COMPANY FORMATION IN INDIA (Private Limited)

This document is intended to give a brief idea about the process of Company Incorporation In India.

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WHAT SHALL YOU BE READING AHEAD?

General information about a Company

I. Meaning of a Company

As per the Companies Act,1956 a Company is defined in section 2(10) read with section 3 as a Company which is formed and registered under the Companies Act or any previous relevant Act.

For the common man, a Company can be said to a legal entity with the following features:

- Limited liability of the owners i.e shareholders.
- Perpetual succession
- Common seal
- Regulated by the Companies Act, the Company's Memorandum and Articles. (these documents define the Company's objectives and functioning),
- Governed by the Board of Directors

The biggest advantage of a Company is its Limited liability. So a businessman can be assured that his personal assets will not be touched to repay the Company's debts. A Company is considered, generally more in the realm of organized business. Formation of a Company generally indicates the desire, wish, intention of the owners to do long term, serious business.

"A Company is a corporate structure and can be used effectively for brand building."

II. Types of Companies (based on share Capital)

No.	Particulars	Private Limited	Public Limited
1	Generally suitable for	Small businesses, Start ups	Suitable for Large businesses
2	Number of shareholders	Maximum: 20 Minimum : 2	Maximum: Unlimited Minimum: 7
3	Directors	Minimum: 2	Minimum: 3
4	Certificates required	Certificate of Incorporation	Certificate of Incorporation Certificate of Incorporation
5	Regulatory Compliances and restrictions	Considerably less than public Limited	Considerably more than Private limited
6	Cost of Formation	Lesser than Public Ltd.	More than Private Ltd.

III. Shareholders

The shareholders of a Company are its owners. The Owners hold shares in the ratio of ownership. Greater the number of shares, higher is the ownership.
E.g. If Mr. Ramesh holds 30% shares of ABC Ltd., it can be said that he is 30% owner of that Company.

The shareholders generally decide the directors of the Company. They have voting power over all the matters of the Company.

IV. Directors

A Company is governed by the Board of Directors. The Directors are appointed by the shareholders. It is the Board which is responsible for the day to day functioning of the Company within the framework of the Memorandum and Articles. A shareholder can also be a Director of the Company.

V. Memorandum and Articles of Association

The Memorandum is the document which explains the name, address, objectives etc. of the Company. It has to be finalized and should have the approval of the Government authorities before the Company can be formed.

The Article of Association contains the rules for the functioning of the Company. Like the Memorandum, it also has to be finalized and should have the approval of the Government authorities before the Company can be formed.

PROCEDURE FOR THE COMPANY INCORPORATION

Obtaining the Directors Identificaion Numbers ("DIN") and the Digital Signature ("DSC") for any one Director.

Obtaining name approval for the Company

Drafting the Memrandum and Articles, and getting them vetted by the Company authorities

Submitting the Forms for Company incorporation and obtaining the Certificate of incorporation

Printing the share certificates and getting them stamped.

I. Obtaining the Director Identification Numbers ("DIN") for all the Directors and Digital Signature ("DSC") for any one Director

DIN is a unique number that has to be obtained by each and every Director. DIN is to be obtained online as well as physical submission of the ID proofs and address proof. Once all the Directors have the DIN and there is at least one DSC, then the process of Company Formation moves forward.

II. Obtaining the name approval of the Company

The proposed names of the Company have to be approved by the Government authorities. At a time, upto 6 names can be proposed. Before a name is decided, a **search report** is to be obtained to determine the chances of getting the desired names. The name should not be in contravention of the Emblems Act, any Government Circular/ Notification etc. The name should not be similar to that of any existing Company, LLP. Once the name approval is obtained, then the Company has to be incorporated within 60 days.

III. Drafting the Memorandum and Articles of Association and getting them vetted

The Memorandum and Articles have to be drafted considering the objectives of the Company. The objects are classified as: Main Objects, Ancillary Objects and Incidental Objects. The drafting of the Objects need a lot of care.

The Memorandum and Articles of the Company have to be approved by the Government authorities at the RoC Office. Only after approval, can the relevant forms be filled.

IV. Submitting the Forms

Once the Memorandum and Articles are approved, then the relevant forms can be filled i.e. Form 1, Form 18, Form 32 etc. have to be uploaded. Then the Certificate of Incorporation can be obtained.

V. Share Certificates

The share certificates are to be printed and stamped in the proper format.

OTHER COMPLIANCES REQUIRED TO BE FOLLOWED BY A COMPANY

A. Compliances under the Companies Act

1. **Board Meetings**

   Hold a Meeting of the Board of Directors at least once in every three months. The process involves sending notices, holding the actual meeting and preparing minutes of the meeting.

2. **Annual General Meeting(AGM)**

   The Annual General Meeting is held once a year to approve the Audited Balance Sheet and Profit and Loss Account signed by the Directors and the Statutory Auditor after he has audited the financials. The Financials include the Balance Sheet, Profit and Loss Account, Schedules and the Notes to Accounts. The AGM is required to be held within 6 months of the end of the financial year.

3. **Maintaining books:**

   Company has to maintain books of accounts on a mercantile double-entry basis. It has to get its books of accounts audited. Also it has to prepare the financials.

4. **Filing of various forms annually**

   After the AGM is completed the Company has to file returns for the year. The forms to be filed are Form 23AC, Form 23ACA for the Balance Sheet and Profit and Loss Account. Also the Annual return for the Company is to be filled.

B. **Compliances with the Income Tax Act**

1. **Income tax return**

   Annual Return for the Income Tax Act to be filed after preparing the Audited Financials. The Income tax return is to be filed before the end of 6 months of the financial year.

2. **TDS returns**

   The TDS returns are to be filed quarterly. The TDS returns are to be filed for both Salary and Non-salary. For the FY 2009-10, there are three quarterly returns to be filed i.e. the July-Sep Qtr, Oct-Dec Qtr and Jan-Dec Qtr.

C. **Professional tax registration**

The Company is required to get the Professional Tax Enrollment, Employee Registrations and Directors registration.