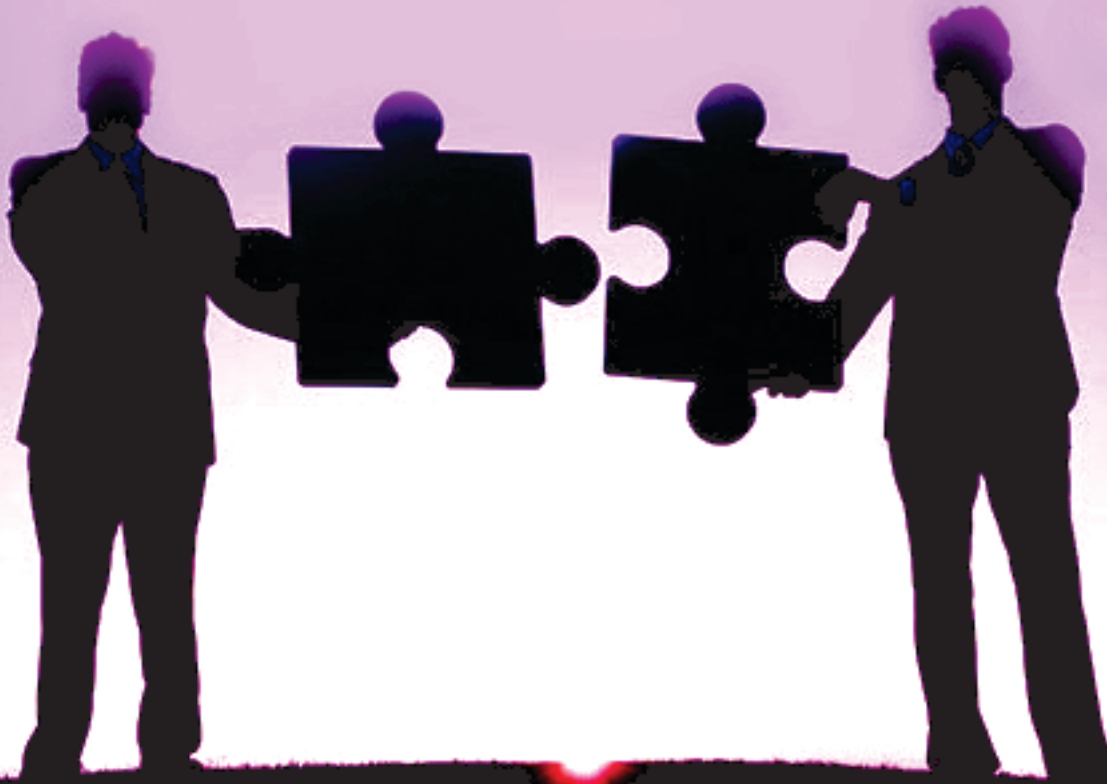




Ministry of Corporate Affairs
Government of India
www.mca.gov.in



INCORPORATION OF COMPANIES



LEAD PARTNER INSTITUTES



❖ Categories of Companies

- Public Company
- Private Company
 - o One Person Company
 - o Small Company
- Section 8 Company (Companies with Charitable objects)

The above said companies may be classified as [Section 3(2)]:

- Company limited by shares [as defined in Section 2(22)]: a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.
- Company limited by guarantee [as defined in Section 2(21)]: a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.
- Unlimited Company [defined in section 2(92)]: a company not having any limit on the liability of its members.

Public Limited Company

- Minimum Subscribers-7
- Minimum Directors-3

Private Limited Company including Small Companies

- Minimum Subscribers-2
- Minimum Directors-2

One Person Company

- Minimum & Maximum Subscriber-1
- Minimum Director-1

❖ Memorandum of Association

- The Memorandum of Association is the charter of a Company. It is a document, which amongst other things defines the area within which the company can operate.
- As per section 2(56) "memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.
- The Memorandum of a company shall be in respective forms specified in Tables, A, B, C, D and E in Schedule I as may be applicable to such company.
- The Memorandum of a limited company must state the following six clauses, *i.e.*,
 - Name Clause: The name will be the name which got reserved with ROC. The Last word of the name of company will include "Limited" in case of Public Company and "Private Limited" in case of Private Company
 - Registered Office Clause (also called Situation Clause)

- Object Clause
- Liability clause
- Capital Clause
- Subscriber's clause
- Nominee Clause (In case of OPC only)

❖ Articles of Association

- The articles of association of a company are bye-laws or rules and regulations that govern the management of internal affairs and the conduct of business. The articles deals with the rights of the members of the company inter se. They are subordinate to and are controlled by the memorandum of association.
- According to Section 2(5) of the Companies Act, 2013, 'articles' means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act.
- As per section 5(3) of the Companies Act, 2013, an entrenchment provision in Articles enables a company to follow a more restrictive procedure than passing a special resolution for altering a specific clause of articles of association. A private company can include entrenchment provisions only if agreed by all its members or, in case of a public company, if a special resolution is passed.
- The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.

❖ Signing of MOA & AOA

- The Memorandum and Articles of the company would be signed by subscribers as per section 7(1)(a) read with Rule 13 of Companies (Incorporation) Rules, 2014.
- Subscribers Clause will have to take into consideration and mention following.
 - Name
 - Father's name
 - Occupation
 - Residential Address
 - Share subscribed
 - Affix one Passport Size Photo graph
 - Signed in given column
 - One person will act as witness and will sign in the witness column along with mentioning following details:
 - o Name o Address
 - o Description o Signature

There are two routes to Incorporate Companies:

- A) Through various stagewise forms.
- B) Through integrated e-form INC-29.

A. Through various stagewise forms.

❖ Incorporation of Public /Private Company



e-Form INC-1

- Trademark or authorization to use trade mark, if the name of the company is based on trade mark or application for deed of assignment or a copy of application of registered trademark.
- In case the proposed name contains such word or expression for which the approval of Central Government is required, a copy of Central Government's approval.
- In principal approval from the concerned regulator wherever is applicable.
- NOC from sole proprietor/ partners/ other associates.
- NOC from existing company
- Copy of affidavit in case of proposed name includes phrase 'Electoral Trust'

e-Form INC-7

- Copy of Memorandum of Association and Articles of Association
- Declaration by Professionals (CA/CS/CWA) in form INC-8. [Section 7(1) (b) and rule 14 of the Companies (Incorporation) Rules, 2014]
- Affidavit from the subscriber to the memorandum in Form No. INC-9 [Section 7(1)(c) read with rule 15 of the Companies (Incorporation) Rules, 2014]
- Proof of residential address which should not be older than two months, and proof of identity of subscribers.
- Specimen Signature in Form INC-10. [Rule 16(1)(q) of Companies (Incorporation) Rules, 2014]
- Entrenched Articles of Association if any of the articles are entrenched.
- NOC in case there is change in the promoters (first subscribers to Memorandum of Association)
- Proof of nationality in case the subscriber is a foreign national
- PAN card (in case of Indian national)
- Copy of certificate of incorporation of the foreign body corporate and proof of registered office address
- Certified true copy of board resolution/consent by all the partners in case subscriber is Body Corporate.
- Principal approval taken from RBI for carrying NBFC activity as the case may be.

e-Form INC-22

- Proof of registered office's address (Conveyance/ Lease deed/ Rent Agreement etc. along with the rent receipts).
- Copies of the utility bills (proof of evidence of any utility service like telephone, gas, electricity etc. depicting the address of the premises not older than two months).
- Proof that the company is permitted to use the address as the registered office of the Company (Authorization from the owner or occupant of the premises along with proof of ownership or occupancy and it is mandatory if registered office is owned by any other entity/ person (not taken on lease by company)).

e-Form INC-12

- Declaration by first director in Form INC-9
- Interest in other entities of director in case number of entities entered is more than one.
- Declaration of the appointee director in Form No. DIR-2.
- Proof of identity and Address.

B. Through integrated e-form INC-29

❖ Integrated Process of Incorporation of Company (INC-29)

- INC-29 is one Single form for incorporating a company pursuant to sections 4, 7, 12, 152 and 153 of the Companies Act, 2013 read with rule 36 of Companies (Incorporation) Rules, 2014.
- Optional process: Incorporation of the company through the integrated form for incorporation INC-29 is optional. Standalone e-forms are also available.
- Form - INC-29 would take care of three separate processes with this single form namely application for DIN, application for name approval and application for incorporation of companies.
- Resulting in doing away of filing of the following e-forms:
 - o Form DIR-3 (Application for allotment of DIN in case proposed Directors have no DIN)
 - o Form INC-1 (Application for Reservation of name)
 - o Form INC-2/INC-7 (Application for incorporation of a company)
 - o Form DIR-12 (Details of Directors)
 - o Form INC-22 (Details of registered office) (Optional at the time of incorporation)
- **Filing Fees:** Fee for the form is Rs. 2000/- plus registration fee as specified in Companies (Registration of offices and Fees) Rules, 2014
- **Scope of E-form INC-29:** The following types of companies can be registered:
 - One Person Company
 - Private Limited Company
 - Public Limited Company
 - Producer Company
- Facility for using 'integrated form' is not available for incorporating Section 8 companies.
- Only one name can be applied for approval in this e-form. Therefore, one is advised to duly check the proposed name and follow name availability guidelines, existing trade marks to avoid rejection.
- Application for DIN is permissible upto 3 directors through this INC-29. Personal details in relation to the director or subscriber is not required in case director/ subscriber already has DIN. Scanned copy of Memorandum and Articles of Association need to be attached with the form.

Procedure for Fast Track Company Registration using Form INC-29

Obtain Digital Signature: To file Form INC-29, the digital signature of one of the Directors are required. Hence, Digital Signature must be obtained for one of the proposed Directors of the Company. Class 2 Digital Signature are required for filing form INC-29

Preparation of Incorporation Documents to be attached with Form INC-29

- In case there is any Director cum Subscriber who already possesses DIN, then the DIN of the person can be entered in the appropriate field
- In case there is any Director cum Subscriber who does not have DIN, then the DIN application can be made in the Form INC-29 itself by submitting the following information and documents:
 - (a) Personal Details, Occupational Details & Educational Qualification
 - (b) PAN – In case of Indian National
 - (c) Passport Number – In case of Foreign National
 - (d) Email Address of the Director
 - (e) Address information of the Director
 - (f) Proof of Identity - Voters ID Card/Drivers License/Passport/Aadhar Card
 - (g) Proof of Address – Bank Statement / Electricity Bill / Telephone Bill / Mobile Bill

The following incorporation documents must be prepared, signed by the Directors/Subscribers and attached with Form INC-29:

1. Memorandum of Association (MOA)
2. Articles of Association (AOA)
3. Affidavit and declaration by first Subscribers and Directors.
4. List of Promoters
5. List of Directors
6. No Objection Certificate from Director in case
7. Form INC- 8 any increase in promoters
8. Form INC-9
9. Form INC-10
10. Form DIR- 2
11. Lease deed or Authentication to use property for use as Registered Office

After filing of INC-29

- Time available for Resubmission of E-Form INC-29 is 15 days from the date of additional information sought for or intimation of defect.
- After Resubmission of the E-Form, if Registrar still sought for any additional information one more opportunity of 15 days available with the user for filing.
- After Three Opportunities E-Form INC-29 of the proposed company shall be rejected.

Certificate of Incorporation

Registrar after being satisfied issues Certificate of Incorporation.

