

### CHP 3.FORMATION OF A COMPANY.

**Q.1 A] Select the correct answer from the option given below and rewrite the sentences:**

- 1) A company is .....  
a) A human being **b) An artificial person created by law** c) An natural individual
- 2) ..... are the person who undertakes the process of formation of company.  
**a) promoters** b) directors c) registrar of companies
- 3) A..... company need two or a more members.  
a) public **b) private** c) one person company
- 4) In a public company there must be minimum ..... or more member.  
a) one b) two **c) seven**
- 5) ..... Refers to contracts entered into by the promoters on behalf of a proposed company.  
**a) pre-incorporation / preliminary contracts** b) fiduciary contracts c) memorandum of association.
- 6) A director must have a ..... to be appointed as a director of a company .  
a) PAN **b) DIN** c) CIN.
- 7) ..... Has a 21 digit alpha numeric code which is unique number assigned to every company at the time of incorporation .  
a) PAN b) DIN **c) CIN.**
- 8) .....is a document which invites the public to buy the shares of a company.  
a) articles of association **b) prospectus** c) certificate of incorporation.

**B) Match The Pairs:**

| Sr no | Group A           | Answer   |
|-------|-------------------|--|
| 1     | Minimum 7 members | <b>Public company.</b>                         |
| 2     | DIN               | <b>Unique number assigned to each Director</b> |

|   |                                  |   |
|---|----------------------------------|---|
| 3 | Preliminary contracts            | <b>Contracts entered by promoters with third parties.</b> |
| 4 | Fiduciary duties towards company | <b>Promoters</b>  |
| 5 | CIN                              | <b>21 digit alphanumeric code number</b>                  |

**C) Write A Word Or A Term Or A Phrase Which Can Substitute Each Of The Following Statements.**

1) Term which means registering a company as per provisions of Companies Act, 2013.

**Ans: Incorporation.**

2) Persons who undertake the necessary steps to set up a company.

**Ans: Promoters.**

3) Term which refers to contracts entered into by Promoters with third parties on behalf of the proposed company;

**Ans: Preliminary contracts.**

4) The Birth Certificate of a company.

**Ans: Certificate of Incorporation.**

**E) State whether the following statements are True or False.**

1) A company is an artificial person.

**Ans: True.**

2) To form a Public company, there must be minimum 2 persons/promoters.

**Ans: false**

3) Promoters are persons who take the necessary steps to set up a company.

**Ans: True.**

4) Promoters can make secret profits while setting up a company.

**Ans: false**

5) In India companies have to be incorporated as per the provisions of Companies Act, 2013.

**Ans: True.**

6) DSC is needed by Directors when they have to sign documents for e-filing.

**Ans: True.**

7) A company can be registered even without submitting Memorandum of Association and Articles of Association.

**Ans: False**

8) Every Director has to quote his DIN while giving his consent to be a Director of a company.

**Ans: True**

9) ROC issues CIN only to certain companies.

**Ans: false**

10) All companies need Certificate of Incorporation.

**Ans: true**

11) All companies need Certificate of Commencement of business.

**Ans: false**

**E) Find The Odd One.**

1) CIN, DIN, PAN

**Ans: PAN.**

2) Promotion, prospectus, Incorporation of a company

**Ans: prospectus**

**F) Complete the sentences.**

1) Promoters are the persons who undertake the process of.....

**Ans: Formation of a company.**

2) The document issued by the Registrar of companies when a company is incorporated is called as .....

**Ans: Certificate of Incorporation .**

3) On incorporation of a company the ROC allots a unique identity number called as .....

**Ans: corporation identify number (CIN).**

4) On behalf of a proposed company, preliminary contracts with third parties are entered by.....

**Ans: promoters.**

**G) Select the correct option from the bracket:**

|  |  |  |
|--|--|--|
|  |  |  |
|--|--|--|

| Sr no | Group a                               | Group B                            |
|-------|---------------------------------------|------------------------------------|
| 1     | Promoters                             | <b>Formation of a company</b>      |
| 2     | <b>Birth certificate of a company</b> | Certificate of incorporation       |
| 3     | CIN                                   | <b>Corporate identify number</b>   |
| 4     | RUN is used for                       | <b>Reserving name of a company</b> |

#### H) Answer In One Sentences:

1) Who is promoters ?

**Ans: A person Who undertakes and completes all the preliminary works necessary for the establishment of the company is called 'Promoter'.**

2) What is CIN?

**Ans. CIN stands for Corporate Identity Number. A 21 digit alpha numeric code which is issued by Registrar of Companies (ROC) at the time of incorporation of a company.**

3) Which company needs Certificate of Commencement of Business?

**Ans. A Public Limited Company needs Certificate of Commencement of Business.**

4) What are Preliminary Contracts?

**Ans. Preliminary contracts are the contracts which are entered into by the promoters on behalf Of the company before its incorporation with third Parties.**

#### I) Correct the underline words and rewrite the following sentences.

1) ROC prepares draft Memorandum and Articles of Association.

**Ans: Promoter prepares draft Memorandum and Articles of Association.**

(2) Certificate of Commencement of Business is like a birth certificate of a company.

**Ans: Certificate of Incorporation is like a birth certificate of a company.**

#### J) Arrange In Proper Order:

**I) (A) Appoint First Directors**

**(b) Prepare Draft Memorandum of Association and Articles of Association.**

(C) Come up with business idea

**Ans: (C) Come up with business idea**

**(b) Prepare Draft Memorandum of Association and Articles of Association**  
**(a) Appoint First Directors**

2) (A) Incorporation of a company

(b) Commencement of business

(C) Promotion

**Ans: (c) Promotion**

**(a) Incorporation of a company**

**(b) Commencement of Business**

**Q.2 Explain the following concept:**

**(1) Promoters.**

**Ans.**

**Meaning :** (1) In precise terms, a group of persons who take lead to form a company and complete all the preliminary works necessary for the establishment of the company are called promoters.

(2) They are founders of the company. Promoters discover the business opportunity and put it in action. '

(3) They complete all the formalities that are required to start a business. They also arrange for finance through various resources.

**(2) Promotion.**

**Ans.**

**(A) Meaning:** To bring the joint stock company into existence, 3 lot of preliminary work is needed to be completed. This includes different activities like discovering business ideas, raising finance, property and management skill and taking various decisions to form the company. The process through which a company gets formed is called company promotion.

According to Gerstenberg. The promotion is 'the discovery of business opportunities and subsequent organisation of funds, property and managerial ability into a business concern for the purpose of making profits from the newly floated enterprise.

**(B) Stages in promotion:**

(1) Discovery of an idea i.e. business opportunities.

(2) Preparing financial plan.

(3) Preparing draft of Memorandum of Association and Articles of Association.

(4) Entering into Preliminary contracts with third parties.

(5) Appointment of First directors.

### **(3) Certificate of Incorporation.**

**Ans.**

**(A) Meaning :** A certificate which is issued by the Registrar of Companies after its registration, signifying the birth of the company, is called the Certificate of Incorporation. It is required to be obtained by all companies i.e. Public Limited companies as well as Private Limited companies.

Certificate of Incorporation contains (1) the name of the company (2) the date of issue (3) Corporate Identity Number to indicate whether a company is listed or unlisted, industry code, state of its location, year of incorporation, ownership type and registration number. (4) Permanent Account Number (PAN) and Tax Deduction and Collection Account Number of the company. (5) Signature of Registrar with date and his seal.

### **(4) SPICe.**

**Ans.**

**(A) Meaning :** SPICe stands for Proforma for Incorporating Company electronically. It is a simplified integrated process for incorporation of a company Vide rule 38 of companies (incorporation) (4th Amendment). This rule made applicable with effect from 2/ 10/2016. SPICe is to be filled for applying:

1. Reservation of Name of Company
2. Incorporation of a new company
3. DIN for Directors
4. PAN and TAN for new company

This form needs to be submitted With Registrar of Companies (ROC).

(B) Submission of documents: Along With SPICe form, documents like e-Memorandum of Association, e-Articles of Association other documents necessary for registration (incorporation) of company and prescribe fees required to be submitted electronically to Registrar of Companies (ROC)

### **(5) CIN.**

**Ans.**

**Meaning :** CIN is an abbreviated form of Corporate Identity Number. CIN is an unique identify number, having 21 digit alpha numeric code, allotted to each company by the Registrar of Companies (ROC) at the time of issuing Certificate of Incorporation. Every company is required to quote CIN in every form and correspondence it does with other

business entities. CIN indicates whether a company is listed or unlisted, industry code, state of its location, year of incorporation, type of company and ROC's company registration number.

### **Q.3 Study the following case/situation and express your opinion.**

(1) Mr. Ram, Mr. Sam and Mr. Tom who are partners have come together to convert their business into a company. They have finalized all the details about the business they want to do, capital needed, etc. However, they do not know how to proceed with the legal formalities. Hence they appoint Mr. Shah who is a Practicing Company Secretary to help them prepare documents needed for incorporating the proposed company.

(a) Can Mr. Ram, Mr. Sam and Mr. Tom convert their partnership firm into a company?

**Ans. Mr. Ram, Mr. Sam and Mr. Tom can convert their partnership firm into a company. They can convert their partnership firm into a Private Company as it need minimum 2 promoters/persons.**

(b) Name 2 most important documents needed to incorporate a company.

**Ans: (b) Memorandum of Association and Articles of Association are the 2 most important documents needed to incorporate a company.**

(c) Will Mr. Shah be considered as a Promoter of the Company? Why?

**Ans: Mr. Shah will not be considered as promoter of the company. This is because Mr. Shah who is a practicing Company Secretary only assist the partners (promoters) in completing the legal formalities in a professional capacity.**

(2) Mr. T along with his 5 friends have submitted all the necessary document for incorporation of TRIM private limited company

**(a) How many minimum promoters are needed to incorporate a private company?**

**Ans: (a) Minimum 2 promoters are needed to incorporate a private company.**

**(b) When can TRIM Private limited company be said to have come into existence.**

**Ans: (b) As soon as Registrar of Companies (ROC) issues a certificate of incorporation to TRIM private Limited company, it is said to have come into existence.**

**(c) Name the two most important documents that must be submitted at the time of Incorporation of a company.**

**Ans: (c) The two important documents viz. Memorandum of Association and Articles of Association must be submitted to the Registrar of Companies (ROC) at the time of incorporation of a company.**



(3) Sagar company limited got its Certificate of Incorporation on 1st Sept. 2018. The application for Incorporation was submitted on 16th Aug. 2018. There were 10 promoters who took the steps to incorporate the company:

(a) State the date on which Sagar company limited came into existence legally?

**Ans. (a) On 1st September, 2018, Sagar Company Limited come into existence legally.**

(b) On which date will the company get its Corporate Identity Number?

**Ans: (b) On 1st September, 2018 (the date on Which Sagar limited is issued Certificate of Incorporation), the Sagar Company Limited will get its Corporate Identity Number (CIN).**

(c) How many minimum promoters are needed for incorporating a public company?

**Ans: (c) Minimum 7 promoters are needed for Incorporating a public limited company.**

#### **Q.4 Answer in brief:**

**1) State the contents of certificate of Incorporation ?**

**Ans: The contents of certificate of incorporation:**

**(1) The name of the company:** Under this head, the Registrar of Companies (ROC) writes the name of the incorporate company approved by the Central Registration Centre (CRC).

**(2) The date of issue:** Under this head, the date on which ROC issues Certificate of Incorporation is mentioned.

**(3) Corporate Identity Number (CIN):** In this column 21 digit alpha numeric code called Corporate Identity Number (CIN) is mentioned. It is unique identity number allotted to each incorporated company.

**(iv) PAN and TAN of the company:** Under this head, Permanent Account Number (PAN) issued by the Income Tax Department to the company is mentioned. PAN consists of 10 digit alpha numeric code. Below PAN, Tax Deduction and Collection Account Number (TAN) issued by the Income Tax Department to the company is mentioned. It consists of 10 digit alpha numeric code.

**(4) Signature of Registrar with date and his seal:** Under this head, Registrar of the companies put his signature with date and seal of Registrar. It is usually in the form of name, either in full or part or in contracted form. The signature of Registrar makes the certificate of incorporation authentic and a piece of legal evidence.

**(2) State the importance of Certificate of Incorporation.**

**Ans. The importance of Certificate of Incorporation:-**

**(1) Birth Certificate of a Company:** The Certificate of incorporation is similar to the birth certificate of the company. This is because company comes into existence from date of issuance of this certificate.



**(2) Legal Person:** After the incorporation and issue of certificate of incorporation, a company becomes a legal or artificial person having distinct personality from its members. Although it has no body, soul and physical existence, still the company is recognised as a person in the eyes of law.

**(3) Perpetual Succession:** After the incorporation, a company becomes a body corporate having perpetual succession. It is created by the process of law and dissolved only by the process of law. Its existence and continuation are not affected by death, retirement, insanity or insolvency of its member or members. It has long, stable and everlasting existence.

**(4) Status:** The company can sue other business entity or person for recovery of claims and can be sued upon by others in its own name.

### **(3) Write a note on Role of Promoter.**

**Ans.**

**(1) Discover the business opportunity:** Promoters discover the business opportunity or idea of business proposed to be started. They collect the necessary information and test the idea i.e. to conduct the feasibility of a business idea.

**(2) Resources mobilization:** Promoters decide the aims and objectives of the proposed business. Amount of capital (finance) required, scale of operation, etc.

**(3) Prepare draft of important documents:** Promoters also draft the important documents required for incorporation of 3 company such as Memorandum of Association. Articles of Association, prospectus, etc.

**(4) Collection of capital (finance):** Promoters then approach the different types of investors to collect needed finance or capital for the proposed business.

**(5) Appointment of first directors:** Immediately after the incorporation of a company. The promoters appoint first directors to take charge of the management of the company. Usually, promoters themselves nominate as the first directors of the company.

**(6) Enter into preliminary contracts:** Promoters then enter into contract with third parties i.e. vendors, underwriters, banks, etc. on behalf of the proposed company. These contracts are called 'preliminary contract' or 'pre-incorporation' contracts; e.g. hiring of office, purchase of land. building, machinery, preparing and printing different documents, etc.

**(7) Fiduciary duties towards the company:** Promoters have certain fiduciary duties towards the proposed company they are setting up. They should be loyal, hardworking and put efforts to protect and promote the interest of proposed company. They cannot make any secret profit at the cost of proposed company.

**Q.5 Justify the following statements:****(1) Certificate of Incorporation is like a Birth Certificate of a company.**

**Ans.** (1) a certificate in the prescribed form issued by the Registrar of Companies to the company after its registration, signifying its birth is called the Certificate of Incorporation. Certificate of corporation is like a Birth certificate of the company because company, came into existence from the date of issue of certificate of incorporation. It is a legal proof of the fact that the company is incorporated. (2) After getting the certificate of incorporation, a company becomes a legal or artificial person having distinct identity or personality. Although it has no body, soul and physical existence, still it recognizes as person in the eyes of law. After incorporation the company gets separated from its members. It becomes a body corporate having a perpetual succession from the date of its incorporation.

**(2) Every company on incorporation gets a CIN.**

**Ans:**

(1) CIN Is the Corporate Identity Number of a company. CIN shows whether a company is listed company or unlisted company, industry code number, state of its location, year of incorporation, type of company and registration number given by ROC. So, CIN becomes company's unique identity number. Every incorporated company is required to quote CIN in every form and correspondence required in course of business. CIN number is also required to obtain various permission from different authorities. So without CIN number, running of a business is not possible.

**(3) Promoters play an important role in the formation of a company.**

**Ans:**

(1) In the words of Justice Cockburn, a promoter is the one who undertakes to form a company with reference to a given project and sets it going and takes the necessary steps to accomplish that purpose. Promoters are the expert entrepreneurs and may have gained deep knowledge of related business activities. They bring together land, labor, capital, management skill, etc. and complete all the preliminary works to establish the company.

(2) They are the men of imagination and resources. They see the opportunities of business and grab them more easily. They conceive the idea of starting business, plan for the formation of. Company and actually bring the company into existence. Promoters play an important role in the formation of a company.

**Q.6 Answer the Following:****(1) Explain briefly the steps involved in incorporation of a company.**

**Ans. Following steps are undertaken to incorporate a company :**

**(1) Obtain Digital Signature Certificate (DSC):** Digital signature is a signature of a

person in digital (electronic) form. Digital signature is used to sign on e-documents. DSC is required for the persons authorised to sign e-documents. Promoters and the first directors of the proposed company are required to obtain DSC by making application to the certified authority.

**(2) Register DSC in the name of the Director with Ministry of Corporate Affairs**

**(MCA):** The promoters and the first directors have to register their DSC with the MCA. MCA records and maintains the details such as their DIN, personal details, etc. of every promoter and director.

**(3) Obtain Director Identification Number (DIN):** Every director who is appointed by the promoters must have DIN i.e. Director Identification Number. The proposed directors and promoters, who do not have their DIN, have to apply for DIN in electronic form SPICe 32 at the time of incorporation.

**(4) Apply for Reservation of Name:** The promoters have to obtain approval for proposed name of the company from the Central Registration Centre (CRC) by ailing form called RUN (Reserve Unique Name) with the prescribed 'fees through MCA portal ([www.mca.gov.in](http://www.mca.gov.in)). After verifying the database, CRC gives its approval for the proposed name and reserve the name for a period of 20 days from the date of application.

**(5) Finalize Memorandum of Association and Articles of Association:** For incorporation of the company, promoters have to submit two important documents viz. Memorandum of Association and Articles of Association. Memorandum of Association lays down the aims and objects of the company and Articles of Association contains information regarding the internal management of the company. The promoters take help of professionals such as legal experts, C.A., company secretary, etc. to finalize the draft Memorandum of Association and Articles of Association promoters have to send a copy of Memorandum of Association and Articles of Association to one or more stock exchanges If such pr0posed company wants to be a listed company.

**(6) Signing, stamping and dating of Memorandum and Articles of Association:** The subscribers to Memorandum of Association must sign the Memorandum of Association and Articles of Association in the presence of at least one witness who has to attest the signatures and sign. The names, descriptions, addresses, occupations etc. of the subscribers and witness are mentioned on the Memorandum of Association and Articles to be stamped as per the provisions of Indian Stamp Act, 1899. Due stamp duty is required to be paid at the time of Incorporation.

**(7) Preparing other necessary documents:** A written consent of the Directors or promoters to act as first directors of the company. Such written consent must be in the prescribed format as per Companies Act, 2013 and must be duly signed by each director or promoter. The details of manager, secretary, etc. should be recorded for filling purposes. A statutory declaration should be taken from the subscribers and first directors that they have not convicted of any offence in connection with promotion, formation and

management of any company during preceding 5 years. They also have to give written undertaking that all the documents filed with Registrar are correct, true and complete.

**(8) Address for communication and notice of Registered office address:** At the time of incorporation, promoters have to give an address for communication. A company is required to have a registered office within 30 days of incorporation.

**(9) Obtain a statutory declaration:** A statutory declaration stating that all the legal requirements of the Act necessary for the incorporation have been complied with. This declaration must be signed by an advocate, practicing company secretary, a Cost Accountant or Chartered Accountant, etc. who are engaged in the formation of the company.

**(10) Filling of application and documents for Incorporation of a company with ROC:** Promoters have to submit an application to the Registrar of Companies (ROC) in the prescribed form along with all the necessary documents and prescribed fees for incorporation.

**(11) Obtaining Certificate of Incorporation:** The Registrar of Companies (ROC) will, then, scrutinize the documents and, if they are in order. He will enter the name of the company in the Register of Companies and will Issue a Certificate of Incorporation.

**(2) Promoters play an important role in the formation of a company. Explain.**

**Ans:** 1) In the words of Justice Cockburn, a promoter is the one who undertakes to form a company with reference to a given project and sets it going and takes the necessary steps to accomplish that purpose. Promoters are the expert entrepreneurs and may have gained deep knowledge of related business activities. They bring together land, labor, capital, management skill, etc. and complete all the preliminary works to establish the company.

(2) They are the men of imagination and resources. They see the opportunities of business and grab them more easily. They conceive the idea of starting business, plan for the formation of company and actually bring the company into existence. Promoters play an important role in the formation of a company.