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Introduction

In a commercial set up for large scale trade the formation of company is the most suitable arrangement. Company possesses artificial personality. Its legal personality does not automatically come into existence. The procedure of incorporation of a company is complicated and lengthy. Sole proprietorship firm can be established easily. The nature of partnership firm is broader than the Sole proprietorship firm. The registration of a partnership firm is optional. As compared to that the incorporation procedure of a company is lengthy, complicated and expensive. A company comes into existence after having complied with the provisions of the Companies Act, registration of necessary documents and completion of the legal procedures. The persons who establish such artificial legal personality are known as promoters.

3.1 Meaning and Definition of Company

Meaning : The word 'Company' has no strictly technical or legal meaning. Under the British Common Law, Company is defined as a "legal person" or "legal entity". It is separate from and capable of surviving beyond the lives of its members. The members of any company may change, retire or die, but it does not affect the existence of a company.

Definition : Definition of Company under the Companies Act, 2013,

"Company" means a company incorporated under the Companies Act, 2013 or under any previous company law.

Companies Act 2013 is introduced stage wise.

3.2 Characteristics of Company

Any incorporated company must have the following characteristics :

3.2.1 Independent Corporate Existence :

Independent Corporate Existence is one of the most significant features of company. Company is regarded as a legal person having entire distinct personality independent from its members.

3.2.2 Limited Liability of Company's Members : The company, being separate legal person is the owner of its assets and bound by its liabilities. Members, even as a whole, are neither the owners of company's undertakings nor liable for its debts. The members' liability is limited only to the nominal values of the shares taken by them. No member is bound to contribute more than the nominal value of the shares held by him. However, company with unlimited liabilities can be formed.

3.2.3 Perpetual Existence : A company is defined as an artificial person. It has perpetual existence. It is not subject to death or illness of any of its members.

3.2.4 Separate Property : Being separate legal person, company is capable of owning, enjoying and disposing of property in its own name. No shareholder of a company can claim his right over the property of a company.

3.2.5 Transferability of Shares : Subject to the provisions laid down in the Articles of Association of a company, the shares of a company can be transferred.

3.2.6 Capacity of the Company to Sue and be Sued : A company being legal person in the eyes of law can initiate legal proceedings against anyone as well as it can be sued by any person in its own name. In the same manner, suit can be filed against a company by any person for breach of contract.

3.2.7 Professional Management : The corporate sector is capable of attracting the growing cadre of professional managers.

3.2.8 Finances : Normally an incorporated company comes into existence on the capital raised by public subscriptions either from shares or debentures.

3.3 Procedure for Incorporation of Company

For incorporation of company many legal provisions are to be followed, Incorporation procedure is expensive and complex. Following procedure is followed for incorporation :

(1) Preliminary Stage (2) Incorporation Stage

3.3.1 Preliminary Stage : (Promotion Stage of a Company) : This is the first stage involving the conception of the idea of setting up a company and the primary and extensive investigation of the feasibility of the idea, the requirement of resources and capital etc. Thus, the promotion of the company can be considered through the following steps :

3.3.1.1 The Idea for the Promotion of a Company/Business : The concept or the idea of a business by one person or a group of persons starts the process of business formation and consequently the idea of establishing a company for the same. The idea is the seed of a business and the promoter who conceived the idea uses his imagination and creativity to give it a concrete form and he is also ready to bear many risks. He converts idea into implementation by mobilising manpower, materials and capital resources to carry out business. Thus company comes into existence. Company is known as brain child of promoters.

3.3.1.2 Primary Investigation : After considering the idea and its possibility, the economic viability is checked out with the help of experts. The expenditure and income estimate is taken and if the result is satisfactory, further detailed survey is conducted.

3.3.1.3 Extensive Investigation : There can be adverse results if thorough investigation is not undertaken. The government policies, legal provisions, availability of raw materials, the demand-supply situation, the availability of auxiliary services, etc. are carefully checked, so that a clear picture is created, which will help to decide whether to proceed with the plan to establish a company or not.

3.3.1.4 Mobilising Resources : If it is decided to proceed with the project, the arrangement for resources like equipment, machinery, tools, land will be made and necessary correspondence, contracts and formalities will be undertaken.

3.3.1.5 Arrangement of Finance : For mobilising the resources and for the promotion expenses, finance will be required. The type of activity and the amount of funds required by the company as well as the sources of capital will be considered.

3.3.2 Incorporation Stage : After having completed the preliminary stage, the second stage in the direction of process of formation of a company is called incorporation stage wherein Certificate of Incorporation of Company is to be taken. A private company has limited members and its share transfer is restricted. So company can start functioning after Certificate of Incorporation.

A private as well as a public company need the following documents in order to get Certificate of Incorporation :

- 3.3.2.1 Memorandum of Association :** This is the basic document of the company. The details/clauses mentioned in it define the scope of activities of the company. It includes the name of the proposed company, its objectives, and the address of its registered office, the capital and the liability of its members. It establishes the relations between the company and the third parties. Memorandum of Association is one of the most important basic and primary requirements for every company. Memorandum of Association states the types of business the company wants to undertake.
- 3.3.2.2 Articles of Association :** This document defines the rules and regulations for the internal management of the company. It states the company's policies and means of achieving the objectives determined in the Memorandum of Association.
- 3.3.2.3 List of Directors :** A list of the names, addresses, age, occupation, nationality etc. of the persons who take responsibility of the work as directors has to be prepared and submitted before the Registrar of Companies as per the Companies Act. There has to be at least one woman director for certain companies among the list of Directors decided by Company Act.
- 3.3.2.4 Written Consent and Affidavit of the Directors :** Each subscriber/director has to give a written consent to the registrar that he has accepted the responsibility to work as a director willingly. Moreover the Subscribers and First Director has to file affidavit before the Registrar of Company containing following facts :
- He has not been convicted for any offence
 - He has not been found guilty of any fraud/misfeasance
 - The information supplied to the Registrar of Companies are correct and complete.
- 3.3.2.5 Declaration :** A declaration in the prescribed form signed by an advocate, a chartered accountant, cost accountant or company secretary in practice, who ever is involved in formation of the company and also signed by persons named in the Articles of Association of the company as a Director, Manager or Secretary of the company.
- 3.3.2.6 Disclosure of Interest in Other Firms/Company :** If the Directors, Subscribers Manager or Secretary are also associated with other firm or company, they have to give information regarding their association.

Certificate of Incorporation : After payment of prescribed Registration Fees and verification of the documents, if the Registrar finds the documents to be satisfactory, he registers them and enters the name of the company in the Register of Companies. After this process the Registrar issues a certificate called Certificate of Incorporation. The life of company commences from the date mentioned in the Certificate of Incorporation.

The Registrar of Companies issue Certification of Incorporation along with Corporate Identity Number (CIN). This identification number is of company which is incorporated in Certification of Incorporation. The company has to preserve the identity original document and information till liquidation at company's registered office.

What have you learnt in this chapter ?

Company has separate artificial and legal personality. Registration of various documents is necessary to establish such legal personality.

Companies Act in India: After independence, the Companies Act, 1956 was introduced in India. Thereafter, provisions of the Companies Act, 2013 are gradually being made applicable.

Meaning : Being artificial legal person, the members of company may change, retire or die; the existence of a company is not affected at all.

Characteristics of a Company : (1) Independent Corporate Existence (2) Limited liabilities of Company's members (3) Perpetual Existence (4) Separate Property (5) Transferability of shares (6) Capacity to sue and be sued (7) Professional Management (8) Finances.

Stages of Company Incorporation :

(A) Preliminary Stage :

- (1) **Idea of Incorporation of Business :** Promoters may have an idea to commence business.
- (2) **Preliminary Investigation :** In order to convert the idea into reality, preliminary investigation is necessary.
- (3) **Extensive Investigation :** Detailed extensive investigation is done by the experts about the implementation of idea to start business
- (4) **Mobilising Resources :** Which resources are available and the quantity there of is to be seen.
- (5) **Arrangement of Finance :** How much finance is required for establishment of business and to purchase the assets is to be calculated.

(B) Incorporation Stage :

Every company has to obtain Certificate of Registration after making application for registration before the Registrar of Companies. Company can commence its business after obtaining such Certificate. Following documents are to be submitted for Registrations :

- (1) **Memorandum of Association :** It is the basic fundamental document containing name, object, capital, registered office etc of the company.
- (2) **Article of Association :** This document shows internal management of a company. Every company has to prepare it.
- (3) **List of Directors :** In the list of Directors it is necessary to mention details of all directors such as names, address, occupation etc.
- (4) **Written Consent and Affidavit of the Subscribers/Directors :** Written consent and affidavit of the directors containing their willingness and consent to accept liability and also that they are not found guilty for any offence. Also affidavit stating the information given by them are true.
- (5) **Declaration :** Declaration is to be submitted stating that all the provisions of law have been complied with and the declaration has to be signed by Secretary, Manager, Director, C.A., Advocate etc.

Exercise

1. Select suitable option from the given options :

- (1) Which of the following is not a characteristic of a Company ?
(A) Independent Existence (B) Limited Liability of its members
(C) Perpetual Existence (D) Head Office in the Metro Cities.
- (2) Which of the following documents are not required to be given to the Registrar of Companies at the incorporation Stage of a Company ?
(A) Memorandum of Association (B) Article of Association
(C) List of Directors (D) Particulars regarding profit and loss
- (3) Who examines the possibilities of Idea of Promotion of Business ?
(A) Directors (B) Share holders (C) Advocate (D) Experts

