Legal & Tax Aspects Of Business

Procedure For Formation & Registration Of Company

2009

ROHIDAS PATIL INSTITUTE OF MANAGEMENT STUDIES

ACKNOWLEDGEMENT

It gives us immense pleasure & distinct satisfaction & achievement to present our report on “Procedure and Formation of Company”.

We take this opportunity to express our heart-felt gratitude to everyone who has helped us in making this report in numerous ways.

I sincerely appreciate the co-operation of “RPIMS” & its distinguished professor.

I am highly obliged to “Mr. Rajan Sir” project guided for giving us an opportunity to conduct this study to get valuable knowledge under their guidance.

COMPANY LAW

Company legislation in India owes its origin to English COMPANY law. First law regulating companies took its birth in 1850 as Joint stock Companies Act. However, it was only in 1857 followed by English companies Act 1856, that the Joint Stock Companies Act, for the first time introduced the principle of limited liability. Principle of limited liability was extended to banking companies by Joint Stock Companies Act 1860.

With the introduction of Limited liability, corporate sector achieved more and more importance. The working of the act revealed several defects or flaws. Following English companies (consolidation) Act of 1908, Indian Companies Act 1913 was passed. Even the Act of 1913 proved inadequate and, therefore 1913 Act was amended several times. WORLD-WAR 2 witnessed many changes in organization and management of Joint Stock Companies. Government of india , therefore, appointed a committee under the chairmanship of Mr. H.L.Bhabha on 25-10-1950 of 12 members representing various interests. Committee submitted its report in april 1952. Based on this Report, Present Companies Act,1956 enacted on the lines of English Companies Act, 1948. Companies Act,1956 regulates entire organization and management of the companies in India. It came into force on and from 1st april 1956. However the present Act of 1956 was neither free from Loopholes. This necessitated vast amendment by Amendment Act,1960. Further amendments followed since 1962 and then by Companies(Amendment) Act, 1996 with affect from 1st march 1997. As a result of Introduction of depositories act, 1996 and Amendments thereto by Amendment Act, 1997, Consequential changes and amendments have been made in the companies Act, 1956.

Types of companies

1] **Royal Charter or Chartered Company: -** These companies are incorporated under special Royal Charter issued by the king or queen.their powers and actions are governed by the charter example. East India Company, Bank of England etc. such company are treated as foreign companies in India.

2] **Statutory companies**: - This company is form under the special statutory act of the parliament or state legislature for example reserve bank of India, state bank of India, industrial finance co-operation of India, LIC etc. These companies are mostly public undertakings and are formed with the main object of public utilities and not for profit. Any change in the working of these companies is regulated by Parliament or Legislative amendments only. Companies Act, 1956 applies to these companies if its provision is not inconsistent with the provision of special acts under which they are formed.

3] **Registered Companies under the Act: -** Company registered under the companies act, 1956 or under any previous Companies Act, are Companies Registered under the Companies Act. All companies are regulated now provisions of the Companies Act, 1956. These companies have memorandum of association and article of association for their internal and external regulations.

Companies registered under the company act are either - Company Limited by Shares, Companies Limited by Guarantee, Unlimited Company.

A) **Company Limited by shares**: These types of companies have share capital and the liability of each member of the company is limited to the extent of face values of shares subscribed by him. The company limited by shares may be **Public Company** or **Private Company**.

B) **Companies limited by guarantee**: These types of companies may or may not have a share capital. Each member promises to pay fix sum of money specified in the memorandum in the event of liquidation of the company for payment of the debt and liabilities of the company [sec. 13(3)]. This amount promised by him called Guarantee. The AOA of the company states number of members with which the company is to be registered [sec. 27(2)]. Such a company is called a company limited by guarantee. Such companies depend for their existence on entrance and subscription fees. They may or may not have a share capital. The liability of the members is limited to the extent of the guarantee and face value of the shares subscribed by him, if the company has the share capital. If it has a share capital it may be a public company or a private company.

C) **Unlimited companies**: The liability of the members in these companies is unlimited like an ordinary partnership firm, in proportion to his interest in the Company. Section 12 gives choice to the promoters to form a company with or without limited liability. A company not having any limit on the liability of its members is called an unlimited company [sec. 12(c)].an unlimited company may or may not have a share capital. if it has a share capital it may be a public company or a private company. If the company has a share capital, the article shall state the amount of share capital with which the company is to be registered [sec. 27(1)].The articles of an unlimited company shall state the number of members with which the Company is to be registered.

Private limited companies [sec. 3(1) (iii)]

Section3 (1) (iii) of the companies act defines a private limited company, private company means a company which has a minimum paid up capital of One lakh rupees or such higher paid up capital as may be prescribed and by its articles-

(i) Restricts the right to transfer its shares, if any;

(ii) limits the number of its members to 50; not including:

(a) Persons who are in the employment of the company, and

(b) 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: and

(ii) Prohibits any invitation to the public to subscribe for any shares in, in debentures of the company.

(iii) Prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

Every private company existing on the commencement of the companies (Amendment) act, 2000, i.e.; on 13.12.2000 with a paid up capital of less than one lakh rupees shall within a period of 2 years from 13.12.2000, enhance it paid up capital to one lakh rupees. Where a private company fails to enhance its paid up capital to 1 lakh rupees within the period of 2 years, such company shall be deemed to be a defunct company and its name shall be stuck off from the register by the registrar.

Public Limited Company:- A Public Limited Company is a Company limited by shares in which there is no restriction on the maximum number of shareholders, transfer of shares and acceptance of public deposits. The liability of each shareholder is limited to the extent of the unpaid amount of the shares face value and the premium thereon in respect of the shares held by him. However, the liability of a Director / Manager of such a Company can at times be unlimited. The minimum number of shareholders is 7

Advantages of a Limited Company

A limited company has following advantages:

- Members' (the directors and shareholders) financial liability is limited to the amount of money they have paid for shares.
- The management structure is clearly defined, which makes it easy to appoint, retire or remove directors.
- If extra capital is needed, it can be raised by selling more shares privately.
  It is simple to admit more members.
- The death, bankruptcy or withdrawal of capital by one member does not affect the company's ability to trade.
- The disposal of the whole or part of the business is easily arranged.
  High status.

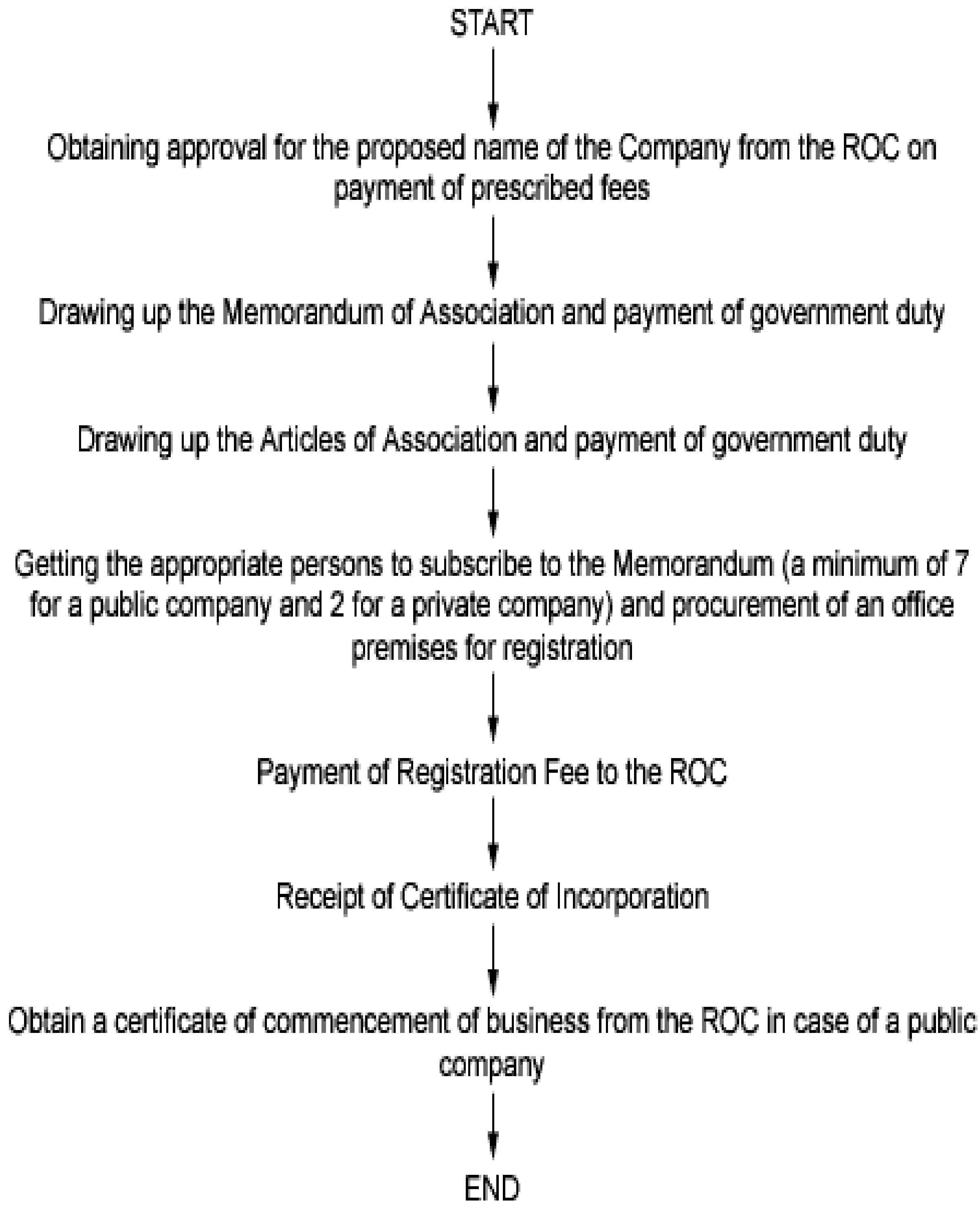
Disadvantages of a Limited Company

A limited company has following disadvantages:

- Requirement to register the company with the registrar of companies and provide annual returns and audited statement of accounts. All details of the company are available for public inspection so there can be no secrecy. There are penalties for failing to make returns.
- Can be more expensive to set up.
- May need professional help to form.
- As a director, you are treated as an employee and must pay tax.
- The advantages of limited liability status are increasingly being undermined by banks, finance house, landlords and suppliers who

require personal guarantees from the directors before they will do business.

Company Formation



COMPANY FORMATION

Introduction - Forming A Company In India

The Companies Act of 1956 sets down rules for the establishment of both public and private companies. The most commonly used corporate form is the limited company, unlimited companies being relatively uncommon. A company is formed by registering the Memorandum and Articles of Association with the State Registrar of Companies of the state in which the main office is to be located.
Foreign companies engaged in manufacturing and trading activities abroad are permitted by the Reserve Bank of India to open branch offices in India for the purpose of carrying on the following activities in India:
To represent the parent company or other foreign companies in various matters in India, for example, acting as buying/selling agents in India, etc.
To conduct research work in which the parent company is engaged provided the results of the research work are made available to Indian companies
to undertake export and import trading activities
to promote possible technical and financial collaboration between Indian companies and overseas companies.
Application for permission to open a branch, a project office or liaison office is made via the Reserve Bank of India by submitting form FNC-5 to the Controller, Foreign Investment and Technology Transfer Section of the Reserve Bank of India. For opening a project or site office, application may be made on Form FNC-10 to the regional offices of the Reserve Bank of India. A foreign investor need not have a local partner, whether or not the foreigner wants to hold full equity of the company. The portion of the equity thus not held by the foreign investor can be offered to the public.

i) Incorporating a Company - Approval of Name

The first step in the formation of a company is the approval of the name by the Registrar of Companies (ROC) in the State/Union Territory in which the company will maintain its Registered Office. This approval is provided subject to certain conditions: for instance, there should not be an existing company by the same name. Further, the last words in the name are required to be "Private Ltd." in the case of a private company and "Limited" in the case of a Public Company. The application should mention at least four suitable names of the proposed company, in order of preference. In the case of a private limited company, the name of the company should end with the words "Private Limited" as the last words. In case of a public limited company, the name of the company should end with the word "Limited" as the last word. The ROC generally informs the applicant within seven days from the date of submission of the application, whether or not any of the names applied for is available. Once a name is approved, it is valid for a period of six months, within which time Memorandum of Association and Articles of Association together with miscellaneous documents should be filed. If one is unable to do so, an application may be made for renewal of name by paying additional fees. After obtaining the name approval, it normally takes approximately two to three weeks to incorporate a company depending on where the company is registered.

ii) MEMORANDUM OF ASSOCIATION

Definition

Memorandum of Association is a document originally framed by a company. Amongst other documents the company is required to file two documents with the Registrar of Companies, i.e., the Memorandum of Association and the Articles of Association. Memorandum of Association contains the rules regarding the constitution and activities or objects of the company. It is fundamental charter of the company. The company is governed by the Memorandum of Association. It is to work within the framework of the Memorandum of Association as otherwise its acts would be ultra vires and void.

The Memorandum of Association defines the extent and powers of the company. A company cannot exceed the power conferred on it under its Memorandum of Association. Whether a transaction entered into by a company can be said to be within its power or not has to be decided on the basis of the facts established and the provisions in its Memorandum and not on the basis of any abstract rule. If the acts of the company are beyond the limits of Memorandum of Association, such acts would be void and ultra vires. They cannot be ratified in order to be binding on the company. Directors are personally liable to make good the Company's loss if company's money is spent on an unauthorised object.

The Memorandum of Association is designed to make the outside world know the state of affairs of the company. The prospective investors, shareholders or creditors, should know the extent of their risk and also possibilities of the company to overcome them. It is a public document and can be inspected by anybody.

CONTENTS OF MEMORANDUM OF ASSOCIATION:[Sec 13]

According to section 13 of the Act the Memorandum of every company shall state:

1) Name Clause
2) Registered Office
3) Objects of Company
4) Liability of Members

5) Details of Share Capital
6) Subscription or Association Clause

1) <u>NAME CLAUSE</u> [Sec. 20]: Promoters of the company have to make an application to Registrar of Companies for the availability of name. The company can adopt any name if:

   i) There is no other company registered under the same or under an identical name;
   ii) The name should not be considered undesirable and prohibited by the Central Government. A name which misrepresents the public is prohibited by the Government under the Emblems & Names (Prevention of Improper use) Act,1950, for example, Indian National Flag, name and pictorial representation of Mahatma Gandhi and the Prime Minister of India, name and Emblems of U.N.O., and W.H.O., the official seal and Emblems of the Central Government and State Governments.

      A name which is identical with or too nearly resembles,-

      i) The name by which a Company in existence has been previously registered, or
      ii) A registered trade mark, or trade mark which is subject of an application for registration, of any other person under the Trade Mark Act, 1999 may be deemed to be undesirable by the Central Government. The Central Government, before deeming a name as undesirable , may consult the Registrar of Trade Marks.

         Where the name of the company closely resembles the name of the company already registered, the Court may direct the change of the name of the company.

      iii) Once the name have been approved and the company have been registered, then:

         a) the name of the company with registered office shall be affixed on outside of the business premises;
         b) if the liability of the member is limited the words ‘’Limited’’ or ‘’Private Limited
         c) the name and address of the registered office shall be mentioned in all letter-heads, business letters, notices and Common Seal of the Company, etc. [Sec. 147].

2) <u>**REGISTERED OFFICE OF THE COMPANY**</u> [Sec. 146]: the company shall, from the day on which it commences business or

within 30 days after the date of its incorporation, have registered office to which all communications and notices may be addressed. The Memorandum must specify the state in which the registered office of the company is to be situated. Company shall give notice within 30 days to Registrar of the situation of the registered office. Usually the Company while submitting its papers for incorporation also files a notice of registered office of the company with Registrar of Companies. All documents and notices to be served on the Company , must be served at its registered office [Sec. 51]

3) <u>OBJECTS CLAUSE</u> [Sec. 13 & 149]: the third and important clause which defines the limits and extent of the activities of the company is its objects clause. The Memorandum must state-

i) the main objects of the company to be pursued by the company on its incorporation;
ii) the objects incidental or ancillary to the attainment of the main objects; and
iii) other objects of the company [Sec . 13(1)(d)]

The doing of any business pertaining to the other objects require compliance of provisions of Sec. 149 (2-A) viz., such commencement of business shall be approved by a special resolution passed in the general meeting and a declaration to that effect is filed with Registrar.

Objects stated in the main objects are to be persuaded by the company immediately after incorporation or within a reasonable time thereafter. Where the main objects of the company have failed to materialise, the Court may order winding-up under just and equitable ground.

The activities which the company proposes to pursue immediately on incorporation are always embodied under the main objects followed by objects incidental or ancillary to the attainment of main objects. The other objects clauses include other activities which the company may plan to pursue at any later date. The object should not be illegal and against the provisions of the Companies Act.

The statement of objects informs the investors of the purpose for which their capital is proposed to be used by the company. It ensures the shareholders that the funds raised for one undertaking are not going to be risked in another. The statement of objects serves the public interest and also prevents concentration of economic power as the corporate activities are confined within a defined field.

The objects clause enables the subscribers of the shares and creditors of the company:-

i) to be fully aware of the objects to which their money can be employed ; and
ii) to protect the creditors by ensuring that the company's funds to which they must look for payment are not dissipated in unauthorised activities.

4) **CAPITAL CLAUSE** [Sec. 13] : In case of company having a share capital unless the company is an unlimited company .Memorandum shall also state the amount of share capital with which the company is to be registered and division thereof into shares of a fixed amount [Sec. 13(4)]. The capital with which the company is registered is called authorised or nominal share capital. The nominal capital is divided into classes of shares and there values are mentioned in the clauses. The amount of nominal or authorised capital of the company would be normally, that which shall be required for the attainment of the main objects of the company. In case of companies limited by guarantee, the amount promised by each member to be contributed by them in case of winding up of the company is to be mentioned. No subscriber to the Memorandum shall take less than one share. Each subscriber of the Memorandum shall write against his name the number of shares he takes.

5) **LIABILITY CLAUSE** [Sec. 13]: The liability of the members is limited to the extent of the shares subscribed by the members if the company is formed with share capital or to the extent of the guarantee given by the members if the company is formed with guarantee.

6) **SUBSCRIPTION OR ASSOCIATION CLAUSE**[Sec. 13]: Each subscriber to the Memorandum of the company shall take at least one share . In case of a private company at least two persons and in case of a public company at least 7 person shall subscribe to the Memorandum of the company .The signatures of the subscribers shall be attested by atleast one witness[Sec.13(4)].

The association clause shall be in the following form:

"We the several persons whose names and addresses are subscribed are desirous of being formed into a company in purchase of this Memorandum of Association and we respectively agree to take the number of shares in the capital of the company set opposite our respective names."

After incorporation, no subscriber can withdraw his name on any ground whatsoever.

After the above clause, the name ,age, address, description and occupation of each subscriber is mentioned.

iii) ARTICLE OF ASSOCIATION

1) Rules and Regulation for internal management of company
2) Share Capital
3) Payment, Calls, Transfer, Forfeiture etc of the shares
4) Share Certificate & warrants
5) Rights of shareholders
6) Meeting of company
7) Appointment, Remuneration, Qualification and Power of Board of Directors.
8) Dividends
9) Accounts & Audit
10) Indemnity
11) Winding Up

The Memorandum of Association and Articles of Association are the most important documents to be submitted to the ROC for the purpose of incorporation of a company. The Memorandum of Association is a document that sets out the constitution of the company. It contains, amongst others, the objectives and the scope of activity of the company besides also defining the relationship of the company with the outside world.
The Articles of Association contain the rules and regulations of the company for the management of its internal affairs. While the Memorandum specifies the objectives and purposes for which the Company has been formed, the Articles lay down the rules and regulations for achieving those objectives and purposes.
The ROC will give the certificate of incorporation after the required documents are presented along with the requisite registration fee, which is scaled according to the share capital of the company, as stated in its Memorandum. A private company can commence business on receipt of its certificate of incorporation.
A public company has the option of inviting the public for subscription to its share capital. Accordingly, the company has to issue a prospectus, which provides information about the company to potential investors. The Companies Act specifies the information to be contained in the prospectus.
The prospectus has to be filed with the ROC before it can be issued to the public. In case the company decides not to approach the public for the necessary capital and obtains it privately, it can file a "Statement in Lieu of Prospectus" with the ROC.
On fulfilment of these requirements, the ROC issues a Certificate of

Commencement of Business to the public company. The company can commence business immediately after it receives this certificate.

iv) Getting a appropriate persons to subscribes to Memorandum (a minimum of 7 for a public company and 2 for a private company) and procurement of an office premises for registration.

v) Payment of Registration Fee to the ROC.

vi) Receipt of Certificate of Incorporation.

प्रारुप 1

पंजीकरण प्रमाण-पत्र

कारपोरेट पहचान संख्या : U85195DL2007PTC161881 2007 - 2008

मैं एतद्द्वारा सत्यापित करता हूं कि मैसर्स

DELHI LAPAROSCOPY HOSPITAL PRIVATE LIMITED

का पंजीकरण, कम्पनी अधिनियम 1956 (1956 का 1) के अंतर्गत आज किया जाता है और यह कम्पनी लिमिटेड है।

यह निगमन-पत्र आज दिनांक ग्यारह अप्रैल दो हजार सात को मेरे हस्ताक्षर से दिल्ली में जारी किया जाता है।

Form 1

Certificate of Incorporation

Corporate Identity Number : U85195DL2007PTC161881 2007 - 2008

I hereby certify that DELHI LAPAROSCOPY HOSPITAL PRIVATE LIMITED is this day incorporated under the Companies Act, 1956 (No. 1 of 1956) and that the company is limited.

Given under my hand at Delhi this Eleventh day of April Two Thousand Seven.

(MAHESH CHANDRA SAXENA)

कम्पनी रजिस्ट्रार / Registrar of Companies

राष्ट्रीय राजधानी क्षेत्र दिल्ली एवं हरियाणा

National Capital Territory of Delhi and Haryana

vii) Obtain a certificate of commencement of business from the ROC in case of a public company.

COMPANY NO. ...55-116200......

Certificate for Commencement of Business

व्यापार प्रारम्भ करने का प्रमाण–पत्र

Pursuant to section 149 (3) of the Companies Act, 1956

कम्पनी अधिनियम १९५६ की धारा १४९ (३) के अनुसरण में

I hereby certify that the......... G WAYS MARKETING LIMITED...............................

मैं एतद् द्वारा प्रमाणित करता हूं ......जी वेस मार्केटिंग लिमिटेड ....

which was incorporated under the Companies Act. 1956 on

जो कि कम्पनी अधिनियम, १९५६ के अन्तर्गत पंजीकृत की गई थी दिनांक 24 आषाढ, 1924..........

the ....FIFTEENTH........................day of JULY..........................2002...........

and which has filed duly verified declaration in the

और जिस ने कि यथावत निर्धारित प्रपत्र में सत्यापित घोषणा पत्र प्रस्तुत

prescribed form that the conditions of section

कर दिया है कि उस ने धारा १४९(२) (क) से (ग)

149 (2) (a) to (c) of the said Act, have been complied with is entitled

की सभी शर्तों का अनुपालन कर दिया है, अतः व्यापार आरम्भ करने का

to commence business

अधिकारी है।

Given under my hand at NEW DELHI

मेरे हस्ताक्षर से आज दिनांक............2 श्रावण, 1924..

this.................TWENTY FOURTH.................day of ....JULY..........................

TWO THOUSAND......................................TWO..

को जारी किया गया।

कम्पनी रजिस्ट्रार ★ रा. रा. क्षेत्र दिल्ली एवं हरियाणा ★

Sd/-

(S. K. SHARMA)

कम्पनी रजिस्ट्रार

Dy. Registrar of Companies

रा. रा. क्षेत्र दिल्ली एवं हरियाणा

N.C.T. OF DELHI AND HARYANA

DOCUMENT REQUIRED FOR INCORPORATION

The following documents are required to be executed (signed) before they are submitted to the ROC:

1. **MOA and AOA** - These are required to be executed by the promoters in their own hand in the presence of a witness in quadruplicate stating their full name, father's name, residential address, occupation, number of shares subscribed for, etc.
2. **Form No. 1** - This is a declaration to be executed on a non-judicial stamp paper of INR 20 by one of the directors of the proposed company or other specified persons such as Attorneys or Advocates, etc. stating that all the requirements of the incorporation have been complied with.
3. **Form No. 18** - This is a form to be filed by one of the directors of the company informing the ROC the registered office of the proposed company.
4. **Form No. 29** - This is a consent obtained from all the proposed directors of the proposed company to act as directors of the proposed company. (Not required in case of private company).
5. **Form No. 32** - This is a form stating the fact of appointment of the proposed directors on the board of directors from the date of incorporation of the proposed company and is signed by one of the proposed directors.
6. Name approval letter in original.
7. Power of Attorney signed by all the subscribers of MOA authorizing one of the subscribers or any other person to act on their behalf for the purpose of incorporation and accepting the certificate of incorporation.
8. Power of Attorney in case of a subscriber who has appointed another person to sign the MOA on his behalf.
9. Filing fees as may be applicable.

After the documents are filled, The ROC calls the Attorney on specific date for scrutiny and making correction in the MOA and filled. On complying with the same, the certificate of Incorporation is granted to the attorney.

When newly formed company start its business operations? [Commencement of Business]

On receipt of the certificate of incorporation, the public company has to complete certain other legal formalities such as a statutory meeting (within 6 months), statutory report, etc. On completion of the said formalities and on filing of the statutory report with the ROC the ROC issues the certification of commencement of business to the company. Thereafter, the Public Company can start the business operations. The Private Company can start its business immediately on incorporation

ADVANTAGE OF INCORPORATION

1) Corporate Existence
2) Liability
3) Transferable shares
4) Perpetual succession
5) Members and the Company
6) Management
7) Separate Property.
8) Company to sue and to be sued.

1. **CORPORATE EXISTANCE**:- The company on incorporation obtain independent corporate existence. It is vested with an independent legal personality distinct from the members who compose it. It becomes a body corporate capable of immediately functioning as an incorporated individual.

2. **LIABILITY**:- The liability of the members is limited to the extent of nominal amount of the shares subscribed in the company's share capital. In case of company limited by guarantee, the liability of the members is limited to the extent of the amount guaranteed by each member.

3. **TRANSFERABLE SHARES**:- Shares in company can be transferred easily without the consent of the other members.

4. **PERPETUAL SUCCESSION**:- As the company has separate legal existence independent of its members, it is not affected by death or insolvency of a member. It has a perpetual existence.

5. **MEMBERS AND THE COMPANY**:- Company being a separate legal entity it can sue its members in the ordinary way, can give loans to the members, enter into contracts with members etc.

6. **MANAGEMENT:**- Management of the company can be vested in professionals and the members of the company can appoint a capable person to manage the affairs of the company to the general interest of the shareholders. Employees of the company can become also its shareholders.

7. **SEPARATE PROPERTY**:- Though capital and assets are contributed by its members, it is company which is the owner of the capital and the assets and it can enjoy and dispose off property in its own name.

8. **CAPACITY TO SUE AND BE SUED**:- A company can being a body corporate, can sued and be sued in its own name.

CHARACTERISTICS OR ESSENTIAL FEATURES OF COMPANY

1) Registration
2) Distinct person (Separate Legal Entity)
3) Perpetual succession
4) Artificial person
5) Transferable shares
6) Limited Liability
7) Common Seal
8) Separate Property
9) Capacity to sue and be sued.

1. **INCORPORATED ASSOCIATION**: - A Company must necessarily be Incorporated or Registered under the Companies Act 1956. The process of incorporation is done by the compliance officer of the company. In case of Private Limited Company 2 or more person and in case of Public Limited Company 7 or more person by subscribing Memorandum Of Association and Article Of Association of the Company. Once the Registrar Of Corporate Affairs issued a Certificate Of Incorporation, the process of Registration is completed.

2. **ARTIFICIAL LEGAL ENTITY**: - Though a Company is formed by natural persons who constitutes a body of persons, but the company is Artificial Legal Entity. A company has many rights which are closed within and it remains in existent till it’s life is come to an end.

3. **SEPARATE LEGAL ENTITY**: - A company is a distinct person possessing its own identity. It is altogether a separate legal entity, independent from its members, through controlled by the Board of Directors. On incorporation it attempt the status of Artificial person having a juristic personality entirely distinct from the members who have formed it.

   Company has right to vote and transfer the title to property, and can claim ownership rights. Every property of company through the transaction enter into by the Directors of Company but same should by purchase in the name of company.

4. **PERPETUAL EXISTANCE**:- A company is a stable form of business organisation. Its life does not depends upon the death, insolvency of any shareholder or debenture holders. Since a company created by law it can be put to an end only by the process of law. A company incorporated never dies. Its members may come and go but the company can go for ever and remain the same entity. It may be wound up. On winding up it ceases to exist.

   Prof. Grover in his book on Modern Company Law says that "A company continues to exist even if all the members are dead. During the war all the members of one private company while in General Meeting were killed by a bomb. But the company survived. Not even a hydrogen bomb could destroy it"

   Thus a company has perpetual existence irrespective number of changes in its membership.

5. **LIMITED LIABILIES**:- The liability of members for the debts of a company, its limited to amount unpaid on shares. The idea of limited liability first time introduced by the Companies Act 1857. Any person can participate in the share capital of an incorporated company and limit his liability to the extent of his participation.

   Limited liability in other words, means, the members cannot be called upon, in case of liquidation or winding up of a company to contribute more than what been agreed by them to subscribe, by way of participation in the share capital of a company. Unlike a partnership concern where the liability of each partner is unlimited and he can be called upon to shell out last penny in his pocket to meet the liabilities of the partnership concern; in an incorporated company, the members can be called upon to contribute only to the extent of their unpaid-up capital on the shares subscribe by them. This secures the members and encourages large scale investments in the incorporated form of organisation.

6. **HOLD DISPOSE OF PROPERTY**:- A company can acquire Free Hold Property in its name, but board resolution to that affect of acquiring property of company. Property of company cannot be treated as members property and vise versa, it has separate legal existence.

7. **TRANSFERABLE SHARES**:- A company has greatest advantage of its shares being transferable. Unlike a Partnership concern, where against the will of the partners, the transferee does not became a partner, the members in an incorporated company can easily transfer their shares. Section 82 of the Companies Act provides that shares or Debentures other interest of any member in a company shall be movable property, transferable in the manner provided for in the Articles of the Company. However, in a Private Limited Company, there are certain restrictions on the transferability of its shares.

8. **COMMON SEAL:-** Company is an artificial person with no physical existence. It acts through Directors. The Directors acts on behalf of company and enter into contract by a fixing companies common seal with name of that company engrave on it has substitute signature. Any document having common seal will be legally binding with the company.

   The company has a separate legal existence under its own common seal. It can enter into contracts with outsiders, with its Directors or with its members. The common seal of the company gives it an independent existence.

9. **SUE AND BE SUED**:- The company having its own dependant existence can sue in its own name, enforce any of a statutory or contractual rights and be sued in its name by third party, if it commits the breach of contract.

PRIVATE AND PUBLIC COMPANY DISTINGUISHED

The Companies Act, 1913 provided no distinction between a private and a public company. All companies under 1913 Act were only limited companies. It was only under the Companies Act, 1956 that private and public companies were distinguished.

	Private Company	**Public Company**

1. MEMBER	Minimum member in private company are 2 and Maximum 50.	Minimum member in a public company are 7 and maximum unlimited.
2. TRANSFER OF SHARES	Transfer of shares is strict and regulated by its articles.	Shares are freely transferable.
3. PUBLIC INVITATION	Cannot invite public to subscribe to its share capital.	It invites members of public to subscribe to its share capital.
4. NAME	It has to use words 'Private Limited' at the end of its name.	It has to use only the word 'Limited' at the end of its name.
5. PRIVILEGES	It enjoys certain privileges, i.e., exemptions from certain provisions of the Companies Act.	It has no privileges.
6. NUMBER OF DIRECTORS	It has to have minimum 2 directors.	It has to have minimum 3 directors.
7. RESTRICTIONS ON APPOINTMENT OF DIRECTORS	NO Restrictions.	Directors must file their consent to act as directors with the Registrar.
8. LEGAL CONTROL	There are less legal controls.	Regulations are more strict.
9. LOANS	Directors can borrow from private company.	Directors cannot borrow from the company.
10. MINIMUM PAID-UP CAPITAL	One Lac rupees.	Five Lac rupees.