

APPLICABLE SECTIONS OF
COMPANIES ACT, 2013 AND
LIMITED LIABILITY PARTNERSHIP
ACT, 2008 IN INSOLVENCY AND
BANKRUPTCY CODE, 2016

By CS Shruti Bhanushali

Associated with APMH & Associates LLP

PROSPECTUS & ALLOTMENT OF SECURITIES

Public Company			Private Company	
3 modes for issuance of securities			2 modes for issuance of securities	
Public offer (IPO, FPO or an offer for sale through issue of a prospectus)	Private placement	Rights issue or Bonus issue to existing shareholders	Rights issue or Bonus issue	Private placement

SHARE CAPITAL & DEBENTURES

Kinds of share capital

Equity Share Capital
(with voting rights; or with differential rights as to dividend, voting or otherwise)

Preference Share Capital

Further issue of share capital

Any company can further issue shares to:

Existing members, by sending a letter of offer

Employees through employee's stock option by a special resolution

General public, by a special resolution and after having its shares valued by registered valuers

Issue of Debentures

A company, by a special resolution, may issue debentures with an option to convert into shares, wholly or partly, at the time of redemption but cannot issue debentures with voting rights

ACCEPTANCE OF DEPOSITS BY COMPANIES

Prohibition on
Acceptance of
Deposits from
Public

No company shall invite, accept or renew deposits from public

Repayment of
Deposits
accepted before
commencement
of the Companies
act 2013

Where the company accepted deposits before this Act came into force, such deposit or part thereof or any interest due thereon, shall be repaid within 1 year of the Act

Acceptance of
Deposits from
Public by Certain
Companies

A public company having a net worth of not less than Rs.100 Crs **or** a turnover not less than Rs.500 Crs and authorised by a special resolution filed with the ROC can accept deposits from public

REGISTRATION OF CHARGES

What to be registered

- Hypothecation agreement, Mortgage deed, Loan agreement etc.

When charges to be registered

- Register the said charge with ROC within 30 days

Consequences of registration

- ROC will issue a certificate of registration

MANAGEMENT & ADMINISTRATION

Register of Members

- Register of members, register of debenture-holders and register of any other security holders

Annual Return

- Every company shall prepare a return stating the details of the company at the end of the F.Y. and file with ROC in 60 days from AGM

Annual General Meeting

- Every company shall in each year hold an AGM and not more than 15 months shall elapse between the date of two AGMs

Calling of extraordinary general meeting

- If the Board deems fit it can call an EGM by giving not less than clear 21 days notice
- Shorter notice is allowed if consent is given by not less than 95% of the members

Minutes of meeting

- Every company shall maintain minutes of every GM and every meeting of its BOD prepared, signed and kept within 30 days of the conclusion of every such meeting

ACCOUNTS OF COMPANIES

Books of Accounts to be kept by the company and Internal Audit

- Every company shall prepare and keep at its registered office books of account and such books shall be kept on accrual basis and according to the double entry system of accounting

Financial Statement and its filing with Registrar

- It shall give a true and fair view of the state of affairs of the company and comply with the AS notified u/s 133 and shall be in the form as may be provided in Schedule III and shall be filed with ROC within 30 days of the date of AGM

Voluntary Revision of statements

- If the BOD thinks that the Financials or Report of Board do not comply with section 129 or section 134 they may prepare revised Financials after obtaining approval of the Tribunal

Boards Report, CSR

- Boards report shall be prepared in accordance with Sec 134 which shall be approved by BOD
- A company having Net worth Rs 500 Cr/Turnover Rs 1000 Cr/NP Rs 5 Cr during any FY shall spend 2% of Average NP made during 3 immediately preceding FYs as CSR

COMPROMISES, ARRANGEMENTS & AMALGAMATIONS AND REGISTERED VALUERS

Compromises, Arrangements and Amalgamations

- The procedure for entering into a compromise or arrangement with creditors and members (Sec 230)
- Power of Tribunal to enforce compromise or arrangement (Sec 231)
- Power to acquire shares of dissenting shareholder (Sec 235)
- Registration of schemes and matters incidental thereto (Sec 238)

Duties of a Registered Valuer

- Make an impartial, true and fair valuation of any assets
- Exercise due diligence
- It is in accordance with such rules as may be prescribed
- Not to undertake valuation of any assets in which he has a direct or indirect interest

REMOVAL OF NAMES OF COMPANIES FROM THE ROC

Grounds for removal of name of the Company

- ROC believes that a company has failed to commence its business within 1 year of its incorporation or has no business for 2 years it can order for Striking off

Procedure for restoration of name of the Company

- A copy of the order passed by the Tribunal shall be filed by the company with the ROC within 30 days from the date of the order and ROC shall cause the name of the company to be restored in the Register and shall issue a fresh COI

Procedure for appeal against order of Registrar

- Aggrieved party can file an appeal to the Tribunal within 3 years seeking restoration of name of such company and ROC in view of the absence of any of the grounds on which the order was passed, it may order restoration of the name of the company in the Register

WINDING UP

Winding Up by Tribunal

- If Special Resolution is passed for winding up
- Company has acted against the interests of the sovereignty and integrity of India
- Tribunal thinks that the affairs of the company have been conducted in a fraudulent manner
- Default in Annual filings with ROC
- Tribunal thinks it is just and equitable

Official Liquidator (OL)

- For winding up the Tribunal at the time of the passing the order of winding up shall appoint an OL from IPs registered under the IBC, 2016

Offences and Penalties

- Any person guilty of offence u/s 336 shall be punishable with imprisonment for a term which shall not be less than 3 years which may extend to 5 years and with fine which shall not be less than Rs. 1,00,000/- which may extend to Rs. 3,00,000/-

NCLT & NCLAT

Constitution of NCLT

- CG shall constitute a Tribunal to be known as the National Company Law Tribunal.
- Consisting of a President and such number of Judicial and Technical members, as the CG deems fit.

Constitution of NCLAT

- CG shall constitute an Appellate Tribunal to be known as the National Company Law Appellate Tribunal.
- Consisting of a Chairperson and such number of Judicial and Technical Members not exceeding 11, as the CG may deem fit

NCLT - QUALIFICATION OF MEMBERS

President

- Person who is or has been a Judge of a High Court for five years

Judicial Member

- is, or has been, a judge of a High Court; or
- is, or has been, a District Judge for at least five years; or
- has, for at least ten years been an advocate of a court.

Technical Member

- has, for at least 15 years been a member of the Indian Corporate Law Service or Indian Legal Service; or
- is, or has been, in practice as a CA for at least 15 years; or
- is, or has been, in practice as a CWA for at least 15 years; or
- is, or has been, in practice as a CS for at least 15 years; or
- is a person having special knowledge and experience of 15 years
- is, or has been, for at least 5 years, a presiding officer of a Labour Court, Tribunal or National Tribunal

NCLAT - QUALIFICATION OF MEMBERS

Chairperson

- Person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court

Judicial Member

- Person who is or has been a Judge of a High Court or is a Judicial Member of the Tribunal for 5 years

Technical Member

- Person of proven ability, integrity and standing having special knowledge and experience, of not less than 25 years in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies

CHAPTER II - CORPORATE INSOLVENCY RESOLUTION PROCESS

- **Constitution of Committee of Creditors (CoC)**
- The CoC comprises of all financial creditors (whether singly, jointly or partly) of the corporate debtor
- Related Party not to have any right of representation, participation or voting in the meeting
- All decisions to be taken by vote of not less than 75% of voting share of the financial creditor
- 1st meeting of the CoC shall be held within 7 days of the constitution wherein the decision of appointing IRP as IP or replace him with some other IP will be taken by CoC
- The members may meet in person or by such electronic means as may be specified

➤ Meetings of CoC

- Every meeting of CoC to be held by giving 7 days prior notice (Shorter notice of not less than 24 hours allowed)
- Notice by electronic means (i.e. e-mail or providing electronic link or URL for accessing such notice) allowed in accordance with Regulation 20 & 21
- The notice shall provide the participants an option to attend the meeting through video conferencing or other audio and visual means in accordance with Regulation 23
- RP to act as the Chairperson and to perform the duties of taking the roll call of every participant, ensuring the quorum throughout the meeting, preparation of minutes and circulating it within 48 hours of each meeting

LIMITED LIABILITY PARTNERSHIP ACT, 2008

Nature of
Limited Liability
Partnership

Partners and
their
Relationships

Objective

Extent and
Limitations of
Limited Liability
Partnership

Financial
Disclosures

ABOUT LLP

- Either Indian LLP or Foreign LLP (FLLP)
- Status of Body Corporate
- Perpetual succession
- Advantages of Company & Partnership
- Separate legal entity
- Both natural & artificial persons can form LLP
- Minimum two partners are required to carry on the business

DESIGNATED PARTNERS

- Every LLP shall have at least two designated partners
- One DP should be a resident in India
- A person has to comply with Rule 9 of the LLP Rules, 2009 for being appointed as DP
- DPs are liable for all the compliances & penalties under the Act imposed on the LLP
- In case of Vacancy, time frame for appointment of a DP is within 30 days

INCORPORATION OF LLP

- Two or more persons
- Lawful business
- Filed with ROC
- Certified by CS/CA/CWA
- Certificate of Registration - conclusive evidence

REGISTERED OFFICE & NAME

- Every LLP to have a Registered office
- Name of every LLP shall either end with the words "limited liability partnership" or the acronym "LLP" in the last
- For change of name, filings can be done with the concerned ROC
- LLPs shall ensure that all its correspondences bear the name, registered office address and LLPIN

PARTNERS

- Persons who are subscribed to the incorporation document
- Persons whose names are provided in the LLP agreement
- LLP agreement will provide the relationship of partners, mutual rights and duties
- File a notice with the ROC within 30 days of change of name or change in partners (cessation / appointment)

LIABILITY OF LLP & PARTNERS

- Partners are agent of the LLP and not of the other partners
- LLP will be held liable for the wrongful act done by any partner
- No partner will be personally liable for the wrongful act or omission of any other partner of LLP
- In case of fraud, the liability of the LLP and the partner indulged in the same, shall be unlimited

CONTRIBUTIONS

- Contribution by partner can be tangible, movable or immovable or intangible property or other benefit to the LLP
- The monetary value of contribution of each partner shall be accounted for and disclosed in the accounts of the LLP
- The obligation of a partner to contribute in the LLP shall be as per the LLP agreement

MAINTENANCE & AUDIT OF BOOKS OF ACCOUNTS

- LLP shall maintain proper Books of A/c at its registered office for a period of 8 years
- Audit not mandatory for LLPs having turnover not more than 40 lakhs or contribution not more than 25 lakhs
- LLPs to file a Statement of Account and Solvency in Form 8 with ROC within 6 months of end of the FY
- LLPs to file an Annual Return in Form 11 with ROC within 60 days of end of the FY

FINANCIAL DISCLOSURES

- The documents filed with ROC will be available for public inspection
- ROC has power to deconstruct any old document in physical or electronic form
- ROC has power to obtain information from present or former partner, employee or DP
- CG can compound offence punishable with fine only by collecting a fine not exceeding the fine prescribed for the offence

CONVERSION TO LLP

- For conversion of a Firm into LLP, Second Schedule to be complied
- For conversion of a Private company into LLP, Third Schedule to be complied
- For conversion of an Unlisted public company into LLP, Fourth Schedule to be complied
- On filing for Conversion, ROC will issue Certificate of Registration
- The firm/company as the case may be, will be deemed to be dissolved on conversion

THANK YOU

Email : shruti@apmh.in