

Procedure for Incorporation of Companies

COMPANIES ACT, 2013

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MEANING OF COMPANY

A company is an association of both natural and artificial persons incorporated under the existing law of a country.

In common law, a company is a “legal person” or “legal entity” separate from, and capable of surviving beyond the lives of its members.

DEFINITION OF COMPANY

In terms of the Companies Act, 2013 a “company means a company incorporated under the Companies Act, 2013 (the Act) or under any of the previous company law” [Section 2(20)].



FORMATION OF COMPANY [SEC 3]

A company may be formed for any lawful purpose by –

- a) **7 or more persons**, where the company to be formed is to be a **public company**;
- b) **2 or more persons**, where the company to be formed is to be a **private company**;
- c) **one person**, where the company to be formed is to be **One Person Company** that is to say, a private company,

by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration. [Section 3(1)]

Registrar of Companies (ROC)

- appointed under Section 396 of the Companies Act, 2013 by the Ministry of Corporate Affairs (MCA),
- is vested with the primary duty of registering companies and
- of ensuring that such companies comply with the statutory requirements of the Act.

INCORPORATION OF COMPANIES

Introduction

- A company comes into existence is generally by a process referred to as incorporation.
- Once a company has been legally incorporated, it becomes a distinct entity from those who invest their capital and labour to run the company.
- Usually the first step to form a company is the process known as 'promotion of company'

STEP BY STEP PROCEDURE FOR INCORPORATION OF COMPANY

I. Selection of the type of company

II. Preliminary Requirements

III. Reservation of Name

IV. Preparation of the Memorandum of Association and Articles of Association

V. Filing of the documents with the Registrar of Companies

VI. Issue of Certificate of Incorporation by the Registrar of Companies



I. Selection of the type of company

The promoters of a company may select type of the company as they wish to form themselves into viz.

- one person company (OPC),
- private company,
- public company,
- non-profit company, etc.



II. Preliminary Requirements

- All the directors of the proposed company Must ensure that they are having Directors' Identification Number (DIN).
- Out of all the directors of the proposed company, atleast one director should have digital signature to digitally sign the incorporation and other related documents.



III. Reservation of Name

- One of the promoters should apply to the Registrar, Central Registration Centre (CRC) regarding the reservation of name.
- He should apply in e-Form No. INC.1
- Maximum of six proposed names can be given in order of preference.



IV. Preparation of MOA and AOA

- This step is subsequent to the reservation of name made by the Registrar.
- MOA and AOA shall be in the respective forms as specified in Schedule -1.
- It should be noted that the main objects must be matched with the objects shown in e-Form INC.1.



V. Filing of the documents with the ROC

- a. Duly signed MOA & AOA
- b. Declarations in INC-8
- c. Affidavits in INC-9
- d. Address of the correspondence
- e. Particulars of Subscribers
- f. Particulars of First Directors
- g. Interest of first Director in other company



VI. Issue of Certificate of Incorporation by the ROCs

- If the Registrar of Companies is satisfied, issue a certificate of incorporation to the company.
- Registrar shall allot to the company a corporate identity number (CIN) which will be printed in the certification of incorporation .
- The company shall maintain and preserve at its registered office copies of all documents.

On furnishing of false and incorrect information for registration of company

1. Person shall be liable for action under section 447.
2. At any time after the incorporation of a company, it is proved - the promoters, first directors and the persons making declaration under clause (b) of subsection (1) shall each be liable for action under section 447.
3. The Tribunal may, on an application made to it, on being satisfied that the situation so warrants.

Provided that before making any order under this sub-section, -

- (i) the company shall be given a reasonable opportunity of being heard in the matter; and
- (ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

References

- Company Law And Practice, Ratan Nolakha, Vikas Publication House.
- Company Law & Secretarial Practice, Appannaiah, Reddy, Prabhudev, Himalaya Publishing House.
- Secretarial Practice, M. C. Kuchhal, S. Chand Publishing.
- <http://www.mca.gov.in>
- <http://www.icsi.edu>

The background features three overlapping circles of varying shades of blue, creating a layered effect. The circles are positioned on the left side of the frame, with the largest and darkest circle on the left, and two smaller, lighter circles overlapping it towards the right. The text 'THANK YOU' is centered within the largest circle.

THANK YOU