

- **Liabilities of Promoter**

The liabilities of promoters are given below:

Liability to account in profit:

As we have already discussed that promoter stands in a fiduciary position to the company. The promoter is liable to account to the company for all secret profits made by him without full disclosure to the company.

The company may adopt any one of the following two courses if the promoter fails to disclose the profit.

(a) The company can sue the promoter for an amount of profit and recover the same with interest.

(b) The company can rescind the contract and can recover the money paid.

Liability for misstatement in the prospectus:

The promoter liable to pay compensation to every person who subscribes for any share or debentures on the faith of the prospectus for any loss or damage sustained by reason of any untrue statement.

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. The death of promoter does not relieve him from liabilities.

Liability at the time of winding up of the company:

In the course 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 for his public examination.

Preliminary Contracts /Pre-Incorporation Contracts Made by the Promoters:

Preliminary contracts are those contracts which are made by the promoters with different parties on behalf of the company yet to be incorporated. Such contracts are generally entered into by promoters to acquire some property or right for and on behalf of the company to be formed.

The promoters enter into preliminary contracts, generally as agents or trustees of the company. Such contracts are not legally binding on the company because two consenting parties are necessary to a contract whereas the company is non entity before incorporation.

The company has no legal existence until it is incorporated. It therefore follows:

1. That when, the company is registered, it is not bound by the preliminary contract.
2. That the company when registered cannot ratify the agreement. The company was not a principal with contractual capacity at the time of contract. A contract can be ratified only when it is made by an agent for a principal who is in existence and who is competent to contract at the time when the contract is made.

3. That if the agent undertook any liability under the agreement, he would be personally liable notwithstanding that he is described in the agreement as an agent and that the company may have attempted to ratify the agreement.
4. The company cannot enforce the preliminary agreement.

The preliminary contracts made by promoters generally provided that if the company adopts the agreement the promoter's liability shall cease and if the company does not adopt the agreement within a certain time either party may rescind the contract. In such a case promoter's liability would cease after the lapse of fixed time.