

# **Presentation on Incorporation of Companies Exemptions to certain types**

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WIRC ICAI**

# Disclaimer

- *This presentation is made for private circulation of select recipients only. The presentation is prepared for general understanding about the provisions of the Companies Act, 2013, Rules prescribed there under based on analysis of the Act and Rules as we understand, it represents our perception of the subject matter.*
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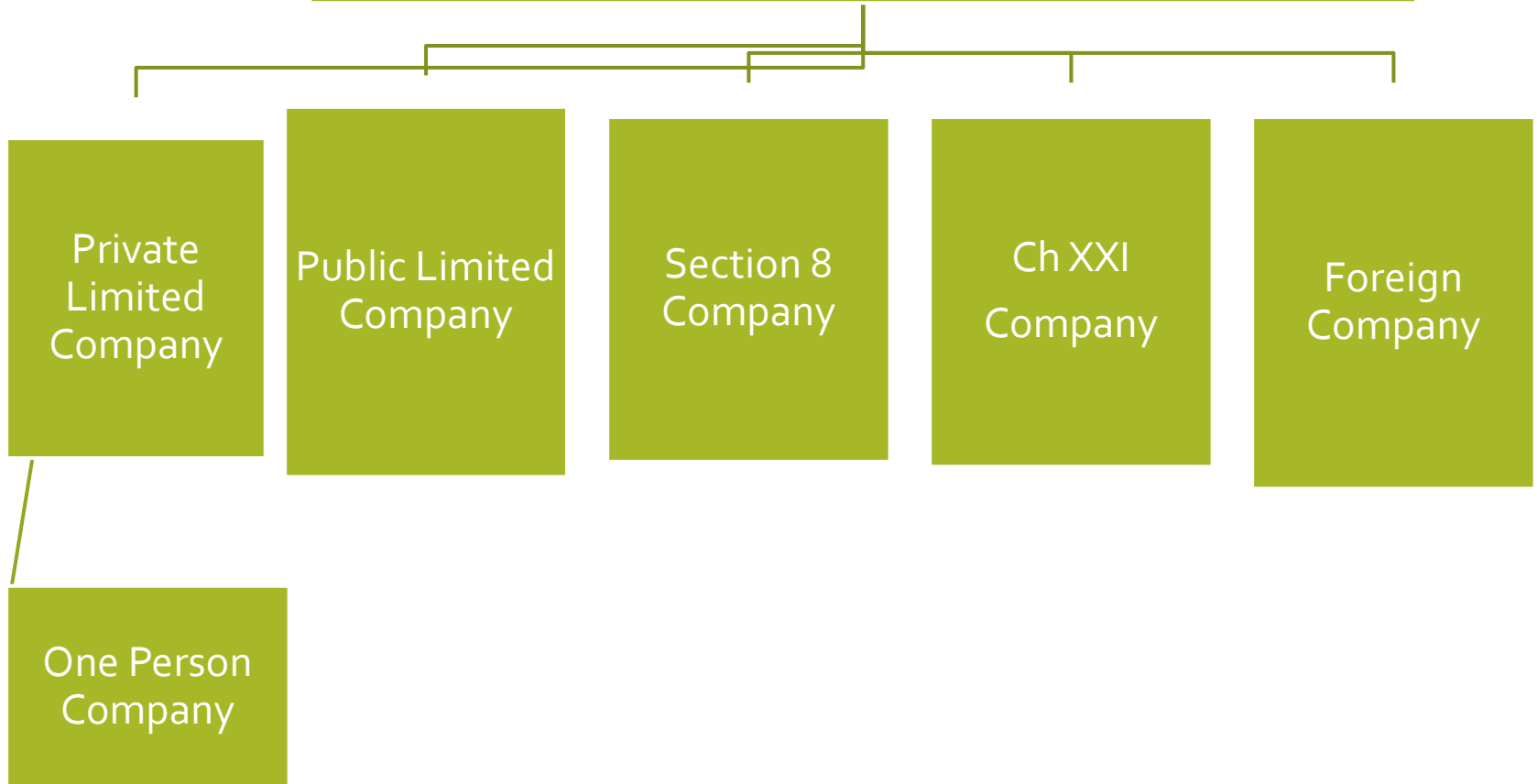
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2	Pre Requisites - DIN, Name application
3	Process of Incorporation
4	OPC, Section 8 & Foreign Company
5	Exemptions to Private Company, Sec 8 Co
6	Q & A

# OVERVIEW OF COMPANIES ACT, 2013

- Total 470 sections / 29 Chapters and 7 Schedules
- Governed by Rules ["As may be prescribed"]
- Chapter II [Sec 3 to Sec 22] – deals with Incorporation of Companies and matters related thereto
- The Companies (Incorporation) Rules, 2014 having 41 Rules

# Categories of Companies



Sec 2(11): "**Body Corporate**" or "**Corporation**" includes a company incorporated outside India, but does not include—

- (i) a co-operative society registered under any law relating to co-operative societies; and
- (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;

Sec 2(20): "**Company**" means a company incorporated under this Act or under any previous company law;

Sec 2(42) "**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.

Sec 2 (62) "**One Person Company**" means a company which has only one person as a member;

Sec 2 (68) "**private company**" means a [company having a minimum paid-up share capital as may be prescribed, and which by its articles],—

(i) **restricts** the right to transfer its shares;

(ii) except in case of One Person Company, **limits** the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members; and

(iii) **prohibits** any invitation to the public to subscribe for any securities of the company;

Sec 2(71) "**public company**" means a company which—

(a) is not a private company;

(b) [has a minimum paid-up share 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

Sec 2 (85) "**small company**" means a company, other than a public company,—

(i) paid-up share capital of which does **not exceed Rs. 2 Cr /50 lakh** or such higher amount as may be prescribed which shall not be more than Rs. 10 Cr; [**and**]

(ii) turnover of which as per its last profit and loss account does **not exceed Rs. 20 Cr /2 Cr** or such higher amount as may be prescribed which shall not be more than Rs. 100 Cr :

**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;



**Section 8 Company** is a special type of Company where 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, charity, protection of environment or any such other 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,

The Central Government may allow such company to be registered as Public Limited or Private Limited Company **without the addition to its name** of the word "Limited" or the words "Private Limited"

# Chapter XXI Companies

[Sec 366 to Sec 374]

**366.** (1) For the purposes of this Part, the word “company” includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force which applies for registration under this Part.

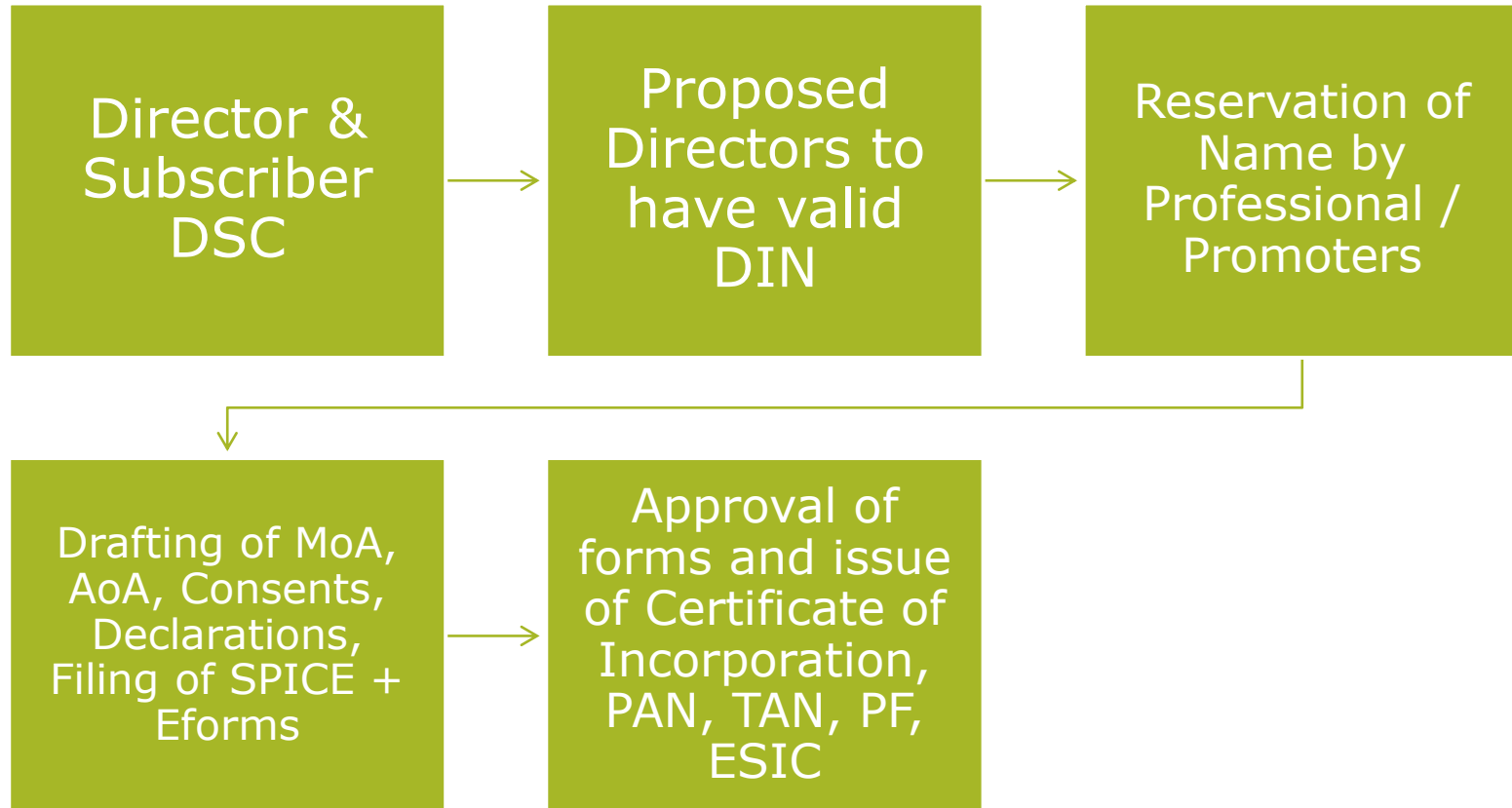
there shall be **two or more members** for the purposes of registration of a company under this Chapter.

a company with less than seven members shall be registered as Private Limited Company only.

the provision relating to incorporation of company and matters incidental thereto shall be **applicable *mutatis mutandis*** for such registration.

After obtaining name approval, it shall file docs & info in form URC-1. The Registrar shall issue Certificate of Incorporation.

# Steps involved in Incorporation of Company



## Directors' Identification Number

Sec 153 read with Rule 9 of Companies (Appointment & Qualification) Rules, 2014: Every individual intending to be appointed as Director shall have DIN.

For  
Existing  
Co

File DIR-3 with  
Color photo, self  
cert copies of PoI,  
PoR, Reso

To be signed by  
applicant & Dir of  
Existing Co

No Certification by  
Professional

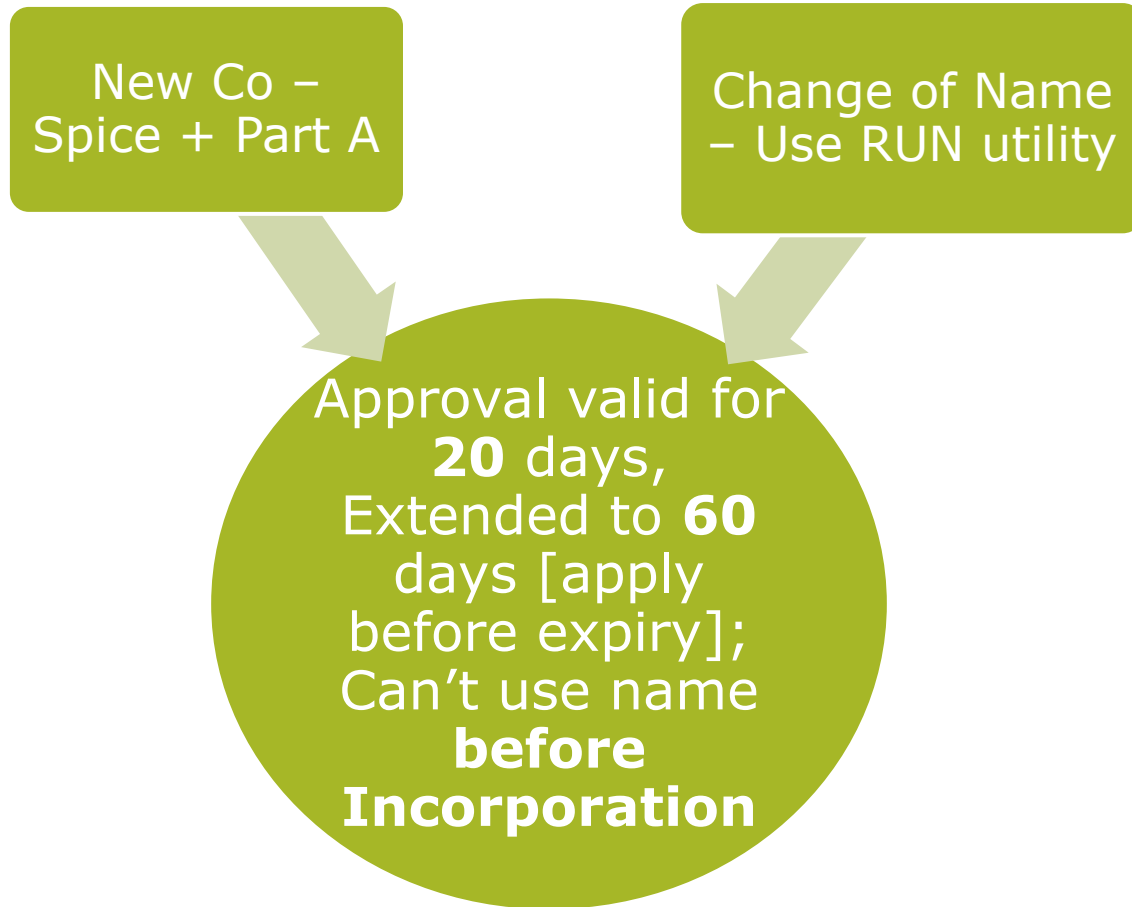
For Co  
under  
Formation

Apply in form INC  
32, Max 3 persons  
without DIN can  
apply

Passport  
Mandatory for  
Foreign Nationals,  
PAN Mandatory of  
Indian National

# Reservation of Name

Rule 8 of the Companies (Incorporation) Rules, 2014



# Most common Reasons Rejection of Name

Includes  
State,  
Country,  
City

Similar /  
Resembling  
to existing  
name

Too  
General

Approval of  
Regulator

NOC /  
RESO  
REQD

Regd Trade  
Mark

Plural or Singular form

Use of "A", "An",  
"The"

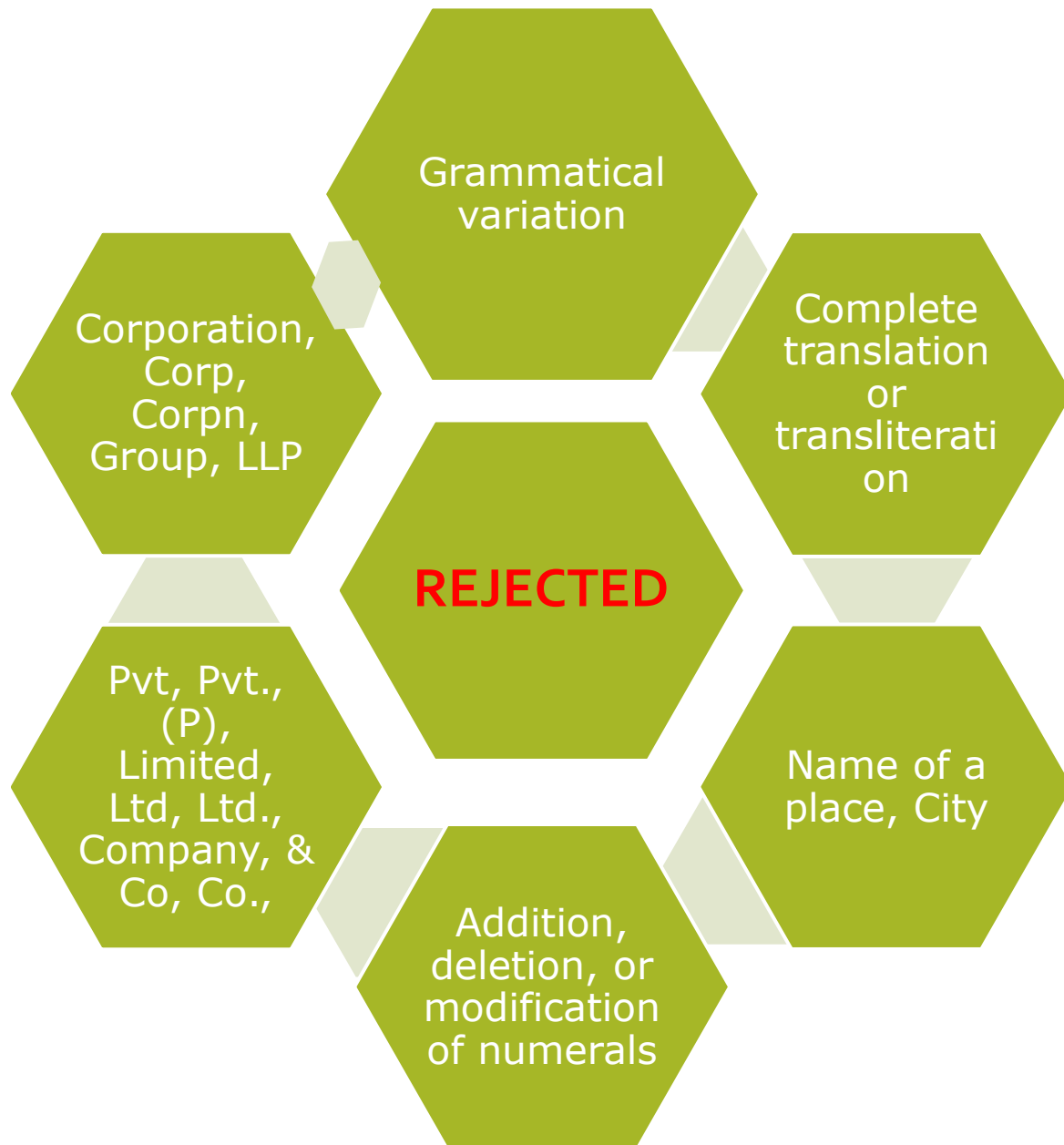
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Spacing  
Punctuation mark

**REJECTED**

Changing order  
of words

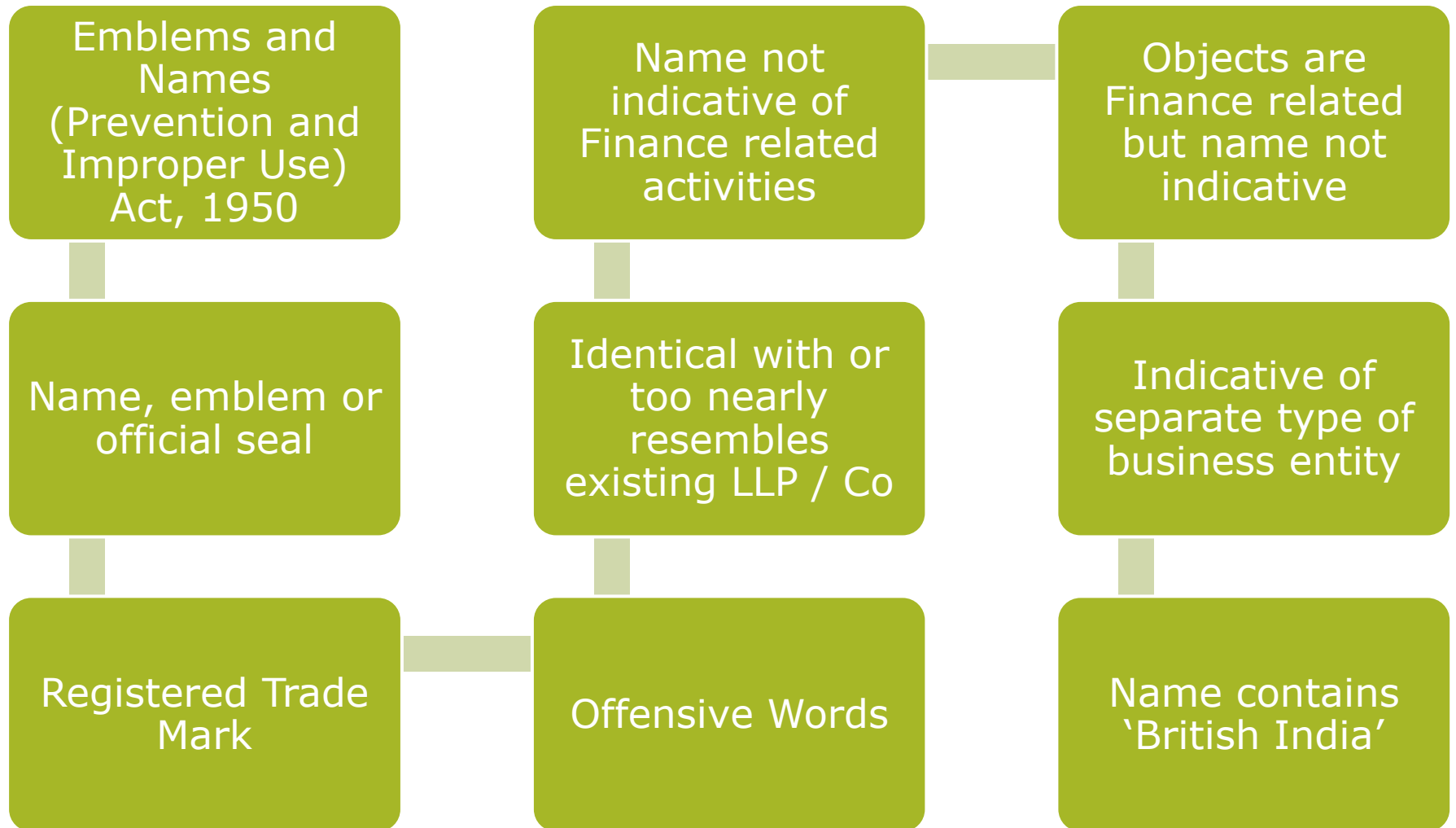
Different Tense,  
Phonetic  
Spelling, Mis  
spelled words

Host Name or  
Domain Name





# Undesirable Names: Rule 8A



Implies association or connection with embassy or consulate

Implies association or connection or patronage of a national hero

Word "State" allowed only for Govt Co

Includes name of any foreign country or any city in a foreign country

Descriptive names consists of commonly used words

Contains name of a continent, country, state, city

Sec 8 Co - Foundation, Forum, Association, Federation, Chambers, Confederation

Nidhi Co - last word 'Nidhi Limited'

3 years not lapsed after strike off

# Process of Incorporation

- Almost all types of Companies are required to utilize webservice SPICE + [**S**implified **P**rocess of **I**ncorporation of **C**ompanies **E**lectronically] for filing of incorporation docs along with form AGILE-PRO-S
- **Zero Filing Fees** [only stamp duty, PAN fee payable] for companies having Auth Share Cap up to Rs 15 Lakh.
- Linked forms to be filed in sequence as:  
SPICE+---->e MOA[if applicable] ----> e AOA[if applicable] ---->  
URC-1[if applicable] ---->AGILE-PRO[mandatory in all the cases]  
---->INC-9[if applicable]
- It is mandatory to use eMoA (INC-33) and eAoA (INC-34) in case the number of subscribers are up to 7 and in the following scenarios:
  - individual subscribers are Indian nationals
  - individual subscribers who are foreign nationals in case they valid DIN and DSC and also submit a proof of a **valid business visa**
  - non-individual subscribers based in India.

# Memorandum & Articles of Association

Sec 2(5) "Articles" means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act;

Sec 2 (56) "Memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act;

Articles contain the regulations for management of a Company while Memorandum is Charter of a Company.

Sch I of CA, 2013 - Model MOA and AOA for various types of companies

Memorandum of Association : Table A to Table E

Articles of Association : Table F to Table J

## MEMORANDUM OF ASSOCIATION

Table A	Company Limited by Shares
Table B	Company Limited by Guarantee & not having share capital
Table C	Company Limited by Guarantee & having share capital
Table D	Unlimited Company not having share capital
Table E	Unlimited Company having share capital

## ARTICLES OF ASSOCIATION

Table F	Company Limited by Shares
Table G	Company Limited by Guarantee & not having share capital
Table H	Company Limited by Guarantee & having share capital
Table I	Unlimited Company not having share capital
Table J	Unlimited Company having share capital

**Form INC-32 SPICE+:** Integrated form which not only enables filing of Incorporation documents but also obtain PAN, TAN, ESIC, EPF and IEC simultaneously.

**Form INC-33 (e-MoA) :** Memorandum of Association – Subscribers and witness shall sign digitally with no of shares subscribed. Option to enter Main Objects, No Other Objects

**Form INC-34 (e-AoA) :** Articles of Association – Select applicable Articles from table given or insert desired articles by editing the articles. Subscribers and witness shall be digitally signed.

No requirement to submit scanned or physical MOA / AOA in most cases; No need to file form DIR-12 [Appointment of Dir]

Form INC-22 [Registered office] within 30 days if address for Correspondence # Registered office address.

Scenario	Forms to be Filed
<b>Non-Individual first subscriber based in India</b>	SPICe+ (INC-32) with linked filing of eMOA (INC-33) and eAOA (INC-34)
<b>Indian National being Subscriber other than director</b>	SPICe+ (INC-32) with linked filing of eMOA (INC-33) and eAOA (INC-34)
<b>Indian National being Subscriber-cum-Director</b>	SPICe+ (INC-32) with linked filing of eMOA (INC-33) and eAOA (INC-34)
<b>Foreign National being Subscriber other than director having valid DIN</b>	SPICe+ (INC-32) with linked filing of eMOA (INC-33) and eAOA (INC-34) alongwith <b>Valid Business Visa</b> to be submitted. In case Business Visa is not available, scanned copies of certified MOA and AOA shall be attached to INC-32.
<b>Foreign National being Subscriber-cum-Director having valid DIN</b>	SPICe+ (INC-32) with linked filing of eMOA (INC-33) and eAOA (INC-34) alongwith <b>Valid Business Visa</b> to be submitted. In case Business Visa is not available, scanned copies of certified MOA and AOA shall be attached to INC-32.
<b>Foreign National being Subscriber-cum-Director not having valid DIN</b>	SPICe+ (INC-32) with scanned certified MOA and AOA as attachments.
<b>Non-Individual first subscriber based outside India</b>	SPICe+ (INC-32) with scanned certified MOA and AOA as attachments

## Applicability of e-MOA & e-AOA

- All companies except

- Section 8 Companies
- Companies with more than 7 subscribers
- Companies with all or any of the **non-individual** first subscribers are based **outside** India
- Individual **foreign subscribers** do not possess a valid **business visa**
- Producer Companies
- Chapter XXI Companies

Above companies to file scanned copies of physical MOA/AOA signed by subscribers and attach to SPICE+ form INC 32.

Subscriber & witness Signs, POI, PoR shall be

- Notarized by Notary Public – **Commonwealth** Countries
- Notarized & Apostilled – Country **part of Hague** Convention
- Notarized & Consularised – **Outside** Hague Convention

Can be signed, if foreign national having valid business Visa visited India for incorporation.



- SPICE+ is divided into **two** Parts:
- Part A: can be submitted individually ONLY for name reservation or can be submitted together with SPICE+ Part B for both name reservation as well as incorporation.
- Part B include following basic details:
  - 1. Capital Details
  - 2. Registered office details
  - 3. Subscriber and Director Details
  - 4. PAN and TAN details

Each Section of PART B contains Save and Continue Button.

- Declaration by all Subscribers and first Directors (INC-9) shall be auto-generated, except where:
  - (i) Total number of subscribers and/or directors is greater than 20 and/or
  - (ii) Any such subscribers and/or directors has neither DIN nor PAN.

Once the SPICE+ is filled completely, it will be converted into pdf for affixing the DSC

Can be edited up to 5 times after affixing DSC, anytime before DSC

- DSC Services
- DIN Services
- Master Data
- LLP Services
- LLP Services For Business User
- e-Filing
- Company Services
  - Check Company Name
  - Find CIN
  - SPICe+
  - RUN** (Reserve Unique Name)
  - NEW
- Complaints
- Document Related Services
- Fee and Payment Services
- Investor Services
- ID Databank Registration

## SPICe+ Part A

### Name Reservation

**Type of Company \***

**Class of Company \***

**Category of Company \***

**Sub-Category of Company \***

**Main division of industrial activity of the Company \***

**Description of the main division**

### Summary of the objects to be pursued by the company on its incorporation \*

You may include a document that supports your name reservation below.

Ministry Of Corporate Affairs - M x

mca.gov.in/mcafoportal/run/spice

Home About MCA Acts & Rules My Workspace MCA Services Data & Reports E-Consultation Help & FAQs Contact Us

MCA Services

Home > MCA Services > Company Services > SPICe+

DSC Services

DIN Services

Master Data

LLP Services

LLP Services For Business User

e-Filing

Company Services

- Check Company Name
- Find CIN
- SPICe+
- RUN (Reserve Unique Name)

Complaints

Document Related Services

### SPICe+ Part A

\* Proposed name is similar to the name of an existing Company/LLP ' RELIANCE INDUSTRIES LIMITED' L17110MH1973PLC019786 in accordance with Rule 8(1)(a) of the Companies (Incorporation) Rules, 2014

#### Name Reservation

Type of Company \* New Company (Others)

Class of Company \* Public

Category of Company \* Company limited by shares

Sub-Category of Company \* Non-government company

Main division of industrial activity of the Company \* 72

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# Spice+ Part B Capital Structure

Part B.pdf - Adobe Acrobat Reader DC (32-bit)

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Home Tools Part B.pdf x

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6. (i) \*Capital structure of the company

Total authorized share capital (in Rupees)

Authorized share capital	Equity	Preference	Unclassified
Number of shares	150,000	0	
Nominal amount per share (in Rupees)	10		
Total amount (in Rupees)	1,500,000	0	0

Page 1 of 16

Total subscribed share capital (in Rupees)

Subscribed share capital	Equity	Preference
Number of shares	10,000	0
Nominal amount per share (in Rupees)	10	
Total amount (in Rupees)	100,000	0



# Spice+ Part B Registered Office

aow help

Part B.pdf



6. (ii) Details of number of members

(a) Enter the maximum number of members	0
(b) Maximum number of members excluding proposed employees	0
(c) Number of members	0
(d) Number of members excluding proposed employee(s)	0

### III. Address of the Company

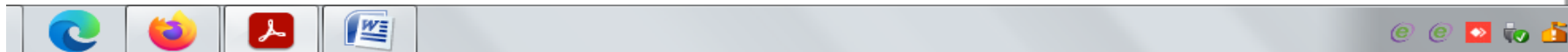
7. (a) \*Correspondence address

*Line I	[Redacted]	
*Line II	[Redacted]	
*City	[Redacted]	
*State/Union Territory	[Redacted]	*Pin code [Redacted]
*District	[Redacted]	
*Phone (with STD code)	[Redacted] - [Redacted]	
Fax	[Redacted]	
*email ID of the company	[Redacted]	

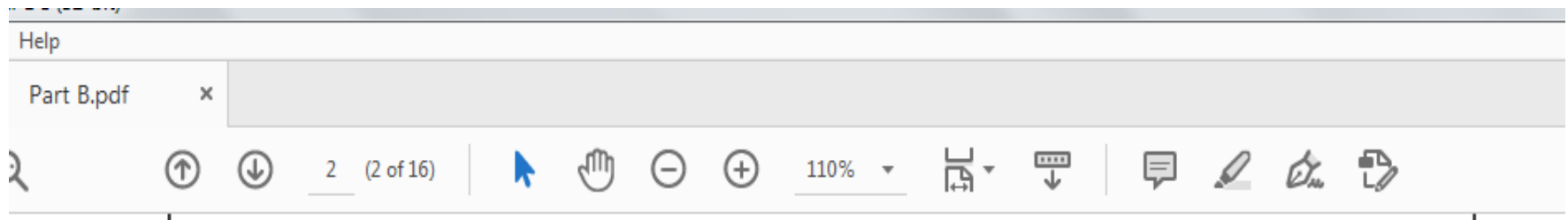
(b) \*Whether the address for correspondence is the address of registered office of the company  Yes  No

(c) \*Name of the office of the Registrar of Companies in which the proposed company is to be registered

Registrar of Companies, Pune



# Spice+ Part B Subscribers & Directors Details



## IV. Subscriber and Directors Details

8. (a) \*Number of first subscriber(s) to MOA and directors of the company

	Having valid DIN	Not having valid DIN
Total number of first subscribers (non-individual + individual)	0	2
Number of non-individual first subscriber(s)		0
Number of individual first subscriber(s) cum director(s)	0	2
Total number of directors (director(s) who is/are not subscriber(s) + subscriber(s) cum director(s) as mentioned in above Row no. 3)	0	2

# Spice+ Part B Subscribers & Directors Details

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\*First Name [REDACTED]

Middle Name [REDACTED]

\*Surname [REDACTED]

\*Father's first name [REDACTED]

Father's middle name [REDACTED]

\*Father's surname [REDACTED]

\*Gender  \*Date of Birth  \*Nationality

\*Place of Birth [REDACTED]

\*Whether citizen of India  Yes  No \*Whether resident in India  Yes  No

\*Occupation type  Self Employed  Professional  Homemaker  Student  Serviceman

\*Area of Occupation

If 'Others' selected, please specify

\*Educational Qualification [REDACTED]

\*  PAN  Passport number

\*Designation  \*Category

Whether  Chairman  Executive director  Non-executive director

\*Name of the company or institution whose nominee the appointee is

[REDACTED]

Taskbar: Firefox, Adobe Reader, Microsoft Word

# Spice+ Part B Subscribers & Directors Details

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Window Help

Part B.pdf



\*State/ Union Territory  \*Pin code

\* ISO Country code  Country

\*Phone (with STD/ISD code)  -

\*Duration of stay at present address  Years  Months

If Duration of stay at present address is less than one year then address of previous residence

\*Proof of identity  \*Residential Proof

Voter's identity card number

Driving license number

Aadhaar Number

Submit the proof of identity and proof of address under attachments.

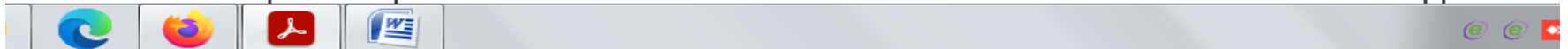
Kind of shares subscribed	Number of subscribed shares	Amount of shares subscribed
Equity shares	6,000	60,000
Preference shares	0	0

Number of entities in which director have interest

\*Registration number

\*Name

\*Address





# Spice+ Part B PAN & TAN Details

Home Tools

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At least one signature requires validating.

Signature Panel

## VII. PAN/ TAN Information

### 11. \*Additional Information for applying Permanent Account Number (PAN) and Tax Deduction Account Number (TAN)

#### Information specific to PAN

Area code			AO type		Range code			AO No.		
P	N	E	W		9	3		9	2	

#### Information specific to TAN

Area code			AO type		Range code			AO No.		
P	N	E	W	T	3	2		1		

#### Source of Income

- Income from Business/profession    Capital Gains    Income from house property  
 Income from other source    No Income

Business/Profession code 

2	0
---	---

## Spice+ Part B Attachments

### Attachments

1. \*Memorandum of association
2. \* Articles of Association
3. \*Declaration by first subscriber(s) and director(s)  
(Affidavit is not required to be attached)
4. Proof of Office address (Conveyance/ Lease deed/ Rent Agreement etc. along with rent receipts)
5. Copy of the utility bills (not older than two months)
6. Copy of certificate of incorporation of the foreign body corporate and resolution passed by foreign company or authority given through constitutional document
7. Resolution passed by promoter company
8. Interest of first director(s) in other entities
9. Consent of Nominee (INC-3)
10. Proof of identity & residential address of subscribers
11. Proof of identity & residential address of nominee
12. Proof of identity and address of Applicant I
13. Proof of identity and address of Applicant II
14. Proof of identity and address of Applicant III
15. Resolution of unregistered companies in case of Chapter XXI (Part I) companies
16. Declaration in Form No. INC-14
17. Declaration in Form No. INC-15
18. Optional attachment(s), (if any)
19. Attachment - Part - A

### List of attachments

MOA_AGRANADE_20201112114400.pdf	<a href="#">Browse</a>
AOA_AGRANADE_20201112114410.pdf	<a href="#">Browse</a>
Declaration_INC-9_AGRANADE_20201112114410.pdf	<a href="#">Browse</a>
	<a href="#">Browse</a>
Utility_Bill_NOC_Reso_AGRANADE_20201112114410.pdf	<a href="#">Browse</a>
COI_and_Reso_AGRANADE_20201112114410.pdf	<a href="#">Browse</a>
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	<a href="#">Browse</a>
	<a href="#">Browse</a>
	<a href="#">Browse</a>
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KYC_Kerstin_AGRANADE_20201112114458.pdf	<a href="#">Browse</a>
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## Important Attachments to SPICE + forms

- Form **INC-9** : Declarations by first subscribers & directors – Auto generated in most cases
- **Declaration** regarding non acceptance of deposits
- Form **DIR-2** : Consent to act as director
- **Interest of Directors** in other entities, if any [Director Master data]
- Registered office **address proof** (Conveyance/ Lease deed/Rent Agreement etc. along with rent receipts)
- Copy of **Utility bill** viz. telephone/gas/mobile/electricity bills (any one proof, not older than 2 months)
- **NOC** from owner, if registered office is not owned by proposed co.
- If one of subscribers is a Company, **Resolution** passed by promoter company **authorizing** one person to subscriber on its behalf
- If one of subscribers is a **Foreign Company**, Cert of Inco and Board Reso authorizing subscription of shares
- Proof of **Identity & Residence** if subscribers / directors DO NOT have DIN & application for DIN is made through SPICE+.

## **AGILE-PRO-S**

[(Application for **G**oods and services tax Identification number, employees state **I**nsurance corporation registration p**L**us **E**mployees provident fund organization registration, **P**rofession Tax **R**egistration and **O**pening of Bank Account and **S**hop & Establishment Act Registration)]

AGILE PRO filed as linked form with SPICE + for

- 1. Registration of GSTIN
- 2. Registration of ESIC
- 3. Registration of EPFO
- 4. Professional Tax Registration [In some states only]
- 5. Bank Account Opening
- 6. Registration under Shop & Establishment Act [In some states only]

One can edit / modify Spice + anytime before generating pdf & affixing DSC. After generating pdf & DSC webform can be edited Max **5 times**.

Necessary to attach Specimen signature card with AGILE PRO. OTP verification mandatory before signing AGILE PRO.

# AGILE-PRO-S

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(This **AGILE-PRO** form is part of **SPICe+** eform for **GSTIN / EPFO / ESIC / Profession Tax / Bank Account**)

\* Name of the company

1. \* Do you want to apply for GSTIN  Yes  No

2. \* State (Same as entered in SPICe+)

3. \* District (Same as entered in SPICe+)

4. \* State Jurisdiction

\* Sector / Circle / Ward / Charge / Unit

5. \* Center Jurisdiction

Commissionerate

Division

Range

6. \* Reason to Obtain Registration

7. \* Whether the Establishment On Lease  YES  NO

\* Leased From Date  To Date

(a) \* Nature of possession of premises

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6/22/2021

# AGILE-PRO-S

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9. \* Nature of Business activity being carried out at above mentioned Premises (Please tick applicable)

Factory / Manufacturing	<input type="checkbox"/>	Wholesale Business	<input type="checkbox"/>	Retail Business	<input type="checkbox"/>
Warehouse/Deport	<input type="checkbox"/>	Bonded Warehouse	<input type="checkbox"/>	Supplier of services	<input type="checkbox"/>
Office/Sale Office	<input type="checkbox"/>	Leasing Business	<input type="checkbox"/>	Recipient of goods or services	<input type="checkbox"/>
EOU/ STP/ EHTP	<input type="checkbox"/>	Works Contract	<input type="checkbox"/>	Export	<input type="checkbox"/>
Import	<input type="checkbox"/>	Others (specify)	<input type="checkbox"/>		

If others, please specify

(A) \* Primary Business Activity

If others selected, please specify

(B) \*Exact nature of work / business

\*Work Sub-category

\*Nature of work business

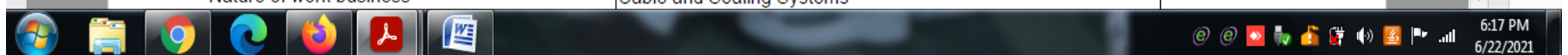
RUBBER PRODUCTS

Leather And Rubber

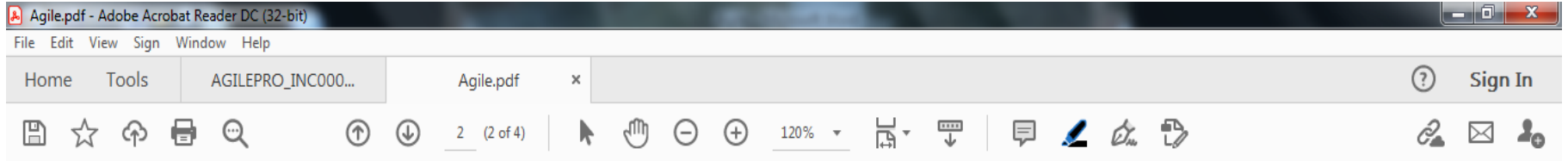
LEAT04

Cable and Sealing Systems

Page 1 of 4



# AGILE-PRO-S



## 12. Director / Primary Owners / Office Bearer Details

(Minimum number of directors to be entered for OPC shall be 1, 2 in case of private company, 3 in case of public limited company and 5 in case of Producer Company)

Number of Director details to be entered

(A). Enter Director details who is also an Authorised Signatory / Primary Owner / Office Bearer

<input checked="" type="radio"/> Director Identification Number (DIN)		<input type="radio"/> Permanent Account Number (PAN)	<b>Photograph</b>
*DIN	<input type="text" value="[REDACTED]"/>	<input type="button" value="Pre-fill"/>	<input type="text" value="DSPPhoto_AGRANADE_2020"/>
*PAN	<input type="text" value="[REDACTED]"/>		
*First Name	<input type="text" value="[REDACTED]"/>		<input type="button" value="Attach Photograph"/> <input type="button" value="Remove Photograph"/>
Middle Name	<input type="text" value="[REDACTED]"/>		
*Last Name	<input type="text" value="[REDACTED]"/>	<input type="button" value="Send OTP"/>	<b>Attach a latest passport size photograph by clicking the above box</b>
*Personal Mobile Number	+91 <input type="text" value="[REDACTED]"/>		
*Personal Email Id	<input type="text" value="[REDACTED]"/>	<input type="button" value="Verify OTP"/>	
*Enter OTP for Mobile Number	<input type="text" value="283719"/>		
*Enter OTP for Email Id	<input type="text" value="535765"/>		

(B). \* Director Details other than Authorised Signatory / Primary Owner / Office Bearer



# AGILE-PRO-S

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13. \*Police Station

14. \*Employer's Particulars

    \*Select Appropriate Branch Office

    \*Select Inspection Office

15. \*Bank Particulars

    \*Select Bank Name

**Attachments**

1. \*Proof of Principal place of business

2. \*Proof of appointment of Authorized Signatory for GSTN

*(Either of the following document can be attached.  
Letter of Authorisation / Copy of Resolution passed by BoD /  
Managing Committee and Acceptance letter)*

3. \*Proof of Identity of Authorized Signatory for opening Bank Account

4. \*Proof of Address of Authorized Signatory for opening Bank Account

5. \*Specimen Signature of Authorized Signatory for EPFO

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6/22/2021



# ONE PERSON COMPANY [OPC]

- Encourage corporatization of micro businesses and entrepreneurship with simpler legal framework; Similar form exists in UK, USA, Singapore, Australia, China, UAE, Turkey, Pakistan etc.
- Special type of Private Limited Company having only one member.
- Member & nominee must be **Natural** persons, **Indian** Citizens **Resident** in India or **Otherwise** [a person who has stayed in India for a period of not less than 120 / 182 days during the immediately preceding one calendar year.]
- A natural person can not form **more than one OPC** and nominee of more than one OPC.
- ~~OPC to lose its status if **paid up capital** > **Rs. 50 lakhs** or average annual **turnover** > **Rs. 2 crores** in three immediate preceding consecutive years. Rule 6 amended w.e.f. 1<sup>st</sup> April 2021 No mandatory conversion upon breach of threshold limits.~~

- Limited Liability, easy to raise capital compared to sole proprietorship
- Lesser compliances under the Act
- Rotation of Auditors - Not Applicable
- Provisions of Sec 98, 100 to 111 [Relating to General Meetings] - Not Applicable
- Only one Board Meeting in each half of calendar year with gap not less than 90 days.
- Cash flow statement - not mandatory
- Abridged format of Board Report
- Annual Return in form MGT 7A, certified by Director. Certification by professional not required

# OPC INCORPORATION

- Minor can not be a Member or Nominee
- DSC, DIN, Name application in form SPICE +
- Filing of form INC-2 [Incorporation form] along with form INC-3 [Consent of Nominee]. Other docs such as MOA/AOA, INC-9, Deposit Declaration, DIR-2, Registered Office proof, NOC etc with SPICE 32 form.
- Nominee to be mentioned in MOA also.
- OPC can not be incorporated or converted into Section 8 company; can not carry out NBFC, Investment activities.

# OPC CONVERSION

- OPC may voluntarily convert itself into Private or Public company. Cessation of OPC status due to exceeding TO [ $> 2\text{Cr}$ s] / Cap [ $> 50$  lakh] criterion removed w.e.f. 1<sup>st</sup> Apr, 2021.
- Conversion by alteration of Memorandum & Articles, Filing of Reso, Consent of Members & Creditors, Audited Financials, form INC-6 (Min 2 dir & 2 members [Private] OR 3 dir & 7 members [Public])
- Private Limited can convert itself into OPC ~~subject to meeting of Capital & Turnover criterion.~~ [amended w.e.f. 1<sup>st</sup> Apr, 2021]
- NOC from Members & Creditors, Special resolution, Affidavit by Directors
- File form MGT-14 and form INC-6 with ROC for conversion

# SECTION 8 COMPANY

- Has in its objects the **promotion** of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- intends to **apply its profits**, or other income in **promoting** its objects; and
- intends to **prohibit payment** of **any dividend** to its members

## Process of Incorporation – **Special points**

- **MoA must** be in form INC-13
- Declaration by professional in form INC-14
- Estimate of future annual income & expenditure for next 3 years
- Declaration by each subscriber in form INC-15
- Application in form INC-12 for **license u/s 8** to ROC **prior** to Incorporation
- After License, incorporation through SPICE + forms.

# Companies Incorporated Outside India

[Sec 379 to Sec 393]

Every foreign company **within 30 days** from date of establishment of its business in India shall file form FC-1 for registration with ROC along with Copy of RBI / other regulatory approvals; Certified copy of its Charter, Statutes or Memorandum in English [or translated in English with original foreign language] ; List of Directors & secretary of Company; Name & full address of Authorized Representative resident in India; Full address of its Principal place of business in India and Other offices, if any

Any **change** in docs filed with ROC shall be intimated to ROC **within 30 days** of such change in form FC-2

Provisions of Debentures, Annual Return, Registration of Charges, Books of Accounts, Audit & Auditors apply mutatis mutandis to a foreign company

File Return of Places of business and Audited Financial Statements within 6 months from close of FY in form FC-3 & FC-4

# Major Exemptions to Private Limited Companies

[Notification dated 5<sup>th</sup> June, 2015]

Sec 43 : Kinds of Share Capital } If provided in their  
Sec 47 : Voting Right } MoA / AoA

Sec 62 : Further issue of capital  
clause (a) sub clause 1 & sub sec (2) relating to notice period not applicable provided 90% of members have given consent.  
clause (b) sub clause 1 - Ordinary reso in place of Special reso

Sec 67 : Restrictions on Purchase of its own Shares [sub to conditions]

Sec 73 (2) clauses (a) to (e) : Acceptance of Deposits from Public provided Pvt Co accept from Members deposits < 100 % of paid up cap + res and file return [form DPT-1] with ROC.

Sec 101 to 107, Sec 109 : Not Applicable if the Article contains specific provisions [Notice of Meeting, Statement to be annexed to Notice, Quorum, Chairman, Proxies, Voting by show of hands, Demand of Poll]

Sec 117 (3) (g) : **Filing of resolutions** pursuant to sec 179 (3)

Sec 141 (3) (g) : For counting **Limit as auditor of 20** companies, OPC, dormant, small & private companies with paid up capital of less than Rs 100 Cr. shall be excluded.

Sec 160 : Right of person other than retiring director to stand for Directorship

Sec 162 : Appointed of Directors to be **voted individually**

Sec 180: **Restrictions** on Powers of Board [Sell, lease or disposal, to invest, to borrow money etc on with Special reso]

Sec 184 (2): Interested Director can **participate** in BM provided he has disclosed his interest.

Sec 188 (1) second proviso : **Voting** on reso to approve Related Party transactions.

Sec 196 (4) & (5) : Appointment of MD, WTD sub to Sec 197 and Sch V, approval by members & approval by Central Govt in certain cases [Ceiling on Remuneration]



## Major Exemptions to Section 8 Companies

[Notification dated 5<sup>th</sup> June, 2015]

Appoint **any person** as Company Secretary, need not be member of ICSI – Sec 2(24)

**No prescribed** Paid Up Share capital, Free to have any amount of Capital – Sec 2(68) & 2 (71)

**Shareholders** can direct Board to fix time, date & place of next AGM – Sec 96 (2) proviso

**Notice period** for calling General Meeting is **14** clear day instead of 21 days, Financial Statements to be served before 14 days of AGM – Sec 101 (1) / Sec 136 (1)

**Exempted** to comply with Sec 118 – Minutes of meetings of General meetings, Board Meetings, Reso passed by Postal ballot

No stipulation on **Min & Max no** of Directors, No need to appoint Independent Directors – Sec 149 / Sec 150

Consent to Act as Director [**DIR-2**] not required – Sec 152 (5)

**Directorship** of Sec 8 Co **exempted** while counting No of Directorships held – Sec 165 (1)

Board Meeting once every **Six months**, Quorum 8 members or 25% of total, Min 2 – Sec 174 (1)

No need to have **Nomination Remuneration Comm, Stakeholder Relation Comm** – Sec 178 Audit Comm w/o Ind Dir

Exercise certain powers by **Circulation** instead of BM [Borrow money, Invest Funds, Grant Loans] – Sec 179

Exempted from **Disclosure of Int** by Dir [Sec 184 (1)] and **Register of Contracts** where RPT < Rs 1 Lakh

# Thank You

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