

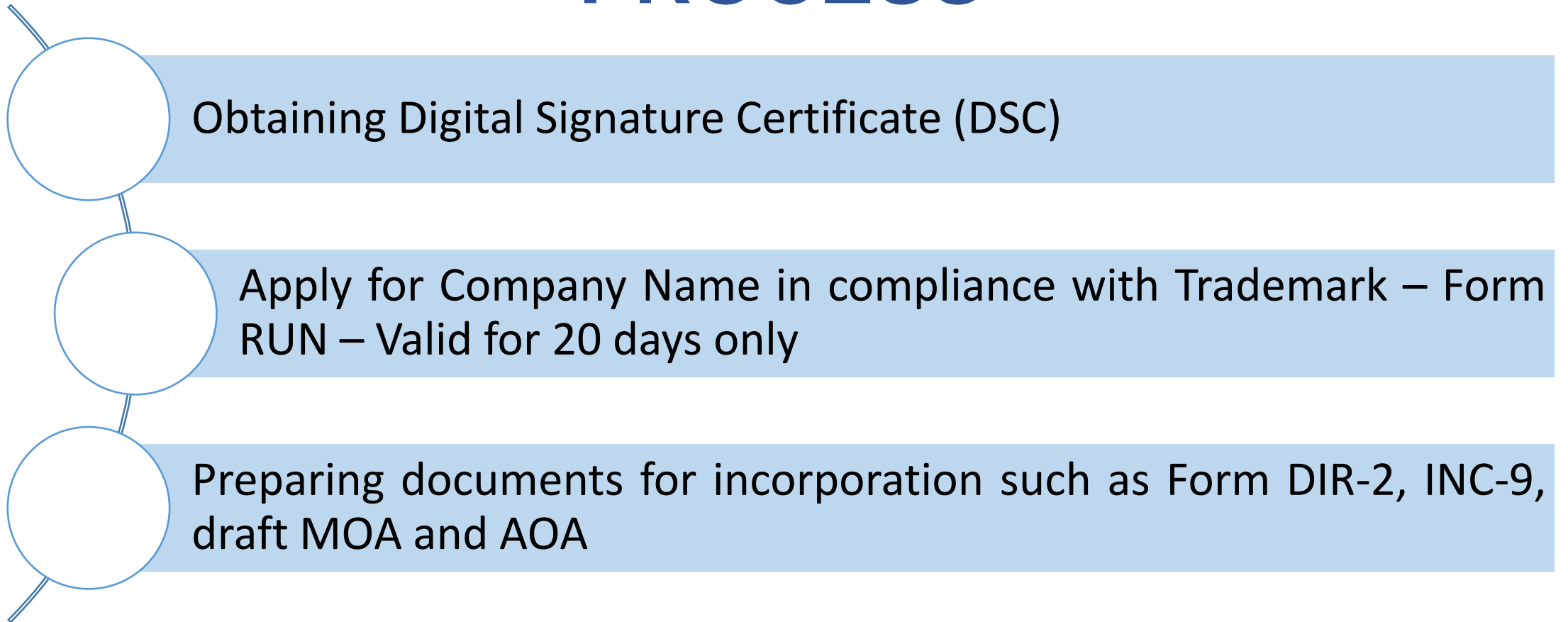
RECENT AMENDMENTS IN  
THE COMPANIES ACT, 2013  
VIS - A - VIS CA PROFESSION

SR.NO	TOPICS COVERED
1.	Incorporation of Company
2.	Charter documents of the Company
3.	Recent Amendments
4.	Checkpoints while drafting of Audit report and preparing Company Accounts

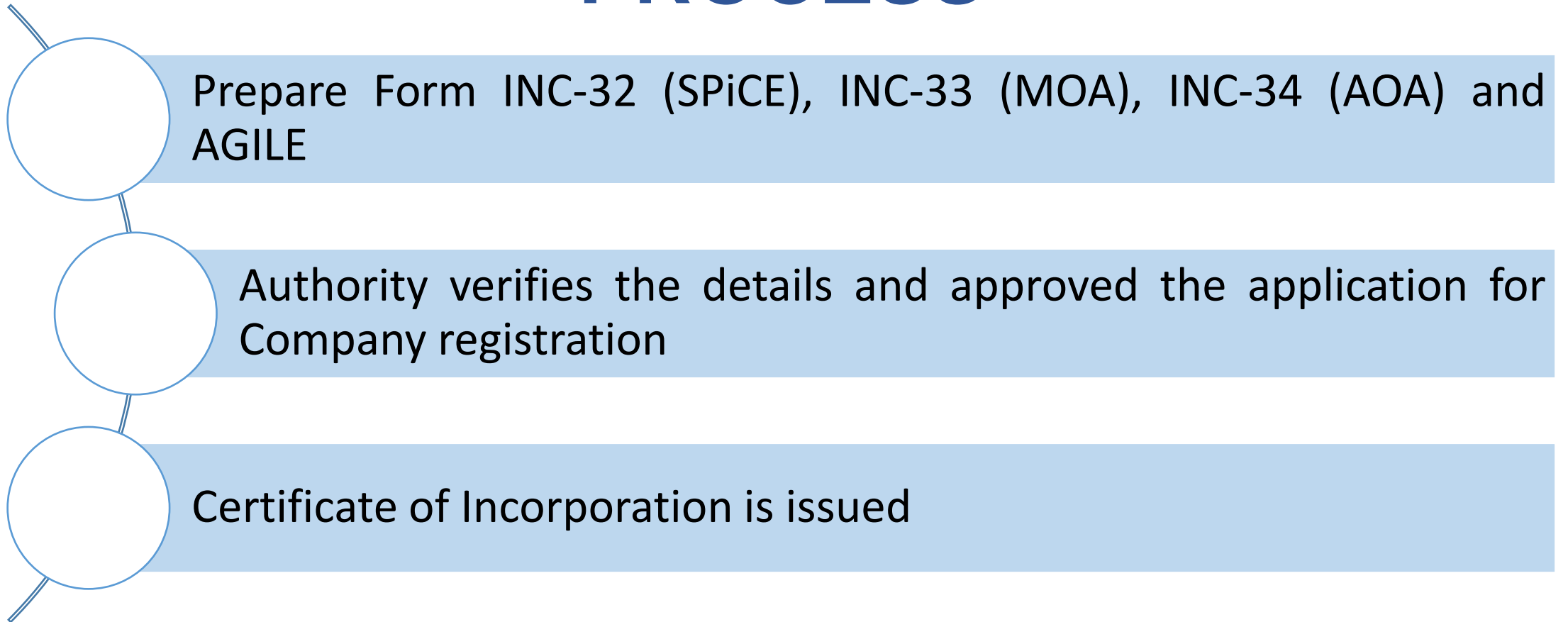
# INCORPORATION OF COMPANY



# INCORPORATION OF COMPANY - PROCESS



# INCORPORATION OF COMPANY - PROCESS



# FORMS OF INCORPORATION OF COMPANY



**Min – 2 Directors**  
**Min - 2 Members**  
**No cap on Minimum Share Capital**



**Min – 3 Directors**  
**Min – 7 Members**  
**No cap on Minimum Share Capital**



**Not more than 20 Directors**  
**Only One Member**  
**No cap on Minimum Share Capital**  
**Appointment of Nominee**

# FORMS OF INCORPORATION OF COMPANY

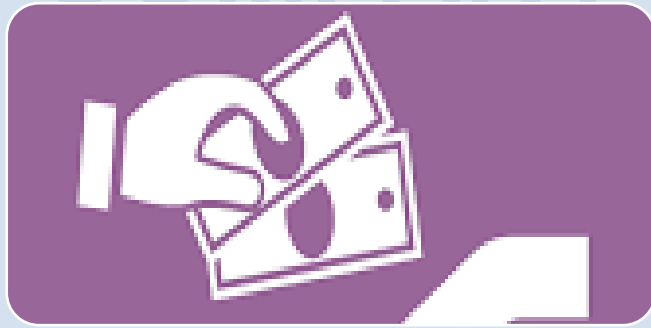


**Min – 2 Directors**

**Min - 2 Members**

**No cap on Minimum Share Capital**

**Registered as Non-Profit Organisation**



**Min – 2 Director**

**Min – 200 Members**

**Net Owned Funds to deposits not more than 1:20**

**Deemed to be a Private Limited Company**



**Min – 5 Directors**

**Min – 10 individual members or 2 Producer Companies**

**Main activity – Agriculture and allied**

**Deemed to be a Public Limited Company**

# CHARTER DOCUMENTS





# Memorandum of Association (MOA)

- 1. Name Clause – Proper Suffix to be mentioned***
- 2. Registered office Clause – State to be mentioned***
- 3. Object Clause – Main activity***
- 4. Liability Clause – Limited by shares or guarantees***
- 5. Share Capital Clause – Subscription of share***

# Articles of Association (AOA)

## *Regulations for management of the Company*

Clauses	Clauses
Nomination of shares	First Directors
Transfer of shares	Valuation
Right of First refusal	General meeting
Drag along Tag along	Board meeting

# Recent Amendments

**Ease of Doing  
Business  
+  
Better  
Corporate  
Compliance**

Tackling the  
larger issue of  
“shell  
companies”

Re-categorization  
of certain  
offences

Decriminalizing  
a host of  
offences

De-clogging  
the National  
Company Law  
Tribunal

# Journey of the Recent Amendments

**Form DIR-3  
KYC**

**Significant  
Beneficial owner-  
Form BEN-1**

**Form  
MSME**

**The Companies  
(Amendment)  
Ordinance,  
2019**

# Form DIR-3 KYC & DIR-3 KYC WEB

# INTRODUCTION- E-FORM DIR-3 KYC and DIR-3 KYC WEB

- The Ministry of Corporate Affairs - Notification - 5<sup>th</sup> July 2018
- DIN as on 31.03.2018 - Form DIR-3 KYC.
- DIN between 01.04.2018 to 31.03.2019 - Form DIR-3 KYC.
- No changes in details for DIN holders who filed Form DIR-3 KYC as on 31.03.2018 – then Web KYC (every year before 30<sup>th</sup> April).
- Change in Mobile Number and Email ID for DIN holders who filed Form DIR-3 KYC as on 31.03.2018 – Form DIR-3 KYC

# Significant Beneficial owner-Form BEN-1

# PURPOSE AND SIGNIFICANCE

- Lifting The Corporate Veil
- Clear Definition Of Significant Beneficial Ownership
- To Know The Actual Owner
- Obligation On Companies And Individuals To Comply

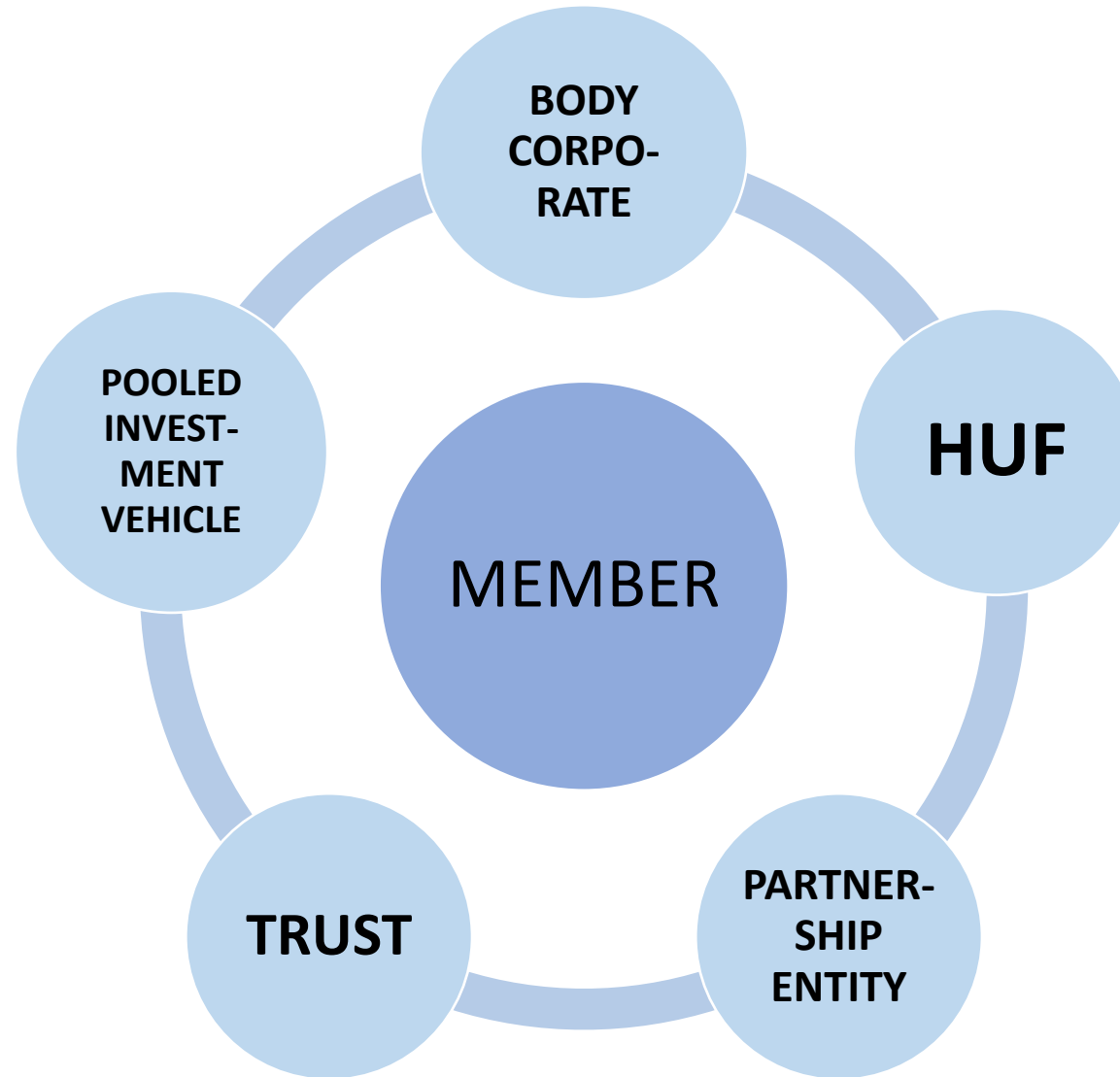


# INDIRECT + DIRECT HOLDING



- ▶ Mr. A is the direct owner of ABC Pvt Ltd and owns 30% shareholding
- ▶ Mr. A is also an indirect owner of ABC Pvt Ltd who owns 63% Indirect shareholding.
- ▶ Therefore , in this case Mr. A is Direct as well as Indirect Owner

# METHODS OF INDIRECT HOLDING



# DETERMINING SBO

## MEMBER IS BODY CORPORATE

The individual who

- holds majority stake in that member; or
- holds majority stake in the ultimate holding company of that member

## MEMBER IS HUF

- Karta of the HUF

## MEMBER IS PARTNERSHIP ENTITY

- The Individual who holds shares on behalf of entity; or
- holds majority stake in the body corporate which is a partner of the partnership entity; or
- holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.

# DETERMINING SBO

## MEMBER IS A TRUST

The individual who

- is a trustee in case of discretionary or charitable trust
- is a beneficiary in case of a specific trust;
- is the author or settlor in case of a revocable trust

## MEMBER IS POOLED INVESTMENT VEHICLE

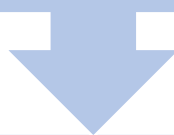
- General partner; or
- Investment manager; or
- Chief Executive Officer

# REPORTING REQUIREMENT

PARTICULARS	BEN-1	BEN-2	BEN-3	BEN-4
WHO	Individual holding Significant Beneficial Interest	Company shall file return for BEN-1 received	Company to maintain Register of Significant Beneficial Owners	Company to give Notice seeking information about Significant Beneficial Owners
TO WHOM	The Company in which the Significant Beneficial ownership is held	Registrar of Companies	-	Significant Beneficial Owners
WHEN	Within 90 days from 08.02.2019 In 30 days for any change or acquiring beneficial ownership	Within 30 days from the date of receipt of BEN-1	-	As soon as it identifies Significant Beneficial Owners

# COMPLIANCE PROCEDURE

Taking Note of Register of Members



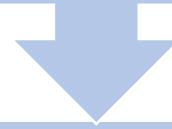
Identifying shareholding % of each member



Identifying Non-Individual Shareholders and their shareholders

## COMPLIANCE PROCEDURE

Identifying SBO behind the Non-Individual shareholders



Receiving BEN-1 from SBO to Company



Filing of Form BEN-2 by Company to ROC

# COMPLIANCE PROCEDURE

Maintenance of SBO Register in Form BEN-3



Notice to SBO for Declaration in Form BEN-4 by company



# EXEMPTIONS

If shares are held by –

- Authority constituted by CG to administer IEPF (Section 125 (5))
- Its holding reporting company and the details of such holding reporting company has been reported in Form BEN-2
- CG/SG/ Local Authority or entity controlled by them
- SEBI registered Investment Vehicles
- Investment Vehicles regulated by RBI or IRDA or Pension Fund Regulatory Authority

## PENAL PROVISIONS

- If Form BEN-1 is not complied, **Imprisonment upto 1 year or with fine 1 Lakh-10 Lakhs or with both.** Failure continues then a further fine of 1K per day
- If Form BEN-2 and BEN-3 not complied, Every Officer in default, fine of **10 Lakh to 50 Lakh** shall be imposed. Failure continues, then further fine of 1K per day
- If any person wilfully suppresses some facts or provides false information, he shall be liable under Section 447.

# Form MSME

# DEFINITIONS

- Micro Small Enterprises: Any class of Entity

MANUFACTURING SECTOR		SERVICE SECTOR	
<b>Enterprises</b>	Investment in Plant & Machinery	Enterprises	Investment in Equipment
<b>Micro Enterprises</b>	Does not exceed Rs. 25 Lakh	Micro Enterprises	Does not exceed Rs. 10 Lakh
<b>Small Enterprises</b>	More than Rs. 25 Lakh but does not exceed Rs. 5 Crore	Small Enterprises	More than Rs. 10 Lakh but does not exceed Rs. 2 Crore

# COMPLIANCES

Received - Goods or Services from MSME by Specified companies and payment is outstanding for 45 days - due on 31<sup>st</sup> March and 30<sup>th</sup> September every year then report the same to ROC the following details:

- Name of Suppliers (Individually)
- PAN of Supplier (Individually)
- Specify the date (Individually)
- Amount due to Supplier (Individually)
- Reason for DELAY , if any

# EXEMPTION

Form MSME-1 is not applicable in the case of **Medium Enterprises**;

- Payment to MSMEs suppliers does not exceed 45 days
- If payment Exceed 45 days but supplier/Creditors given a declaration that they do not fall under Micro or small Enterprises.

# FORM DPT-3

# DEFINITION: DEPOSITS

## WHAT IS DEPOSITS ?

**SECTION 2(31) OF THE ACT, DEFINES “DEPOSIT” WHICH INCLUDES ANY RECEIPT OF MONEY BY WAY OF DEPOSIT OR LOAN OR IN ANY OTHER FORM BY A COMPANY, BUT DOES NOT INCLUDE SUCH CATEGORIES OF AMOUNT RECEIVED AS PROVIDED IN RULE 2(1)(C) OF THE COMPANIES (ACCEPTANCE OF DEPOSITS) RULES, 2014, AS AMENDED FROM TIME TO TIME**



# PROCEDURAL REQUIREMENTS

- Passing of Special/Ordinary Resolution as the case may be
- Filing of E-form MGT-14 within 30 days
- Credit Rating
- Filing of a Circular before 30 days of its issue
- Appointment of Trustees for depositors for creating security for deposits
- Execution of Deposit Trust Deed before 7 days of issue of circular

# PROCEDURAL REQUIREMENTS

- Issuance of a Circular
- Secured Deposits: Provision of security and creation of charge thereon
- Issue of Deposit Receipts to the Depositors
- Maintenance of Register of Depositors
- 25% deposit repayment reserve before the 30<sup>th</sup> April
- Filing of Return of Deposits

# PENAL PROVISIONS

## **FOR COMPANY:**

AMOUNT OF DEPOSITS + INTEREST THEREON + FINE LOWER OF (INR 1.00 CR OR TWICE OF DEPOSITS ACCEPTED) WHICH MAY EXTEND TO INR 10.00 CR.

## **FOR EVERY OFFICER IN DEFAULT:**

IMPRISONMENT WHICH MAY EXTEND 7 YRS **AND** WITH FINE NOT LESS THAN INR 25.00 LAKH, WHICH MAY EXTEND TO INR 2.00 CR.

# The Companies (Amendment) Ordinance, 2019

# Commencement of Business

## The Companies (Amendment) Ordinance, 2019

File a declaration within a period of **180 days**

**Incorporated  
after 2<sup>nd</sup>  
November 2018**

**Every company  
having share  
capital**

**Section 10A  
(Re-Introduced)**

# Section 12- Registered Office of Company

## ❖ New sub- section (9)

❖ Physical verification of the registered office



❖ Reasonable cause - No business or operations is being carried out

❖ Additional ground for Registrar to  name of the company.

# Section 77- Duty to Register Charges

Creation of charges has to be registered  
within 30 days of creation



It may be extended by the Registrar to additional  
30 days by way of an application



In case of failure to register within additional time of 30 days



Registrar may, on an application, allow an additional period of 60 days



Levy of an **ad valorem fee**

# Section 164 – Disqualification of Directors

- A new clause has been inserted under the Section 164 linking to Section 165
- Breach of limits of maximum directorship will also Disqualify the Director now.
- Any of the clauses of Section 164 leads to automatic vacation of office that too, from all the existing companies.

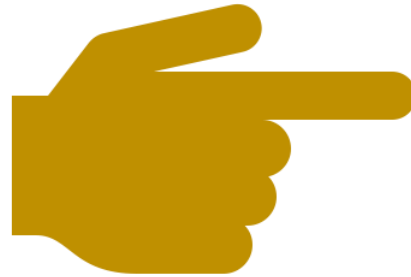


# Section 441- Compounding of Offences

INCREASED LIMIT OF OFFENCE FOR COMPOUNDING

BEFORE THE REGIONAL DIRECTOR

5 LAKHS



25 LAKHS

# Section 454A- Penalty for repeated default (New Section)

In case of repeated defaults by companies or any person

**PENALTY  
DOUBLED**

Subsequent default if repeated within 3 years

# Checkpoints - Audit report & preparing Company Accounts



# WHAT IS ACCOUNTING AND WHAT DOES COMPANY ACCOUNTS MEAN?

- Accounting is the systematic and comprehensive recording of financial transactions pertaining to a business.
- Whereas Company Accounts means - A set of financial records that a company must produce at the end of a business year in which details of the company's profits and losses and Company's current financial positions are reflected

# Provisions applicable while preparation of Company Accounts report

- Schedule III of the Companies Act, 2013
- The Income Tax Act, 1961
- Applicability of IND AS
- Consolidation of Accounts

# IMPORTANT SECTIONS

- While preparing the Company Accounts certain sections are to be kept in mind and details of which are presented as below:

Section	Brief Description
2 (2)	Definition of accounting standards
2 (6)	Definition of associate company
2 (7)	Definition of auditing standards
2 (8)	Definition of authorised capital or nominal capital
2 (13)	Definition of books of account
2 (17)	Definition of Chartered Accountant
2 (35)	Definition of Dividend

# IMPORTANT SECTIONS

Section	Brief Description
2 (40)	Definition of Financial Statements
2 (41)	Definition of Financial Year
2 (46)	Definition of Holding Company
2 (57)	Definition of Net worth
2 (62)	Definition of One Person Company
2 (68)	Definition of Private Limited Company
2 (71)	Definition of Public Limited Company
2 (72)	Definition of Public Financial Institutions
2 (76)	Definition of Related Party Transactions
2 (78)	Definition of remuneration
2 (85)	Definition of Small Company

# IMPORTANT SECTIONS

Section	Brief Description
123 to 127	Disclosure of Dividend and Investor Education and Protection Fund (IEPF) provisions
128 to 138	Financial Statements and allied provisions
139 to 141	Appointment of Auditors



# CHECKPOINT WHILE PREPARING FINANCIALS

PARTICULARS	CHECKPOINT
Share Capital	<ul style="list-style-type: none"><li>• Whether authorized share capital increased during the year?</li><li>• Whether shares are allotted during the year?</li><li>• Whether shares are transferred during the year?</li></ul>
Share application pending allotment	<ul style="list-style-type: none"><li>• No shares allotted against share application money, then treated as Deposits</li></ul>
Borrowings (Secured)	<ul style="list-style-type: none"><li>• If funds borrowed during the year and are secured against asset of Company, creation of charge (Section 77 of CA 2013)</li></ul>

# CHECKPOINT WHILE PREPARING FINANCIALS

PARTICULARS	CHECKPOINT
Trade Payable	<ul style="list-style-type: none"><li>• MSME Compliance</li></ul>
Tangible or Intangible	<ul style="list-style-type: none"><li>• Additions during the year – Approval of Board</li></ul>
Investments in shares	<ul style="list-style-type: none"><li>• Approval of Board, Check % of holding, Share Certificates (Section 186 of CA 2013)</li></ul>

# CHECKPOINT WHILE PREPARING FINANCIALS

PARTICULARS	CHECKPOINT
Loan and Advances	<ul style="list-style-type: none"><li>• Loan given to Director (Section 185 of CA 2013)</li></ul>
Revenue from operations	<ul style="list-style-type: none"><li>• Domestic / Foreign</li></ul>
Employee Benefit Expenses	<ul style="list-style-type: none"><li>• Includes Director's remuneration</li></ul>
Related Party Transactions	<ul style="list-style-type: none"><li>• Details as per AS-18 needs to be reported</li></ul>

*CS Pawan G Chandak*

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Google Map Link: <https://goo.gl/maps/GFZFYEZTGo22>