

FAQ's* based on the queries received at the various sessions of the

Quest Assist - ICSI

Q. 1 How the subscriber sheet should be signed in case of foreign subscribers.

Ans: In case of the foreign subscriber, the subscriber sheet needs to be physically signed and witnessed there. Also ensure to follow the process of Notarisation & Apostille for all documents as required under the Act. The complete MOA and AOA along with the subscriber sheet should be attached with the form.

Q. 2 How to file Spice (INC 32) in case of Foreign Subscriber and Foreign Body Corporate?

Ans. In such case the physical copy of MOA & AOA is need to be attached as Spice e-form 33 & 34 will not applicable.

If foreign individual has DIN and valid business visa then DSC will work on e-MOA & e-AOA but in case of body corporate - physical signing of MOA and AOA is required.

Q.3 What is the meaning of Entrenchment?

Ans. The term "Entrenchment" is not defined in the act. If you are imposing something restrictive which is not written in the law then it is called entrenchment.

For example - Notice period for Board meeting is 7 days as per law which cannot be decreased but if you increase the notice period to 14 days, it will be called entrenchment. It has to be specifically mentioned in AOA.

Q.4 Spice (INC 32) is allowing only 75 characters and the proposed name is of 78 characters. Please guide for how to proceed

Ans- Maximum limit for the Name column as per Spice is 75 characters and you cannot go beyond that. In case of more than 75 characters in the proposed name, you can file form INC-1 which allow up to 100 characters in name.

Q. 5 - in case of signing of e-MOA & e- AOA when both the subscribers are not available at the same place and on same date. How to take witnesses on the form?

Ans - Signature of both the subscriber to be affixed only in the presence of witness for which you may use a separate sheet. If subscribers are available on different dates, then the witness shall sign only after both DSC have been affixed.

Q. 6 - How to file Spice if only DIN available in case of Foreign Subscriber?

Answer - According to Rule 13, In case of Foreign Subscriber, if both DIN and valid business visa are available, then Spice, e-MOA& e- AOA is sufficient. But if

there is no valid business visa, then physical MOA and AOA will be required to be signed outside and duly Apostile & Notarised as per the rule.

Q. 7 – Whether the maintenance of PAS – 5 is mandatory for all companies?

Ans - Yes, every company making private placement shall maintain a complete record of private placement offers in Form PAS-5.

Q. 8 - Whether to file Form PAS-4 and PAS-5 in separate Form GNL-2, if offer is being made to existing shareholders?

Ans - Exemption has been granted in case of private placement offer is being made to existing shareholders, thus no requirement of filing Form PAS-4 and Form PAS-5 in Form GNL-2 and attach a copy with Form PAS-3.

Q. 9 - MOA and AOA drafted according to Companies Act, 1956. Is it compulsory to change MOA & AOA as per the Companies Act, 2013? Is it necessary to file MGT 14 if we change it as per 2013 Act?

Answer - It is not mandatory to adopt MOA & AOA as per the Companies Act, 2013, until any alteration in the same is done. It is necessary to pass a special resolution and file MGT 14 if you change MOA & AOA as per 2013 Act.

Q.10 - Spice eMOA does not have Other Object like earlier provided in the Act, Can we incorporate the other objects in eMOA?

Ans – The Companies Act, 2013 has deleted Other Objects. Now only Main Objects & Ancillary Objects are required to be mentioned.

Q. 11 - We have not adopted new AOA as per 2013 Act and there is no power in our AOA for dematerialisation of equity shares. Should we amend our AOA or adopt new AOA as per 2013 act?

Ans - You have to adopt new AOA as per the 2013 act and add the new clause related to dematerialisation of shares. The registrar may refuse the MGT- 14 and will enforce you to adopt new AOA if you try to amend your existing AOA by adding dematerialisation clause.

Q. 13 - Which form is to be filed for alteration of MOA & AOA? Do we need to file Spice 33 & 34 in case of alteration?

Ans - The Spice forms 33 & 34 are available for only fresh incorporation and not available for alteration of MOA and AOA .

The filling of necessary forms depends on the nature of alteration you are making. Such as for alteration of –

- Object Clause - MGT - 14,
- Capital Clause - SH 7
- Conversion of Public company to private company and vice versa - INC 27, and MGT - 14.
- Name clause - MGT 14, INC – 1 & INC - 24
- Registered Office Clause – MGT- 14, INC – 23,28,22 & GNL - 2

Q. 14 - Do I need to attach physical MOA & AOA with MGT - 14 if a company incorporated through Spice form wants to alter MOA & AOA?

Ans. - Physical MOA & AOA needs to be attached while filing MGT - 14 for authentication of alteration. Eform 33 & 34 are only for Incorporation.

Q.15 - Difficulty in attaching DSC, it takes too much time when attaching with the new forms and showing Error.

Ans. - Try changing the PDF setting. MCA has prescribed settings for reduction of the Size of PDF Documents which is available on the MCA – Forms & Downloads.

**The FAQs were developed on the basis of the answer given by the experts while addressing the queries and would not in any way represent the views of the ICSI.*