

Step by Step Formalities for formation of a new company

Persons desirous of forming a company must adhere to the step by step procedure as discussed below:-

1. Selection of type of the company.
2. Selection of name for the proposed company.
3. Apply for Directors Identification Number and Digital Signatures.
4. Drafting of Memorandum and Articles of Association.
5. Stamping, digitally signing and e-filing of various documents with the Registrar.
6. Payment of Fees.
7. Obtaining Certificate of Incorporation.
8. Preparation and filing of Prospectus/Statement in lieu of Prospectus and e-Form 19/20 (in case of public companies) for obtaining the certificate of commencement of business.
9. Obtaining Certificate of Commencement of business (in case of public limited companies).

1. Selection of the type of company

The Promoters of a company may be individual entrepreneurs or body corporate engaged in efforts to incorporate a company. They have the power of defining the object of the company and deciding various matters for the company proposed to be incorporated. It is depending upon, the purposes for which the company is to be incorporated, proposed scale of operations, capital involved, etc. The promoters can select type of the company as they wish to form themselves into viz. private company, public company, non-profit making company, etc.

2. Selection of name

Six names are required to be selected in order of preference after taking notes of numerous provisions, clarifications, circulars and rules made by the Ministry of Corporate Affairs, etc. In case key word is required, significance of each key word should be given in the e-Form 1A.

2.1 Applying for ascertaining the availability of the selected name

The promoters are required to make an application to the concerned Registrar of Companies to be submitted electronically to the Ministry of Corporate Affairs on the portal of MCA. An application shall be in e-Form 1A as prescribed by

Notification No. GSR 56(E) dated 10th Feb., 2006 duly digitally signed by any one promoter or managing director or director or manager or secretary of the company along with the required fee for ascertaining whether the selected name is available for adoption by the promoters of the proposed company.

2.2 Approval of the name

After receipt of completed application in e-Form 1A, the Registrar shall intimate whether the proposed name is available for adoption or not. The confirmation of the name made available by the Registrar shall be valid for a period of six months. In case, if the promoters fail to submit all the required documents for incorporation within that period, then they are required to submit another application after payment of requisite fees.

3. Requirement for having DIN

As per proviso to section 253 of the Companies Act, 1956, inserted by the Companies (Amendment) Act, 2006, w.e.f. 1-11-2006, no company shall appoint or re-appoint any individual as director of the company unless he has been allotted a Director Identification Number under section 266B. New section 266A has been inserted by the Companies (Amendment) Act, 2006 which provides that every individual, intending to be appointed as director

of a company shall make an application for allotment of Director Identification Number (DIN) to the Central Government in the prescribed DIN Form. Therefore, before submission of e-Form 1A all the directors of the proposed company must ensure that they are having DIN and if they are not having DIN, it should be first obtained.

Specific care should be taken that a person cannot have more than one DIN, therefore, a DIN once obtained shall serve the requirement for all the companies in which he is a director or intended to be a director.

3.1 Requirement for having digital signatures

After 16th Sept., 2006, every document prescribed under the Companies Act, 1956 is required to be filed with the digital signature of the managing director or director or manager or secretary of the Company, therefore, it is compulsorily required to obtain digital signatures of at least one director to sign the e-Form 1A and other documents. It may be noted that if the director or other persons covered are having digital signatures, their signatures may be used for the above said purpose and there is no need take new signature again.

4. Preparation of the Memorandum of Association (MOA) and Articles of Association (AOA)

Drafting of the MOA and AOA is generally a step subsequent to the availability of name made by the Registrar. It should be noted that the main objects should match with the objects shown in e-Form. These two documents are basically the charter and internal rules and regulations of the companies. Therefore, they must be drafted with utmost care with the expert's advice and the other object clause should be drafted in a very broader sense.

5. Filing of documents with the Registrar

Next step for the promoters is to file the following documents with the Registrar for incorporation of the company. The following documents shall be submitted to the Registrar along with the adequate filing fees as applicable for registration of the company online with in a period of six months from the date of intimation of availability of name:-

- Memorandum of Association, duly signed by the subscribers and witnessed, showing the number of shares against their names electronically attached in PDF file. It should also be properly stamped as per the stamp duty applicable in the State, where the registered office of the company is to be situated. Simultaneously original

stamped copy of the Memorandum of Association shall be submitted with the Registrar of Companies concerned.

- Articles of Association should be duly signed by the subscribers and witnessed, showing the number of shares against their names electronically. It should be properly stamped according to the authorized share capital as per the stamp duty applicable in the state, where the registered office of the company to be situated. Simultaneously original stamped copy of the Memorandum of Association shall be submitted with the Registrar of Companies concerned.
- Copy of the agreement, if any, which the company proposes to, enter in to with any individual for appointment as its managing or whole-time director or manager shall be attached in the PDF file.
- Declaration in e-Form 1 by an advocate or company secretary or chartered accountant engaged in whole time practice in India or by a person named in the Articles as a director, manager or secretary of the company, that all the requirements of the Companies Act, 1956 and the rules made there under have been complied with in respect of registration and matters precedent and incidental thereto, which may be accepted by the Registrar as sufficient evidence of such

compliance. It should be carefully noted that details of all the companies in which directors are also director should be given and the names, addresses and other particulars of directors and promoters should be matched with the information provided in the DIN application Form. [Section 33(2)] (Appendix 2).

- Power of Attorney for should be furnished by all the subscribers in favour of any one subscriber or any other person authorizing him to file these documents and to with the Registrar and to obtain certificate of incorporation. The power of attorney should be given on Non-Judicial stamp paper of appropriate value and shall be submitted to the Registrar. (Appendix 3).
- Other agreement if any, which has been stated in the Memorandum or Articles of Association shall also be filed in the PDF file with the Registrar because in such cases the agreement will form part of this basic document.
- E-Form 18 is to be filed with the Registrar electronically with the digital signatures in regard to location of the registered office. E-Form 18 shall also be certified by the company secretary or chartered accountant or cost accountant in whole –time practice. [Section 146 (2)] (Appendix4)

- E-Form 32 is required to be filed with the Registrar electronically for filing particulars of directors. The personal details should match with the information provided in the DIN. Following additional details are also required to given in e-Form 32:
 1. Name and CIN of all the companies in which they are directors;
 2. Names of partnership concerns in which they are partner;
 3. Names of proprietorship concerns in which they are proprietor;

In case if the field provided in the e-From 32 is not sufficient, an annexure may also be enclosed for the required details. As an e- Form 32 provides fields for three directors only, e-Form 32AD i.e. Addendum to e-Form 32 shall be submitted for additional appointments. E-Form 32 AD, if any is also required to be certified by the company secretary or chartered accountant or cost accountant in practice digitally before filing with the Registrar. Consent to act as director on plain paper and authorization to submit e-Form 32 from all the director should be attached with the e-Form 32.

E-form 32 is required to be digitally signed by the director or managing director or manager or secretary of the company. E-Form 32 shall be filed along with the adequate filing fee as prescribed under Schedule XIII of the Companies Act,

1956; however, no separate filing fee is required to be paid on the addendum of e-Form 32. (Appendix 5).

6. Payment of registration fees for a new company

The fees payable to the Registrar at the time of registration of a new company varies according to the authorized capital of a company proposed to be registered as per Schedule X to the Act. Fees can be calculated by the MCA portal.

7. Certificate of Incorporation (section 33 and 34)

On the satisfaction of the Registrar that the requirements specified in sections 33(1) and 33(2) have been complied with by the company, he shall retain the documents and register the MOA, AOA and other documents. Section 34(1) cast an obligation on the Registrar to issue a Certificate of Incorporation, normally within 7 days of the receipt of documents.

8. Commencement of Business

A Private limited company and a company not having share capital may commence its business activities from the date of its incorporation. However, a

public Limited Company having share capital is required to take certificate of commencement of business before it can commence business.