

## **COMPANY LAW MADE EASY**

1. What is the law regarding companies in India, including the State of West Bengal?

Ans. Companies Act, 1956, at present.

2. Which Ministry governs the Companies Act, 1956?

Ans. The Ministry of Corporate Affairs, Government of India.

3. Where is the detail information regarding companies available for general public?

Ans. At the website of the Ministry of Corporate Affairs, i.e., [www.mca.gov.in](http://www.mca.gov.in)

4. What is the regulatory mechanism of companies under the Companies Act, 1956?

Ans. The Companies Act, 1956 is governed in the following manner:

- a. Certain powers approval, adjudication etc. are exercised by the head quarters of the Ministry of Corporate Affairs situated at Shastri Bhawan, Rajendra Prasad Road, New Delhi – 110 001. ( for details refer to the website [www.mca.gov.in](http://www.mca.gov.in) )
- b. The entire country has been divided into regions, with a regional director at the head of it. State of West Bengal comes under the jurisdiction of Regional Director – East, whose office is at Nizam Palace, 2<sup>nd</sup> MSO Building, 3<sup>rd</sup> Floor, 234/4 A.J.C. Bose Road, Kolkata – 700 020. The Regional Director has administrative as well as quasi-judicial authority and as such the Regional Director has power to adjudicate in certain matters. ( for details refer to the website [www.mca.gov.in](http://www.mca.gov.in) )
- c. Each state is headed by a Registrar of Companies (ROC) and in some states there is more than one ROC as well. There is only one ROC for the state of West Bengal whose address is Nizam Palace, 2<sup>nd</sup> MSO Building, 2<sup>nd</sup> Floor, 234/4 A.J.C. Bose Road, Kolkata – 700 020. The ROC has several powers such as approval of name of a company, change of name, incorporation of a company, inspection, investigation, etc. ( for details refer to the website [www.mca.gov.in](http://www.mca.gov.in) )
- d. The appellate authority is vested with the Company Law Board. Company Law Board has one principle bench at New Delhi and regional benches. Some matters are within the jurisdiction of the principle bench and rest of the matters come under the jurisdiction of the regional benches. The entire eastern region including the state of West Bengal comes under the jurisdiction of the Kolkata Bench whose address is 5, Esplanade Row West, Kolkata – 700 001. One can appeal against an appealable order of the Company Law Board in the jurisdictional High Court, i.e., in the case of State of West Bengal at Calcutta High Court and, further, one can appeal in the Supreme Court against an order of the High Court.

5. What are the benefits of doing business in the form of a company?

Ans. Benefits:

- a. Since, a company is governed by a proper department under the Ministry of Corporate Affairs, it creates a lot of confidence in a prospective investor, bank, supplier, vendor and others who may be interested in dealing with the business entity.
- b. A company has to file certain documents with the Ministry of Corporate Affairs, which are available for public inspection and as such it helps the company in maintaining transparency and authenticity.
- c. A company has the potential to survive for a long time since the members/shareholders of the company may change but the company remains in existence. In other words, a company has perpetual existence.
- d. A company is a separate legal entity, separate from its members/shareholders and enjoys the status of an artificial person. Therefore, a company, in its own name can enter into an agreement with any other company, partnership firm, association of persons, or with an individual.
- e. A company can become a partner in a partnership firm and it can also become a shareholder in another company.

6. What are the periodical compliance requirements of a company ?

Ans. A private company limited by shares needs to mandatorily to the following;

- (a) Hold it's first board meeting within a period of 30 days from the date of incorporation of the company , in which the Board, among other matters, must adopt the Common Seal of the company, adopt and issue the share certificates of the company, approve the preliminary expenses incurred by the company, appoint the first auditors of the company, pass necessary resolution for opening of bank account etc. ( for details you may consult a professional dealing in company law matters, such as Company Secretaries in Practice )
- (b) Hold at least one Board meeting in each quarter.
- (c) Hold an Annual General Meeting for every financial year, within the specified time in specified manner. ( for details please refer to the Companies Act 1956 )
- (d) File with the Ministry of Corporate Affairs, the Annual Report of the Company and the Annual Return of the Company, in the manner as prescribed in the Companies Act 1956 read with applicable rules, regulations, notifications, circulars etc. ( for details refer to Sections 220 and 159 of the Companies Act 1956, respectively and also the website [www.mca.gov.in](http://www.mca.gov.in) )
- (e) Appoint the statutory auditor of the company every year at the Annual General Meeting and get the statutory audit of the company done. ( for details refer to Section 224 of the Companies Act 1956 and also the website [www.mca.gov.in](http://www.mca.gov.in) )
- (f) Maintain the statutory registers of the company as mentioned in several sections of the Companies Act 1956.
- (g) Appoint a Company Secretary in Practice under Section 383A of the Companies Act 1956, wherever applicable as per the said section, to carry out the audit of the Company as per the said section and to file the Compliance Certificate issued by the said Company Secretary

if Practice with the Ministry of Corporate Affairs. ( for details refer to Sections 383A of the Companies Act 1956 and also the website [www.mca.gov.in](http://www.mca.gov.in) )

*There are some additional requirements for Public limited Companies, Companies incorporated under Section 25 of the Companies Act 1956 ( Charitable companies ), listed companies etc. ( for details please refer to the respective laws such as Companies Act 1956, Stock Exchange Standard listing agreements, SEBI Act 1992, Securities Contract Regulation Act 1956 etc. )*

7. What are the different types of companies?

Ans. Different types of companies:

a. Private Company: A company which has a minimum paid-up capital of one lakh rupees and by its articles:

- i. Restricts the right to transfer its shares, if any;
- ii. Limits the number of its member to fifty, not including:
  - persons who are in the employment of the company; and
  - persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased;
- iii. Prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company; and
- iv. Prohibits any invitation or acceptance of deposits from persons other than its members, directors or relatives.

( for details refer to Sections 3 of the Companies Act 1956 and also the website [www.mca.gov.in](http://www.mca.gov.in) )

b. Public Company: It's a company which:

- i. is not a private company;
- ii. has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed ;
- iii. is a private company which is a subsidiary of a company which is not a private company.

( for details refer to Sections 3 of the Companies Act 1956 and also the website [www.mca.gov.in](http://www.mca.gov.in) )

c. Government Company: any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government company as thus defined.

( for details refer to Sections 617, 619, 619A, 619B and 620 of the Companies Act 1956 and also the website [www.mca.gov.in](http://www.mca.gov.in) )

d. Foreign Company: Companies incorporated outside India having a place of business within India. ( for details refer to Sections 591 to 602 of the Companies Act 1956 and also the website [www.mca.gov.in](http://www.mca.gov.in) )

- e. Section 25 Company: Where it is proved to the satisfaction of the Central Government that an association:
- i. is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object, and
  - ii. intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members,
- the Central Government may, by license, direct that the association may be registered as a company with limited liability, without the addition to its name of the word "Limited" or the words "Private Limited".
- f. Limited Company: A company may be limited by shares or limited by guarantee:
- i. a company limited by shares: a company in which the liability of each shareholder is limited by the number of shares he has taken, so that he cannot be called on to contribute beyond the amount, if any, unpaid on his shares:
  - ii. a company limited by guarantee: a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound-up.
- g. Unlimited Company: a company not having any limit on the liability of its members, i.e., the liability of each member is unlimited and extends to all debts and liabilities of the company.

In India, companies limited by shares are the most popular form of company.

8. What is the capital requirement of a company?

Ans. A public company must have a minimum paid-up capital of five lakh rupees or such higher paid-up capital as may be prescribed.

A private company must have a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed.

9. How many shareholders a Company should have ?

Ans. A private company must have minimum two shareholders and a public company must have minimum seven shareholders.

10. What is the difference between a member and a shareholder of the company.

Ans. A person who holds or acquires shares of a company is called a shareholder. A company must enter in the register of member the name of the shareholder, once he lawfully acquires/gets transfer a share in his name and on entering his name in the register of members, he becomes a member of the company.

11. What are the different types of capital?

Ans. Different types of capital:

- a. Authorised Capital: This is the maximum capital upto which the company can issue shares. The registration fee which the company has to pay at the time of incorporation is based on the authorized capital of the company. A company can increase its authorized capital from time to time by paying the applicable fee.

- b. Subscribed Capital: This is the part of the authorized capital which the shareholders of the company agree to subscribe. That is to say, in case of a private company having authorized capital of Rs. 5 lacs may have a subscribed capital of Rs. 3 lacs.
- c. Paid-up Capital: This is the part of the subscribed capital for which the shareholders have already paid money.

12. What is the internal governance mechanism of a company?

Ans. Internal governance mechanism:

- a. Every company must have its own Memorandum and Articles of Association of the company. Memorandum of Association of a company contains the power that the company can exercise such as the type of business/activity it can undertake, the capital of the company it can issue, etc. The Articles of Association of a company contains internal regulations of the company such as provisions for appointment of directors, issue of further shares, sealing of documents, etc. A company can alter the provisions of its Memorandum and Articles of Association as per the provisions of the Companies Act, 1956, as applicable for the time being.
- b. Every company must have a Board of Directors. A private company must have atleast 2 directors on its Board. A public company must have atleast 3 directors on its Board. Companies Act, 1956 has some specific provisions related to the powers of the Board of Directors, and Articles of Association of a company also contain powers of the Board of Directors. The Board of Directors of a company has to exercise their powers in accordance with the Memorandum and Articles of Association read with the Companies Act, 1956.
- c. Shareholder: Certain powers are enjoyed exclusively by the shareholders of the company. In case of any deadlock in the Board of Directors, the shareholders of the company get powers to resolve.

13. Should the directors necessarily hold shares of the company?

Ans. The Articles of Association of a company may specify whether a director needs to hold any share in the company and it is called qualification shares. The nominal value of such qualification shares shall not exceed five thousand rupees, or the nominal value of one share where it exceeds five thousand rupees. In case the Articles of Association is silent, a director need not hold shares of a company.

14. What is the nominal value or face value of a share?

Ans. Nominal value/ face value of a share is the value per share in which the authorized share capital of a company is divided into. Nominal value of a share is different from Market value of a share. Normally, in case of listed companies, market value of shares differs from nominal value of the shares.

15. How are directors appointed in a company?

Ans. Every public company must have atleast three directors. Whereas every other company shall have atleast two directors. Only an individual can be appointed as a director.

The first directors of a company are usually named in the Articles of Association, if not, then the subscribers to the memorandum who are individuals shall be deemed to be the first directors.

Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company, or of a private company which is a subsidiary of a public company shall be liable to retire by rotation, and one-third of which shall actually retire from office at every subsequent annual general meeting.

Additional Director: The Articles of a company may authorize the Board of Directors to appoint additional directors who shall hold office only upto the date of the next annual general meeting of the company. Provided the number of directors and additional directors together shall not exceed the maximum strength fixed for the Board by the articles.

Casual Vacancy: In the case of a public company or a private company which is a subsidiary of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office will expire in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of directors at a meeting of the Board. Any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated as aforesaid.

Alternate Directors: The Board of directors of a company may, if so authorized by its articles or by a resolution passed by the company in general meeting, appoint an alternate director to act for a director during his absence for a period of not less than three months from the State in which meetings of the Board are ordinarily held. An alternate director so appointed shall not hold office as such for a period longer than that permissible to the original director in whose place he has been appointed and shall vacate office if and when the original director returns to the State in which meetings of the Board are ordinarily held.

16. What are the Certificate of Incorporation and the Certificate of Commencement?

Ans.

- a. Certificate of Incorporation: A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of the Act have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company authorized to be registered and duly registered under this Act.

A private company may commence business immediately after incorporation once it has received the certificate of incorporation.

- b. Certificate of Commencement: A public company can commence business or exercise borrowing powers only after getting another certificate called the certificate of commencement of business.

17. What is a Digital Signature?

Ans. The Information Technology Act, 2000 provides for use of Digital Signatures on the documents submitted in electronic form in order to ensure the security and authenticity of the documents filed electronically. This is the only secure and authentic way that a document can be submitted electronically. As such, all filings done by the companies under MCA21 e-Governance programme are required to be filed with the use of Digital Signatures by the person authorized to sign the documents. ( for details refer to the website [www.mca.gov.in](http://www.mca.gov.in) )

18. What are electronic forms?

Ans. Since 2006, all forms related to companies have been made electronic, i.e., forms are required to be filed electronically at the MCA website. These forms are available at the MCA website itself. They are first required to be downloaded, filled, signed digitally and then uploaded at the MCA portal. Forms requiring pre-certification have to be digitally signed by a Practicing Company Secretary or other professionals also. Filing fees depends upon the authorized capital of the company. There is a fee calculator available at the MCA website for this purpose as well. ( For further information please visit [www.mca.gov.in](http://www.mca.gov.in) )

19. Process of incorporation of a company?

Ans. Procedure:

- a. Apply for Director Identification Number (DIN);
- b. Select a name for the company and seek its availability from the Registrar in e-form 1A, and the name should indicate the main objects of the company;
- c. Draft and prepare the Memorandum of Association as per the Table B, C, D or E of Schedule I to the Act to be presented to the Registrar;
- d. Draft and prepare the Articles of Association to be presented to the Registrar;
- e. Arrange for stamping of the Memorandum and Articles as per the Stamp Act of the State in which the proposed company is to be registered. The stamped copy is required to be presented to the Registrar for registration of the company;
- f. Authorize a director or a Company Secretary or any other professional, etc. through a Power of attorney or a Letter of Authority (both on a stamp paper of requisite value) to:
  - i. Make changes in the Memorandum and Articles as suggested by the Registrar;
  - ii. Collect the Certificate of Incorporation from the Registrar; and
  - iii. Do all acts and things in connection with the incorporation of the company.
- g. File following forms with the Registrar:
  - i. E-form 1 with the Memorandum and Articles of Association, annexure containing details of subscribers, Power of Authority or Letter of Authority, letter of approval of name by the Registrar, and rest optional attachments;
  - ii. E-form 18 regarding situation of the registered office of the company;
  - iii. E-form 32 in respect of the first directors of the company.
- h. Simultaneously, a physical copy of e-form 1 on stamp paper has to be filed with the Registrar, along with the original stamped Memorandum and Articles of Association, and letter of approval of name issued by the Registrar.
- i. Pay the filing fees on the documents submitted to the Registrar at the rates prescribed under Schedule X to the Act;
- j. Registration fee to be paid depending upon the amount of the authorized capital stated in the Memorandum.
- k. Collect the Certificate of Incorporation from the Registrar's office. ( for details refer to the Companies Act 1956 and also the website [www.mca.gov.in](http://www.mca.gov.in) )

20. What are the different meetings of a company?

Ans. Different meetings of a company are:

- a. Statutory Meeting: Every public company limited by shares, and every company limited by guarantee and having a share capital, shall, within a period of not less than one month nor more than six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called the statutory meeting.

The Board of directors shall, at least twenty-one days before the day on which the meeting is held, forward a report (referred to as "the statutory report") to every member of the company.

- b. Board Meeting: In the case of every company, a meeting of its Board of directors shall be held at least once in every three months and at least four such meetings shall be held in every year, the notice of each of which shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.

The quorum for a meeting of the Board of directors of a company shall be one-third of its total strength (any fraction contained in that one-third being rounded off as one), or two directors, whichever is higher.

- c. General Meeting: A meeting of the shareholders of a company is referred to as a General Meeting. A general meeting of a company may be called by giving not less than twenty-one days' notice in writing. General Meeting may be an Annual General Meeting and an Extra-ordinary General Meeting.
- d. Annual General Meeting: Every company shall in each year hold in addition to any other meetings a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.

Provided that a company may hold its first annual general meeting within a period of not more than eighteen months from the date of its incorporation; and if such general meeting is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year.

An annual general meeting of a company may be called by giving not less than twenty-one days' notice in writing.

Every annual general meeting shall be called for a time during business hours, on a day that is not a public holiday, and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

- e. Extra-ordinary General Meeting: It is called on requisition of certain number of members. When members holding at least  $1/10^{\text{th}}$  of voting power making a written request to the Board of Directors, then the Board of Directors shall take steps within 21 days from the date of deposit of requisition so that the meeting will be held within 45 days from the date of deposit of requisition. If the meeting is not held within the above time limit then the requisitionists will themselves call the meeting within 3 months from the date of deposit of the requisition.

Unlike an annual general meeting, an extra-ordinary general meeting may be held at anytime, on any day and at any place.

21. What are the requirements if a company takes a loan?

Ans. A company may take a loan by creating a charge on its property. A charge is like a security created on a company's property at the time of taking loan.

A charge can be of two types- Fixed Charge and Floating Charge.

In case of a Fixed Charge, the company is not free to deal with that fixed asset in the ordinary course of business till it repays the loan, but in the case of a Floating Charge the asset can be dealt with in the ordinary course of business. But, a floating charge becomes a fixed charge when the company goes into liquidation and it ceases to carry on its business.

22. What is the procedure for creating, modifying and satisfying a charge?

Ans. Creation/Registration of a Charge: A charge can be filed by the company or any person interested in the charge within 30 days from the date of creation of the charge together with the instrument creating the charge with the ROC for registration. E-form 8 is filed with ROC for filing particulars of Charge. If charge not filed within 30 days, then the ROC may allow next 30 days time on payment of additional fees if sufficient cause for not filing the charge timely is shown. **If charge is not filed within the above time limit, then company can avail the provision for condonation of delay.**

Modification of a charge: Whenever the terms or conditions, or the extent or operation, of any charge registered is modified, it shall be the duty of the company to send to the Registrar the particulars of such modification, and the same time limits as in case of registration of a charge shall apply to such modification of the charge as well. Variations in the charge registered have to be communicated to the Registrar in e-form 8. **If the modification of charge is not filed within the above time limit, then company can avail the provision for condonation of delay.**

Satisfaction of charges: The company shall intimate the Registrar of the payment or satisfaction of a charge in e-form 17 within 30 days from the date of such payment or satisfaction. If the company fails to file the satisfaction of charge then ROC cannot extend the time for such filing. **If satisfaction of charge is not filed within the above time limit, then company can avail the provision for condonation of delay.**

( for details refer to Sections 124 to 145 of the Companies Act 1956 and also the website [www.mca.gov.in](http://www.mca.gov.in) )

21. How can a company be closed ?

Ans. A company can be closed by following the provisions of winding up as per the provisions of the Companies Act 1956. The Registrar of Companies, having appropriate jurisdiction is also empowered to "strike off" the name of a company pursuant to Section 560 of the Companies Act 1956, if he finds that there is no activity in the company.