

# ONE PERSON COMPANY (OPC)



**THE INSTITUTE OF  
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## **PREFACE**

One person company is a concept introduced in India by the Companies Act, 2013. The concept opens up new vistas of business opportunities and particularly spectacular possibilities for sole proprietorships and entrepreneurs who can enjoy the advantages of limited liability, and the benefit of separate legal entity as well.

Ministry of Corporate Affairs vide its G.S.R. Notification No. 250(E) dated 31st March, 2014 notified the Companies (Incorporation) Rules, 2014 under the Companies Act, 2013 which provide for formation of One Person Company.

The Institute as part of its capacity building initiatives under the Companies Act, 2013 thought it fit to bring out Ready Reckoner on One Person Company, as a self teaching aid to understand the basic elements of the new business vehicle. The ready reckoner introduces the readers to the concept of One Person Company, provides insight into the historical perspective and the international position with respect to OPC. It lists the salient features, privileges and the law governing OPCs in a capsule form. The provisions relating to incorporation and conversion of OPCs have been explained in a lucid manner for the benefit of the readers. Lastly, the FAQs on this novel concept have been put as annexure along with the Rules notified by the MCA in this regard.

I place on record my sincere thanks to Shri S Dhanapal, Partner, S. Dhanapal & Associates, Chennai for preparing the initial draft of this book. I acknowledge with thanks all organizations, institutions and regulatory authorities whose materials were sought / consulted in the preparation of this referencer.

I commend the dedicated efforts put in by CS Saurabh Jain, Deputy Director and Shri Chittaranjan Pal, Assistant Education Officer in the Institute for incorporation of the suggestions and finalisation of the Ready Reckoner under the dynamic guidance of CS Sutanu Sinha, Chief Executive, ICSI.

I am confident that this Ready Reckoner will facilitate the members and other readers in understanding the nuances of setting up, management and administration of One Person Company.

OPC being in the evolving stage, there would always be scope for further improvement. I would personally be grateful to the users and readers for offering their suggestions for further refinement.

**(CS R Sridharan)**

Place: New Delhi

*President*

Date: June 23, 2014

Institute of Company Secretaries of India

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# ONE PERSON COMPANY (OPC)

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## INTRODUCTION

The introduction of OPC in the legal system is a move that would encourage corporatization of micro businesses and entrepreneurship with a simpler legal regime so that the small entrepreneur is not compelled to devote considerable time, energy and resources on complex legal compliances. This will not only enable individual capabilities to contribute economic growth, but also generate employment opportunity. One Person Company of sole-proprietor and company form of business has been provided with concessional /relaxed requirements under the Companies Act, 2013. With the implementation of the Companies Act, 2013, a single national person can constitute a Company, under the One Person Company (OPC) concept.

## GENESIS AND GLOBAL DEVELOPMENT

One person companies are in existence in certain countries. In India this concept has been mooted by the Ministry of Corporate Affairs by allowing One Person Companies in India in line with UK, China, USA, Australia, Singapore, Qatar, Pakistan and several other countries. It is a right thinking in right direction by the Ministry of Corporate Affairs. One Person Companies have been in existence in UK for several years now. China allowed formation of OPCs as recent as in 2005. A few other countries have also given the legal status for OPCs.

### United Kingdom

Historically, United Kingdom is the first one, which paved the way to the one man company through a precedent set in its famous case *Saloman v. Saloman & Co.* (1897) AC 22.

Section 7 of the UK Companies Act, 2006 deals with method of forming company. It provides that -

- (1) A company is formed under this Act by one or more persons—
  - (a) subscribing their names to a memorandum of association (see section 8), and
  - (b) complying with the requirements of this Act as to registration (see sections 9 to 13).
- (2) A company may not be so formed for an unlawful purpose.

**United States of America**

In USA several States permit the formation of a single member Limited Liability Company (LLC).

**Singapore**

Singapore permits One Person Company under Companies Amendment Act of 2004.

**China**

China introduced One Person Company in 2005.

**UAE**

United Arab Emirates recognises the concept of One Person Company.

**Turkey**

According to Turkish Commercial Code since 2012 a joint stock company or limited liability company may be established with one or more shareholders. The code also sets forth certain obligations and conditions for such companies. In addition, limited liability companies and joint stock companies can have a board of directors that consists of only one board member.

**Pakistan**

Single Member Companies Rules, 2003 of Pakistan provide for incorporation of single member company.

**Origin of the concept in India**

The concept of OPC was mooted, in the report of Dr. J.J. Irani Committee. The Irani Committee briefly referred to OPC in its report. In Chapter III titled "Classification and Registration of Companies" the committee suggested multiple classification of companies as given hereunder.

This classification which included OPCs was:

- i. On the basis of size
  - a. Small companies
  - b. Other Companies
- ii. On the basis of number of members:
  - a. One person company
  - b. Private companies
  - c. Public companies

- iii. On the basis of control
  - a. Holding companies
  - b. Subsidiary companies
  - c. Associate companies
- iv. On the basis of liability:
  - a. Limited
    - I. by shares; and
    - II. by guarantee (with or without share capital)
  - b. Unlimited
- v. On the basis of manner of access to capital:
  - a. Listed companies
  - b. Un-listed companies

The Committee expressed the view that the law should recognize the potential for diversity in the forms of companies and rather than seeking to regulate specific aspects of each form, seek to provide for principles that enable economic inter-action for wealth creation on the basis of clear and widely accepted principles.

Regarding OPC, the suggestions of the Committee were thus -

*“One Person Company (OPC)”*

6. *With increasing use of information technology and computers, emergence of the service sector, it is time that the entrepreneurial capabilities of the people are given an outlet for participation in economic activity. Such economic activity may take place through the creation of an economic person in the form of a company. Yet it would not be reasonable to expect that every entrepreneur who is capable of developing his ideas and participating in the market place should do it through an association of persons. We feel that it is possible for individuals to operate in the economic domain and contribute effectively. To facilitate this, the Committee recommends that the law should recognize the formation of a single person economic entity in the form of ‘One Person Company’. Such an entity may be provided with a simpler regime through exemptions so that the single entrepreneur is not compelled to fritter away his time, energy and resources on procedural matters.*

6.1 *The concept of ‘One Person Company’ may be introduced in the Act with following characteristics :-*

- (a) *OPC may be registered as a private Company with one member and may also have at least one director;*
- (b) *Adequate safeguards in case of death/disability of the sole person should be provided through appointment of another individual as Nominee Director. On the demise of the original*

*director, the nominee director will manage the affairs of the company till the date of transmission of shares to legal heirs of the demised member.*

*(c) Letters 'OPC' to be suffixed with the name of One Person Companies to distinguish it from other companies."*

### **Impact of OPC in Indian Entrepreneurship**

The concept of OPC is still in its nascent stages in India and would require some more time to mature and to be fully accepted by the business world. With passage of time, the OPC mode of business organisation is all set to become the most preferred form of business organization specially for small entrepreneurs. The benefits emanating from this concept are many, to name a few –

- Minimal paper work and compliances
- Ability to form a separate legal entity with just one member
- Provision for conversion to other types of legal entities by induction of more members and amendment in the Memorandum of Association.

The One Person Company concept holds a bright future for small traders, entrepreneurs with low risk taking capacity, artisans and other service providers.

The OPC would act as a launch pad for such entrepreneurs to showcase their capabilities in the global arena.

The counterparts of Indian OPCs in Europe, United States and Australia have resulted in further strengthening of the economies in the respective countries. OPCs in India are aimed at structured, organised business units, having a separate legal entity ultimately playing a crucial role in further strengthening of the Indian economy.

### **Priority Sector Lending - Reserve Bank of India**

The Reserve Bank of India under its Master Circular No. *RBI/2013-14/107 RPCD.CO. Plan.BC9/04.09.01/2013-14* dated July 01, 2013 has instructed all Scheduled Commercial Banks (excluding Regional Rural Banks) to increase their involvement in financing of priority sectors, viz., agriculture and small scale industries. The Master Circular provides for the following activities as being eligible for priority sector lending:

#### **Manufacturing Sector**

<i>Enterprises</i>	<i>Investment in Plant and Machinery</i>
Micro Enterprises	Do not exceed twenty five lakh rupees
Small Enterprises	More than twenty five lakh rupees but does not exceed five crore rupees



**Service Sector**

<i>Enterprises</i>	<i>Investment in Equipment</i>
Micro Enterprises	Does not exceed ten lakh rupees
Small Enterprises	More than ten lakh rupees but does not exceed two crore rupees

One Person Company coming under any of the above categories may fall under priority sector lending. There is enormous scope for One Person Companies to leverage benefits of priority sector lending.


**OPC or Proprietorship Concern! Your choice**

<b>OPC</b>	<b>VS.</b>	<b>SOLE PROPRIETORSHIP</b>
<i>OPC</i>		<i>SOLE PROPRIETORSHIP</i>
Separate Legal entity		Not a Separate Legal Entity
Limited Liability		unlimited liability
Perpetual succession		No perpetual succession
Loan not the sole responsibility of the owner		Loan-sole responsibility of the owner
Registration required		Registration not required
Finance –credit record of the OPC		Finance –credit record of the Owner

OPC structure would be similar to that of a proprietorship concern without the ills generally faced by the proprietors. **One most important feature of OPC is that the risks mitigated are limited to the extent of the value of shares held by such person in the company.** This would enable entrepreneurial minded persons to take the risks of doing business without the botheration of litigations and liabilities getting attached to the personal assets. One Person Company has a separate legal identity from its shareholders i.e., the company and the shareholders are two different entities for all purposes. On the other hand proprietorship does not have a separate legal identity from its members. The existence of a One Person Company is not dependent upon its members and hence, it has a perpetual succession i.e., death of a member does not affect the existence of the company and the Sole proprietorship is an entity whose existence depends on the life of its members and death or any other contingency may lead to the dissolution of such an entity.

In OPC the business head is the decision maker, he is not dependent on others for suggestions or implementation of suggestions etc., resulting in quicker and easier decision making. He is the sole person who runs the business and hence, the question of consensus or majority opinion etc., does not arise.

**COMPANY VS. OPC**

<b>COMPANY</b>	<b>Common Seal</b>	<b>OPC</b>
	<b>Perpetual Succession</b>	
	<b>Separate legal entity</b>	
	<b>Limited Liability</b>	
	<b>Separate Ownership</b>	
	<b>Management and Control</b>	

**One Person Company**

***As per section 2(62) of the Companies Act, 2013, "One Person Company" means a company which has only one person as a member***

**Salient features of OPC**

The salient features of OPC are:

- Desire for personal freedom that allows the Professional skilled person to adopt the business of his choice.
- Personality driven passion and implementation of a business plan.
- The desire of the entrepreneurial person to take extra risk and willingness to take additional responsibility.
- Personal commitment to the business which is a sole idea of the person and close to his heart.
- It is run by individuals yet OPCs are a separate legal entity similar to that of any registered corporate.
- A One Person Company is incorporated as a private limited company.
- It must have only one member at any point of time and may have only one director.
- The member and nominee should be natural persons, Indian Citizens and resident in India. The term "resident in India" means a person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year.
- One person cannot incorporate more than one OPC or become nominee in more than one OPC.
- If a member of OPC becomes a member in another OPC by virtue of his being nominee in that OPC then within 180 days he shall have to meet the eligibility criteria of being Member in one OPC.

- OPC to lose its status if paid up capital exceeds Rs. 50 lakhs or average annual turnover is more than 2 crores in three immediate preceding consecutive years.
- No minor shall become member or nominee of the One Person Company or hold share with beneficial interest.
- Such Company cannot be incorporated or converted into a company under section 8 of the Companies Act, 2013.
- Such Company cannot carry out Non Banking Financial Investment activities including investment in securities of any body corporate.
- No such company can convert voluntarily into any kind of company unless 2 years have expired from the date of incorporation, except in cases where capital or turnover threshold limits are reached.
- An existing private company other than a company registered under section 8 of the Act which has paid up share capital of Rs. 50 Lakhs or less or average annual turnover during the relevant period is Rs. 2 Crores or less may convert itself into one person company by passing a special resolution in the general meeting.

#### **Privileges available to OPC**

Some of the privileges and benefits identified with OPCs are:

- OPCs would provide the start-up entrepreneurs with new business idea.
- OPC provides an outlet for the entrepreneurial impulses among the professionals.
- The advantages of limited liability. The most significant reason for shareholders to incorporate the 'single-person company' is certainly the desire for the limited liability.
- OPCs are not proprietorship concerns; hence, they give a dual entity to the company as well as the individual, guarding the individual against any pitfalls of liabilities. This is the fundamental difference between OPC and sole proprietorship.
- Unlike a private limited or public limited company (listed or unlisted), OPCs need not bother too much about compliances.
- Businesses currently run under the proprietorship model could get converted into OPCs without any difficulty.
- OPCs require minimal capital to begin with. Being a recognized corporate, could well raise capital from others like venture capital financial institutions etc., thus graduating to a private limited company.
- Mandatory rotation of auditor after expiry of maximum term is not applicable.

- The annual return of a One Person Company shall be signed by the company secretary, or where there is no company secretary, by the director of the company.
- The provisions of Section 98 and Sections 100 to 111 (both inclusive), relating to holding of general meetings, shall not apply to a One Person Company.
- A One Person Company needs to have minimum of one director. It can have directors up to a maximum of 15 which can also be increased by passing a special resolution as in case of any other company.
- For the purposes of holding Board Meetings, in case of a one person Company which has only one director, it shall be sufficient compliance if all resolutions required to be passed by such a Company at a Board meeting, are entered in the minutes-book, signed and dated by the member and such date shall be deemed to be the date of the Board Meeting for all the purposes under this Act. For other One Person Companies, atleast one Board Meeting must be held in each half of the calendar year and the gap between the two meetings should not be less than 90 days.
- The financial statements of a one person company can be signed by one director alone. Cash Flow Statement is not a mandatory part of financial statements for a One Person Company. Financial statements of a one person company need to be filed with the Registrar, after they are duly adopted by the member, within 180 days of closure of financial year along with all necessary documents.
- Board's report to be annexed to financial statements may only contain explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

**Types of OPC****(Section 3(2))**

- a company limited by shares; or
- a company limited by guarantee; or
- an unlimited company.

**Memorandum of Association**

The memorandum of a company shall state—

- the name of the company with the last word Private Limited;
- the State in which the registered office of the company is to be situated;

- the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;
- the liability of members of the company, whether limited or unlimited, with details;
- the amount of share capital with which the company is to be registered and the division thereof as specified;
- the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;
- in the case of One Person Company, the name of the person who, in the event of death of the subscriber, shall become the member of the company.

**Directors {Sections 152(1), 149(1)(a) & (1)(b)}**

- Articles of a company may provide for the appointment of the first directors
- If articles are silent then the subscriber to the memorandum who is an individual shall be deemed to be the first director of the company
- May have a single director
- Maximum-15 directors and more than 15 directors after passing Special Resolution
- Director must have stayed in India for a total period of not less than 182 days in the previous calendar year.

**Meetings of Board {Section 173(5)}**

- At least one meeting of the Board of Directors to be conducted in each half of a calendar year
- Gap between the two meetings should not be less than ninety days
- Exemption – if company has only one director.

**Contract by One Person Company {Section 193(1)}**

- One Person Company limited by shares or by guarantee enters into a contract with the sole member of the company who is also the director of the company, the terms of contract or offer are in writing or contained in a memorandum or recorded in the minutes of the Board meeting held next after entering into the contract.
- Inform the Registrar about every contract entered into by the company within a period of fifteen days from the date of approval by the Board of Directors.
- Contracts in ordinary course of business not required to comply with the above.

**Annual Return (Section 92)**

Every company shall prepare an annual return in the prescribed form containing the particulars as they stood on the close of the financial year regarding—

- (a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
- (b) its shares, debentures and other securities and shareholding pattern;
- (c) its indebtedness;
- (d) its members and debenture-holders along with changes therein since the close of the previous financial year;
- (e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- (f) meetings of members or a class thereof, Board and its various committees along with attendance details;
- (g) remuneration of directors and key managerial personnel;
- (h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
- (i) matters relating to certification of compliances, disclosures as may be prescribed;
- (j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and
- (k) such other matters as may be prescribed,

***The annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.***

**Financial Statement (Section 134)**

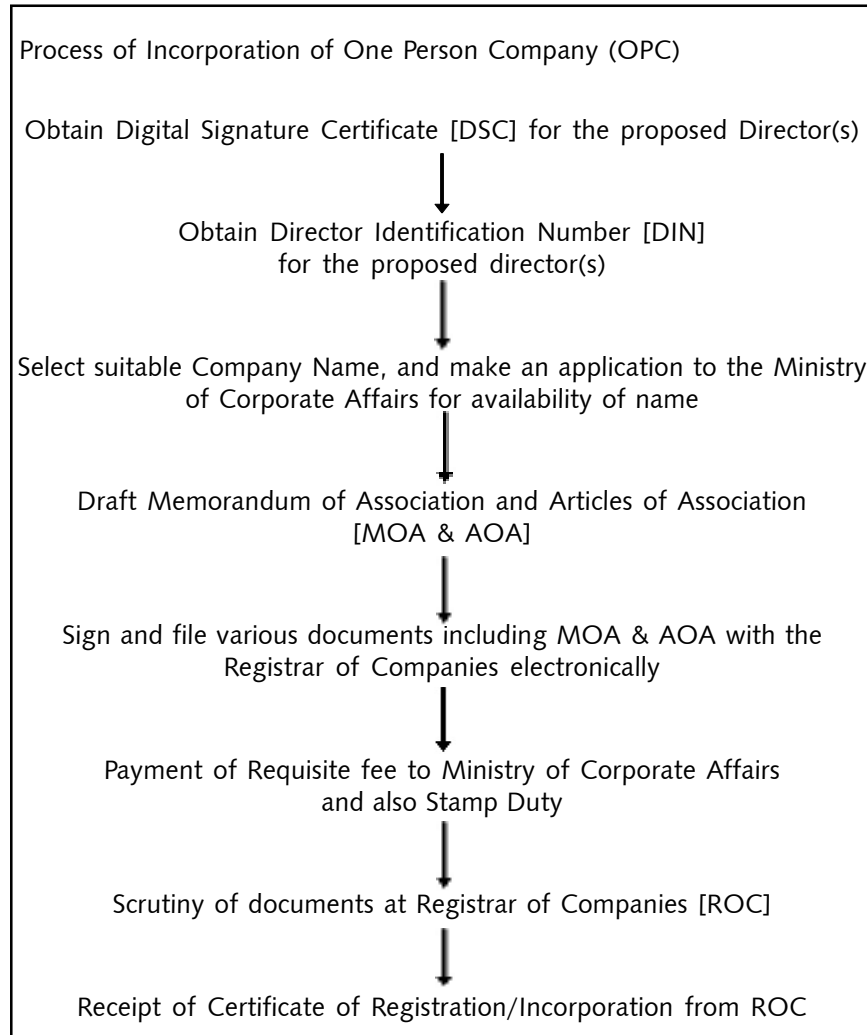
- The financial statement, signed by one director, for submission to the auditor for his report thereon.
- The report of the Board of Directors to be attached to the financial statement.
- Board of Directors Report of OPC means a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.
- Filed with ROC within 180 days from the closure of the financial year.
- Financial statement, may not include the cash flow statement.

**Exemptions available to OPCs under the Companies Act, 2013**

- Section 96. Option to dispense with the requirement of holding an AGM.
- Section 98. Power of Tribunal to call meetings of members.
- Section 100. Calling of extraordinary general meeting.
- Section 101. Notice of meeting.
- Section 102. Statement to be annexed to notice.
- Section 103. Quorum for meetings.
- Section 104. Chairman of meetings.
- Section 105. Proxies.
- Section 106. Restriction on voting rights.
- Section 107. Voting by show of hands.
- Section 108. Voting through electronic means.
- Section 109. Demand for poll.
- Section 110. Postal ballot.
- Section 111. Circulation of members' resolution.

**One Person Company (Rule 3 of Companies (Incorporation) Rules, 2014)**

- (1) Only a natural person who is an Indian citizen and resident in India, i.e., a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one calendar year shall be eligible to incorporate a One Person Company and a nominee for the sole member of a One Person Company.
- (2) A person shall not be eligible to incorporate more than one OPC or become nominee in more than one such company.
- (3) A minor shall not become member or nominee of the One Person Company or can hold share with beneficial interest.
- (4) Such Company cannot be incorporated or converted into a company under section 8 of the Act.
- (6) Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporate.
- (7) No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of One Person Company, except when threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

**INCORPORATION OF OPC***Reservation of name*

An application for the reservation of a name shall be made in Form No. INC.1 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

Where the articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in Form No.INC.2 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 at the time of incorporation of the company or in case of existing companies, the same shall be filed in Form No.MGT.14 within thirty days from the date of entrenchment of the articles, as the case may be, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.



The model articles as prescribed in Table F, G, H, I and J of Schedule I may be adopted by a company as may be applicable to the case of the company, either in totality or otherwise.

*Application for incorporation of companies*

An application shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in Form No.INC.2 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 for registration of a company:

*Signing of Memorandum and Articles of Association*

The memorandum and articles of association of the company shall be signed by each subscriber to the memorandum, who shall add his name, address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise sign and add his name, address, description and occupation, if any and the witness shall state that "I witness to subscriber/subscriber(s), who has/have subscribed and signed in my presence (date and place to be given); further I have verified his or their Identity Details (ID) for their identification and satisfied myself of his/her/their identification particulars as filled in".

*Affidavit of Subscriber and first directors*

The affidavit shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in Form No.INC.9

*Particulars of Subscriber*

Particulars of every subscriber to be filed with the Registrar at the time of incorporation

*Nomination by the subscriber or member*

- (1) The subscriber to the memorandum of a One Person Company shall nominate a person, after obtaining prior written consent of such person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of that One Person Company.
- (2) The name of the person nominated shall be mentioned in the memorandum of One Person Company and such nomination in Form No INC.2 along with consent of such nominee obtained in Form No INC.3 and fee as provided in the Companies (Registration offices and fees) Rules, 2014 shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles.

*Declaration by professionals*

The declaration by an advocate, a Chartered Accountant, Cost accountant or Company Secretary in practice shall be in Form No. INC.8.

*Important Instructions - filing of eform for Incorporation*

- User is required to file eForm INC-2 for incorporation of One Person Company.
- It is suggested that eForm DIR-12 should be filed together at the time of filing of eForm INC-2 if the member is not the sole director of the company.
- In case the address for correspondence is not the address of the registered office of the Company, user is required to file INC-22 within 30 days of its incorporation.
- Stamp duty on eForm INC-2, Memorandum of Association (MoA) and Articles of Association (AoA) can be paid electronically through the MCA portal.
- Payment of stamp duty electronically through MCA portal is mandatory in respect of the States which have authorized the Central Government to collect stamp duty on their behalf. Now eStamp duty payment is to be done online through MCA portal for all the states.
- Refund of stamp duty, if any, will be processed by the respective state or union territory government in accordance with the rules and procedures as per the state or union territory stamp Act.
- User is required to scan the photograph of every subscriber with MOA and AOA.
- The company can have its registered office from the date of incorporation or on and from the 15th day of its incorporation. Till the same is established and intimated to the RoC, company can have its correspondence address capable of receiving and acknowledging all communications and notices as may be addressed to it.
- Enter the details of registered office address of the company if the company is having its registered office from the date of its incorporation.
- Enter the valid email id of the company. Ensure that this email ID is valid as intimation regarding processing of the eForms, important communication from RoC office shall also be communicated electronically at the email ID being mentioned here.
- Enter the details of the address of the police station under whose jurisdiction the registered office of the company is to be situated.
- Enter the details of authorized and subscribed share capital break up in case of a company having share capital.
- Minimum authorized share capital required for One Person Company having share capital is Rs. 1,00,000/-.

- Minimum and maximum number of members for One Person Company is one only.
- The subscriber to the Memorandum shall ensure that the payment for the total amount of shares subscribed by him is made to the company upon incorporation.
- Enter the number of shares, total amount of shares and nominal amount per share for each type of share. At least one type of share capital (Equity/ Preference) should be greater than zero.
- In case company has shares of multiple nominal amounts per share, then enter multiple nominal values per share separated by comma in the field Nominal amount per share.
- Main division of industrial activity of the company.
- Enter the details of promoter.
- User is required to file eForm DIR-12 in case promoter and director are not the same persons.
- Enter either DIN or Income-tax PAN. In case DIN is entered it should be an approved DIN.
- For cases of PAN, name and address of the promoter is required to be entered. System shall verify the name of the promoter based on PAN entered.
- Enter surname or family name in the field Family Name.
- Enter all other relevant particulars of the promoter including duration of stay at present address. If duration of stay is less than a year at present address, enter the details of previous residence of the promoter. Ensure that Promoter of One Person company is always an Indian citizen and resident in India and promoter shall be eligible to incorporate only one OPC.
- Every One Person Company is required to indicate the name of other person as nominee to the sole member in the memorandum and nominee for the subscriber should be an individual who is an Indian citizen and resident in India.
- Enter the name of such nominee.
- Enter the details of nominee by entering approved DIN or valid Income-tax PAN. In case DIN is entered, the system shall automatically display the name, middle name, surname, father's name and gender of such person.
- Provide details of stamp duty already paid.
- Ensure the eForm is digitally signed by the same person whose designation is reflected in the declaration section of the eForm.

- In case the person digitally signing the eForm is a Director - Enter the approved DIN. In case the person digitally signing the eForm is Company Secretary - Enter valid membership number. In case the person digitally signing the eForm is Manager - Enter approved DIN or valid income-tax PAN.
- It is mandatory to attach Memorandum of Association, Articles of Association, proof of identity of the member and the nominee, residential proof of the member and the nominee, copy of PAN card of member and nominee, consent of nominee in Form INC-3 along with enclosures, affidavit from the subscriber and first director to the memorandum in Form No. INC-9.
- It is mandatory to attach Specimen Signature in Form INC-10 in case company is 'Not having share capital'.
- It is mandatory to attach entrenched Articles of Association if any of the articles are entrenched.
- Proof of registered office address and copies of the utility bills not older than two months are required to be attached in case of address of correspondence is the address of registered office of the company.
- It is mandatory to attach proof that the company is permitted to use the address of the registered office of the company if the same is owned by director/any other entity/ Person (not taken on lease by company).
- It is mandatory to attach consent to act as a director in case subscriber and director are the same persons.
- List of all the companies (specifying their CIN) having the same registered office address, if any.

#### **Conversion of OPC into Public or Private Company and Vice-Versa**

One Person Company to convert itself into a public company or a private company in certain cases.-

- (1) Where the paid up share capital of an One Person Company exceeds fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as a One Person Company.
- (2) Such One Person Company shall be required to convert itself, within six months of the date on which its paid up share capital is increased beyond fifty lakh rupees or the last day of the relevant period during which its average annual turnover exceeds two crore rupees as the case may be, into either a private company with minimum of two members and two directors or a public company with at least seven members and three directors in accordance with the provisions of section 18 of the Act.

- (3) The One Person Company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.
- (4) The One Person Company shall within a period of sixty days from the date of enhancement of above ceiling limit, give a notice to the Registrar in Form No.INC.5 informing that it has ceased to be a One Person Company and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover, having exceeded the threshold limit.

It may be noted that "relevant period" means the period of immediately preceding three consecutive financial years;

- (5) If One Person Company or any officer of the One Person Company contravenes the provisions of these rules, One Person Company or any officer of the One Person Company shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.
- (6) A One Person company can get itself converted into a Private or Public company after increasing the minimum number of members and directors to two or minimum of seven members and two or three directors as the case may be, and by maintaining the minimum paid-up capital as per requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.

### **Conversion of Private company into One Person Company**

- (1) A private company other than a company registered under section 8 of the Act having paid up share capital of fifty lakhs rupees or less or average annual turnover during the relevant period is two crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting.
- (2) Before passing such resolution, the company shall obtain 'No objection' in writing from members and creditors.
- (3) The one person company shall file copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in Form No. MGT.14.
- (4) The company shall file an application in Form No.INC.6 for its conversion into One Person Company along with fees as provided in the Companies (Registration offices and fees) Rules, 2014, by attaching the following documents, namely:-
  - The directors of the company shall give a declaration by way

of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital of the company is fifty lakhs rupees or less or average annual turnover is less than two crores rupees, as the case may be;

- the list of members and list of creditors;
- the latest Audited Balance Sheet and the Profit and Loss Account; and
- the copy of 'No Objection' letter of secured creditors.

(5) On being satisfied and complied with requirements stated herein the Registrar shall issue the Certificate.

#### **Withdrawal or death of nominee or member of OPC**

- The person nominated by the subscriber or member of a One Person Company may, withdraw his consent by giving a notice in writing to such sole member and to the One Person Company
- The sole member shall nominate another person as nominee within fifteen days of the receipt of the notice of withdrawal and shall send an intimation of such nomination in writing to the Company, along with the written consent of such other person so nominated in Form No. INC.3.
- The company shall within thirty days of receipt of the notice of withdrawal of consent file with the Registrar, a notice of such withdrawal of consent and the intimation of the name of another person nominated by the sole member in Form No INC.4 along with fee as provided in the Companies (Registration offices and fees) Rules, 2014 and the written consent of such another person so nominated in Form No. INC.3.
- The subscriber or member of a One Person Company may, by intimation in writing to the company, change the name of the person nominated by him at any time for any reason including in case of death or incapacity to contract of nominee and nominate another person after obtaining the prior consent of such another person in Form No INC.3.
- The company shall, on the receipt of such intimation, file with the Registrar, a notice of such change in Form No INC.4 along with fee as provided in the Companies (Registration offices and fees) Rules, 2014 and with the written consent of the new nominee in Form No.INC.3 within thirty days of receipt of intimation of the change.
- Where the sole member of One Person Company ceases to be the member in the event of death or incapacity to contract and his nominee becomes the member of such One Person Company,

such new member shall nominate within fifteen days of becoming member, a person who shall in the event of his death or his incapacity to contract become the member of such company, and the company shall file with the Registrar an intimation of such cessation and nomination in Form No INC.4 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 within thirty days of the change in membership and with the prior written consent of the person so nominated in Form No.INC.3.

## **FREQUENTLY ASKED QUESTIONS ON ONE PERSON COMPANY (OPC)**

### **1. How to Incorporate One Person Company (OPC)?**

- A.** *Name reservation:* Form INC-1 shall be filed for name availability.

*Incorporate OPC :* After name approval, form INC-2 shall be filed for incorporation of the OPC within 60 days of filing form INC-1. Form DIR-12 shall be filed along with (linked) form INC-2 except when promoter is the sole director of the OPC. The company shall file form INC-22 within 30 days once form INC-2 is registered in case the address of correspondence and registered office address are not same.

### **2. How to Inform ROC about the change in membership of OPC?**

- A.** The company shall file form INC-4 in case of cessation of member of OPC on account of death, incapacity to contract or change in ownership. In the same form, user needs to provide details of the new member of the OPC.

### **3. Are there any threshold limits for an OPC to mandatorily get converted into either private or public company?**

- A.** In case the paid up share capital of an OPC exceeds fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees, then the OPC has to mandatorily convert into private or public company.

### **4. How to intimate ROC that the OPC has exceeded the threshold limits and require conversion into private or public company?**

- A.** The OPC shall inform RoC in form INC-5, if the threshold limits are exceeded and is required to be converted into private or public company.

### **5. What is the time limit for filing Form INC-5?**

- A.** Form INC-5 shall be filed within sixty days of exceeding threshold limits.

**6. Is there any Form that is to be filed for conversion of an OPC into private or public company?**

- A.** Form INC-6 shall be filed by an OPC for conversion of an OPC into private or public company.

**7. Is there any other purpose for filing this Form INC-6?**

- A.** Yes, the private company will also file form INC-6 for converting itself into an OPC. The paid up share capital of private company should not be exceeding fifty lakh rupees and should not have average annual turnover more than two crore rupees at the time of such conversion into OPC. The company shall be having one member and shall appoint one nominee to act as member in case of death or incapacity of the member at the time of conversion into OPC.

**8. What is the time limit for filing Form INC-6?**

- A.** Form INC-6 shall be filed within 30 days in case of voluntary conversion and within six months of mandatory conversion.

**9. Who is eligible to act as a member of OPC?**

- A.** Only a natural person who is an Indian citizen and resident in India shall be eligible to act as a member and nominee of an OPC. The term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one financial year.

**10. A person can be a member in how many OPCs?**

- A.** A person can be member in only one OPC.

**11. What if a member of an OPC becomes a member in another OPC by virtue of being a nominee in that other OPC?**

- A.** Where a natural person, being member in One Person Company becomes a member in another OPC by virtue of his being a nominee in that OPC, then such person shall meet the eligibility criteria of being a member in only one OPC within a period of one hundred and eighty days, i.e., he/she shall withdraw his membership from either of the OPCs within one hundred and eighty days.

**12. Which Form is to be filed in case of withdrawal of consent by the nominee of an OPC or in case of intimation of change in nominee by the member?**

- A.** Form INC-4 shall be filed in case of withdrawal of consent by the nominee or in case of intimation of change in nominee by the member.



**IMPORTANT PROVISIONS OF COMPANIES ACT, 2013  
GOVERNING ONE PERSON COMPANY**

**Formation of Companies (Section 3)**

- (1) A company may be formed for any lawful purpose by—
- (a) seven or more persons, where the company to be formed is to be a public company;
  - (b) two or more persons, where the company to be formed is to be a private company; or
  - (c) one person, where the company to be formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles.

Provided further that such other person may withdraw his consent in such manner as may be prescribed. Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed.

Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed.

Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

- (2) A company formed under sub-section (1) may be either—
- (a) a company limited by shares; or
  - (b) a company limited by guarantee; or
  - (c) an unlimited company.

**Memorandum (Section 4)**

- (1) The memorandum of a company shall state—
- (a) the name of the company with the last word "Limited" in the case

of a public limited company, or the last words "Private Limited" in the case of a private limited company:

Provided that nothing in this clause shall apply to a company registered under section 8;

- (b) the State in which the registered office of the company is to be situated;
  - (c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;
  - (d) the liability of members of the company, whether limited or unlimited, and also state,—
    - (i) in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and
    - (ii) in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute—
      - (A) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and
      - (B) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;
  - (e) in the case of a company having a share capital,—
    - (i) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and
    - (ii) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;
  - (f) in the case of One Person Company, the name of the person who, in the event of death of the subscriber, shall become the member of the company.
- (2) The name stated in the memorandum shall not—
- (a) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or

- (b) be such that its use by the company—
  - (i) will constitute an offence under any law for the time being in force; or
  - (ii) is undesirable in the opinion of the Central Government.
- (3) Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains—
  - (a) 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 Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force; or
  - (b) such word or expression, as may be prescribed, unless the previous approval of the Central Government has been obtained for the use of any such word or expression.
- (4) A person may make an application, in such form and manner and accompanied by such fee, as may be prescribed, to the Registrar for the reservation of a name set out in the application as—
  - (a) the name of the proposed company; or
  - (b) the name to which the company proposes to change its name.
- (5) (i) Upon receipt of an application under sub-section (4), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of sixty days from the date of the application.
  - (ii) Where after reservation of name under clause (i), it is found that name was applied by furnishing wrong or incorrect information, then,—
    - (a) if the company has not been incorporated, the reserved name shall be cancelled and the person making application under sub-section (4) shall be liable to a penalty which may extend to one lakh rupees;
    - (b) if the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard—
      - (i) either direct the company to change its name within a period of three months, after passing an ordinary resolution;
      - (ii) take action for striking off the name of the company from the register of companies; or
      - (iii) make a petition for winding up of the company.

- (6) The memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company.
- (7) Any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

**Incorporation of Companies (Section 7)**

- (1) There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:
  - a) the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;
  - b) a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;
  - c) an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;
  - d) the address for correspondence till its registered office is established;
  - e) the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed;
  - f) the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed and

- g) the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.
- (2) The Registrar on the basis of documents and information filed under sub-section (1) shall register all the documents and information referred to in that subsection in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.
  - (3) On and from the date mentioned in the certificate of incorporation issued under sub-section (2), the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.
  - (4) The company shall maintain and preserve at its registered office copies of all documents and information as originally filed under sub-section (1) till its dissolution under this Act.
  - (5) If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under section 447.
  - (6) Without prejudice to the provisions of sub-section (5) where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters, the persons named as the first directors of the company and the persons making declaration under clause (b) of subsection (1) shall each be liable for action under section 447.
  - (7) Without prejudice to the provisions of sub-section (6), where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—
    - (a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
    - (b) direct that liability of the members shall be unlimited; or
    - (c) direct removal of the name of the company from the register of companies; or

- (d) pass an order for the winding up of the company; or
- (e) pass such other orders as it may deem fit:

Provided that before making any order under this sub-section,—

- (i) the company shall be given a reasonable opportunity of being heard in the matter; and
- (ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

### **Annual Return (Section 92)**

- (1) Every company shall prepare a annual return in the prescribed form containing the particulars as they stood on the close of the financial year regarding—
  - (a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
  - (b) its shares, debentures and other securities and shareholding pattern;
  - (c) its indebtedness;
  - (d) its members and debenture-holders along with changes therein since the close of the previous financial year;
  - (e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
  - (f) meetings of members or a class thereof, Board and its various committees along with attendance details;
  - (g) remuneration of directors and key managerial personnel;
  - (h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
  - (i) matters relating to certification of compliances, disclosures as may be prescribed;
  - (j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and
  - (k) such other matters as may be prescribed,

and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice.

Provided that in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

- (2) The annual return, filed by a listed company or, by a company having such paid-up capital and turnover as may be prescribed, shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.
- (3) An extract of the annual return in such form as may be prescribed shall form part of the Board's report.
- (4) Every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed, within the time as specified, under section 403.
- (5) If a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.
- (6) If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

### **Annual General Meeting (Section 96)**

- (1) *Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.*

Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year.

Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.

Provided also that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

- (2) Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate:

Provided that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.

*Explanation.*—For the purposes of this sub-section, “National Holiday” means and includes a day declared as National Holiday by the Central Government.

#### **Applicability of Chapter VII to One Person Company (Section 122)**

- (1) The provisions of section 98 and sections 100 to 111 (both inclusive) shall not apply to a One Person Company.
- (2) The ordinary businesses as mentioned under clause (a) of sub-section (2) of section 102 which a company, other than a One Person Company, is required to transact at its annual general meeting, shall be transacted, in case of One Person Company, as provided in sub-section (3).
- (3) For the purposes of section 114, any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if, in case of One Person Company, the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under section 118 and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act.
- (4) Notwithstanding anything in this Act, where there is only one director on the Board of Director of a One Person Company, any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if, in case of such One Person Company, the resolution by such director is entered in the minutes-book required to be maintained under section 118 and signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under this Act.

#### **Financial statement, Board’s report, etc.(Section 134)**

- (1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed



on behalf of the Board at least by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.

- (2) The auditors' report shall be attached to every financial statement.
- (3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—
  - (a) the extract of the annual return as provided under sub-section (3) of section 92;
  - (b) number of meetings of the Board;
  - (c) Directors' Responsibility Statement;
  - (d) a statement on declaration given by independent directors under sub-section (6) of section 149;
  - (e) in case of a company covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;
  - (f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—
    - (i) by the auditor in his report; and
    - (ii) by the company secretary in practice in his secretarial audit report;
  - (g) particulars of loans, guarantees or investments under section 186;
  - (h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form;
  - (i) the state of the company's affairs;
  - (j) the amounts, if any, which it proposes to carry to any reserves;
  - (k) the amount, if any, which it recommends should be paid by way of dividend;
  - (l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;

- (m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;
  - (n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;
  - (o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;
  - (p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;
  - (q) such other matters as may be prescribed.
- (4) The report of the Board of Directors to be attached to the financial statement under this section shall, in case of a One Person Company, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.
- (5) The Directors' Responsibility Statement referred to in clause (c) of sub-section (3) shall state that—
- (a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
  - (b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
  - (c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
  - (d) the directors had prepared the annual accounts on a going concern basis; and
  - (e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

*Explanation.*—For the purposes of this clause, the term “internal

financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

- (f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.
- (6) The Board's report and any annexures thereto under sub-section (3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.
- (7) A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of—
  - (a) any notes annexed to or forming part of such financial statement;
  - (b) the auditor's report; and
  - (c) the Board's report referred to in sub-section (3).
- (8) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

**Copy of financial statement to be filed with Registrar  
(Section 137)**

- (1) A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed within the time specified under section 403:

Provided that where the financial statements under sub-section (1) are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents under sub-section (1) shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements

are filed with him after their adoption in the adjourned annual general meeting for that purpose:

Provided further that financial statements adopted in the adjourned annual general meeting shall be filed with the Registrar within thirty days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed within the time specified under section 403:

Provided also that a One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred eighty days from the closure of the financial year:

Provided also that a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

- (2) Where the annual general meeting of a company for any year has not been held, the financial statements along with the documents required to be attached under sub-section (1), duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held and in such manner, with such fees or additional fees as may be prescribed within the time specified, under section 403.
- (3) If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified in section 403, the company shall be punishable with fine of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

#### **Company to have Board of Directors (Section 149)**

- (1) Every company shall have a Board of Directors consisting of individuals as directors and shall have—
  - (a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and

(b) a maximum of fifteen directors:

Provided that a company may appoint more than fifteen directors after passing a special resolution:

Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.

- (2) Every company existing on or before the date of commencement of this Act shall within one year from such commencement comply with the requirements of the provisions of sub-section (1).
- (3) Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.
- (4) Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.

*Explanation.*—For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one.

- (5) Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (4).
- (6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—
  - (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
  - (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;  
(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
  - (c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
  - (d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

- (e) who, neither himself nor any of his relatives—
- (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
  - (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—
    - (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
    - (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;
  - (iii) holds together with his relatives two per cent. or more of the total voting power of the company; or
  - (iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or
- (f) who possesses such other qualifications as may be prescribed.
- (7) Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in sub-section (6).
- Explanation.*—For the purposes of this section, “nominee director” means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.
- (8) The company and independent directors shall abide by the provisions specified in Schedule IV.
- (9) Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option and may receive remuneration by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

- (10) Subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.
- (11) Notwithstanding anything contained in sub-section (10), no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director:
- Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.
- Explanation.*—For the purposes of sub-sections (10) and (11), any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections.
- (12) Notwithstanding anything contained in this Act,—
- (i) an independent director;
  - (ii) a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.
- (13) The provisions of sub-sections (6) and (7) of section 152 in respect of retirement of directors by rotation shall not be applicable to appointment of independent directors.

### **Appointment of directors (Section 152)**

- (1) Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.
- (2) Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.
- (3) No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under section 154.
- (4) Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under this Act.

- (5) A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment in such manner as may be prescribed:

Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.

- (6) (a) Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall—
- (i) be persons whose period of office is liable to determination by retirement of directors by rotation; and
  - (ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.
- (b) The remaining directors in the case of any such company shall, in default of, and subject to any regulations in the articles of the company, also be appointed by the company in general meeting.
- (c) At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with clauses (a) and (b) and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.
- (d) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.
- (e) At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

*Explanation.*—For the purposes of this sub-section, “total number of directors” shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.

- (7) (a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week,



at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

- (b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless—
- (i) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;
  - (ii) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;
  - (iii) he is not qualified or is disqualified for appointment;
  - (iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or
  - (v) section 162 is applicable to the case.

*Explanation.*—For the purposes of this section and section 160, the expression “retiring director” means a director retiring by rotation.

### **Meetings of Board (Section 173)**

- (1) Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board:

Provided that the Central Government may, by notification, direct that the provisions of this sub-section shall not apply in relation to any class or description of companies or shall apply subject to such exceptions, modifications or conditions as may be specified in the notification.

- (2) The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time:

Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.

- (3) A meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means:

Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting:

Provided further that in case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

- (4) Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousand rupees.
- (5) A One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days:

Provided that nothing contained in this sub-section and in section 174 shall apply to

One Person Company in which there is only one director on its Board of Directors.

### **Contract by One Person Company (Section 193)**

- (1) Where One Person Company limited by shares or by guarantee enters into a contract with the sole member of the company who is also the director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum or are recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract:

Provided that nothing in this sub-section shall apply to contracts entered into by the company in the ordinary course of its business.

- (2) The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board of Directors under sub-section (1) within a period of fifteen days of the date of approval by the Board of Directors.

**MINISTRY OF CORPORATE AFFAIRS**

**NOTIFICATION**

New Delhi, the 31st March, 2014

**G.S.R. 250(E).**-- In exercise of the powers conferred under section 3, section 4, sub-sections (5) and (6) of section 5, section 6, sub-section (1) and (2) of section 7, sub-section (1) and (2) of section 8, clauses (a) and (b) of subsection (1) of section 11, sub-sections (2), (3), (4) and (5) of section 12, sub-sections (3), (4) and proviso to sub-section (5) of section 13, sub-section (2) of section 14, sub-section (1) of section 17, sub-section (1) and (2) of section 20 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013) and in supersession of the Companies (Central Government's) General Rules and Forms, 1956 or any other relevant rules prescribed under the Companies Act, 1956 (1 of 1956) on matters covered under these rules, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely: -

**1. Short title and commencement**

- (1) These rules may be called the Companies (Incorporation) Rules, 2014.
- (2) They shall come into force on the 1st day of April, 2014.

**2. Definitions**

- (1) In these rules, unless the context otherwise requires,-
  - (a) "Act" means the Companies Act, 2013 (18 of 2013);
  - (b) "Annexure" means the Annexure to these rules;
  - (c) "Form" or "e-Form" means a form in the electronic form or non-electronic form as specified under the Act or Rules made there under and notified by the Central Government under the Act;
  - (d) "Fees" means fees as specified in the Companies (Registration offices and fees) Rules, 2014;
  - (e) "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;
  - (f) "Section" means the section of the Act;
- (2) Words and expressions used in these rules but not defined and defined in the Act or in Companies (Specification of definitions details) Rules, 2014 shall have the meanings respectively assigned to them in the Act and said rules.

**3. One Person Company**

- (1) Only a natural person who is an Indian citizen and resident in India-
  - (a) shall be eligible to incorporate a One Person Company;
  - (b) shall be a nominee for the sole member of a One Person Company.

*Explanation.-* For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one calendar year.

- (2) No person shall be eligible to incorporate more than a One Person Company or become nominee in more than one such company.
- (3) Where a natural person, being member in One Person Company in accordance with this rule becomes a member in another such Company by virtue of his being a nominee in that One Person Company, such person shall meet the eligibility criteria specified in sub rule (2) within a period of one hundred and eighty days.
- (4) No minor shall become member or nominee of the One Person Company or can hold share with beneficial interest.
- (5) Such Company cannot be incorporated or converted into a company under section 8 of the Act.
- (6) Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporates.
- (7) No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of One Person Company, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

**4. Nomination by the subscriber or member of One Person Company**

For the purposes of first proviso to sub-section (1) of section 3-

- (1) The subscriber to the memorandum of a One Person Company shall nominate a person, after obtaining prior written consent of such person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of that One Person Company.

(2) The name of the person nominated under sub-rule (1) shall be mentioned in the memorandum of One Person Company and such nomination in Form No INC.2 along with consent of such nominee obtained in Form No INC.3 and fee as provided in the Companies (Registration offices and fees) Rules, 2014 shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles.

(3) The person nominated by the subscriber or member of a One Person Company may, withdraw his consent by giving a notice in writing to such sole member and to the One Person Company:

Provided that the sole member shall nominate another person as nominee within fifteen days of the receipt of the notice of withdrawal and shall send an intimation of such nomination in writing to the Company, along with the written consent of such other person so nominated in Form No. INC.3.

(4) The company shall within thirty days of receipt of the notice of withdrawal of consent under sub-rule (3) file with the Registrar, a notice of such withdrawal of consent and the intimation of the name of another person nominated by the sole member in Form No INC.4 along with fee as provided in the Companies (Registration offices and fees) Rules, 2014 and the written consent of such another person so nominated in Form No. INC.3.

(5) The subscriber or member of a One Person Company may, by intimation in writing to the company, change the name of the person nominated by him at any time for any reason including in case of death or incapacity to contract of nominee and nominate another person after obtaining the prior consent of such another person in Form No INC.3:

Provided that the company shall, on the receipt of such intimation, file with the Registrar, a notice of such change in Form No INC.4 along with fee as provided in the Companies (Registration offices and fees) Rules, 2014 and with the written consent of the new nominee in Form No.INC.3 within thirty days of receipt of intimation of the change.

(6) Where the sole member of One Person Company ceases to be the member in the event of death or incapacity to contract and his nominee becomes the member of such One Person Company, such new member shall nominate within fifteen days of becoming member, a person who shall in the event of his death or his incapacity to contract become the member of such company, and the company shall file with the Registrar an intimation of such cessation and nomination in Form No INC.4 along with the fee as provided in the Companies

(Registration offices and fees) Rules, 2014 within thirty days of the change in membership and with the prior written consent of the person so nominated in Form No.INC.3.

#### **5. Penalty**

If One Person Company or any officer of such company contravenes the provisions of these rules, One Person Company or any officer of the One Person Company shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

#### **6. One Person Company to convert itself into a public company or a private company in certain cases**

(1) Where the paid up share capital of an One Person Company exceeds fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as a One Person Company.

(2) Such One Person Company shall be required to convert itself, within six months of the date on which its paid up share capital is increased beyond fifty lakh rupees or the last day of the relevant period during which its average annual turnover exceeds two crore rupees as the case may be, into either a private company with minimum of two members and two directors or a public company with at least of seven members and three directors in accordance with the provisions of section 18 of the Act.

(3) The One Person Company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.

(4) The One Person Company shall within period of sixty days from the date of applicability of sub-rule (1), give a notice to the Registrar in Form No.INC.5 informing that it has ceased to be a One Person Company and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover, having exceeded the threshold limit laid down in sub-rule (1).

*Explanation.*-For the purposes of this rule,- "relevant period" means the period of immediately preceding three consecutive financial years;

(5) If One Person Company or any officer of the One Person Company contravenes the provisions of these rules, One Person Company or any officer of the One Person Company shall be punishable with fine which may extend to ten thousand rupees

and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

- (6) A One Person company can get itself converted into a Private or Public company after increasing the minimum number of members and directors to two or minimum of seven members and two or three directors as the case may be, and by maintaining the minimum paid-up capital as per requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.

#### **7. Conversion of private company into One Person Company.-**

- (1) A private company other than a company registered under section 8 of the Act having paid up share capital of fifty lakhs rupees or less or average annual turnover during the relevant period is two crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting.
- (2) Before passing such resolution, the company shall obtain No objection in writing from members and creditors.
- (3) The one person company shall file copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in Form No. MGT.14.
- (4) The company shall file an application in Form No. INC.6 for its conversion into One Person Company along with fees as provided in in the Companies (Registration offices and fees) Rules, 2014, by attaching the following documents, namely:-
  - (i) The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital company is fifty lakhs rupees or less or average annual turnover is less than two crores rupees, as the case may be;
  - (ii) the list of members and list of creditors;
  - (iii) the latest Audited Balance Sheet and the Profit and Loss Account; and
  - (iv) the copy of No Objection letter of secured creditors.
- (5) On being satisfied and complied with requirements stated herein the Registrar shall issue the Certificate.

#### **8. Undesirable names**

- (1) 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;)
- (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.
- (2) (a) 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;
- (b) 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;
  - (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;

- (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;

- (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;
- (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.

- (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 .
- (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;
  - (b) Commission;
  - (c) Authority;
  - (d) Undertaking;
  - (e) National;
  - (f) Union;
  - (g) Central;
  - (h) Federal;
  - (i) Republic;
  - (j) President;

- (k) Rashtrapati;
  - (l) Small Scale Industries;
  - (m) Khadi and Village Industries Corporation;
  - (n) Financial, Corporation and the like;
  - (o) Municipal;
  - (p) Panchayat;
  - (q) Development Authority;
  - (r) Prime Minister or Chief Minister;
  - (s) Minister;
  - (t) Nation;
  - (u) Forest corporation;
  - (v) Development Scheme;
  - (w) Statute or Statutory;
  - (x) Court or Judiciary;
  - (y) Governor;
  - (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
  - (za) Bureau
- (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.

## 9. Reservation of name

An application for the reservation of a name shall be made in Form No. INC.1 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

10. Where the articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in Form No.INC.2 or Form No.INC.7, as the case may be, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 at the time of incorporation of the company or in case of existing companies, the same shall be filed in Form No.MGT.14 within thirty days from the date of entrenchment of the articles, as the case may be, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.
11. The model articles as prescribed in Table F, G, H, I and J of Schedule I may be adopted by a company as may be applicable to the case of the company, either in totality or otherwise.

**12. Application for incorporation of companies**

An application shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in Form No.INC.2 (for One Person Company) and Form no. INC.7 (other than One Person Company) along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 for registration of a company:

**13. Signing of memorandum and articles**

The Memorandum and Articles of Association of the company shall be signed in the following manner, namely:-

- (1) The memorandum and articles of association of the company shall be signed by each subscriber to the memorandum, who shall add his name, address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise sign and add his name, address, description and occupation, if any and the witness shall state that "I witness to subscriber/subscriber(s), who has/have subscribed and signed in my presence (date and place to be given); further I have verified his or their Identity Details (ID) for their identification and satisfied myself of his/her/their identification particulars as filled in"
- (2) Where a subscriber to the memorandum is illiterate, he shall affix his thumb impression or mark which shall be described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark and authenticate it by his own signature and he shall also write against the name of the subscriber, the number of shares taken by him.
- (3) Such person shall also read and explain the contents of the memorandum and articles of association to the subscriber and make an endorsement to that effect on the memorandum and articles of association.

- (4) 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 and where the subscriber is a Limited Liability Partnership, it shall be signed by a partner of the Limited Liability Partnership, duly authorized by a resolution approved by all the partners of the Limited Liability Partnership:

Provided that in either case, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of Association.

- (5) Where subscriber to the memorandum is a foreign national residing outside India-
- (a) in a country in any part of the Commonwealth, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary (Public) in that part of the Commonwealth.
  - (b) in a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association 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.
  - (c) in a country outside the Commonwealth and which is not a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association 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 under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (40 of 1948) or, where there is no such officer by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic.C.10), or in any Act amending the same;
  - (d) visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa.

*Explanation.-* For the purposes of this clause, it is hereby clarified that, in case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa shall not be applicable.

#### **14. Declaration by professionals**

For the purposes of clause (b) of sub-section (1) of section 7, the

declaration by an advocate, a Chartered Accountant, Cost accountant or Company Secretary in practice shall be in Form No. INC.8.

*Explanation* (i) "chartered accountant" means a chartered accountant as defined in clause (b) of sub section 1 of section 2 of the Chartered Accountants Act, 1949 (ii) "Cost Accountant" means a cost accountant as defined in clause (b) of subsection (1) of section 2 of the Cost and Works Accountants Act, 1959 and (iii) "company secretary" means a "company secretary" or "secretary" means as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980.

#### **15. Affidavit from subscribers and first directors**

For the purposes of clause (c) of sub-section (1) of section 7, the affidavit shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in Form No. INC. 9

#### **16. Particulars of every subscriber to be filed with the Registrar at the time of incorporation**

(1) The following particulars of every subscriber to the memorandum shall be filed with the Registrar-

- (a) Name (including surname or family name) and recent Photograph affixed and scan with MOA and AOA:
- (b) Father's/Mother's/ name:
- (c) Nationality:
- (d) Date of Birth:
- (e) Place of Birth (District and State):
- (f) Educational qualification:
- (g) Occupation:
- (h) Income-tax permanent account number:
- (i) Permanent residential address and also Present address (Time since residing at present address and address of previous residence address (es) if stay of present address is less than one year) similarly the office/business addresses:
- (j) Email id of Subscriber;
- (k) Phone No. of Subscriber;
- (l) Fax no. of Subscriber (optional)

*Explanation.-* information related to (i) to (l) shall be of the individual subscriber and not of the professional engaged in the incorporation of the company;



- (m) Proof of Identity:
    - For Indian Nationals:
      - PAN Card ( mandatory) and any one of the following
      - Voter's identity card
      - Passport copy
      - Driving License copy
      - Unique Identification Number (UIN)
    - For Foreign nationals and Non Resident Indians
    - Passport
  - (n) Residential proof such as Bank Statement, Electricity Bill, Telephone / Mobile Bill:

Provided that Bank statement Electricity bill, Telephone or Mobile bill shall not be more than two months old;
  - (o) Proof of nationality in case the subscriber is a foreign national.
  - (p) If the subscriber is already a director or promoter of a company(s), the particulars relating to-
    - (i) Name of the company;
    - (ii) Corporate Identity Number;
    - (iii) Whether interested as a director or promoter;
  - (q) The specimen signature and latest photograph duly verified by the banker or notary shall be in the prescribed Form No.INC.10.
- (2) Where the subscriber to the memorandum is a body corporate, then the following particulars shall be filed with the Registrar-
- (a) Corporate Identity Number of the Company or Registration number of the body corporate, if any
  - (b) GLN, if any;
  - (c) the name of the body corporate
  - (d) the registered office address or principal place of business;
  - (e) E-mail Id;
  - (f) if the body corporate is a company, certified true copy of the board resolution specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed

company, the number of shares proposed to be subscribed by the body corporate, and the name, address and designation of the person authorized to subscribe to the Memorandum;

- (g) if the body corporate is a limited liability partnership or partnership firm, certified true copy of the resolution agreed to by all the partners specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed in the body corporate, and the name of the partner authorized to subscribe to the Memorandum;
- (h) the particulars as specified above for subscribers in terms of clause (e) of sub-section (1) of section 7 for the person subscribing for body corporate;
- (i) in case of foreign bodies corporate, the details relating to-
  - (i) the copy of certificate of incorporation of the foreign body corporate; and
  - (ii) the registered office address.

**17. Particulars of first directors of the company and their consent to act as such**

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

**18. Certificate of incorporation**

The Certificate of Incorporation shall be issued by the Registrar in Form No.INC.11.

**19. License under section 8 for new companies with charitable objects etc.**

- (1) A person or an association of persons (hereinafter referred to in this rule as "the proposed company"), desirous of incorporating a company with limited liability under sub-section (1) of section 8 without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", shall make an application in Form No.INC.12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 to the Registrar for a license under sub-section (1) of section 8.

- (2) The memorandum of association of the proposed company shall be in Form No.INC.13.
- (3) The application under sub-rule (1) shall be accompanied by the following documents, namely:—
  - (a) the draft memorandum and articles of association of the proposed company;
  - (b) the declaration in Form No.INC.14 by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;
  - (c) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;
  - (d) the declaration by each of the persons making the application in Form No. INC.15.

## **20. License for existing companies**

- (1) A limited company registered under this Act or under any previous company law, with any of the objects specified in clause (a) of sub-section (1) of section 8 and the restrictions and prohibitions as mentioned respectively in clause (b) and (c) of that sub-section, and which is desirous of being registered under section 8, without the addition to its name of the word "Limited" or as the case may be, the words "Private Limited", shall make an application in Form No.INC.12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 to the Registrar for a licence under sub-section (5) of section 8.
- (2) The application under sub-rule (1), shall be accompanied by the following documents, namely:-
  - (a) the memorandum and articles of association of the company;
  - (b) the declaration as given in Form No.INC.14 by an Advocate, a Chartered accountant, Cost Accountant or Company Secretary in Practice, that the memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and that all the requirements of the Act and the rules made

thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;

- (c) For each of the two financial years immediately preceding the date of the application, or when the company has functioned only for one financial year, for such year (i) the financial statements, (ii) the Board's reports, and (iii) the audit reports, relating to existing companies;
  - (d) a statement showing in detail the assets (with the values thereof), and the liabilities of the company, as on the date of the application or within thirty days preceding that date;
  - (e) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;
  - (f) the certified copy of the resolutions passed in general/board meetings approving registration of the company under section 8; and
  - (g) a declaration by each of the persons making the application in Form No.INC.15.
- (2) The company shall, within a week from the date of making the application to the Registrar, publish a notice at his own expense, and a copy of the notice, as published, shall be sent forthwith to the Registrar and the said notice shall be in Form No. INC.26 and shall be published-
- (a) at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is to be situated or is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district; and
  - (b) on the websites as may be notified by the Central Government.
- (4) The Registrar may require the applicant to furnish the approval or concurrence of any appropriate authority, regulatory body, department or Ministry of the Central Government or the State Government(s).
- (5) The Registrar shall, after considering the objections, if any, received by it within thirty days from the date of publication of notice, and after consulting any authority, regulatory body, Department or Ministry of the Central Government or the State Government(s), as it may, in its discretion, decide whether the license should or should not be granted.

- (6) The licence shall be in Form No.INC.16. or Form No.INC.17, as the case may be, and the Registrar shall have power to include in the licence such other conditions as may be deemed necessary by him.
- (7) The Registrar may direct the company to insert in its memorandum, or in its articles, or partly in one and partly in the other, such conditions of the license as may be specified by the Registrar in this behalf.

**21. Conditions for conversion of a company registered under Section 8 into a company of any other kind**

- (1) A company registered under section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion.
- (2) The explanatory statement annexed to the notice convening the general meeting shall set out in detail the reasons for opting for such conversion including the following, namely:-
  - (a) the date of incorporation of the company;
  - (b) the principal objects of the company as set out in the memorandum of association;
  - (c) the reasons as to why the activities for achieving the objects of the company cannot be carried on in the current structure i.e. as a section 8 company;
  - (d) if the principal or main objects of the company are proposed to be altered, what would be the altered objects and the reasons for the alteration;
  - (e) what are the privileges or concessions currently enjoyed by the company, such as tax exemptions, approvals for receiving donations or contributions including foreign contributions, land and other immovable properties, if any, that were acquired by the company at concessional rates or prices or gratuitously and, if so, the market prices prevalent at the time of acquisition and the price that was paid by the company, details of any donations or bequests received by the company with conditions attached to their utilization etc.
  - (f) details of impact of the proposed conversion on the members of the company including details of any benefits that may accrue to the members as a result of the conversion.
- (3) A certified true copy of the special resolution along with a copy of the Notice convening the meeting including the explanatory statement shall be filed with the Registrar in Form No.MGT.14 along with the fee.

- (4) The company shall file an application in Form No.INC.18 with the Regional Director with the fee along with a certified true copy of the special resolution and a copy of the Notice convening the meeting including the explanatory statement for approval for converting itself into a company of any other kind and the company shall also attach the proof of serving of the notice served to all the authorities mentioned in subrule (2) of rule 22.
- (5) A copy of the application with annexures as filed with the Regional Director shall also be filed with the Registrar.

**22. Other conditions to be complied with by companies registered under section 8 seeking conversion into any other kind**

- (1) The company shall, within a week from the date of submitting the application to the Regional Director, publish a notice at its own expense, and a copy of the notice, as published, shall be sent forthwith to the Regional Director and the said notice shall be in Form No. INC.19 and shall be published-
  - (a) at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district; and
  - (b) on the website of the company, if any, and as may be notified or directed by the Central Government.
- (2) The company shall send a copy of the notice, simultaneously with its publication, together with a copy of the application and all attachments by registered post or hand delivery, to the Chief Commissioner of Income Tax having jurisdiction over the company, Income Tax Officer who has jurisdiction over the company, the Charity Commissioner, the Chief Secretary of the State in which the registered office of the company is situated, any organisation or Department of the Central Government or State Government or other authority under whose jurisdiction the company has been operating and if any of these authorities wish to make any representation to Regional Director, it shall do so within sixty days of the receipt of the notice, after giving an opportunity to the Company.
- (3) The copy of proof of serving such notice shall be attached to the application.
- (4) The Board of directors shall give a declaration to the effect that no portion of the income or property of the company has been or shall be paid or transferred directly or indirectly by

way of dividend or bonus or otherwise to persons who are or have been members of the company or to any one or more of them or to any persons claiming through any one or more of them.

- (4) Where the company has obtained any special status, privilege, exemption, benefit or grant(s) from any authority such as Income Tax Department, Charity Commissioner or any organisation or Department of Central Government, State Government, Municipal Body or any recognized authority, a "No Objection Certificate" must be obtained, if required under the terms of the said special status, privilege, exemption, benefit or grant(s) from the concerned authority and filed with the Regional Director, along with the application.
- (5) The company should have filed all its financial statements and Annual Returns upto the financial year preceding the submission of the application to the Regional Director and all other returns required to be filed under the Act up to the date of submitting the application to the Regional Director and in the event the application is made after the expiry of three months from the date of preceding financial year to which the financial statement has been filed, a statement of the financial position duly certified by chartered accountant made up to a date not preceding thirty days of filing the application shall be attached.
- (6) The company shall attach with the application a certificate from practicing Chartered Accountant or Company Secretary in practice or Cost Accountant in practice certifying that the conditions laid down in the Act and these rules relating to conversion of a company registered under section 8 into any other kind of company, have been complied with.
- (7) The Regional Director may require the applicant to furnish the approval or concurrence of any particular authority for grant of his approval for the conversion and he may also obtain the report from the Registrar.
- (8) On receipt of the application, and on being satisfied , the Regional Director shall issue an order approving the conversion of the company into a company of any other kind subject to such terms and conditions as may be imposed in the facts and circumstances of each case including the following conditions, namely;-
  - (a) the company shall give up and shall not claim, with effect from the date its conversion takes effect, any special status, exemptions or privileges that it enjoyed by virtue of having been registered under the provisions of section 8;
  - (b) if the company had acquired any immovable property free

of cost or at a concessional cost from any government or authority, it may be required to pay the difference between the cost at which it acquired such property and the market price of such property at the time of conversion either to the government or to the authority that provided the immovable property;

- (c) any accumulated profit or unutilised income of the company brought forward from previous years shall be first utilized to settle all outstanding statutory dues, amounts due to lenders claims of creditors, suppliers, service providers and others including employees and lastly any loans advanced by the promoters or members or any other amounts due to them and the balance, if any, shall be transferred to the Investor Education and Protection Fund within thirty days of receiving the approval for conversion;
- (9) Before imposing the conditions or rejecting the application, the company shall be given a reasonable opportunity of being heard by the Regional Director.
- (10) On receipt of the approval of the Regional Director,
- (i) the company shall convene a general meeting of its members to pass a special resolution for amending its memorandum of association and articles of association as required under the Act consequent to the conversion of the section 8 company into a company of any other kind;
  - (ii) the Company shall thereafter file with the Registrar.-
    - (a) a certified copy of the approval of the Regional Director within thirty days from the date of receipt of the order in Form No.INC.20 along with the fee;
    - (b) amended memorandum of association and articles of association of the company;
    - (c) a declaration by the directors that the conditions, if any imposed by the Regional Director have been fully complied with.
- (11) On receipt of the documents referred to in sub rule (10) above, the Registrar shall register the documents and issue the fresh Certificate of Incorporation.

### **23. Intimation to Registrar of revocation of licence issued under section 8**

Where the licence granted to a company registered under section 8 has been revoked, the company shall apply to the Registrar in Form No.INC.20 along with the fee to convert its status and change of name accordingly.



**24. Declaration at the time of commencement of business**

The declaration filed by a director shall be in Form No.INC.21 along with the fee as and the contents of the form shall be verified by a Company Secretary in practice or a Chartered Accountant or a Cost Accountant in practice:

Provided that in the case of a company requiring registration from sectoral regulators such as Reserve Bank of India, Securities and Exchange Board of India etc, the approval from such regulator shall be required.

**25. Verification of registered office**

(1) The verification of the registered office shall be filed in Form No.INC.22 along with the fee, and (2) There shall be attached to said Form, any of the following documents, namely :-

- (a) the registered document of the title of the premises of the registered office in the name of the company; or
- (b) the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
- (c) the authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and
- (d) the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.

**26. Publication of name by company**

The Central Government may as and when required, notify the other documents on which the name of the company shall be printed.

**27. Notice and verification of change of situation of the registered office**

The notice of change of the situation of the registered office and verification thereof shall be filed in Form No.INC.22 along with the fee and shall be attached to the said form, the similar documents and manner of verification as are specified for verification of Registered office on incorporation in terms of sub-section (2) of section 12.

**28. Shifting of registered office within the same State**

(1) An application seeking confirmation from the Regional Director

for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, shall be filed by the company with the Regional Director in Form no.INC.23 along with the fee.

- (2) The company shall, not less than one month before filing any application with the Regional Director for the change of registered office.-
  - (a) publish a notice, at least once in a daily newspaper published in English and in the principal language of that district in which the registered office of the company is situated and circulating in that district; and
  - (b) serve individual notice on each debenture holder, depositor and creditor of the company, clearly indicating the matter of application and stating that any person whose interest is likely to be affected by the proposed alteration of the memorandum may intimate his nature of interest and grounds of opposition to the Regional Director with a copy to the company within twenty one days of the date of publication of that notice:

Provided that in case no objection is received by the Regional Director within twenty one days from the date of service or publication of the notice, the person concerned shall be deemed to have given his consent to the change of registered office proposed in the application:

Provided further that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

### **29. Alteration of Memorandum by change of name**

- (1) The change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures.
- (2) An application shall be filed in Form No.INC.24 along with the fee for change in the name of the company and a new certificate of incorporation in Form No.INC.25 shall be issued to the company consequent upon change of name.

### **30. Shifting of registered office from one State or Union territory to another State**

- (1) An application under sub-section (4) of section 13, for the

purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one State Government or Union territory to another, shall be filed with the Central Government in Form No. INC.23 along with the fee and shall be accompanied by the following documents, namely:-

- (a) a copy of the memorandum and articles of association;
  - (b) a copy of the notice convening the general meeting along with relevant Explanatory Statement;
  - (c) a copy of the special resolution sanctioning the alteration by the members of the company;
  - (d) a copy of the minutes of the general meeting at which the resolution authorizing such alteration was passed, giving details of the number of votes cast in favor or against the resolution;
  - (e) an affidavit verifying the application;
  - (f) the list of creditors and debenture holders entitled to object to the application;
  - (g) an affidavit verifying the list of creditors;
  - (h) the document relating to payment of application fee;
  - (i) a copy of board resolution or Power of Attorney or the executed Vakalatnama, as the case may be.
- (2) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details, namely:-
- (a) the names and address of every creditor and debenture holder of the company;
  - (b) the nature and respective amounts due to them in respect of debts, claims or liabilities:

Provided that the applicant company shall file an affidavit, signed by the Company Secretary of the company, if any and not less than two directors of the company, one of whom shall be a managing director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge.

- (3) There shall also be attached to the application an affidavit from the directors of the company that no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief Secretary of the concerned State Government or the Union territory
- (4) A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company.
- (5) There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.
- (6) The company shall at least fourteen days before the date of hearing-
  - (a) advertise the application in the Form No.INC.26 in a vernacular newspaper in the principal vernacular language in the district in which the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district;
  - (b) serve, by registered post with acknowledgement due, individual notice(s), to the effect set out in clause (a) on each debenture-holder and creditor of the company; and
  - (c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.
- (7) Where any objection of any person whose interest is likely to be affected by the proposed application has been received by the applicant, it shall serve a copy thereof to the Central Government on or before the date of hearing.
- (8) Where no objection has been received from any of the parties, who have been duly served, the application may be put up for orders without hearing.
- (9) Before confirming the alteration, the Central Government shall ensure that, with respect to every creditor and debenture holder who, in the opinion of the Central government, is

entitled to object to the alteration, and who signifies his objection in the manner directed by the Central government, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Central Government.

- (10) The Central Government may make an order confirming the alteration on such terms and conditions, if any, as it thinks fit, and may make such order as to costs as it thinks proper:

Provided that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

- 31.** The certified copy of the order of the Central Government, approving the alteration of the memorandum for transfer of registered office of the company from one State to another, shall be filed in Form No.INC.28 along with the fee as with the Registrar of the State within thirty days from the date of receipt of certified copy of the order.

**32. Change of objects for which money is raised through prospectus**

- (1) Where the company has raised money from public through prospectus and has any unutilised amount out of the money so raised, it shall not change the objects for which the money so raised is to be applied unless a special resolution is passed through postal ballot and the notice in respect of the resolution for altering the objects shall contain the following particulars, namely:-

- (a) the total money received;
- (b) the total money utilized for the objects stated in the prospectus;
- (c) the unutilized amount out of the money so raised through prospectus,
- (d) the particulars of the proposed alteration or change in the objects;
- (e) the justification for the alteration or change in the objects;
- (f) the amount proposed to be utilised for the new objects;
- (g) the estimated financial impact of the proposed alteration on the earnings and cash flow of the company;
- (h) the other relevant information which is necessary for the members to take an informed decision on the proposed resolution;

- (i) the place from where any interested person may obtain a copy of the notice of resolution to be passed.
- (2) The advertisement giving details of each resolution to be passed for change in objects which shall be published simultaneously with the dispatch of postal ballot notices to shareholders.
- (3) The notice shall also be placed on the website of the company, if any.

### **33. Alteration of articles**

- (1) For effecting the conversion of a private company into a public company or vice versa, the application shall be filed in Form No.INC.27 with fee.
- (2) A copy of order of the competent authority approving the alteration, shall be filed with the Registrar in Form No. INC.27 with fee together with the printed copy of the altered articles within fifteen days of the receipt of the order from the Central Government.

*Explanation.-* For the purposes of this sub-rule, the term "competent authority" means, the Central Government.

### **34. Copies of memorandum and articles, etc. to be given to members on request being made by them**

A company shall on payment of fee, send a copy of each of the following documents to a member within seven days of the request being made by him-

- (1) the memorandum;
- (2) the articles;
- (3) every agreement and every resolution referred to in sub-section (1) of section 117, if and so far as they have not been embodied in the memorandum and articles.

### **35. Service of documents**

- (1) A document may be served on a company or an officer thereof through electronic transmission.
- (2) For the purposes of sub-rule (1), the term, "electronic transmission" means a communication–
  - (a) delivered by –
    - (i) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail

address, respectively, which the company or the officer has provided from time to time for sending communications to the company or the officer respectively;

- (ii) posting of an electronic message board or network that the company or the officer has designated for such communications, and which transmission shall be validly delivered upon the posting; or
  - (iii) other means of electronic communication, in respect of which the company or the officer has put in place reasonable systems to verify that the sender is the person purporting to send the transmission; and
- (b) that creates a record that is capable of retention, retrieval and review, and which may thereafter be rendered into clearly legible tangible form.
- (3) A document may be served on the Registrar or any member through electronic transmission.
- (4) For the purposes of sub-rule (3), the term, "electronic transmission" means a communication –
- (a) delivered by –
    - (i) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the Registrar or the member has provided from time to time for sending communications to the Registrar or the member respectively;
    - (ii) posting of an electronic message board or network that the Registrar or the member has designated for those communications, and which transmission shall be validly delivered upon the posting; or
    - (iii) other means of electronic communication, in respect of which the Registrar or the member has put in place reasonable systems to verify that the sender is the person purporting to send the transmission, and
  - (b) that creates a record that is capable of retention, retrieval and review, and which may thereafter be rendered into clearly legible tangible form.
- (5) For the purposes of sub-section (1) and (2) of section 20,

“courier” means a document sent through a courier which provides proof of delivery.

- (6) In case of delivery by post, such service shall be deemed to have been effected- (i) in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted; and (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
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