

Procedure/Steps for Formation of a company

Formation of a company

The procedure or formation of a company may be divided into four stages;

1. Promotion
2. Incorporation
3. Raising of capital
4. Commencement of business

I. Promotion

It is the first stage in the formation of a company.

In this stage the idea of carrying on a business is conceived by a person or a group of persons called promoters. They make detailed investigation about the workability of the idea, amount of capital required, operating expense etc.

Before a company can be formed, there must be some persons who have an intention to form a company and who take the necessary steps to carry that intention into operation. Such persons are called promoters.

The promoter is the person who brings a company into existence.

II. Incorporation

A company is said to be incorporated when it is registered with the registrar under the company's act. The certificate of incorporation is the birth certificate of the company. A company comes into existence from the date mentioned in the certificate.

Procedure for registration

The promoter has to first decide the proposed form of company as whether it is to be a public company or a private company.

They may form the company with limited liability, unlimited liability or limited by guarantee.

They have to decide the name of the company agreeable and desirable to all. For eg. if the name proposed is identical with or closely resembles the name of an existing company, it is undesirable.

For getting registration an application has to be made to the registrar. The application shall be accompanied by the following **documents**:

1. Memorandum of association
2. Articles of association
3. A statement of nominal capital
4. A notice of address of the registered office of the company.
5. A list of directors and their consent to an act signed by them
6. A declaration that all the requirements of the act have been complied with. Such declaration shall be signed by an advocate of high court or supreme court or a chartered accountant who is engaged in the formation of company

Certificate of incorporation

If the registrar is satisfied that all the requirements of the act have been complied with he shall register the company and issue a certificate of incorporation.

Conclusive proof

Once a company is registered incorporation cannot be challenged subsequently. The certificate of incorporation is a conclusive evidence of the fact that-

1. all the requirements of the act have been complied with.
2. company is duly registered.
3. company came into existence on the date of certificate.

Advantages of incorporation

1. Transferability of shares
2. Separate legal entity
3. Perpetual succession
4. Common seal
5. Separate property
6. Capacity to sue

III. Raising of capital

After incorporation a company can raise capital by issuing shares. A private company cannot issue shares to public.

In case of public company a copy of prospectus is filed with the registrar and it will be issued to the public. Those who are intended in purchasing share are required to send their application money to company's banker.

On the last date fixed for the receipt of application if the company has received application equal to minimum subscription the directors will start with allotment of shares.

IV. Commencement of business

A private company may commence its business immediately after incorporation.

But a public company cannot commence business immediately after incorporation but it has to obtain a certificate of commencement from the registrar.

MEMORANDUM OF ASSOCIATION

Memorandum of association for a company is like the constitutional law for a country. It is the document which contains the rules regarding constitution and activities of the company. It is a fundamental charter of the company.

It defines the extent of powers of the company, beyond that it cannot go. It is a document filed at the time of incorporation.

It is a public document i.e. any interested public can get a copy on payment of prescribed fees.