

FORMATION OF COMPANIES

INCORPORATION OF A NEW COMPANY INVOLVES

- Approved Directors Identification Number (DIN) and Digital Signature Certificate (DSC)
Approval of the Name
- Preparation of documents
- Stamping of Documents and submission for vetting by the concerned Registrar of Companies
- Corrections in the documents as advised by the Registrar of Companies
- Uploading of the pre-vetted documents and payment of requisite filing fees
- Submission of the physical copies of the documents uploaded.
- Approval of Registration

NAME APPROVAL

- **e-Form: 1A**
- **Information required :**
 - Information about the applicant — Name, address, occupation and email id.
 - Names (Maximum 6), in order of preference, of the proposed company.
 - Significance of the names
 - Main object of the proposed company
 - Names of the Promoters. In case of a Private Limited Company — minimum 2 and in case of a Public Limited Company minimum 7 names are required.
 - Information of the Proposed Directors :

o Approved Director Identification No. (DIN)

o Name of Father/Husband

o Corporate Identity No. (CIN), in case already a Director/Promoter of an existing company.

o Date of Birth

o Permanent & Present Residential Address

- Proposed Authorised Capital
- **Points to be kept in mind**
 - All the proposed Directors should have valid/ approved Director Identification No. (DIN).
 - In case any Director is not having DIN, apply for DIN and thereafter make an application for name approval.

- The applicant should be having valid Digital Signature Certificate (Class 2 or above) from one of the approved Certifying Authorities e.g. MTNL, TCS, GNFC n CODE, SIFY SAFE SCRIPT.
- The names should be indicative of the activities/main object of the proposed company.
- Ensure that the name does not resemble the name of any other already registered company and also does not violate the provisions of emblems and names (Prevention of Improper Use) Act, 1950. The MCA Portal provides the facility of online checking of the names of existing companies/names already approved under the link "Check Company Name"
- The use of words in the name of Company like "National", "Global", "Industries", "Enterprises", "Universal", "International", "Hindustan", "India", "Corporation" etc. is allowed only if Authorised Capital of Company is as prescribed e.g. for National – Rs.50 Lacs, for Global – Rs.1 Crore etc.

For details refer Circular F. No. 27/1/87 dated 13-3-1989.

• Steps

- Register with MCA Portal as "Registered User" and remember user name and the Password.
- Electronically File application in completed e-Form 1A.
- Make the payment online, through payment gateway or generate challan, for Rs. 500/- for off line payment.
- In case of off line payment, make the payment of challan, through designated branches of the authorized bank.
- The online payment should be preferred for faster clearance, as the application can not be processed till the payment has been made and intimated by the Payee Bank to the ministry.
- The name approval is conveyed through email to the applicant. The status can also be checked online through the user id used for e-filing of Form 1A, under the link "Track Transaction Status".
- The name approval is valid for 60 days only. In case further steps for the incorporation of the company could not be completed, make application for renewal of name. Renewal is for 30 days and if, thereafter require fresh application should be made in Form 1A.

PREPARATION AND SUBMISSION OF DOCUMENTS

- Following Documents are required:
 - **e-Form 1** — Declaration of compliance of all provisions on Stamp paper of Rs.100/- (Ensure that stamp paper is not in name of company but in name of any of the Applicant or stamp duty can be paid on Form 1 by way of Franking.)
 - **Memorandum of Association (MOA)** — It should contain following clauses:
 - The name of the proposed company — It should be the same as given in the name approval letter.
 - Domicile of the company; i.e., the state in which the proposed company is sought to be registered.
 - **Objects Clause** should be consist of

(a) Main Object: It should clearly State the activities to be carried on by the company upon incorporation. Generally, ROC does not allow more than one or two clauses under this Clause.

(b) Objects Ancillary or incidental to the main Objects of the Company. This should contain objects, which are required to be carried out to attain the Main Objects of the company.

(c) Other Objects: These are the objects, which the company is likely to carry out either along with the Main Objects or in place of Main Objects.

These clauses should be drafted carefully to avoid frequent amendments.

- **The Capital Clause** should show the Authorised Capital of the company, in case the company is being registered with share capital. It should also state that the paid-up capital of the company, which should be minimum Rs.1 lakh in case of private limited company [or Rs.5 lakhs in case of Public company]. In case the liability of the members is limited, the same should be mentioned in the Memorandum of Association under clause IV. The Stamp Duty and ROC fees are payable based on the Authorised Capital.
- **The Subscription clause** should be signed by all the subscribers (Minimum two in case of Private Company & Seven in case of Public Company) and mentioning in their own handwriting, name, address, occupation and number of shares agreed to be subscribed before a witness. Witness also has to write his details in his own handwriting.
- **The Liability clause** should mention the fact that the liability of the company is limited (by shares or by Guarantee as the case may be). Clause IV.
- **Articles of Association (AOA or A/A)** – For all companies, to the extent applicable:
 - A/A, if filed, may contain clauses like capital structure, power to issue further shares, make call, forfeit, issue bonus shares, or buy back of shares including power to increase, convert, cancel, consolidate and/or split the shares etc.
 - A/A must not be *ultra vires* the Act or the M/A
 - The relationship of promoters *inter se* or rights — powers duties of each promoter may be described in A/A.
 - Any MoU or shareholders agreement etc. between promoting groups may be suitably referred to in A/A, if it is desired that company should take cognizance of such MoU etc.
 - The method and mode of valuation of shares, further allotment etc., if desired, may be enclosed in A/A.
 - Minimum/maximum number of Directors, their rights, and duties can be contained in A/A.
 - Appointment/Re-appointment, Retirement, Re-muneration of Directors may also be mentioned in A/A.
 - A public company limited by shares may adopt fully or partly "Table A" as its A/A. A Private company must file and register A/A mentioning the restraints as per S. 3(1)(iii). For other clauses, "Table A" may be adopted.
 - Restraints u/s. 3(1)(iii) in case of Private Limited Company :

(a) The right to transfer the shares is restricted.

(b) Number of members not to exceed 50 (excluding employees and ex-employees who became members during continuance of employment).

(c) Prohibition of invitation to public to subscribe shares/debentures.

(d) Prohibition of invitation/acceptance of deposits from persons other than members, directors or their relatives.

- **e-Form 18** – for situation of the registered office :
- Address of Registered Office
- Address of Jurisdictional Police Station also to be mentioned.

o Form 1A reference number is also to be given.

o Email ID of the Company

- It is to be digitally signed by any one of the Applicant.
- **e-Form 32-** for appointment of the first Directors
- Approved Director Identification No. (DIN)
- The e-Form 32 comes with "Pre-Fill" button. The Name, Father's Name and Address of the Director will be filled automatically.
- It is to be digitally signed by any one of the Applicant.
- Ensure that none of the Directors is disqualified.
- **Power of Attorney**
- To be executed by all the subscribers on Stamp paper of Rs. 100/- (Ensure that stamp paper is not in name of company but in name of any of the Subscriber).
- To contain power to make alterations and corrections as suggested by ROC office at the time of vetting/prescrutiny

STAMPING OF DOCUMENTS AND SUBMISSION FOR VETTING BY THE CONCERNED REGISTRAR OF COMPANIES :

- Following Documents are to be Stamped :
 - **Memorandum of Association** — Rs. 200/- on first page of MOA.
 - **Articles of Association** — Stamp duty will vary depending upon the Authorised Capital
 - **Form 1** – Rs.100
 - **Power of Attorney** — Rs.100
- Following Documents to be Submitted to the concerned ROC, for vetting:
 - Memorandum of Association
 - Articles of Association
 - Power of Attorney
 - Form 1
 - Form 32
 - Form 18

CORRECTIONS IN THE DOCUMENTS AS ADVISED THE REGISTRAR OF COMPANIES :

- Make all the corrections in the documents, as advised by the ROC. Ensure that the originals returned by the ROC bears the stamp of Pre-scrutiny by ROC.

UPLOADING OF THE PRE-VETTED DOCUMENTS AND PAYMENT OF REQUISITE FILING FEES

- Following forms to be uploaded/filed electronically:
 - e-Form 1: with following attachments:
 - Scanned copy of MOA — ensure that the stamp duty payment and ROC Pre-Scrutiny by ROC are visible.
 - Scanned copies AOA —ensure that the stamp duty payment and ROC Pre-Scrutiny by ROC are visible.
 - Scanned copy of First page of Form 1 – showing payment of stamp duty
 - Annexure containing detail of subscribers
 - e-Form 18
 - e-Form 32
- Generate Challan/make on line payment for filing of the above Forms.
- **Points to be kept in mind**
 - All the scanned documents should be saved in "PDF" format. The MCA portal does not accept files in any other format.
 - The First page of MOA, AOA, & Form 1, bearing Stamps for payment of Stamp duty & pre-scrutiny by ROC, should be scanned in colour/black and white (both are valid).
 - Other pages can be scanned in Black & white, to reduce the size of file.
 - The e-forms being used, should be latest version. There should not be much time gap between downloading of the blank form and uploading of the duly filled in form. The user may face difficulties in uploading, if there is a time gap of more than 3-4 days.
 - After e-filing, the user should regularly visit MCA portal to check the status of the documents filed by using the link "Track Transaction Status", available after login. The queries raised, in respect of documents filed, are normally mentioned as "remarks".
 - If any requirement is there or to make any corrections in forms filed, as suggested by ROC Office, the same can be uploaded by using Form 67 prescribed for addendum facility.

SUBMISSION OF THE PHYSICAL COPIES OF THE DOCUMENTS UPLOADED

- After e-Filing of the documents as described above following documents are required to be submitted to the concerned ROC:
 - o Original, stamped copy, of MOA
 - o Original, Stamped copy of AOA
 - o Copy of all the Forms uploaded, with attachments.
 - o Copy of challan, duly paid, as an evidence of completed e-filing of the documents.

APPROVAL OF REGISTRATION

- The concerned ROC generates the Corporate Identity Number (CIN) on satisfactory completion of all the formalities. The Promoter, or Power of Attorney holder can collect the original certificate of incorporation. Otherwise it is directly sent to the Company's Registered Office Address.

AFTER INCORPORATION

Private Limited Company can directly start its activities / business immediately after the receipt of Certificate of Incorporation.

But Public Limited Company has to obtain Certificate of Commencement of Business before starting its activities / business in addition of Certificate of Incorporation.

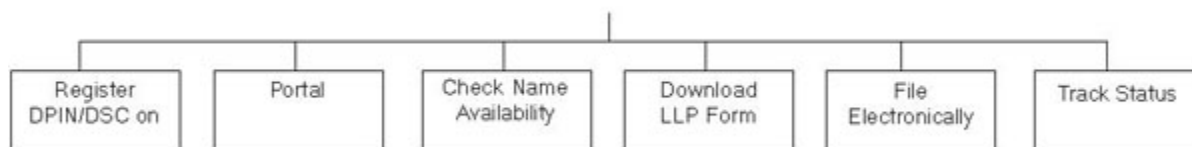
HOW TO INCORPORATE A NEW LIMITED LIABILITY PARTNERSHIP

A Limited Liability Partnership may be incorporated as per the procedure explained below:

*Acquire
Acquire DSC*

DPIN

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LLP READY TO FUNCTION

1. Acquire Designated Partners Identification Number (DPIN) – Form 7

- Designated Partners Identification Number (DPIN) is Compulsory for all the Partners who proposed to be Designated partners of the Partnership firm
- Prescribed form is Form 7, which is available on website and can be downloaded by Login Facility
- Application Fees is Rs.100/- payable online by Credit Card
- Provision DPIN No. is generated after filing of Form 7
- Print out of DPIN Form, signed by Applicant and Proof of Identity & Residence, certified to be true, along with photograph, has to be sent to **Registrar, Ministry of Corporate Affairs, 3rd Floor, "Paryavaran Bhawan", CGO Complex, Lodhi Road, New Delhi-110 003.**
- Approval status can be checked online and on approval intimation will be received by applicant

2. Acquire Digital Signature Certificate:

- Partners/Designated Partners of the LLP/proposed LLP, whose signatures are going to be affixed on Forms, get the Digital Signature Certificate of Class 2 and Class 3 from any Authorised Certifying Agency.

3. User Registration

- User Registration can be done on the link provided on website www.llp.gov.in.
- Create User ID and Password on the site by filing a form available on website
- Registration of Digital Signature is also required.

4. Reservation of Name for Proposed LLP: - Form 1

- Any partner or designated partner in the proposed LLP may submit Form-1.
- Download Form 1 from E Form Links, enable after Login on website
- Details of minimum two Designated Partners is required, one of them must be Resident in India
- Only individuals or nominees on behalf of the bodies corporate as partners can act as designated partners.
- Status of Application can be checked after login

5. After Name Availability

A. Incorporation Documents & Statements – Form 2

- Log on to the portal and fill the Form – 2
- Form – 2 has to be Digitally Signed by Person named as Designated Partner, having permanent DPIN
- Form – 2 has to be Certified either by Advocate, Chartered Accountant/ Company Secretary/Cost Accountant in Practice and engage in formation of LLP.
- Submit the Form -2 Online and pay prescribed fee online
- On submission of all documents and to the satisfaction of Registrar that Provision of LLP Act are Complied with, Certificate of Incorporation will be issued maximum of within 14 days
- Certificate of Incorporation will be issued in Form 16

B. Filing of LLP Agreement and Details of Partners

- Form 3 – Details of LLP Agreement and Changes therein
- Form 4 – Notice of Appointment of Partners/ Designated Partners and there consent
- Time Limit for Filing Form – 3 & Form – 4
 - Simultaneously at the time of filing of Form – 2 or
 - Within 30 Days of Incorporation or Appointment

C. Payment of Registration Fees

- Pay the prescribed registration fee as per the slab given in Annexure A of the LLP Rules, 2009, based on the total monetary value of contribution of partners in the proposed LLP.

D. Certificate of Registration

Certificate of Registration will be issued within 14 days of filing of all the documents and Forms by the Ministry of Corporate Affairs.