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YOUR CA BUDDY
CA SHUBHAM SINGHAL

Message from Author

Haanji Doston, kya haal hai :)

Glad you decided to rely on this book for your preparation of **LAW**. I can assure you that I have given my 100% energy, time, heart and soul to make this book useful for you.

This book is named "**The Ultimate Solution**" for a reason. I believe (and it has been proven in the past, time and again) that this book is all you need to nail your exam. And when I say nail, I mean bare minimum **EXEMPTION**.

Trust me when I say that this book is a result of **6 months** of hard work and dedication to bring out the best book ever. And, I am aware that there is always a scope for improvement, and hence, I promise you that with time, it will only get better.

Meanwhile, use this and ace your exams

with Love!
Shubham

-Your CA Buddy

Our AIRs in CA Inter Law

May'24 exams!



70+ Scores!

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Bhavik Nilesh Runwal	83
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Ananya A S	70
Ankit Bisht	70
Mahi Agarwal	70
Ishita	70
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Siddhant Sethia	70
K Rohit	70
Mayank Jaju	70
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Mahi Agarwal	70

800+
EXEMPTION
HOLDERS

Index and Last Day Revision Plan

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3	Prospectus and Allotment of Securities	16
4	Share Capital and Debentures	22
5	Acceptance of Deposits by Company	10
6	Registration of Charges	5
7	Management and Administration	28
8	Declaration and Payment of Dividend	7
9	Accounts of Companies	21
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12	The General Clauses Act, 1897	9
13	Interpretation of Statutes	13
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15	Limited Liability Partnership Act	13

200
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SN	Appendix	SN	Appendix
1	Matters requiring Ordinary Resolution	7	Important Limits of Companies Act
2	Matters requiring Special Resolution	8	Exemptions to Private Companies
3	Matters requiring Unanimous Resolution	9	Exemptions to Govt and Sec 8 Companies
4	Matters for Postal Ballot	10	Exemptions to Nidhi Cos.
5	ABC Analysis	11	Exemptions to OPC and Small Cos
6	Chapter-wise trend analysis	12	Exemptions to Specified IFSC companies

Steps to nail your theory papers - The Ranker's Way:

1. Take as much as you can from the **classes** - Conceptual clarity, concise notes, funny mnemonics and examples and what not.
2. Do a lot of **writing practice** in addition to the writing practice that we do in our classes.
3. Cover the full **question bank** in the first revision along with this summary notes and mark selected questions for next revision
4. Plan 2 **revision** for full syllabus of law and 3-4 revision for important or difficult topics
5. Use revision videos along with this summary notes for comprehensive revision
6. Boom - You are **ready** to nail Law exams - The Ranker's Way



These indicates marking of relevant question number from our question bank.

SHORT FORMS USED IN THIS SUMMARY NOTES:

Short	Full Form	Short	Full Form
AIF	Alternate Investment Fund	NCLT	National Company Law Tribunal
AoA	Articles of Association	OFS	Offer for Sale
AP	Abridged Prospectus	OOBH	Opportunity of being heard
BC	Body Corporate	OPC	One Person Company
BOA	Books of Accounts	OR	Ordinary Resolution
BoD	Board of Directors	PFI	Public Financial Institutions
BR	Board Resolution	PO	Public Offer
CASH	Company or of its holding, subsidiary or associate company	POB	Place of Business
CFS	Cash Flow Statement	PP	Private Placement
CG	Central Government	PROI	Person Resident Outside India
CIS	Collective Investment Schemes	PSC	Preference Share Capital
CP	Commercial Paper	PUSC	Paid Up Share Capital
CRR	Capital Redemption Reserve	RD	Regional Director
CSR	Corporate Social Responsibility	RGTB	Reasonable Ground To Believe
CTV	City, Town, Village	RHP	Red Herring Prospectus
DH	Debenture Holders	RO	Registered Office
DP	Designated Partner	RoC	Registrar of Company
DPIN	Designated Partner Identification Number	RoM	Register of Members
DRR	Debenture Redemption Reserve	RP	Registered Post
DRR	Deposit Repayment Reserve	RPAD	Registered Post Acknowledgement Due
DTD	Deposit Trustee Deed	RPT	Related Parties Transaction
DVR	Differential Voting Rights	SAS	Statement of Account Solvency
EGM	Extra Ordinary General Meeting	SEBI	Securities and Exchange Board of India
ESC	Equity Share Capital	SEZ	Special Economic Zone
FC	Foreign Company	SG	State Government
FPO	Further Public Offer	SH	Shareholders
FS	Financial Statement		
GM	General Meeting	SOH	Subsidiary Of Holding
ID	Independent Director	SP	Shelf Prospectus
IEPF	Investor Education and protection Fund	SR	Special Resolution
IOT	Intimation of Transmission	T&C	Terms and Conditions
IPO	Initial Public Offer	UDA	Unpaid Dividend Account
IRDA	Insurance Regulatory & Development Authority	VR	Voting Rights
KMP	Key Managerial Person	WEH	Which Ever is Higher
LR	Legal Representative	WEL	Which Ever is Lower
MCA	Ministry of Corporate Affairs	WOS	Wholly Owned Subsidiary
MoA	Memorandum of Association	WTD	Whole Time Director
MSME	Micro Small Medium Enterprises		

**Objective of this Act**

Act to **consolidate** and amend the law relating to companies.

**Enactment**

- Received the assent of the Hon'ble President of India on **29th August 2013**
- Notified in Official Gazette on **30th Aug 2013** (different dates may be appointed for enforcement)

**Flow**

29 Chapters → 470 Sections → 7 Schedules

Company: An **incorporated** association which is an **artificial person**, having a separate legal entity, with a **perpetual succession**, a **common seal** (optional).

**Section 1: Short Title, Extent, Commencement and Application:**

Short Title	Companies Act, 2013
Extent	Whole of India (by default includes J&K)
Commencement	From date as appointed by CG by notification in Official Gazette
Applicability	The provision of this Act shall apply to: <ol style="list-style-type: none"> companies incorporated under this Act or under any previous company law. insurance cos., except where provisions are inconsistent with that of Insurance Act, 1938 or IRDA Act, 1999; banking companies, except where provisions are inconsistent with that of Banking Regulation Act, 1949 cos. engaged in generation/supply of electricity, except where provisions are inconsistent with that of Electricity Act, 2003 other company governed by any Special Act, except where provisions are inconsistent with that of Special Act (Ex: LIC, RBI) such body corporate, incorporated by any Act for the time being in force, as may be notified by CG [Example - Food Corporation of India (FCI), National Highway Authority of India (NHAI)]

**Section 2: Definitions: ('Internal aids to construction')**

In this Act, unless the context otherwise requires:

1 **Abridged Prospectus**

Means a **memorandum** containing such **salient features** of a **prospectus** as may be specified by the Securities and Exchange Board by making regulations in this behalf

2 Accounting Standards (AS)

Means AS or any **addendum** thereto for companies or class of companies referred u/s 133;
Section 133: Central Government to Prescribe Accounting Standards

As per Sec 133, CG may prescribe the AS or any addendum thereto, as recommended by **ICAI**, constituted u/s 3 of the CA Act, 1949, in consultation with and after examination of recommendations made by **National Financial Reporting Authority (NFRA)**



Rule 7 of Companies (Accounts) Rules, 2014: Accordingly,

- i. The standards of accounting as specified under Companies Act, **1956** shall be deemed to be AS until AS are specified by CG u/s 133.
- ii. Till the NFRA is constituted u/s 132 of the Act, the CG may prescribe AS or any addendum thereto, as recommended by ICAI in consultation with and after examination of recommendations made by **National Advisory Committee(NAC)** on AS constituted u/s 210A of Companies Act, **1956**.

Further, in exercise of powers conferred u/s 133, the CG in consultation with the NAC on AS prescribed that Companies (AS) Rules, 2006 and Companies (Ind AS) Rules, 2015 may be followed.

3 Alter or Alteration

Includes the making of additions, omissions and substitutions;

5 Articles

Means the **articles of association** of a company:

- as **originally** framed, or
- as **altered** from time to time, or
- applied in pursuance of any **previous** company law or **this** Act;

6 Associate Company

In relation to another co., means a company in which that other co. has a **significant influence**, but which is **not a subsidiary co.** of the co. having such influence and **includes a joint venture.**

Explanation: For the purpose of this clause:

- (a) "Significant influence" means control of **at least 20% of total voting power**, or control of or participation in **business decisions** under an agreement;
- (b) "Joint venture" means a **joint arrangement** whereby the parties that have **joint control** of the arrangement have rights to the net assets of the arrangement

Clarification: Shares held by a company in another company in a **fiduciary capacity** shall **not be** counted for the purpose of determining the relationship of associate company

A fiduciary is a person who holds a **legal or ethical relationship** of trust with one of more parties (persons or group of persons). Typically, a fiduciary prudently takes care of money or other assets for another person.

7 Auditing standards

means the standards of auditing or any addendum thereto for companies or class of companies referred to u/s 143(10)

Section 143(10) - CG may prescribe the standards of auditing or any addendum thereto, as recommended by ICAI, constituted u/s 3 of the CA Act, 1949, in consultation with and after examination of recommendations made by NFRA.

Provided that until any auditing standards are notified, any standard or standards of auditing specified by the ICAI shall be deemed to be the auditing standards.

8 Authorised Capital or Nominal Capital

means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;

10 Board of Directors or Board

means the collective body of the directors of the company

11 Body corporate or Corporation

Includes a company incorporated outside India, but does not include:

- i. a co-operative society registered under any law relating to co-operative societies; and
- ii. any other body corporate (not being a company as defined in this Act), notified by CG;

12 "Book and Paper" and "Book or Paper": Includes: [WARM DVD]



maintained on paper or in electronic form;

13 "Books of account" includes records maintained in respect of:

- (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
- (ii) all sales and purchases of goods and services by the company;
- (iii) the assets and liabilities of the company; and
- (iv) the items of cost as may be prescribed u/s 148 in the case of a company which belongs to any class of companies specified under that section;

14 Branch office, in relation to a company, means any establishment described as such by the co.;

15 Called-up capital means such part of the capital, which has been called for payment;

16 Charge means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage;

- 17 Chartered Accountant means a CA as defined in section 2(1)(b) of the Chartered Accountants Act, 1949 who holds a **valid certificate of practice** u/ss 6(1) of that Act;
- 18 Chief Executive Officer means an officer of a company, who has been **designated** as such by it;
- 19 Chief Financial Officer means a person **appointed** as the Chief Financial Officer of a company;
- 20 Company means a company **incorporated** under this Act or under any previous company law;
Example: RIL (1973), Tata Steel (1907), Infosys (1981).
- 21 Company limited by guarantee means a company having the **liability** of its members **limited** by the memorandum to such amount as the members may **respectively undertake to contribute** to the assets of the company in the event of its being **wound up**;
- 22 Company limited by shares means a company having the **liability** of its members **limited** by the **memorandum** to the amount, if any, **unpaid on the shares respectively held** by them;
Example: A shareholder who has paid Rs. 75 on a share of face value Rs. 100 can be called upon to pay the balance of Rs. 25 only.
- 26 Contributory means a person **liable** to contribute towards the assets of the company in the event of its being **wound up**.
Explanation: For the purposes of this clause, it is hereby clarified that a **person holding fully paid-up** shares in a company shall be considered as a contributory **but** shall have **no liabilities** of a contributory under the Act whilst retaining rights of such a contributory;
- 27 Control shall **include**:
- the right to appoint **majority** of the **directors** or
 - to control the **management** or **policy decisions** exercisable by a person(s) acting individually or in concert, directly or indirectly,
 - including by virtue of their **shareholding** or **management rights** or shareholders agreements or voting agreements or in any other manner
- 30 Debenture includes debenture stock, bonds or any other instrument of a company **evidencing a debt**, whether constituting a charge on the assets of the company or not.
Provided that, following instrument shall not be shall not be treated as debenture:
- a. **instruments** referred to in Chapter III-D of the RBI Act, 1934; and
 - b. such other instrument, as may be prescribed by **CG** in consultation with RBI, issued by Co.
- 34 Director means a **director appointed** to the Board of a company;
- 35 Dividend includes any **interim dividend**;

36 Document includes **summons, notice, requisition**, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;

37 Employees stock option means the **option** given to the **directors, officers or employees** of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or **right to purchase**, or to subscribe for, the shares of the company at a **future date** at a **pre-determined price**;

38 "Expert" includes an **engineer**, a **valuer**, a **CA**, a **CS**, a cost accountant and any other person who has the power or authority to **issue a certificate** in pursuance of any law for the time being in force;

2

40 Financial statement in relation to a company, includes:

- i. **Balance sheet** as at the end of the financial year;
- ii. a **profit and loss account**, or in the case of a company carrying on any activity **not for profit**, an income and expenditure account for the financial year;
- iii. **cash flow statement (CFS)** for the financial year*;
- iv. a statement of changes in equity, if applicable; and
- v. any **explanatory** note annexed to, or forming part of, any doc. referred in above sub-clause:

*Provided that the FS, with respect to **OPC, small company and dormant company and Private company (startup)**, may not include **CFS**;

4

41 Financial Year, in relation to any company or BC, means **period ending on 31st day of March every year**, and where it has been **incorporated on or after the 1st day of January** of a year, the period ending on the 31st day of March of the **following year**, in respect whereof FS of the company or BC is made up.

Provided that where a company or BC, which is a holding company or a subsidiary or associate company of a **company incorporated outside India** and is required to follow a different FY for consolidation of its accounts outside India, the **CG** may, on an application made by that company or BC in such form and manner as may be prescribed, **allow any period as its FY**, whether or not that period is **a year**.

43 Free reserves means such reserves which, as per the latest audited balance sheet of a company, are **available for distribution as dividend**.

Provided that, following shall not be treated as free reserve:

- i. any amount representing **unrealised gains, notional gains**, or revaluation of assets, whether shown as a reserve or otherwise, or
- ii. any change in **carrying amount** of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at **fair value**;

44 Global Depository Receipt (GDR): means any **instrument** in the form of a depository receipt, by whatever name called:

- **created** by a **foreign depository outside India** and
- **authorised** by a **company** making an issue of such depository receipts.

45 Government company means:

- any company in which **not less than 51%** of paid-up share capital is held by **CG**, or by any **SG**, or partly by **CG** and partly by one or more **SG**, and
- **includes** a company which is a **subsidiary company of such Government company**;

46 Holding company, in relation to one or more other companies, means a company of which such companies are **subsidiary companies**;

50 Issued Capital means such capital as the company **issues** from time to time **for subscription**;

51 Key Managerial Personnel, in relation to a company, means:

the CEO or the managing director or the manager;

the company secretary;

the whole-time director;

the Chief Financial Officer here

such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and

such other officer as may be prescribed;

 52 Listed company means a **company** which has any of its securities listed on any **recognised stock exchange ("RSE")**;

Provided that **such class** of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the SEBI, shall **not be considered as listed companies**.



According to Rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:

- Public** companies which have **not listed their equity** shares on a RSE but have listed their:
 - non-convertible debt securities** issued on **private placement basis** in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
 - non-convertible redeemable preference shares** issued on **private placement basis** in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013;
 - both** categories of (i) and (ii) above.
- Private** companies which have listed their **non-convertible debt securities on private placement** basis on a RSE in terms of SEBI Regulation, 2008;
- Public** companies which have not listed their equity shares on a RSE but whose **equity shares are listed on a stock** exchange in a jurisdiction as specified in sec 23(3) of the Act.

53 Manager means an **individual** who:

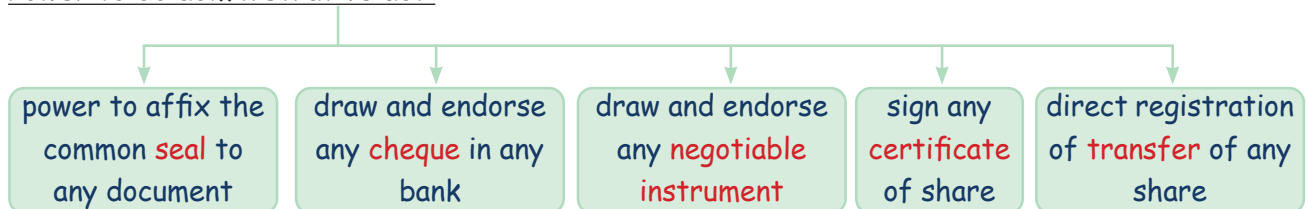
- subject to the superintendence, control and direction of the Board of Directors,
- has the management of **whole**, or **substantially the whole**, of the affairs of a company, and
- **includes a director** or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;

54 Managing Director means a **director** who

- By virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors,
- is entrusted with **substantial powers of management** of the affairs of the company and
- includes a director occupying the position of managing director, by whatever name called.

Explanation: For the purposes of this clause, the **power to do administrative acts** of a **routine nature** when so authorised by the Board **shall not be deemed** to be included within the substantial powers of management;

Power to do administrative act:



55 Member in relation to a company, means:

- i. the **subscriber** to the memorandum of company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its **register of members**;
- ii. every other person who **agrees in writing** to become a member of the company and whose name is entered in the **register of members** of the company;
- iii. every person holding shares of the company and whose name is entered as a **beneficial owner** in the records of a **depository**;

56 Memorandum means the **MoA** of a company as **originally** framed or as **altered** from time to time in pursuance of any **previous** company law **or of this Act**;

 3 57 Net worth means the:

Aggregate value of:

1. paid-up share capital,
2. **All reserves** created out of the profits,
3. Securities premium account &
4. debit or credit balance of P&L

After deducting aggregate value of:

1. the accumulated **losses**,
2. **deferred** expenditure &
3. miscellaneous **expense not written off**

Does NOT include:

1. Reserve created out of **revaluatn** of assets
2. **Write-back** of depreciation and amalgamation

58 Notification means a notification published in Official Gazette and expression "notify" to be construed accordingly;

59 Officer includes any director, manager or KMP or any person in accordance with whose directions or instructions the BoD or any one or more of the directors is or are accustomed to act;

60 Officer who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:

- (i) Whole-time director;
- (ii) KMP;
- (iii) where there is no KMP, such director(s) as specified by the Board in this behalf and who has or have given his consent in writing to the Board to such specification, or all the directors, if no director is so specified;
- (iv) any person who, under the immediate authority of Board/KMP, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
- (v) any person in accordance with whose advice, directions or instructions the BoD of co. is accustomed to act, other than a person who gives advice to BoD in a professional capacity;
- (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
- (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

62 One Person Company (OPC) means a company which has only one person as a member;

63 Ordinary or Special Resolution means an OR/SR as referred to in section 114;

64 Paid-up share capital or share capital paid-up means: such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;

65 Postal ballot means voting by post or through any e-mode;

66 Prescribed means prescribed by rules made under this Act;

68 Private Company means a company having a minimum paid-up share capital as may be prescribed, and which by its articles:

- i. **restricts** the right to **transfer** its shares;
- ii. except in case of OPC, **limits** the number of its **members** to **200**:

Provided that in case **joint holding** - Treat them as **single member**.

Provided further, following shall **not be included** in number of members:

- a. persons who are in the **employment** of the company; and
 - b. persons who, having been **formerly in employment** of co., were members of co. while in that employment and have **continued to be members** after employment ceased.
- iii. **prohibits** any invitation to the **public to subscribe** for any securities of the company;

The requirement of having a minimum PUSC shall **not apply to a Section 8 provided** it has not committed a default in filing its financial statements u/s **137** or annual return u/s **92** with RoC.

69 Promoter means a person:

- a) who has been **named** as such in a **prospectus** or is identified by co. in **annual return** u/s 92,
- b) who has control over the **affairs** of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- c) in accordance with whose advice, directions or instructions the Board of the company is **accustomed to act** (**except** where such person is acting merely in **professional capacity**)

70 Prospectus means any document described or issued as a prospectus and includes a **red herring prospectus** or **shelf prospectus** or **any notice**, circular, advertisement or other document **inviting** offers from the public for the subscription or purchase of any securities of a body corporate;

 71 Public company means a company which:

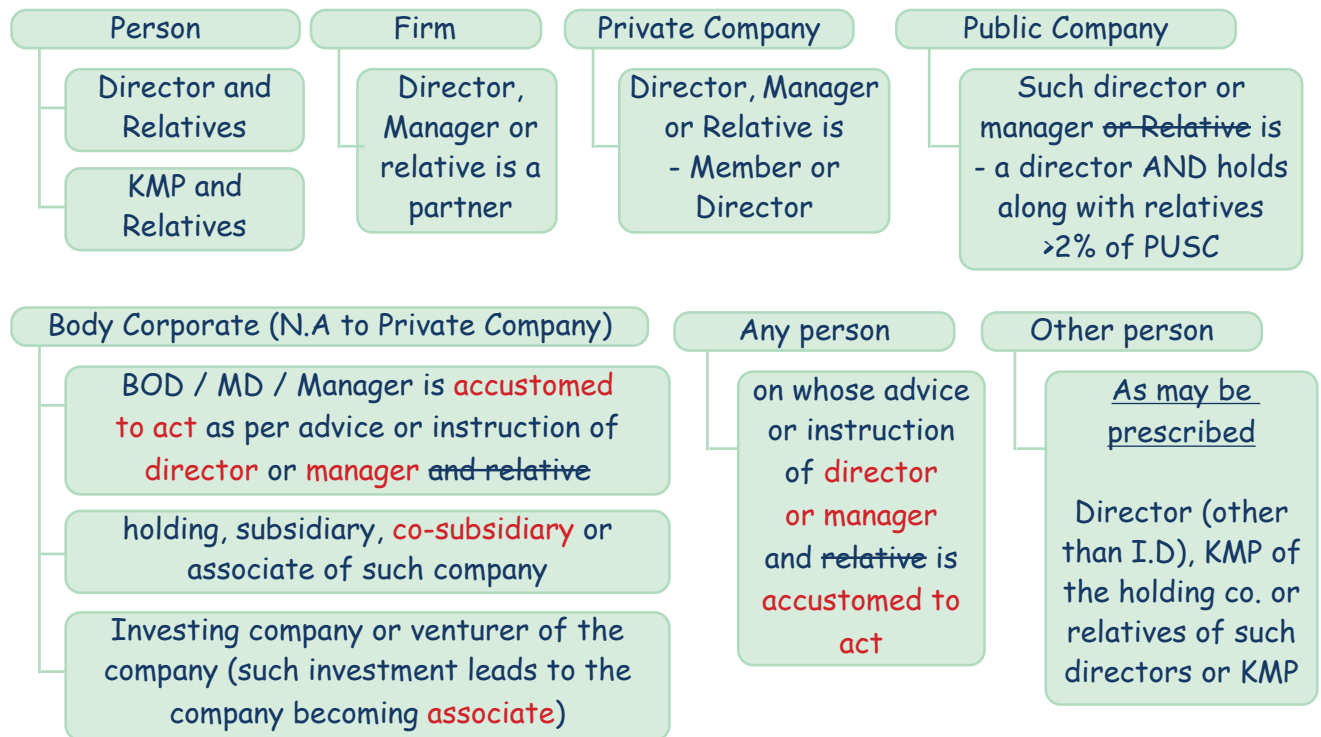
- i. is not a **private company**; and
- ii. has a minimum paid-up share capital as may be prescribed (N.A. to Sec 8 companies)

Provided that **subsidiary of a public co.** shall be **deemed** to be **public co.** for the purposes of this Act even where such subsidiary company continues to be a private company in its articles;

74 Register of companies means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act;

75 Registrar means a **Registrar**, an **Additional Registrar**, a **Joint Registrar**, a **Deputy Registrar** or an **Assistant Registrar**, having the **duty** of registering companies and discharging various functions under this Act

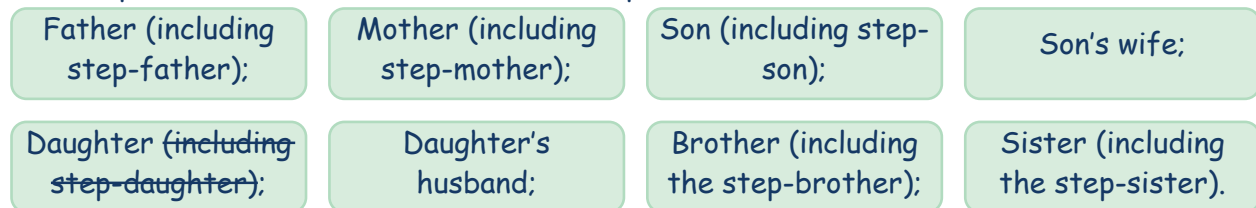
9 76 Related Party:



77 Relative:

Anyone who is related to another and covers the following:

- they are **members** of a HUF (Hindu Undivided Family);
- they are **husband** and **wife**; or
- one person is related to the other in the prescribed manner as under:



78 Remuneration means any **money**, or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income Tax Act, 1961

84 Share means a share in the share capital of a company and **includes stock**;

85 Small company means a company, **other than a public company**: 5 7 11

- PUSC** of which does not exceed **Rs. 50 lakh** or such **higher** amount as may be prescribed which shall not be **> Rs. 10 crores**; and
- turnover** of which as per P&L account for the immediately preceding FY does not exceed **Rs. 2 cr.** or such **higher** amount as may be prescribed which shall not be **> Rs. 100 cr.**

Provided that nothing in this clause shall apply to:

- a **holding** company or a **subsidiary** company;
- a company registered under section 8; or
- a company or body corporate governed by any **special Act**.

As per the Companies (Specification of Definitions Details) Rules, 2014, for section 2(85), PUSC and T/O of small company shall not exceed Rs. 4 crores and Rs. 40 crores respectively.

[Amendment]

86 Subscribed capital means such part of the capital which is for the time being subscribed by the members of a company;

1 87 Subsidiary company or Subsidiary, in relation to any other company, means a company in which the holding company:

- i. controls the composition of the Board of Directors; or
- ii. exercises or controls more than $\frac{1}{2}$ of the total voting power either at its own or together with one or more of its subsidiary companies.

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation: For the purposes of this clause:

- a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or (ii) is of another subsidiary co. of holding co.;
- b) the composition of a company's BoD shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- c) the expression "company" includes any body corporate;
- d) layer in relation to a holding company means its subsidiary or subsidiaries;

Note - Shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for purpose of determining the holding - subsidiary relationship.

88 Sweat equity shares means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions.

89 Total voting power, in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote are present at the meeting and cast their votes;

90 Tribunal means the NCLT constituted u/s 408;

91 Turnover means the gross amount of revenue recognised in the P&L account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a FY;

92 Unlimited company means a company not having any limit on the liability of its members;

93 Voting Right means the right of a member of a company to vote in any meeting of the company or by means of postal ballot;

The End

Student's Notes:-



Summary of Forms:

Form No.	Sec.	Use
INC-03	3	Consent of nominee while formation of OPC
INC-04	3	OPC to inform ROC within 30 days of replacement of nominee or withdrawal
INC-08	7	Declaration of compliance of Act or Rules during incorporation of company
INC-09	7	Declaration by subscribers to MoA and First Directors
INC-11	7	CoI issued on registration of company
INC-13	8	MoA of Section 8 company
INC-14	8	Declaration by CA/CS/Cost account w.r.t compliance at incorporation
INC-15	8	Declaration by person making application for incorporation of sec 8 company
INC-18	8	Application to RD for conversion of Section 8 Company to any other kind
INC-19	8	Notice to be published within a week of application in INC-18
INC-20A	10A	Declaration by director that every subscriber has paid the due amount
INC-22	12	Notice of change in situation of RO to be verified
INC-23	13	Application for change of RO from one state to another
INC-24	13	Application for change in name to ROC u/s 13
INC-25	13	Fresh COI issued after change in name on application in INC-25
INC-26	13	Form for advertisement regarding application to CG for change of RO
INC-27	14	Altered AoA to be filed with RoC for registration
INC-28	13	File with RoC a copy of order of CG approving change of RO
INC-31	8	AoA for Section 8 company.
INC-32	7	SPICe+ Form to incorporate a company
INC-33	7	E-MoA to be furnished to RoC at the time of incorporation
INC-34	7	E-AoA to be furnished to RoC at the time of incorporation



Introduction to the Chapter:

- A person who initiates promotion of a company is called as **Promoter** [as defined u/s 2(69)]
- In this chapter we are going to read about - Incorporation of company, constitutional documents (MoA and AoA) and various other key provisions.
- Types of company on the basis of Liability:

Limited by
Shares

Limited by
Guarantee **with**
Share Capital

Limited by
Guarantee **without**
Share Capital

Unlimited
company **with**
Share Capital

Unlimited
company **without**
Share Capital

Note - Specified IFSC company shall be formed only as company limited by shares.



Understanding the concept of Promotor:

- A promoter is one who undertakes to **form** a company w.r.t. a given project, **and to set it going**, and who takes the necessary steps to accomplish that purpose.
- To be a promoter, one need not necessarily be associated with the initial formation of the company; one who **subsequently helps to arrange floating** of its capital will equally be regarded as a promoter.
- Hence, "promoter" denotes any individual, association, partnership or a company that takes all the necessary steps to incorporate (create and mould) a company and set it going, in a fiduciary position.



Section 3 - Formation of Company:

4

A company may be formed for any **lawful purpose** by:

- > = 7 persons in case of a **public** company;
- > = 2 persons in case of a **private** company; or
- 1 person, where the company to be formed is to be **OPC** that is to say, a **private company**, by **subscribing** to a **memorandum** and complying with the requirements of this Act.

In case of OPC, MoA to specify nominee:

1. Nominate a person: In case of OPC, the **MoA** 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

The **written consent** so obtained shall also be filed with the **Registrar** at the time of **incorporation** of the OPC along with its MoA and AoA

2. Withdrawal:

- Nominee may **withdraw** consent by giving a notice in writing to the sole member and to OPC.
- Sole member shall **nominate** another person **within 15 days** of such withdrawal.
- **Send intimation** of such nomination + written consent (Form INC 3)
- OPC to **inform RoC** in Form **INC-4** **within 30 days** of withdrawal of nomination.

3. Replacement of Nominee - Member of OPC may, at any time, change the name of Nominee by:

- Member to obtain **written consent** of new nominee (INC-3)
- Intimate the **company** about such change.
- OPC to **inform RoC** in Form **INC-4** within 30 days of intimate of change of nominee from member.
- Change of such name shall **NOT be deemed as Alteration of MoA**



Section 3A - Members severally liable in certain cases:

5

If at any time, the **no. of members is reduced** below prescribed limit i.e., 7 (public) or 2 (private)



Company carries on **business for > 6 months** while no. of members is so reduced

Every person who is a member during the time that it so carries on business **after those 6m and** is **cognizant** of the fact that business is carried on by reduced member, such members shall be **severally liable** for payment of **whole debts** contracted during that time, **and** may be **severally sued** therefor.



Section 4 - Memorandum of Association: [As defined u/s 2(56)]

Basics of MoA:

- **Base document** for the formation of the company (MoA + AoA = Constitutional Document)
- **Content** of MoA need to be in compliance with Companies Act, 2013
- MoA contains object for formation of company beyond which its actions cannot go.
- A memorandum is a **public document u/s 399** of the Companies Act, 2013. Consequently, every person entering into a contract with the company is **presumed** to have **knowledge** of conditions contained therein.
- Shareholders must know the **purposes** for which his money can be used by the company and what **risks** he is taking in making the investment.
- Company cannot depart from provisions contained in MoA - Otherwise, **ultra vires** Act.

Legal provision:

1. The MoA of a company shall state: [**NR SOLO**]

the **Name** of co. with **last word** "Limited" (public) or "Private Limited" (Pvt co.);
(**Not applicable to Sec 8 Co.**)

the **state** in which the **Registered office** of the company is to be situated

Objects for which the company is proposed to be incorporated and any **matter incidental thereto**

the **Liability** of members of company, whether limited or unlimited**

In case of **company having SC**:
a. **Amount of registered SC** (divided into amt and no. of shares)
b. the no. of shares each **subscriber** intends to take opposite to his name

in case of **OPC** → **Name** of person who, in event of death of subscriber, shall become the member of OPC (**nominee**).

** **Liability clause**: State that liability is limited to unpaid amt of shares (in case of company limited by **shares**) or amt upto which member undertake to contribute in event of winding up (in case of ltd. by **Guarantee**). List A and List B is to be prepared (to be discussed in accounts).

2. **Name Clause:** The name stated in the memorandum shall:
- NOT** be identical with or resemble too nearly to name of an existing company;
 - NOT** be such that its use by the company:
 - will constitute an **offence** under any law for the time being in force; or
 - is **undesirable** in the opinion of the **CG** (power delegated to **RoC**).

A name is said to "**resemble**" when difference is only of:

Plural or Singular	Spacing between letter or punctuation marks	Use of different tenses	Slight variation of spelling (Disc Ltd vs Disk Ltd.)
Different phonetic spellings (Jay Kay Ltd. and JK Ltd)	Complete translation in Hindi or English (National Service Ltd vs. Rashtriya Seva Ltd)		
Use of www. or ".net" etc. (SS Ltd vs SS.com Ltd)	Order of words is similar (Ravi Builders and Teacher Ltd. vs Ravi Teacher and Builder Ltd)		
Addition of name of place	Addition or deletion of numerals (unless numerals represent brand)		

3. Without prejudice to provision u/ss (2), a co. shall **not** be registered with a **name** which contains:
- 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 **CG**, any **SG**, or any **local authority**, corporation or body constituted by the **CG/SG** under any law for the time being in force; or
 - such **word** or expression, as may be **prescribed**, unless the **previous approval** of **CG** has been **obtained** for the use of any such word or expression.



Rule 8B of Companies (Incorporation) Rules, 2014:

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 CG** has been obtained:

<ul style="list-style-type: none"> Board; Union; Nation; Central; Federal; Bureau 	<ul style="list-style-type: none"> National; Republic; President Minister; Governor; Rashtrapati; PM or CM; 	<ul style="list-style-type: none"> Authority; Municipal; Panchayat; Commission; Undertaking; 	<ul style="list-style-type: none"> Forest corporation; Development Scheme; Court or Judiciary; Statute or Statutory; 	<ul style="list-style-type: none"> Development Authority; Small Scale Industries; Financial Corporation and the like; Khadi and Village Industries Corporation;
<ul style="list-style-type: none"> The use of word of Scheme with the name of Government (s), State, India, Bharat or any Government authority or in any manner resembling with the schemes launched by CG/SG or local Governments/auth 				

Approval of Regulator:

If 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:

Bonus Points:

- In case of **Govt co.**, the **suffix** - "Pvt Ltd" or "Ltd" is **not required** provided **92 + 137**
- In case of **OPC**, add the **suffix** - (OPC) Private Limited

4. A person may make an application (SPICe+/RUN form) to **Registrar** for **reservation** of a **name** as:
- the name of the **proposed** company; or
 - the name to which the company **proposes** to **change** its name.
- Resubmission** may be allowed within **15 days**, in case of any defect.

5. Reservation of Name:

- Upon receipt of appln u/ss (4), the **Registrar may**, on the basis of info. and docs furnished with application, **reserve** the name:

For 20 days	From approval or such other prescribed period in case of New Company
For 60 days	From approval in case of Existing Company .



Rule 9A: Application for extension of time can be made **before expiry of 20 days** as follows:

Another 20 days (Total 40 days)	Fees Rs. 1,000
Further 20 days (Total 60 days)	Fees Rs. 2,000
40 days in one go (Total 60 days)	Fees Rs. 3,000

- Where after reservation, it is **found** that name was applied by furnishing **wrong** or incorrect **info**, then:

If company is not yet incorporated	Cancel reserved name + Applicant liable for penalty upto Rs. 1L
If company is incorporated	Registrar may, after giving the company an OOBH: a. direct co. to change name within 3m , after passing an OR ; b. take action for striking off name of co. from register; or c. make a petition for winding up of the company.

General Circular No. 29/2014 dated 11th of July, 2014:

CG directed **Registrar** that while allotting names to **Cos./LLPs**, the **RoC** concerned should exercise **due care** to ensure that the names are **not in** **contravention** of the provisions of the "Emblems and Names (Prevention of Improper Use) Act, 1950. It is necessary that Registrars are fully familiar with the provisions of the said Act.

6. MoA shall be in respective **forms** specified in Tables A, B, C, D and E in Sch I as may be applicable.

7. In case of company limited by **guarantee** and **not having a share capital** - Any provision in MoA/AoA **purporting** to give any person a right to **participate** in **divisible profits** of company otherwise than as a **member**, shall be **void**.

Doctrine of Ultra Vires

- Whatever is **not stated** in MoA as objects of company is **prohibited** by doctrine of ultra vires.
- An act which is **ultra vires** is **void** and **does not** bind the **company**.
- Neither the **company** nor the contracting party can **sue** on it.
- The co. **cannot make it valid**, even if every **member** assents to it (i.e., such act **cannot be ratified**)

Important Case Laws:

Rajendra Nath Dutta v. Shailendra Nath Mukherjee, 1982

An act which is **intra vires** the company but outside the authority of the directors may be ratified by the company in proper form.

House of Lords in - Ashbury Railway Carriage and Iron Company Ltd. v. Riche

Facts of the case:

- MoA defined its objects as - "The objects for which the company is established are to make and sell, or lend or hire, railway plants to carry on the business of mechanical engineers and **general contractors.....**".
- The **company** entered into a contract with M/s. **Riche**, a **firm** of railway contractors **to finance** the construction of a railway line in Belgium.
- On subsequent repudiation of this contract by the company on the ground of its being ultra vires, **Riche brought a case** for damages on the ground of breach of contract, as according to him the words "general contractors" in the objects clause gave power to the company to enter into such a finance contract and, therefore, it was within the powers of the company.
- **More so** because the contract was **ratified** by a majority of shareholders, it is a valid contract.

Decision by The House of Lords:

- Held that the contract was **ultra vires** the company and, therefore, **null and void**.
- The term "general contractor" was interpreted to indicate as the making generally of such contracts as are connected with the business of mechanical engineers.
- The Court held that **if every shareholder** of the company had been in the room and had said, "That is a contract which we desire to make, which we authorise the directors to make", **still** it would be **ultra vires**.
- The **shareholders cannot ratify** such a contract, as the contract was ultra vires the objects clause, which by Act of Parliament, they were prohibited from doing.

Author's Note - The purpose of doctrine of ultra vires has been **defeated** as now the **object clause** can be easily altered, by passing just a **special resolution** by the shareholders.



Section 5 - Article of Association: [Defined u/s 2(5)]



1. AoA shall contain the **regulations for management** of the company (internal rules and regulations)
2. AoA to include such **matters**, as may be prescribed.
Provided that co. may include additional matters in AoA as considered necessary for management.

Entrenchment Provision:

3. AoA may contain **provisions for entrenchment**
Effect of such provision - AoA may be **altered** only if conditions or procedures as that are **more** restrictive than those applicable in case of **special resolution**, are met or complied with.
4. Provisions for **entrenchment** shall **only** be made:
 - **either** on **formation** of a company, or
 - by an **amendment in AoA** agreed to by:
 - i) **all members** (in case of **private** company) or
 - ii) by a **special resolution** (in case of **public** company)
5. Where AoA contain prov. for entrenchment → Company shall give **notice** to **Registrar** of such provision in **SPICe+** (new companies) or **MGT-14** (within 30 days of entrenchment provision)
6. AoA shall be in respective forms specified in Tables, **F, G, H, I and J** in Schedule I as applicable to such company
7. A co. may **adopt** all or any of the regulations contained in **model** articles applicable to such co.
8. Where registered AoA do not exclude or modify regulation contained in model AoA applicable to such company, the **regulations (in model AoA)** shall be deemed to be **regulation** of such company as if they were contained in duly registered AoA of the company



Doctrine of Indoor Management:



Persons dealing with the co. **cannot be assumed** to have knowledge of internal problems of co.

- **Stakeholders** need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that it is all done.
- The **doctrine** helps **protect external members** from the company and states that the people are entitled to **presume** that **internal proceedings** are as per documents submitted with the RoC.

Doctrine of Indoor Management (DIM) vs Doctrine of Constructive Notice (DCN)

The DIM evolved around 150 years ago in the context of the DCN. The role of DIM is **opposed** to the role of DCN. Whereas the **DCN protects a company** against outsiders, the **DIM protects outsiders** against the actions of a company. This doctrine also is a **possible safeguard** against the possibility of abusing the DCN.

Basis for Doctrine of Indoor Management

- What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.
- If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

Exceptions to DIM (i.e., Applicability of DCN):

- a. Knowledge of irregularity: In case, the 'outsider' has actual knowledge of irregularity within the company, the benefit under DIM would no longer be available. In fact, he/she may well be considered part of the irregularity.
- b. Negligence: If with a **minimum of effort**, the irregularities within a company could be **discovered**, the benefit of the DIM would not apply. The protection of the rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry.
- c. Forgery: The rule does not apply where a person relies upon a document that turns out to be forged since **nothing can validate forgery**. A company can never be held bound for forgeries committed by its officers.
- d. Where the **question** is in regard to the very **existence of an agency**.
- e. Where the act is **ultra vires** to the company itself.



Section 6 - Act to Override Memorandum, Articles, etc.

Save as otherwise expressly provided in this Act-

- a. the **provisions** of this **Act** shall have effect notwithstanding anything to the contrary contained in:
MoA/AoA any **agreement** executed by co. **BoD resolution** or **SH resolution**
- b. any **provision** contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is **repugnant** to the provisions of this Act, become or be **void**, as the case may be.



Section 7 - Incorporation of Company:

8

1. File the following **documents** and information with the **Registrar** within whose jurisdiction the Registered Office (RO) of a company is **proposed** to be situated:

MoA (eMOA in INC-33) & AoA (eAOA in INC-34)
- duly signed by Subscribers*

Declaration (Form INC-8), that requirement of act w.r.t., incorporation is **complied** with, by:

1. Advocate, CA, Cost Accountant, CS in practice engaged in **formation** of company, **AND**
2. Person named in **AoA** (director, manager or secretary of company)

Address for correspondence till RO is estb.

Particulars (name, residential address, nationality and others) of **every subscriber** + Proof of identity

Particulars of first directors - Names, **DIN**, residential address, nationality and other particulars + Proof of identity

Related to **first directors** - **Interest** in other firms/ BC + **Consent** to act as directors (**DIR -2**) filed with **ROC in DIR-12**

Declaration from each Subscribers and First Directors (in Form INC 9) that:

- (a) he is not **convicted** of offence w.r.t., promotion, formation or mgt. of any co., or
- (b) that he has not been found **guilty** of any fraud/misfeasance or breach of duty to any co. during **preceding 5 years** **AND**
- (c) all **docs** filed with RoC for registration contain **correct**, complete and true information to best of his knowledge and belief

Such documents shall be filed along with **application** for incorporation in **SPICE+ Form INC 32**



Rule 13: Steps of Incorporation

Generally -	Each subscriber to add - Name, address, description, occupation (himself and at least 1 witness)
Illiterate Subscriber	Affix thumb impression
Body corporate Subscriber	Director, officer/employee authorized (not himself a subscriber)
LLP Subscriber	Duly authorized partner (not himself a subscriber)
Foreign national Subscriber	Signature to be notarized by Notary
Foreign national visiting India to incorporate a co.	Valid Business Visa required. However, Business visa N.A. for Person of Indian Origin or Overseas Citizen of India

Add on - In case of OPC, file the written consent of nominee in addition to above documents!

2. **Issue of Certificate of incorporation ("COI")** - RoC shall, on basis of above doc and info, register and issue a COI in **Form INC -11**.
3. **Allotment of Corporate Identity Number (CIN)** - RoC shall allot to the company a **CIN**, which shall be a **distinct identity** for the company and which shall also be included in the COI

Decoding CIN of Infosys Limited is L85110KA1981PLC013115:

L	Status - Listed or Unlisted	1981	Year of Inc.
85110	Serial No.	PLC	Public/Private etc. (NPL - Not for profit)
KA	State of inc.	013115	Registration no. with ROC

4. Company shall maintain & preserve at its RO copies of all docs & info. as originally filed u/ss (1) till dissolution.
5. If person furnishes any false/incorrect particulars of info. or suppresses any material info., of which he is aware in any of docs filed with RoC above → Such person shall be liable u/s 447
6. If after incorporation, it is proved that company is incorporated by furnishing false/incorrect info. or representation or by suppressing any material info. for incorporating such company, or by any fraudulent action:
 - a. promoters, first directors and person making declaration shall be liable u/s 447
 - b. Tribunal may, on an application made to it [MR. LOW]:
 - i. pass orders for regulation of Management of the co. including changes, if any, in its MoA/ AoA, in public interest or in the interest of company and its members and creditors; or
 - ii. direct that Liability of the members shall be unlimited; or
 - iii. direct Removal of the name of the company from the register of companies; or
 - iv. pass an order for the Winding up of the company; or
 - v. pass such Other orders as it may deem fit

Prior to such orders, provide reasonable opportunity of being heard (OOBH) to the company and take int consideration the transactions entered into by the company.

Simplified Proforma for Incorporating Company Electronically (SPICE) - For ease of doing business, MCA has now simplified the process of filing forms for incorporation of company though SPICE.

Summary of Incorporation of a Company



Additional points related to incorporation:

- If objects of company require prior approval of sectorial regulators such as RBI/SEBI, obtain such approval prior to pursuing the objects & declaration in this behalf to be submitted at incorporation.

- In case of **Nidhi** company, declaration by **CG u/s 406** is to be obtained prior to commencement of business + Declaration to the ROC

Formation of One Person Company (OPC):

- **MoA** of OPC to indicate name of other person (**nominee**) who becomes member of the OPC in case of death/ incapacity of subscriber.
- When such nominee becomes a member, he shall appoint a new nominee **within 15 days** of becoming member. OPC to inform RoC in Form **INC-4** within **30 days** of becoming member.
- Nominee to give his prior **written consent** in **Form INC-3**.
- Such written consent to be **filed with RoC** along with MoA/AoA
- Nominee may **withdraw** consent any time in prescribed form
- Member of OPC may, at any time, change the name of Nominee by:
 - Giving **notice** in prescribed form
 - Intimating the **company** about such change
 - On receipt of such intimation, company to inform **Registrar**.
 - Change of such name shall **NOT be deemed as Alteration of MoA**
- Only a **natural person** who is an **Indian citizen** whether **resident** in India or **otherwise**:
 - shall be eligible to **incorporate** OPC;
 - shall be a **nominee** for the sole member of OPC.

"Resident in India" means a person who has stayed in India for **>= 120 days** during immediately preceding FY.
- A natural person shall **not be member of > 1 OPC** at any point of time and **the said person** shall not be a **nominee** of > 1 OPC.
- Where a natural person being member in **OPC becomes member** in another such company by virtue of his being a **nominee** in that OPC, such person shall meet **eligibility criteria** (as given in point above) **within 180 days**.
- **No minor** shall become member or nominee of the OPC or can hold share with beneficial interest.
- Such Company **cannot** be incorporated or **converted** into a section 8 company. OPC **may be converted to private/public companies** in certain cases. The procedure of conversion is given in the Rules 6 & 7 of Chapter II of the Companies Act, 2013.
- OPC **cannot carry out** Non-Banking Financial Investment activities including investment in securities of any BC.



Section 8 - Formation of companies with charitable objects, etc:



1. Where CG (power delegated to RoC) is satisfied that a person/AOP proposed to be registered as Limited company:
 - a. Has its objects to promote -
 - Commerce
 - Art
 - Science
 - Sports
 - Education
 - Research
 - Social Welfare
 - Religion
 - Charity
 - Protection of environment
 - Other Object
 - b. intends to apply its profits, if any, or other income in promoting its objects; and
 - c. intends to prohibit the payment of any dividend to its members,

CG may issue a license and thereupon the RoC shall register such company as Limited Company. [Without addition of the word "Limited" or "Pvt. Ltd" as the case may be]

2. Sec 8 co = Privileges and obligation of Limited company.
3. Can a Firm become member of Section 8 company - Yes!
4. Additional points relating to Section 8 company:
 - a. Not alter provision of MoA or AoA w/o prior approval of CG (RoC)
 - b. May be converted to any other kind of company - Subject to passing SR at GM approving such conversion and approval of CG (RD)
5. CG (ROC) may suo motu also issue license u/s 8 to an existing public or private company
6. Revocation of License and conversion to normal company: Where the company:
 - a. contravenes any requirements of this section or
 - b. contravenes any conditions subject to which a license is issued or
 - c. the affairs of company are conducted fraudulently or in manner violative of objects of company to public interest,

CG (RD) may, by order (after reasonable OOBH):

- revoke license
- direct the company to Convert its status and
- change its name to add the word " Limited" or the words "Private Limited", as the case may be, to its name and thereupon the Registrar shall register the company accordingly:

7. Where license is revoked, CG may, in public interest, order (reasonable OOBH):
 - winding up under this Act, or
 - amalgamate such company with other company registered under this section and having similar objects, constitution, powers, rights, etc. to be defined by CG

8. If on winding up/dissolution, there remains, after satisfaction of its liabilities, **any asset**, it may be:
 - a. **transfer to another sec 8 co.** having similar objects subject to T&C imposed by Tribunal, or
 - b. **sold** & proceeds thereof credited to **Insolvency and Bankruptcy Fund** formed u/s 224 of IBC

9. Section 8 company shall amalgamate only with another Sec 8 company having similar objectives

10. Punishment for default in complying with this section:

If a co. makes any default in complying with requirements of this section, the **co.** shall be **punishable** with **fine** which shall not be less than **Rs. 10 lakhs** but which may extend to **Rs. 1 crores** **AND** the **directors** and every **officer** of the company who **is in default** shall be punishable with fine which shall not be less than **Rs. 25,000** but which may extend to **Rs. 25 lakhs** [Amendment]

Provided that when it is proved that affairs of company were conducted fraudulently, every **OID** liable u/s 447.

	Company	Directors and OID
Minimum fine	Rs. 10 lakhs	Rs. 25,000
Maximum fine	Rs. 1 crore	Rs. 25 lakhs
Affairs of co. - fraudulent	-	Sec 447



Steps to incorporate a section 8 company:

1. **Application** to ROC in SPICe + (INC 32)
2. Documents to be attached to such application:
 - a. **MoA** (INC -13) and **AoA** (INC - 31)
 - b. **Estimated** income and expense - Future **3 years**
 - c. **Declaration** by advocate, CA, CS, Cost Acc. in practice (in INC-14) and by each person making application (in INC-15) that:
 - i. MoA/AoA is in **conformity** with provision of section 8
 - ii. All requirements of act w.r.t. registration of section 8 company is complied with.



Conversion of Section 8 company into other kind [Rule 21 and 22]:

- Pass **SR** at GM. Explanatory statement of such notice to set out details of conversion.
- The company should have filed **FS** and **AR** upto last FY.
Additional FS - Where application is made **after 3m** from end of last FY, **attach** a **FS** made upto date **not > 30 days** of filing such application duly **signed by CA**.
- Serve a **notice** of such conversion to the following for representation, if any:

Income Tax Authority	Charity Commissioner	Cheif Secretary of State where RO is situated	CG/SG department having jurisdiction
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- Above authorities may make **representations** to RD within **60 days** after OOBH to company.
- Apply to **RD** (INC-18) with fee + certified copy of resolution + proof of delivery of notice.
- Forward a copy of the above application to **ROC**.
- Within a **week** of such application to RD, publish a notice (Form INC-19) at its own expense in 2 newspaper (vernacular + english) and its website.
- If RD is satisfied, **approve conversion** subject to terms and conditions imposed.

- Before **rejecting** application or imposing conditions - RD to give **OOBH** to such company
- On receipt of such approval - Pass **SR** at **GM** for **alteration** of AoA/MoA.
- Copy of altered AoA/MoA to be filed with **RoC**. RoC to issue **fresh CoI**.

Examples of exceptions to Sec 8 companies:

- a. Call for **GM** by giving clear 14 days' notice (instead of 21)
- b. Requirement of min. no. of director, ID, does not apply.
- c. Need not constitute NRC or SRC

Concept clarity check:

1. Can a Sec 8 co. be incorporated with unlimited liability? - **No. Sec 8 co. only be a limited co.**
2. Can an existing co. seek license u/s 8? - **Yes. In such case, it will drop the suffix Ltd or pvt Ltd.**
3. Can a Firm become member in a normal public company- **No. Partnership firm is not separate legal entity.**



Section 9 - Effect of Registration:

30

From the **date of incorporation** mentioned in **COI**, such **subscribers** to MoA and all other persons, as may, from time to time, become **members** of the company, shall be:

- a **body corporate** by the name contained in the memorandum,
- capable of exercising all the functions of an incorporated company under this Act and
- having **perpetual succession** with **power** to acquire, hold and dispose of **property**, both movable and immovable, tangible and intangible, to **contract** and to **sue** and be sued, by the said name.



Section 10 - Effect of Memorandum and Articles

30

1. Subject to the provisions of this Act, the MoA and AoA shall, when registered **bind the company** and the **members** thereof to the same extent as respectively signed by them and contained covenants on its and his part to **observe** all the provisions of the MoA/AoA.
2. All **monies payable** by any member to the company under MoA/AoA shall be a **debt due** from him to company (i.e., company can recover calls in arrears from members as if it a loan recovery)

Note - Company is liable to members and vice-versa. But members are not liable to each other.



Section 10A: Commencement of business etc.

13

1. A **company having a share capital** shall not commence any business or exercise any borrowing powers unless:

declaration by a director, within **180** days of incorp. is filed with RoC that - As on date of declaration, every **subscriber** has **paid** the value of shares agreed to be taken

The company has filed with RoC a **verification of RO** provided u/s 12(2)

2. If any **default** under this section → Co. - Rs. 50,000 **and** every **OID** - Rs. 1,000/day upto Rs. 1 L

3. If no declaration is filed within **180 days** and RoC has reasonable ground to believe (**RGTB**) that company is **not carrying on any business or operations**, RoC may initiate action for the **removal** of the name of the company from register of companies.



As per the Companies (Incorporation) Rules, 2014:

- Declaration u/s 10A by a director shall be in Form INC-20A **and** contents of the said form shall be **verified** by a **CS/CA or a Cost Accountant, in practice**.
- In case of **a company** pursuing objects requiring registration/approval from any **sectoral regulators** such as RBI, SEBI, etc., the regt./approval from such regulator shall also be **obtained** and attached with the declaration.



Section 12: Registered Office of Company

15

1. Company shall, **within 30 days** of incorporation and at all times, thereafter, have a RO, capable of receiving communications.
2. Company to furnish to RoC **verification of RO within 30 days** of incorporation.
3. Every company shall:
 - a. paint or affix its **name, address** of its **RO** on the **outside** of **every office** or place in which its business is carried on, in a conspicuous position, in legible letters in **languages in general use** in that locality.
 - b. have its name **engraved** in legible characters on its **seal**; if any
 - c. get its name, address of its RO and the **CIN** along with **telephone number**, fax number, if any, **e-mail** and website addresses, if any, **printed** in all its **business letters**, billheads, letter papers and in all its notices and other **official publications**; and
 - d. have its name **printed** on **hundies**, promissory notes, bills of exchange and such other docs as prescribed.

Provided that, in case **name change** during the **last 2 years**, print or affix former name as well. In case of OPC - The words "One Person Company" to be mentioned in bracket below such name.

Change in RO:

4. Notice of change in situation of RO, **verified** in Form **INC22**, shall be sent to RoC **within 30 days** of change.
5. Except by passing a **SR**, the RO shall **NOT** be changed:
 - a. in the case of an **existing company**, outside the **local** limits of any city, town or village where such office is situated at commencement of this Act or where it may be situated later by virtue of SR passed by company;
 - b. in the case of any **other company**, outside the **local** limits of any city, town or village where such office is **first situated** or where it may be situated later by virtue of a SR passed by the company;

Provided that **no company** shall change RO from **jurisdiction** of one RoC to another RoC within the **same State unless** confirmed by **Regional Director (RD)** on appln made in this behalf by company in prescribed manner.

6. On application u/ss 5, RD to communicate confirmation within 30 days from receipt of application. Thereafter, co. shall file the same with **RoC within 60 days** of date of confirmation RoC shall **register** the same **and certify** the registration **within 30 days** from filing such confirmation.
7. The certificate referred u/ss (6) shall be **conclusive evidence** that all the **requirements** of this Act w.r.t, change of RO have been **complied with and** the change shall take effect from the date of the certificate.
8. If any **default** is made in complying with this section → **Company** and every OID shall be liable to penalty of **Rs. 1,000/day** during which the default continues but **not > Rs. 1 lakhs**.
9. If RoC has **RGTB** that company is **not carrying on any business or operations**, he may cause a **physical verification** of the RO in prescribed manner and if any **default** is found to be made in complying with requirements of sub-section (1) → Initiate action for the **removal** of the name of the company from register of companies.

Can RO be different from Head Office or Corporate office? - **Yes!**

Concept clarity check:

A Ltd. has current Registered office at Dadar, Mumbai, Maharashtra under Mumbai RoC. It is considering changing the location of RO. Help A Ltd. with the approvals required.

Proposed RO	RoC	Sec	Board Resolution	SR	CG (RD) approval
Bandra, Mumbai (within local limits)	Mumbai	12	Yes	No	No (Notice to RoC - 30 days)
Thane District	Mumbai	12	Yes	Yes	No (Notice to RoC - 30 days)
Pune, MH	Pune	12	Yes	Yes	Yes (RD to approve in 30 days of application. Company to submit RD's approval to ROC in 60 days. Post that, RoC to register & certify in 30 days)
Ahmedabad, Gujarat	Gujarat	13	Yes	Yes	Yes (RD to approval within 60 days and then ROC to register within 30 days of application)



Section 13 - Alteration of Memorandum



1. Company may alter provisions of MoA by a **SR** + by complying with procedure of this section

Filing with RoC: A company shall, in relation to any alteration of its memorandum, file with the Registrar:

- (a) the **SR** passed by the company u/ss (1);
- (b) the approval of **CG** u/ss (2), if alteration involves any change in the name of the company.

2. Change in **Name** - Effective only with approval of **CG** in writing (power delegated to **RoC**) in Form **INC-24** + Fee.

Note - **No approval** if the only change is addition/deletion of word "**Private**" on **conversion**.

3. On change of name - RoC shall **enter** the new name in register of cos. and issue new **COI**. Name change effective from issue of CoI in Form **INC -25**.

4. Alteration of registered office **from one state to another** - Effective only on approval of **CG** (delegated to RD) on application in **Form INC-23**:

- Certified **copy** of the **order of CG** approving such change - File with **RoC of each States**.
- Such RoCs shall **register the same**, and
- **Registrar** of the **State** where the **RO** is being shifted to, shall **issue a fresh CoI**

Such application to **CG** (RD) shall be **accompanied** with:

- Copy of **MoA** with proposed alteration
- Copy of minutes of **GM** at which **resolution** authorizing such alteration was passed
- Copy of **board resolution**
- List of **creditor** and **debenture holder**
- Acknowledgement of service of copy of application to - **RoC, Chief secretary** of RO state.

Advertise such application - **30 days** before application in **2 newspapers** in **Form INC-26**

5. On **application to CG** u/s 13(4) for approval of change in **state** where RO is situated:

- a. **CG** to **dispose** application within **60 days**.
- b. Before passing order, may **satisfy** itself that:
 - i. Alteration has the **consent** of creditors, DH and other persons concerned with company, **or**
 - ii. sufficient **provision** has been made by company for due discharge of all its **debts** & obligations **or**
 - iii. adequate **security** has been provided for such discharge.

Note - Where **RO** is shifted from one **state** to another, file **CG's approval** with **ROC of each state** in Form **INC -28** within **30 days** of receipt of order of **CG**.

6. Change in object for which money raised from Public:
 Company, which has **raised money** from public through prospectus + still **has any unutilised amount**, shall **not change** its objects for which it raised such money unless a **SR** is passed **and**:
- prescribed **details** (discussed in sec 27) of such resolution shall be:
 - published in **newspapers** (English + vernacular which is in circulation at place where **RO is situated**) and
 - placed on **website** of the company, if any, indicating the justification for such change;
 - the **dissenting shareholders** shall be given an **opportunity to exit** by the promoters and shareholders having control in accordance with regulations to be specified by the **SEBI**.
7. Alteration of Object clause of MoA:
 The RoC shall **register** any alteration of MoA w.r.t, the **objects** of the company and certify the registration **within 30 days** from the date of filing of the **SR** u/ss (6)(a) of this section.
8. No alteration shall have any **effect** until it has been **registered** as per this section.
9. Any **alteration** of the MoA of a **company limited by guarantee and not having a share capital**, purporting to give any person a **right to participate in divisible profits** of the company otherwise than as a member, shall be **void**.

Summary of provision related to Amendment of MoA:

MOA clause	SH Resolution	External approvals	Outcome
Name	SR	Approval of CG (ROC) + Sec 4 & 16	Change effective from date of issue of Fresh CoI by ROC N.A. where only word "Pvt" is added/deleted on conversion
Domicile (State)	SR	Approval of CG (RD) (only when RO is changed from one state to another)	CG shall dispose appln within 60 days and before approving, may satisfy itself that consent of crs, DH, etc. <u>or</u> that sufficient provision is made for due discharge <u>or</u> that adequate security is provided for discharge of debts.
Objects	SR	-	Company, which has raised money from public through prospectus + still has any unutilised amount , shall not change its objects for which it raised such money unless a SR is passed and :
			<ol style="list-style-type: none"> the details of SR - published in newspapers + Placed on website of company indicating justification for such change; the dissenting SH shall be given an opportunity to exit by the promoters and SH having control as per SEBI regulatn



Section 14 – Alteration of articles

19

1. Company may, by **SR**, alter its AoA.

Alteration of AoA **includes conversion** of:

- a. Pvt company to public company
- b. Public company to Private company (subject to **approval of CG** as given below)

An alteration having effect of **converting public company to private** shall not have effect unless approved by **CG** on **application** within **60 days** from passing **SR** to **RD** in **Form RD-1** with following docs:

Draft **MoA** and **AoA** with proposed alteration

Copy of minutes of **GM** in which such **SR** was passed

Copy of **Board resolution**

Declaration by **KMP** regarding compliances.

Note: An alteration having effect of converting public company to private shall not have effect unless approved by **CG** (**RD**) on application (in **Form RD-1**) within **60 days** from passing **SR** with following docs:

Provided that - Where a private company alters its article such that it **does not include restriction/** limitation which a Pvt. company is required to include in AoA as per Act, such Pvt. company shall **cease** to be private from date of alteration.

2. Following shall be filed in **Form INC 27** with **RoC**, within **15 days of alteration** of AoA, for registration:
 - Every **Alteration** of AoA
 - **Approval** of **CG** for such alteration
 - **Printed** copy of the altered articles,
3. Any alteration of AoA registered u/ss (2) shall be **valid** as if it were **originally** in the articles.

Andrews vs Gas Meter Company - The power to alter articles vests with the Company by virtue of Companies Act, 2013. A company cannot divest itself of these power.



Section 15: Alteration of MoA/AoA to be noted in every copy.

- (1) Every alteration in MoA/AoA shall be noted in **every copy** of the MoA/AoA, as the case may be.
- (2) Default → Co. + **OID** - Liable to penalty of **Rs. 1,000 for every copy issued** without alteration.



Section 16: Rectification of Name of Company:

18

1. If, through **inadvertence** or otherwise, a company on its **first registration** or on its registration by a **new name**, is registered by a name which:
 - a. in **opinion** of **CG**, is **identical** with or too nearly resembles the name by which a company in **existence** had been previously registered, it may:
 - **direct** the company to **change its name** and
 - the company shall change its name **within 3m** from such direction, after adopting an **OR**;
 - b. on an **application**:
 - by a registered **proprietor** of a **trade mark**
 - made to **CG** **within 3 years** of incorporation or registration or change of name of the co.
 - that the name is **identical** with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999,
 - in the opinion of **CG**, is identical with or too nearly resembles to an existing trade mark,
 - **CG** may:
 - i) **direct** the company to **change its name** and
 - ii) the co. **shall** change its name **within 3m** from such direction, after adopting an **OR**;
2. Where a company **changes its name** or obtains a new name u/ss (1), it shall, **within 15 days** from date of such change, give **notice** of the change to **Registrar** along with the **order** of **CG**, who shall carry out necessary changes in the **CoI** and **memorandum**.
3. If a company is in **default** in complying with any **direction** given u/ss (1), the **CG** shall **allot** a **new** name to the company and **Registrar** shall **enter** the new name in register of companies in place of the old name and **issue fresh CoI** with the new name. [Amendment]

Provided that nothing here shall prevent a company from **subsequently** changing its name u/s 13



Section 17: Copies of memorandum, articles, etc., to be given to members.

1. Company shall, on being so **requested** by a member, send to him **within 7 days** of the request and subject to the payment of such **fees** as may be prescribed, a **copy** of each of the following documents, namely:

Memorandum
Articles
agreement and resolutions u/s 117(1) not so included in MoA/AoA
2. If default u/s 17, the such company and every **OID** shall be liable **for each default - Rs. 1,000/ day upto max Rs. 1 lakh**.



Section 18: Conversion of Companies Already Registered:

Alter MoA/AoA

Application to RoC

RoC to issue fresh
CoI

No affect on debts/
liabilities

1. A company of **any class** registered under this Act may **convert** itself as a company of **other class** under this Act by **alteration** of **MoA and AoA** of the co. as per the provisions of this Chapter.

2. Application to RoC for fresh CoI:

- Where **conversion** is required to be done under this section,
- the **RoC** shall, on an **application** made by co, after satisfying himself that provisions of this Chapter is complied with,
- **close the former registration** of the company and
- after registering docs referred u/ss (1), **issue a CoI** in same manner as its first registration.

3. The **registration** of a company under this section shall **not affect any debts, liabilities**, obligations or contracts incurred or entered into, by or on behalf of the company before conversion **and such debts**, liabilities, obligations and contracts may be **enforced** in the manner **as if** such registration had not been done.



Section 19: Subsidiary company not to hold shares in its holding company

1. Restriction:

~~21~~ ~~22~~ ~~23~~ ~~24~~ ~~25~~

- **No** company shall (itself/nominees) **hold** any shares in its holding company, and
- **No** holding company shall **allot/trf** its shares to any of its sub sy company and
- any such allot/trf of shares of a company to its sub sy. shall be **void**

Provided that nothing in this sub-section shall apply to a case:

- where subsidiary holds such shares as **legal representative** of a deceased member of holding company;
- where the sub sy company holds such shares as a **trustee**; or
- where sub sy company is a **SH even before it became a subsidiary co.** of the holding co.

Provided further that sub sy company referred to in the above proviso shall have a **right to vote** at a **meeting** of holding company only w.r.t., the shares held by it as a LR/trustee.

2. The reference in this section to shares of a **holding company which is a company not having share cap (Ltd. by guarantee or unlimited)**, shall be construed as reference to **interest** of its **members**, whatever be the form of interest.

Note - A subsidiary can **buy shares** of holding where it is a part of **scheme of amalgamation** sanctioned by court/Tribunal.

Concept clarity check:

As on April'22 - A Ltd holds 5% shares in B Ltd.

As on June'22 - Due to some transactions, A Ltd. becomes subsidiary of B Ltd.

As on July'22 - B Ltd calls for AGM.

Question 1 - Can A Ltd. vote in such AGM as A Ltd. is a subsidiary of B Ltd?

Answer - No! The exception of right to vote at a meeting is only in case shares as held as a LR/Trustee. It is not applicable in the third exception that is " where sub sy company is **SH even before it became a sub sy** of holding company"

Question 2 - Can B Ltd. issue bonus shares to A Ltd (say, in the ratio 1:1)

Answer - Yes, as this transaction is under purview of exemption, such bonus shares can be issued.



Section 20: Service of Documents

27 28 32

1. A **document** may be served **on a co.** or an officer thereof by sending it at the **RO** of the co. by:

registered
post

speed
post

courier
service

leaving it
at its RO

means of such electronic or other mode
as may be prescribed

However, where securities are held with a **depository**, the **records** of the **beneficial ownership** may be served by such depository on the company by means of electronic or other mode.

2. A **document** may be served **on Registrar** or any **member** by sending it to him by:

Post

registered
post

speed
post

courier
service

delivering at his
office or address

means of such e-mode or
other prescribed mode

Provided that member may request delivery through a particular mode by paying fees as determined in AGM.

Author's Note - Law only provides for an option to pay extra fees and decide an alternate mode for receiving notice. However, the notice will still be sent at the registered address of the member only. Company is not responsible for sending the notice to any other address (even if extra fees is paid)

Exception to Nidhi Company

In case of Nidhi Company, u/s 20 (2), docs may be served **only on members** who hold **shares more than:**

Rs. 1,000 in face value or

1% of the total PUSC



whichever is less.

For other SHs, docs may be served by a **public notice** in **newspaper** circulated in the district where the RO of Nidhi is situated; **and** publication of the same on the **notice board** of the Nidhi.



Rule 35 of Companies (Incorporation) Rules, 2014

- Electronic transmission means a communication that creates a **record** that is capable of **retention**, retrieval and **review (RRR)**, and which may thereafter be rendered into clearly **legible tangible** form. It includes:

fax

email

posting of electronic message
board or network

other mode capable of
verifying the sender

- In case of delivery by **post**, such service shall be **deemed** to have been effected:
 - (i) in case of notice of a meeting, at expiration of **48 hours** after letter containing the same is **posted**; and
 - (ii) in any **other** case, at time at which the letter would be **delivered** in the ordinary course of post



Section 21: Authentication of documents, proceedings and contracts

Save as otherwise provided in this Act,

- (a) a document or proceeding requiring authentication by a company; or
- (b) **contracts** made by or on behalf of a company,

may be **signed** by any **KMP** or an **officer** or **employee** of the company duly **authorised** by the **Board** in this behalf.



Section 22: Execution of bills of exchange (BOE), etc. 29

1. A BOE, hundi or promissory note shall be **deemed** to have been made, accepted, drawn or endorsed on behalf of company if it is made or drawn **by any person** acting under its **authority, express or implied**.

2. Company having seal: A company may, by writing under its **common seal**, if any, **authorise any person** as its **attorney to execute** other deeds on its behalf in any place (India/outside India)

Company not having seal: Provided that in case if **no common seal**, the **authorisation** under this subsection shall be made by **2 directors** or by **director + CS**, wherever the company has appointed a CS.

3. A deed signed by such an attorney on behalf of the company and under his seal shall **bind** the company.

The End

“
What you lack in talent can be
made up with desire, hustle and
giving 110% all the time.
”