

## Meaning of Company

The term 'company' may be described to imply an association of persons formed for some common object or objects. The purposes for which people may wish to associate themselves are multifarious and include economic as well as noneconomic objectives. However, the term 'company' is normally reserved for those associated for economic purpose, i.e., to carry on a business for gain. **This should, however, not give you an impression that a company under the companies Act cannot be created for non-economic or charitable purposes. In fact, Section 8 of the Companies Act, 2013 allows formation of non-profit associations as companies.**

Partnerships often describe themselves as 'A, B. C and Company'. But, this does not make the firm a company in the legal sense of the word; it only suggests that there are other persons also in the association.

In legal terminology a company means a company incorporated or registered under of the Companies Act, 2013 or under any of the earlier Companies Acts. Section 2(20) of the Companies Act, 2013 defines **a company to mean a company incorporated under this Act or under any previous company law.** This definition, however, is not exhaustive because it does not reveal the meaning and characteristics of a Company. Thus we have to see definition of a Company as given by famous Jurists.

**Lord Justice Lindley** defines a Company as follows:

"A company is an association of many persons who contribute money or money worth to a common stock and employ it in some trade or business, and who share the profit and loss (as the case may be) arising therefrom. The common stock so contributed is denoted in money and is the capital of the company. The persons who contribute it, or to whom it belongs, are called members. The proportion of capital to which each member is entitled is his share. Shares are always transferable although the right to transfer them is often more or less restricted."

According to **Lard Haney**, "A company is an incorporated association which is an artificial person created by law, having a separate entity, with a perpetual succession and a common seal."

## Nature of Company

- 1. Separate Legal Entity** - A company is perceived to be a distinct legal entity. Once incorporated under the Act, the company is vested with a corporate personality which does not depend on its members. The money credited by the creditors of the company can be recovered only from the company and the properties owned by the company. Individual members cannot be sued. Similarly, the company in any way is not liable for the individual debts of the members.
- 2. Limited liability** - Limited liability means the company's debts are its own and members are protected from personal liability unless they are negligent or gave personal guarantees. A company may be limited by shares or by guarantee. In a company limited by shares, the liability of members is limited to the unpaid value of the shares. If the

shares are fully paid i.e. if the amount has already been fully paid to the company, then the member need not contribute any more towards the company's debts. If the amount has not been fully paid, then the member's liability is limited to the unpaid amount.

- 3. Perpetual Existence** - Perpetual succession means that the membership of a company may keep changing from time to time, but that shall not affect its continuity. Its life does not depend upon the death, insolvency or retirement of any or all shareholder (s) or director (s). Law creates it and law alone can dissolve it.
- 4. Separate Property** - As a company is a legal person distinct from its members, it is capable of owning, enjoying and disposing of property in its own name. Although its capital and assets are contributed by its shareholders, they are not the private and joint owners of its property. The company is the juristic person in which all its property is vested and by which it is controlled, managed and disposed of.
- 5. Shares** - In a public company, the shares are freely transferable. The right to transfer shares is a statutory right and it cannot be taken away by a provision in the articles. However, the articles shall prescribe the manner in which such transfer of shares shall be made and it may also contain bona fide and reasonable restrictions on the right of members to transfer their shares. But absolute restrictions on the rights of members to transfer their shares shall be ultra vires. However, the law allows, in the case of a private company to have such articles which restrict the right of member to transfer his shares in company.
- 6. Common Seal** - A company cannot sign documents by itself. It acts through natural persons who are called its directors. A common seal is used with the name of the company engraved on it as a substitute of its signature. To be legally binding on the company, a document has to carry the company seal on it.

### Types of Company

#### **(A) On the basis of incorporation:**

- (i) Chartered companies
- (ii) Statutory companies
- (iii) Registered companies

#### **(B) On the basis of liability:**

- (i) Companies limited by shares
- (ii) Companies limited by guarantee
- (iii) Unlimited companies.

#### **(C) On the basis of number of members:**

- (i) Private company

(ii) Public company

**(D) According to Domicile:**

(i) Foreign company:

(ii) Indian Companies:

**(E) Miscellaneous Category:**

(i) Government Company:

(ii) Holding and subsidiary companies:

(iii) One man Company

**(A) On the basis of incorporation:**

On the basis of incorporation, companies can be classified as:

- (i) **Chartered companies:** The crown in exercise of the royal prerogative has power to create a corporation by the grant of a charter to persons assenting to be incorporated. Such companies or corporations are known as chartered companies. Examples of this type of companies are Bank of England (1694), East India Company (1600). The powers and the nature of business of a chartered company are defined by the charter which incorporates it. After the country attained independence, these types of companies do not exist in India.
- (ii) **Statutory companies:** A company may be incorporated by means of a special Act } of the Parliament or any state legislature. Such companies are called statutory companies, Instances of statutory companies in India are Reserve Bank of India, the Life Insurance Corporation of India, the Food Corporation of India etc. The provisions of the Companies Act 1956 apply to statutory companies except where the said provisions are inconsistent with the provisions of the Act creating them. Statutory companies are mostly invested with compulsory powers.
- (iii) **Registered companies:** Companies registered under the Companies Act 1956, or earlier Companies Acts are called registered companies. Such companies come into existence when they are registered under the Companies Act and a certificate of incorporation is granted to them by the Registrar.

**(B) On the basis of liability:**

On the basis of liability the company can be classified into:

- (i) **Companies limited by shares:** When the liability of the members of a company is limited to the amount if any unpaid on the shares, such a company is known as a company limited by shares. In a company limited by shares the liability of the members is limited to the amount if any unpaid on the shares respectively held by them. The

liability can be enforced during existence of the company as well as during the winding up. Where the shares are fully paid up, no further liability rests on them.

- (ii) **Companies limited by guarantee:** It is a registered company in which the liability of members is limited to such amounts as they may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up. In the case of such companies the liability of its members is limited to the amount of guarantee undertaken by them. Clubs, trade associations, research associations and societies for promoting various objects are various examples of guarantee companies.
- (iii) **Unlimited companies:** A company not having a limit on the liability of its } members is termed as unlimited company. In case of such a company every member is liable for the debts of the company as in an ordinary partnership in proportion to his interest in the company. Such companies are not popular in India.

### **(C) On the basis of number of members:**

**(i) Private company:** A private company means a company which by its articles of association:

(i) Restricts the right to transfer its shares

(ii) Limits the number of its members to fifty (excluding members who are or were in the employment of the company) and

(iii) Prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(iv) Where two or more persons hold one or more shares in a company jointly, they are treated as a single member. There should be at least two persons to form a private company and the maximum number of members in a private company cannot exceed 50. A private limited company is required to add the words "Private Ltd" at the end of its name.

**(ii) Public company:** A public company means a company which is not a private company. There must be at least seven persons to form a public company. It is of the essence of a public company that its articles do not contain provisions restricting the number of its members or excluding generally the transfer of its shares to the public or prohibiting any invitation to the public to subscribe for its shares or debentures. Only the shares of a public company are capable of being dealt in on a stock exchange.

### **(D) According to Domicile:**

**(i) Foreign company:** It means a company incorporated outside India and having a place of business in India.

According to Section 591 a foreign company is one incorporated outside India:

(a) Which established a place of business within India after the commencement of this Act or

(b) Which had a place of business within India before the commencement of this Act and continues to have the same at the commencement of this Act.

**(ii) Indian Companies:** A company formed and registered in India is known as an Indian Company.

**(E) Miscellaneous Category:**

**(i) Government Company:** It means any company in which not less than 51 percent of the paid up share capital is held by the Central Govt, and/or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments. The subsidiary of a Government company is also a Government company.

**(ii) Holding and subsidiary companies:** A company is known as the holding company of another company if it has control over } another company. A company is known as subsidiary of another company when control is exercised by the latter over the former called a subsidiary company. A company is to be deemed to be subsidiary company of another .

**(iv) One man Company:** This is a company in which one man holds practically the whole of the share capital of } the company and in order to meet the statutory requirement of minimum number of members, some dummy members hold one or two shares each. The dummy members are usually nominees of principal shareholder. The principal shareholder is in a position to enjoy the profits of the business with limited liability. Such type of companies are perfectly valid and not illegal.

**MEMORANDUM OF ASSOCIATION**

The Memorandum of association is the most important document of the company. This is a document which sets out the constitution of a company. It defines the company's relations with the outside world, and the scope of its activities. Its purpose is to enable the shareholders, creditors as well as those who deal with the company to know the company's permitted range of enterprises.

**ARTICLES OF ASSOCIATION:**

**Meaning:** The articles are the internal regulation of the company on the basis of which its internal affairs are managed. They lay down the powers of the directors, shareholders and officers. It is not compulsory for the a public company to prepare its own article of association as it can follow Table A of companies act whereas preparation of articles of association is compulsory for private company.