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Course :- M.Com. III Sem Corporate Legal Framework.

**Topic :- Formation of Joint stock company.**

Formation of a company : In company law includes various major stages for fulfilling the procedure of incorporation. Without these stages, the company cannot be formed. It includes various factors and legal documents for the purpose of incorporation. At the time of establishment there are two documents play a very important role. Those documents are Memorandum of Association (MOA) and Article of Association (AOA).

The stages of formation of a company are also known as process and procedure of incorporation of company. There are mainly four stages of formation of company.

- I. Promotion stage
- II. Registration or Incorporation stage
- III. Capital subscription stage
- IV. Commencement of business stage

## I. **Promotion Stage** :-

Discovery of business idea and take all initiative and investigation to form a company and planning and organizing all necessary resources to set up business.

Promoter is a person or group of persons who perform all act during promotion stage.

### Functions of Promoters :-

- a) Identification or discovery of business opportunity.
- b) Feasibility studies : Now promoter starts investigation regarding cost, profitability, production process, demand of product etc. on the basis of their investigation, promoter decide the size of business , location of business capital required.

### Feasibility includes :

- i) Technical feasibility
  - ii) Financial feasibility
  - iii) Economic feasibility
- c) Name approval : It is necessary for every company to get its name approved from registrar.
  - d) Fixing up signature to MOA : Promoter decide who will sign to documents that signatory may become director of company and promoter ask the director to buy qualification shares.
  - e) Appointment of professional :  
Promoter appoint
    - i) Brokers /underwriter
    - ii) Solicitors
    - iii) Bankers

- f) Preparation of necessary documents : In joint stock co. promoter prepare their legal document (MOA, AOA prospective etc) because they have to be submitted to registrar at the time of incorporation.

## **II. Incorporation stage (incorporation of a company under Indian Company Act 1956)**

- a) Filing of necessary documents : The following documents have to be submitted with registrar.
- i) Memorandum of Association : It is a primary document of company. In MOA there are some clauses such as: Name clause, objective clause, capital clause, liability clause etc.
  - ii) Articles of association
  - iii) Statement of authorized capital
  - iv) A list of directors with their names, addresses, age and occupation
  - v) Written consent of director
  - vi) Registered office of a company
  - vii) A statutory declaration stating that all the formalities of co. are duly completed.
- b) Payment of fees
- c) Registration (incorporation) of a company.
- d) Certificate of incorporation :- Registrar issue certificate of incorporation.

### Effect of certificate of incorporation

- Company is legally born
- Considered as separate legal entity with perpetual succession
- It is legal evidence that company came into existence.

### III. **Capital subscription stage :**

This is the third stage of formation of a company and in this stage the promoters of the company will decide the capital structure of their company because managing any company for their capital is an important task. A private company started its business after incorporation but public Ltd company has to perform third step i.e. capital subscription.

- Approval from SEBI (regulatory body) : SEBI control the capital market to protect interest of investors; Public Ltd company must submit all relevant information with SEBI before issuing its securities in capital market.
- Issue Prospectus : Invitation to public to subscribe to its share.
- Appointment of bankers, brokers and underwriters.
- To get minimum subscription
- Application to stock exchange : Company must get itself listed in stock exchange before issuing security to public.
- Allotment of Shares : Now company prepare details about the name and address of all share holders and submit it to registrar.

### IV. **Commencement of business :**

This is the fourth stage of formation of a company, at this stage the company gets a legal approval certificate from the registrar office for the purpose of running a specific company. When company legal documents are verified by registrar under Sec. 149(1) and Sec. 149(2) then the company gets a legal certificate to run the business. This legal certificate is also known as certificate of commencement of business.