



Company Law paper

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ASST.PROF. IN COMMERCE



UNIT-I

COMPANY

Definition of Company

- **Section 3(1)(i) and (ii) of the Companies Act** define a company as “a company formed and registered under this Act or an existing company. An existing company means a company formed and registered under any of the former Companies Acts.”
- According to **Lord Justice Lindley**, “By a company is meant an association of many persons who contribute money or money’s worth to a common stock and employ it in some trade or business, and who share the profit and loss (as the case may be) arising therefrom. The common stock so contributed is denoted in money and is the capital of the company. The persons who contribute it. Or to whom it belongs, are members. The proportions of capital to which each member is entitled is his share. Shares are always transferable although the right to transfer is more or less restricted.”
- According to **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”.

Characteristics

1. Incorporated association
2. Artificial legal person
3. Separate legal entity
4. Perpetual existence
5. Common seal
6. Limited liability
7. Transferability of shares

Kinds of Companies

According to the mode of incorporation

1. Statutory company

- ❖ Formed by the special Act passed either by the central or State legislature. Eg. SBI, RBI, LIC, FCI etc.
- ❖ Not required to have any Memorandum of Association as they are governed by the Act constituting them.
- ❖ Do not have to use the word 'limited' as part of their name.

2. Incorporated or registered company

- ❖ A company registered under the Companies Act.
- ❖ All existing companies in India except the statutory companies have been formed in this way.
- ❖ Registered Companies can be further divided in two ways
 - (i) On the basis of the number of members and
 - (ii) On the basis of liability of members.

On the basis of the number of members

1. Private Company

- According to section 3(1)(iii), as amended by the companies amendment act 2000, a Private company means a company which has a minimum paid up capital of Rs. One lakh or such higher paid up capital as may be prescribed and by its articles of association
- Restricts the right of the members to transfer shares if any
- Limits the number of members to fifty, excluding members who are or were in the employment of the company
- Prohibits any invitation to the public to subscribe for any shares in or debentures of the

2. Public Company

- Section 3(1)(iv) defines a public company as a company which is
- Not a private company
- Has a minimum paid up capital of rs. Five lakh or such higher paid up capital as may be prescribed
- Is a private company which is a subsidiary of a company which is not a private company.
- (i.e. which does not have the 4 restrictions of a private company)

On the basis of the liability of the members

1. Companies limited by shares	2. Companies limited by guarantee	3. Unlimited companies
<p>1. The liability of the members is limited by the MOA to the amount of any unpaid shares respectively held by them.</p> <p>2. These are limited liability companies.</p> <p>3. The liability can be forced during the existence and also during the winding up of the company.</p>	<p>1. A company has the liability of its members limited by the memorandum to such amount as may be respectively thereby undertaken to contribute to the assets of the company in the event of its being wound up.</p> <p>2. The amount from each member cannot be demanded until the company is wound up.</p> <p>3. Companies of this type are usually formed for non-trading purposes and do not have share capital. Eg. The Chambers of Commerce, trade associations etc.</p>	<p>1. There is no limit on the liability of the members and it may extend to the personal property of the members.</p>

Other kinds of companies

1. Licensed companies or Companies not for profit

- Such companies are registered under the companies act but they have to obtain a licence from the central government.
- These companies are usually formed for promoting art, commerce, science, religion, charity or any other useful object and do not intend to apply its profits in paying dividends rather in promoting its objects.
- Enjoys certain privileges such as excluding the word limited from its name, non payment of stamp duty on registration of their MOA.

2. One-man Company or Family Company

- One man holds the whole of the share and only takes dummy members only to fulfil the statutory requirement (7 in case of public co. and 2 in case of private co.)

3. Foreign Company

- A company which has been incorporated outside India but having a place of business in India.
After 30 days of establishing business in India, it has to submit to the Registrar, the following documents as per sec 592
 - A certified copy of the Charter, Statute, MOA, AOA. If not in English, a certified translation thereof.
 - The full add. of the registered or principal office of the Co.
 - A list of the directors, secretary giving full details.
 - Name and add. Of any person authorised to accept service of legal process and notices in India.

The co. has to state the name of the country of its incorporation in every document that it circulates to the public, it has to exhibit outside every office, its name and the name of the incorporation in English and in a regional language. It has to also state whether the liability of its members is limited or not in every official publications.



UNIT-I

a. INCORPORATION, RAISING OF
CAPITAL, COMMENCEMENT OF
BUSINESS



**b. MEMORANDUM AND
ARTICLES OF ASSOCIATION**

Contents of the Memorandum (section 13)

1. The name clause

2. The registered office clause

3. The objects clause

4. The liability clause

5. The capital clause

6. The subscription/ association clause