

Essay type Min 4 pages Short notes 2 pages ----- Charts/graphs

Q; Who is a Promoter Explain his liability?

Definition

Explain the Position of the Promoter/Functions-----2 pages

Duties of the Promoter

Liabilities of the Promoter:-----2 pages

1. Liability for furnishing False Information for Incorporation.
2. Liability for Misleading Prospectus.
3. Liability for contravention of any provision of the issue of securities in private placement.
4. Liability for failure to make disclosure or non-disclosure items of **special business**.

Interest---BOD---agreement with a x coy---in which promoter has some interest---
disclosed (before the conduct on during) Rs 50,000—

5. Liability for failure to repay Money or restore Property:
6. Liability for non- Cooperation to Company Liquidator:
7. Liability for Preliminary Expenses/Contracts

AGM----Annual general Meeting

1. Ordinary Business---Simple Majority—more than 50 %
2. Special Business---2/3 Majority---

BOD--- Board of Director---every quarter-----**Interested Director** / Disinterested

Registration/Incorporation of Company:

1. Preliminary Steps:
 - a. Deciding the kind of Company
 - b. Registered office
 - c. DIN---directors
 - d. Digital signature—promoters/directors
 - e. Name reservation
 - f. Draft the M/A
 - g. Draft A/A
 - h. Prospectus
 - i. MA,AA, Prospectus---Vetting and Signature of Members
 - j. Approvals---
2. Application for the Registration: INC-2, INC 7, INC-12
 - a. Notice of address for communication.
 - b. MA
 - c. AA
 - d. Declaration and Compliance
 - e. Affidavits

Particulars of the Subscriber---Pvt Ltd---Min 02 Max 200 Min Dire:02

--- Public Ltd---Min 07 Max unlimited Min Dire:03

----OPC Min—01 Max 01 Min 01 max 15---Nominee--01

Documents required for the Registration :

1. CIN: Issue of Certificate of Incorporation: COI---Form no INC 11 ---Date---Company Birth.-
---allot a CIN Corporate Identity Number

COI--- A Conclusive proof of Incorporation....

MCA----Integrated Process of Incorporation:

It applies to following companies:

1. OPC
2. Private Companies
3. Public Companies
4. Producer Companies

Steps in the Process:

1. Application: INC- 29:
 - i. Reservation of name
 - ii. Incorporation
 - iii. DIN---(upto3 directors)
 - iv. Appointment of 3 director
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Effects of Incorporation:

1. Emergence of the Corporate Personality.
2. Name
3. Characteristics of Joint Stock Company....

What is Incorporation

Steps for Incorporated

Effects;

OPC, Private, Public

When does the promoter liability End?

1. Preliminary Contracts---COI---AGM---Shareholder ratify---Cease
2. As and when court decide.

Memorandum of Association---legal document---public document

Charter---Constitution of Coy: --

Types: 1. Chartered Coy---Charter by a Royal (Decree)

Identifies a coy by name, holding and running---what area of business---where---place and limit on the area of business.

I: It should be in a proper form: Form of M/A:

1. Form in Table A---For Coy limited by Shares
2. Form in Table B---For Coy limited by Guarantee and having no share capital.
3. Form in Table C---For Coy limited by Guarantee and having Share capital.
4. Form in Table D---For an Unlimited and having no share capital
5. Form in Table E--- For an Unlimited and having share capital

II. Printed

III. Numbered

IV. Signed by all the Members

V. Should not contravene any rule of law in the Country

Contents of a M/A:

1. Name Clause---Unique---Registered with ROC
2. Registered office Clause--
3. Object Clause---i)Primary ii)Secondary
4. Liability Clause
5. Capital Clause
6. Subscribers Clause
7. Nomination Clause

If a company does something which is not mentioned in the M/A---???

Ans:- That activity will be **void ab initio** , Ultra -vires the company...

Ultra--- beyond

Vires---powers

Intra- vires

Doctrine of Constructive Notice:---Since all Public documents are freely available, it is implied

That everyone who so ever wants to enter into any contract must have read the documents.

Later on the company will not be responsible.

Doctrine of Ultra Vires:

Landmark case “ Ashbury Railway Carriage and Iron Company Ltd” 1875 vs Riche House Lords,”

Ratify---??

Ultra Vires Acts:

1. Acts Which do not fall within the objectives of the Company.
2. Acts which do not fall within the scope of matters considered necessary in furtherance of the objects of the company.
3. Acts done after the Objects have become Impossible.

Consequences/Effects:

1. Void initio
2. No Ratification
3. Injunction
4. Personal Liability of Directors
5. Liability for Breach of Warranty of Authority
6. Company’s rights on Ultra-vires Purchased Property
7. Ultra Vires borrowings
8. Ultra Vires Lending
9. Torts or Civil Wrongs

Alteration of memorandum of Association? (Companies Act 2013 Section 13)

1. Special Resolution---AGM/EGM—2/3rd majority—
2. Permissions; ROC—State Govt—Central Govt.
3. Clear all debts and liabilities
4. Any complaint or claim must be satisfied.

What is M/A Explain the contents. Or How can the M/A be altered?
Discuss the Doctrine of Ultra-Vires.

Article of Associations—They regulate the Internal

Types of Prospectus:

1. Abridged Prospects
2. Deemed Prospectus---Indirect

Direct ---Company---Investors

Indirect---Company---Issuing House/Agent----Investors

3. Shelf Prospectus:

For a certain class of Companies---(PFI) Public Financial Institutions,
Public Sector Banks or Scheduled Banks.

They are not required to issue prospectus every time for the issue.

In this way they can save money.

Life of Shelf Prospectus==1 year

PFI---ROC---Prospectus----Shelf Prospectus---Information Memorandum

4. Red-Herring Prospectus: IPO---Book Building---

2 missing : 1. Price of the Issue

2 Number of shares

Golden Rules for the Framing of Prospectus---Golden Legacy---New Brunswick etc Co vs
Muggeridge (1860)

V.C. Kindersely, " Those who issue prospectus hold out to the public are of great significance to
the persons who will subscribe securities of the company,

Faith of representation

Bound to state everything with strict accuracy

Should not omit any material fact

Prospectus---Promoters---any person, any official....

Statement---construe---invest---loss---serious consequence

S.Cr---

Equity shareholders

Remedies or Consequences of Misleading Prospectus

1. Remedies against the Company
2. Remedies against the Directors, Promoters etc.

1. Remedies against the Company:
 - a. Rescission of the Contract—material fact---misleading--loss
 - b. Compensation for damages
2. Remedies against the Directors, Promoters etc.
 - a. Civil Liability--
 - i. Damages for misleading and Omission
 - ii. Unlimited personal liability for fraud
 - b. Criminal Liability---IPC—jail 6 months—10 years---fine—compensation---three times (fraud)..

Directors:-

U/S 2(34), "Appointed by the Board of the Company".

"One who is appointed as director to the Board of Directors of a Company and who guides the policy and supervises the working of the Company."

Position of Directors in a Company:

1. Directors as Agents: -----fiduciary-----relation----company
2. As Trustees-----Trust-----Trustee----beneficiary(Shareholders)
3. As Managing Partners-----elected by the shareholders—contribute large capital...
4. As Officers---of the BOD
5. As employees---salary---
6. As an organ of the Company---Brain---BOD--

Composition of the Board of Directors:

1. Public limited: minimum—03 Max 15
2. Private limited: Min—02—Max 15
3. OPC: Min—1 Max--1

Methods of Appointment of Directors:

1. **Appointment First Directors**---Subscribers to the M/A, A/A shall be deemed to be first directors.
2. Appointment
 - a. First General body Meeting. (AGM)---Shareholders--
 - b. Subsequent Meetings.

Retire by Rotation---2/3rd on every AGM---1/3rd Non rational directors—152(6)
3. Board of Directors:

- a. Additional Director--
 - b. Alternate Director
 - c. Casual Vacancy
 - d. Nominee Director---(financial institution, government)
4. Appointment by Proportional Representation
 5. Appointment by the Order of the Tribunal
 6. Appointment by the Central Government
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Independent and Small Shareholders Directors:

Independent Director---Non executive

1/3rd---Independent

U/s 151---Small Shareholder=Shares of nominal value of rs 20,000/-

Idea(Company-----Democratic Institution)---All have a right to participate...Collective participation

---Democracy---Voting---Ballot---all are able to vote...

Powers of the Board of Directors: Self Study...

1. Powers exercisable at the Board Meeting

- a. To make Calls on Shares
- b. To authorise buy back
- c. To issue securities including debentures
- d. To borrow monies
- e. To approve financial statements
- f. To diversify the business
- g. To approve amalgamation, merger or reconstruction

2. Powers exercisable with the Consent of the AGM

- a. To sell lease
- b. To invest
- c. To borrow
- d. To repay debt
- e. To give to charity

3. Powers exercisable with the Central Government

Duties of the Directors: Self Study

1. General Duties

- a. To act in accordance to the Act
- b. To act in good Faith
- c. To perform duties with reasonable care
- d. Not to act in conflict with the company
- e. Not to achieve undue gain
- f. Not to assign office

2. Special Duties

- a. To ensure full and correct disclosure in prospectus
- b. To make declaration in the prospectus
- c. To sign the prospectus
- d. To deliver prospectus to registrar

KMP: Key Managerial Personnel

1. CEO
2. MD---powers
3. CS
4. WTD
5. CFO
6. Any such officers as prescribed u/s2(51).

The Following Companies Shall have KMP

1. Every Listed Company.
2. Having 10 crore or more as Capital.

Winding Up Process:

A.Ramiya, " Winding up is a means by which the dissolution of a company is brought about and its assets realized and applied in payments of its debts and after satisfaction of the debts, the balance , if any, is paid back to the members in proportion to the contribution made by them to the capital of the company".

Modes of Winding Up:

1. Tribunal or Compulsory Winding Up.
2. Voluntary.

Winding up by the Tribunal/ Compulsory Winding Up

Grounds for Winding Up:

1. Unable to pay its debts.
2. Special resolution pass for winding up by the Tribunal.
3. Acted against Sovereignty and integrity of the country
4. Declared as a Sick Company under chapter XIX
5. Government Orders---ROC---
6. Default in filing its financial statements or Annual Returns for the last 5 years.
7. Tribunal Order

Procedure of Winding Up by the Tribunal:

1. Petition
2. Order

Commented [APSS1]: All the shareholder they pass the resolution by 2/3rd majority.

- a. Dismiss
 - b. Interim Order
 - c. Appoint Liquidator
 - d. Order for winding up
 - e. Make any order that it deems fit
3. Notice is given to Company—Official Liquidator
 4. Issue direction to the Company--gives a chance
 5. Filing Objections and statement of Affairs
 6. Winding Up Committee and Report.

Consequences of Winding up of the Company:

1. Official Liquidator
2. ROC
3. Stay of Suits
4. Submit all the books to the liquidator
5. Property will be under the Liquidator

Dissolution of the Company:

Company Liquidator:

Grounds for Winding Up:

1. Not able to pay of its debts.
2. Company passes a Special resolution for winding up by the Tribunal.
3. If the company acts against the Integrity of the Country.
4. Declared a Sick Company.
5. An application has been made to the ROC.
 - a. Frauds
 - b. Formed fraudulently.
 - c. While forming there some fraudulent activities.
6. Defaulting in filing of the Annual Returns for the past 5 years.
7. Tribunal is of the opinion.

Persons entitled to file petition with Tribunal:

1. The Company itself.
2. Creditors
3. Contributor
4. The Registrar
5. Person authorised by the GOI.

Examination revisions:

Important questions

Revision and doubt clarification

How to write your answers (tips)