

# INCORPORATION OF COMPANIES

Companies act 2013

# KINDS OF COMPANIES

- ◉ Public Company
- ◉ Private Company
- ◉ One Person Company(OPC)
- ◉ Dormant Company
- ◉ Sec 8 Companies
- ◉ Foreign company

# PRIVATE COMPANY

- ⦿ A company which has minimum paid up share capital of Rs.1,00,000 or higher
- ⦿ Restrict transfer of shares
- ⦿ Limit the maximum number of members to 200
- ⦿ Prohibit invitation to public to subscribe the shares
- ⦿ Can accept deposit

# PUBLIC COMPANY

- Company not a private company
- Having paid up share capital of Rs.5,00,000
- A private company which is a subsidiary of a public company

# ONE PERSON COMPANY(OPC)

- ◎ Company having one person as member
- ◎ Only a natural person who is an Indian citizen & resident in India can become member or nominee
- ◎ Mandatory to appoint nominee by providing application in Form INC-2 and consent from nominee to act as nominee in INC-3
- ◎ Nominee name should mentioned in MOA

# DORMANT COMPANY

- ◎ A company formed and register under companies act 2013 for future purposes or to hold asset or intellectual property and having no significant activity.
- ◎ Such company can apply in MSC-1 to attain dormant status.(voluntary)
- ◎ If a company which has not filed financial statement or annual return for 2 consecutively F.Y ROC will issue notice and change status of company as dormant
- ◎ To get active status company has to file MSC-4

# SEC 8 COMPANIES

- For a company to get registered under this section it should have the following objectives
  1. Has objective to promote commerce, arts, science, sports, etc .
  2. Intended to apply it's profit in promotion
  3. Intended to prohibit payment of dividend
  4. And such other conditions laid down by Central government.
- This company enjoy the privileges available to private company
- A firm can become it's member.
- These company should not change it's MOA or AOA without prior approval of Central government.

# SEC 8 COMPANIES

- ⊙ Central government can withdraw its license if it violate any of the conditions.
- ⊙ If it violate then central govt may order for
  1. Add Pvt Ltd or Ltd in the name.
  2. Change of management
  3. Wind up
  4. Merger
- ⊙ If any default is there penalty for company is 25l-1Cr. For director and officer in default will be punishable with 25k-25l or 3 year imprisonment or both.



# FOREIGN COMPANY

- ◎ A foreign company is defined to mean any company or body corporate incorporated outside India but having the place of business in India by itself or through agent physically or through electronic mode.

# FORMATION OF COMPANY

- ◎ A company can be formed for any lawful purposes by
  - 7 or more in case of public company
  - 2 or more in case of private company
  - 1 in case of OPC
- ◎ Company formed can be of
  - company limited by shares
  - company limited by guarantee
  - unlimited

# MEMORANDUM OF ASSOCIATION

- ◉ Name of the company (INC-1)
- ◉ State of registered office
- ◉ Objective of company
- ◉ Liability of members
- ◉ Detail of share capital
- ◉ Name of nominee in case of OPC
- ◉ MOA of company shall be in respective forms A,B,C,D,E in schedule 1

# Liability of the member

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graph TD; A[Liability of the member] --> B[Company limited by share]; A --> C[Company limited by guarantee (having share capital)]; A --> D[Company limited by guarantee (having share capital)]; A --> E[Unlimited share capital];
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Company limited by share

Company limited by guarantee (having share capital)

Company limited by guarantee (having share capital)

Unlimited share capital

# ARTICLES OF ASSOCIATION

- ◎ Articles of Association is one which contain the rules and regulations of the company
- ◎ It should not contain any clause that company can't introduce any new rules
- ◎ Provision of Entrenchment in form INC-2 or 7 in case of new company form MGT-14 in case of existing company
- ◎ AOA of company shall be in respective forms F,G,H,I,J in schedule 1

# APPLICATION OF NAME FOR COMPANY

- Application should be made in form INC-1 along with prescribed fee to ROC for reservation
- After if the documents were satisfied and name applied is available register will hold it for a period of 60 days.
- Where after reservation it is found that the name was applied using wrong information
  - 1) if company is not incorporated the register will cancel the reservation and person applied for the name will be penalized up to Rs.1,00,000

# APPLICATION OF NAME FOR COMPANY

2) If company is incorporated, the register may

- ⊙ Either direct the company to change the name within 30 days
- ⊙ Take action to remove the company name from the register of companies
- ⊙ Make petition for winding up of company

# INCORPORATION OF COMPANY

◎ The following documents should be filled with register within whose jurisdiction the registered office of the company is proposed to situated

1. Duly signed MOA, AOA.
2. Declaration in INC-8
3. Affidavit in INC-9
4. Address of the correspondence
5. Identity proof of every subscriber
6. Identity proof of the director
7. Interest of the first director in other company



# INCORPORATION OF COMPANY

- ◎ Register on the basis of documents provided shall register the company and issue certificate of incorporation.
- ◎ After registration registrar will provide CIN(corporate identification number) which will be printed in the certificate of incorporation.
- ◎ Company has to maintain all the documents in the registered office

# DEFAULT IN INCORPORATION OF COMPANY

- ◉ If a person knowingly given false information for incorporation he will be liable for action u/s 447.
- ◉ If after incorporation it is found that given false information the promoter, first director, person making declaration shall be liable u/s 447.