

COMPANY SECRETARY

SBILL CHAPTER 2 HANDWRITTEN NOTES

By CS MENTOR

# Corporate Entities → Companies

Regulatory framework: → companies act 2013.  
Companies [Incorporation] rules, 2014.

The company is derived from Latin word "cum" means "with together" and "panis" means Bread.

Section 2(20) of companies act: company means a company which is incorporated under this act or any previous companies act.

## Characteristics of company

Corporate personality

Perpetual succession

Separate property

Transferability of share

Capacity to sue or be sued

## Classification of companies

### ① Classification on the basis of Incorporation.

① Statutory companies: → Inorp. by a special act of parliament or state legi. C.A 13 not apply.  
[Example:- RBI, LIC].

② Registered companies: → Inorp. under companies act.

### ② Classification on the basis of Liability.

① Unlimited companies: → 2(92) → liability of member of this type of company is unlimited.

② Companies limited by guarantee: 2(41) company that has the liability of its member limited to such amount. by MOA to contribute to the assets of the company in the event of wound up.

③ Companies limited by shares: company having the liability of its member limited by the memo. of the amt. if any unpaid on share.

### ③ Other forms of companies:-

- ① Section 8 companies
- ② Foreign company
- ③ Producer companies
- ④ Nidhi company
- ⑤ Listed company
- ⑥ Small company

Paid-up share → upto 4 crore cap.

turnover:- → upto 40 crore.

## Private company section 2(68).

AOA

Prohibition.

To invite to the public to sub. any sum of company

Restriction.

To transfer of its shares.

Limitation.

Maxi. 200 memb.  
Not to be counted as member

Employee of comp.  
Past employ

Jointed SH shall be treated as 1.

## Public company section 2(71).

company means which is not a private company.

→ Mini - 7 mem Maxi → unlimited.

→ freely transfer of share, there is no restr. on trans. of share.

## One person company section 2(62)

means a company which only has one person as member.

Characteristics.

- ① Financial statement of comp. shall not include cash flow st.
- ② company's MOA shall indicate name of nominee.
- ③ One person company shall be mentioned below the name of such company.
- ④ Annual return shall be signed by cs. if cs not available then by director.
- ⑤ there is only one director.
- ⑥ financial st. shall be app. by director.
- ⑦ OPC shall file copy of Fi. st. within 180 days from closure of f.y.

## Nidui company

Object of cultivating the habit of thrift and saving amongst its member.

Characteristics of Nidui.

- ① Nidui → Incorp as Public company shall have as last word "Nidui limited".
- ② Public. com. with mini. paid up. sh. cap of 10 lakh.
- ③ Nidui appl. NDH-4 within 120 days of Insp. Mini → 200 member. Net owned fund → 20 lakh.
- ④ Nidui limited (suffix) can be used only after obtaining declor. from Govt.

## Share capital & investment

→ issue only fully paid up equity share of mini → ₹10 each

→ Nidui deposit → deposit holder :- mini. 10 equity share.  
or share equal to 100 Rs.

## Incorporation of company

• Step 1 :- Apply for Name approval.

- login on M.C.A website, click on icon SPTIEC+
- fill details which is required
- choose fill
- Submission of form on MCA website
- Name will be reserved for 20 days and for change of Name then <sup>60 days</sup>

Step 2 Preparation of documents for incorporation of company

- declaration by director & subs. in INC-9
- DIR-2
- form MBP-1
- NOC from owner of property, where regl. office of the company will be located
- Proof of office address
- copy of utility bills [Not older than 2 months]
- Digital signature of all subscribers
- copy of PAN.

Step 3 fill the information in form

once all the document are available, applicant has to fill info in form PART B

Step 4 Preparation of MOA & AOA.

- After filling of SPTIEC + PART B form, applicant has to download the e-form INC-33 & INC-34.

Step 5 :- fill details of PAN & TAN

Step 6 :- fill details of GST, TFC in angle PRO

Step 7 :- Submission of INC-32, 33, 24 ~~AG~~ AGILE PRO -S on MCA

Step 8 :- Certificate of Incorporation → Generated in form INC-11

## Precaution to be taken by Professionals

- Professional should take engagement letter from the promoters.
- A prof. declares that he has verified all particulars from org. <sup>part</sup>
- A professional ensure all attachments are clear enough to read.
- A professional ensure that regl. office of the comp. is functioning for Busi. purpose of company.

## Process of Info. of a Public limited company.

- Min → 7 SH. Max → 3 director.
- A Public / PVT. have to comply with all laws under reg.

## Process of Incorporation of OPC

- only 1 member
- type of private company
- Only a natural person who is an Indian citizen and 10% shall be eligible to incor. — a BOPC, & shall be nominee of OPC.

## Content: - of MOA

- ① Name clause: - Identify the type of company  $\rightarrow$  Public / Private.  
Name shall not be identical with, or resemble too nearly  
Undesirable Names, all those names which in the opinion of the Central Govt.
- ① Prohibited in Emblems and Names Act 1950.
  - ② The name include  $\rightarrow$  Trade mark Act 1999
  - ③ Name which is offensive.
  - ④ Propound name contains "British India".
  - ⑤ Name include "State".

Reservation of Name: -  $\rightarrow$  Incorporation  $\rightarrow$  30 days  
 $\rightarrow$  Change Name  $\rightarrow$  60 days.

- ② Situation clause: The Name of the state in which the regl office of the company is to be situated must be given in the memo.
- ③ Objective clause determine the object of clause.
- ④ Liability clause: The liability of members of the company.  
 $\rightarrow$  Limited by share.  $\rightarrow$  Limited by guarantee.
- ⑤ Capital clause  $\rightarrow$  capital Invested to start a company.
- ⑥ Subscription clause:  $\rightarrow$  No. of share which subscribers agree to take.

## Articles of association.

Section 2(5):  $\rightarrow$  articles means the articles of asso. of a company as originally framed or as altered from time to time to any previous company law.

## Drafting of AOA.

Table  $\rightarrow$  F  $\rightarrow$  com limited by share  
Table  $\rightarrow$  CH  $\rightarrow$  com limi' by guarantee having share cap  
Table  $\rightarrow$  H  $\rightarrow$  " " " " not having share capital.  
Table  $\rightarrow$  I  $\rightarrow$  unlisted com. having share capital  
Table  $\rightarrow$  J  $\rightarrow$  unlisted com. having not having share capital

## Formation and registration of corporate entities

### \* Features of SPICE +

SPICE + is an integrated web form replacing the earlier version of e form the form is divided into two parts viz.

#### PART - A

for name reservation for new company

#### PART B.

- $\rightarrow$  offering a bouquet of service
- $\rightarrow$  Inorp.
- $\rightarrow$  DIN allotment
- $\rightarrow$  PAN, TAN
- $\rightarrow$  Issue of EPFO regl.
- $\rightarrow$  Issue of ESIC regl.
- $\rightarrow$  Issue of JAO
- $\rightarrow$  Bank account
- $\rightarrow$  GISTIN
- $\rightarrow$  Shopact.

**Section 8 company** → formed for promoting commerce, art, sci, sports, edu. museum, social welfare, or any other objective.

### Characteristics

- 1) Profit are applied in promoting their obje.
- 2) Prohibits the payment of dividend to its mem.
- 3) company can be incorp. without using words "limited" or "Priv. Ltd"
- 4) No requi. for min. paid up share cap.
- 5) Exemp. from stamp duty regl.
- 6) OPC cannot be incorp. into a sec. 8 comp.
- 7) Independent corp. legal entity.

### Producer company

It is a body corp. The membership of producer comp. is open to such people who them selves are primarily producers.

#### Objective/object

- 1) Produce, harvest, distilling, processing, packaging of produce of its mem.
- 2) Preserving, drying, distilling, marketing, export & Im. of goods.
- 3) Sale or supply of machinery to its member.
- 4) Providing edu. on mutual assistance principle to its memb.
- 5) Insurance of their primary produce
- 6) promoting technique of mutuality
- 7) welfare facilities for benefits of members.
- 8) any other financial services.

### Foreign company → sec 2(42)

→ f.c. means any company incorp. outside India which has place of busi. in India.

Every fo. com. established in India within 30 days of estab. shall file for regl. with ROC.

- 1) certified copy of MOA & AOA.
- 2) full address of regl. office of company
- 3) list of all director & c.s.
- 4) Name & address of one or more person resident of India.
- 5) Particulars of opening & closing of a place of busi. in India.

### Drafting of Incorporation documents

#### 1) Memorandum of association

- section 2[56] MOA defines scope of company's activi & its relations with outside world.
- The first step at formation of a company is to prepare a document called MOA.

#### Forms of MOA

- Table A → comp. limited by shares
- Table B → co. limited by guarantee not having a sh. cap
- Table C → ———— having a sh. cap
- Table d → unlimi. com not having a s. cap.
- Table e → unlimited comp. having a share capital

## Membership of Nidhi

- Body corp or trust → Not a member.
- Min 200 members.
- Minor should not be admit as member.
- deposit should be accepted in the name of a minor, if they are made by the natural or legal gu. who is memb. of Nidhi.
- A member Not transfer more than 50% of sh. during subs? of such loan.

## Branches of Nidhi

- Nidhi may open branches if profit after tax continuously during the preceding 3 financial years.
- Nidhi may open upto 3 branches within the district.
- Nidhi can open more than 3 branches within the district or outside the district shall obtain prior permission of the R.D in form NDH-2 <sup>situat.</sup>
- Nidhi shall not open branches outside the state where req. officer.
- shall not open branches unless fi. st. and Annual return. are filled with the regl.
- Nidhi can open branches by obtaining app from R.D with form NDH-2 with fee at least 60 days prior of such closer.

After obtaining the app. Publish, adv. in Newspaper in vernacular langu. in the place where it carries on busi. at least thirty days prior to such closer.

## Acceptance of deposits

fixed deposit  
for mini. 6 months  
& maxi. 60 months

Recurring deposit  
for mini. 12m & maxi  
60 months

saving deposit  
maxi. balance  
& rate of Int. shall not  
exceeds 2%.

Nidhi may offer int. on fixed s.d. at maxi. rate prescribed by RBI.

## Un-encumbered term dep.

Every Nidhi shall invest & cont. to keep invested in unencumbered term deposit with S.C. Bank or post office shall not be less than 10% of deposits outstanding

## Loans by Nidhi

- |                                          |                |
|------------------------------------------|----------------|
| <u>loan</u>                              | <u>Deposit</u> |
| 200,000 → less than 2cr.                 |                |
| 750,000 → more than 2cr but less 20cr    |                |
| 12,00,000 → more than 20cr but less 50cr |                |
| 15,00,000 → more than 50cr.              |                |

from last 3 years, if Nidhi has not made profit, the loan amt shall be come halfe.

## Rate of Int

Maxi:- higher rate of Int. on deposit  
7.5%

## Director

→ Member of Nidhi  
Term → 10 consecutive year.  
supp. only after expiry of 2yr  
when he ceased to be a director

## Dividend

→ Maxi. 25% in a financial year.

Mem:- default in repay. of loan → The not eligible for further loan.