



# COMPANY LAW

---

Ms. MANISHA THAKUR  
ASSISTANT PROFESSOR, SCHOOL OF LAW  
MAHARAJA AGRASEN UNIVERSITY

# Introduction

- The word ‘company’ is derived from latin word – Companis.
- 'Companis' is made up of two words: 'com' and 'panis'. ‘Com’ means together and ‘Panis’ means bread.
- It originally referred to an association of persons who took their meals together.
- Basically a company is the voluntary association of persons formed for the purpose of earning profit with investment of capital.
- It is incorporated and registered under the Companies Act, 2013.

# Definitions

- A company is an incorporated association which is an artificial person created by law, having a separate legal entity with a perpetual succession and a common seal.
- According to Section-2(20) of Companies Act, 2013- Company means a company incorporated under this Act or under any previous Companies law like Companies Act, 1956

# Nature Of A Company

A company has a dual nature, as an association of its members but also as a person separate from its members. As soon as necessary formalities of incorporation are satisfied, a new entity comes into existence which is separate and distinct from its directors and shareholders

## **Whether Company is a citizen or not?**

Company though a legal person is not a citizen either under the Constitution of India or under the Citizenship Act. This has been the conclusion of a special bench of the Supreme Court in State Trading Corporation of India Ltd. v CTO AIR 1963 SC 1811.

# Characteristics Of Company

- INCORPORATED ASSOCIATION
- ARTIFICIAL PERSON
- SEPARATE LEGAL ENTITY
- PERPETUAL SUCCESSION
- COMMON SEAL
- LIMITED LIABILITY
- NUMBER OF MEMBERS
- TRANSFERABILITY OF SHARES
- CAPACITY TO SUE AND BE SUED

- **INCORPORATED ASSOCIATION**

A company is a registered association. Under the Companies Act it is necessary for a company to be registered i.e., it needs to be incorporated.

For forming a public company at least seven persons and for a private company at least two persons are required. These persons will subscribe their names to the Memorandum of association and also comply with other legal requirements of the Act in respect of registration to form and incorporate a company, with or without limited liability.

- ARTIFICIAL PERSON

The Company is considered as an artificial person because its birth is not natural birth. It is created by law. Being an artificial person, it cannot take an oath, be imprisoned or personally appear in a court of law. It has to act through a board of directors elected by shareholders.

Justice Hidayatullah once remarked that if all the members are citizens of India, the company does not become a citizen of India

- **SEPARATE LEGAL ENTITY**

The most important characteristic of a company is that it is a separate legal entity. A company is separate from its members, it can enter into any contract without any of its members, buy property in its name, borrow or lend money or file a suit in the court of law against any third party.

In **Salomon v/s A Salomon & Co(1897)**, it has been held that in common law a company is a legal person or has a legal entity separate from its members and is capable of surviving beyond the lives of its Members.



- **PERPETUAL SUCCESSION**

Members may come, members may go but the company goes on forever. Its existence is not dependent upon its shareholders or directors.

The shareholders or the directors might change but the company goes on. It continues to exist even if all its members are dead. The existence of company can be terminated only by law

- COMMON SEAL

A company being an artificial person has no body similar to natural person and it cannot sign documents for itself. It acts through natural person who are called its directors. It is the signature of the company to any document on which binds the company for all obligations undertaken in the document.

As per companies (Amendment) Act, 2015, now for a company to have a common seal is not mandatory

- **LIMITED LIABILITY**

The liability of the shareholders of the company is limited. In case of financial loss, the liability of members will be limited to the amount unpaid of their shares and their personal property cannot be used to pay off the debts.

- **NUMBER OF MEMBERS**

The minimum number of members in a public company is seven and maximum can be infinite.

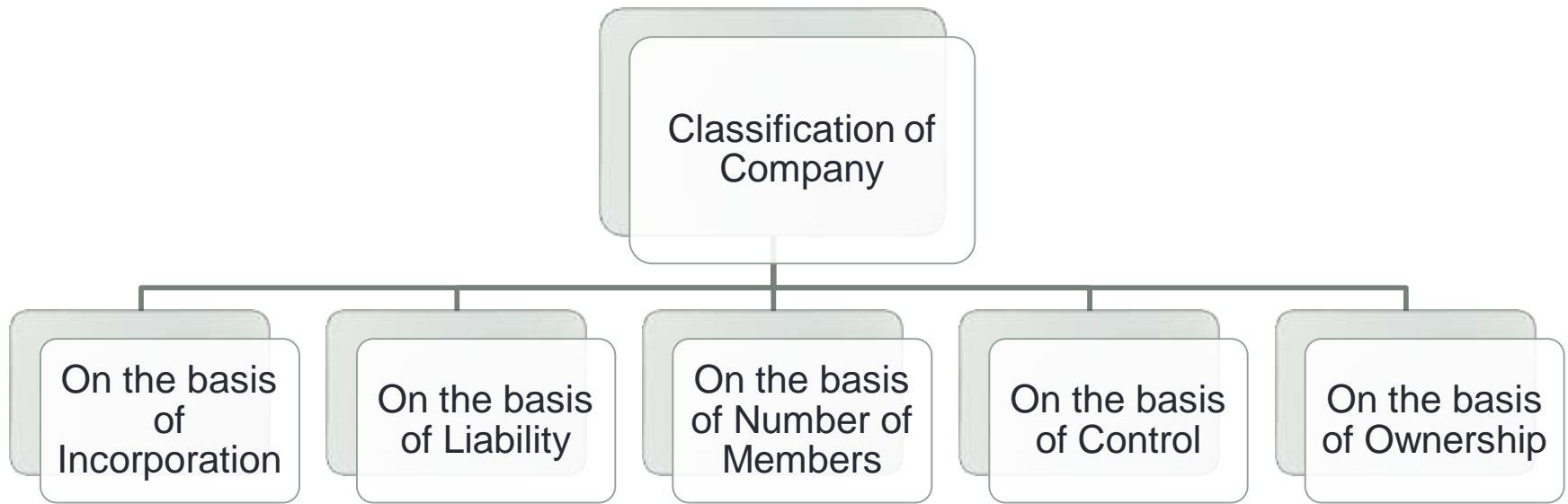
The minimum number of members in a private company is two and maximum can be two hundred.

- **TRANSFERABILITY OF SHARES**

In the public company the shares can be transferred freely. In private company also the shares can be transferred but with some restrictions i.e., shares are not freely transferrable.

- **CAPACITY TO SUE AND BE SUED**

A company being a separate legal entity has the legal entity to sue others such as members, directors, debtors, outsiders etc. Similarly, a company may also be sued by others such as members, directors, creditors, outsiders



# On The Basis Of Incorporation

## **1. Chartered Companies:**

Companies set up as a result of a royal charter granted by a king or queen of a country are known as chartered companies. Example: East India Company.

## **2. Statutory Companies:**

Company which is incorporated by the means of special act of the parliament or any state legislature. Example: Reserve Bank of India, Life Insurance Corporation of India etc.

## **3. Registered Companies:**

Companies registered under the Companies Act, 2013 or under any of the previous Companies Acts are called registered companies.

# On The Basis Of Liability

## **1. Companies with Limited Liability:**

It is a company where the liability of the shareholder remains limited to the nominal value of the shares held by him. The company members are liable only for the unpaid amount on the shares respectively held by them.

## **2. Unlimited Companies:**

A company not having any limit on the liability of its member is called an unlimited company. The liability of unlimited company extends to their private properties also.

## **3. Companies Limited by Guarantee:**

The liability of a shareholder is limited to the amount which he has voluntarily undertaken to contribute towards the assets of the company to meet out any deficiency at the time of its winding up. Such a company may or may not have a share capital.

# On The Basis Of Number Of Members

## 1. Private Company

- A company which has a minimum paid-up capital of Rs. 1 lakh □□.
- Minimum number of members are 2
- Maximum number of members are 200
- There are some restrictions on transfer of shares.
- Can not invite public to subscribed to its shares

## 2. Public Company

- A company which □□has a minimum paid-up capital of Rs. 5 lakh
- Minimum number of members are 7
- There is no limit for maximum number of members
- Shares are freely transferable
- They have to invite public to subscribed to its shares



### **3. One Person Company**

One Person Company is a company incorporated by a single person. Before the enforcement of the Companies Act, 2013, a single person could not establish a company. It provides that an individual can form a company with one single member and one director. The director and member can be the same person.

# On The Basis Of Control

## 1. Holding Company

A company will be a holding company of another when

- It controls the composition of the Board of Directors of the other company.
- It exercises or controls more than 50% of the total share capital either on its own or together with one or more of its subsidiary companies.

## 2. Subsidiary Company

A company is known as a subsidiary company when

- the composition of its Board of Directors is controlled by another company; or
- the other company holds majority of its equity shares; or
- the other company controls more than half of its voting rights; or
- it is a subsidiary of another subsidiary company.

# On The Basis Of Ownership

## **1. Government Company**

A Government company is a kind of a company in which not less than 51% of the paid-up share capital is held by the Central or State Government, or partly by the Central and State Governments.

## **2. Foreign Company**

Foreign Company means any company or body corporate incorporated outside India which-

- Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- Conducts any business activity in India in any other manner

THANKU  
YOU