

PROCEDURE FOR INCORPORATION OF A PRIVATE COMPANY OR PUBLIC COMPANY*

6

{Sections 4,7 and 12 of the Act read with Rule 8,8A,8B, and 38A of the Companies (Incorporation)Rules, 2014}

**This procedure does not contain the procedure regarding incorporation of a company under Section 366 of the Companies Act, 2013.*

Significant Relevant Approvals and Requirements

- ❖ DSC of the subscribers of MOA and AOA of the proposed company
- ❖ Board resolution, etc., if company is promoted by a body corporate
- ❖ Trademark registration certificate/trademark application
- ❖ No objection certificate from the sole proprietorship/partner/other associates/ company/body corporate
- ❖ Declaration regarding registration of the company with sectoral regulator
- ❖ Proofs of office address/registered office address
- ❖ Proof for appointment of authorised signatory for bank account/GSTIN, etc
- ❖ Formats of Specimens Signature of the authorised person
- ❖ DIN related documents, if DIN is to be taken.
- ❖ Consent of directors in DIR 2
- ❖ Eligibility/non-disqualification letter from directors in DIR 8
- ❖ Declaration for commencement of business.

Procedure with major check points

- ❖ Decide name of the proposed company and ensure that the proposed name has been searched with existing trademark and is not in violation of provisions of Section 4(2) of the Companies Act, 2013 read with Rules 8, 8A and 8B of the Companies (Incorporation) Rules, 2014, and in brief, ensure that –
 - the proposed name shall not be identical with or resemble too nearly to the name of an existing company registered under the Companies Act, 2013 or any previous company law {Section 4(2)(a) of the Act}.
 - the proposed name shall not be such that its use by the company will constitute an offence under any law for the time being in force; or is undesirable in the opinion of the Central Government {Sections 4(2)(b)(i) and (ii) of the Act}.
 - the proposed name of the company shall not contain any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force {Section 3(a) of the Act read with Rule 8 of the Companies (Incorporation) Rules, 2014}.
 - if the proposed name is similar to an existing company, consent from that company has been obtained to use this name or word by no objection certificate together with copy of board resolution for the same {Rule 8 (1) of the Act read with Proviso of the Companies (Incorporation) Rules, 2014}.
 - if the proposed name is based on registered trademark or where application for said name is pending with Registrar of Trade Mark, consent or no

objection certificate from the person whose mark is registered or pending for registration has been obtained *{Rule 8 (A)(1) (b) of the Companies (Incorporation) Rules, 2014}*.

- if the proposed name contains words or expressions for which approval of Central Government is required, approval of the Central Government has been obtained *{Section 4(3) of the Act read with Rule 8B of the Companies (Incorporation) Rules, 2014}*.
- if the promoters are carrying any business with the proposed name under any proprietorship firm or partnership firm including Limited Liability Partnership Firm (LLP) or any association, no objection certificate from partners or other associates, as the case may be, has been obtained *{Rule 8A(1)(d) of the Companies (Incorporation) Rules, 2014}*.
- If the company's main business is financing, leasing, chit fund, investments, securities or combination thereof, the proposed name is indicative of such related financial activities, viz., Chit Fund or Investment or Loan, etc. *{Rule 8A(1)(f) of the Companies (Incorporation) Rules, 2014}*.
- If the company's name is indicative of activities financing, leasing, chit fund, investments, securities or combination thereof, the company's main business is related to such activities *{Rule 8A(1)(g) of the Companies (Incorporation) Rules, 2014}*.
- if the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding, a period of two years has been elapsed from the date of such dissolution and if the proposed name is identical with the name of a company which is struck off in pursuance of action under section 248 of the Act or under section 560 of the Companies Act, 1956, a period of twenty years has expired from the date of publication of the name of such company in the Official Gazette being so struck off *{Rule 8A(1)(n) of the Companies (Incorporation) Rules, 2014}*.
- if the proposed name includes name of any foreign country or any city in a foreign country, produce any proof of significance of business relations with such foreign country like memorandum of understanding with a company of such country and note that the proposed name is not containing the name of an enemy country *{Rule 8A(1)(t) of the Companies (Incorporation) Rules, 2014}*.
- the proposed name does not contain any word(s) which is/are prohibited under section 4(2) and (3) of the Companies Act, 2013.

- ❖ Arrange following attachments for name reservation or for name availability:
 - (a) Certified true copy of board resolution, in case company is promoted by a body corporate, in respect of authorisation to subscribe memorandum of association, articles of association, making investment in proposed company and number of shares to be subscribed,
(In case of foreign company, the said resolution shall be apostil or consularised by the Indian Consulate)
 - (b) Trademark registration certificate or trademark application,
 - (c) No objection certificate (NOC) from the sole proprietor/partner/other associates/company/body corporate, in case the proposed name is similar or resembling to their name or trademark,
 - (d) Copy of Central Government approval, in case the proposed or desired name contain(s) any word(s)/expression(s) which requires Central Government approval, and
 - (e) Approval of sectoral regulator, if required.
- ❖ The applicant can **either** reserve the name and thereafter can file documents related to incorporation and other services **or** can file name reservation documents as well as documents related to incorporation and other services together at one go through integrated web-form, known as **SPICe+ (INC 32)** which have two parts, viz:

PART A

- name reservation of proposed company

PART B

- incorporation of proposed company
- DIN allotment (up to 3 persons)
- mandatory issue of Employees' State Insurance Corporation (ESIC) registration
- mandatory issue of Employees' Provident Fund Organisation (EPFO) registration
- mandatory issue of Permanent Account Number (PAN)
- mandatory issue of Tax Deduction Account Number (TAN)
- mandatory issue of Profession Tax registration (if registered office of the proposed company is in Maharashtra)
- mandatory opening of bank account
- allotment of Goods and Services Tax Identification Number (GSTIN), if applied
- Shops and Establishment Registration

In case SPICe+ (INC-32) Part-A is only submitted for name reservation, then PART-B of the said form and other linked forms shall be enabled only after the SRN of PART-A is approved.

FOR MORE.....PLEASE REFER BOOK TITLED-"COMPANY LAW - PROCEDURES AND COMPLIANCES" 2ND EDITION, 2021 WRITTEN BY DR. SANJEEV GUPTA AND PUBLISHED BY BHRAT LAW HOUSE PRIVATE LIMITED