

Promoters of Share Company

Description

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The formation of a share company can start either with five founders or through subscription of shares to the public. When the latter happens, there will be promoters involved in making sure the share company's business objective is sold to the public. In this brief article we shall see who promoters are, benefits allocated to promoters, and liabilities of promoters.

Definition of Promoters

A promoter is defined as a person who initiates the formation of a company by public subscription, invites persons to join the company by preparing a prospectus or generally acts with the view to realizing the formation of the company and is liable for damage sustained in connection with failure to establish the company, if the company is not formed. The promoters of a share company may be one or more natural or artificial persons. An expert who based on a contract concluded with a promoter, for consideration, conducts a study necessary for the formation of the company, renders professional support or similar service is not a promoter. A promoter need not be a shareholder in the company.

Benefits Allocated to Promoters

The promoters may, for a period not exceeding three years, receive a share in the profits, beginning from the date on which the company starts making profits, which may not exceed twenty percent of the net profits in the balance sheet. Specifics regarding the amount of the share in profits, the manner in which the years payment is to be effected are chosen and the like shall be provided for in the Memorandum of Association. The promoters may not receive, from the company, any other special benefit except that which is provided for as a share in profits. Nothing shall affect the benefits that may be due to promoters in their capacity as shareholders. The benefit to be provided in shares in the profits shall be paid in cash. The special benefit due to the promoters may not be paid by issuing shares.

Persons not Competent to be Promoters

A person that had been convicted of breach of trust, theft, robbery or any other similar criminal offense, in connection with his function as a promoter, director, manager, inspector, auditor or any other managerial positions in a business organization or in any other circumstance shall not act as a promoter of a share company formed by public subscription.

Liability of Promoters

Promoters shall be jointly and severally liable to persons with whom they contracted, shareholders, and third parties with respect to the following matters: a) commitments entered into for the formation of the company; b) full subscription of the capital of the company and deposit of the paid-up capital in the

name and to the account of the company; c) valuation of contributions made in kind to the company in accordance with the provisions of the Commercial Code; d) accuracy of statements made to the public in respect of the formation of the company; e) legality of the process followed in the formation of the company; f) verification by an Auditor of the formation procedure of the company; g) where the company is not formed, refund of paid up contributions with interest to subscribers who demand that in accordance with this Code; and h) all other matters connected with the formation process.

Period of Limitation

Claims for damages against promoters shall be barred after five years from the date when the aggrieved party knew the damage and of the person liable. There shall be absolute limitation after ten years from the date when the act complained of took place.

Take Over of Commitments from Promoters

The company shall take over from the promoters commitments entered into by such promoters during the formation of the company and expenses made by them in so far as such commitments and expenses were necessary for the formation of the company or if approved by the general meeting of the subscribers. Where the company is not established for whatever reason, the subscribers shall not be liable for the commitments and expenses made by the promoters.

Conclusion

The new Commercial Code has introduced in detail the benefits of promoters, the liability of promoters and who can be a promoter and who cannot be a promoter. Public subscription of shares now takes the active role of promoters. In this way business and investment in the form of a share company will be conducted in a predictable manner.

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