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The process of forming a company depends on the type of company being formed. Forming a new company can be broken down into four stages: Promotion Incorporation Capital Subscription Commencement of Business What Decisions Have to Be Made to Form a Business? Before you can establish a company, you will need to make several decisions. For example, you will need to determine: The name of the company How you want it to be incorporated (LLC, s-corp, c-corp, partnership, sole proprietorship, etc.) A business can change its legal form at any time. The formation of each business type provides a different legal framework, including how it conducts its activities and its tax liability. When a private company or a public company with no share capital is formed, promotion and incorporation are the only steps that must be taken before starting its operations. While all new companies have various steps to take during the formation process, a private company is able to commence business immediately after they have received a certificate of incorporation. A company with share capital will go through additional steps before commencing business. Let's take a look at the process of forming a new company. All companies start with promoters. This is the individual or individuals who take the initial steps necessary to begin the formation process. When an individual or individuals discover a business opportunity and then invest with funds, property, and managerial skills for the purpose of earning income, this would be a promotion. Another example of promotion would be participating in the startup of an enterprise. It involves all activities that are a part of the startup process. Promotion begins as early as when an individual seriously starts considering the formation of the company, according to H.E. Heagland. In addition, once the business is up and running, promotion comes to an end, Heagland adds. Likewise, Guthmann and Dougall agree that promotion begins at the conception of the idea and carries on until the business is operating. Of course, an enterprise can't just establish itself; an individual or individuals must bring the enterprise into existence. Therefore, it has to be promoted to exist. If something is to be promoted, it must have a promoter as well. The promoter is the individual who conceives the idea of formation and then takes action to establish the enterprise into existence. Promoters can be professional, occasional financial contributors, entrepreneurs, or a variety of other types. When a company incorporates, it becomes its own legal business structure. It is separate from its owner or owners and is an entity to transact business as a separate legal unit. In addition, a corporation has liability protection and can raise capital through sales of shares of the company. Retirement funds and qualified retirement plans are established more easily, as well. States will vary in the requirements for forming a corporation. After a name has been verified for availability, the promoter would prepare the following documents. Memorandum of Association Forming a company places a lot of obligations on a lot of people. All initial shareholders who agree to form the company will sign the memorandum. The memorandum is basically a legal document that sets up the company, including the objectives of the corporation, its name, its address, and the names and addresses of all members. Articles of Association The articles of association set out how the company is to be managed, governed and owned. If a company chooses to hire a full-time director or manager, an agreement should be entered and then be filed with the Registrar of companies. Basic Steps to Form a Company To register your company, you will need to file several important documents. These documents must be filed with the appropriate entities or you will not have a legit business to operate. Instead, you will be operating illegally and this could land you in hot water with the IRS. Once you have filed the proper paperwork with the appropriate entities, you will likely have to pay a fee to become an official business. After you have met all requirements, you will then receive a Certificate of Incorporation. If you need help with understanding the process of forming a company, you can post your legal need on UpCounsel's marketplace. UpCounsel accepts only the top 5 percent of lawyers to its site. Lawyers on UpCounsel come from law schools such as Harvard Law and Yale Law and average 14 years of legal experience, including work with or on behalf of companies like Google, Menlo Ventures, and Airbnb. Image: 4 Important stages in the formation of a company The whole process of company formation can be divided into four stages as given below. Promotion of a Company Registration of a Company Certificate of Incorporation; and Commencement of the Business. 1. Promotion of a Company: A business enterprise does not come into existence on its own. It comes into existence as a result of the efforts of an individual or group of people or an institution. That is, it has to be promoted by some person or persons. The process of business promotion begins with the conceiving of an idea and ends when that idea is translated into action i.e., the establishment of the business enterprise and commencement of its business. Who is a Promoter in a Company? A successful promoter is a creator of wealth and an economic prophet. The person who is concerned with the promotion of business enterprise is known as the Promoter. He conceives the idea of starting a business and takes all the measures required for bringing the enterprise into existence. For example, Dhirubhai Ambani is the promoter of Reliance Industries. The promoters find out the ways to collect money, investigate business ideas arranges for finance, assembles resources and establishes a going concern. The company law has not given any legal status to promoters. He stands in a fiduciary position. Types of Promoters Promoters are different types such as professional promoters, occasional promoters, promoter companies, financial promoters, entrepreneurs, lawyers and engineers. 2. Registration of a Company It is registration that brings a company into existence. A company is properly formed only when it is duly registered under the Companies Act. Procedure of Registration In order to get the company registered, the important documents required to be filed with the Registrar of Companies are as follows. 1. Memorandum of Association: It is to be signed by a minimum of 7 persons for a public company and by 2 in case of a pvt company. It must be properly stamped. 2. Articles of Association: This document is signed by all those persons who have signed the Memorandum of Association. 3. List of Directors: A list of directors with their names, address and occupation is to be prepared and filed with the Registrar of Companies. 4. Written consent of the Directors: A written consent of the directors that they have agreed to act as directors has to be filed with the Registrar along with a written undertaking to the effect that they will take qualification shares and will pay for them. 5. Notice of the Address of the Registered Office: It is also customary to file the notice of the address of the company's registered office at the time of incorporation. It is to be given within 30 days after the date of incorporation. 6. Statutory Declaration: A statutory declaration by any advocate of the Supreme Court or of a High Court, or an attorney or pleader entitled to appear before a High Court or a practicing chartered accountant in India, who engages in the Company formation or by a person indicated in the articles as director, managing director, Secretary or manager of the company, mentioning that the requisites of the Act and the rules there under have been complied with. It is to be filed with the Registrar of Companies. When the required documents have been filed with the Registrar along with the prescribed fee, the Registrar scrutinizes the documents. If the Registrar is satisfied, the name of the company is entered in the register. Then the Registrar issues a certificate known as Certificate of Incorporation. 3. Certificate of Incorporation On the registration of Memorandum of Association, Articles of Association and other documents, the Registrar will issue a certificate known as the 'Certificate of Incorporation'. The issue of certificate is the evidence of the fact that the company is incorporated and the requirements of the Companies Act have been complied with. 4. Certificate of Commencement of Business As soon as a private company gets the certification of incorporation, it can commence its business. A public company can commence its business only after getting the 'certificate of commencement of business'. After the company gets the certificate of incorporation, a public company issues a prospectus for inviting the public to subscribe to its share capital. It fixes the minimum subscription. Then it is required to sell the minimum number of shares mentioned in the prospectus. After completing the sale of the required number of shares, a certificate is sent to the Registrar along with a letter from the bank stating that all the money is received. The Registrar then scrutinizes the documents. If he is satisfied he issues a certificate known as 'Certificate of Commencement of Business'. This is the conclusive evidence for the Commencement of Business.

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