

### 3. PROMOTION AND INCORPORATION OF COMPANY

#### PART 1: PROMOTION OF COMPANY

#### QUESTION WISE ANALYSIS OF PREVIOUS EXAMINATIONS

No.	M-14	N-14	M-15	N-15	M-16	N-16	M-17	N-17	M-18 (O)	M-18 (N)	N-18 (O)	N-18 (N)	M-19 (O)	M-19 (N)	N-19 (O)	N-19 (N)	N-20 (O)	N-20 (N)
THEORY QUESTIONS FOR CLASSROOM DISCUSSION																		
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PRACTICAL QUESTIONS FOR CLASSROOM DISCUSSION																		
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#### CHAPTER OVERVIEW

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#### SECTION 1: THEORY FOR CLASSROOM DISCUSSION

**Q.No.1. Who shall be considered as Promoter? Explain the legal position of Promoter in relation to the company they promote? (B) (NEW SM, N14 - 4M)**

**PROMOTER [SEC: 2(69)]:** Promoter<sup>1</sup> means a person-

- 1) Who is named in prospectus or annual return as promoter; or
- 2) Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise or
- 3) In accordance with whose advice, directions or instructions the Board is accustomed to act.

- 1) Persons who initiate promotion of a company are known as promoters. All persons who:
  - a) Take steps for the registration of a company e.g., those associated with the preparation of a prospectus or
  - b) In drawing up the Memorandum of Association of the company and
  - c) Assisting in its registration, are regarded as promoters.

**NOTE:**

- a) Persons acting in **Professional capacity** are not regarded as promoters, e.g., the solicitor, banker, accountant etc.,
- b) A promoter may be an individual, firm, an association of persons or a body corporate.
- c) There can be more than one promoter to the company.
- d) **Legal Position of Promoter:**
  - Promoters of a company are neither the agents nor the trustees for the company because it is not in existence.
  - They stand in fiduciary position<sup>2</sup> in relation to the company.

**SIMILAR QUESTION:**

- 1) Can a director or officer or employee of the Company become a promoter?
  - A) A Director or Officer or Employee who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise is considered as Promoter.
- However, a director or officer or employee of the company shall not be deemed as a promoter, if such person is acting in his professional capacity.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 1)

<b>Q.No.2. State the legal formalities for formation of a company? (C)</b>	<b>(NEW SM)</b>
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- 1) **LAWFUL PURPOSE:** company may be formed for any lawful purpose. Thus, no company shall be formed for carrying on any unlawful objects.
- 2) **MINIMUM NUMBER OF MEMBERS (SEC. 3(1)):** The persons who sign the memorandum are termed as subscribers
  - a) **Public Company:** In case the company proposed to be formed is a public company, the memorandum must be subscribed to by 7 or more persons.
  - b) **Private Company:** In case the company proposed to be formed is a private company, the memorandum must be subscribed to by 2 or more persons.
  - c) **One Person Company:** In case the company proposed to be formed is One Person Company, the memorandum must be subscribed to by 1 person.

**NOTE:** Every company formed under companies act, 2013 may be either

- Company limited by shares or
- Company limited by guarantee or
- Unlimited company

- 3) **'Breach' of Minimum number of members: (sec. 3A):**

- a) If at any time the number of members of a company is reduced:
  - i) In the case of public company below 7, in the case of private company below 2 and
  - ii) The company carries on business for more than six months while the number of members is so reduced
- b) Then every person who
  - i) Is a member of the company during the time that it so carries on business after those six months and
  - ii) Is aware of the fact that it is carrying on business with less than 7 members or 2 members shall be **severally liable** for the payment of the whole debts of the company contracted during that time (after six months), and may be severally sued therefore.

2) Fiduciary position means position of taking care or position of acting in good faith.

**SIMILAR QUESTION:**

- 1) Mapped Stationary Ltd, has 10 members, 6 members lost their life in a car accident on 1st Jan 2020. Company fails to appoint any member. Subsequently, it enters in to agreement with its supplier on 25th Feb 2020 & 25th Aug 2020, in which there was breach in both the agreements. Determine who would be liable for damage of both agreement.
- A) (Section 3A of Companies (Amendment) Act, 2017). Company is responsible for the agreement entered on 25<sup>th</sup> Feb 2020. Members, who are aware of the fact that it is carrying on business with less than 7 members, are responsible for 25<sup>th</sup> August 2020

*(IMMEDIATELY REFER PRACTICAL QUESTION CRD 2, 3)*

**PART 2: INCORPORATION OF A COMPANY****Q.No.3. Explain the Procedure/Mode for Incorporation of Company (Sec.7)? (A) (NEW SM, RTP N17)**

- 1) **FILING OF THE DOCUMENTS AND INFORMATION WITH THE REGISTRAR:** The following documents and information are required to be filed with the ROC within whose jurisdiction the registered office of the company is proposed to be situated:
  - a) The Memorandum of Association and Articles of Association of the company duly signed by all the subscribers.
  - b) A Declaration that all the requirements of the Companies Act, 2013 and the rules made thereunder have been complied with. The declaration shall be signed by -
    - i) person who is engaged in the formation of the company (an advocate or a chartered accountant or cost accountant or company secretary in practice), and
    - ii) person named in the articles as a director, manager or secretary of the company.
  - c) A declaration signed by
    - i) each of the subscribers to the memorandum and
    - ii) each of the persons named as a first directors in the articles

The declaration shall state that:

    - i) He has not been convicted of any offence in connection with the promotion, formation or management of any company during the last five years,
    - ii) He has not been found guilty of any fraud or misfeasance or of any breach of duty to any company during the last five years. AND
    - iii) All the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief.
  - d) Address for correspondence till the registered office of the company is situated.
  - e) **Subscriber Details:**
    - i) The particulars (names, including surnames or family names, residential address, nationality) of every subscriber to the memorandum along with proof of identity
    - ii) In case of a subscriber being a body corporate, such particulars as may be prescribed.
  - f) **Director Details:** The particulars of first directors, namely:
    - i) Names, including surnames or family names,
    - ii) The Director Identification Number (DIN),
    - iii) Residential address, nationality of the persons and
    - iv) Such other particulars including proof of identity as may be prescribed and
    - v) The particulars of the interests of first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company.
- 2) **ISSUE OF CERTIFICATE OF INCORPORATION ON REGISTRATION:**

The Registrar on the basis of documents and information filed, shall

  - a) Register all the documents and information in the register and
  - b) Issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this act.

**3) ALLOTMENT OF CORPORATE IDENTITY NUMBER (CIN):**

- a) The Registrar shall allot to the company a corporate identity number.
- b) The CIN shall be a distinct identity of the company.
- c) The CIN shall also be included in the Certificate of Incorporation.

**4) MAINTENANCE OF COPIES OF ALL DOCUMENTS AND INFORMATION:**

- a) The company shall maintain and preserve copies of all documents and information filed by it with ROC.
- b) The documents and information shall be maintained at its registered office of the company.
- c) The company shall maintain these documents and information till its liquidation under this Act.

**SIMILAR QUESTIONS:**

- 1) Mr. A and B are partners in a firm AB & Co. since the last 10 years. Now their business has crossed 20 crores and they want to form a private limited company to take over the firm's business and to expand it at large scale. They approached their auditor to assist to incorporate a company in the name of AB Trading Private Ltd. Explain in brief what documents are required to be filed with the Registrar of Companies? (May' 18) (OR)

State the documents and information for registration of One Person Company (OPC) required to be filed with the Registrar of Companies.(May' 16)

- A) As per section 3 of the Companies Act, 2013, a Private company may be formed for any lawful purpose with two or more persons by subscribing their names to a memorandum and complying with the requirements of this Act in respect of registration of company.

Document to be filed with the Registrar of Companies: Refer Point A above

- 2) Mr. Ramlal and his friend desire to incorporate a public company and approach you for help. Advice.

- A) Refer Above Answer

**Q.No.4. Write about consequences of furnishing false information or suppression of material fact, at the time of incorporation? (NEW SM)**

**FURNISHING OF FALSE OR INCORRECT INFORMATION OR SUPPRESSION OF MATERIAL FACT AT THE TIME OF INCORPORATION (I.E. DURING INCORPORATION PROCESS):**

Every person who furnishes any false or incorrect information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, shall be liable under section 447.

**COMPANY ALREADY INCORPORATED BY FURNISHING ANY FALSE OR INCORRECT INFORMATION OR REPRESENTATION OR BY SUPPRESSING ANY MATERIAL FACT (I.E. POST INCORPORATION):**

If it is proved that the company was incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed with the Registrar in relation to the registration of a company, then, the following persons shall be liable u/s 447:

- the promoters;
- Every person named in the articles as a first director; and
- Every person who made a declaration that the requirements of the act and the rules were complied with.

**ORDER OF THE TRIBUNAL: (IF APPLICATION IS MADE TO TRIBUNAL)**

- 1) If a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants:

- a) Pass such orders, as it may think fit, for -

- regulation of the management of the company
- changes (if any) in its memorandum and articles, in public interest or in the interest of the company and its members and creditors or

- b) Direct that liability of the members shall be unlimited or
  - c) Direct removal of the name of the company from the register of companies or
  - d) Pass an order for the winding up of the company; or
  - e) Pass such other orders as it may deem fit.
- 2) **OPPUTUNITY OF BEING HEARD: Before passing any order, -**
- a) The company shall be given a reasonable opportunity of being heard in the matter; and
  - b) The Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

**SIMILAR QUESTION:**

- 1) Republic Limited was incorporated by furnishing false information. As per the Companies Act, 2013, state the power of the Tribunal in this regard. (RTP Nov' 17)
- A) Refer Point C above

**Q.No.5. Explain the 'Effect of Incorporation'. (Sec.9)****(B) (NEW SM)**

- 1) **DATE OF INCORPORATION:** The date mentioned in the certificate of incorporation issued by the registrar, shall be the date of incorporation of company.
- 2) **BODY CORPORATE:** From the date mentioned in the certificate of incorporation, the subscribers to memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate.
- 3) **NAME:** The name as mentioned in the memorandum shall be the name of the company.
- 4) **CAPACITY TO FUNCTION:** The Company shall become capable of exercising all the functions of an incorporated company.
- 5) **PERPETUAL SUCCESSION:** The Company shall have perpetual succession.
- 6) **COMMON SEAL:** The Company may or may not have a common seal.
- 7) **POWER TO ACQUIRE PROPERTY:** The Company shall have the power to acquire, hold and dispose of property of any kind, whether movable, tangible or intangible.
- 8) **POWER TO CONTRACT:** The company shall have the power to contract in its own name
- 9) **CAPACITY TO SUE AND BE SUED:** The Company shall have the power to sue in its own name, and the company can be sued in its own name.

**SIMILAR QUESTIONS:**

- 1) X, Y & Z carrying on a partnership business in cloth, formed a private company and acquired X, Y and Z carrying on a partnership business in cloth, formed a private all the shares in it. They sold certain premises to the new company and there by earned a huge profit. The profit so earned was assessed to tax by the income tax officer. X, Y and Z objected to such assessment contending that it was a mere transfer from self to self. Is there objection valid?
- A) Concept of separate legal entity of a company
- 2) Certificate of Incorporation: A Company was incorporated on 6<sup>th</sup> October. The Certificate of Incorporation of the Company was issued by the Registrar on 15<sup>th</sup> October. On 10<sup>th</sup> October, the Company entered into a contract, which created its contractual liability. The Company denies from the said liability on the ground that the Company is not bound by the contract entered into by it prior to obtaining Certificate of Incorporation. Can the Company be exempted from the said contractual liability?
- A)
- The Company came into existence on 6th October, the date of incorporation stated in the Certificate.
  - Contract entered into by the Company after its incorporation, but before the issue of Certificate of Incorporation shall be binding on the Company. Actual date of issue of Certificate is not relevant. The Company is liable under the contract.
- 3) A company being an artificial person having status in the eyes of law, comment whether the company has the status of citizen of this country.
- (Hint- Citizenship relates only to individuals)

**(IMMEDIATELY REFER PRACTICAL QUESTION CRD 9, 10, 11, 12)**

**Q.No.6. Explain the procedure for Reservation of name of the company? (B)**

**(NEW SM)**

**APPLYING FOR RESERVATION OF NAME:**

- 1) Any person may make an application to the Registrar for reservation of a name.
- 2) The application shall be made in such form and in such manner as may be prescribed. The application shall be accompanied with prescribed fees.
- 3) The application may be made-
  - a) For reservation of name for a company proposed to be incorporated; or
  - b) By a company already in existence, for the purpose of changing its name to a new name, viz. the name proposed to be reserved.

**RESERVATION OF NAME BY THE REGISTRAR:** An Approved name (by ROC) is valid for a period of-

- 1) 20 days from the date of approval (in case name is being reserved for a new company).
- 2) 60 days from the date of approval (in case change of Name of an existing company).

**CANCELLING NAME:** Where after reservation of name, if it is found that name was applied by furnishing wrong or incorrect information, then

- 1) If the company has not been incorporated, the reserved name shall be cancelled and the person who has made the application shall be liable to a penalty which may extend to one lakh rupees;
- 2) If the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard
  - a) Either direct the company to change its name within a period of 3 months, after passing an ordinary resolution;
  - b) Take action for striking off the name of the company from the register of companies; or
  - c) Make a petition for winding up of the company.

**FORM AND FEES:** An application for the reservation of a name shall be made in Form INC. 1 along with such fees as is provided in the companies (Registration offices and fees) Rules, 2014.

It may be approved or rejected, as the case may be, by the registrar (Rule 9 of the Companies incorporation) Rule, 2014.

**SIMILAR QUESTION:**

- 1) Vinay and Sanjay made a name reservation application accompanied by requisite fee to the Registrar for forming a new private company. The Registrar accorded its approval for reservation of most preferred name Vinsan Softwares Private Ltd. on 7th July, 2018. By which date necessary documents for incorporation of the company must be submitted to the Registrar so that the reserved name does not get lapsed.

A) Latest by 27<sup>th</sup> July, 2018

**Q.No.7. What is meant by OPC. Who can become the member of OPC?**

**(A) (NEW SM)**

- 1) **DEFINITION (SEC. 2(62)):** One person company means a company which has only one person as a member.

2) **PROVISIONS APPLICABLE TO OPC:**

- a) One Person Company shall have **minimum one director**. *It means OPC may have more than one director.*
- b) It is a kind of private company.
- c) Capital and Turnover Conditions: The paid-up share capital of OPC shall not exceed Rs.50 Lakhs and Turnover shall not exceed Rs.2 Crores. In other words, OPC is always a small company.<sup>3</sup>

- 3) Rule 7A. Penalty"- If a One Person Company (OPC) or any officer of such company contravenes any of the provisions of rules related to the formation and nomination by the subscriber/member of One Person Company, the OPC or any officer of such company shall be punishable with fine which may extend to 5000 rupees and with a further fine which may extend to 500 rupees for every day after the first offence during which such contravention continues

d) **OPC can be formed either as:**

- Company limited by shares; or
- Company limited by guarantee; or
- Unlimited company.

3) **ELIGIBILITY TO BECOME A MEMBER OF OPC:**a) **Member:**

- Must be a natural person, i.e. individual. [Legal Entities, Artificial Juridical persons are **excluded**].
- Must be an Indian citizen.
- Must be a resident in India.

**[Note:** "Resident in India" means a person who has stayed in India for a period of not less than 182 days during the immediately preceding financial year].

b) **Only for One "OPC":**

- A natural person shall not be a member of more than one OPC at any point of time and the said person shall not be a nominee of more than one OPC.
- If a natural person being member in OPC becomes member in another such company by virtue of his being a nominee in that OPC, such person shall meet eligibility criteria within a period of 182 days. (i.e., withdraw membership of one OPC within 182 days)  
(Note: Same Person can be Member of one OPC and Nominee for another OPC)

c) **Prohibition on Minor:**

- No minor shall become member or nominee of the OPC.
- No minor can hold shares with beneficial interest.

4) **RESTRICTIONS WITH RESPECT TO OPC:**a) **Activities:**

- It cannot be incorporated and converted into a section 8 company.
- It cannot carry out Non-Banking Financial Management activities. (NBFC)
- It cannot make investment in securities of any Body Corporates.

b) **Voluntary Conversion:**

- It cannot be converted into any kind of company (i.e. private or public) within period of 2 years from the date of incorporation of OPC.
- Exception:** OPC shall be converted into private or public company on increase of, paid up share capital beyond Rs. 50 lakhs, or turnover beyond Rs. 2 Crores.

**ACCADEMIC INTEREST: Privileges or benefits to OPC:**

- Financial statement does not include cash flow statement
- Need not to hold AGM
- Need not prepare report on AGM
- Financial statements and Board's report can be signed by one director
- Concept of managerial remuneration under section 197(1) is not applicable.

**SIMILAR QUESTIONS:**

- Mitesh 15 Years old student. He wants to start his own OPC for software development. Advice.  
A) Minor cannot be member or nominee in OPC.
- Raj is director in A Ltd. He has incorporated Raj One Person Company. Now, he wants to appoint his friend as sleeping partner in OPC. Advice.  
A) Raj cannot appoint his friend as sleeping partner in OPC. OPC does not have concept of sleeping partner.
- State whether following statements are correct or incorrect: Only one person can form a company under the provisions of Companies Act 2013. (M18 (O) - 1M)  
A) Yes. Refer above 3 in the above Answer.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 4, 5)

**Q.No.8. Who can become the Nominee of One Person Company? (A)**

**(NEW SM)**

- 1) **NOMINEE:** The nominee -
  - a) Must be a natural person, i.e. individual. [Legal Entities, Artificial Juridical persons are excluded].
  - b) Must be an Indian citizen.
  - c) Must be a resident in India<sup>4</sup>.
- 2) **RESTRICTIONS ON NOMINEE:**
  - a) A natural person shall not be eligible to become nominee for more than one OPC.
  - b) A minor shall not become nominee of the OPC.
- 3) **MOA:** Name of nominee shall be mentioned in the MOA of the OPC.
- 4) **CONSENT:**
  - a) The nominee, whose name is given in the memorandum, shall give his prior written consent in prescribed form
  - b) The Consent of Nominee shall be filed with Registrar of companies at the time of incorporation along with its Memorandum of Association and Articles of Association.
- 5) **CHANGE IN NAME OF NOMINEE:**
  - a) Change in nominee may arise due to-
    - i) Withdrawal of Nominee's consent, or
    - ii) Removal of Nominee by sole member.
  - b) Any such change in the name of the person shall not be deemed to be an alteration of the MOA.
- 6) **WITHDRAWAL OF CONSENT BY NOMINEE:**
  - a) Nominee may withdraw his consent by giving a notice to the - (i) Sole Member and (ii) OPC.
  - b) In such case, the sole member shall nominate another person within 15 days of receipt of notice of withdrawal.
  - c) Within 30 days of receipt of notice of withdrawal, OPC shall file with ROC -
    - i) Notice of withdrawal of consent and
    - ii) Intimation of another nominee, along with written consent of new nominee.

**SIMILAR QUESTION:**

- 1) Rajesh has formed a 'One Person Company (OPC)' with his wife Roopali as nominee, for the last two years his wife Roopali is suffering from terminal illness and due to this hard fact he wants to change her as nominee. He has a trusted and experienced friend Ramnivas who could be made nominee or his (Rajesh) son Rakshak who is of seventeen years of age. Whom should he nominate as nominee in place of his wife? (RTP M19)
- A) Rajesh can appoint his friend Ramnivas as nominee in his OPC)

**Q.No.9. Explain about formation of companies with charitable objectives? or Can a "non-profit organization be registered as a company under the companies act? if so, what procedure does it have to adopt [Sec. 8] (A)** **(NEW SM, M11 - 5M, RTP M15, M16)**

- 1) **CONDITIONS FOR FORMATION OF A NON-PROFIT COMPANY:** A company may be formed u/s 8 if-
  - a) The objects of the company are to promote the Social and charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
  - b) The company intends to apply its profit in promoting its objects and
  - c) The company intends to prohibit the payment of any dividend to its members.

4) [Note: "Resident in India" means a person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year].

**2) POWER OF CG TO GRANT - SEC.8 LICENSE:**

- a) Where it is proved to the satisfaction of CG that an association of persons proposed to be registered under this Act as a limited company satisfies all the conditions given u/s 8, CG may-
  - i) By issue of a license in the prescribed manner;
  - ii) Allow that the company may be registered as a limited company, but without using the words "Limited" or "Private Limited".
- b) For the above purpose, Central Government will issue license subject to some conditions.
- c) The registrar shall on an application register such association of persons as a company under this section.
- d) Further Sec.8 Company can enjoy all privileges as of a Limited Company.

**3) FIRMS - MEMBER:** A firm may be a member of the company registered under section 8.**4) ALTERATION OF MOA AND AOA:** Section 8 Company shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government. (*Power delegated to ROC and Regional Director*).**5) CONVERSION INTO OTHER KIND OF COMPANY:** A company registered under section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion.**6) BENEFITS OF SEC.8:**

- a) Can call its general meeting by giving a clear 14 days - Notice instead of 21 days.
- b) Requirement of minimum number of directors, independent directors etc. does not apply.
- c) Need not constitute Nomination and Remuneration Committee and Shareholders Relationship Committee.]

**Q.No.10. Explain Provisions relating to Revocation of License granted Under Section 8.**

**(A) (NEW SM, MTP2 N18 - 5M)**

**REVOCAION OF LICENSE:**

- 1) The Central Government may revoke the license of the company if-
  - a) The company contravenes any of the provisions of Sec. 8; or
  - b) The company contravenes any condition subject to which the license was issued; or
  - c) The affairs of the company are carried on fraudulently or violates its objects or prejudicial to public interest.
- 2) **Opportunity of being heard:** Before passing any order of revocation, CG shall give a reasonable opportunity of being heard to the company.

**CONSEQUENCES OF REVOCATION OF LICENSE:**

- 1) **Limited/Private Limited:** On revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register.
- 2) **Windup / Amalgamate:** If a licence is revoked, the Central Government, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.
  - a) **Winding up:** *If on the winding up of a Section 8 company, Surplus arising out of sale of assets and settlement of debts may be*
    - i) *Transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or*
    - ii) *Credited to the Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016.*
  - b) **Amalgamation:** *A Sec. 8 Company can only amalgamate with another Sec. 8 company having similar objectives.*

**PENALTY FOR CONTRAVENTION WITH SEC. 8:** If a Sec. 8 company makes any default in complying with any of the requirements laid down in this section:

- 1) **Company:** The company shall, be punishable with fine varying from ten lakh rupees to one crore rupees and
- 2) **Directors:** The directors and every officer of the company who is in default shall be punishable with
  - a) imprisonment for a term which may extend to three years or
  - b) fine varying from twenty-five thousand rupees to twenty-five lakh rupees, or
  - c) both.
- 3) If it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 6, 7, 8)

**Q.NO.11 Write about commencement of business by a company?**

**(NEW SM)**

**COMMENCEMENT OF BUSINESS (SEC .10A):**

- 1) **Applicability:** This section is applicable to -
  - a) The company which is incorporated after the commencement of the Companies (Amendment) Act, 2019 (i.e., after 02nd November 2018); and
  - b) The company is a Company having a share capital
- 2) **Conditions for Commencement of Business**  
 The Company shall not commence any business or exercise any borrowing powers unless the following 2 conditions are not satisfied —
  - a) **Filing of Declaration:**
    - i) A declaration is filed by a director with Registrar (ROC) that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him.
    - ii) The declaration shall be filed within a period of 180 days of the date of incorporation of the company.
    - iii) The declaration shall be in form no. INC 20A.
    - iv) The declaration shall be verified by a Chartered Accountant, or Cost Accountant, or Company Secretary in practice.
    - v) 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.
  - b) **Verification of Registered Office:** The company shall with the Registrar a verification of its registered office as provided section 12.
- 3) **Punishment for Default:** *(If any default is made in complying with the requirements of this section)*
  - The company shall be liable to a penalty of Rs.50,000 and
  - Every officer who is in default shall be liable to a penalty of Rs.1,000 for each day during which such default continues but not exceeding an amount of Rs.1,00,000.
- 4) **Power of ROC to remove the name of the Company:** Registrar may initiate action for the removal of the name of the company from the register of companies under Chapter XVIII, if
  - a) The declaration is not filed with the Registrar within a period of 180 days of the date of incorporation of the company and
  - b) The Registrar has reasonable cause to believe that the company is not carrying on any business or operations.

**SECTION 2: DIFFERENCES FOR STUDENTS SELF STUDY**

**Q.No.12. Write the differences between Private Company & One Person Company. (B) (OLD SM)**

**DISTINCTION BETWEEN PRIVATE COMPANY AND OPC:**

BASIS	Private Company	OPC
<b>Incorporation</b>	It requires at least 2 persons for incorporation.	It requires one person for incorporation.
<b>Person</b>	Private company can be incorporated either by natural or artificial person.	OPC can be incorporated by natural person.
<b>Number of members</b>	Min.2 and Max.200 members.	Only 1 Member.
<b>Number of directors</b>	Min.2 directors.	Min. 1 director.
<b>Number of companies by one person</b>	One natural person can incorporate any number of private companies.	One natural person can incorporate only one OPC
<b>Invest in any Body Corporate.</b>	Can invest in any other body Corporate.	Cannot invest in other body Corporates.

**SIMILAR QUESTION:**

- Whether OPC and Private limited company are synonymous or not? (OLD PM)
- Refer above answer.

**Q.No.13. Write the difference between Sole Proprietorship and OPC. (C) (OLD SM)**

Basis	Sole Proprietorship	OPC
Legal entity	It is not a legal entity.	It is a separate legal entity.
Liability	Unlimited liability of owner or promoter.	Limited liability of member or promoter.
Registration	Registration of proprietorship is not required.	Registration of OPC is mandatory
Perpetual Succession	Principle of perpetual succession is not observed.	Principle of perpetual succession is observed.

**SECTION 3: QUESTIONS FOR ACADEMIC INTEREST ONLY**

**Q.No.14. A company wants to get registered with the Registrar of companies. As a Chartered Accountant advise as to how it can get itself incorporated as per the Simplified Procedure for Incorporation of a Company Electronically under the provisions of the Companies Act, 2013. (B) (NEW SM, RTP N16)**

**SIMPLIFIED PROCEDURE FOR INCORPORATION OF A COMPANY ELECTRONICALLY UNDER THE COMPANIES ACT, 2013:**

- This procedure of Incorporation of companies is available for OPC, Private Company, Public Company, and Producer Company.
- A "single e Form INC-32", is applied for
  - Allotment of DIN,
  - Reservation of name,
  - Incorporation of company,
  - Appointment of directors and
  - Verification of registered office of the company.

- 3) DIN is to be applied for a maximum of 3 directors.
- 4) Only One name of company shall be proposed unlike the existing INC-1, in which up to 6 names can be proposed.
- 5) Non applicability of certain Provisions of the Companies Act, 2013 relating to incorporation:
  - a) Rule-9 of Companies Incorporation Rules relating to reservation of Name and
  - b) Provisions of Sec. 4(5) (i) relating to 20 days validity for reservation of name.
- 6) Memorandum and Articles may be prepared in Form INC-33 and INC-34 respectively.
- 7) Verification of registered office as required by Sec.12(2) can be done using Form INC - 32
- 8) Registrar shall process INC - 32 including application for allotment of DIN.
- 9) If any defect is found in INC-32, the ROC shall give a maximum of 3 opportunities to applicant to rectify the defects and to resubmit the. INC - 32. Provided that the total period of re-submission shall not exceed 30 days.
- 10) If no defects are found, then a "Certificate of Incorporation" shall be issued in Form.INC-11.

**Q.No.15. Explain the concept of publication of name?**

**(C)**

**1) PROVISIONS CONTAINED IN THE ACT:**

- a) **Name to be engraved on the common seal:** The name of the company shall be engraved in legible characters on the common seal, if any, of the company.
- b) **Names address etc. to be printed on official publications:** The following particulars shall be printed on all the business letters, billheads and in all its notices and other official publications:
  - i) Name of the company
  - ii) Address of its registered office
  - iii) The Corporate Identity Number
  - iv) Telephone number
  - v) Fax number, if any
  - vi) E-mail address
  - vii) Website address, if any.
- c) **Name and address to be painted outside the offices of the company:** Every company shall paint or affix its name and the address of its registered office, outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters.
- d) **Additional requirement in case of OPC:** In case of OPC, the words 'One Person Company' shall be mentioned in brackets below the name.

**2) PROVISIONS CONTAINED IN THE COMPANIES (INCORPORATED) RULES, 2014.**

**Particulars to be published on the website:** Every company which has a website for conducting online business or otherwise, shall disclose/publish, on the landing/home page of the said website, the following particulars:

- i) Name of the company
  - ii) Address of its registered office
  - iii) The Corporate Identity Number
  - iv) Telephone number
  - v) Fax number
  - vi) E-mail address
  - vii) The name of the person who may be contacted in case of any queries or grievances.
- 3) **POWER OF CG TO NOTIFY OTHER DOCUMENTS:** CG may, as and when required, notify the other documents on which the name of the company shall be printed

## SECTION 4: PRACTICAL QUESTIONS FOR CLASSROOM DISCUSSION

**Q.No.1.** Three persons A, B, & C formed a scheme of developing a barren land. Under the scheme A and B were to incorporate a Company and C, a professional, was to provide loan equivalent to the capital brought in by A and B. The loan part was essential for giving shape to the scheme. Can C be regarded as one of the Promoters of the Company?

**PROVISIONS:** As per Sec 2(69) of Companies Act, 2013 promoter means a person:

- a) Who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
- b) Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- c) In accordance with whose advice, directions or instructions the BOD of the company is accustomed to act.

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.

Whether a person is a promoter of a company or not depends upon the role played by him in the formation of the company. But if a person is employed merely in a professional or technical capacity such as an auditor, he will not be a promoter. But if a professional lends more than professional assistance then he would be regarded as a promoter.

In the given case the scheme is such that it cannot be completed without the loan being provided by C to the company and C has already agreed to provide loan to company on incorporation. Therefore C has necessarily participated in the formation of the company and not in the professional capacity.

**CONCLUSION:** C can be regarded as a promoter of the company.

**Q.No.2.** A public limited company has only seven shareholders. Being all the shares paid in full, one such shareholder purchased all the shares of another shareholder in a private settlement between them reducing the no. of shareholders to six. The company continues to carry on its business thereafter. Discuss with reference to the Companies Act, 2013 the implications of this transaction on the functioning of the company.

Section 3A of the Companies Act, 2013 provides that if at any time the number of members of a company is reduced, in the case of a public company, below seven or in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognizant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued there for. In view of the above provision, if the company continued to carry on the business with that reduced membership (i.e. 6) beyond six months period, only those members who are cognizant of the fact that it is carrying on business with less than seven members shall be severally liable for the payment of the whole of debts of the company contracted during that time, and may be severally sued therefor.

**Q.No.3.** A person holds 90% of the issued shares of a company. He wants to acquire the balance 10% of the shares from the existing shareholders. As a Company Secretary in practice, advise him.

The question is not clear as to whether the company is a private company or a public company. For the sake of convenience we are assuming it to be a private company. A private company must have at least 2 members at all time. If person who already holds 90%, acquires remaining 10%, then the number of members will be reduced from 2 to 1.

As per section 3A of companies Act 2013, if at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognizant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

Hence, to avoid such a situation, it is advisable that person shall buy the shares in the name of any other person normally his relatives.

**Q.No.4.** MNO a One Person company (OPC) was incorporated during the year 2015-16 with an authorized capital of 45 lakhs (4.5 lakhs shares of 10 each). The capital was fully subscribed and paid up. Turnover of the company during 2015-16 and 2016-17 was 2 crores and 2.5 crores respectively. Promoter of the company seeks your advice in the following circumstances, whether MNO (OPC) can convert into any other kind of company during 2017-18. Please, advise with reference to relevant provisions of the Companies Act, 2013 in the below mentioned circumstances:

- a) If promoter increases the paid up capital of the company by 10 lakhs during 2017-18  
 b) If turnover of the company during 2017-18 was 3 crores. **(RTP M19, RTP N18)**

**PROVISIONS:** As per Companies (Incorporation) Rules, 2014, One Person Company (OPC) cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation. However if the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore the company must convert itself into a private or a public company.

**ANALYSIS AND CONCLUSION:** In the above case MNO an OPC was incorporated in the year 2015-16. The paid up capital of the company is 45 lacs and turnover in the two years is 2 crores and 2.5 crores. During 2017 -

18 the company wants to convert into any other kind of company.

Thus as per the information above:

- a) If the promoters increase the paid up capital of the company by 10.00 lakh during 2017- 2018 the total paid up capital becomes 55 lakh (45+10= 55), MNO (OPC) must convert itself voluntarily into any other kind of company due to increase in the paid up share capital exceeding 50 lakh rupees.  
 b) If the turnover of MNO during 2017-18 was 3.00 crore, the average annual turnover of the company for the relevant period shall exceed 2 crore and in such a case the company must convert itself into any other kind of company.

**Q.No.5.** Naveen incorporated a "one person Company" making his sister Navita as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said one person company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.

- a) If Navita is leaving India permanently, is it mandatory for her to her to withdraw her nomination in the said one person Company?  
 b) If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One person Company? **(N19 (N) - 4M)**

**As per Rule 3 & 4 of the Companies (Incorporation) Rules, 2014 following the answers:**

- a) Yes, it is mandatory for Navita to withdraw her nomination in the said OPC as she is leaving India permanently as only a natural person who is an Indian citizen and resident in India shall be a nominee in OPC.  
 b) Yes, Navita can continue her nomination in the said OPC, if she maintained the status of Resident of India after her marriage by staying in India for a period of not less than 182 days during the immediately preceding financial year.

**Q.No.6.** Alpha Ltd., a Section 8 company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2018. Mr. Chopra is holding 800 equity shares as on date. State whether the act of the company is according to the provisions of the Companies Act, 2013? **(M18 (N) - 4M)**

**PROVISIONS:** According to Section 8 of the Companies Act, 2013, the companies having licence under Section 8 (Formation of companies with Charitable Objects, etc.) of the Act are prohibited from paying any dividend to its members. Their profits are intended to be applied only in promoting the objects of the company.

**ANALYSIS AND CONCLUSION:** In the above case Alpha Ltd., a section 8 company was planning to declare dividend. As per the provisions of section 8 a company registered under this section is prohibited from declaring dividend.

Hence Alpha Ltd., which is planning to declare dividend, is not according to the provisions of the Companies Act, 2013.

**Q.No.7.** Alfa school started imparting education on 01.04.2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 30th March 2018, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case? **(MTP1 N18)**

**OR**

Mr. X, in association with his relative formed a company to promote education for the children of poor section. A licence was issued by the Central Government allowing the said company to be registered under section 8 of the Company. Government aids and lot of funds were contributed by public for the fulfilment of the benevolent object. However, on the complaint against the company, CG came to know about the manipulation of the funds in the company and so order to revoke the licence of the company. Further, directed for the amalgamation with another company registered under this section with an object to save girl child. Examine the legal position as to the order passed by the Central government in the given situation in the light of the Companies Act, 2013. **(MTP2 N18)**

**PROVISIONS:** As per Section 8 of the Companies Act, 2013 companies which are registered under this section are incorporated to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them. If the company:

- a) contravenes any of the requirements of this section; or
- b) any of the conditions subject to which a license is issued; or
- c) the affairs of the company are conducted fraudulently; or
- d) violate of the objects of the company; or
- e) Prejudicial to public interest the Central Government may revoke the license. On such revocation the company shall be directed to
- f) convert its status and change its name to add the word "Limited" or "Private Limited"; or
- g) If the Central Government is of the opinion it is essential in the public interest direct that the company be wound up under this Act or amalgamated with another company registered under this section.

No such order shall be made unless the company is given a reasonable opportunity of being heard.

**ANALYSIS AND CONCLUSION:** In the above case Alfa School was registered as a section 8 company under the Act. The company was formed in 2010 with the objective to provide education to children of weaker society. The Central Government came to know the company was violating its objectives under which the license was granted. Since, Alfa School was a Section 8 company and it had started violating the objects of its objective clause, the Central Government may pass any of the above mentioned orders.

**Q.No.8.** A company registered under section 8 of the Act as "ABC Sports Club" wants to do the following - Advise the company on the course of action.

- i) ABC Sports Club decided to alter its Articles of Association.
- ii) Decided to admit AB & Co. a partnership firm into the company as members

- a) According to Section 8(4) of Companies Act, 2013, a company registered under Section 8 shall not alter the provisions of its Memorandum or Articles of Associations except with the previous approval of the Central Government. The power to grant such approval has been delegated to the Regional Director having jurisdiction. Hence, ABC sports club can alter its Articles only with the prior approval of the Central Government.
- b) According to Section 8(3) of Companies Act, 2013, a firm may be a member of the company registered under Section 8. Hence, ABC Sports club can admit firm AB to Co. a firm as a member of the company registered under this section.

**Q.No.9.** A Company was incorporated on 6th July, 2014. The COI of the company was issued by the Registrar on 15th July, 2014. The company on 10th July, 2014 entered into a contract, which created its contractual liability. The company denies from the said liability on the ground that company is not bound by the contract entered into prior to issuing of COI. Decide, under the provisions of the Companies Act, 1956, whether the company can be exempted from the said contractual liability. **(RTP N14)**

**(Or)**

The Registrar of Companies issued a COI on 8th January, 2014. However, by mistake, the certificate was dated 5<sup>th</sup> January, 2014. An allotment of shares was made on 7<sup>th</sup> January, and 2014. Could the allotment be declared void on the ground that it was made before the company was incorporated?

### **CERTIFICATE OF INCORPORATION AND THE BINDING EFFECT: (SECTION 9)**

- a) Upon the registration of the documents as required under the Companies Act, for incorporation of a company, and on payment of the necessary fees, the Registrar of Companies issues a Certificate that the company is incorporated.
- b) Sec 9 of the COA, 2013, provides that a COI issued by the Registrar is conclusive as to all administrative acts relating to the incorporation and as to the date of incorporation.
- c) It was held that an allotment of shares made on the date after incorporation could not be declared void on the ground that it was made before the company was incorporated when the certificate of incorporation was issued at a later date.
- d) Since the company came into existence on the date of incorporation stated on the certificate, it is quite legal for the company to enter into contracts from such date.
- e) The date of issue of certificate is immaterial.

**CONCLUSION:** The contention of the company in this case cannot be tenable

**Q.No.10.** Six out of seven signatures to the MOA was forged. The company was registered and the certificate of incorporation was issued. Can the registration of the company be challenged subsequently on the ground of forgery?

**PROVISION:** Registration places the existence of the company as a legal person, beyond doubt.

### **ANALYSIS AND CONCLUSION:**

Challenging the formation/registration of the company is irrelevant, since the certificate of incorporation is conclusive, once it is issued. However, effect of furnishing false particulars, etc. for registration, apply in this case.

**Q.No.11.** The MOA of a Company was presented to the Registrar of companies for registration and the Registrar issued the certificate of incorporation. After complying with all the legal formalities a company started a business according to the object clause, which was clearly an illegal business. The company contends that the nature of the business cannot be looked into as the certificate of incorporation is conclusive. Answer the question whether company's contention is correct or not.

**PROVISIONS OF LAW:** As per Section 3 of the Companies Act, 2013 - Formation of a Company

As per Sec 9 of the Act provides that from the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may from time to time, become members of the company, shall be a body corporate capable of exercising all the functions of an incorporated company under this Act.

Sec 3 of the Companies Act states that a company may be formed for any lawful purpose, the issue of Certificate of incorporation does not legalize objects contained in MOA.

The subscribers of MOA may choose any objects for the purpose of their company. However there are two restrictions on the selection of "object" for the company.

- a) The objects should not include anything which is illegal or contrary to law or public policy.
- b) The objects should not also contemplate doing anything which is prohibited by the companies Act.

The court held in the case mentioned above that the statute does not provide that all or any of the objects mentioned in memorandum, if otherwise illegal would be concluded legal by the certificate.

**ANALYSIS:** By applying the above provisions in the present problem the company's contention is wrong. Though certificate of incorporation is issued it does not mean that all its objects are legal.

**CONCLUSION:** The contention of the company is not tenable.

**Q.No.12.** ABC Pvt. Ltd., is a Private Company having five members only. All the members of the company were going by car to Mumbai in relation to some business. An accident took place and all of them died. Answer with reasons, under the Companies Act, 2013 whether existence of the company has also come to the end?

**PROVISIONS:** Death of all members of a Private Limited Company, Under the Companies Act, 2013:

The most distinguishing feature of a company is its being a separate entity from the shareholders and promoters who form it. This lends stability and perpetuity to the company form of business organization. In short, a company is brought into existence by a process of law and can be terminated or wound up or brought to an end only by a process of law. Its life is not impacted by the death, insolvency or retirement of any or all shareholder(s) or director(s).

The provision for transferability or transmission of the shares helps to preserve the perpetual existence of a company by allowing the constitution and identity of shareholders to change.

**ANALYSIS AND CONCLUSION:** In the present case, ABC Pvt. Ltd. does not cease to exist even by the death of all its shareholders. The legal process will be for the successors of the deceased shareholders to get the shares registered in their names by way of the process which is called "transmission of shares". The company will cease to exist only when it is wound up by a due process of law. Therefore, even with the death of all members (i.e. 5), ABC (Pvt.) Ltd. does not cease to exist.

### SECTION 5: TRUE OR FALSE STATEMENTS - FOR CLASSROOM DISCUSSION

- 1) The registrar issued on 8<sup>th</sup> January, a certificate of incorporation dated 5<sup>th</sup> January. An allotment of shares was made on 5<sup>th</sup> January. The allotment is void as it was made before the company was incorporated (F).
- 2) All seven signatures on a Memorandum of Association were forged by a single person and a Certificate of Incorporation was obtained. This is a Valid Certificate (T).
- 3) A firm may be a member of a company licensed u/s 8, but its Membership shall cease on dissolution of the Firm (T).
- 4) Persons who initiate promotion of a company are known as shareholders (F).
- 5) The person who takes lesser role in the formation of company cannot be a promoter (F).
- 6) A director or officer or employee of the issuer or a person, if acting as such merely in his professional capacity, shall not be deemed as a promoter (T).

### SECTION 6: PRACTICAL QUESTIONS FOR STUDENTS SELF PRACTICE

**Q.No.1.** Mr. V along with six other persons desires to float a company for charitable purposes, as permissible u/s 8 of the Companies Act, 2013. He seeks your advice about the procedure to be followed to give effect to the above proposal. Advise him. **(OLD PM, RTP N13)**

**COMPANY FOR CHARITABLE PURPOSES (SEC 8):**

As per Section 8 of the Companies Act, 2013 the procedure to be followed to give effect to the said proposal is as follows:

- 1) Mr. V, and the 6 other persons with him should first prepare and sign the MOA and AOA (*which may either be drafted in its own format or may be in the formats available in the Companies Act.*)
- 2) The company may either be limited by shares or by guarantee and the choice made must be mentioned in the MOA.

- 3) The object of the proposed company must be for promoting commerce, arts, science, sports, education, research, social welfare religion, charity protection of environment or any such other useful object.
- 4) The AOA will include a clause prohibiting the distribution of dividend.
- 5) All the profits of the company should be applied for the promotion of its objects as mentioned above and incorporated in the MOA and the AOA.
- 6) The association of persons (Mr. V and his friends) should apply to the Registrar seeking a license for the formation of the proposed company.
- 7) The Registrar will on being satisfied of the facts of the case, issue a license to the Association of Persons (AOP) and may impose any conditions which it deems fit.
- 8) On receipt of the license, the Association of Persons (AOP) shall apply to the Registrar in the prescribed form with the required documents for registration of the company.
- 9) The registration process of the company with the ROC will start with the approval of the name of the proposed company for which 3 options will be submitted to the Registrar in the prescribed format with the prescribe fee.
- 10) The ROC will provide the names available and one will be finally chosen by the promoters for use.
- 11) After getting the name from the ROC, the draft MOA and AOA must be got approved by Regional Director who has been delegated the powers by the CG.
- 12) A power of attorney in favour of practicing CA/CS/CMA or an advocate for presentation before ROC to make corrections and collect incorporation certificate, must also be filed on non-judicial stamp paper.
- 13) The company becomes operative on receipt of the COI.

**Q.No.2.** By obtaining the license from the CG u/s 8 of the COA, 2013 a Company shall dispense with the word "limited" or "private limited" from its name.

**PROVISION:** As per Section 8 of the Companies Act, 2013

Where it is proved to the satisfaction of CG that an association of persons proposed to be registered under this Act as a limited company satisfies all the conditions given u/s 8, CG may-

- a) By issue of a license in the prescribed manner.
- b) Allow that the company may be registered as a limited company, but without using the words "Limited" or "Private Limited".
  - i) For the above purpose, Central Government will issue license subject to some conditions.
  - ii) The registrar shall on an application register such association of persons as a company under this section.
  - iii) Further Sec.8 Company can enjoy all privileges as of a Limited Company.

**ANALYSIS & CONCLUSION:** **False**, It is not compulsory to dispense with the word Limited or a Private Limited, but it is only optional at the wish of the Company. Because, the object of registration of a Company u/s 8 of the COA, 2013 is not to dispense the use of words Limited or Private Limited as a part of its name but to avail the exemption which may be granted to such Companies from the provisions of this Act by the Central Government.

**Q.No.3.** On revocation of License granted by the CG u/s 8 of the Companies Act, 2013 the Company may continue to carry on the same Activities which were being carried on by it prior to such revocation.

**PROVISION:** As per Section 8 of the Companies Act, 2013 companies which are registered under this section are incorporated to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them. If the company:

- a) contravenes any of the requirements of this section; or
- b) any of the conditions subject to which a license is issued; or
- c) the affairs of the company are conducted fraudulently; or

- d) Violative of the objects of the company; or
- e) prejudicial to public interest

Then the Central Government, after giving a reasonable opportunity of being heard, may revoke the license. On such revocation the company shall be directed to

- 1) convert its status and change its name to add the word "Limited" or "Private Limited"; or
- 2) If the Central Government is of the opinion it is essential in the public interest direct that the company be wound up under this Act or amalgamated with another company registered under this section.

**ANALYSIS & CONCLUSION: True.** On revocation of license granted by the CG, the association or the Company may continue to carry on the same activities which were being carried on by it prior to such revocation. The impact of the revocation of license is:

- a) The Company will have to add a word 'Limited' or 'Private Limited' at the end of its name.
- b) It will cease to enjoy the exemptions granted by the CG to such Companies.

**Q.No.4.** The existing number of members in a Public Limited Company is below the requirement as per the Companies Act, 2013. However, the company is continuing its business operations. State the legal consequences arising out of such continuance business.

**PROVISION: As per Section 3A of the Companies Act, 2013,**

- 1) If at any time the number of members of a company is reduced:
  - a) In the case of public company below 7, in the case of private company below 2 and
  - b) The company carries on business for more than six months while the number of members is so reduced
- 2) Then every person who
  - a) Is a member of the company during the time that it so carries on business after those six months and
  - b) Is aware of the fact that it is carrying on business with less than 7 members or 2 members. shall be **severally liable** for the payment of the whole debts of the company contracted during that time (after six months), and may be severally sued therefore.

**CONCLUSION:** Members who are aware of this fact are personally and severally liable for the whole of the debts contracted-

**SECTION 7: THINGS TO REMEMBER**

**PENALTIES AND PUNISHMENTS**

SECTION	PARTICULARS	PENALTIES AND PUNISHMENTS
Section 4: Memorandum	If Company name is reserved by giving incorrect information:	Company, Officer in Default <b>Reserved Name:</b> Cancelled <b>Person who made application:</b> Fine Rs Max 1 Lac
	If the Company has not been incorporated	
	If Company has been incorporated	<b>Name:</b> Change name within 3 months (by passing OR), or ROC may strike off name from Register of Companies, or ROC may make a petition for winding up of Company
Section.4(5)(ii)(a)	Availability of name has been obtained by furnishing wrong or incorrect information and the company is not yet incorporated	The person who has made the application for getting availability of name- Up to Rs.1 Lakh

Section 8	Contravenes any of the provisions of rules related to the incorporation of Non-profit Organization as a company.	<ul style="list-style-type: none"> <li>Company shall be punishable with fine varying from Rs.10 Lakhs to Rs.1 Crore and</li> <li>Every officer of company u/s 8, shall be punishable with imprisonment up to 3 years or with fine varying from Rs.25,000 to Rs.25 lakhs or both</li> </ul>
Section 10 A: Commencement of business etc.	Company commenced business or exercise any borrowing powers, without filing required declaration within 180 days or failed to file with the Registrar a verification of its registered office	Company, Officer in Default <b>Company:</b> Rs 50,000 <b>Officer in Default:</b> Rs 1,000 / day during which such default continues but not exceeding an amount of Rs 1 Lac
Section 12	Default in complying with Sec.12 - Registered office, Particulars to be displayed etc.	<b>a)</b> Company; and <b>b)</b> Every officer of the company who is in default Rs.1,000/day. Max.Rs.1 Lakh.
Section 15: Alteration of MOA and AOA to be noted in every copy	If alteration made in the MOA or AOA of a company is not noted in every copy of the MOA or AOA.	Company, Officer in Default Rs 1,000 for every copy of the MOA or AOA issued without alteration
Section 16- Rectification of name of company	Company makes default in registration of name as (which in the opinion of CG is identical to the name of company already registered.)	Company: Rs 1,000 for every day during which the default <b>Officer in Default: Rs 5,000 to 1 Lac</b>
Section 17- Copies of memorandum, articles, etc., to be given to members	If on request of member Company has not provided them a copy (within 7 days) of <ul style="list-style-type: none"> <li>MOA</li> <li>AOA</li> <li>Every agreement and resolution referred in Sec 117(1)</li> </ul>	Company, Officer in Default Rs 1,000 for each day during which such default continues or Rs 1 Lac, whichever Less
Section 447- Punishment for Fraud	Section 447- Punishment for Fraud	Any person who is found to be guilty of fraud <ol style="list-style-type: none"> <li>Involving an amount of at least Rs 10 Lac or 1% of the turnover of the company, whichever is lower Fine: At least amount involved in the fraud, which may extend to 3 times the amount involved in the fraud, and Imprisonment: 6 months to 10 years Also, if fraud in question involves public interest, the term of imprisonment shall not be less than 3 years.</li> <li>Where fraud involves an amount less than Rs 10 Lac or 1% of the turnover of the company, whichever is lower, and does not involve public interest, Fine: May extend to Rs 50 Lac Imprisonment: May extend to 5 years, or both</li> </ol>

**DURATION**

1)	Procedure for incorporation of a company Under the Integrated process of incorporation. (Sec.7)	<p>a) Validity of reservation of name for a maximum period of 20 days</p> <p>b) Documents shall be filed with ROC, within <u>20 days</u> of approval of name</p> <p>c) Total period of re-submission shall not exceed <u>30 days</u>, in case of rectification of defects in Form INC-29.</p>
2)	Approval of the tribunal for conversion of a public company into a private company	Filed with the registrar, within a period of <u>15 days</u>

**SECTION 8: TEST YOUR KNOWLEDGE**

- 1) **Company form of business organization is not a popular form of business organization. Is it correct?** Statement is false
- 2) **Two companies are incorporated with the same set of shareholders. Are they same or distinct under the Companies Act, 2013? Discuss.** No.
- 3) **The entire assets of a company are acquired by another company. Will it constitute taking over the management of the company? Why?**  
No. It will not be treated as takeover of management of company under Companies Act, 2013. Company is separate legal entity and capable to hold property in its name.
- 4) **Common seal of a company will have to be affixed on all the letters and documents of the company. Comment**  
It is incorrect to say that common seal of company is required to be affixed on all letters and documents of company. Provision of common seal, has now become optional. It means, if the company has common seal, it has to be affixed. If company has no common seal, there is no point of affixing it on letters and documents.
- 5) **Comment the following: A shareholder who holds 99% of the share capital of a company can be held liable for the acts of the company.**  
Shareholder cannot be held liable for act of company even though he is holding majority or all shares of company.
- 6) **The State Trading Corporation of India is incorporated as a private company under the Companies Act, 2013. All the shares are held by the President of India and two secretaries in their official capacities. Is the Corporation a citizen of India? No.**

**THE END**

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