



SYLLABUS

Class - B.Com. III Sem. (Plain)

Subject - Indian Company Act

UNIT - I	Company definition, characteristics, types of company, formation of company, promotion, incorporation & commencement of business.
UNIT - II	Detailed study of memorandum of association, articles of association & prospectus.
UNIT - III	Shares - share capital, types of shares, transfer & transmission of shares, shareholders V/s members of the company.
UNIT - IV	Directors - managing directors, whole time director, their qualification, appointment, powers, duties & responsibilities.
UNIT - V	Majority powers & minority rights, prevention of oppression & mis management, winding up of companies - types of methods.



UNIT — I

Definition of a Company:

According to the Companies Act, 2013, “‘Company’ means a company incorporated under this Act or under any previous company law”. [Sec. 2 (20)]

Chief Justice Marshall of the USA defines, “A corporation is an artificial being, invisible, intangible, existing only in contemplation of the law. Being a mere creation of law, it possesses only the properties which the Charter of its creation confers upon it, either expressly or as incidental to its very existence.”

According to **Prof Haney**, “A company is an artificial person created by law, having separate entity, with a perpetual succession and common seal.”

SPECIAL FEATURES OF A COMPANY:

1. Incorporated body
2. Incorporated by a person or persons
3. Artificial person
4. Separate legal entity
5. Perpetual succession
6. Common seal limited liability and two
7. Limited liability
8. Transferable shares
9. Separate property
10. Capacity to contract
11. Capacity to sue and to be sued
12. Managerial team
13. Governance by majority
14. Social responsibility

LIFTING OR PIERCING CORPORATE VEIL:

Lifting of corporate veil means this regarding the separate legal entity of a company and identifying the realities which existed behind the legal facade. In applying this doctrine, the court/tribunal ignores the companies separate existence and concerns itself directly with the numbers or directors.

The various cases in which the corporate veil is lifted may be put under two categories:

I. Statutory Exceptions-

1. Incorporation on the basis of false information
2. Misleading statement in the prospectus [Sec. 35 (1)]
3. Failure to repay deposits accepted for fraudulent purposes [Sec. 75 (1)]
4. Investigation of ownership of a company [Sec. 216]



5. Investigation of the affairs of a company [Sec. 219]
6. Non-payment of income tax [Sec. 179]
7. Fraudulent conduct of business [Sec. 339]

II. Judicial Exceptions -

1. Misdescription or nondisclosure of name of the company
2. For determination of character of the company
3. For protecting government revenue
4. For prevention of fraud or improper conduct
5. For fixing liability for economic offences
6. Where companies formed for evading legal obligation
7. Where companies acting as agent or trustee of the shareholders
8. Where a company is used for illegal purpose
9. For fixing liability under welfare legislations
10. To punish for contempt of court
11. For determination of qualifications or technical competence

KINDS OF COMPANIES:

The incorporated bodies or the companies may be put in various classes on the basis of following aspects:

- I. On the basis of mode of formation
- II. On the basis of liability of members
- III. On the basis of number of members
- IV. On the basis of control
- V. On the basis of ownership
- VI. On the basis of access to capital market
- VII. Other companies

I. ON THE BASIS OF MODE OF FORMATION

On the basis of mode of formation or incorporation, the companies may be classified into two categories:

- A. Unregistered or Unincorporated Companies-** Any entity or organisation formed but not registered under the companies act 2013 or under any previous company law may be called an unincorporated or unregistered company.

According to the companies act 2013, the expression 'unregistered company' includes the following entities:

1. Any partnership formed
2. Any limited liability partnership
3. Any co-operative Society
4. Any society
5. Any other business entity



B. Incorporated companies- The incorporated companies a company formed by registered under any statute or law. Such companies may be following kinds:

1. Companies incorporated by Royal Charter
2. Companies formed under statute/statutory companies
3. Companies incorporated under the companies act

II. On the basis of liability of members:

- a. Companies limited by shares [Sec. 2(22)]
- b. Companies limited by guarantee [Sec. 2(21)]
- c. Companies with unlimited liability [Sec. 2(92)]

III. On the basis of number of members:

1. **Public company:** A public company means a company, which:
 - a. is not a private company, and
 - b. has a minimum paid-up capital as may be prescribed
2. **Private company:** A private company means a company having a minimum paid-up share capital as may be prescribed, and which by its articles provides for the following:
 - a. Restricts the right to transfer its shares.
 - b. Except in case of OPC, limits the number of its members to 200 excluding the present or former employees who are members of the company.
 - c. Prohibits any invitation to the public to subscribe for any securities of the company.
3. **One-person company:** "One-person company means a company which has only one person is a member." [Sec.2(62)]

IV. On the basis of control:

1. **Holding company:** "Holding company in relation to one or more companies means a company of with such companies are subsidiary companies." [Sec.2(46)]
2. **Subsidiary companies:** The companies act states that a subsidiary company means a company in which the holding company has controll in any of the following ways:
 - i. Control the composition of the Board of Directors.
 - ii. Exercises control on more than one half of its total share capital either at its own or together with one or more of its subsidiary companies.
3. **Associate company:** Associate company, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary of the company having such influence, it includes a joint-venture company.



V. On the basis of ownership:

- A. Government companies:** A government company means any company in which not less than 51% of the paid-up share capital is held by the following-
- i. By the Central government or
 - ii. By any state government or governments or
 - iii. Partly by the Central government and partly by one or more state governments.
- B. Non-government company:** A company in which 51% or more of the paid-up capital is held by one or more private entrepreneurs or by public or a group of persons other than government is said to be a non-government company.

VI. On the basis of access to capital market:

- A. Listed company:** listed company means a company which has any of its securities listed on any recognised stock exchange. [Sec.2(52)]
- B. Unlisted company:** Unlisted companies are those companies which do not have any of its securities listed on any recognised stock exchange.

- VIII. **Other companies:** In addition to the above discussed companies, there are certain other companies, they are as under:
- A. Charitable companies
 - B. Small companies
 - C. Dormant companies
 - D. Nidhis or mutual benefit societies
 - E. Foreign companies

PRIVILEGES AND EXEMPTIONS AVAILABLE TO PRIVATE COMPANIES

1. Every private company except OPC may be formed with two members whereas a public company must have at least seven members. [Sec.3(1)]
2. A private company need not and cannot issue prospectors for issue of its security, but a public company is required to issue. [Sec.23(1)]
3. A private company can allot securities even before receiving minimum subscription. [Sec. 39]
4. Except a OPC, every private companies are required to have at least two directors there is a public company must have at least three. In case of OPC, minimum one director is required. [Sec.165]
5. The provisions as to rotational retirement directors do not apply to any independent private company. [Sec. 152(6)]



6. A private company made by its articles provide any additional disqualification for appointment as directors in addition to those specified in the act, but a public company can't do so. [Sec.164(3)]
7. An independent private companies exempted from the overall limit of managerial remuneration of 11% of the net profit. [Sec.197]
8. Unless the article provide for a larger number, only two persons personally present shall be the quorum for a meeting in case of a private company.
9. A private company need not to prepare the report on each annual general meeting and file it with the registrar. [Sec. 121]

One-person company:

“One-person company means a company which has only one percent as a member.” [Sec. 2(62)]

It may be stated that a OPC is an artificial person incorporated under companies act 2013 with only one person as its member, having separate legal existence from the member forming eight, with a perpetual succession.

Benefits of one-person company:

1. One-person needed to form company
2. Separate existence
3. Perpetual succession
4. Limited liability
5. Secrecy
6. Low operation cost
7. Services of professional directors
8. Easy financial and banking services
9. Low regularity cost
10. Growth of entrepreneurs

Limitations of OPC:

- 1 Many formalities
2. High cost of formation
3. High managerial cost
4. High rate of taxation
5. Limited financial resources
6. Limited scope of activities

FORMATION OF A COMPANYY

The process of formation of a company may be divided into the following three stages:



- A. Promotion stage
- B. Registration and incorporation stage
- C. Commencement of business stage

A. Promotion of company: Promotion is the process of discovery and investigation of business opportunities, planning and organisation of physical, financial and human resources with a view to forming a company.

Promoter: Promoter means a person who fulfills any of the following conditions:

- a. Who has been named as promoter in a prospectors.
- b. Who is identified as promoter by the company in its annual return.
- c. Who has control over the affairs of the company directly or indirectly whether as a shareholder, director or otherwise.
- d. In accordance with whose advice, directions or instructions the Board of director of the company is accustomed to act.

Functions/Role of a Promoter

1. Conceiving the idea of the company
2. Investigation and verification of the idea
3. Assembling the requirements
4. Making preliminary contracts
5. Financial planning
6. Compliance of legal formalities
7. Getting the company incorporated
8. Ensuring subscription to the initial capital
9. Ensuring verification of registered office
10. Controlling affairs of the company
11. Advising and giving directions
12. Appointing directors of all directors resign

Duties of Promoters

1. To disclose all material facts
2. Not to make secret profit
3. To disclose the interest in the transaction
4. Not to sell own property without informing
5. To make full disclosure of the property bought
6. Not to make unfair use of his position
7. Not to accept appointment as independent director
8. To provide opportunity to exit from securities if objects are changed
9. To attend before the Tribunal

Liability of Promoters:-



1. Selection liability for furnishing false information for incorporation
2. liability for misleading prospectus
3. liability for contravention of provisions as to issue of securities in private placement mode
4. liability for failure to make disclosure of a non-disclosure items of a special business
5. liability for failure to repay money or restore property
6. liability for non-cooperation to company liquidator
7. liability for preliminary contracts

B. Registration And Incorporation Of Company:

Second stage of formation of company is known as the registration or incorporation stage. A company comes into existence only after its registration and issue of certificate of incorporation to it. The registration and incorporation of a company usually involves the following steps:

I. Preliminary steps:

1. Deciding the kind of company
2. Deciding the place of registered office [Sec.7]
3. Obtaining DIN by the prospect of directors [Sec.153 & Sec. 154]
4. Obtaining digital signature by promoters/prospected directors
5. Selecting and reserving name of the company
6. Drafting memorandum and articles [Sec. 4 & Sec. 5]
7. Printing the documents
8. Obtaining signature subscribers
9. Obtaining declaration as to compliance with legal requirements
10. Obtaining affidavit from subscribers and persons named as first directors
11. Obtaining particulars of subscribers and first directors
12. Obtaining consent of directors
13. Drafting other contracts

II. Application for incorporation and delivery of documents :

The application shall be accompanied by the following documents and information:

1. Notice of address for communication [Sec. 7 (1) (d)]
2. Memorandum of the company
3. Approval of sectoral regulators
4. Articles of the company
5. Declaration as to compliance with legal requirement
6. Affidavit from subscribers and persons named as first directors
7. Particulars of every subscriber
8. Particulars of first directors



9. Consent to act as directors
 10. Power of attorney by subscriber
 11. Power of attorney to make corrections
 12. Payment of fees
- III. **Scrutiny and registration of documents:** After receiving application and delivery of documents were incorporation, the registrar shall scrutinise the documents. When all documents are found in order, the register on the basis of documents and information filed to him shall register all these documents and information in the register of companies. [Sec. 7 (2)]
- IV. **Issue certificate of incorporation and see I and CIN:** On registration of all the documents and information, the registrar shall issue a certificate of incorporation. On and from the date mentioned in the certificate of incorporation, the registrar shall allot to the company a corporate identity number or CIN.
- c. Commencement of Business:** According to the latest provisions of companies act, every company is entitled to commence its business as soon as it obtains its certificate of incorporation. No other formality is required to be complied with four commencement of business by any company after its incorporation.

If a company fails to commence its business within one year of its incorporation, the Registrar may initiate action for removing its name from the register of companies. [Sec. 248]

Integrated process of incorporation

With effect from 1 May 2015, MCA has introduced a new process of incorporation of companies which is called as the integrated process of incorporation of companies. It is an alternative process of incorporation by which a company may be registered within 24 hours of the application.

The integrated process of incorporation is applicable for the registration of the following kinds of companies:

- i. OPCs
- ii. Private companies
- iii. Public companies
- iv. Producer companies

Non-trading companies on not-for-profit companies or charitable companies cannot be registered by following this procedure.

Steps in the process:

1. Application
2. One name for the proposed company
3. Memorandum



4. Articles
5. Non applicability from certain provisions
6. Verification of registered office
7. Processing of application and calling further information by the Registrar
8. Defective or incomplete resubmitted documents
9. Rejection of the from
10. Registration
11. Certificate of incorporation

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