COMPANY LAW

CHAPTER 1

COMPANY-DEFINITION REGISTRATION And ADVANTAGES

Ch.1-1 Company

(i) **Definition :**

The Companies Act 1956, defines 'company' as a Company formed and registered under the Companies act. A company is a legal or juristic person, apart from its members, capable of rights and duties of its own, and endowed with the potential or perpetual succession and a common seal. It is not a novelty, but an institution of very ancient date, it can sue or be sued. It can own and dispose of properties.

Registration & Incorporation

(ii) **Procedure:**

An application in the prescribed form is to be filed with the "Registrar of Companies" along with

1. Memorandum of Association

2. Articles of Association

3. Declaration that all the statutory requirements of Companies Act have been complied with. This must be signed by an Advocate or Chartered Accountant, and one of the directors, or Secretary. The necessary fee should be paid.

If the Registrar is satisfied that all the requirements are complied with he registers and places the name of the company on the Register of companies and issues a certificate of incorporation as a Limited Company.

The Company is born on the issue of the certificate. The validity of it cannot be challenged in any court (The remedy is to claim for winding up). Private Company: It may start business, soon after incorporation. But a Public company must take out a certificate of commencement of business from the Registrar by filing an application, signed by the Director or the secretary and fulfilling certain statutory conditions.

(iii) **Advantages of Registration:**

i) Corporate Personality:

The outstanding feature of a company is its status as an independent corporate person. By incorporation, the company becomes vested with the legal personality. **The leading case is**

Solomon Vs. Solomon & Co. Ltd.

Solomon was a boot and shoe manufacturer. His business was sound, he incorporated a Company called Solomon & Co. Ltd., for running the business. The seven subscribers to the Memorandum were Solomon, his wife and a daughter and four sons. Solomon and two sons formed the Board of Directors. The business of manufacturing was transferred by Solomon to the company at a cost £ 40,000.

In the company, Solomon had 20,000 shares of one pound each (The company had a debenture of £ 10,000/- to be given to Solomon).

Within a year the company went into liquidation. The creditors who had advanced to the Company, sued and claimed that Solomon & Co. was not a 'Company'.

Held, Solomon & Co. was a Company as it fulfilled all the legal requirements of an incorporated Company; it was a juristic person different from its subscribers. Its liability is therefore limited.

ii) Limited Liability:

This is a privilege and an advantage, in-as-much as the liability is limited to the extent of the shares held by the shareholders and no liability arises beyond this. The members are not the owners of the company and are not liable to its debts. The company is independent and meets its obligations.

iii) Succession:

There is perpetual succession and the company never dies. The membership may be changing from time to time, but this will not affect the company or its continuity. The death or insolvency of a member will not affect it. Members may come and go but the company goes on forever.

iv) Vested ownership of company:

The company as a legal person, may acquire, hold and dispose of property. It is the owner of all its assets and capital. Hence, the shareholders are not the owners.

v) **Shares are transferable :**

The shares (and other interests) of any member are a movable property and are transferable, as per the Companies Act. Once the Company is incorporated, a shareholder may sell his shares in the open market and get back his investment.

vi) Capacity to sue and be sued: As a body corporate, in its own name, a company may sue or be sued. This is one of the essentials of the legal personality of the company.

Ch. 1.2. Differences between Company and Partnership Firm

Company	Partnership Firm
1. Company is a legal person, it is separate from its Members (Solomon Vs. Solomon)	1. Not a person, partners are agents.
2. Members (shareholders) are not liable for the debt of the Company (Limited Companies)	2. Partners are jointly and severally liable & hence unlimited liability.
3. Members are not its agents.	3. Every partner is an agent of the firm.
is not the property of its members,	the property of all the partners.
5. A member of the Company can	5. A partner cannot contract
	4. The property of the firm is
4. The property of the Company	with his firm.
contract with the Company (Farrar V. Farrar Ltd.) 6. A member may transfer his shares freely.	6. A partner cannot transfer and make the transferee, (with out the consent of other partners) a partner.
7. A company is bound by its M/A & A/A which cannot be changed except according to to procedures provided therein.	7. Partners may make partnership agreement which may be changed changed by them if not registered. If registered, changes should be brought on Registrar of Firms Record in the Registrar's Office.
8. There is no limit as regards membership. But for private company the minimum is 2, maximum 50. For public companies minimum is 7, no limit on maximum.	8. The number of partners should not be above 10 for banking and 20 for others.

Ch. 1.3. Illegal Associations :

Large partnerships trading without registration create confusion and uncertainty and many evils flow from them. Hence, to arrest this activity sn. 11 (2) of the Companies Act provides that if a company, Association or Partnership is formed with 20 or more persons (10 in case of Banking business) to do any business, and acquire gains or profits then it should be registered as a Company under the Companies Act. If not so registered it becomes an "illegal Association".

Consequences of illegality:

i) As it has not juristic status, it cannot enter into contract. Each member becomes personally liable and also liable to a fine upto Rs.1000/-

ii) No suit or action can be brought in the name of the Company.

iii) Winding up provisions are not applicable and hence cannot be wound up under the Act.

iv) Claims between members are also not tenable.

Leading case **Badari Prasad V. Nagarmal**

The Supreme Court refused to grant any relief as the Association was illegal.

In **Dayal Singh V. Des Raj (Punjab)**

20 persons engaged in manufacture of "Trunks" formed an "Association', applied to the controller for Steel Quota, got the quota and distributed among themselves. It was not a regd. association, The Court held that it was an illegal association and no suit would lie for dissolution and accounts.

CHAPTER 2 KINDS OF COMPANIES

Ch. 2.1. Kinds of Companies :

1. Unlimited Companies 2. Guarantee Companies

3. Limited Companies 3. Private Companies

1. Unlimited Companies, the liability of the shareholders is not limited to their shares, but liable for all the trade debts, without any limit. Of course, the creditor will have to sue the Company and not the individuals. In case of winding up, the shareholders will have to contribute to the assets to dissolve the liability of the Company. Such a company need not have share capital; but it should have Articles of Association, setting out the number of members and the share capital, if any. It can reduce its own capital without the permis sion of the court. But, it must make annual returns.

Such companies are very rare.

2. Guarantee Companies, the liability of the members is lim ited to a particular sum specified in the Memorandum of Association. Hence, in case of a winding up the guarantee extends to the extent of the sums specified in the M/A only.

3. Limited Companies, the liability is limited to the shares subscribed and does not go beyond. Shareholder not liable. (Add details from Ch .l).

4. Private Companies, family concerns and small scale units may run business with a small number of persons (Minimum 2, Maximum 50) (Add details from Ch. 2.2).

Ch.2.2. Special features and privileges of Private Companies:

A private company also has the M/A and A/A and is to be incorporated. Infact, it is having the advantages of both the privacy of a partnership and origin and performance of a corporate body.

Public Companies are like bees working in a glass-hive; but Private Companies can keep the affairs for themselves, because of the encouragement and benediction of the Parliament.

i) Number:

The minimum is two and the maximum is 50. Hence, a Private Company can be formed with two persons (Public company minimum is 7).

ii) **Transfer of shares :**

Restrictions may be imposed regarding transfer of shares. The total membership should not exceed 50. (It becomes public, if it is 50 or above).

In it's A/A, it must prohibit issue of prospectus to the public to subscribe for shares or debentures. Hence, all the procedures regarding issue of prospectus are not applicable to it.

iii) Directors :

There are many benevolent provisions. It may have only two Directors. They can be permanent life members (14 days notice, as in Public Company, is not applicable. Similarly rule relating to rotation, of directors number of directors. Reporting to the Registrar within 30 days of taking office as Directors, restriction as to remuneration etc., also do not apply), provisions relating to qualification shares do not apply.

iv) **Statutory Meeting:**

Whereas this is a must in a Public Company, a Private company is exempted from holding a statutory meeting and of filing its statutory report.

v) An interested director i.e., a director interested in the subject matter or issue cannot participate and vote in a Public Company, but not so in a Private Company. A director, who is selling his plot of land to the Company, is an interested director. The reason for giving these and other advantages is that no public money is involved, in private companies.

vi) A Private Company may commence its business on registration.

vii) It is exempted from filing with the Registrar a prospectus or a statement in lieu of prospectus.

viii) Director may vote on a contract in which he is interested. Restriction on remuneration to directors imposed in Public Companies do not apply.

ix) Violation of Conditions:

The various privileges to a Private Company are available to it, as long as it maintains the status as a Private Company by observing the restrictions and limitations imposed on it. However, if it violates them, it will not be entitled to privileges. The Company Law Board may excuse if failure is accidental or due to some reasonable cause.

CHAPTER 3

PROMOTERS

Ch. 3.1. Promoters :

(i) The word Promoter is not defined either judicially or by the Parliament. As Judge Gross has stated; Promoter is not a term of art, not a term of law, but a term of business.

He is a person who brings about the incorporation and Organisation of the Company. He takes all the preliminary steps, procures the subscription, files the necessary documents, gets the incorporation, Registration done and sets the machinery of the company running. He takes out the certificate for commencement of business (Public Company) etc. His functions come to an end, when he hands over the new company to a governing body like the Board of Directors.

(ii) **Preliminary contracts:**

A Promoter stands in a fiduciary position (trustee) ; his dealings must be open and fair. Thus a promoter who starts a company and sells his property to the shareholders must faithfully disclose all the facts relating to the property. If he conceals, and the company incurs a loss, it may sue him and set aside the sale and also recover compensation.

The leading case if **Eranger V. New Sombrero Phosphate Co.**

Facts : E (with a few others) bought a phosphate mine for 55,000. E formed a company with *5* Directors including himself. Two were abroad. The Board of Directors bought the said phosphate mine for 1,10,000/- A prospectus was issued. Many took shares. The company failed. The liquidator sued the promoters, held, promoters liable.

In later cases it has been held that the disclosure should be made to the shareholders. There should be no hoodwinking of the shareholders.

The other leading cases are Gluckstein V. Barnes and Lidney V. Bird.

The disclosure by the promoters should be explicit and complete, otherwise the company may set aside the same and claim damages from the Promoters. The promoters are liable for "secret profits" and the liability arises as soon as the company is formed.

iii) Remuneration:

The promoter is entitled to a reasonable remuneration for his services in as much as he will have put his energy, skill and knowledge in planning out and bring into existence the new company.

Ch. 3.2. **Memorandum of Association:** M/A (Sns **12 to** 23) **:**

Definition :

The M/A is a document of great importance in relation to the proposed company (Palmer). It is the charter of the Company. It defines its Constitution and the scope of the power with which it has been established under the Companies Act. It is the foundation on which there comes into existence, a covenant between the Company on the one side and the members on the other. This creates a Solemn obligation. It must be divided into paragraphs, numbered consecutively and printed or presented to Registrar for purposes of Registration. It can be made in the forms as in Schedule to Companies Act.

a) **Name Clause:**

As the Company is a juristic person, it should have a name to establish it identity. It is the symbol of its existence. The name should not be identical with any company and should not be undesirable according to the Central Government.

The name is part for the business reputation and is protected by registration.

Liability: If the liability of the Members is limited it should be stated as 'Limited' (Ltd.) if Private Company 'Private Ltd.'

In case of religious, scientific, charitable companies, the Central Government may permit to drop the use of 'Ltd', if the Company has prohibited payment of dividend i.e., it must be nonprofit making company.

The name should be used by the company in all its documents and official letters. A painted board should be installed in the place of business.

b) Registered Officer:

The M/A should state the Registered office of the Company, with address (address may be informed within 30 days).

c) Objects :

Three sub clauses are made :

i) **Main objects:** The main objects and the identical or ancillary objects are stated.

ii) Other objects: those not included in (i) above may be added here.

iii) States to which objects extend: Non-trading companies should state to which of the States in India, the objects extend. The objects should not be illegal, opposed to public policy or to any provision of law. The rationale for stating the objects is to enable the shareholder to know how his contribution is being used. It gives him protection and ensures defined use of the Contributions. The creditors are also protected.

d) Powers :

(i) The company should confine to its objects :

The leading case is **Ashbury Railway Carriage Co. V. Riche.**

Facts : The M/A stated the objectives .... to make and sell .... Railway Wagons.......... and General Contractors..... The co. entered into a Contract with Riche, to finance a Railway line in Belgium. The company. later repudiated stating it as ultra vires. Riche sued for damages.

Held, the contract was ultra vires and hence void. It has no powers to finance railway line.

The ambits were prescribed in the M/A. The limits were defined. Hence, even the majority cannot ratify to validate the transaction, the court observed. The M/A is the area beyond which the action of the company cannot go; inside that any regulation may be made.

ii) The company may grant donations to promote the activities stated in the M/A. This is clear from the leading case.

A. Laxmanaswami Mudaliar V. L.I.C.

Facts : The business of an Insurance Company was taken over by L.I.C. The Directors of the Company, as per the resolution of the shareholders, paid Rs.2 lakhs for promotion of education in Commerce and Insurance.

The payment was held ultra vires. As the Company's assets were under acquisition, it had no object to promote and hence, the donation was ultra vires.

e) Liability Clause :

The nature of the liability of the shareholder should be stated, in the M/A. Whether the liability is limited by shares or by guarantee should be specified.

f) Capital Clauses :

The amount of the nominal capital of the Company i.e., Authorised and paid up capital and the number and value of the shares into which it is divided should be stated.

g) Declaration:

The M/A, concludes with a declaration by the shareholder (7 or more in Public Companies and 2 or more in Private Companies) Each subscriber must sign and state the number of shares held by him (minimum share one).With this the M/A is complete.

However, it must be noted that the Companies

Act over-rides the M/A.

Ch. 3.3. **Alteration of M/A :**

Amendments or alteration of the provisions may be made, as per Sn.17.

1. Alteration or Change of name of the Company:

This may be made by passing a special resolution and the approval of the Central Government in writing. Change becomes effective when it is registered with the Registrar.

2. Change of Regd. Office and Objects Clause:

This may be made by passing a resolution in the General Body and by getting the sanction of the Company Law Board. A certified copy of the board's order and a printed copy of the amended M/A must be filed with the Registrar within 3 months of the Board's sanction. The change becomes effective on Registration by the Registrar and issue of a copy thereof.

3. Change of objects:

Alteration of objects, capital rights attached to different classes of shares and limited liability of directors.

The purposes for which changes are allowed:

i) To run Company on more economic and effective terms.

ii) To achieve the objective by new or improved means.

iii) To enlarge the area of operation.

iv) Some new business which may be conveniently taken up.

v) To amalgamate with any Company etc

. **Ch. 3.4. Articles of Association. A/A**

(Sns **26 to 31, 36 and** 38) **:**

1. Nature :

This is a document of great importance next only to M/A. It

contains the rules, regulations and bye-laws for the general management of the Company.

The A/A must be registered along with the M/A by (i) Unlimited Companies ii) Companies Limited by Guarantee and iii) Private Companies Limited by Shares.

A Company limited by shares may frame its own Articles or may adopt Table A of Schedule I of the Companies Act. But, if it does