1.1 · Company Formation and Conversion P13 · Module 1 · Companies Act, 2013

SM pp. 3–33 (31 pages). 53 marks in 7 papers, asked in 6 of them, with a long question in 5. The Jun'26 long question was **private → public**, so the reverse, the LLP route or OPC is fresher.

Paper	What was asked	Marks
Jun'23	MCQs: foreign company definition; shifting the RO from one State to another	4
Dec'23	MCQ: RO moved to another ROC in the same State → Regional Director · Q4(b) **public → private: counting the 200 members**	2 + 7
Jun'24	MCQ: 35% holding but controls the Board → subsidiary · Q5(b) **constructive notice and indoor management, with exceptions**	2 + 7
Dec'24	MCQ: RO moved within the city → Board resolution · Q2(a) **OPC: nominee leaves India and withdraws; minor nominee; consequences**	2 + 7
Dec'25	MCQ: US company with no business in India · Q4(b) **not-for-profit consulting company: s.8 licence**	2 + 7
Jun'26	Q1 (i)–(iii) MCQ case: ultra vires contract, unauthorised borrowing (indoor management), prospectus misstatement · Q4(a) **private → public: procedure**	6 + 7

HOW IT IS EXAMINED

- **Conversion cases** (public ↔ private, LLP → company in ICMAI's MQP), **OPC**, **section 8** and the **three doctrines** (ultra vires, constructive notice, indoor management).
- **MCQs come from the SM exercise**: Jun'23 Q1(i) = SM MCQ 5; Jun'24 Q1(i) = SM MCQ 14; Dec'24 Q1(i) = SM MCQ 11; Dec'25 Q1(vi) = SM MCQ 92; Jun'23 Q1(v) = MCQ bank 96.
- **The SM is outdated in places** (OPC, conversion approval, small company): see the ⚠ boxes. The Dec'26 supplementary's **small company** limits are an ICMAI "Examination Point".

DEC'26: OUR PREDICTION (A PREDICTION, NOT A PROMISE)

Tier **A**. Expected **7–13 marks**: a 7-mark case plus 1–3 MCQs. Likely questions:

1. LLP converting into a company: procedure and effect (s.366) (MQP)
2. Start-up case: public or private, NRI investor, a section 8 company making profits (PTP)
3. Public → private: the 200-member count and approvals (Dec'23)
4. OPC nominee withdraws / minor nominee (Dec'24)

MAP OF THIS PACK

1. What a company is; lifting the veil ★
2. Kinds of companies ★★
3. One Person Company ★★
4. Incorporation, commencement, effect ★
5. Registered office ★★ (MCQs)
6. Memorandum, name, alteration ★
7. Articles; the three doctrines ★★★
8. Conversions: public ↔ private, LLP ★★★
9. Section 8 companies ★★
10. Foreign companies ★
11. Model answers · SM MCQs · numbers

1 What a company is, and lifting the corporate veil

WHAT IT IS A company is an **artificial, legal, juristic person, separate from its members, with perpetual existence**. Under s.2(20) it is a company incorporated under the Act or a previous company law. The Act has **29 chapters, 470 sections and 7 schedules**, and is administered by the **MCA** through the ROC, NCLT and NCLAT. [SM 3–4]

FEATURES

- **Separate legal entity**: *Salomon v. Salomon & Co.* [SM 4]
- **Limited liability**: up to the unpaid nominal value of shares, or the guaranteed amount [SM 4]
- **Perpetual succession**: "members may come and go" (*Gopalpur Tea Co.*) [SM 4]
- **Separate property**: shareholders do not own its assets (*Bacha F. Guzdar v. CIT*) [SM 4]
- **Transferable shares**: movable property, transferable as the articles provide (s.44) [SM 5]
- **Common seal optional** since 2015. Without a seal, documents are authorised by **two directors**, or a director and the CS [SM 5]

THE VEIL IS LIFTED (courts look at the people behind) ...

- trading with the **enemy** (test of control) · **taxes**, duties, stamps
- a subsidiary acting as the parent's **agent** (*Smith, Stone & Knight*)
- avoiding **welfare legislation** (*Workmen of Associated Rubber*)
- **fraud** or improper conduct · abuse for an unjust purpose
- **public policy** (*Connors v. Connors*) · **exchange control**, quasi-criminal cases
- using a company to **avoid legal obligations**
- *Estate Officer v. Esys IT* (SC 2016): a share transfer that was really a **prohibited sale of land**

[SM 5–6]

2 Kinds of companies

Basis	Kind and definition
Incorporation	**Statutory** (by a special Act, e.g. RBI, SBI, LIC; the Act applies only if that Act says so) · **Registered** (under this Act or earlier ones) [SM 7]
Liability	**Limited by shares** s.2(22): liability limited to the **unpaid amount** on shares · **by guarantee** s.2(21): the amount each member undertakes to contribute on winding up (similar to an LLP) · **unlimited** s.2(92): no limit [SM 7–8]
Members	**OPC** s.2(62): one member (part 3) · **Private** s.2(68): articles **restrict share transfers**, limit members to **200** (except OPC), and **prohibit public invitation**. Joint holders count as one; **employees and ex-employees who became members while employed are not counted** · **Public** s.2(71): not private; at least **7** members. A **subsidiary of a public company** is deemed public [SM 8–9]
Size	**Small company** s.2(85): a non-public company within the capital and turnover limits (⚠ new limits below). Not a holding or subsidiary company, a section 8 company, or one under a special Act [SM 9–10]
Control	**Subsidiary** s.2(87): the holding company **controls the composition of the Board**, OR controls **more than 50%** (SM: "one-half") of total voting power. *So 35% holding with the power to appoint the majority of directors = subsidiary (Jun'24 MCQ = SM MCQ 14).* · **Associate** s.2(6): **significant influence**, i.e. control of at least **20%** of share capital or of business decisions; includes a JV [SM 10–11]
Listing	**Listed** s.2(52): any securities listed. **Not counted as listed:** companies listing only privately placed NCDs or non-convertible redeemable preference shares, and public companies whose equity is listed only abroad [SM 10–11]
Others	**Government company** s.2(45): at least **51%** held by CG and/or SG(s), and its subsidiaries · **Foreign company** s.2(42) (part 10) · **Dormant** (s.455): formed for a future project or to hold an asset or IP, with **no significant accounting transaction** in the last **2 FYs**; applies to the ROC · **Nidhi** (s.406): mutual benefit; deposits from and loans to members only · **PFI** s.2(72): LIC, IDFC, UTI's specified company, notified institutions · **Section 8** (part 9) · **JV** (or a contractual JV without a company) · **Sectoral**: banking, insurance, electricity follow both the Act and their sector law · NBFC [SM 11–13]

PRIVATE vs PUBLIC (SM table)

Point	Private	Public
members	min 2, max 200	min 7, no max
directors	min 2, max 15	min 3, max 15 (more by special resolution)
public money	cannot raise	can raise
share transfer	restricted	free
name ends	"Pvt. Ltd."	"Ltd."

[SM 9]

Members below the minimum (s.3A): if a company carries on business for more than **6 months** below the minimum, every member who knows it is **severally liable for all debts** contracted in that period. [SM 9]

Large partnership (s.464, Rule 10): an association of more than **50** persons for gain must register as a company (except HUFs and professionals under special Acts). Otherwise it is an **illegal association**: fine up to **₹1 lakh**, personal liability, no legal existence. [SM 13]

Public sector: Government departments, statutory corporations, Government companies. **Joint sector** = Government holding **26–50%**. [SM 6]

DEC'26 SUPPLEMENTARY: SMALL COMPANY · COMPANIES (SPECIFICATION OF DEFINITION DETAILS) AMENDMENT RULES, 2025 · FROM 1 DEC 2025 · ICMAI "EXAMINATION POINT"

Small company = paid-up capital up to **₹10 crore** and turnover up to **₹100 crore**, with the usual exclusions (holding and subsidiary companies, section 8 companies, special-Act companies). **The SM's ₹4 crore / ₹40 crore are superseded.** [Supp Dec'26 p.2] [SM 10]

3 One Person Company (OPC) · Dec'24 Q2(a)

FEATURES AND RULES

- **One member**, a **natural person, Indian citizen**. It may be limited by shares, by guarantee, or unlimited. [SM 8]
- A **nominee** named in the memorandum becomes the member on the subscriber's **death or incapacity**. The nominee's **prior written consent** is filed with the ROC at incorporation. [SM 8–16]
- The nominee **may withdraw consent**. The member may **change the nominee** at any time by notice to the company, which tells the ROC. Changing the nominee is **not an alteration of the memorandum**. [SM 16]
- A person may not form **more than one OPC** or be a nominee in more than one. A person who becomes a member of a second OPC as a nominee must comply within **180 days**. [SM 16–17]
- **No minor** may be a member or nominee, or hold shares with beneficial interest. [SM 16]
- No **section 8** conversion; no **NBFI activity**, including investing in securities of a body corporate. [SM 16]
- At least **1** director, up to **15**. **No AGM**; FS signed by **one director**; **no cash flow statement**. "(One Person Company)" appears below its name. [SM 8–19]
- **Penalty** for breaking these rules: up to **₹10,000**, plus up to **₹1,000 a day**. [SM 17]

⚠ THE SM MIXES OLD AND NEW OPC RULES (2021 AMENDMENT)

On SM 8 the member and nominee must be "Indian citizen **and resident**", but on SM 17 the rule says Indian citizen "**whether resident in India or otherwise**". The 2021 amendment **removed the residency condition**, so **write the SM 17 version**. [SM 8–17]

SM 16(i) still says an OPC cannot convert voluntarily for **2 years** unless paid-up capital exceeds **₹50 lakh** or turnover exceeds **₹2 crore**. The same 2021 amendment **removed that lock-in and the forced conversion**; an OPC may now convert at any time. Write the SM figure and add the 2021 change. [SM 16]

Not in the SM, but needed for Dec'24 Q2(a): when the nominee withdraws, the member must **nominate another person within 15 days** of the withdrawal notice, with the new nominee's consent. The company then informs the ROC.

4 Incorporation, commencement of business, effect of registration

WHO MAY FORM (s.3) · FILING (s.7)

- **7** or more persons for a public company; **2** or more for a private company; **1** for an OPC. [SM 14]
- **File with the ROC:** MOA and AOA signed by all subscribers · **declaration by a professional** (advocate, CA, CMA or CS in practice) and by a director, manager or secretary named in the articles that the Act has been complied with · **declaration by each subscriber and first director**: not convicted, not guilty of fraud or misfeasance in the last **5 years**, documents true · correspondence address · particulars and ID proof of subscribers and first directors (with DIN), their other interests and **consent**. [SM 14–15]
- The ROC registers and issues the **certificate of incorporation** (SM MCQ 9) with the **CIN**. Copies are kept at the RO till dissolution. False information → **s.447** (fraud). [SM 15]
- **SPICe+ (INC-32)** with **e-MOA (INC-33)**, **e-AOA (INC-34)** and **AGILE-PRO-S (INC-35)**: name, incorporation, DIN, PAN, TAN, EPFO, ESIC, bank account, GSTIN, professional tax. **RUN** is now only for changing an existing name. A **Central Scrutiny Centre** checks STP e-forms (from 23 Mar 2021). [SM 15–16]

COMMENCEMENT (s.10A) · EFFECT (s.9, s.10)

- A company with share capital incorporated after the 2019 amendment may not start business or borrow until (a) a director files **INC-20A** within **180 days** of incorporation (verified by a CS, CA or CMA in practice) declaring that every subscriber has paid for his shares, and (b) it has verified its RO in **INC-22**. [SM 18]
- **Default:** company **₹50,000**; each officer **₹1,000 a day**, up to **₹1 lakh**. Without INC-20A in 180 days, the ROC may **strike off** the name. [SM 18]
- **Effect of registration:** a **body corporate** with perpetual succession, able to hold property, contract and sue in its own name. The **certificate is conclusive evidence** of incorporation. [SM 17]
- **s.10:** the MOA and AOA bind the company and members as if **signed by each member** (money due under them is a debt). They are a contract between the **company and members** and among **members inter se** (*Wood v. Odessa Waterworks*), but **not with outsiders**. [SM 17]
- **s.6:** the Act **overrides** the MOA, AOA, agreements and resolutions; anything inconsistent is void. [SM 20]

5 Registered office (s.12, s.13(4)): three past MCQs

Move	What is needed
within the same city, town or village	**Board resolution**; notice to the ROC within **15 days** (Dec'24 MCQ = SM MCQ 11) [SM 19]
outside local limits, same ROC	**special resolution** + notice to the ROC [SM 19]
to another ROC **in the same State**	special resolution + confirmation by the **Regional Director** (Dec'23 MCQ). The RD communicates within **30 days**; the company files it within **60 days**; the new ROC certifies within **30 days**. The certificate is conclusive; the change takes effect from its date [SM 19]
to **another State**	alter the memorandum by **special resolution + Central Government approval** (Jun'23 MCQ; MCQ bank 96). The CG decides within **60 days**, checking the creditors' consent or provision for debts. File the order with the ROC of each State; the new State's ROC issues a fresh certificate [SM 22–23]

Other s.12 rules: an RO from the **15th day** of incorporation; **verification within 30 days (INC-22)**. Name and RO address **painted outside every office**, in local characters too. Name, RO, **CIN**, phone, e-mail and website on **letters, bills and notices**. **Former names** of the last **2 years** shown too. Default: **₹1,000 a day**, up to **₹1 lakh**. [SM 18–20]

6 Memorandum, name and alteration of the memorandum (s.4, 13, 16)

CONTENTS OF THE MOA (s.4)

1. **Name** ending "Limited" or "Private Limited"
2. **State** of the registered office
3. **Objects**. A company whose activities change must change its name to match within **6 months**
4. **Liability**: limited by shares (unpaid amount) or guarantee (the amount, payable while a member or within **1 year** after ceasing)
5. **Capital**: amount and division; each subscriber takes at least **one share**
6. **OPC:** the nominee's name

The memorandum is a **public document** (**s.399**; MCQ bank 247): anyone contracting with the company is presumed to know it. [SM 20–21]

NAME RULES

- Not identical or too similar to an existing company's name; not an offence; not undesirable in the CG's view; nothing suggesting Government patronage without CG approval. [SM 21]
- **Reservation: 20 days** for a new company, **60 days** for a change of name. Extension for a new company: **40 days** (₹1,000), **60 days** (₹2,000 / ₹3,000). [SM 21–22]
- **Wrong information:** before incorporation, name cancelled and penalty up to **₹1 lakh**. After incorporation, the ROC may order a change within **3 months** by ordinary resolution, strike off, or petition for winding up. [SM 21]
- **s.16:** the CG may direct rectification of a name too like an existing company's or a registered trade mark within **3 months** (ordinary resolution); notice to the ROC within **15 days**. [SM 23]

Altering the memorandum (s.13): by **special resolution** · **name change** needs CG approval, except adding or deleting "Private" on conversion. Not allowed if the company is in default of filings or deposit/debenture repayment. Effective on the **fresh certificate** · **objects change** while prospectus money is unused: special resolution **by postal ballot**, published in one English and one vernacular newspaper and on the website, with an **exit offer to dissenting shareholders** under SEBI rules. The ROC registers it within **30 days** · no alteration has effect until **registered** · a guarantee company without share capital cannot give a non-member a share of profits. [SM 22–23]

7 Articles and the three doctrines · Jun'24 Q5(b), Jun'26 MCQ case

ARTICLES (s.5, 14, 15, 17)

- The **bye-laws** for management. They may contain **entrenchment** (provisions alterable only on conditions stricter than a special resolution), adopted on formation or later: **all members** agreeing in a private company, a **special resolution** in a public one. Notice to the ROC. [SM 23–24]
- **Model articles** apply to the extent not excluded or modified. [SM 24]
- **Alteration (s.14):** by **special resolution** (SM MCQ 94), including conversions. Filed with the ROC within **15 days** with the altered articles; once registered, valid as if original. [SM 24]
- **s.15:** every copy must show alterations; penalty **₹1,000 per copy**. **s.17:** copies of the MOA, AOA and s.117 resolutions to members within **7 days** of request; default **₹1,000 a day or ₹1 lakh, whichever is less**. [SM 24–25]

THE THREE DOCTRINES

- **Constructive notice:** the MOA and AOA are **public documents** (s.399), so an outsider is **deemed to know their contents**. He deals incompatibly at his peril; e.g. if the articles require two directors to sign a bill and only one signed, he cannot claim. It operates **only against the outsider**, not the company. [SM 25]
- **Indoor management** (*Royal British Bank v. Turquand*): an outsider may assume the **internal formalities have been complied with**. In Turquand, the bond was valid even though the authorising resolution had never been passed. It is the **limit on constructive notice**. *Jun'26: a bank lending without knowing that Board approval was missing → the company is liable (B).* [SM 25]
- **Ultra vires:** an act **beyond the objects** in the memorandum is void. An act beyond the **Board's** powers but within the company's may be **ratified** by the company, but an act ultra vires the **company cannot be ratified even by all members**. [SM 18]

⚠ EXCEPTIONS TO INDOOR MANAGEMENT: THE SM GIVES ONE, AN ANSWER NEEDS MORE

The SM's exception: no protection for information the outsider could reasonably have found with little effort. [SM 25] **The standard exceptions from case law (not in the SM):** (1) the outsider **knew** of the irregularity; (2) **suspicion** or negligence: circumstances should have put him on inquiry; (3) **forgery**: a forged document is void; (4) an act **outside the officer's apparent authority**; (5) the act is **void or illegal** in itself.

8 Conversions: public ↔ private, any class (s.14, s.18), LLP ↔ company (s.366) · Dec'23 Q4(b), Jun'26 Q4(a)

PRIVATE → PUBLIC (JUN'26 Q4(a))

1. pass a **special resolution** altering the articles to **remove the s.2(68) restrictions** (share transfer, 200 members, public invitation) [SM 9]
2. it **ceases to be private from the date of alteration**
3. file the alteration and printed altered articles with the ROC within **15 days**
4. delete "Private" from the name (no CG approval needed for that)
5. meet public company rules: at least **7 members, 3 directors**; the ROC issues a fresh certificate (s.18)

[SM 8–24]

PUBLIC → PRIVATE (DEC'23 Q4(b))

1. **special resolution** altering the articles to **add the s.2(68) restrictions**; binding on dissenters if bona fide and in the company's interest
2. members within **200** [SM 9] (count as in part 2: joint holders = 1; current and ex-employee members excluded)
3. **approval** on application (⚠ below)
4. file the alteration and approval order with the ROC within **15 days**; add "Private" to the name

[SM 8–24]

⚠ "APPROVAL OF THE TRIBUNAL" OR "OF THE CENTRAL GOVERNMENT"? THE SM SAYS BOTH

SM 13 says the **Tribunal**; SM 24 says the **Central Government**. The 2019 amendment moved this to the **Central Government** (exercised by the **Regional Director**). **Write the Central Government (Regional Director).** [SM 13–24]

s.18 (any class to another): alter the MOA and AOA, apply to the ROC, who **closes the former registration** and issues a **fresh certificate**. **Debts, liabilities, obligations and contracts** from before conversion are **unaffected**. [SM 26] The SM lists the possible conversions: private ↔ public, OPC → private/public, private → OPC, section 8 → other, LLP → company, private or unlisted public → LLP. [SM 30]

LLP (OR FIRM) → COMPANY, s.366 + AUTHORISED TO REGISTER RULES (MQP Q4(b))

1. partners' meeting: name (same name + "Ltd" or "Pvt Ltd"; valid **60 days**) and authority to act [SM 30]
2. **DSC and DIN** for the future directors [SM 31]
3. **advertisement** in a local and a national newspaper; **NOC** from the ROC where the LLP is registered [SM 30]
4. file **URC-1** with: a list of partners (as on a day not more than **6 clear days** before applying) and their shares (cash / non-cash); first directors' particulars and consent; the partnership deed and registration certificate (for a firm); **consent or NOC of all secured creditors**; **written consent of the majority** of members at a general meeting [SM 31–33]
5. at least **2 members**; with fewer than **7** it registers as a **private company** (the old minimum of 7 partners was relaxed in 2017) [SM 30–31]

COMPANY → LLP (LLP Act s.58, Schedules III–IV)

- Only a **private company** or an **unlisted public company**. [SM 31]
- Board resolution; **written consent of all shareholders**; name approval in **RUN-LLP** (with the Board resolution). [SM 31–32]
- LLP agreement: name, partners and designated partners, contribution, profit share, rights and duties, business, rules. Filed in **Form 3** within **30 days**. [SM 32]
- Apply in **Form 18** with a statement of shareholders and an **auditor-certified statement of assets and liabilities**. [SM 32]
- *SM MCQ 16: after converting into an LLP, intimation to the ROC within **15 days**.*

9 Section 8 (not-for-profit) companies · Dec'25 Q4(b), ICMAI PTP case

WHEN THE CG LICENSES IT

a. its **objects**: commerce, art, science, sports, education, research, social welfare, religion, charity, environment, or similar
b. it **applies its profits or income only to those objects**
c. it **prohibits dividends** to members (SM MCQ 12; MCQ bank 301)

The CG then licenses it to register **without "Limited" / "Private Limited"** in its name. Apply in **INC-12** with the MOA (**INC-13**), a declaration (**INC-14**) and **3-year** income and expenditure projections. An existing company may also apply (INC-12, with past FS and audit reports). [SM 26–27]

CONSEQUENCES

- It has all the privileges and obligations of a limited company; a **firm may be a member**. [SM 26]
- It may **alter its MOA or AOA only with prior CG approval**; it converts into another kind only on prescribed conditions. [SM 26]
- **Licence revoked** if its affairs are run fraudulently, against its objects, or against the public interest. It then adds "Ltd"/"Pvt Ltd", and may be **wound up** or **amalgamated** with another section 8 company. [SM 27]
- **Surplus assets** on winding up go to another section 8 company with similar objects, or are sold with the proceeds credited to the **Rehabilitation and Insolvency Fund** (s.269). It may **merge only with section 8 companies** with similar objects. [SM 27]
- **Penalty:** company **₹10 lakh to ₹1 crore**; directors and officers **₹25,000 to ₹25 lakh**; if fraud, **s.447**. [SM 27]
- **Dec'25 answer in brief:** earning only "marginal profits" does **not** make it non-profit. It needs the **three conditions in its MOA and a CG licence**, and it may operate pan-India from its RO. Profits are allowed, but **never distributed**.

10 Foreign companies (Chapter XXII, s.379–393)

DEFINITION AND THE MCQs

- **s.2(42):** a company or body corporate **incorporated outside India** that (a) has a **place of business in India**, itself or through an agent, physically or electronically, and (b) conducts any business activity in India in any other manner. [SM 11–27]
- **MCQ key (SM MCQ 5 = Jun'23):** "**either (a) or (b)**". A US company doing business only in the USA is **not** a foreign company, but becomes one once it starts business in India (**both**: SM MCQ 92 = Dec'25). An Indian company 100% owned by a UK company is an **Indian company** (SM MCQ 13). Chapter **XXII** (SM MCQ 17).
- **s.379:** if Indian citizens or Indian companies hold at least **50%** of its paid-up capital, it complies with Chapter XXII **as if incorporated in India**. [SM 28]
- Inspection and investigation (Chapter XIV) apply. It may **merge** with an Indian company (or vice versa) with **RBI's prior approval** (s.234(2)). If it stops business in India, it may be wound up as an **unregistered company** (s.376). [SM 27–28]

COMPLIANCE

- **s.380:** within **30 days** of setting up a place of business, file: its charter or MOA/AOA (with an English translation), its principal office address, directors and secretary, **persons resident in India authorised to accept service**, its principal place of business in India, earlier openings and closings, and a declaration that no director or representative is convicted or debarred. Alterations within **30 days**. [SM 28]
- **s.381:** every **calendar year**, a balance sheet and P&L (English translation) and a list of Indian places of business, filed with the ROC. [SM 28–29]
- **s.382:** display its name and **country of incorporation** outside every office (in English and the local language) and on letters and notices; state limited liability where it applies. [SM 29]
- **s.383:** service on the person registered under s.380, by post or electronically. Debentures (s.71), annual return (s.92), books in India (s.128) and charges (Chapter VI) also apply. [SM 29–30]

11 Model answers

MODEL ANSWER 1 · PUBLIC → PRIVATE: COUNTING THE 200 MEMBERS (DEC'23 Q4(b)) · 7 MARKS

Facts: KFR Ltd (public) has 230 members: directors and relatives 50; employees 15; ex-employees who got shares while employed 10; 5 couples holding jointly (10 persons); others 145. The Board wants to convert it into a private company. Must the number of members be reduced?

Provision: a private company's articles limit members to **200** (s.2(68)). **Joint holders count as one member**. **Employees**, and **ex-employees who became members while employed**, are **not counted**. Conversion needs a **special resolution** altering the articles and **Central Government (RD) approval**, with the order filed within 15 days (s.14). [SM 8–24]

Group	Persons	Counted	Why
directors and relatives	50	50	counted like any member
employees	15	0	excluded
ex-employees (shares allotted while employed)	10	0	excluded
5 joint-holding couples	10	5	joint holders = one member
others	145	145	counted
total	**230**	**200**	**exactly at the limit**

Conclusion: the members for the s.2(68) count are **200**, which is **within the limit**. **No reduction is needed.** KFR may convert by special resolution, with the altered articles adding the private-company restrictions, CG (RD) approval, filing with the ROC, and "Private" added to its name.

MODEL ANSWER 2 · OPC NOMINEE CASE (DEC'24 Q2(a)) · 7 MARKS

Facts: Gautam formed an OPC with his brother Rohit as nominee. Rohit moved permanently to Dubai and withdrew his nomination. (i) What must Gautam do, and by when? (ii) Can he nominate his minor son? (iii) What if he fails to nominate?

1. **Law:** an OPC's memorandum must name a **nominee** who becomes the member on the subscriber's death or incapacity; the nominee gives written consent and **may withdraw it**. The member may change the nominee by notice to the company, which informs the ROC; this is not an alteration of the memorandum. The member and nominee must be **natural persons and Indian citizens**; residency is **no longer required** (SM 17, 2021 rules). [SM 8–17]
2. **(i)** Rohit's withdrawal is valid. Gautam must **nominate a new person, with that person's written consent, within 15 days** of the withdrawal notice, and give notice to the OPC, which informs the ROC. (Moving to Dubai alone would not have disqualified Rohit after 2021, as long as he is an Indian citizen.)
3. **(ii) No.** A **minor cannot be a member or nominee** of an OPC. [SM 16]
4. **(iii)** The OPC and every officer in default are liable to a penalty of up to **₹10,000**, plus up to **₹1,000 a day** while the default continues. [SM 17]

MODEL ANSWER 3 · LLP CONVERTING INTO A COMPANY (ICMAI MQP Q4(b)) · 7 MARKS

Under **s.366** and the Companies (Authorised to Register) Rules, an LLP (or firm) may register as a company. Steps: (1) partners resolve on the **name** (the LLP name plus "Ltd"/"Pvt Ltd", valid 60 days) and authorise a partner; (2) obtain **DSC/DIN** for the future directors; (3) **advertise** in a local and a national newspaper and obtain an **NOC** from the ROC; (4) file **URC-1** with the list of partners and shares (as on a day not more than 6 clear days before), the first directors' particulars and consent, the LLP or partnership documents, **consent or NOC of all secured creditors**, and **majority consent** of members; (5) at least **2** members; with fewer than 7 it becomes a **private company**. **Effect:** a new body corporate; the incorporation provisions of Chapter II apply mutatis mutandis. [SM 30–33]

SM exercise MCQs on 1.1, with answers (SM 158–172; ★ = asked in an exam)

1 minimum members, public company	**7**	10 professional declaration at incorporation by	**practising CS, CA or CMA: any**
2 Govt company: 51% held by	**CG, SG or both: any**	11 RO moved within city ★	**Board resolution**
3 "limited" means limited	**liability of members**	12 section 8 companies cannot	**distribute dividend**
4 share transfer restricted in	**private company**	13 Indian co, 100% held by a UK co	**an Indian company**
5 foreign company: abroad and ★	**either place of business or business in India**	14 35% held + majority of Board ★	**subsidiary**
6 no significant accounting transaction	**dormant company**	15 guarantee company is similar to	**LLP**
7 LIC is	**statutory corporation and PFI**	16 company → LLP: intimate ROC within	**15 days**
8 those who sign the MOA	**subscribers to MOA**	17 chapter on foreign companies	**XXII**
9 certificate of incorporation issued by	**ROC**	92 US company doing business in US ★	**not foreign now; foreign once in India**
93 sectoral company complies with	**Companies Act + sector law**	94 articles altered by	**special resolution**
bank 96: RO to another State ★	**special resolution + CG**	bank 243 / 246 / 248	**OPC max 15 directors / INC-22 / INC-12**

R Revision: every number in 1.1

Rule	Number
Act: chapters / sections / schedules	29 / 470 / 7
members: OPC / private / public	1 / 2–200 / 7+
business below minimum members for	> 6 months
joint sector Govt holding	26–50%
Government company	≥ 51%
subsidiary voting power	> 50%
associate: significant influence	≥ 20%
dormant: no significant transaction for	2 FYs
small company (Dec'26 supp.)	₹10 cr / ₹100 cr
large partnership limit / fine	50 / ₹1 lakh
OPC: nominee in more than one / comply within	no / 180 days
OPC: SM conversion lock / capital / turnover ⚠	2 yrs / ₹50 lakh / ₹2 cr
OPC penalty	₹10,000 + ₹1,000/day
subscriber declaration look-back	5 years
INC-20A within / penalty	180 days / ₹50,000
officer: per day / max	₹1,000 / ₹1 lakh

Rule	Number
RO from the … day / verification INC-22	15th / 30 days
RO change notice to ROC	15 days
RD confirms / company files / ROC certifies	30 / 60 / 30 days
former names shown for	2 years
s.12 default	₹1,000/day, max ₹1 lakh
State change: CG decides within	60 days
name to match changed activities within	6 months
name reserved: new / existing	20 / 60 days
extension 40 / 60 days fee	₹1,000 / ₹2,000 or ₹3,000
wrong name info: penalty / change within	₹1 lakh / 3 months
objects change registered within	30 days
articles alteration filed within	15 days
s.15 / s.17 penalty	₹1,000 per copy / per day (max ₹1 lakh)
s.8 penalty: company / officers	₹10 lakh–₹1 cr / ₹25,000–₹25 lakh
s.8 projections for	3 years
s.379 Indian holding / s.380 filing	≥ 50% / 30 days
LLP → company: members / list date	≥ 2 (<7 private) / 6 clear days