

## DRAFT RULES UNDER COMPANIES ACT, 2013

### CHAPTER XXI

#### PART I. – Companies authorized to register under this Act

**21.1.** (1) For the purposes of sub-section (2) of section 366, the provision of Chapter II relating to name availability and incorporation of a company shall be applicable mutatis mutandis except specifically exempted under section 371.

**Provided** that there shall be seven or more members who shall apply for availability of name and incorporation.

(2) A company after obtaining availability of name shall attach the documents and information to the Registrar along with Form 21.1. in the following manner:

(i) For registration as a company limited by shares:

(a) A list showing the names, addresses, and occupations of all persons named therein with details of shares held by them (including shares held as cash or other than cash separately) respectively, distinguishing, in cases where the shares are numbered, each share by its number, who on a day, not being more than six clear days before the day of seeking registration, were partners of the Partnership Firm or Limited Liability Partnership;

(b) A list showing the particulars of persons proposed as the first directors of the company, their names, including surnames or family names, the DIN, residential addresses and their interests in other firms or bodies corporate along with their consent to act as directors of the company;

(c) An affidavit from each of the persons proposed as the first directors, that he is not disqualified to be a director under sub section (1) of section 164 and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

(d) A list containing the names and addresses of the Partners of the Partnership Firm or Limited Liability Partnership Firm.

(e) a copy of any Act of Parliament or other Indian law, deed of partnership, Bye laws or other instrument constituting or regulating the company and duly verified in the manner provided in Rule 7;

(f) a statement specifying the following particulars:—

(i) the nominal share capital of the company and the number of shares into which it is divided;

(ii) the number of shares taken and the amount paid on each share;

(iii) the name of the company, with the addition of the word "Limited" or "Private Limited" as the case may require, as the last word or words thereof;

(g) Written consent or No Objection Certificate from all the secured creditors of the applicant.

(h) Written consent from the majority of members whether present in person or by proxy at a general meeting agreeing for registration under this part.

(ii) For registration as a company limited by guarantee or as an unlimited company:

(a) a list showing the names, addresses and occupations of all persons, who on a day, not being more than six clear days before the day of seeking registration, were members of the company with proof of membership;

- (b) A list showing the particulars of persons proposed as the first directors of the company, their names, including surnames or family names, the DIN, residential addresses and their interests in other firms or bodies corporate along with their consent to act as directors of the company;
- (c) An affidavit from each of the first directors, that he is not disqualified to be a director under sub section (1) of section 164 and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;
- (d) A list containing the names and addresses of the Partners of the Partnership Firm or Limited Liability Partnership Firm
- (e) a copy of any Act of Parliament or other Indian law, deed of partnership, bye-laws or other instrument constituting or regulating the company duly verified in the manner provided in Rule 7;
- (f) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

(3) Statement of accounts of the company, prepared not later than six days preceding the date of seeking registration, certified by the Auditor of the “company” together with the Audited Financial Statements of the previous year, where applicable.

**Provided** that assets of the ‘company’ shall not be revalued for the purpose of vesting of its assets with the company as incorporated under this Act during immediately preceding one year or surplus out of the revaluation shall not be credited to the capital account.

(4) A certificate from a Company Secretary in Practice or Chartered Accountant or Cost Accountant certifying that the entity applying for registration under this Part has complied with all the provisions of the Stamp Act, to the extent applicable including in vesting of immovable properties.

(5) No objection certificate from the concerned Registrar of Firms or Registrar of Companies(LLP) for conversion into a company under the Companies Act, 2013;

(6) An affidavit, duly notarized, from all the members or partners providing that in the event of registration as a company under Part I of Chapter XXI of the Companies Act, 2013, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution as partnership firm or limited liability partnership.

(7) The list of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be duly verified by the declaration of any two or more directors of the company or Designated Partner of the Limited Liability Partnership or two partners of a partnership firm.

**21.2.** (1) For the purpose of clause (b) of section 374, every company seeking registration under Part I of Chapter XXI shall publish an advertisement about registration under this Part, seeking objections, if any. The said advertisement shall be in Form No. 21.2 and shall be published 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, and circulating in that district, and at least once in English language in an English newspaper circulating in that district;

(2) A copy of the notice, as published, shall be attached with Form 21.1. .

(3) The Registrar shall, after considering the application and the objections, if any, received by him within thirty days from the date of publication of notice, and after ensuring that the company has addressed the objections suitably decide whether the Registration should or should not be granted.

(4) If the Registrar decides that the applicant should be registered, he shall issue a certificate of incorporation in Form 2.12.

**21.3.** For the purpose of section 374(d), where a partnership firm or Limited Liability Partnership has obtained a certificate of registration under section 367, an intimation to this effect shall be given, within fifteen days of such registration, to the concerned Registrar of Firms or Registrar of Companies(LLP) under which it was originally registered, as the case may be, along with necessary documents or papers for its dissolution as partnership firm or limited liability partnership.

\*\*\*\*\*