



# Define Promoters

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## Who is a Promoter?

As provided in sec. 2(69) of the Companies Act,2013,' the term Promoter means a person.'

- a) Who has been named as such in the prospectus or is identified in the company Annual return referred in sec, 92.
- b) Who has been control over the affairs of the company, directly or indirectly whether as shareholder, director, or otherwise, or
- c) In accordance with those advice, directions, or instructions the BOD of the company is accompanied with it.'

According to Justice C. Cockburn, CJ in Twycross V. Grant-  
'Promoter is one who undertakes to form a company with reference to a given object and to set it going, and who takes the necessary steps to accomplish that purpose."

The carrying of persons on the ground of profit to run a business is called promoters. The role of the promoter is to make a detailed investigation of the weakness and the strongest of the idea and determine the amount of capital to be invested and estimate the operating expense and probable income





The concept of the promoter is a term of business and not that of law. It has not been defined anywhere in the act.

According to L.J. Brown. "The term promoter is a term not of law but of business, usefully summing up in a single word a number of business operations familiar to the commercial world by which a company is generally brought into existence."

### **Functions of Promoters of a Company**

- (1) The formation of an idea and forming the company and exploring the possibilities
- (2) To conduct the negotiation for the purchase of a business
- (3) To collect the number for the signing of the MOA and the AOA



- 4) To decide the name of the company, location of the registered office, amount and form of share capital
- (5) To get the MOA and the AOA drafted and printed
- (6) To arrange for the minimum subscription
- (7) To arrange for the registration of the company and certificate of incorporation.



## **Rights of Promoters**

### **(1) Right to Indemnity**

The promotor are severally and jointly liable for any false statement given in the prospects therefore when more than one person acts as the promoter of the company, one promoter can claim against another promoter for the compensation and damages paid by him.

### **(2) Right to Receive the legitimate Preliminary expenses**

He has the right to recover the legitimate expenses which had to spend during the process of the company in cost of advertisement, fees for the solicitor, etc. The right to receive the preliminary expenses is not a contractual right. It depends upon the discretion of the directors of the company.

### **(3) Right to receive the remuneration**

The right to receive remuneration is not a contractual right. It completely depends on the company to make sure to provide the same or not. In some cases, articles of the company provide for the directors to pay a specified amount to promoters for their services but this does not give the promoters any contractual right to sue the company.



## **Duties of Promoters of a Company**

To disclose the secret profit

promotor should not make any secret profits. If in case he has it is his duty to disclose the same. He is also empowered to deduct the reasonable expense incurred by him.

To disclose all the material facts

promotor of the company must disclose all the material facts and information,

The promoter must make good to the company what he has obtained as a trustee. As the promoter has a fiduciary relationship with the company. It is the duty of the promotor to make good to the company for his company to whatever he has obtained ad a trustee.

Duty to disclose the private arrangement

It is the duty of the promoter to disclose all the private arrangements resulting in him profit from the promotion of the company.

Duty of promoter against the future allottees

promotor has a fiduciary relationship with the company. In the same way, the promoter has a fiduciary relationship with the future allottees of the share.



## **Liabilities of Promoters of a Company**

### **(1) Liability to account for profits**

The promoter is liable to account to the company for all secret profits made by him without full disclosure to the company. They will sue the promotor for the amount of profit and recover the same with interest

### **(2) Personal Liability**

The promoter is personally liable for all contracts made by him on behalf of the company until the contracts have been discharged or the company takes over the liability of the promoter.

### **(3) Liability of the misstatement in the prospectus**

In the case of Mismanagement of the prospectus, the promotor is liable and needs to pay compensation of every share and debenture for any loss or damage sustained due to the wrong information on the prospectus.

### **(4) Liability at the time of winding up the company**

In the Case of winding up of the company, on an application made by the official liquidator, the court may make a promoter liable for misfeasance or breach of trust. Further, where fraud has been alleged by the liquidator against a promoter, the court may order his public examination



## **Position of Promoters in Companies Act, 2013**

The expression 'promoter' has not been defined under the Companies Act, 1956, although the term is used expressly in sections 62, 69, 76, 478, and 519. Section 62 of the Companies Act, 1956 defines 'promoter' for the limited purpose of that section only. But in Companies Act 2013, the term 'to accomplish that purpose.'

