

DEDICATED
TO
SRI KRISHNA

COMPANY LAW PROCEDURES

With

Draft Resolutions and Referencer

[As amended by the Companies (Amendment) Act, 2017]

**Third
Edition**

2018

**CORPORATE
LAW
ADVISER**

CS-111/189

© All rights reserved with Jus Scriptum Magnus Pvt. Ltd.

Price : Rs. 975

ISBN : 978-93-84345-22-8

Law stated in this book is as amended upto 30th June, 2018

Published by : **Corporate Law Adviser**
(a division of Jus Scriptum Magnus Pvt. Ltd.)

CLA House

B-365, Sector 19, Dwarka, New Delhi - 110 075

Tel : +91-11-48004100 (20 Lines)

E-mail : info@claonline.in ; www.claonline.in

Designed and Processed by : AArushi Graphics, New Delhi

Printed at : Saurabh Printers Pvt. Ltd., Noida

No part of this book may be reproduced, copied or translated in any manner or by any means (graphics, electronic or mechanical, including photocopying, recording, taping or information retrieval system) or reproduced on any disc, tape, perforated media or other information storage device, etc., without the written permission of the publisher. Breach of this condition is liable for legal action.

The authors, editors and the publisher have taken all efforts to state the information as correctly as possible and are not responsible for any errors or omissions. The user should cross verify the law/Government Circulars/Notifications with original Government publication. The authors/publisher/editors would not be held responsible for any action taken by the user on the basis of information provided in this book.

All disputes are subject to the jurisdiction of courts of Delhi.

Contents

DIVISION I – PROCEDURES

Pr. No.

Pg. No.

INCORPORATION/ CONVERSION

One Person Company

1	Incorporation of One Person Company (OPC)	3
2	Conversion of One Person Company (OPC) into a public company or a private company	6
3	Conversion of a private company into One Person Company (OPC)	8
4	Change of nominee in One Person Company (OPC)	10

Private/Public Company

5	Incorporation of Private/Public Company	12
6	Conversion of Private Company to Public Company or vice-versa	15

Section 8

7	Incorporation of section 8 Company with Charitable Objects	18
8	Conversion of a Company Registered under section 8 into a Company of any other kind	21

Nidhi Company

9	Incorporation of Nidhi Company	27
---	--------------------------------	----

ALTERATION OF MEMORANDUM / ARTICLES

Name clause

10	Change in Name of the Company	30
11	Rectification of Name of the Company	33

CONTENTS

<i>Pr. No.</i>		<i>Pg. No.</i>
<i>Registered Office</i>		
12	Change of Registered Office outside the local limit within the same State	35
13	Change of Registered Office from the Jurisdiction of one Registrar to another within the same State	37
14	Change in the Registered Office from One State to Another	40
<i>Objects clause</i>		
15	Change in the Objects of the Company	43
16	Change in the Objects for which Money is Raised through Prospectus	45
17	Variation in terms of Contract or Objects in Prospectus	48
<i>Capital clause</i>		
18	Alteration of Share Capital	50
<i>Articles</i>		
19	Alteration of Articles	52
20	Entrenchment provision in the Articles	54
SHARE CERTIFICATE		
21	Issue of Duplicate Share Certificate	55
ISSUE OF SHARES / DEBENTURES		
22	Private Placement of Securities	57
23	Issue of Equity Shares with Differential Rights	60
24	Issue of Sweat Equity Shares	64
25	Further Issue of Share Capital on Right Basis	67
26	Issue of Bonus Shares	70
27	Buy-back of Securities	74
28	Issue of Debentures	81
DEPOSITS		
29	Acceptance of Deposits by a public company from Members	85
30	Acceptance of Deposits from Public in certain cases	90
31	Acceptance of Deposits from Members by a Private Company	96

CONTENTS

<i>Pr. No.</i>		<i>Pg. No.</i>
CHARGE		
32	Registration of Creation or Modification of Charge	99
33	Satisfaction of Charge	102
34	Rectification of Register of Charges by Central Government	104
BENEFICIAL INTEREST		
35	Declaration in respect of Beneficial Interest in any Share	106
36	Declaration in respect of Significant Beneficial Ownership	108
REGISTER OF MEMBERS		
37	Closure of Register of Members / Debenture-holders	110
38	Keeping of Register of Members or Debenture Holders/Index of Members/Foreign Register	112
39	Keeping of Register of Members etc., at a place other than the registered office	114
40	Keeping Books of Account at a Place Other than the Registered Office	116
MEETINGS AND RETURNS		
41	Convening of an Annual General Meeting	118
42	Convening of Extraordinary General Meeting	122
43	Laying of Financial Statement at the Annual General Meeting	125
44	Filing of Annual Return	128
DIVIDEND		
45	Payment of Dividend	130
46	Payment of Dividend out of Reserves	133
47	Payment of Interim Dividend	135
AUDITORS		
48	Appointment of Auditors	138
49	Appointment of First Auditor	140
50	Appointment of Internal Auditor and Internal Audit	142
51	Appointment of Auditor by Government Company	144
52	Appointment of Branch Auditor	146

CONTENTS

<i>Pr. No.</i>		<i>Pg. No.</i>
53	Appointment of Cost Auditor	148
54	Filling up of Casual Vacancy of Auditor	150
55	Rotation of Auditors	153
56	Reappointment of Retiring Auditor	155
57	Appointment of Auditors other than Retiring Auditors	157
58	Removal of Auditor before Expiry of his Term	160
59	Resignation of Auditor	162
SECRETARIAL AUDIT		
60	Secretarial Audit	163
DIRECTOR		
61	Appointment of Director (including first director)	168
62	Appointment of a Person, who is not a Retiring Director, as Director	171
63	Appointment of Alternate Director	173
64	Appointment of Independent Director	175
65	Appointment of Director elected by Small Shareholders	179
66	Appointment of Additional Director	182
67	Filling of Casual Vacancy in the Office of Director	184
68	Appointment of Nominee Director	186
69	Disqualification of Director	188
70	Resignation of Director	190
71	Removal of Director	192
BOARD MEETING		
72	Convening of Board Meeting through Physical Presence	195
73	Convening of Board meeting through video-conferencing or other audio-visual means	198
74	Passing a Resolution by Circulation	201
75	Disclosure of Interest by Directors	202
COMMITTEE MEETING		
76	Constitution of Audit Committee	204
77	Constitution of Nomination and Remuneration Committee	207
78	Constitution of Stakeholders Relationship Committee	210

CONTENTS

<i>Pr. No.</i>		<i>Pg. No.</i>
BORROWING POWERS		
79	Exercising of Borrowing Powers	212
LOANS AND INVESTMENTS		
80	Loan to Directors	215
81	Loans and Investments by a Company	219
RELATED PARTY TRANSACTIONS		
82	Related Party Transactions	223
APPOINTMENT / REMUNERATION OF MANAGING DIRECTOR ETC.		
83	Appointment of Managing Director, Whole Time Director or Manager	227
84	Appointment of Managing Director or Manager who is already a Managing Director or manager of another Company	231
85	Appointment of Key Managerial Personnel (KMP)	234
86	Increase in Remuneration of Managerial Personnel	236
87	Managerial Remuneration in absence of Profit or Inadequate Profit	239
PART XXI COMPANY		
88	Registration of Companies under Part XXI	242
FOREIGN COMPANIES		
89	Registration of Foreign Companies	244
90	Accounts of Foreign Company	246
DORMANT/ACTIVE COMPANY		
91	Obtaining Status of Dormant Company	248
92	Obtaining Status from Dormant to Active Company	251
INVESTOR EDUCATION AND PROTECTION FUND		
93	Transfer of Money to the Investor Education and Protection Fund	253
94	Transfer of shares to the Investor Education and Protection Fund	255
REMOVAL OF NAME		
95	Application by the company for removal of its name (strike-off of name)	257

CONTENTS

DIVISION II – REFERENCER

<i>Ref. No.</i>		<i>Pg. No.</i>
1	Companies Act, 1956 vis-a-vis Companies Act, 2013	261
2	Table of Fees	308
3	Matters requiring shareholders approval by special resolution	315
4	SS-1 Secretarial Standard on Meetings of the Board of Directors	318
5	SS-2 Secretarial Standard on General Meetings	342
6	SS-3 Secretarial Standard on Dividend	377
7	Exemptions to private companies	393
8	Exemptions to Government companies	397
9	Exemptions to charitable companies	403
10	Exemptions to Nidhis	406
11	SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	409

DIVISION I
PROCEDURES

Incorporation of One Person Company (OPC)

Applicable Sections

Sections 2(62), 3 and 12 of the Companies Act, 2013

Applicable Rule

Rules 3 and 12 of Companies (Incorporation) Rules, 2014

Synopsis

- OPC may be registered with one shareholder and may have a single director. The sole shareholder can himself be the sole Director. The company may have a maximum number of 15 directors.
- OPCs are provided with simpler legal and governance regime for their operation along with relaxations from a number of compliance requirements relating to holding of General meetings and Board meetings. Adequate safeguards are provided to ensure perpetual succession even after the death/disability of the sole owner through appointment of another person as a nominee of the shareholder.
- 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.

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 calendar year.

Where a natural person, being member in One Person Company becomes a member in another such company by virtue of his being a nominee in that other One Person Company, such a person shall meet the eligibility criteria within a period of *one hundred and eighty days*.

- All contracts (except contracts in the ordinary course of business) entered by an OPC with the sole member who is also a director of the OPC should either be reduced to writing or contained in a memorandum or recorded in the minute of the first meeting of the Board of Directors held after the contracts were entered into. Such contracts, which are recorded in the minutes, are also required to be informed to the Registrar of Companies within fifteen days of the date of the Board Meeting.
- No person shall be eligible to incorporate more than one 'OPC' or become nominee in more than one OPC.
- No minor shall become member or nominee of the One Person Company or can hold share with beneficial interest. This is because a minor is not capable of entering into contract or capable of stepping in the shoes of the Shareholder.
- OPC cannot be incorporated, or converted into a company, under section 8 of the Act.
- OPC cannot undertake Non-Banking Financial Investment activities including investment in securities of any other bodies corporate.

Procedure

Incorporation through SPICe (Without filing RUN)

One can avail 5 different services (name reservation, allotment of director identification number (DIN), incorporation of new company, allotment of PAN and allotment of TAN) in one form by applying for incorporation of a new company through **SPICe Form (INC-32) – Simplified Proforma for Incorporating Company electronically (SPICe)** – with eMoA (INC-33), eAOA (INC-34). In case eMoA, eAoA are not applicable, users are required to attach the pdf attachments of MoA and AoA. There is no need for reserving a name separately before filing SPICe. One name for the proposed company can be applied through SPICe (INC-32).

On approval of the **Form SPICe**, the Registrar shall issue certificate of incorporation with letters 'OPC' affixed with the name.

Incorporation through SPICe (With RUN)

1. Name reservation: RUN service shall be used for name availability.
2. Incorporate OPC: After name approval, **Form SPICe** shall be filed for incorporation of the OPC within 20 days from the date of approval of RUN.
3. File **Form INC-22** within 30 days once **Form SPICe** is registered in case the address of correspondence and registered office address are not same.

-
4. On approval of the *Form SPICe*, the Registrar shall issue certificate of incorporation with letters 'OPC' affixed with the name.
-

Conversion of One Person Company (OPC) into a public company or a private company

Applicable Sections

Section 3, 18 and 122 of the Companies Act, 2013.

Applicable Rule

Rule 6 of Companies (Incorporation) Rules, 2014

Synopsis

- Where the paid up share capital of a One Person Company exceeds fifty lakh rupees and its average annual turnover during the period of immediately preceding three consecutive financial years exceeds two crore rupees, it shall cease to be entitled to continue as a One Person 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

1. The One Person Company shall within period of sixty days from the date its paid up share capital exceeds 50 lakh rupees and its average annual turnover during the relevant period exceeds two crore rupees give a notice to the Registrar in **Form No.INC.5** 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.
2. The One Person Company shall alter its memorandum and articles by passing a

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.

3. The company shall file **Form MGT-14** within 30 days of passing the resolution.
4. An application in **Form INC-6** shall be made to the Registrar requesting for conversion of OPC as a private company or a public company, as the case may be.
5. On conversion to either private or public company it shall maintain the minimum prescribed paid up capital, with regard to Private / Public company and by making due compliance of section 18 of the Act for conversion
6. The Registrar on being satisfied in the matter will issue a fresh Certificate of Incorporation.

SHAREHOLDER RESOLUTION

(for conversion of one person company into a private or public limited company)

“RESOLVED THAT pursuant to the provisions of sections 3, 18 and 122 and any other applicable provisions, if any of the Companies Act, 2013, read with Companies (Incorporation) Rules, 2014, the consent of the members/ creditors be and is hereby accorded to the conversion of this one person company into a Private Limited Company/ Public Limited Company and consequently the name of the Company be and is hereby changed from “.....” to “.....”.”

RESOLVED FURTHER that Mr., Director of the Company be and is hereby authorised on behalf of the Company, to do all such acts, deeds, matters and things as deemed necessary, proper or desirable and to sign and execute all necessary documents, application and returns for the purpose of giving effect to the aforesaid resolution along with filing of necessary e forms (*enter forms to be filed here i.e., MGT-14 and INC-6*) with Registrar of Companies, (jurisdiction).”

Conversion of a private company into One Person Company (OPC)

Applicable Sections

Sections 18 and 122 of the Companies Act, 2013

Applicable Rule

Rule 7 of Companies (Incorporation) Rules, 2014

Procedure

1. A private company other than a company registered under section 8 of the Act having paid up share capital of fifty lakhs rupees and less and average annual turnover during the relevant period of two crore rupees 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. The one person company shall file copy of the special resolution with the Registrar of Companies within thirty 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 One Person Company along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014, by attaching the following documents :
 - (i) A declaration by directors of the company by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital company is fifty lakhs rupees or less and average annual turnover is less than two crores rupees, as the case may be ;
 - (ii) the list of members and list of creditors ;
 - (iii) the latest audited balance sheet and the profit and loss account; and

- (iv) the copy of no objection letter of secured creditors.
5. On being satisfied and complied with requirements stated herein the Registrar shall issue the Certificate of Incorporation with letters 'OPC' affixed with the name.

SPECIAL RESOLUTION

(for conversion of private company into one person company)

“RESOLVED THAT pursuant to the provisions of sections 18 and 122 and other applicable provisions, if any, of the Companies Act, 2013, read with Companies (Incorporation) Rules, 2014, the consent of the members/ creditors be and is hereby accorded to the conversion of this Private Limited Company into a One Person company and consequently the name of the Company be and is hereby changed from “.....” to “.....”.”

RESOLVED FURTHER THAT the word “Private” wherever appearing in the memorandum and articles of association of the company in the name of the company be and is hereby deleted.

RESOLVED FURTHER THAT Mr.Director of the Company be and is hereby authorised on behalf of the company, to do all such acts, deeds, matters and things as deemed necessary, proper or desirable and to sign and execute all necessary documents, application and returns for the purpose of giving effect to the aforesaid resolution along with filing of necessary e forms (*enter forms to be filed here i.e., MGT-14 and INC-6*) with Registrar of Companies, (jurisdiction).
