

COMPANIES ACT,2013

Advocate Arun Saxena

Saxena & Saxena Law Chambers Law Chambers

Advocates & Attorneys

603-604, New Delhi House

27, Barakhamba Road, New Delhi – 110 001.

Mob.: 9810037364

E-mail : advisor@sslclegal.in

INCORPORATION

Class of the Companies

3

- One person company
- Private limited company
- Public limited company

One Person Company :Section 3(1)(c)

4

- Only natural person and Indian citizen and resident is eligible.
- A company which has only one person as member.
- OPC shall be private company.
- MOA to indicate the name of the person who shall become member in case of death or his incapacity to contract.
- Consent of that person to be filed with ROC.
- Other person can withdraw his consent any time.
- Member can change the name of other person at any time.
- "One person company" has to be mentioned in (bracket) below the name of company.

One Person Company [Section 3(1)(c)]

5

Rule 3 :

- No person shall be entitled to incorporate more than 1 OPCs.
- In case one member of OPC becomes the member in another OPC by virtue of his being nominee in that OPC. He/she shall meet the criteria of OPC in 180 days.
- OPC cannot be for Section 8 company.
- OPC cannot do the business of NBFC.

One Person Company [Section 3(1)(c)]

6

One Person company to convert into Public or Private company (within 6 months)

- When paid up capital exceeds Rs.50,00,000/-
or
- Average annual turnover exceeds Rs.2,00,00,000/- at the last day of relevant period OPC shall cease to continue as OPC.

One Person Company [Section 3(1)(c)]

7

- OPC cannot be converted into any other kind of company unless:

2 years have expired after incorporation

or

Its threshold limit of capital/ turnover increased.

Conversion of private company to OPC

8

- ❖ A private limited company can be converted into OPC
- ❖ By passing Special Resolution
- ❖ And
- ❖ NOC from creditors and members

One Person Company [Section 3(1)(c)]

9

- ❖ **Procedure for conversion:**
- ❖ File S/R with ROC along with
 - a) Application (INC 6).
 - b) Declaration of Directors about turnover / capital.
 - c) List of members / creditors
 - d) Latest audited Balance Sheet.
 - e) NOC from secured creditors.

MEMORANDUM OF ASSOCIATION {Section 4(1)}

- New Companies Act, 2013 does not require the object clause in the Memorandum to be classified into:-
 - ▣ Main objects of the company
 - ▣ Objects incidental or ancillary to the attainment of main object & other object.
 - ▣ Only objects for which company is proposed to be incorporated and any matter considered necessary in furtherance thereof be mentioned in MOA.

RESERVATION OF NAME FOR PROPOSED COMPANY {Section 4(4) & 4(5)}

1. A Promoter may, on application, get reserve the name of the proposed company.
2. ROC on its satisfaction reserve the name for the period of 60 days from the date of application.
3. Similarly, existing company may apply for the reservation of name for the change of its existing name. ROC may, after satisfaction, reserve the name for 60 days.

Incorporation

12

4. In case after reservation of the name, it is found that name was got reserved by furnishing the incorrect information then:
 - a) If company has not been incorporated, the reserved name will be cancelled and person making application shall be liable to the penalty not exceeding Rs.1.00 lac.
 - b) If company has already been incorporated, ROC may, after giving the opportunity being heard, direct the company to change the name within three months; or
 - c) Make petition for winding up of company.

SPEEDY INCORPORATION OF COMPANY (Section 7)

The new companies Act, 2013 provide for the speedy incorporation process, with detailed declarations and disclosures about the promoter, directors etc. at the time of incorporation.

Where it is found that the company got incorporated by :-

Incorporation

14

1. Furnishing false or incorrect information or;
2. Representation or suppressing any material fact or the company is incorporated by fraudulent action, the Tribunal may, on an application made to it, on being satisfied.
 - a) Pass such order as it may think fit for the regulation of the management of the company including changes, if any in public interest; or
 - b) Direct that liability of the members shall be unlimited; or

Incorporation

15

- c) Direct removal of the name of the company from the register; or
- d) Pass an order for the winding up of the company; or
- e) Pass such orders as it may deem fit.

However, reasonable opportunity will be given to the company before passing any one of above orders.

FORMATION OF COMPANIES WITH CHARITABLE OBJECTS (Section 8)

- The scope of this section extends to a person or association of persons since new kind of the company OPC is introduced in the new Companies Act, 2013.
- Firm can be a member of company under this section.

FORMATION OF COMPANIES WITH CHARITABLE OBJECTS (Section 8)

In the allowable objects following objects have been included in addition to the existing objects

- a) sports,
- b) education,
- c) research,
- d) social welfare,
- e) environment protection.

Incorporation

18

Central Government, while revoking license, may order (in the interest of the public) to wound up the company or to amalgamate with other companies having some objects on the terms and conditions as may be specified.

COMMENCEMENT OF BUSINESS (section11)

Section 11 provides that the company having share capital shall not commence any business or exercise any borrowing powers unless:

- a) A declaration is filed by director with the Registrar that every subscriber to the Memorandum and has paid the value of the share agreed to be taken by him and the paid up capital of the company is not less than Rs.5.00 lacs or Rs.1.00 lac as the case may be as on the date of declaration;
- b) The company has filed with the Registrar a verification of its registered office in the manner as may be prescribed

COMMENCEMENT OF BUSINESS

(Section 11)

20

- c) In case of default in compliance company shall be liable to a penalty which may extend to Rs.25,000 and every officer in default shall be punishable with fine upto Rs.1000/- per day during which default continues.
- d) ROC is empowered to initiate action for the removal of name of the company from register, if such declaration has not been filed with the Registrar within 180 days from the date of incorporation and
- e) This section applicable to all kind of companies having share capital.

Incorporation, Management & Administration

21

RESTRICTIONS ON ALTERATION OF OBJECT CLAUSE (Section 13)

- As per Companies Act, 1956 object clause can be altered by passing special resolution and filing prescribed Form-23 with Registrar of Companies and no other approval is required.
- New Companies Act, 2013 provides in Section 13 where company has raised the money from public through prospectus and still has unutilized amount out of the money so raised, such company

- shall not change its object unless :
 - a) **Special Resolution** is passed
 - b) Details, as may be prescribed, shall also be **published in news paper** of English and of vernacular language in the city where registered office is situated.
 - c) Also, details will be placed on the **website** of the company clearly mentioning the justification of such alteration.
- The dissenting shareholders shall be given an **opportunity to exit** by the promoters and shareholders having control in accordance with the regulations specified by SEBI.

Incorporation, Management & Administration

23

Other provisions for incorporation.

- a) Provision for **entrenchment** in articles.
- b) Correspondence address till the registered office is established.
- c) The registered office shall be established within 15 days from its incorporation.
- d) **Affidavit** of each subscriber is required.
- e) Company has to maintain **original record** or document till its winding up.
- f) **CIN no.** is mandatory to be printed on the letter head, bills and on correspondence material.

Amendment Rules 2015

24

Rule 16

Now signature of the subscribers shall be self-attested instead of attestation by the bank (INC 10)

Rule 36 (new rule)

Incorporation of the company through single integrated form (INC 29)

Applicable : 1st May 2015

Applicable for : OPC, Private company,
Limited company, Producer co.

Amendment Rules 2015

25

Rule 36 (new rule)

Inclusion:

- ▣ DIN for maximum 3 directors
- ▣ Reservation of name
- ▣ Incorporation of the company
- ▣ Appointment of Directors

Amendment Rules 2015

26

Only one name shall be proposed in this form:-

MOA (INC – 30)

AOA (INC – 31)

Fee: Rs. 2000/- plus registration fees (as applicable)

Filing of form with ROC, opportunity for removal of deficiencies

- 1) 15 days
- 2) Another 15 days
- 3) Thereafter form will be rejected



THANK YOU