

CONTRACT

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Whichever the Seller, Applicant will accept the Buyer's payment for the PRODUCT's service is

All of programs shown as contained in Schedule "A" attached hereto, the parties hereto agree and approve as follows:

1. The total amount paid for all services, including and representing a _____ liability.

100. If _____, paid in cash, credited to bank checks, or a deposit upon execution of this Agreement, to be paid

5. The proposals to the state government shall be forwarded to a committee known as the State Debt Commission by the Union.

3. The buyer promises and agrees to deliver good title and warrants title to all the property to be sold hereunder. The same to be free and clear and unencumbered. All promises of and property sold be delivered in the same condition that it is in, reasonably close and new.

3. The construction of the bill, with payment by the Bank of the balance of the direct payment and the delivery to the holder of a bill of order drawn on at sight.

PRE- INCORPORATION CONTRACTS

- ❖ Companies Act No.07 of 2007
Section 23 - Section 25
- ❖ Case Law

PRE- INCORPORATION CONTRACTS

- What is a pre-incorporation contract?

A contract entered in to before the incorporation of a corporation

- Sec 23 –

"pre-incorporation contract" means –

- a. A contract purported to have been entered into by a company before its incorporation; or
- b. A contract entered into by a person on behalf of a company before and in contemplation of its incorporation.

Warranties Implied in Pre-Incorporation contracts

- Sec 24(1)-
 - Notwithstanding anything to the contrary in any law
 - In a pre-incorporation contract,
 - There shall be an IMPLIED WARRANTY by the person who enters into the contract in the name of or on behalf of the company-
- A. That the company will be incorporated within such period as specified in the contract OR if no period is specified, within a reasonable time after the making of the contract.
- AND**
- B. That the company will ratify the contract within such period as specified in the contract OR if no period is specified, within a reasonable time after the incorporation of such company.

Breach of Implied warranties

- Sec 24(2) –

The amount of damages recoverable in an action for breach of an implied warranty



the amount of damages that is recoverable in an action against the company for an unperformed obligation under the contract by the company if the contract had been ratified by the company.

- According to the Companies Act of 2007, a promoter's liability can be avoided in 2 methods:

A. Ratification – Sec 23(2)

B. The Company makes a fresh agreement with the third person – Sec 24(3)

Ratification

- Sec 23(2) –

Notwithstanding anything to the contrary in any law, a pre-incorporation contract may be ratified

➤ Within such period as may be specified in the contract OR

➤ If no such period is specified, within a reasonable time after the incorporation of the company

Sec 23(3) –

A ratified pre-incorporation contract should be as **valid and enforceable** as if the company had been a party to the contract at the time it was entered into.

Fresh Agreement

- Sec 24(3)-

- ☐ After the incorporation of a company,
- ☐ When the company enters into a contract in the same terms as or in substitution for a pre-incorporation contract (not being a contract ratified by the company under section 23)
- ☐ The liability of a person who purported to enter in to a contract in the name of the co. or on behalf of the co. should be discharged.

Failure to Ratify

Sec 25-

- The court can make an order –
 - Where a company has acquired property pursuant to a pre-incorporation contract
 - A. Directing the company to return property acquired under the pre-incorporation contract, to that party;
 - That has not been ratified by the company after its incorporation,
 - B. Validating the contract in whole or in part; or
 - C. Granting any other relief in favour of that party
 - On an application made in that behalf by the party from whom the property was acquired,

Case Law

- A co. becomes a legal person only after it is incorporated
- Therefore, before the incorporation, a co. cannot make a contract either personally or through an agent (as there cannot be an agent to a non-existing principal)



- A pre-incorporation contract does not bind the company



- Therefore, the person who entered in to the contract is bound by it unless the co. ratifies it afterwards

- ***Kelner v. Baxter***

A pre-incorporation contract binds the promoter not the co.

- ***Re English Colonial Produce Co. Ltd***

The mere fact that a benefit was taken does not change this position.