

# Business law

## Lecture-33

### TYPES OF COMPANY

Joint stock company can be of various types. The following are the important types of company:

#### 1. Classification of Companies by Mode of Incorporation

Depending on the mode of incorporation, there are three classes of joint stock companies.

**A. Chartered companies.** These are incorporated under a special charter by a monarch. The East India Company and The Bank of England are examples of chartered incorporated in England. The powers and nature of business of a chartered company are defined by the charter which incorporates it. A chartered company has wide powers. It can deal with its property and bind itself to any contracts that any ordinary person can. In case the company deviates from its business as prescribed by the charted, the Sovereign can annul the latter and close the company. Such companies do not exist in India.

**B. Statutory Companies.** These companies are incorporated by a Special Act passed by the Central or State legislature. Reserve Bank of India, State Bank of India, Industrial Finance Corporation, Unit Trust of India, State Trading corporation and Life Insurance Corporation are some of the examples of statutory companies. Such companies do not have any memorandum or articles of association. They derive their powers from the Acts constituting them and enjoy certain powers that companies incorporated under the Companies Act have. Alternations in the powers of such companies can be brought

about by legislative amendments.

The provisions of the Companies Act shall apply to these companies also except in so far as provisions of the Act are inconsistent with those of such Special Acts [Sec 616 (d)]

These companies are generally formed to meet social needs and not for the purpose of earning profits.

**C. Registered or incorporated companies.** These are formed under the Companies Act, 1956 or under the Companies Act passed earlier to this. Such companies come into existence only when they are registered under the Act and a certificate of incorporation has been issued by the Registrar of Companies. This is the most popular mode of incorporating a company. Registered companies may further be divided into three categories of the following.

**i) Companies limited by Shares :** These types of companies have a share capital and the liability of each member or the company is limited by the Memorandum to the extent of face value of share subscribed by him. In other words, during the existence of the company or in the event of winding up, a member can be called upon to pay the amount remaining unpaid on the shares subscribed by him. Such a company is called company limited by shares. A company limited by shares may be a public company or a private company. These are the most popular types of companies.

**ii) Companies Limited by Guarantee :** These types of companies may or may not have a share capital. Each member promises to pay a fixed sum of money specified in the Memorandum in the event of liquidation of the company for payment of the debts and liabilities of the company [Sec 13(3)] This amount promised by him is called

‘Guarantee’. The Articles of Association of the company state the number of member with which the company is to be registered [Sec 27 (2)]. Such a company is called a company limited by guarantee. Such companies depend for their existence on entrance and subscription fees. They may or may not have a share capital. The liability of the member is limited to the extent of the guarantee and the face value of the shares subscribed by them, if the company has a share capital. If it has a share capital, it may be a public company or a private company.

The amount of guarantee of each member is in the nature of reserve capital. This amount cannot be called upon except in the event of winding up of a company. Non-trading or non-profit companies formed to promote culture, art, science, religion, commerce, charity, sports etc. are generally formed as companies limited by guarantee.

**iii) Unlimited Companies :** Section 12 gives choice to the promoters to form a company with or without limited liability. A company not having any limit on the liability of its members is called an ‘unlimited company’ [Sec 12(c)]. An unlimited company may or may not have a share capital. If it has a share capital it may be a public company or a private company. If the company has a share capital, the article shall state the amount of share capital with which the company is to be registered [Sec 27 (1)]

The articles of an unlimited company shall state the number of member with which the company is to be registered.

## **II. On the Basis of Number of Members**

On the basis of number of members, a company may be :

(1) Private Company, and (2) Public Company.

## **A. Private Company**

According to Sec. 3(1) (iii) of the Indian Companies Act, 1956, a private company is that company which by its articles of association :

- i) limits the number of its members to fifty, excluding employees who are members or ex-employees who were and continue to be members;
- ii) restricts the right of transfer of shares, if any;
- iii) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

Where two or more persons hold share jointly, they are treated as a single member.

According to Sec 12 of the Companies Act, the minimum number of members to form a private company is two. A private company must use the word “Pvt” after its name.

**Characteristics or Features of a Private Company.** The main features of a private of a private company are as follows :

- i) A private company restricts the right of transfer of its shares. The shares of a private company are not as freely transferable as those of public companies. The articles generally state that whenever a shareholder of a Private Company wants to transfer his shares, he must first offer them to the existing members of the existing members of the company. The price of the shares is determined by the directors. It is done so as to preserve the family nature of the company’s shareholders.

- ii) It limits the number of its members to fifty excluding members who are employees or ex-employees who were and continue to be the member. Where two or more persons hold share jointly they are treated as a single member. The minimum number of members to form a private company is two.
- iii) A private company cannot invite the public to subscribe for its capital or shares of debentures. It has to make its own private arrangement.

## **B. Public company**

According to Section 3 (1) (iv) of Indian Companies Act. 1956 “A public company which is not a Private Company”,

If we explain the definition of Indian Companies Act. 1956 in regard to the public company, we note the following :

- i) The articles do not restrict the transfer of shares of the company
- ii) It imposes no restriction no restriction on the maximum number of the members on the company.
- iii) It invites the general public to purchase the shares and debentures of the companies

(Differences between a Public Company and a Private company)

1. **Minimum number** : The minimum number of persons required to form a public company is 7. It is 2 in case of a private company.
2. **Maximum number** : There is no restriction on maximum number of members in a public company, whereas the maximum number cannot exceed 50 in a private company.

3. **Number of directors.** A public company must have at least 3 directors whereas a private company must have at least 2 directors (Sec. 252)
4. **Restriction on appointment of directors.** In the case of a public company, the directors must file with the Register a consent to act as directors or sign an undertaking for their qualification shares. The directors of a private company need not do so (Sec 266)
5. **Restriction on invitation to subscribe for shares.** A public company invites the general public to subscribe for shares. A private company invites the general public to subscribe for the shares or the debentures of the company. A private company by its Articles prohibits invitation to public to subscribe for its shares.
6. **Name of the Company :** In a private company, the words “Private Limited” shall be added at the end of its name.
7. **Public subscription :** A private company cannot invite the public to purchase its shares or debentures. A public company may do so.
8. **Issue of prospectus :** Unlike a public company a private company is not expected to issue a prospectus or file a statement in lieu of prospectus with the Registrar before allotting shares.
9. **Transferability of Shares.** In a public company, the shares are freely transferable (Sec. 82). In a private company the right to transfer shares is restricted by Articles.
10. **Special Privileges.** A private company enjoys some special privileges. A public company enjoys no such privileges.
11. **Quorum.** If the Articles of a company do not provide for a larger quorum. 5 members personally present in the case of a public company are quorum for a meeting of the company. It is 2 in the case of a private company (Sec. 174)