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Procedure for Incorporation of a Company under CA, 2013

Dear Professional Colleague,

Again an attempt has been made from my side to share my experience regarding Incorporation of a Company under Companies Act, 2013 in the form of an Article. This Article contains the procedure for Incorporation of a Company under Companies Act, 2013 with detailed documentation required. I hope this document would be of some help w.r.t. your professional working:

Please find below the basic procedure for Incorporation of a Company under Companies Act, 2013:

1. Obtain Digital Signatures

Nowadays various document prescribed under the Companies Act, 2013, are 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 a Digital Signature Certificate from authorized DSC issuing authority for at least one director to sign the E-forms related to incorporate like form INC.1 and other documents.

2. Obtain Director Identification Number [Section 153]

As per 153 of the Companies Act, 2013, every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number in form **DIR.3** to the Central Government in such form and manner and along with such fees as may be prescribed.

Therefore, before submission of e-Form **INC.1** for availability of name, 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.

3. Name availability for proposed company

As per section 4(4) read with **Rule-9** of Companies (Incorporation) Rules, 2014, application for the reservation/availability of name shall be in Form no. **INC.1** along with prescribed fee of Rs. 1,000/-. In selection of Company name should be in accordance with name guidelines given in **Rule-8** of Companies (Incorporation) Rules, 2014.

Note: MCA has prescribed certain rules for name availability so it is advisable to check guidelines for the same before applying for name. Refer **Rule-8** of Companies (Incorporation) Rules, 2014.

After approval of name ROC will issue a Name availability letter w.r.t. approval for availability of name for a proposed company.

Validity of Name approved by ROC: As per section 4(5), maximum time for which name will be available has been prescribed in the law itself under section 4(5). The name will be valid for a period of 60 Days from the date on which the application for Reservation was made.

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 there under.

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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 **INC.1**. These two documents are basically the charter and internal rules and regulations of the company. Therefore, it must be drafted with utmost care and with the advice of the experts and the other object clause should be drafted in a very broader sense.

As per section 4(6) 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.

As per section 5(6) the articles of a company shall be in respective forms specified in **Tables F, G, H, I and J in Schedule I** as may be applicable to such company.

You can download the sample format of MA and AOA under Companies Act, 2013, from the link given below:

[Sample MOA and AOA as per Companies Act, 2013](#)

You may download some sample object clauses from the link given below:

[Company Law some useful Main Object Clause-I](#)

[Company Law some useful Main Object Clause-II](#)

[Company Law some useful Main Object Clause-III](#)

[Company Law some useful Main Object Clause-IV](#)

5. Application for incorporation of a private company

As per **Rule-12** of Companies (Incorporation) Rules, 2014, application for incorporation of a private and Public 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** [Rule 12 to 18] along with Form no. **INC.22** for situation of registered office of the Company, (as the case selected in form no. **INC 7**) and DIR -12 with the following attachments:

Form no. INC 7 Attachments: (Read with Section 7 of Companies Act, 2013)

- i. Memorandum of Association as per Table A of schedule I
- ii. Articles of association as per Table F of Schedule I
- iii. Declaration in Form No. **INC-8** by Professionals. (As per **Rule-14** of Companies (Incorporation) Rules, 2014, A declaration in the prescribed form by an advocate, a CA, CMA or CS 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 there under in respect of registration and matters precedent or incidental thereto have been complied with;)

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- iv. Affidavit from each of the subscriber to the Memorandum in Form No. **INC-9** as per **Rule-15** of Companies (Incorporation) Rules, 2014, (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;)
- v. Proof of residential address (the address for correspondence till its registered office is established;)
- vi. For verification of signature of subscribers [Pursuant to rule 16 (1)(q) of companies (Incorporation) Rules, 2014 in form no. **INC - 10**
- vii. NOC in case there is change in the promoters (first subscribers to Memorandum of Association)
- viii. 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;)
- ix. Entrenched Articles of Association, if any.

Note: 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.

- x. PAN Card (in case of Indian national)
- xi. Copy of certificate of incorporation of the foreign body corporate and proof of registered office address
- xii. Certified true copy of board resolution/consent by all the partners authorizing to subscribe to MOA
- xiii. Optional attachment, if any
- xiv. Form no. **DIR.12**:

As per **Rule-17** of Companies (Incorporation) Rules, 2014, 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. Along with the above details in the Form no.INC.7, Form no.DIR 12 to be filed with the following attachments:

Attachments:

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

xv. Form no. **INC 22**:

As per Rule 25 of Companies (Incorporation) Rules, 2014, verification of registered office shall be filed in Form No.**INC.22** along with the fee.

Section 12(2) of the Companies Act, 2013 states that 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.

Section 12(4) of the Companies Act, 2013 states that 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.

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

Attachments:

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

(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); and

2. 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)
3. List of all the companies (specifying their CIN) having the same registered office address, if any;
4. Optional attachment, if any

PURPOSE OF THE E-FORM 7

From above we can easily understand that lots of Information is to be arranged for Incorporation of a Company under Companies Act, 2013. So it is also important to understand the purpose of E-Form **INC-7**.

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E-Form INC-7 deals with incorporation of a new company (other than OPC). This E-Form is accompanied by supporting documents such as details of Directors/subscribers, the Memorandum of Association (MoA) and Articles of Association (AoA) and evidence of payment of stamp duty. Once the E-Form is processed and found complete, a company is registered and CIN is allocated.

Please note the following:

1. User is required to file E-Form INC-7 for incorporation of Company other than OPC within **sixty days** from the date of application of reservation of name in E-Form **INC-1**.
2. It is suggested that E-Form **DIR-12** and E-Form **INC-22** should be filed together at the time of filing of E-Form **INC-7** when address for correspondence is the address of registered office of the company.
3. In case the address for correspondence is not the address of the registered office of the Company, user is required to file **INC-22** within 30 days of its incorporation.
4. Stamp duty on E-Form **INC-7**, Memorandum of Association (MoA) and Articles of Association (AoA) can be paid electronically through the MCA portal and in such case submission of physical copies of the uploaded E-Form **INC-7**, MoA and AoA to the office of ROC is not required.
5. Payment of stamp duty electronically through MCA portal is mandatory in respect of the States which have authorized the Central Government to collect stamp duty on their behalf.
6. Now eStamp duty payment is to be done online through MCA portal for all the states.
7. User is required to scan the photograph of every subscriber with MOA and AOA.

DUTY OF REGISTRAR TO SCRUTINISE THE DOCUMENTS

If after filling the Requisite forms for incorporation with the Registrar of Companies along with fees, ROC is satisfied with the contents of the documents filed, ROC will issue the Certificate of incorporation in Form no. INC 11 as directed by **Rule-18** of Companies (Incorporation) Rules, 2014.

Declaration at the time of commencement of business

As per **Rule-24** of Companies (Incorporation) Rules, 2014, 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:

1. Specimen signature in form INC.10.

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2. Certificate of Registration issued by the RBI (Only in case of Non-Banking Financial Companies)/ from other regulators
3. (Optional attachment(s) (if any)

Additional Information:

As per **Rule-16(1)** of Companies (Incorporation) Rules, 2014, 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 24 than one year) similarly the office/business addresses.
- j. E-mail 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. If the subscriber is already a Director or Promoter of a Company(s), the particulars relating to:

- i. Name of Company
- ii. Corporate Identity Number

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iii. Whether Interested as a Director or Promoter

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

Other Corporate Secretarial work under Companies Act, 2013

For my other Corporate Law Articles on Companies Act, 2013, kindly refer the links mentioned below:

1. [Useful Interpretations about Companies Act, 2013 - Part-1](#)
2. [List of Resolutions to be filed with ROC in Form MGT.14](#)
3. [Procedure for Appointment of Additional Director in CA 2013](#)
4. [Different Monetary Limits under Companies Act 2013](#)
5. [Companies to have Uniform Financial year under CA 2013](#)
6. [Procedure for Increase in Authorise Share Capital under Companies Act, 2013.](#)
7. [Intimation to ROC for Auditor appointment in form ADT.1](#)
8. [Procedure for Resignation of Director under Companies Act, 2013](#)
9. [Useful Corporate Board Resolutions under Companies Act, 2013](#)
10. [Checklist for Action Points under Companies Act 2013](#)
11. [Company Law some useful Main Object Clause-III](#)
12. [Useful Interpretations about Companies Act, 2013- Part-2](#)
13. [Company Law some useful Main Object Clause-IV](#)

Disclaimer:

This write up is intended to start academic discussion on few significant interpretations under Companies Act, 2013. It is not intended to be a professional advice and should not be relied upon for real time professional facts. Readers are advised to refer relevant provision of law before applying or accepting any of the point mentioned above. Author accepts no responsibility whatsoever and will not be liable for any losses, claims or damages which may arise because of the contents of this write up.

I am hopeful that this write up would be of some help w.r.t. your professional working and endeavors under Companies Act, 2013. Kindly share your opinion.

Thanks

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