

Draft Rules under Companies Act, 2013

CHAPTER II

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERE TO

Person incorporating a One Person Company to be a natural person, Indian citizen and resident in India

- 2.1** (1) In exercise of the powers conferred by sub-section (1) of section 469, for the purposes of sections 3 and 4, only a natural person who is an Indian citizen and resident in India:-
- (a) shall be eligible to incorporate a One Person Company;
 - (b) shall be a nominee for the sole member of a One Person Company.

Explanation: For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one financial year.

- (2) No person shall be eligible to incorporate more than five One Person Companies.

(3) Where a natural person, being member in One Person Company in accordance with this rule becomes a member in another One Person Company by virtue of his being a nominee in that One Person Company, he/she shall meet the eligibility criteria specified in rule 2.1(2) within a period of one hundred and eighty days.

Nomination by the subscriber or member of One Person Company.

2.2 For the purposes of first proviso to sub-section (1) of section 3,

- (1) The subscriber to the memorandum of a One Person Company shall nominate a person, after obtaining his/her prior written consent, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of that One Person Company.
- (2) Name of the person nominated under sub-rule (1) shall be mentioned in the memorandum of One Person Company and the nomination in Form No. 2.1 along with consent of such nominee obtained in Form No. 2.2 and fee as provided in Annexure 'B shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles.
- (3) In pursuance of second proviso of sub-section (1) of section 3, the person nominated by the subscriber or member of One Person Company may, withdraw his consent by giving a notice in writing to such sole member and to the One Person Company.
Provided that the sole member shall nominate another person as nominee within 15 days on 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. 2.2.

- (4) The company shall within thirty days of receipt of the notice of withdrawal of consent under sub-rule (3) file with the Registrar, a notice of such withdrawal of consent and the intimation of the name of another person nominated by the sole member in Form No.2.3 along with fee as provided in Annexure 'B' and the written consent of such another person so nominated in Form No.2.2.
- (5) For the purposes of third proviso of sub-section (1) of section 3, the subscriber or member of a One Person Company may, by intimating in writing to the company, 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 after obtaining the prior consent of such another person in Form No. 2.2.

Provided that the company shall, on the receipt of such intimation, file with the Registrar, a notice of such change in Form No. 2.4 along with fee as provided in Annexure 'B', and with the written consent of the new nominee in Form No. 2.2 within 30 days of receipt of intimation of the change.

- (6) Where the sole member of One Person Company ceases to be the member in the event of his death or his incapacity to contract and his nominee becomes the member of such One Person Company, such new member shall nominate within fifteen days of becoming the member a person who shall in the event of his death or his incapacity to contract become

the member of such company, and the company shall file with the Registrar an intimation of such cessation and nomination in Form No. 2.5 along with the fee as provided in Annexure 'B' within 30 days of the change in membership and with the prior written consent of the person so nominated in Form No. 2.2.

2.3 Penalty

If One Person Company or any officer of the OPC contravenes the provisions of these rules, OPC or any officer of the OPC shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.

One Person Company to convert itself into a public company or a private company in certain cases

2.4 In exercise of the powers conferred by sub-section (1) of section 469,

(1) Where the paid up share capital of a One Person Company exceeds fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as a One Person Company.

(2) 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 or the close of the financial year during which its balance sheet total exceeds one 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 minimum of seven members and three directors in accordance with the provisions of section 18 of the Act.

(3) It shall alter its memorandum and articles by passing an ordinary or special resolution in accordance with sub-section

(3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.

(4) Within thirty days of the sub-rule (1) becoming applicable, the One Person Company shall give a notice to the Registrar in Form No. 2.6 informing that it has ceased to be a One Person Company and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover, having exceeded the threshold limit laid down in sub-rule (1) above.

Explanation.-For the purposes of this rule,-

(a) "relevant period" means the period of immediately preceding three consecutive financial years; and

(5) If One Person Company or any officer of the OPC contravenes the provisions of these rules, OPC or any officer of the OPC shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.

(6) One Person company can get itself converted into a Private or Public company after increasing the minimum number of members and directors to two or minimum of seven members and three directors as the case may be, and by maintaining the minimum paid-up capital as per requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.

Undesirable names.

2.5. (1) For the purposes of clause (a) of sub-section (2) of section 4, in determining whether a proposed name is identical with another, the differences on account of the following shall be disregarded:

- (a) the words Private, Pvt, Pvt., (P), Limited, Ltd, Ltd., LLP, Limited Liability Partnership;
- (b) the words appearing at the end of the names – company, and company, co., co, corporation, corp, corpn, corp.;
- (c) the plural version of any of the words appearing in the name;
- (d) the type and case of letters, spacing between letters and punctuation marks;
- (e) joining words together or separating the words does not make a name distinguishable from a name that uses the similar, separated or joined words;
- (f) the use of a different tense or number of the same word does not distinguish one name from another;
- (g) Using different phonetic spellings or spelling variations does not distinguish one name from another. For example, P.Q. Industries limited is existing then P and Q Industries or Pee Que Industries or P n Q Industries or P & Q Industries will not be allowed. Similarly if a name contains numeric character like 3, resemblance shall be checked with 'Three' also;
- (h) misspelled words, whether intentionally misspelled or not, do not conflict with the similar, properly spelled words;
- (i) the addition of an internet related designation, such as .com, .net, .edu, .gov, .org, .in does not make a name distinguishable from another, even where (.) is written as 'dot';

- (j) the addition of words like New, Modern, Nav, Shri, Sri, Shree, Sree, Om, Jai, Sai, The, etc. does not make a name distinguishable from an existing name. Similarly, if it is different from the name of the existing company only to the extent of adding the name of the place, the same shall not be allowed; Such names may be allowed only if no objection from the existing company by way of Board resolution is submitted;
 - (k) different combination of the same words does not make a name distinguishable from an existing name, e.g., if there is a company in existence by the name of "Builders and Contractors Limited", the name "Contractors and Builders Limited" will not be allowed unless it is change of name of existing company;
 - (l) if the proposed name is the Hindi or English translation or transliteration of the name of an existing company or limited liability partnership in English or Hindi, as the case may be.
- (2) For the purposes of sub-clause (ii) of clause (b) of sub-section (2) of section 4:
- (a) a name shall be considered undesirable if:-
 - (i) it attracts the provisions of section 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950 (12 of 1950);
 - (ii) it includes the name of a registered trade mark or a trade mark which is subject of an

application for registration, unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters;

(iii) it includes any word or words which are offensive to any section of the people;

(b) a name shall also generally be considered undesirable if:-

(i) the proposed name is identical with or too nearly resembles the name of a limited liability partnership;

(ii) it is not in consonance with the principal objects of the company as set out in the memorandum of association:

Provided that every name need not be necessarily indicative of the objects of the company, but when there is some indication of objects in the name, then it shall be in conformity with the objects mentioned in the memorandum;

(iii) the Company's main business is financing, leasing, chit fund, investments, securities or combination thereof, such name shall not be allowed unless the name is indicative of such related financial activities, viz., Chit Fund/ Investment/ Loan, etc.;

(iv) it resembles closely the popular or abbreviated description of an existing company or limited liability partnership;

- (v) the proposed name is identical with or too nearly resembles the name of a company or limited liability partnership incorporated outside India and reserved by such company or limited liability partnership with the Registrar:

Provided that if a foreign company is incorporating its subsidiary company in India, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian state or city, if otherwise available;

- (vi) any part of the proposed name includes the words indicative of a separate type of business constitution or legal person or any connotation thereof e.g. co-operative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm, Inc., PLC, GmbH, SA, PTE, Sdn, AG etc.;

Explanation: Name including phrase **'Electoral Trust'** may be allowed for Registration of companies to be formed under section 25 of the Companies Act, 1956 under the Electoral Trusts Scheme 2013 as notified by the Central Board of Direct Taxes (CBDT); provided that name application is accompanied with an affidavit to the effect that the name to be obtained shall be only for the purpose of registration of companies

under Electoral Trust Scheme as notified by the CBDT.

- (vii) the proposed name contains the words 'British India';
- (viii) the proposed name implies association or connection with embassy or consulate or a foreign government;
- (ix) the proposed name includes or implies association or connection with or patronage of a national hero or any person held in high esteem or important personages who occupied or are occupying important positions in Government;
- (x) the proposed name is vague or an abbreviated name such as 'ABC limited' or '23K limited' or 'DJMO' Ltd: abbreviated name based on the name of the promoters will not be allowed. For example:- BMCD Limited representing first alphabet of the name of the promoter like Bharat, Mahesh, Chandan and David.

Provided that existing company may use its abbreviated name as part of the name for formation of a new company as subsidiary or joint venture or associate company but such joint venture or associated company shall not have an abbreviated name only e.g. Delhi Paper Mills Limited can get a joint venture or

associated company as DPM Papers Limited and not as DPM Limited

However the companies well known in their respective field by abbreviated names are allowed to change their names to abbreviation of their existing name after following the requirements of the Act;

- (xi) the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding and a period of two years have not elapsed from the date of such dissolution (since the dissolution of the company could be declared void within the period aforesaid by an order of the Tribunal under section 356 of the Act). Further, if the proposed name is identical with the name of a company which is struck off in pursuance of action under section 248 of the Act, then the same shall not be allowed before the expiry of twenty years from the publication in the Official Gazette being so struck off (since the company can be restored anytime within such period by the Tribunal);
- (xii) it is identical with or too nearly resembles the name of a limited liability partnership in liquidation or the name of a limited liability partnership which is struck off up to a period of five years;

- (xiii) the proposed name include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual fund' etc., unless a declaration is submitted by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant;
- (xiv) the proposed name includes the word "State", the same shall be allowed only in case the company is a government company.
- (xv) the proposed name is containing only the name of a continent, country, state, city such as Asia limited, Germany Limited, Haryana Limited, Mysore Limited;
- (xvi) the name is only a general one, like Cotton Textile Mills Ltd. or Silk Manufacturing Ltd., and not Lakshmi Silk Manufacturing Co. Ltd;
- (xvii) it is intended or likely to produce a misleading impression regarding the scope or scale of its activities which would be beyond the resources at its disposal:
- (xviii) the proposed name includes name of any foreign country or any city in a foreign country, the same shall be allowed if the applicant produces any proof of significance of business relations with such foreign country like MOU with a company of such country .Provided further the name

combining the name of a foreign country with the use of India like India Japan or Japan India shall be allowed if, there is a government to government participation or patronage. No company shall be incorporated using the name of an enemy country. (Enemy country means so declared by the Central Government from time to time).

(3) If any company has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of six months from the change of activities after complying with all the provisions as applicable to change of name.

(4) In case the key word used in the name proposed is the name of a person other than the name(s) of the promoters or their close blood relatives, No objection from such other (s) shall be attached with the application for name. In case the name includes the name of relatives, the proof of relation shall be attached. It shall be mandatory to furnish the significance and proof thereof for use of coined words made out of the name of the promoters or their relatives.

(5) The applicant shall declare in affirmative or negative (to affirm or deny) whether they are using or have been using in the last 5 years , the name applied for incorporation of company or LLP in any other business constitution like Sole proprietor or Partnership or any other incorporated or unincorporated entity and if, yes details thereof and NOC from other partners and associates for use of such name by the proposed Company or LLP as the case may be and also a declaration as to whether such other business shall be taken over by the proposed company or LLP or not .

(6) For the purposes of clause (b) of sub-section (3) of section 4, the following words and combinations thereof shall not be used in the name of a company in English or any of the languages depicting the same meaning unless the previous

approval of the Central Government has been obtained for the use of any such word or expression:

- (a) Board;
- (b) Commission;
- (c) Authority; or
- (d) Undertaking
- (e) National
- (f) Union
- (g) Central
- (h) Federal
- (i) Republic
- (j) President
- (k) Rashtrapati,
- (l) Small Scale Industries
- (m) Khadi and Village Industries Corporation
- (n) Financial, forest, Corporation and the like
- (o) Municipal
- (p) Panchayat
- (q) Development Authority;
- (r) Prime Minister or Chief Minister
- (s) Minister
- (t) Nation
- (u) Forest corporation
- (v) Development Scheme
- (w) Statute or Statutory
- (x) Court or Judiciary
- (y) Governor
- (z) Development Scheme or the use of word Scheme with the name of Government (s) , State , India,

Bharat or any government authority or in any manner resembling with the schemes launched by Central, state or local Governments and authorities.

- (7) For Section 8 Companies, the name shall include the words foundation, Forum, Association, Council and the like.
- (8) The names freed on change of name by any company shall remain in data base and shall not be allowed to be taken by any other company including the group company of the company who has changed the name for a period of three years from the date of change subject to specific direction from the Tribunal in the course of merger or reconstruction or demerger.

Reservation of name.

- 2.6.** For the purposes of sub-section (4) of section 4, an application for the reservation of a name shall be made in Form No. 2.7 along with the fee as provided in Annexure 'B'.
- 2.7.** For the purposes of sub-section (5) of section 5, where the articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in Form No. 2.8 along with the fee as provided in Annexure 'B' within thirty days from the date of formation of the company or amendment of the articles, as the case may be.
- 2.8.** For the purposes of sub-section (6) of section 5, the model articles as prescribed in Table F, G, H, I and J of Schedule I may be adopted by a company as may be applicable to the case of the company, either in totality or otherwise.

Application for incorporation of companies.

2.9. For the purposes of sub-section (1) of section 7, an application shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in Form No. 2.9 along with the fee as provided in Annexure 'B' for registration of a company:

Signing of memorandum and articles.

2.10. For the purpose of clause (a) of sub-section (1) of section 7, the Memorandum and Articles of Association of the company shall be signed in the following manner:-

- (1) Memorandum and articles of association of the company shall be signed by each subscriber to the memorandum, who shall add his name, address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise sign and add his name, address, description and occupation, if any. The witness shall state that "I witness to subscriber/subscriber(s). who has/have subscribed and signed in my presence (date and place to be given). Further I have verified his/their ID for their identification and satisfied myself of his/her/their identification particulars as filled in.

- (2) Where a subscriber to the memorandum 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. He shall also write against the name of the subscriber, the number of shares taken by him. Such person shall also read and explain the contents of the memorandum and articles of association to the subscriber and make an endorsement to that effect on the memorandum and articles of association.
- (3) Where the subscriber to the memorandum 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 of the body corporate and 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, provided that in either case, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of Association.

- (4) Where subscriber to the memorandum is a foreign national residing outside India,
- (a) in a country in any part of the Commonwealth, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary (Public) in that part of the Commonwealth.
 - (b) in a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary (Public) of the country of his origin and be duly apostilled in accordance with the said Hague Convention.
 - (c) in a country outside the Commonwealth and which is not a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity, shall be notarized before the Notary (Public) of such country and the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (40 of 1948) or, where there is no such officer by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic.C.10), or in any Act amending the same.

(d) If, a foreign national 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.

Explanation :-In case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa will not be applicable.

Declaration by professionals.

2.11. For the purposes of clause (b) of sub-section (1) of section 7, the declaration by an advocate, a Chartered Accountant, Cost accountant or Company Secretary in practice shall be in Form No. 2.10.

Affidavit from subscribers and first directors.

2.12. For the purposes of clause (c) of sub-section (1) of section 7, the affidavit shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in Form 2.11.

Particulars of every subscriber to be filed with the Registrar at the time of incorporation.

2.13. (1) For the purposes of clause (e) of sub-section (1) of section 7, the following particulars of every subscriber to the memorandum shall be filed with the Registrar:

- (a) Name (including surname or family name) and recent Photograph affixed and scan with MOA and AOA:
- (b) Father's/Mother's/ Spouse's name:
- (c) Nationality:
- (d) Date of Birth:
- (e) Place of Birth (District and State):
- (f) Occupation:
- (g) Income-tax permanent account number:
- (h) Permanent residential address and also Present address (Time since residing at present address and address of previous residence address (es) if stay of present address is less than one year) similarly the office/business addresses :
- (i) Email id of Subscriber
- (j) Mobile No. of Subscriber
- (k) Phone No. of Subscriber
- (l) Fax no. of Subscriber

Explanation: - information related to (i) to (l) shall be of the individual subscriber and not of the professional *engaged in the incorporation of the company.*

- (m) Proof of Identity:
 - For Indian Nationals:

- PAN Card (mandatory) and any one of the following
 - Voter's identity card
 - Passport copy
 - Driving License copy
 - Unique Identification Number (UIN)
 - For Foreign nationals and Non Resident Indians :
 - Passport
 - Others.
- (n) Residential proof such as Ration Card, Voter's card, Driving licence, Passport, Unique Identification Number (UIN), Registered Rent Agreement etc AND Bank Statement, Electricity Bill, Telephone / Mobile Bill etc.
- Provided** that Bank statement Electricity bill, Telephone / Mobile bill shall not be more than two months old.
- (o) Proof of nationality in case the subscriber is a foreign national.
- (p) Each subscriber (including first directors of the company) to the MOA and AOA shall furnish the specimen signature duly verified by their respective banker at the time of incorporation
- Explanation: - the specimen signature shall be in the prescribed **form no 2.32**.
- (q) If the subscriber is already a director or promoter of a company(s), the following details:
- (i) Name of the company
 - (ii) CIN

(iii) Whether interested as a director or promoter

(2) Where the subscriber to the memorandum is a body corporate then the following particulars shall be filed with the Registrar:-

- (a) CIN of the Company / Registration No of the body corporate, if any
- (b) GLN, if any
- (c) Name of the body corporate
- (d) Registered office address/ principal place of business
- (e) E-mail Id
- (f) If the body corporate is a company, certified true copy of the board resolution specifying *inter alia* the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed by the body corporate, and the name, address and designation of the person authorized to subscribe to the Memorandum. If the body corporate is a limited liability partnership, certified true copy of the resolution agreed to by all the partners specifying *inter alia* the authorization to subscribe to the memorandum of association of the proposed company and to make investment in

the proposed company, the number of shares proposed to be subscribed in the body corporate, and the name of the partner authorized to subscribe to the Memorandum.

(g) Particulars as prescribed above for subscribers in terms of Section 7(1)(e) for the person subscribing for body corporate.

(h) In case of foreign bodies corporate, following additional details to be submitted:-

- i) copy of certificate of incorporation of the foreign body corporate; and
- ii) registered office address along with proof.

Particulars of first directors of the company and their consent to act as such.

2.14. For the purposes of clauses (f) and (g) of sub-section (1) of section 7, the particulars 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 to act as director of the company shall be filed in Form No. 2.12 with the fee as provided in Annexure 'B'.

Certificate of incorporation.

2.15. For the purposes of sub-section (2) of section 7, the Certificate of Incorporation shall be issued by the Registrar in Form No. 2.13.

Formation of companies with charitable objects etc.

License under section 8 for new or existing companies with charitable objects etc.

2.16.(1) Powers under section 8 of the Act of the Central Government are Delegated to the Registrar having Jurisdiction over the area where the Registered office of the company is proposed to be situated.

(2) A person or an association of persons (hereinafter referred to in this rule as "the proposed company"), desirous of being incorporated as a company with limited liability under sub-section (1) of section 8 without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", shall make an application in Form No. 2.14 (Part A) along with the fee as provided in Annexure 'B' to the Registrar for a license under sub-section (1) of section 8.

(3)The memorandum of association of the proposed company shall be in Form No. 2.17.

(4) The application under sub-rule (1) shall be accompanied by the following documents, namely:—

- (a) draft memorandum and articles of association of the proposed company;
- (b) a declaration in Form No. 2.15 by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and that 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) an estimate of the annual income and expenditure of the proposed company for the next three years, specifying the sources of the income and the expenditure plans;
- (d) 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;
- (e) a declaration by each of the persons making the application in Form No. 2.16;
- (f) a copy of the board resolution / members' resolution.

(4) A limited company registered under this Act or under any previous company law, with any of the objects specified in clause (a) of sub-section (1) of section 8 and the restrictions and prohibitions as mentioned respectively in clause (b) and (c) of that sub-section, and which is desirous of being registered under section 8, without the

addition to its name of the word "Limited" or as the case may be, the words "Private Limited", shall make an application in Form No. 2.14 (Part B) along with the fee as provided in Annexure 'B' to the Registrar for a licence under sub-section (5) of section 8.

(5) The application under sub-rule (4) shall be accompanied by the following documents:

- (a) memorandum and articles of association of the company;
- (b) declaration as given in Form No. 2.15 by an Advocate, a Chartered accountant, Cost Accountant or Company Secretary in Practice, that the memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and that 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) the following documents submitted by the company in general meeting for each of the two financial years immediately preceding the date of the application, or when the company has functioned only for one financial year, for such year—
 - (i) the financial statements,
 - (ii) the Board's reports, and
 - (iii) the audit reports;
- (d) 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;

- (e) 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;
- (f) certified copy of the resolutions passed in general/board meetings approving registration of the company under section 8; and
- (g) a declaration by each of the persons making the application in Form No. 2.16.

General conditions to be complied with by companies to be registered under section 8.

2.17. (1) The applicant shall, within a week from the date of making the application to the Registrar, publish a notice at his own expense, and a copy of the notice, as published, shall be sent forthwith to the Registrar. The said notice shall be in Form No. 2.18 and shall be published:

- (a) at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is to be situated or is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district; and
- (b) on the websites as may be notified by the Central Government.

(2) The Registrar may require the applicant to furnish the approval or concurrence of any appropriate authority, regulatory body, department or Ministry of the Central or State Government(s).

(3) 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 or State Government(s), as it may, in its discretion, decide whether the license should or should not be granted.

(4) The licence shall be in Form No. 2.19 or Form No. 2.20, 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. 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.

Conditions for conversion of a company registered under Section 8 into a company of any other kind.

2.18. (1) For the purposes of sub-clause(ii) of sub-section (4) of section 8, 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 including the following:

- a) Date of incorporation of the company;
- b) The principal objects of the company as set out in the memorandum of association;
- c) Reasons as to why the activities for achieving the objects of the company cannot be carried on in the current structure i.e. as a section 8 company;
- d) If the principal/main objects of the company are proposed to be altered, what would be the altered objects and the reasons for the alteration;
- e) What are the privileges/concessions currently enjoyed by the company, such as tax exemptions, approvals for receiving donations/contributions including foreign contributions, land and other immovable properties, if any, that were acquired by the company at concessional rates/prices or gratuitously and, if so, the market prices prevalent at the time of acquisition and the price that was paid by the company, details of any donations or bequests received by the company with conditions attached to their utilization etc.
- f) What would be the impact of the proposed conversion on the members of the company including details of any benefits that may accrue to the members as a result of the conversion.

(2) A 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. 7.14 along with the fee as provided in Annexure 'B'.

(3) The company shall file an application in Form No. 2.21 with the Regional Director with the fee as provided in Annexure C 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 converting itself into a company of any other kind.

(4) A copy of the application with annexures as filed with the Regional Director shall also be filed with the Registrar.

2.19. Other conditions to be complied with by companies registered under section 8 seeking conversion into any other kind.

(1) 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. The said notice shall be in Form No. 2.22 and shall be published:

(a) 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;

(b) on the website of the company, if any, and as may further be notified/directed by the Central Government.

(2) The company shall send a copy of the notice, simultaneously with its publication, together with a copy of the application and all attachments 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. If any of these authorities wish to make any representation to Regional Director, it shall do so within sixty days of the receipt of the notice.

(3) The Board of directors shall give a declaration to the effect that no portion of the income or property of the company has been or shall be paid or transferred directly or indirectly by way of dividend or bonus or otherwise to persons who are or have been members of the company or to any one or more of them or to any persons claiming through any one or more of them.

- (4) Where the company has obtained any special status, privilege, exemption, benefit or grant(s) from any authority such as Income Tax Department, Charity Commissioner or any organisation or Department of Central Government, State Government, Municipal Body or any recognized authority, a "No Objection Certificate" 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.
- (5) 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.
- (6) The company shall attach with the application a certificate from practicing Chartered Accountant/ Company Secretary in practice/ Cost Accountant 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.
- (7) The Regional Director may require the applicant to furnish the approval or concurrence of any particular authority for grant of his approval for the conversion.

(8) 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 including the following conditions:

- a) The company shall give up and shall not claim, with effect from the date its conversion takes effect, any special status, exemptions or privileges that it enjoyed by virtue of having been registered under the provisions of section 8;
- b) If the company had acquired any immovable property free of cost or at a concessional cost from any government or authority, it may be required to pay the difference between the cost at which it acquired such property and the market price of such property at the time of conversion either to the government or to the authority that provided the immovable property;
- c) Any accumulated profit or unutilized income of the company brought forward from previous years shall be first utilized to settle all outstanding statutory dues, amounts due to lenders claims of creditors, suppliers, service providers and others including employees and lastly any loans advanced by the promoters or members or any other amounts due to them and the balance, if any, shall be transferred to the Investor Education and Protection Fund. within thirty days of receiving the approval for conversion;

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

- (9) On receipt of the approval of the Regional Director,
- (i) 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 as required under the Act consequent to the conversion of the section 8 company into a company of any other kind.
 - (ii) The Company shall thereafter file with the Registrar:
 - a) a certified copy of the approval of the Regional Director
 - b) Amended memorandum of association and articles of association of the company.
 - c) A declaration by the directors that the conditions, if any imposed by the Regional Director have been fully complied with.

(10) On receipt of the documents referred to in sub rule (4) above, the Registrar shall register the documents and issue the fresh Certificate of Incorporation.

Intimation to Registrar of revocation of licence issued under section 8.

2.20. For the purposes of sub-section (6) of section 8, where the licence granted to a company registered under section 8 has been revoked, the company shall apply to the Registrar in Form No. 2.23 along with the fee as provided in Annexure 'B' to convert its status and change of name accordingly.

Declaration at the time of commencement of business.

2.21. For the purposes of clause (a) of sub-section (1) of section 11, the declaration filed by a director shall be in Form No. 2.24 along with the fee as provided in Annexure 'B' and the contents of the form shall be verified by a Company Secretary in practice or a Chartered Accountant or a Cost Accountant:

Provided that in the case of a company requiring registration and/or approval from other regulators or professional body which regulates such professional activity, the declaration referred above shall also be accompanied with a certificate of registration/Approval issued to it by the concerned regulator, or professional body.

Verification of registered office.

2.22. For the purposes of sub-section (2) of section 12 -

- (1) the verification of the registered office shall be filed in Form No. 2.25 along with the fee as provided in Annexure 'B'; and
- (2) there shall be attached to Form No. 2.25, any of the following documents, namely -
 - (a) Registered document of the title of the premises of the registered office in the name of the company;
or
 - (b) Notarized copy of lease / rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;

(c) Authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office.

AND

(d) Document of connection of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner/document as the case may be which is not older than 2 months.

(3) There shall be attached to Form No. 2.25 the list of all other companies with their CIN, having the same unit/tenement/premises as their registered office address.

Publication of name by company.

2.23. For the purposes of clause (d) of sub-section (3) of section 12, the Central Government may as and when required, notify the other documents on which the name of the company shall be printed.

Notice and verification of change of situation of the registered office.

2.24. For the purposes of sub-section (4) of section 12, notice of change of the situation of the registered office and verification thereof shall be filed in Form No. 2.25 along with the fee as provided in Annexure 'B' and there shall be attached to Form No. 2.25, and the similar documents and manner of verification as are prescribed for verification of Registered office on incorporation as above in terms of section 12 (2)

Shifting of registered office within the same State

2.25. (1) For the purposes of proviso of sub-section (5) of section 12, an application seeking confirmation from the Regional Director for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, shall be filed by the company with the Regional Director in Form No. 2.26 along with the fee as provided in Annexure 'C'.

(2) The company shall, not less than one month before filing any application with the Regional Director for the change of registered office,

(a) publish a notice, at least once in a daily newspaper published in English and in the principal language of that district in which the registered office of the company is situated and circulating in that district and

(b) serve individual notice on each debenture holder, depositor and creditor of the company;

clearly indicating the matter of application and stating that any person whose interest is likely to be affected by the proposed alteration of the memorandum may intimate his nature of interest and grounds of opposition to the Regional Director with a copy to the company within twenty one days of the date of publication of that notice:

Provided further that in case no objection is received by the Regional Director within twenty one days from the date of service or publication of the notice, the person concerned shall be deemed to have given his consent to the change of registered office proposed in the application:

Provided also that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

Alteration of Memorandum by change of name.

- 2.26.** (1) Change of name shall not be allowed to a company which has defaulted in filing its Annual Returns or Financial Statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures.
- (2) For the purposes of sub-section (3) of section 13, a new certificate of incorporation in Form 2.27 shall be issued to the company consequent upon change of name.

Shifting of registered office from one State to another State.

Application under section 13.

2.27. (1) An application under sub-section (4) of section 13, for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one State to another, shall be filed with the Central Government in Form No. 2.28 along with the fee as provided in Annexure 'C' and shall be accompanied by the following documents:

- (a) Copy of the memorandum and articles of association.
- (b) Copy of the notice convening the general meeting along with relevant Explanatory Statement.
- (c) Copy of the special resolution sanctioning the alteration by the members of the company.
- (d) Copy of the minutes of the general meeting at which the resolution authorizing such alteration was passed, giving details of the number of votes cast in favor or against the resolution.
- (e) Affidavit verifying the application.
- (f) List of creditors and debenture holders entitled to object to the application.
- (g) Affidavit verifying the list of creditors.
- (h) Bank draft evidencing payment of application fee.
- (i) Copy of Board Resolution or the executed Vakalatnama, as the case may be.

(2) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details:

(a) the names and address of every creditor and debenture holder of the company;

(b) the nature and respective amounts due to them in respect of debts, claims or liabilities:

Provided that the applicant company shall file an affidavit, signed by the Company Secretary of the company, if any and not less than two directors of the company, one of whom shall be a managing director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge.

(3) There shall also be attached to the application an affidavit from the directors of the company that no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state.

- (4) A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company.
- (5) There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of the state where the registered office is situated at the time of filing the application.
- (6) The company shall at least 14 days before the date of hearing:
 - (a) advertise the application in the specified form in a vernacular newspaper in the principal vernacular language in the district in which the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district;
 - (b) serve, by registered post with acknowledgement due, individual notice(s), to the effect set out in clause (a) above on each debenture-holder and creditor of the company; and

- (c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board, in the case of listed companies and to the regulatory body, if the company is regulated under any special act.
- (7) Where any objection of any person whose interest is likely to be affected by the proposed application has been received by the applicant, it shall serve a copy thereof to the Central Government on or before the date of hearing.
- (8) Where no objection has been received from any of the parties, who have been duly served, the application may be put up for orders without hearing.
- (9) Before confirming the alteration, the Central Government shall ensure that, with respect to every creditor and debenture holder who, in the opinion of the Central government, is entitled to object to the alteration, and who signifies his objection in the manner directed by the Central government, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Central Government.

- (10) The Central Government may make an order confirming the alteration on such terms and conditions, if any, as it thinks fit, and may make such order as to costs as it thinks proper:

Provided that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

- 2.28.** For the purposes of sub-section (7) of section 13, the certified copy of the order of the Central Government, approving the alteration of the memorandum for transfer of registered office of the company from one State to another, shall be filed in Form No. 2.29 along with the fee as provided in Annexure 'B' with the Registrar of each of the States within thirty days from the date of receipt of certified copy of the order.

Change of objects for which money is raised through prospectus.

- 2.29.** (1) For the purposes of sub-section (8) of section 13, where the company has raised money from public through prospectus and has any unutilized amount out of the money so raised, it shall not change the objects for which the money so raised is to be applied unless a special resolution is passed through postal ballot and the notice in respect of the resolution for altering the objects shall contain the following particulars:

- (a) total money received;
- (b) total money utilized for the objects stated in the prospectus;
- (c) unutilized amount out of the money so raised through prospectus,
- (d) particulars of the proposed alteration/ change in the objects;
- (e) justification for the alteration/change in the objects;
- (f) amount proposed to be utilized for the new objects;
- (g) estimated financial impact of the proposed alteration on the earnings and cash flow of the company;
- (h) other relevant information which is necessary for the members to take an informed decision on the proposed resolution;
- (i) place from where any interested person may obtain a copy of the notice of resolution to be passed.

(2) For the purposes of clause (i) of sub-section (8) of section 13, the advertisement giving details of the resolution to be passed for change in objects shall be in Form No. 2.30, which shall be published simultaneously with the dispatch of postal ballot notices to shareholders.

(3) The notice shall also be placed on the website of the company, if any.

Alteration of articles.

2.30. For the purposes of sub-section (2) of section 14, a copy of the order of the Tribunal approving the alteration, shall be filed with the Registrar in Form No. 2.31 with fee as provided in Annexure 'B' together with the printed copy of the altered articles within fifteen days of the receipt of the order from the Tribunal.

Copies of memorandum and articles, etc. to be given to members on request being made by them.

2.31. For the purposes of sub-section (1) of section 17, a company shall on payment of fee as provided in Annexure 'B', send a copy of each of the following documents to a member within seven days of the request being made by him-

- (1) the memorandum;
- (2) the articles, if any;
- (3) every agreement and every resolution referred to in sub-section (1) of section 117, if and so far as they have not been embodied in the memorandum and articles.

Service of documents.

2.32. (1) For the purposes of sub-section (1) of section 20, a document may be served on a company or an officer thereof through electronic transmission.

(2) For the purposes of sub-rule (1) of this rule, "electronic transmission" means a communication-

(a) delivered by -

(i) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the company or the officer has provided from time to time for sending communications to the company or the officer respectively;

(ii) posting of an electronic message board or network that the company or the officer has designated for such communications, and which transmission shall be validly delivered upon the posting; or

(iii) other means of electronic communication,

in respect of which the company or the officer has put in place reasonable systems to verify that the sender is the person purporting to send the transmission, and

- (b) that creates a record that is capable of retention, retrieval and review, and which may thereafter be rendered into clearly legible tangible form.
- (3) For the purposes of sub-section (2) of section 20, a document may be served on the Registrar or any member through electronic transmission.
- (4) For the purposes of sub-rule (3) of this rule, "electronic transmission" means a communication –
 - (a) delivered by –
 - (i) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the Registrar or the member has provided from time to time for sending communications to the Registrar or the member respectively;
 - (ii) posting of an electronic message board or network that the Registrar or the member has designated for those communications, and which transmission shall be validly delivered upon the posting, or
 - (iii) other means of electronic communication

in respect of which the Registrar or the member has put in place reasonable systems to verify that the sender is the person purporting to send the transmission, and

- (b) that creates a record that is capable of retention, retrieval and review, and which may thereafter be rendered into clearly legible tangible form.
- (5) For the purposes of sub-section (1) and (2) of section 20, 'courier' means a document sent through a courier which provides proof of delivery.