Company Law Procedure

- ***Meaning of Company*** **:**

Section 2(10) of the Companies Act, 1956 provides that "Company Means a Company as defined in Section 3.

Section 3 of the Companies Act, 1956

"Company" Means a Company formed and registered under the Companies Act, 1956 or an existing Company.

Classes of Company :

1) Private Limited Company;
2) Public Limited Company; and
3) Unlimited Company

Mode of Formation :

1) Any Seven or more persons, or where the Company to be formed will be a private Company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this act in respect of registration, form an incorporated company, with or without limited liability.

2) Such a Company may be either

a) Limited Liability by Shares
b) Limited Liability by Guarantee
c) Unlimited Liability

Brief Guide-lines of Formation of a Company

I. Select a name for the Company.
II. Memorandum & Articles of Association be prepared.
III. It should be registered with the Registrar of Companies.
IV. On incorporation, the Registrar will issue Certificate of Incorporation of the Company.

⇒ ***Formation of Private Company*** **:**

1) *Name* :

The name of a Private Company must end with the word "Private Limited". It is necessary to mention the word "Private Limited".

***2) Subscribers* :**
Minimum 2 Persons are required to form a Private Limited Company. Maximum 50 Persons

***3) Directors* :**
Minimum 2 Directors

***4) Articles* :**

The Articles of A Private Company must provide the following :
a) Restricts the rights to transfer its shares.
b) Limits the number of its members to fifty. while calculating the number of Member the following members shall be excluded :
I. Persons who are in the employment of the Company.
II. Former employees of the Company.
III. Where two or more persons hold shares in joint name. (They shall be treated as single member)
c) Prohibits any invitations to the public to subscribe for any shares in, or debentures of, the Company.

5) *Documents for Incorporation* :

The following documents are required to be filed before the Registrar of Companies, alongwith the requisite Fees:

I. Letter approving availability of name by the Registrar of Companies, in Original.
II. Memorandum and Articles of Association, duly stamped and signed by the subscribers and attested by atleast one witness, in duplicate.
III. Declaration of Compliance in Form No.1 (on stamp paper of Rs. 20/-)
IV. Particulars of the appointment of the first directors, in Form No. 32 in duplicate. This Form can be filed either at the time of registration of a company or within 30 days of Incorporation.

V. Notice regarding situation of registered office in Form No. 18. This Form can be filed either at the time of registration of a company or within 30 days of incorporation.
VI. Power of attorney (on Stamp paper of Rs.100/-) Signed by all the subscribers.
VII. Agreement, if any, for the appointment of managing or whole time director or manager.
VIII. Payment of Fees (Pay order or Demand Draft)

6) *Commencement of Business* :
A Private Company can commence business immediately on its incorporation.

⇒ ***Formation of Public Company* :**

1) ***Name*** *:*
Name of a Public Company should end with the word "Limited". It is not necessary to mention "Public Limited"

2) ***Subscribers*** *:*
Minimum 7 Persons.

3) *Directors* :
Minimum 3 Persons (Directors)

4) ***Articles* :**
A Public Limited Company may have or may not have its Own articles. It can adopt Table A of Schedule I to the companies Act, 1956 as its articles. It can also take or exclude any provisions of the said Table in its articles.

5) *Documents for Incorporation* :
All documents as mentioned for Private Limited Company
Consent to act as a director given by each director in Form No. 29 duly stamped as regards the undertaking.

6) *Commencement of Business* :
Unlike a Private Limited Company a Public Limited Company having a Share Capital cannot commence business on its incorporation. It has to obtain a Certificate of Commencement of business from the Registrar of Companies.

⇒ ***Formation of Guarantee Company*** **:**

1) ***Meaning*** **:**
A Guarantee Company means a Company having a liability of its Members limited by the Memorandum to such amount as the members may respectively undertake to contribute in the assets of the Company in the event of its being wound-up. The guarantee company may be a Private Company or a Public Limited Company. It may have Share Capital or may not have any Share Capital.

2) ***Formalities for Incorporation*** **:**
Same as for a Private Limited or a Public Limited Company, as the case may be.

3) ***Subscription Clause*** **:**
Each Subscriber shall write their name, address, description, particulars, occupation and also undertake a guarantee that they will pay so much amount at the time of the Company being wound up.

PROCEDURE FOR INCREASE IN AUTHORISED CAPITAL:

1. Consult the Articles of Association of the company to see whether they authorise the company to see whether they authorise the company to increase the share capital.

2. Convene a Board Meeting after issuing notices to directors to decide about the increase and to fix up the date, time, place and agenda for convening a General Meeting and to pass an Ordinary Resolution or Special Resolution, if so required by the Articles, for the same.

3. Issue notices in writing at lease 21 days before the date of the meeting for the General Meeting with suitable Explanatory Statement.

4. Hold the general meeting and pass the Ordinary Resolution by simple majority or Special Resolution, by 3/4ths majority.

5. If the resolution passed is a Special Resolution, file the same with Explanatory Statement with the concerned ROC in Form No. 23 within 30 days.

6. File the notice of increase with the concerned ROC in Form No. 5 (duly stamped) within 30 days on which the Registrar of Companies will make necessary changes in the Company's Memorandum & Articles of Association.

7. Other following documents to be filed alongwith the above referred documents :

- Certified True Copy of the MOA & AOA after altering necessary clauses.
- Demand Draft in favour of Registrar of Companies, Maharashtra payable at Mumbai for the requisite filing Fees.

PROCEDURE FOR CHANGE IN NAME:

1. Select, in order of preference, a few suitable names, not less than 4, each of which should indicate as far as possible the main object of the company. (One main & 3 others)

2. Hold Board meeting - to adopt the new names selected.

3. File Form No. 1A with Fees of Rs.500/-.

4. Hold Board Meeting for convening a General Meeting for passing a special resolution to change the name.

5. Issue notices not less than 21 days from the date of the meeting proposing the Special Resolution with suitable explanatory statement.

6. Hold G.M. & pass Special Resolution.

7. File Form No. 23 within 30 days of Special Resolution passed.

8. Form of Application - on a plain paper

   - Detailed reasons for the change of name.
   - An up-to-date certified true copy of MOA & AOA.
   - Certified true copy of Balance sheet & P&L a/c. for the last two financial years.
   - Letter of change of Name - in Original.
   - Certified true copy of the communication received from ROC in token of his having recorded the special resolution.
   - A certified true copy of the special resolution.
   - date of Incorporation and Registration number.
   - Certified true copy of Director's Reports for the last two financial years.

PROCEDURE FOR CHANGE IN REGISTERED OFFICE:

A) *In Case the Registered Office is proposed to be changed within the local limits :*

1. Hold a Board meeting to decide about the change.
2. File the notice of change with the concerned ROC in Form No. 18 alongwith a certified copy of the Board resolution approving the change within 30 days of the decision taken in the Board. (alongwith the requisite Fees.)

A) In case the registered office is proposed to be changed Outside the local limits : (but within the State) :

1. Hold a Board Meeting to decide about the change and to fix up the date, time, place and agenda for the General Meeting to pass a Special Resolution for the same.
2. Issue notices for the General Meeting proposing Special Resolution with suitable Explanatory Statement.
3. Hold General Meeting & pass the Special Resolution by 3/4th Majority.
4. File the Special Resolution with ROC within 30 days in Form No. 23 with Explanatory Statement.
5. File the notice of change with ROC in Form No. 18 within 30 days of passing of the Special Resolution.
6. Requisite Fees.

A) In case the registered office is proposed to be changed Outside the State :

1. Hold a Board Meeting to decide about the change and to fix up the date, time, place & agenda for the General Meeting to pass a Special Resolution for altering the MOA in this regard subject to confirmation of the CLB.
2. Issue notice for the General Meeting proposing the Special Resolution with Suitable Explanatory Statement.
3. Hold the General Meeting and pass the Special Resolution by 3/4th Majority subject to the confirmation of the CLB.
4. File Form No. 23 within 30 days with ROC.
5. Not less than one month before filing the petition publish a general notice at least once in the daily newspaper published in the principal language of the district in which the registered office is situate and at least once in English in a daily newspaper, in the English language and circulating in that district.
6. Prepare a List of creditors as on a certain date which should be serially numbered and giving therein the amount and nature of credit.

7. Make a petition to the concerned Regional Bench of CLB in Form No. 1.
8. If the petition is in order in all respects then the Bench Officer will issue an order for confirmation.
9. File Form No. 21 and certified true copy of MOA as altered within 3 months from the date of order with ROC.
10. File the notice of change with ROC of the new state in Form No. 18 within 30 days from the date when the change become effective.