

Incorporation of Private Limited Company under Companies Act 2013

WHAT DOES THE ACT SAY REGARDING PRE INCORPORATION AND POST INCORPORATION?

PRE INCORPORATION

Q: Who shall form a [Private Limited Company](#)?

A: Two or more persons can form a Private Limited Company to conduct any lawful business {Section 3(1)}

Q: What are the various methods of forming a Private Limited Company?

A: There are three methods in which a Private Limited Company could be formed

- a. a company limited by shares; or
- b. a company limited by guarantee; or
- c. an unlimited company. {Section 3 (2)}

Q: What should we do to get the name of the Company approved by ROC?

A: One of the Promoters should fill up Form No.2.7, digitally sign and then upload the Form in the MCA21 Portal. Before doing so, the following three points have to be complied with:

- a. All the Promoters should have their DIN Nos.
- b. At least one Promoter should have the DSC. (Class 2 Digital Signature)
- c. The proposed names selected should fall in guidelines prescribed in Rule 2.5)

There is another method to get the name approved. If the Form is certified by any Professional (Chartered Accountant/Company Secretary/Cost Accountant), the name gets approved under ST P automatically. Sometimes even after the Professional certifies, it does not get cleared and the system routes the Form to the concerned Officer in ROC office. This is because the system itself recognizes that the suggested name could not be allotted as the same does not fall in line with the guidelines prescribed under the rules. In that case, there is 90% chance that the name gets rejected by ROC.

Q: Once the Name is approved within how many days, you need to register the Company?

A: The Company should be registered within 60 days from the date of filing of the Name Application Form as the name shall be reserved by the Registrar only till the above period. {Section 4(5)(i)}

(Please ensure all the Forms relevant for Company registration are filed within 60 days from the date of SRN of Form No.2.7)

Q: What should be the content of the Main Registration Document viz., MOA and the AOA?

A: [Memorandum of Association](#)

i. Contents

The Memorandum of a Company shall contain the following:

a) the name of the company with the last word "Limited" in the case of a Public Limited Company, or the last words "Private Limited" in the case of a Private limited company. Provided that nothing in this clause shall apply to a company registered under Section 8;

- b) the State in which the registered office of the company is to be situated;
- c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof ;
- d) the liability of members of the company, whether limited or unlimited,
- e) in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and
- f) in the case of a company having a share capital,—
 1. the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and
 2. the number of shares each subscriber to the Memorandum intends to take, indicated opposite his name;

ii. Format

The memorandum of a Company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company. (Section 4)

ARTICLES OF ASSOCIATION

i. Contents

- a) The Articles of a Company shall contain the regulations for management of the company.
- b) The articles shall also contain such matters given in Table F, G, H, I and J in Schedule 1 as may be applicable to such Company. A Company may adopt all or any of the regulations contained in the model articles applicable to such Company.
- c) In case of any Company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.
- d) The Company is not prevented in including such additional matters in its articles as may be considered necessary for its management.
- e) The Company is also empowered to include provisions for entrenchment in the Articles to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with. This provision for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company. { Here one should understand in the case of a Private Limited Company to seek any amendment in the entrenchment in the Articles, unanimous approval of the members (whether present in the General meeting or not) is required whereas in the case of a Public Limited Company a special resolution passed in the General Meeting is sufficient. }
- f) Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in Form 2.8 (Section 5)

Q: What documents are to be filed with ROC for registering the Company?

A: The following documents for registration should be attached in Form No.2.9 and uploaded in the MCA21 Portal.

1. Memorandum of Association
2. Articles of Association
3. Subscriber Sheet
4. a declaration in Form No.2.10 by an Advocate or a Chartered Accountant or a Cost Accountant or a Company Secretary in practice, who is engaged in the formation of the company, by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;
5. an affidavit in Form No.2.11 from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief ;
6. the address for correspondence till its registered office is established;
7. Details of First directors along with their respective consents
8. The details of persons named in the Articles as First Directors and also their respective interests in other Companies and Firms and their consent to act as Directors. The same shall be furnished in Form No.2.12. (Section 7)

Q: What should be contents of the Subscriber sheet?

A: The Subscriber Sheet should be filled up by each subscriber in his/her own hand writing and duly signed. The following details should be given by each Subscriber.

1. Name (including the family name or surname)
2. Recent Photograph duly and scanned and affixed
3. Father's Name/Mother's name/Spouse Name
4. Nationality
5. Date of Birth
6. Place of Birth (Place of State and the District)
7. Occupation
8. Income Tax Pan No
9. Permanent Address and the present Address (Time since residing at the present Address if the shifting to the Present Address from the earlier address is less than one year)
10. Email id, Mobile No, Phone No and the Fax No
11. Proof of Identity (PAN card and any one of Voters Identity, Driving license, UIN, Passport)
12. Residential Proof (It should be any one copy of the following: Passport, Voters Identity, Driving license, UIN, Registered rental Agreement, Bank Statement, Electricity Bill, Telephone Bill, Mobile Bill etc. (The utility Bills /Bank Statement shall not be more than two months old))
13. Proof of Nationality in the case of Foreign National
14. If the Subscriber is a Body Corporate, the following details have to be furnished:
 - Cin No and GLN if any

- Registered office address/Principal Place of Business and the Email id
- Board resolution furnishing the following details:

1. Authorisation to subscribe for shares and the no of shares to be subscribed
2. name, address and the designation of the authorized person to sign the subscriber sheet on behalf of the Company

In the case of a Foreign Body Corporate, in addition to the above, the certificate of incorporation and the registered office address along with Proof.

The subscriber sheet should be handwritten and signed by the Subscriber in the presence of atleast one witness who shall mention in the subscriber sheet as follows:

' I witness to the subscriber/subscribers(s) who has/have subscribed and signed in my presence on theday of at

Further I have verified his/their ID for their identification particulars as filled in '

(Rule 2.10)

If the Subscriber is an Illiterate or has signed in a language other than English, the ROC may insist for an Affidavit stating that he is aware of the contents specified in the Memorandum and Articles.

If the subscriber is a Body Corporate, any director, officer or employee could sign and a Board resolution to that effect should be attached.

If the Subscriber is a Foreign Company/Foreign Subscriber, the Proof of Identity and also the Proof of Address of such a Subscriber (though not given in the Rule) shall be notarized by the Notary Public and subscriber sheet shall be witnessed with the official seal by an Indian Embassy Staff in that Country{For more details Please refer Rule 2.10(4)}.

POST INCORPORATION

Q: How will the ROC register a Company once he is satisfied with the registration documents filed by the Promoters of the Company?

A: The Registrar of Companies on the basis of documents and information filed under sub-section (1) shall register all the documents and issue a certificate of incorporation in the Form No.2.13.

Q: What should the Company do after obtaining the Certificate of Incorporation from ROC?

A: The company shall maintain and preserve at its registered office copies of all documents and information as originally filed on incorporation till the dissolution of the Company.

Q: What declaration should be filed by the Company before commencement of Business?

A: Before commencing any business or exercising Borrowing Powers a declaration has to be filed by a director in Form No.2.24 and duly verified by a certifying Professional, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company on the date of making of this declaration {Section 11(1)}

Q: What should be done for the verification of the Registered Office?

A: The Company shall, on and from the fifteenth day of its incorporation and at all times thereafter, have a

registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

The Company has to file with the Registrar of Companies the verification of Registered Office within 30 days of incorporation in Form No.2.25. The following documents have to be attached along with the said form.

- a) A copy of the title deeds of the premises if the same is owned by the Company.
- b) Notarised copy of the Rental agreement/Lease Agreement executed in the name of the Company
- c) Rental receipt not older than a month.
- d) Authorisation letter from the owner /Authorised occupant of the premises along with proof of ownership or occupancy authorization to use the premises as its registered office.
- e) A copy of the utility Bill (not later than 2 months) depicting the name of the owner and the address of the premises.
- f) List of all companies with their CIN using the same premises as their registered office. (Section 12)

Q: Where should the name and registered office address of the Company be printed?

A: Every company shall—

- a) paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefor are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;
- b) have its name engraved in legible characters on its seal;
- c) get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and
- d) have its name printed on hundies, promissory notes, bills of exchange and such other documents as may be prescribed: (Section 12)

Concluding Remark

Section 11 says that the Company shall not commence business unless it complies with relevant provisions mentioned in the act. ROC is not going to issue a certificate of commencement of Business as there is no provision as such.. Should we take the date of commencement of Business on the day we file Form No.2.24 and Form No.2.25 as the date has got a direct bearing on Issue of Sweat Equity Shares If a Company contemplates such an Issue immediately after a gap of one year from the date of commencement of Business as required under Section 54(1)(d). I hope that the Government will look into this issue in due course of time.