

Roadmap to Incorporation of Private and Public Limited Company under Companies Act, 2013 and Companies Rules, 2014



The Companies Bill was passed by the Lok Sabha on 18th December, 2012 (called Companies Bill, 2012) and then passed by the Rajya Sabha on 8th August, 2013 (became Companies Bill, 2013), and eventually, it got the assent of the President of India on 29th August, 2013, and became the Companies Act, 2013 (Act 18 of 2013). The Companies Act, 2013 is rule-based, since a large part of the Act is dependent upon the allied rules. In the first phase of its implementation, the Ministry of Corporate Affairs (MCA) has notified 98 Sections on 12th September, 2013. In the second phase of implementation, MCA has notified vide notification dated 26th March, 2014, 183 Sections and 13 sub-Sections of the already notified sections and all the Schedules of the Companies Act, 2013 which are effective from 1st April, 2014. With Notification dated 26th March, 2014, the MCA has till date notified 282 Section of the Act, out of a total of 470 Sections. In this article, the author explains a detailed procedure for incorporation of private or public limited company. She has not included one-person company, small companies and Section 8 companies, i.e. companies incorporated for charitable purposes in her article. Read on...

Formation of Company [Section 3]

A company may be formed for any lawful purpose by-

- 7 or more persons, in case of public company;
- 2 or more persons, in case of private company; or
- 1 person, in case of one-person company.

By subscribing their names or his name to a Memorandum and complying with the requirement of this Act related to registration.

A company may be either-

- (a) A company limited by shares; or
- (b) A company limited by guarantee; or
- (c) An unlimited company



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Step 1: Obtain DSC for proposed Directors:

Obtain Digital signature certificate from authorised DSC issuing authority.

Step 2: Obtain DIN for Proposed Directors:

Person who wishes to become a director of the company and if he/she does not have DIN than he/she must make an application in form DIR-3 [Rule 9 of Chapter XI]. Following is the checklist for obtaining DIN:

- Self attested copy of PAN card and address proof
- One colour photograph
- Area of occupation
- Educational qualification certificate
- Valid e-mail address and mobile no.
- Form DIR 4 (pursuant to Section 153 and Rule 9 (3)(a)(iv) of Companies (Appointment and Qualification of Directors) Rules, 2014) on ₹10 stamp paper duly authorised.

Step 3: Register DSC in the name of director on MCA Portal.

Step 4: Apply for Reservation of Name of the Company:

Applicant can propose six names in the order of their preference. Rules and regulations regarding name reservation under the Companies Act, 2013 are:

[Section 4(2)]

The name stated in the memorandum shall not-

- a) be identical with or resemble too near to the name of an existing company registered under this Act or any previous company law; or
- b) be such that its use by the company—
 - i. will constitute an offence under any law; or
 - ii. is undesirable in the opinion of the Central Government.

[Section 4(3)]

A company shall not be registered with a name which contains-

- a) Any word or expression which is likely to give

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A person may make an application, in Form No. INC.1 along with a fee, to the ROC for the reservation of a name set out in the application – (a) The name of the proposed company; or, (b) The name to which the company proposes to change its name.

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the impression that the company is in any way connected with, or having the patronage of: -

- i. Central Government (CG);
- ii. Any State government;
- iii. Any local authority;
- iv. Corporation or body constituted by the CG or any State government under any law for the time being in force.

b) Such word or expression, as may be prescribed; *Company may use such words or expression with the prior approval of the Central Government.*

Undesirable Names (Rule 8)

In considering whether a proposed name is identical or not, the below mentioned points shall be disregarded:

- Private, pvt., Pvt., (P), Limited, Ltd., LLP, limited liability partnership;
- Company, and company, co., co, corporation, corp., corpn., corp.;
- Plural version of any of the words
- Type and case of letters, punctuation marks, spacing between letters;
- Joining words or separating the words
- Use of different tense or number of the same word
- Using different phonetic spellings of spelling variations (e.g. P. Q. written as Pee Que Industries Limited)
- Misspelled words (like Concept or Koncept)
- Addition of internet related designation (like .com, .edu, .net, .gov, .org, .in)
- Addition of words like New, Modern, Nav, Shri, Sri, Shree, Sree, Om, Jai, Sai, The, etc. or adding the name of the place (may be allowed if NOC from Existing Co. by way of Board Resolution)
- Different combination of the same words (e.g. Builders & Contractors Limited/ Contractors & Builders)
- Hindi or English Translation/ Transliteration of existing Company/LLP
- If it attracts the provisions of Section 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950
- Includes the name of a registered trade mark
- Includes any word or words – offensive to any Section of People
- Includes the name of a TM which is the subject matter of application for registration


In case of any company registered after the commencement of this Act and the registered articles of such company do not exclude or modify the regulations contained in the model articles, then those Regulations will apply as registered Regulations.


- Not in consonance with the principal objects of the Co.
- Identical or too closely resembles the name of the Company/LLP incorporated outside India and reserved by such Company (In case of Subsidiary Co. in India of a Foreign Company, the Original name of Holding Co. with addition of word 'India' may be allowed).
- Indicating a separate type of business constitution, e.g. sehkari, trust, HUF, society, Plc., Inc, firm, etc.
- Implying connection with embassy or consulate, etc.
- Implying patronage of a national hero/ persons held in high esteem
- Is vague, e.g. ABC Limited
- Is abbreviated, e.g. DJMO Limited etc.
- Subsidiary/Joint Venture/Associate company can use but shall carry the object of the Company
- A period of two years have not elapsed from the date of dissolution of the company
- If company struck off, then only after an elapse of 20 years
- Identical with/too clearly resembles the name of a LLP in liquidation or the LLP which has been struck off up to five years
- Includes 'Insurance', 'Bank', 'Stock Exchange', 'venture capital' etc. unless a declaration that the mandated requirements of the respective Act(s) have been complied with
- If the name 'State' – allowed only in case of Govt. Co.
- If it only contains the name of a continent, country etc., e.g. Germany Limited
- The name is only a general one, like Cotton Textile Mills
- Misleading impression regarding the scope/ scale
- Name of any foreign country or any city of foreign country (allowed if MOU produced showing business relations)

- Cannot use name of an enemy country
- Names combining the name of a foreign country with the use of India, e.g. India Japan (shall be allowed, if government to government participation)

[Section 4 (4),(5)]

A person may make an application, in *Form No. INC.1* along with a fee, to the ROC for the reservation of a name set out in the application –

- (a) The name of the proposed company; or
- (b) The name to which the company proposes to change its name.

Upon receipt of an application, the ROC may reserve the name for a period of 60 days from the date of the application.

Effect of wrong/incorrect information in Application [Section 4(5) (ii)]

After reservation of name, if it is found that name was applied by furnishing wrong or incorrect information, then-

- a) if the company has not been incorporated, the reserved name shall be cancelled and the person making application shall be liable to a penalty which may extend to ₹1 lakh;
- b) if the company has been incorporated, the ROC may, after giving the company an opportunity of being heard-
 - o Either direct the company to change its name within a period of three months, after passing an ordinary resolution;
 - o Take action for striking off the name of the company from the register of companies; or
 - o Make a petition for winding up of the company.

Step 5: Adoption of Memorandum of Association [Section 4]: The memorandum of a company shall state:

- a) The name of the company with the last word-
 - ✓ "Limited" in the case of a public limited company;
 - ✓ "Private Limited" in the case of a private limited co.

Above clause is not applicable for company registered under Section 8, i.e., company with charitable object.

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- b) The State in which the registered office of the company is to be situated;
- c) The objects of the company:-
 - ✓ is proposed to be incorporated, *i.e.* main objects and
 - ✓ Incidental objects to attain main object.
- d) The *liability* of members of the company, whether limited or unlimited, and also state-
 - ✓ In the case of a *company limited by shares* that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and
 - ✓ *In the case of a company limited by guarantee* that liability of its members is limited to the amount up to which each member undertakes to contribute—
 - To assets of the company in the event of its winding up, while is a member or within one year after he ceases to be a member.
 - To the cost, charges and other expense of Winding up
- e) In the case of a company having a share capital,—
 - ✓ The *amount of share capital* with which the company is to be registered and the division thereof into shares of a fixed amount; and
 - ✓ the number of shares each subscriber to the memorandum intends to take;

Section 4(6):

The memorandum of a company shall be in respective forms specified in Schedule I :

- Table A : MOA of a company limited by shares
- Table B : MOA of a Co. Limited by guarantee and not having share capital
- Table C : MOA of a Co. Limited by guarantee and having share capital
- Table D : MOA of an Unlimited Co. and not having share capital
- Table E : MOA of an Unlimited Co. and having share capital

Section 4 (7):

In case of company limited by the guarantee and not having share capital, any provision in MOA or AOA for division of profit to person other than members of the company shall not be permissible.

Step 6: Adoption of Articles of Association [Section 5]

- i. The articles shall contain:
 - ✓ The regulations for management of the company, and
 - ✓ Such matters, as may be prescribed.
- ii. The company can also include such additional matters in its articles as may be considered necessary for its management.
- iii. The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a Special Resolution are met or complied with.
- iv. Entrenchment provisions can be made:
 - Either at the time of formation of the company; or
 - By an amendment in the AOA agreed by all the members of the company in case of private company and by special resolution in case of public company.
- v. Entrenchment notice to ROC
 - ✓ At the time of Incorporation, the company is to give notice to the ROC in *Form No. INC.2 or Form No. INC.7*
 - ✓ In case of Amendment, the company to give notice to the ROC in *Form No. MGT.14* within 30 days from the date of entrenchment of Articles.
- vi. Formats of AOA [Section 5(6)]: Article of the company shall be in the respective forms specified in schedule I in the following tables:
 - Table F : AOA of a company limited by shares
 - Table G : AOA of a Co. Limited by guarantee and having share capital
 - Table H : AOA of a Co. Limited by guarantee and not having share capital
 - Table I : AOA of an Unlimited Co. and having share capital
 - Table E: AOA of an Unlimited Co. and not having share Capital.
- vii. Company may adopt all or any of Regulations of Model AOA applicable to such a company.

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**An affidavit in Form No. INC.9 on ₹ 20 stamp paper
duly notarised to be submitted by the subscribers
and first directors of the company.**

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The Registrar on the basis of documents and information filed shall register all the documents and information in the register and issue a certificate of incorporation in the Form INC.11 and shall allot CIN to company.

Applicability of Model AOA [Section 5(8)]

- In case of any company registered after the commencement of this Act and the registered articles of such company do not exclude or modify the regulations contained in the model articles, then those Regulations will apply as registered Regulations.
- Nothing in Section 5 shall apply to AOA of Co. registered under any previous Company Law unless amended under this Act.

Step 7: Incorporation of Companies [Section 7]: An application for incorporation of company is to be submitted in Form No. INC 7. List of documents to be filed with the ROC for registration:

1. Signing of MOA and AOA by all subscribers of the company:

- i. Where a subscriber to the MOA :
 - ✓ He shall affix his thumb impression or signature.
 - ✓ The number of shares taken by him shall be written against his name (by the person writing for him).

Such person shall also read and explain the contents of the MoA/AoA to the subscriber and make an endorsement to that effect on the MoA/AoA

- ii. Where the subscriber to MOA is body corporate: The memorandum and articles of association shall be signed by the director, officer or employee of the body corporate duly authorised in this behalf by a resolution of the BOD.

- iii. Where the subscriber to MOA is LLP: The memorandum and articles of association shall be signed by the partner of LLP duly authorised in this behalf by a resolution approved by all the Partners of LLP.

Witness of MOA and AOA

- Witness by any person in whose presence the subscriber has signed MOA and AOA
- "I witness to subscriber/subscriber(s) who has/have subscribed and signed in my

presence (date and place to be given); further I have verified his or their identity details (ID) for their identification and satisfied myself or his/her/their identification particulars as filled in."

2. Declaration by Professionals/Directors: A declaration in Form No. INC.8 by-

- ✓ an advocate; or
- ✓ a chartered accountant; or
- ✓ a cost accountant; or
- ✓ a company secretary in practice, who is engaged in the formation of the company on ₹20 stamp paper duly notarised;
- Declaration also to be given by a person named in the articles as a director; manager, or secretary of the company;
- Declaration to be made that all the requirements of this Act and the rules have been complied with.

3. Affidavit by Subscribers and First Directors:

An affidavit in Form No. INC.9 on ₹20 stamp paper duly notarised to be submitted by the subscribers and first directors of the company. Affidavit contains that he :-

- ✓ Has not been convicted of any offence in connection with the promotion; formation; or management of any company;
- ✓ Has not been found guilty of any fraud or misfeasance or of any breach of duty to any company during the preceding five years.
- ✓ 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.

4. Address for correspondence till establishment of registered office.

5. Particulars of Subscribers [Section 7(1)(e)]

- Name including surname or family name
- Recent photograph affixed and scan with MoA and AoA
- Father's/Mother's/Spouse's name
- Nationality
- Date of birth
- Place of birth (District and State)
- Occupation
- Income-tax permanent account number

- Permanent Residential Address and Present Address
- Email id of subscriber
- Phone no. of subscriber
- Fax no. of subscriber
- Proof of Identity
- Residential proof such as bank statement, electric bill, telephone/mobile bill
- Proof of nationality in case subscriber is a foreign national
- If the subscriber is already a director or promoter of a company(s), the particulars relating to:-
 - Name of Company
 - CIN No.
 - Whether interested as Director or promoter
- Specimen signature and latest photograph duly verified by the banker or notary in Form No. INC.10 on ₹20 stamp paper duly notarised.
- If the subscriber is a body corporate, then the following particulars shall be filed with the ROC:
 - CIN of the company/registration no. of the body corporate
 - GLN, if any
 - Name of the body corporate
 - Registered office address/principal place of business
 - Email Id
 - Certified true copy of board resolution specifying:
 - Authorisation to subscribe MOA
 - To make investment in proposed company
 - No. of shares to be subscribed
 - Name, address and designation of the person authorised to subscribe MOA.

6. Particulars of First Directors [Sec. 7(1)(f)]

- Names, including surname or family names
- Director identification number
- residential address
- nationality and such other particulars and
- proof of identity

7. Particulars of Interests in other firms or body corporate along with consent to act as Director in Form No. DIR 12.

Issuance of Certificate of Incorporation [Section 7(2)]

The Registrar on the basis of documents and information filed shall register all the documents and information in the register and issue a certificate of incorporation in the Form No. INC.11 and shall allot CIN to company.

If any person furnishes any:

- ✓ false or incorrect particulars of any information and/or
- ✓ suppresses any material information;

In any of the documents filed with the ROC in relation to the registration of a company that Person shall be liable for action under Section 447 (fraud).

Step 8: Registered Office of Company (Sec. 12):

Verification of registered office in Form No. INC.22 shall be submitted to ROC within 30 days from Incorporation. Documents to be attached to Form No. INC 22:

- Registered document of title of the Premises in name of Co., or,
- Notarised copy of lease/rent agreement in name of Co.;
- a) The authorisation from the owner/ authorised occupant of the premises along with proof of ownership/occupancy authorisation, to use the premises by the company as its registered office.
- b) Proof of evidence of any utility service like telephone, gas, electricity, etc. having address of premises in the name of owner.

Every company shall:-

- Paint or affix its name and address of its Regd. Office on outside of every office or place of business.
- Have its name engraved on its Seal.
- Get its name, address of its Regd. Office, CIN, Telephone no., Fax no.

Where no declaration is filed with ROC within 180 days of incorporation and the ROC has sufficient reasons to believe that the company is not carrying any business or operations, ROC may initiate action for removal of the name of the company from the Register of the Companies.

(if any), email and website address (if any) printed in all its business letters, billheads, letter papers and all its notices, and other official publications.

- Have its name printed on hundies, promissory notes, Bill of exchanges and other documents as may be prescribed.

In case of change of name, each company is required to mention its old name for a period of two years, at its registered and other offices and other stationery as mentioned above.

Intimation of change of registered office is required to be given to ROC within 15 days of change. In case of default in complying with the section, the company and every officer who is in default shall be liable to a penalty of ₹1,000/- for every day during which the default continues but not exceeding ₹1 lakh.

Step 9: Commencement of Business (Section 11): For commencement of business by company, the following documents are required to be submitted with ROC:

- A declaration by Directors in prescribed form providing that the subscribers have paid the value of shares agreed to be taken by them and the paid up share capital is not less than the minimum capital required to incorporate the company. (In *Form No. INC.21*)
- Declaration shall be verified by CS or a CA or a Cost Accountant in Practice.

In case of default in complying with requirements, the Company shall be liable to Penalty which may extend to ₹5,000 and every officer who is in default shall be punishable with the fine which may extend to ₹1,000 for every day of continuing default.

Removal of Name from Register of Companies: Where no declaration is filed with ROC within 180 days of incorporation and the ROC has sufficient reasons to believe that the company is not carrying any business or operations, ROC may initiate action for removal of the name of the company from the Register of the Companies.

Now, this section is also applicable to private limited company.

Particulars of Fees for Incorporation of Company

S. No.	Particulars	Amount in INR
Fee for Incorporation of Other Companies		
1.	Nominal share capital does not exceeds ₹1,00,000	₹5,000/-
2.	Nominal share capital after the first ₹1,00,000 up to ₹5,00,000	₹400 for every ₹10,000/- or part thereof
3.	Nominal share capital after the first ₹5,00,000 up to ₹50,00,000	₹300 for every ₹10,000/- or part thereof
4.	Nominal share capital after the first ₹50,00,000 up to ₹one crore	₹100 for every ₹10,000/- or part thereof
5.	Nominal share capital after the first ₹one crore	₹75 for every ₹10,000/- or part thereof

Filing Fee of Documents to ROC

6.	In respect of a company having a nominal share capital of up to ₹1,00,000.	₹200
7.	In respect of a company having a nominal share capital of ₹1,00,000 or more but less than ₹5,00,000.	₹300
8.	In respect of a company having a nominal share capital of ₹5,00,000 or more but less than ₹25,00,000	₹400
9.	In respect of a company having a nominal share capital of ₹25,00,000 or more but less than ₹1 crore or more.	₹500
10.	In respect of a company having a nominal share capital of ₹1 crore or more.	₹600

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