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**PRE-INCORPORATION CONTRACTS AND ITS EFFECTS: ANALYSIS
UNDER COMPANIES ACT 2013**- Anurag Pattnaik¹**Abstract**

A company is deemed to exist when incorporated under the Companies Act, 2013 or any earlier Companies Act. All companies must be united before doing business. When establishing a company, deciding in advance whether the industry will be private or public, its purpose, how much investment will be made, and many other things are necessary. Many laws and procedures need to be completed first. A company can only be established after completing all legal requirements correctly. All business entities must comply with the guidelines set by the authorities to do business. When a company is registered or incorporated, it is said to have a birth certificate called the Certificate of Incorporation.

Keywords: Pre Incorporation, responsibilities, liabilities, promoters, registration, company

Introduction

The establishment and integration of a company is like the birthday of a person who goes through various stages of the creation of many parts of his body while in the womb. Before starting a company, there will be a lot of planning work to do. Integrating an idea into a business consists of several stages; the most important are the preliminary integration and design stages. These are discussed in detail below. This Sec describes the terms of pre-incorporation agreements and explains the Promoters' roles, responsibilities, and obligations. This page focuses on the company registration process.

Promotion

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As the name suggests, this registration period focuses on work that the company has not yet done. A Promoter can be an investor who will find money for an idea (his creation or another idea). To share the work, entrepreneurs try to get entrepreneurs to trust the concept and generate investment. According to Section 2(69)1 of the Companies Act 2013, "Promoter"²

is one word. Technically, Promoters are individuals identified in the company's publications.

The company must identify its Promoters in the annual return under Section 96(3). Promoters are to a company what parents are to their children. Besides convincing investors to support a business idea, Promoters involve physical capital such as labour, raw materials, management skills, machines, etc. Followers should conduct a SWOT analysis based on the strategy's prospects. Although they are interested in the company's idea, they are still considering the possibility of a relationship. SWOT analysis is applied to four parameters: Strengths, Weaknesses, Opportunities and Threats. It is used to evaluate the company's overall competitiveness in the market and create strategic plans. It is sometimes called situation assessment or situation analysis. SWOT Analysis is a tool that helps identify a company's current best performance and develop strategies for future success. SWOT can also identify business areas hindering the company's growth that competitors can use to hedge against time.

The concept of Promoter can be seen in three different ways:

- Promoter is the person named in the company's report and said to be the Promoter in the company's annual report and
- Promoter is the person mentioned in the company's report. A person who works to establish company policies and Organizer is appointed by the Board of Directors with the authority to nominate a person selected by a majority of the Board of Directors.

Functions of a Promoter

(i) Identify the business needs of the business

Before introducing a business idea, the Promoter first finds the business potential.

Any new product, service, or even the design or production of existing products using new technology will be a potential opportunity.

(ii) Effectiveness of the idea

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The Promoter should carefully examine the new company's potential from business and financial information. Therefore, the manager of the business strategy, market research, and consultancy from product experts, entrepreneurs, economists, etc. Carefully investigate various aspects of the business strategy using multiple methods, including feedback. Promoters plan to use this strategy to defraud businesses. Listed below are three tests that can be used to test the feasibility of an idea.

- **Technical conceivability:** Although a business idea is reasonable, sometimes it is technically challenging to implement due to problems such as the cost of purchasing raw materials, limited budget, and difficulty in production under the conditions.
- **Financial resources:** Due to limited resources and tight deadlines, raising the money needed to start a large business may not be possible. Financial institutions may also be cautious about lending large amounts of cash to startups.
- **Financial Sufficiency:** Even if the business idea is prosperous and financially viable, it may not be commercially viable. It won't be profitable or bring in enough money. In this case, the Promoting organisation chooses not to do this.

(iii) Company Name

After the initial creative partnership, the Promoter needs a company name. Promoters apply to the Companies Registry Office in that region wherever they want to establish the company's headquarters.

On application to the Registrar, our name is listed as 'X or Y or Z', preferred and promoters under

Chapter 8 of the Companies (Corporations) Rules, 2014.

(iv) Signatories of the Completing agreement

The promoters elect the members who will sign the Secs of Association of the new company. The company's first director is usually the person who signs the MOA.

To become a company manager, the person who signs the contract must give written approval.

(v) Employment of Professionals Merchant bankers, auditors, lawyers, etc. professionals will be appointed by Promoters. These experts help collect the necessary information which must be sent to the relevant Registrar of Companies for the company's registration

(vi) Creation of the necessary documents

The organiser is responsible for collecting the documents that must be provided to the Registrar of Companies to register the company's name. These documents include return policies, Secs of incorporation Secs of incorporation, management agreements, and policy statements.

Responsibility of the Promoter

Since the company has not yet been established at the pre-establishment stage, the relationship between the Promoter and the company does not include a physical proxy-agency relationship. Various legal interpretations have determined that the relationship between the Promoter and the company is based on trust. These decisions have been implemented in the General Court and the Indian Courts.

Promoters' responsibilities are discussed here:

Responsibility to disclose hidden benefits:

Promoters have a fiduciary duty to the company that liability will be included, as previously stated. Promoters are responsible for informing the company of any secret profits they may obtain. Promoters have the right to reimburse the company for all expenses incurred during the establishment of the company.

Responsibilities to promote the company to the market:

The Promoter will prepare to sell, rent or lease a company property. However, it is assumed that these transactions were made without market knowledge.

In this case, the company may sign a Promotership agreement and cancel the sales, rental, or rental agreement or even request a refund of the money the Promoter received from the agreement.

Responsibility of loyalty to potential shareholders:

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Promoters have a duty of loyalty to the company, the signatories of the Secs of Association and the beneficiaries of future distributions by the company. The relationship of trust between the Promoter and potential shareholders

indicates that the Promoter will comply with all standards the company sets for itself.

Obligation to Disclosure Advertising Revenues:

Provided that the Promoter has a relationship with the company, it must disclose to the company the income it obtains during the business promotion. Liability to the company for all money received as an agent: There is a relationship between the Promoter and the company, and the Promoter must repay the company for all benefits received during his time as president.

Liability of Promoters

According to various provisions of the Companies Act 2013 (explained below), the promoter will be liable for any misconduct or misconduct as he has a good relationship with the company. The Promoters must have the following responsibilities:

1. Responsibility to protect business transactions

There is a close relationship between the company and the Promoters; therefore, the company has the right to investigate business from the Promoters without permission.

At the time of the transaction, the company has two options for this transaction: to reject the Promoters's agreement with the third party or to file a lawsuit so that the Promoters returns after receiving the money and the proceeds from doing business against the will of the company for profit.

2. Liability for misrepresentation in the prospectus

Sec 26 of the Companies Act 2013 specifies the information that must be included in the prospectus. The Promoters will be responsible if these terms are violated. Under Sec 63 of the Companies Act, 2013

The Promoters may be liable for making false statements in the report—those who made false statements in form 63. According to the Sec, it is punishable with imprisonment of up to two years and a fine of up to 5,000 rupees. Under Sections 34 and 35 of the Companies Act 2013, if any misrepresentation in the prospectus would lead a person to believe that the report is accurate

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and liable, the shareholder may register the shares. However, only the initial allotment of shares (not future allotments) is subject to the cap on support obligations.

3. Personal Liability for Contracts

The promoter may be personally liable for all contracts concluded during the pre-establishment period of the company until the terms of these contracts are fulfilled or until the company becomes liable for the Promoters's liability after the company's incorporation. Creates company liability.

4. Responsibilities of Promoter throughout the entire liquidation process of the company

According to Sec. 340, the official liquidator shall apply to the court to hold the Promoters accountable for fraud or breach of trust in the standards of the entire liquidation process. Company. In addition, if the entrepreneur claims that there has been fraud in the promotion or establishment of the company, the entrepreneur may be investigated under Sec. 300.

Pre-establishment agreement and Promoters' obligations before company establishment

The pre-establishment agreement is the crucial commitment document signed by the Promoter before the company's establishment. For the long-term development and survival of the company. However, these pre-merger agreements are different from regular agreements. These agreements are reciprocal, and their effects are reciprocal. It works with promoters, service providers, and interested parties, and these agreements positively impact potential companies that are still in the pre-registration stage. Promissory Notes are generally used in transactions involving two parties. However, in this case, since the company is not a party to the contract, they are used for the benefit of third parties. According to the above article, before the company is established, the recipient of the contract is the parent company. Reasons why the company is not responsible for previously concluded contracts can lead to disputes. Still, the simple answer is that a person cannot be held liable if he is not present and not a party to the pre-establishment agreement. Before the promulgation of the Special Act, the disclaimers regarding pre-commercial shares were the same as in the Indian courts. Pre-merger and non-common law agreements are valid under Articles 15(h) and 19(e) of the Specific Relief Act. Who can claim performance under clause 15 (h) 12? When Promoters sign the contract before joining the

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company, the company must agree to accept other persons into the contract. Company Representatives and Company guarantee this agreement. Under Section 19(e)13, a party may seek extraordinary relief if the partners agreed to the merger and the agreement was reasonable. The business must confirm acceptance of the agreement and notify others. According to the usual practice for promoters in such cases, if the Company has accepted the contract and notified someone else by way of a document, it agrees with the guarantee. This was done according to the above provisions of the Special Relief Act of 1963. The four judges heard many cases to understand liability under the pre-establishment agreement. We will examine the examples below. In the case of *Weavers Mills v Balkis Ammal and Others*¹⁴, the promoters agreed to purchase various properties in the name of the business. Still, when incorporated, the company acquired land and buildings there. Although no transfer of ownership took place between the Promoters and the company, this was decided. According to the decision, ownership of the company's assets is legal and full. The Madras High Court has expanded the meaning of the above terms. Judges have heard many cases to understand obligations under the pre-incorporation agreement. We will examine the examples below.

Weavers Mills v. Balkis Ammal et al. ¹⁵, the entrepreneurs agreed to purchase various properties in the business's name, but when merged, the company acquired land and residential buildings. Although no transfer of ownership took place between the Promoters and the company, this was decided. According to the decision, ownership of the company's assets is legal and full. The Madras High Court has expanded the meaning of the above terms. The Supreme Court accepted that there would be no principal-agent relationship since the principal and agent would not exist without the company's cooperation. He added that the company could not be held responsible for the pre-incorporation contract through adoption because it was not a party to the contract language and was not present when the contract was signed. In the case of *Newborn v. Sensolid Ltd.*¹⁶, an unaffiliated company entered into a contract, and the other party refused to perform its obligations—*Court of Appeals Kellner v. Baxter*. The judge noted that there would be no pre-litigation agreement because the company could not make or enter into pre-incorporation agreements. The idea is that if a representative or Promoters signs the contract, the Promoters will be personally recognised. Still, if that person acts as a representative of the company that is not involved, the contract will be invalid and create confusion.

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The Principles of Pre-Incorporation Agreements and Supporters'

Liability may provide that, under the law, beneficiaries will be personally liable for the company's pre-incorporation agreements. This was also the case in the United Kingdom and India before the passage of the Specific Relevance Act of 1963. Essentially, this means that the role of the Promoters cannot be avoided. However, Indian law has accepted the transfer of responsibility from the project owner to the company in case of a pre-contractual agreement. The first and most important method is a new contract recognised by the courts for transferring responsibility from the Promoters to the company. However, in India, there is a special law called the Special Relief Act of 1963, which contains provisions applicable to promoters' agreements during the company's pre-merger period. However, if a deal is not reached before the merger, those who carry out the merger are responsible.

Company Registration/Establishment

A joint stock company gains legal status by registering a company within the scope of the Companies Law.

Rule 718 provides detailed instructions regarding the registration process. This article explains the conditions for establishing a company. Specific details regarding the documents are as follows:

- Articles of Association, which is the company's articles of association and has the authorised stamp; For private companies, the minimum number of signatories is two; For public companies, the minimum number of signatories is seven and the following information: their names, positions and addresses;

Company registration procedures

The Ministry of Corporate Affairs website has the facility for online company registration, bringing together the different stages of copyright creation on one web page. Also, to create or register a business name; you must first apply for a unique domain name for your future company for a fee of Rs. 1000. The next step is to fill out the Simplified Corporate Form online. This document provides a way to start an online business, starting with collecting the necessary information for the Promotersing company. 1Secondly, you can fill out e-AOA (Electronic

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Articles of Association) and e-MOA (Electronic Articles of Association) electronically with INC- 33 and INC- document numbers.

As we all know, MOA is the product of the company's organisation, which essentially reflects the purpose of the organisation and the leaders involved in its establishment. AOA has established the rules and regulations for cooperation after the Memorandum of Association, which facilitates the establishment of the process. The E-AOA also establishes the duties, rights and privileges of directors, officers and the board of directors. Companies can prepare the Participation Rules in line with their own needs or choose to benefit from the differences in the Companies Report Law. The AOA must be completed, signed by all directors, and witnessed by two people. Internal Management Philosophy refers to the Establishment products of a company, as they concern various topics such as:

- Rights of different types of shareholders,
- Sharing the process, including all published processes.

All documents deemed relevant by Article 7 of the Articles of Association and the directors' digital signature must be submitted per the Companies Law. Regarding entities seeking mergers, the Ministry of Corporate Affairs has made efforts to expedite the process of obtaining Simple DIN codes for CEOs of start-ups. The central government of India is trying to expand the efficiency and resources of company registration by creating a single window review process for company registration.

Certificate of Incorporation

The Registrar is responsible for registering Articles of Association, Articles of Association and other documents. Once the registrant is satisfied with the application and supporting documents, they will be considered for issuing a Certificate of Participation.

The final document proving the existence of a company is the certificate of incorporation.

Effectiveness of the Certificate of Incorporation

- According to Sec. 35 of the Companies Law No. 195621, the Certificate of Incorporation is the final legal evidence of the existence or existence of the company.

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- Once issued, the certificate of incorporation constitutes proof of the legality of the business as of the date specified in the document, even if a lawsuit has been filed due to the illegality of the company's establishment.

Incorporation Certificate

- Private businesses can start operating after receiving the establishment certificate. When a public company receives its certificate of incorporation, it creates a poster to encourage the public to register their shares. The minimum subscription price is stated in the advertisement. After that, the minimum number of products specified in the report must be sold. Once the required number has been reached, a certificate and letter from the bank confirming that the full payment has been sent to the registration authority and the property has been sold.
- The registrar will review the information. If all legal requirements are met, the registered person is given a certificate called "Certificate of Commencement". This is undeniable proof that the listed company is operational.

Conclusion

According to the above, the establishment period of the company can be defined as the combination of the period before the establishment and the period after the foundation—a moment of unity. The pre-establishment period can be considered as the concept phase of the company.

When raising money for a business, the names of Promoters appearing in the company's publications are essential. Promoters also conduct a SWOT analysis of the industry to determine its business potential and whether investors can consider it an investment. The roles and responsibilities of Promoters are clearly explained, demonstrating the integrity of their relationship with the company. By discussing the merits of the preliminary agreement, it was determined that the Promoters would be personally liable for all pre-participation agreements unless the agreement continues or under the following conditions: India, in case the provisions of the Special Law apply to the company Accept the Agreement and inform the other party about

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the liability business The registration process of the government as it affects the needs of investors to businesses in the economy. Its role in improvement is critical.

Ministry of Corporate Affairs has given the option to register the company by providing a unique name by submitting the Articles of Association and Memorandum of Association online along with the digitally recorded check, the effect of which is stated: The company is satisfied with all the legal requirements for the company to be registered. This makes integration easier. This law outlines the state's responsibility to support businesses that support economic development. The certificate of incorporation is essential to prove that the industry is sufficiently established and cannot be revoked unless the company registrar decides to incorporate the company after detecting fraud in the design process. The registered company certificate is self-explanatory, and the date of incorporation is not affected by the date of receipt, so even if the certificate was obtained on 20 February, it is clear that the date of registration of the company. All transactions made after this date are deemed carried out legally.

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