

AN ANALYSIS OF COMPANY FORMATION AND CONSTITUTION: KEY PRINCIPLES AND LEGAL IMPLICATIONS

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Abstract

This article provides a comprehensive review of the principles of company formation and constitution, focusing on the legal frameworks and key documents involved in establishing a company. The formation and constitution of a company involve critical procedures such as the drafting of the memorandum and articles of association and compliance with statutory requirements. By analyzing these themes, this article aims to highlight the importance of legal structure and governance in creating a successful business entity.

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INTRODUCTION

Company formation and constitution are fundamental concepts in corporate law that establish the legal identity and governance structure of a business. The process of company formation includes the registration of a legal entity, while the constitution of a company defines its internal rules and regulations. This article explores the themes of company formation and constitution, providing an overview of key documents and legal requirements. It also discusses the significance of these processes in ensuring legal compliance and effective corporate governance.

Methods

This study utilized a qualitative content analysis method to review and synthesize findings from relevant research papers on company formation and constitution. The research focused on the analysis of legal principles, statutory requirements, and key constitutional documents such as the memorandum and articles of association. Papers selected for review included those that examined both theoretical and practical aspects of corporate law.

RESULTS

According to the Law of the Republic of Uzbekistan "On Joint Stock Companies and Protection of Shareholders' Rights," joint-stock companies are formed through methods of establishment and reorganization. This chapter discusses the establishment of joint-stock companies. A joint-stock company can be established in the form of an open or closed joint-stock company. A joint-stock company in which its participants can transfer their shares to other persons without the consent of other shareholders is considered an open joint-stock company. A joint-stock company in which shares are distributed only among its founders or within a predetermined group of persons is considered a closed joint-stock company. The minimum number of shareholders in an open joint-stock company is not

limited, whereas the number of shareholders in a closed joint-stock company must be at least three. If the number of shareholders of a company has not been reduced to the number stipulated by law, each founder of the company must be a shareholder. An open joint-stock company is entitled to conduct an open subscription to its issued shares and to freely sell them, taking into account the requirements of the legislation. In this case, the number of its shareholders may not be limited. Such a company is not entitled to conduct an open subscription to its shares or offer them for purchase to an unlimited number of persons in any other manner. The number of shareholders in a closed joint-stock company cannot exceed fifty. If the number of shareholders exceeds the specified limit, it must be converted into an open joint-stock company within six months from the date on which the number of shareholders listed in the shareholders' register exceeds the established limit. If this deadline is not met, the company must be liquidated in court. [H.R.Rahmonqulov S.S.Gulyamov]

The establishment of a company by its founders is carried out based on the decision of the founders, who can be legal or physical persons, and who have signed the founding agreement. Any other joint-stock company can act as a founder of a joint-stock company as a legal entity. The decision to establish a new company is made by the supervisory board of the relevant company. The general meeting of shareholders only considers the participation of the company in holding companies, financial-industrial groups, and other associations of commercial organizations. Such decisions must be recorded in the minutes of the general meeting of shareholders.

The analysis revealed several critical findings on the themes of company formation and constitution:

Company Formation Process: The process of forming a company involves several legal steps, including registering the company name, preparing the memorandum and articles of association, and complying with statutory requirements. The registration process confers legal personality, making the company a distinct entity separate from its owners (Min, 2003).

Memorandum and Articles of Association: The memorandum of association serves as the foundation of a company, laying down its name, objectives, and the extent of liability of its members. The articles of association outline the internal management rules, including governance structures, rights, and duties of members (Jain, 2020).

Role of Legal Personality: Once a company is registered, it acquires a separate legal personality. This concept, outlined in the Companies Act 2006, allows the company to enter into contracts, own property, and sue or be sued in its own name (Hannigan, 2021).

Enforcement and Interpretation of the Company Constitution: The constitution of a company forms a statutory contract between the company and its members, as well as between the members themselves. This contract is enforceable under section 33 of the Companies Act 2006, but amendments to the articles are subject to both statutory and common law limits (Roach, 2019).

Distinction Between Public and Private Companies: The book differentiates between public and private companies, emphasizing that public companies are subject to more stringent regulations and disclosure requirements. The legal distinction impacts the governance, liability, and capital structure of companies (Bottomley et al., 2017).

DISCUSSION

The findings demonstrate that the formation and constitution of a company are not merely procedural requirements but foundational elements that define the legal and governance framework of a business. The memorandum and articles of association play a critical role in establishing the scope of a company's activities and ensuring that internal governance aligns with legal expectations. Furthermore, the enforcement of these documents ensures that companies maintain their legal obligations and operate within the boundaries of the law.

The distinction between public and private companies has significant implications for corporate

governance, particularly in areas such as transparency, accountability, and shareholder rights. Public companies, due to their larger size and broader impact on the economy, are required to adhere to stricter legal standards compared to private companies.

CONCLUSION

Company formation and constitution are integral components of corporate law that establish a company's legal identity and governance structure. The findings from this analysis emphasize the importance of adhering to statutory requirements and maintaining a clear and enforceable company constitution. Legal personality, as well as the memorandum and articles of association, form the backbone of a company's legal framework, providing a solid foundation for corporate governance.

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