

PROCEDURE FOR INCORPORATION OF COMPANY

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INTRODUCTION:

There are various forms of business organization but company is one of the best form among them. According to section 2(20)of companies act,2013 “company” means a company incorporated under this Act or under any previous company law. To form the company is not the easy task we required the professionals help to form it.

STEPS TO BE TAKEN TO INCORPORATE A NEW COMPANY

Following are the steps to be taken to get a new company incorporated:

- Select, in order of preference, at least one suitable name upto a maximum of six names, indicative of the main objects of the company.
- Ensure that the name does not resemble the name of any other already registered company and also does not violate the provisions of emblems and names (Prevention of Improper Use) Act, 1950 by availing the services of checking name availability on the portal.
- Apply to the concerned Registrar of Companies to ascertain the availability of name in eForm1 A by logging in to the portal. A fee of Rs. 500/- has to be paid alongside and the digital signature of the applicant proposing the company has to be attached in the form. If proposed name is not available, the user has apply for a fresh name on the same application.
- After the name approval the applicant can apply for registration of the new company by filing the required forms (that is Form 1, 18 and 32) within 60 days of name approval
- Arrange for the drafting of the memorandum and articles of association by the solicitors, vetting of the same by RoC and printing of the same.
- Arrange for stamping of the memorandum and articles with the appropriate stamp duty.
- Get the Memorandum and the Articles signed by at least two subscribers in his/her own hand, his/her father's name, occupation, address and the number of shares subscribed for and witnessed by at least one person.
- Ensure that the Memorandum and Article is dated on a date after the date of stamping.
- Login to the portal and fill the following forms and attach the mandatory documents listed in the e-Form

1) Declaration of compliance - Form-1

2) Notice of situation of registered office of the company - Form-18.

3) Particulars of the Director's, Manager or Secretary - Form-32.

Submit the following eForms after attaching the digital signature, pay the requisite filing and registration fees and send the physical copy of Memorandum and Article of Association to the RoC

• After processing of the Form is complete and Corporate Identity is generated obtain Certificate of Incorporation from RoC.

Additional steps to be taken for formation of a Public Limited Company:

To obtain Commencement of Business Certificate after incorporation of the company the public company has to make following compliance

• File a declaration in eForm 20 and attach the statement in lieu of the prospectus (schedule III)
OR

• File a declaration in eForm 19 and attach the prospectus (Schedule II) to it.

• Obtain the Certificate of Commencement of Business.

RECENT UPDATES FOR INCORPORATION OF COMPANY

SPICe – Simplified Proforma for Incorporating Company Electronically

Ministry of Corporate Affairs (MCA) has recently introduced SPICe Form INC-32 which is a Simplified Proforma for Incorporating Company Electronically. **SPICe or** Form INC-32 can help incorporate a company with a single application for:

- reservation of name
- incorporation of a new company and/or
- application for allotment of DIN.

The Integrated Form INC-29 has been replaced with SPICe Form INC-32 and as such the Form INC-29 has been completely removed from the MCA portal. The SPICe Form INC-32 is very similar to Form INC-29, which also helps with fast track incorporation of a company in India.

This simplified & integrated process for incorporation of a company is done through

- Form No. INC-32,
- e- Memorandum of Association in Form No. INC-33 and
- e-Articles of Association in Form No. INC-34.

So, now there are 2 ways to incorporate a company:

- INC-7, DIR-12 & INC-22
- INC-32 (formerly INC-29), INC-33 & INC-34

1. Purpose of the eForm:

Form INC-32 can help incorporate a company quickly in India by integrating many of the steps into a single process. It has been introduced to do away with filing of various forms.

The eForm-32 has other added benefits wherein the DINs get allotted to those Directors who do not hold a valid DIN and also the Company's PAN, TAN and ESIC registration can also be obtained easily in a single step.

(Note: Maximum three Directors are allowed for using this integrated form for filing application of allotment of DIN while incorporating a company.)

2. Key Features:

- DSC of Subscribers needed instead of physical sign.
- Date of signing MOA & AOA will be date of affixing DSC.
- DSC of witness needed. If no DSC, no SPICE procedure.
- The form will be processed at Registrar's Office.

3. Type of Companies that can be incorporated using SPICE Form INC-32:

Using SPICE Form INC-32, the following types of companies can be incorporated in India:

- Part I Company
- Producer Company (only if 2 agricultural corporations are promoters, if there are minimum 10 promoters as applicable for individuals, then normal incorporation process has to be followed).
- Section 8 Company (was not available in INC-29)
- New Company – Public or Private or OPC

The company can also be of different categories like company limited by shares, company limited by guarantee or unlimited company.

The major addition to the SPICE Form INC-32 is relating to provision for entering name approval that was already obtained by the applicant by filing INC-1 – thereby assuring the name.

Previously there was no such provision in the e-Form INC-29, thereby there were chances for resubmissions leading to delay in the process for incorporation.

4. Declaration by Professional

The digital signature of a professional (Chartered Accountant/ Company Secretary/ Cost Accountant/ Advocate) is required to file Form INC-32. The professional must declare that all information presented in the form is correct and enter his/her membership number and certificate number.

5. Documents Required for SPICe Form INC-32:

The following documents must be filed with SPICe Form INC-32 for incorporation of company:

- Memorandum of Association – Applicable and mandatory only in case of Section 8 company or company with foreign subscribers not having DIN
- Articles of Association – Applicable and mandatory only in case of Section 8 company or company with foreign subscribers not having DIN
- Affidavit and declaration by first subscriber(s) and director(s) – Mandatory in all cases
- Proof of office address
- Copies of utility bills that are not older than two months
- Copy of approval in case the proposed name contains any word(s) or expression(s) which requires approval from central government
- If the proposed name is based on a registered trademark or is subject matter of an application pending for registration under the Trade Marks Act, then it is mandatory to attach the trademark registration certificate or trademark application copy
- NOC from the sole proprietor/ partners/other associates/ existing company
- Proof of identity and residential address of the subscribers
- Proof of identity and residential address of directors

6. Advantages:

- No need to reserve Companies Name prior to Incorporation.
- E-MOA & E-AOA.
- In form INC-34, select the table applicable to you i.e. which table of AOA is applicable on you. Clauses will appear on the screen. The same can be altered or marked “Not Applicable”.

7. Disadvantages of SPICe System:

- The biggest disadvantage in SPICe system is that the maximum number of subscribers can be seven only. In case of more subscribers, normal incorporation procedure has to be followed.
- Only one name of the company can be proposed.
- It is a bit costlier as DSC of all subscribers and witness is needed.

Conclusion:

SPICe Form INC-32 is surely an improvised version of e Form-29 wherein a lot of changes have been made to accommodate the interest of the stakeholders by reducing the timelines, however due to some limitations it might not be feasible when compared to earlier procedure.

We can only hope that the regulators might address the inherent limitations that are being observed in the current procedure for incorporation through SPICe Form INC-32 (like; limited number of subscribers, affixing of DSC of subscribers) and make the necessary changes in the time to come so that stakeholders might be more benefited.

KEY WORDS:

- SPICe Form INC-32, INC-7, DIR-12 & INC-22
- INC-32 (*formerly INC-29*), INC-33 & INC-34
- Ministry of Corporate Affairs(MCA)
- Memorandum of Association(MOA)
- Articles of Association(AOA)

REFERENCES:

1)WWW.MCA.GOV.IN

2)www.caclubinida.com