

TYPES OF COMPANIES

ACS Mahima V. Sharma

09/05/2015

On the basis of Size

Small Companies

Other Companies

On the basis of no. of members

OPC

Private Companies

Public Companies

On the basis of Control

Holding Companies

Subsidiary Companies

Associate Companies

On the basis of Liability

Limited by Shares

Limited by Guarantee

Unlimited

On the basis of manner of access to capital

Listed Companies

Unlisted Companies

On the basis of nature of business

Companies with
Charitable Objects -
Section 8

Dormant Companies

Govt. Companies

Nidhi Companies

On the basis of place of business

Incorporated within the country

Foreign Company

SEC 2(85)

SMALL COMPANY-

- (i) other than a public company,
- (ii) Paid-up share capital - does not exceed 50 lakh rupees or such higher amount as may be prescribed which shall not be more than 5 crore rupees; or
- (iii) Turnover of which as per its last P&L does not exceed 2 crore rupees or such higher amount as may be prescribed which shall not be more than 20 crore rupees
- (iv) Holding company, subsidiary company , section 8 company, a company or body corporate governed by any special Act cannot be classified as small company

Privileges and Exemptions –

- The annual return of the small company can be signed by the company secretary alone , where there is no company secretary, by a single director
- It may hold 2 BM in a year i.e 1 BM in each half of calender year with min gap of 90 days between two meetings.
- It may need not include cash flow statement as a part of its financial statement
- Provision regarding Mandatory rotation of auditor is not applicable to small company
- Merger process between two or more small companies gets approved on fast track basis with the approval of members holding 90% of shares, majority of creditors (9/10), Roc and official liquidator.
- *The status of a company as a “small company” may change from year to year. thus the benefits, available in a particular year, may stand withdrawn in the next year and becomes available again in the subsequent year*

As per sec 2 (6):

“associate company”, in relation to another company, means –

1. company in which that other company has a significant influence,
2. which is not a subsidiary company of the company having such influence
3. includes a joint venture company.

For the purposes of this clause, “significant influence” means control of at least 20% of total share capital, or of business decisions under an agreement;

For section 129 (3)-consolidated financial statement-the term subsidiary shall include associate

For section 2(76) related party includes associate company

IMPACT AND ANALYSIS OF THE DEFINITION:

A Ltd. is an associate company of B Ltd. If:

- B Ltd. has significant influence in A Ltd. and*
- B Ltd. is not a holding company of A Ltd.*

or

A Ltd and B Ltd. are joint venture companies.

-Share capital includes preference shares as well as equity shares.-

Agreement could be oral or in writing.

Thus:

Holding-Subsidiary relationship excluded

Joint Venture included irrespective of 'significant influence'.

As per sec 2 (87) “subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company—

*(i) **controls the composition of the Board of Directors**; or*

*(ii) exercises or **controls more than one-half of the total share capital** either at its own or together with one or more of its subsidiary companies:*

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

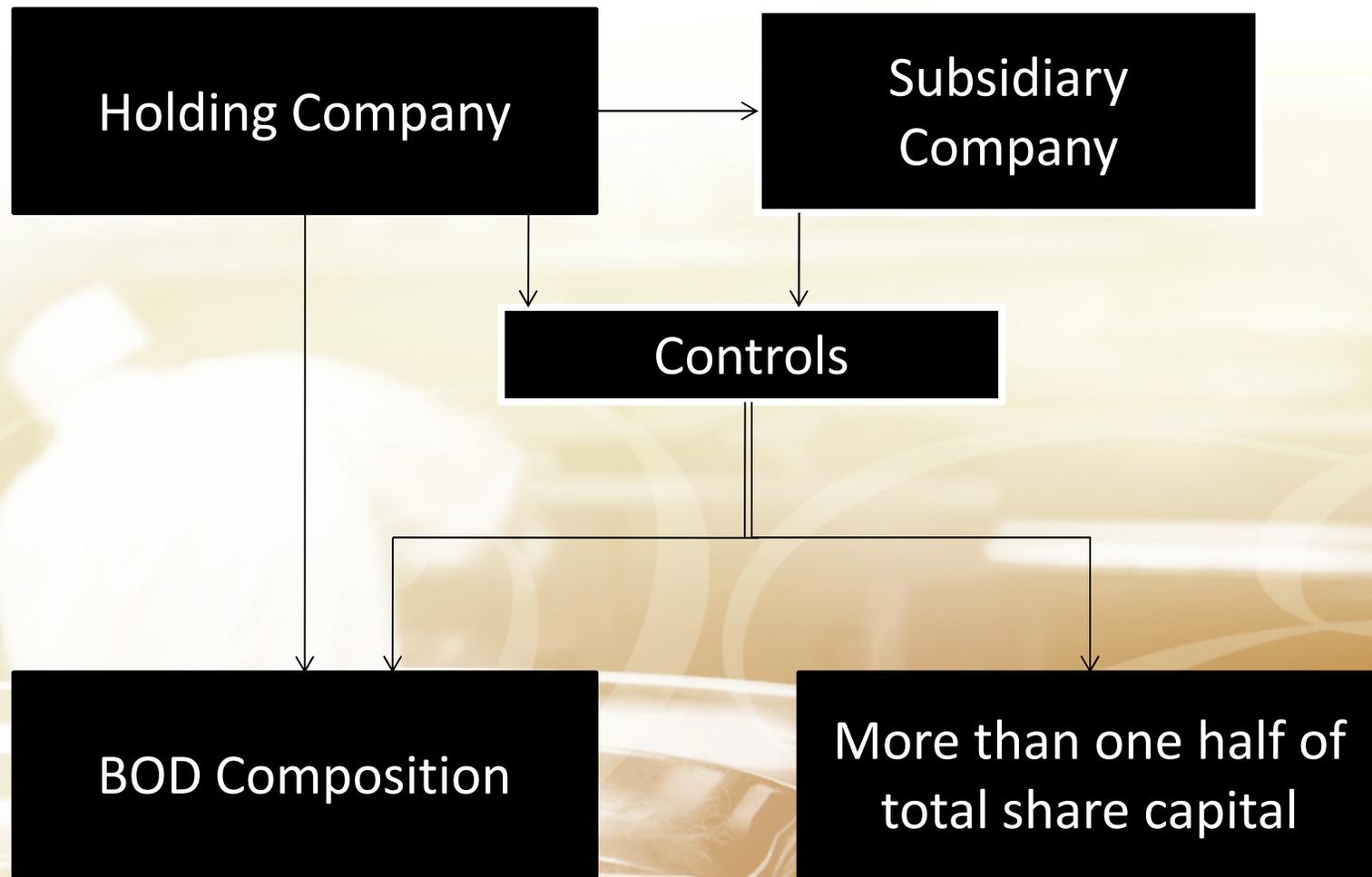
For the purposes of this clause,—

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) the composition of a company’s Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

(c) the expression “company” includes any body corporate;

(d) “layer” in relation to a holding company means its subsidiary or subsidiaries;



AMBIGUITY

- **Meaning of Exercise or Control of share capital is not clear.**
- **Share Capital includes Equity and preference shares.**
- **As per explanation “ Layer in relation to holding company means its subsidiary or subsidiaries”.**
- **Refer section 186 (1) Loan and Investment by Company-.....a company shall unless otherwise prescribed, make investment through not more than two layers of investment companies:....**

PUBLIC COMPANY: Section 2(71)

- Public Company means a company which-

(a) Is not a private company;

(b) Has a minimum Paid-Up Share Capital of Five Lakh Rupees or such higher paid-up capital, as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where subsidiary company continues to be private company in its Articles;

- **PUBLIC COMPANY: AMBIGUITY**

- **What is the position of subsidiaries of bodies corporate incorporated outside India?**
- **Whether those are Private or Public?**
- **No corresponding provision for erstwhile section 4(7).**

PRIVATE COMPANY: Section 2(68)

“private company” means a company –

1. having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,—
 - (i) restricts the right to transfer its shares;
 - (ii) except in case of One Person Company, limits the number of its members to two hundred:
 - (iii) Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that— (A) persons who are in the employment of the company; and (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
 - (iv) prohibits any invitation to the public to subscribe for any securities of the company;

- **Section 3 (1) (b)- Minimum number of members -2 Members**

Note: However, if the number of members falls below 2, neither unlimited liability for continuing member(s) nor compulsory winding up will follow as sections 45 and 433(d) of the 1956 Act are omitted by the 2013 Act.

- **Section 2(40)- Exemption from presenting cash flow statement if private company is a small company**

- **Sec 14 (1) (a)-Right to alter articles**

Subject to the provisions of this Act and to the conditions contained in its memorandum, if any, the company may by a special resolution alter its articles including alterations having the effect of conversion of a private company into a public company.

Note: However, alteration of articles to incorporate 'entrenchment provisions' requires that alteration should be agreed to by all the members of the company. For this alteration, special resolution will not suffice [section 5(4)].

- **Sec 18 read with Rule 7 of the companies (incorporation) Rules, 2014-**
A private company other than a company registered under section 8 of the Act whose paid up share capital is of 50 lakh rupees or less or average annual turnover during the relevant period is 2 crore rupees or less **may convert** itself **into OPC** by passing a special resolution in the general meeting.
- **Sec 67 (2)**-Not barred from giving financial assistance to purchase its shares/ shares of its holding company
such financial assistance may be by means of a loan, guarantee, provision of security or otherwise. Such financial assistance may be direct or indirect.
- **Sec 92 (2) / Rule 11 (2) of the Companies (Management and Administration) Rules 2014-**
No need for compulsory certification of annual return by the CS in practice if paid up capital less than Rs. 10 Crores and / or turnover of company is less than Rs. 50 Cr.
- **Sec 108/Rule 20 (1) of the Companies (Management and Administration) Rules, 2014-** Not required to provide to its member facility of voting through Electronic means

- **Sec 120 / Rule 27(1) of the companies (Management and Administration) Rules, 2014-** Not required to maintain records in electronic form
- **Sec 135- No CSR obligations unless company's net worth is Rs. 500 Cr. or more or turnover is Rs. 1000 Cr. or more or net profit is Rs. 5 Cr. or more**
CSR obligations including mandatory CSR spends in each financial year of at least 2% of average net profit during 3 preceding financial years applies only to company whose net worth is Rs. 500 Cr. or more or turnover is Rs. 1000 Cr. or more of net profit is Rs. 5 Cr. or more.
- **138 /Rule 13 of the companies (Accounts) rules, 2014- Mandatory internal Audit provisions not applicable to private companies unless turnover or outstanding loans criteria is satisfied**

Every Private company having –

- Turnover of Two hundred crore rupees or more during the preceding financial year; or
- Outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year.

An existing company covered under any of the above criteria shall comply within 6 months of commencement of such section.

- **Sec 139 (2)/Rule 5 of Companies (Audit and Auditors) rules, 2014-**
Requirement of compulsory rotation of auditors shall not apply unless paid up share capital (20 crore or more) or outstanding loans or deposits (50 crore or more) criteria is satisfied
- **Sec 149(1)/ 2nd proviso rule 3 of the companies (Appointment and Qualification of Directors) Rules, 2014-** Not required to appoint at least one woman director
- **Sec 190(4)-**No need to maintain contracts of service with MD/ WTD
- **Sec 197 (12)-**Not required to disclose in the Boards report the ratio of the remuneration of each director to the median employees remuneration.
- **Sec 204 (1)/Rule 9 (1) of Companies (Appointment and remuneration of Managerial Personnel) Rules, 2014-** Mandatory secretarial audit requirements not applicable
- **Sec 5 (3) & 5(4)-**Alteration of articles to incorporate entrenchment /restrictive provisions requires agreement of all members of the company

COMPANIES WITH CHARITABLE OBJECTS

APPLICABILITY

SECTION 8 OF THE COMPANIES ACT 2013

- A section 8 Company is ,which is :
 - (a) formed for furtherance of objects like the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
 - (b) intends to apply its profits, if any, or other income in promoting its objects; an
 - (c) intends to prohibit the payment of any dividend to its members.

Section 8 company -

- enjoys all the privileges and is subjected to all the obligations of limited companies.
- A firm may be a member
- shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government
- may convert itself into company of any other kind only after complying with such conditions as may be prescribed.
- Not obligatory to use the word “Limited” or “Private Limited” but if incorporated as OPC then the One person company shall be mentioned below the name of the company
- After extinguishing all liabilities and on consent of 75% of member, by special resolution may apply to ROC for striking of the name

GOVERNMENT COMPANY

The background of the slide is a complex, abstract composition of swirling, organic shapes. The color palette is dominated by deep reds, oranges, and blacks, creating a sense of movement and depth. The patterns resemble liquid or smoke in motion, with some areas appearing more solid and others more ethereal. The overall effect is a dynamic and somewhat mysterious visual field.

As per sec 2(45)-

“Government company” means any company in which

- 51% or more of the paid-up share capital is held by CG, or SG , or CG +SG
- includes a company which is a subsidiary company of such a Government company;

Applicability of various provisions:-

1. Sec 76 read with rule 3(5) of companies (Acceptance of Deposits) Rule 2014 -

No govt company shall accept or renew deposit exceeding 35% of the aggregate of its paidup capital and free reserves.

2. Sec 139 (5)-

The Comptroller and Auditor-General of India shall appoint an auditor –

- a. in the case of a Government company
 - b. any other company owned or controlled, directly or indirectly, by the by CG, or SG , or CG +SG
- within a period of 180 days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

Sec 139 (7)-

1st auditor shall be appointed by the CAG within 60 days from the date of registration of the company

1. In case the CAG fails to do so, the BOD of the company shall appoint such auditor within the next 30 days;
2. If the BOD fails to do so , then the shareholders @EGM shall appoint the auditor with in 60days

Sec 139 (8) (ii)-

Filling of Casual vacancy in the office of Auditor- By CAG with in 30 Days

If CAG Fails to do so then – By BOD within next 30days

Sec 143 (5) & (6)-

Auditor shall submit a copy of audit report to CAG

CAG will comment upon or supplement such audit report within 60 days

CAG may also conduct test audits

Sec 161(3)-

Appt of Director Nominated by CG or by SG

Sec 182 (1)-

A Govt company is prohibited from making any contribution, directly or indirectly to any political parties.

Sec 394(1) & (2)-

- (1) Where the CG is a member of a Govt company- annual Report + audit report +comment of CAG on audit reports placed before both Houses of Parliament
- (2) Where in addition to the CG, any SG is also a member of a Govt company, annual Report + audit report +comment of CAG on audit reports shall be laid before the House or both Houses of the State legislature

DORMANT COMPANY

APPLICABILITY

**SECTION 455 OF THE COMPANIES ACT 2013
READ WITH
COMPANIES(MISCELLANEOUS) RULES 2014**

- Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property

And

has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in the **Form MSC-1** along with the prescribed fees for obtaining the status of a dormant company.

- after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value)

“inactive company” means a company

- not carrying on any business or operation, or
- not made any significant accounting transaction during the last two financial years, or
- not filed financial statements and annual returns during the last two financial years;

- "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.



- a company shall be eligible to apply under only, if-
 - (i) no inspection, inquiry or investigation has been ordered
 - (ii) no prosecution has been initiated and pending;
 - (iii) not having any public deposits which are outstanding nor the company is in default in payment thereof or interest thereon;
 - (iv) not having any outstanding loan, whether secured or unsecured

Provided that if there is any outstanding unsecured loan, the company may apply under this rule after obtaining concurrence of the lender and enclosing the same with Form MSC-1 ;

- (i) no dispute in the management or ownership of the company and a certificate in this regard is enclosed with Form MSC-1;
- (ii) does not have any outstanding statutory taxes, dues, duties etc. payable to the Central Government or any State Government or local authorities etc.;
- (iii) not defaulted in the payment of workmen's dues;
- (iv) the securities of the company are not listed on any stock exchange within or outside India.

- **Certificate of status of dormant company.- a certificate in Form MSC-2 issued by the Registrar**
- The Dormant company shall have -
 - 3 Directors (Public company)
 - 2 Directors (Private company)
 - 1 Director (OPC)
- Rotation of auditors – NA to Dormant companies.
- Return of dormant companies.- Form MSC-3 (filed annually)-within 30days from the end of FY. Indicating financial position duly audited by a chartered accountant in practice
- The company shall continue to file -
 - Return of allotment (whenever the company allots any security)
 - Change in directors, if any

in the manner and within the time specified in the Act,

DORMANT -TO- ACTIVE

BY WILL

- An application in Form MSC-4 , shall be made along with prescribed fees
- Application shall be accompanied by a return in Form MSC-3 in respect of the financial year in which the application for obtaining the status of an active company is being filed
- The Registrar, after considering the application shall issue a certificate in Form MSC-5 allowing the active status to the company

BY ACT OF OMISSION

- Where a dormant company does or omits to do any act mentioned in the Grounds of application in Form MSC-1 submitted to Registrar, affecting its status of dormant company, the directors shall within seven days from such event, file an application, for obtaining the status of an active company.

“ Whether registrar can suo moto, make the company dormant”

- Company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies
- Also the Registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive five years.

“ Whether registrar can suo moto, make the dormant company, active”

- If the Registrar has reasonable cause to believe that any company registered as ‘dormant company’ ,has been functioning in any manner, directly or indirectly, he may initiate the enquiry and , after giving a reasonable opportunity of being heard to the company in this regard, the Registrar may remove the name of such company from register of dormant companies and treat it as an active company.

FOREIGN COMPANY

APPLICABILITY

SECTION 2 (42) OF THE COMPANIES ACT 2013,
SEC 379-393 OF CHAPTER XXII OF THE COMPANIES
ACT 2013

READ WITH

COMPANIES (REGISTRATION OF FOREIGN COMPANY)
RULES 2014

“foreign company” means any company or body corporate

- i) incorporated outside India
- ii) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- iii) conducts any business activity in India in any other manner

“electronic mode” means carrying out electronically based, whether main server is installed in India or not, including, but not limited to –

- (i) business to business and business to consumer transactions, data interchange and other digital supply transactions;
- (ii) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
- (iii) financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
- (iv) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- (v) all related data communication services,
whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

- Where not less than 50% of the paid-up share capital (equity or preference or partly equity and partly preference), of a foreign company is held by
 - a) one or more citizens of India or
 - b) by one or more companies or bodies corporate incorporated in India, or
 - c) by one or more citizens of India and one or more companies or bodies corporate incorporated in India,
 - d) whether singly or in the aggregate,

such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

- (1) Every foreign company shall, within 30 days of the establishment of its place of business in India, shall file with the Registrar Form FC-1 —
- (a) **a certified copy of the charter, statutes or memorandum and articles**, of the company or other instrument defining the constitution of the company along with the certified copy of translation if the instrument is not in the English language
 - (b) **the full address of the registered or principal office of** the company;
 - (c) **a list of the directors and secretary (or the Equivalent)** of the company containing particulars ;
 - i. personal name and surname in full; with any former name or names and surname or surnames in full;
 - ii. father's name or mother's name and spouse's name;
 - iii. DOB , residential address and nationality (along with nationality of origin);
 - iv. passport Number, date and country of issue; (if a person holds more than one passport then details of all passports to be given)
 - v. income-tax permanent account number (PAN) , if applicable;
 - vi. occupation, if any ;

- viii. whether directorship in any other Indian company, (Director Identification Number (DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);
 - ix. other directorship or directorships held by him;
 - x. Membership Number (for Secretary only); and
 - xi. e-mail ID.
-
- (d) the name and address of one or more persons resident in India authorised to accept any notices or other documents ,on behalf of the company
 - (e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
 - (f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
 - (g) declaration that none of the directors of the company /authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad;
 - (h) Attested copy of approval from the RBI under FEMA, or from any other authority, if required

Form FC-2 –

1. Containing the particulars of the alteration, in the documents delivered to the Registrar
2. Filed within of 30 days of alteration

Form FC-3

Every foreign company shall file with the Registrar, within a period of 6 months from the end FY of foreign company

- (a) Financial statement of its Indian business operation as per the Chapter IX of the Act i.e. Accounts of Companies ;
- (b) consolidated financial statements of the parent foreign company , as submitted in the country of its incorporation
- (c) a list of all the places of business established by the foreign company in India as on the date of balance sheet

(d) Statement of related party transaction:-

- i. name of the person in India which shall be deemed to be the related party within the meaning of clause (76) of section 2 of the Act
- ii. nature of such relationship;
- iii. description and amount of such transaction along with the opening ,closing, highest and lowest balance during the year and provisions made (if any) in respect of such transactions;
- iv. reason and material effect of such transaction on both the parties;
- v. amount written off or written back in respect of dues from or to the related parties;
- vi. a declaration that such transactions were carried out at arms length basis; and other details of the transaction necessary to understand the financial impact;

(e) Statement of repatriation of profits which shall include-

- (i) amount of profits repatriated during the year;
- (ii) recipients and form of repatriation;
- (iii) dates and mode of repatriation

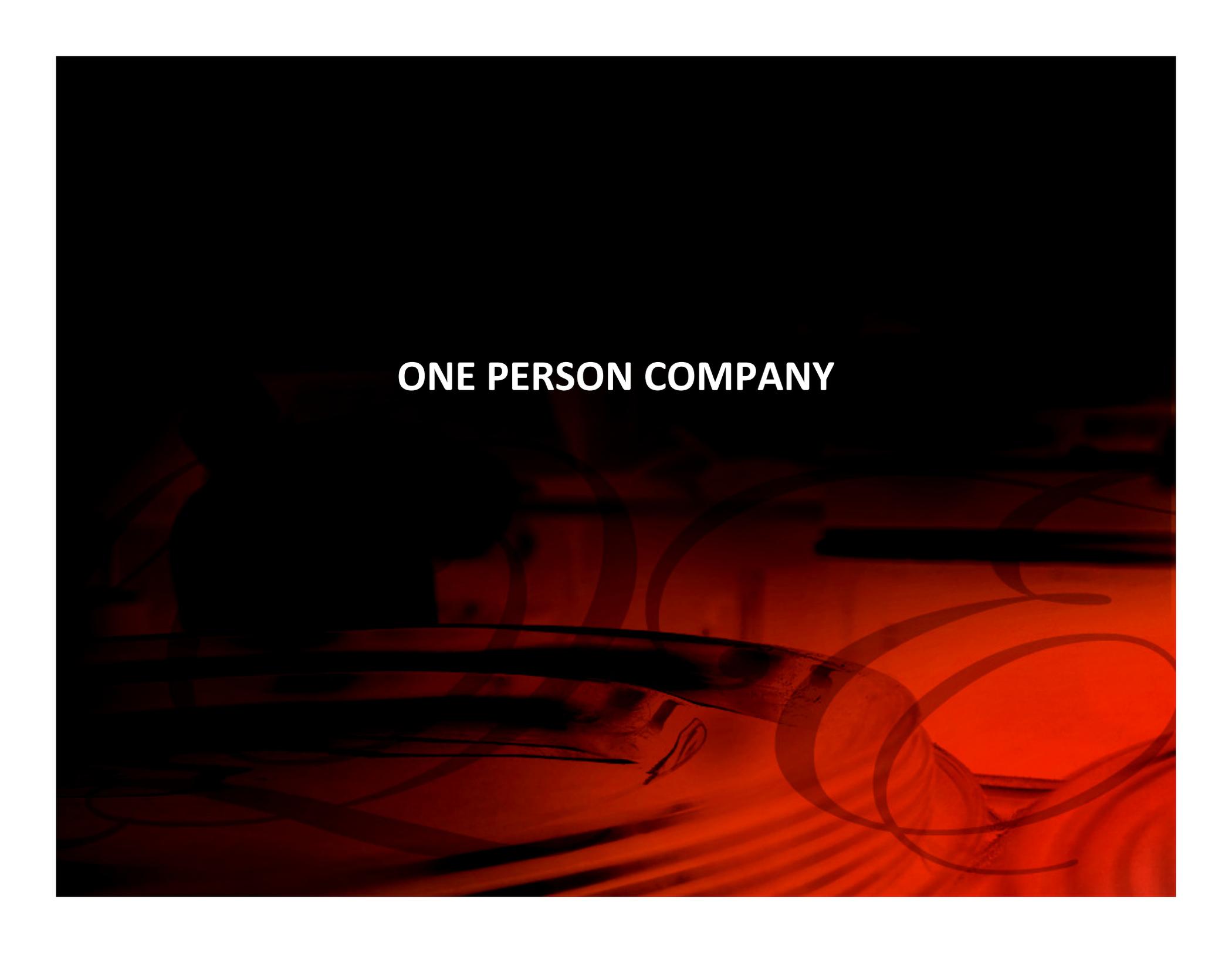
- Statement of transfer of funds (including dividends if any)-
in relation of any fund transfer between place of business of foreign company in India and any other related party of the foreign company outside India including its holding, subsidiary and associate company,

Form FC.4 – Annual Return foreign company – to be filed , within 60 days from the last day of FY

Other Applicable Provisions:

1. Every foreign company shall conspicuously exhibit on the outside of every place of business in India, the name of the company and the country in which it is incorporated, in legible language;
2. Sec 128- keeping of Books of A/c-@ principal place of business in india and only to the extent its in relation to the business in india
3. Sec 71 (issue of debentures); Chap VI(Regn of charges) and Chap XIV (Inspection, Inquiry & Investigation)- shall apply mutis mutandis

ONE PERSON COMPANY

The background of the slide is a dark, abstract composition. It features a gradient from deep black at the top to a vibrant, fiery red at the bottom. Overlaid on this gradient are numerous thin, dark, swirling lines and shapes that resemble smoke, liquid, or perhaps a microscopic view of a material. The overall effect is dynamic and somewhat mysterious.

- As per sec 2 (62)- “One Person Company” means a company which has only one person as a member;
- The key difference between OPC and sole proprietor is the way liabilities are treated and decision making.
- OPC can not have the paid up share capital exceeding 50 lakhs and the turnover for the relevant period shall not exceed Rs. 2 crores

- Who can incorporate one person company
- Whether a person can form more than one OPC
- Whether a minor can become a member of OPC
- Whether an OPC can carry out any NBFC activity
- Is OPC suitable for medium and large business
- Is there any time limit for conversion of OPC
- Is it mandatory to nominate a person during incorporation
- Whether it is mandatory to mention the name of nominee in MOA
- Is it mandatory to mention the word OPC in all documents
- Is it mandatory to convey the withdrawal of nomination to the company
- What is the time period for nominating other person as nominee
- What is the max time period for intimation to registrar about the withdrawal and appointment of new nominee
- What is the procedure for issue of share certificate of OPC
- In the event of the death member who will be the owner of the OPC
- What is the max penalty, in case of default

- When the OPC can convert itself to the public or private company
- Is there any time limit for conversion of such OPC
- Is it mandatory to alter MOA and AOA for giving effects to conversion
- Whether prior intimation to ROC is required for ceasing the status of OPC
- Is it mandatory to get signature from PCS in annual return of OPC
- Is it mandatory to comply the provisions of BM,GM ,EGM, AGM
- Is it mandatory to maintain the minutes book for OPC
- Is it mandatory to file the financial statements of OPC
- Is it mandatory to record in minutes book about every contract entered into by OPC
- Is it mandatory to prepare cashflow statement

Thank You!!!

For any queries : –

Call me @ +91 9766826707

Mail me @ - mahima_vsharma@rediffmail.com

M/s. Mahima Sharma & Associates

Nagpur