

Tamralipta Mahavidyalaya
Study Material
B.com (2nd sem.)
Sub: Corporate Law (C4T)
Unit-1
By
Mrinal Maity

1. What do you mean by Company? Write down the features of Company.

Ans. Definition of a Company:

Section 2 (20) of the Companies Act, 2013 defines a company as “a company incorporated under this Act or under any previous company law.” Important previous companies’ laws are the companies laws passed in 1850, 1866, 1882, 1913 and 1956.

After passing of the Companies Act, 2013, all these acts have been repealed. The definition contained in the Act does not throw any light on the features of a company. A more comprehensive definition of a company has been given by Prof. Haney: “A company is an incorporated association which is created by law, having a separate entity with a perpetual succession and a common seal.”

Two more features division of capital into transferable shares and limited liability of the members may be added to the definition given by Prof. Haney. Thus, a company may be defined as “an incorporated association which is an artificial person created by law, having a separate entity, with a perpetual succession, a common seal, capital divided into transferable shares and carrying limited liability.

Characteristics or Features of a Company

i) Incorporated Association:

A company must be registered under the prevalent Companies Act. If the number of members in an association exceeds 50 and the association is formed for carrying on a business with profit motive, it must be registered under the Companies Act or any other Indian Law otherwise it becomes an illegal association. For forming a public company, at least seven

persons and for forming a private company, at least two persons are required. For forming one person company, as a private company, only one person is required.

ii) Artificial Legal Person:

A company is an artificial legal person. It is artificial because it is created by a process other than the natural birth. It comes into existence through the operation of law. It is a legal person because it exists in the eyes of the law. It can do a number of things which can be done by a natural person g. a company can enter into a contract, it can purchase and sell assets, it can be fined, it can files it, and so on. It acts through the board of directors elected by the members.

iii) Separate Legal Entity (Doctrine of Corporate Veil):

A company is a legal person and is different from its members. The property of the company belongs to the company alone and the members cannot claim individually or jointly ownership rights in the assets of the company during its existence or in its winding up. A company can file a suit against its members and the members can also file a suit against the company. Further, the members are not liable for the liabilities of the company. Their liability is limited to the extent of their shareholdings. Creditors of the company are the creditors of the company alone and they cannot proceed directly against the members of the company. The concept of separate legal entity was recognized in the famous case of **Solomon vs. Solomon & Co. Ltd.**)

iv) Perpetual Existence:

A company has perpetual succession and is independent of the life of its members. Its existence is not affected by the death, lunacy or bankruptcy of its members. Members may come, members may go but a company continues for ever. A company comes into existence through the operation of law and it can come to an end only through the operation of la During the) war, all the members of a private company, while attending the general meeting, were killed by a bomb. But the company continued. Legal representatives of the deceased members became the new members of the company.

v) Limited Liability:

Liability of the members of the company is limited to the value of the shares subscribed by each of them. In case of company limited by grantee, the liability of the members of the company is limited to the extent of guarantee given by them.

vi) Transfer ability of Shares:

The shares of a company are freely transferable in the case of public companies whereas they are not so in case of private companies)

vii) Common Seal:

Every company has its own common seal which is affixed on all the important documents of the company. The common seal with the name of the company engraved on it, is used as a substitute of its signature.

viii) Separate property:

A company, being a legal person, is capable of owning, enjoying and disposing of property in its own name. The property of the company is to be used for the company's business and not for the personal benefit of its members.

2. Write down the Classification of companies?

Ans. Joint stock company can be of various types. The following are the important types of company:

1. Companies on the Basis of Liabilities:

i) Companies Limited by Shares:

Sometimes, shareholders of some companies might not pay the entire value of their shares in one go. In these companies, the liabilities of members is limited to the extent of the amount not paid by them on their shares.

This means that in case of winding up, members will be liable only until they pay the remaining amount of their shares.

ii) Companies Limited by Guarantee:

In some companies, the memorandum of association mentions amounts of money that some members guarantee to pay.

In case of winding up, they will be liable only to pay only the amount so guaranteed. The company or its creditors cannot compel them to pay any more money.

iii) Unlimited Companies:

Unlimited companies have no limits on their members' liabilities. Hence, the company can use all personal assets of shareholders to meet its debts while winding up. Their liabilities will extend to the company's entire debt.

2. Companies on the basis of members

i) One Person Companies (OPC):

These kinds of companies have only one member as their sole shareholder. They are separate from sole proprietorships because OPCs are legal entities distinct from their sole members. Unlike other companies, OPCs don't need to have any minimum share capital.

ii) Private Companies:

Private companies are those whose articles of association restrict free transferability of shares. In terms of members, private companies need to have a minimum of 2 and a maximum of 200. These members include present and former employees who also hold shares.

iii) Public Companies:

In contrast to private companies, public companies allow their members to freely transfer their shares to others. Secondly, they need to have a minimum of 7 members, but the maximum number of members they can have is unlimited.

3. Companies on the basis of Control or Holding

In terms of control, there are two types of companies.

i) Holding and Subsidiary Companies:

In some cases, a company's shares might be held fully or partly by another company. Here, the company owning these shares becomes the holding or parent company. Likewise, the company whose shares the parent company owns becomes its subsidiary company.

Holding companies exercise control over their subsidiaries by dictating the composition of their board of directors. Furthermore, parent companies also exercise control by owning more than 50% of their subsidiary companies' shares.

ii) Associate Companies:

Associate companies are those in which other companies have significant influence. This "significant influence" amounts to ownership of at least 20% shares of the associate company.

The other company's control can exist in terms of the associate company's business decisions under an agreement. Associate companies can also exist under joint venture agreements.

4. On the basis of incorporation:

i) Statutory companies:

These companies are incorporated by a Special Act passed by the Central or State legislature. Reserve Bank of India, State Bank of India, Industrial Finance Corporation, Unit Trust of India, State Trading corporation and Life Insurance Corporation are some of the examples of statutory companies. Such companies do not have any memorandum or articles of association. They derive their powers from the Acts constituting them and enjoy certain powers that companies incorporated under the Companies Act have. Alterations in the powers of such companies can be brought about by legislative amendments.

The provisions of the Companies Act shall apply to these companies also except in so far as provisions of the Act are inconsistent with those of such Special Acts [Sec 616 (d)] These companies are generally formed to meet social needs and not for the purpose of earning profits.

ii) Registered companies:

These are formed under the Companies Act, 1956 or under the Companies Act passed earlier to this. Such companies come into existence only when they are registered under the Act and a certificate of incorporation has been issued by the Registrar of Companies. This is the most popular mode of incorporating a company. Registered companies may further be divided into three categories as limited by Guarantee, limited by share and Unlimited companies.

iii) Chartered companies:

These are incorporated under a special charter by a monarch. The East India Company and The Bank of England are examples of chartered incorporated in England. The powers and nature of business of a chartered company are defined by the charter which incorporates it. A chartered company has wide powers. It can deal with its property and bind itself to any contracts that any ordinary person can. In case the company deviates from its business as prescribed by the chartered, the Sovereign can annul the latter and close the company. Such companies do not exist in India.

5. On the basis of Ownership of companies:

i) Government Companies:

A Company of which not less than 51% of the paid up capital is held by the Central Government or by State Government or Government singly or jointly is known as a Government Company. It includes a company subsidiary to a government company. The share capital of a government company may be wholly or partly owned by the government, but it would not make it the agent of the government. The auditors of the government company are appointed by the government on the advice of the Comptroller and Auditor General of India. The Annual Report along with the auditor's report are placed before both the House of the parliament. Some of the examples of government companies are - Mahanagar Telephone Corporation Ltd., National Thermal Power Corporation Ltd., State Trading Corporation Ltd. Hydroelectric Power Corporation Ltd. Bharat Heavy Electricals Ltd. Hindustan Machine Tools Ltd. etc.

ii) Non-Government Companies:

All other companies, except the Government Companies, are called non-government companies. They do not satisfy the characteristics of a government company as given above.

6. On the basis of Nationality of the Company

i) Indian Companies:

These companies are registered in India under the Companies Act, 1956 and have their registered office in India. Nationality of the members in their case is immaterial.

ii) Foreign Companies:

It means any company incorporated outside India which has an established place of business in India [Sec. 591 (I)]. A company has an established place of business in India if it has a specified place at which it carries on business such as an office, store house or other premises with some visible indication premises. Section 592 to 602 of Companies Act, 1956 contain provisions applicable to foreign companies functioning in India.

7. On the basis of size:

Small companies:

A small company is a company other than public company that has a paid-up capital not exceeding fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees. Such companies should also be subjected to reduced financial reporting and audit requirements and simplified capital maintenance regimes. Essentially the regime for small companies should enable them to achieve transparency at a low cost through simplified requirements. Such a framework may be applied to small companies through exemptions, consolidated in the form of a Schedule to the Act. It has been stated by the expert committee that a small company should however neither be a holding nor a subsidiary of any other company. However, the Committee does not feel the need for providing a special internal governance and constitutional regime to small companies.

This is likely to come in the way of their future growth. Instead the Committee recommends enabling of new vehicles for business, such as Limited Liability Partnerships, through separate legislation, if necessary. Associations, Charitable Companies etc. licensed u/s 25 of the existing Companies Act, should not be treated as small companies irrespective of their gross assets. The law should provide a framework compatible to growth of small corporate entities. Exemptions should however facilitate compliance by small companies in an easy and cost effective manner. These should not incentivize concealment of true size by any entity or be a barrier to growth of small companies. However, public limited companies cannot qualify to be small companies.

8. Other companies:

- i) Dormant company
- ii) Nidhi company
- iii) Non-Banking finance companies
- iv) FERA companies
- v) Chit Fund companies
- vi) Investment companies