

<b>Easy to Start</b>	<p>There is no separate registration procedure for proprietorships. All you need is a government registration relevant to your business. <b>Example:</b> <i>If you're selling goods online, a proprietor would only need a GST registration. Therefore, starting up as a sole proprietor is relatively easy.</i></p>
<b>Questions For Practice</b>	
<b>Ques 1: Discuss features of OPC.</b>	
<i>Hint: Refer Topic One Person Company (OPC) as discussed above.</i>	
<b>Ques 2: Discuss features of Private Limited Company?</b>	
<i>Hint: Refer Topic features of Private Limited Company as discussed above.</i>	

<p>Proprietorship is one of the oldest forms of business organisation. It is also known as a sole proprietorship or a single proprietorship. In India, it is a business owned by one person who is responsible for all the debts and obligations of the business. Proprietorship is a simple form of business organisation where there is no separate legal entity between the owner and the business. The owner has full control over the business and can make all the decisions without consulting anyone else. Proprietorship is a common form of business organisation in India, especially in small-scale industries and service sectors. Proprietorship is a low-cost form of business organisation, as there is no need for formal registration or obtaining any special permissions. However, it has some disadvantages, such as limited capital, limited liability, and difficulty in transferring ownership. Proprietorship is suitable for small-scale businesses where the owner wants to have complete control and flexibility in managing the business.</p>
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# 2

## CHAPTER

# TYPES OF COMPANIES

### Chapter Coverage

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2.1	Introduction
2.2	Types of Companies
2.3	Classification of Companies
2.4	Private Company
2.5	Characteristics of Private Company
2.6	Incorporation of a Private Company
2.7	Privileges and exemptions of Private Companies
2.8	Public Company
2.9	Characteristics of Public Company
2.10	Incorporation of Public Company
2.11	One Person Company
2.12	Privileges of One Person Company
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2.14	Exemptions, modification and adaptations to Nidhi Companies
2.15	Producer Companies
2.16	Objects of Producer Companies
2.17	Foreign Companies

### Regulatory Framework Coverage

#### The Companies Act, 2013

SECTION	DEALS WITH
Section 2(6)	Associate Company
Section 2(11)	Body Corporate
Section 2(42)	Foreign Company
Section 2(45)	Government Company
Section 2(46)	Holding Company
Section 2(62)	One Person Company
Section 2(68)	Private Company
Section 2(71)	Public Company
Section 2(85)	Small Company
Section 3	Formation of Company
Section 8	Formation of Company with Charitable Objects
Section 10A	Commencement of Business

<b>Sections 378A &amp; 378B</b>	Definition & Object of Producer Companies
<b>Sections 379 to 393</b>	Companies Incorporated Outside India
<b>Section 406</b>	Nidhis
<b>Section 455</b>	Dormant Company
<b>The Companies (Specification of Definitions Details) Rules, 2014</b>	
<b>RULES</b>	<b>DEALS WITH</b>
<b>Rule 2</b>	Definition
<b>Rule 2A</b>	Companies not to be considered as listed companies
<b>The Companies (Incorporation) Rules, 2014</b>	
<b>RULES</b>	<b>DEALS WITH</b>
<b>Rule 3</b>	One Person Company
<b>Rule 9</b>	Reservation of Name
<b>Rule 9A</b>	Extension of Reservation of Name in certain cases
<b>Rule 23A</b>	Declaration at the time of commencement of business
<b>Rules 38 &amp; 38A</b>	The Applicant for Incorporation of a Company
<b>Nidhi Rules, 2014 - Rule 3 to Rule 23B</b>	
<b>The Producer Companies Rules, 2021- Rules 2 to 5</b>	

## 2.1 Introduction

**Section 3 of the Companies Act, 2013 read with the Companies (Incorporation) Rules, 2014, states that:**  
A company may be formed for any lawful purpose by-

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

by subscribing their names or his name to a memorandum and complying with the requirements of the act in respect of registration.

## 2.2 Types of Companies

The three basic types of companies which may be registered under the Act are:

- (a) Private Companies;
- (b) Public Companies; and
- (c) One Person Company (to be formed as Private Limited Company).

## 2.3 Classification of Companies

### Classification on the basis of Incorporation

**Companies may be Incorporated under the following categories:**

- ◆ **Statutory Companies:** These are constituted by a Special Act of Parliament or State Legislature. The provisions of the Companies Act, 2013 do not apply to them. Examples of these types of companies are Reserve Bank of India, Life Insurance Corporation of India, etc.
- ◆ **Registered Companies:** The companies which are incorporated under the Companies Act, 2013 or under any previous company law and registered with the Registrar of Companies, fall under this category.

### Classification on the basis of Liability

Under this category there are three types of companies:-

- ◆ **Unlimited Companies:** In this type of company, the liability of members of the company is unlimited. Section 2(92) of the Companies Act, 2013 provides that unlimited company means a company not having any limit on the liability of its members such companies may or may not have share capital. They may be either a public company or a private company. The members are liable to the company and to any other person.
- ◆ **Companies limited by guarantee:** Section 2(21) of the Companies Act, 2013 provides that a company that has the liability of its members limited to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound-up, is known as a company limited by guarantee. The members of a guarantee company are, in effect, placed in the position of guarantors of the company's debts up to the agreed amount. The members are liable to the company and to any other person.
- ◆ **Companies limited by shares:** A company that has the liability of its members limited by the liability clause in the memorandum to the amount, if any, unpaid on the shares respectively held by them is termed as a company limited by shares. Section 2(22) of the Companies Act, 2013 provides that "company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.

*For example, a shareholder who has paid INR 75 on a share of face value Rupees 100 can be called upon to pay the balance of INR 25 only. Companies limited by shares are by far the most common and it may be either public or private.*

### Other Forms of Companies

- ◆ **Section 8 Companies:** a person or an association of persons proposed to be registered under this Act as a limited company and proved to the satisfaction of the Central Government that the company –
  - (i) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
  - (ii) intends to apply its profits, if any, or other income in promoting its objects; and
  - (iii) intends to prohibit the payment of any dividend to its members, such person or association of persons may be allowed to be registered as a limited company without addition to its name of the word "limited" or "private limited" by the Central Government by issuing a license and by prescribing specified condition.

The association proposed to be registered under section 8 shall not be proposed to be an unlimited company. However the same may be company limited by guarantee or a company limited by shares.

- ◆ **Government Companies:** As per section 2(45) of the Companies Act, 2013 the "Government Company" means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company;

*Explanation.-* For the purposes of this clause, the "paid up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued.

- ◆ **Foreign Companies:** As per section 2(42) of the Companies Act, 2013 the "foreign company" means any company or body corporate incorporated outside India which:
  - (i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
  - (ii) conducts any business activity in India in any other manner.
- ◆ **Holding and Subsidiary Companies;** As per section 2(46) of the Companies Act, 2013, the "holding company", in relation to one or more other companies, means a company of which such companies are subsidiary companies and the expression "company" includes any body corporate.

As per section 2(87) of the Companies Act, 2013 "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company –

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies;

However, 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, –**

- (i) 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;
- (ii) 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;
- (iii) the expression "company" includes any body corporate;
- (iv) "layer" in relation to a holding company means its subsidiary or subsidiaries.

As per section 2(11) of the Companies Act, 2013, the "body corporate" or "corporation" includes a company incorporated outside India, but does not include –

- (i) a co-operative society registered under any law relating to co-operative societies; and
  - (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.
- ◆ **Associate Companies/ Joint Venture Company:** As per section 2(6) of the Companies Act, 2013 the "associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

**Explanation. - For the purpose of this clause, –**

- (i) the expression "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement;
  - (ii) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.
- ◆ **Investment Companies:** the term "investment company" includes a company whose principal business is the acquisition of shares, debentures or other securities and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent of its total assets, or if its income derived from investment business constitutes not less than fifty per cent as a proportion of its gross income.
  - ◆ **Producer Companies:** According to Section 378A of the Companies Act, 2013, Producer Company means a body corporate having objects or activities specified in section 378B of the Companies Act, -2013 and registered as Producer Company under the Companies Act, 2013 or under the Companies Act, 1956.

**The Companies Amendment Act, 2020 has introduced a separate Chapter (Sections 378A to 378ZU) relating to Producer Companies under the Companies Act, 2013. [Amendment effective from 11th February 2021].**

- ◆ **Nidhi Companies:** A nidhi company is a type of company in the Indian non-banking finance sector, recognized under section 406 of the Companies Act, 2013 their core business is borrowing and lending money between their members. They are also known as Permanent Fund, Benefit Funds, Mutual Benefit Funds and Mutual Benefit Company. These companies are regulated under the Nidhi Rules, 2014 issued by the Ministry of Corporate affairs.

- ◆ **Dormant Companies** covered under section 455 of the Companies Act, 2013 and includes a company which is formed and registered under the Act for a future project or to hold an asset or intellectual property and which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.
- ◆ **Non-banking Financial Companies:** A Non-Banking Financial Company (NBFC) is a company registered under the Companies Act, 1956/2013 engaged in the business of loans and advances, acquisition of shares/ stocks/bonds/debentures/securities issued by Government or local authority or other marketable securities of a like nature, leasing, hire-purchase, insurance business, chit business but does not include any institution whose principal business is that of agriculture activity, industrial activity, purchase or sale of any goods (other than securities) or providing any services and sale/ purchase/construction of immovable property. A non-banking institution which is a company and has principal business of receiving deposits under any scheme or arrangement in one lump sum or in instalments by way of contributions or in any other manner, is also a non-banking financial company.
- ◆ **Listed Company:** "Listed company" means a company which has any of its securities listed on any recognised stock exchange. However, such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

*For the purposes of the proviso to clause (52) of section 2 of the Companies Act, 2013, the following classes of companies shall not be considered as listed companies, namely:-*

- (a) **Public companies which have not listed their equity shares on a recognized stock exchange but have listed their -**
  - (i) *non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or*
  - (ii) *non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or*
  - (iii) *both categories of (i) and (ii) above.*
- (b) **Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.**

- ◆ **Small Company :** The MCA for the Ease of doing Business has revised the definition of Small companies by increasing their threshold limits for paid up capital from "not exceeding ₹ 50 Lakhs" to "not exceeding ₹ 2 Crore" and turnover from "not exceeding ₹ 2 Crore" to "not exceeding ₹ 20 Crore".

Thus, the definition of small company under section 2(85) read with Rule 2(1)(t) of the Companies (Specification of Definitions Details) Rules, 2014 with effect from 1 April 2021 is hereunder:

**"Small company"** means a company, other than a public company-

- (i) paid-up share capital of which does not exceed two crores rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed twenty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act.

### QUESTIONS Ques 1: Distinguish

**between : Subsidiary Company & Associate Company** Hint: Refer Topic

*Subsidiary Company & Associate Company.*

**Ques 2:** The paid-up share capital of PKA India Pvt. Ltd. is ₹ 20 Crore, consisting of 150 lakh fully paid-up Equity Shares of ₹ 10 each and 50 lakh fully paid-up Cumulative Preference shares of ₹ 10 each. PKA India Capital Pvt. Ltd. and PKA Tele Services Pvt. Ltd. are holding 55 lakh and 25 lakh Equity Shares respectively in PKA India Pvt. Ltd.

**PKA India Capital Ltd. and PKA India Tele Services Pvt. Ltd. are subsidiaries of Lord Krishna Pvt. Ltd. Referring to the provisions of the Companies Act, 2013 examine whether PKA India Pvt. Ltd. is a subsidiary of Lord Krishna Pvt. Ltd.?**

**Would your answer be different if Lord Krishna Pvt. Ltd. has five out of total seven directors on the Board of Directors of PKA India Pvt. Ltd.?**

*Hint: Refer Topic Subsidiary Company India Pvt. Ltd together its subsidiaries viz. PKA India Capital Pvt. and PKA India Tele Services Pvt. Ltd. Accordingly, PKA India Pvt. Ltd shall become an indirect subsidiary of Lord Krishna Ltd.*

**Ques 3:** A Company registered under section 8 can be registered as a Small Company under the provisions of the Companies Act, 2013. Comment.

*Hint: Refer Topic Small Company.*

**Ques 4:** ABC Ltd. is a company incorporated under the Companies Act, 2013. The paid-up share capital of the company is held as under :

- Government of India 20%
- Government of Andhra Pradesh 20%
- Government of Tamil Nadu 10%
- Government of Maharashtra 10%

Explaining the provisions of the Companies Act, 2013, state whether the said company be called a 'Government company' and also state whether the employees of a Government company can claim their salaries from the Government of India.

*Hint: Refer Topic Government Company.* As per the facts given in case, more than 51% capital is held in ABC Ltd. by the Central Government and State Government; hence it is a government company.

**Ques 5:** 43% of the paid-up share capital of V4C Ltd. is held by the Central Government and 8% is held by the Life Insurance Corporation of India and Unit Trust of India (Public Institutions). Analyze the definition of 'Government Company' under the provisions of the Companies Act, 2013 and decide whether V4C Ltd. is a Government Company.

*Hint: Accordingly, V4C Ltd. cannot be treated as Government Company.*

### Question For Practice

**Ques 1: Discuss classification on the basis of Liability?**

*Hint: Refer Topic Classification on the basis of Liability.*

### 2.4 Private Company

As per Section 2(68) of the Companies Act, 2013, "private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles:

- ◆ Restricts the right to transfer its shares;
- ◆ Except in case of One Person Company, limits the number of its members to two hundred:  
Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member;

Provided further that –

- (a) persons who are in the employment of the company; and
- (b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
- ◆ Prohibits any invitation to the public to subscribe for any securities of the company.

The aforesaid definition of private limited company specifies the restrictions, limitations and prohibitions, which must be expressly provided in the articles of association of a private limited company.

**Note:**

1. It must be noted that it is only the number of members that is limited to two hundred. A private company may issue debentures to any number of persons, the only condition being that an invitation to the public to subscribe for debentures is prohibited.
2. The words 'Private Limited' must be added at the end of its name by a private limited company.

**QUESTION**

**Ques 1: A private company incorporated under the Companies Act, 2013 may issue debentures to any number of persons and can accept deposit from the public. Comment.**

*Hint: Refer Topic 2.4 Private Company.*

**2.5 Characteristics of Private Company**

- ◆ **Members** – To start a company, minimum number of 2 members is required and a maximum number of 200 members as per the provisions of the Companies Act, 2013.
- ◆ **Limited Liability** – The liability of each member or shareholders is limited. It means that if a company faces loss under any circumstances then its shareholders are not liable to sell their own assets for payment. Thus, the personal, individual assets of the shareholders are not at risk.

**Exception to limited liability :** Section 3A provides that if the number of members of a private company is reduced below two, and the business is carried on for more than six months, while the number of members is so reduced, every person who is a member of the company during this period and is cognisant of this fact, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

- ◆ **Perpetual succession** – The Company keeps on existing in the eyes of law even in the case of death, insolvency, the bankruptcy of any of its members. This leads to perpetual succession of the company. The life of the company keeps on existing forever.
- ◆ **Index of members** – An index of the names entered in the respective registers of members and the index shall, in respect of each folio, contain sufficient indication to enable the entries relating to that folio in the register to be readily found. The maintenance of index of members is not necessary in case the number of members of the company is less than fifty which is a privilege to a private company wherein number of members is less than fifty.
- ◆ **A number of directors** – When it comes to directors, a private company needs to have minimum two directors. With the existence of 2 directors, a private company can come into existence and can start with its operations.
- ◆ **Paid up capital** – There is no minimum capital requirement.
- ◆ **Prospectus** – Prospectus is a detailed statement of the company affairs which is issued by a company for its public. However, in the case of private limited company, the act prohibits any invitation to the public to subscribe for any securities of the company. There is no such need to issue a prospectus because in this type of companies, public is not invited to subscribe for the shares of the company.
- ◆ **Commencement of Business** – A company incorporated after the commencement of the Companies (Amendment) Act, 2019 (w.e.f. 02/11/2018) and having a share capital cannot commence any business or exercise any borrowing powers unless –

- (a) A declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and
- (b) The company has filed with the Registrar a verification of its registered office.
- ◆ **Name** – It is mandatory for all the private companies to use the word “private limited” after its name.

#### Question For Practice

##### **Ques 1: Discuss Characteristics of Private Company?**

*Hint: Refer Topic 2.5 Characteristics of Private Company.*

#### **2.6 Incorporation of a Private Company**

- ◆ The Companies (Incorporation) Amendment Rules, 2020 w.e.f 23rd February, 2020 introduced new web form SPICe+ for incorporation of the Companies replacing the old e-form SPICe.
- ◆ SPICe+ is an integrated Web form offering 11 services by 3 Central Government Ministries & Departments. (Ministry of Corporate Affairs, Ministry of Labour & Department of Revenue in the Ministry of Finance) and three State Government (Maharashtra, Karnataka & West Bengal), thereby saving as many procedures, time and cost for Starting a Business in India. SPICe+ is part of various initiatives and commitment of Government of India towards Ease of Doing Business (EODB).
- ◆ As per Rule 38 of the Companies (Incorporation) Rules, 2014, the Application for incorporation of a company shall be made in **SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32)** along with e-Memorandum of Association (e-MOA) in **Form No. INC-33** and e-Articles of association (e-AOA) in **Form No. INC-34**.
- ◆ The application for incorporation of a company under rule 38A of the Companies (Incorporation) Rules, 2014 shall be accompanied by form **AGILE-PRO-S (INC-35)** containing an application for registration of the following numbers, namely:
  - (a) GSTIN with effect from 31st March, 2019
  - (b) EPFO with effect from 8th April, 2019
  - (c) ESIC with effect from 15th April, 2019
  - (d) Profession Tax Registration with effect from the 23rd February, 2020
  - (e) Opening of Bank Account with effect from 23rd February, 2020.
  - (f) Shops and Establishment Registration.

- ◆ **Services offered through SPICe+ are:**

Name Reservation, Incorporation, DIN allotment, Mandatory issue of PAN,

Mandatory issue of TAN, Mandatory issue of EPFO registration, Mandatory issue of ESIC registration, Mandatory issue of Profession Tax Registration (Maharashtra, Karnataka & West Bengal), Mandatory Opening of Bank Account for the Company and Allotment of GSTIN (if so applied for), Shops and Establishment Registration. After deployment of SPICe+ web form, RUN is applicable only for change of name of existing companies.

- ◆ In case of incorporation of a company having more than seven subscribers or where any of the subscriber to the MOA/AOA is signing at a place outside India, MOA/AOA shall be filed with SPICe+ (INC-32) in the respective formats as specified in Table A to J in Schedule I without filing form INC-33 and INC-34.

#### Steps For Incorporation

##### **STEP - I: Apply for Name Approval:**

###### A. Login on MCA Website

Applicant have to login into their account on MCA Website. (Pro-existing users can use earlier account or new users have to create a new account.)

- B. After Login user have to click on the icon SPICe+ in MCA Service. An online form shall be open. Applicants have to fill the information online. (This form cannot be downloaded). Details required to be mentioned in online form:

New fields introduced in Part A of SPICe+ are: (i) Type of company ; (ii) Class of company ; (iii) Category of company ; (iv) Sub-Category of company ; (v) Main division of industrial activity of the company ; (vi) Description of the main division; (vii) Summary of the objects to be pursued by the company on its incorporation; (viii) Particulars of the proposed or approved name.

- C. **Choose File:** This option is available to upload the PDF documents. If applicant want to attach any file, can be upload at this option.
- D. **Submission of Form on MCA Website:** After completion of above steps user shall submit the Form with MCA website.

E. **Validity of Reserved Name:**

The name may be either approved or rejected, as the case may be, by the Registrar, Central Registration Centre after allowing re-submission of such web form within fifteen days for rectification of the defects, if any. Reserved name shall be valid for 20 days from the date of approval.

**STEP - II: Preparation of Documents for Incorporation of Company:**

The following documents are required to be enclosed: For SPICe+:

- (a) Memorandum of Association;
- (b) Articles of Association;
- (c) Declaration by the first director(s) and subscriber(s)(Affidavit not required);
- (d) Proof of office address (Conveyance/Rental Agreement along with rent receipts);
- (e) Copy of utility bills not older than two months;
- (f) NOC for use premises for registered office of proposed Company from owner and person whose name mentioned in utility bill;
- (g) Copy of certificate of incorporation of foreign body corporate (if any);
- (h) A resolution passed by promoter company(Applicable if name a body corporate is promoter);
- (i) The interest of first director(s)in other entities;
- (j) Consent of Nominee (INC-3)(Applicable for one person Company);
- (k) Proof of identity as well as the residential address of subscribers;
- (l) Proof of identity as well as residential address of the nominee;
- (m) Resolution of unregistered companies in case of Chapter XXI (Part I) Companies;
- (n) Optional attachments (if any).

**STEP - III: Fill the Information in Form:**

Once all the above mentioned documents/ information are available. Applicant has to fill the information in the e-form "Spice+ Part -B".

**SPICe+ (INC-32) a Single Window Form for Incorporation of Company:** Earlier if a Person wants to incorporate Company then it has to apply for the DIN, Approval of the Name Availability, and separate form for first Director, Registered office address, PAN, TAN etc. But this form is a single window for Incorporation of Company. This form can be used for the following purposes:

- ◆ Application of DIN (upto 3 Directors)
- ◆ Application for Availability of Name
- ◆ No need to file separate form for first Director (DIR-12)
- ◆ No need to file separate form for address of registered office (INC-22)

- ◆ No need to file separate form for PAN & TAN
- ◆ No need to file separately for GST, IEC.

**Note :**

1. Maximum details of 7 subscribers can be filled in SPICE+. In case of more subscribers, physically signed MOA & AOA shall be attached in the Form.
2. Maximum details of THREE (3) directors are allowed to be filled in SPICE+.
3. Maximum 3 (Three) DIN can be applied through SPICE+ form.

**STEP - IV: Fill details of PAN & TAN:**

It is mandatory to mention the details of PAN & TAN in the Incorporation Form INC-32. Link to find out of Area Code to file PAN & TAN are given in Help Kit of SPICE Form.

**STEP - V: Fill details of GST, IEC in AGILE-PRO-S:**

If Company wants to apply for GST or IEC it has to select YES in the form and fill the information in the form. If Company doesn't want to apply for GST and IEC then it have to select no.

If Companies wish to perform Aadhaar authentication for GSTIN registration, they can select Yes or No itself in the Agile Pro- S Form.

**STEP - VI: Preparation of MOA & AOA (Electronic or Physical):**

After proper filing of SPICE+ form, applicant has to file form INC-33 (e-MOA) and INC-34 (e-AOA) from the MCA site.

**STEP - VII: Submission of INC-32, 33, 34, AGILE-PRO-S on MCA:**

Once all the 4 forms ready with the applicant, upload all four document as Linked form on MCA website and make the payment of the same.

Following is the sequence of uploading linked forms to SPICE +:

- (a) e-MOA [if applicable]
- (b) e-AOA [if applicable]
- (c) URC-1 [if applicable]
- (d) AGILE-PRO-S [mandatory in all the cases]
- (e) INC-9

Companies getting incorporated through SPICE+ with an Authorized Capital up to INR 15,00,000 would continue to enjoy 'Zero Filing Fee' concession. Such companies will be levied with only stamp duty fees as may be applicable on state to state basis.

**STEP - VIII: Certificate of Incorporation:**

The Certificate of Incorporation of company shall be issued by the Registrar in Form No. INC-11 along with CIN, PAN & TAN.

***Precautions required/points to checked before uploading/submitting SPICE+ form:***

- (1) The version of the PDF should be latest/new one;
- (2) Form is digitally signed by the director as well as the Professional;
- (3) Digital signatures are validated;
- (4) That the directors are not disqualified under any provision of the Companies Act, 2013;
- (5) Size of the documents attached are within the prescribed limit;
- (6) Documents attached are legible; and
- (7) Signature are not copy pasted in any of the document attached.

### **Rule 9A of the Companies (Incorporation) Rules, 2014-Extension of Reservation of name in certain cases**

Upon payment of fees provided below through the web service available at [www.mca.gov.in](http://www.mca.gov.in), the Registrar shall extend the period of a name reserved under rule 9 by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), upto:

- (a) forty days from the date of approval under rule 9, on payment of fees of rupees of one thousand rupees made before the expiry of twenty days from the date of approval under rule 9;
- (b) sixty days from the date of approval under rule 9 on payment of fees of rupees two thousand made before the expiry of forty days referred to in clause (a) above;
- (c) sixty days from the date of approval under rule 9 on payment of fees of rupees three thousand made before the expiry of twenty days from the date of approval under rule 9;

However, the Registrar shall have the power to cancel the reserved name in accordance with sub-section (5) of section 4 of the Companies Act, 2013.

New 'Extend' functionality has been introduced as part of SPICe+ Part A in line with Rule 9A 'Extension of reservation of name in certain cases' of the Companies (Incorporation) Third Amendment Rules, 2020 with effect from January 26, 2021.

### **Commencement of Business**

As per Section 10A read with Rule 23A of the Companies (Incorporation) Rules, 2014, every company incorporated after the commencement of the Companies (Amendment) Act, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless:

- (a) a declaration in form INC-20A is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified by a Company Secretary or a Chartered Accountant or a Cost Accountant, in practice, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration;
- (b) The company has filed with the Registrar a verification of its registered office in form INC-22 as provided in sub-section (2) of section 12 of the Companies Act, 2013;
- (c) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees; and
- (d) Where no declaration has been filed with the Registrar under clause (a) of sub-section(1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

### **Pre-caution to be taken by Professionals for Incorporating Companies**

1. Obtain engagement letter from subscriber.
2. Verification of original records pertaining to registered office.
3. Ensure all attachments are clear enough to read.
4. Ensure registered office of the company is functioning for the business purposes of the company.
5. Take a declaration to the effect that all the original documents have been handed over after incorporation. Since as per section 7(4) copies all documents/information as originally filed should be preserved at the registered office of the company, therefore a professional should take a declaration while handing over the incorporation documents.
6. MCA Circular 10/2014:- According to this circular ROC/RD in case of omission of material fact or submission of false/incomplete/ misleading information can after giving opportunity to explain refer the matter to e-governance division of MCA, which in turn may initiate proceedings under section 447 and/ or ask the respective professional institute to take requisite disciplinary action.

### Questions For Practice

**Ques 1: Write Short Note On: Extension of Reservation of name in certain cases.**

*Hint: Refer Topic Extension of Reservation of name in certain cases.*

**Ques 2: List services offered through SPICe+ ?**

*Hint: Refer Topic Services offered through SPICe+.*

**Ques 3: Discuss Pre-caution to be taken by Professionals for Incorporating Companies?**

*Hint: Refer Topic Pre-caution to be taken by Professionals for Incorporating Companies.*

**Ques 4: List the registration numbers applied with the application for incorporation of a company under rule 38A of the Companies (Incorporation) Rules, 2014 accompanied by form AGILE-PRO-S (INC-35) ?**

*Hint: Refer Topic 2.6 Incorporation of Private Companies.*

**Ques 5: Discuss steps for Incorporation of Private Companies?**

*Hint: Refer Topic Steps for Incorporation of Private Companies.*

### 2.7 Privileges and exemptions of Private Companies

- ◆ The financial statement, with respect to One Person Company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement.
- ◆ A holding, subsidiary or an associate company of such company, a subsidiary of a holding company to which it is also a subsidiary (*i.e.* fellow subsidiary) or an investing company or the venturer of the company will not be considered as related party for the purpose of section 188.
- ◆ Provisions of Sections 43 & 47 shall not apply where memorandum or articles of association of the private company so provides.
- ◆ A Private Company is not required to comply with the provision with respect to minimum time period to open an right offer, if ninety per cent of the members of a private company have given their consent in writing or in electronic mode.
- ◆ A private company can offer shares to employees under a scheme of employees' stock option by passing ordinary resolution instead of special resolution.
- ◆ A private company which are small company shall prepare an annual return containing the particulars as they stood on the close of the financial year regarding "aggregate amount of remuneration drawn by directors" instead of "remuneration of directors and Key Managerial Personnel".
- ◆ In relation to One Person Company, small company and private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.
- ◆ Board Resolutions passed u/s 179(3) are not required to be filed with the Registrar in Form MGT-14.
- ◆ An auditor or audit firm can audit one person company, dormant company, small company and private company having paid- up share capital upto one hundred crore without counting them in the limit of twenty companies.
- ◆ A One Person Company, small company, dormant company and a private company (if such private company is a start-up) shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days. However, nothing contained in this sub-section and in section 174 shall apply to One Person Company in which there is only one director on its Board of Directors.
- ◆ Shall apply to a private company with the exception that the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184.

### Question For Practice

**Ques 1: Discuss of privileges and exemptions of Private Companies?**

*Hint: Refer Topic 2.7 Privileges and exemptions of Private Companies.*

### 2.8 Public Company

- ◆ By virtue of Section 2(71), a public company means a company which:
  - (a) is not a private company; and
  - (b) has a minimum paid-up share capital, as may be prescribed. Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.
- ◆ As per section 3(1)(a), a public company may be formed for any lawful purpose by seven or more persons, by subscribing their names or his name to a memorandum and complying with the requirements of this act in respect of registration.
- ◆ A public company may be said to be an association consisting of not less than 7 members, which is registered under the Act. In principle, any member of the public who is willing to pay the price may acquire shares in or debentures of it. The securities of a public company may be quoted on a Stock Exchange. The number of members is not limited to two hundred.
- ◆ As per section 58(2), the securities or other interest of any member in a public company shall be freely transferable. However, any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.
- ◆ The provision contained in the law for the free transferability of shares in a public company is founded on the principle that members of the public must have the freedom to purchase and, every shareholder should have the freedom to transfer. The incorporation of a company in the public, as distinguished from the private, realm leads to specific consequences and the imposition of obligations envisaged in law. Those who promote and manage public companies assume those obligations. Corresponding to those obligations there are some rights which the law recognizes as inherent in the members of the public who subscribe to shares of the company.

**Note:** The concept of free transferability of shares in public and private companies is very succinctly discussed in the case of *Western Maharashtra Development Corp. Ltd. v. Bajaj Auto Ltd.* [2010] 154 Com Cases 593 (Bom). It was held that the Companies Act, makes a clear distinction in regard to the transferability of shares relating to private and public companies.

### QUESTION

**Ques 1:** Masons Pvt. Ltd. is a private limited company as per the Article of Association of the company. However, a public company acquired shares in Masons Pvt. Ltd. thereby making the Masons Pvt. Ltd., a subsidiary of that public company. State the impact of such acquisition of shares by the public company on Masons Pvt. Ltd.

**Hint:** If a public company acquires shares in Masons Pvt. Ltd. making it subsidiary of that public company, the Masons Pvt. Ltd. will be treated as public company under the Companies Act, 2013 even though Masons Pvt. Ltd. continues to be a private company in its articles.

### 2.9 Characteristics of Public Company

- ◆ **Board of Directors:** The Board of the Public company comprises of a minimum number of three directors and a maximum of 15. The company may appoint more than 15 directors after passing a special resolution. They act as the representatives of the shareholders in the management of the company. Public limited companies are headed by a board of directors and Key Managerial Personnel of the Company. Composition of the board of directors is set out in the company's articles of association and the applicable rules and regulation.
- ◆ **Limited Liability:** Shareholder liability for the losses of the company is limited to their share contribution. This is what makes it separate legal entity from its shareholders. The business can be sued on its own and not involve its shareholders. The company does not belong to any person since one person can own only a part of it.

**Exception to limited liability :** Section 3A provides that if the number of members of a public company is reduced below seven and the business is carried on for more than six months, while the number of members is so reduced, every person who is a member of the company during this period and is cognisant of this fact, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

- ◆ **Number of Members:** A public limited company has a minimum number of seven shareholders or members and no maximum limit of members. It can have as many shareholders as its share capital can accommodate.
- ◆ **Transferable shares:** Shares of a public limited company are bought and sold by the shareholders. However, in case of listed company the shares are traded on a stock exchange where the shares of the company are listed. They are freely transferable between its members and people trading in the stock exchange.
- ◆ **Life Span:** A public limited company is not affected by death of one of its shareholders, but the shares are transferred to the next kin or legal heir of such deceased shareholder and the company continues to run its business as usual. In the case of a director's death, the Board is empowered to fill the resulting casual vacancy that may be filled by Board of Directors at Board meeting which shall be subsequently approved by members in the immediate next general meeting.
- ◆ **Financial Privacy:** Public limited companies are strictly regulated and are required by law to publish their complete financial statements annually. This ensures that they reveal their true financial position to their owners and to potential investors so that they can determine the true worth of its shares.
- ◆ **Capital:** Public limited companies enjoy an increased ability to raise capital since they can issue shares to the public through the stock market. Debentures and bonds are in the form of secured or unsecured debts issued to a company on the strength of its integrity and financial performance by the general public or its members etc.

#### Question For Practice

##### Ques 1: Discuss characteristics of Public Company?

*Hint: Refer Topic 2.9 Characteristics of Public Company.*

#### 2.10 Incorporation of Public Company

- ◆ **Requirement of minimum number of directors and shareholders:** There is a minimum requirement of directors and shareholders: Public Company: Minimum Shareholders: 7 (Seven) ; Minimum Directors: 3 (Three).
- ◆ **Statutory compliances:** A public or private will have to comply with all the laws, rules and regulations as applicable, including but not limited to the Companies Act, 2013, Foreign Exchange Management Act, 1999, Shops and Establishment Act, Income-tax Act, etc., failing to which may result in heavy penalties.
- ◆ **Important Points To Be Remembered:**
  - There must be at least seven members to start a public company.
  - There is no ceiling on the maximum number of members in a public company.
  - A public company should have at least three directors.
  - The shareholders of a public company can freely transfer their shares.
  - A public company can invite the general public for subscribing shares of the company.
  - The shares of a public company can be listed on a recognized stock exchange and traded publicly.

**Steps For Incorporation of Public Company:** The Incorporation procedure for a public company is similar to the private company. However, it needs to be ensured that the proposed company is in compliance with the minimum requirement of the members and Directors in a public company and the Articles and Memorandum of Association are drafted as per the requirement of the Act. The name shall be suffix by the word "Limited". If the article of the company is entrenched then such entrenchment shall be in compliance with the Act. (*Refer Topic 2.6*)

### 2.11 One Person Company

<b>Background of OPC</b>	The Companies Act, 2013 provides for a new type of entity in the form of One Person Company (OPC), the introduction of OPC in the legal system is a move that would encourage corporatization of micro businesses and entrepreneurship.
<b>Status of OPC in other countries</b>	<ul style="list-style-type: none"> <li>◆ Even in other countries like UK, Australia, Singapore, Pakistan, etc.; a single person can form a company.</li> <li>◆ Various countries permit this kind of a corporate entity (China introduced it in October 2005) in which the promoting individual is both the director and the shareholder.</li> <li>◆ The amended company law of Pakistan permits one person to form a single-member company by filing with the registrar, at the time of incorporation, a nomination in the prescribed form indicating at least two individuals to act as nominee director and alternate nominee director.</li> <li>◆ In US, several states permit the formation and operation of a single-member Limited Liability Company (LLC).</li> <li>◆ In China, one person is allowed to apply for opening a limited company with a minimum capital of 1, 00,000 Yuan. The amended law of China prescribes that the owner should pay the investment capital at one time and bars him from opening a second company of the same kind.</li> <li>◆ In most countries, the law governing companies enables a single-member company to have more than one director and grants exemption to such companies from holding AGMs, though records and documents are to be maintained.</li> </ul>
<b>Important Provisions relating to Incorporation of OPC</b>	<ul style="list-style-type: none"> <li>◆ The single application for Incorporation of Company</li> <li>◆ Consent of such nominee (Form INC-3) and requisite fee shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles.</li> <li>◆ Form INC-32 is form for incorporation of OPC.</li> <li>◆ The subscriber to the memorandum of OPC shall nominate a person after obtaining prior written consent of such person who shall in the event of the subscriber's death/ his incapacity to contract become the member of that OPC.</li> <li>◆ A natural person can be member of only one "One Person Company" and he/she shall not be a nominee of more than a OPC.</li> <li>◆ Only a natural person who is an Indian citizen and resident in India shall be eligible:</li> <li>◆ To incorporate a OPC and</li> <li>◆ Act as nominee for the sole member of OPC as per Rule 3 of the Companies (Incorporation) Rules, 2014.</li> </ul>
<b>Position of OPC in India</b>	<ul style="list-style-type: none"> <li>◆ Under section 2(62) of the Companies Act, 2013, "One Person Company" means a company which has only one person as a member.</li> <li>◆ One Person Company will be registered as a private company with one member and one director.</li> <li>◆ OPC may be formed either as a company limited by shares or a company limited by guarantee or an unlimited liability company</li> </ul>

<b>Contract by One Person Company (OPC)</b>	<ul style="list-style-type: none"> <li>◆ As per Section 193(1) of the Companies Act, 2013 provides that where One Person Company limited by shares/by guarantee enters into a contract with the sole member of the company who is also the director of the company, the company shall unless the contract is in writing ensure that the terms of the contract/offer are recorded in a memorandum/ recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract.</li> </ul> <p><b><i>Note: The above discussed provision shall not apply to contracts entered into by OPC in the ordinary course of its business.</i></b></p> <ul style="list-style-type: none"> <li>◆ As per section 193 (2) of the Companies Act, 2013, the company shall inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board of Directors within a period of fifteen days of the date of approval by the Board of Directors.</li> <li>◆ As per Section 152 (1) of the Companies Act, 2013 in case of OPC, an individual being its member shall be deemed to be its first director until a director/directors are duly appointed by the member.</li> </ul>
<b>Provisions discussed under Rule 3 of Companies (Incorporation) Rules, 2014 regarding OPC</b>	<ul style="list-style-type: none"> <li>◆ Only a natural person who is an Indian citizen and resident in India: <ul style="list-style-type: none"> <li>(a) shall be eligible to incorporate a One Person Company;</li> <li>(b) shall be a nominee for the sole member of a One Person Company.</li> </ul> </li> <li>◆ A natural person shall not be a member of more than a One Person Company at any point of time and the said person shall not be a nominee of more than a One Person Company.</li> <li>◆ Where a natural person being member in One Person Company in accordance with this rule becomes a member in another such Company by virtue of his being a nominee in that One Person Company then such person shall meet the eligibility criteria within a period of 180 days.</li> <li>◆ No minor shall become member or nominee of the One Person Company or can hold share with beneficial interest.</li> <li>◆ Such Company cannot be incorporated or converted into a company under section 8 of the Companies Act, 2013.</li> <li>◆ Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.</li> <li>◆ No OPC can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of OPC except paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.</li> </ul>
<b>Difference between a Sole Proprietorship and an OPC</b>	<ul style="list-style-type: none"> <li>◆ One-person company is different from a sole proprietorship because it is a separate legal entity that distinguishes between the promoter and the company.</li> <li>◆ Promoter's Liability is limited in an OPC in the event of a default or legal issues. On the other hand, in sole proprietorships the liability is not restricted and extends to the individual and his/her entire assets would be liable to repay the debts due by the sole proprietorship business unlike OPC.</li> </ul>
<b>Ques 1:</b> One person company shall be formed only as a company limited by shares. Comment.	
<b>Hint:</b> Refer Topic 2.11 OPC.	

### 2.12 Privileges of One Person Company

- ◆ The financial statement, with respect to One Person Company, may not include the cash flow statement;
- ◆ The annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company. In other words, it need not be signed by a company secretary in practice. Further, the Central Government has prescribed abridged form of Annual Return from the financial year 2020-2021 onwards in Form MGT-7A.
- ◆ Need not hold annual general meeting.
- ◆ Need not prepare a report on Annual General Meeting.
- ◆ The provisions of section 98 and sections 100 to 111 (both inclusive) of Chapter VII shall not apply to a One Person Company, since it is exempted from holding AGM.
- ◆ For any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if, in case of One Person Company, the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under section 118 and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act.
- ◆ Where there is only one director on the Board of Director of a One Person Company and any business is required to be transacted at the meeting of the Board of Directors of the company, it shall be sufficient if, in case of such One Person Company, the resolution by such director is entered in the minutes-book required to be maintained under section 118 and signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all purposes under this Act.
- ◆ Financial statement and Board's report can be signed only by one director.
- ◆ Need not prepare a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;
- ◆ The Central Government has prescribed the abridged Board's Report for compliance with the provision by an OPC.
- ◆ In case of a One Person Company, Board's report shall mean only a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.
- ◆ File a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within 180 days from the closure of the financial year.
- ◆ A person shall not be appointed as an auditor if he is an auditor in more than twenty companies which does not include a "One Person Company".
- ◆ One person company can appoint one director as minimum number of directors in its Board.
- ◆ An individual being member of OPC shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.
- ◆ Retirement by rotation is not applicable to OPC.
- ◆ Additional grounds for disqualification for appointment as a director may be specified by way of articles of OPC being a private company.
- ◆ Additional grounds for vacation of office of a director may be provided in the Articles of OPC being a private company.
- ◆ Section 174 not applicable, if company has only one director.
- ◆ The provisions relating to contract of employment with managing or whole-time directors does not apply to a One Person Company being a private company.
- ◆ Total managerial remuneration payable by a one person company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year may exceed eleven per cent of the net profits since the restrictive provision is not applicable to OPC being a private company.

- ◆ If a one person company fails to comply with any of the provisions of the Companies Act, 2013, where penalty is payable, then such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one-half of the penalty specified in such provisions subject to a maximum of two lakh rupees in case of a company and one lakh rupees in case of an officer who is in default or any other person, as the case may be.

### 2.13 Nidhi Companies

<b>Introduction</b>	<ul style="list-style-type: none"> <li>◆ The primary object of Nidhis is to carry on the business of accepting deposits and lending money to member-borrowers only against jewels, etc. and mortgage of property.</li> <li>◆ For over a century Nidhis, with the objective of cultivating the habit of thrift, generally promoted by public spirited men drawn from affluent local persons, lawyers and professionals like auditors, educationists, etc., including retired persons.</li> <li>◆ The area of operation was local – within municipalities and panchayats.</li> <li>◆ Some Nidhis on account of their financial and administrative strength opened branches within the respective revenue district and even outside.</li> <li>◆ The principle of mutual benefit has been incorporated to pool the savings from members and lend only to members and never have dealing with non-members.</li> <li>◆ Nidhis were not expected to engage themselves in the business of Chit Fund, hire purchase, insurance or in any other business including investments in shares or debentures. As stated these Nidhis do their business only with Members. Such Members are only individuals. Bodies Corporate or Trusts are never to be admitted as Members in these companies.</li> </ul>
<b>Origin of the Concept in India</b>	<p>The history of the Nidhis, their special features, their manner of functioning, their regulations, etc. have been described by the:</p> <ol style="list-style-type: none"> <li>(i) Viswanatha Shastri Committee in 1965;</li> <li>(ii) Banking Commission in 1972;</li> <li>(iii) James Raj Committee in 1975;</li> <li>(iv) Chakravarthy Report in 1987;</li> <li>(v) Dr. A. C. Shah Committee in 1992.</li> </ol>
<p><b>Note: In 2005, the Expert Committee on Company Law headed by Dr. Jamshed J. Irani suggested in its report on Nidhi companies as given hereunder:</b> NIDHI companies are effectively non-banking financial companies and are engaged in the business of accepting deposits and making loans to their members. The recent failures in the NBFC sector also extended to the NIDHI companies compelling the Government to introduce strict prudential norms for such companies. Whereas the deposit taking activities of NIDHIs are governed by the RBI Act and guidelines made there under, the power to give exemptions to the NIDHI companies in the administration of NIDHIs is with the Ministry of Corporate Affairs. Since, RBI is the regulator of all the NBFCs incorporated under the Companies Act, the Committee felt that NIDHI companies should also be controlled by RBI through close supervision.</p>	
<b>Prevailing Regulatory Aspects of Nidhi</b>	<p>As per section 406 of the Companies Act, 2013, "Nidhi" or "Mutual Benefit Society" means a company, which the Central Government may by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.</p> <p>"Nidhi" means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and saving amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with the rules made by the Central Government for regulation of such class of companies.</p>
<b>Declaration of Nidhis</b>	<p>The Central Government, on receipt of application (in Form NDH-4 along with fee thereon) of a public company for declaring it as Nidhi and on being satisfied that the company meets the requirements under these rules shall notify the company as a Nidhi in the official Gazette:</p>

<b>(Rule 3A of the Nidhi Rules, 2014)</b>	<p>Provided that a Nidhi incorporated under the Act on or after the commencement of the Nidhi (Amendment) Rules, 2019 shall file <b>Form NDH-4</b> within sixty days from the date of expiry of:-</p> <ul style="list-style-type: none"> <li>(a) one year from the date of its incorporation or</li> <li>(b) the period up to which extension of time has been granted by the Regional Director under sub-rule (3) of rule 5:</li> </ul> <p>Provided further that nothing in the first proviso shall prevent a Nidhi from filing <b>Form NDH-4</b> before the period referred therein:</p> <p>Provided also that in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).</p>
<b>Compliance with rule 3A by certain Nidhis (Rule 23A of the Nidhi Rules, 2014)</b>	<p>Rule 23A of Nidhi Rules, 2014 provides that Every company referred to in clause (b) of rule 2 and every Nidhi incorporated under the Act, before the commencement of Nidhi (Amendment) Rules, 2019, shall also get itself declared as such in accordance with rule 3A within a period of one year from the date of its incorporation or within a period of nine months from the date of commencement of Nidhi (Amendment) Rules, 2019, whichever is later: Provided that in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).</p>
<b>Companies declared as Nidhis under previous company law to file Form NDH-4 (Rule 23B of the Nidhi Rules, 2014)</b>	<p>Every company referred in clause (a) of rule 2 shall file Form NDH-4 along with fees as per the Companies (Registration Offices and Fees) Rules, 2014 for updating its status: Provided that no fees shall be charged under this rule for filing Form NDH-4, in case it is filed within nine months of the commencement of Nidhi (Amendment) Rules, 2019:</p> <p>Provided further that, in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).</p>
<b>Incorporation of Nidhi (Rule 4 of the Nidhi Rules, 2014)</b>	<ul style="list-style-type: none"> <li>◆ A Nidhi shall be a public company and shall have a minimum paid up equity share capital of five lakh rupees.</li> <li>◆ Nidhi company shall not issue preference shares.</li> <li>◆ If preference shares had been issued by a Nidhi before the commencement of the Companies Act, 2013, such preference shares shall be redeemed in accordance with the terms of issue of such shares.</li> <li>◆ No Nidhi shall have any object in its Memorandum of Association other than the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit.</li> <li>◆ Every "Nidhi" shall have the last words 'Nidhi Limited' as part of its name</li> </ul>
<b>Requirements for minimum number of members and net owned funds (Rule 5 of the Nidhi Rules, 2014)</b>	<p><b>Sub-Rule (1) of Rule 5 of the Nidhi Rules, 2014 deals with requirements for minimum number of members, net owned fund etc. It provides that:</b> Every Nidhi shall, within a period of one year from the date of its incorporation, ensure that it has-</p> <ul style="list-style-type: none"> <li>(a) not less than two hundred members;</li> <li>(b) Net Owned Funds of ten lakh rupees or more;</li> <li>(c) unencumbered term deposits of not less than ten per cent of the outstanding deposits as specified in rule 14; and</li> <li>(d) ratio of Net Owned Funds to deposits of not more than 1:20.</li> </ul> <p>"Net Owned Funds" means the aggregate of paid up equity share capital and free reserves as reduced by accumulated losses and intangible assets appearing in the last audited balance sheet. Further, the amount representing the proceeds of issue of preference shares shall not be included for calculating Net Owned Funds.</p>

<b>Return of statutory compliances by Nidhi Companies</b>	Within ninety days from the close of the first financial year after its incorporation and where applicable, the second financial year, Nidhi shall file a return of statutory compliances in Form NDH-1 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 with the Registrar duly certified by a company secretary in practice or a chartered accountant in practice or a cost accountant in practice.
<b>General restrictions or prohibitions</b>	<p><b>In terms of Rule 6, Nidhi shall not –</b></p> <ul style="list-style-type: none"> <li>(a) carry on the business of chit fund, hire purchase finance, leasing finance, insurance or acquisition of securities issued by any body corporate;</li> <li>(b) issue preference shares, debentures or any other debt instrument by any name or in any form whatsoever;</li> <li>(c) open any current account with its members;</li> <li>(d) acquire another company by purchase of securities or control the composition of the Board of Directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management, unless it has passed a special resolution in its general meeting and also obtained the previous approval of the Regional Director having jurisdiction over such Nidhi;</li> <li>(e) carry on any business other than the business of borrowing or lending in its own name. Nidhis which have adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding twenty per cent of the gross income of the Nidhi at any point of time during a financial year.</li> <li>(f) accept deposits from or lend to any person, other than its members;</li> <li>(g) pledge any of the assets lodged by its members as security;</li> <li>(h) take deposits from or lend money to any body corporate;</li> <li>(i) enter into any partnership arrangement in its borrowing or lending activities;</li> <li>(j) issue or cause to be issued any advertisement in any form for soliciting deposit. It may be noted that private circulation of the details of fixed deposit Schemes among the members of the Nidhi carrying the words "for private circulation to members only" shall not be considered to be an advertisement for soliciting deposits.</li> <li>(k) pay any brokerage or incentive for mobilizing deposits from members or for deployment of funds or for granting loans.</li> </ul>
<b>Membership of Nidhi (Rule 8 of the Nidhi Rules, 2014)</b>	<ul style="list-style-type: none"> <li>(a) A Nidhi shall not admit a body corporate or trust as a member.</li> <li>(b) Every Nidhi shall ensure that its membership is not reduced to less than two hundred members at any time.</li> <li>(c) A minor shall not be admitted as a member of Nidhi.</li> </ul> <p><i>It may be noted that deposits may be accepted in the name of a minor, if they are made by the natural or legal guardian who is a member of Nidhi.</i></p>
<b>Branches of Nidhi (Rule 10 of the Nidhi Rules, 2014)</b>	<ol style="list-style-type: none"> <li>(1) A Nidhi may open branches, only if it has earned net profits after tax continuously during the preceding three financial years. A Nidhi may open up to three branches within the district.</li> <li>(2) If a Nidhi proposes to open more than three branches within the district or any branch outside the district, it shall obtain the prior permission of the Regional Director and an intimation is to be given to the Registrar about opening of every branch within thirty days of such opening.</li> <li>(3) Nidhi shall not open branches or collection centres or offices or deposit centres, or by whatever name called outside the State where its registered office is situated.</li> </ol>

	<p>(4) Nidhi shall not open branches or collection centres or offices or deposit centres, or by whatever name called unless financial statement and annual return (up to date) are filed with the Registrar.</p> <p>(5) A Nidhi shall not close any branch unless it :</p> <ul style="list-style-type: none"> <li>(a) publishes an advertisement in a newspaper in vernacular language in the place where it carries on business at least thirty days prior to such closure, informing the public about such closure;</li> <li>(b) fixes a copy of such advertisement or a notice informing such closure of the branch on the notice board of Nidhi for a period of at least thirty days from the date on which advertisement was published under clause (a) ; and</li> <li>(c) gives an intimation to the Registrar within thirty days of such closure.</li> </ul>
<b>Acceptance of Deposits (Rule 13 of the Nidhi Rules, 2014)</b>	<ul style="list-style-type: none"> <li>◆ Rule 13 of the Nidhi Rules, 2014 provides that any of the fixed deposits accepted by a Nidhi company shall be for a minimum period of six months and a maximum period of sixty months.</li> <li>◆ Recurring deposits shall be accepted for a minimum period of twelve months and a maximum period of sixty months. In case of recurring deposits relating to mortgage loans, the maximum period of recurring deposits shall correspond to the repayment period of such loans granted by Nidhi.</li> <li>◆ The maximum balance in a savings deposit account at any given time qualifying for interest shall not exceed one lakh rupees at any point of time and the rate of interest shall not exceed two per cent above the rate of interest payable on savings bank account by nationalised banks.</li> <li>◆ A Nidhi may offer interest on fixed and recurring deposits at a rate not exceeding the maximum rate of interest prescribed by the Reserve Bank of India which the Non-Banking Financial Companies can pay on their public deposits.</li> <li>◆ A fixed deposit account or a recurring deposit account shall be foreclosed by the depositor subject to the following conditions, namely: <ul style="list-style-type: none"> <li>(a) Nidhi shall not repay any deposit within a period of three months from the date of its acceptance;</li> <li>(b) where at the request of the depositor, a Nidhi repays any deposit after a period of three months, the depositor shall not be entitled to any interest up to six months from the date of deposit;</li> <li>(c) where at the request of the depositor, a Nidhi makes repayment of a deposit before the expiry of the period for which such deposit was accepted by Nidhi, the rate of interest payable by Nidhi on such deposit shall be reduced by two per cent from the rate which Nidhi would have ordinarily paid, had the deposit been accepted for the period for which such deposit had run.</li> </ul> </li> </ul> <p>It may be noted that in the event of death of a depositor, the deposit may be repaid prematurely to the surviving depositor or depositors in the case of joint holding with survivor clause, or to the nominee or to legal heir with interest up to the date of repayment at the rate which the company would have ordinarily paid, had such deposit been accepted for the period for which such deposit had run.</p>
<b>Unencumbered term deposits by Nidhi (Rule 14 of the Nidhi Rules, 2014)</b>	Under Rule 14 of the Nidhi Rules, 2014, every Nidhi shall invest and continue to keep invested, in unencumbered term deposits with a Scheduled commercial bank (other than a co-operative bank or a regional rural bank), or post office deposits in its own name an amount which shall not be less than ten per cent of the deposits outstanding at the close of business on the last working day of the second preceding month.

<b>Loans by Nidhi</b>	<p>In cases of unforeseen commitments, temporary withdrawal may be permitted with the prior approval of the Regional Director for the purpose of repayment to depositors, subject to such conditions and time limit which may be specified by the Regional Director to ensure restoration of the prescribed limit of ten per cent.</p> <p>According to Rule 15A Nidhi shall provide loans only to its members. The loans given by a Nidhi to a member shall be subject to the following limits, namely:-</p> <ul style="list-style-type: none"> <li>(a) two lakh rupees, where the total amount of deposits of such Nidhi from its members is less than two crore rupees;</li> <li>(b) seven lakh fifty thousand rupees, where the total amount of deposits of such Nidhi from its members is more than two crore rupees but less than twenty crore rupees;</li> <li>(c) twelve lakh rupees, where the total amount of deposits of such Nidhi from its members is more than twenty crore rupees but less than fifty crore rupees; and</li> <li>(d) fifteen lakh rupees, where the total amount of deposits of such Nidhi from its members is more than fifty crore rupees:</li> </ul> <p>Where a Nidhi has not made profits continuously in the three preceding financial years, it shall not make any fresh loans exceeding fifty per cent of the maximum amounts of loans specified in clause (a), (b), (c) or (d).</p> <p>A member shall not be eligible for any further loan if he has borrowed any earlier loan from the Nidhi and has defaulted in repayment of such loan. The amount of deposits shall be calculated on the basis of the last audited annual financial statements.</p>
<b>Rate of interest on any loan given by a Nidhi</b>	<p>The rate of interest to be charged on any loan given by a Nidhi shall not exceed seven and half per cent above the highest rate of interest offered on deposits by Nidhi and shall be calculated on reducing balance method.</p> <p>Nidhi shall charge the same rate of interest on the borrowers in respect of the same class of loans and the rates of interest of all classes of loans shall be prominently displayed on the notice board at the registered office and each branch office of Nidhi.</p>
<b>Directors in a Nidhi Company</b>	<ul style="list-style-type: none"> <li>◆ The Director shall be a member of Nidhi. The Director of a Nidhi shall hold office for a term up to ten consecutive years on the Board of Nidhi. The Director shall be eligible for re-appointment only after the expiration of two years of ceasing to be a Director.</li> <li>◆ Where the tenure of any Director in any case had already been extended by the Central Government, it shall terminate on expiry of such extended tenure.</li> <li>◆ The person to be appointed as a Director shall comply with the requirements of Director Identification Number.</li> <li>◆ A person shall not be eligible for appointment as a director of a Nidhi, if - <ul style="list-style-type: none"> <li>(a) he is of unsound mind and stands so declared by a competent court;</li> <li>(b) he is an undischarged insolvent;</li> <li>(c) he has applied to be adjudicated as an insolvent and his application is pending;</li> <li>(d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence.</li> </ul> </li> </ul> <p>However, if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;</p> <p>(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;</p>

	<p>(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;</p> <p>(g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or</p> <p>(h) he has been allotted a Director Identification Number under section 154 of the Act.</p> <p>No person who is or has been a director of a Nidhi or any other company which:</p> <p>(i) has not filed financial statements or annual returns for any continuous period of three financial years; or</p> <p>(ii) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,</p> <p>shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.</p>
<b>Dividend</b>	Under Rule 18 of the Nidhi Rules, 2014 a Nidhi shall not declare dividend exceeding twenty five per cent or such higher amount as may be specifically approved by the Regional Director for reasons to be recorded in writing and further subject to the following conditions, namely:-
	<p>(a) an equal amount is transferred to General Reserve;</p> <p>(b) there has been no default in repayment of matured deposits and interest; and</p> <p>(c) it has complied with all the rules as applicable to Nidhis.</p>
<b>Appointment of Auditor</b>	Nidhi shall not appoint or re-appoint an individual as auditor for more than one term of five consecutive years and Nidhi shall not appoint or re-appoint an audit firm as auditor for more than two terms of five consecutive years. <i>Note: An auditor (whether an individual or an audit firm) shall be eligible for subsequent appointment after the expiration of two years from the completion of his or its term. Further, in case of an auditor (whether an individual or audit firm), the period for which he or it has been holding office as auditor prior to the commencement of these rules shall be taken into account in calculating the period of five consecutive years or ten consecutive years, as the case may be.</i>
<b>Auditor's certificate</b>	The Auditor of the company shall furnish a certificate every year to the effect that the company has complied with all the provisions contained in the rules and such certificate shall be annexed to the audit report and in case of non-compliance, he shall specifically state the rules which have not been complied with.
<b>Filing of half yearly return</b>	As per Rule 21 of the Nidhi Rules, 2014, every Nidhi company required to file half yearly return with the Registrar in Form NDH-3 along with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within thirty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice or cost accountant in practice.

### QUESTION

**Ques 1:** Directors of ABC Ltd. want to incorporate a producer company. ABC Ltd. itself is in the production and harvesting business. You are the company secretary of ABC Ltd. You are requested to advise the Board of ABC Ltd. about incorporation of such a producer company and set out its objectives as per relevant provisions of the Companies Act.

*Hint: Refer Topic 2.13 Nidhi Companies.*

#### **2.14 Exemptions, modification and adaptations to Nidhi Companies**

- ◆ In the case of a Nidhi company, the document may be served only on members who hold shares of more than Rs.1000 in face value or more than 1% of the total paid-up share capital of the Nidhis, whichever is less.

For other shareholders, document may be served by a public notice in newspaper circulated in the district where the Registered Office of the Nidhi is situated; and publication of the same on the notice board of the Nidhi. [Exemption notification dated June 05, 2015].

*Note:* Section 20 deals with service of documents.

- ◆ Section 62 relates to further issue of share capital. Section 62 is not applicable to Nidhi companies.
- ◆ No member shall exercise voting rights on poll in excess of 5% of total voting rights of equity shareholders. [Exemption notification dated June 05, 2015].

*Note:* Section 47(1)(b) deals with voting right on a poll to be in proportion with the paid-up share capital held. In Nidhi companies it shall apply, subject to the modification that no member shall exercise voting rights on poll in excess of five per cent of total voting rights of equity shareholders.

- ◆ Restrictions on purchase by company or giving of loan by it for purchase of its shares shall not apply, when shares are purchased by the company from a member on his ceasing to be a depositor or borrower and it shall not be considered as reduction of capital under section 66 of the Companies Act, 2013.

*Note:* Section 67(1) states that no company limited by shares or by guarantee and having a share capital shall have power to buy its own shares unless the consequent reduction of share capital is effected under the provisions of the Act. It shall not apply to Nidhi companies when shares are purchased by the company from a member on his ceasing to be a depositor or borrower and it shall not be considered as reduction of capital under section 66 of the Companies Act, 2013.

- ◆ Any amount accepted by a Nidhi company in accordance with the rules made under section 406 shall not treat as deposits.
- ◆ A Nidhi is not required to provide the facility to vote by electronic means.
- ◆ Any Dividend payable in cash may be paid by crediting the same to the account of the member, if the dividend is not claimed within 30 days from the date of declaration of the dividend.
- ◆ Where the dividend payable to a member is Rs. 100 or less, it shall be sufficient compliance of the provisions of the section, if the declaration of dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhis for at least three months.
- ◆ While nominated any person for appointed as director under section 160, the amount of security required to be deposited shall be "ten thousand rupees" instead of "one lakh rupees".
- ◆ Loan to directors etc. shall not apply provided the loan is given to a director or his relative in their capacity as members and such transaction is disclosed in the annual accounts by a note.
- ◆ The filing fees in respect of every return of allotment under sub-section (9) of section 42 shall be calculated at the rate of ₹ 1 for every 100 rupees or parts thereof on the face value of the shares included in the return but shall not exceed the amount of normal filing fee payable.
- ◆ The remuneration of a director who is neither managing director nor whole time director or manager for performing special services to the Nidhis specified in the articles of association may be paid by way of monthly payment subject to the approval of the company in general meeting and also to the provisions of section 197.

However, no approval of the company in general meeting shall be required where—

- (a) A Nidhi does not have a managing director or a whole-time director or a manager;
- (b) The remuneration payable during a financial year to all the directors of the Nidhi does not exceed 10% of the net profits of such Nidhi or fifteen lakh rupees, whichever is less; and
- (c) A remuneration payable under clause (b) is approved by a special resolution passed in this behalf by the Nidhi.

### 2.15 Producer Companies

- ◆ The MCA has appointed February 11, 2021 as the commencement date of section 52 of the Companies (Amendment) Act, 2020 which is related to the insertion of new Chapter XXIA in the Companies Act, 2013 pertaining to "Producer Companies".
- ◆ Section 66 of the Companies (Amendment) Act, 2020 has amended Section 465 of the Companies Act, 2013 related to Repealing of certain enactments and savings respectively.
- ◆ After introduction of new Chapter XXIA on 'producer companies', the first proviso to section 465(1) of the Companies Act, 2013 has been omitted which provides for the provisions of Part IXA of the erstwhile Companies Act, 1956, which was applicable to a producer company in a manner as if the Companies Act, 1956 has not been repealed until a Special Act is enacted for Producer Companies.

**Note:**

**The points which must be taken care while applying for incorporation of a Producer Company:** The application for incorporation of a Producer Company may be rejected on the following grounds:

- (a) The Producer Certificate has not attached or the signatures/stamp of the signing authority is not legible or not on letterhead of the concerned department.
- (b) The Objects are not in consonance with Section 581(1)(B) of Companies Act, 2013.
- (c) The MOA and AOA contains the provisions for issuance of Debentures and Preference Shares.

#### Question For Practice

**Ques 1: List out points which must be taken care while applying for incorporation of a Producer Company?**

*Hint: Refer Topic 2.15 Producer Companies.*

### 2.16 Objects of Producer Companies

In terms of Section 378B of the Companies Act, 2013, the objects of a producer company registered under this Act may shall relate to all or any of the following matters:

- (a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit.  
Provided that the Producer Company may carry on any of the activities specified in this clause either by itself or through other institution.
- (b) processing including preserving, drying, distilling, brewing, vinting, canning and packaging of the produce of its members.
- (c) manufacturing, sale or supply of machinery, equipment or consumables mainly to its Members.
- (d) providing education on the mutual assistance principles to its Members and others.
- (e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members.
- (f) generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce.
- (g) insurance of producers or their primary produce.
- (h) promoting techniques of mutuality and mutual assistance.
- (i) welfare measures or facilities for the benefit of the members as may be decided by the Board.
- (j) any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) above or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner.
- (k) financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) above, which include extending of credit facilities or any other financial services to its Members.

**Note:** It is clarified that every Producer Company shall deal primarily with the produce of its active Members for carrying out any of its objects specified in this section above.

**New Producer Companies Rules, 2021:**

- ◆ **Applicability** - These rules shall apply to a Producer Company as referred in clause (I) of section 378A of the Companies Act, 2013.
- “*co-operative society*” means a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State.
- ◆ **Change of place of registered office from one State to another.** - The rules 27, 30 and 31 of the Companies (Incorporation) Rules, 2014, including the forms stated therein shall be applied for the purpose of change of place of registered office of a Producer Company from one State to another.
- ◆ **Investment of general reserves.** - A Producer Company shall make investments from and out of its general reserves in anyone or in combination of the following namely:
  - (a) in approved securities, fixed deposits, units and bonds issued by the Central Government or State Governments or co-operative societies or scheduled bank; or
  - (b) in a co-operative bank, State co-operative bank, co-operative land development bank or Central co-operative bank; or
  - (c) with any other scheduled bank; or
  - (d) in any of the securities specified in section 20 of the Indian Trusts Act, 1882; or
  - (e) in the shares or securities of any other inter-State co-operative society or any co-operative society; or
  - (f) in the shares, securities or assets of public financial institutions specified under clause (72) of section 2 of the Companies Act, 2013.

**Questions For Practice****Ques 1: Discuss New Producer Companies Rules, 2021?**

*Hint: Refer Topic 2.16 Objects of Producer Companies.*

**Ques 2: Discuss objects of producer companies?**

*Hint: Refer Topic 2.16 Objects of Producer Companies.*

**2.17 Foreign Companies**

<b>Definition of “Foreign Company”</b>	As per section 2(42), “foreign company” means any company or body corporate incorporated outside India which - <ul style="list-style-type: none"> <li>◆ has a place of business in India whether by itself or through an agent, physically or through electronic mode and</li> <li>◆ conducts any business activity in India in any other manner.</li> </ul>
<b>Funding of the Branch Office by Foreign Company</b>	<ul style="list-style-type: none"> <li>◆ <b>Equity Share Capital:</b> In this usual ways an Indian companies are financed.</li> <li>◆ <b>Preferred Share Capital:</b> such convertible preference shares, compulsorily convertible into equity shares are regarded as Foreign Direct Investment (FDI).</li> <li>◆ <b>Debentures and Borrowings:</b> These can be redeemable, convertible or non-convertible. The companies can issue debentures, bonds and other debt securities. When convertible into equity shares are treated as FDI.</li> </ul>
<b>Information/ Documents required for establishment of Foreign Companies In India</b>	As per Section 380 of Companies Act, 2013, every foreign company which establishes a place of business in India must within 30 days of the establishment of such place of business file with the Registrar of Companies for registration: <ul style="list-style-type: none"> <li>◆ a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;</li> <li>◆ the full address of the registered or principal office of the company;</li> </ul>

- ◆ a list of the directors and secretary of the company containing such particulars as prescribed;
- ◆ the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
- ◆ the full address of the office of the company in India which is deemed to be its principal place of business in India;
- ◆ particulars of opening and closing of a place of business in India on earlier occasion or occasions;
- ◆ declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
- ◆ any other information as prescribed.

### QUESTIONS

**Ques 1:** To consider a body corporate as a foreign company, a place of business in India is to be established. State the activities that do not constitute carrying of business in India.

*Hint: Refer Topic 2.17 Foreign Companies.*

**Ques 2:** Referring to the provisions of the Companies Act, 2013, state as to when shall a company incorporated outside India be considered as a 'foreign company' within the meaning of the Companies Act, 2013. Also examining the provisions of the Act, state whether in the following cases, the company shall be considered as a 'foreign company' :

- (i) A company incorporated outside India has a representative in India, who on behalf of the company merely receives orders from the customers.
- (ii) Company incorporated outside India holds its Board meetings and general meetings in India.

*Hint: Refer Topic 2.17 Foreign Companies.*

**Ques 3:** Actavis Ireland Ltd. a pharma firm incorporated in Ireland :

- (i) has a share transfer office in Kanpur;
- (ii) directors of the company frequently stayed in a hotel in Noida and Mumbai for looking after matters of business, the company does not have any physical office or property in India.

As a practicing Company Secretary, advice under the provisions of the Companies Act, 2013, whether the company will be treated as having place of business in India?

*Hint: Refer Topic 2.17 Foreign Companies*

**Situation 1:** Share Transfer Office in Kanpur: Share Transfer office in Kanpur constitutes place of business in India

**Situation 2:** Directors frequently stayed in hotel in Noida and Mumbai: Keeping in view of above discussion it can be concluded that Actavis Ireland Ltd. has a place of business in India as directors of the company frequently stayed in a hotel in India at Noida and Mumbai for looking after matters of business.

### Questions For Practice

**Ques 1:** Write Short Note On: Funding of the Branch Office by Foreign Company.

*Hint: Refer Topic 2.17 Foreign Companies.*

**Ques 2:** List out information required for establishment of Foreign Companies In India?

*Hint: Refer Topic 2.17 Foreign Companies.*