# Incorporating A Company

In this modern world, every business has countless opportunities to flourish. And as a rapidly evolving country like India, the customer base of as low as 0.1% is a vast niche to bank upon. However, it's not as easy as it's made out to be. And the smallest of decisions have a huge impact on the overall performance of the business.

One such important decision is the type of business a person might want to go on with. As we know, the larger a business is, the more are the compliances for it to deal with which starts from Companies Act but is not limited to it and is inclusive several acts and departments such as Income Tax Act, Labour Laws, ESIC, Provident Fund, RBI etc. Apart from that, the industry that a business is going to deal into also has a major impact on the types of compliances from various laws that it is going to deal with. Therefore, it's important to take such major decisions carefully.

The Company can be of various forms as per the Companies Act, 2013, such as:

| | | |
|---|---|---|
| ✚ | **One Person Company** | As the name suggests, it requires only one promoter/ owner and one director to incorporate and run a One Person Company |
| ✚ | **Private Limited Company** | It is considered as a separate legal entity in the eyes of law and requires at least 2 promoters/ owners and directors to incorporate and run a Pvt. Ltd. Company. |
| ✚ | **Public Limited Company** | These type of Companies are larger in size and volume of transactions than a regular private limited company. For a Public limited Company, at least 3 Directors and 7 promoters are needed to incorporate such entities. |
| ✚ | **Section 8 Company** | This is a very special type of Company which is to be incorporated only for social and cultural welfare of any particular class or region of citizens |

A business can also be run in the form of a Limited Liability Partnership (LLP) which is also considered as a body corporate and has most of the feature of a Company.

Before starting a business, one must think about some particular questions:

- ✓ **The number of partners or promoters the business will have**
  - This is a crucial decision as the number of partners or promoters can help you decide on the type of Company you can go on with. In case you would like to exert complete control and would like to run business on your own, OPC might be a good set up to go wit. In otherwise situations, you can go on with the Private Limited Company.

- ✓ **The liability of the business**
  - A Company forms of business helps to mitigate the unlimited liability that comes with a Sole Proprietor, HUF or even a Partnership form of business. A company of any kind or an LLP has a liability clause which prevents the owners and their personal assets from any liability a company might suffer.

- ✓ **The Tax implications**
  - The tax rates applicable to a Sole proprietor or an HUF are different than what is applicable to a Company.  The income of a Sole proprietor or an HUF are clubbed with the income of an individual but that is not the case when there is the income of the Company. The income of a company is and remains with the Company. The tax slab rates of the Income Tax are also different between various entities.

- ✓ **Investment Opportunities**
  - Once your business has reached its potential, you might be looking for opportunities to expand and grow. The expansion part becomes easy and lucrative when a business is in the form of a company. The investors see the Company form as a viable business structure which has the capacity to grow.

Once you have decided upon the model of business, the next step is to know about the process involved to incorporate a Company. Here, we are going to look at the process which is taken in order to incorporate a Company.

## 1. Obtaining Digital Signatures (DSC)

- Once you have decided on the type of business, the next step is to obtain digital signatures of all the proposed directors of the Company. Digital signatures or DSC are required for filing electronic forms with the Ministry of Corporate Affairs (MCA), which is the regulating body of Companies.

## 2. Obtaining Director Identification Number (DIN)

- The next step is to obtain a Director Identification Number for every proposed Director of the Company. When a company gets incorporated, DIN of every proposed directors are required to be entered in the Company Incorporation Form. However, currently you can apply for the DIN alongside the Company Registration in SPICe+ Form. A maximum of 3 DINs can be applied for in the SPICe+ form.
- New DIN can also be obtained after the Company is incorporated by filing DIR-3 Form.

## 3. Choose a Company name and obtain approval

- Choosing a right name for the Company is a big thing and should be done carefully. The name of the Company should be reflective of the business it is into or the association with its owners.
- The name of the Company is applied via 2 methods: Either file the Form Reserve Unique Name (or RUN) Or Apply the same via SPICe Part A.

- While applying the name via RUN, you must be fully prepared to file the required documents in time as you only get 20 days to file all the documents from the date of approval of name. However, getting approval of the name via RUN is convenient as you get first hand approval of the name of the Company. While, filing directly via SPICe+, the constraint of time is not there but the same may get rejected if it is too similar to the name of an existing company or if it violates Emblems and Names (Prevention of Improper Use) Act, 1950 or contains the words prohibited under the Companies (Incorporation Rules) 2014.

- If the SPICe+ form gets rejected due to non-approval from the Registrar of Companies, you will need to file another form and pay the prescribed fees.

## 4. Preparation of Requisite Documents

- Once you have got the approval of the Company name, you will be required to draft and prepare the required documents such as Article of Association, Memorandum of Association etc.

- The AOA of the company talks about the rules and procedures a company will need to follow in certain situations. It provides for a framework of bye-laws a company needs to adhere to in the certain events. The AOA is different for all types of companies and therefore the appropriate one must be chosen. Apart from that it is editable and you can alter provisions as you would like it to be implemented in the company.

- While the MOA provides for more rigid clauses of the company such as the "Name Clause", "Objects Clause", "Subscription Clause", "Liability Clause", and "Capital Clause". It is a document that outlines the fundamental objectives as well as the scope of the objectives. It serves as a charter which states the powers and limitations of the company and its members. While drafting an MOA, an eye must be kept at various laws and constitution prevailing in the country as an MOA of a company cannot surpass the Companies Act or any such acts in force at that time in the Country.

## 5. Incorporation of a Company

- Once all the formalities are done with and the form is filed and submitted along with the required documents, the Registrar of Companies will go through the documents to check the veracity of the details and verify them as per his convenience. If everything is found to his satisfaction, then he will issue a **Certificate of Incorporation** which will be available to the applicant on the registered email address of the company.

- However, if the documents are found to be incomplete or details differ in the documents provided, the Registrar may ask to submit the application again after rectifying the errors. The maximum number of times, one is given the opportunity to rectify is two. After that the application is rejected if the error still persists.

## ❖ Documents required for Company Registration

| S NO. | Documents required for Company Registration |
|---|---|
| **1.** | Proof of identification of all the Directors and Shareholders such as Aadhar Card, PAN Card, Driving License, Passport etc. |
| **2.** | Proof of Address of all the Directors and shareholders such as Latest Electricity Bill, latest Telephone Bill, Bank Statement with address. |
| **3.** | Rent Agreement/ No Objection Certificate in case the registered address is not owned. |
| **4.** | Basic documents such as Photo, PAN, Declaration for PF (in the format provided by MCA), Sample Signature of the directors and shareholders. |
| **5.** | Basic details such as Educational Qualification of Directors, DIN (if have already), Mobile No., Email, etc. Authorised Capital, Paid-up Capital, Capital contribution ratio, Equity share/ Preference share etc |

We hope that you get the gist of the process involved in incorporating a Company in India under Companies Act, 2013.

In conclusion, the process of incorporating a company in India can be complex and time consuming but it is essential to ensure that the business is run as per the law and that it can function smoothly. It is pertinent to note that once the ROC approves the documents and issues a Certificate of Incorporation, the Company can begin its business activities. It should be ensured that the compliance requirements should be met as per their timeline in the law to avoid unnecessary penalties.

Seeking professional assistance from the experts of the field can be helpful in navigating the process and to stay compliant with the relevant laws.

- Mayank Shashi