

Business Law



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About the Tutorial

This tutorial presents the Business Laws within the Indian context of Companies Act, Company Law Board, Ministry of Corporate Affairs, National Company Law Tribunal, and the Registrar of Companies, India, which will give you a concise yet exact idea on the workings of Business Law in India.

Audience

This tutorial is specially designed for the students of Management, Business Law, Company executives, Legal executives. It is also intended for anyone who desires to get acquainted with the legal aspects of running a business.

Prerequisites

To understand this tutorial, it is advisable to have a foundation level knowledge of business and management studies. However, general students who wish to get a brief overview of the various laws and acts in business may also find it quite useful.

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1. BL — Company Law

What is a Company?

Organizations require huge investments. As the investments are big, the risks involved are also very high. While undertaking a big business, the two important limitations of partnerships are limited resources and unlimited liabilities of partners. The company form of partnerships has become popular to overcome the problems of partnership business. Various multinational companies have their investors and costumers spread throughout the world.

In order to maximize and utilize the organizational and managerial abilities effectively, it is necessary for a limited liability company to be supported not only by its own organs but also by clear and precise regulations. It is necessary to have a brief overview of the business organization from the framework of company law.

Commercial sector recognizes three principal categories of business organizations:

- Sole proprietorship (Generally used for informal purposes)
- Partnership (General or limited)
- Company

There are three types of partnerships:

- Persecution per data (governed by the civil code)
- Persecution firms (governed by the civil code as well as the commercial code)
- Persecution (governed by the civil code as well as the commercial code)

It is difficult to determine the absolute equivalents between these partnerships and partnerships under common law tradition.

Meaning and Nature of Company

According to the Companies Act, 1956, "A company is a person, artificial, invisible, intangible, and existing only in the contemplation of the law. Being a mere creature of the law, it possesses only those properties which the character of its creation confers upon it either expressly or as incidental to its very existence."

It can clearly be defined that:

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- A company is defined as a group of people that contributes money or the worth of money to a common stock to employ it in some trade or business. The people in this group share the profit or loss (as the case may be) arising as a result.
- The common stock is usually denoted in terms of money and is the capital of the company.
- The persons who contribute to the common stock are the members.
- The proportion of the capital entitled to each member is called the member's share.
- Shares are always transferrable subject to the restrictions and liabilities offered by the rights to transfer shares.

The main characteristics of a company are discussed below.

Incorporated Association

- A company can be created only under the registration of the Company Act.
- It comes into existence from the date when the certificate of incorporation is issued.
- At least seven persons are required to form a public company.
- At least two persons are required to form a private company.
- These persons will subscribe to the memorandum of associations and also comply with the other legal requirements of the Company Act in respect of registration to form and incorporate the company, with or without liability.

Artificial Legal Person

A company can be considered as an artificial person (a person who cannot act on his own will). It has to act through a board of shareholders elected or selected by the members of the company.

- The board of directors works as the only brain of the company.
- It has the rights to acquire and dispose the properties, to enter into contract with third parties in its own name, and can sue and can be sued in its own name.
- However, it cannot be considered as a citizen as it cannot enjoy the rights of a citizen.

Separate Legal Entity

A company is perceived to be a distinct legal entity and one that does not depend on its members. The money credited by the creditors of the company can be recovered only from the company and the properties owned by the company.

- Individual members cannot be sued.
- Similarly, the company in any way is not liable for the individual debts of the members.
- The properties of the company can only be used for the development, betterment, maintenance, and welfare of the company and cannot be used for personal benefits of the shareholders.
- A member cannot claim any ownership rights over the company either single-handedly or jointly.
- The members of the company can enter into contracts with the company in the same manner as any other individual can.
- The Income Tax Act also recognizes company as a separate legal entity.
- The company has to pay income tax as it earns profits and when dividends are paid to the shareholders, the shareholders also have to pay income tax based on the dividends earned. This highlights the fact that the shareholders and the company are two separate individual entities.

Perpetual Existence

- A company is said to be a stable form of business organization.
- A company's life does not depend upon the death, insolvency or retirement of any or all of its shareholders or directors.
- It is created by law and can only be dissolved by law.
- Members can join or leave the company but the company can continue forever.

Common Seal

- A company cannot sign documents by itself.
- It acts through natural persons who are called its directors.
- A common seal is used with the name of the company engraved on it as a substitute of its signature.
- To be legally binding on the company, a document has to carry the company seal on it.

Limited Liability

- A company may be limited by shares or by guarantee.

- In a company limited by shares, the liability of members is limited to the unpaid value of the shares.
- In a company limited by guarantee, the liability of members is limited to such an amount as the members may undertake to contribute to the asset of the company in the events of it being wound up.

Transferrable Shares

- The shares can be freely transferred in case of a public company.
- The right to transfer shares is a statutory right and it cannot be taken away by any provision.
- However, the manner in which such transfer of shares is to be made should be provided and it may also contain bona fide and reasonable restrictions on the rights of members for transfer of their shares.
- However, in case of private companies, the article shall restrict the rights of the members to transfer their shares in companies with its statutory description.
- If a company refuses to register the transfer of shares, a shareholder may apply to the Central Government in order to make the right to transfer shares legal.

Delegated Management

- Any company can be considered as an autonomous, self-governing and self-controlling organization.
- Due to the presence of a large number of members, all members cannot take part in the management of different affairs of the company.
- Control and management is therefore delegated to the elected representatives called directors, who are elected by the shareholders.
- The directors supervise the day-to-day work and progress of the company.

Classification of Companies

All the companies must be registered under the Companies Act. A certificate of incorporation must be issued by the registrar of the company after registration. Different jurisdictions can form different companies. Some of the most common types of companies are as follows:

Private Company

- A company is said to be a private company if it does not allow its shareholders to transfer shares.
- If any transfer of shares is allowed, the company limits the number of its members to 50 and does not entertain any invitations to the public for subscribing any shares of the company.
- These types of companies offer limited liabilities to their shareholders but also place some restrictions on their ownership.
- A private company can have a minimum of 2 members and a maximum of 50 members, excluding the employees and the shareholders.
- A private company is desirable in those cases where it is intended to take the advantage of corporate life, has limited liability and the control of the business is in the hands of few persons.
- In private sector, an individual can gain control of the entire business firm.

Public Company

- At least seven members are needed to form a public company.
- The maximum number of members remains unrestricted in the case of public companies.
- A Prospectus is issued by the public companies to invite people to buy the shares of the company.
- The liability of the members is limited by the value of the shares they purchase.
- The shares of a public company are sold and bought freely without any obstruction in the stock market.

Companies Limited by Guarantee

- Every member of these companies promises to pay a fixed amount of money in the event of liquidation of the company.
- This amount is denoted as guarantee.
- There is no liability to pay anything more than the value of the share and the guarantee. Some of the substantial resultants of companies limited by guarantee are charities, community projects, clubs, societies, etc.

- Most of these companies are not into any profit-making.
- These types of companies can be considered as private companies offering limited liabilities to their members.
- A guarantee company substitutes share capitals with guarantors willing to pay a guarantee amount upon the liquidation of the company.

Companies Limited by Share

In the case of companies limited by shares, the shareholders pay a nominal value of money contributing to the share capital. The payments can be done either at a time or by installments.

- The members do not have to pay anything more than the fixed value of the share. Companies limited by shares are the most popular among the registered companies.
- These types of companies are required to have the suffix 'Limited' at the end of their names so that the people know that the liability of its members is limited.

Unlimited Company

- Unlimited companies are the companies where the liabilities of the shareholders are unlimited as in the case of partnership firms.
- Such companies are permitted under the Companies Act but are not known.
- These types of companies are incorporated either with or without a share capital.
- The shareholders are liable to donate whatever sums are required to pay the outstanding debts of the company, should it go into formal liquidation and if there is any need to meet the insufficiency of assets to pay the debts and liabilities and the fixed cost of liquidation.
- The members or shareholders have no direct liability to the creditors or security holders of an unlimited company.

2. BL — Principle of Separate Legal Existence

The Principle of Separate Legal Existence is a fundamental principle in the field of company law. According to this principle, the company is treated as an entity separate from its members.

Functions of Separate Legal Existence

- In order to create a company, the promoters of the company must produce certain documents to the registrar of companies.
- The registrar presides over the government agency known as the Companies House.
- After checking the documents, the registrar will issue a certificate of incorporation and the company starts to exist as a corporate body.

Separate Legal Entity

The most important consequence of incorporation is that a company is regarded as a person. It has its own rights and the rights are different from the rights of its owners.

Limited Liability

- When Shareholders buy shares from a certain Company and pay a certain percentage amount of the shares rather than paying the full amount, and when the company is dissolved, then the shareholders are liable to pay the rest of the amount.
- If a shareholder has paid the full amount, he/she is not liable to pay any amount upon dissolution of the company.
- Therefore, shareholders have a limited liability.

Perpetual Succession

This refers to the existence of any organization despite the death, bankruptcy, insanity, change in membership of any member from the business. In such instances, the shares are passed on to the next generation.

Ownership of Property

Certain properties can be owned by a company. These properties continue to be owned by the companies regardless of their shareholders and members.

- These properties are used when a company needs to borrow money as a security.

- These properties may be the present or future assets.

Contractual Capacity

- A company has the ability to make contracts.
- The company can sue or be sued on the basis of these contracts.
- The power to make contracts is delegated to human agents working for the company.
- The contracts are carried out by the directors and other agents of the company.
- The company, as a person itself, is subjected to the rights and liabilities imposed by the contract.

Criminal Liability

- For someone to be found guilty of committing a crime, the individual's actions and mindset must fit the crime.
- It is generally perceived that companies cannot commit any crime as they do not have minds of their own.
- However, the courts assume the controllers of the company to be the minds of the company.

End of ebook preview

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