

An orange scroll graphic with a black outline, featuring a vertical strip on the left side and rounded corners. The text "Corporate Law" is written in a black, cursive font across the center of the scroll.

Corporate Law

Ch. 3 U1:

Preliminary

CHAPTER OVERVIEW

Preliminary chapter of the Act covers



1. INTRODUCTION

The Companies Act, 2013 is an Act to consolidate and amend the law relating to companies. The legislation was necessitated to meet changes in the national and international economic environment and for expansion and growth of economy of our country. **The Companies Act, 2013 received the assent of the Hon'ble President of India on 29th August 2013 and was notified in the Official Gazette on 30th August 2013 for public information stating that different dates may be appointed for enforcement of different provisions of the Companies Act, 2013, through notifications.**

The Companies Act, 2013 is rule based legislation with **470 sections** and seven schedules. The entire Act has been **divided into 29 chapters**. Each chapter has at **least one set of Rules**. The Companies Act, 2013 aims to improve corporate governance, simplify regulations and strengthen the interests of investors. Thus, this enactment makes our corporate regulations more contemporary

2. SHORT TITLE, EXTENT, COMMENCEMENT AND APPLICATION

Section 1 of the Companies Act, 2013 deals with the title of the Act according to which this Act may be called as the Companies Act, 2013. Further, section deals with the extent to the applicability of the Act. It says that the **Act shall extend to the whole of India.**

This Section furthermore states of the **applicability of the Act**. The provisions of this Act shall apply to-

a) companies incorporated under this Act or under any previous company law

- b) insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;
- c) banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949.
- d) companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003.
- e) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act, and
- f) such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.

Example: Food Corporation of India (FCI), National Highway Authority of India (NHAI) etc.

Note: The term "except in so far as" shall mean excluding to the extent of i.e. if any provision of the Companies Act is inconsistent with any of the provisions of other Act (Insurance Act, Banking Regulation Act, Electricity Act, etc.) to which the company is regulated than that company shall comply with the provisions of respective Act/Acts to which it is governed and regulated by.

3. DEFINITIONS

Section 2 of the Companies Act, 2013 is a definition section. It provides various terminologies used in the Act. Definitional Sections or Clauses, are known as 'internal aids to construction' and can be of immense help in interpreting or construing the enactment or any of its parts. Also, according to clause 95 of section 2, words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in those Acts.

When a word or phrase is defined as having a particular meaning in the enactment, it is that meaning alone which must be given to it while interpreting Section of the Act unless there be anything repugnant in the context.

Section 21 states that- In this Act, unless the context otherwise requires,

1. **Abridged prospectus** means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf;



2. **Accounting standards** means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133;

Section 133 of the Act deals with the Central Government to Prescribe Accounting Standards. As per the section, the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

Section 133 is to be read with Rule 7 of the Companies (Accounts) Rules, 2014. Accordingly,

- a) The standards of accounting as specified under the Companies Act, 1956 shall be deemed to be the accounting standards until accounting standards are specified by the Central Government under section 133.
- b) Till the National Financial Reporting Authority* is constituted under section 132 of the Act, the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India in consultation with and after
- c) examination of the recommendations made by the National Advisory Committee on Accounting Standards constituted under section 210A of the Companies Act, 1956.

Further, in exercise of the powers conferred by section 133, the Central Government in consultation with the National Advisory Committee on Accounting Standards prescribed that Companies (Accounting Standards) Rules, 2006 and the Companies (Indian Accounting Standards) Rules, 2015 may be followed. *The Central Government hereby appoints the 1st October 2018 as the date of constitution of National Financial Reporting Authority.

3. **Alter or Alteration** includes the making of additions, omissions and substitutions;

4. **Articles means**- the articles of association of a company as **originally** framed, or

- a) as altered from **time to time**, or
- b) applied in pursuance of any **previous company law**, or
- c) applied in pursuance of this Act;

6 **Associate company**, in relation to another company, means a company in which that other company has a **significant influence**, but which is **not a subsidiary company** of the company having such influence and **includes a joint venture company**.

Explanation. — For the purpose of this clause, —

- a) the expression "significant influence" means control of **at least twenty per cent.** of total voting power, or control of or participation in business decisions under an agreement;

b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

Vide Circular dated 25/06/2014 it has been clarified that the shares held by a company in another company in a fiduciary capacity (a fiduciary is a person who holds a legal or ethical relationship of trust with one of more parties (persons or group of persons. Typically, a fiduciary prudently takes care of money or other assets for another person) shall not be counted for the purpose of determining the relationship of associate company

7. **Auditing standards** means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143.
8. **Authorised capital or Nominal capital** means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;
9. **Board of Directors or Board**, in relation to a company, means the collective body of the directors of the company;
10. **Body corporate or Corporation** includes a company incorporated outside India, but does not include—
- a) co-operative society registered under any law relating to cooperative societies; and
 - b) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf
11. **Book and Paper and Book or Paper** include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;
13. **Books of account** includes records maintained in respect of—
- a) **all sums of money received and expended by a company** and matters in relation to which the receipts and expenditure take place;
 - b) **all sales and purchases of goods and services by the company;**
 - c) **the assets and liabilities** of the company; and
 - d) **the items of cost** as may be prescribed under section 1482 in the case of a company which belongs to any class of companies specified.
14. **Branch office**, in relation to a company, means any establishment described as such by the company;



- 15. Called-up capital** means such part of the capital, which has been called for
- 16. Charge** means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage;
- 17. Chartered Accountant** means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;
- 18. Chief Executive Officer (CEO)** means an officer of a company, who has been designated as such by it;
- 19. Chief Financial Officer (CFO)** means a person appointed as the Chief Financial Officer of a company; These definitions of CEO & CFO should be read with section 2(51) and 203 which deals with the definition and appointment of Key Managerial Personnel (KMP) of the Companies Act, 2013.
- 20. Company** means a company incorporated under this Act or under any previous company law.
- 21. Company limited by guarantee** means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;
- 22. Company limited by shares** means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.
- 23. Contributory** means a person liable to contribute towards the assets of the company in the event of its being wound up.
- Explanation:** For the purpose of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory.
- 27. Control** shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner; It is an inclusive definition and relevant for the provisions relating to subsidiary and holding companies.
- 30. Debenture** includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not; Provided that— (a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and (b) such

other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company, shall not be treated as debenture;

34. Director means a director appointed to the Board of a company;

35. Dividend includes any interim dividend;

36. Document includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;

37. Employees' stock option means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price;

38. Expert includes an engineer, a valuer, a Chartered Accountant, a Company Secretary, a Cost Accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;

40. Financial statement in relation to a company, includes—

- a) a balance sheet as at the end of the financial year;
- b) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- c) cash flow statement for the financial year;
- d) a statement of changes in equity, if applicable; and
- e) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.

EXEMPTIONS

For private companies, the proviso to section 2(40) shall be read as follows:

"Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement;

Explanation. - For the purposes of this Act, the term "start-up" or "start-up company" means a private company incorporated under the Companies Act, 2013 or the Companies Act, 1956 and recognised as start-up in accordance with the notification issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry".

The exceptions, modifications and adaptations shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.

41. Financial year, in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up

Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.

43. Free reserves mean such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend: Provided that—

- a) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
- b) any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves;

44. Global Depository Receipt means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts.

45. Government company means any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company; 5

Explanation. - For the purposes of this clause, the "paid-up share capital" shall be construed as "total voting power", where shares with differential

Example: X Industries Ltd. is a company in which 25% of shareholding is held by Central Government; 10% shareholding is held by Government of Maharashtra and 15% shareholding is held by Central Government and Government of Rajasthan. Here, X Industries Ltd. is not a government company as there is no compliance of minimum holding of paid-up share capital i.e. at least 51 % by the Central Government, or by any State Government or Governments or partly by the Central Government and partly by one or more State Government.

46. Holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies

Explanation. - For the purposes of this clause, the expression "company" includes any body corporate.

For meaning of "subsidiary company" refer the definition given in section 2(87) of the Companies Act, 2013.

50. Issued capital means such capital as the company issues from time to time for subscription;

51. Key Managerial Personnel, in relation to a company, means—

- a) the Chief Executive Officer or the managing director or the manager;
- b) the company secretary
- c) the whole-time director;
- d) the Chief Financial Officer;
- e) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
- f) such other officer as may be prescribed;



Note: However, till now no other officer has been prescribed.

52. Listed company means a company which has any of its securities listed on any recognised stock exchange;

Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies

According to rule 2A of the Companies (Specification of definitions details) Rules, 20146, the following classes of companies shall not be considered as listed companies, namely: -

- a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their -
 - i) non-convertible debt securities issued on private placement basis in terms of SEBI.
 - ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI
 - iii) both categories of (i) and (ii) above.
- b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;
- c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.

53. Manager means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;

54. Managing Director means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

Explanation. — For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as:

- i) the power to affix the common seal of the company to any document or
- ii) to draw and endorse any cheque on the account of the company in any bank or
- iii) to draw and endorse any negotiable instrument or
- iv) to sign any certificate of share or to direct registration of transfer of any share,

shall not be deemed to be included within the substantial powers of management;

Explanation. - For any individual to be called as managing director, an individual shall first be a director duly appointed by the Company under the provisions of the Companies Act, 2013. This also

implies that an individual who is not a director in the company cannot be appointed as Managing Director of that company.

55. Member, in relation to a company, means—

- a) **the subscriber to the memorandum** of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;
- b) **every other person who agrees in writing to become a member of the company** and whose name is entered in the register of members of the company;
- c) **every person holding shares of the company** and whose name is entered as a beneficial owner in the records of a depository;

56. Memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act;

57. Net worth means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;

Example: The statutory auditors of a company were required to issue a certificate on the net

Note: As per sec 2(57) of the Companies Act 2013, any reserves created out of revaluation of assets doesn't form part of net worth. The company fair valued its property, plant and equipment and took that to retained earnings.

Even if the company has taken the fair valuation to the retained earnings in its books of accounts, the resultant credit in reserves (by whatever name called) would be in the category of 'reserves created out of revaluation of assets' which is specifically excluded in the definition of 'net worth' in section 2 (57) and hence should be excluded by the company.

Further the auditors should also consider the matter related to accounting of this reserve separately at the time of audit of books of accounts of the company

worth of the company as per the requirement of the management as on 30th September 2020 computed as per the provision of section 2(57) of the Companies Act, 2013. The company had fair valued its property, plant and equipment in the current year which was mistakenly taken into retained earnings of the company in its books of accounts. Advise whether this fair valuation would be covered in the net worth of the company as per legal requirements.

58. Notification means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

59. Officer includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;

60. Officer who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely: –

- a) whole-time director (WTD);
- b) key managerial personnel (KMP);
- c) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
- d) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
- e) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
- f) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
- g) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

Example: In a company, a default was committed with respect to the allotment of shares by the officers. In company there were no managing director, whole time director, a manager, secretary, a person charged by the Board with the responsibility of complying with the provisions of the Act, and neither any director/directors specified by the board. Therefore, in such situation, all the directors of the company may be treated as officers in default.

62. One Person Company means a company which has only one person as a member;

63. Ordinary or special resolution means an ordinary resolution, or as the case may be, special resolution referred to in section 114 (Ordinary and Special Resolution);

64. Paid-up share capital or share capital paid-up means as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;

65. Postal ballot means voting by post or through any electronic mode; This definition is related to section 110 to be read with Rule 22 of the Companies (Management and Administration) Rules, 2014 specifying the procedure to be followed for conducting of business through postal ballot and provides the list of items of business which should be transacted only by means of voting through a postal ballot.

66. Prescribed means prescribed by rules made under this Act;

68. Private company means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, —

- a) restricts the right to transfer its shares;
- b) except in case of One Person Company, limits the number of its members to two hundred: Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

- i) persons who are in the employment of the company; and
- ii) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
- c. prohibits any invitation to the public to subscribe for any securities of the company.

The requirement of having a minimum paid up share capital shall not apply to a section 8 company (Formation of companies with charitable objects, etc.) vide notification dated 5th June 2015. The above-mentioned exemption shall be applicable to a section 8 company which has not committed a default in filing its financial statements under section 137 of the Companies Act, 2013, or annual return under section 92 of the said Act with Registrar. [Vide amendment notification G.S.R. 584(E) dated 13th June 2017.]

69. Promoter means a person—

- a) who has been **named as such in a prospectus** or is identified by the company in the annual return referred to in section 92, or

- b) who has **control over the affairs of the company**, directly or indirectly whether as a shareholder, director or otherwise; or
- c) in accordance with whose **advice, directions or instructions** the Board of Directors of the company is accustomed to act:
 Provided that nothing in sub-clause shall apply to a person who is acting merely in a professional capacity.

70. Prospectus means any document described or issued as a prospectus and includes a red herring prospectus or shelf prospectus or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate;

71. Public company means a company which

- a) is not a private company; and
 b) has a minimum paid-up share capital as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles;

Example: A Pvt. Ltd. is wholly owned subsidiary of AB Ltd., a public company incorporated under the Companies Act, 2013. A Pvt. Ltd. wanted to avail exemptions as provided to private companies. In this case, since A Pvt. Ltd. is subsidiary of AB Ltd., which is a public company, therefore A Pvt. Ltd. will be deemed to be a public company and will be not allowed to avail exemptions provided to a private company.

The requirement of having a minimum paid up share capital shall not apply to a section 8 company vide notification dated 5th June 2015

74. Register of companies means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act



75. Registrar means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act;

76. Related party, with reference to a company, means—

- a) a **director** or his relative;
 b) **key managerial personnel** or his relative;
 c) a **firm**, in which a director, manager or his relative is a partner;

- d) **a private company** in which a director or manager or his relative is a member or director;
- e) **a public company** in which a director or manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital.
- f) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- g) any person on whose advice, directions or instructions a director or manager is accustomed to act: Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- h) any body corporate which is-
 - i) a holding, subsidiary or an associate company of such company;
 - ii) a subsidiary of a holding company to which it is also a subsidiary; or
 - iii) an investing company or the venturer of the company;

Explanation. - For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

- i) **such other person as may be prescribed;** As per Rule 3 given in the Companies (Specification of Definitions Details) Rules, 2014, for the purposes of sub-clause.
- j) of clause (76) of section 2 of the Act, **a director (other than an independent director) or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.**

Example: XYZ Pvt. Ltd. has two subsidiary companies, Y Pvt. Ltd. and Z Pvt. Ltd. Here as per the section 2(76)(viii)(B), Y Pvt. Ltd and Z Pvt. Ltd. are related parties. However, as per the Notification No. G.S.R. 464(E) dated 5th June, 2015, clause (viii) shall not apply with respect to section 188 to a private company. Therefore Y Pvt. Ltd and Z Pvt. Ltd are not related parties for the purpose of section 188. However, if Y Pvt. Ltd and Z Pvt. Ltd. have common directors, then they will be deemed to be related parties because of section 2(76)(iv).

Example: Now suppose, XYZ Ltd. a public company, has two subsidiary companies, Y Pvt. Ltd and Z Pvt. Ltd. Here as per section 2(71), a private company which is a subsidiary of a public company will be deemed to be a public company, so Y Pvt. Ltd and Z Pvt. Ltd will not be eligible to avail exemption under the Notification No. G.S.R. 464(E) dated 5th June, 2015. Therefore, as per section 2(76)(viii)(B), Y Pvt. Ltd and Z Pvt. Ltd are related parties. In addition, XYZ Ltd. will also be related Party to Y Pvt. Ltd and Z Pvt. Ltd.

77 Relative, with reference to any person, means anyone who is related to another, if—

- a) they are members of a Hindu Undivided Family;

- b) they are husband and wife; or
- c) one person is related to the other in such manner as may be prescribed.

According to Rule 4, List of Relatives:

- i) 1 "Father" includes step-father
- ii) 2 "Mother" includes the step-mother
- iii) 3 " Son" includes the step-son
- iv) 4 Son's wife.
- v) 5 Daughter.
- vi) 6" Daughter's" husband.
- vii) 7 "Brother" includes the step-brother.
- viii) 8 "Sister" includes the step-sister.

78. Remuneration means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income Tax Act, 1961

84. Share means a share in the share capital of a company and includes stock;

85. Small company means a company, other than a public company, —

- a) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- b) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to—7

- i) a holding company or a subsidiary company;
- ii) a company registered under section 8; or
- iii) a company or body corporate governed by any special Act.

As per the Companies (Specification of Definitions Details) Rules, 2014, for the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the **small company shall not exceed rupees four crore and rupees forty crore respectively.**

Example: H Ltd. is the holding company of S Pvt. Ltd. As per the last profit and loss account for the year ending 31st March, 2023 of S Pvt. Ltd., its turnover was to the extent of ` 1.50 crores; and paid up share capital was ` 40 lacs. Since S Pvt. Ltd., as per the turnover and paid up share capital norms, qualifies for the status of a 'small company' it wants to be categorized as 'small company'. S Pvt. Ltd. cannot be categorized as a 'small company' because it is the subsidiary of another company (H Ltd.). [Proviso to section 2(85)].

86. Subscribed capital means such part of the capital which is for the time being subscribed by the members of a company;

87. Subsidiary company or Subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company—

- a) controls the composition of the Board of Directors; or
- b) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation—For the purposes of this clause, —

- a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- c) the expression "company" includes any body corporate;
- d) "layer" in relation to a holding company means its subsidiary or subsidiaries;

88. Sweat equity shares means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;

89. Total voting power, in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes;



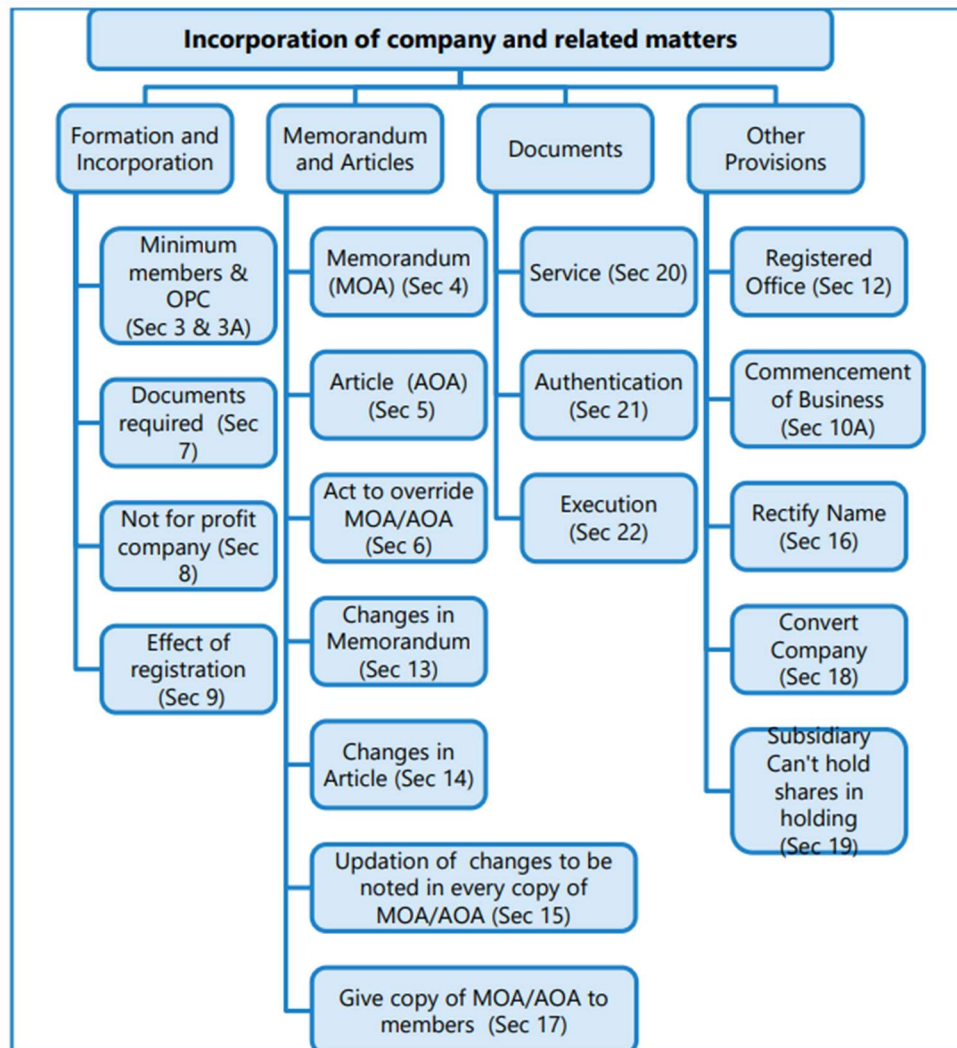
90. Tribunal means the National Company Law Tribunal constituted under section 408;

91. Turnover means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year;

Ch. 3 U2:

Incorporation of Co. & matters incidental thereto

CHAPTER OVERVIEW



1. INTRODUCTION TO INCORPORATION OF COMPANIES & PROMOTOR

A company is a separate legal entity from its members. It has perpetual succession and can be incorporated only for lawful purposes. Prior to incorporation, promotion activities are essential. Promotion signifies a number of business operations familiar to the commercial world by which a company is brought into existence.

Persons who undertake promotion activities in order to incorporate the company are generally known as promoters.

Promoter is one who undertakes to form a company with reference to a given project, and to set it going, and who takes the necessary steps to accomplish that purpose. To be a promoter, one need not necessarily be associated with the initial formation of the company; one who subsequently helps to arrange floating of its capital will equally be regarded as a promoter. Hence, "promoter" denotes any individual, association, partnership or a company that takes all the necessary steps to incorporate (create and mould) a company and set it going, in a fiduciary position.

Illustration (True/False)

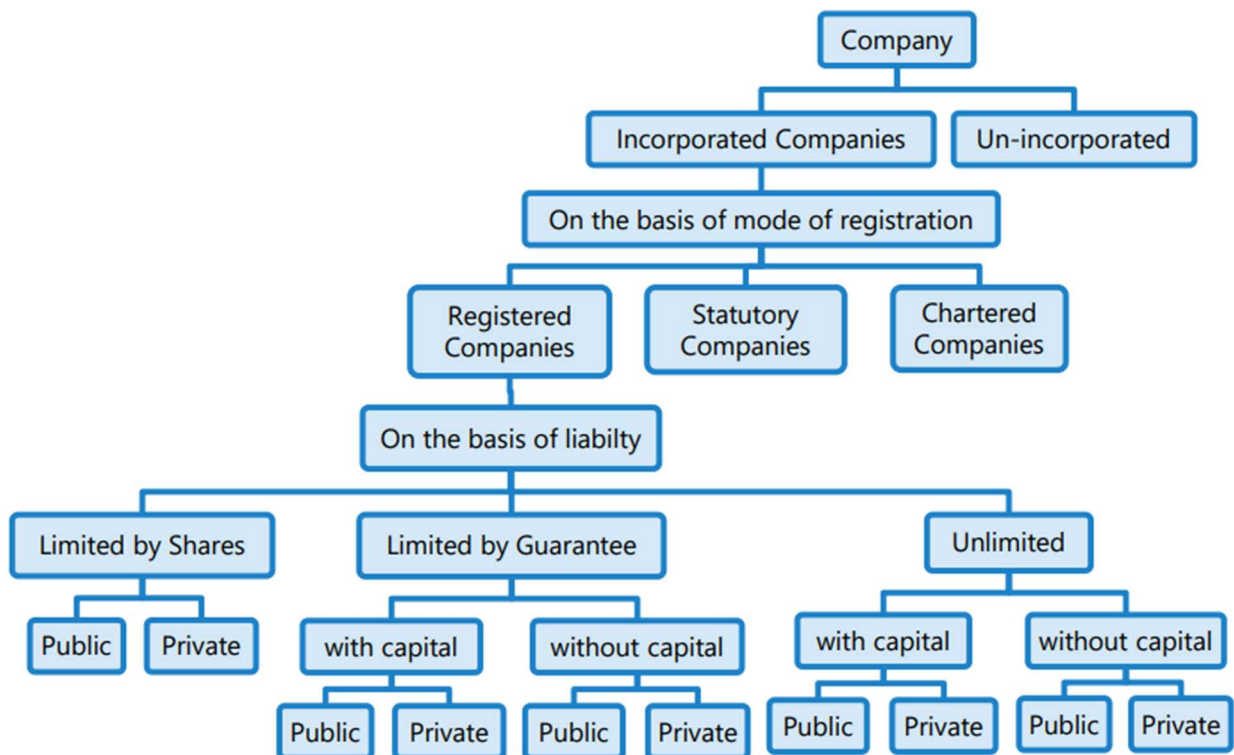
Statement - To be a promoter one necessarily be associated with the initial formation of the company.

Answer - False, one who subsequently helps company to keep going, raise fund & advice to board (other than in professional capacity) will equally be regarded as a promoter.

2. FORMATION OF COMPANY [SECTION 3]

Section 3 of the Act deals with registered companies.

a) FORMS OF COMPANIES



Sec 3(1) provides that for lawful purpose, by subscribing their name to memorandum and complying with requirement of this Act;

- i) A public company may be formed by seven (7) or more persons
- ii) A private company may be formed by two (2) or more persons
- iii) A one person company (as private company) may be formed by one (1) person.

Sec 3 (2) provides that, company formed as specified above may be incorporated either as;

- i) Companies limited by shares; or
- ii) Companies limited by guarantee; or
- iii) Unlimited liability companies.

b) ONE PERSON COMPANY (OPC)

The Companies Act, 2013 for the first time allowed the formation of company by just one person with limited liability, called one person company; such a company is described as a private company under section 3(1)(c).

Who can form one person company?

Only a natural person, other than minor; who is an Indian citizen and whether resident in India or otherwise shall be eligible to incorporate a One Person Company. Resident in India means a person who has stayed in India for a period of not less than one hundred and twenty days during the immediately preceding financial year.

OPC can't be incorporated or converted into a company under section 8 of the Act. Further, OPC can't carry out Non-Banking Financial Investment activities including investment in securities of any body-corporates.

Indicate Name & Consent Nominee

The memorandum of One Person Company shall also indicate the name of the natural person, other than minor; who is an Indian citizen, whether resident in India or otherwise (as nominee), along with his prior written consent in the Form No. INC-3, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company.

Note: This provision is to ensure perpetual succession of legal existence of OP

Form No. INC-32 (SPICe) along with consent of such nominee obtained in Form No. INC-3 and fee shall be filed with the registrar.

Where a natural person, being member in One Person Company in accordance with this rule becomes a member in another such Company by virtue of his being a nominee in that One Person Company, such person shall meet the above specified criteria (can be member of only one OPC) within a period of one hundred and eighty days.

Withdraw of Consent by Nominee

Such other person (nominee) **may withdraw** his consent by giving a notice in writing to such sole member and to the One Person Company.

In this case, the sole member shall nominate another person as nominee within **fifteen days** of the receipt of the notice of withdrawal and shall send an intimation of such nomination in writing to the Company, along with the written consent of such other person so nominated in Form No. INC-3.

Replacing Nominee with another

The member **may change** the name of the person nominated by him at any time for **any reason** including in case of death or incapacity to contract of nominee and nominate another person (new nominee) after obtaining the prior consent of such another person in Form No. INC-3.

Member can do so by prior intimation in writing to the company. Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

Example - Rajesh has formed a 'One Person Company (OPC), wherein his wife Roopali is named as nominee. For the last two years, his wife Roopali is suffering from terminal illness and due to this hard fact, he wants to change her as nominee. He has a trusted and experienced friend Ramnivas who could be made nominee or his (Rajesh) son Rakshak who is of seventeen years of age. In the instant case, Rajesh can appoint his friend Ramnivas as nominee in his OPC and not Rakshak because Rakshak is a minor.

When Nominee become Member

Where the sole member ceases to be the member and nominee become new member, then such new member shall nominate within fifteen days of becoming member, a person (new nominee) who shall in the event of his death or his incapacity to contract become the member of such company.

Notice of change to Registrar

the company within thirty days of receipt of notice of withdrawal of consent by nominee, intimation of change of nominee from member, or cessation; shall file the notice with the Registrar of such withdrawal of consent, change or cessation respectively and intimate the name of such another person (new nominee) in Form No. INC-4 along with the fee.

Additional reading

Relaxations available to an OPC include

- i) No cash-flow statement
- ii) annual return can be signed by the Director and not necessarily a Company Secretary,
- iii) if one director signs the audited financial statements and abridged form of director report may be prescribed.
- iv) Holding annual general meeting as required under section 96 is not necessary in case of OPC. Moreover, certain specific provisions related to general meetings and extraordinary general meetings, specified under sections 100 to 111 not applicable to OPC.
- v) Even relaxation is also there in convening board meetings section 173 requires an OPC to hold only one meeting of the Board of Directors in each half of a calendar year.
- vi) Vide section 137, the OPC are allowed to file financial statements within six months

3. MEMBERS SEVERALLY LIABLE IN CERTAIN CASES i.e. REDUCTION IN MINIMUM MEMBERSHIP [SECTION 3A]

The members are jointly liable for the debt of company, but they shall be severally liable for the payment of the debts of the company and may be severally sued therefore; if at any time:

- The number of members of a company is reduced below **seven (7)** and **two (2)** in case of a public and private company, respectively; and
- Such company carries on business for **more than six months** with reduced number of members; and
- Every such person who carries on business after those six months is cognizant (aware) of the fact that business is carried reduced members

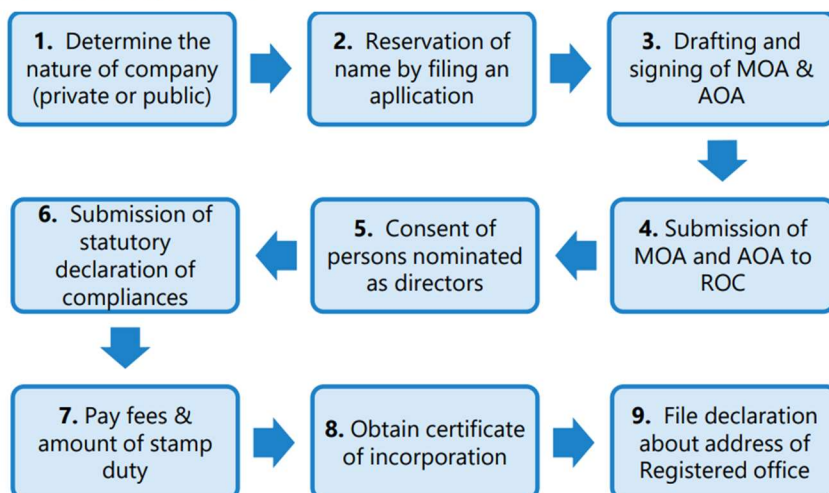
Such members are liable for the payment of the whole debts of the company contracted during that time (after elapse of six months)

Example - Amar, Akbar, and Anthony along with five of their friends were member of Harmony Limited. Amar and Akbar died on 18th August 2022, resultantly members count reduced to 6 and every one aware about it. Harmony limited continued its operation without increasing members. In March 2023, Company took loan for business operations, and defaulted in payment thereof. The lender of such loan can sue company, or Anthony or any of rest of five friends, because members shall severally liable for said loan in given case.

4. INCORPORATION OF COMPANY [SECTION 7]

Section 7 of the Act provides for the procedure to be followed for incorporation of a company.

Steps for Incorporation



a) FILING OF THE DOCUMENTS AND INFORMATION WITH THE REGISTRAR [SUB-SECTION 1]

An **application** for registration of a company shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in **SPICe+** (Simplified Proforma for Incorporating company Electronically Plus: **INC- 32**) **along with the fee** accompanied by following documents and information

The duly signed memorandum of association and articles of association

The memorandum (e-MOA in Form No. INC-33) and article (e-AOA in Form No. INC-34) of company so furnished shall be duly signed by all the subscribers to the memorandum in the manner prescribed by rule 13 of the Companies (Incorporation) Rules, 2014 as stated below:

- i) Each subscriber shall add his name, address, description & occupation, if any, in the presence of at least one witness who shall attest the signature, shall sign and add his name, address, description and occupation, if any.
- ii) Where a subscriber is illiterate, he shall affix his thumb impression or mark which shall be described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark and authenticate it by his own signature and he shall also write against the name of the subscriber, the number of shares taken by him.
- iii) Where the subscriber is a body corporate, the memorandum and articles of association shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors.
- iv) Where the subscriber is a Limited Liability Partnership, it shall be signed by a partner of the Limited Liability Partnership, duly authorized by a resolution approved by all the partners of the Limited Liability Partnership:

Note: In either case c or d stated above, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of Association

- v) Where subscriber to the memorandum is a foreign national residing outside India his signatures and address on the memorandum and articles of association and proof of identity shall be **notarized by a Notary (Public)** with a certificate. Further, if such person residing in a country outside the Commonwealth or which is not a party to the Hague Apostille Convention, 1961, the certificate of the Notary (Public) shall be **authenticated by a Diplomatic or Consular Officer**.
- vi) Where subscriber to the memorandum is a foreign national residing outside India and visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa. In case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa shall not be applicable

Declaration of Compliance by Professional & Director, Manager or Secretary of company

A declaration that all the requirements of this Act and the rules made thereunder by:

- i) an advocate, a chartered accountant, cost accountant or company secretary in practice who is engaged in the formation of the company and
- ii) a person named in the articles as director, manager or secretary of the company.

Declaration by subscribers to the memorandum and persons named as the first directors

A declaration in Form No. INC-9 from each of the subscribers to the memorandum and from persons named as the first directors (if any) in the articles, stating that all the documents filed with the Registrar for registration of the company contain information that is **correct and complete** and **true** to the best of his knowledge and belief

- i) He is **not convicted** of any **offence** in connection with the promotion, formation or management of any company, or
- ii) He has **not been found guilty** of any **fraud or misfeasance** or of any **breach of duty** to any company under this Act or any previous company law during the last five years.

Address for correspondence

The address for correspondence till its registered office is established.

Particulars of persons named as the first directors

The particulars i.e. name, including surname or family name, the Director Identification Number (DIN), residential address, nationality and such other particulars including proof of identity of each person mentioned in the articles as first director of the company and **his interest** in other firms or bodies corporate along with **his consent** (Form No. DIR-2) to act as director of the company shall be filed in Form No. DIR-12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

Particulars of subscribers to the memorandum

The following particulars of every subscriber to the memorandum shall be filled;

- i) Name (including surname or family name) and recent Photograph affixed
- ii) Father's/Mother's name
- iii) Nationality, Proof of nationality in case the subscriber is a foreign national

- iv) Date and Place of Birth (District and State)
- v) Educational qualification and Occupation
- vi) Permanent Account Number
- vii) Email id and Phone number of Subscriber h. Permanent residential address and also Present address
- viii) Residential proof such as Bank Statement, Electricity Bill, Telephone / Mobile Bill, provided that Bank statement Electricity bill, Telephone or Mobile bill shall not be more than two months old.
- ix) Proof of Identity (For Indian Nationals - Voter's identity card, Passport copy, Driving License copy, Unique Identification Number (UIN) & for Foreign nationals and Non-Resident Indians - Passport)
- x) If the subscriber is already a director or promoter of a company(s), the particulars relating to name of the company; Corporate Identity Number;

Whether interested as a director or promoter Where the subscriber to the memorandum is a body corporate, then the following particulars shall be filed with the Registrar⁷

- i) The name of the body corporate and Corporate Identity Number of the Company or Registration number of the body corporate, if any
- ii) GLN, if any
- iii) The registered office address or principal place of business
- iv) E-mail Id
- v) If the body corporate is a company, certified true copy of the board resolution specifying inter alia the authorization to subscribe to the MOA
- vi) If the body corporate is a LLP or partnership firm, certified true copy of the resolution agreed to by all the partners specifying inter alia the authorization to subscribe to the MOA
- vii) In case of foreign bodies corporate, the details relating to the copy of certificate of incorporation of the foreign body corporate; & the registered office address.

As per rule 12 of the Companies (Incorporation) Rules, 2014

In case any of the objects of a company requires registration or approval from sectoral regulators such as the RBI and SEBI, then such registration or approval shall be obtained by the proposed

company before pursuing such objects and a declaration in this behalf shall be submitted at the stage of incorporation.

In case of a Company being incorporated as a Nidhi, the declaration by the Central Government under Section 406 of the Act shall be obtained by the Nidhi before commencing the business and a declaration in this behalf shall be submitted at the stage of incorporation by the Company

b) ISSUE OF CERTIFICATE OF INCORPORATION ON REGISTRATION

The Registrar shall issue a certificate of incorporation in the Form No. INC-11 to the effect that the proposed company is incorporated under this Act. Certificate of Incorporation shall mention permanent account number of the company where if it is issued by the Income-tax Department.

Earlier, the certificate of incorporation considered as conclusive proof, but as per the Companies Act, 2013, certificate of Incorporation is not conclusive proof of everything prior to incorporation being in order.

c) ALLOTMENT OF CORPORATE IDENTITY NUMBER (CIN)

On and from the date mentioned in the certificate of incorporation, the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate of incorporation.

CIN is a 21 alpha-numeric digit based unique identification number, comprising data sections/elements that reveals the basis aspects about company.

Example - Decode the CIN

CIN of **Infosys Limited** is **L85110KA1981PLC013115**

The first character - **L** (reveals listing status, L for listed and U for unlisted, for instance Infosys is Listed one)

The next five digits - **85110**

The next two letters - **KA** (reveals the Indian state where the company is registered, for

for instance, KA is for Karnataka)

The next four digits - **1981** (reveals the year of incorporation of a company)

The next three characters - **PLC** (reveals the company classification - PLC for public, PTC for private, FTC for foreign, and GOI for government)

The last six digits - **013115** (reveals registration number with concerned ROC)

d) MAINTENANCE OF COPIES OF ALL DOCUMENTS AND INFORMATION

The company shall maintain and preserve copies of all the documents and information as originally filed at its registered office, till its dissolution under this Act.

e) FURNISHING OF FALSE OR INCORRECT INFORMATION OR SUPPRESSION OF MATERIAL FACT AT THE TIME OF INCORPORATION (I.E. DURING INCORPORATION PROCESS)

If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action for fraud under section 447.

f) COMPANY ALREADY INCORPORATED BY FURNISHING ANY FALSE OR INCORRECT INFORMATION OR REPRESENTATION OR BY SUPPRESSING ANY MATERIAL FACT (i.e. POST INCORPORATION)

Where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by

- i) furnishing any false or incorrect information or representation or
- ii) by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or
- iii) by any fraudulent action,

Then, the promoters, the persons named as the first directors of the company and the persons making declaration under this section shall each be liable for action for fraud under section 447.

g) ORDER OF THE TRIBUNAL

- i) Where a company has been got incorporated by
- ii) furnishing **false or incorrect information** or representation, or
- iii) by **suppressing any material fact** or information in any of the documents or declaration filed or made for incorporating such company or
- iv) by any **fraudulent action**,

Then, **the tribunal (NCLT)** on being satisfied that the situation so warrants, in response to an application made to it, may pass order as it may deem fit including

- i) **regulation of the management** of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
- ii) direct that liability of the members shall **be unlimited**; or
- iii) direct **removal of the name** of the company from the register of companies; or d. winding up of the company;
- iv) winding up of the company;

Provided that before making any such order:

- i) The company shall be given a reasonable opportunity of being heard in the matter; and
- ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations if any, contracted or payment of any liability.

4. FORMATION OF COMPANIES WITH CHARITABLE OBJECTS, ETC. [SECTION 8]

a) WHO CAN ISSUE AND GET THE LICENSE UNDER SECTION 8(1)?

As per section 8, the Central Government (ROC in its behalf) may grant such a licence if it is proved to the satisfaction that a **person** or an **association of persons** proposed to be registered under this Act as a **limited company**.

- i) has in its **objects** the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- ii) intends to apply its profits (if any) or other income in promoting its objects and,
- iii) intends to **prohibit payment** of any dividend to its members

Note:

- i) OPC cannot be incorporated as Sec (8) company.
- ii) a small company cannot be incorporated or converted into a section 8 company.
- iii) A firm may be a member of the company registered under section 8.
- iv) Despite, members liability is limited, the words 'Limited' or 'Private Limited' shall not be added to its name. But on registration, the company shall enjoy same privileges and obligations as of a limited company.
- v) Licence issued may on such conditions as Central Government (ROC) deems fit.

b) REGISTRATION OF COMPANY USING LICENSE

Application for registration

A person or an association of persons desirous of incorporating a company with limited liability under section 8(1), shall make an application to registrar in Form **SPICe+** (Simplified Proforma for Incorporating company Electronically Plus: INC32) along with the fee.

Supporting document along with Application

The application furnished as specified above shall be accompanied by the following documents:

- i) The memorandum and articles of association of the proposed company in the Form No. INC-13 and Form No. INC-31, respectively;
- ii) An estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;
- iii) The declaration in by an Advocate, a Chartered Accountant, cost accountant or Company Secretary in practice Form No. INC-14 and by each of the persons making the application in Form No. INC-15, that:
 - the memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and
 - all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;

c) ALTERATION OF MEMORANDUM AND ARTICLES REQUIRES PRIOR PERMISSION OF GOVERNMENT

A company registered under this section requires prior permission from:

- i) Central Government (power delegated to **regional directors**) for alteration of its **memorandum** and
- ii) Central Government (power delegated to **ROCs**) for alteration of its **articles**.

d) CONVERSION INTO ANY OTHER KIND OF COMPANY

A company registered under this section may convert itself into company of any other kind prescribed below:

- i) A company shall pass a **special resolution** at a general meeting for approving such conversion
- ii) An **explanatory statement** to notice of such general meeting must set-out the details on reason of such conversion.
- iii) The company shall file an application in Form No. INC-18 with the **Regional Director** with the fee along with a certified true copy of the special resolution and a copy of the Notice convening the meeting including the explanatory statement for approval for conversion. Also attach the proof of serving of the notice served **by registered post or hand delivery**, to:
 - the Chief Commissioner of Income Tax having jurisdiction over the company,
 - Income Tax Officer who has jurisdiction over the company,
 - the Charity Commissioner,
 - the Chief Secretary of the State in which the registered office of the company is situated,
 - any organisation or Department of the Central Government or State Government or other authority under whose jurisdiction the company has been operating.
- iv) A **copy** of the application with annexures as filed with the Regional Director shall also be **filed with the Registrar**.
- v) The company shall, within a week from the date of submitting the application to the Regional Director, **publish a notice** at its own expense, and a copy of the notice, as published, shall be sent forthwith to the Regional Director and the said notice shall be in Form No. INC-19 and shall be published:
 - **at least once in a vernacular newspaper** in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once **in English language** in an English newspaper having a wide circulation in that district; and
 - on the **website of the company**, if any, and as may be notified or directed by the Central Government
- vi) The company should have filed all its **financial statements and Annual Returns** upto the financial year preceding the submission of the application to the Regional Director and all other returns required to be filed under the Act up to the date of submitting the application to the Regional Director.
- vii) On receipt of the application, and on being satisfied, the Regional Director shall issue an order **approving the conversion of the company** into a company of any other kind subject to **such terms and conditions** as may be imposed in the facts and circumstances of each case.

viii) Before imposing the conditions or rejecting the application, the company shall be given a reasonable **opportunity of being heard** by the Regional Director

ix) On receipt of the approval of the Regional Director, the company shall convene a **general meeting** of its members to pass a **special resolution** for amending its **memorandum of association** and articles of association and the Company shall thereafter **file these with the Registrar** (with declaration to adhere conditions if any, imposed by Regional Director)

x) On receipt of the documents referred above, the Registrar shall register the documents and **issue the fresh Certificate of Incorporation**

e) REVOCATION OF LICENSE

i) The Central Government (power delegated to regional director) may by order revoke the licence of the company where;

- the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or
- the affairs of the company are conducted fraudulently, or in violation of the objects of the company or prejudicial to public interest, before such revocation a written notice must be served on such company and opportunity to be heard in the matter shall be given.

ii) Where a licence is revoked and the Central Government is satisfied, that it is essential in the public interest; then after giving a reasonable opportunity of being heard; by order it may direct that

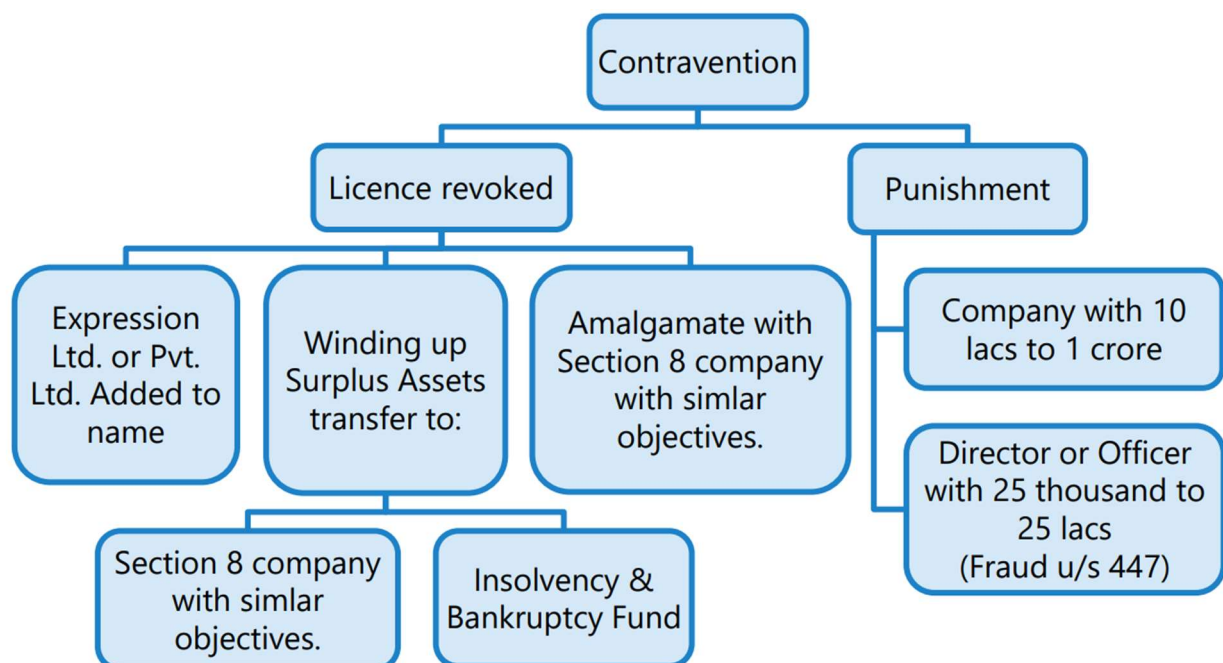
- Company be **wound up** under this Act. **Excess assets** on the winding up or dissolution, after the satisfaction of its debts and liabilities, may be transferred to;
- **Another company** registered under this section and **having similar objects**, subject to such **conditions** as the Tribunal may impose, or
- **May be sold and proceeds thereof credited to the Insolvency and Bankruptcy Fund** formed under section 224 of the Insolvency and Bankruptcy Code, 2016.
- Company be **amalgamated** with another company registered under this section and **having similar objects**. The Central Government empowered with **overriding effects to provide the said amalgamation** to form single entity with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order

f) PENALTY/ PUNISHMENT IN CONTRAVENTION

Penalty for offences under section 8 are summarised below:

Offence	Penalty
company makes any default in complying with any of the requirements laid down in this section	company shall, be punishable with fine varying from ten lakh rupees to one crore rupees directors and every officer of the company who is in default shall be punishable with fine varying from twenty-five thousand rupees to twenty-five lakh rupees
the affairs of the company were conducted fraudulently	every officer in default shall be liable for action under section 447

g) FIGURE- SUMMARY OF SUB-SECTION 6 TO 11 OF SECTION



Additional reading

Relaxations available to a Section 8 Company include

- i) Can call its general meeting by giving a clear 14 days' notice instead of 21 days.
- ii) Requirement of minimum number of directors, independent directors etc. does not apply.
- iii) Need not constitute Nomination and Remuneration Committee and Shareholders Relationship Committee.

6. EFFECT OF REGISTRATION [SECTION 9]