

# Formation of Company

# STEPS, DOCUMENTS AND INFORMATION REQUIRED FOR INCORPORATION OF A COMPANY UNDER THE COMPANIES ACT, 2013

## 1. Reservation of Company Name:

First, the applicants are required to apply for a name in **Form No. INC-1**. The fee for seeking a name approval is Rs.1000/- as prescribed and 60 days are allowed for incorporating the company. The name should not be undesirable i.e.; identical, resembling, restricted or prohibited.

## 2. Drafting of Memorandum and Articles of Association:

The memorandum (MoA) should be drafted keeping in mind the provisions of section 4 of The Companies Act, 2013 and objects should not be contrary to those as per **Form No. INC-1**. The Model MoA as prescribed in Table A to E of Schedule I of The Companies Act, 2013 can be adopted as applicable.

## 4. Application for Incorporation of Companies

After obtaining availability of name (see sample name approval certificate, applicants should file Form No. INC-7 for other than OPC and in Form No. INC-2 (for OPC) with Jurisdictional Registrar of Companies (ROC) along with required information in attachments and along with prescribed fee.

## 5. Documents to be filed for Incorporation

Section-7 prescribes the various documents and information to be filed with RoC for registration of a new company as under:

- (1) MoA and AoA duly signed and verified.
- (2) Declaration by Professionals INC-08 .
- (3) Declaration from Director, Manager or Secretary.
- (4) Affidavit from each subscribers and first directors INC-09.
- (5) The address for correspondence.
- (6) Complete Details of Subscribers with proof of identity.
- (7) Complete Details of first Directors with proof of identity.
- (8) Particulars of interest of first directors in other firm/body corporate and NoC.

## 6. Particulars of first directors of the company and their consent to act as such

The particulars of first directors of the company and his interest in other firms or bodies corporate along with his consent (Form DIR.2) to act as director of the company shall be filed in Form No.DIR.12 along with the prescribed fee.

## 7. Notice of Situation of Registered Office:

The particulars of the registered office of the company should be filed in Form No. INC-22.

## 8. Payment of Fee:

While uploading various documents prescribed fee can be paid online including stamp duty for MoA.

## 9. Certificate of incorporation:

After the RoC is satisfied that all documents and information which is required has been filed in the prescribed manner and along with prescribed fee, the Certificate of Incorporation shall be issued by the Registrar in Form No. INC-11

- Every company must have a registered office from the day it starts its business or within 30 days of getting the Certificate of Incorporation, whichever is earlier. Memorandum of Association must state the name of the State in which the registered office of the company is situated.
- This clause is important as it mentions the residence for the purpose of the communication with the company. It determines the jurisdiction of the company and also mentions the place where all the records of company are maintained. Where the company wants to change its registered office from one state to another then it can do so by passing a special resolution as well as by confirmation of Company Law Board.

# Object Clause

## **MAIN OBJECTS**

Objects incidental or ancillary to the attainment of the main objects.

## **OTHER OBJECTS.**

Objects stated in the main objects are to be pursued by the company immediately after incorporation or within reasonable time thereafter.

# Liability clause

- This clause states that the liability of the members is limited to the extent of the shares subscribed by the member or shareholders if the company is formed with share capital.
- Amount of capital with which the company is to be registered and its division into shares of a fixed amount must be stated in the MOA of a company.
- The capital with the company is registered is called “Authorized capital” or “Registered Capital”.

# Article of Association

- Defines the responsibilities of the directors, the kind of business to be undertaken, and the means by which the shareholders exert control over the BOD.
- Contains the rules & regulations for the internal management of the company.
- AOA needs to be filed with the Registrar of Company.
- AOA can be altered from time to time.

# Contents of AOA

- Share capital
- Payment, calls, transfer, lien, conversion, transmission, forfeiture etc. Of shares
- Share certificate & warrants
- Rights of shareholder
- Meetings
- Appointment, remuneration, qualification, powers etc. of Board of Directors
- Accounts & Audit
- Payment of dividends
- Winding up
- Indemnity



# Alteration of Article of Association

- It can be altered with special resolutions.
- Approval of the central government for conversion of company from public to private.
- AOA should not violate provisions of MOA and company law board.
- Special resolution passed or approved by central government must be filed with the Registrar within 1 month.

# Limitations of Article of Association

- The alteration cannot be made so as to increase the liability of members without his/her written consent.
- Limit the number of members to 200.
- Prohibit any invitation to the public to subscribe for any share in, or debenture of the company.
- Restrict the right to transfer shares.
- Approval of central government: -
  - ✓ Appointment or re-appointment of Director
  - ✓ Increase in remuneration of Director

---

## MEMORANDUM OF ASSOCIATION

## ARTICLE OF ASSOCIATION

- It is a charter of a company determining constitution and activities of the company.

- It contains rules & regulations regarding internal management of the company.

- Every company must have a memorandum.

- Public companies limited by shares may or may not have articles.

- Alteration of Memorandum is much difficult and strictly regulated.

- Articles can be easily altered by a special resolution.

- Prior permission is required.

- No need for permission(in some cases)

- Defines the relationship between company & outsiders.

- Defines the relationship between management & shareholder.

# Membership of a Company

- Who is a member of a company: -
- The subscriber to the memorandum of a company shall be deemed to have agreed to become members of the company and on its registration, shall be entered as members in the register of the members.
- Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members, shall be a member of the company.
- Every person holding equity share capital of the company.
- Other ways:

1. Succession
2. Insolvency of a member
3. Beneficial owner

# Who can be a Member

- Minor
- Company
- Trust
- Partnership Firm
- Society
- Non-Resident

# Rights of a Member

- To receive notices of all general meetings.
- To attend and vote at general meetings, appoint directors and auditors of the company.
- To receive copies of accounts of the company.
- To transfer his/her shares.
- To receive share certificate.
- To receive dividends in case of preference shares.
- To make an application to the central government for ordering investigation into the affairs of the company.
- To be registered as a shareholder in company books.
- To present a petition to the court for winding up of the company.