

CORPORATE ADMINISTRATION

UNIT 1: INTRODUCTION TO COMPANY

DEFINITION

A company is “an association of many persons who contribute money or money’s 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 there from.” —James Stephenson

CHARACTERISTICS OF A JOINT STOCK COMPANY

Characteristics of a Joint Stock Company are as follows:

1. Incorporated association:

A company is called an incorporated association because it comes into existence only after registration.

2. Minimum Number of Members:

Forming a public company at least 7 persons and for forming a private company at least 2 persons are required.

3. Artificial legal person:

A company is a creation of law and is called an artificial person. It exists only in the eyes of law.

4. Distinct legal entity:

A company is regarded as an entity separate from its members. The company has (i) the right to own the property in any way it likes. (ii) Can sue and be sued in its own name by its members as well as outsiders.

5. Perpetual succession:

The death, insolvency of any members has no effect on the life of a Company.

6. Common Seals:

The company must have a common seal with its name engraved on it.

7. Transferability of shares:

The member can transfer the shares in case Public Company. In a private company, there is a restriction on transfer of shares.

8. Limited liability:

The liability of members is limited in case Company limited by shares. In case of a company whose liability is limited by guarantee, the liability of the members is limited to such amount as the members may decide to contribute in the assets of the company, in the event of its being wound up.

CLASSIFICATION OF COMPANIES

Classification on the basis of Incorporation

There are three ways in which companies may be incorporated.

1. Chartered Company

If a company is incorporated under a special charter granted by the monarch, it is called a Chartered Company and is regulated by that Charter.

2. Statutory Companies

These are constituted by a special Act of Parliament or State Legislature. Examples of these types of companies are Reserve Bank of India, Life Insurance Corporation of India, etc.

Registered Companies

These are the companies which are incorporated under the Companies Act, 2013 or under any previous company law.

Classification on the basis of Liability

Under this category there are three types of companies:

1. Unlimited Liability Companies

In this type of company, the members are liable for the company's debts and their liability is unlimited.

2. Companies limited by guarantee

A company that has the liability of its members limited to such amount as the members may respectively undertake, by the memorandum, to contribute to the

assets of the company in the event of its being wound-up, is known as a company limited by guarantee.

3. Companies limited by shares

A company that has the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them is termed as a company limited by shares.

Other Forms of Companies

1. Associations not for profit or Sec 8 Company

A Section 8 company can be established for “promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object”, provided it “intends to apply its profits, if any, or other income in promoting its objects” and “intends to prohibit the payment of any dividend to its members.”.

2. Government Companies

According to Sec (45) “Government company” means any company in which not less than fifty one % of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

3. Foreign Companies

According to Sec. 2(42) a foreign company is a company which is incorporated in any country outside India under the law of that country and has a place of business in India.

4. Public Company

Sec 2... (71) “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.

5. Private Company

Section 2 Sub section (68) defines the Private Company. The “private company” means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and

which by its articles,—

- (i) restricts the right to transfer its shares;
- (ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

- (A) persons who are in the employment of the company; and
- (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
- (iii) prohibits any invitation to the public to subscribe for any securities of the company.

6. Holding Company and Subsidiary Company

“Subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company —

- (i) Controls the composition of the Board of Directors; or
- (ii) Exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

7. Small company

“Small company” means a company, other than a public company,—

- (i) Paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
- (ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act;

8. Associate Company

Under Sec2 (6) “associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

9. One Person Company

Section 2(62) of the Companies Act, 2013 (“Act”) defines OPC as a company which has only one person as a member.

10. Listed Company

Section 2(52) defines a listed company as a company which has any of its securities listed on any recognized stock exchange.

DIFFERENCE BETWEEN PUBLIC COMPANY AND PRIVATE COMPANY

BASIS FOR COMPARISON	PUBLIC COMPANY	PRIVATE COMPANY
Definition	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.	Section 2 Sub section (68) defines the Private Company. The “private company” means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,— (i) restricts the right to transfer its shares; (ii) except in case of One Person Company, limits the number of its members to two hundred:

BASIS FOR COMPARISON	PUBLIC COMPANY	PRIVATE COMPANY
Minimum members	7	2
Maximum members	Unlimited	200
Minimum Directors	3	2
Suffix	Limited	Private Limited
Start of business	After receiving certificate of incorporation and certificate of commencement of business.	After receiving certificate of incorporation.
Issue of prospectus / Statement in lieu of prospectus	Can issue Prospectus	Not required
Public subscription	Allowed	Not allowed
Quorum at AGM	<p>five members personally present if the number of members as on the date of meeting is not more than one thousand;</p> <p>fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five</p>	2 members must present in person.

BASIS FOR COMPARISON	PUBLIC COMPANY	PRIVATE COMPANY
	thousand; thirty members personally present if the number of members as on the date of the meeting exceeds five thousand;	
Transfer of shares	No Restriction on transfer of Shares	Restricted
Minimum Paid Up Share Capital	Rs. 5,00,000	Rs. 1,00,000

HIGHLIGHTS OF COMPANIES ACT 2013

There are 450 Sections, 7 schedules and 29 chapters.

Introduction of One Person Company (OPC)

It's a Private Company having only one Member and at least One Director. The one basic pre-requisite to incorporate an OPC is that the only natural-born citizens of India, including small businessmen, entrepreneurs, artisans, weavers or traders among others can take advantage of the 'One Person Company' (OPC) concept outlined in the new Companies Act. The OPC shall have minimum paid up capital of Rupees 1 Lakh and shall have no compulsion to hold AGM (Annual General meeting).

Small Company

It means a company, other than a public company, paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or turnover of which as per its last profit and loss account does not exceed two Crore rupees or such higher amount as may be prescribed which shall not be more than twenty Crore rupees. The 2013 Act provides exemptions to Small Companies primarily from

certain requirements relating to board meeting, presentation of cash flow statement and certain merger process.

Minimum members for private company

The new act has increased the limit of the number of members from 50 to 200.

Immediate changes in stationery

The letterhead, bills or invoices, quotations, emails, publications & notifications, letters or other official communications, should bear the full name of contact person, address of company's registered office, Corporate Identity Number (CIN No. which is a 21 digit number allotted by Government), Telephone number, fax number, Email id, contact website (if any).

Articles of Association

In the next General Meeting, it is desirable to adopt Table F as standard set of Articles of Association of the Company with relevant changes to suite the requirements of the company. Further, every copy of Memorandum and Articles (MOA) issued to members should contain a copy of all resolutions / agreements that are required to be filed with the Registrar of companies (ROC).

Commencement of business

For all the companies (public/private Company) registered under Companies Act 2013 needs to file the following with the Registrar of Companies (ROC) in order to commence their business –

1. A declaration by the director in prescribed form stating that the subscribers/ promoters to the memorandum have paid the value of shares agreed to be taken by them
2. A confirmation that the company has filed a verification of its registered office with the Registrar of companies (ROC)

In the case of a company requiring registration from any sectoral regulators such as RBI, SEBI etc., approval from such regulator shall be required prior to starting the business.

Financial Year

The Companies Act 1956 Act provided companies to elect financial year. The Companies Act 2013 Act eliminates the existing flexibility in having a financial year different than 31 March. The 2013 Act provides that the financial year for all companies should end on 31 March, with certain exceptions approved by the

National Company Law Tribunal. Companies should align the financial year to 31 March within two years from 01 April 2014.

Eligibility age to become Managing Director or whole time Director

The eligibility criteria for the age limit have been revised to 21 years as against the existing requirement of 25 years.

Number of directorships held by an individual

Section 165 provides that a person cannot have directorships (including alternate directorships) in more than 20 (twenty) companies, including ten (ten) public companies. It provides a transition period of one year from 1 April 2014 to comply with this requirement

Board of Directors and Disqualifications for appointment of director

The 2013 Act requires that the company shall have a maximum of 15 (fifteen) directors (earlier it was 12) and appointing more than 15 (fifteen) directors will require special resolution by shareholders.

Further, it requires appointment of at least one woman director on the board for prescribed class of companies. It also requires that company should have at least 1 (one) resident director i.e. who has stayed in India for a total period of not less than 182 (hundred and eighty two days) in the previous calendar year.

All existing directors must have Directors Identification Number (DIN) allotted by central government. Directors who already have DIN need not take any action. However, Directors not having DIN should initiate the process of getting DIN allotted to him and inform the respective companies on which he is a director. The Company, in turn, has to inform the registrar of companies (ROC).

Independent Directors

The 2013 Act defines the term "Independent Director". In case of listed companies, one third of the board of directors should be independent directors. There is a transition period of 1 (one) year from 01 April 2014 to comply with this requirement. The 2013 Act also provides additional qualifications/restrictions for independent directors as compared to the 1956 Act.

Section 150 enables manner of selection of independent directors and maintenance of databank of independent directors and enables their selection out of data bank maintained by a prescribed body.

Resident Director

Every Company must have at least one director who has stayed in India for a total period of 182 days or more in previous calendar year. For existing companies, the compliance needs to be made before 31st March 2015.

Loans to director

The Company cannot advance any kind of loan / guarantee / security to any director, Director of holding company, his / her partner/s, his/ her relative/s, Firm in which he or his relative is partner, private limited in which he is director or member or any bodies corporate whose 25% or more of total voting power or Board of Directors is controlled by him.

Appointment of managing director, whole time director or manager [section 196 of 2013 Act]

The re-appointment of a managerial person cannot be made earlier than one year before the expiry of the term instead of two years as per the existing provision of section 317 of the 1956 Act. However, the term for which managerial personnel can be appointed remains as five years. Further, the 2013 Act lifts the upper bar for age limit and thus an individual above the age of 70 years can be appointed as key managerial personnel by passing a special resolution.

Key Managerial Personnel (KMP)

The Provisions relating to appointment of KMP includes (i) the Chief Executive Officer (CEO) or the managing director (MD) or the manager (ii) the company secretary (iii) the whole-time director; (iv) the Chief Financial Officer (CFO); and (v) such other officer as may be prescribed is applicable only for Public Limited Companies having paid up capital more than 10 crores and Private Limited Companies are exempted from appointment of KMPs.

Attending Board Meetings

As per section 167 of the Act, a Director shall vacate his/her office if he/she absents himself from all the meetings of the Board of Directors held during a period of 12 (twelve months) with or without seeking leave of absence of the Board. Simply speaking, attending at least one Board Meeting by a director in a year is a must else he has to vacate his/her office.

Board meetings

At least 7 days notice to be given for Board Meeting. The Board need to meet atleast 4 times within a year. There should not be a gap of more than 120 days between two consecutive meetings.

Appointment of Statutory Auditors

Every Listed company can appoint an individual auditor for 5 years and a firm of auditors for 10 years. This period of 5 / 10 years commences from the date of their appointment. Therefore, those companies who have reappointed their statutory auditors for more than 5 / 10 years have to appoint another auditor in their Annual General Meeting for year 2014.

Other specialized services which cannot be provided by Statutory Auditors

The Statutory Auditor of the Company cannot give following specialized services directly or indirectly to the company –

- a. Accounting and book keeping services
- b. Internal audit
- c. Design and implementation of any financial information system
- d. Actuarial services
- e. Investment advisory services
- f. Investment banking services
- g. Rendering of outsourced financial services
- h. Management and/or any other services as may be prescribed

Corporate Social Responsibility (CSR)

The company has to constitute a CSR committee of the Board and 2% of the average net profits of the last three financial years are to be mandatorily spent on CSR activities by an Indian company if any of the following criteria is met:

Net worth of Rs.500 crores or

Turnover of Rs. 1000 crores or more or

Net profit of Rs. 5 crores or more

Contributing to Incubators, which has been notified by the Government of India, is eligible for spending under CSR. This is a prosperous time for incubators and entrepreneurs and can really change the entrepreneurial eco system in India.

Financial statements

Financial Statements are now defined under the Act as comprising of the following. All companies (except one person Company, small company and dormant company) are now mandatorily required to maintain the following, which may not include the cash flow statement)

- A balance sheet as at the end of the financial year
- A profit and loss account / an income and expenditure account for the financial year, as the case may be
- Cash flow statement for the financial year
- A statement of changes in equity (if applicable)
- Any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv)

STEPS IN THE FORMATION OF A JOINT STOCK COMPANY AS PER COMPANIES ACT,2013

SL No	Steps	Requirement
01	Obtain Digital Signature Certificate (DSC)	Obtain a Digital Signature Certificate from authorized DSC issuing authority.
02	Obtain Director Identification No. (DIN) [S.153]	Make Application in Form DIR-3 [Rule 9 of Chapter XI Rules]
03	Register DSC in the name of Director on MCA portal	
04	Apply for Reservation of Name [S.4(4)]	Apply in Form No. INC.1 [Rule 9]. The same shall be reserved for a period of 60 days
05	Adoption of Memorandum of Association [S.4(6)]	MoA shall be in respective form as prescribed in Table A, B, C, D and E of Schedule I as may be applicable

06	Adoption of Articles of Association [S.5(6)]	MoA shall be in respective form as prescribed in Table F, G, H, I and J of Schedule I as may be applicable
07	Incorporation	<p>File with ROC Form No. INC.7 [Rule 12 to 18] alongwith</p> <p>(a) The Memorandum and Articles of the company duly signed by all subscribers;</p> <p>(b) A declaration in Form No.INC.8 by an advocate or Practicing professional (CA, CS, CA) who is engaged in incorporation, and a person named in director as Director, Manager or Secretary, that all requirements related to incorporation has been complied with;</p> <p>(c) an affidavit in Form No. INC.9 from each subscriber and from each person named as first director in the articles that; he is not convicted if any offence in connection with promotion, formation or management of any company, he is not been found guilty of any fraud or misfeasance or of any breach of duty to any company during preceding five years, and all the documents filed with the Registrar contain correct, complete and true information to the best of his knowledge and belief;</p> <p>(d) the address for correspondence till its registered office is established;</p> <p>(e) the particulars of every subscribers along with proof of identity;</p> <p>(f) the Particulars of first directors along with proof of identity; and</p> <p>(g) the particulars of interests of first directors in other firms or bodies corporate along with their consent to act as directors.</p>

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8	Commencement of business [S.11]	Director should file Declaration with ROC in Form No. INC.21 [Rule 24]
9	Registered Office [S.12]	A company shall have a registered office within 15 days of Incorporation and it shall file Form No.INC.22 [Rule 25] to verify the same