

Chapter - 2 "Incorporation of Company"

Chapter II of Companies Act, 2013
(Sec. 3 to Sec. 22)

Companies (Incorporation) Rules, 2014
(as amended)

Division

Part - I	Part - II	Part - III	Part - IV	Part - V	Misc.
<u>"Formation of a company"</u>	Incorporation of a company	Memorandum of a company	Articles of Association	<u>General Provision</u> as to MoA + AoA	
✓ Sec. 3	- Sec. 7	Sec. 4	Sec. 5	Sec. 6	Sec. 18
✓ Sec. 3A	- Sec. 9			Sec. 10	Sec. 19
[- Sec. 8]	- Sec. 10A			Sec. 13/14/15	Sec. 20
	[Sec. 11 - Omitted]			Sec. 17	Sec. 21
				<u>Sec. 12 / Sec. 16</u>	Sec. 22

(1) Formation of a company: - A company may be formed for lawful purpose only.
(Sec. 3)

- Min. No. of Members (Subscribers to Memorandum):

Public Co: 7 ; Private Company - 2 ; OPC - 1

- A company may be formed with

(a) limited liability (Shares / Guarantees)

(b) unlimited liability

(Sec. 3A) : Members severally liable in certain cases :

If at any time, number of members fall below statutory minimum,

↓ and

Company carries on business for a period > 6 Months

↓ and

Remaining members are aware of this fact

↓

all such remaining members are severally liable for the
act of the company for that period.

(2) Special provisions in case of OPC (Sec. 3) :

OPC : - Only One member - Individual,

- Indian Citizen

- Resident in India or otherwise

- MOA shall indicate the name of nominee.

- Nominee: Individual, Indian Citizen, Resident in India or otherwise

Not be a Minor.

Prior consent in writing to be obtained.

May withdraw his nomination, any time, by informing

to sole member and OPC.

- A member of OPC cannot be member of another OPC at
same time.

- A member of OPC can be a nominee in another OPC
not exceeding One, at the same time.

- An individual cannot be a nominee in more than one OPC at same time.

<u>Ex:</u>		A (OPC)	B (OPC)	
I	Mr. A	Member	Member	x
II	Mr. A	Nominee	Nominee	x
III	Mr. A.	Member	Nominee	✓
	Mr. B] ✓	Nominee	Member	✓

Ex 2: Mr. A is Sole Member of A (OPC) and also a nominee of B (OPC).

B (OPC) was formed by Mr. B as a sole member.

In an accident Mr. B dies and after his death Mr. A, becomes member of B (OPC). Comment.

Ans.: Mr. A is required to fulfill the eligibility criteria within a period of 182 days.

- Conversion of OPC into Other Company:

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is permitted with an exception of Sec. 8 Company.

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Conversion may be at any time.

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Conversion should be in prescribed manner. (Rule 6)

(3) Sec. 8 Company:

- An Entity formed for the purposes of promotion of Commerce, art, science, Education, religion, research, society welfare, sports etc.

↓

may be incorporated under the Companies Act, 2013, subject to following

conditions: (a) Specific objects (Promotion - - - - -)

(b) Funds to be applied for promotion of the objects.

(c) Prohibition over distribution of dividend among members.

- An application in this regard shall be made to C.G.

- C.G., if satisfied, grants a licence for regn. u/s 8.

- ROC shall register the company u/s 8.

Implications of Regn.:

(a) Company is not required to use the words "limited" or "Private limited" along with its name.

(b) Company is entitled for all privileges available to a Sec. 8 Company.

(c) Alteration of MoA/AOA needs approval of C.G. (ROC)

(d) Alteration of MoA as to conversion into other kind of company requires approval of Regional Director.

Benefits of Sec. 8 Company: (i) Provisions of Sec. 149 as to Max. no. of directors and independent directors, not applicable.

(ii) Notice period for meetings is 14 days instead of 21 days.

(iii) No requirement of Min. paid-up Capital.

Revocation of Licence: Licence granted by C.G. may be revoked:

(a) Contravention of provisions of sec. 8.

(b) " " Conditions subject to which licence was granted.

(c) if affairs are conducted in fraudulent manner.

(d) if affairs are being managed oppressive to objects of the company.

- However, before revocation of licence, C.G. must provide an opportunity of being heard.

- If licence is revoked, C.G. may pass the order as to

(a) dissolution/winding up of the company.

(b) Amalgamate with another Sec. 8 Co. which is engaged in similar activities.

H.W.: - Revision of Sec. 3, 3A and 8

- learning of all Questions/answers

- written practice of 3-4