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**INCORPORATION OF A PRIVATE LIMITED COMPANY UNDER THE COMPANIES ACT, 2013**

The term **‘PRIVATE COMPANY’** is defined under section 2(68) of the Companies Act, 2013. The main features of it are given below:

* 1. Having a \*[minimum paid-up share capital] as may be prescribed.
  2. Its Articles of Association shall –
  3. restrict the right to transfer its shares;
  4. limit the number of its members to two hundred;
  5. prohibit any invitation to the public to subscribe for any securities of the company

\***Note:*the words “of one lakh rupees or such higher paid-up share capital” available in the principal Act, was omitted by the Companies (Amendment) Act, 2015 effective from 26.05.2015;***

To retain the status of a private company, it must always fulfill the requirements specified in the definition.

**Minimum requirement to incorporate a private company:**

* Minimum two directors having a digital signature and directors identification number (DIN);
* Minimum two subscribers to the Memorandum of Association of the Company. Subscribers can either be individuals or body corporate.

**Steps involved in incorporating a private company**

1. **Digital Signature:** Obtain a digital signature of all the individuals (proposed directors) and register it on the website of the Ministry of Corporate Affairs. This will enable the system to recognize the signature affixed on any form for uploading.
2. **Directors Identification Number (DIN):** Get a DIN of all the proposed directors. This is a pre-requisite as per the Companies Act. No individual can be appointed as a director without having a DIN and that individual must necessarily have a digital signature.

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1. **Availability of Name:** Check whether a particular name is available for registration based on the search module on the website of the Ministry of Corporate Affairs. Also ensure that the proposed name is not in resemblance or identical to any registered Trade Mark. *One must diligently follow and ensure all the compliances as required under Rule 8 of the Companies (Incorporation) Rules, 2014 as amended from time to time*
2. **Application for reservation of name:** File an application (Form INC-1) indicating minimum six proposed names in its order of preference with the Registrar of Companies (RoC) against a filing fee of Rs.1000/-. Name will be made available for registration for 60 days from the date of approval by the RoC. This name will lapse on expiry of the 60th day, in case no action is taken and the applicant will have to re-apply by filing again the said form with the RoC.
3. **Drafting of Memorandum and Articles of Association:** Draft the Memorandum and Articles of Association as per model prescribed in Table-A and Table-F respectively under Schedule I to the Companies Act, 2013.
4. **Filing of incorporation forms:**

* **Form INC-7 -** Application of incorporation of company.

*Documents to be attached:*

* Memorandum of Association (MoA)#
* Article of Association (AoA)#

***# Subscribers and witness to the Subscribers are now allowed to type their name, address and other details instead of writing in their own hand writing***

* Recent photograph of the subscribers affixed on the subscription page to the MoA and AoA
* Declaration by professionals in Form No. INC-8
* Affidavit from Subscribers and first directors in Form No. INC-9 on stamp paper duly notarized
* Subscribers or first directors shall self-attest his signature and recent photograph in Form No. INC-10
* Identity Proof of Subscribers:
* **For Indian Nationals:**
* PAN Card (mandatory) and any one of the following:
* Passport / Voter ID / Aadhar card / Driving License
* **For Foreign Nationals:** Passport
* Residentialaddress proof of Subscribers: Bank Statement/ Telephone or Mobile Bill / Electricity Bill, provided that the above documents shall not be more than two months old
* In case the subscriber to the MoA is a **body corporate**, then the following documents shall be filed with the Registrar –
* Copy of certificate of incorporation
* Details relating to their registered office address

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* Certified true copy of board resolution authorising to subscribe to the MoA, to make investment and other actions required for incorporation
* In case the body corporate is a Limited Liability Partnership or Partnership Firm, certified true copy resolution agreed by all the Partners authorising to subscribe subscribe to the MoA, to make investment and other actions required for incorporation
* **Form INC-22 -** Notice of situation of registered office.
* **Form DIR-12 –** Particulars of appointment of Directors
* **Form DIR-2 –** Consent to act as Director

1. **Payment of registration fee and stamp duty:** Pay the registration fee and stamp duty based on the authorized share capital of the company. The fee is calculated online after uploading the forms. An online challan gets generated. Payment can be made either via internet banking or by credit / debit card.
2. **Scrutiny by the Registrar of Companies:** All the documents are examined manually by the concerned official of the Registrar. On his satisfaction and based on all the documents and information provided, if found in line with the provisions of the Companies Act, he shall approve the forms filed and issue a “Certificate of Incorporation” under his digital signature. This certificate will be the conclusive evidence that all the requirements of the Companies Act has been complied.

**Note:***In case documents filed are found defective or incomplete by the Registrar, he may allow one more chance to re-submit the documents for registration. If the documents are again found defective and incomplete and not satisfactory to the Registrar on resubmission, then, he has the authority to reject the forms and treat the documents as if it were never filed. The filing fee and stamp duty paid will also get forfeited.*

**INTEGRATED INCORPORATION PROCESS**

A company can also be incorporated by filing one single e-Form (Form No. INC-29) instead of separate eForms for obtaining DIN, availability of name, appointment of directors, and registration of the registered office and incorporation of a company. It is a very comprehensive and detailed form.

**SIMPLIFIED PROFORMA FOR INCORPORATING COMPANY ELECTRONICALLY (SPICE) – FORM NO. INC-32**

Recently, the Companies (Incorporation) Rules got amended the fourth time with introduction of a new e-form namely SPICE – Form No. INC-32. The aim of the

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government is to simplify the process of incorporation in the wake of “ease of doing business”. **These rules are effective from October 2, 2016**.

**SPICE** is one step ahead of the Integrated Incorporation Process. SPICE is very much similar to the integrated incorporation form with the facility of filling and filling the Memorandum and Articles of the proposed company electronically. eMoA and eAoA in e-Forms viz INC-33 and INC-34 respectively are introduced for companies who choose incorporation through SPICE route. This is a welcome step to all the new Start-ups who are ready to launch their business immediately and create a name for them in this competitive world.

***SPICE also has a provision to provide details to apply for PAN / TAN at the time of incorporation. This information is mandatorily required to be filled in case of applicants desirous of applying for PAN and / or TAN at the time of incorporation of a company. This facility is available at the e-Biz portal only as per separate procedure prescribed by e-Biz portal.***

**Actions to be taken after incorporation**

1. Hold a board meeting to record matters related and incidental to incorporation of company
2. Board to appoint Auditor of the Company within 30 days from the date of incorporation
3. Apply for PAN / TAN with the Income Tax Department
4. Open Bank account
5. Receive subscription money from the subscribers to the MoA
6. Issue share certificates to the subscribers to the MoA within two months from the date of incorporation
7. Purchase physical Statutory Registers or prepare it in electronic mode
8. Make necessary entries in the Statutory Registers

**EXEMPTIONS AND PRIVILEGES OF PRIVATE COMPANIES**

A Private Company as compared to a Public Company enjoys several advantages, as many provisions of the Companies Act, 2013 (“the Act”) are exempt which apply to public companies. Further, by a Notification No. GSR 464(E) dated 5th June, 2015 private companies are exempted from certain provisions of the Act with certain modifications, which were applicable to private companies earlier to this notification.