

# **COMPANY LAW**

## **PART II**

**CPA SECTION 3**

**CCP SECTION 3**

**CS SECTION 3**

**STUDY TEXT**

### **18. Dissolution**

Unless a partner is entered into for a period fixed by agreement, any partner may dissolve it at any time, and the partnership will automatically come to an end in the event of the death, insolvency or unsoundness of a partner's mind. A company has perpetual succession hence personal circumstances of its members cannot lead to its death. Only liquidation can terminate the existence of a company as a legal entity.

### **19. Maintenance of Books**

A company is bound by law to maintain books of account and have its accounts audited annually by qualified auditors. There is no such statutory provision in the case of partnership.

### **20. Expenses**

A company incurs greater expenses during formation, throughout its life and on dissolution as compared to partnership.

## **Similarity between Companies and Partnerships**

The main similarity is that both companies and partnerships are methods of carrying on business. Many companies are of course large and impersonal, having many institutional shareholders. Such companies bear little resemblance to partnerships. Small private companies are however often founded on the same basis as partnerships, i.e. a relationship of mutual trust and confidence.

## **Difference between Company and Co-Operative Societies**

The main difference between cooperative societies and a company are given below:

### **1. Basic objects:**

The primary objective of a cooperative society is to provide service, whereas a company seeks to earn profits. This does not mean that a cooperative society does not earn profits and a company does not render service to society. It simply means that all the activities of a cooperative society are guided by service motive and profits are incidental to this objective. On the other hand, the activities of a company are inspired by profit taking and services rendered to society are incidental to profit motive.

### **2. Number of members:**

The minimum number of persons is 7 in a public company and 2 in a private company. A cooperative requires at least 10 members. The maximum number of members is 50 in a private company and 100 in cooperative credit society. There is no maximum limit in case of public companies and non-credit cooperative societies.

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**(a) Agency**

One of the ratio decidendi in Salomon's case was stated by Lord Macnaghten that "the company is not in law the agent of the subscribers". This proposition was affirmed by the English Court of Appeal and extended to associated companies in **Ebbw Vale Urban District Council v South Wales Traffic Area Licensing Authority** when Lord Cohen stated: "Under the ordinary rules of law, a parent company and a subsidiary company, even a 100% subsidiary company, are distinct legal entities, and in the absence of an agency contract between the two companies, one cannot be said to be the agent of the other. That seems to me to be clearly established by **Salomon v Salomon & Co Ltd**

From this statement, it can be inferred that, if a court held that a company acted in a particular instance as an agent of its holding company, the veil of incorporation would have been lifted. This is illustrated by the decision in **Firestone Tyre & Rubber Co v Llewellyn**. An American company formed a wholly-owned subsidiary in England to manufacture and sell its brand of tyres in Europe. The American company negotiated agreements with European distributors under which the latter would place orders with the American company which the English subsidiary would carry out. In fact the distributors sent their orders to the subsidiary direct and the orders were met without any consultation with the American company. The subsidiary received the money for the tyres sold to the distributors and, after deducting its manufacturing expenses plus 5 per cent, it forwarded the balance of the money to the American company. All the directors of the subsidiary resided in England (except one who was the president of the American company) and they managed the subsidiary's affairs free from day-to-day control by the American company. It was held by the House of Lords that the American company was carrying on business in England through its English subsidiary "acting as its agent" and it was consequently liable to pay United Kingdom tax.

**(b) Fraud or improper conduct**

English courts have intervened on numerous occasions and lifted the veil of incorporation in order to circumvent a fraudulent or improper design by a bunch of scheming promoters or shareholders. This is illustrated by the decisions in **Jones and Another v Lipman and Another**. Lipman agreed to sell freehold land with registered title to the plaintiffs for £5,250. Pending completion he sold and transferred the land to the defendant company (having a capital of £100), which he acquired and of which he and a clerk of his solicitors were sole shareholders and directors, for £3,000, of which £1,564 was borrowed by the defendant company from a bank and the rest remained owing to him.

In an action by the plaintiffs for specific performance, it was held that, in the circumstances of the case, the defendant company was a cloak for Lipman (the first defendant), who could compel a transfer of the land to the plaintiffs, and the court would accordingly decree specific performance against both defendants. Lawrence L.J. stated:

"The defendant company is the creature of the first defendant, a device and a shame, a mask which he holds before his face in an attempt to avoid recognition by the eye of equity. The proper order to make is an order on both the defendants specifically to perform the agreement between the plaintiffs and the first defendant."

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## **Liabilities and Duties of Shareholders**

### **Liabilities**

The liability of a shareholder depends on the type of the company. In a company limited by shares, the shareholder is not liable to pay anything more than the nominal value of the share, whatever may be the liabilities of the company. In a company limited by guarantee, the shareholder is liable to pay up to the amount of the guarantee and the nominal value of the share, if there is a share. In an unlimited company, the shareholder is liable to an unlimited extent for the debts of the company. The capital clause of the memorandum of association contains provisions regarding the liability of shareholders.

### **Duties and Obligations**

A shareholder has certain duties and obligations. They are summarised below:

1. A shareholder must pay the unpaid amount due on the share, when calls are made.
2. In case of liquidation of a company, the shareholders are to be placed in the list of contributories.-
3. In certain cases a transferor of a share is still liable for the unpaid shares of a company.
4. The memo and the articles of association constitute a binding contract between the shareholder and the company.
5. All the shareholders are bound to follow the decision of the majority of the shareholders, unless the majority are guilty of mismanagement and oppression
6. Cases of unlimited liability.-
  - (a) Under the Articles of association, directors and managers can be made liable to an unlimited extent.
  - (b) If the number of membership of the company falls to below 7 in public companies and below 2 in private company, the existing members become liable for the debts of the company to an unlimited extent

### **VARIATION OF SHAREHOLDERS' RIGHTS (Sec. 74)**

If in the case of a company, provisions are made by the memorandum or articles of association authorizing the variation of the rights attached to any class of shares in the company. This is subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares. In pursuance of the said provisions the rights attached to any such class of shares are at any time varied. The holders of not less in the aggregate than fifteen per cent of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled. Where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.

An application shall be made by petition within thirty days after the date on which the consent was given or the resolution was passed.

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