



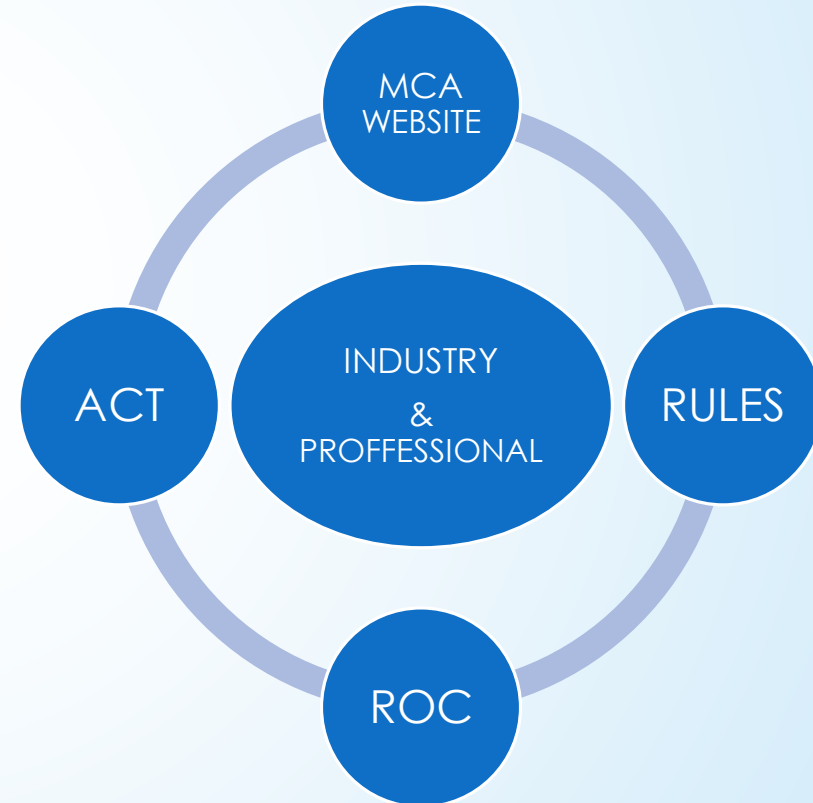
Incorporation of various types of companies

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Basis for discussion

Interpretation

Conservative
Approach



Definition of a Company

Section 2(20)

Section 3

- ▶ “Company” means a company incorporated under this Act or under any previous company law; Section 2 (20)

Private Company

Section 2(68)

Section 3

- ▶ "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;

Public Company

Section 2(71)

Section 3

▶ "public company" means a company which—

(a) is not a private company and;

(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 ;

One Person Company

Section 2(62)

Section 3

- ▶ "One Person Company" means a company which has only one person as a member.

Name Application.....

Headings of Name Application

Type of Company (Producer, Section 8 ,New Company (others), PART I , Private (OPC), Unlimited Company, Nidhi , IFSC Company,

Class of Company (Public, Private)

Category of Company (Limited by shares, limited by guarantee)

Sub-Category of Company

(Union Govt. Co, State Govt .Co, Non-government company, subsidiary of company incorporated outside India , Guarantee & Association Co.)

Types of Companies

Basic Types	Section Reference
Company Limited by guarantee	2 (21)
Company Limited by Shares	2 (22)
Companies with charitable object	8
Producer Company	378A(I)
Nidhi Company	406(1) & (2)
Government Company	2 (45)



INCORPORATIONAL
ASPECTS

Planning.....

- ▶ Deciding the correct structure based on the requirement ...

Partnership , LLP, OPC, Private , Public, ?????

- ▶ Creating awareness as to the compliances of the Company form of organization ...

- ▶ Status of Director's DIN

KYC Compliant /Qualified /Disqualified

Cont...

- ▶ *Number of subscribers and Directors
Indian Foreign.....*

- ▶ *Foreign subscribers..... Time involved in notarization.....*

Incorporation with Indian subscriber/Directors Saving in time.....

Transfer of shares afterwards????????

Chinese companies ?????? Not advisable.....

Cont..

- ▶ *Deciding authorized and paid –up capital*

Incorporation ?????

Registration Fees?????

Professional Fees ????

Depositing the subscription money after incorporation?????

- ▶ *Checking availability of the proofs as per requirements*

Different addresses on different proofs

Differences of name....

Validity of proofs Passport Driving license.....

Cont..

- ▶ Checking the availability of DSC of the subscribers as per requirement....

Requirements of different agencies for DSC....

DSC of foreign national

Avoid last minute rush.....

- ▶ Registration as Business User and association of DSC in V3.
- ▶ Approvals from any other Regulators such as RBI , SEBI. IRDA.....

Cont...

- ▶ Check whether the Company limited by share capital of company limited by guarantee...

"company limited by guarantee" means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

"company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;

Incorporation

	Provisions
Name Application	PART-A of the SPICE +
Incorporation	Web based { SPICE+ (Part A +Part B) + AGILE-PRO }

Basic Process/ Aspects/ Some constraints as to Incorporation of Company

Incorporation process is done through **Spice +** (Simplified Proforma for incorporating Company Electronically Plus) accompanied by linked forms:

- ▶ **SPICE+ Part B**
- ▶ **SPICE+ MOA (INC-33)**
- ▶ **SPICE+ AOA (INC-34)**
- ▶ **AGILE –PRO** Application for **G**oods and services tax Identification number, employees state **I**nsurance corporation registration plus **E**mployees Provident fund organisation registration , **P**rofession tax **R**egistration and **O**pening of bank account)
- ▶ **SPICE+ INC-9**
- ▶ **form URC-1** as applicable (In case of conversion of partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law)

Cont..

Headings of Name Application

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*Main division of industrial activity of the Company and description of main activity

Cont..

Headings of Name Application

*Main division of industrial activity of the Company and description of main activity

NIC-2008

Selection of proper NIC Code.....

Confirmation with client....

Cont..

- **Points to be checked while making name application...**
- ❖ Selecting proper category & class of company...
- ❖ Double checking the name with existing names of Companies /LLP....Interface.....
- ❖ Checking trademark against name....
- ❖ Selecting proper activity code....
- ❖ Submission of main object
- ❖ Submission of trademark certificate /NOC if applicable....

Cont..

- ▶ Approval if any needed from sectoral regulators such as the Reserve Bank of India, the Securities and Exchange Board.....
- ▶ Attaching copy of resolution of holding company in case the Company is subsidiary company.....

Cont...

- ▶ *Whether Period for submission of PART -B after name is approved through PART-A is sufficient ?*

Foreign subscribers ??

Travelling subscribers ???

Website issues??

Part I conversion Newspaper Notice period ??????

...Before Name Application ??? After Name Application??

.....Accounts as attachment not ready???

Cont...

- ▶ Extension of Reservation of Name:

Registrar shall extend period of name reserved through application made by Promoters using Web service SPICE+ upto:

- (a) forty days from the date of approval under rule 9, on payment of fees of rupees of one thousand rupees made before the expiry of twenty days from the date of approval under rule 9;
- (b) sixty days from the date of approval under rule 9 on payment of fees of rupees two thousand made before the expiry of forty days referred to in clause (a) above;
- (c) sixty days from the date of approval under rule 9 on payment of fees of rupees three thousand made before the expiry of twenty days from the date of approval under rule 9:

Provided that the Registrar shall have the power to cancel the reserved name in accordance with subsection (5) of section 4 of the Act.”

Challenges/Advantages ???

- *Ease of doing business ??? Yes...*
- *Linking with trademark ???*
Protection for trademark
Restrictions on available names
- *Whether the name application*
PART A can be submitted
independently ? Yes....
- *If name is applied through PART A*
and rejected then whether resubmission
is allowed and how many times ?



Incorporation Documents

Drafting of Documents

	Requirements
INC-9 (Declaration by all the subscribers & first Directors)	<p>Will be auto generated by the system except in the following cases :</p> <ol style="list-style-type: none"> 1. No. of Directors/ subscribers more than 20. 2. Any subscriber/ Director who is not having PAN/DIN.
<i>Resolution of the promoter company.</i>	<i>Required to be drafted and signed</i>
<i>NOC for using the address as the registered office.</i>	<i>Required to be drafted and signed</i>
<i>Other incorporation documents (PAN declaration in case of foreign national, affidavit if foreign national is signing in India etc...)</i>	<i>Required to be drafted and signed</i>

Some questions??

- ▶ Signing of Memorandum & Articles of Association ???
- ▶ Foreign subscribers ???
- ▶ Obtaining the DSC of the subscribers???
- ▶ Signed : Physically ?? Digitally ?? **NO CPR**

Cont...

VARIOUS REGISTRATION	
PAN	Mandatory
TAN	Mandatory
EPFO	Mandatory
ESIC	Mandatory
Profession Tax (Applicable to the State of Maharashtra only, Karnataka , West Bengal)	Mandatory
Opening of bank account for the Company	Mandatory
GSTIN	Voluntary
Allotment of Shops and Establishment Registration Number (Only for Delhi)	

Some questions??

- ▶ Whether the entities will have extra burden to comply with the regulations (EPFO + ESIC) which are not mandatorily applicable at the time of incorporation ? At actuals....
- ▶ Total time involved for incorporation ?????
- ▶ Is opening Bank account mandatory ?
- ▶ Various KYC requirements of the different banks!!!
- ▶ Which banks are integrated ????? Choice of banks ??? Co-operative banks ???
- ▶ Closure of bank account..!!

Some questions??

- ▶ Whether the PCS can use his own user ID for company incorporation or it is incorporation specific ?
- ▶ Is refund applicable if SPICE+ Form gets rejected ??

Some general aspects relating to incorporation

Drafting and signing of Memorandum and Articles

Type of Company	Applicable Table of Companies Act, 2013 (MOA)	Applicable Table of Companies Act, 2013 (AOA)
Company Limited by shares	Table A	Table F
Company Limited By Guarantee And Not Having A Share Capital	Table B	Table H
Company Limited By Guarantee And Having A Share Capital	Table C	Table G
Unlimited Company And Not Having Share Capital	Table D	Table J
Unlimited Company And Having Share Capital	Table E	Table I

Cont...

Where the subscriber to the memorandum is a body corporate

The memorandum and articles of association shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors of the body corporate.

Where the subscriber to the memorandum is a Limited Liability Partnership

The memorandum and articles of association shall be signed by a designated partner of the Limited Liability Partnership, duly authorized by a resolution approved by all the partners of the Limited Liability Partnership.

Cont....

➤ Where subscriber to the memorandum is a ***foreign national residing outside India-***

▪ **In a country in any part of the Commonwealth**

His signatures and address on MOA and AOA and proof of identity shall be notarized by a Notary (Public) in that part of the Commonwealth

▪ **In a country which is a party to the Hague Apostille Convention, 1961**

His signatures and address on MOA and AOA and proof of identity shall be notarized before the Notary (Public) of the country of his origin and be duly apostilled in accordance with the said Hague Convention

Cont...

- **In a country outside the Commonwealth and which is not a party to the Hague Apostille Convention, 1961**

His signatures and address on MOA and AOA and proof of identity, shall be notarized before the Notary (Public) of such country and the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf.

- **visited in India and intended to incorporate a company**

incorporation shall be allowed if, he/she is having a valid Business Visa

- *In case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa shall not be applicable.*

Subscriber's Information...

➤ **Particulars of every subscriber**

- *Name and recent photograph affixed and scan with MOA and AOA*
- *Father's/Mother's/ name*
- *Nationality and Income-tax permanent account number (for Indian Nationals)*
- *Date of Birth and Place of Birth (District and State)*
- *Educational qualification and Occupation*
- *Permanent residential address and also Present address (Time of stay at present address and address of previous residence address (es) if stay of present address is less than one year*
- *Email ID, Phone No. of Subscriber*

Cont..

▶ *Proof of Identity*

For Indian Nationals	For Foreign Nationals and Non Resident Indians
PAN card and any one of – <u>Voter's Identity Card, Passport copy, Driving License copy</u>	Passport

- *In case the subscriber is already holding a valid DIN, and the particulars provided therein have been updated as on the date of application, and the declaration to this effect is given in the application, the proof of identity and residence need not be attached.*

Cont...

- Residential proof such as Bank Statement, Electricity Bill, Telephone / Mobile Bill (not more than 2 months old)
- Proof of nationality in case the subscriber is a foreign national
- In case subscriber is already a director or promoter of a company(s)
 - Name, CIN of the Company and whether interested as a director or promoter.
- In case subscriber is a body corporate
 - Name, CIN, registered office address or principal place of business, E-mail Id of the body corporate.

Cont...

If the body corporate is a company

Certified true copy of the board resolution specifying the authorization to subscribe, number of shares proposed to be subscribed and the name, address and designation of the person authorized to subscribe

If the body corporate is a limited liability partnership

Certified true copy of the resolution agreed to by all the partners specifying authorization to subscribe, number of shares proposed to be subscribed and the name of the partner authorized to subscribe

Points to be Remembered

- ▶ Read the spice help menu
- ▶ Selection of correct ROC...
- ▶ Submission of latest proofs....
- ▶ Checking validity of proofs....
- ▶ Selection of proper codes for TAN & PAN registrations....
- ▶ Registered office address proof ...
- ▶ NOC of owner.....
- ▶ Proper scanning of documents

SOME SPECIFIC INFORMATION

Relaxations for Incorporation of One Person Company
{Rule 3 of the Companies (Incorporation) Rules, 2014 }
Effective from 01.04.2021

- ▶ Indian Citizen **whether resident in India or otherwise** eligible to incorporate OPC. (Earlier only Indian citizen resident in India was eligible to incorporate OPC.)
- ▶ Scope for small businesses to be started under legal structure by NRI....
- ▶ “Resident in India” means person who has stayed in India for period not less than **120 days** during immediately preceding Financial Year. (Earlier it was 182 days).

More travelling time is allowed for business expansion....

One Person Company..

- ▶ Selection of Nominee
- ▶ Conversion

Section 8 Companies ...

- ▶ The Company with object promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object.
- ▶ The name shall include the words foundation, Forum, Association, Federation, Chambers, Confederation, council, Electoral trust and the like etc
- ▶ Memorandum of Association in form INC-13. (Specific Format)
- ▶ Additional Document :An estimate of the future annual income and expenditure of the company for next three years
- ▶ Selection of proper NIC code

Producer Company...

- ▶ "Producer Company" means a body corporate having objects or activities specified in section 378B and registered as Producer Company under this Act or under the Companies Act, 1956;
- ▶ "Producer" means any person engaged in any activity connected with or relating to any primary produce;
- ▶ "Producer Institution" means a Producer Company or any other institution having only producer or producers or Producer Company or Producer Companies as its member whether incorporated or not having any of the objects referred to in section 378B and which agrees to make use of the services of the Producer Company or Producer Companies as provided in its articles;

Cont...

- ▶ “Primary Produce” means —

- (i) produce of farmers, arising from agriculture (including animal husbandry, horticulture, floriculture, pisciculture, viticulture, forestry, forest products, re-vegetation, bee raising and farming plantation products), or from any other primary activity or service which promotes the interest of the farmers or consumers; or
- (ii) produce of persons engaged in handloom, handicraft and other cottage industries; or
- (iii) any product resulting from any of the above activities, including by-products of such products; or
- (iv) any product resulting from an ancillary activity that may assist or promote any of the aforesaid activities or anything ancillary thereto; or
- (v) any activity which is intended to increase the production of anything referred to in sub-clauses (i) to (iv) or improve the quality thereof;

Cont..

► **Objectives of producer Company** (Section 378B (1))

(a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit: Provided that the Producer Company may carry on any of the activities specified in this clause either by itself or through other institution;

(b) processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its Members;

(c) manufacture, sale or supply of machinery, equipment or consumables mainly to its Members;

Cont..

- (d) providing education on the mutual assistance principles to its Members and others;
- (e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members;
- (f) generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relating to primary produce;
- (g) insurance of producers or their primary produce;

Cont...

- (h) promoting techniques of mutuality and mutual assistance;
- (i) welfare measures or facilities for the benefit of Members as may be decided by the Board;
- (j) any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner;
- (k) financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include extending of credit facilities or any other financial services to its Members.''

Cont...

- ▶ Minimum Members :
10 or more individuals who are producers or
any two or more Producer Institutions, or
a combination of ten or more individuals and Producer institutions,
- ▶ Maximum Member : No limit
- ▶ Company limited by shares
- ▶ On registration shall become a body corporate as if it is a private limited company to which the provisions contained in this Chapter apply, without, however, any limit to the number of Members thereof, and the Producer Company shall not, under any circumstance, whatsoever, become or be deemed to become a public limited company under this Act

Cont...

- ▶ Minimum Directors :5
- ▶ Maximum Directors :15
- ▶ Only **farmer/agriculturist/producer can be a director.**
- ▶ Name: shall end with Producer Company Limited
- ▶ **Major Requirement as to MOA** :the main objects of the Producer Company shall be one or more of the objects specified in section 378B
- ▶ **Major Requirement as to AOA** : The AOA shall contain mutual assistance principles as mentioned in Section 378G(2).
- ▶ Share Capital of a producer company shall consist of equity shares only

Cont..

- ▶ Signed MOA & AOA is required... No e-MOA & e-AOA..
- ▶ Additional document :
 - **A certificate signed and duly stamped by the district agriculture officer or equivalent to the effect that the subscribers are engaged in the farming activities and earning their livelihood from farming/agriculture etc.**
 - Affidavit from the 1st directors regarding non-acceptance of deposits by the Company.
 - List of subscribers duly signed.

Nidhi Company....

- ▶ “Nidhi” means a company which has been incorporated as a nidhi with the object of cultivating the habit of thrift and saving amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with the rules made by the central Government for regulation of such class of companies.
- ▶ Nidhi Company shall be incorporated as Public Company.
- ▶ Minimum paid-up capital of Nidhi Company shall be Rs.10 Lakh.
- ▶ Nidhi Company shall not issue Preference shares.
- ▶ Every Nidhi Company shall have the last words ‘Nidhi Limited’ as part of its name.

Cont...

- ▶ Additional document required :Declaration from all the Directors and Subscribers under Rule 4, 5, 6 and 10 of NIDHI Rules, 2014
- ▶ In case of a Company being incorporated as a Nidhi, the declaration by the Central Government under section 406 of the Act shall be obtained by the Nidhi before commencing the business and a declaration in this behalf shall be submitted at the stage of incorporation by the company.

Cont...

- ▶ Every Nidhi shall, within a period of one year from the date of its incorporation, ensure that it has-
 - (a) not less than two hundred members;
 - (b) Net Owned Funds of ten lakh rupees or more;
 - (c) unencumbered term deposits of not less than ten per cent. of the outstanding deposits as specified in rule 14; and
 - (d) ratio of Net Owned Funds to deposits of not more than 1:20.

Government Company...

- ▶ “Government company” means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.
- ▶ Mentioning of word Limited or Private Limited is not required.

May be formed as Private or Public....

Few points as we finish!!!!

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*Thank you
for your attention!*

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