

INCORPORATION OF COMPANIES, OPC AND CHANGES IN SHARE CAPITAL

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The Companies Act, 2013

Historical background

- Companies Act, 1956 (30,000 cos.)
- 25 amendments till date (more than 8,00,000 cos.)
- Corporate scams and build up for new Bill
 - Concept paper in 2004
 - Setting up of JJ Irani Committee
 - New Companies Bill, 2008 based on recommendations of JJ Irani Committee
 - New Companies Bill, 2009
 - Reference to Standing Committee on Finance and its report in August, 2010
 - New Companies Bill, 2011
 - Reference again to Standing Committee on Finance and its report dated 15th June, 2012.

The Companies Act, 2013

Time line

- 18th Dec, 2012 passed by Lok Sabha
- 8th August, 2013 passed by Rajya Sabha
- 29th August, 2013 got President's assent
- 30th August, 2013 gazetted as Act no 18 of
2013

CA, 2013 vs. CA, 1956

- 29 chapters against 13 in CA, 1956
- 470 sections against 658 sections in CA, 1956
- 7 schedules against 15 in CA, 1956

CA, 2013 vs. CA, 1956

- Substantial part of law shall be in the form of rules to be prescribed.
- Applicability to the entire nation, no regional exemptions.
- Very few exemptions to private limited companies as compared to under CA, 1956.
- Few transition provisions.
- Very steep penalties and very harsh prosecution provisions.
- Very strict regime for company auditors.

Change in approach

- Shift from Shareholders Protection to stakeholders protection
- Corporate Governance /Investor Protection is Mantra
- Lot of Disclosures
- Strict penalties and prosecution
- Liabilities of Directors / Professionals increased
- Cost of Limited Liability increased
- Coverage of the Act increased

Coverage

- What are different kinds of companies under the new Companies Act, 2013
- Procedure to incorporate a Company in consonance with Companies (Incorporation) Rules 2014
- Various forms and its attachments used for incorporation
- Name Availability guidelines and its impact while choosing/suggesting a name
- List of section to be considered while drafting Articles of Association

- Share capital and changes in the light of Companies (Share Capital and Debenture) Rules, 2014
- One Person company (OPC)
 - Features
 - Eligibility norms
 - Corresponding Rules
 - Procedure for incorporation
 - Cessation of OPC
 - Provisions not applicable to OPC
 - Various forms and its attachments
- Penalties under the Companies Act

Object clause of MOA

- Section 4 requires the object clause in the Memorandum to be classified into:-
 - Objects for which co is incorporated
 - Matter considered necessary in furtherance thereof
- Earlier requirement was:
 - Main objects of the company
 - Objects incidental or ancillary to the attainment of main object &
 - other objects.
- Sec 13- Object clause can be altered simply by passing special resolution and filing prescribed Form with ROC.

COMMENCEMENT OF BUSINESS

- Section 11 provides that the company having share capital shall not commence any business or exercise any borrowing powers unless:
 - a) a declaration is filed by director with the Registrar that every subscriber to the Memorandum and has paid the value of the share agreed to be taken by him and
 - b) the company has filed with the Registrar a verification of its registered office in the manner as may be prescribed.
- Obtaining Certificate of Commencement of Business and holding Statutory Meeting by a public limited company is not required.

Incorporation as conclusive evidence

- Section 7 -Where it is found that the company got incorporated by :-
 1. furnishing false or incorrect information or;
 2. representation or suppressing any material fact or
 3. fraudulent action.
- the Tribunal may, on an application made to it, on being satisfied:
 - a) Direct that liability of the members shall be unlimited; or
 - c) Direct removal of the name of the company from the register; or
 - d) Pass an order for the winding up of the company; or
 - e) Pass such orders as it may deem fit.
- However, reasonable opportunity will be given to the company before passing any one of above orders.

PROCEDURE FOR INCORPORATION OF COMPANY

Procedure at a Glance

Procedure	Changes introduced	Under Companies Act, 1956	Under Companies Act 2013
Apply for DIN	No change except for the attachment and form no.	Form No.DIN-1	DIR3
Register DSC	DSC available only in token, no pfx files	-	-
Application for Name availability	Changes with respect to the contents of the form	Form 1A	INC-1
Application for incorporation	Changes with respect to attachments and information	Form 1 with 18 and 32	INC-7 with INC-21 and DIR-12

Receipt of Certificate of Incorporation	Form prescribed to be used by ROC	No form prescribed earlier	INC-11
Filing for commencement of business	Applicable to private limited companies also	No form prescribed earlier for pvt ltd co. Form 62 for Public limited co. with SLP	INC-21
Intimation of Registered Office	New requirement	Form 18 at the time of incorporation	INC-22 (at the time of incorporation if registered office and communication address is same) (within 30 days, if the communication

APPLICATION FOR DIN

- Make application in eForm **DIR-3**
- Requires Following documents-
 - Proof of Identity**
 - PAN Card (Mandatory)
 - Driving license,
 - Passport-Mandatory in case of Foreign nationals ,
 - Proof of residence**
 - Passport
 - Election/Voter cards
 - Ration card
 - Driving license
 - Electricity/Telephone bill
 - Aadhaar card.
- Copy of verification by the applicant as per eForm No. **DIR-4**

REGISTER DSC

The DSC that the applicant is to use, shall be registered with the MCA, once the name availability application has been filed.

RESERVATION OF NAME

- Apply in Form No. **INC-1** [Rule 9 of Chapter II of Companies (Incorporation) Rules 2013.
- The same shall be reserved for a period of 60 days.
- **Required Attachments- NO MANDATORY ATTACHMENT – ONLY EVENT BASED**

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In case the proposed name(s) are based on a registered trademark or on the Trade Marks Act, 1999, the approval of the owner of the trademark

RESERVATION OF NAME

- In principle approval from the concerned regulator, in case of use of words like: Insurance, Bank, Stock Exchange, Venture Capital Asset Management, Nidhi, or mutual fund
- NOC from the sole proprietor/partners/other associates in case the promoter is already carrying the business with the same name;
- NOC from existing company in case some other company exists with nearly the same name.
- Copy of affidavit, in case proposed name including phrase 'Electoral Trust'
- In case of name of relative used in the name, NOC from such person with the proof of relation.

NAME AVAILABILITY GUIDELINES

- It is not necessary that the proposed name should be indicative of the main object.
- Abbreviated name such as ‘ABC limited’ or ‘23K limited’ cannot be given to a new company.
- If the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding should not be allowed for a period of 2 years from the date of such dissolution.
- If the proposed name includes the word “State”, the same shall be allowed only in case the company is a government company.

CONTINUE....

- Change of name shall not be allowed to a company which is defaulting in filing its due Annual Returns or Balance Sheets or which has defaulted in repayment of matured deposits and debentures and/or interest thereon.
- If it includes the words indicative of a separate type of business constitution or legal person or any connotation thereof, the same shall not be allowed. For eg: co-operative, sehkari, trust, LLP, partnership, society, proprietorship etc.
- If the proposed names include words such as ‘Insurance’, ‘Bank’, ‘Stock Exchange’, ‘Venture Capital’, ‘Asset Management’, ‘Nidhi’, ‘Mutual fund’ etc., the name may be allowed with a declaration by the applicant that the requirements mandated by the respective regulator have been complied with.

MEMORANDUM OF ASSOCIATION

- **Memorandum of Association** stipulates constitution and object of the company. Seven or more (two for Private & Five for Producer Companies) persons shall subscribe to M.O.A.
- It shall be in such one of the forms in Tables A, B, C, D and E in Schedule -I of the Act as applicable.

CLAUSES OF M.O.A

- Name Clause -States the Name of the Company.
- Situation Clause -states where the Registered office of the Company will be situated and under the jurisdiction of which ROC
- Object Clause -Contains Main, Ancillary and supportive objects of the Company. (other objectives have been deleted under the new Act)
- Liability Clause- States that the liability of the members of the company is limited.
- Capital Clause- States the Share capital of the company as amended from time to time, the different kinds of shares , and the nominal value of each share
- Subscription Clause-States the subscribers to memorandum who must signify their willingness to associate and form a company

Name clause

Avoid Undesirable Names

- Too similar to the name of another company
- Misleading

Prohibition of use of certain names

Ex: Name, emblem or official seal of

UNO

WHO

Central and State government

President and Governor

Limited → Public Company

Private Limited → Private Company

If the company is promoting art, science, religion etc Limited and Private Limited can avoided with the permission of central government.

Registered office clause

- State in which Registered office will be situated.
- The jurisdiction of the Registrar of Companies under which the company will be covered
- Address of registered office should be intimated within 30 days, in case the registered office and the communication address are different

Capital Clause

- Share capital amount should be specified
- Cannot issue more shares for the time being
- Equity or Preference shares
- Private company can issue any type of shares

OBJECT CLAUSE

- Divided in main objects and Ancillary objects
 - “OTHER OBJECTS” category has been discontinued
- Company should commence its business with the main object

Liability Clause

MOA of company

Limited by shares or Limited by guarantee

ASSOCIATION CLAUSE

- Subscriber's name, address should be mentioned in the MOA
- Each subscriber must take at least 1 share
- MOA should be signed by
- At least 7 subscriber for Public company
- At least 2 subscriber for Private company
- Attested by at least 1 witness

Provisions for Article of Association

- The name of Association
- The Registered office of the Association
- Purpose which includes the various verticals in which the business is going to be there with the objectives and long term goal of the company.
- Details of Share's of Company and there classification and distribution. The rights of owner and the shareholder
- Details of all the Shared Certificates and Intermediated securities
- Share Register
- Power of general meetings which includes the duration of Annual general meeting , the voting rights and the weighted of each vote
- Presiding officers and the minutes of general meeting

Provisions for Article of Association

- Number of directors
- Term of office
- Organization of board , Remunerations
- Powers of board in general
- Delegations of Powers
- No of Auditors and Rights and Duties of Auditors
- Details of financial year of the company
- Business Report
- Appropriation of profit resulting from the balance sheet
- Notices
- Winding up.

LIST OF SECTIONS TO BE CONSIDERED WHILE DRAFTING ARTICLE OF ASSOCIATIONS

SR.NO	SECTION	PARTICULAR
1	2(54)	Definition of Managing Director
2	43	Kinds of share capital
3	44	Nature of shares or debentures
4	48	Variation of shareholders rights
5	50	Company to accept unpaid share capital, although not called up
6	51	Payment of dividend in proportion to amount paid up
7	55(2)	Issue and redemption of preference shares

8	58(1)	Refusal of registration and appeal against refusal
9	61(1)	Power of limited company to alter its share capital
10	62(1)	Further issue of share capital
11	63(2)	Issue of bonus shares
12	68(2)	Power of company to purchase its own securities
13	85(2)	Companies register of charges
14	88(4)	Register of members, etc
15	103	Quorum of meeting
23 July 2014 16	104	Chairman of Meeting

17	106(1)	Restriction on voting rights
18	115	Resolutions requiring special notice
19	119(1)	Inspection of minutes books of general meeting
20	152(6)	Appointment of director
21	161	Appointment of additional director, alternate director and nominee director
22	163	Option to adopt principle of proportional representation for appointment of directors
23	164(3)	Disqualifications for appointment as a Director (for private company)

24	166(1)	Duties of directors
25	167(4)	Vacation of office of director (for private company)
26	174(4)	Quorum for meetings of Board
27	197(4)	Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits

28	203	Appointment of key managerial personnel
29	286	Obligations of directors and managers
30	304	Circumstances in which company may be wound up voluntarily
31	320	Distribution of property of company

DECLARATION BY PROFESSIONALS

- A declaration in Form No.**INC-8** by an advocate or Practicing professional (CA, CS, CA) who is engaged in incorporation, and a person named in director as Director, Manager or Secretary, **that all requirements related to incorporation has been complied with.**

AFFIDAVIT FROM SUBSCRIBERS AND **FIRST DIRECTORS**

- An affidavit in Form No. **INC.9** from each subscriber and from each person named as first director in the articles that;
 - **He is not convicted of any offence in connection with promotion, formation or management of any company,**
 - **he is not been found guilty of any fraud or misfeasance or of any breach of duty to any company during preceding five years, and**
 - **all the documents filed with the Registrar contain correct, complete and true information to the best of his knowledge and belief.**

PARTICULARS OF EVERY SUBSCRIBER

➤ IF INDIVIDUAL-

- Full name and photo
- Father's/Mother's/ name:
- DOB
- Nationality
- Educational Qualification
- Occupation
- Place of Birth (District and State)
- PAN
- Permanent residential address and also Present address
- Email ID, Phone Number and FAX of subscriber.

Proof of Identity:

➤ For Indian Nationals:

- PAN Card (mandatory) and any one of the following
- Voter's identity card
- Passport copy
- Driving License copy
- Unique Identification Number (UIN)

➤ For Foreign nationals and Non Resident Indians

- Proof of nationality
- Passport
- Residential proof such as Bank Statement, Electricity Bill, Telephone / Mobile bill.

- The specimen signature and latest photograph duly verified by the banker or notary shall be in the prescribed Form No.**INC-10**.

➤ IF BODY CORPORATE-

- Corporate Identity Number of the Company or Registration number of the body corporate, if any
- GLN, if any;
- The name of the body corporate, the registered office address or principal place of business and E-mail Id.
- If the body corporate is a company, CTC of the board resolution and if the body corporate is a LLP or partnership firm CTC of the resolution agreed to by all the partners.

PARTICULARS AND CONSENT OF FIRST DIRECTORS OF THE COMPANY

- The particulars of each person mentioned in the articles as first director of the company and his interest in other firms or bodies corporate along with his consent to act as director of the company shall be filed in Form No.**DIR-12** along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.
- Consent to act as Director in a company in **DIR-2**

CERTIFICATE OF INCORPORATION

- The Certificate of Incorporation shall be issued by the Registrar in Form No.**INC-11**.
- Private Limited Company and Public Limited Company can commence its activity after obtaining Certificate of Commencement of Business after completing following requisite formalities required under section 11 of the Act.
- The declaration has to be filed by a director shall be in Form No.**INC-21** within 180 days from Incorporation along with the fee as and the contents of the form shall be verified by a Company Secretary in practice or a Chartered Accountant or a Cost Accountant in practice.

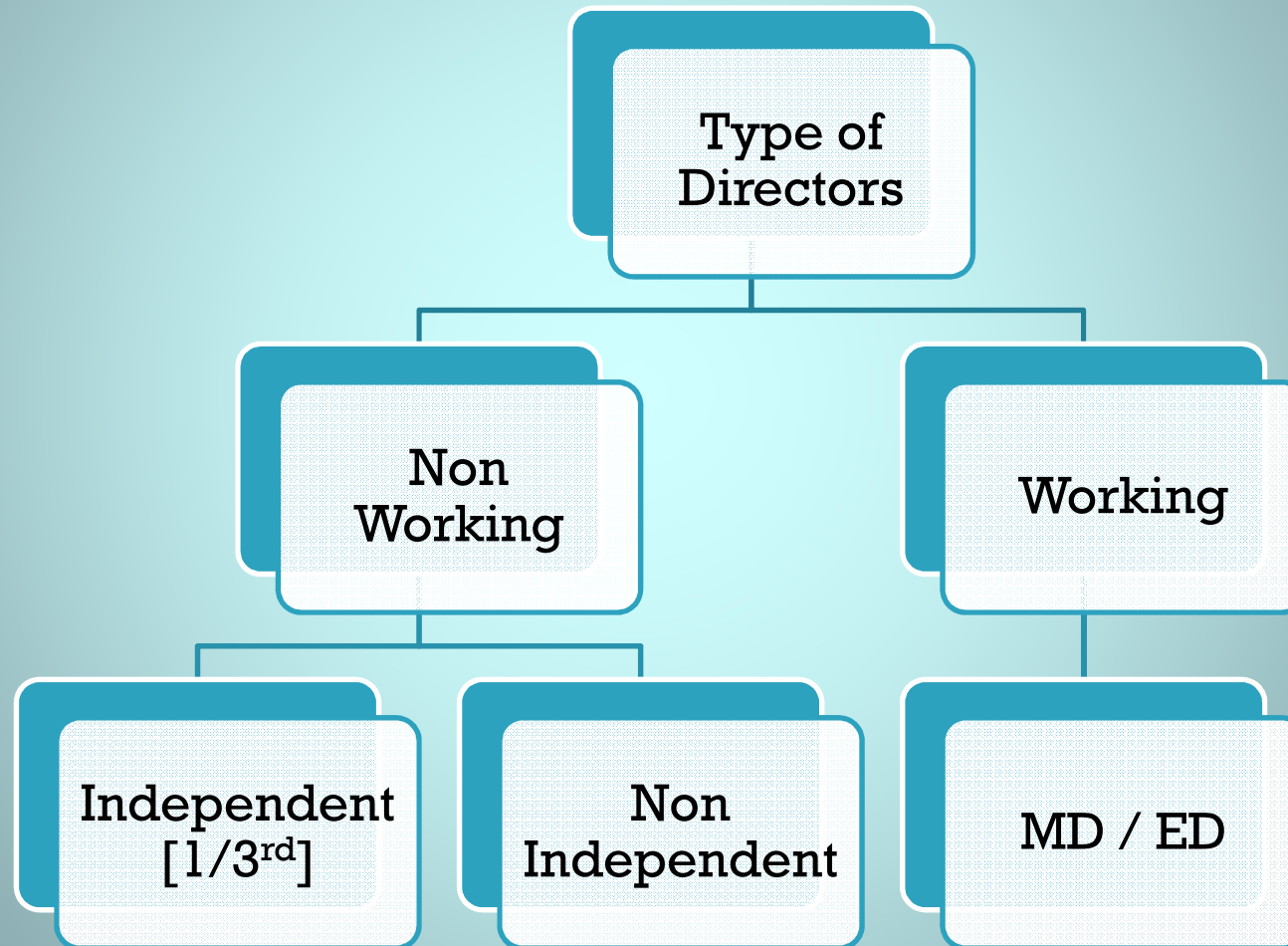
REGISTERED OFFICE OF COMPANY

- Notice of situation or change of situation of registered office and verification shall be given in Form No. **INC-22** to ROC.
- Attachments/Documents Require-
 - Proof of Registered Office address (Conveyance/ Lease deed/Rent Agreement along with the rent receipts) etc.
 - Copies of the utility bills as mentioned above (not older than two months);
 - A proof that the Company is permitted to use the address as the registered office of the Company if the same is owned by any other entity/ Person (not taken on lease by company);
 - Copy of order of competent authority;
 - List of all the companies (specifying their CIN) having the same registered office address, if any.

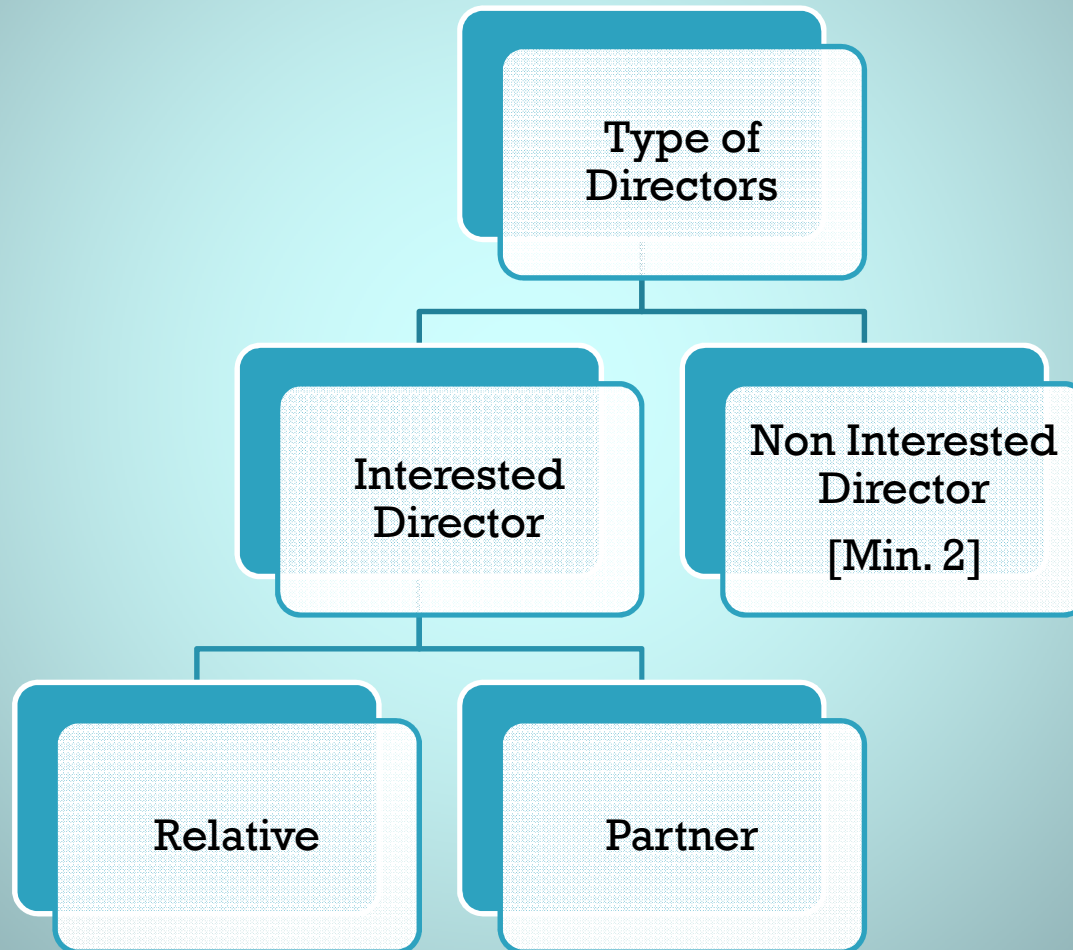
DIRECTORS



Type of Director



Type of Director



Director – Composition [effective].

- 1/3 Independent Director – listed and few public companies**
- 1 woman director - listed and public companies- 100 cr paid up capital/ 300 cr turnover**
- Cos need 2 non interested directors to approve related party transactions**
- At least one director should be resident in India [Transition of 1 year]**
- Any person who has not attended board meeting for last 12 months will vacate**
- Any private co which has not filed 3 years ROC returns, all Directors will be disqualified**
- Max. no Directorship not to exceed 10 public co and total 20**

Duties / Responsibility

- To give disclosure of interest in first BM of FY
- To give disclosure about change in interest (either as Director or Shareholder)
- Not to deal in forward dealing in securities
- To act for the benefit of all stake holders
- Not to involve in situation of conflict of interest
- To devise adequate system to ensure compliance with applicable provisions of all applicable laws
- Not to give loan to related entities

Liabilities

- Every working Director/ KMP is officer in default
- Director made accountable is officer in default
- If there is no working Director, all Directors will be officer in default
- Non executive / independent Directors are liable for acts / omissions occurred with his knowledge attributable through broad process
- Insurance can be taken towards the liabilities of the Directors

Is it mandatory to have Managing Director?

Remuneration

- Board and Shareholder approval essential
- Require compliance of schedule V
- No remuneration restriction on private company, if –
no default in payment of debts
- Disclosure is required in the annual report
- All listed and public companies with paid up capital of Rs.10 cr require MD + CFO
- All companies with paid up capital of Rs.5 cr require CS

FINANCIAL STATEMENTS AND COMPLIANCES

Financial Statements & Compliances [effective]

For Financial Year starting after 1/4/2014

- Depreciation as per new method – useful life
- Consolidation is becoming mandatory for all companies
- Associate companies financials also needs consolidation
- Directors Report will be very exhaustive document
- Annual Return will also be very exhaustive document
- Annual Return is required to be certified by CS
- Secretarial Standards are mandatory for board and general meeting
- Lot of transactions require approval of the board
- Majority resolutions are required to be filed with ROC

Resolutions to be filed with ROC (effective)

- to issue securities, including debentures,
- to borrow monies;
- to invest the funds of the company
- to appoint or remove KMP
- to take note of disclosure of interest by the Directors
- to appoint or remove personnel of one level below KMP
- to grant loans or give guarantee or provide security in respect of loans;
- to approve financial statement and the Board's report;
- to diversify the business of the company
- To take note of appointment / removal of one level below KMP

Consequences of Non Compliances

- Section 403 – consequences of late filing [effective]
- Section 450 – wherever no penalty is prescribed
- Section 447 – prosecution under fraud
- Compounding requires approval of special court
- Special Courts is constituted for doing trial of offences under Companies Act 2013
- SFIO is getting constituted
- Investors can claim damages against CA / CS / CWA
- Class action can be taken by investors

Exit Options

How to close company?

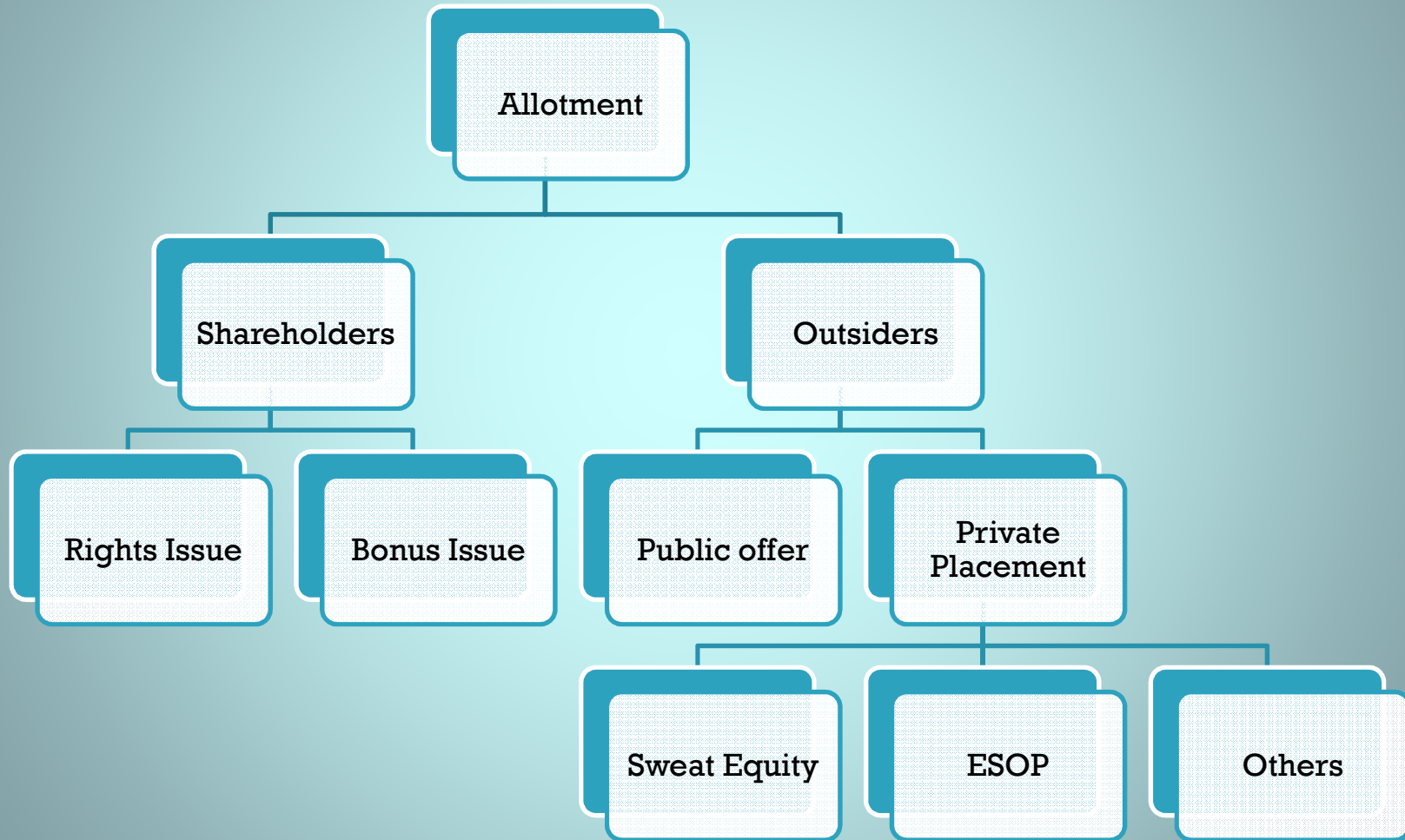
- If company has assets / liabilities – winding up process
- Winding up Process is very lengthy and costly
- It involves process cost + taxes
- If company has no assets no liabilities – exit scheme
- Exit Scheme is easy – needs indemnity from directors for future liabilities

Can I convert into LLP ?

- LLP = Limited Liability Partnership
- Yes Company can convert into LLP
- Some constraints for conversion
 1. If turnover in any last 3 yr = 60 lacs = capital gain tax
 2. Can not convert if we have secured loan
 3. FIPB Approval if company has FDI
 4. Stamp duty?
 5. Bankers comfort ?

Share Capital

Share Capital



Share Capital

- Share Application money accepted before 31 March 2014 will have to be refunded; OR
- Shares to be allotted before 29 May 2014
- Refund will have to be made before 29 May 2014
- Else it will be considered as acceptance of deposit
- All Shares to be offered on rights basis; ELSE
- Special Resolution + valuation report
- Lot of documentation
- Allotment can not be shown on previous date

Do you have Preference Shares?

**If dividend is not paid
for 2 years, it will carry
voting right**

ONE PERSON COMPANY

ONE PERSON COMPANY

- Proprietary Company with the benefit of separate legal identity.
- Single entrepreneur can manage his own business.
- There can be 1 Director, 1 shareholder but as per Section 149 he may appoint more than 15 Directors after passing a special resolution.
- So the key difference between OPC and sole proprietorship is that in case of OPC the liability of promoter is limited in the event of default or legal issues.

IS IT A NEW CONCEPT

- In India- YES
- In Other Countries- already existing, eg:
 - Australia- known as Proprietary Company
 - UK – known as One person Private Limited co.
 - South Africa – known as Close Corporation
 - Singapore- known as Private Limited Co.

Important features of One Person Company

- OPC can have 1 member/shareholder
- OPC can be incorporated as a Private Company only
- OPC can be company limited by shares or guarantee or unlimited company
- OPC limited by shares shall have the following points:
 - Paid up capital Rs. 1 Lakh
 - Prohibits invitation to public to subscribe to securities.
 - Restricts right to transfer
 - An OPC is required to give legal identity by specifying a name under which activities of the business could be carried on.

Eligibility norms for **Incorporation**

- As per Rule 3(1) of Company Incorporation Rules, 2014
- only a natural person who
- is a resident of India shall be eligible to form/incorporate an OPC.
- A nominee of OPC should be a natural person and resident. No person shall be eligible to be nominee in more than 1 OPC.

- The nominee so appointed shall become member in following cases:
- In the event of sole members death
- In the event if sole member becomes incapacitated
- A nominee so appointed shall give his consent which shall be filed with ROC at the time of Incorporation along with MOA and AOA.

As per Rule 4 of Incorporation Rules, 2014

- In Memorandum of OPC, the sole owner shall specify the name of the nominee in subscriber in Form INC-2
- Consent of nominee is to be filed in INC-3
- Form INC-4 for cessation or nomination.

Incorporation

- **Name Availability:**
- **Din no.**
- **Present residential address**
- **Educational Qualification**
- **ID proof**

Other information's to be provided

- Applicant shall provide following details:
- Proposed name (max.6 names)
- Proposed business
- Capital contributed
- State
- Details of nominee

After obtaining name availability

- File incorporation documents with ROC following are the attachments:
- MOA and AOA
- Proof of Identity of member and nominee
- Residential proof of member and nominee
- Consent of nominee in INC-3
- Affidavit from 1st subscriber and Director to the memorandum in INC-9

- Specimen signature in INC-10
- List of companies having same registered office address
- Consent of Director
- Proof of registered office
- Copy of PAN card of member and nominee
- Details of duration of stay at present address if it is less than 1 year then address of previous residence
- Details of name of nominee
- Details of entrenchment of articles.

Signing of Annual Report

- **Annual return in case of OPC shall be signed by company secretary if there is no company secretary then by director.**

Financial statement

- Signed by one person alone
- Cash flow not mandatory
- Board report to be annexed to financial statement
- Should file a copy of financial statement within 180 days from closure of financial year
- As per section 96(1) holding AGM is not mandatory.
- At least 1 board meeting should be held in each half of the calendar year and gap between 2 meetings should not be less than 90 days. If OPC has only 1 Director then it is exempted from holding Board meeting.

- **Provision of compulsory rotation of auditors is not required.**
- **OPC has to get their accounts audited just like normal company.**
- **OPC can file intimation of cessation in INC-5.**

Cessation of OPC status

- As per Rule 6(1) of Companies Incorporation, 2014 an OPC cease to be entitled to continue in following cases:
- Paid up capital exceeds 50 Lacs
- Turnover for 3 preceding years exceeds 2 cr
- Intimation of increase in threshold has to be filed in INC-5

Provisions not applicable to OPC

Sections	Particulars
• 98	Powers of tribunal to call meetings of
members	
• 100	Calling of EGM
• 101	Notice of meeting
• 102	Statement to be annexed to notice
• 103	Quorum of Meeting
• 104	Chairman of meeting
• 105	Proxies
• 106	Restriction on voting rights
• 107	Voting by show of hands
• 108	Voting by electronic means
• 109	Demand Poll
• 110	Postal ballot
• 111	Circulation of member's resolution.

Due date of filing forms of OPC

- | Form No. | Due date of Filing |
|----------|--------------------|
| • INC-1 | N.A. |
| • INC-2 | 60 days |
| • INC-3 | 15 days |
| • INC-4 | 30 days |
| • INC-5 | 60 days |
| • INC-6 | N.A. |
| • MGT-14 | 30 days |
| • | |
- Thus OPC is a **One Man Army**. It shall boost the confidence of small entrepreneurs.

Terms and Restrictions of OPC

- A person shall not be eligible to incorporate more than a One Person Company or become nominee in more than one such company.
- Minor cannot shall become member or nominee of the One Person Company or can hold share with beneficial interest.
- An OPC cannot be incorporated or converted into a company under Section 8 of the Act. [Company not for Profit].

- An OPC cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporate.
- An OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation of One Person Company, except threshold limit (paid up share capital) is increased beyond Rs.50 Lakhs or its average annual turnover during the relevant period exceeds Rs.2 Crores i.e., if the Paid-up capital of the Company crosses Rs.50 Lakhs or the average annual turnover during the relevant period exceeds Rs.2 Crores, then the OPC has to invariably file forms with the ROC for conversion in to a Private or Public Company, with in a period of Six Months on breaching the above threshold limits.

Actionable for Private Limited Company

Actionable for Private company

- Printing of CIN, website, mail id, phone, fax, registered office on letterhead and official publication
- Filing of return of deposit
- Repayment of deposit in 1 year
- Appointment of KMP / MD / WTD
- Articles of Association needs revision
- Minutes/ Registers / Share Certificates to be maintained
- Statutory Registers to be maintained in new format [since incorporation]
- ROC filing to be maintained upto date without any delay
- Induction of new directors

Actionable for Private company

- Private Company can not give loan/ guarantee / security to another entity in which Director is interested
- Justification of arms length for related party transaction
- Borrowing in excess of paid up capital + reserves require special resolution to be filed with ROC
- Refund of Share Application money in 60 days, if not allotted

RECENT CASE LAW

- In one of the first major cases interpreting the provisions of the Companies Act, 2013, the Bombay High Court has rejected a request made by Godrej Industries and Wadala Commodities for permission to seek shareholders' nod for their proposed merger through electronic voting and postal ballot.
- In February this year, Godrej Industries announced that it would merge Wadala Commodities, which is in the business of bulk trading of vegetable oil, with itself. Both parties later requested the High Court to dispense with the requirement of holding a physical meeting of shareholders, and instead let them conduct the meeting by way of an electronic voting and postal ballot, as purportedly mandated under the new provisions of the Companies Act.
- The High Court declined the request and reiterated the importance of physical meetings in corporate democracy, and the right of shareholders to discuss and deliberate actions proposed to be undertaken by the company.

- Justice G S Patel recommended that until the issues raised by the High Court on the exclusion of physical shareholder meetings are finally settled, no company should insist upon a postal-ballot-only-meeting.
- The High Court also held that all provisions for compulsory voting by postal ballot and by electronic voting to the exclusion of a physical meeting do not apply to court-convened shareholder meetings. At such meetings, provision must be made for shareholders to allow them to vote through postal ballots or electronic voting, in addition to the voting right at the physical meeting.
- A spokesperson from law firm Khaitan & Co noted that the High Court “came down heavily on the Ministry of Corporate Affairs for the haphazard manner in which various rules made under the 2013 Act are being notified. The High Court has directed the Additional Solicitor General, Registrar of Companies and SEBI to make further submissions before it on this issue”.
- The court has also taken steps to elevate the issue to a larger bench.

THANK YOU