
Functions of the promoters

- To conceive an idea of forming a company and explore its possibilities.
- To conduct the necessary negotiation for the development of the business.
- To collect the requisite number of persons who can sign the MOA and AOA of the company and also to act as the first directors of the company.
- The decide about the**—Name and location of its registered office, the amount and form of its share capital, the brokers or underwriters for capital issue, if necessary, the bankers, auditors and legal advisers.
- To get the MOA and AOA drafted and printed.
- To enter into preliminary contracts with the vendors, underwriters, etc.
- To make arrangements for the preparation of prospectus, its filing, advertisement and issue of capital.
- To arrange for the registration of company and obtain the certificate of incorporation. To defray preliminary expenses.
- To arrange for the minimum subscription.

Legal position of a promoter

- The promoter is neither a trustee nor an agent of the company because there is no company yet in existence. The correct way to describe his legal position is that he stands in a fiduciary position towards the company about to be formed.
- They have in their hands the creation and moulding of the company.
- They have the power of defining how and when and in what shape and under what supervision, it shall start into existence and begin to act as a trading corporation.

Rights of promoters

- Right to indemnity.
- Right to receive the legitimate preliminary expenses.
- Right to receive remuneration.

Duties of promoter

- To disclose the secret profit.
- To disclose all the material facts.
- The promoter must make good to the company what he has obtained as a trustee.
- Duty to disclose private arrangements.
- Duty of promoter against the future allottees.

Liability of promoters

- Liability to account in profit.
- Liability for mis-statement in the prospectus.
- Personal liability.
- Liability at the time of winding up of the company.

Important steps in Registration of

- Application for Availability of Name of company.
- Preparation of Memorandum and Articles of association.
- Vetting of Memorandum and Articles, Printing, Stamping and signing of the same.
- Power of Attorney.
- Additional Documents Required.
- Statutory declaration.
- Payment of registration fees. Certification of Incorporation.

Promoters have the following liabilities under the Companies Act, 1956

- They can be liable for non-compliance of the provisions of the Act
- Severe penalty may be imposed
- The court may suspend the promoter from taking part in the management of the company
- Liable for any untrue statement in the prospectus to the person who has subscribed for any shares or debentures on the faith of the prospectus

The liabilities are:-

- a) To set aside the allotment of shares,
- b) Sued for damages,
- c) Sued for compensation
- d) Criminal proceedings

The requirements are as follows

- Application for availability of name
- Preparation of MOA and AOA
- Selection and finalization of MOA and AOA- Its printing, stamping and signing
- Preparation of other necessary documents
- Filling of the required documents for Registration to obtain certificate of incorporation and Certificate of commencement of business.

Memorandum of Association

The company to be registered under the companies act is required to have 2 documents stamped, registered and filed with the registrar of companies they be MoA and AoA.

- **MoA has been defined as** – MoA of a company as originally frame or as altered from time to time in pursuance of any previous company's law or of this act.
- MoA is the main document which contains rules regarding its constitution, objective, activities and area of operation of the company. This document is mainly made out for the outside world or in other words we can say that MoA is a mirror of a company in which an outsider can look its image.
- It also defines the extent and powers of the company.
- It is the charter of the company
- It contains the fundamental conditions upon which the company can be incorporated
- It contains the objects of the company's formation
- The company has to act within objects specified in the MOA
- It defines as well as confines the powers of the company
- Anything done beyond the objects specified in the MOA will be ultra vires. Their transactions will be null and void
- The outsider have to transact looking into the MOA

Conditions of the MOA

- It should be printed
- Divided into paragraph and numbers consecutively
- Signed by at least seven persons or two in case of public and private company respectively.
- The signature should be in the presence of a witness, who will have to attest the signature
- Members have to take shares and write the number of shares taken with full address

The MOA of the Limited Company

- The name of the company with 'limited' as the last word
- The name of the state where the registered office of the company is to be situated
- The objects of the company stating the 'Main objects' and the 'other objects'
- The declaration about the liability of the members is limited (limited by shares or guarantee)
- The amount of the authorized share capital, divided into shares of fixed amounts.

The Compulsory Clauses in MOA



- **The Name Clause**– it decides on the name of the company based on the capital involved
- **The Registered Office Clause**- where it has registered its head office and other branch office (The registered office can be changed with the permission of the ROC)
- **The Object Clause**-Main object, ancillary object and the other objects of the company are clearly specified (**Ashbury Railway Carriage Co V. Riche**). The applicable doctrine here is the “ Doctrine of Ultra Vires” beyond the powers of the company (opposed to Intra Vires)