COMPANY

SHARE COMPANY
(Sh. Co.)

PRIVATE LIMITED
COMPANY(PLC)

ONE-MAN
COMPANY

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- The sole proprietor and partnership have certain limitation and disadvantages which make them unsuitable for large scale business operation with business opportunities growing at a faster pace as a result of discovery and exploitation of natural resources.
- The company form is the right answer to over come the short comings or limitations of the sole proprietorship and partnership both of which can not be expected to exploit the vast business potential thrown up by the tremendous technological progress in all fields of human activity.
- Share Company is defined as (a) one which does not have restriction on maximum number of members (b) inviting public to subscribe for shares or debentures of the company (c) transferability of shares are free.

Article 245. Definition

1/ A share company is a company whose capital is fixed in advance and divided into shares and whose liabilities are met only by the assets of the company.

2/ The obligation of the shareholders shall be limited to making the contribution they pledged to make to the company.

- As we inferred from the definition:- Capital is fixed in advance and divided into shares, whose liabilities are met only by the assets of the company (limited liability). What does it mean?
- Eg. The capital of the company is birr 100,000 divided into 1000 shares of Birr 100 each

Company

1. **Membership:**
   - **Sh. Co**: **Min**: 5 – **Max**: unlimited.
   - **PLC: Min**: 2 – **Max** : 50 members
2. **Legal status:**
   - Separate legal entity.

3. Liability:

- Limited.

4. Transferability of interest:

- Subject to some restrictions.

5. **Management:-**

- **Sh. Co**: **BOD**.
- **PLC: Managers.**

6. Implied Agency

- No member can act as an implied agent and bind the company.

7. **Stability**

- Perpetual succession.

Partnership

1. Min: 2 – Max: Unlimited.
2. legal entity with exception of joint- venture.
3. Unlimited.
4. Not freely transferable.
5. Partners= participate in management & even Managers.
6. Every partner has an implied authority.
7. Unstable

Merits of Company

A. Financial Resource: - It helps to mobilize huge funds, required by big business because large number of members can subscribe its capital in small & affordable quantities.-*Shares & debentures*.

B. Limited liability: - Shareholders are not personally liable for the debt of the company.

✓Company= popular by its limited liability, profitability & confidence in the management.

✓ = ***"low-risk and high return factor."***

C. Scope of growth:- company can grow and expand at a rapid pace and faster due to huge resource.

D. Professional management:- Competent & professional management is vital for targeted rates of growth and expansion.

E. Stability of the company:- continuity and stability of business are equally important for the success of any business.

- With its ***perpetual succession*** of ownership theory, only the company form can ensure both continuity and stability.

F. Positive social benefits:- a company is beneficial not only to its members, creditors and employees but also to the public at large.

- It supplies goods and services at a competitive rates by introducing new and sophisticated technologies and by exploiting the natural resources.
- provides employment opportunities both direct and indirect to the needy and competent persons in the society.
- It channels small savings of people into

Distinction between Private Limited and Share Company

1. **Membership: -** only **two persons** are required to form a **private limited company** while a **share company** requires a **minimum of five members** to start with. There is **no limit on the maximum number** of members in **Share Company**. Whereas a **private limited company** can have **only 50 members** at most.
2. **Directors: -** A private limited company is managed by one or more managers while Share Company is managed by directors whose minimum number shall be three.
3. **Public subscription: -** while a share company can invite public to subscribe to its shares and debentures, a private limited company can not go to public to raise its capital.

4. Prospectus: - A share company which goes to public to raise its capital is required to file a prospectus while a private limited company is exempt from this requirement because it can not invite public to subscribe to its capital.

5. Minimum subscription: - in Share Company all capital must be subscribed and 25% of the capital must be paid-up before registration. Private Limited Company be registered by fully paid-up capital.

Nature of Share Company

- **Limited liability**: - No member is liable to contribute anything more than the nominal value of the shares held by him.
- **Perpetual succession:-** unlike partnership sh. Co. will not be dissolved by the death or incapacity of its members. It is an entity with a perpetual succession.
- **Transferability of shares:-** Even though it is

Promoters and Founders

- Before formation of share company persons who:
  - ✓ Form a ***share company*** (brings a share company into existence);
  - ✓ Take the **necessary steps** to carry that intention into operation.
  - ✓ Decide the **scope** and **business** of share company.
  - ✓ Prepare the **necessary documents**.
  - ✓ Make arrangements for **advertising** and **circulating the prospectus**.
  - ✓ There may have **several Promoters or founders** – (**individual** & **body corporate**).
  - ✓ **Non-members** may be founders acting like as a ***solicitor, engineer, accountant or valuer***.

Article 248. Promoters

- A promoters are:-
- ✓ person who initiates the formation of a company,
- ✓ invites persons by preparing a prospectus,
- ✓ is liable for damage sustained in connection with failure to establish the company.
- ✓ But, an expert who based on a contract concluded with a promoter, for consideration is not a promoter.
- ✓ The promoters of a share company may be one or more natural or artificial persons.
- ✓ A promoter need not be a shareholder in the company.

Article 252. Founders of the Company

1/ Individuals may, without offering shares for public subscription, establish a share company as between themselves, by fulfilling the requirements of this Code for the formation of a share company.

2/ Subject to any other law requiring a different number, the founders of a share company shall be at least five.

- What is the difference between promoters and founders?

Generally, A Founder or promoters is someone who founds the company and/or business and is any person who complies with the necessary formalities of company registration, finds directors and shareholders for the new company, acquires business assets for use by the company, and negotiates business contracts on behalf of the company and the like. Both are Fully responsible for

Distinction between Founders and Promoters

- The old Commercial Code gives the name and status of a founder to any person, even though outside the company, who has initiated plans or facilitated the formation of the company. Now in the new Commercial Code a person(both artificial or natural) who initiates the formation of a company by public subscription, invites persons to join the company by preparing prospectus or in general acts with the view to realizing the formation of the company is called promoter.
- The new Commercial Code provides in detail what the liability of promoters are and special benefits allocated to promoters. Under the new Commercial Code, the name ‘founder’ is narrowed down to those individuals who establish a share company as between themselves without offering shares for public subscription.

Roles of promoters – They:

- Are **not agents** because there is no principal.
- Start to act with the name of the company they stand in a fiduciary position towards the Sh. Co.
- Have the power of **creating and modifying** the company.
- They **deal with 3rd parties** in the name Sh.co
- As per art 251 the company shall take over from the promoters commitments entered into by such promoters during the formation of the company and expenses made by them in so far as such commitments and expenses were necessary for the formation of the company or if approved by the general meeting of the subscribers.
- Where the company is not established for whatever reason, the subscribers shall not be liable for the commitments and expenses made

Article 250. Liability of Promoters

1/ Promoters shall be jointly and severally liable to persons with whom they contracted, shareholders, and third parties with respect to the different matters. Such as listed under art 250 (1) A-H

Article 253. Benefits Allocated to Promoters

The promoters may, for a period not exceeding three years, receive a share in the profits [not exceeding to 20% of NP & the manner payment is as they chose in company's MOA>

- There is no any other special benefit
- Above benefits applies also promoters incapacity of shareholders
- It must be paid in cash. May not paid by issuing of share.

FORMATION OF THE COMPANY

General requirements Article 254.

a) the capital has been fully subscribed; and

b) at least one quarter of the par value of shares sold in cash has been paid up and deposited in a blocked bank account opened in the name of the company under formation.

Accompanying Documents for Registration in the Commercial Register

The new Commercial Code avoided the articles of association as an accompanying document for registration and included an audit report regarding valuation of contribution in kind and company formation. The rest of accompanying documents namely authenticated memorandum of association, prospectus where the company is formed by public subscription and resolution of meeting of subscribers will be submitted. see Art.255, 257,

Memorandum of association

1. Memorandum of association(MOA):

- ✓ Document which sets out the **constitution** of B.Os and is the foundation on which the structure of the B.Os is based & **signed by subscribers**.
- ✓ It contains the **fundamental conditions** upon which alone the B.Os is allowed to be **incorporated – Objects & scope of activities** of the B.Os – **not to be Ultra virus**. i.e. Business organization may pursue only such objects and exercise only such powers as are conferred expressly in the memorandum or by implication there from.
- ✓ It becomes a **public document & available for inspection** after registration of the B.O.
- ✓ It must comply with the **provisions of the commercial code** & all other documents of the company must comply with MOA.

❑ Purpose of MOA

- MOA enables the shareholders/ partners, creditors and all those who deal with the company/ to know what its powers are and what the range of its activities is.
- **Source of information for intending partner/shareholder –**

✓ they can refer field, object/purpose, risk of the B.Os.

✓Any one dealing with the company can refer its corporate objects.

❑ **Contents of MOA** – commonly it contains 5 clause:-

A. Name clause:- include name of the company – Any name except illegal, immoral, similar name with other existing co.

✓Eg. “XYZ share company”. See Article 246

B. Registered office clause:- include name of the state where the registered office of the company is situate. This clause important because:- it ascertains

C. Object Clause:- The most important clause because it:

- ✓ ***shows the object of the company;***
- ✓ ***determines the extent of the powers which the company.***

- ➢ Objects must be **clear** to give information for shareholders and third parties.

D. Liability Clause:- provide nature of liability incurred by members – Limited (unpaid capital) & unlimited liability.

- Helps members to know their liability to the company.

E. Capital Clause:- provide subscribed & paid-up capital, nominal value of each share.

- Only altered by the amendment of the MOA.

NB:- ***T***he minimum capital of ETB 50,000(Fifty Thousand) for formation of a share company remains the same between the old and new Commercial Code. However the par value of each share, says the new

❑ Doctrine of Constructive Notice

- MOA must be **registered** at the competent registration office/public authority/ - then becomes public document – accessible & open for public inspection upon payment.
- Every one dealing with the co., whether a shareholder or an outsider is presumed to have read & understood MOA. This deemed knowledge of the this document and its contents is known as Constructive Notice of MOA.
- It is **negative** towards(operates against) **outsiders**, **positive** towards the **company**

❑ Doctrine of indoor management

- is an **exception** to the rule of constructive notice.
- Internal arrangements, other than registered in the office of registration, conducted by the company do not bind outsiders – they are **presumed not known by the outsiders**.

❑ Deposit and Registration_(Art 265)

➢A share company shall be registered in the commercial register regardless of the manner in which it was formed. A company shall obtain legal personality upon registration.

➢The following documents must be **deposited** at the office of registrar at Ministry of Trade and Industry at Federal level and Trade and Industry Bureau's at regional level: art. 265(3)

- ❖ MOA
- ❖ The prospectus, if any
- ❖ audit reports regarding valuation of contributions in kind and company formation
- ❖ The minutes of the subscribers' meeting and all complementary documents.

Upon registration, the co. acquires **personality**.

Amendment of MOA

- Amendments of substance to the draft memorandum of association may not be made without the unanimous approval of subscribers.
- Nevertheless, approval by a majority vote shall be sufficient where the amendments relate to valuation of contributions in kind or allocation of special share in the profits to the promoters [art.265(4)

❑ Securities

Share Company can issue two kinds of securities, equity securities and debt securities

1. **Equity securities**

- Are described as the counter part of the shareholders contributions to the capital of the company and could include common stocks preferred stocks etc.
- They give to their holders pecuniary rights which usually depend on the financial situation of the company and mainly consist of the right to receive dividends, liquidation profits (if any), to exercise preferred subscription rights in the context of capital increase.
- It also give to their holders personal rights which allow the shareholder to be informed on the management of the company and to participate in

Shares

- It expresses a proprietary relationship between the company and the shareholder. A shareholder is proportionate owner of the company but he does not own the company's assets which belong to the company as a separate legal entity.
- It is the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second.
- It is a personal estate capable of being transferred in the manner laid down in the MOA.
- It is movable property which can either be mortgaged or pledged
- It is in corporeal in nature and it consists of

The nature of share can be summed up:-

1. Share gives rights and liabilities to the holder
2. Shareholders is not part-owner of the company or property of the company
3. The share is movable property. The movable property of person can be a “chose in action or” chase in possession”
4. Share is goods
5. Shares are indivisible.

Issuance

- When a company is formed, an application for issuance of shares is made by prospective shareholders.
- It is an offer by prospective shareholders. When application is accepted it is an issuance of shares.
- Issuance creates a binding contract between the parties. Till such issuance is made, shares as such do not exist.
- A company issues a share certificate, a document, stating that the person named therein is registered holder of specified number of shares of certain classes.
- A share certificate has to be issued whether the shares are partly paid-up or fully paid-up. The share certificate enables the shareholder to deal more easily in the market.

Particulars that are indicated on the share certificate are the following

1. The name, head office and period for which the company is established.
2. The amount of capital and par value of the share
3. The date of the memorandum of association and of registration of the company in commercial register and the place of registration
4. The serial number of share, its series class, whether it is ordinary or preferential and the kind of preferential share
5. The amount of part payment on shares not fully paid up or a statement that the share is fully paid; and
6. A statement showing whether a share may be transferred to a foreigner.

Form of Share (art. 267)

- Forms of shares are either registered in the name of a shareholder or the bearer.
- The main difference between shares in the bearer form and shares in the registered form is that in the first instance, the issuer does not know the identity of the persons holding its shares and can communicate with them only by way of press releases, whereas, in the second case the issuer has full access to the shareholders list.
- Particularly, the shares that are issued in Ethiopia are registered shares, statutes of share companies prohibits bearer share from the very beginning and therefore, it is very difficult to find bearer shares in circulation.
- Shares are issued in their par value. They may not be issued in less than their value. When it is permitted by the statutes it may be issued in

❑ Classes of share / Article 278. /

- The law empowers the company to issue several classes of share with different rights. Mainly there are two classes of shares. They are equity and preference shares.
- Equity shares are shares which are not preference. Equity shareholders get more if the company is prosperous or get nothing if the business of the company flops.
- Preference share / Art. 279 / typically confer up on this holders a preference over other shares such as preferred right of subscription in the event of future issues, or rights of priority over profits, or in the case of liquidation of the assets of the company priority right over repayment of contributions or distribution of a share of the surplus in the winding-up.
- Preference share, therefore, should fulfill the

Rights and duties of shareholders

Rights: When once a person becomes a member of Share Company he or she is entitled to exercise all the rights of member until he/she ceases to be a member in accordance with the provisions of the commercial code or statues of the company. Such rights can not be taken away from members unless they give their consent. Some of these rights can be exercised by single shareholder individually and others along with other members. Rights of members of shareholders can

2. Corporate membership rights:-

Members have also certain rights as a group. These rights can be exercised only by the majority and not by the single shareholder or minority shareholders. Corporate membership rights are rights which the member has agreed to submit to the will of the majority provided that the will is expressed in accordance with the law and statutes. Thus, the shareholders in majority determine the policy of the company or exercise control over the management of the company. With respect to these rights the principle of supremacy of the majority applies,

Temporary Warrants /Article 290 /

 These warrants are bearer and registered. There are conditions that are to be fulfilled in order to issue temporary warrants. These are:

 The shares shall be fully paid-up. Temporary warrants in respect of registered shares shall be registered and its transfer follows the same to that of the registered share. In the case of temporary bearer warrants the transfer is by mere delivery. Share warrants should contain the number of shares in respect of which they have been issued. Such warrants must state that the bearer of its entitled to the shares specified therein

 A share warrant can be issued only when the shares are fully paid up

 A share warrant is a negotiable instrument

 A share warrant is the share security itself capable of easy transfer

Debt Securities

 Debt securities differ from equity securities in that:-

(a) holders of debt securities are creditors and rank prior to the shareholders

(b) debt securities are remunerated by fixed interest where as the income from equity security is uncertain

(c) only bond issues may be secured by issuers

(d) debt securities are remunerated before equity securities, and

(e) debt securities are issued for a defined term and are reimbursed to their holders

Debenture

Article 407. Definition

1/ A debenture is a negotiable debt instrument whereby the issuing company undertakes to pay the debenture holder a fixed interest for a specified

Debentures are among debt securities.

Debenture is a document given by a company as evidence of debt to the holder usually arising out of loan and most commonly secured by a charge. In the ordinary business sense a debenture is generally understood to be a document usually but necessarily under seal, acknowledging a debt and securing repayment thereof by mortgage or charge on the company's property or undertaking, and providing that until payment, interest will be paid there on at a fixed rate payable usually either half-yearly or yearly on fixed dates.

Characteristics of a debenture

- It is in the form of a certificate, like a share certificate. In other words, it is an instrument in writing
- The certificate is an acknowledgement of indebtedness
- It is usually under the seal of the company but it is not necessarily
- It usually provides for the repayment of a specified principal sum at a specified date
- It provides for the payment of interest at a specified rate until the principal sum is paid back. But this is not essential. Interest may be made payable subject to contingencies of uncertain nature.
- The debentures carry no voting rights at any meeting of the company

QUISES

BRIFELY DESCRIBE THE DIFFERENCE BETWEEN PARTNERSHIP AND COMPANY

LIST DOWN ADVANTAGES OF COMAPNY