



COMPANY FORMATION AND CONVERSION



COMPANY REGISTRATION



Learning objectives

- Choice of form of Business Entity
- Incorporation of Companies
- Procedure for Incorporation of Companies
- Conversion of Companies
- Procedure for Conversion of Companies
- Procedure for ratification of pre-incorporation agreements and contracts
- Annexure– Specimen Resolutions



Regulatory Framework for Incorporation

Applicable Chapter	Chapter II of the Companies Act, 2013
Applicable Sections	Section No. 3 to Section No. 22
Applicable Rules	Companies (Incorporation) Rules, 2014 (as amended)

Section Numbers & Particulars

Section 3	Formation of company
Section 4	Memorandum of Association
Section 5	Articles of Association
Section 6	Act to over-ride Memorandum, Articles etc.
Section 7	Incorporation of Companies
Section 8	Formation of companies with charitable objects etc.
Section 9	Effects of registration
Section 10	Effect of Memorandum and Articles
Section 11	(Commencement of Business) *omitted with effect from 29 th May, 2015
Section 12	Registered office of the Company
Section 13	Alteration of Memorandum of Association
Section 14	Alteration of Articles of Association
Section 15	Alteration of Memorandum and Articles to be noted in every copy
Section 16	Rectification of the name of company
Section 17	Copies of Memorandum and Articles to be given to members etc.
Section 18	Conversion of Companies already registered
Section 19	Subsidiary company not to hold any shares in its holding company
Section 20	Service of Document
Section 21	Authentication of documents, proceedings and contracts
Section 22	Execution of Bill of Exchange etc.

Choice of Form of Business Entity

Selection of the form of business entity is one of the most important decisions before starting a business.

The decision regarding choice of business entities depends upon many aspects such as-

- ✓ Object of the business
- ✓ number of members
- ✓ Financial requirements
- ✓ Degree of risk and liability
- ✓ Scale of operations
- ✓ Control of business
- ✓ Legal requirements
- ✓ Tax implications

The best form of organization for any business is the one which leads to the best realization of its objectives. Since business and entrepreneurial objectives vary, no single form of organization can be considered as the best for all kinds of businesses.

Nature, Form and Types of Business Enterprises

Business enterprises can be broadly divided into two broad categories, namely,

A) Non-Corporate Form of Business Enterprises

- Sole proprietorship
- Partnership
- Hindu undivided family

B) Corporate Form of Business Enterprises

- Companies
- Co-operative organization or undertakings

The basic difference between the corporate and the non-corporate form of organization is that while a non-corporate form of business may be started without registration, corporate bodies cannot be set up without registration under the laws which govern their functioning.

A. Non-Corporate Form of Business Enterprise



SOLE PROPRIETORSHIP

- An individual normally uses his **own capital**, skill and intelligence to carry out some business activity.
- Sole proprietor exercises **full control** over the affairs of his business
- Maintain **maximum secrecy**
- Suitable for businesses which are **small in size**

PARTNERSHIP

- **Section 4** of the Partnership Act, 1932, defines partnership as “The relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all”.
- Features
 - **Contractual Relationship**
 - **Sharing of profits**
 - **Mutual agency**

HINDU UNDIVIDED FAMILY

- The business is generally managed by the father or some other senior member of the family called the **Karta** or the manager.
- ‘Karta’ is basically the **senior most male member** of the family.
- The joint Hindu family firm comes into existence by the **operation of Hindu Law** and not by any contract.

B. Corporate Form of Business Enterprises

CO-OPERATIVE ORGANISATION

- A **voluntary association** with unrestricted membership and **collectively owned funds**
- A means of **protecting the interests of** the relatively **weaker sections of society** against exploitation by big businesses operating for the maximization of profits.

Meaning of a Company

The word ‘company’ is derived from the **Latin word** (Com=with or together; panis=bread), and it originally referred to an association of persons who took their meals together.

An organisation may be an incorporated association or an unincorporated association. An **incorporated association** as a single person distinct from the individuals constituting it, whereas an **unincorporated association** is a mere collection or aggregation of individuals.

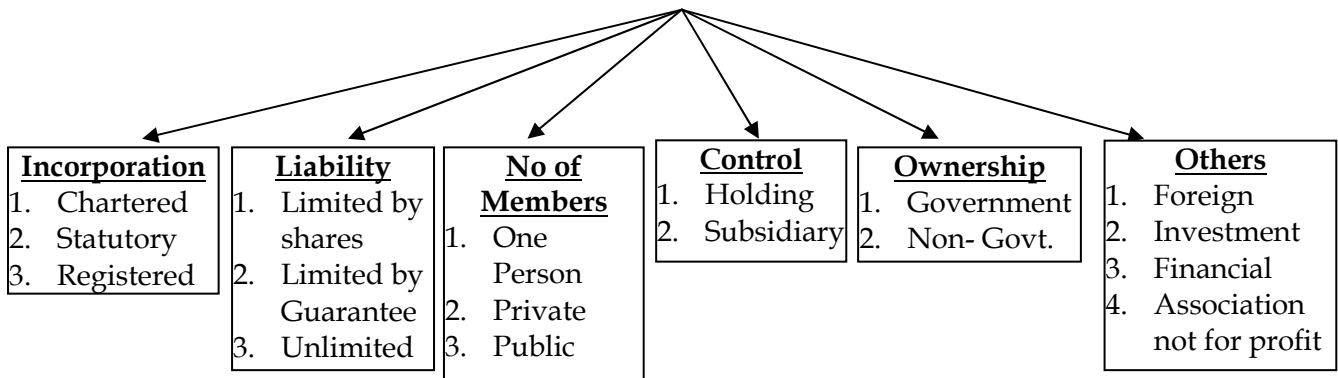
Definition of company Section 2(20)

Section 2(20) of the Companies Act, 2013 defines-

“Company means a company

- formed and
- Registered under this Act or an existing company.”

Classes of Companies



Rule 3 of the Companies (Incorporation) Rules 2014 say, only a natural person who is an **Indian citizen and resident in India:-**

- shall be **eligible to incorporate a One Person Company**;
- Shall be a **nominee for the sole member of a One Person Company**.

Incorporation of Companies (Section 7)

A company is an association of both natural and artificial persons incorporated under the existing law of a country.

In terms of the Companies Act, 2013 a “company means a company incorporated under the Companies Act, 2013 (the Act) or under any of the previous company law” **[Section 2(20)]**. In common law, a company is a “legal person” or “legal entity” separate from, and capable of surviving beyond the lives of its members.

A company may be formed for any lawful purpose by –

- seven or more** persons, where the company to be formed is to be a public company;
 - two or more** persons, where the company to be formed is to be a private company;
- or
- one person**, where the company to be formed is to be One Person Company that is to say, a private company,

By subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration. **[Section 3(1)]**

Thus, **Section 3 (1)** stipulates the existence of the following ingredients for the incorporation of a company:

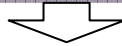
- Lawful purpose for which they should associate themselves;
- Promoters of the company – at least seven in the case of a public company, at least two in the case of a private company and one in case of one person company;
- Promoters must subscribe their names to the MOA of the company;
- Promoters must comply with the requirements of the Companies Act, 2013 in respect of registration of the company.

Registrar of Companies (ROC) appointed under **Section 396(2)** of the Companies Act, 2013 by the Ministry of Corporate Affairs (MCA), is vested with the primary duty of registering companies and of ensuring that such companies comply with the statutory requirements of the Act.

A company shall be registered with the ROC of the state under whose jurisdiction the proposed company's registered office will be situated.

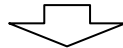
Procedure for Incorporation of Companies Under Companies Act, 2013

Obtain Director Identification Number (DIN)



Every person who is to be appointed as a director must have "Director's Identification Number (DIN)" [Section 152(3)]. If the proposed director does not already have a DIN, he/she must obtain the same before incorporation of the company. This can be obtained by making an application on the MCA portal in **Form DIR - 3**.

Acquire Digital Signature Certificate (DSC)



All filings done by the companies under MCA21 e-Governance programme are required to be filed with the use of Digital Signatures by the person authorized to sign the documents.

Acquire DSC - A **licensed Certifying Authority (CA)** issues the digital signature. Certifying Authority means a person who has been granted a license to issue a digital signature certificate under **Section 24** of the Indian Information Technology Act, 2000.

Register DSC - Role check for Indian companies is to be implemented in the MCA application. Role check can be performed only after the signatories have registered their Digital signature certificates (DSC) with MCA.

Proposing the name of the Company and ascertaining its availability from the ROC



Promoters should apply to the Registrar of Companies (ROC) regarding the availability of name. While applying, following points should be kept in mind:-

1. He should apply in **Form No. INC-1** with the prescribed fees.
2. Propose **SIX** names should be filled in the order of preference.
3. the proposed name(s) is/are not in violation of the provisions of **Emblems and Names (Prevention of Improper Use) Act, 1950** as amended from time to time;
4. He is a **promoter** (proposed first subscriber to the MOA) and is authorized by the other proposed first subscribers to sign and submit the application.



5. to the best of his knowledge and belief, the information given in the **application and its attachments is correct and complete,**

The name, if made available to the applicant, shall be reserved for **sixty days** from the date of approval. If, the proposed company has not been incorporated within such period, the name shall be lapsed and will be available for other applicants

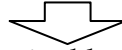
Following documents have to be attached to INC - 1:

- I. Copy of Board resolution of the existing company or foreign holding company as a proof of no objection
- II. Copy of direction from Central Government, if name is changed due to direction received from the Central Government
- III. Trademark or authorization to use trade mark, if the name of the company is based on trade mark or application for deed of assignment or a copy of application of registered trademark.
- IV. In case the proposed name contains such word or expression for which the approval of Central Government is required, a copy of Central Government's approval.
- V. Proof of relation.
- VI. In principal approval from the concerned regulator wherever is applicable.
- VII. NOC from sole proprietor/ partners/ other associates.
- VIII. NOC from existing company ,
- IX. Copy of affidavit in case of proposed name includes phrase 'Electoral Trust'
- X. Resolution of unregistered companies in case of Chapter XXI (Part I) companies,
- XI. Order of competent authority.
- XII. NOC as required in Rule 8(4)

Where after reservation of name, it is found that name was applied by furnishing wrong or incorrect information, then, -

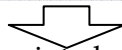
Company has not been incorporated	The reserved name shall be cancelled and the person making application shall be liable to a penalty which may extend to one lakh rupees.
Company has been incorporated	The registrar may, after giving the company an opportunity of being heard - <ol style="list-style-type: none">i. Either direct the company to change its name within a period of three months, after passing an ordinary resolution;ii. Take action for striking off the name of the company from the register of companies; oriii. Make a petition for winding up of the company. [section 4(5)]

Drafting and Printing of Memorandum and Articles of Association



- ❖ The memorandum of a company limited by shares shall be in **Tables - A** in Schedule - I of the Companies Act, 2013
- ❖ The model articles of a company shall be in **Tables - F** in Schedule - I of the Companies Act, 2013 as may be applicable to the company.
- ❖ The memorandum and articles shall be in conformity with the provisions of **Section 4 and 5** of the Companies Act, 2013.
- ❖ If the promoters plan to get the securities of the proposed company listed with one or more designated stock exchanges, it is advisable to send the draft of the memorandum and articles of association to those stock exchanges for their scrutiny and suggestion to the effect whether they would like to have certain articles incorporated therein in compliance with the provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred as Listing Regulations).
- ❖ If applying through Form **INC-32 (SPICe)**, it is mandatory to attach e-MOA in **Form INC-33** and e-MOA in **Form INC-34**.

Stamping and Signing of Memorandum and Articles



The memorandum and articles should be printed and signed by subscribers. Thereafter, the memorandum and the articles should be **stamped by** the appropriate State Authority (**Collector of Stamps**) under the Indian Stamp Act, 1899. However, presently there is a facility for **online payment of stamp duty** along with filing fees.

It is pertinent to note the Stamping is a subject matter of **"State Revenue"** and not a matter of the Central Government. Hence the Stamp Duty payable on the Memorandum and/or the Articles of Association shall be determined according to the place of incorporation of the company.

Verification of registered office



According to **Section 12** of companies act, the company shall on and from the **15th day** of its incorporation and at all time thereafter, have a registered office for the purpose of receiving notice and communicate

Verification of registered office is to be furnished to registrar with in **30 day** from the date of incorporation in **Form no. INC-22**

In case of Specified IFSC Public company, verification of filed within **60 days** to registrar
Every Company shall paint or affix its name and registered office address and keep outside the place where company carry their business

Every company shall have its name engraved in legible characters on its seal, if any. Provided that in case a company does not have a common seal the authorisation shall be made by two directors or a director and Company Secretary, wherever the company has appointed a CS.

If company change the situation of registered office, company shall required to give notice to registrar within **15 days** from the date of change.

In case Specified **IFSC** Public company, the notice of every change of situation of registered office shall be furnished with the registrar within **60 days**.

Filing of Documents and Forms for Registration

According to **Section 7** of the Companies Act, 2013 all document related to incorporation shall be filed before the registrar, in whose jurisdiction registered office of a company is proposed to be situated.

Following documents shall be filled with the ROC within **60 days** from the day of intimation regarding the availability of name-

1. The Memorandum and Articles of the company duly signed by all subscribers;
2. A declaration by -
 - a) Declaration in **Form INC - 8** by an advocate or Practicing CA/CS/CWA
 - b) person named in as Director, Manager or Secretary
3. That all requirements related to incorporation has been complied with;
4. Affidavit in **Form INC - 9** from the subscribers to the memorandum and from persons named as first directors if any.
5. Proof of residential address
6. **Proof of identity**
7. NOC in case there is change in the promoters (first subscribers to MOA)
8. **Proof of nationality** (in case the subscriber is a foreign national)
9. PAN card (in case of Indian national)
10. Copy of resolution/consent by all partners or board resolution authorizing to subscribe to MOA.
11. **DIR - 12** - Particulars of appointment of Directors and the key managerial personnel and the changes among them (with Declaration by first Director and Declaration of appointee Director, in form DIR-2 as attachment)
12. **INC - 22** - Notice of situation or change of situation of registered office.
13. **E-Form No. INC-32 (SPICE)**
 - Memorandum of Association – Applicable and mandatory only in case of **Section 8** company or company with foreign subscribers not having **DIN**.
 - Articles of Association – Applicable and mandatory only in case of **Section 8** Company or company with foreign subscribers not having **DIN**.
 - Affidavit and declaration by first subscriber(s) and director(s) – Mandatory in all



cases. If the address for correspondence is the address of registered office of the company, then following attachments are mandatory

- Proof of office address
- Copies of utility bills that are not older than **two months**. If proposed name requires approval of Central Government, then attach the following:
- Copy of approval in case the proposed name contains any word(s) or expression(s) which requires approval from Central Government. If the proposed name is based on a registered trademark or is subject matter of an application pending for registration under the Trade Marks Act, then it is mandatory to attach:
- Approval of the owner of the trademark or the applicant of such trademark for registration of Trademark. If the promoters are carrying on any Partnership firm, sole proprietary or unregistered entity in the name as applied for, then it is mandatory to attach:
- NOC from the sole proprietor/ partners/other associates/ existing company If proposed name requires approval from any sectoral regulator, then it is mandatory to attach (if already received):
- In principle approval from the concerned regulator If any subscriber to the proposed company is Foreign company and/or company incorporated outside India, then it is mandatory to attach:
- Copy of certificate of incorporation of the foreign body corporate and resolution passed.

Note: It is optional to attach Copy of certificate of incorporation in case the subscriber to the proposed company is Body Corporate.

If any subscriber to the proposed company is a Company itself, then it is mandatory to attach:

- Resolution passed by promoter company In case the name is similar to any existing company, then it is mandatory to attach:
- A certified true copy of No objection certificate by way of board resolution / resolution In case any of the director has any interest in the proposed company, then it is mandatory to attach :
- Interest of **first director(s)** in other entities In case of an OPC, it is mandatory to attach:
- Consent of nominee
- Proof of identity and residential address of the nominee

Registration and Filing Fee



Promoters must make sure to remit to the Registrar, along with the above forms/ documents, the prescribed Registration fee. The fee payable for the purpose can be remitted either electronically (by using a Credit Card or by electronic Bank transfer) or by cash/ draft through challan generated electronically.

Scrutiny of Documents and Forms by Registrar



On receipt of the aforementioned documents, the office of the Registrar of Companies will scrutinize them and if they are found complete in all respects, the Registrar will register the company and generate a **CIN**. If the Registrar finds any defect or deficiency in any of the documents or forms, the Registrar will send an electronic communication pointing out the defects and after the deficiencies are removed, the Registrar will register the company.

Issue of Certificate of Incorporation by Registrar



After the registration of the company, the Registrar will issue under his hand and seal of his office, the Certificate of Incorporation in the name of the company and **send it electronically**. The date mentioned by the Registrar in the Certificate of Incorporation shall be the date of incorporation of the company, on which date the company will be considered to have come into existence as a legal entity separate from its subscribers.

The Certificate of Incorporation shall be in Form INC - 11 of the Companies (Incorporation) Rules, 2014.

The validity of the registration cannot be challenged after the issue of certificate of incorporation [Moosa v. Ebrahim]. But that does not mean that COI legalizes the illegal object mentioned in the memorandum.

Copies Of Memorandum & Articles etc. To be given to members



According to **section 17 A** Company shall on being so requested by a member, send to him **within 7 days** of the request and subject to the payment of fees as may be prescribed, a copy of each of the following document:

- Memorandum
- Articles
- Every agreement and every resolution referred to in **Section 117** if and in so far as they have not been embodied in the memorandum or articles.

In case of default in complying with provision, the company and every officer of the company in default shall be liable for each default, to a penalty of **rupees 1000** for each day during which such default continues **or one lakh rupees**, whichever is less.



GOVERNMENT OF INDIA

MINISTRY OF CORPORATE AFFAIRS

Registrar of Companies, Mumbai
Everest , 100 , Marine Drive

Certificate of Incorporation

[Pursuant to sub-section (2) of section 7 of the Companies Act, 2013 and rule 8 of the Companies (Incorporation) Rules, 2014]

I hereby certify that SUNLIGHT INFRAVENTURES PRIVATE LIMITED is incorporated on this Twenty Eighth day of November Two Thousand Fourteen under the Companies Act, 2013 and that the company is limited by shares.

The CIN of the company is U45400MH2014PTC259798.

Given under my hand at Mumbai this Twenty Eighth day of November Two Thousand Fourteen.

Validity unknown
Digitally signed by T. PANDIAN
Date: 2014.11.28 12:41:11 GMT+05:30

T PANDIAN
Registrar of Companies
Maharashtra

Mailing Address as per record available in Registrar of Companies office:

SUNLIGHT INFRAVENTURES PRIVATE LIMITED
PLOT NO.14, WARD NO.73, KACHIMET, AMRAVATI ROAD,
NAGPUR - 440016,
Maharashtra, INDIA



Simplified Proforma For Incorporating Company Electronically (SPICe)

A) Single Application For Company Incorporation By Filing Form INC-32 (SPICe), Simplified Proforma For incorporating company electronically (Rule 38):

1. For the incorporation of Part I Company, Producer Company, Section 8 Company, New Company, an application for incorporation of companies shall be filed in FORM No. **INC-32 (SPICe)** along with e-Memorandum of Association (e-MOA) in **Form INC-33** and e-Articles of Association (e-AOA) in **Form No. INC-34**.
2. E-Form **SPICe (INC-32)** deals with the single application for allotment of Director Identification Number **upto three Directors**, reservation of a name, application for PAN and TAN, incorporation of company and appointment of Directors.
3. It shall be filed with the Registrar, within whose jurisdiction the registered office of the company is proposed to be situated along with fees of **rupees five hundred** in addition to the registration fee as specified in the Companies (Registration of Offices and Fees) Rules, 2014:
4. Where an applicant has applied for reservation of a name under **Rule 9** and which has been approved therein, he may fill the reserved name as proposed name of the company and where the name is not reserved then the promoter or applicant of the proposed company shall propose only one name in the form.
5. For the purposes of filing **SPICe** Form the particulars of maximum of **three directors** shall be allowed to be filled in **FORM No. INC-32 (SPICe)** and allotment of Director Identification Number of maximum of three proposed directors shall be permitted in **FORM No. INC-32 (SPICe)** in case of proposed directors not having approved Director Identification Number.
6. The promoter or applicant of the proposed company shall prepare Memorandum of Association (e-MOA) in **FORM No. INC-33** and Articles of Association (e-AOA) in **FORM No. INC-34** and the subscribers and witness or witnesses shall affix their digital signatures to the e-MOA and e-AOA.
7. There is no need of affixing photograph while providing particulars of the subscribers at the time of Incorporation of Company in **Form No. INC-1** for Application of Reservation of Name.
8. **FORM No. INC-22** shall not be required to be filed in case the proposed company maintains its registered office at the given correspondence address
9. Where the Registrar, on examining **FORM No. INC-32 (SPICe)**, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form **within fifteen days** from the date of such intimation given by the Registrar.
10. After the resubmission of the document if the registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of **fifteen days** to remove such defects or deficiencies. However, the total period for resubmission of documents shall not exceed **thirty days**
11. The Certificate of Incorporation of company shall be issued by the Registrar in **Form No. INC-11**.

Note:

Incorporation of a Company falling under Section 8 of the Act, **Form No. INC-32 (SPICe)** shall be filed along with **Form No. INC-13** (Memorandum of Association) and **Form No. INC-31** (Articles of Association) as attachments.

B) Form INC-7 (Part I Company and Companies to be Incorporated with more than Seven Subscriber)

An application shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in **Form INC-7** for **Part I** Company and Companies to be incorporated with more than seven subscribers along with the fee as provided in Companies (Registration of offices and fees) Rules, 2014 for registration of a company. Following points shall be kept in mind:

1. User is required to file **e-Form INC-7** for incorporation of **Part-I** Company and Company with more than seven subscribers within **sixty days** from the date of application of reservation of name in **e-Form INC-1**.
2. It is suggested that e-Form DIR-12 and **e-Form INC-22** should be filed together at the time of filing of **e-Form INC-7** when address for correspondence is the address of registered office of the company.
 - a) In case the address for correspondence is not the address of the registered office of the Company, user is required to file **INC-22** within **30 days** of its incorporation.
 - b) Stamp duty on **e-Form INC-7**, Memorandum of Association (MOA) and Articles of Association (AOA) can be paid electronically through the MCA portal and in such case submission of physical copies of the uploaded **e-Form INC-7**, MOA and AOA to the office of ROC is not required.
3. Payment of stamp duty electronically through MCA portal is mandatory in respect of the States which have authorized the Central Government to collect stamp duty on their behalf.
4. Now e-Stamp duty payment is to be done online through MCA portal for all the states.
5. Refund of stamp duty, if any, will be processed by the respective state or union territory government in accordance with the rules and procedures as per the state or union territory stamp Act.
6. User is required to scan the photograph of every subscriber with MOA and AOA.

**Procedure for Incorporating of Company for Charitable Purpose
{Section 8}**

An association, desirous of being incorporated as a company with limited liability without the addition to its name of the word "Limited" or the words "Private Limited" shall take the following procedural steps for securing a **Licence under Section 8** of the Companies Act, 2013 and for getting itself registered under the Act:

1. To select not more than **six names in the order of their preference**
2. The application for reservation of name shall be in **Form INC - 1 Form INC-32 (SPICe)** **i.e., Single Application for Incorporation of Company (herein only one name can be proposed)** of the Companies (Incorporation) Rules, 2014. The procedure of making this



application is same mentioned as discussed earlier.

3. The Registrar of Companies to furnish the required information to the applicants, ordinarily **within three days** of the receipt of the application.
4. Make an application in **Form INC - 12** along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 to the Registrar for a **Licence** under sub-section (1) of section 8.
5. Memorandum of association of proposed company shall be in **Form INC - 13**.
6. The application for grant of licence in **form INC - 12** shall be accompanied by the following documents, namely: -
 - a) **draft memorandum and articles of association** of the proposed company;
 - b) **declaration in Form INC - 14**, by an Advocate, a CA/ CS/ CWA in practice, that the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8
 - c) 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;
 - d) The declaration by each of the persons making the application in **Form INC - 15**.
7. The licence shall be in **Form INC - 16** and the Registrar shall have power to include in the licence such other conditions as may be deemed necessary by him.
8. After obtaining the licence, to get the memorandum and articles, as approved by the Registrar of Companies,
9. Filing of Forms and Documents with Registrar and Registration and Filing Fee are same as public limited company having share capital.
10. A Certificate of Incorporation will be issued by the Registrar of Companies under his hand and seal of his office and sent electronically.

A limited company registered under Companies Act 2013 or under any previous company law may convert itself into a company licensed under Sec. 8 of the Companies Act, 2013 by following all above steps required for incorporation of sec. 8 company.

Other Important Point :

If on the winding up or dissolution of Section 8 Company, there remains, after the satisfaction of its debts and liabilities, any assets, they 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 the proceeds there of credited to Rehabilitation and Insolvency Fund.

Procedure for Issue of Licence Under Sec. 8 to Company Already Registered

A limited company registered under Companies Act 2013 or under any previous company law may convert itself into a company licensed under Section 8 of the Companies Act, 2013.

1. The company shall make an application in **Form INC - 12** along with the fee as provided to the Registrar for a licence under sub-section (5) of section 8.
2. According to Section 8 of the Act, the applicants have to prove to the satisfaction of the

Registrar of Companies that an association is already in existence as a limited company for **promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object** and that the association intends to apply its profits, if any, or other income, for promoting its objects and that it prohibits the distribution of any dividend to its members.

3. Along with **Form INC - 12**, for issue of **licence u/s 8**, the following documents are also required to be attached:
 - i. The memorandum and articles of association of the company;
 - ii. The declaration as given in **Form INC - 14** by an Advocate, a CA, CWA or CS in Practice, that the memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made there under and that all the requirements of the Act and the rules made there under relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;
 - iii. a statement showing in detail the assets (with the values thereof), and the liabilities of the company, as on the date of the application or within **thirty days** preceding that date;
 - iv. an estimate of the future annual income and expenditure of the company for **next three years**, specifying
 - v. the sources of the income and the objects of the expenditure;
 - vi. the certified copy of the resolutions passed in general/ board meetings approving registration of the company under section 8; and
 - vii. a declaration by each of the persons making the application in **Form INC 15**
 - viii. List of proposed promoters.
 - ix. List of proposed directors.
 - x. List of key managerial personnel.
4. The Registrar may require the applicant to furnish the approval or concurrence of any appropriate authority, regulatory body, department or Ministry of the Central Government or the State Government(s).
5. The Registrar shall, after considering the objections, if any, received by it within **thirty days** from the date of publication of notice, and after consulting any authority, regulatory body, Department or Ministry of the Central Government or the State Government(s), as it may, in its discretion, decide whether the license should or should not be granted.
6. The licence shall be in **Form INC - 17**, as the case may be, and the Registrar shall have power to include in the licence such other conditions as may be deemed necessary by him.
7. The Registrar may direct the company to insert in its memorandum, or in its articles, or partly in one and partly in the other, such conditions of the license as may be specified by the Registrar in this behalf

One Person Company (OPC) (Section 2(62))

1. Section **2(62)** One Person Company means a company which has only one person as a member. OPC is a sub-domain of -a Private Company.
2. As per Rule 3 of the Companies (Incorporation) Amendment Rules, 2015, the following points must be complied with while incorporating a One Person Company
3. OPC can have a maximum paid up capital of **50 Lakhs** or turnover of **2 Crores** in the relevant period.
4. Only a natural person who is an Indian Citizen and resident in India shall be eligible to incorporate a One Person Company and become nominee of the sole member of the One Person Company.
5. Resident in India means a person who has stayed in India for a period of not **less than 182 days** during the immediately preceding one calendar year.
6. The subscriber to the memorandum of a One Person Company shall nominate a person, after obtaining prior written consent of such other person
7. Person who shall, in the event of the subscriber's death or his incapacity to contract, become the member of that One Person Company.
8. A person can incorporate only one "One Person Company", at any point of time and the said person shall not be a nominee of more than a One Person Company
9. The name of the person nominated shall be mentioned in the memorandum of One Person Company and such nomination in **Form INC-32 (SPICe)**
10. Single Application for Incorporation of Company, along with consent of such nominee obtained in Form **INC - 3** and fee as provided in the Companies (Registration offices and fees) Rules, 2014 shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles.

Nidhi Company (Section 406)

Nidhi Company means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from and lending to its members only for their mutual benefit and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies **(Section 406)**.

According to **Rule 4** of Nidhi Rules, 2014, a Nidhi Company shall be a public company and must have a minimum paid up equity share capital of **five lakh rupees**. The Nidhi Company shall have only one object in its memorandum that is of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit. Every Company incorporated as a "Nidhi" shall have the last words 'Nidhi Limited' as part of its name.

Rule 5 provides that, every Nidhi shall, within a period of **one year** from the commencement of these rules, ensure that it has:

- a) Not less **than two hundred** members.
- b) Net Owned Funds of **ten lakh** rupees or more.
- c) Unencumbered Term Deposits of not less than **ten percent** of the outstanding

deposits.

- d) Ratio of Net Owned Funds to deposits of not **more than 1:20**.

The process of incorporation of a Nidhi company is same as of incorporation of a public company limited by shares.

Foreign Company Section 2(42)

Definition: Section 2(42): Foreign Company means any company or body corporate incorporated outside India which.

- a) has a place of business in India whether by itself or through an agent, physically or through an electronic mode and
- b) Conducts any business activity in India in any other manner.

Every foreign company shall, within **thirty days** of the establishment of its place of business in India, deliver to the Registrar for registration in **form FC-1 [Section 380(1)]** -

- a) a certified copy of the charter, statute or memorandum and articles of the company or other instrument constituting or defining the constitution of the company and if the instrument is not in English language, a certified translation thereof in the English language;
- b) the full address of the registered or principal office of the company;
- c) a list of the directors and secretary of the company with particulars ;
- d) the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
- e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
- f) particulars of opening and closing of a place of business in Indian on earlier occasions;
- g) declaration that none of the directors of the company or authorized representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; or
- h) Other prescribed particulars.
- i)

Application for approval to established a place of business in India should also be made to RBI by filling **Form FNC-1**

Provision relating to Annual Return shall also apply to foreign company when they apply to company incorporated in India and annual return of foreign company should be in **FC-4** Where if any alteration made in any document which is delivered to registrar then foreign company delivered such alteration to Registrar with in **30 day** from such alteration in **form no. FC-4**

Every foreign company shall required to maintained balance sheet and profit & loss account for every calendar year and file such copy to Registrar in **FC-3**

NOTE- if 51% or more share capital include equity and preference both of the foreign company is held by one or more company or citizens of India such foreign company shall required to comply provision of the chapter and any other provision prescribed by the act With respect to carry on business.

Form related to foreign company

FC-1	Information to be filed by Foreign company
FC-2	Return of alteration in any document filed by foreign company
FC-3	Details of Annual account & list of all principal place of business of the foreign company
FC-4	Annual return of a foreign company

Guarantee Company (Section 2(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 [Section 2(21)].

The procedure for incorporation of a company limited by guarantee is similar to the one required to be followed for getting a public or a private limited company incorporated. However, the following distinctive features in the case of a company limited by guarantee must be noted:

1. A company limited by guarantee may or may not have a share capital.
2. A company limited by guarantee may be a public company or a private company

In the case of a company limited by guarantee, the Memorandum shall state the amount up to which each member undertakes to contribute -

- a) To the assets of the company in the event of its being wound-up while he is a member or within **one year** after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts as the case may be; and
- b) To the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves. [Sec. 4(1)(d)(ii)]

Any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.[Section 4(7)] and [Section 13(11)]

The following procedural steps are required to be taken for getting a company limited by guarantee registered:

Paid-up Capital	There is no minimum paid up capital required for ‘Guarantee Company’. The requirement to have minimum paid up capital is
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	done away with.
Selection of Name of the Company and Ascertaining its Availability from ROC	This is same as in case of public company limited by share.
Drafting and Printing of Memorandum and Articles of Association	<ul style="list-style-type: none"> ❖ On receipt of name availability from the Registrar of Companies, get the MOA and AOA of the proposed company drafted by a competent professional. ❖ The MOA of a company limited by Guarantee and not having a share capital shall be in accordance with Table – B of Schedule – I. ❖ The MOA of a company limited by Guarantee and having a share capital shall be in accordance with Table – C of Schedule – I. ❖ The AOA of a company limited by guarantee and having share capital shall be in accordance with Table – G of Schedule – I. ❖ The Articles of association of a company limited by guarantee and not having share capital shall be in accordance with Table – H of Schedule – I.
Stamping and Signing of Memorandum and Articles	This is same as in case of public company limited by share.
Dating of Memorandum and Articles:	Thereafter the memorandum and articles will be dated. This date must be the date of stamping or later than the date of the stamping and not, in any event, a date prior to the date of the stamping.
Filing of Forms and Documents with Registrar:	This is same as in case of public company limited by share.
Registration and Filing Fee:	The fee shall be as provided in the Companies (Registration Offices and Fees) Rules, 2014.
Scrutiny of Forms and Documents by Registrar:	On receipt of the aforementioned documents and forms, the office of the Registrar of Companies will scrutinize them and if they are found complete in all respects, the Registrar will register the company and allot CIN. If the Registrar finds any defect or deficiency in any of the documents or forms, he shall send an electronic communication pointing out the defects and after the deficiencies are removed, the Registrar will register the company.
Issue of Certificate of Incorporation by Registrar	A Certificate of Incorporation will be issued by the Registrar of Companies under his hand and seal of his office and sent electronically. One may take printout of Certificate of Incorporation which is generated online.

Dormant Company (Section 455)

Section 455(1) : Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and have no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining status of a dormant company. Thus, according to **Section 455** of the Companies Act, 2013, dormant company is an inactive company which has not been carrying on any business or has not made any significant accounting transaction in the last **two financial years** or has not filed financial statements and annual returns during the last **two financial years**.

Point related to Dormant Company

- ❖ Company may make application in **MSC-1** to the Registrar for obtaining the status of Dormant Company. However registrar may also provide status of dormant company on suo-moto.
- ❖ Once application delivered to Registrar, Registrar may allow status of dormant company and issue a certificate in **MSC-2**.
- ❖ Company identify as Dormant Company shall have minimum **3 Director** in public company 2 in private company 1 in OPC. Provision related to rotation of auditor not apply in dormant company
- ❖ Company may file its annual return in **MSC-3** which audited by CA in practice
- ❖ Dormant company may apply for active status by filling **MSC-4**
- ❖ Once company file **MSC-4** registrar after considering the application the application filed , issue certificate in **MSC-5** and allow to use as active status.
- ❖ In case Dormant Company omits to do anything which affects its status as dormant company the directors **within 7 days** from such event file an application for obtaining the status of an active company

Conditions for obtaining status of Dormant Company :

- i. No inspection, investigation or inquiry has been ordered or taken up against the company
- ii. No prosecution has been initiated against the company under any law
- iii. The company is neither having any public deposit which are outstanding nor is the company in default in payment thereof or interest thereon.
- iv. The company is not having any outstanding loan whether secured or unsecured. However, in case of unsecured loan, **MSC-1** can still be filed after obtaining consent of the lender.
- v. There is no dispute in the management or ownership of the company and a certificate in this regard is enclosed with **MSC-1**
- vi. The company does not have any outstanding statutory taxes, duties, dues etc. payable to the Government.
- vii. The company has not defaulted in the payment of workmen's dues
- viii. The securities of the company are not listed on any stock exchange within or outside India.



Unlimited Company Section 2(92)

By virtue of **Section 2(92)** of the Companies Act, 2013, unlimited company is a company not having any limit on the liability of its members. The maximum liability of the members of such a company, in the event of its being wound up, could extend to their entire personal property to meet the debts and obligations of the company by contributing to its assets.

However, it must be noted that the liability of the members is only towards the company and not towards the company's creditors directly and hence only the liquidators of the company can ask the members to contribute to its asset which will be used in the discharge of the company's debts and the cost of winding up.

Section 4 of the Act provides that an Unlimited company must state in its Memorandum that liability of the company is unlimited.

The Memorandum of an Unlimited company shall be in **Table D** (where not having share capital) or in **Table E** (where having share capital) of **Schedule I** of the Act. The Articles of an Unlimited company shall be in the form in **Table I** (where having share capital) or **Table J** (where not having share capital) of Schedule I of the Act.

As per the provisions of **Section 65**, an unlimited company may convert itself into a limited company.

The procedure for incorporation of such companies is similar to that of companies with limited liability

Government Company (Section 2(45))

Definition: Section 2(45) It means any company in which not less than 51% of the paid up share capital is held by the Central Governments or by State Governments or partly by Central and Partly by State governments and includes a company which is the subsidiary company of such Government Company.

It should be noted that a Government company is neither a Government department nor a Government establishment. Similarly, employees of the Government company are not Government servants.

Small Company (Section 2(85))

Section 2(85): It means a company other than public company -

- Paid up share capital of which does not exceed **50 Lakh rupees** or such higher amount as may be prescribed which shall not be more than **5 Crore rupees** and
- Turnover of which as per its last profit and loss account does not exceed **2 Crore rupees** or such higher amount as may be prescribed which shall not be more than **20 crore rupees**.

Exceptions: The following can never be termed as Small Company :

- A holding company or a subsidiary company

- A company registered under Section 8
- A company or body corporate governed by any special act

Procedure for Incorporation of Private Ltd. Company Having Share Capital

The procedure for the incorporation of a private limited company is similar to that of a public limited company (as discussed above) with the following exceptions:

The term Private Company define under 2(68)

The requirement to have a minimum paid-up capital has been done away with.

There must be **at least two subscribers** in place of seven, however in case of **One Person Company** there will be **only one subscriber**.

Prohibit any invitation to the public to subscribe for any security of the Co. in AOA

There must **be at least two directors** in place of three.

Registration of the articles of association is compulsory.

Procedure for Incorporation of Company as Subsidiary of an Existing Company

As per provisions of **Section 2(87)** of the Companies Act, 2013, "**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 –

- i. Controls the composition of the Board of Directors; or
- ii. Exercises or controls **more than one-half** of the total share capital 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. (Proviso is yet to be enforced)

Section 186(1) prohibits a company to make investment through more than **two layers** of investment companies

Conversion of Company (Section 18)

Section 18 of the Companies Act, 2013 deals with conversion of companies already registered. A company of already registered may convert itself as a company of another class by alteration of memorandum and articles of the company. The Registrar shall close the former registration of the company. After registering the documents relating to conversion, the Registrar shall issue a certificate of incorporation

Conversion of One Person Company to Private Company/Public Company

No one person company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of OPC, except threshold limit (paid up share capital) is increased beyond **fifty lakh rupees** or its average annual turnover during the relevant period exceeds **two crore rupees**. [Rule 3(7) of the Companies (Incorporation) Rules 2014].

After two years from the date of Incorporation, **OPC** may convert into any other company even without threshold limit.

Where the paid-up share capital of an OPC exceeding **Rs.50 lakhs** or its average annual turnover during the relevant period exceeds Rs. **2 crore**, it shall cease to be entitled to continue as **OPC [Rule 6(1)]**

OPC shall within period of **sixty days** from the date of applicability, give a notice to the Registrar in Form **INC - 5** informing that it has ceased to be a OPC and that it is now required to convert itself into a private company or a public company.

Such One Person Company shall be required to convert itself, within six months of the date on which its paid up share capital is increased beyond **fifty lakh rupees** or the last day of the relevant period during which its average annual turnover exceeds **two crore rupees** as the case may be, into either a private company with minimum of two members and two directors or a public company with at least of **seven** members and **three** directors in accordance with the provisions of **section 18** of the Act.

Procedure for conversion of One Person Company of the Companies Rules

1. Where only one director is there, following resolutions shall be signed and dated by the director and shall be entered into minutes.
 - 1) Take note about exceeding the threshold limits if applicable.
 - 2) Authorizing giving Notice to the Registrar in Form **INC - 5**
 - 3) Notice with Explanatory Statement for Special resolutions to be signed, dated and communicated by the member to the company regarding:
 - Alteration of Article for conversion, example **Regulations 27, 48, and 76 for Table - F in Schedule - I** where adopted;
 - Alteration of MOA (name clause and capital clause)
 - Alteration of MOA to amend the reference of the name of one person and its



nominee

2. Where OPC has more than one director, convene a Board meeting to:
 - 1) And (3) are same as above of only one director.
 - 2) Board Resolution for giving Notice to the Registrar.
 - i) Copy of Special Resolutions along with explanatory statements to be filed within **thirty days** with the Registrar in Form **MGT - 14** and copy of altered Memorandum and articles shall be attached therewith
 - ii) Increase the number of members to minimum two in case converted company is a private company, or to **minimum seven** in case converted company is a public company;
 - iii) Where number of director are below the requirement of the Act for converted company, increase the number of director to **two** in case of private company or to three in case of public company;
 - iv) Obtain from the Registrar of Companies, fresh Certificate of Incorporation consequent upon conversion of the one person company into a private company or public company;
 - v) Issue, if necessary, a general notice in newspapers informing members and all other concerned persons and public at large that the company has become a public company and its name has been changed from ___ OPC to ___ Pvt. Ltd. or ___ Limited with effect from ____.
 - vi) To have stationery printed with the new name and/or affix rubber stamp of the new name on all the existing stationery items including the share certificates blanks.
 - vii) Have painted the new name of the Company on all the sign boards wherever they are displayed.

In case of voluntary conversion of One Person Company to Private company or Public Company, the procedure above mentioned shall be same but requirement for filing Form **INC - 5** shall not be applicable.

Conversion of Private Company Into OPC

1. A private company other than a company registered under section 8 of the Act having paid up share capital of **Rs. 50 lakhs or less** or average annual turnover during the relevant period is **Rs. 2 crore or less** may convert itself into One Person Company by passing a special resolution in the general meeting.
2. Before passing such resolution, the company shall obtain '**No objection**' in writing from members and creditors.
3. File copy of the special resolution with the Registrar of Companies within **30 days** from the date of passing such resolution in Form No. **MGT-14**.
4. The company shall file an application in Form No. **INC-6** for its conversion into OPC along with prescribed fees by attaching the following documents, namely:-
 - a) Directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of company have given their consent for

conversion, the paid up share capital is **Rs. 50 lakhs** or less or average annual turnover is less than **Rs. 2 crore**, as the case may be;

- b) The list of members and list of creditors;
- c) The latest Audited Balance Sheet and the Profit and Loss Account; and
- d) The copy of '**No Objection**' letter of secured creditors.

On being satisfied and complied with requirements stated herein the Registrar shall issue the Certificate.

Conversion of Private Company Into Public Company (Section 14)

Section 14 of the act lays down the procedure for alteration of articles. A company may alter its articles including alterations having effect of conversion of

- ❖ A private company into a public company or
- ❖ A public company into private company with the approval of members through special resolution For conversion, the private company is required to take the following procedural steps:
 1. convene a Board meeting to:
 - for approving proposal for conversion of the company into a public company;
 - for fixing time, date and venue for holding a general meeting of the company for passing the required special resolution through postal ballot for conversion

The following resolutions will be required to be passed at the general meeting

- a) The Articles shall be altered to **delete the 3 matters** [as given in **Sec 2(68)**].
Alteration of articles requires a special resolution in general meeting.
- b) Alteration of Memorandum (name clause and capital clause)
2. Hold the general meeting and have the aforementioned special resolutions passed.
3. Copy of Special Resolutions along with explanatory statements to be filed **within thirty days** with the Registrar in Form **MGT - 14**.
4. Increase the number of members to **minimum seven and number of director to three**;
5. A copy of order of the competent authority approving the alteration shall be filed with the Registrar in **Form INC - 27** with fee together with the printed copy of the altered articles within fifteen days of the receipt of the order from the **tribunal**
6. Obtain from the Registrar of Companies, fresh Certificate of Incorporation consequent upon conversion of a private company into public company.
7. To have stationery printed with the new name and/or affix rubber stamp of the new name on all the existing stationery items including the share certificates blanks
8. Have painted the new name of the Company on all the sign boards wherever they are displayed.
9. If a company opts to have a common seal, arrange for a new Common Seal and have the same adopted at a meeting of the Board of directors of the company and keep both the old and the new Common Seals in safe custody under lock and key.

Conversion of Public Company Into Private Company

1. Hold a meeting of its Board of directors to consider and approve the proposal for conversion of public company into private company.

The following resolutions must be passed at the meeting:

- To approve the proposal for conversion of the company into private company
 - To fix time, date and venue for holding an extraordinary general meeting of the company.
 - To approve notice for the general meeting along with the explanatory statement as required under **Section 102** of the Act.
 - The Articles shall be altered to include the **4 matters [as given in Sec 2(68)]**. Alteration of articles requires a special resolution in general meeting.
 - Alteration of Memorandum (name clause and capital clause)
2. Hold general meeting and have the aforementioned special resolutions passed.
 3. Within **thirty days** of passing of the special resolutions, file **Form MGT 14** with copy of resolution
 4. Reduce the number of members to **200** or below if required.
 5. Send to the stock exchanges where the securities of the company are listed, **six** copies including one certified copy of the amendments to the articles of association of the company as soon as they have been approved by the company in general meeting.
 6. In accordance with the **Section 14** of the Companies Act, 2013, no alteration made in the articles of association of a company, which has the effect of converting a public company into a private company, shall be effective unless such alteration has been approved by the Central Government. Now, the power has been delegated to Registrar of Companies.
An application in Form **INC 27** along with the minutes of the members' meeting within three months from the date of passing of the special resolution for alteration of the articles
 7. Send to the stock exchanges where the securities of the company are listed, three copies of proceedings of the general meeting at which the special resolution was passed and also three copies of the newspaper advertisement of notice.
 8. After the alteration of the articles has been approved by the Central Government, a printed copy of the altered articles of the company should be filed with the concerned Registrar of Companies in form **INC 27** within **one month** of the date of receipt of the order of approval.
 9. Surrender to the Registrar, the Certificate of Incorporation of the company in order to obtain fresh Certificate of Incorporation

It is important to note that the company becomes a private company with effect from the date of approval of the Tribunal under the proviso to **Section 14** of the Companies Act, 2013, the change in the name of the company shall be effective from the date of issue of fresh Certificate of Incorporation consequent upon conversion into a private company, by the Registrar of Companies.

Conversion of a Section 8 Company Into a Company of any other Kind

A company registered under **section 8** which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion.

- The explanatory statement annexed to the notice convening the general meeting shall set out in detail the reasons for opting for such conversion.
- What are the privileges or concessions currently enjoyed by the Company.
- Certified true copy of the special resolution along with a copy of the Notice convening the meeting including the explanatory statement shall be filed with the Registrar in **Form No.MGT-14** along with the fee.
- The company shall file an application in **Form No.INC-18** with the Regional Director and with the registrar with the fee along with a certified copy of the special resolution and a copy of the Notice convening the meeting.
- The company shall, within a week from the date of submitting the application to the Regional Director, publish a notice at its own expense in **Form No. INC-19**.
- If company enjoyed special privileges from authorizes “NOC” must be obtained, if required under the terms of the said special status, privilege, exemption, benefit or grant(s) from the concerned authority and filed with the Regional Director, along with the application.
- The company shall attach with the application a certificate from practicing **CA/CS/CWA** certifying that the conditions laid down in the Act and these rules relating to conversion of a company registered under **section 8** into any other kind of company, have been complied with.
- 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
- Company shall be given a reasonable opportunity of being heard by the Regional Director
- On receipt of the approval of the Regional Director convene a general meeting to pass a special resolution for amending its MOA and AOA.
- The Company shall thereafter file with the Registrar.-
 - a) A certified copy of the approval of the Regional Director within **thirty days** from the date of receipt of the order in **Form No.INC-20** along with the fee;
 - b) Amended MOA and AOA of the company.
 - c) A declaration by the directors that the conditions, if any imposed by the Regional Director have been fully complied with.
- Approval of the RD shall be filed with ROC in **form INC-28**
- On receipt of the documents as mentioned above, the Registrar shall register the documents and issue the fresh Certificate of Incorporation

ANNEXURES

SPECIMEN OF THE SPECIAL RESOLUTION FOR ALTERING ARTICLES OF A PRIVATE COMPANY CONVERTING IT INTO A PUBLIC COMPANY

“RESOLVED THAT-

- i. pursuant to the applicable provisions of the Companies Act, 2013, the company be and is hereby converted into a public company;
- ii. The name of the company be and is hereby changed from ____ Private Limited to ____ Limited; and
- iii. The regulations contained in the document submitted for consideration and approval of this meeting, and initialed by the chairman of the meeting for the purpose of identification, be and are hereby approved and adopted as the articles of association of the company in substitution for, and to the exclusion of, the present articles of association of the company.”

Explanatory Statement

The Board of directors of the company, at its meeting held on ____, discussed the pros and cons of a public limited company and a private limited company, and decided to convert the company into a public limited company and also decided that the present articles of association of the company, which were adopted by the company when it was incorporated as a private limited company, be also substituted by a new set of articles.

Since the proposed alterations, deletions, insertions etc. to the present articles of association were numerous; the Board decided that it would be convenient to adopt an altogether new set of articles of association incorporating all the proposed alterations.

Your directors commend the proposed special resolution for your consideration and adoption of the new set of articles of association of the company in place of the existing articles of association of the company.

None of the directors is concerned or interested in the proposed resolution.

SPECIMEN OF THE SPECIAL RESOLUTION FOR CHANGE OF NAME OF THE COMPANY AS PER PROVISIO TO SECTION 13 OF THE ACT

“RESOLVED THAT pursuant to the proviso to Section 13 of the Companies Act, 2013, the name of the company be and is hereby changed from “_____. Private Limited” to “_____ Limited” and the name clause in the memorandum and articles of association of the company are also accordingly altered.

Explanatory Statement

The Board of directors of the company had, at its meeting held on, resolved that the consequent upon conversion of the company from private limited company to public limited

company, the name of the company be changed from “___Private Limited” to “___ Limited”.

No director is concerned or interested in the proposed resolution.

SPECIMEN OF GENERAL NOTICE OF THE COMPANY ON BECOMING A PUBLIC COMPANY AND CONSEQUENT CHANGE OF NAME OF THE COMPANY

Name of the Company (new) Registered Office Address

PUBLIC NOTICE

All concerned are hereby informed that the name of the Company has been changed from “___Private Limited” to “___ Limited” with effect from ___ as per FRESH CERTIFICATE OF INCORPORATION CONSEQUENT UPON CHANGE OF NAME issued by the Registrar of Companies, ___ on the ___ day of ___, 20___.

The registered office of the company continues to be situated at _____

Place: _____ for _____ Limited

Date: _____

(_____)

Company Secretary

NOT TO BE PUBLISHED

For publication in the ___, ___, ___ and ___ editions of the English daily and ___, Hindi Daily, ___ for ___ Limited

(_____)

Company Secretary

SPECIMEN OF NOTICE FOR THE BOARD MEETING FOR CONVENING GENERAL MEETING FOR ALTERATION OF ARTICLES TO CONVERT A PUBLIC COMPANY INTO A PRIVATE COMPANY

Shri _____ Managing Director

Shri _____ Whole-time Director

Shri _____ Director

Shri _____ Director

Shri _____ Director

Shri _____ Director

Dear Sirs,

Notice is hereby given that the next meeting of the Board of directors of the company will be held at ___ Hrs. on ___ (day), ___ (month) ___ 20___ at the Corporate Office of the company at _____ to transact the following business:

1. To grant requests from directors for leave of absence, if any.
2. To confirm the minutes of the previous Board Meeting held on ___ and the chairman to sign the same.
3. Directors to make disclosure of their interest, or changes thereof, if any.

4. To discuss and approve financial results for the quarter ended _____ and to authorize the chairman to sign the same on behalf of the Board of directors of the company.
5. To authorize the company secretary to arrange for the publication of the approved financial results in the English daily newspaper _____ and the Hindi daily newspaper _____ in their earliest available editions and also to send the same to the stock exchanges where the securities of the company are listed within forty-eight hours of the close of the Board meeting.
6. To fix time, date and venue for holding an extraordinary general meeting of the company to transact the business as detailed in the agenda including an item for conversion of the company into a private company the draft whereof would be placed before the meeting as initialed by the chairman as a mark of identification.
7. To authorize the company secretary or any director to issue notice for the general meeting on behalf of the Board in accordance with the provisions of Section 101 of the Companies Act, 2013 along with the Explanatory Statement as required under Section 102 of the Act.
8. Any other business with the permission of the chair.

Please make it convenient to attend the meeting. Thanking you,
Yours faithfully.

(_____)
Company Secretary

SPECIMEN OF BOARD RESOLUTION FOR CALLING A GENERAL MEETING

“RESOLVED THAT an extraordinary general meeting of the company be and is hereby called to be held at ____Hrs. on ____ (day) ____ (month) ____20____ at the registered office of the company at ____for, inter alia, passing the special resolutions for –

- i. conversion of the company into a private company in accordance with Section 14(1) of the Companies Act, 2013;
- ii. for change of name of the company in accordance with Section 13 of the Companies Act, 2013;
- iii. for alteration of articles of association of the company so as to include, the required restrictions, limitation and prohibition specified in Section 2(68) of the Companies Act, 2013, delete all provisions that are inconsistent therewith in accordance with Section 14 read with Section 2(68) of the Companies Act, 2013 and include articles which are required for required for a private company ; and
- iv. for alteration of the name clause in the memorandum of association of the company in accordance with the provision of Section 13 of the Act.”

MODEL GENERAL POWER OF ATTORNEY
(On non-judicial Stamp Paper of Requisite Value)

The Registrar of Companies

I/We, the undersigned, subscribers to the Memorandum and Articles of Association, _____ do hereby authorize Shri _____ son of _____ resident of _____ to make any alteration, addition, correction, deletion, amendment, and such other work as may be necessary on our behalf in the Memorandum and Articles of Association and all other documents filed with you relating to the registration of the above-mentioned company and attest the same on my/our behalf and to receive/collect the Certificate of Incorporation on our behalf and to do such other things as may be necessary in connection with the incorporation of the above named company.

Accepted.

Place: Subscriber(s) to the Memorandum and Articles of Association

Date:

**SPECIMEN OF BOARD RESOLUTION FOR ADOPTION OF PRE-INCORPORATION
CONTRACTS**

RESOLVED THAT the preliminary expenses for `_____ incurred by the promoters of the company for the purpose of its incorporation as per the statement placed before the meeting be and are hereby approved.

RESOLVED FURTHER that the preliminary contracts entered into by the promoters in connection with the incorporation of the company as per the statement before the meeting be and are hereby approved.



FAQs

Short Notes

- Limited liability partnership (LLP)
- One Person Company(OPC)

Distinguished between the following

- Company limited by guarantee and an unlimited company
- Holding company and Subsidiary company
- Private company and Small company

Descriptive questions

- As a Company Secretary, what steps would you take for incorporation of a Public Limited Company having Share Capital?
- What are the contents of Form No.INC 1 relating to availability or change of name?
- Enumerate the procedure for conversion of a public company into a private company.
- A group of persons desirous of forming a company wants to know the procedure for getting the name of the company approved by the Registrar of Companies. Advise the group about the e-form to be used and the procedure to be followed by the applicant group in this regard.
- BST is a company incorporated as a company not for profit under section 8 of the Companies Act, 2013. The Board of BST has decided to convert the same into a public company under section 2(71). Explain the procedure governing conversion of BST into BST Ltd.
- A foreign company proposes to establish a place of business in New Delhi. Explain the requirements and compliances to be made in this regard. Whether the directors of the company are required to obtain DIN?
- Beach SA, a company incorporated in France, wants to set-up a branch in India. Advise Beach SA, regarding provisions to be complied with. Will it make any difference if 50% of the paid-up share capital of Beach SA, is held by Indian citizens?

Practical questions

- Your client Vivek wants to form a private company with a share capital of 50,000. Examining the relevant provisions of the Companies Act, 2013, advise Vivek on the following issues with proper justification:
 - i. Whether Vivek will be successful in the formation of the proposed company?
 - ii. Whether public can be invited for subscribing to the share capital of the proposed company?
 - iii. Whether registration of articles of association of the proposed company is mandatory?
 - iv. Whether Vivek will be able to convert the proposed private company into

'one person company' at a later date, if need be?

- v. As regards to stamp duty state whether it will make any difference if the proposed company is incorporated in the State of Haryana or in the State of Kerala.
- William & Company, a company incorporated in U.K., decides to set-up its corporate office in Mumbai. Accordingly, the Board of Directors of the company passes a resolution.
- The Board seeks your advice on the procedure to be adopted to carry out the proposal of the company. Advise the Board about the procedure to be followed and forms and documents the company is required to file with the Registrar of Companies.



SPACE FOR NOTES