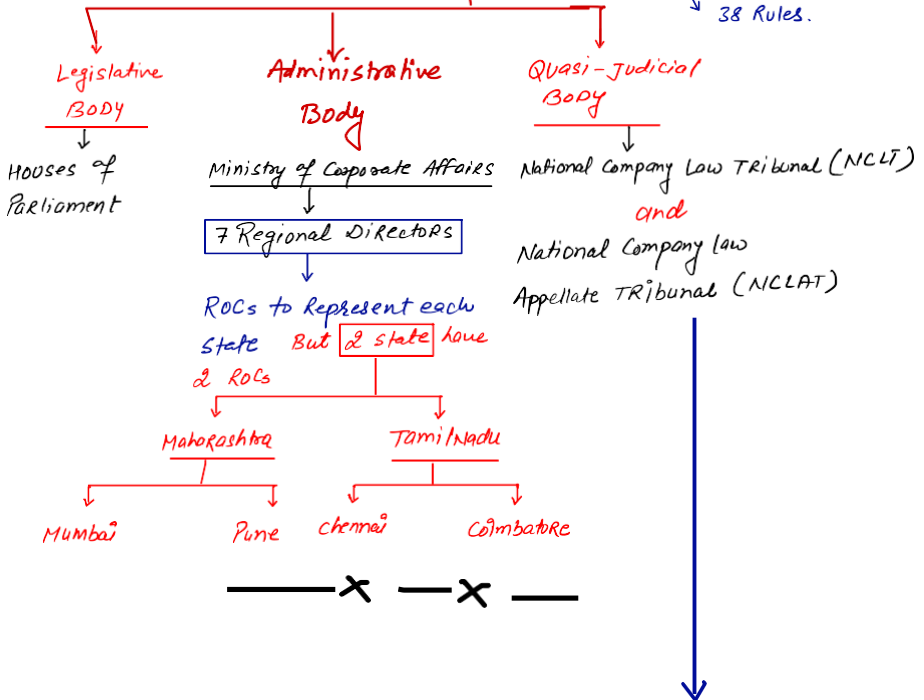


# INTRODUCTION

IntroductionRegulatory framework of Companies Act 2013

- 29 chapters
- 470 sections
- 7 schedules
- 95 definitions
- 38 Rules.



NCLT & NCLAT are called as **Quasi-Judicial** Body because they have the authority to deal with the cases under Co. Act 2013 OR IBC 2016 OR other specific Act only and not under Constitution of India OR IPC 1860 etc as of Judicial Body like Courts including High Court & Supreme Court.

Applicability of Co. Act 2013Section 1(2)

It extends to  
whole of India.

Section 1(4)

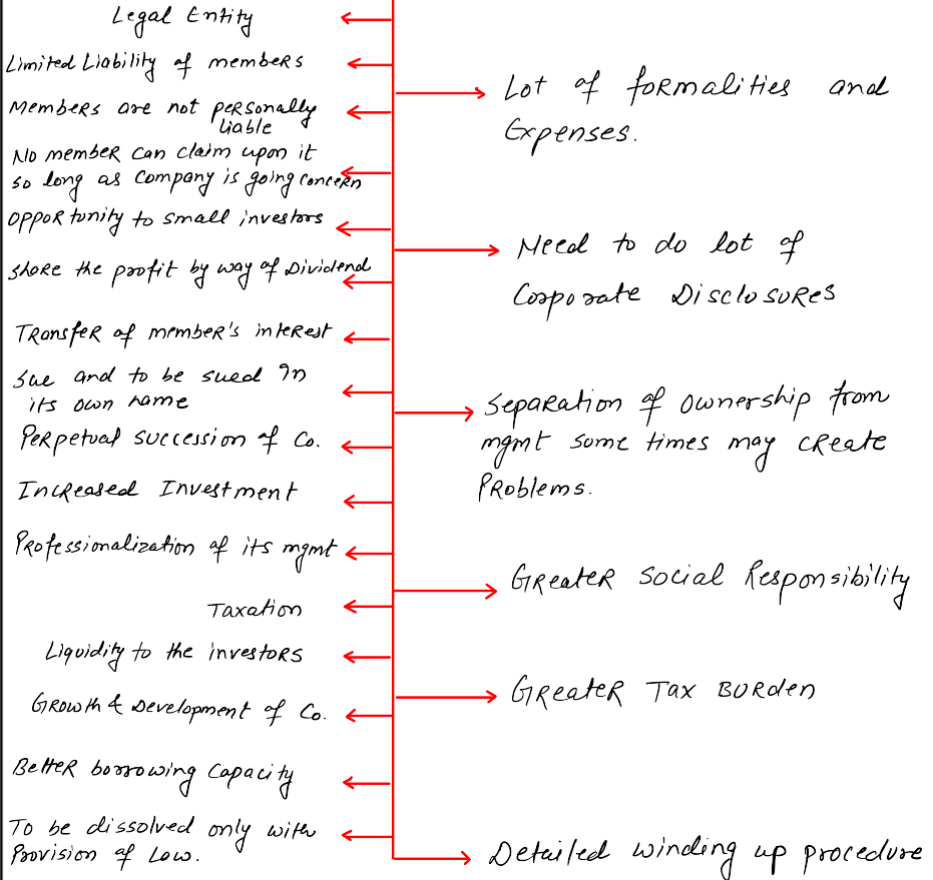
Companies Act 2013 shall  
apply to

- \* Company incorporated under Co. Act 13
- \* Banking Co.
- \* Insurance Co.
- \* Electricity Co.
- \* Co. registered under special Act of Parliament
- \* Other Notified Body Corporate.

—X—X—

Features of Incorporated Company

Artificial Person	←	→ Incorporated Association
Separate Property	←	→ Separate Legal Entity
Separate Ownership & Mgmt	←	→ Capacity to sue & to be sued
Transferability of shares	←	→ Common Seal
Limited Liability	←	→ Perpetual succession
Experience of shareholder as experience of Company	←	→ one man Company
Limitation of Action	←	→ Contractual Rights
	←	→ voluntary Association for Profit
	←	→ Termination of existence

**Incorporated COMPANY**AdvantagesDisadvantages

Legal status of CompanyCitizenship of Company

Company is not a citizen

either under Constitution of India

OR The Citizenship Act 1955

Even special Bench of Supreme Court  
in *STCI vs. CTO* concluded the same

Hence Company cannot claim any fundamental rights which are expressly guaranteed to citizen only.

However, all the other rights provided to person shall be available to Company also.

Residential Status of Company

It will be Resident of place where  
its place of incorporation is

where generally meeting of Company  
are held and

where its governing body meets  
in bodily presence

Note! → Residential status is for  
determining Income Tax liability of  
Company.

Body Corporate *sec 2(11) of Companies Act 2013*

OR

Corporation

Includes any Company Incorporated outside India

But does not include

- ① Co-op. society registered under society Registration Act OR
- ② Any other notified Body Corporate.

Company *sec 2(20) of Co. Act 2013*

An Association Incorporated under provisions of Co. Act 2013 OR any other previous Company Law.

Note! - Term Body Corporate is wider than term Company i.e. In general Body Corporate includes Indian Company, foreign Co., Public financial Institution, Limited Liability Partnership, Banking Co., Non-Banking Financial Institutions.

मानव शरीर और, फिर भी entity में incorporation हुआ होगा तो Body Corporate कहेंगे।  
नहीं शरीर में Act के तहत से हुआ है।

## Illegal Association → Sec 464 and Rule 10 of Co. (Misc) Rules 2014

- \* An Association
- \* having more than 100 members OR such other numbers as may be prescribed
- \* working for Profit and Gain

↓  
50 members  
as per Rules

shall be Registered under Co. Act 2013 OR any other Act

**Other wise**

Such Association shall be Considered as **Illegal**  
and

members of such Association shall be personally liable

↓  
TOWARDS  
CREDITORS of  
Association  
&  
outsiders

↓  
for penalty  
of non compliance  
of Law.

### However

The provisions of Sec 464 shall not be applicable on —

- ① HUF and
- ② Partnership among professionals who are Registered under Institute which are incorporated under special Act of Parliament Like ICSI/ICAI.

### Important Point

It was held in the case of "Gangya vs. Venkateswami" that if there is any "Partnership" between "Kartas of 2 or more HUF" then such partnership OR Association shall be considered between them only **and** members of such HUFs shall not **IPSO FACTO** be considered as Partners unless they expressly agree so.

Lifting of Corporate veil

OR

Piercing of Corporate veil

OR

Ignoring the separate legal existence of Company



In general, under provisions of Co. Act 2013 and Rules made thereunder, Once a company gets incorporated under Co. Act 2013 OR any other previous Co. Law, it becomes a separate legal entity having its own individual identity separate from its owners and creators which simply means that after incorporation a company shall be responsible and liable for all acts done on behalf of such company

But

subject to condition that such acts are done in good faith and in common interest of company and its stakeholders

and

if it is found that any act is done on behalf of company with mala fide intention OR to defraud any creditor or other person, then respective authority have right to lift the corporate veil and to take action against the person in default

Situations when Corporate veil Can be IgnoredUnder Statutory Provisions

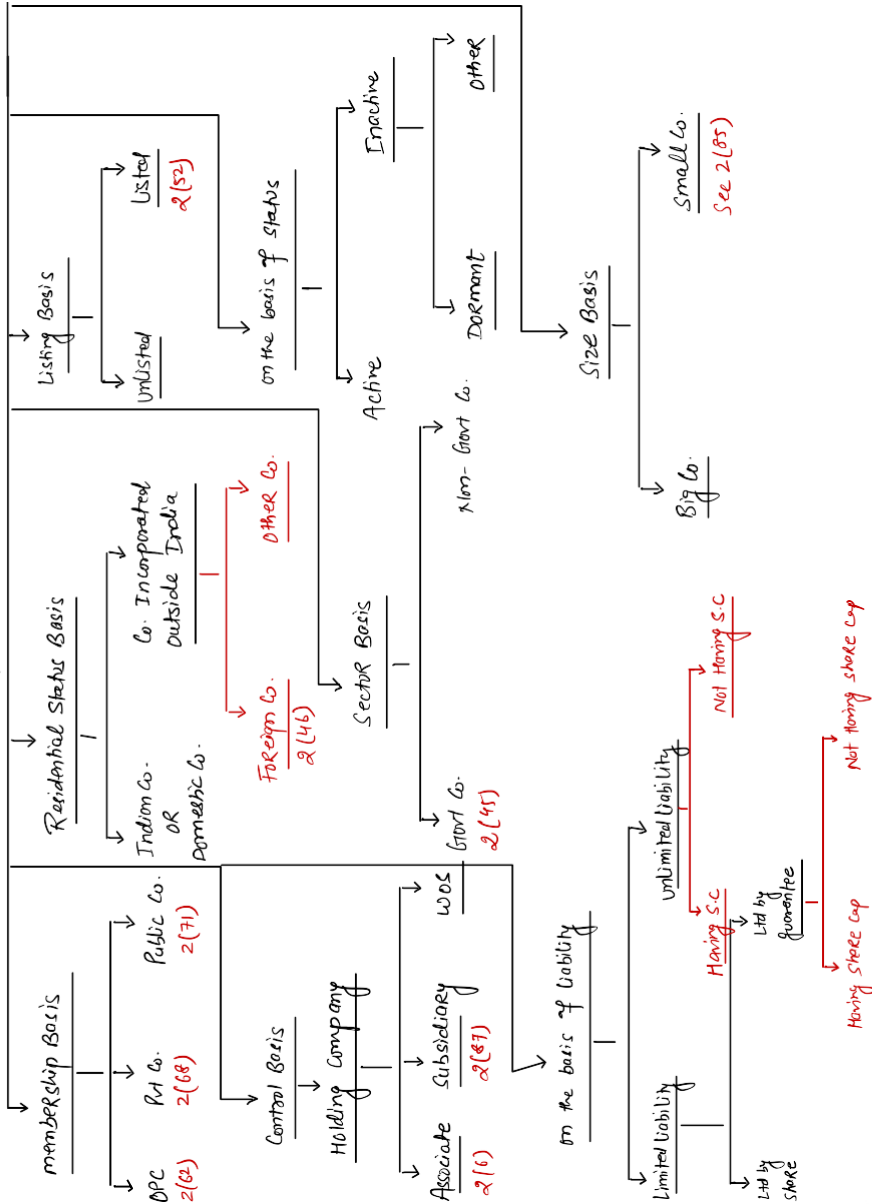
- ① When number of members in a Company fall below prescribed limit then Every remaining member shall be severally liable too. (New sec 34, w.e.f. 9<sup>th</sup> Feb 18)
- ② If any Director or promoter or other officer do misrepresentation in prospectus.
- ③ When officers/directors fail to Refund application money in proper time when share application is Rejected.
- ④ In Case of misdescription of name of Company OR non-mentioning of name of Company
- ⑤ When any subsidiary Company is formed to take undue advantage
- ⑥ When Co. is incorporated for any fraudulent purpose.
- ⑦ When any Contravention is done under any other statute OR Act
- ⑧ FOR Any Ultra vires Act.

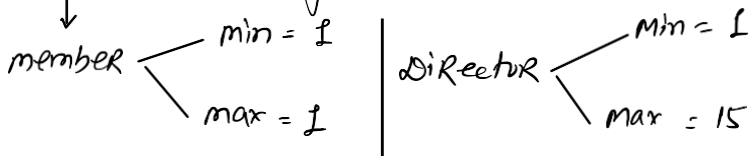
Under Judicial Pronouncements

- ① To Protect Revenue of Govt  
Case: Sir Dinslow Manekji Petit
- ② When enemy character of Co. has to be determined  
Case: Daimler vs. Continental Tyres
- ③ When Co. is incorporated to Commit Fraud  
Case: Gilford Motor Co. vs. Horne
- ④ When Co. is incorporated to avoid any welfare legislation.  
Case: Workmen of ARIL vs. ARIL.
- ④ The separate Legal entity of Company may be ignored to punish the defaulter for Contempt of Court
- ⑤ The corporate entity may be ignored if any subsidiary Co. is incorporated just to act as an agent for holding Co. with No other object of its own.  
Case: Merchandise TPT Ltd vs. British TPT Commission

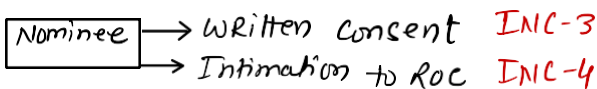
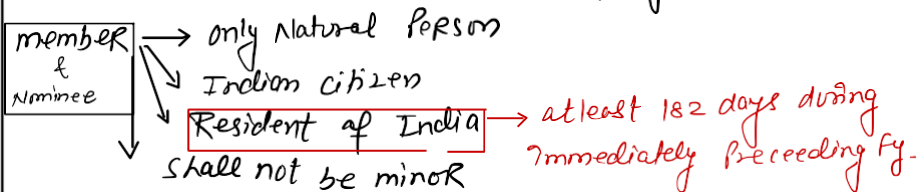


# TYPES OF COMPANIES

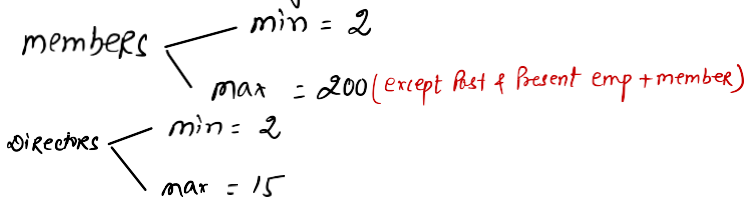
Types of Company

On the basis of membershipOne Person Company (Sec 2 (62))

# Word "OPC" after Name of company.



— X —

Private Company (Sec 2 (68))


minimum paidup share capital → As may be prescribed.  
3 Imp conditions.

- # Restriction on Right to Trf the share
- # max member = 200 except in case of OPC. (Joint members to be counted as one)
- # Prohibition on invitation to Public to subscribe any of its securities.

Public Company (Sec 2(71))

↓  
A Co. which is not a Pvt Co. and  
Has a minimum paid up cap → As may be Prescribed.

Private Co., which is subsidiary of a public Co. is also  
deemed to be a public Company

members	→ minimum = 7	↓	max = ∞	Directors	→ Minimum = 3	↓	Max = 15
---------	---------------	---	---------	-----------	---------------	---	----------

On the basis of size

Big Co. → No specific definition given But other  
than small company

Small Co. Sec 2(85)

↓  
A Company

other than a public Company having -

- (i)  $PSC \leq ₹ 50 \text{ Lakh}$  OR such Higher amt as may be  
Prescribed by CG but not more than ₹ 10 CR AND
- (ii)  $Turnover \leq ₹ 2 \text{ CR}$  OR such Higher amt as may  
be prescribed by CG But not more than ₹ 100 CR.

Above Provision does not apply to - # Holding & Subsidiary Co.  
# Sec 8 Co.  
# Special Act Co

Section 8 Co. / Licence Co. / NPO / NGO (Sec 8)

↓  
Object → Promotion of Commerce, ART, science, sports, education, Research, social welfare, Religion, Charity etc.

Any Profit earned shall be applied on its main object only and shall not be distributed as dividend to its members.

↓  
Licence → To be Granted by Central Govt.

↓  
Important Points → No need to use word "Pvt Ltd" OR "Ltd"  
 Partnership firm can also become member  
 Can not be in form of OPC.

Govt Co. (Sec 2(45))

↓  
 A Company  
 In which not less than 51% of PSC is held by:  
 CG, SG, by Both

Note: A subsidiary Company of Govt Co. is also a Govt Company

Explanation: → If shares are issued with DVR, PSC shall be construed as "Total voting Power".

Note: Employee of Govt Co. are not Govt servants.

Listed Company (Sec 2(52))

A Company which has any of its Securities listed on any RSE.

Foreign Company (Sec 2(42))

A Company Incorporated outside India which

- ① has established a place of business in India and
- ② conducts any business activity in India in any other manner.



following shall not be considered

- ① carrying small transactions
- ② conducting sltt meeting
- ③ operating Bank A/c
- ④ Transferring of any security.

— X — X —

Investment Company

A company whose primary business is to acquire Securities of other companies.

Financial Company

Non-Banking Company which is a financial institution within the meaning of Sec 45 of RBI Act 1934

Holding Company (Sec 2(46))

↓  
A Company including Body Corporate, shall be deemed to be holding Co. of another if the other is its subsidiary → Sec 2(87)

↓  
A Company in which the holding Co. —

- ① Control the Composition of BOD. OR
- ② Exercise or Control more than Half of TVR either at its own OR together with one OR more of its subsidiary  
But layers should not be more than 2.

Associate Company Sec 2(6)

↓  
A Company, in which other Company has significant influence But is not a Subsidiary Co.

→ Includes joint venture

↓  
Control of at-least 20% of TVR OR  
Control of or participate in Business Decisions.

Dormant Company (Sec 455)

↓  
Where a company is formed for future project OR hold an Asset OR intellectual Property and has No significant Accounting Transaction, Such a company OR an Inactive Company may make an app to Roc to obtain the status of Dormant Co.

Nidhi Company (Sec 406)

↓  
# Mutual Benefit Society  
# declared as such by CG  
# Public Company with a minimum capital of Rs. 5Lakh.

- ① Payment of Roc fees
- ② Payment to fulfill Requirement of Law
- ③ Allotment of shares to comply with Law
- ④ Maintenance expenditures.