

INTRODUCTION TO COMPANY

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Company – derived from latin term (*Com*=with or together;*panis*=bread)

It is:

- a collection of many individuals
- united into one body under a special domination
- having perpetual succession under an artificial form, and
- vested by the policy of law with the capacity:
 - of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations, and of suing and being sued,
 - of enjoying privileges and immunity in common
 - of exercising a variety of political rights more or less extensive

Salient characteristics of a company:

I	Corporate Personality	It is a legal person distinct from its members, large or small; beneficiary or trustee - <i>Salomon v Salomon & Co Ltd</i>
ii	Limited Liability	Liability of a shareholder extends only upto the nominal value of the shares held and not paid by him
iii	Perpetual succession	Being a legal entity it does not die except when it is wound up.
iv	Separate property	Capable of owning, enjoying and disposing of property in its own name; shareholders not part owners.
V	Transferability of shares	Shares are transferable and no shareholder is permanently wedded to the company.
Vi	Common Seal	It is the official signature of the company.
Vii	Capacity to sue and be sued	Legal proceedings can be instituted by or against the company in the name of the company itself
Viii	Contractual rights	Can enter into contract for the conduct of business of the company
ix	Limitation of action	Cannot function beyond the powers stated in its memorandum of Association
X	Separate management	Management and ownership of the company are

		distinct
Xi	Voluntary association for profit	
Xii	Termination of existence	Created by law, carries on business according to law and ceases to exist by operation of law

Distinction between Company and Partnership

Company	Partnership
A Distinct legal person	Not distinct from the persons forming it
Limited liability	Unlimited liability
Perpetual succession	Death or insolvency of a partner dissolves the firm
Number of members unlimited (50 in case of Pvt Ltd)	Number of partners limited to 20
Property belongs to the company	Property of the firm is the property of the individuals comprising it
Creditors can proceed only against company and not its members	A decree against the firm can be executed against the partners jointly and severally
Members of a company are not its agents	Partners are the agents of the firm
Member can enter into a contract with the company	A partner cannot contract with his firm
Company's shares can ordinarily be transferred	Transfer of partner's share only with the consent of the other partners
Restriction on partner's authority not binding outsiders	Restrictions in articles binding
Dissolution by law	Dissolution by agreement

Advantages and disadvantages of a Company

Advantages	Disadvantages
Distinct legal corporate personality	Formalities and expenses
Limited liability	Corporate disclosures
Perpetual Succession	Separation of control from ownership
Transferable Shares	Greater social responsibility
Separate property	Detailed and cumbersome winding up procedure
Capacity to sue	
Flexibility and autonomy	

Corporate veil – piercing of

A company is a distinct legal entity separate from persons who are its beneficial owners. Looking behind the corporate entity and taking action as though no entity separate from the members existed is known as the doctrine of “lifting of or piercing of corporate veil”.

Circumstances in which Corporate veil can be lifted:

- 1 Where the corporate veil has been used for commission of fraud or improper conduct
- 2 Where the corporate façade is actually an agency instrumentality
- 3 Where the doctrine conflicts with public policy, courts lifted the corporate veil to protect the public policy
- 4 For determining the actual character or status of a company

- 5 Where the veil has been used for the sole purpose of evasion of taxes and duties
- 6 In quasi criminal cases, courts have sometimes lifted the veil
- 7 If the functioning of PSU lead to failure to perform constitutional duties, the State would become liable
- 8 If a company has abused its corporate personality for an unjust or inequitable purpose
- 9 Some statutes recognize lifting of corporate veil – Sections 45,147,212,247,242 of Companies Act, income tax and wealth tax legislations.
- 10 Use of corporate structure to conceal criminal activities
- 11 Lifting the corporate veil in case of SSI

Jones v lipman;
In re R G Films Ltd
Connors Bros v Connors
Diamler co ltd v Continental Tyre & Rubber co
In re Sir Dinshaw Manakjee Petit
Kapila Hingorani v State of Bihar
In re H and Others
Inalsa Ltd v union of India

Illegal Association:

Section 11 – No Company, association or partnership consisting of more than 20 persons (10 persons in case of banking business) shall be formed for carrying on business for gain unless it is registered as a company or is formed in pursuance of some other Indian law.

- Not applicable to Joint families

- Carrying on of business in contravention of this requirement will make every member of company, association or partnership personally liable for all liabilities
- Also liable to fine upto Rs.10000/-

Babulal v Laxmi Bharat Trading Co – Association formed at the instance of the Government for distribution of grain, had an element of gain; held to be illegal.

Effect of non registration : Association is illegal and the law does not recognize its existence. It is however, liable to be taxed

Miscellaneous:

Company is a person under the Civil Procedure Code – Supreme Court in ***Union Bank of India v Khader international Construction and Other***

Company, though a legal person, is not a citizen – ***State Trading Corporation of India Ltd v CTO. Section 2(f) of the Citizenship Act specifically excludes a company from citizenship.***

Individual's fundamental right is not lost merely because he is a shareholder of a company – ***R C Cooper v Union of India***

TYPES OF COMPANIES

1. PRIVATE COMPANY:

Definition [Section 3(i)(iii)] :- It is a company which:

- (a) Has a minimum paid-up capital of one lakh rupees or such higher sum as may be prescribed; and
- (b) By its articles :
 - i. Restricts the right to transfer its shares;
 - ii. Limits the number of its members to fifty (excluding employees and ex-employees)
 - iii. Prohibits any invitation to subscribe for any shares in or debentures of the company; and
 - iv. Prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

Other features:

- Joint members shall be treated as a single member for calculating the limit of fifty
- The words "Private limited" must be added at the end of its name
- It must have atleast two members (Section 12)
- It shall have atleast two directors (Section 252)
- The Act confers certain privileges and exemption on Private Limited Company
- Special obligations of a private limited company-

- Along with the Annual Return, it shall send certificate stating that the company (a) has not issued any invitation to public to subscribe to its shares ; and where the number of members exceeds fifty, they only comprise of employees or ex-employees. (Section 161(2)(b))
- A member of a private company cannot appoint more than one proxy to attend and vote at a meeting

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- If the conditions contained in Sec 3(1)(iii) are infringed, it shall cease to be a Private Company.

2. PUBLIC COMPANY:

Definition [Section 3(i)(iv)] :- It means a Company, which:

- (a) Is not a public company;
- (b) Has a minimum paid-up capital of five lakhs of rupees or such sum as may be prescribed;
- (c) Is a private company which is subsidiary of a company which is not a private company

Other features:

- It shall have atleast 7 members
- It shall have atleast 3 directors

Consequences of reduction in members:

- the number falls below 2 or 7 and the business is carried on for more than six months, the liability of the member shall be unlimited (Section 45)
- A valid ground for compulsory winding up (Sec 433(d))
- Contributory may present a petition for winding up on this ground (Sec 439(4)(a))

3. GUARANTEE COMPANY:

It is a company having liability of its members limited by its memorandum to such amount as the member may respectively undertake to contribute to the assets of the company in the event of winding up.

NOTE:

A Guarantee company may also issue shares. In which case, the liability of members would be two-fold; one, to the extent of amount unpaid on shares and two, to the extent of amount guaranteed in the event of winding up.

4. UNLIMITED COMPANY: (Section 12(2)(c))

It means a company which does not have any limit on the liability of its members. The liability of a member extends to the whole amount of company's debts and liabilities. However, liability of members is towards company and not directly towards creditors.

- The articles of an unlimited company shall state the number of members with which it is to be registered.(Sec 27(1))
- It may have shares capital. In which case, the articles shall state the amount of share capital with which it has to be registered [Sec 27(1)]

Note

An unlimited company may register itself as a limited company (Sec 32). However, the debts, liabilities, obligations or contracts prior to conversion shall remain unaffected.

5. ASSOCIATION NOT FOR PROFIT

An association not for profit may be registered as a company with limited liability under a licence from the Central Government.

- Such licence allows it not to add to its name the word(s) “limited” or “private limited”.
- These are also called as “licence Companies’ or ‘Section 25 Companies”.
- The licence is granted only if the CG is satisfied that an association:
 - is to be formed for promoting commerce, art, science, religion, charity or any other useful object; and
 - intends to apply its profits or income only for the promotion of its objects and prohibits payment of dividend to its members.
- A licence company shall enjoy all the privileges and be subject to all the obligations (except those exempted) of limited companies.
- A partnership firm may be a member of a “licence company”.
- A licence company shall not alter its objects except with the previous approval of CG

6. GOVERNMENT COMPANIES**Definition –Section 617:**

A Government company is any Company in which not less than 51% of the paid up share capital is held by:

- (a) The Central government; or
- (b) Any State Government or Governments; or
- (c) Partly by the Central government and partly by any of the State governments.

- **Section 620:** Central government may notify non applicability or applicability with exceptions or modifications of the provisions of the Act to the government companies.
- A Government company is neither a government department nor a government establishment – **Hindustan Steel Works Construction Ltd v State of Kerala**
- Government companies have a corporate personality of their own, distinct from that of the government of India. – The income or the assets are the assets of the Company; the government only owns the share capital - **Andhra Pradesh Road Transport Corporation v ITO**

Audit of Government Companies:

- Section 619: Auditor of a Government company shall be appointed by the Comptroller and Auditor General of India
- C & AG has the power to direct the manner in which the accounts are to be audited and instruct the auditor
- Auditor to submit a copy of his audit report to C & AG, who may comment or supplement the audit report
- The comments and/or supplementary report to be placed before AGM
- Central government must place before Parliament an annual report on the working and affairs of each government company within three months of AGM
- The annual report to be placed before state legislature if State Government is a member.

7. FOREIGN COMPANIES:

Definition – Section 591:

A foreign Company is a company which is incorporated in a country outside India and:

- (a) Has established a place of business in India after 1-4-1956
 - (b) Established a place of business in india before that date and continue to have a place of business in India.
- Within 30 days of the establishment of place of business, the foreign company shall file with ROC, New Delhi and jurisdictional ROC:
 - A certified copy of instrument defining constitution of the company or Memorandum & Articles of Association
 - Address of registered office
 - List of directors and secretary
 - Name and address of person authorized to accept service of documents
 - Full address of principal place of business in India
 - Provisions relating to accounts, their filing, creation of charges applicable as applicable to Indian companies
 - May be wound up as an unregistered company if it ceases to carry on business in India (Sec 582 to 590)
 - Place of business :
 - A share transfer office or share registration office constitutes place of business
 - Mere holding of property cannot be regarded as place of business
 - Mere receiving of orders from customers not held to be a place of business

8. HOLDING & SUBSIDIARY COMPANIES

Definition: Section 4-

A company shall be deemed to be a subsidiary of another, if and only if:

- (a) The other company controls the composition of its Board (Board controlled subsidiary)
- (b) The other company controls more than half of the total voting power or holds more than half in the nominal value of its equity capital (Shareholding controlled subsidiary)
- (c) It is a subsidiary of any company which is the subsidiary of the other company (Chain Subsidiary)

- Subsidiary company cannot be a member of a holding company, unless it became member prior to becoming its subsidiary (Sec 42)
- Shares held in fiduciary capacity to be ignored.
- Shares held by a nominee or by another subsidiary to be counted
- Shares held as security for business transaction in ordinary course to be ignored.

9. INVESTMENT COMPANIES:

A company, the principal business of which consists of acquiring, holding and dealing in shares and securities.

10. PRODUCER COMPANIES:

Section 581A to 581ZT deals with Producer Companies.

It is a body corporate:

- Having objects or activities specified in Sec 581B
- Whose membership is open to people who themselves are the primary producers
- which shall primarily deal with the produce of its active members for carrying out its objects

11. STATUTORY CORPORATIONS:

It is a company formed under an Act of Parliament or State Legislature. The special statute contains its constitution and scope of its activities

Features of Statutory Corporation:

1. Owned by the State	2. Distinct relation with the Government
3. Created by a special law of parliament or State legislature	4. Independent finances
5. Immunity from parliamentary scrutiny	6. Commercial audit
7. Freedom in regard to personnel	8. Operation on business principles
9. It is a body corporate	

Note:

Raman Dayaram Shetty v International Airport Authority – IAA held to be State and was required to observe principles of equality in its contractual dealings

Som Prakash v Union of India – BPCL was held to be State and hence amenable to Writ jurisdiction

Ajay Hasia V Khalid Mujib – REC held to be state and required to observe principles of equality for admission