• Definition of Company

Literary meaning of the word 'company' is an association of persons formed for common object. A company is a voluntary association of persons recognised by law having a distinctive name and common seal formed to carry on business for profit with capital divisible into transferable shares, limited liability, a corporate body and perpetual succession.

1. According to Justice James,

"A company is an association of persons united for a common object."

2. According to Lord Lindley,

"A 'company' is meant an association of many persons who contribute money or money's worth to a common stock and employ it for some common purpose. The common stock so contributed is denoted in money and is the capital of the company. The persons who contribute it or to whom it belongs are members. The proportion of capital to which each partner is entitled is his share."

Section 2 (20) of the Companies Act, 2013 defines a company as "A company incorporated under this Act or under any previous company law." Important previous companies laws are the companies laws passed in 1850, 1866, 1882, 1913 and 1956.

• Advantages of Incorporation of a Company

A company is an artificial legal person, distinct from members. A company is more stable, and the death or insolvency of a member does not affect the company Legal Entity.

According to sec. 3 (1) (ii) of the Companies Act, 1956 a company means a company formed and registered under the Companies Act, 1956 or any of the preceding Acts. Thus, a Company comes into existence only by registration under the Act, which can be termed as incorporation.

According to sec 2(20) of companies act 2013 , company means a company incorporated under this Act or under any previous company law; Advantages of incorporation offers certain advantages to a company as compared with all other kinds of business organizations.

They are:

1) Independent Legal Entity - the outstanding feature of a company is its independent corporate existence. By registration under the Companies Act, a company becomes vested with corporate personality, which is independent of, and distinct from its members. A company is a legal person.

The decision of the House of Lords in Salomon v. Salomon & Co. Ltd. (1897 AC 22) is an authority on this principle:

Ones incorporated a company to take over his personal business of manufacturing shoes and boots. The seven subscribers to the memorandum were all his family members, each taking only one share. The Board of Directors composed of S as managing director and his four sons. The business was transferred to the company at 40,000 pounds. S took 20,000 shares of 1 pound each n debentures worth 10,000 pounds. Within a year the company came to be wound up and the state if affairs was like this: Assets- 6,000 pounds; Liabilities- Debenture creditors-10,000 pounds, unsecured creditors- 7,000 pounds.

It was argued on behalf of the unsecured creditors that, though the co was incorporated, it never had an independent existence. It was S himself trading under another name, but the House of Lords held Salomon & Co. Ltd. must be regarded as a separate person .

2) Limited liability- limitation of liability is another major advantage of incorporation. The company, being a separate entity, leading its own business life,

the members are not liable for its debts. The liability of members is limited by shares; each member is bound to pay the nominal value of shares held by them and his liability ends there.

3) Perpetual succession- An incorporated company never dies. Members may come and go, but the company will go on forever. During the war all the members of a private company, while in general meeting, were killed by a bomb. But the company survived, not even a hydrogen bomb could have destroyed it (K/9 Meat Supplies (Guildford) Ltd., Re, 1966 (3) All E.R. 320).

4) Common seal- Since a company has no physical existence, it must act through its agents and all such contracts entered into by such agents must be under the seal of the company. The common seal acts as the official seal of the company.

5) Large Capital-The number of members is large in case of a company as in a public company, there is no limit to the maximum number of members. In a private company, maximum number of members is 200.

6) Separation between Ownership and Management- the Company is managed by the directors who are elected by the members. There is separation between ownership and management. Members need not worry about the management of the company. In case of company, the directors are professionals and they can manage the company in a better way. Further, in a company, decisions are taken by the majority.

7) Transferable shares- when joint stock companies were established the great object was that the shares should be capable of being easily transferred. Sec 82 (as per companies act 2013 section is 44) gives expression to this principle by providing that “the shares or other interest of any member shall be movable property, transferable in the manner provided by the articles of the company.”

8) Separate property- The property of an incorporated company is vested in the corporate body. The company is capable of holding and enjoying property in its own name. No members, not even all the members, can claim ownership of any asset of company’s assets.

9) Capacity for suits - A company can sue and be sued in its own name. The names of managerial members need not be impleaded.

10) Professional management- A company is capable of attracting professional managers. It is due to the fact that being attached to the management of the company gives them the status of business or executive class.