Certificate in Accounting & Finance

CAF - 03

Business Law – Company Law Portion
ICAP’s Grids & Weightings for **CAF - 03**

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Section 1

COMPANY - BASICS
Comparison of companies with other form of business

Company
Companies are created by a process established by The Companies Act 2017. A company must also have a written constitution. Unlike sole traders and Partnerships, a company is a legal person, separate from its owners. This is the doctrine of corporate personality.

Partnership
A partnership is a group of individuals who own and run their own business. Each partner contributes capital to the business. A partnership business is not recognized as a ‘person’ by the law. Individual partners are personally liable, jointly with the other partners, for the debts of the business.

Sole Proprietor
A sole trader is an individual who owns and runs his or her own business. The law does not recognize the business: the law recognizes only the individual who runs it. The individual is liable for the debts of the business and is also personally liable for any breaches of the law by the business.
The meaning of separate legal personality

It is important to understand what separate legal personality means.

The law regards a company as a person, separate from its owners. For example, suppose that Mr A sets up a limited company, New Company with ten shares of Rs. 10 each which he owns. Mr A the individual and New Company, for the purpose of the law, would be two separate persons - both would have separate legal existence.
Separation of Ownership from Management
Ownership becomes vital when MANAGEMENT of business is separated from OWNERSHIP to ensure more transparency.
Limited liability of owners

The concept of limited liability applies to the owners (shareholders) of a company. The liability of the owners of a company for the debts of the company is limited to the amount of their investment in the company.

The shareholders will lose what they have invested, but will not be required to pay any more.

For example,

If Mr A owns 100% of the share capital of New Company amounting to Rs. 200,000, and New Company goes into liquidation with assets of Rs.200,000 (realizable value) and liabilities of Rs.500,000, the company’s creditors will be unpaid for Rs 300,000 of the Rs.500,000 they are owed, when the company is liquidated.

There is no requirement on Mr A personally to pay the remaining Rs.300,000 that the creditors are owed.
Transfer of ownership and perpetual succession

Another feature of the separate legal personality of a company is that its shareholders can transfer their share in the ownership of the company to someone else, but this change of ownership does not affect the company in any way.

In practice, it is common for shares to be transferred many times during the life of a company. Some companies have been in existence for many years, during which time its ownership has changed many times.

The company has continued, even when its owners have changed. This phenomenon is called ‘perpetual succession’ or ‘perpetual existence.’
Definition of company & body corporate as per CA 2017

**Company**
Companies Act 2017 defines a company as a Company formed and registered under this Act or the company law.

**Company Law**
The repealed Companies Act, 1913, Companies Ordinance, 1984, Companies Ordinance, 2016 and also includes this Act.

**Body Corporate**
"Body corporate" or "corporation" includes

- a company incorporated under this Act or company law;
- a company incorporated outside Pakistan, or
- a body corporate declared as body corporate in the relevant statute but does not include
  - A co-operative society; or
  - Any other entity, not being a company as defined in this Act.
Limited liability may be in the form of a company limited by shares or a company limited by guarantee.

- With a **company limited by shares**, the limited liability of its owners is restricted, in law, to the face value of the shares they own.

- With a **company limited by guarantee**, its owners may or may not have shares. Members liability to the company is limited to an amount that the member guarantees to contribute in the event that the company goes into liquidation for a company not having share capital, and for a company having share capital this shall also include the amount of share capital he subscribed to the company. A company limited by guarantee is a form often used by charities, trade associations and private members’ sports clubs.

- It is also possible to register a company as an **unlimited company**. This has all the advantages of a normal company except that the liability of its members is not limited. In practice unlimited companies are fairly rare.
Types of Company - Private Vs Public Company

Private Company
Private company is of two types; Single Member Company and other than Single Member Company

Single Member Company – It is a company which consists of a single member who is also the director of the company. In these companies (SMC-PVT) Limited is added to the name of the company.

Private Company (Other Than Single Member Company) – Such type of a company can be registered by at least two members and it restricts:
• The maximum number of members to fifty;
• Members jointly holding shares shall be counted as one member,
• The right to transfer the shares by its members,
• The invitation of subscriptions from general public for its shares.
Types of public company – Listed Vs Unlisted

Public Company
Public company means a company which is not a private company it can take two forms:
• Public listed company
• Public unlisted company

• **Public listed company** – Such form of public company whose securities are listed on an exchange and they are traded as per regulations of that stock exchange.

• **Public unlisted company** – Public unlisted companies have not made an offer of their shares to general public hence there shares are not traded on a stock exchange.
Holding company Vs Subsidiary company

**Holding Company**
- It means a company or body corporate which holds (directly or indirectly) more than fifty percent (50%) in the voting securities of any other company, or controls the composition of the board of such other company.

**Subsidiary Company**
- It means a company or body corporate whose more than fifty percent (50%) voting securities are held or controlled (directly or indirectly), by some other company or such other company controls the composition of the board of such company.
Association not for profit

People working for useful objects of the society sometimes need protection of limited liability for such work. Companies Act allows the registration of companies as associations not for profit if they satisfy certain conditions to Securities and Exchange Commission of Pakistan.

Not for profit association shall be licensed by Commission to get registered and work as a limited liability company without using the words Limited or (Guarantee) Limited.

• Such association may be set up for any of the following purposes

  commerce, health, protection of environment
  art, education, social welfare,
  science, research, charity or
  religion, sports, any other useful object,

• Such Association shall apply its profits, if any, or other income in promoting its objects;
• Such Association shall prohibit the payment of any dividend to its members; and
• Its objects and activities are not and shall not, at any time, be against the laws, public order, security, sovereignty and national interests of Pakistan.
SECP established under the SECP Act 1997 was operationalized on 1st January 1999.

- The SECP’s head office is at the Federal Capital, Islamabad and it has eight regional offices (Company Registration Offices - CROs), one at Federal Capital, four at provincial capitals and three in other major cities i.e. Multan, Faisalabad and Sukkur.

- Commission has been vested with lot of powers under the Companies Act 2017 and other relevant laws. Commission has got powers to regulate the affairs of all the companies.
“Registrar” means a registrar, an additional registrar, an additional joint registrar, a joint registrar, a deputy registrar, an assistant registrar or such other officer as may be designated by SECP, performing duties and functions under this Act.

The powers and duties of registrar start from registration of companies to receiving various documents which the companies are required to submit to the authorities under the Act.

Registrar

• Keeps the record of mortgages and charges
• Also keeps track of company routine documents besides his powers to call the officers of the company for information and explanations and
• Also empowered to inspect the books and records of the company.
• May seize the books and records if he believes that seizure is necessary to reach out certain facts by Commission.