



# **SNS COLLEGE OF ENGINEERING**

**Kurumbapalayam (Po), Coimbatore - 641 107**

**An Autonomous Institution**

**Accredited by NBA - AICTE and Accredited by NAAC - UGC with 'A' Grade**

**Approved by AICTE, New Delhi & Affiliated to Anna University, Chennai**



## **DEPARTMENT OF MANAGEMENT STUDIES**

**COURSE NAME : 19BA104- LEGAL ASPECTS OF BUSINESS**

**I YEAR / I SEMESTER**

**Unit - 4 : COMPANY LAW 2013 & IPR**

**TOPIC: Formation, Memorandum and Articles of Association**



# Formation of a Company

These are two principal stages in the formation of a company:

1. Promotion of a Company
2. Incorporation of a Company



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प्रारूप 1  
पंजीकरण प्रमाण-पत्र

संस्थापक संस्था: CIN Number 2008 - 2009

मैं यहाँ घोषणा करता हूँ कि इसका  
Name of the Company

यह संस्थापक, अपनी अधिनियम 1956 (1956 का 1) के अंतर्गत किया गया है और यह  
अपनी संस्थापक अधिनियम है।

यह प्रारूप-1 का अंश है और इसे केवल केवल केवल के अंतर्गत में जारी किया गया है।

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Form 1  
Certificate of Incorporation

Corporate Identity Number: CIN Number 2016-17  
I hereby certify that Name of the Company is this day  
incorporated under the Companies Act, 1956 (No. 1 of 1956) and that the company  
is private limited.

Given under my hand at Kanpur this Ninth day of June Two Thousand

(SEHAR PUNJAI A)  
उपरोक्त अधिकारी / Assistant Register of Companies  
उत्तर प्रदेश और उत्तरांचल  
Uttar Pradesh and Uttranchal

संस्थापक के व्यक्तिगत पता को प्रमाणित करने के लिए  
Mailing Address as per record available in Register of Companies office.

Name of the Company & Address  
for mailing

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## **1. Promotion of a Company**

Promotion is the stage of conceiving an idea of forming a company to do a business and working on that idea. The person involved in this task is termed as promoter. The promoter may work up the idea with the help of his own resources, influence or competence or he may, if necessary, take the help of technical and legal experts to bring a company into existence.

### **1.1 Promoter of a Company**

Promoter is a person who conceives the idea of starting a business, plans the formation of a company and actually brings it into existence.

Palmer has defined company promoter as “a person who originates a scheme for the formation of the company, has the Memorandum and the Articles prepared, executed and registered, and finds the first directors, settles the terms of preliminary contracts and prospects (if any) and makes arrangements for advertising and circulating the prospectus and placing the capital.”



**Sec. 2(69) of the Companies Act, 2013 defines the term promoter as a person:**

- (a) Who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
- (b) Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- (c) In accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act. This shall, however not apply to a person who is acting merely in a professional capacity.



## 1.2 Functions of Promoter

The main functions of a promoter are as follow:

- (i) To conceive an idea of starting a business and explore its possibilities.
- (ii) To undertake detailed technical, economic and commercial feasibility of the business propositions. Help of experts may be taken for that.
- (iii) To conduct negotiations for the purchase of a business in case it is intended to purchase an existing business.
- (iv) To collect the requisite number of persons i.e. 2 in the case of a private company and 7 in the case of a public company, who can sign the memorandum and articles of the company and also agree to act as the first directors of the company.
- (v) To decide the following:
  - (a) the nature of the company
  - (b) the location of its registered office
  - (c) the amount and form of its capital
  - (d) the underwriters or brokers for capital issue, if necessary
  - (e) the bankers
  - (f) the auditors
  - (g) the legal advisers.
- (vi) To get the memorandum of association and articles of association drafted and printed.
- (vii) To enter into preliminary contracts with vendors, under-writers etc.
- (viii) To arrange for the preparation of prospectus, its filing, advertisement and issue of capital.
- (ix) To pay preliminary expenses.
- (x) To arrange funds required by the company.



## 1.4 Duties of Promoter

- (i) **Not to make Secret Profit:** Promoters should not make any secret profits at the cost of the company without its knowledge and consent.
- (ii) **Disclosure of Material Facts:** it is the duty of the promoters to disclose fully all material facts relating to the formation of the company. The disclosure of all material facts, regarding contracts made and the profits earned by them from the formation of the company, should be made to an independent and competent Board of Directors.

## 1.5 Liabilities of Promoter

- (1) Non-disclosure of Secret Profit
- (2) Non-adoption of Preliminary Contract
- (3) Fraud in the Promotion of the Company
- (4) Omission in the Prospectus
- (5) Misrepresentation in the Prospectus



## 1.6 Remuneration to Promoter

The promoter has to incur the initial expenses in the process of formation of a company besides undergoing a good deal of arduous task. The claim for expenses should be supported by vouchers and should be placed before the directors of the company when formed.

The promoter may be remunerated in any of the following ways:

- (a) Promoter may sell his own asset to the company at profit for cash or shares in the company.
- (b) He may be given commission on the purchase price of the business taken over by the company.
- (c) He may be granted a lump sum as remuneration either in cash or in shares or debentures.

The amount of remuneration payable or paid to the promoters is required to be disclosed in the prospectus issued by the company.



## 1.8 Adoption of Preliminary Contract

A company may adopt preliminary contracts by either of the two ways:

(i) The company may adopt these contracts by entering into new contracts with the third parties on the same terms as were embodied in the original contract. Such a new agreement of adoption may not be expressly made but may be implied by the acts of the company.

(ii) The company may adopt these contracts under the Specific Relief Act, 1963. Sections 15(h) and 19(e) of the Act provide that a contract entered into by the promoters on behalf of the company before its incorporation can be enforced by or against the company, if the following two conditions are satisfied:

– The contract is entered into, for the purposes of the company and such contract is warranted by the terms of incorporation. The term “for the purposes of the company” implies that the contract should be for the working purpose of the company.

– The company accepts the contract after its incorporation and communicates such acceptance to the other party to the contract.





**RECAP**

**QUESTIONS???**

**THANK YOU**