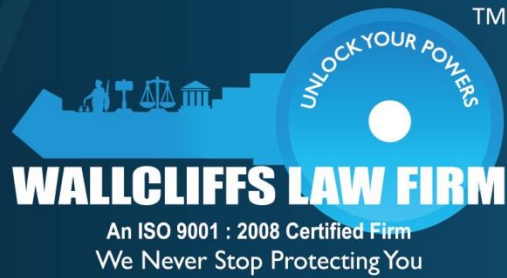


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THE COMPANIES ACT, 2013

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CHAPTER I

INTRODUCTION

Q1. How did the Companies Act, 2013 amended?

The Companies Act, 2013 replaced the Companies Act, 1956 consists of 658 section. The Act gets its assent from the President on 28th August 2013. The Section 1 under the Companies Act amended on 30th August 2013, other 98 sections was amended on 12th September 2013. Subsequently, the term "One Person Company" was amended. The Companies Act, 2013, consists of 29 Chapters, 470 Sections and 7 schedules.

Q2. What is the purpose of the Act?

- To encourage entrepreneurship.
- To create flexibility and simplicity in forming and maintenance of companies.
- To encourage high standards in corporate governance.
- To enforce strict punishments against fraud.
- To set up a structure in the form of various authorities, bodies, and panels.

CHAPTER II

INCORPORATION OF MATTERS OF COMPANY AND MATTERS INCIDENTAL THERETO. (SEC. 3 - 22)

Q3. What is the procedure for the formation of the Company?

- A company may be formed for any lawful purpose under this Companies Act, 2013,
 - A. In the case of a Public Company, it shall consist of seven or more persons.
 - B. Whereas the Private Company shall consist of two or more persons.
 - C. The One Person Company shall consist of one person.



- The registration can be done by subscribing their names to a memorandum and by complying with this Act.
- The One Person Company shall indicate the name of the other person, with his prior consent in the prescribed form.
- On subscriber's death or his incapacity to contract, he shall become the member of the company and the written consent of such person shall also be filed with the Registrar during the incorporation of the One Person Company.
- The name of the One Person Company shall be done by giving prior notice.
- It is the duty of the member of One Person Company to intimate the change to the Registrar.
- Any change in the name of the person does not necessitate to alter the memorandum.
- The company may be formed either by,
 - a. A company limited by shares.
 - b. A company limited by guarantee.
 - c. An unlimited company.

Q4. What are the contents of the Memorandum of Association?

- In the case of the public company, it shall consist of "Limited Company".
- The name of the company with the last word "Private Limited Company".
- The State in which the registered office of the company is to be situated.
- The object for which the company is proposed to be incorporated.
- The liability of members of the company, whether limited or unlimited.
 - a. In the case of a company limited by shares, the liability of its members is amount unpaid on the shares held by them.
 - b. The amount up to which each member, in the case of the company limited by guarantee.
- The name mentioned in the Memorandum shall not be identical with or resemble the name of an existing company registered or any previous company.
- The person making an application in such form and manner and accompanied by such fee, the Registrar for the reservation of a name set out in the applications made in the name of the proposed company or the name to which the company proposes to change its name.



- On receipt of the application, the Registrar on the basis of information and documents furnished along with the application, reserve the name for a period of sixty days from the date of the application. **(Sec.4)**

Q5. What are Articles of Association?

- The Articles of a company shall contain the regulations for the management of the company.
- The articles shall be deemed to prevent a company from including additional matters in its articles.
- The articles may contain provisions for entrenchment and the specified provisions of the articles may be altered only if conditions are more restrictive than those applicable in the special resolution.
- Where the articles contain provisions for entrenchment either on the formation or by amendment, the company shall give notice to the Registrar.
- In the case of a registered company, the registered articles do not exclude or modify the regulations contained in the model articles. **(Sec.5)**

Q6. What are the procedures to incorporate the company?

- The company shall be filed with the Registrar within whose jurisdiction the registered office of a company is situated.
- The necessary documents and information for the registration of the company are as follows,
 - a. The memorandum and articles of the company are signed by all the subscribers to the memorandum.
 - b. A declaration in the prescribed form by an advocate, a chartered accountant, cost accountant, or company secretary in practice who is engaged in the formation of the company.
 - c. An affidavit from each of the subscribers to the memorandum.
 - d. The address for correspondence till its registered office is established.



c.

- e. The particulars of name, including surname or family name, residential address, nationality, and other particulars of every subscriber another memorandum along with the proof of identity.
 - f. The particulars of the persons in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and other particulars including proof of identity.
 - g. The particulars of the interest of the persons in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors.
- The Registrar on the basis of the above documents and information shall register all the documents and information in the register and issue a certificate of incorporation to the effect that the proposed company.
 - On and from the date mentioned in the certificate of incorporation, the Registrar shall allot to the company identity number, which shall be a distinct identity for the company and the same shall be included in the certificate.
 - The company shall maintain and preserve at its registered officer copies of all documents and information till its dissolution.
 - If any person furnishes any false or incorrect information or suppresses any material information, he shall be liable for action under Section 447 under this act.
 - After the incorporation of the company, if it is proved that the company has been got incorporated by furnishing any false or incorrect information or suppressed the material fact, the persons, the promoters, the persons named as the first directors of the company, and the persons making the declaration shall each be liable for action under Section 447 of this act.
 - If the company has been got incorporated by furnishing any false or incorrect information or representation or any suppressing any material fact or any fraudulent action, the Tribunal on the application made to it so warrants,
 - a. Pass such orders for the regulation of the management of the company including changes, in its memorandum and articles in the public interest or in the interest of the company and its members and creditors.
 - b. Direct that liability of the members shall be limited.



- c. Direct removal of the name of the company from the registrar of companies.
 - d. Pass an order for the winding up of the company.
 - e. Pass other orders as it deems fit.
 - Before making any order,
 1. The company shall give a reasonable opportunity of being heard.
 2. The Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any contracted or payment of any liability.
- (Sec.7)**

Q7. What the effects of registration, memorandum, and articles?

Effect Of Registration:

- From the date of incorporation in the certificate of incorporation,
 - a. The members of the company shall be a body corporate by the name in the memorandum, capable of exercising all the functions of an incorporated company.
 - b. Perpetual Succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract.
 - c. To sue and be sued by the said name. **(Sec.9)**

Effect Of Memorandum And Articles:

- The memorandum and articles, when registered shall bind the company.
- The members who had been signed by the company and by each member and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles. **(Sec.10)**

Q8. What are the rights and liabilities of the registered company?

- A company shall from the fifteenth day of its incorporation have a registered office capable of receiving and acknowledging all communication and notices that may be addressed to it.
- The company shall furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation.
- Every Company shall,



- a. Affix its name and the address of its registered office and keep the same outside the office or place in which its business carried on.
 - b. Have its name engraved in legible characters on its seal.
 - c. Get its name, address of its registered office, and the Corporate Identity Number along with telephone number, fax number, e-mail, and website address.
 - d. Have its name printed on hundies, promissory notes, bills of exchange, and other documents.
- If the company has changed its name or names during the last two years it shall affix along with its name, the former name or names so changed during the last two years as required.
 - Notice of every change shall be given to the Registrar within fifteen days of the change who shall record the same.
 - Unless there is a special resolution passed by a company, the registered office of the company shall not be changed,
 - a. In the case of an existing company, outside the local limits of any city, town or village where the first office is first situated or it may be situated later by virtue of a special resolution passed by the company.
 - b. If the case of any other company, outside the local limits of any city, town, or village where such office is situated or where it may be situated later.
 - No company shall change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar with the same state unless confirmed by the Regional Director.
 - The Confirmation shall be communicated within a period of thirty days from the date of receipt of application.
 - The certificate shall be conclusive evidence that all the requirements have been complied with and the change shall take effect from the date of the certificate.
 - If any default is made in complying with the requirement, the company and every officer shall be liable to a penalty of one thousand rupees for every day but not exceeding one lakh rupees. **(Sec.12)**



Q9. What is the procedure to alter memorandum?

- A company may by a special resolution and after complying with the procedure alter the provisions of the memorandum.
- The Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name.
- The alteration of the memorandum relating to the place of the registered office from one State of another shall not have approved by Central Government as prescribed.
- The Central Government shall dispose of the application within a period of sixty days and before passing its order, the alteration has the consent of the creditors, debenture-holders, and other persons of the company.
- The Registrar shall register any alteration of the memorandum to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution.
- Any alteration of the memorandum of a company limited by guarantee and not having a share capital to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void. **(Sec.13)**

Q10. What is the procedure to make the alteration in articles?

- The conditions contained in its memorandum, if any company may by a resolution profession alter its articles including alterations,
 - a. A private company into a public company, or
 - b. A public company into a private company.
- Every alteration of the articles and a copy of the order of the Tribunal approving the alteration shall be filed with the Registrar together with a printed copy of the altered articles with in a period of fifteen days who shall register the same.
- Any alteration of the articles registered shall be valid as if it were originally in the articles. **(Sec.14)**



Q11. What is the procedure to serve the copies of the memorandum, articles to the members?

- A company shall by a member sent to him within seven days of the request and to the payment of such fees, a copy of each of the following,
 - a. The memorandum
 - b. The articles
 - c. Every agreement and every resolution and have been embodied in the memorandum or articles.
- If a company makes any default in complying with the provisions, the company and every officer of the company who is in default shall be liable for each default, to a penalty of one thousand rupees for each day during which such default continues or one lakh rupees whichever is less. **(Sec. 17)**

Q12. What is the procedure to execute bills of exchange etc under this act?

- A bill of exchange, hundis or promissory note shall be deemed to be made, accepted, drawn or endorsed on behalf of a company if made, accepted, drawn or endorsed in the name of or on behalf or on account of the company by any person acting under its authority express or implied.
- A company by writing authorise any person either generally or to execute other deeds on its behalf in any place either in or outside India. **(Sec.22)**

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