

## CHAPTER XXI

### COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT

#### PART 1

#### *COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT*

#### **Companies capable of being registered.**

**366.** (1) For the purposes of this Part, the word “company” includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force which applies for registration under this Part.

(2) With the exceptions and subject to the provisions contained in this section, any company formed, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other law for the time being in force or being otherwise duly constituted according to law, and consisting of [two or more members] , may at any time register under this Act as an unlimited company; or as a company limited by shares , or as a company limited by guarantee, in such manner as may be prescribed and the registration shall not be invalid by reason only that it has taken place with a view to the company’s being wound up.

#### **Provided that**

(i) a company registered under the Indian Companies Act ,1882 (6 of 1882) or under the Indian Companies Act,1913 (7 of 1913) or the Companies Act, 1956 (1 of 1956) shall not register in pursuance of this section

(ii) a company having the liability of its members limited by any Act of Parliament other than this Act or any other law for the time being in force, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee,

(iii) a company shall be registered under this section as a company limited by shares only if it has a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or dividend and held partly in the one way and partly in the other , and formed on the principle of having for its members, the holders of those shares or that stock, and no other persons

(iv) a company shall not register under this section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose;

(v) where a company not having the liability of its members limited by any Act or Parliament or any other law for the time being in force is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting,

(vi) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for the payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount ,

(vii) A company with ***less than seven members shall register as a private company***

(3) In computing any majority required for the purposes of the sub-section (1), when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

## **Obligations of companies registering under this Part**

**374.** Every company which is seeking registration under this Part shall—

(a) ensure that the secured creditors of the company, prior to its registration under this Part, have either consented to or have given their no objection to the company 's registration under this Part,

(b) publish in a newspaper, advertisement one in English and one in vernacular language in such a form as may be prescribed giving notice about registration under this Part, seeking objections and address them suitably

(c) file an affidavit, duly notarized from all the members or partners to provide that in the event of registration under this Part, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered , for its dissolution as partnership firm, limited liability partnership, cooperative society, society or any other business entity, as the case may be,

[ **Provided** that upon registration as a company under this Part a limited liability partnership incorporated under the Limited Liability Partnership Act,2008 (6 of 2009) shall be deemed to have been dissolved under that Act without any other further act or deed ]

### **Notes**

- Substituted for “ seven or more members” by the Companies ( Amendment ) Act, 2017, w.e.f. 15-8-2018
- Inserted by the Companies ( Amendment ) Act, 2017, w.e.f 15-8-2018

**MINISTRY OF CORPORATE AFFAIRS**

**NOTIFICATION**

New Delhi, the 5<sup>th</sup> July, 2018

**G.S.R. 613(E).**—In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Authorised to Register) Rules, 2014, namely:—

**1. Short title and commencement.**—(1) These rules may be called the Companies (Authorised to Register) Second Amendment Rules, 2018.

(2) They shall come into force **with effect from 15<sup>th</sup> August 2018.**

2. In the Companies (Authorised to Register) Rules, 2014 (hereinafter referred to as the said rules), in rule 2, in sub-rule (1), after clause (g), the following clauses shall be inserted, namely:-

“(h) “society” means a society registered under the Societies Registration Act, 1860 (21 of 1860) and includes a society registered under or deemed to be registered under any other law for the time being in force;

(i) “trust” means an irrevocable public charitable or religious trust registered under any law for the time being in force and represented by its trustees, in whom the trust property is vested, as members;

(j) “Registrar of Firms” means the Registrar appointed under section 57 of the Indian Partnership Act, 1932 (9 of 1932);

(k) “Registrar of Trusts” includes a Charity Commissioner, an Inspector-General of Registration or such other authority having the duty of registering trusts in a State.”.

3. In the said rules, for rule 3, the following rule shall be substituted, namely:-

“3. (1) For the purposes of sub-section (2) of section 366 of the Act, the provision of Chapter II of the Act relating to incorporation of company and matters incidental thereto shall be applicable *mutatis mutandis* for such registration:

Provided that there shall be two or more members for the purposes of registration of a company under this sub-rule:

Provided further that a company with less than seven members shall register as a private company.

(2) A company shall attach and provide the required documents and information to the Registrar along with Form No. URC. 1 in the following manner, namely:-

(a) In case of an application by a Limited Liability Partnership or firm for registration as a company limited by shares -

(i) a list showing the names, addresses, and occupations of all persons named therein as partners with details of shares held by them respectively, showing separately shares allotted for consideration in cash and for consideration other than cash along-with the source of consideration and distinguishing, in cases where the shares are numbered, each share by its number, who on a day, not being more than six clear days before the day of seeking registration, were partners of the Limited Liability Partnership or firm as the case may be;

(ii) a list showing the particulars of persons proposed as the first directors of the company, alongwith Director Identification Number (DIN), passport number, if any, with expiry date, residential addresses and their interests in other firm or body corporate along with their consent to act as directors of the company;

(iii) in case of a firm, deed of partnership, bye-laws or other instrument constituting or regulating the firm and in case the deed of partnership was revised at any time in the past, copies of the principal and all subsequent deeds including the latest deed, along with the certificate of the registration issued by the Registrar of Firms, in case the firm is registered;

(iv) written consent or No Objection Certificate from all the secured creditors of the applicant;

(v) written consent, from the majority of members whether present in person or by proxy at a general meeting, agreeing for such registration;

(vi) an undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 (2 of 1899) as applicable;

(vii) a copy of the latest income tax return of the Limited Liability Partnership or firm, as the case may be.

(b) In case of an application by a Limited Liability Partnership or firm for registration as a company limited by guarantee or as an unlimited company-

(i) a list showing the names, addresses and occupations of all persons, who on a day, not being more than six clear days before the day of seeking registration, were partners of the Limited Liability Partnership or firm, as the case may be with proof of membership;

(ii) a list showing the particulars of persons proposed as the first directors of the company, alongwith DIN, passport number, if any, with expiry date, residential addresses and their interests in other firm or body corporate along with their consent to act as directors of the company;

(iii) in case of a firm, deed of partnership, bye laws or other instrument constituting or regulating the company and in case the deed of partnership was revised at any time in the past, copies of the principal and all subsequent deeds including the latest deed, along with the certificate of the registration issued by the Registrar of Firms, in case the firm is registered;

(iv) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of guarantee;

(v) written consent or No Objection Certificate from all the secured creditors of the applicant;

(vi) written consent from the majority of members whether present in person or by proxy at a general meeting agreeing for such registration;

(vii) an undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 (2 of 1899), as applicable;

(viii) a copy of the latest income tax return of the Limited Liability Partnership or firm, as the case may be.

(c) In case of an application by a society for registration as a company limited by guarantee under section 8-

(i) a list showing the names, addresses and occupations of all persons, who on a day, not being more than six clear days before the day of seeking registration, were members of the society with proof of membership;

(ii) a list showing the particulars of persons proposed as the first directors of the company, alongwith DIN, passport number, if any, with expiry date, residential addresses and their interests in other firms or bodies corporate along with their consent to act as directors of the company;

(iii) a list containing the names and addresses of the members of the governing body of the society;

(iv) a certified copy of the certificate of registration of the society;

(v) written consent or No Objection Certificate from all the secured creditors of the applicant;

(vi) written consent from the majority of members whether present in person or by proxy at a general meeting agreeing for such registration, and the resolution shall also provide for declaration of the amount of guarantee;

(vii) an undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 (2 of 1899) as applicable;

(viii) a copy of the latest income tax return of the society;

(ix) details of the objects of the company alongwith a declaration from all the members that the restrictions and prohibitions as mentioned in clause (b) and clause (c) of sub-section (1) of section 8 of the Act shall be complied.

(d) In case of an application by a trust for registration as a company limited by guarantee under section 8-

(i) a list showing the names, addresses and occupations of all persons, who on a day, not being more than six clear days before the day of seeking registration, were trustees of the trust with proof thereof;

(ii) a list showing the particulars of persons proposed as the first directors of the company, alongwith DIN, passport number, if any, with expiry date, residential addresses and their interests in other firm or body corporate along with their consent to act as directors of the company;

(iii) a certified copy of the certificate of registration of the trust and the trust deed;

(iv) written consent or No Objection Certificate from all the secured creditors of the applicant;

(v) written consent from the majority of members whether present in person or by proxy at a general meeting agreeing for such registration, and the resolution shall also provide for declaration of the amount of guarantee;

(vi) an undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 (2 of 1899) as applicable;

(vii) a copy of the latest income tax return of the trust;

(viii) details of the objects of the company alongwith a declaration from all the members that the restrictions and prohibitions as mentioned in clause (b) and clause (c) of sub-section (1) of section 8 of the Act shall be complied.

(3) Where an application is made by a society or trust for registration as a company limited by guarantee and it has been proved to the satisfaction of the Registrar that the proposed company has its objects in accordance with clause (a) of sub-section (1) of section 8 of the Act and it intends to comply with the restrictions and prohibitions as mentioned respectively in clause (b) and clause (c) of that sub-section, the Registrar shall issue a license in Form No. INC. 16 to allow such society or trust to be registered as a limited company without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited" and thereupon issue a certificate of incorporation in terms of sub-rule (4) of rule 4 on an application submitted under Chapter II of the Act for incorporation of a company:

Provided further that a society which has not filed the annual or other returns, statutorily required to be filed with the Registrar of Societies, shall not be eligible to apply for registration under section 366 of the Act.

(4) An undertaking from all the members or partners or trustees providing that in the event of registration as a company under Part I of Chapter XXI of the Act, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution:

Provided that no such undertaking shall be required to be submitted in case the application for registration under Part I of Chapter XXI of the Act has been made by a Limited Liability Partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009).

(5) The list of members and directors and any other particulars relating to the company which are required to be delivered to the Registrar shall be duly verified by the declaration of any two or more proposed directors.”.

4. (i) In the said rules, in rule 4,-

(a) in sub-rule (1), for the words “Limited Liability Partnership or the firm as the case may be is situate” the words “Limited Liability Partnership, firm, society or trust, as the case may be, is situated” shall be substituted;

(b) in sub-rule (2), after the words, brackets and letters “Registrar (LLP)”, the words “Registrar of Firms, Registrar of Societies or Registrar of Trust, as the case may be”, shall be inserted.

5. In the said rules, in rule 5,

(a) for clause (i), the following clause shall be substituted, namely:-

“(i) where a firm, society or trust has obtained a certificate of registration under section 367 of the Act, an intimation to this effect shall be given within fifteen days of such registration to the concerned Registrar of Firms, Registrar of Societies or Registrar of Trusts, as the case may be, under which it was originally registered, along with documents for its dissolution as a firm, society or trust as the case may be;

(b) in clause (iii), after the words “Registrar of Firms”, at both the places, where they occur, the words, “Registrar of Societies or Registrar of Trusts, as the case may be” shall be inserted;

(c) in clause (v), for the words “Limited Liability Partnership or the firm”, the words “Limited Liability Partnership, firm, society or trust” shall be substituted;

(d) after clause (v), the following clauses shall be inserted, namely:-

“(vi) in case a society or trust intending to register as a company under section 366 of the Act is registered under section 12A of the Income Tax Act, 1961 (43 of 1961) for claiming exemption on its income, an intimation in this regard shall be sent to the Income- tax authorities and proof of its service shall be attached with Form No. URC. 1.;

(vii) upon registration of a society or trust as a company under the Act, no application for conversion into a company of any other kind, except conversion from a private company to a public company or vice-versa, shall be made till the expiry of a period of ten years from the date of incorporation under the Act.

(viii) no application for registration as a company under the Act shall be made by a trust during the pendency of any proceedings under section 92 of the Code of Civil Procedure (5 of 1908).”.