



SNS COLLEGE OF ENGINEERING

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DEPARTMENT OF MANAGEMENT STUDIES

COURSE NAME : 19BA104- LEGAL ASPECTS OF BUSINESS

I YEAR / I SEMESTER

Unit - 4 : COMPANY LAW 2013 & IPR

TOPIC: Formation, Memorandum and Articles of Association



2. Incorporation of a Company

Incorporation brings a company into existence as a separate corporate entity.

As per Sec. 3(1) a company may be formed for any lawful purpose by:

- (a) seven or more persons, where the company to be formed is to be a public company;
- (b) two or more persons, where the company to be formed is to be a private company; or
- (c) one person, where the company to be formed is to be One Person Company that is to say, a private company,

by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.



2.1 Preliminary Steps

The promoters have to go through the following preliminary steps before applying for incorporation of the proposed company:

1. As per Sec. 4(2) a company cannot be registered with a name which is considered to be undesirable in the opinion of the Central Government. The name should not be identical with or resemble too nearly to the name of an existing company or registered under this Act or any previous company law. Therefore the promoters are advised to make an application in the Form 1 A to ascertain the availability of maximum six names in the order of their preference.
2. 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 to apply for a fresh name on the same application.
3. The name approved will be reserved by the Registrar for a period of 20 days from name approval. Within this period, the applicant can apply for registration of the new company by filing the required forms (i.e. Forms 1, 18 and 32).



4. Before promoters begin the incorporation of a company, they have to appoint chartered accountants, lawyers etc., to help them in preparing various documents.
5. Arrange for the drafting of the memorandum and articles of association by solicitors, vetting of the same by Registrar of Companies and printing of the same.

The Memorandum and Articles must be signed by at least 7 subscribers (2 in case of private company) along with address, description, occupation, if any, in the presence of at least of one witness. The subscribers should also clearly mention the number and nature of shares subscribed by them.



Registration stage:

Registration stage is the second part of the formation process. In this stage, the company gets registered, which brings the company into existence.

A company is said to be in existence, if it is registered as per the Companies Act, 2013. In order to get a company registered, some documents need to be provided to the Registrar of Companies.

There are several steps involved in the registration phase, and are as follows:

Memorandum of Association: A memorandum of association (MoA) must be signed by the founders of the company. A minimum of 7 members are required in case of a public company and 2 in case of a private company. The MoA must be properly registered and stamped.

Article of Association: Article of Association (AoA) is also required to be signed and submitted. All members who previously signed MoA, should also be signing the AoA.

The next step is preparing a list of directors which should be filed with the Registrar of Companies.

Directors of the company should provide a written consent agreeing to be directors, should be filed with the Registrar of Companies (RoC).

The notice of address of the office needs to be filed.

A statutory declaration should be made by any advocate of either the High Court or Supreme Court, or a person of the capacity of Director, Secretary or Managing Director. This declaration shall be filed with the RoC.



Certificate of Incorporation: Certificate of incorporation is issued when the registrar is satisfied with the documents provided. This certificate validates the establishment of the company in the records.

Certificate of commencement of business: Certificate of commencement of business is required for a public company to start doing business, while a private company can start business once it has received the certificate of incorporation.

Public companies receiving the certificate of incorporation can issue prospectus in order to make the public subscribe to the share for raising capital. Once all the minimum number of required shares have been subscribed, a letter should be sent to the registrar along with a bank document stating the receiving of the money.

The registrar will issue a certificate upon finding the provided documents satisfactory. This certificate is known as certificate of commencement of business. The company can start business activities from the date of issue of the certificate and the business shall be done as per rules laid down in the MoA (Memorandum of Association).



List of Documents Required while incorporating a company



SPICe Private Limited Company Incorporation Filing Process is an integrated single point application for Reservation of Company Name, Allotment of DIN for Directors and Incorporation of a New Company along with allotment of Permanent Account Number (PAN) and Tax Collection and Deduction Account Number (TAN) to the New Company.

1. Documents from Directors and Shareholders A. Identity Proof 1) Permanent Account Number (PAN) Card 2) Aadhaar Card / Passport / Driving License / Voter Identity Card B. Address Proof 1) Telephone Bill / Mobile Bill 2) Electricity Bill / Water Bill 3) Bank Statement /Bank Passbook with latest transaction (Any one of the Document not older than 2 months)

C. Passport size Photographs – 3 each Notes: All the Copies of documents must be Self Attested by the applicant. Telephone Bill / Mobile Bill/Electricity Bill / Bank Account Statement must be in the name of applicant and should not be older than 2 months. If the documents are not in than English, it should be translated to English.

2. Documents to be Signed by DIRECTORS

1) Consent to Act as Director: Form DIR-2 2) Details for DIN 3) Declaration of DIN (If DIN is allotted already)



3. Documents to be Signed by SHAREHOLDERS

- 1) Application for Digital Signature Certificate (DSC)
- 2) Declaration by Subscribers & Director: INC-9

4. Documents from Company / LLP / Trademark Owner, if any

- 1) Board Resolution / Formal authorisation for use of Name / Trademark 2) Authorisation for execution
- Documents from Company / LLP Note:- These shall be signed by the concerned on their Letter head

5. Registered Office – Address

- 1) No-Objection letter from the Owner of Address to use the address of the registered office of the Company.
- 2) Address Proof – In the name of the Owner Electricity Bill, Telephone Bill (Fixed Line Only), Gas Bill or Water Bill (Not older than 2 months);- To be signed by the of the Owner of Premises

OR

Tax Paid Receipt or Copy of Registered Sale Deed- To be signed by the Shared Office Service provider.

Note: If the Address facility is availed from a Shared Office Service provider, a copy of Electricity Bill / Tax Receipt with a copy of Lease Agreement with specific powers to sublease or issue NOC letters for use of premise as Registered Office address under Companies Act is also required.



RECAP

QUESTIONS???

THANK YOU