A HANDBOOK OF QUESTIONS YOU MAY WANT TO ASK ABOUT DOING BUSINESS AS A PRIVATE COMPANY

(For Private Circulation Only)

The answers provided in this booklet are for general understanding and to aid common practical knowledge of readers and shall not be construed as legal opinion.

BEING RESPONSIBLE IS SINE QUA NON TO BE A PROFESSIONAL

PRACTISING COMPANY SECRETARIES, TRADEMARKS AGENTS & INSOLVENCY PROFESSIONALS

www.ksrandco.in

ABOUT US

KSR & Co Company Secretaries LLP, is a full services Company Secretaries firm which has created a niche in Corporate Law practice with expertise in diverse domains akin to a full-service Law firm. We Have served clients across various sectors.

The partners and the team have set an excellent track record in the Field of Corporate Laws, Securities Laws, Foreign Exchange Management Laws, Intellectual Property Laws, Insolvency and Bankruptcy law, Industrial and Labour Laws, Environmental Laws.

The firm undertakes Board Process Audits, Corporate Governance Audits, Secretarial Audits, Internal Audits on Functions and Activities, Due Diligence Audits.

The Firm is acclaimed for its expertise in mergers and acquisitions – both Regulatory Compliances and Legal aspects as well as conceptualisation strategies. Litigation Management in Shareholder Disputes, Board Disputes, Oppression and Mismanagement Cases, Commercial Arbitration, Mediation and Conciliation.

"Being responsible is sine qua non to be a professional."

PREFACE

A company form of organization is the most preferred choice of people in business. It is very convenient. It allows the people in business to take advantage of the legal status of the company and limited liability concept so that it is possible to carry on business, admit more people and run it effectively. They can take more risks than that they would take if they run their business in the form of a sole proprietorship or partnership. They realize that the company that carries on the business is different from themselves.

Upon incorporation or registration of a company, the subscribers to the Memorandum of Association shall be deemed to be members of the company. Others may become members of the company by subscribing to shares issued by the company from time to time. The company is considered as a body corporate recognized by the name contained in the Memorandum of Association capable of exercising all functions of an incorporated company as per the Companies Act, 2013 and having a perpetual succession. There may be changes in shareholders. But company will continue to exist forever, unless struck off or liquidated or wound up as per the provisions of the said Act. A company can acquire properties in its own name and it can sue and be sued by its name. The Memorandum and Articles of Association shall be binding on all members as though each one of them have actually signed the same.

Mainly there are two types of companies. Private companies and public companies. Private companies occupy a lion's share in the number of companies registered in India. It is not without reason that entrepreneurs prefer to carry on their business in the form of private companies.

Private companies offer them the convenience of operating a business with limited liability. Private companies enjoy a host of privileges and exemptions under the Companies Act, 2013. Private companies are considered to be perfect choice for the reason that, in India, all that it requires is only two persons coming together as subscribers, directors and share-holders to constitute and incorporate a private company and to run their business enterprise. Practically there is no business activity that cannot be done in the form of a private company. One can engage in manufacturing activity, trading activity, non-banking financial activity or even as a provider of services. Even activities involving social causes and charity can be carried on as a private company.

While proposing to do one's business, trade and commerce or import and export activities, entrepreneurs always enquire about the ideal form of entity to carry on business. Choice of business entity or vehicle is not something that can be made without any analysis. We do check a host of factors, by making enquiries with the promoters and advise them about the pros and cons of doing business in the form of a company form of entity. The most important questions that we ask relate to the nature of business, the size of business, funding requirements and the manner in which they

would raise capital for doing the business, future business growth prospects et al. We also ask about the number of people who will be contributing to the capital or who will invest in the company, for funding the business needs.

In some cases, we do understand that the promoters dream big and therefore it might take some more years before a particular size of business is achieved and hence to start a private company is more desirable rather than to start a public company. If the entrepreneurs suggest that they may require share capital from a significant number of people or they may have to accept deposits in the form of unsecured loans from public then it is not advisable to form a private company.

In India before the coming into force of the Companies Act, 2013, the statutory maximum number of members that a Private Company could have was just 50 persons in number. However, under the Companies Act, 2013 a Private Company can have as high as up to 200 members now. This limit of 200 does not include employees of the company past and present who are its shareholders. Moreover, after the introduction of stringent norms relating to acceptance of deposits from public, it has practically become all the more difficult to raise money from public by way of deposits. Therefore, in most of the cases the choice invariably narrows down to Private Companies. With the favorable law on deposits for private companies funding options need not always come from share capital and funding through unsecured loans / deposits from shareholders, directors and their relatives can help.

During the course of our advisory profession aiding in business formations, we have come across certain very **"Frequently Asked Questions"** about private companies. We thought it fit to consolidate such questions and bring out a booklet from which every entrepreneur will find it easy to understand the provisions under the Companies Act, 2013 and related laws which come into play on specific aspects. We have provided answers to more than 200 questions relating to private companies ranging from its incorporation to GST registration, PAN, opening of a bank account, constitution and meetings of board of directors, general meetings, issue of shares, nomination, share certificates, transfers, foreign investment, forms and procedures, remuneration to directors, dividends, contracts with the related parties, forming business partnerships, collaborations, joint ventures, borrowing and last but not the least exit options as well.

We do hope that this booklet will be of immense use to everyone who proposes to or are running their business as Private Companies. We are aware that you may have many more questions in mind on various topics concerning a private company, Please feel free to write to us through our **"Guidance Window"** **https://ksrandco.in/#content_guid** to receive responses and also enable us to incorporate the same in our next edition.

Last but not the least, we have to make a mention that the concept for this book has come from Shri.C.Velumani, Chairman of CRI Group of Companies and we are grateful to him as he is trigger for our undertaking this project.

We wish everyone a very happy and healthy financial year 2020-21 with no trace of COVID19 and copious raining of wealth.

We look forward to hearing from you. We welcome your comments, observations and suggestions to ksr@ksrandco.in

Thank You, Stay Safe& Happy Reading!

For TEAM KSR&CO.

DR K S Ravichandran
Managing Partner

Place : Coimbatore
Date : April 9, 2020

APPRECIATION FROM INDUSTRIAL CAPTAINS

Dear Ravichandran,
When I attempted to pass through the book, I thought I am trying to do so by peeping through a closed glass window. But in a few minutes, I could understand, I am not seeing through a window but already standing in the place where I wanted to be. This is a very simple but an analytical guide to the stakeholders. In short, I find a good hand holding teacher to clear the many doubts of company law. Treating other areas like Shops & Establishments Act and Factories Act, will be very useful to the management of concerned companies. Congratulations to KSR team for presenting this excellent booklet.

COMMENTS from Mr. A. V. Varadarajan,
Managing Director
CODISSIA Industrial Park Limited

Dear Dr.Ravichandran,

I have just gone through the "Hand Book for Private Companies" written by you.
I am extremely happy that you have made a nice presentation of the nuances of setting up a private company. It is put in a simple and understandable way without using jargons. I am also happy that the content and coverage of various legislative frame work within which a private company has to function like the Companies Act 2013, Shops and establishment Act, the Factories Act, and the Goods and Services Act, applicability of FEMA, for FDI. This book will serve as an easy guide to those private companies who are not required to have a full-time company secretary to understand the Compliances of various Acts and submission of information to the authorities concerned.
This book will come handy for the young entrepreneurs who intend to set up a company.
While complimenting you on bringing out this book, which is a ready reference for many, I record the service you are rendering in educating the corporate community.

Best Wishes,
Srinath N S,
Chairman,
The Karur Vysya Bank Limited,
Karur.

Namaskar

Congratulations for bringing out an excellent hand book for private companies and “commencement conduction business”. It has come aptly at the time of COVID 19 so that even directors of private companies and persons planning to start business can comfortably read, understand and take a call for starting business operations.

Besides, it has extensively covered all other applicable laws which goes to provide customs tariff number and so on.

Regards
Dr. S. Chandrasekaran | Senior Partner | Chandrasekaran Associates | Company Secretaries | 11-F, Pocket Four | Mayur Vihar Phase One | Delhi - 110 091

KSR&CO
COMPANY SECRETARIES LLP
Rewarding Ideas | Raring Steps

Craftsman AUTOMATION

31st March, 2020

To,

Dr. K.S.Ravichandran, M.Com, LL.B, FCS, Ph.D,
Managing Partner,
KSR & Co Company Secretaries LLP
Indus Chambers, No.101,
Govt. Arts College Road,
Coimbatore – 641018.

Dear KSR,

Sub: Preface for your new Publication on Private Limited Company

I went through the handbook your team has prepared. In my opinion some of the questions were answered now struck my mind decades before when I started doing my business. I find this book is very useful. Particularly for young business man and start the promoters some of the questions you have answered will be very useful. Right from incorporation until winding up of the company a long journey indeed and I do not think there is any book in the market that explains Questions that come to one's mind the way you have done. This book will be of immense use not only to men in business but also to professionals as well as students. I appreciate your team effort to ensure that the book is not written with references to Sections and rules.

Thanking you.

Yours faithfully,
for CRAFTSMAN AUTOMATION LIMITED

CRAFTSMAN AUTOMATION LIMITED
SENTHEL TOWERS
4th FLOOR
1078, AVANASHI ROAD
COIMBATORE-18.

S.Ravi
Chairman and Managing Director

Craftsman Automation Limited

Registered Office:
Senthel Towers, 4th Floor
1078, Avanashi Road
Coimbatore - 641 018
Tamilnadu, India

tel +91 422 67 391 01
fax +91 422 67 391 11
info@craftsmanautomation.com
www.craftsmanautomation.com

CIN No : U28991TZ1986PLC001816
GST No : 33AABCC2461K1ZW

Contents

PART I – COMPANY LAW 10

1. Preliminary 11
2. Incorporation Meaning And Procedures 17
3. Commencement Of Business 21
4. Articles Of Association 23
5. Directors 25
6. Tenure, Retirement, Resignation, Removal And Vacation Of Office Of Directors 31
7. Working Directors And Remuneration To Directors 34
8. Members 35
9. Shares And Issue Of Shares 36
10. Sweat Equity Shares And Employee Stock Options 39
11. Transfer And Transmission Of Shares 41
12. Role Of Shareholders 44
13. Deposits And Loans 48
14. Meetings And Resolutions At Board Meetings And General Meetings 51
15. Books, Registers And Records 54
16. Auditors 55
17. Company Secretary 58
18. Online Filing Of Forms At Mca Portal 59
19. Threshold Based Compliances 62
20. Forms And Procedures – Event Based And Non Event Based 66
21. Dispute Resolution 73
22. Defunct Company / Dormant Company / Insolvency/ Liquidation / Winding Up . 74

PART II – FDI AND FEMA 76

23. Foreign Direct Investment 77

PART III – OTHER LAWS 82

24. Shops And Establishments Act 83
25. Income Tax Act 85

26. Goods And Services Tax 86
27. POSH Act 88
28. Factories Act 90
29. Employee State Insurance [ESI] And Employees Provident Fund [EPF] 93
30. Trademarks Act 96

PART I – COMPANY LAW

1.PRELIMINARY

1. What are most important classes of companies?

A company formed and registered under the Act is known as a "company" for the purposes of the Act. A company may be formed and registered as a private or public company, whether with or without share capital, whether with or without limited liability. The Companies Act, 2013has introduced a new category of companies known as One Person Company with only one shareholder. One Person Company is also treated as a private company. While there could be a classification of companies on the basis of their liability clause, there are not many companies with unlimited liability. A private company has unique characteristics as it could introduce restrictions in its articles of association with respect to transfer of shares. On the other hand, shares are freely transferable in a public company whether its shares are listed in a recognised stock exchange or not. When compared with a public company, a private company is entitled to a lot of privileges and exemptions, even though the private company may have worldwide operations and huge turnover. When it comes to issuing shares to the public or inviting public deposits under a public deposit scheme, only public companies are permitted.

2. What is meant by limited liability?

Limited liability indicates a peculiar feature of companies formed with limited liability by which shareholders do not bear any liability to pay for the liabilities of their company beyond the money they are liable for the shares they have subscribed for. For instance, if a shareholders has subscribed for 1000 shares of Rs.10/- each and he has paid Rs.10,000/- towards the shares, assuming no premium was payable for the shares), even if the company runs into trouble and accumulates losses and liabilities beyond what could be met by its assets, the shareholder who has paid all money due on his shares will not be / cannot be called upon to pay for the liabilities of the company.

3. Which is the ministry having administrative powers over companies incorporated in India?

The MCA administers the Companies Act. The MCA, headed by a Secretary to the Government of India, has under its control Regional Directorates. The Regional Directors of the respective regions control the offices of the Registrars of Companies (ROCs) under their respective jurisdictions. The central government may delegate any of its powers, other than powers to make rules under the Companies Act*, 2013* to such authorities and officers as may be specified in the notification announcing such delegation. By virtue of these powers, the Central Government has delegated its powers under various provisions of the Act to Registrars and Regional Directors. For this purpose, various notifications have been issued under Section 458 from time to time, which are published on the MCA website. The Regional Directors, besides having been vested with certain quasi-judicial powers in the matter of compounding of offences, also exercise administrative control over the functions of the Registrars. Each office of the Regional Director also has an inspection wing. The Registrars are the field level officers with adequate powers to prosecute companies and officers of companies for certain offences against the Act.

4. How is a Company different from a Partnership Firm or a Limited Liability Partnership?

a) A Company is a body corporate being a creation of law and having perpetual succession. A company can be called as an artificial juridical person being distinct from the management namely the Board of Directors and the owners namely the shareholders. Company comes into existence upon its registration under the Companies Act, 2013 or under previous law prior to coming into force of Companies Act, 2013. Administration of companies come under the Central Government under the Ministry of Corporate Affairs.

b) A partnership firm is not a body corporate and hence has no distinct legal existence. A partnership firm is a compendious expression to denote the partners who comprise of the firm. Continuation of partnership post cessation of one or more partners is dependent on the terms of the partnership agreement. A partnership firm may or may not be registered.

Administration of registered partnership firms come under the respective state governments within whose jurisdiction the firm is registered.

c) In terms of Section 464 of Company law, no association or partnership consisting of 50 or more persons shall be formed for the purpose of carrying on any business or for the object of acquisition for gain unless it is registered as a company under the Company law.

d) Both, Company and Limited Liability Partnership ["LLP"] are termed as Body Corporate. Then you may wonder what is the difference between both these forms considering that they enable a limited liability for its members/partners. Partners of an LLP will have ownership and management rights, whereas in a Private Limited Company, the shareholders, unless they are directors also, do not enjoy management powers. This is beneficial because there is scope for bringing in professional directors on the Board without having to provide them ownership rights. Another critical aspect is that Reserve Bank of India treats LLPs at par with partnership firms and this may hamper the borrowing ability of the entity.

e) Compliances and governance norms are stringent in the case of companies as compared to LLPs.

5. What is a private company?

A private company means a company which by its Articles of Association:

(i) Restricts the right to transfer shares

(ii) Limits the number of members (excluding employee members past and present) to 200

(iii) Prohibits any invitation to the public to subscribe for any securities of the company

6. What are the various types of private limited companies under the Company Act, 2013? Explain.

a) A private company is a **"One Person Company"** when the company has only one person as a member.

b) A **"Small Company"** is a private company whose:

i. Paid-up share capital does not exceed Rs. 50 Lakhs [or higher amount to be prescribed which shall not be more than Rs. 10Crores] **and**
ii. turnover for immediately preceding financial year does not exceed Rs. 2 Crores [or such higher amount to be prescribed which shall not be more than Rs.100Crores]

The following companies shall however not be treated as a small company:

i. a holding company or a subsidiary company;
ii. a company registered under section 8; or
iii. a company or body corporate governed by any special act;

Presently, the paid up capital should not exceed Rs.50 Lakhs and turnover should not exceed Rs.2 Crores in order to be classified as a small company. Even if one of the above two parameters is crossed, the status as a small company will be lost.

c) An entity shall be considered as a Start-up:

i. Upto a period of 10 years from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India.
ii. Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded INR 100 Crores.
iii. Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

Provided that an entity formed by splitting up or reconstruction of an existing business shall not be considered a 'Start-up'.

Explanation: An entity shall cease to be a Start up on completion of 10 years from the date of its incorporation/ registration or if its turnover for any previous year exceeds INR 100 Crores.

d) A Private Company shall be a **"Producer Company"**[1] as a body corporate having objects or activities specified in Section 378B and registered as Producer Company under this Company Act, 2013 or under the Companies Act, 1956.The Government is introducing an amendment for the purpose of incorporating the provisions relating to Producer Companies within to Companies Act, 2013.

e) The objects of the Producer Company shall relate to all or any of the following matters, namely:

i. 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;
ii. processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its Members;
iii. manufacture, sale or supply of machinery, equipment or consumables mainly to its Members;
iv. providing education on the mutual assistance principles to its Members and others;
v. rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members;
vi. generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce;
vii. insurance of producers or their primary produce;
viii. promoting techniques of mutuality and mutual assistance;
ix. welfare measures or facilities for the benefit of Members as may be decided by the Board;

[1]Companies Amendment Act, 2020 vide notification dated 19th March 2020

x. any other activity, ancillary or incidental to any of the activities referred to in clauses (i) to (ix) or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner;

xi. financing of procurement, processing, marketing or other activities specified in clauses (i) to (x) which include extending of credit facilities or any other financial services to its Members.

Prior to introduction of the Companies (Amendment) Act, 2020,**"Producer Company"** was defined as a body corporate having objects or activities specified in section 581B and registered as Producer Company under Companies Act, 1956. The objects have not undergone any change and the above listed objects were part of Section 581B of Companies Act, 1956 as well.

7. Can a private company be a Micro, Small and Medium enterprises under the MSMED Act 2006?

Yes, a private company can be a Micro, Small and Medium enterprise if it satisfies the following conditions:

Manufacturing Sector	
Enterprises	**Investment in Plant &Machinery**
Micro Enterprises	Does not exceed Rs. 25 lakhs
Small Enterprises	More than Rs. 25 lakhs but does not exceed Rs. 5 crores
Medium Enterprises	More than Rs. 5 crores but does not exceed Rs.10 crores
Services Sector	
Enterprises	**Investment in Equipment**
Micro Enterprises	Does not exceed Rs. 10 lakhs
Small Enterprises	More than Rs. 10 lakhs but does not exceed Rs.2 crores
Medium Enterprises	More than Rs. 2 crores but does not exceed Rs. 5 crores

2.INCORPORATION MEANING AND PROCEDURES

8. What is meant by incorporation of a company?

Incorporation is the first step. It is the process by which the company as a legal entity is born and Government certifies that a company by a name is registered and incorporated. Presently incorporation takes place online through a Central Registration Centre operated by the Ministry of Corporate Affairs (MCA) of the Government of India (Central Government). MCA is the Ministry responsible for administration of Company law.

9. What is the effect of incorporation?

From the date of incorporation mentioned in the certificate of incorporation, the subscribers to the memorandum becomes members of the company; the company becomes a body corporate, a legal entity treated as a artificial juridical person. It can exercise all the functions of an incorporated company. It will have power to acquire, hold, dispose of any property. It can enter into contracts in its name. It can file cases against others and it can also be sued by others.

10. Can a company, upon incorporation, enter into partnerships, joint ventures, and collaborations?

As already stated, upon incorporation it becomes a body corporate capable of entering into contracts. As such, it can enter into partnerships, joint ventures, collaborations in its name much similar to a natural person.

11. What is Central Registration Centre of MCA?

The Central Registration Centre (CRC) is an initiative of Ministry of Corporate Affairs (MCA) in Government Process Re-engineering (GPR) with the specific objective of providing speedy incorporation related services in line with global best practices.

CRC is presently tasked to process applications for name availability (**RUN**) and forms related to incorporation of new companies (/SPICe+ (INC-32)/SPICe MoA-INC-33/SPICe AoA-INC-34/).

12. What is SPICE+ e- form?

Web form SPICe+ (INC-32) deals with the single application for reservation of name, incorporation of a new company and/or application for allotment of Director Identification Number (DIN) and/or application for PAN and TAN.

SPICe+ has been divided into two parts, SPICe+ Part A and SPICe+ Part B.

SPICe+ Part A represents the section wherein all details with respect to name reservation for a new company has to be entered.

SPICe+ Part B represents the section wherein all remaining details required for incorporation of a company has to be entered.

Note: SPICe+ Part A can be submitted individually for name reservation or can be submitted together with SPICe+ Part B for both name reservation as well as incorporation.

In case SPICe+ Part A is submitted individually for name reservation. Part B and all other linked forms shall be enabled only after the SRN of SPICE+ Part A is 'Approved' by CRC i.e. the name is reserved for the Applicant.

Once the e-Form is processed and found complete in all respects with respect to the details and supporting documents, company would be registered and Certificate of Incorporation is issued in Form INC 11and CIN would be allocated. Also, DINs get issued to the proposed Directors who do not have a valid DIN. Maximum three Directors are allowed for using this integrated form for filing application of allotment of DIN while incorporating a company other than a Producer company. In case of a Producer company, maximum of five directors are allowed to apply for allotment of DIN. Also PAN and TAN would get issued to the Company.

13. What is AGILE-PRO e- form?

Along with SPICE+ eform a Linked mandatory eform called AGILE-PRO [**A**pplication for **G**oods and services tax Identification number, employees state **I**nsurance corporation registration p**L**us **E**mployees provident fund organisation registration, **P**rofession tax **R**egistration and **O**pening of bank account] for issuance of GSTN/ EPFO/ ESIC/ Profession Tax registration (only for Maharashtra) is also required to be uploaded and this form is also for opening of a Bank account. A Company which intends to apply for GSTIN shall follow the existing process of registration through Common Portal for GST registration and respective portal. GST is not a mandatory requirementin AGILE- PRO form. New companies incorporated through SPICe+ along with AGILE-PRO and thereby have obtained EPFO / ESI registration numbers will have to file statutory returns only when they cross thresholds prescribed under the relevant Acts.

14. What are the documents that are required to be filed along with SPICe + e-form?

a) The Memorandum and Articles of the company. All subscribers have to sign on the memorandum.

b) The professional (CA/CS/CMA) who is engaged in the formation of the company has to give a declaration in Form INC 8 regarding compliance of all the requirements and rules of the Company law. A person named in the Articles as director also has to sign the declaration.

c) Each subscriber to the Memorandum and individuals named as first Directors in the Articles should submit a declaration in Form INC 9 with the following details:

   i. that he/she is not convicted of any offence with respect to the formation, promotion, or management of any company.

   ii. he/she has not been found guilty of fraud or any breach of duty to any company in the last five years.

   iii. the documents filed with the Registrar are complete and true to the best of his/her knowledge.

d) Address for correspondence until the registered office is set-up.

e) If the subscriber to the Memorandum is an individual, then he/she needs to provide his full name, residential address, and nationality along with a proof of identity. If the subscriber is a body corporate, then Certificate of Incorporation, Board resolution passed by such Company along with basic details about the body corporate and prescribed documents need to be provided.

f) Individuals mentioned as subscribers to the Memorandum in the Articles need to provide the details specified in the point above. However, if they provide their Director Identification Number then proof of identity and residence need not be attached.

g) The individuals mentioned as first directors of the company in the Articles must provide particulars of interests in other firms or bodies corporate along with their consent to act as directors of the company in Form DIR 12.

3.COMMENCEMENT OF BUSINESS

15. Immediately after receiving the certificate of incorporation, on the same day, can the company open a bank account?

Yes. Very much. All that a Bank will require is a resolution of the Board of Directors. Once a company is formed, the persons named in the Articles as first directors would constitute themselves as the Board of Directors and they can meet the same day and pass a resolution for opening and operating one or more bank accounts. Usually the banks will give a specimen resolution itself. With effect from 20th February 2020, opening of bank account also forms part of the incorporation of new companies.

In fact, the AGILE-PRO e-form enables opening of a bank account as part of the incorporation process based on the choice of the bank made by the applicants amongst the list of the banks displayed and the nearest branch closest to the town, city or village in which the proposed registered office will be situated. The promoters have a choice to disregard the option for further processing their application like submission of KYC and other information with the bank which was chosen at the time of incorporation. The promoters can choose a different bank or branch for opening and operating the current account of the company post its incorporation.

16. Whether a Private company has to obtain Certificate of Commencement of business?

Yes. A private company before it proceeds to exercise its borrowing powers or to commence business has to obtain a certificate of commencement of business. A return in Form INC 20A needs to be filed within one hundred and eighty days of registration of a company with MCA confirming that

(i) every subscriber to the memorandum of association has paid the value of the shares that he or she or it has agreed to take

(ii) the situation of the registered office has been verified and the same has been filed separately in a prescribed form for confirmation

In the case of a company pursuing objects requiring registration or approval from any sectoral regulators such as the Reserve Bank of India, Securities and Exchange Board of India, etc., the registration or approval, as the case may be from such regulator shall also be obtained and attached with the declaration.

17. Is it necessary to create a login by a company in the portal of Ministry of Corporate Affairs?

Yes, creating a **login id is mandatory** for the company to file any form, know the status of form filed, to re-submit forms wherever required or carry out inspection of documents filed etc.

4.ARTICLES OF ASSOCIATION

18. Why Articles of Association is an important document for promoters, directors and shareholders of private companies?

a) Articles of Association is the document governing the conduct of affairs of a company. It is a binding contract between the members and the company. Private companies have the liberty to incorporate in its Articles of Association, matters that the Company lawmay not have provided for or the Company lawmay have provided the liberty to modify its requirements to suit the management of the private company. In a company form of organization, decisions are taken by the Board of Directors who act within the boundaries of the Articles.

b) Upon registration of a company, the Memorandum and Articles of Association is binding on all members of the company [including those becoming members during the life time of the Company] as though each one of them have personally signed the same. Articles of Association is a contract between the company and its members.

c) For instance, if a bank account has to be opened, it is the Board of directors which will take a decision. If the requirement is to open branches, it will be the Board of directors which will take the decision in this regard. If the company needs to borrow monies or must raise capital by issue of shares, it will be the Board of directors which will take the decision.

d) There are certain matters in relation to which directors have to take the approval of shareholders. These matters are specified by the Company law itself. For example, let's say if the company has its office in Coimbatore, but directors are of the opinion that it would be useful to have the registered office in Bangalore in view of the nature of business proximity to customers and various other reasons. In such a situation, shifting of registered office must be done only after obtaining the approval of the shareholders. Similarly, there are several other such matters where directors have to look up to the shareholders and take their approvals.

e) In most of the private companies, there may be the same persons who are the directors and also the shareholders. Even in such cases the law creates an invisible wall of separation between the directors and shareholders. As a matter of formality, directors will call for a meeting of the shareholders and formally secure the approval of shareholders in the

form of resolutions for the proposals they want to pursue. In addition to the matters, the company law wants approval of shareholders. The Articles of Association of a private company can incorporate several other matters for which shareholders nod is made essential. Not only that, the Articles can provide that in respect of certain matters even directors cannot take decision unless all the directors approve it. For instance, let us say two or three friends contribute their money to commence a business. Each one may constitute a group of shareholders comprising of their relatives or family members. All of them cannot become directors because business needs have to be decided from time to time and therefore it is advisable to have a small strength of people constituting the Board of Directors. Generally, in such companies, each group will have their representatives in the Board.

f) The Articles of Association can provide that certain decisions have to be made only with the unanimous consent of all the directors. In this process partnership principles can be introduced through Articles of Association in the case of a private company. Articles may add in respect of certain matters that approval of shareholders is necessary though it may not be needed as per law. Apart from that, Articles may provide for inducting nominee directors or issuing shares to outsiders which will require approval of all the directors or approval of all shareholders. Similarly, Articles of Association can provide for specific restrictions relating to transfer of shares. For instance, no shareholder shall transfer his or her shares to any person other than a person who is an existing shareholder or a person who is approved by the Board of Directors.

g) Articles can provide for what are known as pre-emptive rights. Moreover, for the purpose of information, Articles can provide that the directors should supply financial information in a specified format to all the shareholders once in a month or once in a quarter. Articles can provide voting rights, dividend rights, class rights and so on and so forth. Articles of Association therefore is a charter document which can provide for several things in order to regulate the internal management of the affairs of the company. In the case of private companies, the leeway available is more than what is available in the case of a public company.

5.DIRECTORS

19. Who can be a Director?

Any individual who has attained the age of majority and who possesses the Director Identification Number (DIN) and who does not suffer from any of the following disqualifications can act as a director of a company:

a) He / She should not be of unsound mind so declared by a competent court
b) He / She is not an undischarged insolvent or has applied to be adjudicated as an insolvent
c) He / She has been convicted by a court of any offence (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
d) He / She has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he / she shall not be eligible to be appointed as a director in any company;
e) He / She is not disqualified from being appointed as a Director by an order of court or Tribunal and the order is in force;
f) He / She is in default of payment of calls in respect of shares and six months have elapsed from the last day fixed for the payment of the call;
g) He / She has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years; or He / She has not obtained Director Identification Number (DIN)
h) He / She has reached or exceeded the maximum limit on number of directorships – 10 for public companies and 20 for private companies.

In order to continue to hold the position of a director, he/she shall not incur any legal disqualification.

20. Is there any educational qualification or minimum business experience for being eligible to get appointed as a director?

No, the law has not prescribed any qualification as to education or experience for being appointed as a director.

21. How to get the Director Identification Number?

Director Identification Number (DIN) is allotted only to the individual who is proposed to be appointed as a director in a company. Form DIR-03 to be filed electronically with the Central Government attaching documents for identity proof and address proof with the prescribed fees. In case the name of the person does not have a last name, then his or her father's or grandfather's surname shall be mentioned in the last name along with the declaration in Form No.DIR-3A. DIN will be allotted upon scrutiny of the Form and the documents attached and letter will be issued for allotment of DIN which will be a proof to the applicant. As already stated, along with applying for incorporation through **SPICe,** DIN will be allotted if required.

22. Whether a person can have more than one Director Identification Number [DIN]?

No. A person can have only ONE DIN.

23. Whether DIN to be renewed year?
No.

24. Is it mandatory to intimate any change in the particulars originally provided for obtaining DIN?

Yes. Form No.DIR-06 to be filed by the individual electronically with the Central Government within 30 days of such change attaching necessary documentary proof, duly certified by a company secretary or chartered accountant or cost accountant in practice. The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within 15 days of such change.

25. Someone told me that when the company makes a reference to a director, it should quote his DIN too. Is this true?

Yes. When in any return or document of the company there is a reference to a director his DIN should also be mentioned. For instance, if the name of the director is mentioned in a notice or report as the signatory to the document, underneath his name, his DIN should also be mentioned.

26. Does the Company Law prescribe any minimum and maximum number as the strength of directors on the Board of Directors?

A private company should have minimum two directors and a one-person company should have at least one director. The Company law provides for a maximum of 15 directors, which limit can be increased beyond 15 if consent of the shareholders of the company is obtained by way of a special resolution.

27. What are the modes of appointment of directors in a private company?

a) The first directors are appointed through Articles of Association at the time of incorporation

b) Shareholders may appoint directors.

c) Board has powers to appoint additional directors; alternate directors; and nominee directors provided articles of association contains enabling provisions. The Board of Directors can appoint a person as a director in any casual vacancy arising in the office of a director before expiry of his term of office, if the articles of association does not contain any provision against such powers. If articles contain any provision with regard to appointment of a person as a director in any casual vacancy, such appointment shall be subject such provision.

28. Is it necessary for a private company to appoint independent directors?

No. However, if articles so provide or if any investment agreement or shareholders agreement requires appointment of independent directors, there is no bar in appointing independent directors.

29. Should all directors of the company stay in India throughout the year?

Company law requires at least one director to stay in India for a total period of not less than 182 days during the financial year. For example, if a Board comprises of 15 directors it would suffice if one of them complies with this condition.

30. What are aspects that a director must be cautious so that a director does not get disqualified from being eligible for appointment / reappointment as a director?

(1) A person shall not be eligible for appointment as a director of a company, if —

(a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undischarged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(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:

Provided that 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;

(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;

(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;

(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

(h) he has not complied with subsection (3) of section 152.

(2) No person who is or has been a director of a company which—

(a) has not filed financial statements or annual returns for any continuous period of three financial years; or

(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay the interest due thereon or pay any dividend declared and such failure to pay or redeem

continues for one year or more, 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.

31. Can a private company bring any additional grounds to disqualify a person from being eligible for appointment / reappointment as a director?

A private company may by its articles provide for any disqualifications for appointment as a director in addition to the aforesaid disqualifications.

32. What are the duties of directors?

a) A director should always act in good faith in order to promote the objects of the company in the best interest of its stakeholders.
b) A director should exercise his or her duties with due and reasonable care, skill and diligence and shall exercise independent judgement.
c) A director shall not involve himself or herself in a situation of conflict with that of the interests of the company.
d) A director shall not achieve any undue gain or unjust enrichment either to himself or to his relatives, partners or associates.
e) A director shall not assign his or her office.
f) It shall be the duty of every Director to file DIR-03 KYC, for every financial year in case there is a change in e-mail id or phone number already furnished in obtaining DIN or DIR-03 KYC web form if there is no change in information already furnished.
g) It shall be the duty of directors to mention the DIN, Name, Designation, in all Returns Information and particulars where he/she sign in the capacity of Director.

33. What is the significance of the Board of Directors?

Every company should have a Board of Directors (Board) to manage its affairs. The Board is the apex body which comprises of Directors appointed by shareholders or by the Board themselves, as the case may be, to render functions as provided under the Company law.

The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board,

namely:

a) to make calls on shareholders in respect of money unpaid on their shares;
b) to authorise buy-back of securities;
c) to issue securities, including debentures, whether in or outside India;
d) to borrow monies;
e) to invest the funds of the company;
f) to grant loans or give guarantee or provide security in respect of loans;
g) to approve financial statement and the Board's report;
h) to diversify the business of the company;
i) to approve amalgamation, merger or reconstruction;
j) to take over a company or acquire a controlling or substantial stake in another company;
k) to make political contributions;
l) to appoint or remove key managerial personnel;
m) to appoint internal auditors and secretarial auditor.

34. What are collective duties or responsibilities of Board of Directors

a) The Board of Directors shall convene their first board meeting within 30 days of Incorporation of the company which means 30 days from the date mentioned in the Certificate of incorporation.
b) Board of Directors shall take decisions for the benefits of the members of the company.
c) The Board of Directors shall not take decisions in matters for which shareholders in general meeting are required to decide.
d) The Board of Directors of the company shall be bound by the restrictions imposed by the company in general meeting.
e) Due notice for holding meeting of the Board should be issued. Notes on agenda should be full, complete and adequate for directors to study, analyse and come prepared for the meeting.
f) The board of directors shall meet at least 4 times in a year and not more than 120 days shall intervene between two board meetings.
g) The Board can carry out its decision-making process through resolution by circulation only on such matters that are emergent in nature and not prohibited for such decision making by law.

6.TENURE, RETIREMENT, RESIGNATION, REMOVAL AND VACATION OF OFFICE OF DIRECTORS

35. What is the term of office of directors appointed by the Board?

a) The Board has power to appoint directors if enabled so by the Articles of association of the company only in four situations: a) as an addition to the Board popularly called as Additional Director, b) to fill in the casual vacancy caused by the cessation of a director, c) as Nominee director d) Alternate Director.

b) The Additional Director can hold office only up to the date of the Annual General Meeting coming after the appointment by the Board. In case the Board fails to hold AGM, then the additional director can hold office only up to the last date on which AGM ought to have been held as per the Company law, which ever earlier.

c) A director appointed to fill in the vacancy caused due to resignation or death or disqualification of a director (which results in casual vacancy) can hold office only up t to the period the original incumbent would have held office.

d) A nominee director can hold office as per the terms of their appointment.

e) An Alternate director acts as an alternate for a director during his absence for a period of not less than three months from India and shall vacate the office if and when the director in whose place he has been appointed returns to India.

36. Whether there is a limitation on term of office of first directors?

Unless the Articles of Association provide otherwise, the first directors can hold office for life or till such time they retire or resign or the shareholders remove them from office.

37. Whether the directors of a private company have to retire by rotation at every Annual General Meeting?

Retirement of Directors by rotation is a procedure by which one third of the total number of directors retire at every annual general meeting and they get re-appointed at the same meeting. This process gives shareholders an opportunity to review the performance or desirability of such directors and vote in favour or reject their reappointment. This procedure is not mandatory for private companies. Company law does not require a director of a private company to retire by rotation. However, Articles may prescribe rotation of directors.

38. Can the Board of Directors or Shareholders at a general meeting or Articles of Association appoint a person as a permanent director or a director for his life-time?

Yes. However, no such appointment will take away the rights of shareholders to remove a director or alter the articles of association in accordance with the procedures prescribed under the Companies Act, 2013.

39. Does the Company Law provide for a process for resignation of directors?

Yes. A director who chooses to resign should send his notice to resign to the registered office of the company. The resignation is deemed to take effect only from the date of its receipt. However, if the director choosing to resign has indicated a prospective date for taking effect of his resignation which date falls after the date of receipt of his or her notice by the company, then such future date will be considered as date of resignation. An option is provided for the resigning director to forward his resignation letter by filing the prescribed e-form DIR-11 with the MCA.

40. What situations will result in automatic vacation of office of a director during his tenure?

a) If a company fails to file its annual report or annual return for three consecutive years, the directors of such defaulting company will vacate office all companies other than the company which is in default.
b) If a director absents himself from all meetings of the Board during a period of 12 months (with or without leave of absence).
c) If a director fails to disclose his interest in a transaction before the Board of directors at their meeting.
d) A court or a tribunal disqualifies a director from holding any such office.
e) If a director is removed from office by a resolution of shareholders.
f) If a director is convicted of any offence (involving moral turpitude or otherwise) and suffers imprisonment for term not less than six months.

In addition to the above a private company can through its Articles of Association can provide additional grounds for vacation of office of director.

41. Can a director be removed from office?

Yes. A director can be removed from his office by passing an ordinary resolution of shareholders. However, prior to passing such resolution, a special notice explaining the grounds for his removal and seeking his replies for the charges

made against him should be served. Special Notice means a notice issued by members holding prescribed number of shares of their intention to move a resolution for specified subjects such as removal of director or auditor. The director proposed to be removed has to be provided an opportunity to make his representation.

7.WORKING DIRECTORS AND REMUNERATION TO DIRECTORS

42. Is there any limitation on tenure of Managing Director / Whole Time Director?

Yes. A Managing Director / Whole Time Director can be appointed only for a term not exceeding 5 consecutive years, unless such Managing Director / Whole Time Director is re-appointed for a term not exceeding 5 years.

43. Who can appoint a Managing Director / Whole-time Director?

Ordinarily, the power to appoint managing director / whole-time directors is with the Board of directors. For private companies also, Articles of Association may require the appointment to be approved by shareholders at a general meeting. It must be noted that if the person getting appointed is already 70 years of age or would cross 70 during his term of office, such appointment shall be subject to approval of shareholders.

44. Can a Private Company pay remuneration to its Directors?

A private company can pay remuneration to its directors. There is no provision in the Company lawwhich regulates this aspect. Ordinarily pay for work is the norm. However, since there are no provisions that control these aspects, directors of the private company can be paid remuneration. Even non-executive directors can get remuneration. However, it is advisable to structure the remuneration in such a way the managing directors, whole time directors are paid higher remuneration than the other non-executive directors.

45. Can any Director other than the Managing or Executive Director give instructions to management and make enquiries about the business activities of the Company?

It is generally the working directors such as managing director, whole time director, executive director who make enquiries and give instructions to officers, employees and other workers. Non-executive directors are entitled to call for information from the management team or make enquiries about the business activity as they are equally responsible for making decisions about the functioning of the company. However, their interference should not hamper the routine functioning of the company or override the powers of working directors.

8.MEMBERS

46. What is the minimum and maximum number of members a Private Limited Company should have?

A Private Limited Company may be formed for any lawful purpose by two or more persons, by subscribing their names or his/her name to the Memorandum of Association of the Company and after complying with the requirements of this Company law in respect of registration. The maximum number of members of a Private Limited Company shall be limited to 200 members. This limit does not include employees (past and present) being members of the company. Joint holders are treated as a single member.

47. How does the computation of the number of members work?

The Company law states that in case 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. The Company law also states that the below mentioned persons shall not be included while counting the number of members of the Company:

- Persons who are in the employment of the company; and
- Persons who were formerly in the employment were also members of the company during such employment; and have continued to be members even after their employment ceased

48. What happens in case the minimum number of members falls below the threshold limit?

If at any time, the number of members of a Private Company falls below the minimum requirement of 2 members and the company still carries on business for more than 6 months, the members can no longer enjoy the benefit of limited liability. During this period when number of members have fallen below two, whichever member continues to undertake business, such member shall bear the burden of settlement of all debts on behalf of the company. Further it is critical to note that while business may be conducted by the Board of Directors, the liability falls on the continuing member and not on the directors. Therefore, members need to be aware of this aspect. If the Company has during this period not incurred any debts then the risk of liability gets negated.

9.SHARES AND ISSUE OF SHARES

49. What are the different types of shares a private company is entitled to issue?

The Company law states that shares are of two kinds. They are equity shares and preference shares. Depending upon business needs and investors preferences, a company can even issue equity shares without granting voting rights or by granting differential voting rights. Normally at a meeting of shareholders the voting rights are determined by the amount paid up on the shares held by a shareholder.

50. What is the difference between equity shares and preference shares?

Preference shares have to be redeemed within a period of 20 years. Redemption means returning the capital contributed by holders of preference shares first or in priority to returning the capital contributed by equity shareholders. The preference shareholder enjoys the right to get a fixed rate of divided in priority to equity shareholders. Apart from that, in case a company is wound up, any money left after all the creditors are paid will be first used to pay the preference shareholders in preference to the equity shareholders.

51. What is the minimum capital with which a company should be Incorporated?

The Company Law does not prescribe a minimum share capital at the time of incorporation. But it is advisable to start the company with a minimum capital for example Rs.1,00,00 consisting of let us say 10,000 shares of Rs.10 each. For businesses that propose to operate in sectors like banking, non-banking financial company, insurance etc, specific regulators may stipulate minimum capital for such regulated businesses and the same shall be contributed to, at the time of incorporation.

52. The business / project of a company is such that it needs Rupees hundred crores as Share capital. All the shareholders are prepared to contribute to the share capital. How to go about it?

Normally in the case of a private company shareholders contribute capital according to the terms of understanding between them. In fact, when they subscribe to the Memorandum of Association, they subscribe to such number of

shares that will show the pattern of their contribution. When further shares have to be issued the company may issue to all the shareholders. As per the company law it is a matter of rule that whenever further shares have to be issued it is mandatory to offer those shares to the existing shareholders in the same proportion in which they are already holding shares. In case the Board of Directors think it is necessary to issue shares only to some of the shareholders or to a person who is not at all a shareholder, it is still possible. In such cases as per the Company law a consent of the shareholders of the company is necessary by means of a special resolution.

53. What is a rights issue?

As per Company law, whenever further shares are issued it shall be issued to the existing shareholders in proportion of shares held by them, save and except when the Board of Directors could secure the approval of shareholders by a special resolution to issue shares otherwise by way of employee stock options or preferential allotment. Such an issue when made will be known as rights issue and it should be issued in proportion to which the shares can be issued. As regards shareholders, the rights issue or rights offer is only an option to subscribe and not an obligation. If there is no provision in the Articles of Association prohibiting the right of renunciation, the right to renounce the offer will be deemed to be there and every person who receives the offer to subscribe for the rights shares will be entitled to renounce his rights in full or in part in favour of any other person, who may or may not be an existing member. Hence in the articles of association of private companies, one must carefully incorporate requisite provisions in the articles so to as to allow or prohibit right of renunciation and even if it is allowed, one has to decide whether a member can renounce in favour of a non-member. The person in whose favour the shares are renounced can make the application for allotment of shares. If after the close of the offer if there are shares which are not subscribed or not renounced or renounced but not taken up, then such shares can be disposed by the Board of Directors subject to such terms as they deem fit provided the terms are not prejudicial to the existing shareholders.

54. What is issue of shares on preferential basis?

Whenever a company proposes to issue shares to persons other than the existing shareholders, or to such some select existing shareholders or in any other manner, it can do so only with the prior approval of the shareholders by

means of a special resolution. The company has to provide prescribed particulars as regards the quantum of shares, the price, the identity of the proposed allottees, the shareholding pattern pre and post issue etc as part of the explanatory statement to the notice of the general meeting proposing preferential issue of shares. Valuation is required to determine the price at which shares are proposed to be issued.

55. Can shares be issued at a discount?

No, a Company cannot issue shares at a discount. Issuing shares at discount means issuing shares at a price less than its nominal value or face value. However, the issue of sweat-equity shares is an exception to issuance of shares at discount.

10.SWEAT EQUITY SHARES AND EMPLOYEE STOCK OPTIONS

56. What are Sweat-Equity Shares?

Equity shares issued by a Company to its directors or employees at a discount or for a consideration, other than cash as a reward for contributing to the economic benefits of a Company, against their know-how, making available rights in the nature of intellectual property rights and other value additions, by whatever name called are Sweat-Equity Shares. A private company can issue sweat equity shares with the approval of shareholders by means of a special resolution. Such resolution will be valid for a period of 12 months within which time sweat equity should be issued.

Sweat equity can be issued to

a. A permanent employee working in or outside India; or

b. A director, whether whole-time or not.

c. An employee or director of the company's subsidiary or its holding company.

There are many requirements as to quantum that can be issued, the value up to which sweat issue can be made in a year, lock in period etc. which needs to be complied. Upon issue a sweat equity will rank paripassu or equal in rights with other equity shares in all respects.

Sweat equity shares are an enticing form of remuneration for promoters of Start-ups.

57. What are Employee Stock Options?

A company can issue employee stock options to its permanent employees, directors, whether whole-time director or not but not including independent directors, employees of holding company or subsidiary company. An employee stock option acts as a reward for loyalty and performance of employees of the company. Such issuance requires prior approval of shareholders. The stock options are granted as a benefit and hence there is no obligation on the

employee to compulsorily exercise this option. Mere holding of the stock options alone does not provide any shareholding right, or dividend right or any other rights enjoyed by the shareholders. The options have to be vested as per law and the scheme subject to which they are issued and the vested options have to be exercised within the exercise period to enable the options to get converted into shares. The number of options to be allotted is a discretion of the Board based on the internal evaluation of the performance of the employee concerned. The exercise price to be paid is also a discretion of the Board. If an employee does not exercise the options, the options lapses. The scheme can also provide for lapse of options on disciplinary grounds or upon termination of an employee due to resignation etc.

11.TRANSFER AND TRANSMISSION OF SHARES

58. Can a member of a private company transfer his or her shares?

By definition a private company has to restrict transfer of shares. Such restrictions are comprised in the Articles of Association. However, this is not a total prohibition or ban on transferability of shares. While transferring shares in a private company, one of the popular restrictions is that it is first offered to an existing member (right of pre-emption) and in case no existing shareholder is interested in purchasing the shares, the shares can be transferred outside freely subject to maximum number of members not exceeding 200. Further the restriction can also include price at which the share can be sold and the Articles of Association may provide a methodology for arriving at the price.

59. What is the procedure to transfer the shares in case of private company?

a) As stated earlier, each company can have different restrictions for transfer of shares. The most popular restriction is the pre-emptive right of the other shareholders to buy the shares offered by the selling shareholder. In such situations, the Articles will provide the process which needs to be followed. One such process could be that the transferor who wishes to transfer his shares shall make an application to the Board stating that he is willing to transfer his shares. The Company has to notify all the existing members regarding the availability of such shares at price determined by the directors of the company for purchase. The time limit within which the members shall make an application for the purchase of such shares shall be mentioned in the notice containing the details of shares that is to be transferred. In case no existing member is interested in purchasing these shares, it can be transferred to any other person.

b) The Company should get the share transfer deed executed by both the transferor(s) and transferee(s) in Form SH-4. The share transfer deed shall bear stamp value of 0.25% of consideration of transfer [or such stamp duty may be applicable from time to time] and the affixed stamps (if its adhesive) have to be cancelled before signing the transfer deed. The signature of transferor in the transfer deed has to be witnessed by a person giving his name and address. Such transfer deed along with the relevant share

certificates has to be delivered to the company within 60 days from the date of execution by or on behalf of transferor or transferee.

60. What is the extent of power with the Board to accept or refuse to register the transfer of shares?

Subject to the provisions of the Articles of Association, the Board can put in place a process for approval of transfers. The board can authorize an officer of the company who shall vet the application and related documents, enter the transfer information in respective registers and sign the related documents.

Under Company Law, the Board of Directors of a private company is entitled to refuse the registration of transfer of shares. Such refusal shall be communicated within a period of 30 days from the date on which instrument of transfer was delivered to the company along with the reason for refusal for registration. If aggrieved, the transferee may appeal to the National Company Law Tribunal (NCLT) against such refusal within 30 days from the date of intimation of refusal and where such refusal was not intimated within 60 days from the date of delivering the share transfer deed and share certificate to the company. If a person contravenes the order of NCLT, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

61. Can shareholders appoint nominees to hold their shares after death?

Yes. The Act provides for nomination by shareholders. Nomination is the process by which a shareholder is required to submit an application in the prescribed form to the company to appoint a nominee who will succeed to his or her shares, upon demise of the shareholder. Nomination is not compulsory. A shareholder by his or her written will can also appoint successors for the shares. Company Law states that such a nominee will be the holder of the shares of the deceased member notwithstanding anything contained in any law for the time being in force or in any disposition, whether testamentary or otherwise and such nominees becomes entitled to all rights in those shares.

62. What is meant by transmission of share?

Transmission of shares arises due to death of a shareholder. Transmission is the process by which shares of the deceased shareholder is vested in the name of the nominee (if the deceased shareholder has so appointed) or in the names of the legal heirs if such heirs make an application with relevant documents to seek transmission. Normally, a company will ask for the death certificate and other documents to prove the death of the original shareholder and his legal heirs and persons claiming to be entitled to his shares including in some cases, succession certificate or legal heirship certificate.

12.ROLE OF SHAREHOLDERS

63. What is the difference between a Director who is a Shareholder and a Director who is not a Shareholder?

The simple difference is that, the director will participate in the management of affairs of the company and he has certain duties in his capacity as director. A director's role is fiduciary in nature. In simple words, director has to act in good faith in the bonafide interest of the company. Mere shareholders have no such obligations. They don't have such duties. Of course, as per law certain decisions of the board of directors are subject to approval of the shareholders.

64. Are shareholders entitled to participate in the day to day management of the affairs of the Private Company?

The powers of the company are with the board of directors of the company. Persons who are merely shareholders are not entitled to interfere in the day-to-day management of the company. Of course, there is no rule that prohibits any shareholder from becoming Director or manager of the company or work for the company in any other capacity or enter into contracts with the company or join in partnership with the company.

65. Are the Shareholders entitled to any remuneration and reimbursement of expenses for attending meetings?

Shareholders are not entitled to any remuneration unless they are also an employee of the Company. Company cannot pay any sort of remuneration to shareholders merely because they are shareholders and they attend general meetings. They are not entitled for reimbursement of expenses for attending meetings.

66. Can there be a monthly meeting of Shareholders?

As company law provides the role of shareholders is very limited, more so in a private company where mostly directors themselves are the shareholders. The directors bring before the shareholders only those matters that require their approval due to provisions of the law or the provisions of the Articles of Association. Practically unlike public companies, in private companies, strength of members will be less. Only if the Articles of Association provides for frequent

meetings of shareholders, or if shareholders place a requisition for general meeting as per applicable provisions of Company Law, general body meetings will not happen frequently. Though monthly meetings may not be called for, there is nothing in law that prohibits having such meetings. It is also to be noted that role of Board of directors should not be diminished due to interference from shareholders in the routine matters of the company. If such interference persists, the purpose of the Board of Directors constituting the governing body would get defeated.

67. Will the Shareholders be given any income for the money they have invested in the Company?

Shareholders invest their money in the capital of the company. In company law, what shareholders get as returns out of profits of the company is called dividends. Normally once in a year the Board of Directors announce dividends. As per law, at the Annual General Meeting whatever dividends are recommended by the board can be approved by the shareholders. If there are sufficient profits there is nothing wrong in the board of directors declaring dividends even on a quarterly basis which is called interim dividends. In the case of preference shareholders the dividend rate will be normally fixed at the time of issue itself.

68. Who will declare dividends?

It is board of directors which will decide how much dividend is payable and when. The shareholders have no right or role in fixation of dividend rate. Shareholders at the best can recommend a lower rate of dividend that the rate fixed by the Board or give up their right to receive dividend; but they cannot increase the dividend recommended by the Board.

69. Will the dividends be declared once in a month or once in a quarter?

There is no provision in company law that prohibits declaration of monthly or quarterly dividend. However, in order to declare a dividend other than final dividend there is a need to determine theprofits generated in the financial year till the quarter preceding the date of declaration of the interim dividend. As a practice general practice interim dividends are declared only on a quarterly basis as Board of directors do not generally review the performance of the company on a month-on-month basis.

70. Can the Shareholders go through the Books of Accounts and ask for the monthly information on financial position of the Company?

As per law only the directors are entitled to inspect the books of account. If the Articles of Association provides shareholders may also be entitled to go through the books of accounts, they can seek its inspection. Articles may provide that the Board of Directors should give monthly information on financial affairs probably in the form of Management Information System to shareholders. Shareholders are entitled to pass resolutions to regulate the affairs of the company and the directors are bound by the same.

71. Can the Shareholders visit the Company's facilities and factories?

Shareholders can visit the registered office and factories or other branch offices or facilities of the company. There is no provision of law that prohibits such visits. Board may create a policy to permit such visits at prescribed hours on prescribed days only on a need basis because such visits should not impair the confidentiality of affairs of the company. Articles of Association can include specific clauses in this regard to enable meaningful visits by institutional investors or shareholders.

72. Can the Shareholders get transport facilities from the Company?

No. Shareholders cannot get transport facilities even for attending general meetings as this cannot be treated as a business expenditure.

73. Will the Shareholders be given any discount on the products of the Company?

Companies as a matter of trade practice give some discounts to shareholders on their products. World over there have been objections to offering gifts and therefore certain companies such as Reliance, Raymonds, Apollo which were offering discounts to shareholders have stopped. Whatever discounts normally any other customer gets shareholders can also get. There is nothing in the law that prevents the company from selling its goods by adopting such ethical trade practices which will boost sales.

74. If the Board of Directors of a company is not calling general body meetings, what can shareholders do?

Shareholders are entitled to apply to the National Company Law Tribunal and get orders for holding general meetings.

75. Can any Shareholder call for a meeting of the Shareholders?

Ordinarily it is board of directors which will decide when to call General Meetings. As per law there must be at least one general meeting in a calendar year known as the Annual General Meeting. Apart from such meetings called and held by the Board of Directors, company law stipulates certain eligibility norms for shareholders to request for calling of meetings. Subject to those eligibility norms Shareholders can call general meetings.

76. Whether shareholders can be appointed on a rotational basis on the Board so that all the shareholders get opportunity to become directors and work for the company?

There is nothing wrong in giving an opportunity to all shareholders to become directors of the company on a rotation basis. It all depends upon the business needs of the company and the desire of the shareholders to participate in the governance of the company. It is however essential to ensure that only those shareholders who are eligible for appointment i.e., who have no disqualification and who possess requisite knowledge, managerial skills and leadership qualities only become directors.

13.DEPOSITS AND LOANS

77. What is the difference between share capital and loans?

A company is a legal person and loans borrowed by it from directors, shareholders, relatives, banks and financial institutions will all be considered as borrowings of the company and they will form part of the amount of debt that the company owes to others. However, share capital is different from loans. When shares are issued the amount of capital raised by issuance of shares is credited to the share capital account. Share capital is not considered as part of debt owed by the company to its shareholders. Shareholders do not get back the capital contributed by them until the company is wound up. Shareholders are entitled to dividends on profits if profits are available and Board of Directors recommend the declaration of dividends.

78. What is a deposit?

Deposit includes any receipt of money by way of deposit or loan or in any other form or name by a Company, but does not include such categories as may be prescribed by MCA in consultation with RBI.

79. Are loans different from deposits?

No doubt, loans are different from deposits. However, for the purposes of Companies Act, 2013, the word “deposits” includes loans too. Generally, in private companies, directors may bring unsecured loans and sometimes such loans are provided by their relatives too. Even shareholders may provide loans. Apart from loans, a private company is entitled to accept deposits too. Under Companies Act, whether the amount provided is loan or deposit, they are treated as deposits and therefore the prescribed conditions apply to both.

80. Can the director of a private company give loans to the company?

Private Companies can accept deposits from its members, directors and relatives of directors of the Company. If a director brings funds to the company by way of loan, he must remember that should provide a declaration that the money he has provided to the company as his loans was not out of any money borrowed by him from any borrowed source.

81. Are you saying that a director cannot borrow from any other source and lend money to the company?

Yes.

82. Can a private company accept loans from a relative of a director?

Yes. Subject the declaration that the money he has provided to the company as his loans was not out of any money borrowed by him from any borrowed source.

83. Who fall within the category of relatives of directors?

a. If a director is part of a Hindi Undivided Family (HUF) then every member of HUF.
b. the spouse of a director.
c. director's father, mother, son (including step-son), daughter (including step-daughter), son's wife, daughter's husband, brother (including step-brother) and sister (including step-sister)

84. Is there any limit on the quantum of loans that a private company can accept from its directors and relatives of directors?

No.

85. Can the company pay interest on loans received from directors or relatives?

Very much. However, even though there is no provision on the maximum rate of interest, it should be reasonable.

86. Can a private company accept loans from its shareholders?

Very much.

87. Is there any limit on deposits accepted from members by a private company?

While a company is entitled accept loans from its members, the quantum of loans in the aggregate that a private company can accept depends on various conditions. There are two different categories as given hereunder:

- **a.** A private company which is a start-up company can accept deposits from its members without any limit on the maximum amount of deposits.
- **b.** Similarly a private company which is not an associate or subsidiary of any other company and which has not borrowed from banks or financial institutions in excess of twice the amount of its paid-up share capital or Rs.50 Crores, whichever is less, and which has not defaulted in its borrowings can accept deposits from its members without any limit on the maximum amount of deposits.
- **c.** Private companies that does not fall under any of the above two categories can accept only upto 100% of the aggregate of its paid-up share capital, free reserves and securities premium account.
- **d.** In any case, acceptance of deposits from shareholders must be approved by a resolution of the shareholders and the period of deposit cannot exceed 36 months.

88. What maximum rate of interest a private company pay on deposits from its shareholders?

Interest payable on deposits shall not exceed the maximum rate of interest prescribed by RBI for deposits accepted by NBFC.

89. Can a private company accept deposits from public?

No. A private company not treated eligible to accept deposits from public.

90. Should any return or form is required to be filed by a private company with the Registrar of Companies?

A Private company accepting loans or deposits from directors or relatives of its directors or from its members must file a Form DPT-03, once in a year within 90 days of closure of every financial year.

14.MEETINGS AND RESOLUTIONS AT BOARD MEETINGS AND GENERAL MEETINGS

91. How decisions are made at board meetings?

Normally at board meetings decisions are made by a majority of votes. Every director has one vote. All directors are equal at the board meeting. Sometimes the articles of association or a provision of the Company Law may require consent or approval of all the directors present at the meeting. In such cases the majority rule will not apply since consent of all the directors present is required either as per articles or as per company law. Sometimes articles will say presence and consent of a particular director is mandatory. If such clauses are there even though a majority of other directors would have passed the resolution unless the consent of such a director or directors is granted the resolution cannot be taken as passed.

92. Whether every Director is entitled to call for a meeting of the Board of Directors?

It is always better to have a Chairman of the Board of Directors so that whenever it is necessary to have a Board meeting it is properly organised and regulated. If any director thinks that it is necessary to have a Board meeting to discuss a particular subject, the director may request Chairman to call or convene a meeting. There may be a situation where a director makes request and the chairman does not agree. In such cases there is nothing wrong nor there is any bar in the law for a director to issue a notice calling for a meeting of directors. But one must note that there is something known as quorum in order to constitute a meeting. Ordinarily the presence of two directors or 1/3 of the total number of directors is necessary to constitute a meeting. That is the minimum quorum prescribed under law. Whenever a director convenes a meeting a proper notice should be issued in accordance with Secretarial Standards and proper quorum should be present to conduct the meeting.

93. Instead meeting in a formal manner, can directors circulate a resolution and have it passed with the consent of a majority of directors?

Yes. Under the Companies Act, 2013, certain matters cannot be passed through circular resolutions. Other matters, depending upon urgency, directors can pass resolutions through circulations after following proper procedures set out under Secretarial Standard No.1 issued by the Institute of Company Secretaries of India.

94. Can the Shareholders participate in meetings of Board of Directors?

As the name goes it is a meeting of board of directors. Only directors are entitled to attend Directors meeting. But if Directors invite the shareholders to attend a meeting to understand something such as a presentation, shareholders may attend board meetings

95. How are decisions made at General Body meetings?

At a general meeting voting usually takes place by a show of hands is a simple process. The chairman of the meeting asks members present at the meeting to raise their hands first by those who are in favour and next by those who are not in favour of the proposals contained in the resolution. On the basis of counting, if number of hands raised is more than the hands that were against, resolution will be declared as passed by a majority of votes. Resolutions are generally passed by show of hands.

96. Sometimes, we hear about ordinary resolutions and special resolutions. How are they different?

When a resolution is placed before the shareholders at a general meeting, some shareholders approve the same and some other shareholders vote against. When the number of votes in favour is more than the votes against, we say the resolution is passed by a majority of votes. This is known as ordinary resolution.

In some cases, like issuing shares by way of further issue to some of the shareholders or to a person who is not already a Shareholder at all, as already stated, the company law requires a special resolution. In order to be passed as a special resolution the votes in favour of the resolution should be not less than three times the votes against. For example, if nine votes are in favour and only three votes are against, we can say resolution is passed as a special resolution.

97. What is a poll?

When shareholders are not happy with the result of vote on a show of hands, they are entitled to demand a poll. In a poll, all the members are given a poll slip also known as ballot paper. On a poll votes are based on paid up value of the shares held by a member. In a poll, on the basis of votes polled, result will be announced. If a member has 100 shares of Rs.10/- each, all shares being of the same face value, we can say he has 100 votes.

98. Can shareholders pass resolution & instruct the Board to do or not do some business activity?

Shareholders are entitled to pass resolutions even to alter the Articles of Association or simply pass the resolutions to regulate the affairs of the company.

99. Can shareholders get gifts at the General Meetings of the Company?

Giving away gifts at general meetings to the shareholders who attend the meeting is strictly prohibited as per Secretarial Standards on General meetings. However, offering, as a matter of courtesy, any food, snacks and beverages, including packed food, at the venue of the Meeting, in the form of refreshments to Members or Proxies who attend the Meeting physically would not amount to offering of gifts.

100. Should private companies follow secretarial standards on board and general meetings?

Yes. The Institute of Company Secretaries of India has issued secretarial standards No.1 and 2 for orderly calling and holding of board and general meetings.

15.BOOKS, REGISTERS AND RECORDS

101. What are the books, registers and records a company must keep and maintain?

Primarily the company must maintain its books of account. Apart from books of account certain statutory registers and records as mentioned below should also be kept and maintained by a company. It is the duty of the company to keep and maintain these registers.

a) Register of Members
b) Register of Debenture Holders
c) Index of Members & Debenture-Holders
d) Foreign Register of Members, Debenture Holders, Other Security Holders or Beneficial Owners Residing Outside India
e) Registers of Renewed & Duplicate Share Certificates
f) Registers of Sweat Equity Shares
g) Registers of Employee Stock Options (ESOP)
h) Registers of Securities Bought Back
i) Register of Deposits
j) Registers of Charges
k) Registers of Directors & Key Managerial Personnel (KMP) And their Shareholding;
l) Registers of Loan, Guarantee, Security or Investments made in company's name
m) Registers of Investments of The Company Not Held in Its Own Name
n) Registers of Contracts & Arrangements in Which Directors Are Interested
o) Minutes of Meetings of the Board of Directors and Committees of Directors
p) Minutes of Meeting of Members (General body meetings)

102. Who are entitled to inspect the above Registers generally?

Directors of a company are entitled to inspect all the Registers and Records of a Company. Members are entitled to inspect the Registers of Members, Annual Returns, Register of Debenture holders, Register of Charges, Register of directors and key managerial personnel and their shareholding, Register of Loans, Guarantees, Security and Investments, Register of Investments not held in Company's Own Name, Register of Contracts and Arrangements, and Minutes of General Meetings.

16.AUDITORS

103. Whether appointment of Statutory auditor is mandatory?

Every company has to appoint a Practicing Chartered Accountant or Chartered Accountant firm as Statutory auditor (s) within 30 days of its incorporation. If the Board fails to appoint Statutory Auditor, members of the company can appoint statutory auditor within 90 of its incorporation.

The first auditor (s) will hold office until the conclusion of the first annual general meeting. At the first annual general meeting the same auditor(s) or any other auditors (s) shall be appointed by the shareholders for a period of five years. Every subsequent appointment by the shareholders shall be for a period of five years.

104. What is the role played by a statutory auditor?

The Statutory auditor has an important function of auditing the Financial Statements comprising the Statement of Profit and Loss, Balance sheet, Cash Flow statement and other financial information forming part thereof. The Board of Directors of a company shall approve the financials within a reasonable period after the closure of the financial year after which the approved accounts are presented to the Statutory Auditor for his audit. Upon completion of the audit, the auditor furnishes his report to the shareholders. If the auditor finds any non-compliance or diversion of funds or fraud he has to qualify his report. The auditor may sometimes also observe or comment on certain accounting practices. The Board of directors are duty bound to state in their report to shareholders the explanations for every qualification, adverse opinion, observation, comment of the auditor.

105. Who will fix the remuneration for auditors?

The members of the company at the Annual General Meeting while approving the appointment of auditors or they may authorise the Board of Directors to fix the remuneration payable to auditors.

106. What is the role of an internal auditor in a private company?

Appointment of internal auditor is mandatory if the private company meets certain thresholds on the basis of turnover or borrowings. If the turnover of a private company is INR 200 Crores or more or if the private company has outstanding loans or borrowings from banks exceeding INR 100 Crores. Without such thresholds too, it is advisable to carry out internal audit. The scope of internal audit is to review the adequacy of internal controls in the functions and activities of the company including in reporting of its financial statements. The term 'functions and activities' en compasses a wide range of activities of the company in its day to day business, its policies etc and is not just limited to financial controls. For instance, entire regulatory compliances of labour laws, industrial laws, factory laws, environmental laws can also be audited under the ambit of internal audit.

107. Whether a cost auditor is required to be appointed for a private company?

Private companies operating in certain specified regulated and non-regulated sectors are required to maintain cost records and further undertake cost audits if the turnover generated from these products or services meets the prescribed thresholds under Companies Act, 2013.Appointment of cost auditor is mandatory for such companies required to conduct cost audit. Cost Auditor is required to audit and report in the format prescribed under the Company law. The appointment of cost auditor and the report of cost auditor are to be filed every year in the prescribed form with the Central Government.

108. Who appoints cost auditors and fixes their remuneration?

The Board of Directors will appoint cost auditors and fix their remuneration. Thereafter shareholders will ratify the appointment.

109. When does the mandatory stipulation for maintaining cost records arise?

Certain companies operating in certain regulated sectors and certain non-regulated sectors when the overall turnover of the company reaches Rs.35 Crores or more during the immediately preceding financial year from all its products and/or services, the requirement to maintain cost records arises. This requirement does not apply to Micro enterprises or Small enterprises as defined under the Micro, Small and Medium Enterprises Development Act, 2006.

110. When does the mandatory need for cost audit arise?

Company operating in Regulated Sector stated above, shall get its cost records audited if its overall annual turnover from all its products and services during the immediately preceding financial year is Rs 50 Crores or more and aggregate turnover of the individual product or products or services in Regulated Sector is Rs. 25 Crores or more.

Company operating in Non-Regulated Sector stated above, shall get its cost records audited if its overall annual turnover from all its products and services during the immediately preceding financial year is Rs.100 Crores or more and aggregate turnover of the individual product or products or service or services in Non-Regulated Sector is Rs.35 Crores or more.

These requirements are not applicable to a Company operating in Regulated Sector or Non-Regulated Sector and generating overall turnover from all these products and/or services of Rs.35 Crores or more during the immediately preceding financial year but(i) whose revenue from exports, in foreign exchange, exceeds 75% of its total revenue; or(ii) which is operating from a Special Economic Zone; or (iii) which is engaged in generation of electricity for captive consumption through "Captive Generating Plant" as defined in Rule 3 of the Electricity Rules, 2005"[2].

[2] Applicable from 14th July 2016

17.COMPANY SECRETARY

111. Whether appointment of Company Secretary is mandatory for a private company?

Appointment of whole time Company Secretary is not mandatory as long as the paid-up share capital of a private company does not exceed Rs.10 Crores. It should be noted that paid-up share capital includes both equity and preference capital.

112. Whether Secretarial Audit is mandatory for a private company and who appoints secretarial auditors?

Secretarial Audit is not mandatory for a private company unless its outstanding loans from banks and financial institutions exceed Rs.100 Crores. Hence it should be seen that it is not the quantum of borrowing but the quantum of outstanding at the end of the financial year which determines the requirement of secretarial audit. The Board of Directors will appoint the secretarial auditors and fix their remuneration. Even if quantum of borrowing is not of the above level, it is advisable to go for secretarial audits.

113. Who appoints Secretarial Auditors and approvestheir remuneration?

Board of Directors.

18.ONLINE FILING OF FORMS AT MCA PORTAL

114. Whether forms are a standard format prescribed and where it is available?

Formsare prescribed under Company law and relevant rules made thereunder. All Forms can be downloaded at the portal of Ministry of Corporate Affairs [MCA][http://www.mca.gov.in/MinistryV2/companyformsdownload.html]. Every company has to file several forms online. For filing forms, law prescribes a time limit and a fee. Delay in filing will result in high costs due to additional fees and penalties. For instance, the Company law requires the company to file Form DIR 12 within thirty days from the date of appointment / date of receipt of notice of resignation by the Company for recording changes in the office of directors / Key Managerial Personnel. For filing the forms directors must be authorised by a resolution of the Board and authorised persons must sign using digital signatures.

115. What is Digital Signature and who should obtain?

Digital Signature is e-signature affixed in any form which is uploaded in the portal of MCA. Every subscriber at the time of incorporation and subsequently after incorporation every person who is a director of the company required to obtain the Digital Signature.

Digital Signature is issued by licensed **Certifying** Authority (CA) who has been granted a license **to issue** a **digital signature certificate under** Section 24 of the Indian IT-Act 2000. Government has authorised licensed CA for this purpose from who the same can be obtained by the individual by following the procedure and paying prescribed fees.

116. Whether affixing of Digital signature is mandatory and whose Digital Signature is required to be affixed in the form for filing?

Affixing Digital signature is mandatory to file any form. In general, the Digital signature of Managing Director is used if there is one or the director (s) who are authorised by the Board of Directors for this purpose.

117. Whether forms can be physically filed with the Registrar of Companies of the jurisdiction in which the registered office is situated?

No. Only online filing is allowed

118. Whether all the resolutions approved by the board or shareholders are required to be filed in Form MGT 14?

No. Only those resolutions prescribed under Section 117 of the Company law will be required to be filed in Form MGT 14.

119. Whether any time period is specified under the Company law **for filing of forms and what are the consequence for non-filing?**

Filing of forms within the time specified is mandatory. Otherwise the company have to pay additional fees for filing the form beyond the time prescribed. In addition, the company and the person responsible for filing need to pay penalty if any show cause, notice is issued for non-filing which may extend to imprisonment in certain cases.

120. Whether certification by a professional is necessary and is it mandatory to file all forms?

Certification of form by a Chartered Accountant or Company Secretary or Cost Audit is necessary if specified by the Company law otherwise it is not necessary to file a form.

121. Whether filing of form once again to rectify an error or mistake in the form already filed is possible? What is the difference in filing of annual forms?

Filing of form once again to rectify the error or mistake is possible. [***For e.g., in the form to be filed for allotment of shares, the number of shares allotted is mentioned as "10" instead of "100" inadvertently, revised form can be filed to rectify the mistake***].

In case of filing of revised annual report and annual return, company to make representation preferably in the form of affidavit explaining the reason for which the revised form to be filed to the Registrar of Companies of the jurisdiction in which the company is registered. Upon the making of such representation, the Registrar of Companies may move the forms already filed to a category "**not to be taken on record**" facilitating the filing of revised forms.

In case of filing of revised form to rectify any misstatement or omission in the forms previously filed with the Registrar of Companies with respect to any charge or modification or satisfaction, the company has to file an application with the Regional Director, Ministry of Corporate Affairs and obtain his approval for carrying out the rectification of the misstatement or omission, as the case may be and filing the revised form carrying the rectified particulars.

122. Whether filing of annual financial statements once again is necessary if they have already been filed within the due date before being adopted at an annual general meeting?

If in any financial year, the company is not able to call and hold the annual general meeting within the prescribed time, it can file the annual report duly approved by the Board of Directors. In addition, the company must to file the adopted financial statements once again after the completion annual general meeting.

123. Will the company and its directors and officers be liable if they file any form or return or statement or any other document without complying with the applicable provisions and procedures specified under the Company law?

Yes. The company and every officer in default or the person responsible for complying with the applicable provisions will be liable for legal action. It is also to be noted that the professional certifying the form will also be liable for wrong certification.

124. Is there any requirement for a director to file any form with the portal of Ministry of Corporate Affairs?

At present every director should file DIR-KYC for confirmation of their personal details with the Ministry of Corporate. If there is default in filing, their DIN / Digital Signature will get blocked and a defaulting director will not be able to use his digital signature for signing and filing other forms until he completes DIR-KYC.

19.THRESHOLD BASED COMPLIANCES

125. What threshold-based compliances are applicable to a private company?

S. No.	Threshold to determine Applicability for Private Companies	Compliance Requirement
I.	If the paid-up capital of Rs.10 Crores[3] or more as at end of preceding financial year.	Appointment of Whole Time Company Secretary
II.	If the borrowings from Banks and Public Financial Institutions in excess of Rs. 50 Crores at any time.	Establishment of Vigil Mechanism
III.	a) Paid Up Capital Rs. 50 Crores[4] or more or b) Borrowings from Financial Institutions, Banks or Public Deposits of Rs. 50 Crores or more as at end of preceding financial year **Not Applicable to:** One person companies and Small companies	Appointment of Auditors on rotation basis; this means the same auditor or audit firm cannot continue to be the auditors of the company after a specified.
IV.	a) Turn Over of Rs. 200 Crores or more during the preceding financial year or b) Outstanding Loan from banks and institutions of Rs. 100 Crores or more at any point of time during the preceding financial year	Internal Audit
V.	Board of Directors of Private Company to which Internal Audit applies shall appoint internal auditors and fix their remuneration	Appointment of Internal Auditor & Fixing of Remuneration

[3]Applicable from 1 April 2020 [Previously Rs. 5 crores]
[4]Applicable from 22 June 2017 [Previously Rs. 20 crores]

VI.	If the outstanding loans or borrowings from banks or public financial institutions of Rs. 100 crores or more on the last date of latest audited financial statement[5] or if the private company is a material listed subsidiary, compliance audit as mandated by the Securities and Exchange Board of India is mandatory.	Secretarial Audit
VII.	a) Turn Over of Rs. 1000 Crores or b) Net Worth of Rs. 500 Crores or c) Net Profit of Rs. 5 Crore during the immediately preceding financial year	Constitute Corporate Social Responsibility Committee & undertake Compliances
VIII.	a) Indian subsidiaries of Listed Companies or b) Companies with Paid up capital of Rs.5 Crores or more or c) Turnover of Rs.100 crores or more **Not applicable to:** (i) NBFC (ii) Housing Finance Companies (iii) Banking Companies (iv) Insurance Companies	Filing Financial Statements in Extensible Reporting Format [XBRL] Format
IX.	In case the Company has any Subsidiary or Associate Company	Preparation of Consolidated Balance Sheet
X.	Private Company except those listed below to prepare cash flow statement **Not Applicable to:** a) One Person Company b) Small company c) Dormant company d) Private company (if such private company is a start-up)[6]	Cash flow statement shall form part of Financial Statements
XI.	Every private company and private company being a subsidiary or holding company of a public company and to a	Companies (Auditor's Report) Order 2016[7]

[5]Applicable from 1st April 2020

[6] Effective 13Jun2017

[7] CARO 2020 to be made applicable for financial year 2020-2021

	foreign company [Section 2(42) of the Companies Act, 2013] shall require Statutory Auditors to submit matters stated under CARO to be reported in their Auditor's Report. **Not Applicable to:** a) Banking company b) Insurance company c) Section 8 Company d) One Person Company e) Small company f) Private limited company, which is not a subsidiary or holding company of a public company, having: i. Paid up capital and Reserves and surplus not more than Rs. 1 crore as on the balance sheet date and ii. Total borrowings not exceeding Rs. 1 crore from any bank or financial institution at any point of time during the financial year iii. Total revenue as disclosed in Schedule III to the Companies Act, 2013 (including revenue from discontinuing operations) not exceeding Rs. 10 crores during the financial year as per the financial statements.	
XII.	If the paid-up share capital of the company is Rs.10 Crs or more or if the turnover of Rs.50 Crs or more during the preceding financial year.	Compliance Certificate in Form MGT-8
XIII.	If the company has more than 10 workers and even if amongst them there is one-woman employee	Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

126. What threshold-based compliances that are not applicable to a private company?

Section	**Rule**	**Particulars**
Section 203	Rule 8 of Companies (Appointment and Remuneration of Key Managerial Personnel) Rules,2014	Appointment of Whole time KMP
Section 149(4)	Rule 4 of Companies (Appointment and Qualification of Directors) Rules,2014	Appointment of Independent Director
Section 177	Rule 6A of Companies (Meeting of Board and its Powers) Rules,2014	Constitution of Audit Committee
Section 178	Rule 6A of Companies (Meeting of Board and its Powers) Rules,2014	Constitution of Nomination and Remuneration Committee
Section 178(5)	---	Constitution of Stakeholders' Committee
Second Proviso to Section 149	Rule 3 of Companies (Appointment and Qualification of Directors) Rules,2014	Appointment of Women Director
Section 134	Rule 8 (4) of Companies (Accounts)Rules,2014	Evaluation of Board
Section 110	Rule 22 of companies (Management and Administration) Rules 2014	Conducting certain Business through Postal Ballot

20.FORMS and PROCEDURES – EVENT BASED AND NON-EVENT BASED

127. What are the mandatory non- event-based filings that a private company has to comply under Companies Act, 2013?

Document to be filed	Name of the Form	Time Period of Filing
Annual Report as perSection 137 of the Act	AOC 4 or -AOC-4 – XBRL **Filing of Form in XBRL mandatory i**f the Paid-up Capital is Rs.5 Core or more or if the turnover is Rs.100 crore or more.	Within 30 days from the date of Annual General Meeting or within 30 days from the **last date before which the annual general meeting should have been held.**
Annual Return as per Section 92 of the Act	MGT -07 **Along with MGT 07,** attaching MGT-08-[Certificate from practicing company Secretary is mandatory], if the paid-up Capital is Rs. 10 crores or more or if the turnover is Rs.50 Crores or more.	Within 60 days from the date of Annual General Meeting or within 60 days from the **last date before which the annual general meeting should have been held**

Return on dues from small and Medium enterprises	MSME – 1	This form is required to be filed every half year by companies who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed forty-five days from the date of acceptance or the date of deemed acceptance of the goods or services.

128. What are forms and returns to be filed based on proposals, events and occurrences?

Nature of Event and Section reference	**Name of the Form**	**Nature of Specific event and Time Period of Filing**
Commencement of Business as per Section 10A of the Act	**INC-20A**	Within 180 days from the date of incorporation **[One-time filing]**
Notice of change in situation of Registered Office	**INC- 22**	Within 30 days of its incorporation
		Shifting within the local limits of same any city / town or village Within 30 days of approval of board of directors
		Shifting outside the local limits of same any city / town or village Within 30 days of special resolution passed at the general meeting
Shifting from jurisdiction of the Registrar to another Registrar within same State	**INC-23**	Application to be made to Regional Director after approval by way of special resolution by shareholders at the general meeting.

Alteration of Memorandum of Association as per Section 13 of the Act	**INC -24**	**Change of Name of Company:** Within 30 days of special resolution passed at the general meeting
	INC-22	**Change of Registered office from one State to another State:** Within 15 days from the date of confirmation by the Regional Director**.** Application to be made to Regional Director after approval by way of special resolution by shareholders at the general meeting.
	MGT-14	**Alteration of Object Clause of Memorandum of Association:** Within 30 days of special resolution passed at the general meeting
Alteration of Articles of Association as per Section 14 of the Act	**INC - 27**	**Conversion of Private Company to Public Company:** Within 15 days of special resolution passed at the general meeting
Issue of shares on Private Placement basis as per Section 42 of the Act	**PAS -03**	Within 15 days of board approval allotting the shares
Alteration of Share Capital and Notice to Registrar as per Section 61 and 64 of the Act	**SH -07**	a. Increase of Authorised Share Capital b. Consolidation and divide all or any share capital into shares of large amount than its existing shares c. Conversion of all or any of its fully paid shares into stock and reconvert that stock into fully paid up shares d. Sub-divide its shares or any of them into shares of smaller amount than is fixed by memorandum e. Cancel shares which at the time

		passing of resolution in that behalf have not been taken or agreed to be taken by any f. Redemption of redeemable preference shares Within 30 days of resolution passed at the general meeting
Further issue of Shares as per Section 62 of the Act	**PAS -03**[8]	**Issue of shares on Preferential Basis:** Within 15 days of board approval for allotment of the shares for cash consideration Within 30 days of board approval for allotment of the shares for consideration other than cash
	PAS -03	**Issue of Shares on Rights Basis** Within 30 days of board approval allotting the shares
Issue of Bonus Shares as per Section 63 of the Act	**PAS -03**	Within 30 days of board approval allotting the shares
Return of Deposit as per Section 73 of the Act	**DPT-03**	To give particulars of loans and deposits which are not treated as deposits (exempt deposits) as per provisions of the Companies Act, 2013 read with Rule 2 of Companies (Acceptance of Deposit) Rules, 2014. On or before 30th June of every Financial Year.

[8]Immunity under Companies Fresh Start Scheme, 2020 taking effect from 1st April 2020 to 30th September 2020 is also not applicable to usage of monies prior to filing of PAS-3

Registration of Charge as per Section 77	**CHG-01**	**For creation or Modification of Charge** Within a period of 30 days from the date of creation or modification or within additional fees as applicable after 30 days. However, filing of form not possible beyond 120 days from the date of such creation or modification
	CHG-04	**For Satisfaction of Charge** Within 30 days from the date of the payment or satisfaction in full of any charge registered with the Registrar of Companies. If the filing could not be done within the aforesaid 30 days, it can be done by making an application to the Registrar within 300 days of such payment or satisfaction paying the prescribed additional fee.
Filing of resolutions and agreement as per Section 117 of the Act	**MGT-14**	a. Special resolution; b. Resolution which have been agreed by all the members would not been effective unless passed by special resolution c. Appointment, re-appointment or variation of terms of appointment of managing director; **d.** Resolution or agreement agreed by any class of members which not so agreed would have been effective unless passed by specific majority or those agreements which effectively will bind such class of member though not agreed to by all those members e. Resolution requiring a company to be wound up voluntarily passed in pursuance of Section 59 of the Insolvency and Bankruptcy Code, 2016

		Within 30 days from the date of approval by the board or members whichever is applicable
Investor Education and Protection Fund as per Section 125 of the Act	**IEPF-01**	Amount of dividend not claimed or paid for seven years from the company Within 30 days from the date on which the amount due to be credited to the fund
	IEPF-02	Statement or information of unclaimed or unpaid amounts separately for seven years of details as end of the financial year Within 60 days of completion of the Annual General Meeting
	IEPF-04	Filing of List of Shareholders who have not claimed dividend for a continuous period of seven years upon transfer to IEPF Authority
	IEPF -07	Filing of list of shareholders of the dividend declared in the year 2019 of the shares transferred to IEPF Authority
Directors, Managing Director, Whole Time Director as per Section 170 of the Act	**DIR-12**	Within 30 days from the date of appointment by the board or shareholders whichever is applicable
Resignation of Director, Managing Director, Whole Time Director as per Section 170 of the Act	**DIR-12**	Within 30 days from the date of receipt of receipt of resignation letter by the company or date of resignation whichever is later. In addition, in case of Manging Director or Whole Time Director as per the terms of appointment if there is any already agreed.

Appointment of Auditor as per 139 Section of the Act	**ADT-01**	Within 15 days from the date of appointment

129. What are consequences of delay in filing?

Any delay in filing will attract additional fees as prescribed under the Company law in addition to the normal fees payable to file a form. Over and above the additional fees, the company may also be liable for legal action or liability under the Company law specified with respect to filing of various forms. For any legal action company will be issued a show cause notice.

In case of delay or omission in filing of satisfaction of charge beyond the additional time limit allowed under the Company law, it is necessary for the company to make an application to Central Government [Powers delegated to Regional Director] to seek approval for such delay or omission in filing. Upon approval, the company can file necessary form for satisfaction.

21.DISPUTE RESOLUTION

130. What will happen if during the course of business dispute develops between directors and shareholders?

Dispute resolution can happen through mutual discussion mediation conciliation arbitration or suits and proceedings. Because a private company is governed by the company law in relation to disputes between shareholders company law provides a special mechanism for resolution of disputes through National Company Law Tribunal. Suppose a group of shareholders are having majority and they are acting against the interest of the company or they are mismanaging the company or they are diverting the business of the company or they are abusing their position or they are acting oppressive of minority shareholders, the aggrieved shareholders are entitled to approach the tribunal and get a resolution of disputes. Suppose shareholders are not getting notices of general body meetings or they are not able to get any communication such as the audited financial statements so as to be able to understand what is happening in the company or their grievances are not redressed or they find further issue of shares which is contrary to the articles of association or law or for any sort of such issues in the nature of oppression of minority shareholders or mismanagement of the affairs of the company, the aggrieved shareholders can approach the Tribunal.

131. I am a director of a private company. In meetings of board of directors my voice is not heard and my objections are not recorded. I don't get notices of meetings what can I do?

In such situations the director concerned must first write to the chairman of the board and communicate his grievances. Suppose he is not a getting remedy you can file a complaint with the registrar of companies. Suppose he is also a shareholder and his grievances are very serious he can approach the tribunal.

22.DEFUNCT COMPANY / DORMANT COMPANY / INSOLVENCY/ LIQUIDATION / WINDING UP

132. During in the course of our business our company has become debt ridden and we want to close it. Can you guide?

When the assets are more than the liabilities, we say that the company is solvent. On the other hand when liabilities are more and the directors do not see any prospect of meeting all the liabilities of the company, the situation will be very bad and it may be an indicator of insolvency gripping the company. Sometimes insolvency situation will be temporary. Sometimes directors may not be able to see a bright future. They may want to close the company because shareholders may not be willing to bring capital and lenders may not be willing to provide financial assistance to the company. Even if they are willing, business prospects may not be very good. In such circumstances the company itself or a creditor of the company may apply to the Company Law Tribunal for resolution of insolvency. In the process of resolution of insolvency the management of the company will come in the hands of a resolution professional. The board of directors will remain suspended. The resolution professional will find out if there is any taker for the company. The banks and financial creditors will form a committee to oversee the resolution process and approve the resolution plans. If a resolution plan succeeds and the tribunal sanctions the same the company will function in terms of the Resolution plan. Otherwise the committee of creditors will recommend liquidation and thereby the company will be put under liquidation and its assets available will be sold and creditors will be paid proportionately. If there is anything left after payment of all the creditors whatever is remaining will be available to the shareholders to be shared amongst them in the same ratio in which they hold shares.

133. Can the shareholders pass a resolution for the winding up of a company?

The company law permits shareholders to pass a special resolution that it is just and equitable to wind up the company and make an application to the tribunal for the winding up of the company. If the petition is allowed the tribunal appoints a company liquidator who will wind up the affairs of the company and bring the assets of the company for sale. Sale proceeds will be used to pay off the creditors. If after payment of all the creditors anything is left whatever is remaining will be available to the shareholders for being shared amongst them in the same ratio in which they hold shares.

134. Despite best efforts we are unable to start business and we want to close the company what is the procedure

Where a company has been incorporated and no business has been carried on and there are no assets and liabilities, the company can apply to the Registrar of Companies and get the name struck of from the Register of Companies. The company will be known as defunct companies. A defunct company is entitled to apply for removal of its name after two years of its existence if it has no assets and liabilities. This is a simple process for going out of the purview of the Companies Act.

135. What is a dormant company?

A company which is formed and registered under the Companies Act, 2013 for a future project or to hold an asset or intellectual property without having any significant accounting transaction or an inactive company may apply to the Registrar of Companies for being classified as a dormant company.

136. What is an "inactive company"?

"Inactive company" means a company 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

137. What is meant by the expression "significant accounting transaction"?

"Significant accounting transaction" means any transaction other than(a) payment of fees by a company to the Registrar;(b) payments made by it to fulfil the requirements of this Act or any other law;(c) allotment of shares to fulfil the requirements of this Act; and(d) payments for maintenance of its office and records.

PART II – FDI AND FEMA

23.FOREIGN DIRECT INVESTMENT

138. Which law govern the foreign investment into companies in India?

The Foreign Exchange Management Act, 1999 (FEMA) and the Rules and Regulations made thereunder govern the foreign investment which is otherwise called as Foreign Direct Investment (FDI). FDI in companies can be categorized as investments through Non-Debt Instruments (NDI) and investments through Debt Instruments (DI). NDI includes equity shares and all securities that are notified as per FDI policy notified from time to time. NDI includes borrowing by issuance of debentures, non-convertible preference shares, external commercial borrowings etc. The said legal framework applies to all companies namely, private, public, listed, unlisted, LLPs, partnership firms, proprietary concerns etc.

139. What is foreign investment?

The term 'foreign investment' is defined to mean "any investment made by a person resident outside India on a repatriable basis in equity instruments of an Indian company or to the capital of a LLP".

140. Who is a Person Resident Outside India?

a) A Person Resident Outside India (PROI) means a person who has gone out of India for a period of 182 days or more during the preceding financial year
   i. For taking up employment outside India
   ii. Carrying on a business or vocation outside India
   iii. any other purpose, in such circumstances as it would indicate that his stay outside India for an uncertain period.

b) A PROI also includes a person who has come to India in the preceding financial year for a purpose other than
   i. For taking any employment in India
   ii. For carrying on a business or vocation in India
   iii. A purpose or such circumstances as it would indicate that his stay in India will be for an uncertain period.

c) PROI also means a person or a body corporate incorporated or registered outside India.

d) an office, branch or agency in India owned or controlled by a person resident outside India.

e) an office, branch or agency outside India owned or controlled by a person resident in India.

141. Whether NRI is a PROI?

Yes, an NRI who is a citizen of India and who has gone out of India for taking up employment outside India or for carrying out any vocation outside India will be treated as PROI provided their stay outside India is for a period more than 182 days.

142. Whether an investment made out of NRO account in India of a PROI being an NRI is treated as a foreign investment?

No. Investment made from an NRO account is not treated as a foreign investment despite the person who owns the account being a PROI.

143. Whether an investment made by an NRI out of NRE account or any other account held outside India will be regarded as foreign investment

Yes. Any investment made out of NRE account or from any account maintained outside India will be treated as foreign investment.

144. Whether investments can be made in cash?

No. Foreign investments have to always be made through normal banking channels.

145. What are the sectors to which FDI is prohibited?

FDI is prohibited in lottery, gambling and betting, Chit funds, Nidhi companies, trading in transferable development rights, Real Estate Business or Construction of Farm Houses, Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes, activities/sectors not open to private sector investment e.g.(I) Atomic Energy and (II) Railway operations (except in case of Railway infrastructure).

146. Whether any prior approval of RBI or any authority or Ministry of Government is required for FDI?

There are certain sectors where 100% FDI is permitted under automatic route. Wherever 100% FDI is permitted no prior approval is required, however, there could be certain conditions subject to which automatic route will operate. There are certain sectors whereby as a policy of the Government, FDI is permitted up to certain percentage say for Banking sector, FDI upto 49% is permitted under automatic route and beyond 49% and upto 74% is permitted under approval route. For Pharmaceutical sector 100% FDI is permitted under automatic route for greenfield investment and for brownfield investment upto 74% is under automatic route and any investment above 74% percent is under approval route.

147. Are there any restrictions for private companies to accept FDI?

No. As stated above if a private company is not engaged in activities not otherwise prohibited for FDI, then FDI in a private company permitted in other activities subject to extant FDI policy and rules.

148. What does approval route or government route mean?

For a specific sector if the mandate is that FDI is permitted for the specified percentage under Government route / approval route, then such approval needs to be taken from sector specific administrative ministry. For example, for investments in broadcasting sector, the administrative ministry will be Ministry of Information and Broadcasting, in case of multi brand retail, the approving authority will be Department of Promotion of Industry and Internal Trade in the Ministry of Commerce and Industry.

149. Which foreign investments (irrespective of sectors) are compulsorily on government approval basis?

Any foreign investment from a citizen or an entity in Pakistan or Bangladesh even sectors with 100% automatic approval route will require mandatory pre-approval by the Government of India.

150. Can a PROI subscribe to Memorandum and Articles of Association of a company under incorporation?

Yes, provided the business proposed to be undertaken by the company under incorporation is under automatic route and the quantum of subscribed capital is equal to or less or equal to sectoral caps permitted under automatic route.

151. Whether the foreign investment is fully repatriable?

Repatriation refers to conversion of any foreign currency into one's local currency and remittance of these funds into one's account. All foreign investments made in Indiaby eligible investors in eligible investees are repatriable (net of taxes) outside India. In certain situations, for example, NRI or PIO resident outside India investing in the capital of a firm or a proprietary concern in India can do so only on non-repatriation basis only.

152. What are the pricing guidelines for foreign investment?

Pricing guidelines are applicable for all foreign direct investments. Any investment in equity shares or any other convertible security in an Indian company shall be not less than the price arrived through a valuation as per internationally accepted pricing methodology on an arm's length basis certified by a Chartered Accountant or a Practicing Cost Accountant or a Merchant Banker registered with SEBI. It is advisable to obtain from a Chartered Accountant or a Cost Accountant who is also a Registered Valuer registered with Insolvency and Bankruptcy Board of India to meet the requirements of both FEMA and Company law.

153. What is the reporting process by the company receiving FDI?

Reporting on FDI has to be made through the Single Master Form (SMF) available on the FIRMS platform at https://firms.rbi.org.in. The user manual for reporting is available on the website www.rbi.org.in. The format of the SMF and KYC report is available in the user manual. Prior to reporting in SMF, the company which received foreign investment or expects to receive it, is required to file an entity master on the FIRMS platform. The procedure for filing the entity master is available on the website www.rbi.org.in.

154. Are there any time lines for making allotment of shares by a company receiving FDI?

Yes. A company which has received foreign investment has to proceed to make allotment of shares and report in Form FC-GPR in SMF not later than 30 days of allotment. Allotment as such should be made within sixty days from the date of receipt of inward remittance of foreign investment.

PART III – OTHER LAWS

24.SHOPS AND ESTABLISHMENTS ACT

155. Who is Eligible Under Shop and Establishment Act?

a) The Shop and Establishment Act is applicable nationwide, and all the commercial establishments, such as the hotels, and eateries, amusement parks, theatres, and other entertainment houses, as well as any other such public amusement places, come under the purview of the Act.

b) The definition of a 'Commercial Establishment', as given in the Act is:
   i. Any commercial sector, such as banking, trading or insurance establishments
   ii. Any establishment where individuals are employed or engaged to do office work or provide service
   iii. The hotels, eateries and boarding houses or a smaller café or refreshment house
   iv. Amusement and entertainment places such as theatres and cinema halls or amusement parks

c) All such above mentioned commercial establishments come under the Act and need to adhere to the norms and regulations set by the Act for the treatment of their employees.

d) The exceptions to the Act vary in the States and each State has given a list of shops and establishments act that come into the Act, and who require the registrations under the Act to run their business in the State.

156. When does a private company need the registration?

If a private company were to carry on any activity that will be falling within the meaning of a commercial establishment or a shop, (as mentioned above), then it needs to file for registration under the Act, within 30 days of commencement of its establishment or business.

This registration is mandatory for several reasons, including the opening of the current account in a bank. This Shop and Establishment Act license, forms as a basic license and a proof of your business to apply for other registrations required to run a business in India.

Shop and Establishment forms are available online on the government website of the respective state government.

157. How to apply for registration?

While each state has set different rules and regulations for registration under the Act, the basic procedure remains the same. The Act requires every business to get approval from the Department of Labour. The registration certificate can be obtained from the Chief Inspector of Shops and Establishment Act, or from other inspectors delegated to the area where you run the establishment.

158. What are the regulations common to Shops & Establishments?

a) Government fixed opening and closing hours of shops, commercial firms, restaurants, etc.
b) The sale of goods other than newspapers in or adjacent to a street or public place after the closing hour fixed for shops in that locality has been prohibited.
c) Provision has also been made as in the Weekly Holidays Act, 1942, for granting to the persons employed a compulsory holiday for one day in a week and if required by Government, half-holiday also in a week.
d) Prohibition of employment of children i.e., persons who have not completed 14 years, in shops, commercial firms, restaurant, etc. The employment of young persons who have completed 14 but not completed 17 and of women before 6.00 A.M and after 7.00 P.M has also been prohibited.
e) Provisions to securing the health and safety of the staff, Cleanliness, Ventilation Lighting, Precautions against fire
f) Grant of annual holidays with pay to the employees.
g) The provisions intended to ensure prompt payment of wages and prohibition of unauthorized deductions from wages and follow mainly those of the Payment of Wages Act, 1936.
h) Suitable penalties have been prescribed for contravention of the different provisions of the Bill.
i) Mandatory Maintenance of registers and records and display of notices.

25.INCOME TAX ACT

159. What is Income Tax?

Income tax is determined on the basis of the income. The tax is calculated on the basis of the source of income like, profits and gains of business or profession, salaries, income from house property, capital gains and income from other sources.

160. What is PAN?

Every individual or a company on incorporation, which comes under the income tax slab as decided by the Government from time to time have to apply for Permanent Account Number (PAN). The PAN Number must be quoted on all the correspondence with the Income Tax dealings.

161. What is TAN?

TAN Number is used for Tax Deduction at Source (TDS) and Tax Collection at Source (TCS). Those who are liable to deduct tax at source, should apply for TAN.

162. Forms and Procedures for Filing of Returns

Income tax Act provides for the filing of tax chargeable person on annual basis. The tax liability is determined as per the provisions of the Income Tax Act and it can be paid to the government by way of TDS, TCS, Advance Tax, Self-Assessment Tax, Tax on Regular Assessment.

163. Is there any specific income tax exemption for Start-ups?

Under the Startup India Action Plan, the Private Companies which are incorporated after April 1, 2016, and the turnover is less than INR 25 Crores [Under the Finance Act, 2020, this limit has been revised to INR 100 Crores with effect from 01stApril 2021] and working towards innovation / improvement, is eligible for getting 100% tax rebate on profit for a period of three years. [Read Section 80-IAC and Notification No. GSR 364(E) dated 11th April 2018].

26.GOODS AND SERVICES TAX

164. What is Goods and Services Tax (GST)?

GST was introduced in India with effect from 01st July 2017. The Indirect Tax with different types and names of taxes have been combined into one tax called GST. GST is collected from the place of supply. GST is imposed on all the process of supply of goods and services and every step in the process of production. The benefits of introduction of GST is that the units can have good compliance and uniformity in the rate of tax.

GST is the Good and Service Tax. GST is the combination of the Sales tax and Service Tax, Excise Tax, Customs Tax, VAT etc

The types GST are:

a) Central GST (CGST)
b) State GST (SGST)
c) Inter-State GST (IGST)

165. What are the tax slabs in GST?

The tax slab for the GST are 0%, 5%, 12%, 18% and 28%. Petroleum, Alcohol and electricity are not taxed under GST.

166. Who should get GST Registration?

Compulsory registration is necessary if the aggregate turnover of the supplier of goods and service for the previous year exceeds Rs.40 Lakh and who makes supply of goods and services inter-state. A unique number will be allotted and it is called the GSTIN.

167. What is Place of Supply?

GST rate is based on the place of supply. Based on the place of the supply, CSGT & SGST or IGST will have to be levied. CGST & SGST are levied if the supply is intra-state (within the state) and IGST is levied if the supply is between the states. Exports are not taxable. Imports are taxable. Therefore, exports will be on higher end and imports will become less

168. What is Reverse Charge?

Reverse Charge Mechanism is where the receiver pays the tax on behalf of unregistered goods and service suppliers. The receiver of the goods or service is eligible for Input Tax Credit. The unregistered dealer is not eligible for taking the credit of the input tax.

169. What are the due dates for Filing of Returns under GST?

Taxpayers are required to file the monthly, quarterly and annual returns. This shall be filed online with digital signature of the authorized signatory of the company. What returns are required to be filed and what are the due dates and what are the consequences of any delay in filing are some of the aspects one must seek professional advice from an expert.

27.POSH ACT

170. Are provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act") applicable to private companies also?

Yes; if the private company employs even one woman. The POSH Act recognizes the right of every woman to a safe and secure workplace environment irrespective of her age or employment/work status. Hence, the right of all women working or visiting any workplace whether in the capacity of regular, temporary, adhoc, or daily wages basis is protected under the POSH Act.

171. Should a private company constitute an Internal Complaints Committee [ICC]?

Constituting an Internal Complaints Committee (ICC) is for the purpose of facilitating women affected by Sexual Harassment at workplace to make a complaint so that her grievances could be sorted out and offenders are punished. If the company has less than 10 employees, it need not constitute ICC. Instead the aggrieved woman employee can file her complaint with the Local Complaints Committee (LCC) constituted by the District Administration in every District in the country. Where the number of employees is more than 10 and even if only one of them is a woman, ICC is required to be constituted.

172. What are the duties of an employer under POSH Act?

Even if there is only one woman employee, the following statutory obligations have to be complied with.

a) Formulate a policy for prohibition, prevention and redressal of sexual harassment at workplace.

b) Display the policy at a conspicuous place in the premises of the workplace.

c) Indicate clearly that at the first instance of any sexual harassment, the woman may reach out to the ICC or LCC; in case of still not being redressed to her satisfaction, she may approach the District Officer being the designated authority for this purpose.

d) Conduct training for all employees to make them aware of creating a safe workplace both at the time of induction and thereafter on an annual basis.

e) Report that the company has complied with provisions relating to the constitution of Complaints Committee [Internal/Local as may be applicable] under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in the Board's Report. The Board of Directors of every company must present an annual report to the shareholders containing various matters prescribed under Company Law. Board's Report forms part of the Financial Statements. In the Board's Report, there must be a disclosure on the above lines as required under the POSH Act.

f) Submit an annual report to the District Officer containing the following details:

i. Number of complaints of sexual harassment received in the year
ii. Number of complaints disposed of during the year
iii. Number of cases pending for more than 90 days
iv. Number of workshops or awareness programmes against sexual harassment carried out
v. Nature of action taken by the employer or District Officer

28.FACTORIES ACT

173. To which kind of businesses would Factories Act be applicable?

To any premises where manufacturing activities are carried out with the aid of power and where 10 or more workers are/were working OR where manufacturing activities are carried out without the aid of power and where 20 or more workers are/were working.

174. What is the responsibility of the Employer (Occupier) with respect to health of workers under Factories Act?

a) Cleanliness Disposal of wastes and effluents
b) Ventilation and temperature dust and fume • Overcrowding Artificial humidification Lighting
c) Drinking water Spittoons.

175. What are the mandatory Safety Measures to be available in the factory premises?

a) Fencing of machinery
b) Working near machinery in motion.
c) Prohibition of Employment of young persons on dangerous machines.
d) Striking gear and devices for cutting off power.
e) Self-acting machines.
f) Casing of new machinery.
g) Prohibition of employment of women and children near cotton-openers.
h) Hoists and lifts.

176. What are the various Regulations on Working Hours, Spread Over & Overtime of Adults under Factories Act?

a) Weekly hours not more than 48 hours.
b) Daily hours, not more than 9 hours.
c) Intervals for rest at least ½ hour on working for 5 hours.
d) Spread over not more than 10½ hours.
e) Overlapping shifts prohibited.
f) Extra wages for overtime double than normal rate of wages.
g) Restrictions on employment of women before 6AM and beyond 7 PM.

There may be minor variations in these requirements from state to state.

177. What are the mandatory welfare measures to be provisioned in the factory?

a) Washing facilities
b) Facilities for storing and drying clothing • Facilities for sitting
c) First-aid appliances – one first aid box not less than one for every 150 workers.
d) Canteens when there are 250 or more workers.
e) Shelters, rest rooms and lunch rooms when there are 150 or more workers.
f) Creches when there are 30 or more women workers.
g) Welfare office when there are 500 or more workers.

There may be minor variations in these requirements from state to state.

178. What are the provisions under Factories Act for employment of young persons?

a) Prohibition of employment of young children i.e. below 14 years.
b) Adolescent workers (15 to 18 years of age) are permitted with less working hours and special conditions.

179. What are the provisions regarding provision of wages and benefits under Factories Act?

a) Annual Leave with Wages

b) A worker having worked for 240 days at one day for every 20 days of working.

180. What are the penal provisions for non-compliances under the Factories Act?

a) For contraventions of Provisions of the Act, imprisonment up to 7 years or fine up to Rs.2,00,000/-.

b) For continuous contraventions of the Act, imprisonment up to 10 year and/or fine up to Rs.5,000/- per day.

29.EMPLOYEE STATE INSURANCE [ESI] AND EMPLOYEES PROVIDENT FUND [EPF]

181. Which companies need to extend benefit of Employees State Insurance to its employees?

Companies that operate in:

a) non-seasonal factories using power and employ 10 or more persons.
b) non-seasonal and non-power using factories and establishments employing 20 or more persons.
c) shops, hotels, restaurants, cinemas [including preview theatre], road motor transport undertakings, newspaper establishments and Private Educational Institutions employing 20 or more persons.

Some states have however granted exemptions to certain establishments listed above.

182. Do the abovementioned companies have to extend this benefit to all its employees?

No, benefit of Employee State Insurance shall be provided to those employees earning upto Rs.21,000/- per month.

183. Is ESI available in all States?

ESI facilities are available in all the States except Nagaland, Manipur, Tripura, Sikkim, Arunachal Pradesh and Mizoram.

184. What benefits can employees and employers get by enrolling for coverage under ESI?

Benefits to Employees:

ESI is a social security scheme for the protection to workers and their dependants in case of sickness, maternity, death or disablement due to an employment injury or occupational hazard. The six social security benefits are: -

a) Medical Benefit
b) Sickness Benefit
c) Maternity Benefit
d) Disablement Benefit

e) Dependant's Benefit
f) Funeral Expenses

Benefits to Employers:

By contributing to ESI, the employers are absolved from their obligations under the Maternity Benefit Act, 1961 and Workmen's Compensation Act 1923.

185. What is the rate of Contribution to be made towards ESI?

Employee's contribution rate with effect from 1st July 2019 has been reduced to 0.75% from 1.75% of the wages and employer's contribution has been reduced to 3.25% from 4.75% of the wages paid/payable to the employees in every wage period.

Employees who earn a daily average wage of only Rs. 50 need not make any contribution. However, employers shall continue to contribute their share with respect to these employees too.

186. What are the Contribution Periods and Benefit Periods?

Contribution periods	Benefit periods
1st April to 30th Sept	1st January of the following year to 30th June
1st Oct. to 31st March	1st July to 31st December of the year following

187. Which companies need to contribute towards Provident Fund for their employees?

Factories engaged in Industries and other establishments specified in the Schedule I below and engaging 20 or more employees shall contribute towards Provident Fund. The Schedule contains 180 sectors such as iron and steel, paper, cement, textiles, sugar, electricity, and so on.

188. Is there any age limit of employees when EPF contributions can be terminated by employers?

No. The EPF Contribution has to be made till the date of an employee leaving the service of the company, irrespective of the age of the employee. For employees who cease to be Employee Pension Scheme members, employers can contribute 8.33% in EPF.

189. Do the employers or employees have to visit the EPF offices in their respective districts for obtaining registration, making contributions etc?

No all the facilities are now available online - starting from registration of the Establishments, filing of monthly returns integrated with online payment of the contributions and charges. Even withdrawal can be done online.

30. TRADEMARKS ACT

190. What is Trademark?

A trademark is the brand name which may be a word, signature, name, device, label, numerals, combination of colours used by one undertaking on goods or services of other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking.

191. Should a Private Company have a Trademark for its products or services?

Yes. It is better to have Trademark on the goods and services for the purpose of distinguishing its goods and services from that of others and to create a goodwill for the products of the company amongst the public.

192. What are the benefits of registering a trademark?

The registration of a trademark confers upon the owner the exclusive right to the use the trademark in relation to the goods or services in respect of which the mark is registered and to indicate so by using the symbol (R), and seek the relief of infringement in appropriate courts in the country. The exclusive right is however subject to any conditions entered on the register such as limitation of area of use etc. Also, where two or more persons have registered identical or nearly similar marks due to special circumstances, such exclusive right does not operate against each other. The registration certificate acts as proof of ownership for a registered trade mark as against a unregistered trademark.

193. Is the Trademark Registration mandatory under the Trademarks Act, 1999?

No. But unless the Trademark is registered, the statutory protection granted under the Trademarks 1999, cannot be availed to initiate infringement action against the misuse of the Trademark by others. Thus, it is better to have the Trademark registration.

194. Whether registration of the Company under the Companies Act is sufficient to get protection under the Trademarks Act, 1999?

No. Registration of a company or business name under the Companies Act does not in itself give protection against others who might commence using identical or similar marks.

195. Whether the Company can be the Applicant for filing Trademark Application for Registration?

Yes. Application can be filed by Companies, individuals, partnerships, trade unions or lawful associations, provided they meet the requirements of the Trademarks Act.

196. Before filing an application for registration, is it mandatory to have the preliminary search*?*

It is not mandatory. However, it is advisable to have the pre-search before applying for registration of the Trademark. It is required to identify the existence of identical or similar mark. It helps to determine whether the application has a chance of success and it helps to avoid infirming on other proprietor's trademarks.

197. Whether the Application can be filed under "Proposed to be used category"?

Yes. It is permissible under Trademarks Act, 1999. But please note that trademark becomes a property only upon its use in the course of trade or when it gets registered, whether using has commenced or not.

198. Can the name of a Company or the name of its website itself be applied as a Trademark for registration under the Trademarks Act, 1999?

Yes. However, the applicant will not get any exclusive rights over general words such as private limited or words referring to any region such as India or Malabar.

199. Is it required to register the Trademark in all classes as classified under the Trademark Rules and as per NICE Classification of good and services of World Intellectual Property Organization?

No. Registration is required only for the goods and services related to the business of the Company.

200. Whether the Company can use the ® symbol before registration as a Trademark?

The ® symbol, can be used only after the trademark is registered and the registration certificate is issued and the same can be used only in connection with the goods and services in respect of which the trademark is registered. Until them the symbol TM can be used.

201. Trademark Registration is valid for how many years?

10 Years.

202. Is it required to renew the Registered Trademark?

Yes. Every 10 years once. The renewal application can be filed six prior to the renewal due date.

203. What is the difference between registered and unregistered Trademark?

A Registered trademark has been approved and entered on the Trademark Register held by the Trademarks Office. Registration is proof of ownership. An unregistered trademark may also be recognized through Common Law as the property of the owner, depending on the circumstances.

204. Whether the Company can initiate infringement action against the use of the identical / similar mark to get injunction against the infringer and to claim damage against such use?

Yes. If the Trademark registered, under the statutory protection granted by the Trademarks Act, Company can initiate infringement suit against the infringer before the appropriate Court which has jurisdiction over the issue. If the trademark is not registered and the proprietor finds someone is misusing trademark or a mark identical or similar or deceptively similar, action in law can be initiated to stop the other person who is misusing from using. Such an action is known as “Passing of action” which can be initiated under the common law.

205. Can a Registered Trademark be removed from the Register of Trademarks maintained at the Registry?

Yes. It can be removed on application to the Registrar on prescribed form by the aggrieved person on the ground that the mark is wrongly remaining on the register.

206. Would registration in one country protect the rights of the Proprietor in other countries?

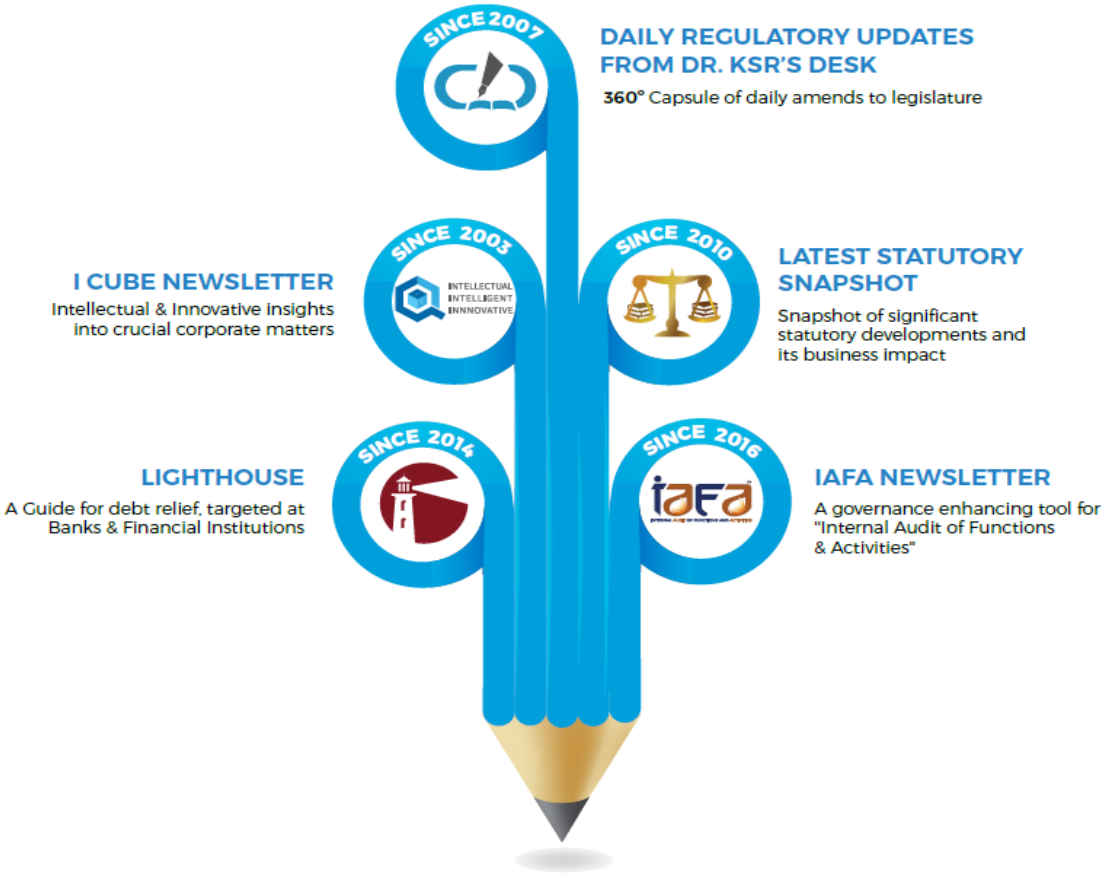
No. Registration covers only the country where it is registered. If it is necessary to have protection in any other country, it is necessary to get it registered in that country. In India, provisions are there to get registration in several countries by making one single application.

207. Is there any remedy to a proprietor of a trademark, if someone registers a company name similar or identical to his trademark?

Yes. To seek remedy under the Companies Act, 2013, the trademark of the aggrieved proprietor should be a registered under the Trademarks Act. If the registered proprietor is of the opinion that the name of any company registered under the Companies Act, 2013 resembles or is identical to his registered trademark, he can apply to the Regional Director, Ministry of Corporate Affairs under whose jurisdiction the subject company is registered and such application must be made within 3 years of incorporation of the subject company seeking an order directing that company to change its name.

KSR&CO
COMPANY SECRETARIES LLP
Rewarding Ideas | Raring Steps

FIRM'S RESEARCH AND PUBLICATIONS



READ AND KNOW MORE ABOUT THE REGULATORY ENVITORNMENT OF YOUR BUSINESS

VISIT OUR WEBSITE [https://ksrandco.in/category/publications/]

OUR OFFICES

Indus Chambers,
No.101, Govt. Arts College Road,
Coimbatore - 641 018.

Phone : +91 422 2302867, 2302868, 4952868, 4982868
Email : info@ksrandco.in
legal@ksrandco.in

Flat No.1, 26/27,
Venkatesham Flat,
Gopal Street, T.Nagar,
Chennai - 600 017.

Ph. No : 044 - 24337620
Email : chennai@ksrandco.in

S 311, South Block, Manipal Centre,
47, Dickenson Road,
Bangalore - 560 042.

Phone : 080-25323232, 9442162014, 9901400995
Email : bangalore@ksrandco.in