

Checklist For Private Company Incorporation

❖ Definition of Private company as per section 2(68) of the Companies Act,2013 states that

“private company” means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,—

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

(iii) prohibits any invitation to the public to subscribe for any securities of the company;

❖ Formation of company as per section 3 of the Companies Act,2013 states that

(1) A company may be formed for any lawful purpose by—

(a) seven or more persons, where the company to be formed is to be a public company;

(b) two or more persons, where the company to be formed is to be a private company; or

(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:

Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles:

Provided further that such other person may withdraw his consent in such manner as may be prescribed:

Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed:

Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed:

Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

- (2) A company formed under sub-section (1) may be either—
- (a) a company limited by shares; or
 - (b) a company limited by guarantee; or
 - (c) an unlimited company.

❖ **Procedure for the Formation of a Private Company**

1. An application for the reservation of a name shall be in Form no.INC .1 along with fee of Rs.1,000/-

- Please note that MCA has mandate certain rules for name availability, check guidelines for the same.

2. The ROC will issue a letter on only an approval for availability of name for a proposed company. The name is valid for a period of 60 Days from the date on which the application for Reservation was made.

- Please note the applicant cannot start business or enter into any agreement, contract, etc. In the name of the proposed company until and unless a certificate of registration is issued by the registrar of companies as per the provisions of the Companies Act, 2013 and the rules made thereunder.

3. Application for incorporation of a private company with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated shall be filed in Form no. INC 7 along with Form no. INC 22 (as the case selected in form no. INC 7) & DIR -12 the following attachments:

- Where the articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in Form No.INC.7, as the case may be, along with the fee as provided in the Companies(Registration offices and fees) Rules, 2014 at the time of incorporation of the company.

Form no. INC 7

Attachments:

- **Memorandum of association as per Table A of schedule I**
- **Articles of association as per Table F of Schedule I**
- **Declaration in Form No. INC-8**
(a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and 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;)

- **Affidavit from each of the subscriber to the memorandum in Form No.INC-9**

(an affidavit 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;)

- **Particulars of every subscriber to be filed with the Registrar at the time of incorporation.**

(a) Name (including surname or family name) and recent Photograph affixed and scan with MOA and AOA,

(b) Father's/Mother's/ name,(c) Nationality,

(d) Date of Birth:

(e) Place of Birth (District and State):

(f) Educational qualification:

(g) Occupation:

(h) Income-tax permanent account number:

(i) Permanent residential address and also Present address (Time since residing at present address and address of previous residence address (es) if stay of present address is less than one year) similarly the office/business addresses :

(j) Email id of Subscriber;

(k) Phone No. of Subscriber;

(l) Fax no. of Subscriber (optional)

Explanation.- information related to (i) to (l) shall be of the individual subscriber and not of the professional engaged in the incorporation of the company;

(m) Proof of Identity:

☐ For Indian Nationals: ☐ PAN Card (mandatory) and any one of the following

☐ Voter's identity card ☐ Passport copy ☐ Driving License copy ☐ Unique Identification Number (UIN)

☐ For Foreign nationals and Non Resident Indians

☐ Passport

(n) Residential proof such as Bank Statement, Electricity Bill, Telephone / Mobile Bill: **Provided** that Bank statement Electricity bill, Telephone or Mobile bill shall not be more than two months old

(o) Proof of nationality in case the subscriber is a foreign national.

(p) the specimen signature and latest photograph duly verified by the banker or notary shall be in the prescribed **Form No.INC.10.**

- **Proof of residential address**

(the address for correspondence till its registered office is established;)

- **Proof of Identity**

(the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum and the

particulars of the persons mentioned in the articles as the first directors of the company along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed;)

- **Entrenched Articles of Association** , if any
- **NOC in case there is change in the promoters** (first subscribers to Memorandum of Association)
- **PAN Card** (in case of Indian national)
- **For verification of signature of subscribers [Pursuant to rule 16 (1)(q) of companies (Incorporation) Rules, 2014 in form no. INC - 10**
- **Optional attachment**, if any

Form no.DIR 12

Alongwith the above details in the Form no.INC.7, **Form no.DIR 12** to be filed with the following attachments:

The particulars of each person mentioned in the articles as first director of the company and his interest in other firms or bodies corporate along with his consent to act as director of the company shall be filed in Form No.DIR-12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014

Attachments:

- **Declaration by first director in Form INC-9 is mandatory to attach in case of a new company**
- **Declaration of the appointee Director, in Form DIR-2;**
- **Interest in other entities of director it is mandatory to attach in case number of entities entered is more than one.**
- **Optional attachment(s), if any**

Form no.DIR 22

Alongwith the above details in the Form no.INC.7, **Form no.DIR 22** to be filed with the following attachments:

Section 12(2) & 12(4) of the Companies Act, 2013 states that:

(2) The company shall furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed.

(4) Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within fifteen days of the change, who shall record the same.

Attachments:

- **Proof of Registered Office address(Conveyance/Lease deed/Rent Agreement along with the rent receipts) etc.;**

(the notarized copy of lease / rent agreement in the name of the company along with a copy of rent paid receipt not older than one month; or the authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office)

- **Copies of the utility bills as mentioned above (not older than two months)**
(the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months)
- **List of all the companies (specifying their CIN) having the same registered office address, if any;**
- **Optional attachment, if any**

If after filling the Requisite forms for incorporation with the Registrar of Companies along with fees is satisfied with the contents of the documents filed will issue the Registrar of companies will issue Certificate of incorporation in Form no.INC 11.

Form No.INC.21

The declaration filed by a director shall be in Form No.INC.21 along with the fee as and the contents of the form shall be verified by a Company Secretary in practice or a Chartered Accountant or a Cost Accountant in practice:

Provided that in the case of a company requiring registration from sectoral regulators such as Reserve Bank of India, Securities and Exchange Board of India etc, the approval from such regulator shall be required.

Pursuant to Section 11(1)(a) of the Companies Act, 2013 and Rule 24 of the Companies (Incorporation) Rules, 2014, Declaration prior to the commencement of business or exercising borrowing powers in **Form No.INC.21 along with the following attachments :**

- **Specimen signature in form INC.10.**
- **Certificate of Registration issued by the RBI (Only in case of Non-Banking Financial Companies)/ from other regulators**
- **(Optional attachment(s) (if any)**

Please note that it is not a professional advice but general information and my personal views about the subject covered here.

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Thanks & Regards

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