Chapter-1

# Company and it's formation

## Introduction of Corporation

A corporation is a legal entity created by individuals or shareholders in the form of multinational company, joint stock company etc. with the aim of earning profit.

Corporation is allowed to enter into contracts, sue and can be sued, purchase and own assets in it's name, borrow the money and pay the tax.

Corporation is managed by the elected board of directors of the organization.

Multinational companies, joint stock company and other large-scale business organizations, as corporation, came into existence to meet the large scales of production.

## Introduction of Company

A company is an entity created by law and sepa is separated from its owners.

A company is a corporate body formed to carry out certain activities for a particular purpose.

It is a body formed by the persons who contribute capital are known as shareholders. Shareholders are the real owners of the company.

A company is a voluntary association of a number of individuals, established for some common purpose of economic gain.

A company is a voluntary association of a group of people willing to carry out a business for which the amount of capital is collected by issuing the shares.

It is an artificial person, which is created by the specific law with a perpetual succession.

## Characteristics of Company

- An artificial person: A company is an artificial person created by the law and having a separate existence of its own. Like a real person, it can buy or sell the properties in its own name. It can sue and can be sued by others. It can conduct a lawful business and enter into contracts with others.
- Separate legal entity: A company enjoys a benefit of a separate legal entity from ~~its~~ its owners. The company itself is liable to carry out its activities. So, shareholders shall not be liable even he/she invested a large amount of capital. Due to this feature, the company can sue and can be sued as per the law.
- Perpetual succession: A company is created and liquidated only by the law. The death, insolvency, inability or lunacy of shareholders do not affect the life of a company. Any shareholders may come or go, but the company exist for a long period of time.

- Limited liability: The liability of everyshareholder of a company is limited to the extent of the face values of the shares purchased. Even if, the assets of the company are not sufficient to pay the liabilities of the company, shareholders are not liable to pay anything more than the face value of the shares held by them.

- Transferability of shares: The capital of the company is divided into a number of units which are called shares. These shares are transferrable. A shareholder is free to withdraw his membership from the company by transferring shares. The holding of shares can be transferred from one person to another mainly by way of sale of shares.

- Common seal: Being an artificial person, the company cannot act and sign itself. It acts through its officers. A common seal is the official signature of a company. All the acts of the company are authorized by its common seal. All the documents are affixed by the common seal for making valid documents.

- Representative management: There is a separation between ownership and management of a company. Shareholders do not participate directly in the day-to-day management of the company. So, they elect their representatives among themselves. These representatives manage the company on behalf of the shareholders and they are called directors. The Directors are the legal representatives of the shareholders.

## Types of Company

1. **Private Company**

A private company is a company which cannot issue the shares to the general public.

As per the provision of Company Act, 2074, a private company can be established by a single person and the maximum number of shareholders is limited upto 101.

A private company must use the words 'Private Limited (Pvt. Ltd.)' in its name.

### Features of Private Company

- **Number of members**: A private company can be established and managed by one member or maximum 101 members. The number of shareholders is fixed in the memorandum of association of the company.

- **Separate legal entity**: A private company is an artificial person which is created by law. It has the right to enter into contracts and can buy and sell the properties in its own name. It can borrow ~~deots~~ debts and conduct a lawful business. It can sue and can be sued in the court of law, So, it has a separate legal entity. It is independent from its members.

- Unlimited liability: The liability of the members of private company is unlimited beyond the investment by shares. In case of dissolution of the company, the shareholders should settle all the liabilities of the company by selling their own properties too.

- Perpetual succession: Being an independent body, ~~a little~~ the life of a private company is not connected with ~~it~~ the life of its shareholders. The law creates the company and the law brings it to an end. It is a corporate body, which is not dissolved due to the death, lunacy, insolvency and termination of a shareholder.

- ~~Restriction on transferring~~

- Restriction on transferability of shares: A private company has no the provision of transferability of share from one person to another. So, the shareholders of the company, cannot transfer their shares publicly. A shareholder can sell his/her shares to another with the consent of other shareholders.

Privileges of Private Company

- Private company can be established by a single person.

- It does not need to publish a prospectus at the time of the issue of its shares.

- It is not necessary to obtain the certificate of ~~the commercial of b~~ commencement of business before starting the business activities.

- It is not necessary to hold a statutory meeting.

2. Public Company

A public company is a company which collects its major portion of capital by issuing the shares to the general public.

A public ~~needs~~ company needs at least seven members for its formation but the maximum number of shareholders is not limited.

The amount of capital of the company is govrned by the authorized capital with which it is registered.

The shares are transferable from one person to another.

It can sell debentures in markets to raise additional capital as loans.

Features of Public Company

- Separate legal entity: A company is an artificial person which is created by law. It has a separate legal entity ~~it~~ independent from its members. So, it can enjoy to enter into contracts and buy and sell the properties in its own name, borrow debts and conduct a lawful business.

- Perpetual existence: Being an independent body, the life of the company is not connected with the life of its shareholders. The company is created and liquidated by the law. The shareholders of the company may transfer their shares to another easily without the consent of the management of the company. The shareholders may come and go but the existence of the company is not affected due to the movement of the shareholders.

- Limited liability: Limited liability is another feature of a public company. In case of the liquidation of the company, the liability of the shareholders is limited upto the amount of shares held by them. In other words, the shareholder is not liable to bear the extra money other than the amount of investment made by him/her on shares.

- Issue of shares: A huge amount of capital is required for production and operations of the company. A public company has only the right to issue the shares to the general public for raising the amount of capital.

- Transferability of shares: The shares of a public company are easily transferrable from one person to another without permission of the company management. A shareholder can convert his/her shares into cash easily either by selling the shares to other persons through stock exchange. The transfer of shares changes the ownership but doesnot affect the regular functioning of the company.

- Representative management: A public company has a large number of shareholders who cannot take active participation in the management of the company. These shareholders elect their representatives for managing the company. These elected representatives are known as directors. The group of directors is known as the board of directors. Thus, the board of directors is responsible for the administration and management of the company.

- Democratic management: A public company is a democratic organization because the decisions are taken in the annual general meeting and board meeting by following the principles of democracy. The board of the company is elected and dismissed according to the interest of the majority of shareholders.

- Publication of financial statements: A public company must publish its financial statements on regular basis for public information and knowledge. It should publish different types of financial statements like income statement, balance sheet & cash flow statement in a regular basis.

## Advantages of Public Company

- The shares are transferable.
- The liability of shareholders is limited.
- It is free to invite the public to buy its shares and debentures.
- A large capital not exceeding the registered capital can be collected for mass production purposes.
- An effective and efficient management is possible.

# Differences between Private Company & Public company

| Bases of difference | Private Company | Public Company |
|---|---|---|
| Number of members | A private company needs at least one member for its formation. The maximum number can be 101. | A ~~com~~ public company needs at least seven members for its formation. The maximum number is not limited. |
| Invitation for capital | It cannot invite the public to buy its shares. | It is free to invite the public to buy its shares and debentures. |
| Commencement of business | It can commence its business immediately after its incorporation. | It can commence its business after obtaining the certificate of the 'Commencement of Business'. |
| Issue of prospectus | It needs not issue a prospectus. | It must issue a prospectus. |
| Statutory meeting | It needs not hold statutory meetings and file a statutory report. | It must hold a statutory meeting and file a statutory report. |
| Transfer of share. | The transfer of its shares is not allowed and hence its ownership cannot be transferred | The transfer of its shares is allowed and hence its ownership can be transferred. |
| Use of word 'Limited' | It must use the word Pvt. Ltd at the end of it's name. | It uses the word Ltd. at the end of its name. |

## Main Documents of company

1. Memorandum of Association (MOA)
For Public and Private Limited Company.

2. Article of Association (AOA)
For Public and Private Limited Company.

3. Prospectus
For Public Limited Company only.

## Memorandum of Association (MOA)

Memorandum of association is the main document of a company. It is a written document which defines ~~the~~ it's objectives, powers and its relationship with the outside ~~world~~ world. It is the character of the company. The company works within the framework of the memorandum.

## Contents of Memorandum of Association (MOA)

- The name of the company.
- The name of the place where the company's registered office is situated.
- The objectives of the company.
- The ~~liabilities~~ liability of shareholders.
- The amount of capital of the company.
- Other necessary particulars

## Article of Association (AOA)

Article of Association (AOA) is a written document, which defines the rights, powers and duties of the management for carrying the business. It explains the various rules and regulations that need to be followed by a company to make smooth functioning of the business. It ~~also~~ shows the relation between the company and its employees and other internal parties.

### Contents of Article of Association (AOA)

- Number of directors and their terms and conditions.
- The amount of minimum subscription by directors.
- Matters relating to the procedure of calling company's meeting and notice to be given for meeting.
- Director's remuneration and allowance.
- Rights and duties of the managing director.
- Provisions relating to the rules and regulation of internal management.
- Other necessary particulars.

### Prospectus

A prospectus is an invitation to the public to purchase shares or debentures of the company. Any circular, advertisement, offer or any other document by which a company gives invitation to the public to subscribe to its shares and debentures is known as prospectus.

## Contents of Prospectus

- The information relating to the management and the objectives of the company.
- The number of shares to be subscribed by directors and the cash to be received from them.
- Capital structure of the company divided into authorized, issued, subscribed and paid up share capital.
- Terms and mode of payment, issue of shares on discount or premium.
- Details about brokerage, underwriting commission and preliminary expenses.
- Estimated expenditures for the company and estimated income at least for coming three years.
- Other necessary particulars.

## Company Formation

Company formation is the process of setting up a new business venture. It includes all the procedures starting from conceptualization of the business idea to its establishment and operation. It is the process of incorporation of a business or registration of a company as per the Company Act of Nepal.

### Steps in company formation

Step 1: Filling up of an application form.
Step 2: Payment of registration fee.
Step 3: Submission of required documents.
Step 4: Receiving the certificate of incorporation.
Step 5: Receiving the certificate of commencement (in case of a public company).