

# PROMOTERS



# Who is a Promoter

- Promoter ‘a person who takes the necessary steps to form a company’
- Promoter – not defined in the Companies Act



## ❖ Twycross V. Grant

“A promoter is one who undertakes to form a co. with reference to a given project, and to set it going, and who takes the necessary steps to accomplish that purpose....

.....and so long as the work of formation continues, those who carry on that work must, .... Retain the character of promoters”.

- Promoters = Parents of a company.

# Who can be a Promoter

- Promoter could be an individual or another corporation.
- There could be more than one promoter.

➤ However,

Mere servant or agent of a promoter is NOT a promoter.

Eg:     -An attorney who does the legal work necessary for formation of a co. is not a promoter  
          -Accountant

# The Fiduciary Position of a Promoter

❖ The Promoter has **fiduciary duties**.

❖ Erlanger V. New Sombrero Phosphate Co.

*They (promoters) stand, undoubtedly in a fiduciary position. They have in their hands the creation and molding of the co.*

## Fiduciary Duties.....

- Should not make secret profit.
- Must make FULL DISCLOSURE of any profits the Promoter makes

- Erlanger V. New Sombrero Phosphate Co.

*It is unjust for promoters to use their effective control over a corporation to exploit that corporation for their own private gain.*



# **The Remedies Available to the co.** **against the Promoter**

- Where the promoter fails to fully disclose facts to the company:
  1. Rescission
  2. Recovery of secret profits
  3. Damages for breach of fiduciary duty

# What is the Payment for service of a promoter?





# **Payment for service of a promoter**

- No Right for remuneration or compensation.  
(promoters = parents)
- However, generally the Articles of Association confer discretionary power upon directors to pay preliminary expenses out of company funds.