

Corporate Law SEM-II

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Q1. What do you mean by a company? Discuss the characteristics of a company.

Ans. The industrial revolution created the modern factory system involving production in a very large scale. Mass production required huge capital investment and expert professional management. Sole proprietorship and partnership firm of organization could not meet this requirements due to shortage of funds, owner oriented management and unlimited liability. Joint stock company was involved to meet the required of the factory system. Thus the company ~~firm~~^{form} of organization came into existence due to the limitation of proprietorship and partnership firm of the business.

A joint stock company is an artificial person invisible, intangible and existing only in contention of law, being the major create of law. It possess only those requisities which is the character of creation conform up on it either expressly or as is insistent to its very existence.

Definition:

Major person on individuals ~~law~~ defined the company.

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We can divide them in three parts of conveyance.

- (i) Definition given by famous writer
- (ii) Definition given by justice
- (iii) Definition given by Act or law

(i) Definition given by famous writer :-

According to L.H. Haney - "A company is an artificial person created by law having a separate entity with a perpetual ~~existence~~ ^{succession} and a common seal.

(ii) Definition given by justice :-

According to Lord Lindley - "By a company is meant an association of many persons who contribute money worth to a common stock and employ it for a common purpose.

(iii) Definition given by Act or law :-

According to Indian Companies Act ²⁰¹³ 1956
"A company means a company ~~firm~~ and registered under this Act or existing company incorporated under this Act or under any ~~other~~ previous Company Law."

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★ Characteristics of a joint stock company

Definition of a joint stock company highlight the following characteristics or feature of a joint stock company.

- (i) Artificial persons - Company does not have a physical body of a natural human being. It is an artificial person created by law. Its operating operation are performed by the elected representation or members ~~known~~ is non- as directors. All this business is run in the name of the company.
- (ii) ~~Perpetual Succession~~
Perpetual Succession - A company has a stable character. Its life is not depended on the life of members. "Members many come and members many go, but company goes on forever."
- (iii) Separate legal entity - The important character of a company is that it has a separate legal entity. A company can have property, can carry on its activities, can get the account open and carry on all the other activities which a person can do. It is clear that the company is different entity from its

members.

(iv) Formation — The formation of a company is a time consuming expensive and completed process. It involves the preparation of several legal requirements before it can start functioning. Registration of a company is compulsory as provided under the Indian Companies Act 1956.

(v) Control — The company ^{firm} of a business is owned by the shareholders. These shareholders elect their representatives who are called directors of the company. The directors manage and control the activities of the company by appointing professional experts.

Limit of liability — The liabilities of members of the company limited to the extent of ~~their~~ share capital contribution in the company. A

(vii) Common seal — Being an artificial person the company cannot sign therefore. There is need for common seal with its name. The activities of the company are carried through a group of a people any documents which does not bear the common seal of the company is not binding on the company.

(vii) Numbers of members — For a limited company the number of members should not fall below to ~~seven~~ ^{seven} and ~~the~~ ⁱⁿ case of private company and seven in the public company. ~~not to be less than 7.~~

Transferability

(ix) Transferability of shares — The share of company are freely transferable. For this transfer the transferring share holders donot have to take the consent of the other shareholders.

(x) Right to sue — Joint stock company can take any legal action in its own name it can sue other person, similarly others can also sue a company.

Q2. What do you mean by promoters? Explain the functions, rights and duties (liabilities) of company promoters?

Ans ⇒ A promoter is one who undertakes to ^{form} ~~firm~~ a company with reference to a given project and sets it in motion and takes the necessary steps to accomplish that purpose. The promoter is a person who does the necessary preliminary work ^{incidental} ~~essential~~ to the formation of a company. The promoter identifies business opportunities, analyses its prospectus and initiates steps to ^{form} ~~firm~~ a company.

Function of Promoters

Promoters are the person who ^{give} ~~give~~ birth to a company. They are the founders of a business enterprise. They have many functions to ~~perform~~ ^{perform} which are as follows.

1. Ideation ⇒ Ideation is a basis for every important activity in this way promoters to get the idea of the formation of a company.
2. Preliminary investigation ⇒ The promoter has to investigate that what sort of facilities are available at the place of establishing that

the required piece of land efficient workers, transportation and communication facilities and raw materials is available or not.

3. **Arranging resources or factors of Production** \Rightarrow The promoters have to make arrangement of sufficient funds. Though the company has obtained its capital by issue of share and debenture but the promoters have to make payment of certain expenses before. He may contact banks, financial institutions and underwriters.
4. **Preparing preliminary documents** \Rightarrow The promoters have to prepare important documents because these documents are necessary required for obtaining certificate of incorporation and commencement of business. The company required memorandum of association, articles of association and prospectus for inviting people to subscribe for its share and debenture.
5. **Preliminary contracts** \Rightarrow These contracts are made by promoters before the incorporation of the company with different parties in the interest of the company.
6. **Naming of the company** \Rightarrow The promoters have to decide the name of the company. He should insure that the name of the company should not be the same name of a company that is already existing.

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7. Obtaining licence \Rightarrow The promoters should obtain the requisite licence for the business.

© Rights of Promoters

Promoters have the following rights of the company.

Right
1. ~~Write~~ to receive the preliminary expenses.

Promoters are empowered to receive the preliminary expenses that they have incurred in the process of formation of company.

Right
2. ~~Write~~ to receive proportional amount from fellow promoters.

Some times the company is promoted by more than one promoter, in ~~that case that case~~ other promoters are right to collect ~~their~~ proportionate remuneration from ~~their~~ co-promoters.

Right
3. ~~Right~~ to receive remuneration.

The promoters are intitled to get some remuneration from the company, they ~~promoters~~ promote.

① Liabilities of Promoters

The promoters are the funders of a company therefore they ^{are} ~~under~~ ^{understand} obligation and liabilities which are as under.

- (1) To disclose and repay the secret profit.
- (2) Liabilities of full disclosure ^{disclosure} material facts.
- (3) Liabilities for Preliminary contracts.
- (4) Liabilities for ^{mis-statement} ~~mis-statement~~ ^{prospectus} prospectus.
- (5) Liability in course of winding up.

Q.3. ~~What~~ What is meant by in-corporation of a company (Registration)? Describe in brief the process of in-corporation of a company.

Ans: In regard to in-corporation or formation of a company sections 3, 4, 5, and 7, of the Companies Act, 2013 lay the following provisions. A company may be formed for any lawful purpose such as for producing lawful goods or providing lawful services or conducting any lawful trade. It has to follow the ahead given steps as per legal requirement.

1.) Approval of the name \Rightarrow The ~~propose~~ ^{proposed} name of the company must be approved by the registered of the company.

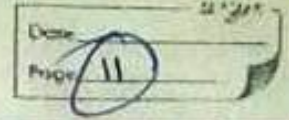
2.) Filing of Documents \Rightarrow The following documents are filed with the registered of the company for in-corporation.

(a) Memorandum of association \Rightarrow It is an important document of the company. It define the object of the company and established its relationship with the out side world. It contains name, capital, objective situations, liabilities and association clauses of the company.

(b) Articles of association \Rightarrow It is the byelaws of the company concerning its internal management. It is popularly known as doctrine of internal management. It must be signed by subscribers to the memorandum. The public company demand to had adopted table a schedule one of the companies act. If it does not file its on articles of association.

3.) Payment of fees \Rightarrow The company must pay the prescribe filing and registration fee and stamp duty while filing the above documents. The registration fee varies with the amount of outtharise the capital

Registrar



4. Registration \Rightarrow The registrar of company will carefully scrutinise the documents and satisfied with the compliance of legal formalities regarding registration. He enters ^{in it} the name of the company in his register.
5. Certificate of Registration \Rightarrow incorporation \Rightarrow After the registration the registrar of company will issue the Certificate of incorporation. It is signed by the registrar of the company specifying the date of issue. From the date of issue of incorporation of the Certificate, the company became distinct legal entity with perpetual succession and common seal.
6. S.E.B.I (Security & Exchange board of India) Security and Exchange board of India (S.E.B.I) which is the regulatory authority in our country has issued guidelines for disclosure information for investors protection. This is necessary for protecting the interest of the investor prior approval from S.E.B.I is there for required before going ahead with raising funds from public.

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- 7.) Filing of Prospectus \Rightarrow After receiving the approval from SEBI A copy of the prospectus is filed with the registrar of the company. A prospectus is an offer or invitation to public for subscribing the share and debentures of the company.
- 8.) Appointment of Banker, Broker and underwriters: In case of raising funds from public, application money is received by the bankers of the company. Underwriters undertake the responsibility to subscribe for shares. The appointment of underwriters is not necessary.
- 9.) Minimum subscription \Rightarrow It has been provided that the company must receive applications for a certain minimum numbers of shares before going ahead with the allotment of the shares. The limit of minimum subscribers is 90% of the size of the issue.
- 10.) Application to stock exchange \Rightarrow An application is made to atleast one stock exchange for permission to deal its shares or debenture.