



COMPANY LAW

SITUATION/EXAMPLE

Ravi started a company Best Softwares Pvt. Ltd.

He borrowed Rs.10 lakh in the name of the Best Softwares Pvt. Ltd from a bank

Best Softwares Pvt. Ltd went into heavy loss.

Ravi is still drawing salary from Best Softwares as CEO

Can the bank ask Ravi to pay the money?

CHARACTERISTICS OF A COMPANY

Separate legal entity

- Company is a distinct person/entity from Ravi (Founder/promoter) as per law
- Company's loan/liability is not the liability of founder/promoter

Limited liability

- Ravi's (Founder/promoter) liability is limited to the equity contribution



What about situation of personal guarantee by promoter?

- To the extend of personal guarantee the promoter would be liable
- Eg. Vijay Mallya stood personal guarantee for Rs.1500 crores
- Kingfisher Airlines as a company has total of Rs.9000 crore loan



Santa Clara County v. Southern Pacific Railroad Co- 1886 U.S
Supreme Court

First time the rights of companies was discussed

As a separate legal entity, the company was provided with all the constitutional rights similar to that of an individual in taxation matters

TYPES OF COMPANY

- Companies Act 2013 provides the option to incorporate a company in either of the three forms:
 - Private Company
 - Public Company
 - One Person Company

PRIVATE COMPANY

Minimum of two shareholders for forming a private company

Restriction regarding maximum number of shareholders

- Maximum 200 shareholders are allowed

Cannot list the share in stock exchange for trading

Company have to clearly mention in the name that it is a private limited company in official documents

- Example: Paytm E-Commerce Pvt. Ltd

TATA SONS SHIFT FROM PUBLIC TO PRIVATE COMPANY

Boardroom battle in Tata Sons, the holding company of Tata group companies

Cryus Mistry was ousted from the Director position in Tata Sons

Tata Sons company recently decided to shift from Public company to a Private Company

TATA SONS SHIFT FROM PUBLIC TO PRIVATE COMPANY

It is assumed that Tata Sons want to take advantage of restrictions on transferability of shares in a private company

Majority shareholders approved the shift from public to private

NCLT also approved the shift from public to private company

PUBLIC COMPANY

Minimum of 7 shareholders

No restriction on the number of shareholders

Can raise money from public through listing shares in stock exchange

Have to adhere to Securities and Exchange Board of India (SEBI) regulations in case the company list share in stock exchange

ONE PERSON COMPANY (OPC)

A new form of business organization to provide limited liability benefit to sole proprietor's and small entrepreneurs

Introduced by Companies Act, 2013

A single person could register a OPC

- Necessary to have nominee- To take care of OPC

In case turnover exceeds Rs. 2 crore, OPC have to be converted into a Private Company (latest Finance Act proposed to change this, yet to be implemented)

SITUATION

Soft Info Private Ltd. is a private limited company registered under the Companies Act, 2013.

The Soft Info Private Ltd. have mentioned in the object clause of the Memorandum of Association that the purpose of the company is to establish a software development business.

The Board of Directors of Soft Info Private Ltd. decided to invest in FMCG sector.

Shareholders of the Soft Info raised an issue that the object clause only mentions about software development business and not about FMCG.

Can Soft Info Pvt. Ltd, invest in another sector?

HOW A COMPANY IS REGISTERED IN INDIA?

The Companies Act, 2013, provides for registration of companies.

In forming a company, documents such as *memorandum of association* and *articles of association* of the proposed company needs to be submitted to the Registrar of Companies.

The Registrar issues a certificate of incorporation and then a company is formed.

MEMORANDUM OF ASSOCIATION (MOA)

MOA should contain crucial information on

- Name
- Registered Office
- Object Clause
- Share Capital of the Company

Provides information to investors and other stakeholders dealing with the company

OBJECT CLAUSE IN MOA

Describes the business which the company is going to deal with- Aims and Objectives


Two approaches could be adopted

- Specific Object Clause
- Unrestricted Object Clause



Specific Object Clause

- Company cannot go beyond the objective mentioned
- Ultra vires the MOA
- Unrestricted Object Clause
 - Companies have more flexibility
 - Ease of doing business

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- In UK and Singapore Company law unrestricted object clause method is used

India at present use Specific object clause requirement.

Companies Bill, 2017 in India proposes to change this requirement to unrestricted object clause method

OBJECT CLAUSE: INFOSYS

To establish, maintain, conduct, provide, procure or make available services of every kind including commercial, statistical, financial, accountancy, medical, legal, management, educational, engineering, data processing, communication and other technological social or other services.

To carry on the business as importer, exporter, buyers, lessers, and sellers of and dealers in all types of electronic components and equipment necessary for attaining the above objects.

ARTICLES OF ASSOCIATION (AOA)

Guidelines for the internal management of the company

Companies can formulate AOA based on

AOA could provide guidelines on matters such as:

- Appointment of Directors
- Restriction on Transfer of Shares in case of Private Company
- Indemnity for all the directors and managers

SITUATION:

A company borrowed money from a bank.

As per the articles of association, the company was authorized to do so subject to a Board of Director's permission

What is the responsibility of the bank?

A third party dealing with a company have to satisfy themselves that the proposed transaction is permitted as per MOA and AOA- Constructive Notice

DIRECTORS OF COMPANY

Board of Director's requirement

- Minimum Two in case of Private Limited Company
- Minimum Three in case of Public Limited Company

Maximum 15 unless the AOA permits more

CONT.

Who can be Director?

Who chooses the Director?

What is the role of the Director?



Who can be Director?

- A person elected by shareholder to hold the position

Who chooses the Director?

- Shareholders of a company appoint the director
- Shareholders can vote out the director

What is the role of the Director?

- Ensure proper functioning of company on behalf of shareholders
- Conduct board meetings
- Constitution of committees such as audit, finance
- Conduct AGM

INDEPENDENT DIRECTOR

Independent Director should not

- Have any monetary interest in a company
- Be related to the promoters or management
- No professional relationship (for preceding three years)
- No more than 2 % of shares through relatives

Mandatory for public listed companies companies

- Minimum 1/3rd of the BOD should be Independent Director's

Important role to protect small/minority investor interest against promoter/majority shareholders



The following classes of companies shall have at least 2 *directors* as independent directors.

- Public Companies with paid-up share capital of Rs. 10 crores or more.
- Public Companies with turnover of Rs. 100 crore or more.
- Public Companies with aggregate outstanding loans, debentures, and deposits, exceeding Rs. 50 crore

CONT.

“How independent are independent directors?”

- The independent directors are appointed by shareholders
- The independent directors could be removed from the position by majority shareholders
- Example: Nusli Wadia being removed from Tata Steel, Tata Motors and Tata Power suddenly after he took favourable stance for Cyrus Mistry

CONT.

Are independent director's effective?

- Satyam computers- Independent director's could not stop the fraudulent activity
- Union Bank of India- quality of the independent director also matters
- *"Independence is a character that the law cannot infuse. Law can only infuse fear" - J N Gupta, MD of Stakeholders Empowerment Services*



Should there be tenure based independent director position?

Qualification for independent director

Small shareholder director- - Alembic Ltd in 2017 has attempted to elect a small-time shareholder director.


DIRECTOR'S LIABILITY

Example/Situation: Ravi is Director at a reputed software company 'Great Software'

Ravi convinced the Board of Directors to invest in 'Techsoft', another software company owned by Ravi

Later, it was found that the 'Techsoft' is in heavy loss and have no good clients

Can Ravi as a director be personally liable?



Companies Act 2013- personal liability of Director – Fine could be imposed- Rs. 1 lakh to 5 lakh

- In case, attempt to take undue advantage and misuse of his/her office is evident
- Conduct creating conflict of interest leading to loss to the company



ICICI Advancement of Loan to Videocon group and conflict of interest issue

Yes Bank —Rana Kapoor issue

REQUIREMENT REGARDING MEETINGS

Every company need to compulsorily hold an Annual General Meeting (AGM)

All shareholders are eligible to attend the AGM

E-Voting is now introduced

Extraordinary General Meetings (“EGMs”) may be called to decide upon urgent matters



AGM/EGM's usually takes into account following matters

- Annual accounts,
- Director's reports and Auditors' reports
- Declaration of dividend,
- Appointment of directors
- Appointment of statutory auditors.

CONT.

The decisions taken during the meeting on various aspects are referred to as Resolutions

Resolutions are classified as

- Ordinary Resolution- Requires only simple majority
- Special Resolution- Requires seventy five percent majority

CONT.

Directors appointment- Ordinary Resolution

Change in authorized share capital- Ordinary Resolution

Change in object clause- Special resolution

Changing from a public company to private company- Special resolution

CONT.

Quorum for meeting

- Private company- minimum 2 shareholder have to be present
- Public company- minimum 5 shareholders have to be present in case number of shareholders is 1000 or less
- Minimum 15 –if number of shareholders is 5000 or less
- Minimum 30- if number of shareholders is more than 5000