

THE COMPANIES ACT, 1956

In a Nutshell

Joint Stock Company is a popular form of business organisation which essentially overcomes limitations of partnership form of business. The Company form of organisation is best understood on a comparison with partnership form of business. (Refer Page 17)

1. *A Company which is an incorporated association, is an artificial person created by law having the privilege of a separate entity with a perpetual succession and a common seal.*
2. *Under certain circumstances the corporate veil is lifted to look at the persons behind the Company who are the real beneficiaries of the corporate fiction.*
3. *The certificate of incorporation issued is conclusive evidence that all the requirements of the Act for formation of the Company, have been complied with.*
4. *A Company, other than a private Company and a Company having no share capital, cannot commence business unless a certificate of commencement of business is obtained.*
5. *Memorandum of Association is the charter of the Company and should be in the form prescribed in Schedule I to the Act.*
6. *Articles of Association are the rules, regulations and bye-laws for the internal management of the affairs of the Company.*
7. *An act ultra vires the Act is illegal and void.*
8. *The doctrine of indoor management is an exception to the doctrine of constructive notice.*
9. *A promoter stands in fiduciary relation to the Company he promotes.*
10. *Preliminary contracts are contracts which are entered into by promoters on behalf of a prospective Company before it has come into existence*
11. *Provisional contracts are contracts entered into by a Company after its incorporation but before it is entitled to commence business.*

12. *Shares may be issued through public issue, offer for sale, private placement*
13. *Sweat Equity refers to equity given to Directors / employees either at a discount or for consideration other than cash for providing know-how, making available rights in the nature of Intellectual Property Rights or any value addition.*
14. *A Company may purchase its own shares (buy-back) out of free reserves, securities premium account or proceeds of any issue.*
15. *Prospectus is any notice, circular, advertisement or any other document inviting deposits from the public or offers for subscription or purchase of any shares / debentures of a body corporate.*
16. *Shelf prospectus means a prospectus issued by any financial institution or bank for one or more issues of the securities or class of securities specified in that prospectus.*
17. *Information memorandum is issued to ascertain the quantum and the acceptable price of securities to be offered by a Company.*
18. *An irregular allotment is an allotment in contravention of the provisions of Sec 69 and 70.*
19. *Alteration of share capital occurs on issue of new shares, consolidation, subdivision of shares, conversion of fully paid shares into stock and cancellation of shares not taken up*
20. *Transmission of shares refers to transfer by operation of law (i.e.,) when a registered shareholder dies.*
21. *A small depositor means a depositor who has deposited in a financial year a sum not exceeding Rs.20,000/- in a Company, and includes his successors, nominees & legal representatives.*
22. *A charge may be fixed / specific or floating and all specified charges have to be registered.*
23. *A debenture is a document acknowledging indebtedness.*
24. *Every public Company limited by shares shall, within a period not less than 1 month and not later than 6 months from the date of commencement of business, hold a statutory meeting.*
25. *Every Company shall hold an AGM within six months from the close of the accounting year and the gap between two AGMs shall not exceed 15 months.*
26. *Quorum refers to the minimum number of members required to transact a business in a meeting.*
27. *Proxy refers to the person representing a member.*
28. *Postal ballot includes voting by electronic mode.*
29. *Dividend can be paid only out of free reserves.*
30. *An association of more than 10 persons carrying on banking business or more than 20 persons carrying on any other business, not registered under Companies Act is an Illegal Association.*
31. *Every Company having share capital shall, within 60 days from the date of AGM, file the annual returns with the Registrar.*



The powers of the Company Law Board (CLB) and High Court (HC) have been transferred to National Company Law Tribunal (NCLT). However, NCLT has not yet been constituted and the powers are currently exercised by the CLB.



THE COMPANIES ACT, 1956

Arrangement of Sections

PART - I PRELIMINARY

SECTION	CHAPTER
1. Short title, commencement and extent	
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2A. Interpretation of certain words and expressions	
3. Definitions of "company", "existing company", "private company" and "public company"	} Classes of Companies
4. Meaning of "holding company" and "subsidiary"	
4A. Public financial institutions	
5. Meaning of "officer who is in default"	
6. Meaning of "relative"	
7. Interpretation of "person in accordance with whose directions or instructions directors are accustomed to act"	
8. Power of Central Government to declare an establishment not to be a branch office.	
9. Act to override memorandum, articles, etc.,	} Memorandum & Articles of Association
10. Jurisdiction of Courts	
10A. [OMITTED BY THE COMPANIES TRIBUNAL (ABOLITION) ACT, 1967, W.E.F. 1.7.1967]	
10B. [OMITTED BY THE COMPANIES TRIBUNAL (ABOLITION) ACT, 1967, W.E.F. 1.7.1967]	
10C. [OMITTED BY THE COMPANIES TRIBUNAL (ABOLITION) ACT, 1967, W.E.F. 1.7.1967]	
10D. [OMITTED BY THE COMPANIES TRIBUNAL (ABOLITION) ACT, 1967, W.E.F. 1.7.1967]	

PART - IA BOARD OF COMPANY LAW ADMINISTRATION

10E. Constitution of Board of Company Law Administration
10F. Appeals against the orders of NCLT

PART - II INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

Certain companies, association and partnerships to be registered as companies under Act

11. Prohibition of associations and partnerships exceeding certain number	Miscellaneous
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Memorandum of association

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|------|---|---|----------------------|--|--|--|--|--|--|--|--|--------------------------------------|--|--|--|--|--|--|--|--|--|--|
| 12. | Mode of forming incorporated company | } | Classes of Companies | | | | | | | | | | | | | | | | | | | |
| 13. | Requirements with respect to memorandum | | | | | | | | | | | | | | | | | | | | | |
| 14. | Form of memorandum | | | | | | | | | | | | | | | | | | | | | |
| 15. | Printing and signature of memorandum | | | | | | | | | | | | | | | | | | | | | |
| 15A. | Special provision as to alteration of memorandum consequent on alteration of name of State of Madras | | | | | | | | | | | | | | | | | | | | | |
| 15B. | Special provision as to alteration of memorandum consequent on alteration of name of State of Mysore | | | | | | | | | | | Memorandum & Articles of Association | | | | | | | | | | |
| 16. | Alteration of memorandum | | | | | | | | | | | | | | | | | | | | | |
| 17. | Special resolution and confirmation by NCLT required for alteration of memorandum | | | | | | | | | | | | | | | | | | | | | |
| 17A. | Change of registered office within a State | | | | | | | | | | | | | | | | | | | | | |
| 18. | Alteration to be registered within three months | | | | | | | | | | | | | | | | | | | | | |
| 19. | Effect of failure to register | | | | | | | | | | | | | | | | | | | | | |

Provisions with respect to names of companies

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| 20. | Companies not to be registered with undesirable names | } | | | | | | | |
| 21. | Change of name by company | | | | Memorandum & Articles of Association | | | | |
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| 24. | Change of name of existing private limited companies | | | | | | | | |
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Articles of association

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|-----|--|---|--|--|--------------------------------------|--|--|--|--|--|--|
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| 27. | Regulations required in case of unlimited company, company limited by guarantee or private company limited by shares | | | | Memorandum & Articles of Association | | | | | | |
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| 31. | Alteration of articles by special resolution | | | | | | | | | | |

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| 32. | Registration of unlimited company as limited, etc., | } | Memorandum & Articles of Association |
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| 34. | Effect of registration | | | | Memorandum & Articles of Association | | | | | | | | | | |
| 35. | Conclusiveness of certificate of incorporation | | | | | | | | | | | | | | |
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- 46. Form of contracts }
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- 49. Investments of company to be held in its own name }
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- 51. Service of documents on company }
- 52. Service of documents on Registrar }
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- 54. Authentication of documents and proceedings } Miscellaneous

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- 55A. Powers of Securities and Exchange Board of India }
- 56. Matters to be stated and report to be set out in prospectus }
- 57. Expert to be unconnected with formation or management of company }
- 58. Expert's consent to issue of prospectus containing statement by him }
- 58A. Deposits not to be invited without issuing an advertisement }
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61.	Terms of contract mentioned in prospectus or statement in lieu of prospectus, not to be varied		
62.	Civil liability for mis-statements in prospectus		
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PART - V
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|---|---|---------------|

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| <ul style="list-style-type: none"> 163. Place of keeping and inspection of, registers and returns 164. Registers, etc., to be evidence | } | Miscellaneous |
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|---|---|----------|

- 178. Chairman's declaration of result of voting by show of hands to be conclusive
 - 179. Demand for poll
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 - 181. Restriction on exercise of voting right of members who have not paid calls, etc.
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 - 186. Power of NCLT to order meeting to be called
 - 187. Representation of corporations at meetings of companies and of creditors
 - 187A. Representation of the President and Governors in meetings of companies of which they are members.
 - 187B. Exercise of voting rights in respect of shares held in trust
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 - 188. Circulation of members' resolutions
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 - 192A. Passing of resolutions by postal ballot
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- } Meetings

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Managerial remuneration, etc.

- 198. Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits
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Prevention of management by undesirable persons

- 202. Undischarged insolvent not to manage companies
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- } Miscellaneous

Restriction an appointment of firms and bodies corporate to offices

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| 204. | Restriction on appointment of firm or body corporate to office or place of profit under a company | } Miscellaneous |
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Dividends and manner and time of payment thereof

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| 205. | Dividend to be paid only out of profits | } Dividends |
| 205A. | Unpaid dividend to be transferred to special dividend account | |
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| 207. | Penalty for failure to distribute dividends within thirty days. | |

Payments of interest out of capital

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| 208. | Power of company to pay interest out of capital in certain cases | } Dividends |
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Note : *Section with strike through means that the provisions are not very relevant to students and that they are not covered in this book.*

Example : 204. ~~Restriction on appointment of firm or body corporate to office or place of profit under a company~~



NATURE OF COMPANY

- A. Definition**
- B. Characteristics of a Company**
- C. Distinction**
- D. Lifting of Corporate Veil**
- E. Others**

A. DEFINITIONS

Chief Justice Marshall

A Company is an artificial being, invisible, intangible and existing only in the contemplation of law.

Haney

A Company is an incorporated association which is an artificial person created by law having a separate entity with perpetual succession and a common seal.

Lord Justice Lindley

A Company is an association of 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 or loss arising therefrom. The common stock is denoted in money and is the capital of the Company. The persons who contribute it or to whom it belongs are the members. The proportion of capital to which each member is entitled is his share.

Cases Referred

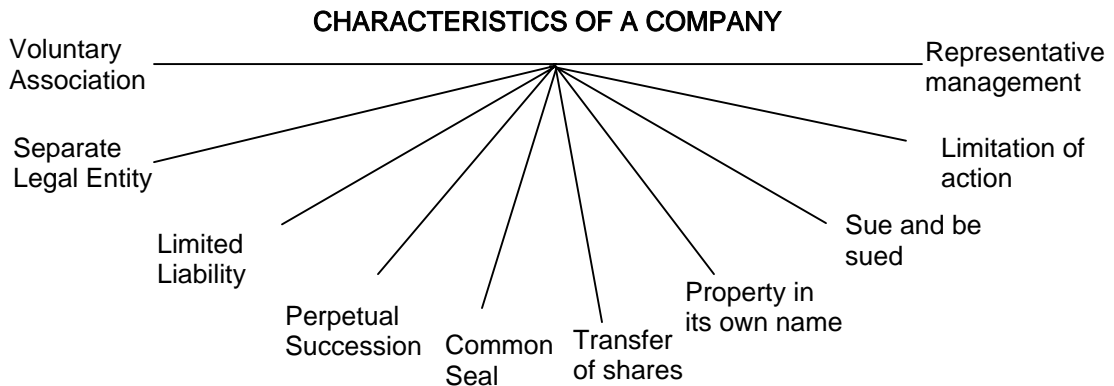
- »» *Salomon Vs. Salomon & Co Ltd.*
- »» *Lee Vs. Lee's Air Farming Ltd*
- »» *Kandoli Tea Co. Ltd*
- »» *Macaure Vs Northern Assurance Co. Ltd.*
- »» *Daimler Co. Ltd. Vs Continental Tyre and Rubber Co. Ltd.*
- »» *Bacha F. Guzdar Vs C.I.T. Bombay*
- »» *Jones Vs Lipman*
- »» *Gilford Motor Co Ltd Vs Horne*
- »» *F.G. Films Ltd. Case*
- »» *Connors Bros Vs Connors*
- »» *Hendon Vs Adelman & others*

Companies Act

- Section 2(10)** - A Company means a Company as defined in Section 3.
- Section 3(1)(i)** - Company means a Company formed and registered under this Act or an existing Company.
- Section 3(1)(ii)** - Existing Company means a Company formed and registered under any of the previous Companies Laws.

Com + Panis = Company
With (or) + Bread
Together

The word **"Company"** is derived from the Latin words COM meaning 'With' or 'Together' and PANIS meaning 'Bread'.

B. CHARACTERISTICS OF A COMPANY

1. **Voluntary Association** : It is a voluntary association of persons.
2. **Separate Legal Entity** : A Company is, in law regarded as an entity separate from its members, i.e., it has an independent corporate existence.

a. Salomon Vs. Salomon & Co. Ltd.*Facts*

There was a sale by `S` of a shoe business to a newly formed Company. The consideration was 38,782 pounds of which `S` took 20,000 shares of 1 pound each, debentures worth 10,000 pounds and the balance in cash. His wife, daughter and 4 sons took up one share each. Subsequently, the Company was wound up on which date the assets were worth 6,000 pounds and liabilities were 17,000 pounds (including 10,000 pounds secured debentures held by `S`). Payment was first made to `S` as he was a secured creditor.

Contention

The unsecured creditors contended that `S` could not be treated as a secured creditor as he was the Managing Director of the one man Company which was no different from `S` and the cloak of the Company was a mere sham and fraud.

Decision

It was held that a Company is distinct from the members who form it and their liability is restricted to the extent of unpaid value of shares, if any.

b. *Lee V Lee's Air Farming Ltd.*

Facts

`L` held 2,999 shares out of 3,000 shares in a Company. He was the Managing Director and chief pilot on a salary. He was killed in an air crash while working for the Company. His wife claimed compensation since her husband died during the course of employment.

Contention

The Insurers challenged that `L` and the Company were the same person.

Decision

It was held that `L` was a separate person distinct from the Company he formed and hence compensation was due to the widow.

c. *Kandoli Tea Company Ltd.*

Facts

Certain persons transferred their estates, on which advalorem duty was payable, in the name of the Company. They claimed exemption from such advalorem duty on the ground that the transfer was from them individually, to themselves in another name.

Decision

It was held that the Company was separate from the shareholders and transfer was as much as conveyance.

3. **Limited Liability** : A Company may be either limited by shares or one limited by guarantee. If it is a Company limited by shares, then the liability of the members is limited to the extent of money remaining unpaid on shares held by them. For example, face value of a share is Rs. 10/- and a member has already

paid Rs. 6/-, then he cannot be called upon to pay during the lifetime of the Company, more than Rs. 4/- per share.

If it is a Company limited by guarantee, then the liability of the members is limited to such an amount as the members may undertake to contribute, in the event of its winding up.

4. **Perpetual Succession** : A Company is a juristic person and its life does not depend on the life of its members. The membership of a Company may keep changing from time to time, but that does not affect the Company's continuity. The death or insolvency of an individual member does not in any way affect the corporate existence of the Company. As Gover puts it "Members may come and members may go, but the Company goes on for ever". As has been held in *Meat Supplies Guildford Ltd.*, even a hydrogen bomb could not destroy a Company. An incorporated body never dies.
5. **Common Seal** : It is the official signature of the Company. As the Company has no physical existence it has to act through its agents and all contracts entered into by its agents must be under the seal of the Company. Normally the seal of the Company is affixed to the documents in accordance with the prescription of the Company's Articles.
6. **Transferability of Shares** : This provides liquidity to the investor and stability to the Company. Shares or interest of the member of a Company is freely transferable except to the extent of restrictions prescribed in the Articles of a Private Company.
7. **Own & Hold property in its own name** : A Company is a legal person. It is capable of owning, enjoying and disposing of the property in its own name. No member can claim himself to be owner of the Company's property during its lifetime or even on its winding up. A shareholder does not have even an insurable interest in the property of the Company. The property of the Company is not the property of its shareholders.

Eg : Macaure held all except one share of a timber Company. He was also a substantial creditor of the Company. He insured the Company's timber in his own name. The timber was destroyed by fire. His claim was rejected by the insurance Company for want of insurable interest. Held, the insurance Company was not liable to him. (*Macaure Vs. Northern Assurance Co. Ltd.*)

- 8. **Capacity to sue & be sued** : A Company being a body corporate can sue and be sued in its own name.
- 9. **Limitation of action** : The creditors can make their claims (limitation) only against Company and cannot proceed against shareholders. Their action stops with Company. It is only the Company which can call for any unpaid capital from its shareholders.
- 10. **Representative Management** : The Company is managed by elected representatives of the shareholders viz., Directors, collectively referred to as the 'Board'.

C. DIFFERENCE BETWEEN A COMPANY AND A PARTNERSHIP FIRM

BASIS OF DIFFERENCE	COMPANY	PARTNERSHIP FIRM
Mode of Creation	Only when registered under Companies Act	By mutual agreement between partners. Registration is optional
Separate Legal Entity	Yes	No
Own Property	Yes	No
Agents	Members are not agents of the Company.	Partners are agents of the Firm
Transfer of Shares	Shares can be transferred	Cannot be transferred
Enter into contracts with Company / Firm	Member can enter into a contract with the Company.	Partner cannot enter into a contract with the Firm.
Liability	Limited	Unlimited
Perpetual Succession	Yes	No

BASIS OF DIFFERENCE	COMPANY	PARTNERSHIP FIRM
Minimum No. of Persons	Two for Private Companies and Seven for Public Companies.	Two
Maximum No. of Persons	Fifty - Private Companies Unlimited - Public Companies	10 for Banking and 20 for any other Business
Audit	Compulsory	Optional
Minimum paid-up capital	Applicable - Rs.1 Lakh for Private Co. Rs.5 Lakhs for Public Co.	Not applicable

D. LIFTING OF CORPORATE VEIL

A Company is a person created by law, having a separate legal entity. The principle of separate and distinct entity has been well established in the case of *Salomon Vs. Salomon & Co. Ltd.* In the words of Lord MacNaghten "*The company is at law different altogether from the subscribers to the memorandum, and though it may be that after incorporation the business is precisely same as it was before and the same persons are managers and the same hands receive the profits, the company is not in law the agent of subscribers or trustees for them. Nor are the subscribers, as members, liable in any shape or form, except to the extent and in the manner provided by the Act.*"

When a Company has been formed and registered under the Act, all dealings with the Company will be in the name of the Company and the persons behind the Company will be disregarded, however important they may be. This principle is referred to as **the Veil of Incorporation**. The Courts in general consider themselves bound by this principle. The effect of this principle is that there is a fictional veil (ie., a curtain and not a wall) in between the Company and its members.

However, the advantages of corporate personality are allowed to be enjoyed only by those who make use of it for honest purposes. In case of a dishonest and fraudulent use of the facility of incorporation, the law will lift the corporate veil and identify the persons (members) who are behind the curtain and make them responsible for the fraud and improper conduct.

The corporate entity will be disregarded in the following circumstances –

1. Cases falling under judicial interpretation
2. Cases falling under statutory provisions

1. *Cases falling under judicial interpretation*

a) Determination of the character; whether it is an enemy Company or not

A Company may assume an enemy character when persons in defacto control of its affairs are residents in an enemy country. In such a case, the Court may, at its discretion, examine the character of the persons in real control of the Company, disregard the corporate fiction and declare the Company to be an enemy Company.

Daimler Co. Ltd. Vs. Continental Tyre and Rubber Co. Ltd.

A Company was incorporated in England by a German Company for the purpose of selling tyres in England which were manufactured in Germany. The German Company virtually held the entire share capital in the English Company. All the Directors were German residents. During the First World War, the English Company commenced an action for recovery of a trade debt from another English Company.

It was held that the Company was an alien Company and the payment of debt to it would amount to trading with the enemy and therefore the Company was not allowed to proceed with the action.

b) Protection of Revenue

The Courts may ignore the 'separate legal entity' status of a Company, where it is used for tax evasion or circumventing tax obligation.

Sir Dinshaw Maneckjee Petit

`D`, an assessee, who was receiving huge dividend and interest income, transferred his investments to 4 private Companies formed for the purpose of reducing his tax liability. These Companies transferred their income to `D` as a pretended loan. Held, these Companies were formed by `D` purely and simply as a means of avoiding tax obligation and the Companies were nothing more than `D` himself. They did no business but were created simply as legal entities to ostensibly receive the dividends and interest and hand them over to `D` as pretended loans.

c) Prevention of fraud or improper conduct

The legal personality of a Company may also be disregarded in the interest of justice where the machinery of incorporation has been used for some fraudulent purpose.

Eg: Defrauding creditors or defeating or circumventing law or avoiding legal obligation.

Jones Vs Lipman

`L` agreed to sell a certain piece of land to `J` for Pound 5,250. He subsequently changed his mind and to avoid specific performance of the contract, he sold it to a Company (with a capital of Pound 100), which was formed especially for this purpose. The Company had `L` and a clerk of his solicitors as the only members. `J` brought an action against `L` and the Company for specific performance of the contract. The Court looked into the reality, ignored the transfer, and ordered the Company to convey the land to `J`.

Gilford Motor Co. Ltd. Vs. Horne

`H`, a former employee of `G`, was subject to a covenant not to solicit its customers. `H` formed a Company to carry on a business which solicited the customers of `G`. The Court gave an injunction both against `H` and his Company to restrain them from carrying on the business further.

d) Where the corporate facade is really only an agency and an instrument

F.G. Films Ltd.

An American Company produced a film in India, technically in the name of a British Company wherein 90% of the share capital was held by the President of the American Company, which financed the production of the film. The Board of Trade refused to register the film as a British film on the ground that the British Company acted merely as a nominee of the American corporation.

e) Where the doctrine conflicts with public policy

Connors Bros. Vs. Connors

The Corporate veil was pierced to identify the Managing Director who used his position contrary to public policy. Reason was that the persons in defacto control of its affairs were residents of Germany, which was at war with England. The alien Company was not allowed to proceed with the action, as that would have meant giving money to the enemy, which was considered monstrous and against public policy.

f) Avoidance of Welfare legislation

Workmen employed in Associated Rubber Industries Ltd., Bhavnagar Vs. Associated Rubber Industries Ltd., Bhavnagar and another

A new Company was formed by the principal Company with no assets of its own except those transferred to it by the principal Company, with no business or income of its own except receiving dividends from shares transferred to it by the principal Company. The Supreme Court held that the new Company was formed as a device to reduce the gross profits of the Principal Company and thereby reduce the amount to be paid by way of bonus to the workmen. The amount of

dividends received by the new Company should, therefore, be taken into account while assessing the gross profit of the principal Company.

g) Quasi Criminal cases

The Courts have sometimes applied the doctrine in quasi-judicial cases to ascertain the actual persons behind the corporate facade.

2. Cases falling under statutory provisions

a) Reduction in membership below statutory minimum: Sec. 45

Where the number of members falls below the statutory minimum (7 or 2 as the case may be) and the Company carries on business for more than 6 months, then every person who is a member at that time it so carries on business after those six months and knows this fact is severally liable for the whole of the debts of the Company contracted during such time.

b) Misrepresentation in Prospectus : Sec. 62 - 63

In case of misrepresentation in a Prospectus, every Director, promoter, and every other person who authorises the issue of such a prospectus incurs liability towards those who subscribe for shares on the faith of such untrue statement.

c) Failure to refund Application Money : Sec. 69

In case of first allotment of shares in a Public Company, if minimum subscription has not been received or the Company has not obtained the certificate of commencement of business, the Directors shall be personally liable to pay the money with interest, if application money is not repaid within 70 days.

d) Misdescription of Company's name : Sec. 147

Where an officer or agent of a Company acts or enters into a contract without fully or properly mentioning the Company's name and address of its registered office, he shall be personally liable.

Where an officer of a Company signs on behalf of the Company, any contract, bill of exchange, hundi, promissory note, cheque or orders for money or goods, such person shall be personally liable to the holder, if the name of the Company is not mentioned.

Hendon Vs Adelman & Others

Directors signed a cheque in the name of a Company stating the Company's name as "L & R Agencies Ltd" whereas the real name of the Company was L & R Agencies Ltd. Held, the Directors were personally liable.

e) Subsidiary Company : Sec.212

Even though the holding Company and its subsidiary are separate legal entities –

- (i) the Holding Company has to attach to its Balance Sheet the Annual Accounts (Financial Statements) of subsidiary
- (ii) the Court may treat a Subsidiary Company as a branch or department of one large undertaking owned by the holding Company.

f) Fraudulent conduct : Sec. 542

Where in the course of winding up of a Company, it appears that any business of the Company has been carried on –

- (i) with an intent to defraud the creditors of the Company or any other person, or
- (ii) for any fraudulent purpose,

then, those who were knowingly parties to such conduct of business may, at the discretion of the Court, be made personally liable without any limitation as to liability for all or any debts or other liabilities of the Company.

g) Non-payment of Tax : Sec. 79 of Income tax Act, 1967

When any closely held Company (unlisted) is wound up and any tax assessed on the Company, whether before or in the course of liquidation, in respect of any income of any previous year, which cannot be recovered, every person who was a Director of that Company at any time during the relevant previous year, shall be jointly and severally liable for payment of tax.

h) Ultra vires Acts (beyond powers)

The Directors of a Company will be personally liable for all those acts, which they have done on behalf of the Company, if they are Ultra vires the Company.

E. OTHERS**1. Body Corporate / Corporation - Sec 2(7)**

“Body Corporate / Corporation” includes a Company incorporated outside India but does not include:

- a) a Corporation Sole¹
- b) a registered Cooperative Society
- c) any other body corporate (not being a Company as defined in the Act) which the Central Government may specify in this behalf.

1 Corporation : (i) *Sole* : It is constituted by a single person who by occupation of an “office” has corporate status. Ex: President, Governors.

(ii) *Aggregate* : It comprises a group of persons associated to form a single person. Ex: A Company, Municipality.

The word 'includes' implies a broader coverage to comprise :

- a) Public Financial Institutions – Sec. 4A
- b) Nationalized banks
- c) Corporations formed under the Act of Parliament

Every incorporated Company is a body corporate but the reverse is not true as there are many body corporates which are not incorporated as Companies.

The Supreme Court has held that a society registered under the Societies Registration Act does not come within the term body corporate though the society is recognised as a legal person capable of holding property and becoming member of a Company.

2. One man Company

A Company where all shares are literally held by one person. **Eg** : 100% Holding Company. Such Company is usually a Private Company. In such Companies, for complying with requirement of statutory minimum number of members (2 or 7) a few shares are held by some representatives of the main shareholders.

3. Citizenship of Company

A Company though a legal person, is **not a citizen** either under the –

- a) Constitution of India, or
- b) Citizenship Act, 1955

However, a Company has both **“Nationality and Residence”**.

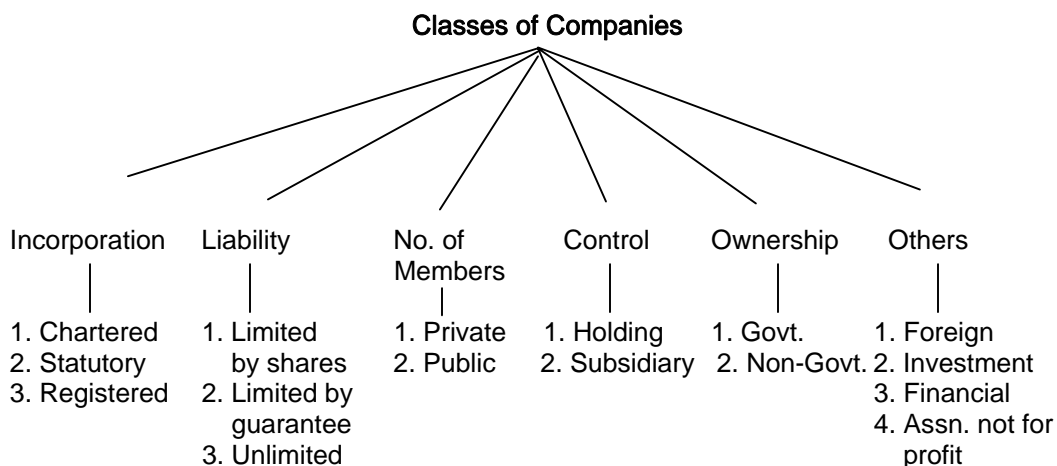
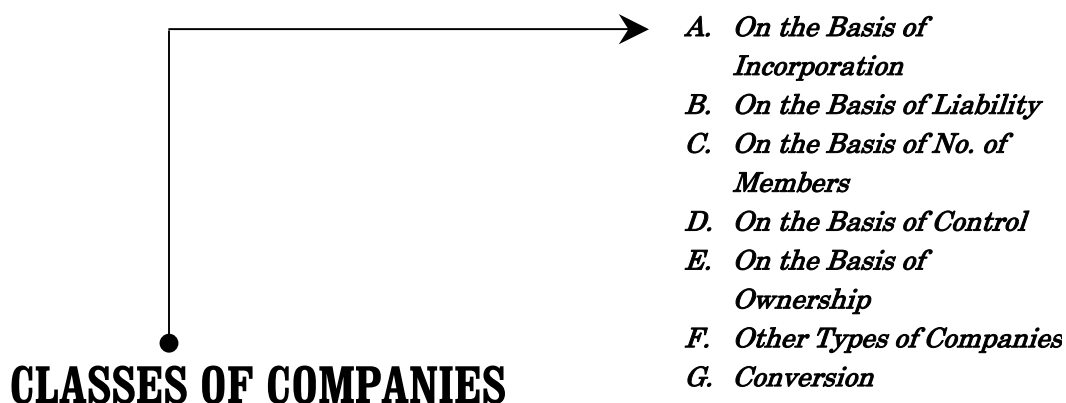
Under the constitution, a Company has no fundamental rights which are expressly available to citizens only. It can however claim some protection of these fundamental rights. **Eg** : right to equality, etc.

Although a Company cannot be a citizen, it has a nationality, domicile and residence. The Company's residence is primarily important in connection with –

- a) the Income Tax Act
- b) the Foreign Exchange Management Act

4. Residence of Company

A Company resides where the central control and management of its business is exercised. Thus a joint stock Company resides where its place of incorporation is, where the meetings of the whole Company or those who represent it are held and where its governing body meets in bodily presence for the purposes of the Company and exercises the powers conferred upon it by the Statute and by Articles of Association.



A. ON THE BASIS OF INCORPORATION

1. Chartered Companies

They are companies which came into existence by a charter (order) of the Queen of English. **Eg** : East India Company. These Companies are no longer in existence.

2. Statutory Companies

They are Companies created by a Special statute of the Legislature / Parliament, **Eg.**, Reserve Bank of India, LIC etc. The provisions of the Companies Act, 1956 apply to them if they are inconsistent with the provisions of the Special Act under which they are formed.

3. Registered Companies

They are Companies as defined u/s 3 of the Act.

B. ON THE BASIS OF LIABILITY

1. Companies Limited by Shares : Sec.12 (2)(a)

It is a Company where the liability of its members is limited by its MoA to the amount unpaid on the shares. This liability can be enforced during the life time of the Company or in the event of winding up.

2. Companies Limited by Guarantee : Sec.12 (2)(b)

It is a Company, where the liability of the members is limited by MoA to such an amount which the members undertake to contribute to the assets of the Company, in the event of it being wound up.

Features :

- a) The Articles of such a Company must state the number of members with which it is registered.
- b) Such Companies are usually not formed for the purpose of profit but for the promotion of art, science, culture and other charitable purposes.
- c) Such a Company may or may not have share capital.
- d) Such guaranteed amount cannot be mortgaged / charged before liquidation. Such sum can be called by the Company for payment of liquidation expenses and general liabilities at the time of liquidation.
- e) Form of Memorandum & Articles of Association for :

<i>i.</i>	<i>Company limited by guarantee without share capital</i>	<i>Table C in Schedule I</i>
<i>ii.</i>	<i>Company limited by guarantee with share capital</i>	<i>Table D in Schedule I</i>

- f) Liability of shareholders :

<i>i.</i>	<i>Company limited by guarantee without share capital</i>	<i>To the extent of guarantee</i>
<i>ii.</i>	<i>Company limited by guarantee with share capital</i>	<i>To the extent of guarantee plus unpaid liability on share capital</i>

Difference between Company limited by Shares and Company limited by Guarantee

<i>Company limited by Shares</i>	<i>Company limited by guarantee</i>
Members may be called upon to discharge their liability at anytime either during the Company's lifetime or at the time of winding up.	Members may be called upon to discharge their liability only after commencement of winding up and only subject to certain conditions.

3. Unlimited Company : Sec.12 (2) (c)

It is a Company without limited liability wherein every member is liable for the debts of the Company as in any ordinary partnership, but only in proportion to their interest in the Company. Such a Company may or may not have share capital.

Features :

- a. It must have its own Articles of Association.
- b. The Articles must state the number of members with which the Company is to be registered.
- c. If the Company has share capital, the Articles must also state the amount of share capital with which the Company is to be registered.
- d. So long as the Company is a going concern, the liability of the shares is the only liability which can be enforced by the Company, though the liability of its members is unlimited so far as creditors are concerned.
- e. If the unlimited Company has share capital, it may increase the nominal value of its shares provided that –
 - i. no part of such increase shall be capable of being called up except in the event and for the purpose of the Company being wound up, or
 - ii. a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purpose of the Company being wound up.
- f. Form of Memorandum and Articles of Association has been prescribed in Table E of Schedule I.

Registration as Limited Company (Sec. 32)

An unlimited Company may re-register itself under the Act as a limited Company by passing a special resolution to that effect and stating the manner in which the liability of the members is to be limited and providing for appropriate alteration in Memorandum and Articles of Association

The registration does not affect any debts, liabilities, obligations or contracts of the Company before or at the time of registration.

C. ON THE BASIS OF NUMBER OF MEMBERS

1. *Private Company : Sec 3(1)(iii)*

A private Company means a Company which has a **minimum paid-up capital** of one lakh rupees or such higher paid-up capital as may be prescribed, and which by its Articles :

- a) **restricts** the right to transfer its shares, if any; (Ex: transfer only to the existing shareholders)
- b) **limits** the number of its members to fifty¹ not including
 - i. persons who are in the employment of the Company and
 - ii. persons who have formerly been in the employment of the Company, have been members while in that employment and have continued to be members after that employment ceased.
- c) **prohibits** any invitation to the public to subscribe to any shares in or debentures of the Company.
- d) **prohibits** any invitation or acceptance of deposits from persons other than its members, Directors or their relatives.

2. *Public Company : Sec 3(1)(iv)*

A public Company means a Company which

- a) is not a Private Company.
- b) has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed.
- c) is a Private Company which is a subsidiary of a Public Company.

Disadvantages of a Private Company

- a) Restrictions in Sec.3 (1) (iii) a, b , c and d.
- b) Company cannot issue share warrants payable to bearer.

1. Joint shareholders are to be treated as a single member.

- c) The annual return to be filed with the Registrar u/s 159 should be sent with additional certificates confirming non-violation of Sec.3 (1)(iii) b, c and d - Sec.161.
- d) A Member cannot appoint more than one proxy to attend and vote at a meeting of the Company.

Distinction between Public Company and Private Company

S.No	BASIS	PUBLIC COMPANY	PRIVATE COMPANY
a.	Minimum No.	7 Members	2 Members
b.	Maximum No.	No restriction	50 Members
c.	Minimum No. of Directors	3	2
d.	Restriction on appointment of Directors - Consent - Qualification Shares	File Consent with RoC Take up qualification shares, if any	Not applicable
e.	Restriction on Invitation to subscribe to shares	No restriction	Prohibited
f.	Transferability of shares	Freely transferable	Restricted
g.	Quorum	Five members personally present	Two members personally present
h.	Managerial Remuneration Ceiling	Yes	Not applicable
i.	Commencement of Business	After obtaining certificate of commencement of Business.	After obtaining certificate of Incorporation.
j.	Statutory meeting	Compulsory	Not applicable
k.	Approval of Central Government for appointment of Directors	Where the no. of Directors exceeds 12	Not Necessary
l.	Retirement of Directors by rotation	Two thirds	Not applicable
m.	Minimum paid-up Capital	Rs.5 lakhs	Rs. 1 Lakh

Consequences of infringement of Articles by private companies : Sec.43

- a) On infringement of restrictions as discussed u/s 3(1)(iii), the Company ceases to be a private Company.
- b) The Act will apply as if it were not a private Company.
- c) If infringement were accidental, and if the C.G.¹ is satisfied that it is just and equitable to grant relief, it may relieve the Company on such terms and conditions as seem to the C.G. just, on an application from the Company or any other person interested.

1. *Central Government*

d) Privileges lost –

- | | |
|---|--|
| <ul style="list-style-type: none"> ▪ <i>Several liability of members : Sec.45</i> ▪ <i>Company winding up : Sec.433</i> ▪ <i>Contributory Petition Sec.439</i> | <p>If the number of members falls below 2 and the Company carries on business for 6 months from the date of such reduction, the members will lose their limited liability.</p> <p>Reduction in membership below 2 is a ground for compulsory winding up.</p> <p>Contributory may present petition for winding up if number of members falls below 2.</p> |
|---|--|

D. ON THE BASIS OF CONTROL

Holding Companies – Sec. 4 (4); and Subsidiary Companies – Sec. 4 (1)

The above are relative terms. A Company shall be deemed to be a subsidiary of another Company, if and only if –

a) that other Company controls the composition of its Board of Directors

Eg : The Board of Directors of a Company S consists of seven Directors and if another Company H has the authority to appoint four or more Directors, Company H is deemed to be the holding Company and Company S is called the subsidiary Company.

Company H is deemed to have power to appoint a Director in the following cases –

- If a person cannot be appointed to a Directorship without the exercise in his favour of the power of appointment held by the Company (Company H);
- If a person's appointment to Directorship follows necessarily from his appointment as Director or manager of or to any other office of employment, in the Company (Company H);
- If the Directorship is held by an individual nominated by the Company (Company H) or by any of its subsidiaries.

b) that other Company, holds more than half in the nominal value of its equity share capital; or

c) The first mentioned Company is a subsidiary of any Company, which is that other Company's subsidiary

Eg: If Company X is a subsidiary of Company Y and Company Y is the subsidiary of Company Z, then X is also a subsidiary of Company Z.

E. ON THE BASIS OF OWNERSHIP

1. *Government Companies : Sec. 617*

A Government Company is a Company in which **not less than 51%** of the paid up share capital is held :

- by the Central Government, or
- by the State Government, or
- partly by the Central Government and partly by one or more State Governments.

2. *Non Government Companies*

They are Companies other than Government Companies.

F. OTHER TYPES OF COMPANIES

1. *Foreign Companies: Sec. 591*

It is a Company incorporated outside India, which has an established place of business in India. Such a Company should file a return with particulars of its background within 30 days of setting up business in India.

2. *Investment Company: Sec. 372*

It is a Company whose principal business is the acquisition of shares, stock, debentures or other securities.

3. *Financial Companies*

As per Rule 2 (cc) of the Companies (Acceptance of deposits) Rules, 1975, a 'Financial Company' means a non-banking Company which is a financial institution within the meaning of Sec. 45(l)(c) of Reserve Bank of India Act 1934.

4. *Association not for profit: Sec.25*

Section 25 permits the registration, under a licence from the Central Government, of an association not for profit, with limited liability, without being required to use the word 'Limited' or the words 'Private Limited' to their name. The Central Government may grant such a licence if –

- It is intended to form a Company for promoting commerce, art, religion, charity or any other useful object; and
- The Company prohibits payment of any dividend to its members but intends to apply its profits or other income to the promotion of its objects.

A licence may be granted subject to such regulations and conditions as it thinks fit and if necessary may direct the same to be incorporated in the Memorandum and Articles of Association.

Features :

- a) The Company cannot alter its objects clause in the Memorandum of Association without the approval of the Central Government.
- b) The Company enjoys all the privileges of a Limited Company, and is subject to all its obligations, except those in respect of which exemption by a special or general order is granted by the Central Government.
- c) The Company need not pay stamp duty for registering their Memorandum and Articles of Association.
- d) The Company is exempted from the requirement of having a minimum paid-up capital.
- e) The Company need not end its name with the words `Limited or Private Limited`.
- f) The licence may be revoked at any time if conditions are not complied with. The revocation is done by the Central Government after giving notice of its intention and giving an opportunity of being heard.
- g) On revocation, the Registrar shall put "Limited" or "Private Limited" against the Company's name in the register.

G. CONVERSION

1. Conversion of a Private Company into a Public Company

a. Conversion by volition or choice : Sec. 44

The conversion is done by altering the Articles of Association in such a manner that they no longer contain the restrictions and provisions of Sec 3 (1) (iii) and other provisions inconsistent with the needs of a public Company.

- i. If the number of members is below seven, steps should be taken to increase the number of members to a minimum of seven.
- ii. If the paid up capital is less than Rupees Five lakh or such sum as may be prescribed steps must be taken to increase the same.
- iii. If the number of Directors is only two, the number of Directors should be increased to atleast three.
- iv. On approval of the alteration by the shareholders, through a special resolution in a general meeting –
 - Form 23 together with a certified copy of special resolution should be filed with the RoC.

- A prospectus or Statement in lieu of prospectus has to be filed with RoC.
- v. RoC will issue a fresh certificate of incorporation.
- vi. The change of name is to be noted in the Memorandum and Articles of Association, letterheads, bills, invoices, seals, etc.
- vii. The Company becomes a Public Company from the date of passing of the special resolution.

However, change in name by deleting the word `Private` becomes effective only on the issue of a fresh certificate of incorporation by RoC.

b. Conversion by default : Sec. 43

If a Private Company fails to comply with any of the restrictive provisions of Sec. 3 (1) (iii), such a Company ceases to be a Private Company and becomes a Public Company. The Company ceases to enjoy the privileges and exemptions conferred on a Private Company.

All provisions of the Act shall become applicable as if the Company were a Public Company.

2. Conversion of a Public Company into a Private Company

A Public Company, by amending its articles and inserting the restrictive clauses given under Sec. 3(1) (iii) of the Act, can become a Private Company.

The amendment to the Articles shall have effect only after the Central Government approval if the amendment has the effect of converting a Public Company to a Private Company (Sec. 31). Therefore the Company not only requires shareholders' approval by Special Resolution but also the approval of the Central Government.

On approval from the Central Government, a printed copy of the altered Articles of Association is to be filed by the Company with the RoC within 1 month from the date of receipt of approval.