



UNIT - I

FORMATION OF A COMPANY

Subject: COMPANY ORGANISATION

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INTRODUCTION

A company may be formed for any lawful purpose by

- i) Seven or more persons. where the company to be formed is to be as a public company
- ii) two or more persons, where the company to be formed is to be a private company.

The process of forming a company can be divided into four stages.

- 1) Promotion
- 2) Registration or Incorporation
- 3) Capital Subscription
- 4) Commencement of business


In case of a private company, it has to follow the first 2 stages only. But in case of public company having a share capital, it has to go through all four stages mentioned above.

PROMOTION

- Promotion is the first step in the formation of a company.
- The term promotion refers to the aggregate of activities designed to bring into being an enterprise to operate a business.
- The idea of carrying on a business which can be profitably undertaken is conceived either by a person or by a group of persons who are called promoters.

Role/Functions of a Promoter

- 1) Ideation: It is the first and foremost function of the promoter. The promoter must have an idea about the form, size and object of the proposed company.
- 2) Preliminary investigation: He has to make preliminary investigation about i) the total demand for his company's product ii) the availability of power labour, raw materials etc. iii) other facilities available to the business
- 3) Arranging factors of production: Land, Labour, Capital and organisation are the factors of production. He has to make necessary arrangement for factors production.
- 4) Arranging finance: The promoter has to make arrangement of sufficient funds. Funds may be raised by issue of shares. debentures or borrowing from financial institutions or from commercial banks. Sometimes promoter has to make payment of certain expenses even before the amount is received from issue of shares. He has to meet this kind of expenses from his own resources.



5) Preparing Preliminary Documents: To start a business, a company is to be incorporated. To get incorporation, a company has to file certain documents to the Registrar of Companies. Therefore, a promoter has to prepare the following documents:

i) Memorandum of Association


ii) Articles of Association

iii) Prospectus

iv) Declaration certificate from Directors.

6) Preliminary contracts: A promoter has to make some preliminary contracts even before the incorporation of the company. Example: Making contract with underwriters, Brokers, Vendors, etc.

7) Naming of the Company: The promoter has to decide the name of the company, He has to select two or three names and send it to the Registrar for his approval.



8) Appointment of bankers, brokers, solicitors. etc: The promoter has to appoint bankers, brokers, solicitors etc on behalf of the company.

9) Obtaining licence: The promoter has to get licence to commence the business.

10) Promoter has to take necessary steps to obtain the certificate of incorporation.

11) Promoter has to arrange for minimum subscription.

Rights of Promoters: Following are the rights of promoters:

- 1) Right of Indemnity.
- 2) Right to receive the Legitimate preliminary expenses.
- 3) Right to receive the remuneration.

Duties of Promoters:

- 1) To disclose the secret profit.
- 2) To disclose all the material facts.
- 3) To disclose private arrangements.
- 4) Promoter must make good to the company what he has obtained as a trustee.
- 5) Duty of promoter against the future allottees.

Liabilities of Promoter:

- 1) Liability to account in profit.
- 2) Liability for misstatement in the prospectus
- 3) Personal liability.
- 4) Liability at the time of winding up of the company.

PROBLEMS IN PROMOTION

I. Product Analysis and Market Survey

An entrepreneur or a promoter must conduct a market survey in order to know the saleability of the proposed product at a given price.

2) Choice of Form of ownership

The ownership form depends on the line of business because if the business is done on large scale the company form of organisation is more suitable.

3) Financial Planning

Financial planning results in the formulation of the financial plan. It is primarily a statement estimating the amount of capital and determining its composition.

4) Location of Plant

The location of a plant is one of the most important decisions which an entrepreneur is supposed to take at the time of establishing a new enterprise.

5) Size of the Business Unit

It is a very important step of launching a new enterprise, the entrepreneur will have to decide the size of the Business Unit. The requirement of capital depends upon the size of Business Unit.

6) Modern Machines and Equipments

Before launching a new business enterprise it is necessary to decide the number of modern machines and equipments to be purchased. The machines and equipments should be ultra modern and automatic.

7) Plant Layout

Plant Layout refers to the arrangement of the physical facilities including production centres for the manufacturer of a product. It involves maximum and effective utilisation of resources available in a factory.

8) Internal Organisations

A proper internal organisation structure is essential for the efficient working of the new business. It requires proper decision making and performance of various functions and duties in time.

9) Tax Planning

Tax policy of the Government will affect the profit or income of the new business. Therefore, Tax planning is an essential part of the overall planning for a new business.

10) Launching the enterprise

After considering the above points, an entrepreneur can go ahead with the actual launching of the enterprise.

INCORPORATION OR REGISTRATION OF A COMPANY

- Second Stage
- A company is properly constituted only when it is duly registered under the Act.
- A company cannot be incorporated all of a sudden. It has to fulfill certain legal requirements.

PROCEDURE TO GET INCORPORATION

- Name Approval
- Licence Under Industries Development and Regulation Act, 1951
- Preparation of documents
- Filing of documents
- Payment of Registration and Filing fees
- Certificate of Incorporation or Registration Certificate

PROCEDURE TO GET INCORPORATION

➤ Name Approval

- A company has to get approval for the proposed name.
- The promoter of a company must select two or three names to get approval from the Registrar of Companies.
- It should not be similar to or identical with that of any existing company.

➤ Licence Under Industries Development and Regulation Act, 1951

- The application is to be submitted only in case when the company's business falls under the scope of Industries Development and Regulation Act 1951

➤ Preparation of documents

- Memorandum of Association
- Articles of Association

PROCEDURE TO GET INCORPORATION

➤ Filing of documents

- Memorandum of Association
- Articles of Association
- Copy of power of attorney
- Agreement
- A written consent of directors
- Pre certification

➤ Payment of Registration and Filing fees

- At the time of registration, the prescribed registration fees and filing fee are to be paid to the Registrar's office, along with the important documents.
- The amount of registration fee payable varies with the amount of capital or with the number of Members.

PROCEDURE TO GET INCORPORATION

➤ Certificate of Incorporation or Registration Certificate

- After receiving the necessary documents and the requisite fees, the Registrar will scrutinise the documents.
- If the Registrar is satisfied with the filed documents, and the required fees, he will register the name of the company in the Registrar of Companies.
- Then the registrar will issue certificate for incorporation.
- The certificate will be issued by the Registrar under his hand and seal of his office.
- The date given by the Registrar in the certificate will be the date of incorporation of the company

CONCLUSIVENESS OF CERTIFICATE OF INCORPORATION

- The certificate of incorporation is the birth certificate of a company.
- It is a conclusive evidence that all the requirements of the Companies Act has been complied with in respect of registration.
- If a company is born, the only method to put an end to it is by winding it up.