



Ist Internal, 2019

Name of Class: BCOM 2(P/H)

Name of Paper: Company Law and Practices

Set A

Time 1.30 Hrs.

Max. Marks 40

Compulsory to attempt all the questions. All Questions carry equal marks.

A. Multiply Choice Questions

[1*10=10]

1. What is known as a charter of a Company?

A. **Memorandum of Association**

B. Bye laws

C. Articles of Association

D. Prospectus.

2. The dividend on preference capital is paid _____

A. **whenever there are profits**

B. when there is loss

C. even if there are no profits

D. after dividend is paid to equity shares

3. Minimum paid up capital for a public company

A. **500000**

B. 400000

C. 300000

D. 200000

4. The minimum number of persons required to form a private company is _____.

A. 7

B. 2

C. 3

D. 4

5. The name of a company can be changed by _____.

A. an ordinary resolution

B. a special resolution

C. . the approval of the union government

D. a special resolution and with the approval of the central government

6. A change in a company's registered office from one state to another may be effected by_____.

A. an ordinary resolution

B. a resolution of the board of directors

C. a special resolution

D. a special resolution and confirmation from the company law board

7. When is a company said to have been registered?

A. When it files the memorandum of association with the registrar of companies.

B. When it gets the certificate of incorporation

C. When it gets the certificate of commencement of business

D. When it actually starts its business

8. The _____ defines the scope of a company's activities.

A. prospectus

B. statutory declaration

C. memorandum of association

D. articles of association

9. The _____ defines a company's relations with the outside world.

A. prospectus .

B. memorandum of association.

C. articles of association .

D. statement in lieu of prospectus .

10. _____ contains a model form of memorandum of association of a company limited by

shares.

A. Table A.

B. Table B.

C. Table C.

D. Table D.

B. Long type Questions:

1. State various stages of formation of a company. What are the various documents to be filled with the registrar for such incorporation? [10]

Formation of company is governed by the provisions contained in The Companies Act of 1956. The company form of organization is being preferred as being suitable by more and more business firms, particularly for setting up medium and large sized organizations. Formation of Company in India involves several steps which are explained hereunder. The steps involved in Formation of company in India are required from the time a business idea originates to the time. A company is legally ready to commence business are referred to as stages in the formation of a company. Those who are taking these steps and the associated risks area promoting a company are called its promoters. It is advisable to avail the services of Indian company lawyer for the formation of company in India.

STAGES IN FORMATION OF COMPANY IN INDIA (PRIVATE LIMITED)

- (i) Promotion is the first step towards formation of company.
- (ii) Incorporation is the second step towards formation of company.
- (iii) Commencement of business is the ultimate or final stage towards formation of company.

Under the Indian laws, a private limited company can start its business immediately after obtaining the certificate of incorporation. As it is prohibited to raise funds from public, it does not need to issue a prospectus and complete the formality of minimum subscription. A public company, on the other hand, goes through the capital subscription stage and then receives the certificates of commencement. Thus, it has to undergo all the four stages. Formation of company in India thus involves the steps stated above and the formalities required therein for formation of company in India.

PROMOTION OF A COMPANY IN INDIA

Promotion of a company in India is the first stage in the Formation of company. It involves conceiving a business opportunity and taking an initiative towards the direction of formation so that practical shape can be given to exploiting the available business opportunity. Thus, it begins with somebody having discovered a potential business opportunity. Any person or a group of persons of even a company may have discovered an opportunity. If such a person or a group of persons or a company proceeds in the direction of formation of company, then, they are said to be the promoters of the company. There is no statutory definition of a promoter. A promoter is said to be the one who undertakes the formation of company . He further sets it going and takes the necessary steps to accomplish that purpose. Thus, apart from conceiving a business opportunity, the promoters analyze its prospects. The promoter further brings together the men, materials, machinery, managerial abilities and financial resources and set the organization going. After thoroughly examining the feasibility of the idea, the promoters assemble resources, prepare

necessary documents, give a name. He further performs various other activities to get a company registered and obtain the necessary certificate enabling the company to commence business. Formation of company thus depends upon the promoters and it is the promoters who perform various functions to bring a company into existence.

Functions of Promoter

(a) Identification of business opportunity: The first and foremost activity of a promoter in the direction of formation of company in India is to identify a business opportunity by the formation of company. The opportunity may be in respect of producing a new product or service. It may be by making some product available through a different channel or any other opportunity having an investment potential. Such opportunity is then analyzed to see its technical and economic feasibility before formation of company in India.

(b) Feasibility studies: It may not be feasible or profitable to convert all identified business opportunities into real projects. The promoters, therefore, undertake detailed feasibility studies to investigate all aspects of the business they intend to start. Depending upon the nature of the project, feasibility studies may be undertaken, with the help of the specialists like engineers, chartered accountants etc. To examine whether the perceived business opportunity can be profitably exploited by formation of company in India.

(i) Technical feasibility: Sometimes an idea may be good but technically not possible to execute. It may be so because the required raw material or technology is not easily available. This is an important steps towards formation of company.

(ii) Financial feasibility: Every business activity requires funds. The promoters have to estimate the fund requirements for the identified business opportunity. If the required outlay for the project is so large that it cannot easily be arranged within the available means, the project has to be given up. For example, one may think that developing townships is very lucrative. It may turn out that the required funds are in several crores of rupees, which cannot be arranged by floating a company by the promoters. The idea of formation of company may be abandoned because of the lack of financial feasibility of the project.

(iii) Economic feasibility: Sometimes it so happens that a project is technically viable and financially feasible but the chance of it being profitable is very little. In such cases as well, the idea may have to be abandoned. Promoters usually take the help of experts to conduct these studies before formation of company. It may be noted that these experts do not become promoters just because they are assisting the promoters in these studies. Only when these investigations throw up positive results, the promoters may decide for the formation of company. Formation of company in India thus involves the above said technicalities associated with it.

(c) Name approval: The first and foremost task in the direction of formation of company is the selection of a name to be given to the proposed company. Having decided to launch a company, the promoter has to select a name for it and submit an application to the registrar of companies of the state in which the registered office of the company is to be situated, for its approval. The proposed name may be approved if it is not considered undesirable. It may happen that another company exists with the same name or a very similar name or the preferred name is misleading, say, to suggest that the company is in a particular business when it is not accepted but some alternate name may be approved. Therefore, three names, in order of their priority are given in the application to the Registrar of Companies before formation of company.

(d) Fixing up Signatories to the Memorandum of Association: The second important step towards the Formation of company is the signing the Memorandum of Association of the proposed company. Usually the people signing memorandum are also the first Directors of the Company. Their written consent to act as Directors and to take up the qualification shares in the company is necessary.

(e) Appointment of professionals: Certain professionals such as mercantile bankers, auditors etc., are appointed by the promoters to assist them in the preparation of necessary documents which are required to be with the Registrar of Companies. The names and addresses of shareholders and the number of shares allotted to each are submitted to the Registrar in a statement called return of allotment. Formation of company involves some more steps associated therein.

(f) Preparation of necessary documents: The promoter takes up steps to prepare certain legal documents, which have to be submitted under the law, to the Registrar of the Companies for getting the company registered. These documents are Memorandum of Association, Articles of Association and Consent of Directors. This is a crucial and important stage in Formation of company hence is done by legally trained hands.

Documents Required to be Submitted during formation of company in India are described as under:

A. Memorandum of Association: Memorandum of Association is the most important document as it defines the objectives of the company. Formation of company in India can not take place without the same. No company can legally undertake activities that are not contained in its Memorandum of Association. The Memorandum of Association contains different clauses, which are given as follows:

(i) The name clause: This clause contains the name of the company with which the company will be known, which has already been approved by the Registrar of Companies. This is considered as the first step towards the Formation of company.

(ii) Registered office clause: This clause contains the name of the state, in which the registered office of the company is proposed to be situated. The exact address of the registered office is not required at this stage but the same must be notified to the Registrar within thirty days of the incorporation of the company. It is also clear that the formation of company in India cannot take place without a valid address.

(iii) Objects clause: This is probably the most important clause of the memorandum regarding formation of company in India. It defines the purpose company is not legally entitled to undertake an activity, which is beyond the objects stated in this clause. The object clause is divided into two sub-clauses, which are:

The main objects: The main objects for which the company is formed are listed in this sub-clause. It must be observed that an act which is either essential or incidental for the attainment of the main objects of the company is deemed to be valid, although it may not have been stated explicitly in the sub-clause.

Other objects: Objects not included in the main objects could be stated in this sub-clause. However, if a company wishes to undertake a business included in this sub-clause, it has to either pass a special resolution or pass an ordinary resolution and get central governments approval for the same.

(iv) Liability clause: This clause limits the liability of the members to the amount unpaid on the shares owned by them in the Formation of company in India.

For example, if a shareholder has purchased 100 shares of Rs. 10 each and has already paid Rs. 6 per share, his/her liability is limited to the Rs. 4 per share. Thus, even in the worst case, he/she may be called upon to pay Rs. 4,00 only.

(v) Capital clause: This clause specifies the maximum capital which the company will be authorized to raise authorized share capital of the proposed company along with its division into the number of shares having a fixed face value is specified in this clause. For example, the authorized share capital of the company may be Rs. 25 with divided into 2.5 lakh shares of Rs. 10 each. The said company cannot issue share capital in excess of the amount mentioned in this clause. This is also considered as an important step towards the Formation of company in India.

(vi) Association clause: In this clause, the signatories to the Memorandum of Association state their intention to be associated with the company and also give their consent to purchase qualification shares. The Memorandum of Association must be signed by at least seven persons in case of a public company and by two persons in case of a private company during the process of formation of company in India.

B. Articles of Association: Articles of Association are the rules regarding internal management of a company. These rules are subsidiary to the Memorandum of Association and hence, should not contradict or exceed anything stated in the Memorandum of Association. A public limited company may adopt Table A which is a model set of articles given in the Companies Act. Table A is a document containing rules and regulations for the internal management of a company. If a company adopts Table A, there is no need to prepare separate Articles of Association for the formation of company in India. For companies not adopting Table A, a copy of the Articles of Association, stamped and duly signed by signatories to the Memorandum of Association is required for registration. This is another important aspect of the Formation of company in India.

C. Consent of Proposed Directors: Apart from the Memorandum and Articles of Association, a written consent of each person named as a director is required confirming that they agree to act in that capacity and undertake to buy and pay for qualification shares, as mentioned in the Articles of Association.

D. Agreement: The agreement, if any, which the company proposes to enter with any individual for appointment as the Managing Director or a whole time Director or Manager is another document which required to be submitted to the Registrar for formation of company in India.

E. Statutory Declaration: A declaration stating that all the legal requirements pertaining to registration have been complied with is to be submitted to the Registrar with the above mentioned documents for formation of company in India. This statement can be signed by an advocate of High Court or Supreme Court or by a Chartered Accountant in full time practice or by a person named in the articles as a director or manager or secretary of the company. The formats are prescribed under the Companies Act, 1956.

F. Payment of fee: Along with the above-mentioned documents, necessary fees have to be paid for the registration of the company. The amount of such fees shall depend on the authorized share capital of the company. This being the final stage in the Formation of company in India thereafter the company comes into existence.

Position of Promoters.

Promoter undertakes various activities to get a company registered and get it to the position of commencement of business. But they are neither the agents nor the trustees of the company. They cannot be the agents as the company is yet to be incorporated. Therefore, they are personally liable for all the contracts which are entered by them, for the company before its incorporation, in case the same are not ratified by the company later on. Also promoters are not the trustees of the company.

Promoters of a company enjoy a fiduciary position with the company, which they must not misuse. They can make a profit only if it is disclosed but must not make any secret profits. In the event of a non-disclosure, the company can rescind the contract and recover the purchase price paid to the promoters. It can also claim damages for the loss suffered due to the non-disclosure of material information.

Promoters are not legally entitled to claim the expenses incurred in the formation of company in India. However, the company may choose to reimburse them for the pre-incorporation expenses during the process of formation of company in India. The company may also remunerate the promoters for their efforts by paying a lump sum amount or a commission on the purchase price of property purchased through them or on the shares sold. The company may also allot them shares or debentures or give them an option to purchase the securities at a future date.

Incorporation

After completing the aforesaid formalities, promoters make an application for the incorporation of the company. The application is to be filed with the Registrar of Companies of the state within which they plan to establish the registered office of the company. The application for registration must be accompanied with the documents related to the identity of the Directors, premises etc. These may be briefly mentioned again. The steps involved with the Formation of company in India can be enumerated as under:

1. The Memorandum of Association duly stamped, signed and witnessed. In case of a public company, at least seven members must sign it. For a private company however the signatures of two members are sufficient. The signatories must also give information about their address, occupation and the number of shares subscribed by them.
2. The Articles of Association duly stamped and witnessed as in case of the Memorandum. However, as stated earlier, a public company may adopt Table A, Which is a model set of Articles, given in the Companies Act. In that case a statement in lieu of the prospectus is submitted, instead of Articles of Association.
3. Written consent of the proposed directors to act as directors and an undertaking to purchase qualification shares.
4. The agreement, if any with the proposed Managing Director, Manager or whole-time director.
5. A copy of the Registrars letter approving the name of the company is essential for the formation of company in India.
6. A statutory declaration affirming that all legal requirements for registration and formation of company in India have been complied with. This must be signed by an advocate of a High Court

or Supreme Court or a signatory to the Memorandum of Association or a Chartered Accountant or Company Secretary in whole time practice in India.

7. A notice about the exact address of the registered office may also be submitted along with these documents. However, if the same is not submitted at the time of incorporation, it can be submitted within 30 days of the receipt of the certificate of incorporation after the formation of company in India.

8. Documentary evidence of payment or registration fees for formation of company in India.

The Registrar upon submission of the application along with the required documents has to be satisfied that the documents are in order and that all the statutory requirements regarding the registration and formation of company in India have been complied with. However, it is not his duty to carry out a thorough investigation about the authenticity of the facts mentioned in the documents. When the Registrar is satisfied, about the completion of formalities for registration, a Certificate of Incorporation is issued to the company, which signifies the birth of the company. The certificate of incorporation may therefore be called the birth certificate of the company. With effect from November 1, 2000, the Registrar of Companies allots a CIN (Corporate Identity Number) to the Company. This completes the stages with the Formation of company in India.

Effect of the Certificate of Incorporation

The issuance of the certificate of incorporation is considered as the final stage towards formation of company in India. A company is legally born on the date printed on the Certificate of Incorporation. It becomes a legal entity with perpetual succession on such date. It becomes entitled to enter into valid contracts. The Certificate of Incorporation is a conclusive evidence of the regularity of the incorporation of a company or the formation of company in India. Imagine, what would happen to an unsuspecting party with which the company enters into a contract, if it is later found that the incorporation of the company was improper and hence invalid. Therefore, the legal situation is that once a Certificate of Incorporation has been issued, the company has become a legal business entity irrespective of any flaw in its registration. The Certificate of Incorporation is thus conclusive evidence of the legal existence of the company and important adjunct towards the formation of company in India.

The Certificate of Incorporation once issued, is a conclusive evidence of the existence of the company and the first legal proof regarding the formation of company in India. Even when a company gets registered with illegal objects, the birth of the company cannot be questioned. The only remedy available is to wind it up. Because the Certificate of Incorporation is so crucial, the Registrar has to go very carefully before issuing it. On the issue of Certificate of Incorporation, a private company can immediately commence its business. It can raise necessary funds from friends, relatives or through private arrangement and proceed to start business. A public company, however, has to undergo two more stages in its formation.

Capital

Subscription

A public company can raise the required funds from the public by means of issue of shares and debentures. For doing the same, it has to issue a prospectus which is an invitation to the public to subscribe to the capital of the company and undergo various other formalities. The following steps are required for raising funds from the public.

(i) SEBI Approval: SEBI (Securities and Exchange Board of India) which is the regulatory authority in our country has issued guidelines for the disclosure of information and investor protection. A company inviting funds from the general public must make adequate disclosure of all relevant information and must not conceal any material information from the potential investors. This is necessary for protecting the interest of the investors. Prior approval from SEBI is, therefore, required before going ahead with raising funds from public.

(ii) Filling of Prospectus: A copy of the prospectus or statement in lieu of prospectus is filed with the Registrar of Companies. A prospectus is any document described or issued as a prospectus including any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares or debentures of a body corporate. In other words, it is an invitation to the public to apply for shares or debentures of the company or to make deposits in the company. Investors make up their minds about investment in a company primarily on the basis of the information contained in this document. Therefore, there must not be a mis-statement in the prospectus and all significant information must be fully disclosed.

(iii) Appointment of Bankers, Brokers, and Underwriters: Raising funds from the public is a stupendous task. The application money is to be received by the bankers of the company. The brokers try to sell the shares by distributing the forms and encouraging the public to apply for the shares. If the company is not reasonably assured of a good public response to the issue, it may appoint underwriters to the issue. Underwriters undertake to buy the shares if these are not subscribed by the public. They receive a commission for underwriting the issue. Appointment of underwriters is not necessary.

(iv) Minimum Subscription: In order to prevent companies from commencing business with inadequate resources, it has been provided that the company must receive applications for a certain minimum number of shares before going ahead with the allotment of shares. According to the Companies Act, this is called the minimum subscription. The limit of minimum subscription is 90 per cent of the size of the issue. Thus, if applications received for the shares are for an amount less than 90 per cent of the issue size, the allotment cannot be made and the application money received must be returned to the applicants.

(v) Application to Stock Exchange: An application is made to at least one stock exchange for permission to deal in its shares or debentures. If such permission is not granted before the expiry of ten weeks from the date of closure of subscription list, the allotment shall become void and all money received from the applicants will have to be returned to them within eight days.

(vi) Allotment of Shares: In case the number of shares allotted is less than the number applied for, or where no shares are allotted to the applicant, the excess application money, if any, is to be returned to applicants or adjusted towards allotment money due from them. Allotments letters are issued to the successful allottees. Return of allotment, signed by a director or secretary is filed with the Registrar of Companies within 30 days of allotment.

A public company may not invite public to subscribe to its shares or debentures. Instead, it can raise the funds through friends, relatives or some private arrangements as done by a private company. In such cases, there is no need to issue a prospectus. A 'Statement in Lieu of Prospectus' is filed with the Registrar at least three days before making the allotment.

Commencement of Business

If the amount of minimum subscription is raised through new issue of shares, a public company applies to the Registrar of Companies for the issue of Certificate of Commencement of Business. The following documents are required:

1. A declaration that shares payable in cash have been subscribed for and allotted up to the minimum subscription mentioned in the prospectus;
2. A declaration that every director has paid in cash, the application and allotment money on his shares in the same proportion as others;
3. A declaration that no money is payable or liable to become payable to the applicants because of the failure of the company to either apply for or obtain permission to deal in its securities on a stock exchange; and
4. A statutory declaration as per the format. This declaration can be signed by a director or secretary of the company. A public company raising funds privately, which has earlier filed a Statement in lieu of prospectus, has to submit only documents 2 and 4 listed above.

The Registrar shall examine these documents. If these are found satisfactory, a Certificate of Commencement of Business will be issued. This certificate is conclusive evidence that the company is entitled to do business. With the grant of this certificate the formation of a public company is complete and the company can legally start doing business. It is thus clear that the Formation of company in India involves several steps which are associated with filing of documents for the Formation of company in India and getting the requisite clearances.

2. Explain the importance of MOA in life of company and how it is different from AOA. [10]

Comparison Chart

BASIS FOR COMPARISON	MEMORANDUM OF ASSOCIATION	ARTICLES OF ASSOCIATION
Meaning	Memorandum of Association is a document that contains all the fundamental information which are required for the incorporation of the company.	Articles of Association is a document containing all the rules and regulations that governs the company.
Defined in	Section 2 (56)	Section 2 (5)
Type of	Powers and objects of the	Rules of the company.

BASIS FOR COMPARISON	MEMORANDUM OF ASSOCIATION	ARTICLES OF ASSOCIATION
Information contained	company.	
Status	It is subordinate to the Companies Act.	It is subordinate to the memorandum.
Retrospective Effect	The memorandum of association of the company cannot be amended retrospectively.	The articles of association can be amended retrospectively.
Major contents	A memorandum must contain six clauses.	The articles can be drafted as per the choice of the company.
Obligatory	Yes, for all companies.	A public company limited by shares can adopt Table A in place of articles.
Compulsory filing at the time of Registration	Required	Not required at all.
Alteration	Alteration can be done, after passing Special Resolution (SR) in Annual General Meeting (AGM) and previous approval of Central Government (CG) or Company Law Board (CLB) is required.	Alteration can be done in the Articles by passing Special Resolution (SR) at Annual General Meeting (AGM)
Relation	Defines the relation between company and outsider.	Regulates the relationship between company and its

BASIS FOR COMPARISON	MEMORANDUM OF ASSOCIATION	ARTICLES OF ASSOCIATION
		members and also between the members inter se.
Acts done beyond the scope	Absolutely void	Can be ratified by shareholders.

3. Discuss the duties and liabilities of promoter. [10]

A promoter is a person who occupies the fiduciary position and who, usually, takes care of the preliminary tasks such as incorporation, and floatation and solicits people to invest money in the company. A promoter, in general, have the control over the affairs of the company and the board of directors are accustomed to act with his advice. The below are the liabilities of a promoter:

1. Information furnished during incorporation — If it is proved that the company has been incorporated by giving false information that includes suppression of material facts, the promoter along with the first directors shall be made liable and the applicable action will be taken against them.

2. Misinformation while promoting and advertising — If it is found that, while advertising or issuing prospectus or inviting to purchase subscriptions, there is non-compliance in disclosing information, Promoters could be liable for the misstatements in the advertising material.

3. Misleading Promises to attract investments — If any deceptive or misleading forecasts are made, knowingly or recklessly, for the purpose of attracting investments, the promoters and the concerned key managerial personnel can be held liable

4. Contravention of private placement — If the acceptance of monies and issue of shares or securities that are intended for specific people are not done as per the rules, then the promoters could be liable for the violations.

5. Revival and rehabilitation activities — The promoters along with the directors are liable to attend the meetings and furnish necessary information to the committee of creditors. In the case of sick companies, if a tribunal finds that funds or other property of company is diverted to purposes that are not aligned to the interests of the company, the promoter, managers and the directors would be made liable and would lead to disqualification and the financial assistance will be removed.

6. Company liquidation and winding up activities — If any promoter, without reasonable cause, fails to cooperate with the Company Liquidator during winding up phase, he shall be made liable for his acts and he shall be punishable with imprisonment or fine.

7. Secret profits — If it is found that the promoter has undisclosed transaction of monies or contracts or agreements that have unstated profits, the company can make the promoter liable and his acts are considered as deceit or breach of duty in company. The promoter will be made guilty and further action could be taken by the company as per the relevant laws.