



Rawani & Co.
Chartered Accountants

J.B. NAGAR STUDY CIRCLE OF WESTERN INDIA REGIONAL COUNCIL

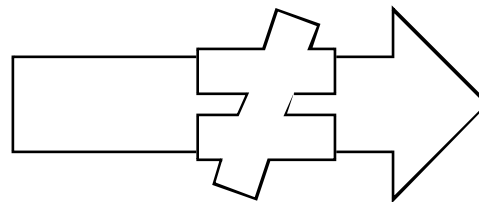
INTENSIVE COURSE OF COMPANIES ACT 2013

Structure

Companies Act, 1956

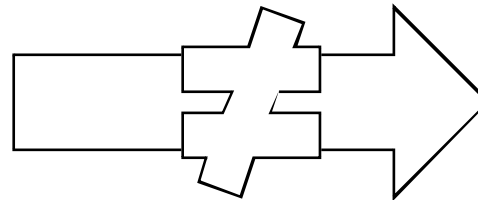
Companies Act, 2013

13 Parts



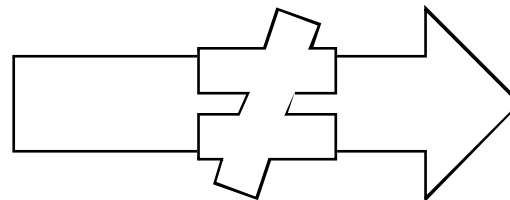
29
Chapters

658
Sections



470
Sections

15
Schedules



7
Schedules

98 Sections of Companies Act 2013 brought into force

- MCA Notification on 12th September 2013;
 - Brought in force 98 Sections relating to definitions, prospectus and allotment of securities, restrictions on powers of board, loan to Directors, Holding of AGM, EGM, Quorum and proxy, Constitution of NCLT etc.
- MCA Circular on 13th September, 2013;
 - Existing AS to continue till revised standards notified;
 - Notice issued prior to Notification for passing Ordinary Resolution, the same to apply;
- MCA Circular on 18th September, 2013
 - Relevant provisions of CA 1956 ceases to apply to the extent of new Act provisions made applicable.

Effective Sections from 1.4.2014

Section 2 (2)	Accounting Standards
Section 2 (7)	Auditing Standards
Section 2 (13)	Books of Account
Section 2 (31)	Deposit
Section 2 (41)	Financial Year
Section 2 (42)	Foreign Company
Section 2 (47)	Independent Director
Section 2 (48)	Indian Depository Receipt

Effective Sections from 1.4.2014

Section 2 (62)	One Person Company
Section 2 (83)	Serious Fraud Investigation Office
Section 2 (85)	Small company
Section 2 (87)	Explanation (d) of definition of subsidiary

Definitions

- Associate Company [Section 2(6)]
 - Associate company will be considered as Related Party and will have implications under financial statements and related party contracts
- Private Company [Section 2(68)]
 - Restricts the right to transfer its shares
 - Except in case of OPC limits number of members to 200;
 - Minimum Paid up Capital of Rs. 1 Lac or more as may be specified from time to time;
 - Prohibits invitation to the public to subscribe for any **securities** of the Company
- Articles to contain a clause that prohibits a Company to accept deposits from person other than its members, directors and relatives.

Foreign Company [Section 2(42)]

- ❑ Company or Body Corporate Incorporated outside India
 - ❑ Has POB in India either by itself, or through agents physically or electronic mode; and
 - ❑ Conducts any business activity in India in any other manner

Government Companies

Section 395

**Annual reports
where one or more
State Governments
are members of
companies**

Financial Statements

- Section 2(40) includes:

○ Balance Sheet

○ Profit and Loss account(or income and expenditure account)

○ Cash Flow Statement (OPC, Dormant excluded);

○ Statement of changes in equity, if applicable

○ Any explanatory Note annexed thereto or forming part thereof

Financial Year Meaning

- Commencing on 1st April and ending on 31st March each year;
- By application to the Tribunal, the Foreign Holding or Foreign Subsidiary Company can follow different FY for consolidation of accounts;
- Existing companies given time limit of 2 years to align the FY with this clause;

Financial Statements

Companies Act, 1956	Companies Act, 2013
No such provisions	Books of accounts may be kept in electronic form.
<p><u>Consolidation of Accounts</u> Consolidation is not mandated under the <u>Companies Act, 1956</u> for any company. Listing agreement requires consolidation for listed companies having subsidiaries. (Clause 32 of Listing agreement and AS 21)</p>	<p><u>Consolidation of Accounts</u> A company having subsidiary or associate company, shall prepare a consolidated financial statement, in addition to its financial statements and shall lay the same for approval in AGM.</p>
<p><u>Contents</u></p> <ul style="list-style-type: none"> • Balance Sheet, Statement of Profit & Loss • Cash flow Statement (applicable only to listed companies and companies having Turnover in excess of 50 crores or borrowings in excess of 10 crores) AS 3 and listing agreement 	<p><u>Contents</u></p> <ul style="list-style-type: none"> • Balance Sheet • Statement of Profit & Loss • Cash Flow Statement (Except for OPC and Small Company) • Statement of Changes in Equity • Notes to accounts

Books of Account & Papers

- Sums of money received and expended and matters relating to receipts and expenditure;
- All sales and purchases of goods and services;
- Assets and Liabilities;
- Cost records as applicable to classes of Company specified u/s 148;
- deeds, vouchers, writings, documents, minutes and registers maintained
 - In paper or in electronic form

Books of Accounts

- Section 128, Rules 9.1 and 9.2
- To be kept at the registered office or such other place as the board decides.
- To be kept on accrual basis and on double entry system of accounting
- It may be kept in electronic mode
 1. To remain accessible in India
 2. To retain completely as originally generated
 3. Includes 'Electronic Record' as per information Technology Act, 2000

..Books of Accounts..

- In case of branches, proper summarized returns to be sent periodically by the branch to registered office
- BOA are open for inspection by any director during business hours at the registered office or any other place.
- BOA to be kept for period of 8 Financial Years in good order;
- If investigation is ordered the same have to be kept for such longer period as the central government may direct.

Key Management Personnel

- in relation to a company, means—
 - (i) the Chief Executive Officer or the managing director or the manager;
 - (ii) the company secretary;
 - (iii) the whole-time director;
 - (iv) the Chief Financial Officer; and
 - (v) such other officer as may be prescribed;

(Section 2(51))

Key Management Personnel

Companies Act, 1956	Companies Act, 2013
<p>Under <u>CA, 1956</u>, irrespective of the capital, Private Companies are not mandated to appoint MD/WTD/Manager etc. except Whole Time Company Secretary in case of companies having paid up capital of Rs. 5 Crores or more. [<u>Section 269 & 383A</u>]</p>	<p>All companies, including private companies, having paid up capital of Rs. 5 Crores or more are required to have the following whole time KMP:</p> <ol style="list-style-type: none">1. MD/CEO/Manager/WTD;2. Company Secretary; and3. CFO <p>[<u>Section 203</u>]</p>

Inclusion of CS in the definition

- expert" includes an engineer, a valuer, a chartered accountant, **a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force**

Officer in Default to include



Any person who,


- under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default.
- any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity.

Other Changes

- Private Company including those which are subsidiary of a public Company would be able to offer financial assistance to any person for the purchase of shares in the Company or in the holding Company;
- Director to give Deposit of Rs. 1 Lac for appointment (Except re-appointment) for standing as a Director including Notice of 14 days in writing to be given (Section 160);
- Financial Statements of the private limited company to be made available for inspection (Section 137);
- Date of Birth of the Director to be mentioned in the Register of Directors;

Promoter

- means a person—
- (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
- (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:
- (Section 2(69)) Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

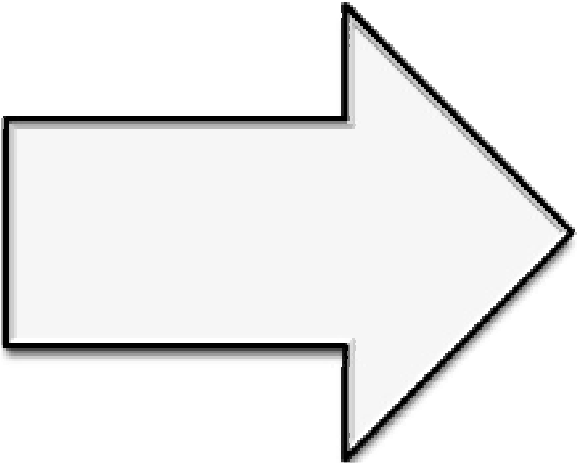


RELATED

Party



Director or KMP or their relative



Person Appointed in Senior management comprising all members of management one level below the executive directors, including the functional heads.

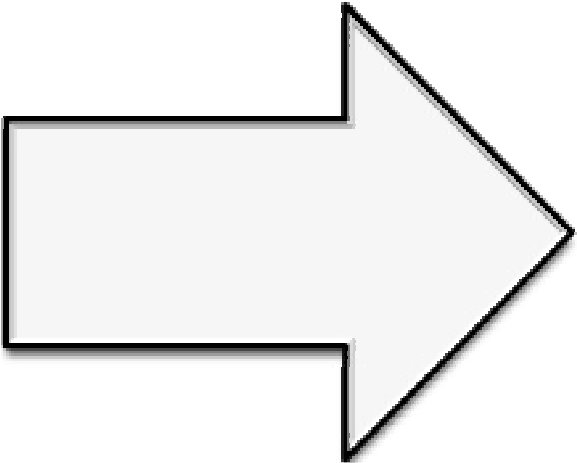
 RELATED

Party



a firm, in which a director,
manager or his relative is a partner;

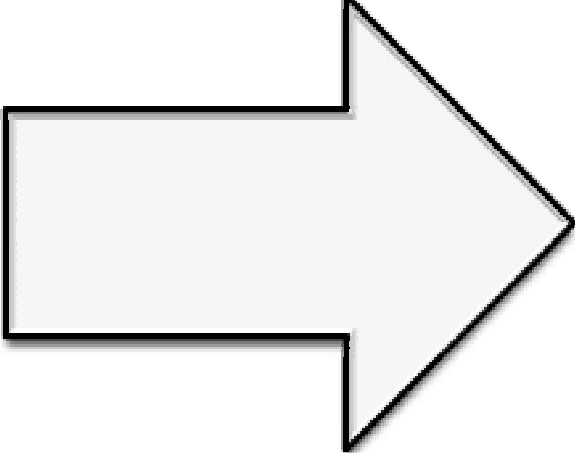
a private company in which a
director or manager is a member
or director;



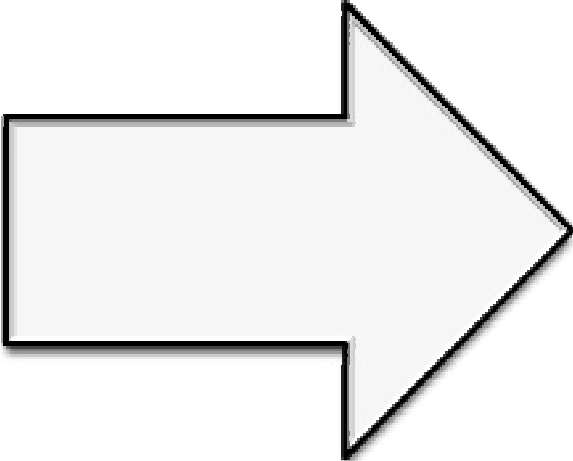
public company in which a director
or manager is a director or holds
along with his relatives, more than
two per cent. of its paid-up share
capital

 RELATED

Party



any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager



any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity

RELATED

Party

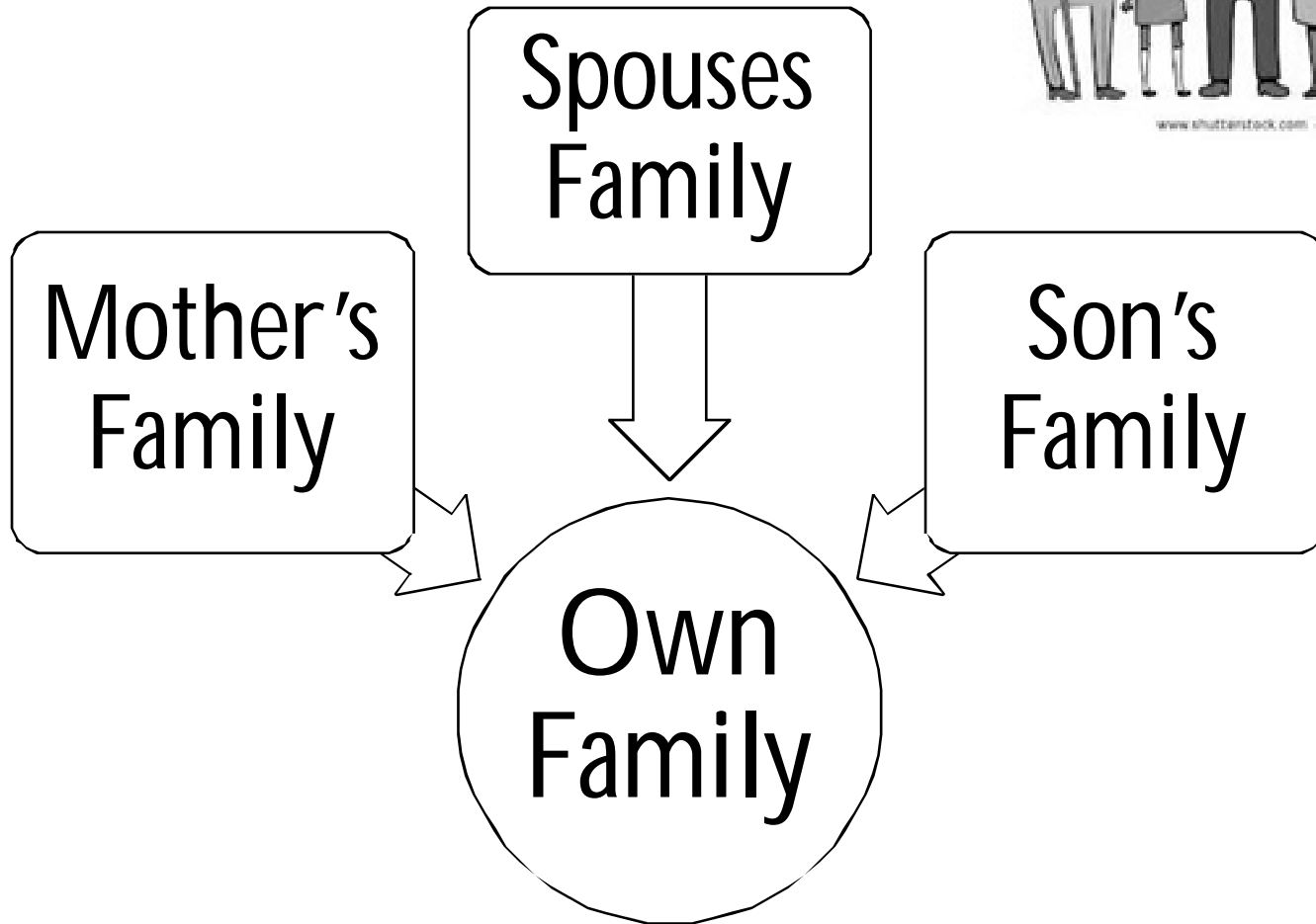
any company which is—

(A) a holding, subsidiary or an associate company of such company; or

(B) a subsidiary of a holding company to which it is also a subsidiary;

such other person as may be prescribed;

Relatives



Subsidiary Company (Section 2(87))

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

Investments in Subsidiary

Companies Act, 1956	Companies Act, 2013
Investments permitted subject to compliance of Section 372-A	A subsidiary company can't hold shares in its holding company, either by itself or through its nominees.
No such direct provision	A holding company can't allot or transfer its shares to any of its subsidiary companies.

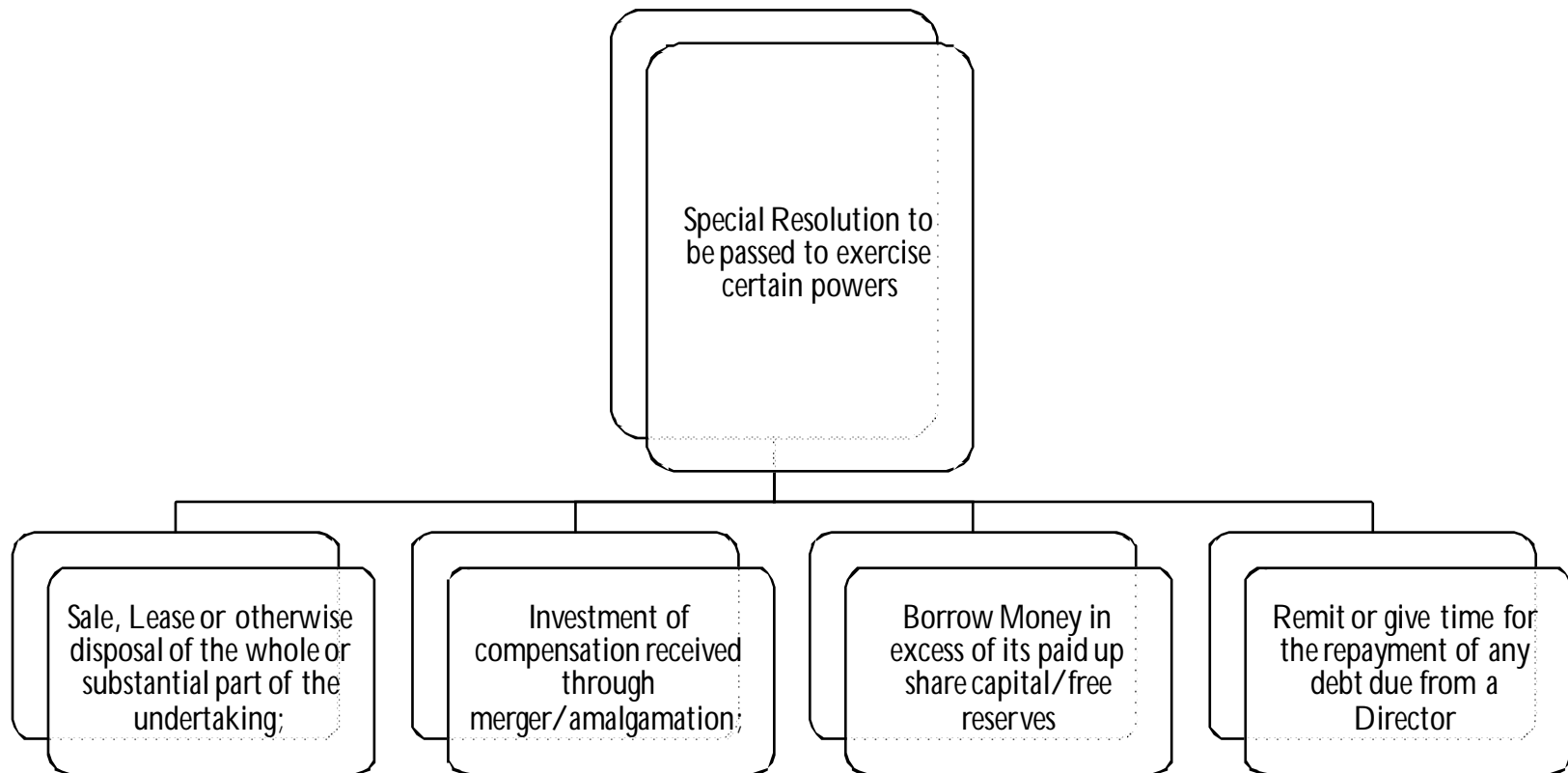
Important provisions

Word "shares" replaced with "securities" to bring all host of instruments;

Any consolidation and division of share capital resulting in change in voting percentage will require approval from Tribunal;

No re-opening of books of account unless required by ITA, SEBI or any regulatory authority;-
Application and approval from Tribunal required.

Restrictions on Powers of Board



List of Exemptions withdrawn for private limited companies

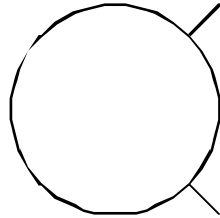
Approval required from members to issue further share capital (Section 62);

Certificate of commencement of business required (Section 11); (Removed by way of amendment in CA 2015)

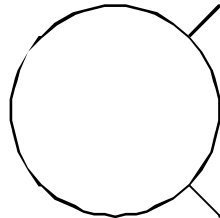
Passing of Resolution by postal ballot made mandatory to Companies having more than 50 members (Section 110);

Stringent conditions prescribed for acceptance of deposit from the members (Section 73 & 74)

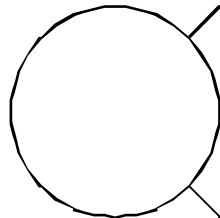
List of Exemptions withdrawn for private limited companies



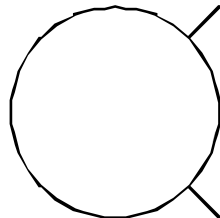
Loan to Directors and related parties approval required(Section 185);



Inter Company Investments & Loans Approval to be taken(Section 186);



Appointment of 2 or more persons as Director by single resolution (Section 162);



Consent to Act as Director to be filed mandatorily (Section 152)

List of Exemptions withdrawn for private limited companies

Appointment of Managerial person approval required(Section 196);

Interested Director not to participate in voting (Section 184);

Appointment & Tenure of MD(Section 203);

Restriction on kind of capital to be issued (Section 43)

Certain Exemptions still continues

- SLP not to be filed before allotment of shares;
- Limits of payment of managerial remuneration in the events of inadequate or lower profits;
- Provisions relating to non retirement of Directors by rotation in the AOA;
- Can frame own rules relating to filling up casual vacancy in the Articles;
- Provide any additional disqualification for Directorship in AOA over and above the provisions of the Act;
- Provide other ground for vacation of office as Director in AOA in addition the provisions of the Act.

Form DIR-3

Application for allotment of Director Identification Number

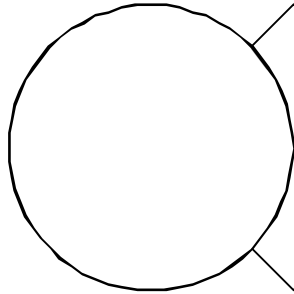
List of documents which needs to be attached with e-Form DIR-3 in PDF format.

1. Proof of identity of applicant
2. Proof of residence of applicant
3. Copy of verification by the applicant as per Form No. DIR-4 (Affidavit format);
4. Digital Signature of the Applicant Mandatory.

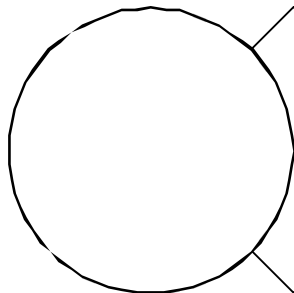
COMPANY FORMATION



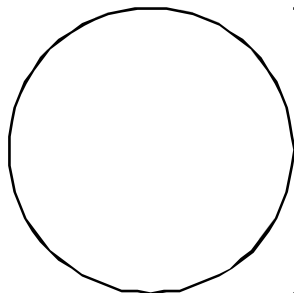
Formation of Company



Chapter II of the
Companies Act, 2013;



Contains 22 Sections



Effective from
1.4.2014

Chapter II- Formation of Company

Section 3	Formation of Company
Section 2 (83)	Serious Fraud Investigation Office
Section 4	Memorandum of Association
Section 5	Articles of Association
Section 6	Act to over ride MOA & AOA
Section 7	Incorporation of Company (sub section (7) excluded)
Section 8	Formation of Company with Charitable Objects (sub section (9) excluded)

Chapter II- Formation of Company

Section 9	Effect of Registration
Section 10	Effect of MOA & AOA
Section 11	Commencement of Business
Section 12	Registered Office of the Company
Section 13	Alteration of Memorandum
Section 14	Alteration of Articles (Except second proviso to sub-section (1) and sub-section (2))
Section 15	Alteration of Memorandum or Articles to be noted in every copy

Chapter II- Formation of Company

Section 16	Rectification of Name of the Company
Section 17	Copies of memorandum, articles, etc., to be given to members
Section 18	Conversion of companies already registered
Section 19	Subsidiary Company not to hold shares in holding Company
Section 20	Service of documents

Changes in Name Reservation

- Undesirable Names not allowed, the criteria continues;
- Proposed Name containing British India not allowed;
- proposed name implies association or connection with embassy or consulate or a foreign government;
- proposed name is identical to the name of a company dissolved as a result of liquidation proceeding and a period of 2 years have not elapsed from the date of such dissolution, if struck by Tribunal then 20 years;
- identical with or too nearly resembles the name of a LLP in liquidation or the name of a LLP which is struck off up to a period of five years

Circular No. 2/2014 dated 11.02.2014

Use of word "National"

- in the name not permitted for Registration of Companies/LLP;
- Allowed only if State/Central Government has a stake in the Company/LLP;

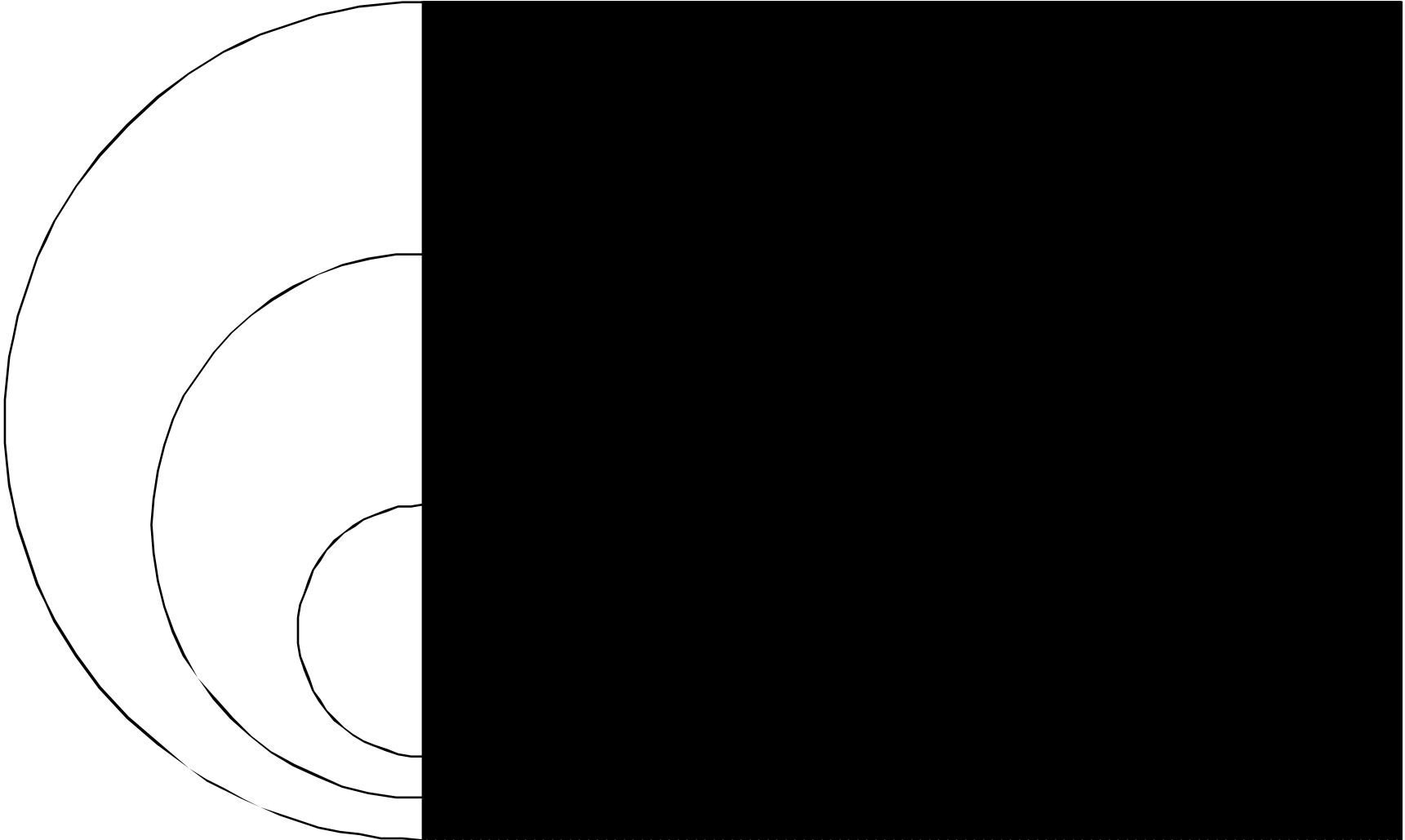
Use of word "Bank"

- NOC from RBI to be submitted

Use of word "Stock Exchange" or "Exchange"

- NOC from SEBI to be filed by the Promoters

Definitions to recollect in Act



Certain Highlights of the Act

A specific provision is added stipulating that the AOA may contain entrenchment provisions whereby specified provisions may be altered only if conditions or procedures that are more restrictive than those applicable to a special resolution, are complied with.

Such entrenchment shall either be made on formation of a company or by an amendment to the Articles agreed by all the members in case of a private company and by a special resolution in case of a public company;

Certain Highlights of the Act

Subscribers & First Directors to give an Affidavit at the time of Incorporation stating

that they are not convicted of any offence in connection with the promotion, formation, or management of or guilty of any fraud or misfeasance or breach of duty in relation to any Company under the new enactment or any previous Company law during the preceding five years

(Additional Document now to be given at the time of Incorporation)

Certain Highlights of the Act

Particulars of Interest to be filed at the time of Incorporation, if any, relation to first Directors;

Any incorrect or false statement to be liable for a fine and attraction of imprisonment;

Company to be regarded as Holding Company if the former holds more than 50% of the total share capital. It includes equity as well as preference also.

Section -3

- Company can be formed for any lawful purpose by
 - 7 or more persons (subscribers) for public limited;
 - 2 or more persons (subscribers) for private limited;
 - 1 person Company (subscriber) will be a private company
- The Companies be formed by subscribing to MOA & complying with the requirements of this Act in respect of Registration.

Section -3

- Company can be formed for any lawful purpose by:
 - Company limited by guarantee;
 - Company limited by shares;
 - An unlimited Company.

- One person Company cannot be formed
 - as Company limited by guarantee
 - for investment activities
 - for NBFC business

Forms to be filed for Incorporation

Form No INC-
1

- Reservation of Name

Form INC-2

- Entrenchment Notice to the Registrar

Form No INC-
7

- Application for Incorporation of Company
- (Modified to include Direct Allotment of PAN, TAN and ESIC Registration effective 19.3.2015)

Form No. DIR-
8

- Appointment of Directors/KMP

Forms to be filed for Incorporation

INC-8

- Declaration by Professional

INC-9

- Affidavit from Subscribers & First Directors

INC-10

- Verification of Specimen Signatures from Bankers (Self Attestation from 1.5.2015)

Forms to be filed for Incorporation

DIR-12

- Consent of the Directors

INC-11

- Certificate of Incorporation

INC-21

- Application for Commencement of Business (Not required for Private Limited effective from 19.3.2015)