



INCORPORATION

OF PUBLIC COMPANY

DEFINATION:

- **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.

According to a decided case law:

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.

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)**

- **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;**

- 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.**
- 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 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.

2. EXTENSION FOR NAME-

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



***Approval date (as per Rule 9 of Company Incorporation Rules, 2014)**

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 on next slide represents if proposed Company intends to pursue following objects then, these Sectoral Regulators approval is required {Following list is inclusive}
- 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.

| <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) |

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.

FORMS TO BE FILED FOR INCORPORATION:

While doing incorporation of Company, following forms are required to be filed:

- SPICE+PART-A
- SPICE+PART-B (INC-32)
- AGILE-PRO-S
- E-Memorandum of Association (INC-33)
- E- Article of Association (INC-34)
- INC-9 (Auto generated form regards Declaration by Subscribers and First Directors)

ONCE DEFECTS ARE RECTIFIED, CERTIFICATE OF INCORPORATION SHALL BE ISSUED IN FORM **INC-11**;

THINGS TO BE REMEMBER:

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.

8. 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)

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

DOCUMENTS REQUIRED TO BE ATTACHED FOR INCORPORATION:

- Proof of Office Address (title deed/lease agreement/rent agreement);
- Copy of Utility Bills (not later than two months);
- Interest of First Director in other Companies and Consent of nominee in OPC;
- Copy of Sectoral Regulator approval if name of proposed company requires approval;
- Resolution for setting up proposed company by the Promoter Company (In case of subsidiary company)
- Proof of identity and residential address of subscribers to Memorandum of Association.

LAW BASED PROVISION FOR INCORPORATION:

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

Section 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;
- Address for correspondence till registered Office is established;

- 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.
- 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.

Section 7(2) Registrar shall register documents and issue a Certificate of Incorporation on the basis of information filed by applicant in **Form INC-11;**

Section 7(3) Registrar shall allot Corporate Identification Number (CIN) to Company on and from date mentioned in Certificate of Incorporation;

Section 7(4) Company shall maintain and preserve at its registered Office of Company copies of all documents and information as originally filed till its **dissolution under the Companies Act, 2013;**

Section 7(5) If any person furnish wrong particulars of any information or suppresses any material information, of which he is aware in any of the documents in relation to registration of Company **shall be liable for action under Section 447.**

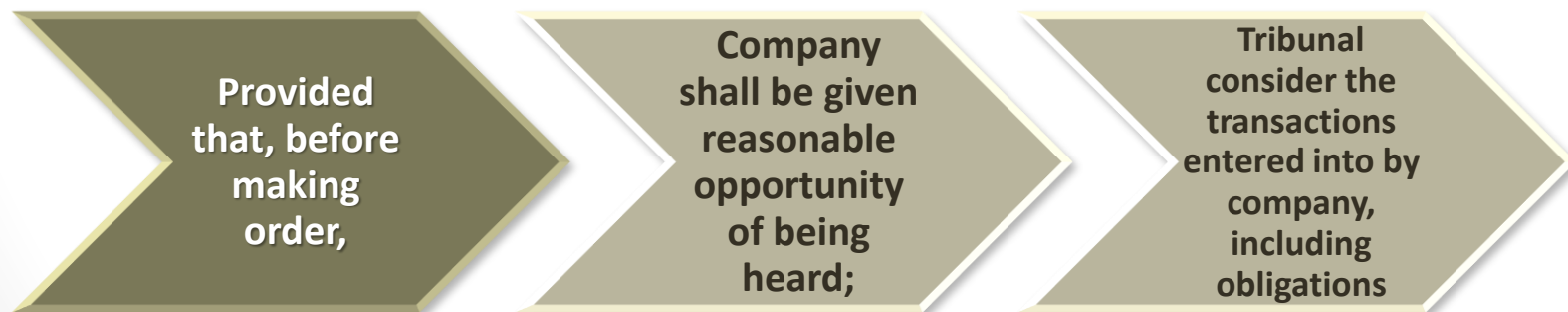
Section 7(6) After incorporation of Company, if it is proved that company has been incorporated –

- 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 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.



CONCLUSION:

From reading and observing the procedure of incorporating the Company we should take care of the following matters:

- 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;

Recommendation - Promoters of the Company should hire a professional for incorporating a Company as it is a complex process, so along with government fees applicant also have to bear professional fees.



If you need any further assistance,
Feel free to contact us.

<https://bkacs.com/>