Company law

BBA 602-18

Lecture notes

COMPANY LAW

The word ‘company’ is derived from the Latin word Com Panis (Com means ‘With or together’ and Panis means ‘Bread’), and it originally referred to an association of persons who took their meals together. In the leisurely past, merchants took advantage of festive gatherings, to discuss business matters. In popular parlance, a company denotes an association of like minded persons formed for the purpose of carrying on some business or undertaking In the legal sense, a company is an association of both natural and artificial persons and is incorporated under the existing law of a country. In terms of the Companies Act, 2013 a “company” means a company incorporated under this Act or under any previous company law [Section 2 (68)] In common law, a company is a “legal person” or “legal entity” separate from, and capable of surviving beyond the lives of its members.

NATURE AND CHARACTERISTICS OF COMPANY

1**. CORPORATE PERSONALITY**: A company incorporated under the Act is vested with a corporate personality so it bears its own name, acts under name, has a seal of its own and its assets are separate and distinct from those of its members. It is a different ‘person’ from the members who compose it. Therefore it is capable of: owning property, incurring debts, borrowing money, having a bank account, employing people, entering into contracts and suing or being sued in the same manner as an individual.

2. **COMPANY AS AN ARTIFICIAL PERSON**: A Company is an artificial person created by law. It is not a human being but it acts through human beings. It is considered as a legal person which can enter into contracts, possess properties in its own name, sue and can be sued by others.

3. COMPANY IS NOT A CITIZEN: The company, though a legal person, is not a citizen under the Citizenship Act, 1955 or the Constitution of India.

4. COMPANY HAS NATIONALITY AND RESIDENCE: Though it is established through judicial decisions that a company cannot be a citizen, yet it has nationality, domicile and residence.

5. LIMITED LIABILITY: "The privilege of limited liability for business debts is one of the principal advantages of doing business under the corporate form of organisation." The company, being a separate person, is the owner of its assets and bound by its liabilities. The liability of a member as shareholder, extends to the contribution to the capital of the company up to the nominal value of the shares held and not paid by him.

6. PERPETUAL SUCCESSION: An incorporated company never dies, except when it is wound up as per law. A company, being a separate legal person is unaffected by death or departure of any member and it remains the same entity, despite total change in the membership. Perpetual succession, means that the membership of a company may keep changing from time to time, but that shall not affect its continuity.

7. SEPARATE PROPERTY: A company being a legal person and entirely distinct from its members, is capable of owning, enjoying and disposing of property in its own name. The company is the real person in which all its property is vested, and by which it is controlled, managed and disposed off.

8. TRANSFERABILITY OF SHARES: The capital of a company is divided into parts, called shares. The shares are said to be movable property and, subject to certain conditions, freely transferable, so that no shareholder is permanently or necessarily wedded to a company. Section 44 of the Companies Act, 2013 enunciates the principle by providing that the shares held by the members are movable property and can be transferred from one person to another in the manner provided by the articles.

9. CAPACITY TO SUE AND BE SUED: A company being a body corporate, can sue and be sued in its own name.

10. CONTRACTUAL RIGHTS: A company, being a legal entity different from its members, can enter into contracts for the conduct of the business in its own name.

11. LIMITATION OF ACTION: A company cannot go beyond the power stated in its Memorandum of Association. The Memorandum of Association of the company regulates the powers and fixes the objects of the company and provides the edifice upon which the entire structure of the company rests.

12. SEPARATE MANAGEMENT: The members may derive profits without being burdened with the management of the company. They do not have effective and intimate control over its working and they elect their representatives as Directors on the Board of Directors of the company to conduct corporate functions through managerial personnel employed by them. In other words, the company is administered and managed by its managerial personnel.

13. VOLUNTARY ASSOCIATION FOR PROFIT: A company is a voluntary association for profit. It is formed for the accomplishment of some stated goals and whatsoever profit is gained is divided among its shareholders or saved for the future expansion of the company.

14. TERMINATION OF EXISTENCE: A company, being an artificial juridical person, does not die a natural death. It is created by law, carries on its affairs according to law throughout its life and ultimately is effaced by law. Generally, the existence of a company is terminated by means of winding up

Classification of Companies

- Companies Limited by Shares
- Companies Limited by Guarantee

- Unlimited Companies
- One Person Companies (OPC)
- Private Companies
- Public Companies
- Holding and Subsidiary Companies
- Associate Companies
- Companies in terms of Access to Capital
- Government Companies
- Foreign Companies
- Charitable Companies
- Dormant Companies
- Nidhi Companies
- Public Financial Institutions

Companies on the Basis of Liabilities

When we look at the liabilities of members, companies can be limited by shares, limited by guarantee or simply unlimited.

a) 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.

b) <u>Companies Limited by Guarantee</u>

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.

c) <u>Unlimited Companies</u>

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.

<u>Companies on the basis of members</u>

a) <u>One Person Companies (OPC)</u>

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.

b) <u>Private Companies</u>

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.

c) 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.

Companies on the basis of Control or Holding

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

a) 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.

b) 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.

Companies in terms of Access to Capital

When we consider the access a company has to capital, companies may be either listed or unlisted.

Listed companies have their securities listed on stock exchanges. This means people can freely buy their securities. Hence, only public companies can be listed, and not private companies.

Unlisted companies, on the other hand, do not list their securities on stock exchanges. Both, public, as well as private companies, can come under this category.

Other Types of Companies

a) Government Companies

Government companies are those in which more than 50% of share capital is held by either the central government, or by one or more state government, or jointly by the central government and one or more state government.