**Features and Incorporation of Company**

Section 2(20) of the companies **2013 Act** defines the term “**company**” to mean “a **company** incorporated under the **Companies Act 2013** or any previous **company law (1956)**.” The sub-section states that for the purposes of such definition, the expression **company** includes “**body corporate**”.

A company is a legal entity formed by a group of individuals to engage in and operate a business—commercial or industrial—enterprise. A company may be organized in various ways for tax and financial liability purposes depending on the corporate law of its jurisdiction.

## Features of a Company

### ****A Company is a Separate Legal Entity****

One of the most distinctive features of a Company, as compared to other [organizations](https://www.toppr.com/guides/business-management-entrepreneurship/organizing/structure-of-organization/), is that it acquires a unique character of being a separate legal entity. Hence, when you register a company, you give it a [legal personality](https://www.toppr.com/guides/legal-aptitude/jurisprudence/legal-personality-of-non-human-beings/) with similar [rights](https://www.toppr.com/guides/civics/the-indian-constitution/rights-and-fundamental-rights/) and powers as a [human being](https://www.toppr.com/guides/biology/how-do-organisms-reproduce/reproduction-human-beings/).

The existence of a company is distinct and separate from that of its members. It can own property, bank accounts, raise loans, incur liabilities and enter into contracts. According to Law, it is altogether different from the subscribers to the [Memorandum of Association](https://www.toppr.com/guides/business-laws/companies-act-2013/memorandum-of-association/).

### ****Perpetual Succession****

Another important feature of a Company is that it continues to carry on its business notwithstanding the death of change of its members until it is wound up on the grounds specified by the Act. Further, the shares of the company change hands infinitely, but that does not affect the existence of the company.

### ****Limited Liability****

One of the important features of a company is the limited liability of its members. The liability of a member depends on the type of company.

* In the case of a limited liability company, the debts of the company in totality do not become the debts of its shareholders. In such a case, the liability of its members is limited to the extent of the nominal value of shares held by them. The shareholders cannot be asked to pay more than the unpaid value of their shares.

### ****Artificial Legal Person****

Another one of the features of a company is that it is known as an Artificial Legal Person.

* Artificial – because its creation is by a process other than natural birth.
* Legal – because its creation is by law, and
* Person – because it has similar rights to a human being.

### ****Common Seal****

While a company is an artificial person and works through the agency of human beings, it has an official signature. This is affixed by the officers and employees of the company on all its documents. This official signature is the Common Seal.

However, the Companies (Amendment) Act, 2015 has made the Common Seal optional. Section 9 of the Act does not have the phrase ‘and a common seal’ in it. This provides an alternative mode of authorization for companies who do not wish to have a common seal.

1. **Minimum number:** Private at least 2 and max. 200 members, public: at least 7 and no limit on maximum no.
2. **Subscribers:** Private- at least 2 and public-7
3. **Share capital**
4. **Separate property**
5. **Capacity to contract**
6. **Capacity to sue and be sued.**
7. **Managerial team**
8. **Business of goods or services**
9. **Residence**

**Formation of a Company**

The procedure or formation of a company may be divided into four stages:

**1. Promotion**

**2. Registration & Incorporation**

**3. Capital subscription**

**4. Commencement of business**

**1. Promotion:**

It is the first stage in the formation of a company.

In this stage the **idea** of carrying on a business is conceived by a person or a group of persons called promoters. They make detailed investigation about the workability of the idea, amount of capital required, operating expense etc.

Before a company to be formed, there must be some persons who have an intention to form a company and who take the necessary steps to carry that intention into operation. Such persons are called promoters.

The promoter is the person who brings a company into existence.

**2. Registration & Incorporation:**

A company is said to be incorporated when it is registered with the registrar under the companies act. The certificate of incorporation is the birth certificate of the company. A company comes into existence from the date mentioned in the certificate.

**Procedure for Registration**

The promoter has to first decide the proposed form of company as whether it is to be a public company or a private company.

They may form the company with limited liability, unlimited liability or limited by guarantee.

They have to decide the name of the company agreeable and desirable to all. For e.g if the name proposed is identical with or closely resembles the name of an existing company, it is undesirable**. Eg. Jay Kay Cement Co. Ltd-X**

For getting registration an application has to be made to the registrar.
The application shall be accompanied by the following documents:

**1.** Memorandum of association

**2.**Articles of association

**3.**A statement of nominal capital

**4.**A notice of address of the registered office of the company.

**5.**A list of directors and their consent to an act signed by them.

**6.**A declaration that all the requirements of the act have been complied with. Such declaration shall be signed by an advocate of high court or supreme court or a chartered accountant (CA) who is engaged in the formation of company.

**Certificate of Incorporation:**

If the registrar is satisfied that all the requirements of the act have been complied with, he shall register the company and issue a certificate of incorporation.

**Conclusive Proof**

Once a company is registered incorporation cannot be challenged subsequently. The certificate of incorporation is a conclusive evidence of the fact that:

**1.**all the requirements of the act have been complied with.

**2.**company is duly registered.

**3.**company came into existence on the date of certificate.

**Advantages of Incorporation:**

* Transferability of shares
* Separate legal entity
* Perpetual succession
* Common seal
* Separate property
* Capacity to sue and be sued

**3. Capital Subscription:**

A public company has to pass through the capital subscription stage. Only then the company can obtain a certificate of commencement of business. There are two ways of raising the capital (a) From private sources i.e., from directors, members etc. (b) From public: where the company arranges capital from private sources, it is required to file a statement in lieu of prospectus with the registrar at least three day before the allotment of shares. Where the company opts to invite public for subscription for shares, it will have to issue a prospectus. Further, on receiving minimum subscription company can allot shares.

**4. Commencement of Business:**

A private company may commence its business immediately after incorporation. But a public company cannot commence business immediately after incorporation, but it has to obtain a certificate of commencement from the registrar.

If a company does not commence its business within a year from its incorporation or suspends business for a whole year, the company may be wound up by the court [sec. 149(6)].