian Market.

### **C. Classification of Company on the basis of the number of members**

The number of members in a company is looked upon while classifying them. This classification of the company has been discussed in detail under the below-mentioned headings. On the **basis of the number of members** in the companies may be classified into:

#### **Private Company**

The private companies as defined under **Section 3(1)(b) of the Companies Act, 2013** are very restrictive in nature wherein it may in its Articles of Association restrict the right to transfer shares. The number of members in such a company might be a maximum of 50. The shares and debentures of such companies are not available for the public at large. The number of members in a company to be called a private company is two, wherein it is clearly set that two members jointly holding a single share shall be considered as one member and not two members. The easy identification of Private companies is the 'Pvt. Ltd.' attached to its name.

#### **Public Company**

As defined under **Section 2(71) of the Companies Act, 2013**, Public Companies are the ones which are not a private company. As mandated **under Section 3(1)(a) of the Companies Act, 2013**, there should be at least 7 members to form a public company. It is the intrinsic nature of the public company that there is the right to transfer shares and debentures of the public company to the public at large.

### **D. Classification of Companies on the basis of domicile**

On the basis of their domicile the companies may be classified into:

### **Foreign Company**

A Company which is situated outside India, but has a registered place in India may be physical or electronic address or perhaps company has ownership itself or through the agents, representatives or managers of the company is known as a foreign company under **Section 2 (42) of the Companies Act, 2013**. The aforementioned definition included in the new Companies Act has widened the scope of the definition of foreign companies extending the same to the entities having their electronic presence in India. The list of foreign companies listed in India has names of the corporate giants such as Whirlpool of India Ltd., Timex Group India Ltd., Ambuja Cements Ltd., etc.

### **Indian Company**

Indian Company has been defined under **Section 2(20) of the Companies Act, 2013** as any company registered under the Companies Act, 2013, or any other previous law is known as an Indian Company. An Indian company may prove its *locus standi* with the help of its office address and the legislation provides a guideline to be followed while using such powers by an Indian company.

### **E. Classification of companies on the basis of miscellaneous factors**

On the basis of other miscellaneous factors the companies may be classified into:

#### **Government Company**

As defined under **Section 2(45) of the Companies Act, 2013**, any company in which a minimum of 51 per cent of the paid-up share capital is held by the Central/State Government, and/or held fractionally by the Central Government and partly by one or more State Governments is known as a Government Company. The major drawback of having a government company is the lack of autonomy.

#### **Holding, Subsidiary Companies and Associated Companies**

Under **Section 2(46) of the Companies Act, 2013**, a company is known as **the holding company** of another company if it has administrative control over another company. Such control may be regarding the affairs of the company. Under **Section 2(87) of the Companies Act, 2013**, a company is known as a **subsidiary company** of another company when control is exercised by the other company over the subsidiary company.

A company is deemed to be a subsidiary company of another:

#### **If the other company**

- Exercises or controls more than 50% of the total voting power i.e. where the holders of preference shares have the same voting rights as the equity shares holder, or,
- 50% in nominal value of its equity share capital held, or,
- Possesses power regarding the composition of the Board of directors.

- If it is a subsidiary of a company which is a subsidiary of the controlling company.

The holding power also includes another kind of Company known as Associate Company, which is now being explained with respect to the above-mentioned Holding and subsidiary company.

### **Associate Company**

These Companies as defined under **Section 2(6) of the Companies Act, 2013** are the one in which the other company has significant influence but these Companies are not the subsidiaries of such influencing companies known as **the Associate Company**. The Joint Venture Companies are such associate companies.

The significant control can be inferred directly from the explanation attached to the provision which requires the influencing company to hold 20% of the share capital or any agreement whereby the decision making of the associate is placed upon such Influencing Company. The Associate Company concept has been seen as a harbinger of transparency in the working of the Company since it provides a more rationale grundnorm for an associated relationship between the two companies.

### **One Man Company**

Under **Section 2(62) of the Companies Act**, a company in which one person is the whole and sole owner of the share capital of the company is known as a One Man Company. In order to meet the statutory requirement of a minimum number of members, some namesake company shareholders hold one or two shares each. The namesake shareholder members are usually nominated by the principal shareholder. The principal shareholder enjoys all the profits of the business with the protective shield of limited liability. Such companies have been given legal sanctity.

### **New kind of Companies recognised under the Act, 2013**

#### **Dormant Companies**

Where a company is formed under **Section 455 of the Company Act, 2013** for a future endeavour or to hold an asset which may be a physical or intellectual property and has no significant accounting transaction, such a company or inactive company can make an application to the Registrar in the prescribed manner for obtaining the status of the dormant company.

The explanation attached to this provision states about the inactive company prescribing a period of 2 years of inactivity in terms of business transactions, operations etc, or the companies which have not filed their annual returns or the financial statement in the last 2 years. Such transactions do not include all the necessary payment which are made by the company to the Registrar and other payments which are supposed to be made under any other law.

The Registrar allows the certificate of the inactive company to the applicant company. The registrar must maintain the list of dormant companies. A company to remain a dormant company on the books of the registrar has to pay the required sum. The Company on request may make the Dormant Company back to an active company.

### **Need for Classification of Companies:-**

Classification refers to recognizing, naming, and describing units or elements to be mapped. The objective of all classifications is the orderly arrangement of a large array of objects so that their differences and similarities can be better understood. We classify land and water resources for any number of reasons, including: Separating like things from unlike things by increasing homogeneity. This in turn increases accuracy in classification and decreases sampling effort. Setting the boundaries of a study area or an area we hope to influence. Looking for identifiable patterns or identifying spatial context and allowing extrapolation. It aids in the development of restoration endpoints by developing identifiable and compatible classes within the classification. Displaying or communicating complex relationships more effectively for planning, restoration, and management

### **II. CONCLUSION**

Various classifications have been made in this topic of Company based upon various factors of independence, liability, financial conduct etc. These classifications are not to be observed in isolation as the Company may have two or more characteristic features of the companies mentioned above and form a very unique kind for itself. The kinds of companies have only been made so as to ease the understanding of the complex legal being that is a Company.

### **REFERENCES**

- [1]. <https://www.writinglaw.com>
- [2]. <https://www.researchgate.net.com>
- [3]. [https://www.academia.edu/10790453/Classification\\_of\\_Companies\\_in\\_Indiahttps://journalofbusinessmodels.com/media/pk1ldqya/vol-3-no-1-pp-49-61.pdf](https://www.academia.edu/10790453/Classification_of_Companies_in_Indiahttps://journalofbusinessmodels.com/media/pk1ldqya/vol-3-no-1-pp-49-61.pdf)
- [4]. Bare act Indian companies acts

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