BLOGS

Important Terminologies Under Company Law

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Introduction

Corporate law is a vast and intricate field that governs the formation, operation, and dissolution of companies and other business entities. For law students, mastering the specific terminology used in this area is not just about learning definitions; it's about understanding the underlying legal principles, relationships, and processes that shape the corporate world.

This article introduces some of the most fundamental terms you will encounter in your study of corporate law, particularly within the Indian context, providing a foundation for deeper learning based on the Companies Act, 2013.

The Concept of a Company

At the heart of corporate law is the concept of a "company." In India, the primary legislation governing companies is the Companies Act, 2013.

- Company: A company is a legal entity distinct from its members (shareholders). It is an artificial person created by law, with perpetual succession (meaning it continues to exist regardless of changes in its membership) and a common seal (though the requirement for a common seal has been made optional under the Companies Act, 2013, replaced by authorisation by directors and key managerial personnel). This principle of separate legal personality, established in the landmark case of Salomon v A Salomon & Co Ltd [1897] AC 22, means the company can own property, enter into contracts, sue, and be sued in its own name, independent of its owners.This separation also implies limited liability for the members, meaning their liability for the company's debts is limited to the amount unpaid on their shares.
- Incorporation: The process by which a company is legally formed and registered with the Registrar of Companies (RoC) under the Companies Act, 2013. Upon incorporation, the company acquires its separate legal identity and perpetual succession.The process involves filing necessary documents like the Memorandum of Association and Articles of Association.

- Memorandum of Association (MoA): This is the foundational document of a company, considered its charter. It outlines the company's name, registered office, objects (the purposes for which the company is formed – the objects clause is crucial as it defines the scope of the company's activities), liability of members (whether limited or unlimited), and share capital (the capital clause specifies the authorised share capital). It defines the company's relationship with the outside world and the extent of its powers.
- Articles of Association (AoA): This document contains the internal rules and regulations for the management of the company's affairs and the conduct of its business. It governs the relationship between the company and its members, and between the members themselves. It covers matters such as the appointment and powers of directors, conduct of meetings, transfer of shares, etc. The AoA must not contradict the MoA or the provisions of the Companies Act, 2013.
- Certificate of Incorporation: A certificate issued by the RoC upon successful registration of a company, serving as conclusive proof of the company's legal existence from the date mentioned in the certificate.

Types of Companies

Companies can be classified based on various criteria, primarily liability, number of members, and control:

- One Person Company (OPC): Introduced by the Companies Act, 2013, an OPC is a company formed with only one person as a member. It provides the benefits of a separate legal entity and limited liability to a single entrepreneur.
- Private Company: Defined by restrictions in its AoA, a private company typically restricts the right to transfer its shares, limits the number of its members (to a maximum of 200, excluding past and present employee members), and prohibits any invitation to the public to subscribe for its shares or debentures.
- Public Company: A company that is not a private company. It can invite the public to subscribe for its shares and debentures, and there are no restrictions on the transfer of shares (though the AoA may contain regulations regarding procedure).
- Holding Company and Subsidiary Company: A company is a holding company of another if it controls the composition of the other company's Board of Directors, or holds more than one-

half of the total voting power of the other company, or holds more than one-half of the issued share capital of the other company. The other company is then a subsidiary company.

- Associate Company: A company in which another company has a significant influence (holding 20% or more of total voting power, or control over business decisions under an agreement) but which is not a subsidiary company or a joint venture company.
- Government Company: A company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments.

Share Capital and Membership

- Share Capital: The total amount of money raised by a company by issuing shares.
  - Authorised Share Capital: The maximum amount of share capital that a company is authorised by its MoA to issue to its shareholders.
  - Issued Share Capital: The part of the authorised share capital that has been offered to subscribers for shares.
  - Subscribed Share Capital: The part of the issued share capital for which shareholders have agreed to take shares.
  - Paid-up Share Capital: The part of the subscribed share capital that has been paid by the shareholders to the company.
- Share: A unit into which the total share capital of a company is divided. Shares represent ownership in the company.
  - Equity Shares: Shares that carry voting rights and participate in the profits of the company after preference shareholders have been paid.
  - Preference Shares: Shares that have preferential rights over equity shares regarding the payment of dividends and the repayment of capital during winding up. Preference shareholders generally do not have voting rights, except in certain circumstances.
- Shareholder (or Member): A person who holds shares in a company and is a member of the company. Shareholders are the owners of the company.
- Debenture: A type of long-term debt instrument issued by a company to raise funds. Debenture holders are creditors of the company, not owners. Debentures can be secured or unsecured.

Management and Governance

- Board of Directors (BoD): The collective body of individuals elected by the shareholders to oversee the management of the company. Directors are fiduciaries who owe duties to the company.
- Director: An individual appointed to the Board of Directors. Directors are responsible for the strategic direction and management of the company's business.
- Managing Director (MD): A director who is entrusted with substantial powers of management of the affairs of the company, either by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of Directors or by virtue of its memorandum or articles of association.
- Whole-Time Director (WTD): A director who is in the whole-time employment of the company and is entrusted with substantial powers of management.
- Independent Director: A non-executive director who is not an employee, not a promoter, and not related to promoters or directors, and who does not have any pecuniary relationship with the company, its promoters, or directors, which may affect his independence. Their role is to provide an objective view in the board's deliberations.
- Key Managerial Personnel (KMP): As defined under the Companies Act, 2013, KMP includes the Chief Executive Officer (CEO) or the Managing Director or the Company Secretary or the Whole-Time Director or the Chief Financial Officer (CFO), and such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board.
- Annual General Meeting (AGM): A mandatory annual meeting of the shareholders of a company to discuss and approve matters such as the company's financial statements, election of directors, and declaration of dividends.
- Extraordinary General Meeting (EGM): Any general meeting of the shareholders other than the AGM, convened to discuss urgent matters that cannot wait until the next AGM.
- Resolution: A formal decision made at a meeting of the shareholders or the Board of Directors.
    - Ordinary Resolution: Requires a simple majority (more than 50%) of the votes cast. Used for routine matters.

- Special Resolution: Requires a majority of not less than three-fourths (75%) of the votes cast. Required for significant matters, such as altering the MoA or AoA, reducing share capital, or winding up the company.

Corporate Finance

- Dividend: A distribution of a portion of a company's profits to its shareholders.
- Prospectus: A formal document issued by a public company when it invites the public to subscribe for its shares or debentures. It provides detailed information about the company, its business, financial performance, and the terms of the offer.
- Allotment of Shares: The process by which a company allocates shares to applicants in response to a share issue.

Corporate Restructuring and Dissolution

- Merger/Amalgamation: The combination of two or more companies into a single larger company.
- Acquisition/Takeover: The process by which one company acquires control of another company, usually by purchasing a majority of its shares.
- Winding Up (or Liquidation): The process by which a company's existence is brought to an end, its assets are realised, its debts are paid, and any surplus is distributed among its members. Winding up can be voluntary or by order of the Tribunal.
- Insolvency: A state where a company is unable to pay its debts as they fall due. This can lead to winding up or other insolvency resolution processes under the Insolvency and Bankruptcy Code, 2016.