

# ***SETTING UP OF BUSINESS ENTITIES & CLOSURE (AMENDMENTS FOR DECEMBER 2021 EXAM)***

## **CHAPTER – 2 – CLASSIFICATION OF COMPANIES**

### **PAGE NO. 8 – NOMINATION BY THE SUBSCRIBER OR MEMBER OF ONE PERSON COMPANY**

**Last two Paras shall be substituted by the Following two Paras:**

It may be noted that only a natural person who is an Indian citizen *whether resident in India or otherwise* —

- shall be eligible to incorporate a One Person Company;
- shall be a nominee for the sole member of a One Person Company.

Here, the term "resident in India" means a person who has stayed in India for a period of not less than *one hundred and twenty days* during the immediately preceding financial year.

### **PAGE NO. 10 – DEFINITION AND MEANING OF SMALL COMPANY**

**First Para shall be substituted by the Following Para:**

The term 'small company' has been defined under **Section 2(85) of Companies Act, 2013.**

As per this, small company means a company, **other than a public company**,—

- (i) paid-up share capital of which does not exceed ***two crore rupees*** or such higher amount as may be prescribed which shall not be more than **ten crore rupees**; and
- (ii) turnover of which, as per profit and loss account for the immediately preceding financial year, does not exceed ***twenty crore rupees*** or such higher amount as may be prescribed which shall not be more than **one hundred crore rupees**:

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**CHAPTER – 3 – PROMOTION & FORMATION OF COMPANY**

**PAGE NO. 25 – APPLICATION FOR REGISTRATION OF GOODS AND SERVICE TAX IDENTIFICATION NUMBER (GSTIN), EMPLOYEES’ PROVIDENT FUND ORGANIZATION (EPFO) REGISTRATION, EMPLOYEES’ STATE INSURANCE CORPORATION (ESIC) REGISTRATION, PROFESSIONAL TAX REGISTRATION AND OPENING OF BANK ACCOUNT [RULE 38A]**

Changes in heading and other Changes

Entire Amended Topic is as follows:

**APPLICATION FOR REGISTRATION OF GOODS AND SERVICE TAX IDENTIFICATION NUMBER (GSTIN), EMPLOYEES’ PROVIDENT FUND ORGANIZATION (EPFO) REGISTRATION, EMPLOYEES’ STATE INSURANCE CORPORATION (ESIC) REGISTRATION, PROFESSIONAL TAX REGISTRATION, OPENING OF BANK ACCOUNT AND SHOPS & ESTABLISHMENT REGISTRATION [RULE 38A]**

The application for incorporation of a company under Rule 38 shall be accompanied by e-form **AGILE-PRO-S (INC-35)**, containing an application for registration of the following numbers, namely:

- (a) GOODS AND SERVICE TAX IDENTIFICATION NUMBER (GSTIN);
- (b) EMPLOYEES’ PROVIDENT FUND ORGANIZATION (EPFO);
- (c) EMPLOYEES’ STATE INSURANCE CORPORATION (ESIC);
- (d) PROFESSIONAL TAX REGISTRATION;
- (e) OPENING OF BANK ACCOUNT; AND
- (f) SHOPS AND ESTABLISHMENT REGISTRATION.

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**CHAPTER – 4 – MEMORANDUM & ARTICLES OF ASSOCIATION**

**PAGE NO. 44 – COMPULSORY CONVERSION OF ONE PERSON COMPANY INTO A PUBLIC COMPANY OR A PRIVATE COMPANY**

**Entire Topic shall be substituted by the following Topic:**

**Conversion of One Person Company into a Public Company or a Private Company**

The One Person Company (OPC) shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.

A One Person company may be converted into a Private or Public Company, other than a company registered under section 8 of the Act, after increasing the minimum number of members and directors to two or seven members and two or three directors, as the case may be, and maintaining the minimum paid-up capital as per the requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.

The company shall file an application in **e-Form No. INC-6** for its conversion into Private or Public Company, other than under section 8 of the Act, along with fees as provided in the Companies (Registration offices and fees) Rules, 2014 by attaching documents, namely:-

- (a) Altered MOA and AOA;
- (b) copy of resolution;
- (c) the list of proposed members and its directors along with consent;
- (d) list of creditors; and
- (e) the latest audited balance sheet and profit and loss account.

On being satisfied that the requirements stated herein have been complied with, the Registrar shall approve the form and issue the Certificate.

**PAGE NO. 44-45 - VOLUNTARY CONVERSION OF OPC INTO A PUBLIC COMPANY OR A PRIVATE COMPANY**

**This Topic has been Omitted.**

**PAGE NO. 45 - CONVERSION OF PRIVATE COMPANY INTO ONE PERSON COMPANY (OPC)**

**Entire Topic shall be substituted by the following Topic:**

**Conversion of Private Company into One Person Company (OPC)**

A private company, other than a company registered under section 8 (non-profit company) of the Act, may convert itself into one person company by passing a special resolution in the general meeting.

Before passing such resolution, the company shall obtain No objection in writing from members and creditors.

The private company shall file copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in **Form No. MGT. 14**.

The company shall file an application in **Form No. INC.6** for its conversion into One Person Company along with fees as provided in the Companies (Registration offices and fees) Rules, 2014, by attaching the following documents, namely:—

- The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion;
- the list of members and list of creditors;
- the latest Audited Balance Sheet and the Profit and Loss Account; and
- the copy of No Objection letter of secured creditors.

On being satisfied and complied with requirements stated herein the Registrar shall issue the Revised Certificate of Incorporation, mentioning that now it has become a One Person Company.

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## **CHAPTER – 12 – MISCELLANEOUS**

### **PAGE NO. 147 – PRODUCER COMPANY**

**Entire Topic shall be substituted by the following Topic:**

### **PRODUCER COMPANY**

#### **Introduction**

Chapter XXIA, covering **Sections 378A to 378ZU**, of the Companies Act, 2013, as inserted by Companies (Amendment) Act, 2020, govern the concept of Producer Companies. **These provisions have come into effect from 11<sup>th</sup> February, 2021.**

Clause (l) of Section 378A of the Companies Act, 2013 defines the term “**Producer Company**”. As per this, Producer Company means a body corporate having objects or activities specified in Section 378B and registered as Producer Company under this Act or Companies Act, 1956.

The membership of producer companies is open to such people who themselves are the primary producers, which is an activity by which some agricultural produce, including animal husbandry, horticulture, forest products, etc., is produced by such primary producers.

The concept of Producer companies will provide an opportunity to the co-operative sector to do the business in the corporate form.

#### **Objects of Producer Companies**

In terms of Section 378B (1) of the Companies Act, 2013, the objects of the Producer Company shall relate to all or any of the following matters, namely:

- (a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit.
- (b) processing including preserving, drying, distilling, brewing, vinting, canning and packaging of the produce of its Members.
- (c) manufacturing, sale or supply of machinery, equipment or consumables mainly to its Members.
- (d) providing education on the mutual assistance principles to its Members and others.
- (e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members.
- (f) generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce.
- (g) insurance of producers or their primary produce.
- (h) promoting techniques of mutuality and mutual assistance.

- (i) welfare measures or facilities for the benefit of the members as may be decided by the Board.
- (j) any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) above or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner.
- (k) financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) above, which include extending of credit facilities or any other financial services to its Members.

Further under Section 378B(2), it has also been clarified that every producer company shall deal primarily with the produce of its active Members for carrying out any of its objects specified above.