INTRODUCTION TO COMPANY

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MEANING OF COMPANY

Company is a voluntary association of persons formed for the purpose of doing business having a distinct name and limited liability. It is a juristic person having a separate legal entity distinct from the members who constitute it, capable of rights and duties of its own and endowed with the potential of perpetual succession. The Companies Act, 2013, states that 'company' includes company formed and registered under the Act or an existing company i.e. a company formed or registered under any of the previous company laws.

Lord Justice Lindley has defined a company as “an association of many persons, who contribute money or money’s worth to a common stock and employ it for a common purpose. 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 members. The proportion of capital to which each member is entitled is his share”. In brief, a company can be defined as an artificial (legal) person with its independent legal entity.

FEATURES OF A COMPANY

1. Registration:

A company comes into existence only after registration under the Companies Act. But a Statutory Corporation is formed and commence business as notified or stated in the Act and as passed in Legislature. In case of partnership, registration is not compulsory.

2. Voluntary Association:

A company is an association of many persons on a voluntary basis. Therefore a company is formed by the choice and consent of the members.

3. Legal Personality:

A company is regarded by law as a single person. It has a legal personality. This rule applies even in the case of “One-man Company.”

4. Contractual Capacity:

A shareholder of a company, in its individual capacity, cannot bind the company in any way. The shareholder of a company can enter into contract with the company and can be an employee of the company.

5. Management:

A company is managed by the Board of Directors, whole time Directors, Managing Directors or Manager. These persons are selected in the manner provided by the Act and the Articles of Association of the company. A shareholder, as such, cannot participate in the management.

6. Permanent Existence:

The company has perpetual succession. The death or insolvency of a shareholder does not affect its existence. A company comes into end only when it is liquidated according to provision of the Companies Act.

7. Common Seal:

Being an artificial person, company cannot sign the documents. Hence, it uses a common seal on which its name is engraved. Putting the common seal on papers relating to company’s transactions makes them binding on the company.

ADVANTAGES OF A COMPANY

1. Limited Liability:

The liability of shareholders, unless and otherwise stated, is limited to the face value of shares held by them or guarantee given by them.

2. Perpetual Existence:

Deaths, insanity, insolvency of shareholders or directors do not affect the company’s existence. A company has a separate legal entity with perpetual succession.

3. Professional Management: In company business, the management is in the hands of the directors who are elected by the shareholders and are well experienced persons. In order to manage the day-to-day activities, salaried professional managers are appointed. Thus, the company business offers professional management.

4. Expansion Potential:

As there is no limit to the maximum number of shareholders in a public limited company, expansion of business is easy by issuing new shares and debentures. Companies normally use their reserves for expansion purposes.

5. Transferability of Shares:

If the shareholders of a company are displeased with the progress of the business, they can sell their shares any time. During all this change of ownership, the business continues to operate.

6. Diffusion of Risk:

As the membership is very large, the whole business risk is divided among the several members of the company. This is an advantage particularly for small investors.

DISADVANTAGES OF A COMPANY

1. Lack of Secrecy:

As per the legal provisions, a company has to make various statements available to the Registrar of the Companies, Financial Institutions; the secrecy of business comes down. It is further reduced when the company provides its annual report to the shareholders as the competitors do also find out the details of all financial data.

2. Restrictions:

Compared to proprietorship and partnership, a company has to comply with more legal requirements. It consumes considerable time and effort.

3. Management Mischief's: Sometimes the managers and directors misuse the company resources for their personal benefits. This brings losses to the company and company is closed.

4. Lack of Personal Interest:

Unlike proprietorship and partnership, the day-to-day affairs of a company are looked after by salaried managers. Since they are the employees not the owners, they do have hardly any personal interest and commitment in the company. This may result in inefficiency and, in turn, losses.

Corporations also have disadvantages compared to proprietorships and partnerships when it comes to taxation. Since the corporation and the stockholders are considered to be two different legal entities, they face the problem of double taxation, meaning that the owners are taxed twice.

If an owner of a corporation works for the corporation, he is paid a salary, and possibly bonuses, like any other employee. He pays taxes on this income, as do regular employees, reporting and paying the tax on his personal tax return. The corporation also pays taxes on whatever profits are left in the businesses after paying out all salaries, bonuses, overhead and other expenses.

KINDS OF COMPANIES

(A) On the basis of incorporation:

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

(i) Chartered companies

(ii) Statutory companies

(iii) Registered companies

(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 2013 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 2013, 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
(ii) Companies limited by guarantee
(iii) Unlimited companies.

(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:

In case of companies limited by guarantee, each member gives guarantee for the debts of the company up to a certain extent and is liable to contribute to the assets of the company in the event of its winding up.

(iii) Unlimited companies:

A company laying no limit on the liability of its members is known as unlimited company.

(C) On the basis of public interest:

On the basis of public interest the company can be classified into:

(i) Private company
(ii) Public company
(iii) Small company
(iv) One Person company

(i) Private Company: According to section 2(68) of the Companies Act, 2013, private company is a company having a minimum paid-up share capital of one lakh rupees which, by its articles:

a) Restricts the right to transfer its shares, if any,
b) Limits the number of its members to two hundred excluding the present & past employees, members, and
c) prohibits any invitation to the public to subscribe to any shares in, or debentures of the company.

(ii) Public Company: Section 2(71) of Companies Act, 2013 provides that public company means a company which-

a) is not a private company;

b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital as may be prescribed.

(iii) Small Company: Section 2(85) of Companies Act, 2013 provides that small company means a company other than public company-

a) Whose paid-up capital doesn't exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees: or

b) Whose turnover as per last profit and loss account doesn’t exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees.

(iv) One Person Company: Section 2(62) of Companies act,2013 Defines that One Person Company means a company which has only Person as a member. One person is required to identify in its name in bracket as “One person Company” after its name. Section 3(1)(C) of the Act provides that where the company to be framed is to be one person company that is to say, a private company, the company may be formed by one person subscribing his name to a memorandum and complying with the requirements of this Act in respect of registration.

(D) Miscellaneous Category:

(i)Government Company: A Government company is one in which not less than 51% of the paid-up share capital is held by the Central Government or a State Government or jointly by both.

A Government company may either by wholly owned by the Government, in which case 100% capital is provided by Government; or may be owned by the Government (holding minimum of 51% share-capital) and private concerns/individuals (holding maximum of 49% share capital)

(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

If the other:

(a) Controls the composition of its Board of directors or

(b) Exercises or controls more than half of its total voting power where it is an existing company in respect where of the holders of preference shares issued before the commencement of the Act have the same voting rights as the holders of equity shares or

(c) In the case of any other company holds more than half in nominal value of its equity share capital or

(b) If it is a subsidiary of a third company which is subsidiary of the controlling company.

Thank You