

INCORPORATION OF COMPANY AND MATTER INCIDENTAL THERETO

COMPANIES ACT

- ❖ Companies Act president assent got as on 29/08/13 and notified 30/08/13
- ❖ Consist of total 470 sections and 29 chapters, 7 schedules and set of rules

SEC 1-SHORT TITLE , EXTENT, COMMENCEMENT AND APPLICATION

- ❖ Extends to whole of India
- ❖ Also apply to company registered under Previous company law and Insurance, Banking, Electricity, Special act companies and such other body corporate (but must not be inconsistent with their respective acts- Banking regulation 1949, Insurance act 1938, Electricity act 2003, Ex for such other body corporate-FCI, NHAI)

SEC 2- DEFINITIONS

SEC 3-FORMATION OF COMPANY

- ❖ Formed for lawful purpose only and number of members shall be atleast 7,2, and 1 for public, private and OPC respectively and can formed may be either limited by shares/guarantee and unlimited company .
- ❖ OPC must indicate a person as nominee and it can be changed by notice and must intimate changes to registrar (such change cannot be treated as alteration of MOA)

SEC 3A- MEMBERS SEVERALLY LIABLE IN CERTIAN CASES

- ❖ If at any time the numbers of the members reduced, in case of public company 7 and private 2 and carry their business 6 months or more, knowing that fact, then members shall be severally liable for the whole debts of the company and may be severally sued.

SEC 4- MEMORANDUM

- ❖ It consist of six clauses as following. It is treated as constitution of company

NAME – Private company end with PRIVATE LIMITED, Public company with LIMITED, Non profit company with words such as association/foundation/organisation etc ,

- For Govt companies Pvt ltd/Ltd not required and Nidhi company must contain word NIDHI LIMITED
- The word “**NATIONAL**” can be used only by government companies

- If name of company contain the word such as BANK, INSURANCE ETC THEN“ **NO OBJECTION**” from such regulatory must be obtained
- Name must not be similar with existing names of other companies/ name must not be connected with CG/SG emblems, names etc

SITUATION/ DOMICILE- in which state registered office of company is situated

OBJECT- Main business/object of the company. Company can carry on the business which only stated in object clause (otherwise ultra vires)

LIABILITY- the member's liability (shares/guarantee/unlimited)

CAPITAL- the consisting of authorised capital of the company (equity& Preference included and capital is divided into shares)

SUBSCRIBERS- 1st subscribers are treated as first shareholders of the company

- ❖ Format of memorandum consist of table **A, B, C, D, E**

SEC 5-ARTICLES OF ASSOCIATION

- ❖ Rules and regulations of the company and within the ambit of MOA
- ❖ Entrenchment provision can apply i.e restrictive than those applicable incase of special resolution. it can be included either formation of company or by altering the articles
- ❖ The company can adopt all or any of the regulations contained in the model articles
- ❖ It consist of formats **F, H, G, J, I**

SEC 6-ACT TO OVERRIDE MOA, AOA ETC

- ❖ If any provisions of the MOA, AOA or any contracts, resolution, agreement made by the company if inconsistent with the act, then it should become Void or in other simple meaning the memorandum and articles may be different to each company but the provisions should not violate companies act

SEC 7- INCORPORATION OF THE COMPANY

- ❖ RUN used for name application (Name valid for 20 days from date of approval in case of new company and for name change 60 days)
- ❖ Spice E form were used for incorporation- Application for Name, DIN, PAN, TAN in single form
- ❖ Details attached with forms were Declaration from promoters, Directors consent, ID proof etc
- ❖ After reserving the name if it was found that name was applied by false/incorrect information
- If not incorporated, reserved name shall be cancelled and applicant shall be liable upto 1 lakh

- If incorporated then take action for strike off/ Petition for winding up/ direct company to change name within 3 months.

Obtain DSC ⇒ Obtain DIN ⇒ Select Suitable name ⇒ Draft MOA and AOA Signed various forms with ROC electronically (⇒ Pay Fees ⇒ Scrutiny of docs by ROC Receipt of Certificate (CIN) ⇒ File registered office within 30 days ⇒ within 180 days file declaration for commencing business (Incorporation forms were spice 32,33,34)

SEC 8-NON-PROFIT COMPANY

- ❖ Registered for promotion of art, culture, sports, charity religious, protection of environment etc
- ❖ License issued by CG and has the power to revoke license if any contravention after giving reasonable opportunity of being heard (The power of issuing licence of CG delegated to ROC and revocation power delegated to RD)
- ❖ Thus on revocation of license, CG may direct to convert its status and change the name/ Winding up/ Amalgamate with other companies having similar objects
- ❖ Enjoy all privileges and obligations of limited companies
- ❖ Special Provisions :
 - Firm can become member
 - No payment of dividend
 - Promote its objectives
 - Maximum number of directors and independent directors not apply
 - Can call its general meeting by giving 14 days notice
 - Proxy must be member
 - Cannot be converted into OPC
 - Shall not alter MOA or AOA without previous approval from CG

SEC 9- EFFECT OF REGISTRATION

- ❖ After obtaining certificate of incorporation company will become body corporate, subscriber as member , perpetual succession and can exercise all function as separate legal entity
- ❖ Certificate will contain CIN (Corporate Identification Number)

SEC 10- EFFECT OF MOA

- ❖ MOA and AOA shall have binding effect upon members and the company and company towards members. No direct between members interse but through the company. The Provisions in MOA and AOA shall have no binding effect upon the outsiders

SEC 10 A- COMMENCEMENT OF BUSINESS ETC

- ❖ A company having share capital shall not commence its business:
 - a.) Until a declaration is filed within 180 days from the date of incorporation of the Company that every subscriber has paid the value of the shares agreed to be taken by him on the date of making such declaration; and

SEC 11- OMMITTED

SEC 12- REGISTERED OFFICE OF THE COMPANY

- ❖ Registered office should file with 30 days of Incorporation
- ❖ Must Indicate in every documents of the company, affix/ painted outside office
- ❖ The Registrar may cause physical verification of the registered office of the Company in case he has reasonable cause to believe that the Company is not carrying on any business or operations and in case the default is found, the Registrar may initiate action for removal of name of the Company from the register of Companies
- ❖ Registered office determine the domicile/jurisdiction of ROC and nationality of company
- ❖ Change of registered office
 - Within local limits- BOD Approval
 - Outside city-General Meeting(BOD+GM (Special Resolution)
 - One jurisdiction to other-BOD Meeting + GMR+RD approval(Regional director)
 - One state to other- CG approval(Alteration of MOA-power delegated to RD)

SEC 13- ALTERATION OF MOA

NAME

- Can be altered by way of passing special resolution
- CG approval is required (Form used INC 24)
- CG approval not required if merely adding/ deleting the word “ Private”

SITUATION :

- CG approval is required (Power delegated to Regional Director)
- CG dispose the application within 60 days and before given approval the consent of debenture holders, creditors may be considered

OBJECT

- Can be altered by passing special resolution
- If money raised by issuing prospectus and still unutilised amount the object shall not change (Refer Section 27)

LIABILITY

- By way of passing special resolution
- Existing Liability of members cannot be increased by alteration

CAPITAL

- Can be altered by way of passing ordinary resolution
 - Subscribers clause cannot be changed
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- ❖ Any alteration of MOA in case of company limited by guarantee and not having share capital which give any person a right to participate in the divisible profit of the company other than the member shall be void

SEC 14- ALTERATION OF AOA

- ❖ By passing special resolution
- ❖ Conversion of Public to private CG approval required (Power delegated to RD)
- ❖ Approval of tribunal required and order should file with ROC within 15 days

SEC 15-ALTERATION MOA AND AOA TO BE NOTED IN EVERY COPY

- ❖ Every alteration made in documents of the company should be noted in every copy of Moa and AOA.

SEC 16-RECTIFICATION OF NAME OF THE COMPANY

- ❖ In opinion of CG- if name identical/too much resembles with existing name of company, the issue direction to change name and company comply within 3 months by ordinary resolution (Suomoto by CG)
- ❖ Application made by registered TM- within 3 years TM holder can apply to CG for issue direction to change name. Company must change within 6 month from date of such direction (Request by TM holder)
- ❖ New name file with registrar within 15 days

SEC 17- COPIES OF MEMORANDUM AND ARTICLES TO BE GIVEN TO MEMBERS

- ❖ If request made by member by payment of any prescribed fees if any, then company within 7 days, send copies of MOA, AOA and resolution filed with registrar(sec 117)

SEC 18- CONVERSION OF COMPANIES ALREADY REGISTERED

- ❖ Any class or class of companies can convert in to other class of companies by altering memorandum and articles according to act and by applying with registrar
- ❖ The registrar will issue new certificate
- ❖ conversion shall not affect the debts, liabilities , obligations or contracts

SEC 19- SUBSIDIARY COMPANY NOT TO HOLD SHARES IN HOLDING COMPANY

- ❖ No company shall hold any shares in holding company either by itself or through nominees. The holding company cannot allot shares to its subsidiary. If allot, void
- ❖ Exceptions :
 - subsidiary company hold shares as a legal representative of deceased member of holding,
 - holds as a trustee
 - subsidiary holds before such relation exist

In 1st 2 exceptions subsidiary company shall have voting right

SEC 20- SERVICE OF DOCUMENTS

- ❖ To serve a document on company or its officer, It shall be sent to registered office of the company.
It provides where and how to serve a document to:
 - (i) a company or its officers,
 - (ii) (ii) Registrar of Companies;
 - (iii) and members of a company
- ❖ Member can request to deliver any document through a particular mode (may charge reasonable fees)

SEC 21-AUTHENTICATION OF DOCUMENTS

- ❖ The documents, proceedings and contracts of the company must be authenticated by a key managerial person or any other officer duly authorized by board Notes : KMP (2(51) of CA 2013 in relation to a company means CEO/MD/Manager, CFO, Company secretary, Whole time director, or any officer not less than one level below the board of directors in whole time employment of the company or any officer or employee of the company as may be prescribed

SEC 22- EXECUTION OF BILLS OF EXCHANGE

A bill of exchange, hundi or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of a company if made, accepted, drawn, or endorsed in the name of, or on behalf of or on account of, the company by any person acting under its authority, express or implied

SPACE FOR NOTES

