

INCORPORATION OF PRIVATE COMPANY/LLP

1) Definition of company incorporation

1.1 Incorporation is a legal process complying which a company gets status of an independent and separate legal entity isolated from all members, promoters and shareholders.

1.2 A duly incorporated company can sue anyone or be sued by anyone, enter into any contract and sell or purchase any property in its own.

2) Types of Incorporation

2.1 Incorporation of LLP (Limited Liability Partnership)

Governing Law for incorporation of LLP

- Limited Liability Partnership Act 2008 is the governing law for incorporation of LLP.

Following persons can be a member of LLP

- Individuals
- Limited Liability Partnerships
- Foreign Limited Liability Partnerships
- Companies
- Foreign Companies

Necessary conditions to incorporate LLP

- There must be two designated partner.
- At least one of them should be an Indian resident.

2.2 Incorporation of Private company

Governing Law

- The incorporation of a company is governed by the Company Act 2013 as well as other applicable company rules.

Necessary conditions are required to be fulfilled for incorporating a Company

- There should be minimum of two Directors and can have upto a maximum fifteen Directors and ;

- There must be minimum two members/subscribers of MOA.

4) Necessary Documents to be filed during incorporation of a Company/LLP

- ★ Memorandum of Association
- ★ Articles of Association
- ★ Subscribers' sheet including consent of all the members/Partner of either company or LLP.
- ★ Agreement of LLP agreement describing rights and liabilities of partners.
- ★ Copy of agreement relating to appointment of M.D., Director and Manager.
- ★ Copy of certificate of incorporation of the foreign body corporate and proof of registered office address (In case of Foreign subscribers).
- ★ Certified true copy of board resolution/consent by all the partners authorizing to subscribe to MOA
- ★ Statutory declaration about compliance of all incorporation provisions or rules by CA/CS/ Advocate engaged in incorporation of a company as well as declaration of all subscribers about their previous conviction connected with company management in Form-1.
- ★ Copy of Letter of Register indicating approval of name.
- ★ Power of Attorney. If applicable.
- ★ Notice of situation of registered office (in Form-18) and particulars of Directors (in Form-32).

5) Steps involved in the process of Incorporation of Company/LLP

We can segregate the steps involved in Incorporation into 2 parts:

5.1 Pre Registration Steps:

a) To obtain **DSC (Digital Signature Certificate)** to be used by Directors, Managing Director during filling necessary Incorporation form. Any one of the following documents is required to get DSC:

- PAN Card (for Identification Purpose)
- Aadhar Card (As a proof of applicant address)

- Passport (in case of foreign subscribers)
- Specimen of signature

b) To obtain **DIN (Director Identification Number)**: As per section 153 of Company Act, 2013 any person intends to appoint a director of a company shall make an application for allotment of Director Identification Number in form DIR.3. The necessary documents required to obtain DIN are same like DSC.

c) To Fill **AGILE-PRO form**: As per section 35 A of company incorporation rules it is mandatory to fill AGILE-PRO form with Spice+ form for registering at GSTIN, TAN, EPFO, ESIC, Profession Tax and for opening of company bank account. The following documents are required at the time of filing AGILE-PRO:

- Proof of Principal place of business.
- Proof of appointment of authorized signatory for GSTIN.
- Proof of identity of authorized signatory for opening a bank account.
- Proof of address of authorized signatory for opening a bank account.
- Specimen signature of authorized signatory of EPFO.

5.2 Steps to be followed during Incorporation of Company/LLP :

- ★ **To reserve proper name of the Company**: As per section 4(4) of Company Act, 2013 read with Rule-9 of Companies (Incorporation) Rules, 2014, application for the reservation / availability of name shall be in Form No. INC. 1 along with prescribed fee. The reserved name will be valid for a period of 20 days (up-to date) from the date on which the application for Reservation was made.
- ★ **Preparation of the Memorandum of Association (MOA) and Articles of Association (AOA)**: As per section 4(6) and 5(6) of Company Act, 2013 MOA and AOA documents are essentially required to be submitted while registering the Company.
- ★ **Application for Incorporation of a company**: As per Rule-12 of Companies (Incorporation) Rules, 2014, application for Incorporation of a company shall be filed in Form No. INC-7 [Rule12to18] along with all required documents mentioned above in Clause 3.
- ★ **Certificate of Incorporation**: As soon as after proper scrutiny, certificate of Incorporation is issued by the office of Registrar of Company a Company is deemed to be Registered and can start its business operation.

- ★ **Allotment of CIN (Company Indemnification Number):** The office of the concerned Registrar of company allots to the newly incorporated company particular number known as CIN.
- ★ **Declaration about verification of company address and shares of subscribers:** A newly incorporated company will send a declaration about shares of subscribers as well as verification of company address in form no. INC 20A within 180 days from the date of receipt of certificate of incorporation issued by ROC.

6) Time line to Incorporate a Company in India

What is the reasonable time for Incorporation of a company will depend on submission of relevant documents by the client and speed of Government Approvals.

7) Effect of non-compliance of statutory provisions and rules of company law during incorporation process

- ★ **Punishment in case of fraud or giving incorrect information:** Section 7(6) of the Company Act, 2013 makes provision that if it is proved after incorporation that a person got certificate of incorporation by making fraud, or by giving false or incorrect information or not filing required statutory declarations during incorporation process the same person can be punished with minimum **6 months extendable up-to 10 years**. In addition to this, **fine which may be 3 time to the amount involved in fraud**.
- ★ **Punishment in case of Non-compliance of Section 10A of the company Act, 2013:** If a company fails to send required declaration under section 10A of the act then it can be penalized with fine of **Rs 50,000 fine (company) and 1000/- per day** in case of individual. If a company fails to commence it's business since incorporation the **ROC can strick off the name of company from its register**.