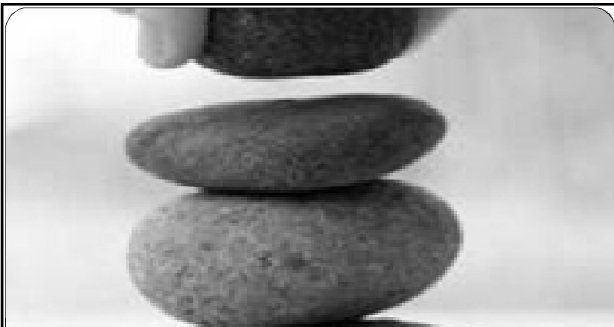


**BORIVALI CENTRAL CPE STUDY
CIRCLE JOINTLY WITH WIRC**

Formation of Companies,
Appointment & Qualification of Directors,
Prospectus & Remuneration of Managerial Person



COMPANY FORMATION

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Formation of Company

- Chapter II of the Companies Bill, 2012;
- Contains 22 Sections
- Passed by the Lokshaba on 18/12/2012
- Mandatory on becoming effective

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Certain Definitions to recollect

- AOA to include Originally framed AOA under earlier Companies Act also;
- Associate Company –
 - Includes that other Company which has significant influence
 - excludes subsidiary Company of Company having significant influence and includes JVC;
- Significant influence means control of 20% of the Share Capital or of business decisions under an Agreement.

4

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Certain Highlights of the Bill

- Incorporation of a One Person Company has been permitted;
- The Bill allows a private company to have up to 200 members as against the existing limit of fifty 50 members.
- The Bill now specifically provides that a private company which is a subsidiary of a public company, shall be regarded as a public company irrespective of its status as private company in its articles. Certain clarifications are required

5

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Certain Highlights of the Bill

- The present provision of a private company, being a subsidiary of a foreign body corporate is presently regarded as a subsidiary of a PLC under section 4(7) of the Companies Act, 1956, has not been specifically dealt with under the Bill.
- A specific provision is added stipulating that the AOA may contain entrenchment provisions whereby specified provisions may be altered only if conditions or procedures that are more restrictive than those applicable to a special resolution, are complied with. Such entrenchment shall either be made on formation of a company or by an amendment to the Articles agreed by all the members in case of a private company and by a special resolution in case of a public company.

6

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Certain Highlights of the Bill

- Subscribers & First Directors to give an Affidavit at the time of Incorporation stating that they are not convicted of any offence in connection with the promotion, formation, or management of or guilty of any fraud or misfeasance or breach of duty in relation to any Company under the new enactment or any previous Company law during the preceding five years (Additional Document now to be given at the time of Incorporation)

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Certain Highlights of the Bill

- Particulars of Interest to be filed at the time of Incorporation, if any, relation to first Directors;
- Any incorrect or false statement to be liable for a fine and attraction of imprisonment;
- Company to be regarded as Holding Company if the former holds more than 50% of the total share capital. It includes equity as well as preference also.

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Section -3

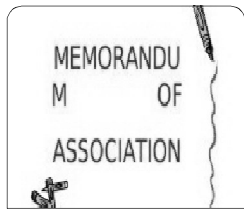
- Company can be formed for any lawful purpose by:
 - 7 or more persons for public limited;
 - 2 or more persons for private limited;
 - 1 person Company will be a private company
- All to be formed by subscribing to MOA & complying with the requirements of this Act in respect of Registration.

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Section -3

- Company can be formed for any lawful purpose by:
 - Company limited by guarantee;
 - Company limited by shares;
 - An unlimited Company.

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Memorandum & Articles

- To be on the same lines as per the earlier law;
- Applicability of the respective forms specified in Table A, B, C, D and E in Schedule I as may be applicable to such Company;
- Permission given to include additional matters in its Articles as is considered necessary by the management;

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Memorandum & Articles

- The provisions of specific requirements by the management can be at the time of formation or at a later stage by passing special resolution;
- Special resolution for private Company to have consent of all the members.
- Article may also contain provisions for entrenchment which can be altered only by passing special resolution. For both the purpose, the Notice of the same to be given to the Registrar in the form and manner specified.

13

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Memorandum & Articles

- To be on the same lines as per the earlier law, bifurcation of Objects Clause into Main, Ancillary & Others removed;
- Applicability of the respective forms specified in Table A, B, C, D and E in Schedule I as may be applicable to such Company;
- Permission given to include additional matters in its Articles as is considered necessary by the management;

14

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Memorandum & Articles

- The provisions of specific requirements by the management can be at the time of formation or at a later stage by passing special resolution;
- Special resolution for private Company to have consent of all the members.
- Article may also contain provisions for entrenchment which can be altered only by passing special resolution. For both the purpose, the Notice of the same to be given to the Registrar in the form and manner specified.

15

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Memorandum & Articles

- Can adopt Model Articles at the time or Incorporation;
- Model Articles given in Table F,G,H,I and J in Schedule I to the extent as may be applicable to the Company;
- The Company can take the draft from the same and suitably modify the requisite clause as per their requirements;

16

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Existing Companies What to do

- Act will always over-ride the Clauses of the MOA and AOA;
- Requisite amendment in the Clauses will be required to be made by each of the Company;
- The same to be amended by passing Special Resolution in the EGM/AGM and file Form 23 for giving effect thereto;

17

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Memorandum Drafting

- Table A- For Company Limited by Shares
 - Name Clause;
 - Registered Office Clause;
 - Object Clause;
 - Liability Clause;
 - Capital Clause;
 - Signatures of the Subscribers.

18

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Memorandum Drafting

- Table B – Specified for Company Limited by Guarantee & Not Having Share Capital
- Capital clause to have guarantee clause to undertake to contribute an amount not exceeding Rs. ____ in the event of winding up towards the cost, charges and expenses for the same.
- Guarantee valid till the time he is a member or one year after he ceases to be a member for the amount contracted by the Company during his tenure of Director;

19

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Memorandum Drafting

- Table C – Specified for Company Limited by Guarantee & Having Share Capital
- Capital clause to have guarantee clause to undertake to contribute to the assets and charges in the event of winding up towards the cost, charges and expenses for the same.
- Guarantee valid till the time he is a member or one year after he ceases to be a member for the amount contracted by the Company during his tenure of Director;

20

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Memorandum Drafting

- Table D – Specified for Company with Unlimited Liability & Not having Share Capital
 - Liability Clause to state that the Liability of the Member shall be UNLIMITED;
 - Subscribers Signature does not have the amount of contribution to be made.
-
- Table E – Specified for Company with Unlimited Liability & having Share Capital

21

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Articles of Association

- Table F- Can be adopted as base for drafting of Articles for Company Limited by Shares;
- Table G- Can be adopted as base for drafting of Articles for Company Limited by Guarantee & having Share Capital;
- Table H- Can be adopted as base for drafting of Articles for Company Limited by Guarantee & NOT having Share Capital;

22

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Articles of Association

- Table I- Can be adopted as base for drafting of Articles for Company of an Unlimited Liability & No Share Capital;
- Table J- Can be adopted as base for drafting of Articles for Unlimited Company & Having Share Capital.

23

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Additional Requirements at the time of Incorporation

- Subscribers and First Directors to give Affidavit;
- Address for correspondence till the Registered office is established;
- Proof of Identity of the Subscribers & First Directors including their interest in the Company;
- Incorrect Information liable for penalties under Section 447 of the Act

24

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Effect of Incorrect Information

- Pass such orders by the Tribunal and modify MOA & AOA to that extent;
- Liability of Subscribers can be made UNLIMITED;
- Removal of Name from the records;
- Order for Winding Up of the Company;
- Or any other action as the Tribunal may deem fit.
- Opportunity of being heard to be given before passing any such Order

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Company with Charitable Objects

- Option to exclude private or public limited from Name;
- Firm can be a member of the Company;
- No Alteration of MOA and AOA allowed without prior approval of the CG;

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**CONCEPT OF DORMANT COMPANY
INTRODUCED**

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Concept of Dormant Company

- Company formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar for obtaining the status of a dormant company.

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CONCEPT OF SMALL COMPANY

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Small Company

- **Small company**
 - **Company other than a public company**
 - having a paid-up share capital of which does not exceed ` 50 lakh rupees or such higher amount as may be prescribed but shall not exceed ` 5 crore or
 - turnover of which does not exceed ` 2 crore or such higher amount as may be prescribed not exceeding ` 20 crore rupees. [clause 2(85)].

31

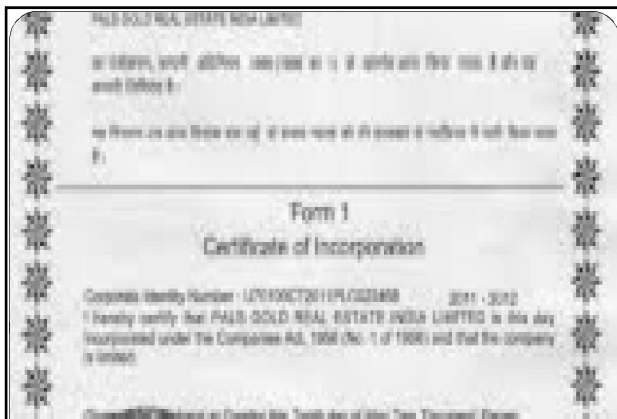
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Advantages of Small Company

- Lesser Stringent Regulatory Framework (Clause 2(85))
- Proposed Draft is in preparation, wherein certain clauses of the Bill shall not apply to the Small Company.

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Effect of Incorporation

- Acquisition of Corporate Status and can exercise all functions;
- Subscribers to become debtors of the Company and money can be recovered by the Company;
- No commencement of business allowed, in case of non contribution by subscribers;
- Any default in non compliance liable for penalty extending upto `5000 on Company & `1000 per day to the officer in default.

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Effect of Incorrect Information

- Pass such orders by the Tribunal and modify MOA & AOA to that extent;
- Liability can be made UNLIMITED;
- Removal of Name of the Company from its records;
- Order for Winding Up of the Company;
- Or any other action as the Tribunal may deem fit.
- Opportunity of being heard to be given before passing any such Order

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Effects of Registration

- Time limit of 180 days fixed for complying of the capital commitments;
- Non compliance may lead to removal of name by the Registrar;
- Time limit of 30days given to inform the Registered Office to the new Company after Incorporation;

36

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Effects of Registration

- To mention CIN Number printed on the business letter heads and other important documents;
- Former name to be mentioned for at least 2 years along with the New Name in all the documents and also on the Paint Board at the Registered Office of the Company;
- In case of OPC to be mentioned below the Name of the Company;

37

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Striking of Name in Certain Cases

- Non payment of subscription money within 180 days;
- Non commencement of Business within 1 year from the date of incorporation;
- Non Application for Change of Status as Dormant Company voluntarily to ROC, in the event of non carrying of business or operation for 2 immediately preceding FY;

38

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CONSTITUTION OF BOARD

39

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Constitution of Board

- Public Company -3, Private Company-2, OPC-1. Maximum increased to 15 from 12;
- More directors can be added by passing of special resolution without getting the approval of Central Government as earlier required (Clause 149);
- At least one woman director shall be on the Board of such class or classes of companies as may be prescribed

40

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Resident Director

- Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year. [clause 149(3)];

41

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Age Limit for Appointment

- Managing Director, Manager or Whole Time Manager should be of minimum 21 years and maximum 70 years;
- Senior person exceeding 70 years may be appointed by passing a special resolution with necessary motion;

42

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Changes in the Board

- Time Limit of One year prescribed to comply with the change requirement for the existing Companies;

43

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KMP

- "Key Managerial Personnel (KMP), in relation to a company, means—
 - (i) the Chief Executive Officer or the Managing Director or the Manager,
 - (ii) the Company Secretary;
 - (iii) the whole-time director;
 - (iv) the Chief Financial Officer; and
 - (v) such other officer as may be prescribed

44

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KMP

- (iv) *any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;*

45

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KMP

- (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
- (vi) every director, in respect of a contravention of any of the provisions of this Act, **who is aware of such contravention by virtue of the receipt by**
- **him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;**

46

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KMP

- (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.
- Specific requirement in the Articles for becoming Chairperson of the Company as well as the MD or CEO at the same time [Proviso to Clause 203(1)]

47

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Promoters

- Person named in the Prospectus or is identified in the Annual Return;
- Direct or Indirect Control on the Affairs of the Company as a shareholder, Director or otherwise;
- In accordance with whose Advice, Directions or instructions the Board of Directors is accustomed to act.

48

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Appointment of CS as KMP

- Appointment by Board Resolution;
- Should contain terms and conditions for appointment;
- In case of creation of vacancy, the same to be filled up within a period of six months from the date of such vacancy (Clause 203(2) & 203(4))

49

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Independent Directors

- Information available in Clause 149(5)
 - Listed Company to have 1/3rd of such;
 - For other classes as the CG may prescribe from time to time;
 - Nominee Director appointed by FI or in pursuance to any Agreement will not be an Independent Director;
 - Need to abide with the provisions specified in Schedule IV;

50

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Independent Directors

- Independent Director to be selected from the Data Bank of CG maintained;
- Due Diligence to be exercised before selection;
- The manner of appointment can be changed by the CG any time in future;
- Any tenure of appointment of ID before the commencement of the Act, not to be considered or included.

51

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Independent Directors

- Holding the Office upto a period of 5 consecutive years;
- Shall be eligible for re-appointment only after passing Special Resolution & Disclosure of the same by the Board;
- Maximum period of 2 terms of 5 years restriction for re-appointment;
- Can be again re-appointed after a gap of 3 years again but cannot be associated in any way during this term.

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Representative of Small Investors

- One Director may be appointed by Small Investors as their. Representative; (Clause 151)
- Small Shareholders means shareholders having Nominal value of shares less than ₹ 20000

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Provision in Articles

- Subscribers to be the first Directors, if the AOA is silent;[Clause 152(1)];
- Director to be appointed only in General Meeting;[Clause 152(2)];
- No Appointment of Director without DIN ;[Clause 152(3)];
- Declaration Mandatory ;[Clause 152(4)];

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Independent Directors

- Information available in Clause 149(5)
 - No remuneration payable to such person, other than sitting fees, reimbursement of expenses in connection with the meeting.
 - Profit related commission can be paid, conditions apply
 - No stock option can be given
 - Can be appointed as Alternate Director (Clause 161(2))

55

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Retirement of Directors

- 2/3rd of Directors of Public Company to be liable for retirement by rotation; [Clause 152(6)(a)];
- Articles can amend the percentage;
- At every AGM at least 1/3rd of Directors to be liable for retirement by rotation, if the same is not in multiple of 3, then rounded off to nearest figure ; [Clause 152(6)(c)];

56

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Appointment of Director

- Deposit of ₹1 Lakh or any other higher amount as may be specified for member intending to propose for the candidature for the Appointment; [Clause 160(1)];
- Notice period of 14 days to be given in writing to be given at the RO of the Company;
- Refund of Deposit to be given if the candidate is elected or gets more than 25% of the valid votes casted at the meeting.

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Resignation/Retirement as Director

- Retiring Director failing to get re-appointed, if stands for re-election to get the Refund of Deposit paid provided he gets 25% of total valid votes [Clause 160(1)];
- Ways in which Director can resign
 - By Notice, the copy of the same to be forwarded to the Registrar and approval in the General Meeting;
 - Effective date to be the date on which resignation is given such Director or date specified in the letter

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Resignation/Retirement as Director

- In case of resignation by all the Directors or, the promoters, CG shall appoint such Directors to fill such vacancy of new appointments
- Independent Directors shall not be liable for retirement by rotation.

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Additional Director (Clause 161)

- Additional Director provisions to be in AOA; Board to appoint AD to hold office to fill up casual vacancy;
- Alternate Director can be appointed maximum for a period of three months from India;
- Alternate Director can be for a maximum 20 Companies at the same time and in case of public companies to 10;
- Such Directors to hold the office till the conclusion of next AGM or the due date of AGM, whichever is earlier;

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Disqualification of Director (Clause 164)

- Unsound mind declared by Court;
- Insolvent declared by Court;
- Applied for insolvency;
- Convicted for offence involving moral turpitude or otherwise & sentenced to imprisonment for less than 6 months & a period of 5 years has not elapsed from the date of expiry of the sentence;
- If in any case of offence, he is sentenced to imprisonment for a period of 7 years or more.

61

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Disqualification of Director (Clause 164)

- Order passed by Court for disqualification;
- Not paid the calls money;
- Convicted for offence dealing with related party transactions u/s 188 at any time during the preceding 5 years;
- Not filed FS or AR for a continuous period of 3 FY;
- Failed to repay deposits accepted, redeemed debentures or interest default or dividend unpaid for a period of one year;

62

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Officer in Default

- "officer who is in default", means any of the following officers of a company, namely:—
 - (i) *whole-time director*;
 - (ii) *key managerial personnel*;
 - (iii) *where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified*

63

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Certain changes relating to Appointments

- Chairperson of a listed company can be a member but not chairperson of Nomination and Remuneration Committee;
- Allowing the same person to be the Chairperson and MD or CEO in certain cases, AOA to specifically provide

64

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Powers of the Directors (C166)

- Promote the Objects of the Company;
- Exercise his duties with reasonable due and care;
- Not involve in any situation leading to direct or indirect interest that conflicts with the interest of the Company;
- Achieve or attempt to achieve any undue gain or advantage to him or any relatives, partners or associates;
- Assignment of his office;

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Powers of the Directors (C166)

- Promote the Objects of the Company;
- Exercise his duties with reasonable due and care;
- Not involve in any situation leading to direct or indirect interest that conflicts with the interest of the Company;
- Achieve or attempt to achieve any undue gain or advantage to him or any relatives, partners or associates;
- Assignment of his office;

66

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Vacancy of Office (Clause 167)

- Any disqualification as stated above;
- Absent from meetings of Board for twelve months with or without seeking Leave of Absence;
- Contravention of contract provisions;
- Failure to disclose interest;
- Disqualified by Order of Court;
- Convicted for Offence by Court;

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Remuneration to Directors



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Remuneration

- Section 197 and Schedule V applicable;
- Terms and conditions of appointment to be approved by Board and then at the General Meeting;
- In case there is a variance in the terms of remuneration, then approval by Central Government;
- Filing of terms of appointment within 60 days of such appointment, with the Registrar;

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Remuneration

- Limit of Total Remuneration by public company to all Directors, not to exceed 11% of the NP for that year as per the formulas given for computation;
- Remuneration payable to one Director shall not exceed 5% to MD, WTD or Manager and in total not exceed 10% of the NP to all such Directors taken together;
- Above amount can be increased with the permission of the CG;

70

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Remuneration

- In case of other Directors, where MD or WTD shall not exceed
 - 1% of the NP, if there is MD or WTD;
 - 3% of the NP, in any other case.
- Percentage does not include any fees payable by way of Sitting Fees.
- Any remuneration of such Director received by way of professional services to be excluded;
- In the opinion of NRC the Directors possess requisite qualification and practice, then exclude.

71

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Limits of Remuneration

- Computed based on effective capital
 - Up to 5cr - 30 lakhs
 - 5 to 100 Cr - 42 lakhs
 - 100 to 250 Cr - 60 lakhs
 - 250 cr & above - 60 lakhs plus 0.01% of the excess
- The remuneration can be doubled by passing special resolution.
- Limit to be pro-rated for the part of the year, if the year is for a shorter period.

72

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No Remuneration payable in certain cases

- If not approved at the General Meeting;
- Default of repayment of debts or interest for a continuous period of 30days in a preceding FY;
- Limit of 3 years fixed has expired;
- Statement giving certain information to shareholders are not given;

73

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Disclosure in Board

- In Boards Report, the ratio of remuneration to be disclosed;
- In case of Insurance taken, the premium paid for professional indemnity not to be counted as a part of remuneration;
- Failure to comply the provisions relating to remuneration liable to fine of ` 1 lakh extendable to ` 5 lakh

74

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Shifting Of Registered Office



- Time Limit reduced to 15 days for filing information
- SR required for shifting of RO from local limits;
- Approval of RD required for Shifting of RO from one state to the other.
- Applicable only on confirmation by issue of certificate to that effect;
- Penalty of `1000 per day to extend up to `1lac

75

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Issue registered on 26/09/2013
This document is for information purposes only and is not intended to constitute an offer.
100% Fresh Issue

Entertainment **CINEMAX**

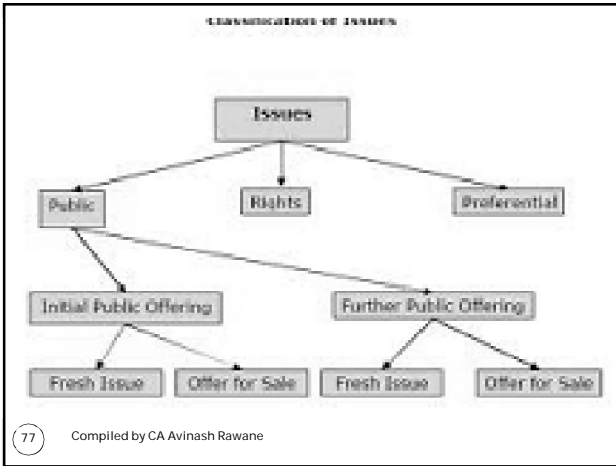
ISSUE OF PUBLIC DEBT

The Prospectus is prepared in compliance with the Securities and Exchange Commission's (SEC) Public Company Issuance Reporting Requirements (PCIR) under the Securities Act of 1933, as amended (the "Securities Act") and the Securities Exchange Act of 1934, as amended (the "Securities Exchange Act"). The Prospectus is subject to the SEC's review and approval process under the Securities Act and the Securities Exchange Act. The Prospectus is not intended to constitute an offer of securities. The Prospectus is for information purposes only and is not intended to constitute an offer of securities. The Prospectus is for information purposes only and is not intended to constitute an offer of securities.

The company and its securities are registered with the SEC. For more information, please visit our website at www.cinemax.com.

ISSUE OF PROSPECTUS

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Prospectus and Allotment of Securities

- Dealt by Chapter III of the Bill;
- Section 23 to Section 42 of the Bill deals with the provisions;
- Divided into 2 parts specifically of limited and private limited Companies;
- GDR issue also covered;

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Certain Notable Changes

- Usage of the term "securities" and not "shares", thereby covering a whole host of instruments;
- Private placement can be made to only 50 persons in a single financial year;
- Time gap of one year specified for other private placements;
- Maximum 200 members not to be exceeded in case of private company.

79

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Prospectus and Allotment of Securities

- Public limited Company to issue securities by complying requirements in Part I,
- For issue in private placement by public company needs to comply the requirements stated in Part II;
- Private limited Company to comply the requirements of issue of Capital stated in Part II

80

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Prospectus and Allotment of Securities

- Provisions relating to Issue and Transfer of Securities and non payment of dividend by the listed companies or proposing listings to be administered by SEBI;
- Others by Central Government, by specific powers to the Registrar, CG or the Tribunal;
- Any document for Offer of Sale to the public shall deemed to be Prospectus (Section 25(1)) and all enactments, contents to be binding on the Issuer.

81

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Prospectus and Allotment of Securities (Section 26)

- Prospectus to state the Net Amount of consideration received or to be received by the Company in respect of the securities to which it relates;
- Time and place at which the contract under which the said securities have been or are to be allotted may be inspected;
- The persons making the offer were the persons named in the prospectus as Directors of the Company

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Prospectus and Allotment of Securities (Section 26)

- Signed by at least 2 Directors;
- To include Name, Registered Address of the Company, Company Secretary, CFO, Auditors, legal advisers, bankers, trustees if any, underwriters or such other persons as may be prescribed;
- Date of opening and closing of the issue;
- Statement by the BOD that all the monies received on application shall be kept in a separate bank account and the required disclosure of receipt and utilisation to be given;

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Prospectus and Allotment of Securities (Section 26)

- Details of underwriters of the issue;
- Consent of the Directors, Auditors, Bankers, experts etc;
- Authority for issue and the details of the resolution passed;
- Procedure and time schedule for issue and allotment of securities;
- Capital structure of the Company;
- Main Objects of the public offer, terms of the present issue and additional particulars, if any.

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Prospectus and Allotment of Securities (Section 26)

- Main Objects and present business of the Company, its location and schedule of implementation of the project;
- Risk factors of the project;
- Minimum Subscription, Details of the Directors, their appointments, remuneration and other particulars including their Nature of Interest;
- Disclosure of Financial Information.

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Prospectus and Allotment of Securities (Section 26)

- Mandatory Registration of the Prospectus with the Registrar before issue;
- Validity of the prospectus will be 90 days after the date of delivery of the Prospectus to the Registrar.
- Penalty for contravention Rs. 50000 extendable to Rs. 3 Lacs & every person knowingly being part of it shall be punishable with imprisonment for a term which may extend to 3 years along with fine.

86

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Prospectus – Other Conditions

- Terms of contract can be varied by following procedures (Clause 27);
- Certain Number of Members, in consultation with the Board, may offer for sale of their Shares, by following procedure (Clause 28)
- Issue of Shares to be in Dematerialised Form for Companies (Clause 29)

87

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Prospectus – Other Conditions

- Advertisement of Prospectus can be given in the Specified Manner (Clause 30);
- Can file Shelf Prospectus with SEBI at the stage for first Public Offer of Securities with a one year validity of such prospectus and also for subsequent offer(Clause 31);
- Additional Information to be filed after filing of Shelf Prospectus for subsequent Offer. Withdrawal Option to non intent persons;

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Red Herring Prospectus (RHP)

- It's a Prospectus which does not include complete particulars of the Quantum or Price of the securities included therein; (Clause 32)
- To be issued before the Issue of Prospectus;
- To be filed 3 days prior to the opening of subscription list and offer;
- To carry same obligations as of the Prospectus;
- Any variation between RHP & Prospectus to be stated in detail in Prospectus;

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Red Herring Prospectus (RHP)

- On Close of the Offer, the details of amount raised through RHP by way of debt or share capital and the closing price of the Securities to be filed with Registrar & SEBI along with the other details as are not included in the RHP;
- Variations for the details stated in RHP and Prospectus to be highlighted at the time of filing.

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Issue of Application forms

- Application Form to have Abridged Prospectus for invitation to subscribe;
- A copy of the prospectus to be provided on request to the intending subscriber before the closure of subscription list;
- Penalty of Rs. 50000/- for each default.
- Criminal & Civil Liability for mis-statement.

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Allotment of Securities

- No Allotment if minimum subscription not received;
- Application Money cannot be less than 5% of the Nominal Amount or such specified percentage by SEBI;
- Refund of subscription amount within 30 days if the conditions are not subscription are not fulfilled;
- Form of Allotment of Shares to be filed with MCA;
- Penalties for non compliance.

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PROSPECTUS AND ALLOTMENT OF SECURITIES

- The term 'private placement' has been defined to bring clarity.
- "Private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section.

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PROSPECTUS AND ALLOTMENT OF SECURITIES

- Detailed disclosures are provided in the Bill itself. It includes disclosures about sources of promoter's contribution.
- In case of variation in the terms of contract referred to in the prospectus or objects for which the prospectus was issued, the dissenting shareholders shall be given exit opportunity by promoters or controlling shareholders

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PROSPECTUS AND ALLOTMENT OF SECURITIES

- **Punishment for fraudulently inducing persons to invest money (clause 36);**
- liable for punishment for fraud. This provision is proposed to help in curbing a major source of corporate delinquency.
- Company raising money through prospectus and not utilised the same, shall not change its Objects unless required by providing exit opportunity.

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Issue of Shares & Debentures

- Issue of Duplicate Shares with the Intent to default liable for minimum penalty of 5 times and maximum 10 times of the FV of shares or Rs. 10 crores whichever is higher;
- **Depository has transferred shares with an intention to defraud a person, it shall be liable under section 447 i.e. provisions for punishment for fraud. [clause56(7)]**

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Issue of Shares & Debentures

- Security Premium Account may also be applied for the purchase of its own shares or other securities. [Clause 52(2)(e)];
- A company **cannot issue share at a discount.** [Clause(53)];
- A company limited by shares **cannot issue any preference shares which are irredeemable.** If Authorised by it's Articles, can issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue.

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Issue of Shares & Debentures

- Preference Shares can be issued for Infrastructural projects, subject to redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preference shareholders. [Clause 55].
- Every company shall deliver **debenture certificate within six months of allotment.** [Clause 56(4)(d)].

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Issue of Shares in consideration

- Any arrangement between a company and its director or connected person, *for acquisition of asset for consideration other than cash, shall require the prior approval of the shareholders by way of a resolution, and in case such director or other connected person is a director of the holding company, approval shall also be required from the shareholders of such holding company.*

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Amendment for Transfer of Shares

- Shares of public Company which are freely transferable, if it is through contract or arrangement between two or more persons in respect of transfer of securities, shall be enforceable as a CONTRACT;
- No buy back of shares up to a period of 1 year from the date of the preceding BUY-BACK. Earlier restriction of 10% of the total paid up capital and free reserves limit is not seen in the Bill.

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Issue of Shares through Private Placement

- Clause 42 deals with the same;
- Not more than 50 members at a time;
- Limit excludes QII and ESOPS;
- No Offer or Allotment to be made unless earlier invitation issued has been fully complied;
- No cash subscription allowed;
- Time limit of 60 days fixed for allotment.
- If No allotment done within specified time, to refund the money with 12% interest.

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Issue of Shares through Private Placement

- No release or Advertisement in public media;
- To keep the Share Application Money in separate Bank Account;
- To file Return of Allotment with MCA online along with complete list of the details of Allotment;
- Any contravention liable for penalty of Rs. 2 Crores or amount involved in Public Offer, whichever is higher.
- Disclosure and certification by the Auditor.

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Valuation made mandatory

- Appointment of registered valuer for carrying out the valuation of company's property e.g. *shares, stocks, debentures, securities or goodwill or net worth of a company or its liabilities, has been made mandatory*

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Valuation made mandatory

- Mandatory valuation by registered valuer is required in case of share capital:-
(a) *allotment of shares for consideration other than cash;*
(b) *acquisition of minority shareholding by an acquirer already holding 90% of issued equity share capital of a company;* (c) *exit opportunity (c) to the dissenting shareholders of transferor company/listed company being merged with an unlisted company;*

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Doubts & Queries

- Any Questions
- Thank You



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Rawani and Company,
Chartered Accountants
B-206, Hinal Heritage, Patel Wadi, S.V.P.Road,
Near Chamunda Circle, Borivali West,
Mumbai 400092
E-mail : avinash@carawani.com
Website: www.carawani.com

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