

Provisions relating to
1. Definitions; 2. Incorporation of
companies; and 3. Issue of Securities
under the Companies Act, 2013



CA ABHAY VASANT AROLKAR

Definitions



- Composition of the Legislation
- Definitions
 - Associate Company [Section 2(6)]
 - 2(6) defines “Associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.
 - *Explanation.*—For the purposes of this clause, “significant influence” means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;

Definitions (Contd.)



- **Chief Executive Officer [Section 2(18)]**
- 2(18) “Chief Executive Officer” means an officer of a company, who has been designated as such by it;

- **Chief Financial Officer [Section 2(19)]**
- 2(19) “Chief Financial Officer” means a person appointed as the Chief Financial Officer of a company;

- **Control [Section 2(27)]**
- 2(27) defines “control” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

Definitions (Contd.)



- **Financial Statements [Section 2(40)]**
 - defines “financial statement” in relation to a company, includes—
 - (i) a balance sheet as at the end of the financial year;
 - (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
 - (iii) cash flow statement for the financial year;
 - (iv) a statement of changes in equity, if applicable; and
 - (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):
 - Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

Definitions (Contd.)



- **Financial Year [Section 2(41)]**
- 2(41) defines “financial year”, in relation to any company or body corporate, means **the period ending on the 31st day of March every year**, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:
- Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:
- Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;

Definitions (Contd.)



- Sections 2(42) defines “foreign company”
 - means any company or body corporate incorporated outside India which—
 - ✦ (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
 - ✦ (b) conducts any business activity in India in any other manner.

Definitions (Contd.)



- **Key Management Personnel [Section 2(51)]**
 - defines “key managerial personnel”, in relation to a company, means—
 - (i) the Chief Executive Officer or the managing director or the manager;
 - (ii) the company secretary;
 - (iii) the whole-time director;
 - (iv) the Chief Financial Officer; and
 - (v) such other officer as may be prescribed;

Definitions (Contd.)



- **Promoter [Section 2(69)]**
 - “promoter” means a person—
 - (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
 - (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
 - (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:
 - Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

Definitions (Contd.)



- **Related Party [Section 2(76)]** “related party”, with reference to a company, means—
 - (i) a director or his relative;
 - (ii) a key managerial personnel or his relative;
 - (iii) a firm, in which a director, manager or his relative is a partner;
 - (iv) a private company in which a director or manager is a member or director;
 - (v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;
 - (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
 - (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act: (professionals excluded)
 - (viii) any company which is—
 - ✦ (A) a holding, subsidiary or an associate company of such company; or
 - ✦ (B) a subsidiary of a holding company to which it is also a subsidiary;
 - (ix) such other person as may be prescribed

Definitions (Contd.)



- **Relative [Section 2(77)]**
 - “relative”, with reference to any person, means any one who is related to another, if—
 - (i) they are members of a Hindu Undivided Family;
 - (ii) they are husband and wife; or
 - (iii) one person is related to the other in such manner as may be prescribed;
 - Under the Rules, a person is related to the other if he or she is related to another in the following manner:
 - ✦ Father (including Step-father) ; Mother (including step-mother)
 - ✦ Son (including Step-son); Son’s wife
 - ✦ Daughter; Daughter’s husband
 - ✦ Brother (including step-brother)
 - ✦ Sister (including step-sister)

Definitions (Contd.)



- **Small Company [Section 2(85)]**
 - “small company” means a company, other than a public company,—
 - (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
 - (ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:
 - Provided that nothing in this clause shall apply to—
 - (A) a holding company or a subsidiary company;
 - (B) a company registered under section 8; or
 - (C) a company or body corporate governed by any special Act;

Definitions (Contd.)



- **Subsidiary company [Section 2(87)]**
- “subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company—
- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:
- Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.
- *Explanation.*—For the purposes of this clause,—
- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company’s Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (c) the expression “company” includes any body corporate;
- (d) “layer” in relation to a holding company means its subsidiary or subsidiaries;

Definitions (Contd.)



- **Sweat Shares [Section 2(88)]**
 - “sweat equity shares” means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;
- **Turnover [Section 2(91)]**
- “turnover” means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;
- **Total Share Capital**
- Total Share Capital means the aggregate of the paid-up equity share capital and convertible preference share capital

Definitions (Contd.)



- **Sick Company [Section 253(1)]**
 - “Where on a demand by the secured creditors of a company representing fifty per cent. or more of its outstanding amount of debt, the company has failed to pay the debt within a period of thirty days of the service of the notice of demand or to secure or compound it to the reasonable satisfaction of the creditors, any secured creditor may file an application to the Tribunal in the prescribed manner along with the relevant evidence for such default, non-repayment or failure to offer security or compound it, for a determination that the company be declared as a sick company.

Dormant Company



- **Dormant Company [Section 455]**
 - Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
- **Inactive Company**
 - “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;

Dormant Company



- **Significant Accounting transaction means** any transaction other than:
 - (a) payment of fees by a company to the Registrar;
 - (b) payments made by it to fulfil the requirements of this Act or any other law;
 - (c) allotment of shares to fulfil the requirements of this Act;
 - (d) payments for maintenance of its office and records

Dormant Company



- Other provisions relating to Dormant company
- Register of Dormant Companies
- To retain the status
 - Have minimum number of directors
 - File such documents as may be prescribed
 - Pay such annual fees as may be prescribed
- To convert into Active status
 - Make an application and file such documents as may be prescribed and pay such annual fees as may be prescribed
- ROC shall have power to strike off the name of a dormant company

Types of Companies



- Types of Companies - Private Company; Public Company ; **One Person Company (OPC)**.
- Private Company
- Section 2(68) defines “private company” means a company and which by its articles,—
 - (i) restricts the right to transfer its shares;
 - (ii) limits the number of its members to two hundred:
 - ✦ Joint holders treated as one
 - ✦ Employees/ex-employees who have taken shares while in employment excluded.
 - (iii) prohibits any invitation to the public to subscribe for any securities of the company; and
 - having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed,

Types of Companies



- **Public Company**
 - Section 2(71) defines “public company” means a company which—
 - (a) is not a private company;
 - (b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed:
 - Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;
- **One Person Company**
- 2(62) defines “One Person Company” means a company which has only one person as a member;

Types of Companies



- Companies with charitable objects [Section 8]
- (1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—
 - (a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, protection of environment or any such other useful object;
 - (b) intends to apply its profits, if any, or other income in promoting its objects; and
 - (c) intends to prohibit the payment of any dividend to its members,

Formation of Companies



- Reservation of Name (Form INC. 1)
- Applicant to have DIN
- Memorandum of Association –
 - Name Clause
 - Domicile Clause
 - Objects Clause
 - Capital Clause
 - Liability Clause
 - Subscription Clause
 - Formats – *Schedule I Tables A - E*

UNDESIRABLE NAMES



In determining whether a proposed name is identical with another, the differences on account of the following shall be disregarded –

- a. The words like Private, Pvt, Pvt., (P), Limited, Ltd, Ltd., LLP, Limited Liability Partnership;
- b. Words appearing at the end of the names – company, and company, co., co, corporation, corp, corpn, corp.;
- c. Plural version of any of the words appearing in the name;
- d. Type and case of letters, spacing between letters and punctuation marks;
- e. Joining words together or separating the words does not make a name distinguishable from a name that uses the similar, separated or joined words;
- f. use of a different tense or number of the same word does not distinguish one name from another;
- g. Using different phonetic spellings or spelling variations shall not be considered as distinguishing one name from another. Illustration (For example, P.Q. Industries limited is existing then P and Q Industries or Pee Que Industries or P n Q Industries or P & Q Industries shall not be allowed and similarly if a name contains numeric character like 3, resemblance shall be checked with ‘Three’ also;)

UNDESIRABLE NAMES



- h. Misspelled words, whether intentionally misspelled or not, do not conflict with the similar, properly spelled words;
- i. The addition of an internet related designation, such as .com, .net, .edu, .gov, .org, .in does not make a name distinguishable from another, even where (.) is written as 'dot';
- j. The addition of words like New, Modern, Nav, Shri, Sri, Shree, Sree, Om, Jai, Sai, The, etc. Does not make a name distinguishable from an existing name and similarly, if it is different from the name of the existing company only to the extent of adding the name of the place, the same shall not be allowed; such names may be allowed only if no objection from the existing company by way of Board resolution is submitted;
- k. Different combination of the same words does not make a name distinguishable from an existing name, e.g., if there is a company in existence by the name of "Builders and Contractors Limited", the name "Contractors and Builders Limited" shall not be allowed unless it is change of name of existing company;
- l. If the proposed name is the Hindi or English translation or transliteration of the name of an existing company or limited liability partnership in English or Hindi, as the case may be.

UNDESIRABLE NAMES



The name shall be considered undesirable, if-

- i. It attracts the provisions of section 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950 (12 of 1950);
- ii. It includes the name of a registered trade mark or a trade mark which is subject of an application for registration, unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters;
- iii. it includes any word or words which are offensive to any section of the people;

UNDESIRABLE NAMES



The name shall also be considered undesirable, if-

- i. The proposed name is identical with or too nearly resembles the name of a limited liability partnership;
- ii. It is not in consonance with the principal objects of the company as set out in the memorandum of association; Provided that every name need not be necessarily indicative of the objects of the company, but when there is some indication of objects in the name, then it shall be in conformity with the objects mentioned in the memorandum;
- iii. The company's main business is financing, leasing, chit fund, investments, securities or combination thereof, such name shall not be allowed unless the name is indicative of such related financial activities, viz., Chit Fund or Investment or Loan, etc.;
- iv. It resembles closely the popular or abbreviated description of an existing company or limited liability partnership;

UNDESIRABLE NAMES



- v. The proposed name is identical with or too nearly resembles the name of a company or limited liability partnership incorporated outside India and reserved by such company or limited liability partnership with the Registrar:

Provided that if a foreign company is incorporating its subsidiary company in India, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian state or city, if otherwise available;

- vi. Any part of the proposed name includes the words indicative of a separate type of business constitution or legal person or any connotation thereof e.g. co-operative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm, Inc., PLC, GmbH, SA, PTE, Sdn, AG etc.;

Explanation.- For the purposes of this sub-clause, it is hereby clarified that the name including phrase 'Electoral Trust' may be allowed for Registration of companies to be formed under section 8 of the Act, in accordance with the Electoral Trusts Scheme, 2013 notified by the Central Board of Direct Taxes (CBDT):

Provided that name application is accompanied with an affidavit to the effect that the name to be obtained shall be only for the purpose of registration of companies under Electoral Trust Scheme as notified by the Central Board of Direct Taxes;

UNDESIRABLE NAMES



- vii. The proposed name contains the words 'British India';
- viii. The proposed name implies association or connection with embassy or consulate or a foreign government;
- ix. The proposed name includes or implies association or connection with or patronage of a national hero or any person held in high esteem or important personages who occupied or are occupying important positions in Government;
- x. The proposed name is vague or an abbreviated name such as 'ABC limited' or '23K limited' or 'DJMO' Ltd: abbreviated name based on the name of the promoters will not be allowed. For example:- BMCD Limited representing first alphabet of the name of the promoter like Bharat, Mahesh, Chandan and David:

Provided that existing company may use its abbreviated name as part of the name for formation of a new company as subsidiary or joint venture or associate company but such joint venture or associated company shall not have an abbreviated name only e.g. Delhi Paper Mills Limited can get a joint venture or associated company as DPM Papers Limited and not as DPM Limited:

Provided further that the companies well known in their respective field by abbreviated names are allowed to change their names to abbreviation of their existing name after following the requirements of the Act;

UNDESIRABLE NAMES



- xi. The proposed name is identical to the name of a company dissolved as a result of liquidation proceeding and a period of two years have not elapsed from the date of such dissolution

Provided that if the proposed name is identical with the name of a company which is struck off in pursuance of action under section 248 of the Act, then the same shall not be allowed before the expiry of twenty years from the publication in the Official Gazette being so struck off;

- xii. It is identical with or too nearly resembles the name of a limited liability partnership in liquidation or the name of a limited liability partnership which is struck off up to a period of five years;

- xiii. The proposed name include words such as ‘Insurance’, ‘Bank’, ‘Stock Exchange’, ‘Venture Capital’, ‘Asset Management’, ‘Nidhi’, ‘Mutual fund’ etc., unless a declaration is submitted by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant;

- xiv. The proposed name includes the word “State”, the same shall be allowed only in case the company is a government company;

UNDESIRABLE NAMES



- xv. The proposed name is containing only the name of a continent, country, state, city such as Asia limited, Germany Limited, Haryana Limited, Mysore Limited;
- xvi. The name is only a general one, like Cotton Textile Mills Ltd. or Silk Manufacturing Ltd., and not Lakshmi Silk Manufacturing Co. Ltd;
- xvii. It is intended or likely to produce a misleading impression regarding the scope or scale of its activities which would be beyond the resources at its disposal:
- xviii. The proposed name includes name of any foreign country or any city in a foreign country, the same shall be allowed if the applicant produces any proof of significance of business relations with such foreign country like Memorandum of Understanding with a company of such country:

Provided that the name combining the name of a foreign country with the use of India like India Japan or Japan India shall be allowed if, there is a government to government participation or patronage and no company shall be incorporated using the name of an enemy country. Explanation.- For the purposes of this clause, enemy country means so declared by the Central Government from time to time.

UNDESIRABLE NAMES



3. If any company has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of six months from the change of activities after complying with all the provisions as applicable to change of name.
4. In case the key word used in the name proposed is the name of a person other than the name(s) of the promoters or their close blood relatives, No objection from such other person(s) shall be attached with the application for name. In case the name includes the name of relatives, the proof of relation shall be attached and it shall be mandatory to furnish the significance and proof thereof for use of coined words made out of the name of the promoters or their relatives.
5. The applicant shall declare in affirmative or negative (to affirm or deny) whether they are using or have been using in the last five years , the name applied for incorporation of company or LLP in any other business constitution like Sole proprietor or Partnership or any other incorporated or unincorporated entity and if, yes details thereof and No Objection Certificate from other partners and associates for use of such name by the proposed Company or LLP, as the case may be, and also a declaration as to whether such other business shall be taken over by the proposed company or LLP or not .

UNDESIRABLE NAMES



6. The following words and combinations thereof shall not be used in the name of a company in English or any of the languages depicting the same meaning unless the previous approval of the Central Government has been obtained for the use of any such word or expression-

- | | | |
|-----------------|--|---|
| a. Board; | l. Small Scale Industries; | v. Development Scheme; |
| b. Commission; | m. Khadi and Village Industries Corporation; | w. Statute or Statutory; |
| c. Authority; | n. Financial, Corporation and the like; | x. Court or Judiciary; |
| d. Undertaking; | o. Municipal; | y. Governor; |
| e. National; | p. Panchayat; | z. The use of word Scheme with the name of Government (s) , State , India, Bharat or any government authority or in any manner resembling with the schemes launched by Central, state or local Governments and authorities; and |
| f. Union; | q. Development Authority; | |
| g. Central; | r. Prime Minister or Chief Minister; | |
| h. Federal; | s. Minister; | |
| i. Republic; | t. Nation; | |
| j. President; | u. Forest corporation; | aa. Bureau |
| k. Rashtrapati; | | |

UNDESIRABLE NAMES



7. For the Companies under section 8 of the Act, the name shall include the words foundation, Forum, Association, Federation, Chambers, Confederation, council, Electoral trust and the like etc. Every company incorporated as a “Nidhi” shall have the last word ‘Nidhi Limited’ as part of its name.

8. The names released on change of name by any company shall remain in data base and shall not be allowed to be taken by any other company including the group company of the company who has changed the name for a period of three years from the date of change subject to specific direction from the competent authority in the course of compromise, arrangement and amalgamation.

Name Clause



- Application for Reservation of Name (Form INC. 1)
- Undesirable name
- Name Clause
 - Should not be identical with or resemble too nearly to the name of an existing company
 - Should not be such that its use will constitute an offence under any law for the time being in force
 - Is undesirable in the opinion of the Central Government
 - Should not contain any word or expression which
 - is likely to give the impression that the company is in any way connected with or having the patronage of the Government or local authority, corporation or body constituted by the Government; or
 - may be prescribed

Name Clause



- Where the application for availability of name was made by furnishing wrong or incorrect information:
- A) where the company is not incorporated : Cancel the reservation of name, and the applicant shall be liable to a penalty upto one lakh rupees
- B) where the company is incorporated :
 - Show cause to be issued
 - Direct the company to change its name within 3 months after passing Ordinary resolution
 - Strike off the name of the company
 - Make a petition for winding up of the company

Name Clause



- Application for change of name
 - Form No. INC. 24
 - Special Resolution – [File Form no. MGT. 14]
 - Reasons for change of name
 - Relevant extract of minutes/resolutions
 - Certificate of Incorporation pursuant to change of name will be issued by ROC in Form No. INC. 25. Change of name effective from the date of issue of such certificate

Domicile Clause



- A company shall on or from the fifteenth day of its incorporation and at all times thereafter have a registered office capable of receiving and acknowledging all communications and notices addressed to it. (Form INC. 22)
- Verification of the registered office:
 - Registered document of title or Notarised copy of lease/rent agreement
 - Authorisation from the owner/authorised occupant
 - Document of connection of utility service depicting the name of the owner

Domicile Clause



- In case of change of Registered office from one State to another:
 - Special Resolution [File Form no. MGT. 14]
 - Application for approval to Regional Director in Form No. INC. 23
 - Copy of Memorandum and Articles of Association
 - Copy of extract of minutes
 - Copy of challan for fees paid
 - Letter of Authority.
 - Advertisement to be published in Form No. INC. 26
 - File Form No. INC. 28 after the order is passed by the Regional Director.

Domicile Clause



- In case of change of Registered office from one State to another (Contd.) :
 - Form No. INC. 22 for giving notice to Registrar of Companies after approval from RD is received.
 - List of debentureholders, depositors, creditors or lenders and a notice to them seeking objections, if any.
- Other requirements (Section 12)
 - Paint or affix its name and address outside its registered office
 - Engrave its name on the company seal
 - Print name, registered office address, **CIN**, website address, contact details on all its business letters, billheads, letter papers, notices, and other official publications (Rule 26)

Objects Clause



- Objects clause to state
 - A) The objects for which the company is incorporated
 - B) any matter considered necessary in furtherance thereof



Objects Clause



- Change of objects for which money is raised through prospectus:
 - Send Notice for passing resolution through postal ballot to the members/shareholders. Notice to contain the following particulars: the total money received, utilised for the objects, unutilised money (raised through prospectus), justification, estimated impact on the earnings/cash flow and other relevant information. The place from where a copy of the resolution to be passed can be obtained. The notice should be hosted on the company's website.
 - Special Resolution [File Form no. MGT. 14]

Capital Clause



- Types of shares
 - Equity Shares
 - ✦ Equity with differential rights
 - Preference Shares
- The number of shares, each subscriber to the MoA agrees to subscribe, which shall not be less than one share, shall be indicated opposite/against his name.

Liability Clause



- Limited by Share Capital
- Limited by Guarantee
 - With share capital
 - Without share capital
 - ✦ Right to participate in the divisible profits to a person other than a member is void
- Unlimited Company

Subscription Clause



- The MoA and the AoA shall be signed each of the subscribers giving their name, address, description and occupation, before at least one witness who shall sign giving the same details and state that:
 - “I witness to the subscriber(s), who has/have subscribed and signed in my presence (date and place); Further I have verified his/her/their identity details for their identification and satisfied myself of his her/their identification particulars as filled in.”
- Rules specify in case where:
 - The subscriber is an illiterate
 - The subscriber is a foreign national residing outside India.

Formation of Companies



- Articles of Association
 - Entrenchment provisions [Section 5(3)]
 - The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.
 - Formats – *Schedule I Tables F - J*

Formation of Companies



- Certificate of Incorporation (Form INC. 11)
- Copies of documents in relation to the registration of the company, and filed with the Registrar at that time, should be maintained and preserved till the dissolution of the company.
- Consequences of formation of the company on the basis of false or incorrect information
- Certificate for Commencement of Business
 - Declaration – (FORM INC. 21)
 - Proof of address - verification of address (alongwith Form INC. 22)
Proof of Registered Office – Deed/Agreement/Rent Receipt. Copy of recent (not older than two months) utility bills at the address.
NOC to use the office as registered office from the owner.

Formation of Companies



- Documents to be submitted for incorporation of a company, (other than OPC and company with licence under Section 8):
 - Application for Incorporation of Company (Form INC. 7)
 - Declaration regarding compliance (Form INC. 8)
 - Affidavit regarding his non-conviction in any offence or guilty of any fraud or misfeasance or for any breach of any duty under the company law during the last five years (Form INC. 9)
 - Form for verification of signature of subscribers (Form INC. 10). NOC in case there is change in promoters.
 - Address for correspondence till the registered office is established.

Formation of Companies



- Documents to be submitted for incorporation of a company, (other than OPC and company with licence under Section 8) (Contd.):
 - Memorandum and Articles of Association
 - Particulars of subscribers including proof of identity, proof of residence and PAN Card. Proof of nationality in case of foreign nationals.
 - Particulars of first directors including proof of identity, proof of residence and PAN card.
 - Consent and other directorships/interests of the first directors
 - Entrenched Articles of Association, if any.

Formation of Companies



- **One Person Company**
 - Deemed to be a private company
 - MoA shall indicate the name of the other person (Form INC. 2) to be filed at the time of incorporation, with his prior consent (Form INC. 3), who shall in the event of the subscriber's death or his incapacity to contract, become the member of the company.
 - Withdrawal of consent by such other person (Form INC. 4) within thirty days of such withdrawal
 - Subscriber may change the name of such other person (Form INC. 4) within thirty days of the intimation to the company.
 - Duty of the subscriber to notify the change in the name of such other person (Form INC. 4).

Formation of Companies



- One Person Company (Contd.)
- Only a natural person who is an Indian citizen and resident in India can incorporate an OPC or be a nominee for the sole member of a OPC.
- Resident shall mean a person who has stayed in India for > 182 days in the immediately preceding calendar year.
- One person can form only one OPC.
- Minors cannot be members or hold shares.

Formation of Companies



- One Person Company (Contd.)
- Restrictions:
 - Cannot be converted into a company with licence u/s 8 of the Act.
 - Cannot carry on non-banking financial investment activity including investment in securities of any body corporate.
 - Cannot voluntarily convert into any kind of company unless:
 - ✦ Two years have elapsed since the date of incorporation of the OPC – Form INC. 6)
 - ✦ The paid up share capital is increased beyond Rs. 50 lakhs (being the threshold limit of paid up share capital).*
 - ✦ The average annual turnover during the immediately preceding three financial years (relevant period) exceeds Rs. 2 crores.*
 - ✦ * to be mandatorily converted – Rule 6(1). (Form INC. 5)

Formation of Companies



- Documents to be submitted for incorporation of an OPC:
 - Application for Incorporation of OPC – Form INC. 2
 - Nominee Consent Form – Form INC. 3
 - Affidavit regarding his non-conviction in any offence or guilty of any fraud or misfeasance or for any breach of any duty under the company law during the last five years (Form INC. 9)
 - Form for verification of signature of subscribers (Form INC. 10).
 - List of all the companies having the same registered office, if any.
 - Particulars of member including proof of identity, proof of residence and PAN Card.
 - Particulars of nominee including proof of identity, proof of residence and PAN Card.
 - Proof of Registered Office – Deed/Agreement/Rent Receipt. Copy of recent (not older than two months) utility bills at the address. NOC to use the office as registered office from the owner.

Formation of Companies



- Documents to be submitted for incorporation of a company with licence under Section 8 :
- To the Regional Director:
 - Reservation of Name (Form INC. 1)
 - Application for licence under Section 8
 - Memorandum and Articles of Association (Form INC. 13)
 - Declaration by a chartered accountant/company secretary/cost accountant, regarding compliance (Form INC. 14)
 - Declaration by the applicant in Form INC. 15
 - [Form No. INC. 26, in case of existing company applying for licence u/s 8(5)]

Formation of Companies



- Documents to be submitted for incorporation of a company with licence under Section 8 (Contd.) :
- To the Regional Director (Contd.):
 - The copies of Balance Sheets, Profit & Loss Account of the immediately preceding two financial years.
 - The statement showing in details of assets and liabilities of the company- as on the date of application or in a such extended period or within thirty days presecding that date,
 - An estimate of future annual income and expenditure for next three years
 - Certified copies of resolutions paased in general .board meetings relating to registration of the company u/s 8.

Formation of Companies



- Documents to be submitted for incorporation of a company with licence under Section 8 (Contd.) :
- To the Registrar of Companies:
 - Reservation of Name (Form INC. 1)
 - Memorandum and Articles of Association as approved by the Regional Director (Form INC. 13)
 - Copy of licence under Section 8 issued by the Regional Director [Form INC. 16 (new company) or Form INC. 17 (existing company), as the case may be]
 - Declaration regarding compliance (Form INC. 8)
 - Address for correspondence till the registered office is established.

Formation of Companies



- Documents to be submitted for incorporation of a company with licence under Section 8 (Contd.) :
- To the Registrar of Companies (Contd.):
 - Affidavit regarding his non-conviction in any offence or guilty of any fraud or misfeasance or for any breach of any duty under the company law during the last five years (Form INC. 9)
 - Form for verification of signature of subscribers (Form INC. 10). NOC in case there is change in promoters.
 - Particulars of subscribers including proof of identity, proof of residence and PAN Card. Proof of nationality in case of foreign nationals.
 - Particulars of first directors including proof of identity, proof of residence and PAN card.
 - Consent and other directorships/interests of the first directors

Formation of Companies



- **Certificate for Commencement of Business**
 - All companies, whether public or private, can start business operations only after obtaining the Certificate for commencement of Business
 - Declaration prior to the commencement of business/exercising borrowing powers (Form No. INC. 21)
 - Specimen Signatures – (Form No. INC. 10)
 - Certificate of registration from RBI, in case of NBFCs

Formation of Companies



- Conversion of Section 8 company into company of any other kind
 - Apply for licence under Section 8 to the Regional Director (RD) in Form No. INC 18 alongwith the following documents:
 - Memorandum & Articles of Association as approved by the RD.
 - Copies of resolutions passed at the Board Meetings relating hereto-above.
 - Notice of the general body meeting and a copy of special resolution passed relating hereto-above.
 - Certificate from CA/CS/CWA in practice
 - Statement of Assets and Liabilities duly certified by the auditor within 30days thereof.
 - Audited financial statements and annual returns for immediately preceding two years
 - Written consent/NOC from lenders/creditors, if any.

Formation of Companies



- Conversion of Section 8 company into company of any other kind (contd.)
 - NOC from sectoral regulatory authority such as Chief Commissioner of Income Tax, Income Tax Officer, Charity Commissioner, Chief Secretary, State Government having jurisdiction over the company. Proof of notice given to such sectoral authorities to be attached.
 - Details of donation/grants etc received since incorporation..
 - Declaration that no portion of the income of the company or property had been paid or transferred, directly or indirectly, as dividend or bonus or otherwise to members or any persons claiming through them
 - Advertisement to be published in two local newspapers and hosted on the company's website (Form No. INC 19)

Formation of Companies



- Conversion of Public into private company or private into public company
 - File Special Resolution (Form No. INC. MGT. 14)
 - Application to ROC Form No. INC. 27
 - Certificate of Incorporation pursuant to change of name will be issued by ROC in Form No. INC. 25

- Notice of Order of any Court or any other competent authority

Notify ROC in Form No. INC. 28.

- Alteration of Memorandum of Association
 - Objects Clause
 - Capital Clause

Issue of Securities



- Issue of Securities
 - A) Public Offer – includes initial public offer, further public offer as also offer of sale of securities by existing shareholder(s) to the public
 - B) Private Placement
 - C) Rights Issue
 - C) Bonus Shares

- Issue by companies having share capital
 - Public companies – any of the modes specified above.
 - Private companies – any of the modes specified above except public offer

Public Offer



- Prospectus
 - **Abridged Prospectus** means a memorandum containing such salient features of a prospectus as may be specified by the SEBI by making regulations in this behalf
 - **Shelf Prospectus** means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus
 - **Information Memorandum** [Form No. PAS-2]
 - **Red Herring Prospectus** means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.
 - **Deemed Prospectus** – Where a company allots or agrees to allot any securities of the company with a view to all or any of the securities being offered for sale to the public, any document by which the offer for sale is made shall, for all purposes, be deemed to be a prospectus issued by the company.
 - **Advertisement** [Form No. PAS-1]

Public Offer



- **Contents of Prospectus**
 - Refer Section 26 of the Act
 - Refer Rules 3, 4, 5 and 6 of Companies (Prospectus and Allotment) Rules, 2014
- **Offer of Sale by members – Rule 8**
- **Variation in terms of contracts or objects for which prospectus was issued – Rule 7**
 - Advertisement to be published in Form No. PAS 1.
- **Dematerialisation of securities – Rule 9**

Public Offer



- Allotment in case of issue of securities by public offer, shall be made only after the minimum subscription, as specified in the prospectus) is received within thirty days from the date of issue of prospectus
- Return of Allotment of Securities [Form No. PAS 3]
 - Shall be within 30 days of the date of allotment

Public Offer



- Impersonation for acquisition
 - Disgorgement [Section 38]
- Misstatement in Prospectus
 - Civil Liability [Section 33 and Section 35]
 - Criminal Liability [Section 34]
- Class Action [Section 37]

Private Placement



- Private placement means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of private placement letter and which satisfies the conditions contained in Section 42,
- Private placement offer letter (PPOL) [Form No. PAS. 4]
- The offer to be made to upto 50 persons, but not exceeding 200 persons in the aggregate in a year, (excluding qualified institutional buyers and employees under ESOPs) only.
- Such Invitation or offer value shall not be less than Rs. 20,000/-.

Private Placement



- All monies payable towards subscription shall be through cheque/demand draft or banking channels
- Application money to be kept in a separate bank account and not used till the allotment is made.
- Allotment [Form No. PAS 3] shall be made within sixty days from the date of receipt of money. Interest @ 12% p.a. shall be payable in case the application money is not refunded within 60 days or shares not allotted.
- No fresh offer unless the previous offer is logically concluded.

Private Placement



- Relaxation in Rules for Non-Banking Financial Companies and Housing Finance Companies in case the such offers are regulated by RBI
- List of persons to whom the offer is made to be maintained [Form No. PAS. 5] and filed with the ROC(or SEBI, where the company is listed), within 30 days of circulation of PPOL.
- Penalty for non-compliance – Amount involved subject to a maximum of Rupees two crores.

Issue of Securities



- Types of securities :-
 - Equity
 - ✦ With voting rights
 - ✦ With Differential voting rights
 - Preference Shares
- Shares Certificate – [Form No. SH-1]
- Renewed/Duplicate Share certificate – Reister to be maintained – [Form No. Sh-2]
 - For defaced, mutilated, torn or old , decrepit worn out shares
 - On sub-division/consolidation
 - For lost/destroyed shares – can charge upto Rs. 50 per share certificate + out-of-pocket expenses + procedure.

Issue of Securities



- **Issue of shares at a discount**
- Section 53 prohibits issue of shares at a discount except by way of sweat shares.
- **Sweat Shares [Section 2(88)]**
- Sweat equity shares means such equity shares as are issued by a company to its directors or employees at a discount or for consideration other than cash , for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Issue of Securities – Other Issues



- Issue of sweat shares (unlisted equity shares):
 - Employee means a permanent employee who has worked for at least one year. Employee or Director of subsidiary/Holding company shall also be eligible.
 - Value additions means actual or anticipated economic benefits derived by the company from an expert /professional for providing know how or making available rights in the nature of intellectual property rights for which the consideration is not paid or included in the normal remuneration or monetary consideration under any contract

Issue of Securities – Other Issues



- Issue of sweat shares:
 - Should be authorised by a special resolution,
 - ✦ Resolution to specify, the number of shares, current market price, consideration, if any, class or classes of directors or employees to whom such equity shares are to be issued.
 - ✦ Validity of the resolution – 12 months
 - Justification and Principal terms and conditions should also be specified in the explanatory statement
 - At least one year should have elapsed from the date of commencement of business
 - Where the equity shares are listed on a recognised stock exchange, the provisions to be complied shall be as per SEBI regulations, or where they are not so listed, as per prescribed Rules
 - Shall rank pari passu with other equity shareholders.

Issue of Securities – Other Issues



- Sweat Shares – Other Issues
 - Valuation by a registered valuer
 - Non-cash transactions – treatment in accordance with the accounting standards
 - To be treated as compensation, where there is no acquisition of asset.
 - Disclosure in the Directors' Report
 - Diluted EPS pursuant to issue of sweat shares to be disclosed
 - Register of Sweat Equity Shares Issued [Form No. SH3]

Issue of Securities



- **Securities Premium Account**
 - Equivalent to share capital account
 - Application of Securities Premium Account : :
 - ✦ To issue of bonus shares*
 - ✦ To write off expenses/commission paid or discount allowed on any equity shares*
 - ✦ For Buy-back of own shares/securities*
 - ✦ **To write off preliminary expenses of the company**
 - ✦ **To write off premium payable on redemption of preference shares or debentures of the company**

*Note : can be applied by such class of companies as may be prescribed and whose financial statements comply with the accounting standards prescribed under Section 133 of the Act

Issue of Securities



- Issue of Equity shares with differential rights
 - Authorised by Articles of Association
 - Authorised by ordinary resolution of the shareholders. In case of listed company, by postal ballot or poll at general body meeting.
 - Cannot exceed 26% of the total post issue paid up equity share capital
 - Track record of dividend payment of at least 10% for immediately preceding last three financial years.
 - Filed financial statements and Annual returns for immediately preceding five financial years.
 - The holders shall enjoy all other rights such as issue of bonus shares, rights shares etc.,

Issue of Securities



- Issue of Equity shares with differential rights (contd.)
 - No subsisting default in regard to payment of dividend, repayment of deposits or interest thereon, repayment of term loan from any financial institution or interest thereon, redemption of preference shares/debentures
 - The company has not been penalised by any Court or Tribunal or any regulators during the last three years.
- Existing equity shares with voting rights cannot be converted into equity shares with differential voting rights.
- Disclose the fact of the issue in the Board's Report for the financial year in which such shares were issued.
- Existing shares to continue till they are converted as per new Act.

Issue of Securities



- **Redemption of preference shares (Section 55)**
 - Cannot issue Irredeemable preference shares
 - Maximum term – 20 years.
 - However higher term may be permitted for infrastructure projects specified in Schedule VI. Redemption at least 10% per year from the twenty first year.
 - Redemption
- **Share Transfer – Form No. Sh-4**
 - Notice in Form No. SH-5 to be given to the transferee in case of transfer of partly paid shares.

Issue of Securities



- **Employees Stock Option**
 - Authorised by a special resolution
 - Minimum one year gap between the grant of option and vesting of option
 - Lock-in period – discretionary
 - Option – not transferable; cannot be pledged or hypothecated or mortgaged or otherwise encumbered or alienated.
 - On resignation/termination of employments, all options not vested shall expire.
 - Register of Employee Stock Options to be maintained in Form No. SH. 6

Issue of Securities



- Issue of shares on preferential basis
 - Authorised by Articles of Association
 - Authorised by a special resolution. Notice to contain prescribed details/disclosures.
 - Process completed within 12 months of passing the special resolution
 - Price to be determined by the registered valuer
 - Where the issue is made for a non-cash transaction, compliance with accounting standards
- Provision of money by company to purchase its own shares by employees/trustees for the benefit of employees

Issue of Securities



- **Issue of Bonus Shares (Section 63)**
 - Authorised by AoA
 - Recommendation of Board and Approval of general body
 - Cannot issue in case of default – deposits/employee statutory dues
 - Cannot issue in lieu of dividend
- **Alteration of Share Capital**
 - Return to be filed in Form No. SH.7
- **Reduction of Capital (Section 66)**
 - Subject to confirmation of Tribunal
 - No reduction permitted in case of default – deposits

Issue of Securities



- **Further issue of Capital (Section 62)**
 - To existing members/shareholders
 - To employees under ESOP, subject to special resolution
 - To others, subject to special resolution and the price of the share is determined by the Registered Valuer

- **Unlimited Companies**
 - To provide for reserve share capital

Issue of Securities



- Buy Back of shares (Section 68)
 - Restrictions: No public company can directly or indirectly give any financial assistance to purchase or subscribe shares of the company subject to exceptions specified in the section.
 - Authorised by AoA and also by Special Resolution at general body.
 - Buy-back out of free reserves, securities premium account or new issue of other securities.
 - Buy-back is of $< 25\%$ of the paid-up capital and free reserves
 - Debt Equity ratio (post – buy back) = 2 : 1
 - Offer letter to be filed with Registrar of Companies in Form No. SH.8

Issue of Securities



- **Buy Back of shares (Section 68) (Contd.)**
 - No new offer of buy-back within one year of the closure of preceding buy-back
 - Either by purchase from existing shareholders or by purchase from the open market or purchase of ESOP/sweat shares
 - Declaration of Solvency in Form No. SH.9. Not applicable for listed securities.
 - No fresh issue of the same kind of security
 - Prohibition
 - Register of securities bought back – [Form No. SH.10]
 - Return to be filed on completion of buy back – [Form No. SH.11] alongwith declaration in Form No. Sh.15 that all the provisions relating to buy-back have been complied.

Issue of Securities



- Issue of Debentures (section 71)
 - Debenture Trust Deed – [Form No. SH.12]
 - Appointment of Debenture Trustees
 - Register of Debentureholders or other securities [Form No. MGT-2]

- Registration of Charge
 - Charge on all properties, whether movable or immovable, tangible or intangible to be registered.
 - Charge to be filed within 30 days
 - Approval of Tribunal in case of delay beyond 300 days

- Nomination – [Form No. SH.13]
 - Cancellation or Variation of Nomination [Form No. SH.14]

Issue of Global Depository Receipts



- Board Resolution
- Special Resolution which shall be deemed to be special resolution u/s 62.
- Issued by Overseas Depository bank, who shall be recorded as a member until redemption, but the underlying shares to be kept in the custody of domestic custodian bank
- Shall comply with the scheme, guidelines, rules, directives issued by RBI in regard thereto
- Appoint CA/CS/CWA/Merchant Banker to oversee the compliance.
- Voting rights only on conversion. Till then as per the agreement.
- Transitory provisions – six months period to comply with the new law.
- Provisions of the Act and Rules relating to issue of shares or debentures not to apply.

Overview of Companies Act, 2013



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