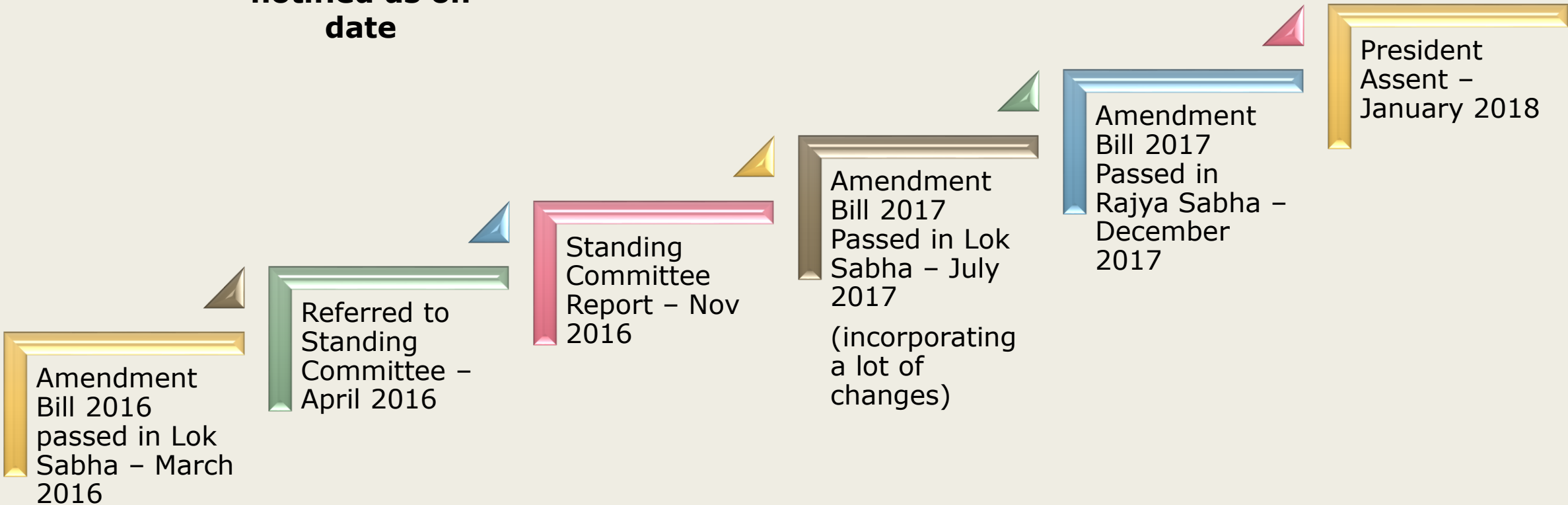


Companies Amendment, Act 2017 A

reality

**Out of 93
Sections 73 are
notified as on
date**



The image features two thick black L-shaped bars. One is positioned in the top-left corner, and the other is in the bottom-right corner, framing the central text.

INCORPORATION OF A COMPANY

REVOLUTIONARY IN THE HISTORY

STATISTICS-AT A GLANCE



INCORPORATION JOURNEY SO FAR

**01.04.2014
TO
30.04.2015**

**New forms for Incorporation Company
Introduced i.e.**

INC-1	Name Approval
DIR-3	DIN
INC-7	Incorporation Of Company
DIR-12	Appointment of Director
INC-22	Registered Office

**01.05.2015
TO
30.09.2016**

**INTEGRATED
INCORPORATION PROCESS
INC - 29**

**01.10.2016
TO
26.01.2018**

**(INCORPORATION) FOURTH AMENDMENT
RULES, 2016**

1. This form was **one step ahead to INC-29.**
2. **Electronic MOA & AOA** introduced in this Form.
3. **PAN & TAN** application become **mandatory**
4. Resubmission for RUN

'EASE OF DOING BUSINESS'

New Process of Name Approval "RUN" notified and e-form INC-1 omitted.

INC-7 form omitted.

No ROC fees for Incorporation of Company up to INR 10 lakhs of Authorized Capital.

Updated version of SPICE notified.

No Requirement of Minimum Paid up share Capital.

No requirement of DIN at the time of Incorporation of Company.

E-MOA & AOA.

Resubmission of RUN-One resubmission allowed

DSC & DIN not required for filing of RUN form for reservation of Name. Only account of MCA portal is mandatory.

TYPES OF COMPANY

- *Incorporation is the legal process used to form a corporate entity or company. A Company is a separate legal entity from its owners, with its own rights and obligations. One can form the following types of the companies:*
 - ***Private Limited Company {Definition as per Companies Act, 2013-Section 2(68)}***
 - ***Public Limited Company {Definition as per Companies Act, 2013-Section 2(71)}***
 - ***One Person Company-{Definition as per Companies Act, 2013-Section 2(62)}***
 - ***Producer Company- (Section 465(1) and Part IX A of the Companies Act, 1956)***
 - ***Section 8 Company- {Definition as per Companies Act, 2013-Section 8)***

COMPARISON- PRIVATE LIMITED AND PUBLIC LIMITED COMPANY

Sr. No	Brief Description	Private Limited Company	Public Limited Company
1	Meaning	No Minimum Capital Right to transfer the shares-Restricted	No Minimum Capital Free Transferability of Shares
2	Minimum Members Required	2 (Two), Maximum 200 (Two Hundred)	7 (Seven)- No Maximum Limit
3	Name of the Company	“Private Limited” as suffix	“Limited” as suffix
4	Minimum number of Directors	2 (Two)	3 (Three)

COMPARISON-CONTINUED.....

Sr. No	Brief Description	Private Limited Company	Public Limited Company
5	Provision of entrenchment in the Articles	To be agreed and approved by ALL the members	To be agreed and approved through a Special Resolution
6	Small Company	If Paid-up Share Capital does not exceed Rs. 50 Lakhs and Turnover as per LAST Audited accounts does not exceed Rs. 2 Crore	Not Applicable

FEATURES OF SECTION 8 COMPANY

Sr. No	Brief Description	Section 8 Company
1	Meaning	A Section 8 Company is an organization which is registered as a Non-Profit Organization (NPO) having an objective to promote arts, commerce, charity, education, protection of environment, science, social welfare, sports, research, religion and intends to apply its profits/surplus, if any, or other income in promoting its objects
2	Minimum Members Required	2 (Two)
3	Name of the Company	No compulsion for Prefix or Suffix to be used, however they might suffix words such as Foundation, Charitable etc.
4	Minimum number of Directors	2 (Two)
5	Additional Requirement	The Promoters of the Proposed Section 8 Company must obtain a License in INC-12 before registration of Company

FEATURES OF PRODUCER COMPANY LIMITED

Sr. No	Brief Description	Producer Company Limited
1	Meaning	A Company having an objective of production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit
2	Minimum Members Required	10 members
3	Name of the Company	“Company Limited”
4	Minimum number of Directors	5 Directors
5	Constitution	Private Limited Company

FEATURES OF NIDHI COMPANY LIMITED

Sr. No	Brief Description	Nidhi Limited
1	Meaning	Nidhi” means a company which has been incorporated as a Nidhi with the object of Cultivating the habit of thrift and savings amongst its members
2	Minimum Members Required	7 members
3	Name of the Company	“Nidhi Limited”
4	Minimum number of Directors	3 Directors
5	Constitution	Public Limited Company

FEATURES OF LIMITED LIABILITY PARTNERSHIP (LLP)

Sr. No	Brief Description	Limited Liability Partnership (LLP)
1	Meaning	It is a corporate structure that combines the flexibility of a partnership and enjoys all the advantages of limited liability of a company
2	Minimum Partners Required	Every LLP shall have at least two partners and shall also have at least two individuals as Designated Partners, of whom at least one shall be resident in India
3	Name of the LLP	“LLP” (Limited Liability Partnership)
4	Members of LLP	Even the Limited Liability Partnership/Private Limited Company shall be members and contribute in the share capital of the Company

PRE-REQUISITE AND INFORMATION FOR INCORPORATION

- Digital Signature Certificate- The DSC of every promoter is required
 - *In case the number of promoters are less than 7 (Seven) then DSC has to be attached to Form INC 33 Memorandum of Association (MOA)*
 - *In case the number of promoters are more than 7 (Seven) then the physical copy of Articles of Association (AOA) and Memorandum of Association (MOA)*
- Director Identification Number (DIN)- Every intending Director shall obtain a valid DIN before he/she is being appointed as Director of any company, however recently, for incorporation of the Company, an individual need not mandatorily obtain the DIN prior to the incorporation.

CONTINUED.....

- **Name of the Company**-The name of the proposed company may either be approved by the registry prior to the date of filing of requisite registration form or may directly apply through Form INC-32.
- **Registered office of the Company**: It shall be determined on the basis of the jurisdiction of the premises of the registered office of the Company.
- **Capital of the Company**: As per the recent amendment, the Ministry of Corporate Affairs (MCA) has introduced “ZERO” filing fees for the authorized capital of the Company upto INR 10 lakhs.
- Details of Directors and their shareholding, if any.

MANDATORY ATTACHMENTS TO THE **FORM**

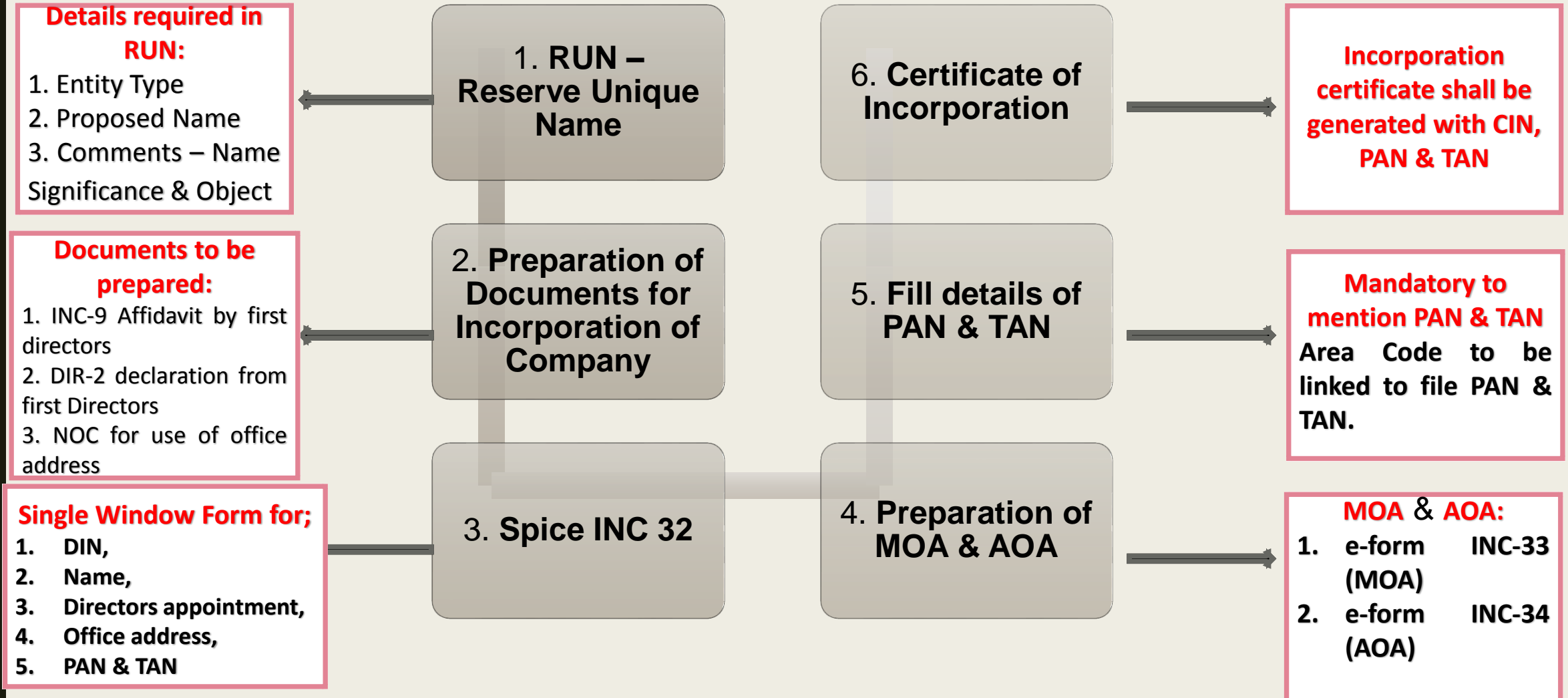
- **INC-9**-Affidavit for stating confirmation for subscription to the Memorandum of Association of the Company and acting as First Directors of the Company, however, now a simple declaration shall also suffice the purpose.
- **DIR-2**-Consent to act as Director-Primary details of Director along with the details of other Directorships
- **Registered office proof**: In case of rented premises, rent agreement or lease agreement shall be attached and NOC of the owner is mandatorily required. In case of owned premises, copy of Index II is required.
- **Utility Bill**- Electricity Bill, Telephone Bill, Gas Connection, Water Connection Bill.

CONTINUED.....

- **Memorandum of Association and Articles of Association-**
As per the latest amendment, the MOA and AOA shall be submitted to MCA through E-form INC-33 (MOA) and E-form INC-34 (AOA), however in case of more than 7 subscribers, the physical copy of MOA and AOA to be attached to the Form INC-32 and no need of filing separate Form INC-33 and Form INC-34.
- Self attested copy of PAN card in case of Indian Director/Promoter and Self attested copy of Proof of residence (Aadhar card is permissible). In case of Foreign Director/Promoter copy of Passport is mandatory.

PROCESS...

A COMPANY COMES INTO EXISTENCE IS GENERALLY BY A PROCESS REFERRED TO AS INCORPORATION



FEATURES OF COMPANIES AMENDMENT ACT, 2017

- In section 7 of the principal Act, in sub-section (1), in item (c), for the words "an affidavit", the words "a declaration" shall be substituted i.e. instead of affidavit and procurement of Stamp paper we may give a simple declaration.
- The *RUN* form shall be allowed for resubmission once and two name may be applied as per preference (Earlier 6 (Six) names were allowed)

FEATURES OF COMPANIES AMENDMENT ACT, 2017

- Once the name is approved, the same shall be reserved for the period of **20 (Twenty) days only**. There is drastic reduction in the reservation period from 60 days to 20 days.
- A company shall **within thirty days** of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.
- The name of the Company need not be in connection with the main object of the Proposed Company.

DIFFICULTIES AND WAY AHEAD

- ❑ The approved name in case of Incorporation shall be reserved for the period of **20 (Twenty) days only**. Hence, the promoters of the proposed company might face problem for filing of the Incorporation form within 20 days from the date of approval.
- ❑ Obtaining license with respect to incorporation of Section 8 company within span of 20 days becomes difficult, in this situation, the Promoters of the Proposed Company after the expiry of 20 days may attach the name approval letter to the form INC-32 and get the company registered.
- ❑ In case of Foreign Promoters and Directors-All the documents must be apostilled/ COUNSULARISED. In such cases, filing of form with period of 20 days becomes difficult.

CONTINUED....

- ❑ In case of incorporating a Producer Company Limited- the farmers being members of the Proposed company, their proof of occupation is mandatory. Copy of 7/12 Extract or Agri-Bank statement is also permissible.
- ❑ Post incorporation compliances for Nidhi Company is very crucial and important for example: Net owned funds of INR 10 lakhs, Net owned fund to deposit ratio 1:20.
- ❑ Limited Liability Partnership is very flexible however, in case of delay in compliance penalty of INR 100 per day is applicable for ALL forms.

CHARGES UNDER COMPANIES ACT, 2013



STATUTORY FRAMEWORK - CHARGES


SECTION 2 (16) - Definition of Charge



CHAPTER VI - Registration Of Charges



SECTION 77 to 87 - Governing Sections



The Companies (Registration Of Charges) Rules, 2014 – Guidelines.

CHAPTER VI - REGISTRATION OF CHARGES

Section 77 –
Duty to Register Charges,
etc.

Section 78 –
Application for
Registration of Charge

Section 79 –
Section 77 to Apply in
Certain Matters

Section 80 –
Date of Notice of Charge

Section 81 – Register of
Charges to be kept by
Registrar

Section 82 – Company to
Report Satisfaction of
Charge

Section 83 –
Power of Registrar to Make Entries of
Satisfaction and Release in Absence of
Intimation from Company

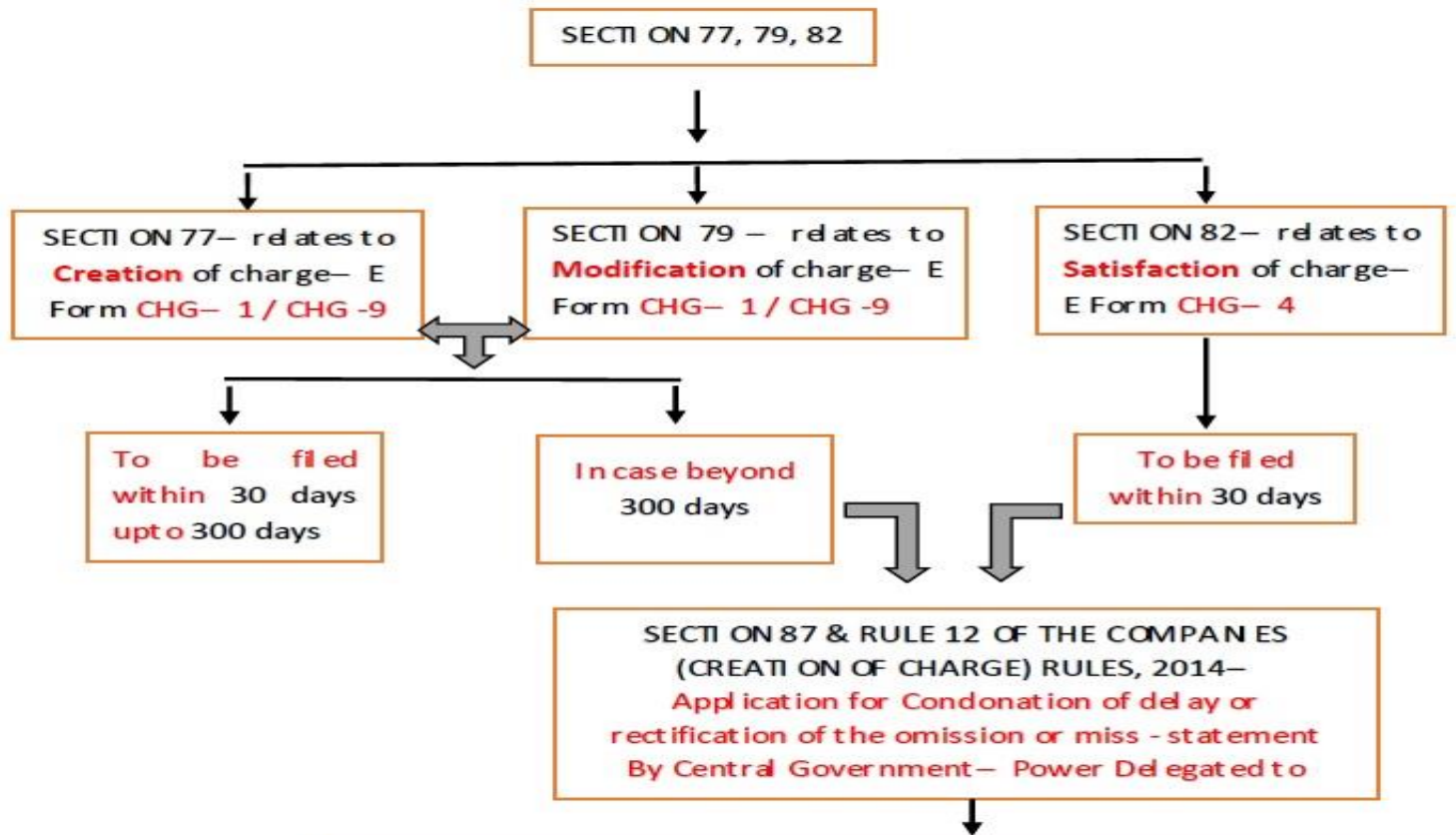
Section 84 –
Intimation of
Appointment of Receiver
or Manager

Section 85 – Company's
Register of Charges

Section 86 – Punishment
for Contravention.

Section 87 – Rectification
by Central Government in
Register of Charges

COMPANIES (REGISTRATION OF CHARGES) RULES 2014



SECTI ON 87 & RULE 12 OF THE COMPAN ES
(CREATI ON OF CHARGE) RULES, 2014-
Application for Condonation of delay or
rectification of the omission or miss - statement
By Central Government - Power Del egated to

Application in e - Form CHG- 8 for which we will require;

Sr. No	Particulars	Fees	
1.	Instrument creating/ modifying / satisfying the charge;	Based on authorized share capital of:	
2.	Board resolution authorizing the filing of application	Upto Rs. 25,00,000	2,000
3.	Petition for condonation of delay or omission or miss-statement	25,00,000 -	5,000
		50,00,000	10,000
4.	Affidavit verifying the petition	5,00,00,000	15,000
5.	Memorandum of Appearance	10,00,00,000	
6.	Certified True Copy of CHG -1 / CHG - 4 / CHG - 9	More than Rs. 10 crores	20,000

ENABLING PROVISIONS FOR CHARGES



SECTION ANALYSIS - **SECTION 77:-** **KEY TAKEAWAYS**

- **77 (1):** It is Company's **duty to register a charge** within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India **in CHG – 1 within 30 days** of creation.
- Provided Company may file **beyond 30 days or within 300 days** by paying **additional fees**.
- In case of delay **beyond 300 days**, the delay is to be **condoned** by the ***Central Government under Section 87** of the Companies Act, 2013.
- **77 (2):** Once charge registered with the Registrar; **Certificate of registration (CoR)** of charge will be received.
- **77 (3):** A charge to have its standing in the Court of Law is required to be registered under the provisions of this Section vide a CoR.
 - **Ammendment w.e.f. 07.05.2018:** This Section to not apply to such charges as may be prescribed in consultation with the Reserve Bank of India.

■ SECTION 78: - KEY TAKEAWAYS

- 78(1): Application to be made by a person in whose favor charge is created (Charge-holder) to the Registrar for registration of Charge in case the Company has failed to register the charge # *within a period of 30 days referred to in sub – section (1) of Section 77 of the Companies Act 2013.*
- In case charge is registered by the Charge-holder in accordance with sub – section 78(1), the Charge-holder is entitled to recover fees including additional fees from the Company.

Amended w.e.f. 07.05.2018

SECTION ANALYSIS



SECTION ANALYSIS

SECTION 79 – 81 : - **KEY TAKEAWAYS**

Section No.	Particulars
Section 79	<p>Section 77 to Apply in Certain Matters</p> <ul style="list-style-type: none">▪ Acquiring of any property subject to a charge▪ Modification in the terms / conditions / extent of operation of such charge.
Section 80	<p>Date of Notice of Charge</p> <ul style="list-style-type: none">▪ Any person deemed to have notice of the charge from the date of its registration in case such person acquires such property, assets, undertakings or part thereof or any share or interest therein.
Section 81	<p>Register of Charges to be kept by Registrar</p> <ul style="list-style-type: none">▪ Particulars of charges maintained on the Ministry of Corporate Affairs portal (www.mca.gov.in/MCA21) deemed to be the register of charges open for inspection to any person.

■ SECTION 82: - **KEY TAKEAWAYS**

- **82(1)**: Company to register Charge within a period of 30 days of the payment or satisfaction in full.
- **82(2)**: Opportunity to be provided to the chargeholder to give objections if any; in case otherwise the Registrar shall order that a memorandum of satisfaction shall be entered in the register of charges.
- **82(3)**: In case any cause shown, Registrar to record and intimate the Company.
- **82(4)**: powers of the Registrar to make an entry in the register of charges.

Exemption: Specified IFSC Public Company and Specified IFSC Private Company are exempted from Sec 82 (1) and can file forms for within a period of 300 days by paying additional fees.



SECTION
ANALYSIS

SECTION ANALYSIS

SECTION 83 – 86 : - KEY TAKEAWAYS

Section No.	Particulars
Section 83	Power of Registrar to Make Entries of Satisfaction and Release in Absence of Intimation from Company.
Section 84	<p>Intimation of Appointment of Receiver or Manager</p> <ul style="list-style-type: none">▪ In case receivers are appointed by any person; intimation to be given to the Registrar and the Company within 30 days of such appointment and the Registrar shall register the receiver in the Register of charge.▪ In case of cessation of office of the receiver such notice to be given to the Registrar and the Company.
Section 85	<p>Company's Register of Charges</p> <ul style="list-style-type: none">▪ Company to maintain register of charges in CHG – 7 and the entries therein shall be made forthwith after the creation, modification or satisfaction of charge.▪ Register of charge to be preserved permanently and the instrument creating or modifying shall be preserved for a period of 8 years.
Section 86	<p>Punishment for Contravention.</p> <ul style="list-style-type: none">▪ Company: Fine: Min 1 lakh to 10 lakh▪ Officer in default: Imprisonment: upto 6 months; or Fine: Min 25,000 upto 1 lakh or both.

SECTION ANALYSIS

■ SECTION 87: - KEY TAKEAWAYS

- (1) The #Central Government on just and equitable grounds and on being satisfied that—
 - The Company has **omitted to file** form for **creation of charge** or **charge** for which any **property acquired** or modification of charge; or
 - The Company has **omitted** to file form for **creation / modification / satisfaction of charge** within prescribed **time**; or;
 - **Omission or misstatement** of any **particular** with respect to any such charge or modification or satisfaction of charge.
- (2) Condone the delay beyond 300 days by making the application in Form CHG – 8.
- (3) Once the order of condonation is received, INC – 28 to be filed with the ROC within 30 days of receipt o the order.



Powers delegated to RD vide MCA Notification Dated 19th December 2016, conferring powers by Section 458 of the Companies Act, 2013.

PROCESS FOR CONDONATION

Application for condonation	Preparing a detailed application for condonation of delay.
Calling of Board Meeting	Company will call the Board Meeting as per Companies Act, 2013 and SS-1.
Holding of BM	Pass a board resolution to file application with MCA for condonation of delay and authorizing any director/secretary/any officer of the Company for preparation and signing of documents including application in this regard.
Filing of Form with MCA	<u>PROCEDURE FOR MAKING APPLICATION:</u> Company will file the e-form CG-1 with MCA along with following attachments: <ul style="list-style-type: none">• Application for Condonation of Delay.• Copy of Resolution for which the e-form was required to be file.• Board resolution to authorize any director/secretary/any officer of the Company for preparation and signing of

PROCESS FOR CONDONATION

Order by Authority	Receipt of Order
Payment of amount of order by Company	After receipt of order, if any penalty is levied in that order, the company should pay it in appropriate account and generate a copy of challan for such a payment.
Filing of Order with ROC	After payment of fees, if any, Company will file INC-28 with ROC along with following attachments: <ul style="list-style-type: none">• Copy of order;• Copy of challan of payment of fees, if any.
Filing of e-form with ROC	After filing of INC-28, Company will file e-form, with additional fees as maybe applicable , by mentioning the SRN of INC-28 in that e-form along with following attachments: <ul style="list-style-type: none">• Copy of order;• Copy of Resolution/documents for which e-form was required to file

Sr. No.	Section Reference & Particulars	Prior to Amendment	Post Amendment
1. .	Section 77 – Section not to apply to charges prepared in consultation with RBI.	No such provision	Central Government in consultation with RBI may exempt charges to which section 77 shall not apply
2.	Section 78(1) - Where a company fails to register the charge within the period of thirty days referred to in sub-section (1) of Section 77.	Register the charge within the period specified in section 77	register the charge within the period of thirty days referred to in sub-section (1) of section 77

AMMENDMENTS IN COMPANIES ACT RELATING TO CHARGES

AMMENDMENTS YET TO COME INTO EFFECT

- **EFFECT OF AMMENDMENT:** Form for satisfaction of charge i.e. CHG – 4 can be filed upto 300 days by paying additional fees and after 300 days by condonation of delay under Section 87 of the Companies Act, 2013.

Sr. No.	Section Reference & Particulars	Prior to Amendment	Post Amendment
1.	<p>Section 82 – Omitted the striketrough part.</p> <p>Proviso added.</p>	<p>A company shall give intimation to the Registrar in the prescribed format of the payment or satisfaction in full of any charge registered under this Chapter within a period of thirty days from the date of such payment or satisfaction and the provisions of sub-section (1) of section 77 shall, as far as may be, apply to an intimation given under this section.</p>	<p><u>Proviso Added:</u> Provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees as may be prescribed.</p>



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