



**CA** **INTERMEDIATE**

**CORPORATE AND  
OTHER LAWS**



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**Kunal Mandhania**



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# Chapter I

## PRELIMINARY

### Short Title, Extent, Commencement and Application [Sec.1]

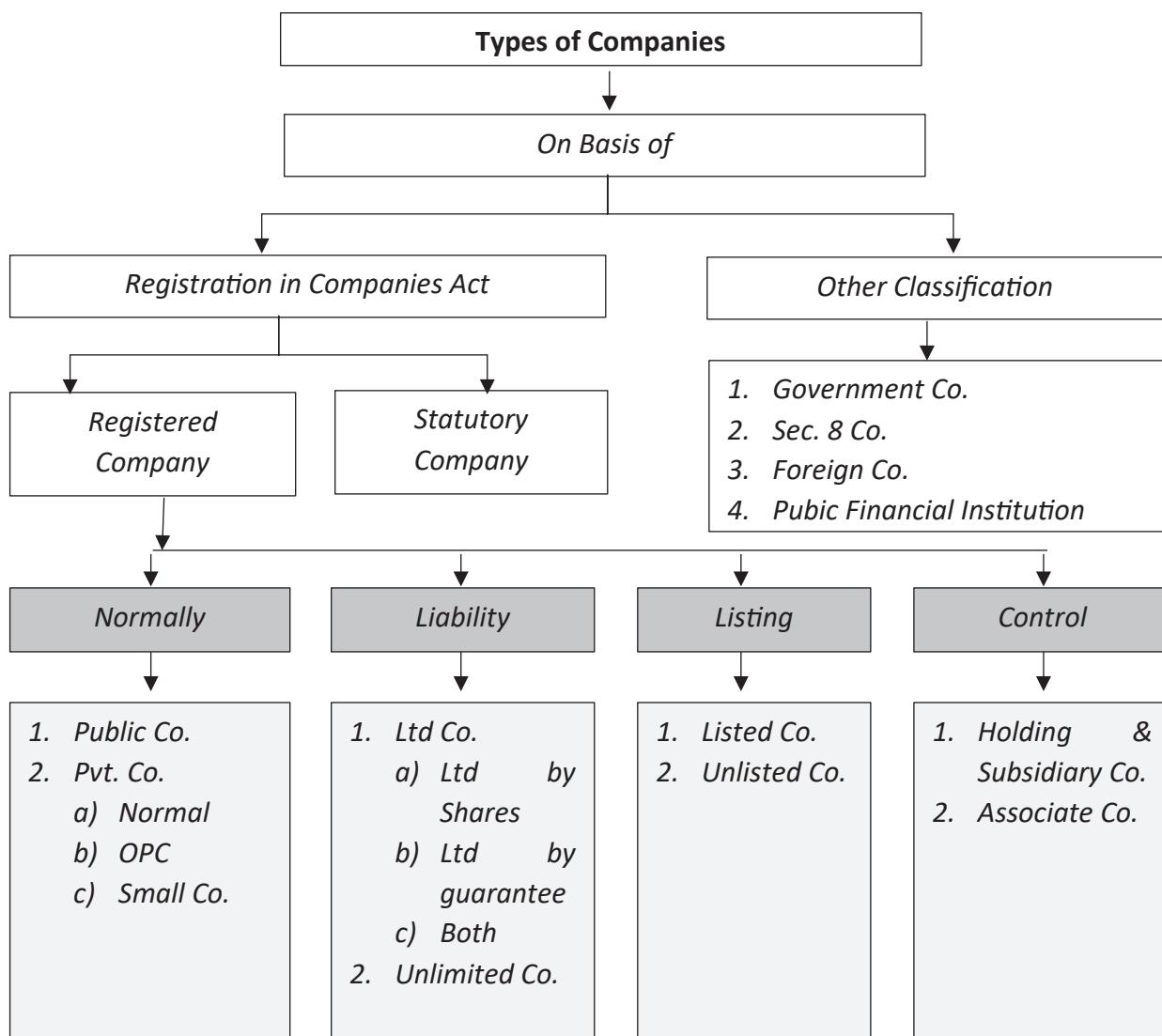
<b>Application [Sec. 1(4)]</b>	<p>The provisions of this Act shall apply to:</p> <ul style="list-style-type: none"><li>(a) Companies defined u/s 2(20);</li><li>(b) Insurance Companies, except if inconsistent with Insurance Act, 1938 or IRDA Act, 1999;</li><li>(c) Banking Companies, except if inconsistent with Banking Regulation Act, 1949;</li><li>(d) Companies engaged in the generation or supply of electricity, except if inconsistent with Electricity Act, 2003;</li><li>(e) Statutory Companies unless inconsistent with its Special Act;</li><li>(f) Body corporate, incorporated by any Act for the time being in force, as the CG may, by notification, specify in this behalf.</li></ul>
<b>Company [Section 2(20)]</b>	<p>Company means a company incorporated:</p> <ul style="list-style-type: none"><li>(a) Under this Act; or</li><li>(b) Under any previous company law.</li></ul> <p><b>Note:</b></p> <ul style="list-style-type: none"><li>• The word "Company" when used in Companies Act, does NOT include Foreign Companies or Company Incorporated Outside India</li></ul>
<b>Body Corporate or Corporation [Section 2(11)]</b>	<p>Section 2(11) of the Companies Act, 2013 provides that body corporate or corporation <b>includes a company incorporated outside India, but does not include-</b></p> <ul style="list-style-type: none"><li>(i) a <b>co-operative society</b> registered under any law relating to co-operative societies; and</li><li>(ii) <b>any other body corporate</b> (not being a company as defined in this Act), which the <b>Central Government</b> may, by <b>notification</b>, specify in this behalf.</li></ul> <p><b>Note –</b></p> <ol style="list-style-type: none"><li>1 Body Corporate is an entity which has these characteristics:-<ul style="list-style-type: none"><li>• Separate Legal Entity (Artificial Person)</li><li>• Perpetual Succession</li><li>• Common Seal (optional)</li></ul>Incorporate under any Statute.</li><li>2 Thus the term body corporate includes not only companies within the meaning of Companies Act, 2013 and corporations established under Special Acts of Parliament but also foreign companies. It will further include all public financial institutions as well as nationalized banks. Thus the term '<b>body corporate</b>' is <b>wider than the</b></li></ol>

	<p><b>expression company.</b></p> <p>3 LLP is also a Body Corporate.</p> <p>4 All companies are body corporate but all body corporate are not company.</p>
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1 The provisions of Companies Act, 2013 apply to:

- XYZ Ltd., a company incorporated under Indian Companies Act, 1913
- ABC Private Limited, incorporated under Companies Act, 1956
- Both (a) and (b)
- Neither (a) nor (b)

## Types of Companies



## Statutory Company

- Company which is not formed under companies act, but **formed under special act of parliament**.
- Such special act governs this company
- E.g. → LIC, ICAI, ICSI, RBI etc.
- Normally these Companies are formed for some public utility.

## Private Company [Sec. 2(68)]

Private company means a company whose articles have following restrictions:-

- (i) Restriction on right to transfer shares.
- (ii) They cannot invite public to subscribe for any securities of the company.
- (iii) Limits the number of members to 200.

### Note :

- 1 If no. of members exceeds 200, it is deemed to be public co. and all rules of public co applies to it.
- 2 **Only for purpose of this clause**, while calculating no. for 200 calculation:-
  - a. Past and present employee members are not counted.
  - b. Joint holders on single shares are counted as 1.
- 3 There can be restriction but not prohibition on transfer of shares.
- 4 Limit on 200 is for membership and no other cases
- 5 A private company **cannot** make a **public offer** of securities like IPO, FPO. However, a private company can issue securities on **private placement** basis u/s 42, whereby it invites only selected persons to subscribe for Securities.

1 A private company has 210 members including 11 members who have been employees of the company and acquired shares while in employment of the company. In view of provisions of Companies Act, 2013, which of the following statement is correct?

- a. The private company has to convert to a public company since the number of

members exceed 200.

- b. The private company will have to forfeit the shares of 10 members so that the number of members can be limited to 200.
- c. For the purposes of reckoning the limit of 200, the shares held by ex-employees of the company are excluded.
- d. None of the above

## Public Company [Sec. 2(71)]

A Company which:

- a. Is not a private company
- b. Is a private company, but is subsidiary of public company;

**Is a public company.**

**Note** - Provided that a Private company which is a subsidiary of a Public 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.

## One Person Company [Sec. 2(62)]

Read with Rule 3 of The Companies (Incorporation) Rules, 2014)

<b>Definition</b> [Sec. 2(62)]	'One Person Company' means a company which has only one person as a member.
<b>Basics</b>	<ul style="list-style-type: none"> <li>(i) It is basically a <b>private company</b> with some unique features.</li> <li>(ii) As regards the name of a one person company, the act provides that the words "one person company" or OPC" shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.</li> </ul>
<b>Qualifications for being a Member/Nominee</b>	<ul style="list-style-type: none"> <li>(i) Only a natural person who is an <b>Indian citizen</b> whether <b>resident in India or otherwise</b> shall be eligible <ul style="list-style-type: none"> <li>(a) to incorporate OPC;</li> <li>(b) to be a nominee for the sole member of a OPC.</li> </ul> </li> <li>(ii) For the purpose of this rule, the term 'resident in India' means a person who has stayed in India for a period of not <b>less than 120 days</b> during the <b>immediately preceding FY</b>.</li> </ul>
<b>Restrictions</b> [Rule 3]	<ul style="list-style-type: none"> <li>(i) A natural person shall not be member of more than 1 OPC at any point of time and the said person shall not be a nominee of more than 1 OPC. [Rule 3(2)]</li> <li>(ii) However, if a natural person is member in a OPC and becomes a nominee in another OPC, such person shall meet the eligibility criteria specified in Rule 3(2) <b>within 180 days</b>. [Rule 3(3)]</li> <li>(iii) <b>A minor shall no become a member or nominee of the OPC.</b> [Rule 3(4)]</li> <li>(iv) <b>Such company cannot be incorporated or converted into a company under section 8 of the Act.</b> [Rule 3(5)]</li> <li>(v) OPC cannot carry out non-banking financial investment activities and cannot invest in securities of a body corporate.</li> </ul>
<b>Rule 4</b>	<p><b>1. Withdrawal by Nominee and new appointment</b></p> <p>The person nominated by the subscriber or member of a OPC may, withdraw his consent by giving a notice in writing to</p> <ul style="list-style-type: none"> <li>• <b>such sole member and to OPC.</b></li> </ul> <p><b>Appointment of New Nominee</b> Sole member shall:-</p> <ul style="list-style-type: none"> <li>• nominate another person as nominee within <b>15 days</b> of the receipt of the notice of withdrawal and</li> <li>• send an intimation of such nomination in writing to the Company, along with the written consent of such other person so nominated in <b>Form No.INC.3.</b></li> </ul> <p><b>2. Change of Nominee by Member</b></p> <p>The member may change the Nominee at any time for any reason.</p> <p>The company shall file with the Registrar:-</p>

	<ul style="list-style-type: none"> <li>• a notice of such change in Form No INC.4 and</li> <li>• the written consent of the new nominee in Form No. INC.3 within 30 days of receipt of intimation of the change.</li> </ul>
<p><b>Intimation to ROC of withdrawal &amp; new appointment</b></p> <p>The company shall within <b>30 days</b> of receipt of the notice of withdrawal of consent, file with the Registrar:-</p> <ul style="list-style-type: none"> <li>• a notice of such withdrawal of consent and</li> <li>• the intimation of the name of another person nominated by the sole member in Form No INC.4 and Form No. INC.3.</li> </ul>	

## Small Company [Sec. 2(85)]

<b>Conditions for being a 'Small Company' [Sec. 2(85)]</b>	A company shall be a small company only if it satisfies both the following conditions: (i) Its <b>paid-up share capital</b> does not exceed <b>Rs. 4 crore; and</b> (ii) Its <b>turnover</b> (as per profit and loss account for the immediately preceding FY) does not exceed <b>Rs. 40 crore</b>
<b>Certain Companies not to be 'Small Companies'</b> [Proviso to Sec. 2(85)]	A company <b>shall not</b> be a small company, if: (i) It is a public company; or (ii) It is a holding or a subsidiary company; or (iii) It is a company registered u/s 8 ; or (iv) It is a company or body corporate governed by any special Act.
<b>1 Define the term 'Small Company' as contained in the Companies Act, 2013.(MAY 2015)</b>	
<b>2 MNP Private Ltd. is a company registered under the Companies Act, 2013 with a, Paid up Share Capital of 2cr and turnover of 60cr crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:</b>	
(i) Whether the MNP Private Ltd. can avail the status of small company? (ii) What will be your answer if the turnover of the company is 30 crore?(MTP NOV 2020)(module)	

1. As on 31st March 2023, paid up capital of ABC Pvt. Ltd. was 2.5 crores and turnover was 36 crores. For categorizing it a small company, ABC Pvt. Ltd. needs to have following paid up capital and turnover which shall not exceed, as per sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Companies Act, 2013 : (Nov 23)

- Paid up capital Rupees two crores or turnover Rupees twenty crores.
- Paid up capital Rupees two crores and turnover Rupees twenty crores.
- Paid up capital Rupees four crores or turnover Rupees forty crores.
- Paid up capital Rupees four crores and turnover Rupees forty crores.

2. Roma along with her six friends has incorporated Roma Trading Ltd. in May 2019. The paid-up share capital of the company is 2

cr. Further, in April 2020, she noticed that in the last financial year, the turnover of the company was well below 40 crores. Advise whether the company can be treated as a 'small company'. **(module)**

- Roma Trading Ltd. is definitely a 'small company' since its paid-up capital is much below 4cr and also its turnover has not exceeded the threshold limit of 40 crores.
- The concept of 'small company' is applicable only in case of a private limited company/OPC and therefore, despite meeting the criteria of 'small company' it being a public limited company cannot enjoy benefits of 'small company'.
- Unlike a private limited company/OPC which automatically becomes a 'small company' as soon as it meets the criteria of 'small company', Roma Trading Ltd. being a public limited company has to maintain the norms applicable to a 'small company' continuously for two years so that, thereafter, it is treated as a 'small company'.
- If all the shareholders of Roma Trading Ltd. give an undertaking to the ROC stating that they will not let the paid-up share capital and also turnover exceed the limits applicable to a 'small company' in the next

two years, then it can be treated as a 'small company'.

- The paid-up capital of Akash Ltd. is 25 Lakh and its turnover as per profit and loss account for the year ended 31st March, 2020 is 1.80 Crore. In view of provisions of Companies Act, 2013, which of the following statement is correct?
  - Akash Ltd. is a 'small company' since it fulfils both, the paid-up capital and turnover criteria.
  - The concept of 'small company' is applicable only to private companies and therefore, Akash Ltd. cannot be categorised as a small company.
  - The paid-up capital and turnover criteria has to be fulfilled for minimum 2 successive years. Therefore, Akash Ltd. cannot be categorised as a small company.
  - None of the above
- The provisions relating to 'small company' as given in Section 2(85) of the Companies Act, 2013 does not apply to:
  - A Holding company or a Subsidiary company
  - A company registered under Section 8
  - A company or body corporate governed by any special act
  - All of the above

#### On the basis of liability

Point of Distinction	Company Limited by Shares [Sec.2(22)]	Company Limited by Guarantee without Share Capital [Sec.2(21)]	Company Limited by Guarantee with Share Capital	Unlimited Company [Sec. 2(92)]
<b>Extent of Liability</b>	Amount unpaid on the shares held by the members	Amount agreed by the Members and stated in the MOA.	(a) Amount unpaid on the shares held by the members; and (b) Amount agreed by	Liability of members is unlimited

			the Members and stated in the MOA	
<b>Timing of Liability</b>	(a) During the continuance of the Company ; or (b) At the time of winding up	After commencement of winding up of company	(a) During the continuance of the Company ; and (b) At the time of winding up	

### On the basis of listing on Stock Exchange

<b>Listed Company</b> [Sec. 2(52)]	<p>'Listed company' means a company which has any of its securities listed on any recognised stock exchange.</p> <p><b>Newly Inserted [The Companies (Amendment) Act, 2020]</b> Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the SEBI (Securities and Exchange Board of India), shall <b>NOT</b> be considered as listed companies.</p> <p>The CG has notified that the following companies <b>shall NOT be considered as Listed Company for the purpose of compliance with provisions of Companies Act 2013:-</b></p> <ol style="list-style-type: none"> <li>1. <b>PUBLIC</b> Companies which have <b>NOT</b> listed their Equity Shares on a recognized Stock Exchange BUT have listed their             <ol style="list-style-type: none"> <li>a) Non-Convertible Debt Securities (Debentures - NCD) issued on Private Placement basis.</li> <li>b) Non-Convertible Redeemable Preference Shares (NCPS) issued on Private Placement basis.</li> </ol> </li> <li>2. <b>PRIVATE</b> Companies which have listed their Non-Convertible Debt Securities (Debentures - NCD) issued on Private Placement basis on a recognized Stock Exchange.</li> <li>3. <b>PUBLIC</b> Companies which have <b>NOT</b> listed their Equity Shares on a recognized Stock Exchange in India BUT whose Equity Shares are listed on FOREIGN Stock Exchanges.</li> </ol> <p>Newage Private Limited issued 9% Non-convertible Debentures worth ₹ 10 lakh and thereafter, the directors contemplated to get them listed. After due formalities, these privately placed non-convertible debentures of ₹ 10 lakh were listed. Which of the following options is applicable in the given situation: <a href="#">(RTP Nov 23)</a></p> <ol style="list-style-type: none"> <li>a. Newage Private Limited shall be considered as a listed company.</li> <li>b. Newage Private Limited shall not be considered as a listed company.</li> <li>c. Newage Private Limited shall be considered as a listed company only when minimum amount of listed privately placed non-convertible debentures is ₹ 15 lakh.</li> <li>d. Newage Private Limited shall be considered as a listed company only when minimum amount of listed privately placed non-convertible debentures is minimum ₹ 20 lakh.</li> </ol>
<b>Unlisted Company</b>	It means a company other than a listed company.

## On the basis of Control

<b>Holding Company</b> [Sec. 2(46)]	<p>(i) Holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.</p> <p><b>(ii) For the purposes of this clause, the expression 'company' includes any Body corporate.</b></p>
<b>Subsidiary Company</b> [Sec. 2(87)]	<p>Section 2(87) provides that a company shall be deemed to be a subsidiary of another, if any of the following conditions are satisfied:</p> <p>(a) That other controls the <b>composition of its board of directors</b>;</p> <p>(b) That other exercises or controls <b>more than one-half of the total voting power</b></p> <ul style="list-style-type: none"> <li>• either at its own or</li> <li>• together with one or more of its subsidiary companies; or</li> <li>• through its Subsidiaries</li> </ul> <p>(c) The first-mentioned company is a subsidiary of any company which is that other's subsidiary (<b>chain action</b>).</p> <p><b>Note –</b></p> <p>(i) For the purpose of clause (a) above, the <b>composition of the board of directors</b> of a company means that the holding company has power, at its discretion, to <b>appoint or remove all or majority of the directors</b> of the subsidiary company without the consent of the other persons.</p> <p>(ii) <b>Company shall not have more than two layers of subsidiaries.</b></p> <ul style="list-style-type: none"> <li>(a) However, this provision is not applicable to Banking Company, Registered NBFC, <b>Government Company</b> and Insurance Company.</li> <li>(b) However, this rule shall not effect a company from <b>company acquiring outside India</b> with subsidiaries beyond 2 layers as per rules of that country (<b>Foreign Chain</b>)</li> <li>(c) For purpose of counting layer, one layer which consist of wholly owned subsidiary or subsidiaries will not be taken into account (<b>100% Subsidiary</b>)</li> </ul> <p>(iii) <b>For the purpose of this clause, the term 'company' includes any Body corporate.</b></p> <p>(iv) Indian company can become holding as well as subsidiary of foreign company</p>

The paid-up share capital of Saras Private Limited is ₹ 1 crore, consisting of 8 lacs Equity Shares of ₹ 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of ₹10 each, fully paid-up. Jeevan (JVN) Private Limited and Sudhir Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Saras Private Limited. Jeevan Private Limited and Sudhir Private Limited are the subsidiaries of Piyush Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Saras Private Limited is a subsidiary of Piyush Private Limited? Would your answer be different if Piyush Private Limited has 8 out of 9 Directors on the Board of Saras Private Limited?

**(RTP MAY 2018) (RTP MAY 2019)**

<b>Associate Company</b> [Sec. 2(6)]	<ol style="list-style-type: none"> <li>1. "Associate Company", in relation to another company, means a company in which that other company has a <b>significant influence</b>, but which is <b>not</b> a subsidiary company of the company having such influence</li> <li>2. <b>And includes a joint venture company.</b></li> </ol>
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**Explanation —** For the purpose of this clause,—

- a) the expression "**significant influence**" means control of **at least 20% of total voting power**, or control of or participation in business decisions under an agreement;
- b) The expression "**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.

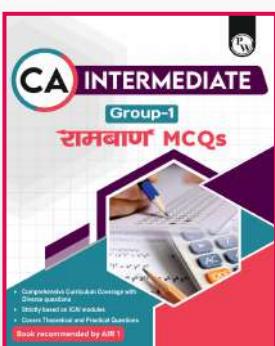
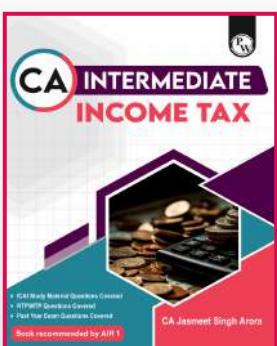
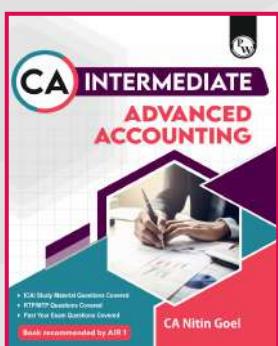
1. A Ltd. is the holding company of B Ltd. Another company C Ltd. is the subsidiary company of B Ltd. Is there any relationship between A Ltd. and C Ltd. **(RTP MAY 2019)**
  - a. There is no relationship between A Ltd. and C Ltd.
  - b. C Ltd. is deemed to be the subsidiary of A Ltd.
  - c. A Ltd. shall be deemed to be the holding company of C Ltd. provided A Ltd. acquires at least 10% stake in C Ltd.
  - d. C Ltd. shall be deemed to be the subsidiary of A Ltd. if the latter company acquires minimum 10% stake in the former company within six months after C Ltd. becomes subsidiary of B Ltd.
2. Aman Pvt. Ltd. was incorporated in 2009 with 10 members having equal amount of equity shares. Subsequently, eight shareholders sold their holding to another company Chaman Ltd. In view of provisions of Companies Act, 2013, which of the following statement is correct?
  - a. Since the identity of company is distinct from its members, the status of Aman Pvt. Ltd. will not change with the change in the shareholders.
  - b. Since Chaman Ltd. holds more than 50% of voting power of Aman Pvt. Ltd., Aman Pvt. Ltd. will be deemed to be a public company.
  - c. Aman Ltd. will have to amalgamate with Chaman Ltd. since it holds more than 50% of its capital.
3. d. None of the above
4. A Ltd. is the holding company of B Ltd. Another company C Ltd. is the subsidiary company of B Ltd. Is there any relationship between A Ltd. and C Ltd.?
  - a. A Ltd. and C Ltd. have separate legal entities and there is no relationship between them.
  - b. C Ltd. is deemed to be the subsidiary of A Ltd.
  - c. A Ltd. shall be deemed to be the holding company of C Ltd. provided A Ltd. acquires at least 10% stake in C Ltd.
  - d. A Ltd. shall be deemed to be the holding company of C Ltd. provided A Ltd. acquires at least 51% stake in C Ltd.
5. H Ltd., its Managing Director and its Company Secretary hold 33.33% equity shares each in S Ltd. Which of the following statement is correct?
  - a. S Ltd. will be treated as subsidiary of H Ltd.
  - b. S Ltd. will be joint venture of H Ltd., its Managing Director and its Company Secretary.
  - c. Both (a) and (b)
  - d. None of the above
6. A Limited held equity shares in B Limited. Later on, A Limited became subsidiary company of B Limited. Decide under the Companies Act, 2013, what will be the requirement as to shares held by A Limited in B Limited.
  - a. A Limited, which is now a subsidiary of B Limited will have to surrender the equity

## About The Author

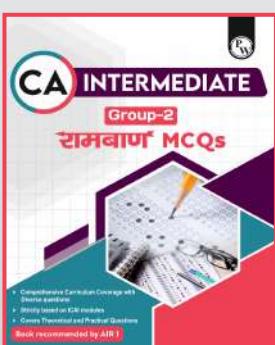
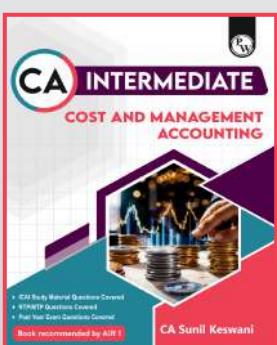
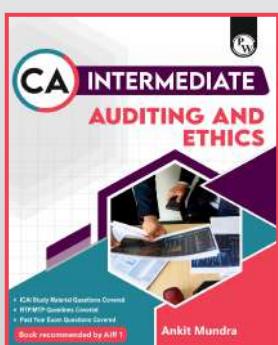
**Kunal Mandhania** Sir, an MBA in Corporate and Business Laws has been teaching CA and CS students for the past 13 years. He specialized in Tax, VAT, GST audit, Project Finance, Merchant Banking and Bank Audits. A renowned visiting faculty at ICAI Nagpur, he has taught more than 1 lac CA students, many of whom have scored exemptions in the subject. Additionally, a significant number of students have achieved the unique feat of scoring 90+ Marks in a theory subject. Kunal Mandhania Sir is well-known among Chartered Accountancy students for his highly effective notes. They are easy to understand, include extensive questions from past exams, RTPs & MTPs and are designed for immediate application and thorough preparation.

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