

B. Kaushik & Associates.

Company Secretaries

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INCORPORATION OF PUBLIC COMPANY

Section 2 (20) of the Companies Act, 2013 defines a company as “A company incorporated under this Act or under any previous company law.”

A Public Company as defined in Section 2(71) can be formed for any lawful purpose by any seven or more persons.

STEPS TO BE TAKEN CHRONOLOGICALLY:

1. DIGITAL SIGNATURES-

First step is to have Digital Signature of ***all the Directors and Subscribers***. If they don't have DSC then here are the documents required for making the digital signature application:

- Self-Attested copy of **PAN Card (Coloured)**;
- Self-Attested copy of **Aadhar Card (Coloured)**;
- Self-Attested Copy of **Passport in case of NRI; (Non-resident Indian)**

- **In case of foreign national PAN card is not mandatory, but we should prefer to have the same;**
- **In case of NRI either all documents shall be of India or of foreign nation, if the documents are of India than Apostiled documents are not required. Otherwise they will;**
- **If the documents are of foreign nation, documents shall be apostiled and notarised from home country or Indian consulate and if not in English language than same shall be converted in English and both the sets i.e. Originals and Converted shall be apostiled and notarised;**
- **If, Passport of foreign National does not contain address than, any other photo ID proof (having photo and Address) shall be mandatory requirement and this shall also be apostiled and notarised.**

- **Passport Size Photograph (Coloured)**;
- **Email ID and Contact Number.**

2. RESERVATION OF NAME- {Rule 9 of Company Incorporation Rules, 2014}

- Application for reservation of name should be made through the web service available at www.mca.gov.in by using web service Spice+Part-A available on website of Ministry of Corporate Affairs.
- Such application may be accepted or rejected by the Registrar after allowing re-submission of such application ***within 15 days of rectification of defect.***

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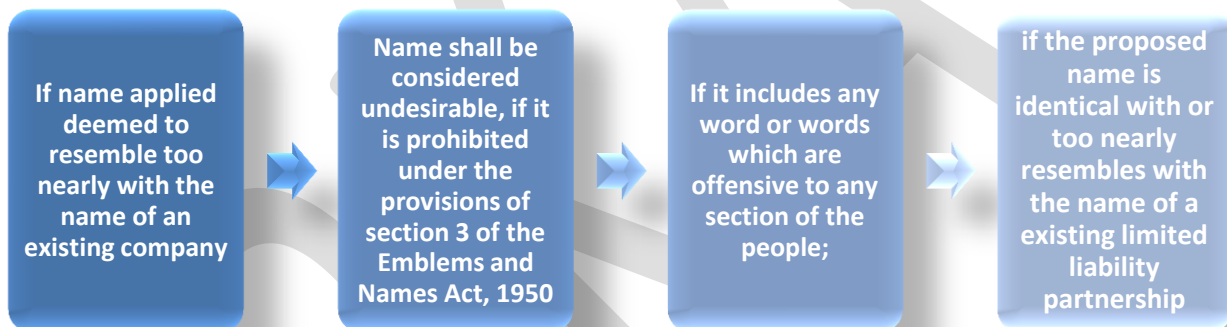
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- In determining whether proposed name is identical to others, provisions of **Rule 8, 8A and 8B of Companies (Incorporation Rules) 2014*** have to be considered.
- When name is reserved for existing entity it is through RUN service (Reserve Unique Name), such name is valid for 60 days.
- Out of the names that can be selected, the proposed first name would be most preferred.
- After reservation of name by the Registrar, the **name is valid only for 20 days**, within which the application for the incorporation of the Company with the concerned name must be filed in Form Spice+Part-B to the Registrar of Companies.

*Some of the grounds under **Rule 8, 8A and 8B** on the basis of which Registrar may reject the application for reservation of name:



For more details refer the following link:

<https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/rules.html>

3. EXTENSION FOR NAME-

Registrar shall extend the name under **Rule 9A of the Companies (Incorporation) Rules 2014** upon payment of fees:



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***Approval date** (means the date on which Form for reserving the name of proposed company got approved)

4. **APPROVAL FROM SECTORAL REGULATOR-**

In Case proposed company pursues the object which requires **approval/ Consent/ No objection Certificate from Sectoral regulators** such as Reserve Bank of India, Securities Exchange Board of India, etc., then the approval shall be obtained by proposed company.

Here is a table represents if proposed Company intends to pursue following objects then, these Sectoral Regulators approval is required {Following list is inclusive }

<u>Objects pursued by Proposed Company</u>	<u>Sectoral Regulator</u>
Financing of rural development	NABARD (National Bank for Agricultural and Rural Development)
Telecommunication	TRAI (Telecom Regulatory Authority of India)
Insurance	IRDAI (Insurance Regulatory and Development Authority of India)
Housing finances	NHB (National Housing Bank)
Food and beverage	FSSAI (Food Safety and Standards Authority of India)
Cricket	BCCI (Board of Control for Cricket in India)
Banking, Finance, Investment	RBI (Reserve Bank of India)
Electricity	CERC (Central Electricity Regulatory Commission)
Mutual Funds, Collective Investment scheme	SEBI (Securities Exchange Board of India)
Real Estate	RERA (Real Estate Regulatory Authority)
Architecture	COA (Council of Architecture)

- Before pursuing the objectives, a **declaration to the effect shall be submitted at stage of incorporation to Registrar.**
- Upon successful submission of proposed name and payment, a Challan will be generated depicting details of fees paid by the user.

5. **RESUBMISSION-**

- Where the Registrar on examining SPICE+ finds it necessary to call for further information or finds application to be defective or incomplete, he shall give intimation to applicant to remove defects and resubmit within 15 days of intimation.
- After resubmission of documents, if Registrar still is of view that the document is defective or incomplete, he shall give one more opportunity of 15 days within which to set rights the defects.

The total period for resubmission of documents shall not exceed 30 days.

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6. For Incorporation, of Company an application has to be filed with Registrar having Jurisdiction in
 - Form INC-32 (Spice+ Part-B) along with;
 - e-Memorandum (e-MOA) in form INC-33 and;
 - e-Articles of Association (e-AOA) in form INC-34)
 - AGILE-PRO-S
 - INC-9 (Auto generated form regards Declaration by Subscribers and First Directors)

Along with fees as may be provided under act for registration of Company.

7. No Registration fees on companies having nominal Capital of Rs. 15 lac*
 - Spice+ Part-A (for Name reservation);
 - Spice+ Part-B (for PAN, TAN, Allotment of DIN for proposed directors and their appointment)

These both forms can be filed either individually or together.

*15 lac is substituted for “equal to 10 lac Rupees” by the Companies (Incorporation) Second Amendments Rule, 2019, w.e.f, 18th of March, 2019.

For further details please refer the following link:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM3NTY=&docCategory=NotificationandCirculars&type=open>

8. In case of incorporation of a Company under Rule 38A of Companies Incorporation Rules 2014 a {Form AGILE-PRO-S} containing an application for registration of numbers like- ESIC, EPFO, GSTIN, Opening Bank Account, Professional Tax Registration.
9. Filling of Registered Address of the Proposed company(Along with Spice+ Part-B)
 - NOC From owner/ Lease holder(If the Registered office is Rented or taken on Lease)
 - Address Proof (Electricity bill /Gas bill /postpaid mobile bill /broadband bill) not older than 2 months.
 - Rent agreement or lease deed, if any
 - BR passed in case of Company, LLP Resolution in case of Limited liability Partnership, and Resolutions in case of Trust, Partnership and Society, by the **Entity giving NOC*** for the purpose of usage of Place as registered office of Proposed Company (**NOC has to be received on letter head**)

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*Entity giving NOC can be Company/LLP/Society/Trust, etc.,

10. Filling of First Directors Details and Subscribers Details(Along with Spice+ Part-B)

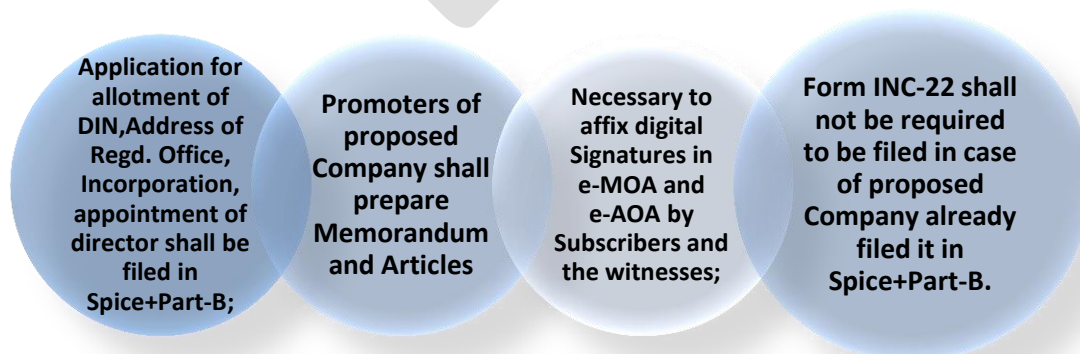
- Identity proofs- Driving license/Voter ID/Passport) along with PAN(Mandatory)
- Address proofs- Bank statement, Utility bill (Not older than 2 months).
- Specimen Signature of Aforesaid

11. In General parlance, for incorporating a company the following information is necessarily required:

- Brief **proposed object** to be pursued by the Proposed Company;
- **Authorized and Paid Up Share Capital** of the Proposed Company;
- Ratio of share subscribed by each subscriber (**Must be 7 in Numbers**);
- **E mail id & phone no.** of Proposed Company;
- **Photograph** of all subscribers and proposed directors;
- **E mail id and phone no. of all subscribers and directors** along with their qualification details, Years of stay at current address, Occupation of proposed director and subscribers;
- Whether **GST** to be applied?
- **Name of bank** in which account to be opened;
- Name of person who is going to act as authorized representative while file AGILE form GST, EPF, ESI etc.
- **Specimen of Signature** of Proposed Directors and Subscribers;
- **DIN of Proposed Director**, if they already have.

Minimum Number of Director's in case of Public Company are 3; and maximum 15 and it can be more than 15 by passing a special resolution under Section 149(1) of Companies Act, 2013.

12. TERMS AT GLANCE:



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Users are permitted to apply for 2 proposed names and 2 resubmissions while Reserving Unique Names for companies through SPICE+ Part-A web-service

To avoid rejection of name applied for, users are advised to be familiar with Companies Incorporation Rules, 2014 and conduct name and trademark search, the links which are separately available on portal.

Upon Approval or rejection of proposed name, an email communication is sent to e-mail id of the applicant and shall be signed by the Registrar

13. SOME DECIDED CASE LAWS-

VINOD KRISHAN KHANNA

Vs.

**AMRITSAR SWADESHI TEXTILE CORPORATION (P) LIMITED (LNIND 2015
PNH 2010)**

It was held that issue of Certificate of Incorporation is conclusive evidence that all requirements of the Act qua registration and formation have been complied with.

MALUK MOHAMED

Vs.

**CAPITAL STOCK EXCHANGE KERALA LIMITED (1991) 72 COMP CAS 333
(KER)**

It was held that although there are provisions in the Act for the name of a company to be removed, no writ can be issued to cancel the registration of a company or issue of the certificate of commencement.

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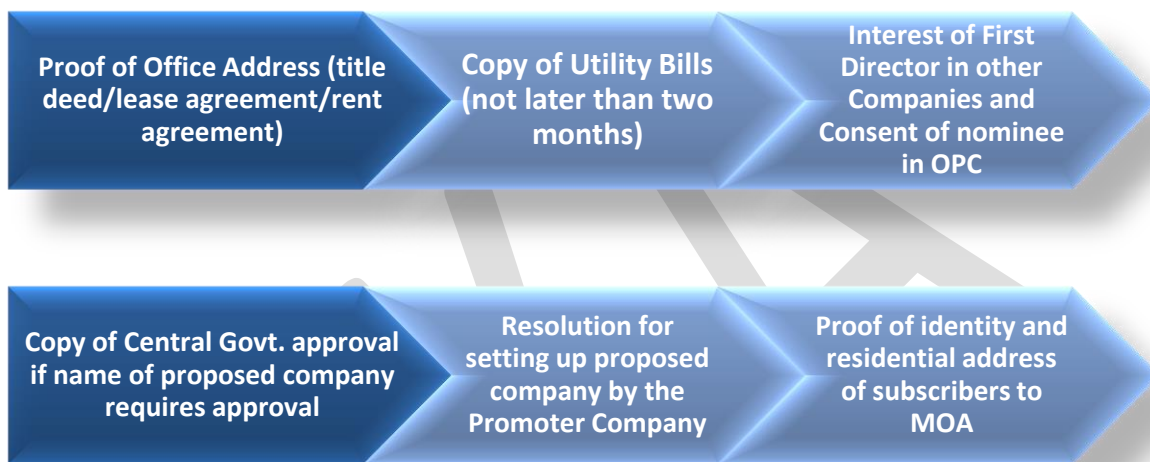
HANUMAN PRASAD GUPTA

Vs.

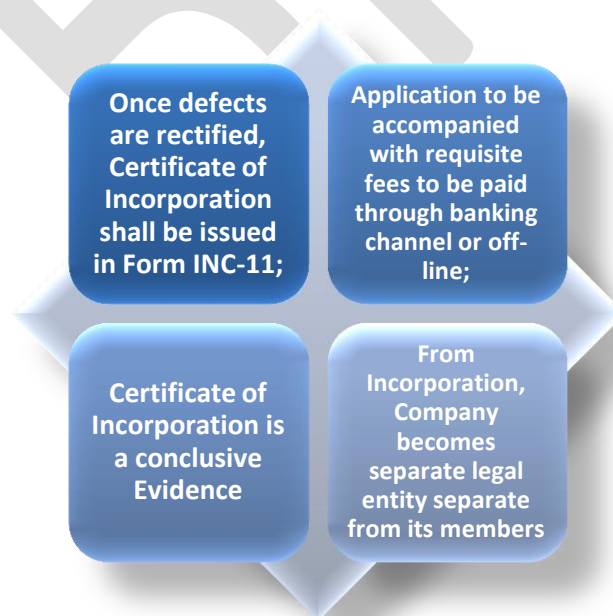
HIRALAL (1970) 40 COMP CAS 1058 (SC)

It was held that as on the date of incorporation, a company becomes a distinct and separate entity separate from members who compose it.

14. DOCUMENTS REQUIRED TO BE ATTACHED FOR INCORPORATION:



TERMS AT GLANCE:



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LAW BASED PROVISION FOR INCORPORATION

Section 7 deals with Incorporation of Company Read with Rule 38, 38A of Company Incorporation Rules, 2014

7(1) Applicant (here Applicant means promoter) shall file application for registration of Company with the Registrar having jurisdiction with the following documents and information:

- Memorandum and Articles duly signed by Subscribers
- Declaration by Advocate, Chartered Accountant, Company Secretary or Cost Accountant in practice, who is engaged in formation of Company, and a person named as director in the Articles, manager or secretary of company that all requirements of Act and rules made thereunder in respect or registration have been complied with;
- Declaration from each subscribers to the memorandum and from first directors that-
 - a. they are not convicted of any offense in connection with promotion, formation or management of company; or
 - b. he has not been found guilty of any fraud and misfeasance;
 - c. Any breach of duty to any company under this Act or any previous Company law during the preceding five years.
- Address for correspondence till registered Office is established;
- Particulars of Name, residential address, nationality and such other particulars of every subscriber to memorandum along with proof of identity **{Form INC-9}**;
- Particulars of persons mentioned in Articles as First Directors of Company;
- Particular of Interest of persons mentioned in articles as First directors of the Company, etc.

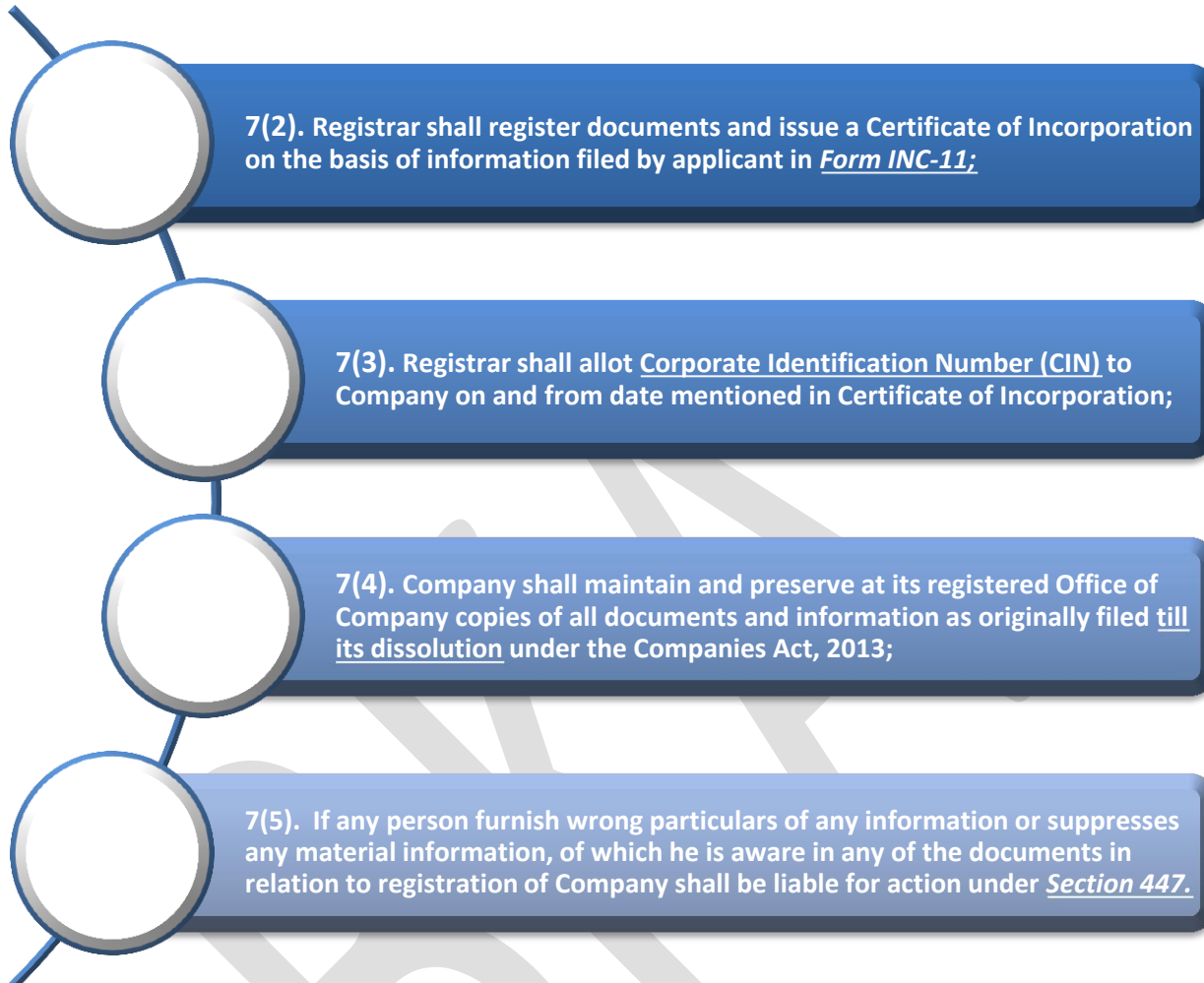
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7(6) After incorporation of Company, if it is proved that company has been incorporated –

- By furnishing any false or incorrect information; or
- Representation or by suppressing any material or information, in any of the documents filed for incorporating such company;
- Any fraudulent Action;

*The promoters, the persons named as first directors of Company and the person gives declaration regarding matters related to registration of Company has complied with shall be liable under Section 447**

**Section 447 (Punishment for Fraud)*

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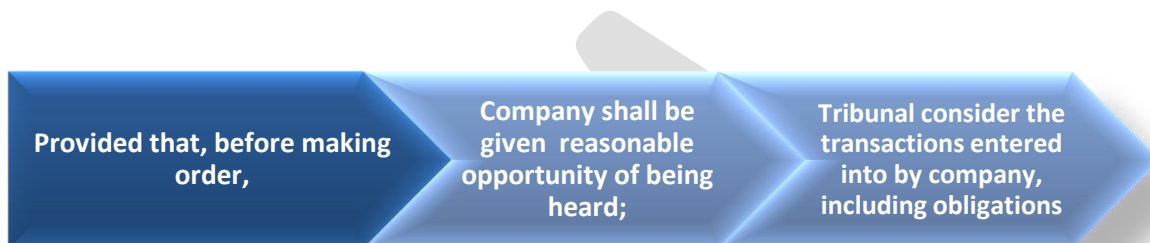
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7(7) Where the Company has been incorporated with false or misleading information, the tribunal (NCLT) may on the application made to it, being satisfied with situation, pass such order-

- For regulating management of Company including **changes in Memorandum and Articles** in the interest of public and Company, its members and creditors; or
- Direct liability of members shall be unlimited;
- Direct removal of company's name (Strike off) from Register of Companies; or
- For winding up of the Company;
- Such other orders as may deem fit.



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CONCLUSION:

On the whole, Incorporation is the legal process used to form a corporate entity or company. A corporation is the resulting legal entity that separates the firm's assets and income from its owners.

The process of incorporating a company is facilitated through the SPICE+ form, which can be submitted online via the MCA website. Once submitted, the ROC will review the form and accompanying documents, subsequently issuing the Certificate of Registration upon successful examination.

Formation of a company is a complex activity involving completion of legal formalities and procedures. A company is a business entity registered under the Companies Act. It is a legal entity with a separate identity from those who are its members who operate it. Therefore it can be considered as an artificial person created by the law in terms of the Companies Act, 2013.

From reading and observing the procedure of incorporating the Company we have to face some issues in practical life:

- Legal Formalities and expenses like Application for DSC, Name reservation Application fees of Rs. 1000, Extension fees (if applied) Incorporation Application and Stamp duty fees;
- Documents required like Proof of Registered Office Address of Company like rent Agreement along with utility bill which should not be older than 2 months;
- For directors document required are Self-attested Id and address proof of Directors and members (PAN, Driving license/Voter ID/Passport and **Bank statement, Utility bill***), * Bank Statement and Utility Bill should not be older than 2 months;
- Promoters of the Company have to hire a professional for incorporating a Company as it is a **complex process**, as it requires the preparation of various legal documents, such as the Memorandum and Articles of Association, and adherence to specific regulatory requirements. So along with government fees applicant also have to bear professional fees including any other additional cost.
- Mistakes during the company registration process can lead to **delays in getting the Registration Certificate**.
- If your application gets rejected on the grounds of incorrect supporting's, incorrect Office address, incorrect company type or name, etc., you may have to **file a fresh application** which may add up to your cost for company registration. It is crucial to avoid these errors by providing accurate and adequate documents and information for company registration. Seeking professional assistance is crucial to navigate the process effectively and minimize potential mistakes.

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