

The Meaning, Status, Power, and Liability of Promoters in Incorporation of a Corporation

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Abstract

There exist deep conflicts with regard to meaning, status, power, and liability of promoters of a corporation in Taiwan's legal circle. On one hand, the academics are inclined to adopt a formal standpoint. On the other hand, decisions of courts insist on a substantive point of view. This Article takes sides with formal view. By reviewing an important judgment recently handed down by Supreme Court, some theoretical and logical problems of substantive view are exposed. The Article, then, goes on to claim that adoption of the formal view does not necessarily weaken the protection of those parties who enter into preincorporation contracts with promoters, as substantive view defenders think it will. The Article concludes that adoption of the formal view will realize capital maintenance as well as transaction's security, both of which are important aims Taiwan's Company Law tries to achieve.

Keywords: Company Law, De Facto Corporation, Fiduciary Duty, Incorporation, Promoter, Promoters' Partnership, Preincorporation Transactions

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