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COMPANY LAW

PRIVATE & PUBLIC LIMITED COMPANY

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Definition of Private Company [section 2(68)]:

Section 2(68) of Companies Act, 2013 defines private companies. According to that, private companies are those companies whose articles of association restrict the transferability of shares and prevent the public at large from subscribing to them. This is the basic criterion that differentiates private companies from public companies. Private companies can now have a minimum paid-up capital of any amount.

The Section further clarified that private companies can have a maximum of 200 members (except for One Person Companies). This number does not include present and former employees who are also members. Moreover, more than two persons who own shares jointly are treated as a single member.

This definition had previously prescribed a minimum paid-up share capital of Rs. 1 lakh for private companies, but an amendment in 2005 removed this requirement. Private companies can now have a minimum paid-up capital of any amount.

Features of Private Companies:

These are some features that distinguish private companies from other types of companies:

- i. **No minimum capital required:** There was a minimum paid-up share capital requirement of Rs. 1 lakh previously, but that is omitted now.

- ii. **Minimum 2 and maximum 200 members:** A private company can have a minimum of just two members (but just one is enough if it a One Person Company), and a maximum of up to 200 members.
- iii. **Transferability of shares restricted:** Private companies cannot freely transfer their shares to the public like public companies. This is why stock exchanges never list private companies.
- iv. **“Private Limited”:** All private companies must include the words “Private Limited” or “Pvt. Ltd.” in their names.
- v. **Privileges and exemptions:** Since private companies do not freely transfer their shares and involve limited interest by members, the law has granted them several exemptions that public companies do not enjoy.

Types of Private Companies:

Private companies are of three types depending on their members’ liabilities:

- a. **Limited by shares:** The liability of the members is limited to the amount unpaid to the company with respect to the shares held by them.
- b. **Limited by guarantee:** Here the members’ liabilities are limited to the amount of money they guarantee to pay in case the company is wound-up.
- c. **Unlimited liability:** The liability of members is unlimited in this type of private companies. Personal assets of members can be attached and sold when the company is being wound-up.

In terms of the number of members, a private company can also be a One Person Company. These types of companies have just one member/shareholder as their promoter. The new Companies Act of 2013 introduced such types of companies.

Further, even small companies that have limited paid-up share capitals and turnover amounts, as defined under Section 2(85), are treated as private companies under Indian company law.

Privileges of Private Companies

The Companies Act has provided certain privileges and exemptions to private companies that public companies do not possess. These privileges accord them greater freedom in conducting their affairs. Here are some examples of them:

- No need to prepare a report for annual general meetings.
- Only 2 minimum directors required.
- No need to appoint independent directors.
- They can adopt additional grounds for the disqualification of directors and vacation of their office.
- They can pay greater remuneration to their directors than compared to some other types of companies.

Limitations of Private Companies

Despite all the advantages they offer, private companies also have the following limitations:

- Private companies cannot freely transfer shares to the public.
- They find it more difficult than public companies to access external financial support.
- Shareholders have greater risks and liabilities.

Public limited company section2(71)

A public limited company is a voluntary association of members that are incorporated and, therefore has a separate legal existence and the liability of whose members is limited.

Public limited companies are listed on the stock exchange where it's share/stocks are traded publicly.

“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

Its main features are;

1. The company has separate legal existence apart from its members who compose it.
2. Its formation, working and it's winding up all its activities are strictly governed by rules, laws, and regulations.
3. A company must have a minimum of seven members but there is no limit as regards the maximum number.
4. The company collects Its capital by the sale of its shares and those who buy the shares are called the members. The amount so collected is called the share capital.
5. The shares of a company are freely transferable and that too without the prior consent of other shareholders or subsequent notice to the company.
6. The liability of a member of a company is limited to the face value of the shares he owns. Once he has paid the whole of the face value, he has no obligation to contribute anything to pay off the creditors of the company.
7. The shareholders of a company do not have the right to participate in the day-to-day management of the business of a company. This ensures the separation of ownership from

management. The power of decision making in a company is vested in the Board of Directors, and all policy decisions are taken at the Board level by the majority rule. This ensures the unity of direction in management.

As a company is an independent legal person, its existence is not affected by the death, retirement or insolvency of any of its shareholders.

Advantages of Public Limited Company

A public limited company is a form of business organization that operates as a separate legal entity from its owners. It is formed and owned by shareholders.

Shares of a public limited company are listed and traded at a stock exchange market freely.

Shareholders of a public limited company are limited to potentially lose only the amount they have paid for the shares they own.

So, some advantages of a public limited company are;

- Led by Board of Directors
- Limited Liability
- Number of Members
- Transferable shares
- Life Span
- Financial Privacy
- Large Capital

Led by Board of Directors

Public limited companies are headed by a board of directors. The composition of the board of directors is set out in the company's articles of association.

Normally it comprises a minimum number of two members and a maximum of 12.

These are elected from the shareholders by the shareholders during the annual general meeting. They act as the representatives of the shareholders in the management of the company.

Limited Liability

Shareholder liability for the losses of the company is limited to their share contribution only. This is what makes it a separate legal entity from its shareholders.

The business can be sued on its own and not involve its shareholders. The company does not belong to any person since one person can own only a part of it.

Number of Members

A public limited company has a minimum number of seven shareholders or members and a limitless number of members. It can have as many shareholders as its share capital can accommodate.

Transferable shares

Shares of a public limited company are bought and sold in a stock exchange market. They are freely transferable between its members and people trading in the stock exchange.

Life Span

A public limited company is not affected by the death of one of its shareholders, but her shares are transferred to the next of kin and the company continues to run its business as usual.

In the case of a director's death, an election is held to replace the deceased director.

Financial Privacy

Public limited companies are strictly regulated and are required by law to publish their **complete financial statements annually**.

This ensures that they reveal their true financial position to their owners and potential investors so that they can determine the true worth of its shares.

Large Capital

Public limited companies enjoy an increased ability to raise capital since they can issue shares to the public through the stock market.

They can also raise additional capital by Issuing debentures and bonds through the same market from the public. Debentures and bonds are unsecured debts Issued to a company on the strength of its integrity and financial performance.

Disadvantages of a Public Limited Company

A Public Limited Company (PLC) means, first, that the firm is parceled out into shares and sold “publicly” on any or the entire globe’s stock exchanges.

Secondly, it means that those who invest in the firm are protected from extreme loss if the company fails.

This is called “limited liability.” This means that if one invests in a firm that fails, only that investment money can be claimed by the firm’s creditors.

More abstractly, “limited” means that only the existing assets of the firm can be seized for the payment of a debt.

So, some disadvantages of a public limited company are;

- High Costs.

- Public Books.
- Greedy Shareholders.
- Takeover.
- Power.
- Slow Decisions.

High Costs

A PLC is normally a complex thing to start. The firm banker (or “underwriter”) then offers the initial shares to the public (and keeps a substantial commission).

Often, the costs of setting up a public firm and Initial Public Offering (IPO) can run into hundreds of thousands of dollars.

Public Books

The term “public” here is to be taken literally. Once a firm goes public, the firm is open to public inspection. The financial books and records of the firm are open to anyone, allowing the competition to see precisely how much profit or loss the firm is experiencing.

Greedy Shareholders

Those who buy shares have no particular interest in the firm except in that it makes a quick buck.

Most companies, however, have an interest in laying out a longterm growth plan that takes patience and planning. It is not often many shareholders see it this way.

Takeover

Since the company is now “public,” anyone can buy up shares, and there is no limit as to how many shares one can buy.

Under certain circumstances, hostile investors might buy up a large amount of stock, giving them a strong voice on the board of directors.

In this case, a firm that was built up by one group (or person) can now be taken over by others since the firm has gone public

Power

Going “public” means a certain lack of control by the founders of the firm. In some cases, the firm can be controlled by a board of directors who do not necessarily have the time for hands-on business management.

Therefore, ownership can be separated from control. If this is the case, then those who control the business do not own it and do not see a profit. This is not an incentive (necessarily) to rational management.

Slow Decisions

If the company is public, it must have a board of directors representing the main and most powerful stockholders.

This means, in turn, that major decisions must go through the board, with debates and voting. In reality, this entails that decisions will be slow and often painful. Sometimes, they might not be made at all.

What is the Difference between Private and Public Limited Company?

The main difference between a private and public company is that public company is allowed to raise capital by selling shares on the stock exchange, where private limiteds are not allowed to publicly traded stock.

Even though **both private and public limited companies types** are registered and incorporated under the same Company Act.

Common differences between a private and public limited company are;

Features	Private Limited Company	Public Limited Company
Minimum number of members	2[section3(1)(b)]	7[section3(1)(a)]
Maximum number of members	200	Unlimited
Number of Directors	At least 2[section 149(1)(a)]	At least 3[section 149(1)(a)]
Transferability of shares	Complete restriction	There is no restriction.
Issue of Prospectus	Prohibited	Can issue a Prospectus.
Consent of the directors	There is no need to give the consent by the directors of a Private Company	Directors of a Public Company must have a file with the Registrar consent to act as Director of the company.
Qualification	The Directors of a Private	Directors of a Public Company are

shares	Company need not sign an undertaking to acquire the qualification shares	required to sign an undertaking to acquire the qualification shares of the public Company.
Commencement of Business	A Private Company can commence its business immediately after its incorporation	a Public Company cannot start its business until a Certificate to commencement of business is issued to it.
Shares Warrants	A Private Company cannot issue Share Warrants against its fully paid shares	Public Company is free to invite the public for subscription i.e., a Public Company can issue a Prospectus.
Further issue of shares	A Private Company need not offer the further issue of shares to its existing shareholders	Public Company has to offer the further issue of shares to its existing shareholders as the right shares. Further issues of shares can only be an offer to the general public with the approval of the existing shareholders in the general meeting of the shareholders only
Statutory meeting	Has no obligation to call the Statutory Meeting	Must call its statutory Meeting and file a Statutory Report with the Register of Companies

Quorum	2 members present	5 members must be present personally (However, the Articles of Association may provide and several members more than the required under the Act.)
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Following are the main distinction between a public company and a private company:-

Minimum number of members

The minimum number of members required to form a private company is 2, whereas a Public Company requires at least 7 members.

Maximum number of members

The maximum number of members in a Private Company is restricted to 200; there is no restriction of a maximum number of members in a Public Company.

Transferability of shares

There is a complete restriction on the transferability of the shares of a private Company through its Articles of Association, whereas there is no restriction on the transferability of the shares of a public company

4 Issue of Prospectus

A Private Company is prohibited from inviting the public for the subscription of its shares, i.e. a Private Company cannot issue Prospectus, whereas a Public Company is free to invite public for subscription i.e., a Public Company can issue a Prospectus.

Number of Directors

A Private Company may have 2 directors to manage the affairs of the company, whereas a Public. A company must have at least 3 directors.

Consent of the directors

There is no need to give the consent by the directors of a Private Company, whereas the Directors of a Public Company must have a file with the Registrar consent to act as Director of the company.

Qualification shares

The Directors of a Private Company need not sign an undertaking to acquire the qualification shares, whereas the Directors of a Public Company are required to sign an undertaking to acquire the qualification shares of the public Company.

Commencement of Business

A Private Company can commence its business immediately after its incorporation, whereas a Private Company cannot start its business until a Certificate to commencement of business is issued to it.

Shares Warrants

A Private Company cannot issue Share Warrants against its fully paid shares, whereas a Private Company can issue Share Warrants against its fully paid-up shares.

Further issue of shares

A Private Company need not offer the further issue of shares to its existing shareholders, whereas a Public Company has to offer the further issue of shares to its existing shareholders as right shares.

Further issues of shares can only be an offer to the general public with the approval of the existing shareholders in the general meeting of the shareholders only.

Statutory meeting

A Private Company has no obligation to call the Statutory Meeting of the member, whereas Public Company must call its statutory Meeting and file Statutory Report with the Register of Companies.

Quorum

The quorum in the case of a Private Company is 2 members present personally, whereas in the case of a Public Company 5 members must be present personally to constitute a quorum.

However, the Articles of Association may provide and several members more than the required under the Act.

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