An Assignment on the Company and its Classification

Introduction:

A Company is a legal entity that is separated and distinct from its members and shareholders. Company is enforced by certain rules and regulation of laws for achieving the targeted goal. Without guideline or laws it is directionless and becoming chaotic condition. At first in France the word "company" was used for body of soldiers. After 1500 year, the word company became famous in business. [1] A company is a third legal business structure and has entirely a different organizational structure from the sole proprietorship or partnership. Its formation is due to firstly, the sole proprietorship and partnership cannot meet the increased capital demand of industry and commerce. Secondly, the company ensures the protection of limited liability to the shareholders and investor.[2]

The word 'company' is derived from the Latin word Com Panis (Com means 'With or together' and Panis means 'Bread'), and it originally referred to an association of persons who took their meals together. In the leisurely past, merchants took advantage of festive gatherings, to discuss business matters.[3]

Description:

In popular parlance, a company denotes an association of like minded persons formed for the purpose of carrying on some business or undertaking.

In common law, a company is a "legal person" or "legal entity" separate from, and capable of surviving beyond the lives of its members.

In the legal sense, a company is an association of both natural and artificial persons and is incorporated under the existing law of a country.[4]

According to Prof. L.H. Haney, "Company is an artificial person created by law having separated entity with a perpetual succession and common seal". [5]

The term company is used to describe an association of a number of persons, formed for some common purpose and registered according to the law relating to companies. Section 3(1)(i) of the Companies Act, 1994 states that a company means," a company formed and registered under this Act or an existing company."

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[1] www.lawyersnjurists.com
[2] www.studylecturenotes.com
[3] www.fromtaxguru.in
[4] www.fromtaxguru.in
[5] Ibid

Lord Justice Lindley defines a company as follows: "By a company is meant an association of many persons who contribute money or money's worth to a common stock so contributed is denoted in money and its capital of the company. [6]

Nature of A company:

A company is incorporated under the Act is vested with a corporate personality so it bears its own name, acts under name, has a seal of its own and its assets are separate and distinct from those of its members. It is a different 'person' from the members who compose it. Therefore it is capable of:

- Owning property,
- Incurring debts,
- Borrowing money,
- Having a bank account,
- Employing people,
- Entering into contracts and
- Suing or being sued in the same manner as an individual.[7]

Activities of a business:

There are three main activities of a business;

Merchandising Activities: This involve activities deal with goods in a ready to sell condition.

Manufacturing Activities: This involve from purchase to raw material and put labor and factory overhead on the raw material and produce a product.

Services Activities: This involve banking, education, insurance and training activities.[8]

Company's Classification

There are various types of company that can be formed in different jurisdictions, but the most common types of companies are:

[6] www.studylecturenotes.com
[7] www from taxguru.in

Private Company- Means such type of company where the members can not transfer their share and the maximum number of members are limited up to 50 and minimum number of member is 2, as per section 3 of Companies Act.

Public Company- This is, such type of company where there is no restrictions whether it is about transfer the share or about the maximum number of member. They can transfer their share and minimum number of member is 7– Sec. 3(1) (IV).

Public companies may be classified into three types:

a. Companies Limited by share- In this company there is a share-capital and each share has fixed nominal values which the shareholder pays at a time or by installments. The member is not liable to pay anything more than the fixed value of the share.

b. Companies limited by guarantee- In these companies, each member promise to pay a fixed sum of money in the event of liquidation of the company. This amount is called the Guarantee.

c. Unlimited Company- In these companies the liability of the shareholder is unlimited, as in partnership firms.

Essential Features of a Company:

Registration: A company comes into existence on registration under the Companies Act. It is an incorporated association. A joint stock company may be incorporated as a private or public company or one person company.[9]

Voluntary Association– A Company is an association of many people on a voluntary basis. Therefore a company is formed by the choice and consent of the members.

Capital– A Company must have a capital, otherwise it cannot work.[10]

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[9] www.economicdiscussion.net

[10] www.lawyersnjurists.com

Continued existence – A company has a life of its own distinct from the life of its members. So the death of a member will not affect the life of the company.[11]

Legal Personality– A Company is regarded by law as a single person. It has a legal personality. This rule applies even in the case of "One-man Company."

Limited Liability– The liabilities of shareholders of a company are usually limited. According to the Company Act 1994 of Bangladesh, the liability of shareholder may be limited by share under section 6(a) (4) or limited by the guarantee under section 7(a)(4).

Transferability– The shareholder of a company can transfer its share and ordinarily the transferee becomes a member of the company.

Statutory Obligation– A Company is required to comply with various statutory obligations regarding management, e.g., filling balance sheets, maintaining proper account books and registers etc.

Financial Power– A Company is given exclusive power and the only medium of organizing business which is given the privilege of raising capital by public subscription either by way of shares or debentures.

Common Seal– Company can not sign on any contract because it is artificial person and it works with common seal.[12]

Can buy and sell assets – A company at its own discretion can buy or sell any asset.

Right To Sue– Company can sue on other parties like natural person for protecting its assets and properties.

Dissolution – The company can be dissolved only by which creates it.

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[11] Economicdiscussion.net

[12] www.lawyersnjurists.com

Board: The management of the company is delegated to a board, called board of directors.

Regulation: The affairs of a company are regulated by the Companies Act.

Buy-Back of Share: Companies Act permits a limited company to buy back its own shares under certain circumstances.

Not a Citizen: A company is not a citizen and therefore cannot enjoy the fundamental rights like right to vote which are available to citizens only.[13]

Formation: A company is formed under the provisions of the relevant Act after completing certain formalities. When these formalities are completed and the Registrar of the Companies is satisfied, he issues a Certificate of Incorporation. With the issue of this certificate, the company comes into existence.

Risk-Bearing: In the case of a company, the business risk is spread very widely among the numerous shareholders. Further, the liability of these shareholders is limited to the extent of the issue price of the shares subscribed by them.

Prescribed Mode of Winding Up: It is the another feature of the company that its winding up is also directed by law. "Company is born under rules and dies under rules". Like its inception, its winding up follow a complete and set procedure as prescribed by law.

Control: In law and theory, the members of the company, who contribute the share capital, have the ultimate control of company's affairs.

Management:

Since the risk-bearing shareholders are widely scattered, and do not, in most cases, have the time, or knowledge of business, especially where they are engaged in their own occupations and professions, the management of the company has to be entrusted to the Board of Directors.

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[13] www.economicdiscussion.net

Duration: Members may come and members may go, but the company goes on undisturbed until dissolved by a process of law. Also, a shareholder cannot get back his money from the company and so be a cause of its disintegration.

Taxation: In all situation the company has to pay the income tax whether earnings is good or bad . This means that the rate of income-tax does not rise with the rise in profits or fall with the fall in profits

Diffused Ownership: The ownership of a company is scattered over a large number of persons. According to the provisions of the Companies Act, a private company can have a maximum of fifty members. While, no upper limit is put on the maximum number of members in public companies.

Separation of Ownership from Management: Though shareholders of a company are its owners, yet every shareholder, unlike a partner, does not have a right to take an active part in the day to day management of the company.[14]

Company has nationality and residence: Though it is established through judicial decisions that a company cannot be a citizen, yet it has nationality, domicile and residence.

Separate property: A company being a legal person and entirely distinct from its members, is capable of owning, enjoying and disposing of property in its own name. The company is the real person in which all its property is vested, and by which it is controlled, managed and disposed off.

Contractual rights: A company, being a legal entity different from its members, can enter into contracts for the conduct of the business in its own name.

Limitation of action: A company cannot go beyond the power stated in its Memorandum of Association. The Memorandum of Association of the company regulates the powers and fixes the objects of the company and provides the edifice upon which the entire structure of the company rests.[15]

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[14] www.yourarticlelibrary.com

[15] www.from taxguru.in

One Share-One Vote:

The principle of voting in a company is one share-one vote i.e. if a person has 10 shares, he has 10 votes in the company. This is in direct distinction to the voting principle of a co-operative society where the "One Member – One Vote" principle applies i.e. irrespective of the number of shares held, one member has only one vote.[16]

Directors and Shareholders

A corporation works through living person not by itself. The human agencies that mainly run by the company's business are called directors. According to Companies Act-1994

"Director includes any person occupying the position of director by whatever name called" and according to section 90(1), every public company must have at least three directors and every private company must have two directors.

Shareholders are the genuine title-holder of the company. But when a company is created and registered in the stock exchange under the company Act-1994 it becomes a separate authorized entity or personality. We can say the directors as member of staff of the corporation. They cannot be treated as agent or trustee of the company.[17]

[16] www.company-formation.co.in
[17] www. Lawyersnjurist.com