

INCORPORATION OF A COMPANY (Registration)

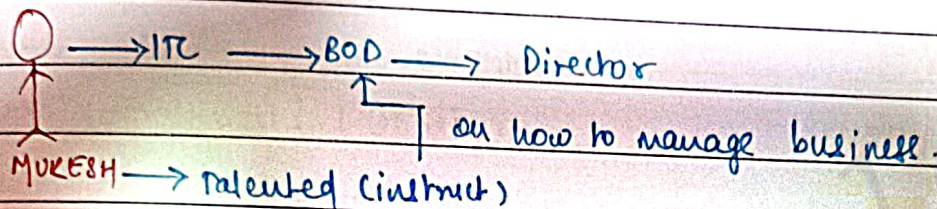
Section 3-22.

Promoter 2(69) - Means a person

- N Named in the prospectus or the annual return of the company. or.
- c controls the affairs of the company or.
- D Directs the board of directors.

However, those acting in professional capacity shall not be regarded as promoter.

↳ (To instruct BOD).



Is Mukesh a promoter?

Ans:- NO

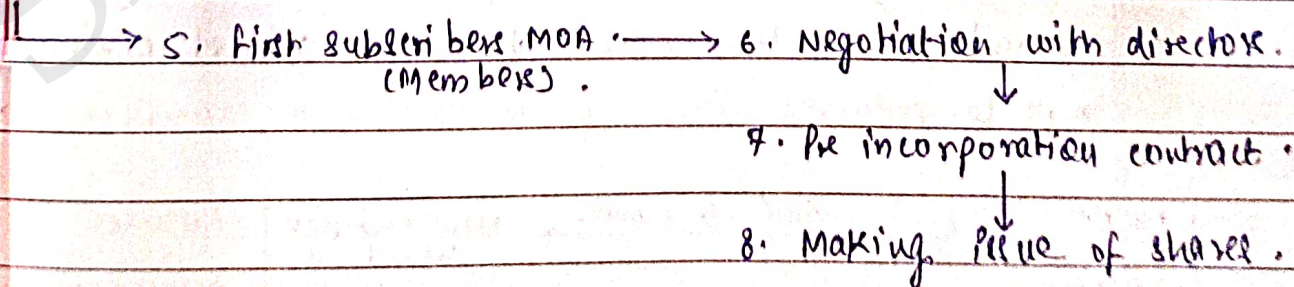
FUNCTIONS OF PROMOTERS.

1. Idea to start a company.
2. Feasibility study (to check whether such a business is of value)
3. Decision

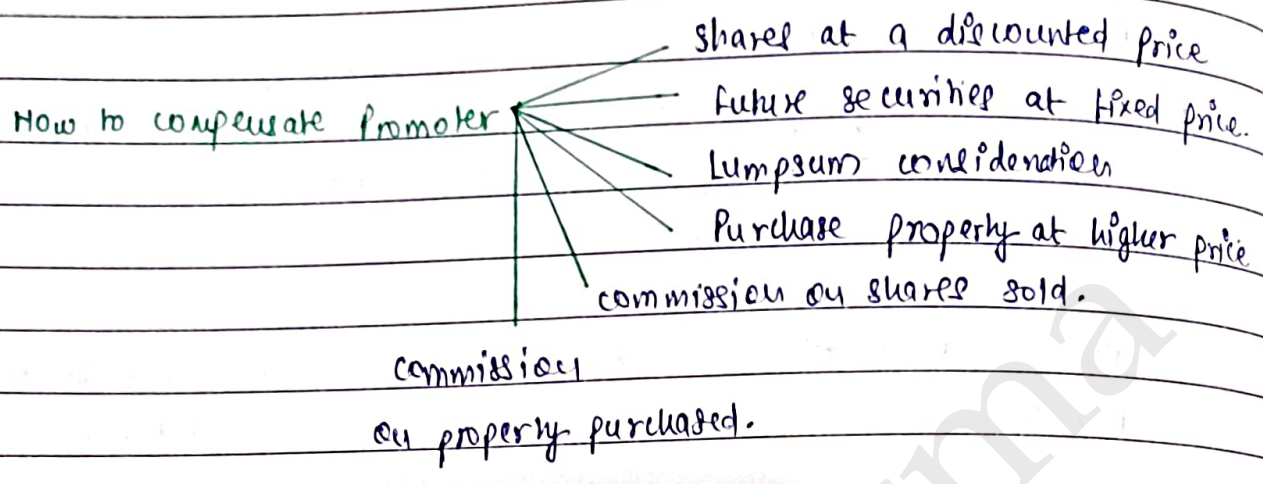
Type of Co [Pub/ Pvt/ OPC]

capital authorised.

2 AOA.



- Promoter is not entitled to any remuneration; or
- Reimbursement of any incorporation expenses
- Even if provided in the articles not binding on the company.



chapter 2.

Episode 1 [Promoter ki kahani]

2.2 FORMATION OF COMPANY. ^{→ must.}

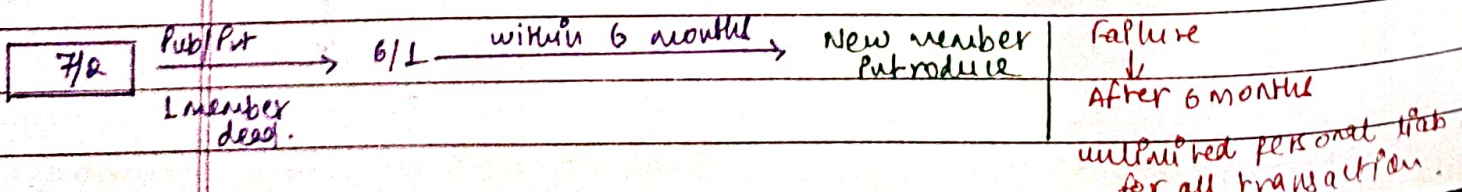
Section 3 :- A company may be formed for lawful purpose

Private co	-	2	} (1st member). sign Memorandum of Association
Public co	-	7	
opc	-	1	

only first → subscriber of memorandum members.

Section 3A :

If at any point of time the number of members fall below the statutory requirement as given by under section 3, the existing members shall within 6 months, restore the statutory minimum members, otherwise all of them aware about such reduced minimum members, shall be personally liable for all debts of the company after 6 months



Every OPC is required to have a nominee

The name of the nominee is mentioned in the Memorandum of the company

The name of the nominee along with written consent submit to ROC in form INC-3. within 15 days of incorporation.

Thereafter for change in OPC due to withdrawal, removal or death of nominee, a new Nominee shall be appointed and written consent shall be submitted in INC-3 in 15 days, the reason for change, withdrawal or removal shall be submitted in INC-4 within 30 days.

If default or delay in

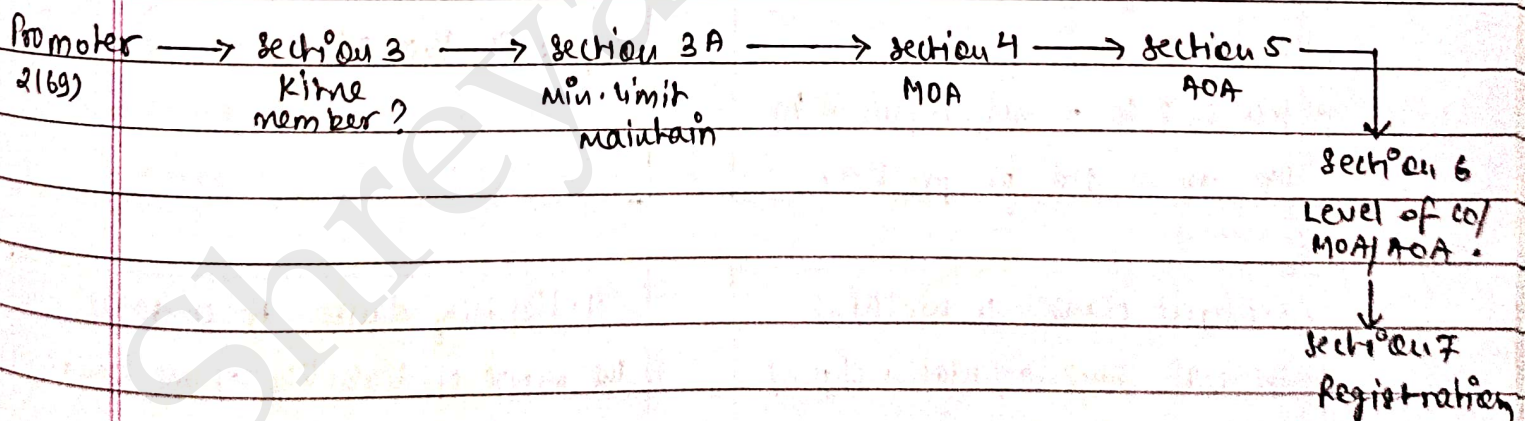
Submission of INC-3/INC-4

1000 per day till default continues.
10000 + one time

Nominee $\xrightarrow[\text{consent}]{\text{written}}$ company $\xrightarrow[15 \text{ days}]{\text{INC-3}}$ ROC.

Change of Nominee $\xrightarrow[\text{Reason}]{\text{Reason}}$ company $\xrightarrow[30 \text{ days}]{\text{INC-4}}$ ROC

CROW EYE VIEW.



Section 4 :- Memorandum of Association.

2(55) - It is the charter document of the company, defines the scope of its activity, and powers that can be exercised within its scope.

- It is a constitutional document for registration of company.
- MOA contains the objects of its formation.
- It is a public document, section 339 every person dealing with the company shall read the MOA.
- It is essential for the stakeholders to understand that, the use of funds made by such companies when the capital is raised in form of securities and deposits.

Any agreement or transaction outside the scope of the MOA is void, i.e. without any legal effects.
 ↳ ultra vires [beyond your power]

6 clauses of MOA.

1. Name clause:- Name of the co with or without the words 'pvt' or Ltd.
 Section 20 is not required to use words Ltd or Pvt Ltd.

2. Registered office clause - The name of the state whose the registered office is located.

3. Object clause - It contains the main objects / related objects / other objects of the company.

4. Liability clause - It contains the nature of liability of the company whether limited by shares, or guarantee or unlimited.

5. Capital clause - It contains the registered capital of the company i.e. Authorised capital.

6. Association clause - It contains the name of the first members and <u>shares</u> taken up.	Qualification Share.
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7. The NAME of the nominee shall be mentioned on the Memorandum of Association.

Alteration of the nominee clause shall not be treated as Alteration of MOA.

NAME CLAUSE :- The name of the company is contained in MOA shall be :-

- Not identical or resemble the name of existing body corporate.
(includes co & LLP).
- Not to be such that its use by the company
 - will create an offence under law in future.

or,

- is undesirable in the opinion of central government (MCA).

Identical & Resemble → Plural or singular
use of diff tense

A - mul (spacing)

sliced (tense)

adiddal (spelling)

slightly difference in spelling
spacing b/w letters.

• Pronounced same spelling diff.

Tio Ltd

tyreo Ltd

vib

You see bee

• use of words www. or .net

unacademy.net.

• Addition of no. to the same

CSG Ltd → CSG Top 100 Ltd.

undesirable.

- (a) Name not to contain any words which show patronage or connection with Co/Sch/ local authority or any govt department unless otherwise agreed upon.

↳ permission is obtained from Co

Sectoral Regulator

The body which is responsible to manage a particular trade or commerce is called a sectoral regulator.

- Banking (RBI)
- Securities Exchange (SEBI)
- Insurance (IRDAI)
- Foreign Investment (FDI).

Therefore if any co. is using words like Bank, banking, Insurance, funds, etc.

The permission shall approved by sectoral regulator in addition to Co.

offence

- Abusive
- Community/ Society/ Religion - sentiments are impacted.

- Government company is not required to add the words Pvt Ltd to its name. even if private compliance of section 92 and 137 shall be done for this exemption.

Reservation of Name

Applies to both new or existing?

(Reserve unique Name).

Application (old) $\xrightarrow{\text{RUN form}}$ Registrar for name reservation.

Application (New) $\xrightarrow{\text{SPICE +}}$ Name + Registration (sorted)

→ Simplified Information for incorporating co electronically

The existing companies in process of change of name can submit the RUN form for reservation of name upto 60 days. However, in case of a new company the time allowed for reservation is 20 days applied for in SPICE+ form.

New company	20 days
Existing company	60 days.

Rule 9A.

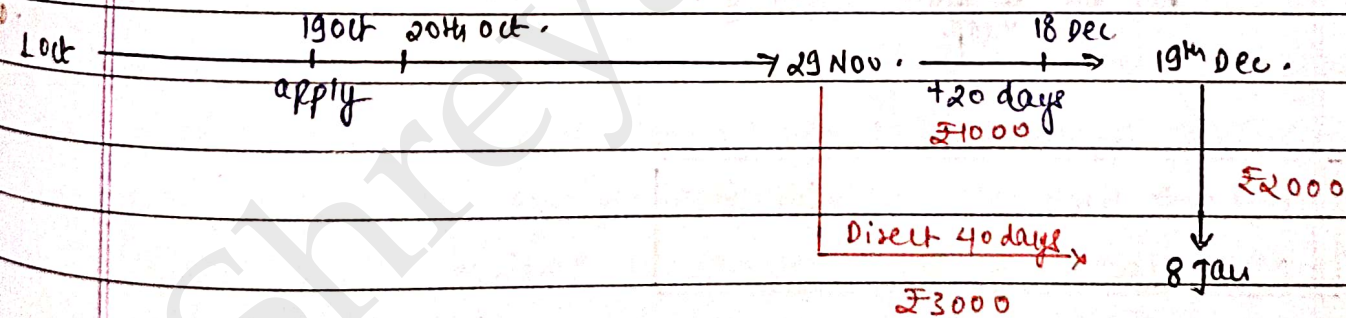
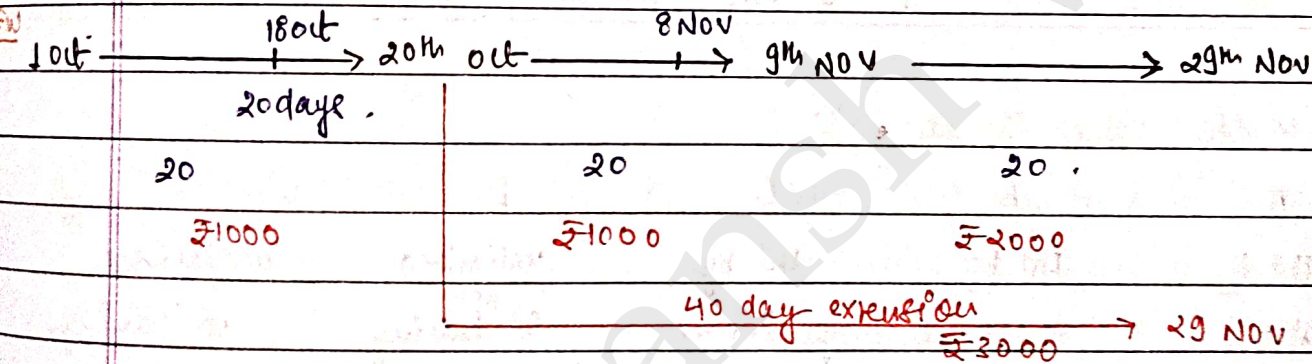
Application for extension can be given before expiry of 20 days

Another 20 days ₹1000 fee

Another 20 days ₹ 2000 fee.

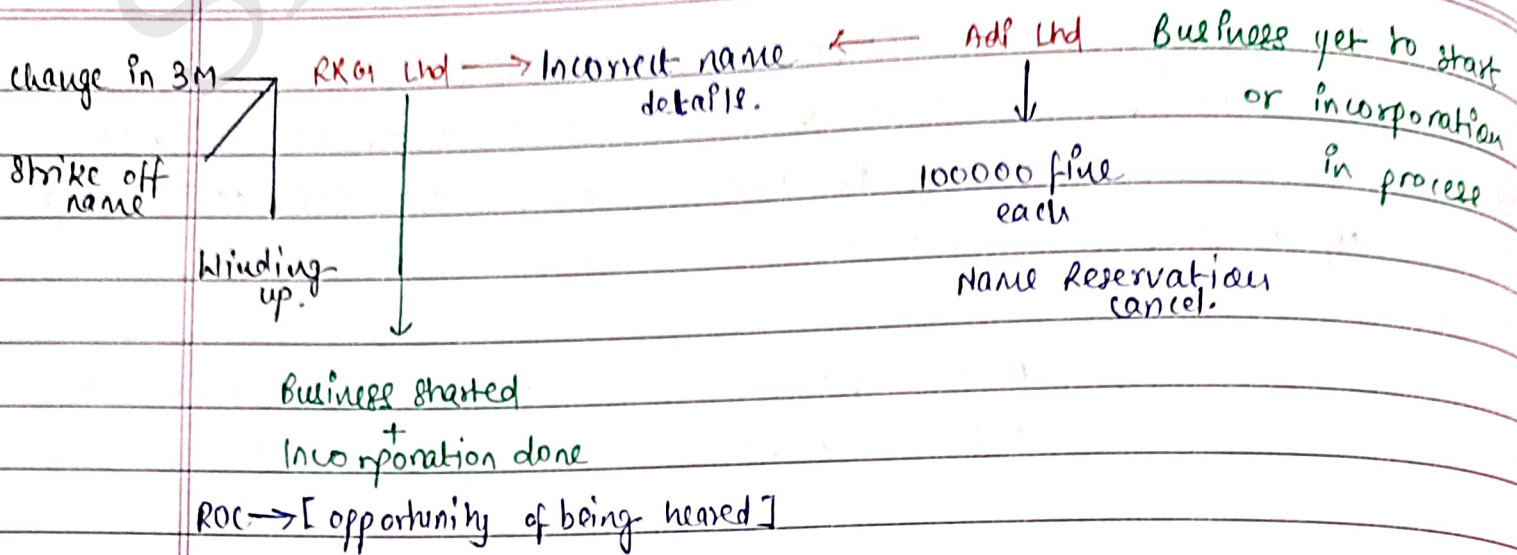
40 days in que go ₹ 3000 fee.

(total 60/120)



Max extension correction can be made in 15 days of reservation

Where a company, after reservation is found that name was applied submitting wrong information or incorrect information



if company is yet to be registered	cancel the reservation + each person involved penalty of 100000
if company already incorporated.	Registrar will give an opportunity of being heard 1. Direct change of name in 3 months (or in 6m) or 2. strike off name of the company or 3. order for winding up of the company

Model Table (Schedule -1)

A	B	C	D	E
Ltd by shares	Ltd by guarantee	Ltd by guarantee	unlimited co ^{not} having s.c	unlimited co having s.c
	not having share cap.	having s.c.		

IFSC → Name shall end with IFSC.
IFSC Pvt/pub → Ltd by shares.

NOTE :- Company limited by guarantee not having share capital - If any provisions present in the MOA giving right to a person other than member to share in profits of the company is void,

- A transaction ultra vires the memorandum and company cannot be ratified even by approval of all members.
- A transaction which is ultra vires the directors but intra vires the company, can be ratified by passing special resolution.

Section 5 - Articles of Association

- It contains the bye-laws of the company.
- These bye laws are for internal management and regulation of the company.
- Articles are strict provisions for well being of the company.

• Entrenchment Provision -

The effect of entrenchment provision is to protect something. The existence of entrenchment, can assist alteration of articles only in a manner which it makes the provisions, even more strict to govern company in a regulatory manner.

Provision of entrenchment shall be introduced any time

during incorporation → Articles Included

After incorporation → Pvt co - All members approval

Pub co - SR approve member

In case of a public co where Articles are to be entrenched after incorporation if require approval of three fourth of the members present and voting by special resolution, however in case of a private co, all members shall agree on such resolution.

A copy of SR shall be submitted to $\xrightarrow{\text{MGT-14}}$ ROC in 30 days.

Model Table

F	G	H	I	J
Ltd by shares.	Ltd by guarantee having share cap.	Ltd by guarantee not having s.cap.	unlimited co having share cap	unlimited co not having share cap.

DOCTRINE OF INDOOR MANAGEMENT.

The management of the company is responsibility of its internal management, the outsider dealing with the company cannot be penalised on account of internal management's failure to ensure good corporate governance.

Exceptions :-

Actual or constructive knowledge of irregularity
suspicion of irregularity
forgery.

Section 6 - Act to override the MOA.

- The provisions of this act shall have effect notwithstanding anything contained in MOA, AOA, deeds & documents.
- Any provision in MOA, AOA or deeds or documents against the Companies Act is void.

Companies Act 2013

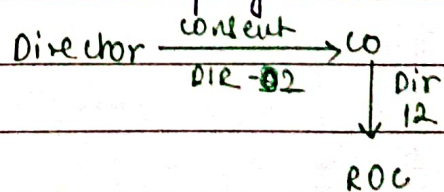
MOA.

AOA

Section 7 - Incorporation of a company.

Documents to be submitted

- Memorandum & Articles of Association duly signed by all subscribers. (INC-33/INC-34)
- Declaration INC-8
That all requisite matters related to incorporation have been completed. Such declaration shall be made by a CA, ^{advocate} CS, or CMA involved in incorporation process.
- Declaration by first members and Directors (INC-9)
C - complete information has been provided in MOA & AOA.
A - fraud has not been committed
- in last 5 yrs related to formation, promotion, management of co.
O - offence has not been committed resulting in conviction related to promotion, formation or management of company.
- Address for correspondence until registered office is established.
- Particulars related to the first subscribers of the MOA.
(name, surname, nationality, email-id, etc), where the subscriber is body corporate. Such information as may be required.
- Particulars of first directors of the company (name, surname, email-id, DIN, 2 DIR-3)
- Related to directors interest in any other body corporate, who agree to be first directors of the company. consent to company.



INC 33/34 INC 8 INC 9
DIR 3 DIR 2 DIR 12

Rule 13 -

- The document (MOA) shall be signed in presence of a witness.
- Iliterate subscriber affix thumb impression.
- Any director authorised if subscriber is body corporate
- In case of LLP a subscriber (Authorised partner)
- Foreign national subscriber, signature notarised by notary authority.
- Foreign national visiting, should have a business visa, but India to incorporate a co. not applicable for Indian citizens.

The Registrar shall, on verification of documents provided above grant registration certificate, containing the corporate Identification Number (a 12 digit Alphanumeric). INC-11.

The CIN is a proof acting as a conclusive evidence of registration company has submitted the documents.

Roc has found a false statement during registration.

↓
Cancel the process of registration
↓
officers involved charged with Section 447.

Roc has found a false statement after commencement of business.

The officers involved charged with 447.

The ROC shall submit the case of the co to tribunal.

↓ Tribunal
shall grant the officers an opportunity of being heard

Pass order for ^{regulation} ~~changes~~ of mgmt including change in the management which are in public interest.

Decision of Tribunal

Direct liability of the company to be unlimited.

Order for winding up of the co.

Strike off name of the co.

Any other order as it may deem fit.

Section 8 - Non Profit Organisation.

Works for special purpose promotion of :-

- (a) Art (b) Science (c) culture (d) Religion (e) charity
- (f) education (g) Research, etc.

Non Payment of Dividend.

Privileges [Section 8 - 8 Benefits]

No requirements to add 'Ltd' or 'Pvt Ltd' against the name

No requirement for minimum capital

Operates under special license from government.

Can call general meeting in 14 days clear notice instead of 21 days.

Requirement of minimum directors or Independent director not needed

Nomination and Remuneration committee is not needed.

Shareholders Relationship committee is not needed.

A partnership firm can be a member of section 8 company.

Revocation of License

Revocation under following conditions by Central government :-
After opportunity of being heard.

Requirements or
condition of
the sections.

violation
of objects of
company.

Affairs conducted
with fraud.

[PROF].

Pregudical to
public interest.

Post Revocation.

1. Registrar shall put the words 'Ltd' or 'Pvt Ltd' against the company name on the Register.

2. { Wound up company
OR
Amalgamate.

That is to combine the co
with another co (NPO) with
the same object (synergy).

Penalty/ Punishment.

Company - 10 Lakhe to 1 crore

officer + Director - 25000 to 25 lakhe.



If found in default
of fraud- then 447.

- steps to incorporate NPO.
1. Application (SPICE+).
 2. MOA (INC-13) AOA (INC-31)
 3. Estimated future cash flows of 3 yrs.
 4. CA/CMA/ Advocate (INC-14) / Member Declaration (INC-15).
 5. After all formalities certificate of incorporation is issued (INC-11).

Roc. (any other case it is Roc).

RD. (MOA under section 8).

[Notification - 21/5/2014
date]

If section 8 company shall contain the words (cause). ~~Entire~~

Conversion of section-8 into another kind of company [Pri/Pub]
(understood - that the section 8 company is leaving its objectives).
eg RIL foundation shifting → RIL sports Ltd
(promote hockey)

1. Special Resolution in General Meeting (SR in GM) for members approval.
2. Company has to submit Annual Return (AR) and Financial statements (FS) upto last 3 financial year.
3. Notice to Income Tax Authority, State govt of the jurisdiction and charity Commissioner. (ISC Board)
4. Above authorities can object such conversion in 60 days to RD.
If no objection is received

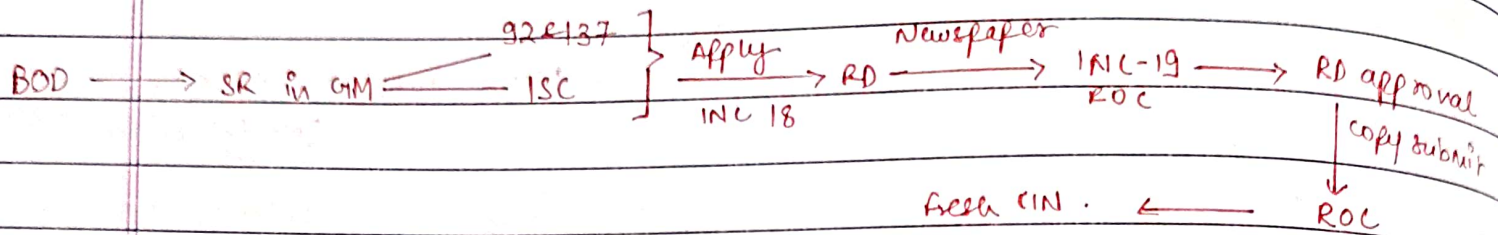
5. Apply to RD in form INC-18 → for approval of conversion

This approval from RD shall be submitted to Roc in 30 days.

6. Within a week the notice of such conversion shall be given in a newspaper (INC-19) in English vernacular

7. If any objections are received from general public, resolution shall be made by the company to resolve it. (3 months).

RD confirms conversion and ROC shall grant a fresh CIN.



Sec-14(1)(b).

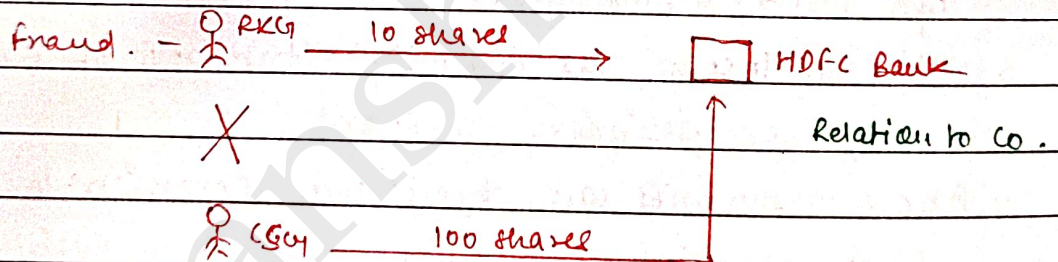
Section 9: Effect of Registration.

From the date of certificate of Incorporation all subscribers of MOA and the directors are bound for their activities towards the company.

It acquires the status of body corporate, SE and perpetual succession.

It can hold, transfer property in its own name, can sue or be sued.

Section 10: Effects of MOA & AOA.



The MOA and AOA bind the members to the company and require observance of rules & regulations by such members.

All monies payable by the co to the member, the member assumes the capacity of the creditor.

Section 10A: Commencement of Business.

- Company having share capital.
- Company shall file form [INC-20A] containing following info:-
- Declaration is ^{not} filed within 180 days to ROC has the right to believe that the co is not carrying out any business transaction & ROC may

initiate removal of name.

Declaration
by Director
+

- Information submitted
- Registered office verification u/s 12.
 - Money has been received in the accounts of the co related to shares subscribed by first members of the company.

Form 20A shall be verified by CA/Cs/CMA in practice.

If any sectional Registrar is involved then prior permission shall be requested from such regulator.

company & officers in default — 1000/day
Max - 50000.

Section 12: Registered office company.

• Company shall inform ROC about the Registered office within 30 days of Registration capable of receiving communication.

• Every company shall affix name of the company along with address of RO outside every office or place of business in English and in any vernacular language

→ RO - 11 Park Street Kolkata, 700014

ITC.

Branch → Mumbai

ITC.

11 Park Street Kol. 700014.

- has its name engraved on the common seal if any (Common seal is optional as per Sec 9 of Co. Amendment Act, 2015).

- All official publication and website shall contain address of Registered office.

ITC $\rightarrow$ Business change

↓ 6m

IC (new NAME)

→ 01d

 1π

248

$\rightarrow$ new

12

- Same state but ROC change

Lucknow $\longrightarrow$ Kanpur
State - UP.

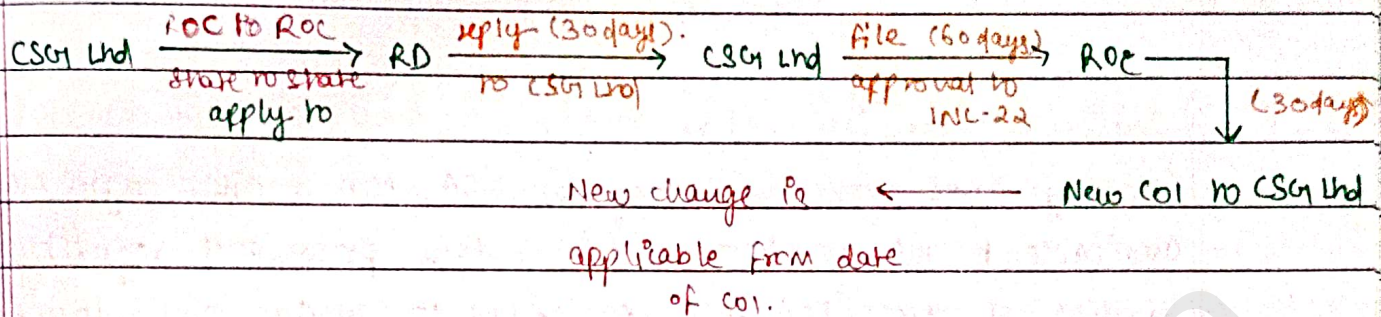
state change

MH $\longrightarrow$ WB.

- Provided that no company shall change registered office from jurisdiction of one ROC to another ROC within the same state or between different states without permission of RD.

penyakit
tela tua.

- An application made to RD, reply shall be received within 30 days, then company shall file same with ROC in 60 days and ROC to issue new COI within 30 days with new address.



30/60/30 / INC-22.

Company and officer in default shall be liable for 1000/per day of default maximum upto 100000. [for delay in submission of INC-22]

Section 15: Alteration of MOA & AOA to be noted in every copy.

- Every copy of MOA & AOA shall contain alterations made there in.
- officer in default & co shall be liable for 1000 per copy issued without alteration.

Section 16: Rectification of Name.

- Where in opinion of CMA the name of a company is found identical to name of another body corporate, on representation made to CMA, it may direct such company to alter its name within a period of "3 Months".

- provided that in case of breach of trademark, the registered owner shall be required to act within 3 years only.

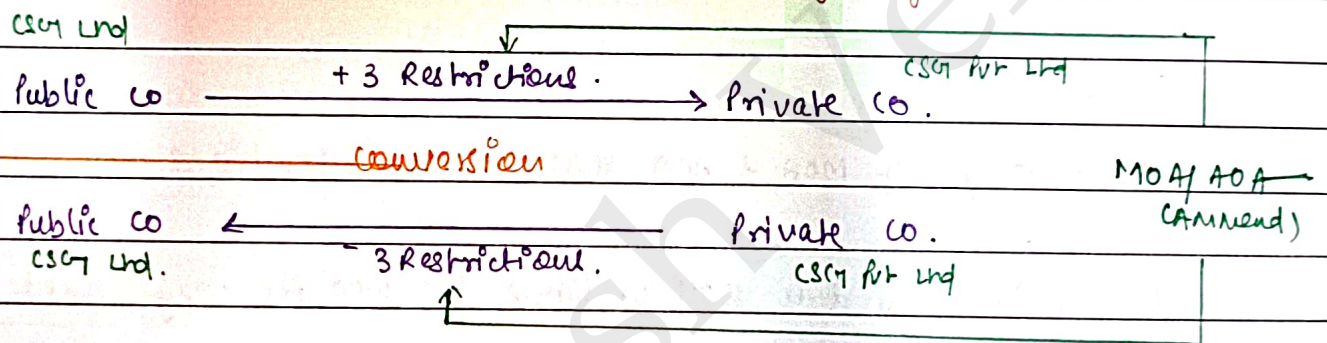
- company changes its name $\xrightarrow{\text{inform in 15 days}}$ ROC $\xrightarrow{\text{New COI in 30 days}}$ company

- company fails to change its name in 3 months,
 CO may sue MO to change the name of company and inform ROC, therewith a fresh incorporation certificate shall be issued.

Section 17 - Copies of MOA & AOA.

Company shall make hard copy of MOA, AOA & other agreements available to the members within 7 days from each request on payment of prescribed fee, on failure to provide such documents, penalty of ₹1000 per default per day to company and officers in default maximum upto 100000

Section 18: Conversion of Companies Already Registered.



Restrictions 2(68):-

Restricts share transfer

Max - 200 members.

Prohibits deposits from public.

A2L ✓

cases ✓

Same:-

1. A company of any class ^{*} under this act can convert itself into company of another class by alteration of MOA/AOA.

* other than sec-8.

2. Application to ROC for the issue of fresh incorporation certificate, the registrar shall close the old registration and issue a new registration certificate with CIN.

3. The registration of a company shall not affect its assets & liabilities or any pending litigations, the same shall continue in the new converted form

Section 19 : Subsidiary company not to hold shares in Holding co.

- No company shall be allowed to hold shares being a subsidiary co in its holding co similarly,
- The holding co shall not allot / transfer shares to its subsidiary co

Provided that, the following shall not be restricted

- Where shares are held ~~prior~~ ^{before} such creation of holding - subsidiary relationship.

BOT+LE

- Where the subsidiary holds such shares as a trustee

- Where the subsidiary holds such shares in capacity of LR

Important note -

1. Bonus shall be issued to such subsidiary in every capacity holding prior to relationship of H-S, trustee or LR)
2. However voting rights shall be restricted to shares held as LR and Trustee.

Section 20 : Service of Documents (Kaise Bhagna hai).

Documents served on company or on officer through member or ROC

Sender	Receiver
Member or ROC	company or officer of co.

- drop at registered office of co.
- courier
- speed post
- registered post
- any other electronic form with record.

Do

Documents served on ROC or member by a company

Sender

Receiver

Company

ROC

or
member

- drop at the office address ^(ROC) or residence member)
- courier
- speed post
- Registered post
- any other electronic form with record

Provided that, member may request delivery through a particular mode by paying fees as determined

Provided further that, it is at the company's discretion whether to accept such request or deny the same.

Where the Co denies such request then inform the member and continue to send the document to registered address only.

Section 21: Authentication of documents, proceedings and contracts

Contracts on behalf of the company can contain the seal of the company or signed by any KMP/ officer/ employee authorised by the Board of Directors.

Section 22: Execution of Bill of Exchange etc.

A BOE or any other negotiable instrument shall be deemed to be signed when approved by any person authorised by BOD.

company having common seal (stamp or seal)

company not having common seal 2 Directors / 1 Director + 1 CS.

Section 13: Memorandum Alteration

Name clause

Object clause

Registered office clause

Liability clause

Capital clause

Association clause

Non-Reserve clause

"General Criteria"

A company may alter provisions of MOA by passing a special resolution in general meeting.

→ A copy of SR shall be submitted to ROC within 30 days in MGT-14 along with a copy of CA approval.

A. Change in Name [order other than sec-16]

- Apply to CO in writing for change of name
Company $\xrightarrow{\text{INC-24}}$ CO

NOTE:- No permission shall be required for addition or deletion of words Private.

- The Registrar shall issue certificate of Incorporation containing the new name of the company within 30 days of Application in INC-25.

Company $\xrightarrow{\text{INC-24}}$ CO $\xrightarrow{\text{reply}}$ CO $\xrightarrow{\text{submit in 30 days}}$ ROC $\xrightarrow{\text{INC-25}}$ Issue fresh INC certificate.

B. Object clause

- ① Money raised from public & change of obj. with money unutilised.

eg - NYKAA $\rightarrow$ 200 crore IPO $\rightarrow$ use 50 cr for expansion

NYKAA $\xrightarrow{\text{shift}}$ Cement (money is unutilised).

- ② Money raised from public & utilised or No funds raised from public

eg - NYKAA $\rightarrow$ 200 cr IPO

$\rightarrow$ used 200 cr in business expansion

Now change of object to cement

Ⓐ Such a company shall not change its objectives

But if such change is necessary

- SR to passed (by postal Ballot).
- Place the same on website of company. (Justification for change of obj.)
- Dissenting shareholders shall exist on price determined by SEBI.

Ⓑ Apply to RD

- SR in GM.
- Approval of RD
- Submit to ROC
- ROC will grant fresh incorporation certificate in 30 days.

C. Registered office.

Change of Registered office: from one state to another approval of central government (RD) on application in INC-23

Approval copy of R.D to be submitted to ROC of both the states

ROC shall register new address of the co

fresh incorporation certificate by the ROC of the state where the new office is located.

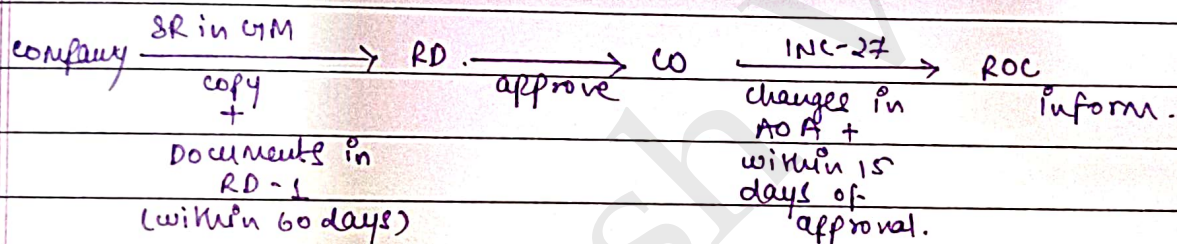
Application to RD → attach documents	Advertise such application 30 days before in 2 newspaper
• MOA & AOA	English vernacular.
• copy of minutes of GM.	"INC-26".
• copy of BR	Co INC-23 → RD → Co INC-28 Inform
• List of creditors & debt holders	close the application in 60 days
• Chief Secretary of the State, (new) permission	ROC's of both states in 30 days.
	CoI by new ROC in 30 days.

Note:- Where any objection is received the co and the creditors shall be given an opportunity of being heard by RD, the co shall discharge the creditor in order to proceed with change in RO.

Any alteration of MOA of co limited by guarantee allowing a non-member to share in profits is void.

Section 14 - Alteration of Articles.

- Any alteration can be made in the AOA by passing a SR in G.M
- However, where the alteration is in the nature of addition or deletion of restrictions to the articles, on account of conversion from private to public or vice versa, permission of RD shall be required.



- company shall apply to RD within 60 days from passing the special Resolution in form RD-1 along with the following documents.

[MD]

- proposed MOA & AOA
- copy of minutes of meeting where SR was passed
- BR was passed
- declaration by RMP regarding all compliances followed.

- on RD's approval the company shall submit the same in INC-27 to ROC containing changes in AOA within 15 days of approval.