



INCORPORATION OF A PRIVATE LIMITED COMPANY IN INDIA



BACKGROUND

The purpose of this presentation is to highlight the brief procedure of incorporation of a Company including subsidiary of foreign body corporate as per the relevant sections of Companies Act, 2013 along with the rules made thereunder and other initial registrations as per various statutory laws as applicable in India.

OVERVIEW

- A Private Limited Company is incorporated by means of Certificate of Incorporation (“COI”) issued by the Registrar of Companies (“ROC”).
- Memorandum of Association (“MOA”) of the Company is its charter document which contains clauses containing name, registered address, objects, liability and capital details of the Company.
- Articles of Association (“AOA”) of the Company outline its bye-laws for regulating its internal affairs.
- The Company has an:
 - Authorized Share Capital – It is the total Share Capital with which a Company limited by shares is allowed (authorized) to issue. It can be increased from time to time by applying to ROC in the prescribed e form.
 - Issued Share Capital – This is the actual issued capital of the Company. It may be equal or lesser than Authorized Share Capital.
- Minimum of 2 shareholders and maximum of 200 shareholders.
- No Minimum Paid-up Share Capital.

OVERVIEW

- Minimum 2 directors and can be non-residents. However, it is mandatory for 1 director to be resident in India.
- Prohibited from inviting the public to subscribe for any securities of the Company.
- Prohibited from accepting deposits from the public.



PROCEDURE FOR COMPANY INCORPORATION

Steps for incorporation of a private limited company

Step 1- Name Approval

Application for name availability of the Company to be filed with Registrar of Companies ("ROC") in Form "Reserve Unique Name" ("RUN").

Chosen name should be unique all over India. In case of subsidiary of Foreign Company, a No Objection Certificate/board resolution is required from the parent Foreign Company.

Step 2- Digital Signature Certificate ("DSC")

For digitally signing forms, all the directors and subscribers should have a valid DSC issued by the Certifying Authorities for which the application needs to be filed with them for obtaining DSC.

Step 3- Documentation

Upon obtaining the name availability certificate, preparation of necessary documents in prescribed formats like consents, affidavits and declarations etc. in relation to incorporation based on the information as provided in the sheet as linked below :

[..\Incorporation\Initial Information Sheet for Company.xls](#)



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Step 3- Documentation (CONT.)

Further, MOA and AOA also need to be drafted as:

E- Memorandum of Association ("MOA") in Form INC-33

E- Articles of Association ("AOA") in Form INC-34

Subscription page of e-MOA and e-AOA are required to be digitally signed by the individual shareholders. In case shareholder is a body corporate, MOA and AOA can be subscribed through a representative authorized by a resolution/ specific power of attorney by the Company.

In case of Foreign Shareholders/Subscribers, physical copies of MOA and AOA shall be required and subscription page shall be manually signed by the shareholders.

All the documents related to incorporation executing and signing outside India, needs to be notarized and apostilled

Step 4- Filing and Registration

Once all the documents are executed, the respective e-forms along with all signed documents and MOA/AOA for incorporation shall be filed with ROC.

ROC scrutinizes the incorporation documents and if found in order, the Company is registered and Certificate of Incorporation ("COI") is issued.



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Step 4- Filing and Registration (CONT.)

The process for application of Director Identification Number (“DIN”) and name approval application can be filed in single e-form as well. It is to be noted that only one name can be applied in that e-form. However, to avoid challenges in the documentation and avoid extra cost, it is recommended to obtain name approval first in the form “RUN” before the second stage of filing incorporation documents.

Step 5- PAN/TAN

Once the Application for Incorporation is processed, then Permanent Account Number (“PAN”) and Tax Deduction and Collection Account Number (“TAN”) shall be issued along with the COI issued by ROC.

Step 6- Opening of bank account

Documents required to be submitted with the bank for opening of bank account documents include board resolution, ultimate beneficiary form, bank application form, signed MOA and AOA booklet, signed PAN copy etc. (Requirements differs from bank to bank).

Once all documents are submitted, bank undertakes their KYC requirements and opens bank account.



Steps for incorporation of a private limited company

Step 7- Infusion of capital

Once account is opened, shareholders shall infuse the capital.

subscribers to submit request for issue of Foreign Inward Remittance Certificate ("FIRC") with the bank. (This is applicable when the subscribers are non-resident/foreign shareholders).

Step 8- Share Allotment

Once the capital is infused, the Company is required to allot shares and issue share certificates. The share certificates shall be issued within 60 days from the date of incorporation.

The stamp duty on the share certificates of the Company shall be paid within 30 days from the date of execution of share certificates. Stamp duty documents signed by director are to be submitted with Sub-Divisional Magistrate.

Step 9- RBI compliance on allotment

Once the shares are allotted and on obtaining FIRC, Form Single Master Form ("SMF") needs to be submitted with Reserve Bank of India ("RBI") through Authorized Dealer ("AD") Bank within 30 days of the allotment.

Allotment should be done within 60 days from the receipt of funds from outside India. (This is applicable when the subscribers are non-resident/foreign shareholders).



Steps for incorporation of a private limited company

Step 10- Commencement of Business

Company having share capital shall not commence business unless a declaration in prescribed form is filed with ROC duly stating that every subscriber to the memorandum has paid the value of shares agreed to be taken by him within 180 days of the incorporation of the Company .

Step 11- Indirect Tax registration

Based on proposed business activities of the Company, application for registrations under various indirect tax statutes of India would need to be filed.



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