

PROCEDURES FOR INCORPORATION AND REGISTRATION OF COMPANIES

A company is a voluntary association of persons formed for the purpose of business activities. A company has distinct name and limited liability, it is a juristic person having a separate legal entity different from its members who constitute it, capable of rights and duties of its own and endowed with a potential or perpetual succession. The Companies Act, 1956 prescribes specific procedures for incorporation and registration of companies. A company can be formed either by:—

(i) incorporation of a new company; or

(ii) conversion of existing business (sole proprietorship concern or partnership firm or co-operative societies) into company under the provisions of Chapter IX and Chapter IXA of the Companies Act, 1956; or

(iii) companies incorporated under section 25 of the Companies Act, 1956.

The incorporation (birth) and winding up and dissolution (death) of a company are governed by the provisions of the Companies Act, 1956. Therefore each company is subject to the provisions of the Companies Act, 1956, as may be amended from time to time. The following procedure involves for incorporation of a company.

STEP WISE FORMALITIES FOR FORMATION OF A NEW COMPANY

Persons **desirous of forming a company** must adhere to the step by step procedure as discussed below:—

- I. Selection of type of the company.
- II. Selection of name for the proposed company.
- III. Apply for Directors Identification Number and Digital Signatures, if does not have
- IV. Drafting of Memorandum and Articles of Association.
- V. Stamping, digitally signing and e-filing of various documents with the Registrar.
- VI. Payment of Fees.
- VII. Obtaining Certificate of Incorporation.
- VIII. Preparation and filing of Prospectus/Statement in lieu of Prospectus and e-Form 19/20 (in case of public companies) for obtaining the certificate of commencement of business.
- IX. Obtaining Certificate of Commencement of business (in case of public limited companies).

Selection of the type of company

The promoters of a company may be individuals or bodies corporate engaged in efforts to incorporate a company. They have the power of defining the object of the company and

deciding various connected matters regarding incorporation. Proposed scale of operations, capital involved, etc. depend upon the purposes for which the company is to be incorporated. The promoters are at liberty to select type of the company viz. private company, public company, nonprofit making company, etc. (See my previous Article "BASIC UNDERSTANDING ABOUT COMPANIES")

Requirement for having DIN

As per proviso to section 253 of the Companies Act, 1956, inserted by the Companies (Amendment) Act, 2006, w.e.f. 1-11-2006, no company shall appoint or re-appoint any individual as director of the company unless he has been allotted a Director Identification Number under section 266B.

New section 266A has been inserted by the Companies (Amendment) Act, 2006 which provides that every individual, intending to be appointed as director of a company shall make an application for allotment of Director Identification Number (DIN) to the Central Government in the prescribed DIN Form. Therefore, before submission of e-Form 1A all the directors of the proposed company must ensure that they are having DIN and if they are not having DIN, it should be first obtained, however on the basis of the provisional DIN allotted online will serve the purpose.

Specific care should be taken that a person cannot have more than one DIN, therefore, a DIN once obtained shall serve the requirement for all the companies in which he is director or intended to be a director.

Requirement for having digital signatures

After 16th Sept., 2006, every documents prescribed under the Companies Act, 1956 is required to be filed with the digital signature of the managing director or director or manager or secretary of the Company, therefore, it is compulsorily required to obtain digital signatures of at least one director to sign the e-Form 1A and other documents.

Selection of name

Six names are required to be selected in order of preference after taking notes of numerous clarifications, circulars and rules made by the Ministry of Company Affairs (DCA), etc. In case key word is required, significance of each key word should be given in the e-Form 1A.

APPLYING FOR ASCERTAINING THE AVAILABILITY OF THE SELECTED NAME

The promoters are required to make an application to the concerned Registrar of Companies be submitted electronically to the Ministry of Company Affairs on the portal of MCA. An application shall be in e-Form 1A as prescribed by Notification No. GSR 56(E) dated 10th Feb., 2006 duly digitally signed by any one promoter or managing director or director or manager or secretary of the company alongwith the required fee of Rs. 500 only for ascertaining whether the selected name is available for adoption by the promoters of the proposed company.

APPROVAL OF THE NAME

After receipt of completed application in e-Form 1A, the Registrar shall intimate whether the proposed name is available for adoption or not. The confirmation of the name made available by the Registrar shall be valid for a period of six months from the date of letter issued in these regards. In case, if the promoters fails to submit all the required documents for incorporation within that period, then they are required to submit another application for revalidation of name with fresh filing fee of Rs. 500 only.

Preparation of the Memorandum of Association (MOA) and Articles of Association (AOA)

Drafting of the MOA and AOA is generally a step subsequent to the availability of name made by the Registrar. It should be noted that the main objects should match with the objects shown in e-Form 1A. These two documents are basically the charter and internal rules and regulations of the company. Therefore, it must be drafted with utmost care and with the advise of the experts and the other object clause should be drafted in a very broader sense.

Estimate of registration fees for a new company

The fees payable to the Registrar at the time of registration of a new company varies according to the authorised capital of a company proposed to be registered as per Schedule X to the Act. Fees can be calculated at the MCA portal using fees calculator.

Filing of documents with the Registrar

Next step for the promoters is to file the following documents with the Registrar for incorporation of the company. The following documents shall be submitted to the Registrar alongwith the adequate filing fees as applicable for registration of the company electronically on line basis within a period of six months from the date of intimation of availability of name:—

(i) Memorandum of Association, duly signed by the subscribers and witnessed, showing the number of shares against their names electronically attached in PDF file. It should also be properly stamped as per the stamp duty applicable in the State, where the registered office of the company is to be situated. Photographs of the subscribers shall also be attached. Simultaneously original stamped copy of the Memorandum of Association shall be submitted (physical submissoin) with the Registrar of Companies concerned.

(ii) Articles of Association should also be duly signed by the subscribers and witnessed, showing the number of shares against their names electronically. It should also be properly stamped according to the authorised share capital. Photographs of the subscribers shall also be attached. Simultaneously original stamped copy of the Article of Association shall be submitted with the Registrar of Companies concerned.

(iii) Copy of the agreement, if any, which the company proposes to enter into with any individual for appointment as its managing or whole-time director or manager shall be attached in the PDF file.

(iv) Declaration in e-Form 1 by an advocate or company secretary or chartered accountant engaged in whole time practice in India or by a person named in the Articles as a director, manager or secretary of the company, that all the requirements of the Companies Act, 1956 and the rules made thereunder have been complied with in respect of registration. **[Refer Section 33(2)]**

(v) Power of Attorney for should be furnished by all the subscribers in favour of any one subscriber or any other person authorising him to file these documents and to with the Registrar and to obtain certificate of incorporation. The power of attorney should be given on Non-Judicial stamp paper of appropriate value and shall be submitted to the Registrar.

(vi) Other agreement if any, which has been stated in the Memorandum or Articles of Association shall also be filed in the PDF file with the Registrar because in such cases the agreement will form part of this basic document.

(vii) E-Form 18 is to be filed with the Registrar electronically with the digital signatures in regard to location of the registered office. E-Form 18 shall also be certified by the company secretary or chartered accountant or cost accountant in whole-time practice. [Section 146(2)]

(viii) E-Form 32 is required to be filed with the Registrar electronically for filing particulars of directors. **The personal details should match with the information provided in the DIN.** Following additional details are also required to given in e-Form 32:

E-Form 32 is required to be digitally signed by the director or managing director or manager or secretary of the company. E-Form 32 shall be filed along with the adequate filing fee as prescribed under Schedule XIII of the Companies Act, 1956.

SUBMISSION OF E-FORM 1

E-Form 1 has to be submitted with following enclosures:

- (1) Memorandum of Association (MoA) and Article of Association (AoA) of the company [Not required for a company licensed under section 25];
- (2) Annexure containing details of subscribers (Optional);
- (3) Power of Attorney/Authority letter given by the subscribers/promoters/directors to the professional *i.e.* advocate or attorney or pleader or CS or CA (in whole-time practice) for formation of a company.

- (4) Copy of Memorandum of Association (MoA) and Article of Association (AoA) after stamping and physically signed by all the subscribers should be delivered at the RoC office where company is to be registered.

Note: In case, if any subscribe put his name, and other descriptions and sign in a language other than, in which the Memorandum and Articles of Associates, then it is required by the witness to give statement that he had explained the contents of all the documents in such language and the subscriber has signed the same after proper understanding of the same.

Further that an Affidavit on the stamp paper of adequate value that he had been explained the contents of the Memorandum and Articles of Association and all other relevant documents for incorporation of the company and he/she had put his/her signature after proper understanding of the same and this affidavit should also be furnished with the Registrar along with all the documents as described above.

Certificate of Incorporation (Sections 33 and 34)

On the satisfaction of the Registrar that the requirements specified in sections 33(1) and 33(2) have been complied with by the company, he shall retain the documents and register the MOA, AOA and other documents. Section 34(1) cast an obligation on the Registrar to issue a Certificate of Incorporation, normally within 7 days of the receipt of documents. It is advisable to authorise some person to collect the certificate personally from the ROC Office.

Commencement of Business

A Private limited company and a company not having share capital may commence its business activities from the date of its incorporation. However, a Public Limited Company having share capital is also required to obtain a separate certificate of commencement of business according to section 149(2A) of the Companies Act, 1956.

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