

CHAPTER - 2**INCORPORATION OF COMPANY****PROMOTERS (SECTION 2(69))**

Means a person -

- who has been named as such in a prospectus or in the annual return ; or
- who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise ; or
- in accordance with whose advice, directions or instructions the BODs of the comp. is accustomed to act.

INCORPORATION OF COMPANY [SECTION 7]

Section 7(1) - Filing of the documents and information with the registrar -

For the registration of the company following documents and information are required to be filed with the registrar within whose jurisdiction the registered office of the co. is proposed to be situated.

- The memorandum and articles of the company duly signed by all the subscribers to the memorandum.
- A declaration by person who is engaged in the formation of the company.
(an advocate, a chartered accountant, cost accountant or company secretary in practice)

[AND]

by a person named in the articles (director, manager or secretary of the company)

That all the requirements of this act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with.

A declaration from each of the subscribers to the memorandum

from persons named as the first directors, if any, in the articles stating that -

- (a) he is not convicted of any offence in connection with the promotion, formation or management of any comp, or
- (b) he has not been found guilty of any fraud or of any breach of duty in any company under this Act or any previous comp. law during the last five years and
- (c) that all the documents filed with the Registrar for registration of the company contain info. that is correct & complete & true to the best of his knowledge & belief.

- the address for correspondence till its registered office is established.
- The particulars (names, including surnames or family names, residential address, nationality) of every subscriber to the memorandum along with proof of identity, and in the case of a subscriber being a body corporate, such particulars as may be substituted prescribed.

For being Director of a comp. 1st need to get DIN (Director Identification number).
for Comp. → CIN (Corporate Identification number)

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- the particulars (names, including surnames or family names, the director identification number, residential address, nationality) of the first director of the comp. & such other particulars including proof of identity as may be prescribed; and
- the particulars of the interests of the persons mentioned in the articles as the first directors of the co. in other firms or bodies corporate along with their consent to act as directors of the co. in such form & manner as may be prescribed.

SECTION 7(2) Issue of Certificate of incorporation on registration -

The Registrar on the basis of documents & information filed, shall register all the documents & information in the register & issue a certificate of incorporation in the prescribed form to the effect that the proposed co. is incorporated under this Act.

SECTION 7(3) Allotment of Corporate Identity Number (CIN) -

On and from the date mentioned in the certificate of incorporation, the Registrar shall allot to the comp. a corporate identity no., which shall be a distinct identity for the comp. & which shall also be included in the certificate.

SECTION 7(4) Maintenance of copies of all documents & information - The co. shall maintain & preserve at its registered office copies of all documents & information as originally filed, till its dissolution under this Act.

SECTION 7(5) Furnishing of false or incorrect information or suppression of material fact at the time of incorporation (i.e. at the time of incorporation) — shall be liable for action for fraud under section 447.

SECTION 7(6) Company already incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact (i.e. post incorporation) — shall liable for action for fraud under section 447.

SECTION 7(7) Order of the Tribunal
If comp. already incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact (i.e. post Incorporation) the Tribunal may, on an application made to it,

1. pass such orders, as it may think fit, for regulation of the management of the comp. including changes, if any, in its memorandum and articles, in public interests or in the interest of the co. & its members & auditors ; or
 2. direct that liability of the members shall be unlimited or direct removal of the name of the comp from the register of comps or
 3. pass an order for the winding up of the comp or
 4. pass such other orders as it may deem fit.
- Provided that before making any order the co. shall be given a reasonable opportunity of being heard in the matter.

EFFECT OF REGISTRATION (SECTION 9)

- From the date of incorporation the comp. becomes a legal person by the name contained in the Memorandum and capable of exercising all the functions of an incorporated comp.
- The issue of certificate of Incorporation is considered as conclusive evidence as to compliance of all the legal formalities in respect of registration of comp.

CHAPTER - 3

ESSENTIALS OF COMPANY

Features of A Company

Separate Legal Entity

Legally separate from the members

Perpetual succession

Change in members does not affect existence of comp.

Limited liability

Liability of Comp. different from liability of members

Artificial Judicial Person

- Comp. can act through human agency only
- Comp. can contract, sue & be sued in its own name.

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1. Separate Legal Entity
- When a comp. is registered, it is clothed with a legal personality.
 - It comes to have almost the same rights and powers as a human being.
 - Its existence is distinct and separate from that of its members.
 - A comp. can own property, have bank account, raise loans, incur liabilities and enter into contracts.
 - A member does not even have an insurable interest in the property of the company.

Eg:

Macaura vs Northern Assurance Co. Ltd.
 Macaura insured stock of fire
 Co. in his own name
 Comp. Co. refused to pay insured amt.
 Northern Assurance Co. Ltd.

CHAPTER - 3

Decision - It was held that contention of insurance co. is valid.

Because co. being an artificial person must have insured stock in co.'s name not by member's name.

- If it was sole proprietorship or partnership business the owner or partners would have received insured amount, because sole proprietorship or firm do not have separate legal entity.

2. Perpetual Succession

- Members may come or members may go, but the co. goes on forever.
- Comp. is an artificial person which is created by law & can be dissolved only by law.
- Its existence is not affected by the death or insolvency of its members.

3. Limited Liability

The liability of a member depends upon the nature of the comp. of which he is a member whether limited by shares, limited by guarantee or unlimited company.

4. Art. Artificial Legal Person

- Intangible, invisible but exist only in the eyes of law.
- Comp. is an artificial person, it is not a fictitious person.
- Being an artificial person, it depends upon natural person for getting its various work done.

5. Common Seal

- Common seal is the official signature of a company, which is affixed by the officers & employee of the comp. on its every document. The common seal is a seal used by a corporation as the symbol of its incorporation.
- The Co. (Amendment) Act, 2015 has made common seal optional.
- This amendment provides that the documents which need to be authenticated by a common seal will be required to be so done, only if the co. opts to have a common seal.
- In case a co. does not have a common seal, the authorization shall be made by two directors or by a director & the

Comp. secretary, whenever the comp has appointed a comp. secretary.

Applicability of The Companies Act, 2013

The provision of the Act shall apply to -

1. Comp. incorporated under this Act or under any previous comp. law.
2. Insurance comp. (except where the provisions of the said Act are inconsistent with the provisions of the Insurance Act, 1938 or the IRDA Act, 1999)
3. Banking companies (except where the provisions of the said Act are inconsistent with the provisions of the Banking Regulation Act, 1949. Eg ICICI, BOB
4. Comp. engaged in the generation or supply of electricity (except where the provisions of the above Act are inconsistent with the provisions of the Electricity Act, 2003) Tata Power
5. Any other comp. governed by any special act for the time being in force.
6. Such body corporate which are incorporated by any Act for time being in force, and as the Crt. Govt. may by notification specify in this behalf. Eg LLP