

Company” is derived from two words: “com”- group and “panies”- bread. Therefore, it means group that eat their bread together.

A company is: - an association or collection of individuals, whether natural persons, legal persons, or a mixture of both.

- Company members share a common purpose and unite
- in order to focus their various talents and organize their collectively available skills or resources to achieve specific, declared goals
- not merely a legal institution
- a legal device for attainment of social (Section 25/8) or economic end and to a large extent publicly and socially responsible

A company as an entity has many distinct features which together make it a unique organization. The essential characteristics of a company are following:

1.2 CHARACTERISTICS OF THE COMPANY

1. Voluntary association:

A company is a voluntary association formed by an individual or group of individuals. Most companies are formed with the motive of profit-making except the Section 8 companies that is Non-Governmental Organization . Profit earned is divided among the shareholders or saved for the future expansion of the company.

2. Separate Legal Entity:

A company becomes a separate legal entity as compared to its members when it registered with an appropriate authority that is ROC (Registrar of Company). The company is distinct and different from its members in law. It has its own seal and its own name; its assets and liabilities are separate and distinct from those of its members. It is capable of owning property, incurring debt, and borrowing money, employing people, having a bank account, entering into contracts and suing and being sued separately.

Case Law: Salomon v/s Salomon: Salomon had a business in leather and shoe manufacturing. Due to some circumstances, he created his own company and sells his previous business of shoe manufacturing to this company. Salomon gave one share each to his wife, daughter, sons, and the rest of the company’s shares were held by him. After few years, the company was wound up and had some existing liabilities but did not have enough assets to pay off the liabilities. Unsecured creditors sued Salomon for repayment of their money, but the court held that the company was not an agent or a trustee for Salomon. The company is entirely different from the individual, and hence the contentions of the creditors could not be upheld.

3. Limited Liability:

The liability of the members of the company is limited to contribution to the assets of the company up to the face value of shares held by him. A member is liable to pay only the uncalled money due on shares held by him. If the assets of the firm are not sufficient to pay the liabilities of the firm, the creditors can force the partners to make good the deficit from their personal assets. This cannot be done in the case of a company once the members have paid all their dues towards the shares held by them in the company.

The liability of a company may be limited either by Shares or Guarantee.

Company limited by Guarantee: Liability of shareholders is limited to a certain amount of guarantee mentioned in the memorandum payable only at the time of wind up and losses occurred by the company.

Company limited by Shares: Liability of the members shall be limited to the extent of unpaid money or shares held by them.

4. Perpetual Succession:

“Perpetual Succession” in a company is best defined by this line - *Members may come and go but the company goes on forever*. It means company never dies. If any member dies or leaves the company it does not make any difference to the corporate existence of the company. It is one of the fundamentals of a company's existence. Perpetual succession means that a company's life is not determined by the longevity of its members, shareholders, promoters, directors, employees or anyone else. If a shareholder dies, or hypothetically, all the shareholders die, only their shares in the company will be transferred to new people. If even a key director resigns, he/she will be replaced but the company will continue on.

5. Separate Property:

A company is a distinct legal entity. The company's property is its own. A member cannot claim to be owner of the company's property during the existence of the company.

6. Transferability of Shares:

Shares in a company are freely transferable, subject to certain conditions, such that no share-holder is permanently or necessarily wedded to a company. When a member transfers his shares to another person, the transferee steps into the shoes of the transferor and acquires all the rights of the transferor in respect of those shares.

7. Common Seal:

A company is an artificial person and does not have a physical presence. Thus, it acts through its Board of Directors for carrying out its activities and entering into various agreements. Such contracts must be under the seal of the company. The common seal is the official signature of the

company. The name of the company must be engraved on the common seal. Any document not bearing the seal of the company may not be accepted as authentic and may not have any legal force.

8. Capacity to sue and being sued:

A company can sue and be sued in its name and may even sue its members. It also has a right to seek damages where a defamatory matter is published about the company, which affects its business.

9. Separate Management:

A company is administered and managed by its managerial personnel i.e. the Board of Directors. The shareholders are simply the holders of the shares in the company and need not be necessarily the managers of the company.

1.3 DISADVANTAGE OF INCORPORATION OF COMPANY

1. Cumbersome Formalities and Cost
2. Separation of control from ownership
3. Greater Social Responsibility
4. Greater Tax Burden in Certain Cases
5. Winding Up Procedure is lengthy

Cumbersome Formalities and Cost:

Incorporation of a company is a very complex legal process and it involves a considerable amount of time and money. These elaborate procedures have been established so as to discourage people from doing business who not serious and passionate about it.

Even after the incorporation of the company, it has to be run and managed very strictly. In accordance with the legal provisions provided by the Companies Act. The returns and other documents have to be registered at the Registrar of Companies.

Certain particular events or activities such as accounts, corporate audits, meetings, borrowing, lending, investment and issue of capital, dividends etc, are necessarily required to be conducted and carried out by the provisions of the Companies Act.

Separation of control from ownership:

Members of small shareholders of a company do not have any effective control over the functions and decisions of the company because, the number of people in the company is large in number that an individual or even a small group of people cannot have a big effect on the functioning of the organisation.