Definition of Company:

Lindley L.J.- 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 arising therefrom.

Chief Justice Marshall of U.S.A- A person, artificial, invisible, intangible and existing only in the eyes of the law.

S.2(20) of the Act: A company means a company formed and registered under this Act or an existing company.

CHARACTERISTICS OF A COMPANY:

1) Separate Legal Entity or Independent Legal existence

*Solomon v. Solomon & Co., Ltd., (1895) All.E.R. H.L.

Re Kondali Tea Co., Ltd.,

Lee v. Lee's Air Farming Ltd., 1961A.C. 12.

2) Perpetual Succession
3) Limited Liability
4) Separate Property
Macaura v. Northern Assurance Co., Ltd., 1925 A.C. 619.
5) Transfer of Shares
6) Capacity to sue and be sued
7) Professional Management
8) Finances.

9) Common Seal

*Corporation- Separate Personality+ Perpetual Succession.

a) Corporation Sole and

b) Corporation Aggregate

i) Trading Corporations

ii) Non Trading Corporations.

Person- i) Natural ii) Legal
Firm- Company- Industry- Factory.

DISADVANTAGES OF INCORPORATION OR LIFTING THE CORPORATE VEIL: JUDICIAL INTERPRETATION:

a) Determination of Character: Daimler Co., Ltd., v. Continental Tyre & Rubber Co., Ltd., 1916 2 A.C 307

b) For the benefit of revenue:

Dinshaw Maneckjee Petit Re. AIR 1927 Bom. 371.

Bacha F. Guzdar v. CIT, Bombay. AIR 1955 SC 74.

CIT v. Associated Clothiers Ltd., AIR 1963Cal.629.

c) Fraud or Improper Conduct:

Gilford Motor Co., v. Horne 1933 1 Ch 935

d) Government Company:
State Trading Corporation v. CTO AIR 1963 SC 1811.
Tamlin v. Hannaford (1950) 1 KB 25. – A government company will be regarded as an agent of the State only when it is performing in substance governmental or sovereign and not merely commercial functions.

Som Prakash Rekhi v. UOI (1981) 1 SCC 449.

e) Agency or Trust where no functioning autonomy granted: F.G. (Films) Ltd., Re., (1953) 1 WLR 483.(American Company-film ‘Monsoon’ in India technically in the name of a company incorporated in UK.- Board of Trade refused to registered as ‘British film’.-valid.

UNDER STATUTORY PROVISIONS:

1) Reduction in Membership:
2) S. 34 & 35. Misrepresentation in Prospectus.
3) S.39. Failure to return application money.
4) Failure to deliver share certificates, within stipulated time.

5) Misdescription of name
6) Holding and Subsidiary Company.
7) S.33 9. Fraudulent Conduct.
8) Ultra Vires Contract.
9) Under Income Tax Act.
10) Pre-incorporation Contracts.

CLASSIFICATION ON THE BASIS OF INCORPORATION:-

I) Statutory Companies

2) Registered Companies

It may be either

A) S.2(68). Private Company

B) S.2(71). Public Company.

The Private Company or Public Company may be incorporated in any one of the following ways.

a) S.2(22): Companies Limited by Shares

b) S.2(21): Companies Limited by Guarantee

c) S.2(92): Companies with unlimited liability.

CLASSIFICATION ON THE BASIS OF THEIR CONTROL:

1) S.2(46), (87): Holding and Subsidiary Company.
2) S.2 (45). Government Company.(51% of the paid up share capital)
3) Public Sector Undertaking.

4) S.2(42). Foreign Company.
5) S.8. Association not for profit having license under s. 8 of the Act.
6) S.464. ILLEGAL Association or Prohibition of Large Partnerships.
7) s.2(62). One Man Company.

SHARE CAPITAL:

Capital is the interest which the owner possesses in the business.

KINDS OF CAPITAL:

1) Authorised Capital or Registered Capital or Nominal Capital
2) Issued Capital
3) Un Issued Capital

4) Subscribed Capital
5) Unsubscribed Capital
6) Called-up Capital
7) Un Called Capital
8) Paid Up Capital
9) Un Paid Capital
10) Reserve Capital.

CORPORATE SECURITIES SHARES:

Share is the interest of a share holder in a company.

S.2(84)s. Share: Share in the share capital of a company and includes stock except where a distinction between stock and share is expressed or implied.

TYPES OF SHARES: s.43:

1) Preference Shares
2) Equity Shares.

A) S.2(88). Sweat Equity Shares (1999 Amendment Act).

KINDS OF PREFERENCE SHARES:

1) Cumulative Preference Shares
2) Non Cumulative Preference Shares
3) Participating Preference Shares
4) Non Participating Preference Shares.

5) Convertible Preference Shares
6) Non Convertible Preference Shares;
7) Redeemable Preference Shares
Conditions:
a) The shares to be redeemed must be fully paid up

b) Such shares can be redeemed only out of the:

i) Profits of the company

ii) the proceeds of a fresh issue of shares made for the purpose of redemption

iii) It must be authorized by the A/A

iv) It should maintain ‘Capital Redemption Account’.

v) Maximum period of redemption is 20 years. (1996 Amendment Act)

KINDS OF SHARE CAPITAL

1) Preference Share Capital

2) Equity Share Capital-

a) with voting rights

b) with differential rights as to dividend or voting rights.

Companies (issue of share capital with differential voting rights) Rules, 2001.

3) Deferred Shares or Founder Shares.

S.2(30): Debenture: Debenture includes debenture stock, bonds and any other securities of a company whether constituting a charge on the company’s assets or not.”

Chitty: Debenture means a document which either creates a debt or acknowledges it.

Characteristics of Debentures:

1) It is a movable property

2) It is issued by the company and is in the form of a certificate of indebtedness.

3) It usually specifies the date of redemption.

4) It usually creates a charge on the undertaking.

Kinds of Debentures:

1) Bearer Debentures
2) Registered Debentures or Order Debentures
3) Redeemable Debentures
4) Irredeemable Debentures
5) Convertible Debentures

a) Fully Convertible Debentures

b) Partly Convertible Debentures
c) Non Convertible Debentures.

STOCK:

The aggregate of fully paid shares of a member merged into one fund of equal value. It is a set of shares put together in a bundle. The stock is expressed in terms of money and not as so many shares.

Stock can be divided into fractions of any amount and such fractions may be transferred like shares.

A company limited by shares may, if authorized by its articles, by a resolution passed in the general meeting convert its fully paid shares into stock and vice versa.

Share Certificate: s.56: Every person whose name is entered as a member in the register of members of a company has a right to receive a certificate of his shares.

The Company shall deliver the share certificate within two months after the application for registration of the transfer of any such shares.

Object of the Share Certificate:

A share certificate under the seal of a company is prima facie evidence of the title of the member to the shares specified in the certificate.

Share Warrant:

a) A public company limited by shares may issue share warrants.
b) It is a negotiable instrument
c) The shares shall be fully paid up
c) The A/A must authorize the company to issue share warrants
d) Prior approval of the central government must be obtained.

e) The share warrants shall be issued under the common seal of the company.

NON VOTING SHARES: Shares which carry no voting rights. These are contemplated as altogether different class of shares which may carry additional dividends in lieu of the voting rights.

Section 86 as amended by the Companies Amendment Act, 2000 has allowed issue of equity shares without voting rights. S.43 new; Shares with differential voting rights, including non voting shares, shall be allowed to the extent of 25% of the total issued share capital.

PROCEDURE OF REGISTRATION OR INCORPORATION OF A COMPANY:

1)S.7: To obtain the registration of a company an application has to be filed with the ROC.

2) The application has to be made to the ROC of the State in which the registered office of the company is stated by the M/A to be situate.

3) S.3: SUBSCRIBERS TO THE M/A:

Incorporation Rules, 2014;

4) APPLICATION FOR AVAILABILITY OF NAME:

5) CORPORATE IDENTITY NUMBER:

6) Preparation of M/A and A/A

7) Vetting of Memorandum and Articles, Printing, Stamping and Signing of the same.

8) : Consent of the Directors.

9) The particulars of directors etc.,: It can be filed within 30 days of the registration of the company or appointment of first directors.

10) Notice of registered address: S.12. A company is required to have a registered office within 30 days of its incorporation.

11) Statutory Declaration: S.7;2(17); requires a declaration to be filed with the ROC. This is known as "Statutory Declaration of compliance". It can be made by an Advocate or C.S. or C.A practising in India and engaged in the formation of a company.

It can also be signed by a person named in the articles as a director, manager or secretary.
He has to declare that all the requirements of Act and the Rules there under have been complied with in respect of registration.

12) The declaration should be in Form No.1 on a non judicial stamp paper of appropriate value with reference to the State in which the office of the ROC situate. Alternatively, non-judicial special adhesive stamps may be affixed to the declaration.

13) Filing of documents for registration and registration fee: The documents are required to filed with the ROC along with the prescribed registration and filing fees.

14) The amount of registration and filing fee payable by the company with share capital varies with the amount of nominal capital of the company. In case of companies having no share capital, registration fee varies according to the number of members but the filing fee is fixed.

15) S.7. Certificate of incorporation:
16) Effect of Certificate of incorporation: It brings the company into existence as a legal person. Upon its issue the company is born.

18) S.7. The company's life commences from the date mentioned in the certificate of incorporation and the date appearing on it is conclusive, even if wrong.

19) S.7. Certificate as ‘Conclusive Evidence’: The certificate given by the ROC in respect of any association shall be conclusive evidence. The validity of the certificate cannot be questioned or disputed on any grounds whatsoever---Old Law.

20) Moosa Goolam Ariff v. Ebrahim Goolam Ariff ILR (1913) 40 Cal. 1 PC.- Lord Machaghten

21) Peels case (1867) 2 Ch. App 674.Lord Cairns.

22) If a company is born, the only method to get it extinguished is not by assailing its incorporation, but by resorting to the provisions of enactments which provide for the winding up of the companies.

23) JUDICIAL REVIEW: When the company is formed for illegal purpose.

24) In some English Cases the courts have explored the possibility of reviewing the ROC’s certificate and have come to the conclusion that they should be open to the judicial review.

25) R. v. ROC, QBD Dec.17, 1980: A company which happened to be registered for an unlawful object, was ordered to be struck off.

26) Maluk Mohamed v. Capital Stock Exchange Kerala Ltd., (1991) 72 Comp.Cas 333 Ker.-A writ cannot be issued to cancel the registration of a company.