



Introduction to Company

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Company

- **The Companies Act 2013 of India defines a company as-**

“A registered association which is an artificial legal person, having an independent legal, entity with a perpetual succession, a common seal for its signatures, a common capital comprised of transferable shares and carrying limited liability.”

- A more precise, global and modern *definition of a company* could be:

A *business entity* which acts as an artificial legal person, formed by a legal person or a group of legal persons to engage in or carry on a business or industrial enterprise.

- **Legal Person:** A *legal person* could be human or a non-human entity which is recognised by law as having legal rights and is subject to obligations.
- **A person or a group of persons:** It is no more required to be an association of persons to form a company. A company can also be started as a single person company (one-person company).

Company Vs Corporation

- All corporations are companies, but not all companies are corporations. Company is a much broader term than corporation, and it encompasses a lot of different types of businesses. These are a few of the key differences between a company and a corporation.
- Companies can be structured in different ways. For example, your company can be a sole proprietorship, a partnership, or a corporation. Depending on which different type of company you're dealing with, it may be owned by one person or a group of people. Liability in most types of company is assumed by the owners, and can either be limited or unlimited depending on the type.

Corporation

Corporations are different from other types of company in that they exist separately from their legal owners. That means that liability is separate as well. With corporations, liability is limited to the holding of shares. In fact, shareholding is a major difference between corporations and other types of companies. With corporations, the shareholders each own a small piece of the larger corporate structure. Most companies are typically owned by one or a small handful of people, while corporations can be owned by thousands of different individuals.



**Features &
Characteristics
Of A Company**

Main Features of A Company

- *Separate Legal Entity*
- *An Artificial Person But Not A Citizen.*
- *Perpetual Succession*
- *Common Seal*
- *Separate Name*
- *Limited Liability*
- *Transferability of Shares*
- *Separate Property*
- *Number of Members*



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Incorporated association

- A company comes into existence when it is registered under the Companies Act (or other equivalent act under the law). A company has to fulfil requirements in terms of documents (MOA, AOA), shareholders, directors, and share capital to be deemed as a legal association.
- ✓ Memorandum of Association is the important document which contains the fundamental conditions and purposes for which a company is formed. In fact, a company does not have its existence beyond its memorandum of association. The other important document is the Articles of Association which lay down the rules and regulations for governance of the company.

Artificial Legal Person

- In the eyes of the law, A company is an artificial legal person which has the rights to acquire or dispose of any property, to enter into contracts in its own name, and to sue and be sued by others.
- The corporate property is clearly distinguished from the members' property and members have no direct proprietary rights to the company's property but merely their 'shares'. Change in the constitution of the company's membership will not cause any realization or slitting of its property.
- Company cannot be the property of the person who owns all the shares in the company, nor can it be considered to be his agent. No member can either individually or jointly claim any ownership rights in the assets of company during its existence or on its winding up.

Macaura v. Northern Assurance Co. Ltd. (1925):

- “No shareholder has any right to any item of property owned by the company, for he has no legal or equitable interests therein.” A member cannot have any insurable interest in the property of the company. The leading case is:
- **Macaura v. Northern Assurance Co. Ltd. (1925):**
- Mr. Macaura was the holder of nearly all the shares, except one, of a timber company. He was also the substantial creditor. He insured the company’s timber in his own name.
- The timber was destroyed by fire. It was held that the insurance company was not liable to compensate as Macaura had no insurable interest in the property which belonged to the company only.

Separate Legal Entity

- A company has a distinct entity and is independent of its members or people controlling it. A separate legal entity means that only the company is responsible to repay creditors and to get sued for its deeds. The individual members cannot be sued for actions performed by the company. Similarly, the company is not liable to pay personal debts of the members.
- A company has a legal entity distinct and separate from its constituent members (shareholders). It is an autonomous body, self-controlling and self-governing. It can hold and deal with any type of property of which it is the owner, in any way it likes. It can enter into contracts, open a bank account in its own name, sue and be sued by its members as well as outsiders.
- The rights and obligations of a company are distinct from its constituent members. "Shareholders are not, in the eyes of the law, part owners of the undertaking. The undertaking is something different from the totality of the shareholders." Shareholders cannot be held liable for the wrongs or misdeeds of the company.

- A company has a nationality, domicile and residence but cannot ask for the enforcement of those fundamental rights which are exclusively available to national citizens. The nationality of the company, however, does not depend upon the nationality of its shareholders.
- A company can enter into partnership with one or more individuals or another company. It can buy shares or debentures of another company. A company can form other companies by subscribing to their Memorandum of Association.
- A director of a company can be the office bearer of the trade union of the workers of the same company. A shareholder, if qualified as a chartered accountant, can be the auditor of the same company.
- A director or a managing director cannot be held personality liable for the payment of arrears of taxes or salaries of employees due by the company. A company can sue for libel or slander effecting its business reputation.

Salomon v. Salomon & Co. Ltd.(1897)

- Thus, a creditor of an incorporated company has remedy only against the company for his debts and not any of the members of whom it is composed. The position was further clarified by the House of Lords in the famous case of Salomon v. Salomon & Co. Ltd.(1897) The facts of the case are as follows:
- Mr. Salomon was the owner of a prosperous shoe business. He floated a company 'Salomon & Co. Ltd.' with only seven shareholders – himself, his wife, daughter and four sons. The newly formed company purchased the sole proprietorship business of Mr. Salomon for £ 40,000.
- The purchase consideration was paid by the company by allotment of £ 20,000 shares and £ 10,000 debentures and the balance in cash to Mr. Salomon. The debentures carried a floating charge on the assets of the company.

- The company went into liquidation within a year due to trade depression. On winding up, assets of the company were running short of its liabilities by £11,000. The unsecured creditors of the company contended that the company, though incorporated under the Act, had never an independent existence; it was in fact Salomon under the name of a company.
- On this ground, the creditors claimed priority for the payment of their debts over the debenture-holders (Mr. Salomon). Debentures had a floating charge on the assets of the company.
- The plea of the unsecured creditors that Mr. Salomon and Salomon & Co. are one and the same was not accepted by the court. It was held that the existence of a company is quite independent and distinct from its members. Shareholders may also be the creditors of the company. Court recognized the separate and independent personality of the company.

- “The company is at law a different person altogether from the subscribers to the memorandum, and though it may be that after incorporation the business is precisely the same as before, the same persons are managers, and the same hands receive the profits, the company is not in law their agent or trustee.
- There is nothing in the Act requiring that the subscribers to the Memorandum should be independent for unconnected, or that they or any of them should take a substantial interest in the undertaking, or that they should have a mind or will of their own, or that there should be anything like a balance of power in the constitution of the company.”

Lee v. Lee's Air Farming Ltd. (1961)

- The concept of separate corporate entity was again confirmed in the case of Lee v. Lee's Air Farming Ltd. (1961).
- Lee formed a company for the purpose of carrying on his own business of aerial top-dressing. He was the beneficial owner of the shares and also the sole "governing director" of the company.
- He also got himself appointed as the chief pilot of the company and under statutory obligations caused the company to insure him against liability to pay compensation under the Workmen's compensation Act.

- He was killed in a flying accident. In a suit by his widow for compensation, the Privy Council held that Lee and his company were distinct legal entities which had entered into contractual relationships under which he became, qua chief pilot, a servant of the company.
- In his capacity of governing director, he could, on behalf of the company, give himself orders, in his other capacity of pilot, and hence the relationship between himself as pilot, and the company was that of a servant and master. In effect the magic of corporate personality enabled him to be a master and servant at the same time and to get all the advantages of both—and of limited liability.'

- The Indian Courts have also unequivocally upheld the independent legal entity of a company in various cases, a few of which are cited below:
- **Re. Kondoli Tea Co. Ltd. (1886):**
- Some persons owned a tea estate. They transferred it to a company. They claimed exemption from ad valorem (according to value) duty on the ground that it is simply a transfer from them to themselves under a different name.
- The court did not accept this contention and observed, "The Company was a separate body altogether from the shareholders and the transfer was as much a conveyance, a transfer of property, as the shareholders had been totally different persons."

- **Abdul Haq v. Das Mai (1910):**

- Abdul Haq was an employee in a company. He had not been paid his salary for several months. He sued Das Mai, a director of the company for recovery of the amount of salary due to him. It was held that he would not succeed, because “the remedy lies against the company and not against the directors or members of the company.
- The liability of an individual member is not increased by the fact that he is the sole person beneficially interested in the property of the company and that the other members have become members merely for the purpose of enabling the company to become incorporated and possess only a nominal interest in its property or hold it in trust for him.
- The concept of independent corporate entity may under certain circumstances be disregarded. This is explained later in the book while explaining the circumstances under which the corporate veil may be pierced, or lifted up.

Perpetual Existence

- Unlike other non-registered business entities, a company is a stable business organisation. Its life doesn't depend on the life of its shareholders, directors, or employees. Members may come and go but the company goes on forever.
- A company has a perpetual, succession. It has no allotted span of life. The mode of incorporation and dissolution of a company and the right of the members to transfer shares freely guarantee the continuity of the existence of the company quite independent of the life of the members. The existence of a company can be terminated only by law.
- Being an artificial person, it cannot die irrespective of the fact that its members, even the founders or subscribers to the Memorandum, may die or go out of it. Moreover, in spite of the changes in the membership of the company, it can perform its contracts and enter into future agreements

Common Seal

- A company being an artificial legal person, uses its common seal (with the name of the company engraved on it) as a substitute for its signature. Any document bearing the common seal of the company will be legally binding on the company.
- Though a company has an artificial personality, it acts through human beings, who are called as directors. They act as agents to the company but not to its members. All the acts of the company are authorized by its “common seal”. The “common seal” is the official signature of the company. A document not bearing the common seal of the company will not be binding on the company.

Limited Liability

- A company may be limited by guarantee or limited by shares. In a company limited by shares, the liability of the shareholders is limited to the unpaid value of their shares. In a company limited by guarantee, the liability of the members is limited to the amount they had agreed upon to contribute to the assets of the company in the event of it being wound up.
- Creditors cannot claim from the personal wealth of the shareholders. In the case of a guarantee company, the members are liable to contribute a specified agreed sum to the assets of the company in the event of the company being wound up.

Transferability of Shares

- One can sell one's share of ownership rights to an interested buyer as the shares of a company are transferable. While in case of public companies shares are freely transferable which is provided by the law, there are some restrictions in the transferability of shares of private companies. In fact transferability of shares and limited liability are the enabling factors for the tremendous rise of companies all over the world.



Thank You.