

Chapter 11

Accounting for Companies

1. COMPANY – BASICS

1.1 Definition

A. Definitions as per Judicial Decisions

Haney	A Company is an Incorporated Association, which is an Artificial Person created by law, having a Separate Entity, with a Perpetual Succession and a Common Seal.
Marshall	A Company is a person, artificial, invisible, intangible and existing only in the eyes of Law. Being a mere creature of law, it possesses only those properties which the Charter of its creation confers upon it, either expressly or as incidental to its very existence.
Lindley	<ul style="list-style-type: none">• A Company is an association of many persons, who contribute money or money's worth to a common stock, and employ it in some common trade or business, and who share the profit or loss (as the case may be) arising therefrom.• The Common Stock so contributed is denoted in money, & 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 Member is entitled is his Share.• Shares are always transferable although the right to transfer them is often more or less restricted.

B. Definitions as per Companies Act, 2013

Sec.2(20)	A Company means a Company incorporated UNDER THIS Act or any previous Company Law.
Sec.2(67)	<p>Previous Company Law means any of the Laws specified below–</p> <ul style="list-style-type: none">(i) Acts relating to Companies in force before the Indian Companies Act, 1866,(ii) Indian Companies Act, 1866,(iii) Indian Companies Act, 1882,(iv) Indian Companies Act, 1913,(v) the Registration OF Transferred Companies Ordinance, 1942,(vi) the Companies Act, 1956, and(vii) any Law corresponding to any of the aforesaid Acts or the ordinances and in force– <p>(a) In the merged territories or in a part B State (other than the State of Jammu and Kashmir) or any part thereof, before the extension thereto of the Indian Companies Act, 1913, or</p>

	<p>(b) In the State Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Acts, 1956, in so far as Banking, Insurance and Financial Corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968, in so far as other Corporations are concerned,</p> <p>(viii) The Portuguese Commercial Code, in so far as it relates to Sociedades anonimas, and</p> <p>(ix) The Registration of Companies (Sikkim) Act, 1961.</p>
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1.2 Characteristic Features of a Company [Sec.9]

Feature	Explanation
1. Artificial Person	<p>(a) A Company comes into existence by the operation of law.</p> <p>(b) By sanction of law, a Company is granted certain rights and obligations as that of a person. Thus, Company is an artificial person, incorporated under law.</p>
2. Separate Legal Entity	<p>(a) The Company is a separate legal entity and an artificial person known by its own name. Members cannot in any way, claim to be the same as that of Company.</p> <p>(b) Upon Registration, the Association of Persons becomes a Body Corporate by the Name contained in the Memorandum of Association.</p> <p>(c) A Company is distinct and separate from the Members who constitute it.</p>
3. Person, not Citizen	<p>(a) A Company is not a citizen either under – (a) the Constitution of India or (b) the Citizenship Act, 1955.</p> <p>(b) The Constitution provides certain fundamental rights to its citizens. A Company cannot enjoy those fundamental rights, which are expressly available to citizens only.</p> <p>(c) However, the Company can claim those fundamental rights which are available to all persons, whether citizens or not, e.g. Right to own property, Right to Equality, etc.</p>
4. Perpetual Succession	<p>(a) A Company is an artificial person and has a separate legal entity.</p> <p>(b) Hence, death, insolvency or retirement of its Members does not affect the Company.</p> <p>(c) The shares of a Company being transferable, members may change during the lifetime of the Company. However, that does not change the status of the Company.</p> <p>(d) The Company goes on forever and continues to exist, till it is wound up and dissolved.</p>
5. Separate Property	<p>(a) As per law, the Shareholders of a Company are not part owners of the undertaking.</p> <p>(b) The Company, being a separate entity, is entitled to hold property in its own name.</p> <p>(c) Members of the Company cannot claim ownership of Company's property.</p> <p>(d) Dealings by or with the Company are carried out in its own name and not as the collective agent of its Shareholders.</p>
6. Common Seal	<p>(a) Common Seal is the official signature of a Company. The Company's name is engraved on the Seal.</p> <p>(b) The Articles of Association may provide for the documents that require the signature of the Company, i.e. the Common Seal. Where any document is affixed with the Common Seal, it amounts to being signed by the Company. [Note: Presently, Common Seal is optional.]</p>
7. Capacity to Sue	<p>(a) The Company is a separate legal entity known by its name and hence all actions of the Company shall be done in its name. In any suit, the Company shall sue or be sued in its own name.</p> <p>(b) When the Creditors remain unpaid, their action as to claim stops with the Company. They cannot proceed against the Shareholders, individually or as a Group.</p>
8. Owner-ship vs Management	<p>(a) The Board of Directors is the elected representative body of the Shareholders of the Company, and manages the affairs of the Company.</p> <p>(b) Generally, every Shareholder / Member does not participate in the day-to-day affairs of working and administration of the Company. Hence, Ownership of Company is different from that of its Management.</p>
9. Right of Access	Shareholders are entitled to have access to information, and inspect the Registers and Records maintained by the Company, in the manner specified in the Companies Act.
10. Limited Liability	<p>(a) The liability of a Member of a Company may be limited by Shares or Guarantee. (In rare cases, the liability may be defined as unlimited by its Memorandum).</p> <p>(b) In case of Company limited by Shares, the Member's liability is limited to the amount unpaid on Shares. If such Shares are fully paid, he has no further liability.</p> <p>(c) In case of Company limited by Guarantee, the Member's liability is limited to the amount guaranteed by him in the Memorandum.</p>
11. Transferability of	(a) Shares of a Company are always transferable, although the right to transfer them is sometimes restricted, e.g. in the case of a Private Company.

Feature	Explanation
Shares	(b) Since Shares are transferable, Members can dissociate themselves from the Company by transferring their Shares at any time, in the manner provided in its Articles.
12. Accounts and Audit	<p>(a) Accounts: A Company has to maintain the prescribed books of accounts under accrual system, and double-entry system of book-keeping only.</p> <p>(b) Audit: A Company's accounts are subject to annual audit. The appointment of Auditors shall be in accordance with the provisions of the Companies Act.</p>

Note: In case of Company does not frame its Articles of Association, the Format of AOA shall be adopted from **Schedule I** u/s 5(6) of Companies Act, 2013.

1.3 Types of Companies

Basis	Types of Companies
Incor-poration	<ul style="list-style-type: none"> • Chartered Companies – Formed by a Charter, i.e. Order of the King or Queen. • Statutory Companies – Formed by or under a Statute of the Legislature / Parliament, e.g. LIC, Reserve Bank of India, State Bank of India, etc. • Registered Companies – Formed and Registered under COA, 2013 or any earlier Companies Act.
Owner-ship	<ul style="list-style-type: none"> • Government Companies – Means not less than 51% of a Paid-Up Capital of a Company is held by the Central Government, or any State Government(s), Governments, or partly by Central Government and partly by one or more State Governments and includes a Company which is a Subsidiary Company of such a Government Company. • Companies controlled by others, i.e. Regular Registered Companies.
Liability	<ul style="list-style-type: none"> • Limited Companies – Liability of Members is limited, either – (a) By Shares, (b) By Guarantee. • Unlimited Companies – Liability of Members is unlimited.
Share Capital	<ul style="list-style-type: none"> • Companies with Share Capital. • Companies without Share Capital. <p>Note: Only Public / Private Companies having Unlimited Liability or Limited by Guarantee can be formed without Share Capital.</p>
Listing	<ul style="list-style-type: none"> • Listed Companies – A Public Company which has any of its Securities listed in any recognized Stock Exchange. • Unlisted Companies – A Company whose Securities are not listed on any recognized Stock Exchange. [Note: Shares of Private Companies are not listed in any Stock Exchange.]
Member-ship	<ul style="list-style-type: none"> • Public Companies • Private Companies • One Person Company (OPC) – a Company which has only one Person as a Member.
Control	<ul style="list-style-type: none"> • Holding Company. • Subsidiary Company. • Associate Company.
Others	<ul style="list-style-type: none"> • Foreign Companies – Incorporated outside India, and has a place of business in India. [Sec.2(42)] • Sec.8 Companies – Association with Charitable Objects. • Other Definitions – Banking Company, Listed Company, Small Company

1.4 Holding Company and its Subsidiary

- Holding Company [Sec.2(46)]:** in relation to one or more other Companies, means a Company of which such Companies are Subsidiary Companies.
- Subsidiary Company or Subsidiary [Sec.2(87)]:** in relation to any other Company (that is to say the Holding Company), means a Company in which the Holding Company –
 - (a) controls the **composition of the Board of Directors**, or
 - (b) exercises or controls **more than one-half of the Total Share Capital** either at its own or together with one or more of its Subsidiary Companies.

Note:

- A Company shall be **deemed** to be a Subsidiary Company of the Holding Company even if the control referred to above is of another Subsidiary Company of the Holding Company.
- The composition of a Company's Board of Directors shall be deemed to be controlled by another Company, if that other Company by exercise of some power exercisable by it at its discretion can **appoint or remove** all or a majority of the Directors.
- The expression "Company" includes any **Body Corporate**.
- "**Total Share Capital**" means, the aggregate of – (a) Paid-up Equity Share Capital, and (b) Convertible Preference Share Capital.
- Shares held by a Company or power exercisable by it in another Company in a 'fiduciary capacity' shall **not** be counted for the purpose of determining the Holding-Subsidiary or Associate relationship.

1.5 'Private Company', 'Public Company', One Person Company

Private Company [Sec.2(68)]	Public Company [Sec. 2(71)]	One Person Company [Sec.3]
<p>Company having a Minimum Paid-Up Share Capital as prescribed (Note), and which by its Articles—</p> <ol style="list-style-type: none"> 1. Restricts the right to transfer its Shares, 2. Limits the number of its Members to 200 [except in case of an OPC], 3. Prohibits any invitation to the public to subscribe for any Securities of the Company. <p>Note on Capital: Presently, there is no prescribed amount. Hence, there is no requirement as to Minimum Paid Up Share Capital.</p>	<p>Company which –</p> <ol style="list-style-type: none"> 1. is not a Private Company, 2. has a Minimum Paid-Up Capital as prescribed. <p>Note 1: Presently, there is no prescribed amount. Hence, there is no requirement as to Minimum Paid Up Share Capital.</p> <p>Note 2: Company which is a Subsidiary of a Public Company, shall be deemed to be a Public Company, even if such Subsidiary continues to be a Private Company as per its AOA.</p>	<p>Meaning: One Person Company (OPC) is a type of Private Company, formed by 1 person subscribing his name to a Memorandum, and complying with the other requirements of the Act and rules.</p> <p>Sole Member:</p> <ol style="list-style-type: none"> (a) OPC requires a subscriber to incorporate (i.e. Sole Member), and a Nominee for the Sole Member. (b) Memorandum of OPC shall indicate the names of the other person (Nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the Member of that OPC.

Notes: (For Private Company)

- (a) Where two or more persons hold one or more shares in a Company **jointly**, they shall, for the purpose of membership, be treated a single member.
- (b) Companies Act makes only a **restriction** on transfer of shares in case of Private Company but does not **prohibit** transfer.