

## CORPORATE ADMINISTRATION

### UNIT – I

#### FORMATION OF COMPANY

Meaning of company: - An association or an organization which is registered or incorporated under the company's act of 1956 is called a company. It is an artificial person created by law.

Definition.-**According to justice lord, Linley. “Associations of many persons who contribute money of money's worth to a common stock and invest in some trade and business and who share profit and loss arising therefore”.**

#### Features or Characteristics of Company

- ☐ Registration: - The Company is created only when registered under the company's act of 1956.
- ☐ Legal entity: - A company is an artificial person with a legal entity of its own. It acts through the board of directors elected by the shareholders.
- ☐ Common Seal: - The Company being an artificial legal entity or person, it can't act on its own. So, it acts through natural person's life or the secretary who is authorized Hence, The need for a common seal of the company for all the contracts entered into by the Directors or the secretary. The common seal is like the signature of a company
- ☐ Perpetuity: - The Company which is registered never dies with retirement or death of its members as is the case with partnership. The company will survive for the longer Period.
- ☐ Limited liability: - In a company, by shares, the liability of members is limited to the Nominal value of the shares held by them. In respect of partly paid shares, the liability Extends up to the balance of the nominal value of shares.
- ☐ Separation of ownership and management: - In a company, the shareholders are the Owners but the management is interested to the board of directors who are separate from Form the body of shares holders.
- ☐ Transferability of shares: - In a public limited company, the shares can be easily Transferred from one person to another.
- ☐ Artificial legal person
- ☐ Capacity to sue and can be sued

#### Advantages of Joint Stock Company

1. Expansion of business
2. Easy access to credit
3. Easy to exit

4. Expert services
5. Employment
6. Flexibility
7. Limited liability
8. Large scale operation
9. Larger capital
10. Long life
11. Long term projects
12. Transfer of shares
13. Increase in savings and investment
14. Better management
15. Higher profits

### **Disadvantages of Joint Stock Company**

1. Initial difficulties
2. Lack of interest
3. Labour disputes
4. Lack of responsibility
5. Lack of secrecy
6. Lack of freedom
7. Speculation'
8. Complicated process
9. Control of power
10. Decision making process

### **Kinds of companies**

- Chartered Company: - It a company is incorporated under a special monarch. It is Called a chartered company. For eg: - East Indian company, the chartered bank of Australia, china and India were Incorporated by the grant of a special royal charter. These companies are not there in India at present
- Statutory Company:- A company which is created by a special act of the legislature is Called a statutory company. The state bank of India, industrial finance corporation, life Insurance, corporation of India etc are the examples of this kind.
- Registered Company: - A company brought into existence by registration with the Registrar of the companies under the company's act of 1956 is called registered company.

### **Types of registered company are:-**

#### **A. Private company Private Company:-**

A private company has been defined as a company which:-

- a) limits the number of members 50
- b) Restricts the transfer of shares from one shareholder to another.

c) Prohibits an invitation to the public to subscribe to its shares and debentures.

#### B. Public Company:-

Public Company is a company which requires at least 7 members to form and there is maximum limit. It can invite the public to subscribe its shares and debentures and it does not restrict the transfer of its shares from one shareholder to another.

##### A. Unlimited company:-

The companies in which the liability of the members is Unlimited is called unlimited company.

##### B. Companies limited by guarantee:-

In these companies, each member gives a guarantee for the debts of a company Up to a certain extent.

Eg: - Trade associations, clubs and societies which formed to promote social And cultural Activities.

##### C. Companies limited by shares:-

In these companies, liability being limited by shares, the member is called upon to pay only the unpaid amount on the shares held by him.

##### D. Government company:-

A company in which not less than 51% of share capital is held by the central government and or any state government or governments is called a Government company.

For Eg: - Hindustan Aeronautics Limited (HAL), Indian Telephone Industries (ITI), Bharath Electronics Limited (BEL).

##### E. Foreign Company:-

A foreign company is that company which is incorporated in a foreign country, but which has established a place of business in India. Under section 592 of companies act, every foreign company must, within 30 days of the Establishment of the business field with the registrar the following documents.

- a) A certified copy of its memorandum and articles of association.
- d) The full address of the registered office of the company.
- c) The list of directors and the secretary of the company with required particulars.
- d) The name and address of the person authorized to receive any notice or documents etc.

#### F. Holding and Subsidiary Company:-

A company which has control over another Company is called holding company in other words, a company which holds more than 50% of the share capital in other company is called a holding company company which is controlled by other company is called a subsidiaries company. Eg:- Company A has 60% of share capital in Company B Here, Company A is called a Holding company and Company B is called a subsidiary Company.

#### G. One Man Company:-

It refers to a company, in which only one person holds the Entire share capital, but in order to meet the statutory requirements of minimum number Of members, some of dummy members mostly his relatives, friends, hold one or two Shares each.

#### Difference between Private Company and Public Company

PUBLIC COMPANY	PRIVATE COMPANY
A Private company has "Pvt.Ltd" at the end of its name.	A Public company has "Ltd" at the end of its name.
<b>Minimum number of members</b>	
The minimum number of members needed to form a private company is at least 2 members.	The minimum number of members needed to form a Public Company is at least 7 members.
<b>Maximum number of members</b>	
The Maximum number of members in a Private Company is restricted to 200.	The Public Company has no restriction on a maximum number of members.
<b>Minimum Paid-up Capital</b>	
Private Company should have a minimum paid up capital of 1 lakh rupees.	Public Company should have a minimum paid up capital of 5 lakh rupees.

PUBLIC COMPANY	PRIVATE COMPANY
<b>Commencement of Business</b>	
Commencement of business of a Private Company takes place immediately after getting the certificate of incorporation.	A Public Company can only Commence its business after receiving a certificate of incorporation and Certificate to commencement.
<b>Number of Directors</b>	
A Private Company must have at least 2 directors to head and supervise the affairs of the company.	A Public Company must have at least 3 directors to manage and lead the affairs of the company.
<b>Issue of Prospectus</b>	
A Private Company cannot issue a Prospectus. Private Company is not allowed for inviting the public for subscription of its shares.	Public Company can issue a Prospectus. Public Company is free to invite public for subscription of its shares.
<b>Minimum Subscription</b>	
A Private Company can allot shares without waiting for the completion of minimum subscription limit.	A Public Company cannot be able to allot shares before the minimum subscription of shares is completed.
<b>Transferability of shares</b>	
The Articles of Association of a Private Company lays restriction on transfer of the shares from one person to another person.	The Public Company is free to transfer the shares of its company from one person to another.
<b>Quorum</b>	
A Private Company is obligated to have at least 2 members personally present for holding the company meeting.	A Public Company is obligated to have at least 5 members personally present to constitute the meeting.

PUBLIC COMPANY		PRIVATE COMPANY	
Statutory meeting			
A Private Company is not required to conduct a Statutory Meeting of the members or filing of Report to the Register of Companies.		A Public Company is required to conduct a statutory Meeting and file the Report to the Register of Companies.	
Managerial remuneration			
There are no restrictions on payments and remunerations offered to the directors or managers of a Private Company.		There are some restrictions on payments and remunerations offered to the directors or managers and the remuneration should not exceed 11% of the net profits.	

### Conversion of Private Company into Public Company

A Private Company can be converted into Public Company by altering its articles of Association and passing special resolutions and by deleting those provisions relating to-

- a) Restriction of transfer of shares.
- b) the limitations of the maximum membership
- c) Prohibition of invitation to the public for subscribing to it shares.

### Duties of a secretary while converting the Private Company into a public company

To arrange a board meeting in consultation with directors and finalize the plan of Conversion and all general meeting for passing resolution for the conversion of the Company.

To prepare a new set of articles in consultation with board of directors.

To issue notices and circulars of the extra-ordinary general meeting as per the decision of the board.

To get the resolution passed at the extra-ordinary general meeting.

To file prospectus with the registrar of the companies.

To file with the registrar, a notice of increase of share capital.

To get from the registrar a new certificate of incorporation, the changed name.

To take steps to raise additional capital from the public if needed for the further Expansion of business.

#### Conversion of Public Company into Private Company

As per the company's amendment act 1960, the conversion of public company into Private Company requires the approval of the central government. The public Company should put the proposal before the central government regarding the Conversion of public company into private company ltd. The central government after scrutinizing (Verifying) the proposal, they permit the conversion into a private Company. Only if it is in the interest of the company.

#### Duties of the Secretary and the steps for the conversion of public company into private Company ltd.

To arrange board meeting with the board of directors for calling an extra-ordinary General meeting.

To insure notices and circulars of extra ordinary general meeting.

To get the special resolution passed at the extra-ordinary general meeting, regarding the conversion of public into private company

To file with the registrar, copies of special resolution within 30 days of the date of Resolutions.

To apply to the central government with necessary documents for the approval of Concern.

To publish about the conversion in leading newspapers and the newspaper clippings to be sent to government.

After obtaining the approval of the central government to file with the registrar within one month of proposal.

### **Highlights of Companies Act 2013**

1. Immediate change in letter head
2. One person company
3. Woman director(cap is more than 100 or 300 crore rupees)
4. Resident director(at least one)
5. Accounting and financial year (april 1st to march 31)
6. Loans to director cannot be given
7. Articles of association
8. Disqualification of directors( if no DIN number)
9. Appointment of statutory auditors
10. Types of companies(maximum limit from 50 to 200)
11. Share capital(shares cannot be issued at discount)
12. Deposits
13. Corporate social responsibility
14. National Company Law Tribunal (NCLT)



## **Unit 2**

### **FORMATION OF A COMPANY**

In the formation of a public limited company mainly four stages are involved:-

- Promotion
- Incorporation
- Capital Subscription
- Commencement of business or trading certificate

In the formation of a private it company only the first two stages say –

#### **Promotion**

The steps which are taken to persuade / motivate a number of persons to come together for the achievement of a common objective through the company form are called promotion.

The person or the persons who undertake the responsibility to bring the company into existence are called promoters.

#### **Steps in promotion of a company**

The promotion may be undertaken either for starting a new business or

Expanding the existing business or for forming a holding company for a merger etc.

The company promotion has involved 4 stages.

##### **a) Discovery of an idea**

The promoters start with an idea to start some business either in new field or existing field of business. He makes preliminary investigation to find out whether the particular business is useful and he roughly estimates income and expenditure of the proposed business.

##### **b) Detailed Investigation:-**

The promoter needs to make detailed investigation of his idea with the assistants of many experts like engineers, chemists, market analysis's, finance experts, management consultants etc. on the basis of reports of these experts the promoters would be in a position to know the capital requirements, place of location, size of the unit, demand condition in the market, price of product, cost of production, Written on capital etc. A detailed investigation will help him to compare the estimated income is enough to meet the cost of production and other expenses.

##### **c) Assembling:-**

After detailed investigation, if he is satisfied with practicability and profitability of the proposal concern, he starts assembling preposition, assembling means getting the support and

consent of other persons to act as a director or founders, arranging for patents, a suitable site for the company, machinery and equipment etc.

### **Incorporation:-**

After taking all preliminary steps of for registration an application along with the necessary documents stamp duty, registration fees etc. has to be made to the registrar for the issue of certificate of incorporation. After scrutinisation of the document, if the registrar is satisfied he will issue a certificate of incorporation.

### **Steps and formalities for the incorporation of the company**

1. Application for availability of name
2. Preparation of the Memorandum of Association and Articles of Association
3. Declaration from the professionals
4. Filling of documents

The following documents to be filed with the registrar

- Memorandum of Association (MOA) with at least 7 persons subscribed, each one share, if it is a public company. If it is a private company at least 2 persons with the shares subscribed.
  - Articles of Association (AOA) except where table 'A' considered as companies articles.
  - Address of the registered office
  - A list of directors with their names, address and occupation
  - Consist of directions in writing to act as directors if it is a public company.
  - An undertaking by directors to take and to pay for any qualification shares. This is not required for private company.
5. Payment of stamp duty and filing fee
  6. Certificate of incorporation or registration
  7. Allotment of Corporate Identity Number(CIN)
  8. Effect of registration
  9. Documents of incorporation to be preserved