



Formation of Company

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ABSTRACT

A corporation is a distinct legal entity which is lawfully incorporated using a systematic approach. Basically company is an organization registered association which is an artificial legal person, a separate legal entity, a perpetual succession, a common seal for its signature, a common capital comprised of transferable share and carrying limited liabilities. An organization should be registered into the Companies act 2013 for legally incorporated as a company. Even those organizations which are registrar under Companies act 1956 will be considered as Company. Without registering themselves in those acts, not any organization will consider as a company.

I. INTRODUCTION

The word "company" comes from the two Latin words "Com" (which means "together") and "panies" (which means "bread"). In simple words "Company refers to a group of people brought together for a certain goal". We can also say any entity that is registered or formed in accordance with the Companies Act of 1956 or the Companies Act of 2013 is regarded as a company. It possesses many of the same legal rights and obligations as a person, including the power to contract, the capacity to bring legal action (or be brought one), the capacity to borrow money, the capacity to pay taxes, the capacity to own property, and the power to employ people. Basically we can conclude company as a separate legal entity and is different from its owner.

As we know, the formation of the company is very early and the initial stage. It needs a lot of legal formalities and procedures initially to be done. A company can only be formed once all the legal formalities are being done with the proper procedures, and legally register itself as a company under companies' acts.

DEFINITION:

• □ According to **Section 3(1)** of the Companies Act 1956, "A company" refers to a legal

entity created and registered in accordance with the act or an existing company; "Existing Company" refers to a legal entity created and registered in accordance with either of the companies acts, which can be either the companies act of 2013 or the companies act of 1956.

• □ According to **section 2(20)** of the Companies Act, 2013 the term "Company" refers to "a Company incorporated or constituted under the Companies Act 2013 or any previous Company Law.

• "In simple word, "A company is a **legal entity created by a group of people to conduct business and run an operation in a commercial or industrial capacity**".¹.

KINDS OF COMPANIES

• **On the basis of incorporation:**

a. **Chartered Company:** A company incorporated under a special charter Act granted by the monarch is called a Chartered Company. Due to the absence of the monarchy, this type of organization does not exist in India.

b. **Statutory Company:** A company that is established by a unique legislative act and is governed by the terms of that act.

c. **Registered Company:** A company that was established through registration with the Registrar of Companies in accordance with the Companies Act of 1956 or 2013 is called as a registered company.

• **On the basis of total number of members**

a. **Private company:** According to section 2(68) of the Companies Act, 2013, private company is defined as "a company having a minimum paid-up share capital as may be prescribed, and whose articles limit the shareholder's ability to transfer their

¹ Definition of Company, Investopedia, available at <https://www.investopedia.com/terms/c/company.asp> last seen on 08/09/2022



shares. A private company's name must include the word "Private." It is limited to 200 member's.²

b. Public Company: Section 2(71) of the Companies Act, 2013 defines public company as the company which can invite the public to subscribe to its shares is called a public company.

• **On the basis of Ownership:**

a. Government company: Section 2(45) of the Companies Act, 2013 defines Government company as "A company in which not less than 51% of the share capital is held by the central government or by any state government or governments is called as a government company."³ It also includes companies which is subsidiary of a government company. Example: Bharat Heavy Electricals Limited (BHEL), Indian telephone industries, HMT etc.

b. Non-Government company- All the companies except governmental companies are known as non-governmental companies.

Steps in Formation of company

Major steps in formation of companies are-

- 1) Promotion stage
- 2) Registration stage
- 3) Incorporation stage
- 4) Commencement of Business stage

1) **Promotion stage-** Promotion is the very initial step in the formation of a company. In this phase, the idea of starting a business is turning into reality with the help of promoters of the business idea. Basically in this stage ideas are executed.

The following steps make up the promotion stage:

- A) Decide on the type of business that has to be conducted after identifying the business opportunity.
- B) Determine the financial, technical, and legal aspects of operating the business by conducting a feasibility study.

C) Promoter interest in the business concept, as well as the provision of funding and other startup requirements.

2) **Registration stage-** This stage is the second step towards the formation of the company. In this phase, the company gets registered, which brings the company into existence.

If a company is registered in accordance with the 2013 Companies Act, it is considered to be in existence. A few documents must be given to the Registrar of Companies in order to register a company. **These Documents are-**

- I) Memorandum of Association
- II) Article of Association (AoA)
- III) list of directors
- IV) written consent agreeing to be directors
- V) address of the office
- VI) Statutory declaration made by any advocate of either HC/ SC or a person of the capacity of Director, Secretary or Managing Director.

3) **INCORPORATION:** - The second stage of formation of the company is incorporation stage where the company needs to be registered with the registrar of the company.

a) Approval of name

- The first step under incorporation is to approve the name of the company by the Registrar of the companies. They have to be ensured that the name selected for the company should not match with the name of any other company. It normally takes approximately 2 to 3 weeks to incorporate a company depending on where the company is registered.

There is some rule which should be followed during approval of the name of the company –

- 1) Must not be identical to an already registered company.
- 2) It should not be offensive towards any group of a society.
- 3) It should not be undesirable by the Central Government.
- 4) The Company must not use any name or symbol which creates an impression that the company is supported by the Central Government or by the State Government.

² Kinds of company, ipleaders, available at https://blog.ipleaders.in/kinds-of-company/#Private_Company last seen on 08/09/2022

³ Kinds of company, BMSCW, available at <https://www.bmscw.edu.in/files/StudyMaterials/BCom/I-BCom/CSA%20UNIT%201.pdf>, last seen on 08/09/2022



b) Filing of documents

For registration the following documents must be submitted with an application for registration to the company registrar:

- The signatories should correctly stamp and sign the memorandum of association.
- Articles of association have been duly stamped and signed.
- Notice regarding the address of the registered office of the company.⁴
- A copy of the notice that the government's department of company law and administration sent to you informing you that the names you've suggested for the firm are available.
- A statutory declaration attesting to compliance with the Companies Act's provisions.
- A declaration of the company's nominal capital.
- Each and every detail of persons (name, addresses, occupation etc.) who have accepted to act as the first directors of the company.⁵
- The written consent of the directors to act so
- An undertaking by the directors to take up and pay for the qualification shares⁶

c) Payment of filing and registration fees

Along with application the promoter must also pay stamp duty, filing costs, and registration fees in addition to the application and the appropriate documentation. The registrar will examine the supporting documentation and, if satisfied, will insert the company's name in the register and issue it with its "Certificate of Incorporation," which serves as the company's birth certificate.

4) Commencement of Business stage

The promoter must submit an application to the registrar together with the required payments in order to obtain the certificate of business commencement. A public company must get a certificate of commencement of business before it can operate, but

a private firm can do so once it has obtained its certificate of formation.⁷

It will be granted only if the following conditions are fulfilled:

- It is required to file a prospectus or a statement in place of a prospectus with the registrar of companies. Companies who do not feel the need to release a prospectus must nonetheless create a statement in lieu of one.
- The minimal amount of subscriptions was obtained by the company.
- The directors have paid the application and allotment fees on the shares they own.
- Declarations made by the company's directors or secretary confirming that the requirements of the companies act have been met.

The certificate for the start of the business will be issued by the registrar if he is satisfied. The business can officially start as of the date the certificate is received by the company.

Procedure of registration of a company

- 1) Apply For Director Identification Number (DIN)
- 2) Apply For Digital Signature Certificate (DSC)
- 3) Filing for New User Registration
- 4) Filing for Charter Documents.
- 5) Application for Company Name.
- 6) Register Other Details.
- 7) Acquiring PAN and TAN.

FEATURES/ CHARACTERISTICS

1) Corporate Body: A company should to be registered under the Companies Act, 2013. Any other organization incorporated with the Registrar of Companies, and subsequently not registered cannot be considered as a company.

⁴ Kinds of company, BMSCW , available at, <https://www.bmscw.edu.in/files/StudyMaterials/BCom/I-BCom/CSA%20UNIT%201.pdf>, last seen on 08/09/2022

⁵ Kinds of company, BMSCW , available at, <https://www.bmscw.edu.in/files/StudyMaterials/BCom/I-BCom/CSA%20UNIT%201.pdf>, , last seen on 08/09/2022

⁶ Kinds of company, BMSCW , available at, <https://www.bmscw.edu.in/files/StudyMaterials/BCom/I-BCom/CSA%20UNIT%201.pdf>, last seen on 08/09/2022

⁷Steps in formation of company, Buyjus, available at, <https://byjus.com/commerce/steps-in-formation-of-a-company/>, last seen on 08/09/2022



2) **Limited Liability:** A company may be limited by shares or may be limited by guarantee.⁸ As we know a company is a separate entity, As a result, the members of a corporation are only liable to the extent of the shares they own or the amount of the guarantee.

3) **Separate Legal Entity:** A company is an independent legal body that is distinct from its owners and employees. Due to this feature, shareholders have the ability to contract with the corporation, bring legal action against it, and are sued by it.⁹

4) **Transferability of Shares:** Shareholders of a *public limited company* can transfer their shares very easily but in the case of a *private limited company*, there might be some restrictions on the transfer of shares.

5) **Perpetual Succession:** The Company created by law has continuous existence. It is sometimes said that "Men may come, men may go, but company goes on forever" since it never dies or retires.¹⁰

6) **Common Seal:** The firm/ company are an artificial entity or a person, and therefore cannot sign its name by itself or cannot act on its own. That's why it needs a natural persons like directors, secretary etc to enter into a contract in behalf of the company.

7) **Specific objectives-**A stock company is formed for specific objectives which are expressly stated in the constitution. These objectives are laid down in the Memorandum of Association.

II. Conclusion

⁸ Kinds of company, BMSCW , available at <https://www.bmscw.edu.in/files/StudyMaterials/BCom/I-BCom/CSA%20UNIT%201.pdf>, last seen on 09/09/2022

⁹ Features of company, BYJUS, available at, <https://byjus.com/commerce/features-of-a-company/>, last seen on 09/09/202

¹⁰ Kinds of company, BMSCW , available at <https://www.bmscw.edu.in/files/StudyMaterials/BCom/I-BCom/CSA%20UNIT%201.pdf>, last seen on 09/09/2022

Formation of a Company is basically a procedure of incorporation of a company.¹¹ A company should always get incorporated in the very first step of its formation. And from the research we can say that, company is considered as a separate legal entity. And this point was said and clears under the case SALMOND vs. SALMOND AND COMPANY LIMITED.

By the whole research, we can conclude this also that. A company is a registered association which is an artificial legal person, a separate legal entity, a perpetual succession, a common seal for its signature, a common capital comprised of transferable share and carrying limited liabilities.

The concept of formation of company is essential for the incorporation of a company and for the functioning of its. The registration process in the concept of formation of a company is kind off reduce the confusion for the customers/ shareholders in the name of brand and because of this if any illegal company having wrong intention is incorporated, we can find it out easily because they surely not register itself in front of register. This also proofs that Register Company must be a good one, and people can trust upon that.

¹¹ Kinds of company, BMSCW , available at, <https://subjectquery.com/introduction-stages-and-conclusion-of-the-formation-of-a-company/>, last seen on 09/09/2022