

Incorporation of Companies,
Drafting of MOA/AOA,
Applicable Sections and recent changes in incorporation
under the Companies Act, 2013



*SEMINAR ON IMPORTANT
PROVISIONS OF COMPANIES ACT.
2013*

CA ABHAY VASANT AROLKAR

April 28, 2018

Status of the Company Law



- Company Law comprises of:
 - Companies Act, 2013
 - Companies Act, 1956
 - Rules made thereunder
 - Notifications
 - Circulars



Private
company

- Small Company
- One Person Company
- Private company simpliciter

Public
company

- Listed or Widely held
- Unlisted or Closely held



Based on Liability of the Company

- Company limited by shares
- Company limited by guarantee
- Unlimited company

Based on Objects of the Company

- Companies with charitable objects [Section 8]
- Producer company
- Investment company or a NBFC

Based on holding/control of the share capital

- Holding Company or Subsidiary Company
- Government company
- Associate Company



Based on the location of the incorporation

- Indian Company
- Foreign Company

Based on compliances

- Dormant Company
- Active Company
- Inactive Company

Types of Companies



- Public Company
 - Section 2(71) defines “public company” means a company which—
 - (a) is not a private company;
 - (b) has a minimum paid-up share capital ~~of five lakh rupees or such higher paid-up capital~~, as may be prescribed;
 - Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;



- Private Company
- Section 2(68) defines “private company” means a company and which by its articles,—
 - (i) restricts the right to transfer its shares;
 - (ii) limits the number of its members to two hundred:
 - ✦ Joint holders treated as one
 - ✦ Employees/ex-employees who have taken shares while in employment excluded.
 - (iii) prohibits any invitation to the public to subscribe for any securities of the company; and
 - having a minimum paid-up share capital of ~~one lakh rupees or such higher paid-up share capital~~ as may be prescribed,
- One Person Company
- 2(62) defines “One Person Company” means a company which has only one person as a member;

Definitions (Contd.)



• **Small Company [Section 2(85)]**

- “small company” means a company, other than a public company,—
- (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; or and
- (ii) turnover of which as per its last profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:
- Provided that nothing in this clause shall apply to—
- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act;

Types of Companies



- Companies with charitable objects [Section 8]
- (1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—
 - (a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other useful object;
 - (b) intends to apply its profits, if any, or other income in promoting its objects; and
 - (c) intends to prohibit the payment of any dividend to its members,

Definitions



- Sections 2(42) defines “foreign company”
 - means any company or body corporate incorporated outside India which—
 - ✦ (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
 - ✦ (b) conducts any business activity in India in any other manner.

Definitions (Contd.)



- **Subsidiary company [Section 2(87)]**
- “subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company—
- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:
- Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.
- *Explanation.*—For the purposes of this clause,—
- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company’s Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (c) the expression “company” includes any body corporate;
- (d) “layer” in relation to a holding company means its subsidiary or subsidiaries;

Dormant Company



- **Dormant Company [Section 455]**
 - Where a company is 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 in such manner as may be prescribed for obtaining the status of a dormant company.
- **Inactive Company**
 - “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;

Definitions (Contd.)



- **Promoter [Section 2(69)]**
 - “promoter” means a person—
 - (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
 - (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
 - (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:
 - Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

Types of public companies under Companies Act, 2013



- Public Company limited by shares
- Public Company limited by Guarantee having share capital
- Public Company limited by Guarantee and having no share capital
- Public unlimited Company having share capital
- Public unlimited Company not having share capital

Types of private companies under Companies Act, 2013



- Private Company limited by shares
- Private Company limited by Guarantee having share capital
- Private Company limited by Guarantee and having no share capital
- Private unlimited Company having share capital
- Private unlimited Company not having share capital

Types of one-person companies (OPC) under Companies Act, 2013



- OPC Company limited by shares
- OPC Company limited by Guarantee having share capital
- OPC Company limited by Guarantee and having no share capital
- OPC unlimited Company having share capital
- OPC unlimited Company not having share capital

Formation of Companies



- Conception
- DIN procedure for the applicant of Reservation of name
- Reservation of name
- DIN procedure for Directors
- Drafting MoA and AoA
- Other Documents to be readied for filing
- Corrections, if any {re-submission}
- Certificate of Incorporation

DIN



- Section 153 – Every individual intending to be appointed as Director to make an application for allotment of DIN as per prescribed Rules
- Section 154 – Central Govt. to allot DIN
- Section 155* – Prohibition to obtain more than one DIN
- Section 156* – Director to intimate the DIN to the company.
- Section 157 – Company to inform the ROC about DIN
- Section 158 – Obligation to indicate DIN in every return, information or particulars furnished to ROC

DIN



- **Rules 8 -12 relate to DIN procedures**
 - DIR 2 – Form of consent to act as Director
 - DIR 3 – Application for allotment of DIN
 - DIR 3C – Intimation of DIN to ROC
 - DIR 5 – Application for surrender of DIN
 - DIR 6 – Intimation of changes in particulars of Directors
- ***Section 159 – Penalty for contravention of Section 155 and 156 –**
 - Imprisonment of up to six months
 - Fine of up to Rs. 50,000/-
 - Fine of Rs. 500 per day in case of continuing default

Application for DIN

SPICe Form:

- Any person (not having DIN) proposed to become a first director in a new company shall have to make an application through eForm SPICe.
- The applicant is required to attach the proof of Identity and address along with the application. DIN would be allocated to User only after approval of the form.
- DIN of maximum 3 directors are allowed in SPICe Forms.

DIR-3 Form:

- Any person intending to become a director in an existing company shall have to make an application in eForm DIR-3 along with a photograph, proof of identity, and proof of residence.
- It shall be verified digitally by a Company Secretary in full time employment of the company or by the Managing Director or Director or CEO or CFO of the existing company in which the applicant is intended to be appointed as a director.

Date:
01.04.2014
to
30.04.2015

- New forms for Incorporation Company Introduced i.e.
INC-1 –Name Approval;
DIR-3 – Director Identification Number
INC-7 –Incorporation of Company
- DIR-12 –Appointment of Directors
INC-22 –Registered Office of Company
- All the above mentioned forms were required to file for Incorporation of Company

Date:
01.05.2015
to
30.09.2016


- Integrated Incorporation Process in form INC-29.
- This form was 5 in one form. Company could apply DIN, Name, Appointment of Director, Registered Office and Incorporation in single form with lesser ROC Fees.
- Still there was some restriction in INC-29.
(Like: If a Company filed INC-1 for proposal of name then it was not possible for the Company to file INC-29)



**Date:
01.10.2016
to
26.01.2018**

- Through Companies (Incorporation) Fourth Amendment Rules, 2016 a new form “SPICE” i.e. INC-32. This form was one step ahead to Form INC-29.
E.g. Electronic MOA & AOA introduced in this Form.
- However, Company having both the way they can apply name in SPICE or apply name in INC-1 then can file SPICE. PAN & TAN application become mandatory as part of the SPICE.

W.e.f.
27.01.2018
(26.01.2018)

- 
- This Date is revolutionary in the History of Companies Act for the purpose of “Ease of Doing Business”.
 - New Process of Name Approval “RUN” notified and e-form INC-1 omitted.
 - INC-7 form omitted. The only way for the incorporation of Company is use of SPICe.
 - No ROC fees for Incorporation of Company up to 10 lakhs of authorized capital under updated version of SPICe notified.

Formation of Companies



- Memorandum of Association –
 - Name Clause
 - Domicile Clause
 - Objects Clause
 - Capital Clause
 - Liability Clause
 - Subscription Clause

 - Formats – *Schedule I Tables A - E*



Name Clause

Subscription Clause

Registered Office Clause

MOA



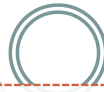
Capital Clause



Objects Clause

Liability Clause





Name Clause

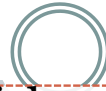
- The name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company.
- Provided that nothing in this clause shall apply to a company registered under Section 8;

Regd Off Clause

- The State in which the registered office of the company is to be situated;

Objects Clause

- The objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.



Liability Clause

- The liability of members of the company, whether limited or unlimited, and also state,—
- (i) Whether capital is limited by shares and/or
- (ii) Whether capital is limited by guarantee

Capital Clause

- in the case of a company having a share capital,—
- (i) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and
- (ii) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;

Subscription Clause

- The memorandum has to be signed by each subscriber in presence of at least one witness.
- Each subscriber must write the number of shares he shall take. At least one share should be taken by each subscriber.

Name Clause



- Application for acquiring DIN by the applicant:– Refer Sections 153 – 159 of the Companies Act, 2013 and Rules 9 – 12 of the Companies (Appointment and Qualification of Directors) Rules 2014
- Undesirable name Refer Rule 8 of Companies (Incorporation) Rules, 2014.
- Application for Reservation of Name **(RUN Services)**
- Drafting of Memorandum & Articles of Association of the proposed company. Name of the company should be as approved by the ROC
- Name Clause



One can check
“Company
name”
services from
MCA Portal
available
before
applying for
name
reservation

MCA Services

Home > MCA Services > Company Services > Check Company Name

DSC Services ▾

DIN Services ▾

Master Data ▾

LLP Services ▾


LLP Services For Business User ▾

e-Filing ▾

Company Services ▲

■ [Check Company Name](#)

■ [Find CIN](#)

■ [RUN \(Reserve Unique Name\)](#) 

NEW

Complaints ▾

Document Related Services ▾

Fee and Payment Services ▾

Investor Services

Check Company Name

Stakeholders are requested to ensure that the proposed name selected does not contain any word as prohibited in [Section 4\(2\) & \(3\)](#) of the Companies Act, 2013 read with [Rule 8](#) of the Companies (Incorporation) Rules, 2014.

Stakeholders are also requested to read and understand Rule 8 of the Companies (Incorporation) Rules, 2014 in respect of any proposed name before applying for the same.

Company / LLP Name*

[Add more names](#)

Activity Type

[Search](#)

[Clear All](#)

Stakeholders are requested to also check the Trademark search to ensure that the proposed name is not violation of provisions of Section 4(2) of the Companies Act, 2013 failing which it is liable to be rejected.

[Check Trademark for your proposed name -->](#) [Check Trademark](#)

This website is maintained by the Office of the Controller General of Patents, Designs & Trade Marks, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry.

[Check Domain for your proposed name -->](#) [Check Domain](#)

This website is maintained by NIXI, the National Internet eXchange of India. Under NIXI, the INRegistry functions as an autonomous body with primary responsibility for maintaining the .IN ccTLD and ensuring its operational stability, reliability, and security.



Details required to be mentioned in online form:

As part of the Ministry's commitment for continuous improvement of processes and providing greater ease to stakeholders, it has been decided to permit (w.e.f 24.03.2018) two proposed names and one Resubmission (RSUB) while Reserving Unique Names for companies through the RUN web service.

RUN
Reserve Unique Name

Company Details

New Request Resubmission

Entity Type

CIN

Proposed Name 1

Proposed Name 2

Comments

No file chosen

Once you have submitted the name reservation request it will then be checked and, if found feasible, approved by the Central Registration Centre (CRC). You will receive an email from the CRC advising the outcome of the name reservation request.

UNDESIRABLE NAMES



- Rule 8 specifies the rules in regard to what are undesirable names:
 - Using different phonetic spellings or spelling variations shall not be considered as distinguishing one name from another. Illustration (For example, P.Q. Industries limited is existing then P and Q Industries or Pee Que Industries or P n Q Industries or P & Q Industries shall not be allowed and similarly if a name contains numeric character like 3, resemblance shall be checked with ‘Three’ also;)
 - The proposed name is vague or an abbreviated name such as ‘ABC limited’ or ‘23K limited’ or ‘DJMO’ Ltd: abbreviated name based on the name of the promoters will not be allowed. For example:- BMCD Limited representing first alphabet of the name of the promoter like Bharat, Mahesh, Chandan and David:

UNDESIRABLE NAMES



- Rule 8 specifies the rules in regard to what are undesirable names:
 - It is not in consonance with the principal objects of the company as set out in the memorandum of association; Provided that every name need not be necessarily indicative of the objects of the company, but when there is some indication of objects in the name, then it shall be in conformity with the objects mentioned in the memorandum;
 - h. If the proposed name is the Hindi or English translation or transliteration of the name of an existing company or limited liability partnership in English or Hindi, as the case may be.

UNDESIRABLE NAMES



- Rule 8 specifies the rules in regard to what are undesirable names:
 - The addition of words like New, Modern, Nav, Shri, Sri, Shree, Sree, Om, Jai, Sai, The, etc. Does not make a name distinguishable from an existing name and similarly, if it is different from the name of the existing company only to the extent of adding the name of the place, the same shall not be allowed; such names may be allowed only if no objection from the existing company by way of Board resolution is submitted;
 - The addition of an internet related designation, such as .com, .net, .edu, .gov, .org, .in does not make a name distinguishable from another, even where (.) is written as ‘dot’;
 - The proposed name is identical with or too nearly resembles the name of a company or limited liability partnership incorporated outside India and reserved by such company or limited liability partnership with the Registrar:

UNDESIRABLE NAMES



- Rule 8 specifies the rules in regard to what are undesirable names:
 - The proposed name include words such as ‘Insurance’, ‘Bank’, ‘Stock Exchange’, ‘Venture Capital’, ‘Asset Management’, ‘Nidhi’, ‘Mutual fund’ etc., unless a declaration is submitted by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant;
 - The proposed name includes the word “State”, the same shall be allowed only in case the company is a government company;



- Rule 8 specifies the rules in regard to what are undesirable names:
 - The applicant shall declare in affirmative or negative (to affirm or deny) whether they are using or have been using in the last five years , the name applied for incorporation of company or LLP in any other business constitution like Sole proprietor or Partnership or any other incorporated or unincorporated entity and if, yes details thereof and No Objection Certificate from other partners and associates for use of such name by the proposed Company or LLP, as the case may be, and also a declaration as to whether such other business shall be taken over by the proposed company or LLP or not.

UNDESIRABLE NAMES



The name shall be considered undesirable, if-

- i. It attracts the provisions of section 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950 (12 of 1950);
- ii. It includes the name of a registered trade mark or a trade mark which is subject of an application for registration, unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters;
- iii. It includes any word or words which are offensive to any section of the people;

UNDESIRABLE NAMES



6. The following words and combinations thereof shall not be used in the name of a company in English or any of the languages depicting the same meaning unless the previous approval of the Central Government has been obtained for the use of any such word or expression-

- | | | |
|-----------------|--|---|
| a. Board; | l. Small Scale Industries; | v. Development Scheme; |
| b. Commission; | m. Khadi and Village Industries Corporation; | w. Statute or Statutory; |
| c. Authority; | n. Financial, Corporation and the like; | x. Court or Judiciary; |
| d. Undertaking; | o. Municipal; | y. Governor; |
| e. National; | p. Panchayat; | z. The use of word Scheme with the name of Government (s) , State , India, Bharat or any government authority or in any manner resembling with the schemes launched by Central, state or local Governments and authorities; and |
| f. Union; | q. Development Authority; | |
| g. Central; | r. Prime Minister or Chief Minister; | |
| h. Federal; | s. Minister; | |
| i. Republic; | t. Nation; | |
| j. President; | u. Forest corporation; | aa. Bureau |
| k. Rashtrapati; | | |

Name Clause



- Where the application for availability of name was made by furnishing wrong or incorrect information:
 - A) where the company is not incorporated : Cancel the reservation of name, and the applicant shall be liable to a penalty up to one lakh rupees
 - B) where the company is incorporated :
 - Show cause to be issued
 - Direct the company to change its name within 3 months after passing Ordinary resolution
 - Strike off the name of the company
 - Make a petition for winding up of the company

Change of Name Clause



- Application for change of name
 - File form RUN with ROC for approval of name
 - Form No. INC. 24
 - Special Resolution – [File Form no. MGT. 14]
 - Reasons for change of name
 - Relevant extract of minutes/resolutions
 - Certificate of Incorporation pursuant to change of name will be issued by ROC in Form No. INC. 25.
 - Change of name effective from the date of issue of such certificate

Domicile Clause



- A company shall on or from the thirtieth ~~fifteenth~~ day of its incorporation and at all times thereafter have a registered office capable of receiving and acknowledging all communications and notices addressed to it. (Form INC. 22)
- Verification of the registered office:
 - Registered document of title or Notarised copy of lease/rent agreement
 - Authorisation from the owner/authorised occupant
 - Document of connection of utility service depicting the name of the owner

Domicile Clause



- In case of change of Registered office from one State to another:
 - Special Resolution [File Form no. MGT. 14]
 - Application for approval to Regional Director in Form No. INC. 23
 - Copy of Memorandum and Articles of Association
 - Copy of extract of minutes
 - Copy of challan for fees paid
 - Letter of Authority.
 - Advertisement to be published in Form No. INC. 26
 - File Form No. INC. 28 after the order is passed by the Regional Director.

Domicile Clause



- In case of change of Registered office from one State to another (Contd.) :
 - Form No. INC. 22 for giving notice to Registrar of Companies after approval from RD is received.
 - List of debenture holders, depositors, creditors or lenders and a notice to them seeking objections, if any.
- Other requirements (Section 12)
 - Paint or affix its name and address outside its registered office
 - Engrave its name on the company seal
 - Print name, registered office address, **CIN**, website address, contact details on all its business letters, billheads, letter papers, notices, and other official publications (Rule 26)

Objects Clause



- Objects clause to state
 - A) The objects for which the company is incorporated
 - B) any matter considered necessary in furtherance thereof
- In case of registration or approval from sectoral regulators is required, a declaration shall be submitted at the time of incorporation that the objects shall be pursued only after such registration/approval.
- Form No. 13 and 16 changed

Objects Clause



- Change of objects for which money is raised through prospectus:
 - Send Notice for passing resolution through postal ballot to the members/shareholders. Notice to contain the following particulars: the total money received, utilised for the objects, unutilised money (raised through prospectus), justification, estimated impact on the earnings/cash flow and other relevant information. The place from where a copy of the resolution to be passed can be obtained. The notice should be hosted on the company's website.
 - Special Resolution [File Form no. MGT. 14]

Capital Clause



- Types of shares
 - Equity Shares
 - ✦ Equity with differential rights
 - Preference Shares
- The number of shares, each subscriber to the MoA agrees to subscribe, which shall not be less than one share, shall be indicated opposite/against his name.
- The restriction to have only the above type of shares is not applicable to a private company.

Liability Clause



- Limited by Share Capital
- Limited by Guarantee
 - With share capital
 - Without share capital
 - ✦ Right to participate in the divisible profits to a person other than a member is void
- Unlimited Company

Subscription Clause



- The MoA and the AoA shall be signed each of the subscribers giving their name, address, description and occupation, before at least one witness who shall sign giving the same details and state that:
 - “I witness to the subscriber(s), who has/have subscribed and signed in my presence (date and place); Further I have verified his/her/their identity details for their identification and satisfied myself of his her/their identification particulars as filled in.”
- Rules specify in case where:
 - The subscriber is an illiterate
 - The subscriber is a foreign national residing outside India.

Formation of Companies



- **Articles of Association**
 - Entrenchment provisions [Section 5(3)]
 - The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.
 - Formats – *Schedule I Tables F - J*

One can
incorporate
Company
with zero fee

Zero fee for Form
SPICe, e-MOA & e-
AOA for companies
with Authorised
capital upto ₹10
lakh.

On the occasion of 69th Republic Day
Government of India makes
"Starting a Business eASIER"

NOW YOU CAN INCORPORATE YOUR
COMPANY WITH

Zero **FEE**



RESERVE UNIQUE NAME SERVICE LAUNCHED

- Reserving a Company name is now child's play
- No need to file a form Or use DSC



DIN NOT REQUIRED
PRIOR TO FILING
SPICe e-FORM

*ZERO FEE for SPICe, eMOA and eAoA for Companies with Authorized Capital upto ₹10 lakh.

REFORMS



SIMPLIFIED
PROCEDURES



ZERO
FEE



REDUCED
TIME



For example:

In case of a company having authorised capital of ₹ 9 lakh, the filing fee for Form SPICe (INC 32) is zero and one has to only pay stamp duty charges

Enquire Fee

Enter Form Details	
Select the Company Form *:	SPICe(INC-32) ▼
Purpose For Filing: *:	<div style="border: 1px solid #ccc; padding: 2px;">Incorporation of a company other than OPC/Small company ▲ Incorporation of a OPC/Small company ▼</div>
Company with Authorised Capital*:	<input checked="" type="radio"/> Yes <input type="radio"/> No
Authorised Capital(in Rs.) *:	<input type="text" value="900000"/>
Number of Members:	<input type="text"/>
SECTION-8 Company*:	<input type="radio"/> Yes <input checked="" type="radio"/> No
State *:	Maharashtra ▼
* Mandatory Field	
<input type="button" value="Calculate Fee"/> <input type="button" value="Clear All"/>	

Type Of Fee		
Type of Document	Type Of Fee	Amount(Rs)
Form Filing of SPICe(INC-32)	Normal	00.00
	Stamp Duty	100.00
	Stamp Duty AOA	2,000.00
	Stamp Duty MOA	200.00
Total		2,300.00

Steps for Incorporation of Company



- **STEP – I: Apply for Name Approval:**

- A. Login on MCA Website**

Applicant have to login into their account on MCA Website.

(Pro-existing users can use earlier account or new users have to create a new account.)

After Login use have to click on the icon “**RUN**” in MCA Service.

An online form shall be open. Applicants have to fill the

information online. (This form cannot be downloaded)





- **STEP – II: Preparation of Documents for Incorporation of Company:**

After approval of name or for Incorporation of Company applicant have to prepare the following below mentioned Documents;

- INC-9 *declaration/declaration by first subscriber(s) and director(s) (on duly authorized Stamp Papers).
- DIR-2 declaration from first Directors along with Copy of Proof of Identity and residential address.
- NOC from the owner of the property.
- Proof of Office address (Conveyance/ Lease deed/ Rent Agreement etc. along with rent receipts);
- Copy of the utility bills (not older than two months)
- In case of subscribers/ Director does not have a DIN, it is mandatory to attach: Proof of identity and residential address of the subscribers
- All the Subscribers should have Digital Signature.

* Substituted by the Companies (Amendment) Act,2017



- **STEP – III: Fill the Information in Form:**

Once all the above mentioned documents! information are available. Applicant has to fill the information in the e-form “SPICe” INC-32.

- **Features of SPICe (INC-32) form:**

Maximum details of subscribers are SEVEN (7). In case of more subscribers, physically signed MOA & AOA shall be attached in the Form.

Maximum details of directors are TWENTY (20).

Maximum THREE (3) directors are allowed for filing application of allotment of DIN while incorporating a Company.

Person can apply the Name also in this form.

By affixation of DSC of the subscriber on the INC-33 (e-MOA) date of signing will be appear automatically by the form.

Applying for PAN / TAN will be compulsory for all fresh incorporation applications filed in the new version of the SPICe form.

In case of companies incorporated, with effect from the 26th day of January, 2018, with a nominal capital of less than or equal to rupees ten lakhs or in respect of companies not having a share capital whose number of members as stated in the articles of association does not exceed twenty, fee on INC-32 (SPICe) shall not be applicable.



- **STEP –IV: Preparation of MOA & AOA:**

After proper filing of SPICE form applicant has to download the e-form INC-33 (MOA) and IN-34 (AOA) form the MCA site. After downloading of form fill all the information in the forms as per requirement of Table A to J of Schedule I.

After completely filing of the form affix DSC of all the subscribers and professional on subscriber sheet of the MOA & AOA.

- **STEP – V: Fill details of PAN & TAN:**

It is mandatory to mention the details of PAN & TAN in the Incorporation Form INC-32. Link to find out of Area Code to file PAN & TAN are given in Help Kit of SPICE Form.

- **STEP – VI: Submission of INC-32,33,34 on MCA:-**

Once all the 3 forms ready with the applicant, upload all three document as Linked form on MCA website and make the payment of the same.

- **STEP – VII: Certificate of Incorporation-:**

Incorporation certificate shall be generated with CIN, PAN & TAN.



Certificate of Incorporation

Formation of Companies



- Documents to be submitted for incorporation of a company, **(other than OPC and company with licence under Section 8)**:
 - Application for Incorporation of Company (Form INC. 32)
 - Declaration regarding compliance (Form INC. 8)
 - Affidavit regarding his non-conviction in any offence or guilty of any fraud or misfeasance or for any breach of any duty under the company law during the last five years (Form INC. 9)
 - NOC in case there is change in promoters.
 - Address for correspondence till the registered office is established.

Formation of Companies



- Documents to be submitted for incorporation of a company, **(other than OPC and company with licence under Section 8)** (Contd.):
 - Memorandum and Articles of Association
 - Particulars of subscribers including proof of identity, proof of residence and PAN Card. Proof of nationality in case of foreign nationals.
 - Particulars of first directors including proof of identity, proof of residence and PAN card.
 - Consent and other directorships/interests of the first directors
 - Entrenched Articles of Association, if any.

Formation of Companies



- Certificate of Incorporation (Form INC. 11)
- Copies of documents in relation to the registration of the company, and filed with the Registrar at that time, should be maintained and preserved till the dissolution of the company.
- Consequences of formation of the company on the basis of false or incorrect information
- Commencement of Business
 - Declaration – ~~(FORM INC. 21)~~
 - Proof of address - verification of address (alongwith Form INC. 22)
Proof of Registered Office – Deed/Agreement/Rent Receipt. Copy of recent (not older than two months) utility bills at the address.
NOC to use the office as registered office from the owner.



Certificate of Incorporation (COI)

The Certificate of Incorporation shall be issued by the Registrar in Form INC-11 and the Certificate of Incorporation shall mention permanent account number of the company where it is issued by the Income-tax number.

–w.e.f. January 30, 2017

Certificate of Incorporation

[Pursuant to sub-section (2) of section 7 of the Companies Act, 2013 (18 of 2013) and rule 18 of the Companies (Incorporation) Rules, 2014]

I hereby certify that <name of the company> is incorporated on this (i.e. FIRST, SECOND etc) day of <Month of approval of the work item in words> two thousand <YEAR of approval of the work item in words> under the Companies Act, 2013 (18 of 2013) and that the company is <limited by shares/limited by guarantee/unlimited company>.

The Corporate Identity Number of the company is <CIN>

The Permanent Account Number (PAN) of the company is <PAN>*/@

The Tax Deduction and Collection Account Number (TAN) of the company is <TAN>

Given under my hand at <Name of the city where the Registrar of Companies office is located> this <Date of approval of the work item in words (i.e FIRST, SECOND etc.)> day of <Month of approval of the work item in words > <YEAR of approval of the work item in words>.

Digital Signature Certificate

<Full name of the Authorising officer approving the work-item>

<Assistant Registrar of Companies/ Deputy Registrar of Companies/ Registrar of Companies>

For and on behalf of the Jurisdictional Registrar of Companies

Registrar of Companies

Central Registration Centre

Disclaimer: This certificate only evidences incorporation of the company on the basis of documents and declarations of the applicant(s). This certificate is neither a license nor permission to conduct business or solicit deposits or funds from public. Permission of sector regulator is necessary wherever required. Registration status and other details of the company can be verified on www.mca.gov.in

Mailing Address as per record available in Registrar of Companies office:

<Name of the company >

<Address of the correspondence/registered office of the company >

Government Seal

* as issued by the Income tax Department.

@ This sentence along with the footnotes, would be indicated in the certificate only in cases where the PAN is allotted by the Income tax Department at the time of incorporation.

Formation of Companies



- **One Person Company**
 - Deemed to be a private company
 - MoA shall indicate the name of the other person (Form INC. 32) to be filed at the time of incorporation, with his prior consent (Form INC. 3), who shall in the event of the subscriber's death or his incapacity to contract, become the member of the company.
 - Withdrawal of consent by such other person (Form INC. 4) within thirty days of such withdrawal
 - Subscriber may change the name of such other person (Form INC. 4) within thirty days of the intimation to the company.
 - Duty of the subscriber to notify the change in the name of such other person (Form INC. 4).

Formation of Companies



- One Person Company (Contd.)
- Only a natural person who is an Indian citizen and resident in India can incorporate an OPC or be a nominee for the sole member of a OPC.
- Resident shall mean a person who has stayed in India for > 182 days in the immediately preceding calendar year.
- One person can form only one OPC.
- Minors cannot be members or hold shares.

Formation of Companies



- One Person Company (Contd.)
- Restrictions:
 - Cannot be converted into a company with licence u/s 8 of the Act.
 - Cannot carry on non-banking financial investment activity including investment in securities of any body corporate.
 - Cannot voluntarily convert into any kind of company unless:
 - ✦ Two years have elapsed since the date of incorporation of the OPC – Form INC. 6)
 - ✦ The paid up share capital is increased beyond Rs. 50 lakhs (being the threshold limit of paid up share capital).*
 - ✦ The average annual turnover during the immediately preceding three financial years (relevant period) exceeds Rs. 2 crores.*
 - ✦ * to be mandatorily converted – Rule 6(1). (Form INC. 5)

Formation of Companies



- Documents to be submitted for incorporation of an OPC:
 - Application for Incorporation of OPC – Form INC-32
 - Nominee Consent Form – Form INC. 3
 - Affidavit regarding his non-conviction in any offence or guilty of any fraud or misfeasance or for any breach of any duty under the company law during the last five years (Form INC. 9)
 - List of all the companies having the same registered office, if any.
 - Particulars of member including proof of identity, proof of residence and PAN Card.
 - Particulars of nominee including proof of identity, proof of residence and PAN Card.
 - Proof of Registered Office – Deed/Agreement/Rent Receipt. Copy of recent (not older than two months) utility bills at the address. NOC to use the office as registered office from the owner.



- **Minimum Subscribers :**
 - OPC - One
 - Private Company – Two
 - Public Company – Seven
- **Minimum Directors**
 - OPC – One
 - Private Company – Two
 - Public Company – Three
- **Maximum Directors – Fifteen**
- **Privileges extended to OPC, small companies, private companies, government companies and Section 8 companies**

Formation of Companies



- Documents to be submitted for incorporation of a company with licence under Section 8 :
- To the Regional Director:
 - Reservation of Name (RUN services)
 - Application for licence under Section 8 (Form INC 12)
 - Memorandum and Articles of Association (Form INC. 13*)
 - Declaration by a chartered accountant/company secretary/cost accountant, regarding compliance (Form INC. 14)
 - Declaration by the applicant in Form INC. 15
 - [Form No. INC. 26, in case of existing company applying for licence u/s 8(5)]

Formation of Companies



- Documents to be submitted for incorporation of a company with licence under Section 8 (Contd.) :
- To the Regional Director (Contd.):
 - The copies of Balance Sheets, Profit & Loss Account, Board's reports and Auditors report of the immediately preceding two financial years.
 - The statement showing in details of assets and liabilities of the company- as on the date of application or in a such extended period or within thirty days preceding that date,
 - An estimate of future annual income and expenditure for next three years
 - Certified copies of resolutions passed in general board meetings relating to registration of the company u/s 8.

Formation of Companies



- Documents to be submitted for incorporation of a company with licence under Section 8 (Contd.) :
- To the Registrar of Companies:
 - Reservation of Name (RUN services)
 - Memorandum and Articles of Association as approved by the Regional Director (Form INC. 13)
 - Copy of licence under Section 8 issued by the Regional Director [Form INC. 16* (new company) or Form INC. 17 (existing company), as the case may be]
 - Declaration regarding compliance (Form INC. 8)
 - Address for correspondence till the registered office is established.

Formation of Companies



- Documents to be submitted for incorporation of a company with licence under Section 8 (Contd.) :
- To the Registrar of Companies (Contd.):
 - Affidavit regarding his non-conviction in any offence or guilty of any fraud or misfeasance or for any breach of any duty under the company law during the last five years (Form INC. 9)
 - NOC in case there is change in promoters.
 - Particulars of subscribers including proof of identity, proof of residence and PAN Card. Proof of nationality in case of foreign nationals.
 - Particulars of first directors including proof of identity, proof of residence and PAN card.
 - Consent and other directorships/interests of the first directors

Formation of Companies



- Commencement of Business
 - All companies, whether public or private, can start business operations without obtaining the Certificate for commencement of Business
 - ~~Declaration prior to the commencement of business/exercising borrowing powers (Form No. INC. 21)~~
 - Certificate of registration from RBI, in case of NBFCs

Formation of Companies



- Conversion of company of any other kind into Section 8 company
 - Apply for licence under Section 8 to the Regional Director (RD) in Form No. INC 18 along with the following documents:
 - Memorandum & Articles of Association as approved by the RD.
 - Copies of resolutions passed at the Board Meetings relating hereto-above.
 - Notice of the general body meeting and a copy of special resolution passed relating hereto-above.
 - Certificate from CA/CS/CWA in practice
 - Statement of Assets and Liabilities duly certified by the auditor within 30ndays thereof.
 - Audited financial statements and annual returns for immediately preceding two years
 - Written consent/NOC from lenders/creditors, if any.

Conversion of a company limited by guarantee into a company limited by shares



- A company other than a company registered under section 25 of the Companies Act, 1956 or section 8 of the Companies Act, 2013 may convert itself into a company limited by shares. The company seeking conversion shall have a share capital equivalent to the guarantee amount.
- A copy of the special resolution shall be filed with the Registrar of Companies in Form MGT-14 within thirty days from the date of passing of the same along with fee.
- An application in Form INC-27 shall be filed with the Registrar of Companies within thirty days from date of the passing of the special resolution enclosing the altered Memorandum of Association and altered Articles of Association and a list of members with the number of shares held aggregating to a minimum paid up capital which is equivalent to the amount of guarantee hither to provided by its members.
- The Registrar of Companies shall take a decision on the application filed under these rules within thirty days and on approval, issue a certificate of incorporation in Form INC-11B.

Formation of Companies



- Conversion of company of any other kind into Section 8 company (contd.)
 - NOC from sectoral regulatory authority such as Chief Commissioner of Income Tax, Income Tax Officer, Charity Commissioner, Chief Secretary, State Government having jurisdiction over the company. Proof of notice given to such sectoral authorities to be attached.
 - Details of donation/grants etc received since incorporation..
 - Declaration that no portion of the income of the company or property had been paid or transferred, directly or indirectly, as dividend or bonus or otherwise to members or any persons claiming through them
 - Advertisement to be published in two local newspapers and hosted on the company's website (Form No. INC 19)

Formation of Companies



- Conversion of Public into private company or private into public company
 - File Special Resolution (Form No. MGT. 14)
 - Application to ROC Form No. INC. 27
 - Certificate of Incorporation pursuant to change of name will be issued by ROC in Form No. INC. 25
- Notice of Order of any Court or any other competent authority

Notify ROC in Form No. INC. 28.
- Alteration of Memorandum of Association
 - Objects Clause
 - Capital Clause

Conversion - Unlimited Liability Company into a Limited Liability Company



- A company shall pass a special resolution in a general meeting and thereafter, an application shall be filed in Form No. INC- 27. Within seven days thereof, publish a notice, in Form No. INC-27A of such proposed conversion in two newspapers (one in English and one in vernacular language) in the district in which the registered office of the company is situated.
- The Company shall within forty five days of passing of the special resolution file an application as prescribed in sub rule (1) for its conversion into a company limited by shares or guarantee along with the prescribed fees along with specified attachments

Conversion - Unlimited Liability Company into a Limited Liability Company

- Attachments to the application for conversion of an unlimited company to a limited company:-
 - (a) notice of the general meeting along with explanatory statement, copy of the resolution passed in the general meeting;
 - (c) copy of the newspaper publication;
 - (d) a copy of altered Memorandum of Association as well as Articles of Association duly certified by any one of the Directors duly authorised in this behalf or Company Secretary of the Company, if any.
 - (e) declaration signed by not less two Directors of the Company, including Managing Director, if any, that such conversion shall not affect any debts, liabilities, obligations or contracts incurred or entered into by or on behalf of the Company before conversion (except to the extent that the liability of the members shall become limited).
- (f) a complete list of creditors and debenture holders, to whom individual notices have been sent setting forth the names and address of every creditor and debenture holder of the Company, the nature and respective amounts due to them in respect of debts, claims or liabilities and a declaration by a Director of the Company that notice as required has been dispatched to all the creditors and debenture holders with proof of dispatch.

Conversion - Unlimited Liability Company into a Limited Liability Company



(g) a declaration signed by not less than two Directors of the Company, one of whom shall be a Managing Director, if any, after full enquiry into the affairs of the Company, that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency are proper estimates thereof and that there are no other debts or claims against the company to their knowledge.

(h) a declaration of solvency signed by at least two Directors of the Company, one of whom shall be the Managing Director, if any, that on full enquiry by the Board of Directors, have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration.

(i) The company shall also obtain a certificate from the Auditors that the company is solvent and that it is a going concern as on the date of passing of resolution by the Board certifying solvency.

(j) No Objection Certificate from sectoral regulator, if applicable.

(k) No Objection Certificate from all secured creditors, if any.

Conversion - Unlimited Liability Company into a Limited Liability Company



- Declaration signed by not less than two Directors including Managing Director, if any, that no complaints are pending against the company from the members or investors and no inquiry, inspection or investigation is pending against the company or its Directors or officers.
- After considering the application and objections if any, received and after ensuring that the company has satisfactorily addressed the objections received by the company, suitably decide whether the approval for conversion should or should not be granted.
- The certificate of incorporation consequent to conversion of unlimited liability company to into a company limited by shares or guarantee be in Form INC-11A issued to the company upon grant of approval for conversion.
- **Conditions to be complied with, subsequent to conversion.-**
 - (1) Company shall not change its name for a period of one year from the date of such conversion.
 - (2) The company shall not declare or distribute any dividend without satisfying past debts, liabilities, obligations or contracts (excluding secured debts due to banks and financial institutions) incurred or entered into before conversion.

Conversion - Unlimited Liability Company into a Limited Liability Company



- **An Unlimited Liability Company shall not be eligible for conversion into a company limited by shares or guarantee in case-**
 - (a) its net worth is negative, or
 - (b) an application is pending under the provisions of the Companies Act 1956 or the Companies Act, 2013 for striking off its name, or
 - (c) the company is in default of any of its Annual Returns or financial statements under the provisions of the Companies Act, 1956 or the Companies Act, 2013, or
 - (d) a petition for winding up is pending against the company, or
 - (e) the company has not received amount due on calls in arrears, from its directors, for a period of not less than six months from the due date; or
 - (f) an inquiry, inspection or investigation is pending against the company.
- The Registrar of Companies shall take a decision on the application filed under these rules within thirty days from the date of receipt of application complete in all respects.

Dormant Company



- **Dormant Company [Section 455]**
 - Where a company is 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 in such manner as may be prescribed for obtaining the status of a dormant company.
- **Inactive Company**
 - “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;

Dormant Company



- **Significant Accounting transaction means** any transaction other than:
 - (a) payment of fees by a company to the Registrar;
 - (b) payments made by it to fulfil the requirements of this Act or any other law;
 - (c) allotment of shares to fulfil the requirements of this Act;
 - (d) payments for maintenance of its office and records

Dormant Company



- **Other provisions relating to Dormant company**
 - An application to the Registrar in Form MSC-1 for obtaining the status of a dormant company
 - Registrar to issue a certificate in Form MSC-2
- **Register of Dormant Companies**
- **To retain the status**
 - Have minimum number of directors
 - File return in Form MSC-3 and such documents as may be prescribed
 - Pay such annual fees as may be prescribed
- **To convert into Active status**
 - Make an application and file such documents as may be prescribed and pay such annual fees as may be prescribed
- **ROC shall have power to strike off the name of a dormant company**



- Provided that a company shall be eligible to apply for dormant status under this rule only, if-
 - (i) no inspection, inquiry or investigation has been ordered or taken up or carried out against the company;
 - (ii) no prosecution has been initiated and pending against the company under any law;
 - (iii) the company is neither having any public deposits which are outstanding nor the company is in default in payment thereof or interest thereon;
 - (iv) the company is not having any outstanding loan, whether secured or unsecured: Provided that if there is any outstanding unsecured loan, the company may apply under this rule after obtaining concurrence of the lender and enclosing the same with Form MSC-1 ;
 - (v) there is no dispute in the management or ownership of the company and a certificate in this regard is enclosed with_ Form MSC-1;
 - (vi) the company does not have any outstanding statutory taxes, dues, duties etc. payable to the Central Government or any State Government or local authorities etc.;
 - (vii) the company has not defaulted in the payment of workmen's dues;
 - (viii) the securities of the company are not listed on any stock exchange within or outside India.

Application for Seeking Status of an Active Company



- An application, for obtaining the status of an active company shall be made in Form MSC-4 and shall be accompanied by a return in Form MSC-3 in respect of the financial year in which the application for obtaining the status of an active company is being filed:
- Registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive five years.
- The Registrar shall, after considering the application filed, issue a certificate in Form MSC-5 allowing the status of an active company to the applicant.
- Where a dormant company does or omits to do any act mentioned in the Grounds of application in Form MSC-1 submitted to the Registrar for obtaining the status of dormant company, affecting its status of dormant company, the directors shall within seven days from such event, file an application, for obtaining the status of an active company.
- Where Registrar has reasonable cause to believe that any 'dormant company' under his jurisdiction is functioning in any manner, directly or indirectly, he may initiate the proceedings for enquiry and if, after having been given a reasonable opportunity of being heard, it is found that the company has actually been functioning, the Registrar may treat it as an active company

Incorporation of Companies,
Drafting of MOA/AOA,
Applicable Sections and recent changes in incorporation
under the Companies Act, 2013



• By

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