

COMPANIES ACT, 2013 - INTRODUCTION

The word 'Company' is derived from 2 latin words

- *Com* (means together)
- *Panis* (means bread/meal)

The word company was initially used for a group of persons who took their meal together.

Thus, generally, company means association of persons for a lawful common objective.

According to **Section 2(20)** of Companies Act, 2013,

- company means a company incorporated (formed and registered) under this Act or under any of the previous companies laws (like Companies Act, 1956).

History of Company Law in India

Company Law in India was introduced by British

- First Companies Act was passed in India in 1850
 - o It was amended in 1857 after the enactment of the Joint Stock Companies Act, 1844 in England
 - o It was further recast in 1882 on the basis of amendments in the Company Law in England
- New consolidating Act was passed 1913
 - o It was amended in 1936 and continued till 1956.
- History of Companies Act 1956
 - o Government of independent India appointed a Committee under the Chairmanship of H.C. Bhaba in 1950 to work on the New Company Law according to the development of Indian trade and industry. Committee submitted its report in March 1952. Based on the recommendations of the Company Law Committee, Companies Act 1956 came into force on 1st April, 1956.
 - o Companies Act, 1956, largely followed the English Companies Act, 1948.
 - o Companies Act 1956 was the longest piece of legislation ever passed by our Parliament consisted of 658 Sections and 15 Schedules.
 - o The Companies Act, 1956 had undergone changes by amendments in 1960, 1962, 1963, 1964, 1965, 1966, 1967, 1969, 1971, 1977, 1985, 1988, 1996, 1999, 2000, 2002 and 2006.
- History of Companies Act 2013
 - o By 2004, it was felt that new Company Law was required due to global competitiveness and fast changing economy.
 - o A Concept Paper on Company Law was exposed for public viewing on the electronic media so that all interested parties may not only express their opinions on the concepts.
 - o On the basis of Concept Paper and suggestions received thereon, A Committee was constituted on 2nd December, 2004 under the Chairmanship of Dr. J J Irani, the then Director, Tata Sons, with the task of advising the Government on the proposed revisions to the Companies Act, 1956.
 - o The Committee submitted its report to the Government on 31st May 2005.
 - o Report provided a road map for a flexible, dynamic and user-friendly new company law. The Expert Committee had recommended that private and small companies need to be given flexibilities and freedom of operations and compliance at a low cost.
 - o Companies with higher public interest should be subject to a stricter regime of Corporate Governance.
 - o Further, Government companies and public financial institutions should be subject to similar parameters with respect to disclosures and Corporate Governance as other companies are subjected to.
 - o Based on the recommendations of Irani Committee, the Companies Bill, 2009 was introduced in the Lok Sabha on 3rd August, 2009.

- The Companies Bill, 2009 after introduction in Parliament was referred to the Parliamentary Standing Committee on Finance for examination which submitted its report to Parliament on 31st August, 2010.
- Certain amendments were introduced in the Bill in the light of the report of the Committee and a revised Companies Bill, 2011 was introduced. This version was also referred to the Hon'ble Committee, which suggested certain further amendments.
- The amended Bill was passed by the Lok Sabha on 18th December, 2012 and by the Rajya Sabha on 8th August, 2013. The Bill was retitled as Companies Bill, 2012.
- The Companies Bill, 2012 finally became the Companies Act, 2013. It received the assent of the President on August 29, 2013 and was notified in the Gazette of India on 30.08.2013.
- Companies Act, 2013 is majorly amended in 2015, 2017, 2019 and 2020.

What are the characteristics of a company form of business?

According to **Section 9** of Companies Act, 2013,

- from the date of incorporation mentioned in the certificate of incorporation, subscribers to the MOA and all other members of the company,
 - shall be a body corporate (by the name contained in the memorandum), capable of exercising all the functions of an incorporated company under this Act having
 - perpetual succession
 - ~~a common seal~~ (deleted by Companies Amendment Act, 2015)
- and
- power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible in its own name
 - power to contract in its own name
 - power to sue and be sued in its own name

Further, according to **Section 44** of the Act,

- the shares or debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.

So following are the main characteristics of company form of business:

1. Corporate personality
2. Limited liability
3. Perpetual Succession
4. Separate Property
5. Transferability of Shares
6. Capacity to sue and be sued
7. Contractual Rights
8. Demutualization (separation of management and ownership)

Characteristics of a Company

Corporate personality

Being an artificial person, a company is a legal entity different and separate from its promoters, members, directors, and other stake holders. It has its own corporate name and work under that name. It

- can hold its assets in its own name,
- can sue or be sued in its own name,
- can borrow/lend funds, open bank accounts, enter into contracts in its own name

Any of its shareholders or directors or other officers cannot be held liable for the acts of the company even if he/it holds the entire share capital. Further, the shareholders or individual directors are not the agents of the company and so they cannot bind company by their personal acts.

Related Case Laws

- Salomon v. Salomon and Co. Ltd.
- Lee v. Lee's Air Farming Ltd.
- New Horizons Ltd. v. Union of India

Watch Video for Details

Limited liability

According to Section 3(2), a company may be

- a company limited by shares
means the liability of the members towards the company is limited to amount unpaid on their shares only.
- a company limited guarantee
means the liability of the members towards the company is limited to the amount of guarantee prescribed in the MOA. Further, in such companies the members can be made liable only in the event of winding up of the company.
- an unlimited company
means the liability of the members is unlimited towards company.

But, in none of the above cases, members can be held directly liable to anyone else except company for any act of the company or directors.

Exceptions of Limited Liability

- Section 3A (Members severally liable in certain cases)

If at any time

- o the number of members of a company is reduced,
 - in the case of a public company, below seven,
 - in the case of a private company, below two,

and

- o the company carries on business for more than 6 months while the number of members is so reduced,

every person who is a member of the company during the time that it so carries on business after those 6 months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

- Section 7(7) [Incorporation of Company]

Where a company has been got incorporated

- o by furnishing any false or incorrect information or representation or
- o by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or

- by any fraudulent action
the Tribunal (NCLT) may, on an application made to it, on being satisfied that the situation so warrants direct that liability of the members shall be unlimited.
- Section 35(3) [Civil Liability for Mis-statements in Prospectus]
Where it is proved that a prospectus has been issued
 - with intent to defraud the applicants for the securities of a company or any other person or
 - for any fraudulent purpose,every person who—
 - (a) is a director of the company at the time of the issue of the prospectus;
 - (b) has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;
 - (c) is a promoter of the company;
 - (d) has authorised the issue of the prospectus; and
 - (e) is an expert referred to in section 26(5),shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.
- Section 75(1) [Damages for Fraud]
Where a company fails to repay the deposit or part thereof or any interest thereon, and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.
- Section 224(5) [Actions to be Taken in Pursuance of Inspector's Report]
Where the report made by an inspector states that fraud has taken place in a company and due to such fraud
 - any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner,the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property, or cash, as the case may be, and also for holding such director, key managerial personnel, officer or other person liable personally without any limitation of liability.
- Section 339 (Liability for Fraudulent Conduct of Business)
If in the course of the winding up of a company,
 - it appears that any business of the company has been carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose,the Tribunal, on the application of
 - the Official Liquidator, or
 - the Company Liquidator or
 - any creditor or
 - contributory of the company,may, if it thinks it proper so to do, declare that
 - any person, who is or has been a director, manager, or officer of the company or
 - any persons who were knowingly parties to the carrying on of the business in the manner aforesaid

shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct.

Perpetual Succession

Perpetual Succession means existence forever. According to Section 9, from the date of incorporation mentioned in the certificate of incorporation, every company has perpetual succession. A company is an artificial person created by law; therefore it can be dissolved or wind up by law.

In other words, members may come and go, but company can go forever.

Separate Property

A company is separate legal entity having its own corporate name. It can hold properties in its own name. No member can claim himself to be the owner of the company's property during its existence. In other words, the property of a company is not the property of the individual members.

Related Case Law

- Mrs. Bacha F. Guzdar v. The Commissioner of Income Tax, Bombay

Transferability of Shares

According to Section 44 of the Act,

- the shares or debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.

According to Section 2(68)(i)

- private company may restricts the right to transfer its shares through its AOA.

But a generally, a public company cannot restrict the transfer of its shares.

Capacity to sue and be sued

A company is separate legal entity (artificial person) having its own corporate name and personality. Therefore, according to Section 9, company may sue or may be sued in its own name (not in the name of its directors or members).

Contractual Rights

A company is an artificial person created by law. Therefore like natural person, it can enter into contract in its own name through its agent (directors or other authorised persons).

Demutualization (separation of management and ownership)

Under company form of business, management (directors) is different from owners (members). Members of the company do not get engaged into day-to-day business of the company. Members appoint directors who direct the business of the company on their behalf. Such directors may or may not be members of the company.

Common Seal

On incorporation, a company may have a common seal. Since a company has no physical existence, therefore it has to act through its agents only. To put restriction on the misuse of the powers of those agents (directors), contracts entered into by anyone on behalf of the company may be under the common seal of the company. Thus common seal acts as official signature of the company.

After Companies (Amendment) Act, 2015, it is not compulsory for the company to have common seal. Thus a company may or may not have common seal.

Difference between Company and other Form of Business

Difference between Company and Partnership

	Company	Partnership
Separate legal entity	Yes	No
Property in the name of	Company	Partners
Liability	Limited	Unlimited
Mutual Agency	Individual Member/individual director is not the agents of company	Every partner is an agent all other partners and partnership firm
Transferability of shares	Yes, subject to AOA (Generally free in case of Public Companies)	No, a partner cannot transfer its share to some else without the consent of all other partners
Perpetual succession	Yes	No
Contract	A member can contract with his company	A partner cannot contract with his firm
Number of members	In case of private limited - Minimum 2, Maximum-200 In case of public limited - Minimum 7, Maximum-unlimited In case of one person company – 1 person	Minimum - 2, Maximum-50 [Rule 10 of Companies (Miscellaneous) Rules, 2014]
Applicable laws	Companies Act, 2013 Companies Act, 1956	Partnership Act, 1932
Registration	Must	Optional
Dissolution	A company, being a creation of law, can only be dissolved as laid down by law	Can be dissolved at any time by agreement among the partners
Audit	A company is required to have its accounts audited annually by a chartered accountant.	The accounts of a firm are audited at the discretion of the partners or as per Tax Laws
Demutualization	Yes	No

Difference between Company and Hindu Undivided Family

	Hindu Undivided Family	Company
Type of Membership	Homogenous	Heterogeneous
Authority	Karta has sole authority to create contract and liability in the name of HUF	Here BOD have authority to do all such acts and deeds which company can do subject to <ul style="list-style-type: none"> - Provisions of Company Laws - Provisions of MOA - Provisions of AOA - Provisions of Resolutions passed by members
How to become member	By the virtue of Birth	By contract with company or by the operation of law.
Registration	Not compulsory	Compulsory

Distinction between LLP and Company

1. In case of LLP, a 'limited liability partnership agreement' (LLPA) is prepared which is different from the 'articles of association' of a company.
2. Whereas the memorandum of a company is required to name the state in which it is required to be incorporated, there is no such obligation in the case of LLP. Consequently, the detail procedure involved in changing the registered office from the state of incorporation to another state is not required to be followed in case of a LLP.
3. In the LLP Act, there is no such stipulation for minimum number of meeting of partners as stipulated for directors and shareholders meetings in the Companies Act.
4. There is no separation between management of the LLP and the ownership as is observed in a company since all the partners, unlike all the members of a company, can take part in the day to day affairs of the LLP.
5. In case of a company no individual director can conduct the business of the company but in an LLP, each partner has the authority to do so unless expressly prohibited by the partnership terms.
6. Whereas, the Companies Act contemplates regulating the remuneration payable to directors, there are no corresponding provisions in the LLP Act for remuneration payable to designated partners. The same could be as per the LLP Agreement.
7. In the case of LLP, unlike in the case of companies, there are no restrictions on the borrowing powers.
8. The LLP can choose to maintain the accounts on cash basis/accrual basis whereas under the Companies Act, accrual method is compulsory.
9. Audit of a company is compulsory. Conversely, the audit of LLP is not compulsory unless required under Income Tax Act, 1961.
10. Cost audit as contemplated in Section 148 of the Companies Act, 2013 has not been prescribed for LLPs.
11. The appointment of Company Secretaries as required under Section 203 of the Companies Act, 2013 is not provided in the LLP Act. However, the annual return of a LLP is to be certified as 'true and correct' by a Company Secretary in practice.

Advantages and Disadvantages of Company form of Business

Advantages

- Corporate personality
- Limited liability
- Perpetual succession
- Transferability of shares
- Separate property
- Capacity to enter into contract in its own name
- Funds can be raised from public by issuing wide range of securities

Disadvantages

- Incorporation and wind up formalities and expense
- Heavy regular compliances expenses
- Heavy fines, penalties and even imprisonment in case of non-compliance of laws
- Too much disclosure in form of annual returns, intimation to stock exchanges etc.
- Demutualization (separation of ownership and management)
- Greater tax burden as company has to pay tax on flat rates
- Greater social responsibility

Can a company be regarded as having enemy character under certain circumstances?

A company has no physical existence; it has no mind of its own. Board of Directors and members of the company are decision making mind of the company. If, using the corporate veil, they act against the public interest or against the country than such company may be considered as having enemy character.

Further,

- if the persons having de facto control of the affairs of company
 - o are resident in an enemy country or
 - o are acting under instructions from or on behalf of the enemy country

than such company may be considered as enemy.

Related Case Laws:

- Connors Bros. v. Connors
- Daimler Co. Ltd. v. Continental Tyre & Rubber Co.

Whether company can file a suit as an indigent (poor) person?

In a case Union Bank of India v. Khader International Construction and Other, it was contended that company is an artificial person but cannot be considered as 'person' within the purview of Order 33, Rule 1 of the Civil Procedure Code, 1908.

The Supreme Court held that the word 'person' mentioned in Order 33, Rule 1 of the Civil Procedure Code, 1908, included any company as association or body of individuals, whether incorporated or not.

Thus a company may also file a suit as an indigent person.

Whether a company is a citizen or not?

The company, though a legal person, is not a citizen under the Citizenship Act, 1955 or the Constitution of India. Section 2(f) of Citizenship Act, 1955 expressly excludes a company or association or body of individuals from citizenship.

Further, in State Trading Corporation of India Ltd. v. C.T.O., the Supreme Court held that the State Trading Corporation though a legal person, was not a citizen and can act only through natural persons.

Nationality and Residence of a Company

In a case Gasque v. Inland Revenue Commissioners, it was held that a limited company is capable of having a domicile and its domicile is the place of its registration and that domicile clings to it throughout its existence.

Thus we can say that every company has its own nationality domicile and residence.

Lifting or Piercing of Corporate Veil

A company is an artificial person different for its members and directors. In the eyes of law it has a separate corporate personality. It has its own corporate name. It works under that name. In normal circumstances company cannot be considered as agent or trustee of its members. Therefore members and directors of a company cannot be held liable for any act of that company.

This concept is known as Corporate Veil. Means only company can be held liable for an act done in the name of the company. But, as per company laws, a company can be created for lawful purpose only. If a company is created for

- dishonest use
- fraudulent purpose
- unlawful purpose
- evading taxes
- any other purpose which is against the public interest

than law can identify the persons who are behind it and are responsible for any fraud/unlawful act.

Concept is very simple. Company cannot work or think on its own. Its directors and members are its mind and body. Therefore, company can't do anything wrong on its own. Thus, for any wrong act in the name of company, members/directors can be held liable. This concept is called "Lifting of Corporate Veil".

It is in the interest of the members in general and in public interest to identify and punish the persons who misuse the medium of corporate personality.

In the following circumstances different courts found it necessary to lift the corporate veil and punish the actual persons who did wrong or unlawful acts under the name of company:

Protection of Revenue	The Court may ignore the Separate Legal Entity status of a Company, where it is used for tax invasion or circumventing tax obligation. (Sir Dinshaw Maneckjee Petit)
Determination of enemy character of the Company	Company being an artificial person cannot be enemy or friend. But during war, it may become necessary to lift the corporate veil and see the persons behind it to determine whether they are friends or enemy. This is due to the reason that though a company enjoys Separate Legal Entity but its affairs are run by individuals. (Daimler Co. Ltd. Vs Continental Tyre & Rubber Co. Ltd.)
Prevention of fraud	Where a Company is used for committing frauds or improper conduct, Court may lift the corporate veil and look at the realities of the situation. (Jones vs Lipman)
Protection of public policy	The Court shall lift the Corporate Veil without any hesitation to protect the public policy and prevent transaction opposed to public policy.
Company mere sham or cloak	Where the Company is a mere sham and was really a ploy used for committing illegalities and to defraud people, the Court shall lift the Corporate Veil. (Gilford Motor Company vs Horne)
Where a Company acts as an agent of its shareholders	If there is an arrangement between the shareholders and a Company to the effect that the Company will act as agent of shareholders for the purpose of carrying on the business, the business is essentially of that of the shareholders and will have unlimited liability.
Avoidance of Welfare Legislation	Where a Company tries to avoid its legal obligations, the corporate veil shall be lifted to look at the real picture. (Workmen of Associated Rubber Industry Ltd. Vs Associated Rubber Industry Ltd.)
To punish for contempt of Court	Company being an artificial person cannot disobey the orders of the Court. Therefore, the persons at fault should be identified.

Lifting the Corporate Veil of Small Scale Industry

Where small scale industries were given certain exemptions and the company owning an industry was controlled by some group of persons or companies, it was held that it was permissible to lift the veil of the company to see whether it was the subsidiary of another company and, therefore, not entitled to the proposed exemptions. [Inalsa Ltd. v. Union of India, (1996) 87 Com Cases 599 (Delhi).]

Illegal Association

Prohibition of association or partnership of persons exceeding certain number (Section 464)

No association or partnership consisting of more than such number of persons as may be prescribed shall be formed

- for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof,
- unless it is registered as a company.

Note: The number of persons which may be prescribed under this sub-section shall not exceed 100.

This Section is not applicable to—

- (a) a HUF carrying on any business; or
- (b) an association or partnership, if it is formed by professionals who are governed by special Acts.
- (c) LLP

Note: If 2 or more HUF carry on business in partnership, then while calculating total number of members involved in that business for the purpose of this section, minor members should be ignored as a minor cannot be considered as partner.

Punishment for carrying on business in contravention of this Section

Every member of an association or partnership carrying on business in contravention of this Section

- shall be punishable with fine which may extend to 1 lakh rupees and
- shall also be personally liable for all liabilities incurred in such business.

Rule 10 of Companies (Miscellaneous) Rules, 2014

No association or partnership shall be formed, consisting of more than 50 persons for the purpose of carrying on any business that has for its objects the acquisition of gain by the association or partnership or by individual members thereof, unless it is registered as a company under the Act or is formed under any other law for the time being in force.

Effect of non-registration of an association or partnership as company according to provisions of this Section

Since, the law does not recognize an illegal association therefore such association:

- cannot enter into any contract;
- cannot sue any member, or outsider, not even if the company is subsequently registered;
- cannot be sued by a member, or an outsider for recovery of any debts;
- cannot be wound up by an order of the Court.

In fact, the Court cannot entertain a petition for its winding up as an unregistered company, for if it did, it would be indirectly according recognition to the illegal association.

Applicability of Companies Act, 2013

According to section 1 of the Companies Act, 2013, the Act extends to whole of India and the provisions of the Act shall apply to the following:-

- (a) companies incorporated under this Act or under any previous company law;
- (b) insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 (4 of 1938) or the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);
- (c) banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949 (10 of 1949);

- (d) companies engaged in the generation or supply of electricity, except in so far as the said provisions
- (e) are inconsistent with the provisions of the Electricity Act, 2003 (36 of 2003);
- (f) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act; and
- (g) such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.

Executive/Administrative Authorities under Company Laws

MINISTRY OF CORPORATE AFFAIRS (MCA)

- MCA carries out functions of central government concerned with administration of the Companies Act 2013.
- MCA is supreme administrative body under Companies Act 2013.
- Under Section 469 of Companies Act, 2013, Central Government, by issuing notifications, can make and amend rules for carrying out the provisions of this Act. This function of Central Government is carried out by MCA.
- Further MCA issues circulars from time to time providing clarifications on different provisions of Companies Act. These clarifications act as guidance. Circulars are not the part of law.

REGIONAL DIRECTORS (RD)

- The 7 Regional Directors (RD) are in-charge of the respective regions, each region comprising a number of States and Union Territories.
- They supervise the working of the offices of the ROC and the Official Liquidators working in their regions.
- They also maintain liaison with the respective State Governments and the Central Government in matters relating to the administration of the Companies Act.
- Certain powers of the Central Government under the Act have been delegated to the Regional Directors.
- They have also been declared as heads of Department.
- Offices of RD
EASTERN REGION – KOLKATA
SOUTHERN REGION – CHENNAI
NORTHERN REGION - NOIDA (UP)
WESTERN REGION – MUMBAI
NORTH WESTERN REGION – AHMEDABAD
SOUTH EAST REGION – HYDERABAD
NORTH EASTERN REGION - SHILLONG

REGISTRAR OF COMPANIES (ROC)

- Registrars of Companies (ROC) appointed under Section 396 of the Companies Act, 2013 covering various States and Union Territories are vested with the primary duty of registering companies floated in the respective states and the Union Territories and ensuring that such companies comply with statutory requirements under the Act.
- These offices function as registry of records, relating to the companies registered with them, which are available for inspection by members of public on payment of the prescribed fee.
- The Central Government exercises administrative control over these offices through the respective Regional Directors.

Companies Act, 2013	
Passed in Lok sabha	December 18, 2012
Passed in Rajya Sabha	August 08, 2013
President's Assent	August 29, 2013

Notified in Official Gazette	August 20, 2013
Total number of sections	470
Total number of chapters	29
Total number of schedules	7

Questions asked in the Previous Attempts

Question

Distinguish between “company” and “corporation”. (4 marks) (June 2010 & June 2011)

Answer:

Company	Corporation
The term Company is defined under Section 2(20) of Companies Act, 2013	The term Corporation is defined under Section 2(11) of the Companies Act, 2013
“Company” means a company incorporated under this Companies Act, 2013 or under any previous company law.	“Body corporate” or “corporation” includes a company incorporated outside India, but does not include: <ul style="list-style-type: none">- a co-operative society registered under any law relating to co-operative societies; and- any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify on this behalf;
Thus every company is a body corporate	But every ‘body corporate’ is not a company. A body incorporate under special law of state/parliament legislature is known as body corporate
Example of companies registered under Company Law: RELIANCE INDUSTRIES LIMITED, TATA INDUSTRIES LIMITED	Example of Body Corporates: RBI, SEBI, ICSI

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Question

Distinguish between “Partnership Firm” and “Company”. (4 marks) (December 2013)

Difference between Company and Partnership

	Company	Partnership
Separate legal entity	Yes	No
Property in the name of	Company	Partners
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Number of members	In case of private limited - Minimum 2, Maximum-200 In case of public limited - Minimum 7, Maximum-unlimited In case of one person company – 1 person	Minimum - 2, Maximum-50 [Rule 10 of Companies (Miscellaneous) Rules, 2014]
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Registration	Must	Optional
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Audit	A company is required to have its accounts audited annually by a chartered accountant.	The accounts of a firm are audited at the discretion of the partners or as per Tax Laws
Demutualization	Yes	No

Question

Write a short note on disadvantages of company form of organization. (4 marks) (June 2010)

Answer:

Disadvantages of company form of business are:

- Incorporation and wind up formalities and expense
- Heavy regular compliances expenses
- Heavy fines, penalties and even imprisonment in case of non-compliance of laws
- Too much disclosure in form of annual returns, intimation to stock exchanges etc.
- Demutualization (separation of ownership and management)
- Greater tax burden as company has to pay tax on flat rates
- Greater social responsibility

Question

Distinguish between 'Company' and 'Limited Liability Partnership'. (4 Marks)(Dec 2015)

Answer:

1. In case of LLP, a 'limited liability partnership agreement' (LLPA) is prepared which is different from the 'articles of association' of a company.
2. Whereas the memorandum of a company is required to name the state in which it is required to be incorporated, there is no such obligation in the case of LLP. Consequently, the detail procedure involved in changing the registered office from the state of incorporation to another state is not required to be followed in case of a LLP.
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11. The appointment of Company Secretaries as required under Section 203 of the Companies Act, 2013 is not provided in the LLP Act. However, the annual return of a LLP is to be certified as 'true and correct' by a Company Secretary in practice.

Question

What do you understand by the term illegal association? What are the rights and liabilities of members of an illegal association? (5 marks) (December 2008)

Or

Write a short note on; Illegal association. (4 marks) (June 2013)

Answer:

Prohibition of association or partnership of persons exceeding certain number (Section 464)

No association or partnership consisting of more than such number of persons as may be prescribed (50 as per Rule 10 of Companies (Miscellaneous) Rules, 2014) shall be formed

- for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof,

unless it is registered as a company.

This Section is not applicable to—

- (d) a HUF carrying on any business; or
- (e) an association or partnership, if it is formed by professionals who are governed by special Acts.
- (f) LLP

Note: If 2 or more HUF carry on business in partnership, than while calculating total number of members involved in that business for the purpose of this section, minor members should be ignored as a minor cannot be considered as partner.

Effect of non-registration of an association or partnership as company according to provisions of this Section

Since, the law does not recognize an illegal association therefore such association:

- cannot enter into any contract;
- cannot sue any member, or outsider, not even if the company is subsequently registered;
- cannot be sued by a member, or an outsider for recovery of any debts;
- cannot be wound up by an order of the Court.

In fact, the Court cannot entertain a petition for its winding up as an unregistered company, for if it did, it would be indirectly according recognition to the illegal association.

Punishment for carrying on business in contravention of this Section

Every member of an association or partnership carrying on business in contravention of this Section

- shall be punishable with fine which may extend to 1 lakh rupees and
- shall also be personally liable for all liabilities incurred in such business.

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Question

The Common Seal of a company has to be affixed on all letters and documents of the company. Comment (5 marks) (December 2008)

Or

The Common Seal of a company has to be affixed on all letters In documents of the company. Comment (5 marks) (December 2009)

Or

The common seal acts as the official signature of a company. Comment (5 marks) (December 2013)

Answer:

On incorporation, a company may have a common seal. Since a company has no physical existence, therefore it has to act through its agents only. To put restriction on the misuse of the powers of those agents (directors), contracts entered into by anyone on behalf of the company may be under the common seal of the company. Thus common seal acts as official signature of the company.

After Companies (Amendment) Act, 2015, it is not compulsory for the company to have common seal. Thus a company may or may not have common seal.

As per the Companies (Amendment) Act, 2015, affixation of the common seal is no longer compulsory. A company may or may not have common seal.

Thus, it is incorrect to say that the Common Seal of a company has to be affixed on all letters and documents of the company.

Question

A shareholder who holds 99% of the share capital of a company can be held responsible for the acts of the company. Comment (5 marks) (June 2012)

Or

A shareholder is personally liable for the acts of the company if he holds virtually the entire share capital of a company. Comment (5 marks) (December 2013)

Or

Members of a company incorporated under the Companies Act, 2013 are the agents of the company. Therefore, the company can be held liable for its acts. Comment (5 marks) (December 2017)

Or

Three companies incorporated with the same set of shareholders are treated as the same companies under the Companies Act, 2013. Comment (5 marks) (December 2017)

Answer:

Corporate personality

Being an artificial person, a company is a legal entity different and separate from its promoters, members, directors, and other stake holders. It has its own corporate name and work under that name. It

- can hold its assets in its own name,
- can sue or be sued in its own name,
- can borrow/lend funds, open bank accounts, enter into contracts in its own name

Any of its shareholders or directors or other officers cannot be held liable for the acts of the company even if he/it holds the entire share capital. Further, the shareholders or individual directors are not the agents of the company and so they cannot bind company by their personal acts.

Two or more companies incorporated with the same set of shareholders cannot be treated as the same companies under the Companies Act, 2013 as every company has separate legal existence in the eyes of law.

Related Case Laws

- Salomon v. Salomon and Co. Ltd.
- Lee v. Lee's Air Farming Ltd.
- New Horizons Ltd. v. Union of India

Question

A company incorporated under the Companies Act, 2013 being an artificial person, is not entitled to sue a natural person or to sue another company incorporated under the Companies Act, 2013. Comment (5 marks) (December 2015)

Answer:

Capacity to sue and be sued

- A company is separate legal entity (artificial person) having its own corporate name and personality.
- It can hold properties in its own name. No member can claim himself to be the owner of the company's property during its existence. In other words, the property of a company is not the property of the individual members.
- Just like natural person, it can enter into contract in its own name through its agent (directors or other authorised persons).

Therefore, according to Section 9, company may sue or may be sued in its own name (not in the name of its directors or members).

Question

A company incorporated under the Companies Act, 2013 never dies except when it is wound-up as per law. Comment (5 marks) (December 2015)

Or

In an Annual general meeting of Amar Private Limited, all the shareholders were killed in a bomb blast. State, whether the company is still in existence? (4 marks) (December 2014)

Or

Six persons are the only members of Tab (Private) Limited all of them went to the USA on a pleasure trip by airplane. On the way, the plane crashed and all the six members died. Does Tab (Private) Limited still exist? Decide. (4 marks) (December 2016)

Answer:

Perpetual Succession

Perpetual Succession means existence forever. According to Section 9, from the date of incorporation mentioned in the certificate of incorporation, every company has perpetual succession. A company is an artificial person created by law; therefore it can be dissolved or wind up by law. A company being an artificial person does not die a natural death.

In other words, members may come and go, but company can go forever.

Transferability of Shares

According to Section 44 of the Act,

- the shares or debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.

Even if all the shareholders are killed in a bomb blast or plane accident, shares of such shareholders will be transmitted to their legal heirs; and such legal heirs will become new members of the company.

Question

Rani is a wealthy lady enjoying large dividend and interest income she has formed 3 private companies in agreed with each of them to hold a block of investment as an agent for it income received was credited in the accounts of the company but the company handed back the amount to her as a pretended loan. This way, she divided her income into three parts in a bit to reduce her tax liability. Discuss the legality of the purpose for which the three companies were formed. (5 marks) (June 2010)

Or

“Separate personality of a company is a special privilege. In case of dishonest or fraudulent use of privilege, the corporate veil can be lifted.” Discuss. (4 marks) (June 2014)

Or

Write a short note on ‘Lifting of corporate veil’. (5 marks) (December 2014)

Or

Explain clearly the meaning of ‘lifting of Corporate Veil’ in relation to a company incorporated under the Companies Act, 2013. Examining judicial decisions, state whether the ‘corporate veil’ can be lifted in the following cases:

- (a) Where the corporate veil has been used for improper conduct?
- (b) Where the acts of the companies are opposed to workmen? (5 marks) (December 2015)

Answers

A company is an artificial person different for its members and directors. In the eyes of law it has a separate corporate personality. It has its own corporate name. It works under that name. In normal circumstances company cannot be considered as agent or trustee of its members. Therefore members and directors of a company cannot be held liable for any act of that company.

This concept is known as Corporate Veil. Means only company can be held liable for an act done in the name of the company. But, as per company laws, a company can be created for lawful purpose only. If a company is created for

- dishonest use
- fraudulent purpose
- unlawful purpose
- evading taxes
- any other purpose which is against the public interest

than law can identify the persons who are behind it and are responsible for any fraud/unlawful act.

Concept is very simple. Company cannot work or think on its own. Its directors and members are its mind and body. Therefore, company can't do anything wrong on its own. Thus, for any wrong act in the name of company, members/directors can be held liable. This concept is called “Lifting of Corporate Veil”.

It is in the interest of the members in general and in public interest to identify and punish the persons who misuse the medium of corporate personality.

In the following circumstances different courts found it necessary to lift the corporate veil and punish the actual persons who did wrong or unlawful acts under the name of company:

Protection of Revenue	The Court may ignore the Separate Legal Entity status of a Company, where it is used for tax invasion or circumventing tax obligation. (Sir Dinshaw Maneckjee Petit)
Determination of enemy character of the Company	Company being an artificial person cannot be enemy or friend. But during war, it may become necessary to lift the corporate veil and see the persons behind it to determine whether they are friends or enemy. This is due to the reason that though a company enjoys Separate Legal Entity

	but its affairs are run by individuals. (Daimler Co. Ltd. Vs Continental Tyre & Rubber Co. Ltd.)
Prevention of fraud	Where a Company is used for committing frauds or improper conduct, Court may lift the corporate veil and look at the realities of the situation. (Jones vs Lipman)
Protection of public policy	The Court shall lift the Corporate Veil without any hesitation to protect the public policy and prevent transaction opposed to public policy.
Company mere sham or cloak	Where the Company is a mere sham and was really a ploy used for committing illegalities and to defraud people, the Court shall lift the Corporate Veil. (Gilford Motor Company vs Horne)
Where a Company acts as an agent of its shareholders	If there is an arrangement between the shareholders and a Company to the effect that the Company will act as agent of shareholders for the purpose of carrying on the business, the business is essentially of that of the shareholders and will have unlimited liability.
Avoidance of Welfare Legislation	Where a Company tries to avoid its legal obligations, the corporate veil shall be lifted to look at the real picture. (Workmen of Associated Rubber Industry Ltd. Vs Associated Rubber Industry Ltd.)
To punish for contempt of Court	Company being an artificial person cannot disobey the orders of the Court. Therefore, the persons at fault should be identified.

Question

The Companies Act, 2013 does not provide statutory recognition of the doctrine of lifting of corporate veil. Only judicial interpretations disregard the concept of separate personality. Comment. (Dec 2019)(5 Marks)

Answer:

A company is an artificial person different for its members and directors. In the eyes of law it has a separate corporate personality. It has its own corporate name. It works under that name. In normal circumstances company cannot be considered as agent or trustee of its members. Therefore members and directors of a company cannot be held liable for any act of that company.

This concept is known as Corporate Veil. Means only company can be held liable for an act done in the name of the company.

But under Companies Act, 2013, there are many provisions when members or directors can be held directly liable for the act of the company.

- Section 3A (When number of members fell down below the statutory requirements)
- Section 7(7) [Wrong/false information during incorporation of Company]
- Section 35(3) [Civil Liability for Mis-statements in Prospectus]
- Section 75(1) [Damages for Fraud in case of Deposits]
- Section 339 (Liability for Fraudulent Conduct of Business)

Thus, even Companies Act, 2013 also recognise the concept of lifting of corporate veil.

Question

Raman Pvt. Ltd. has only two shareholders, X and Y. All shares were fully paid up. X sold all his shares to Y and the company carried on its business activities thereafter. Comment. (December 2018) (5 Marks)

Or

A public limited company has only seven shareholders. Being all the shares paid in full, one such shareholder purchased all the shares of another shareholder in a private settlement between them reducing the No. of shareholders to six. The company continues to carry on its business thereafter. Discuss with reference to the Companies Act, 2013 the implications of this transaction on the functioning of the company. (June 2019) (5 marks)

Answer:

Members severally liable certain cases (Section 3A of the Companies Act, 2013):

If at any time

- the number of members of a company is reduced,
 - in the case of a public company, below seven,
 - in the case of a private company, below two,

and

- the company carries on business for more than 6 months while the number of members is so reduced,

every person who is a member of the company during the time that it so carries on business after those 6 months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

Thus,

- in first case, Y shall take all steps to increase the number of members to 2 within 6 months.
- in second case, remaining members shall take all steps to increase the number of members to 7 within 6 months.

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