

SOLUTIONS

All questions are compulsory

(JOB BATCH)

Ans. (1)

- As per pro's of co's Act 2013, an OPC is a co with only 1 member & 1 nominee.
- Sec 2(62) defines OPC as a private co with sole member.
- Rule 3 of Co's (Incorporation) Rules, 2014 state that:
- Sole mem & nominee shall be citizens of India &
- residents of India
- They shall be natural persons residing in India for a period of 182 days or more.
- No peignor can become sole member or nominee.
- MOA of the co shall mention name of sole member & nominee in form INC-2.
- Prior consent of nominee is to be obtained in form INC-3.
- The nominee may at anytime withdraw consent by giving notice in writing to OPC & sole member.
- Sole member shall nominate new nominee within 15 days & inform OPC.
- OPC shall inform ROC within 30 days.
 - (a) Notice of withdrawal in
 - (b) Name of new nominee – INC-4
 - (c) Prior consent of new nominee in INC-3
- Sole member may change nomination by giving notice to OPC.
- OPC shall file INC-4 + INC-3 with ROC respectively.
- If sole member ceases to be member, nominee shall become sole member.
- He shall further nominate new nominee. Within 15 days & inform OPC.
- Co shall inform ROC within 30 days.
 - (a) Notice of cessation of membership.
 - (b) Details of new member.
 - (c) Details of new nominee in INC-4
 - (d) Consent of nominee in INC-3

Rectification of name of company

Section 16(1) provides that if, through inadvertence or otherwise, a company on its first registration or in its registration by a new name, is registered by a name which

- in the opinion of the Central Government is identical with or too nearly resembles the name by which a company in existence had been previously registered, whether under this Act or any previous Company laws, it may direct the company to change its name or new name within a period of three months from the issue of such direction, after adopting an ordinary resolution for this purpose;
- On an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999 made to the Central Government within three years of incorporation or registration or change of name of the company. If it is in the opinion of the Central Government that the name of the company is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name or new name within a period of six months from the issue of such direction after adopting an ordinary resolution for this purpose,

Section 16 (2) provides that where a company changes its name or obtains a new name it shall within 15 days from the date of such change give notice to the change to the Registrar along with the order of the Central Government. The Registrar shall carry out necessary changes in the certificate of incorporation and the memorandum.

Section 16(3) provides punishment for contravention of this Section. If a company makes default in complying with any direction, the company shall be punishable with fine of ₹ 1000/- for every day during which the default continues. Every officer who is in default shall be punishable with fine which shall not be less than ₹ 5000/- but which may extend to ₹ 1 lakh.

Ans. (3)

- Rule 6 of co's (Incorporation) Rules, 2014 states provisions w.r.t conversions of OPC into public or private co.
- Where paid up share capital of OPC exceeds ₹ 50 L and turnover exceeds ₹ 2 Cr, an OPC shall cease to operate as an OPC & compulsory shall have to convert into a public co with 7 mem or more or private co with 2 mem or more within 6 months.
- OPC shall have to alter its MOA & AOA.
- However, OPC can also convert voluntarily by passing resolution but after 2 yrs have elapsed since incorporation.
- Either compulsory or voluntary OPC shall have to file form INC-5 with ROC within 60 days.

Ans. (4)

- Sec 42 of Co's Act 2013 states that offer of securities or invitation to subscribe to securities, to a select group of persons by a co through issue of private placement offer letter shall be known as pvt. placement.
- Offer to more than no. prescribed shall be deemed to be public offer.
- Rule 14 of Co's (PAS) Rules, 2014 state that pvt. place offer to be made after passing special resolution in general meeting.
- Offer not to be made to persons exceeding 50 excluding qualified institutions buyers and employer u/ESOP.
- Aggregate offer to max 200 persons.
- Offer to be of atleast ₹ 20000 of face value of securities per person.
- Money towards subscription to be paid via cheque, (D), other banking channel but not by cash.
- If shall be deposited in a separate bank a/c.
- Conditions for issue of private place:
 - (a) No fresh P.P. offer to be made unless allot made earlier has been completed or withdrawn or abandoned.
 - (b) Offer to be made only to such no. of persons whose names are recorded prior to sending invitation to subscribe.
 - (c) P.P. offer letter to be in form PAS-4.
 - (d) Record shall be maintained in form PAS-5 & filed with ROC within 30 days.
 - (e) No public advertisement shall be allowed.
- Co shall allot sec within 60 days of receipt of application money.
- If not, it shall repay the money within 15 days.
- If delay beyond 15 days is made by co, co shall pay in @12% p.a. from the 60th day.
- Co to file return with ROC within 30 days in form PAS-3 along with prescribed fees.

Ans. (5)

- The provs as u/co's Act 2013 relating to issue of employee stock option (ESOP) are as follows:
- Co shall take shareholders approval by passing special resolution in general meeting to issue ESOP to employees of the co.
- Co to file MGT 14 with ROC within 30 days along with prescribed fees.
- Explanatory statement shall mention.
 - (a) Total no of options granted
 - (b) Employees u/the scheme
 - (c) lock-in period
 - (d) vesting & exercising period
 - (e) method of variation
 - (f) max options granted employee wise

- Co shall decide lock-in period.
- Shareholder i.e. option holder shall have no right to receive dividend or to vote until exercise of option.
- Min 1 year gap required between granting & vesting of option.
- Options granted are non-transferable i.e. they shall not be altered, pledged or hypothecated.
- In case of death of employee, all options granted shall vest in his legal heir or nominee.
- Details of ESOP shall be mentioned in Directors Report.

Ans. (6)

- Mr. Ajay, shareholder of Sun Industries Ltd can apply to co for duplicate share certificate as per provs of Co's Act, 201.
- Sec. 46 states that duplicate S.C. may be issued to S.H. if it is proved to have been lost or destroyed.
- Prior consent of BOD is required to issue such certificate.
- Fees charged for issue of duplicate share certificate shall not be exceeding ₹ 50 per certificate.
- Shareholder (SH) has to furnish
 - Evidence &
 - indemnity &
 - out of pocket exps to the co.
- Duplicate S.C to be issued within 3 months if unlisted co & within 45 days if listed co.
- Register of duplicate S.C to be maintained in SH-2
- If co issue duplicate S.C with intent to defraud, it shall face punishment of fine of min 5 times or max 10 times of face value of shares or ₹ 10 Cr whichever is higher.
- Thus, Mr. Ajay has remedy as above.

Ans. (7)

- Sec. 58 of co's Act, 2013 provides for remedy against refusal to register transfer of shares.
- In Ms. Smita's case, she has transferred shares of Moon Indus. Ltd. a public co which has rejected the transfer by giving notice on 1st Feb, 2020.
- As per sec 58 where it is a public co, the shareholder can appeal to Tribunal against refusal of co within 60 days of receiving notice from Co.
- The tribunal may on receipt of appeal either.
 - dismiss the appeal or
 - order co to register the transfer within 10 days and
 - order to pay damages, if any, to aggrieved party be co.
- Thus, Ms. Smita has remedy as u/Co's Act. 2013.