

# 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}

## Synopsis

6.1	Procedure with Check Points	188
6.2	Forms to be filed	199
6.3	List of documents required	204
6.4	List of information required	206
	<b>FAQ on SPICe+</b>	337
<b>Appendix 6.1</b>	Format of subscriber sheet of the memorandum of association (in case the subscriber are individual and are more than seven/if any of the subscriber to the moa is signing at a place outside India)	208
<b>Appendix 6.2</b>	Format of subscriber sheet of memorandum of association (in case the subscriber are body corporate and individual and are more than seven/if any of the subscriber to the moa is signing at a place outside India)	209
<b>Appendix 6.3</b>	Format of no objection certificate (for registered office)	210
<b>Appendix 6.4</b>	Format of form INC-9	210
<b>Appendix 6.5</b>	Format of form DIR-2	211
<b>Appendix 6.6</b>	Format of form DIR-8	212
<b>Appendix 6.7</b>	List of all the companies having the same registered office address	213
<b>Appendix 6.8</b>	Undertaking	213
<b>Appendix 6.9</b>	No objection certificate	214
<b>Appendix 6.10</b>	Format of declaration by each promoter and first director	214
<b>Appendix 6.11</b>	List of main divisions of industrial activities	215
<b>Appendix 6.12</b>	Business/profession code	217
<b>Appendix 6.13</b>	Format of list of interest in other entities of all the directors	218
<b>Appendix 6.14</b>	Form MBP-1: Notice of interest by director	218
<b>Appendix 6.15</b>	Sample Board Resolutions	219

## Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 3, 4, 5, 6, 7, 10, 10A, 12, 149, 152, 153, 403 and Schedule-I
The Companies (Incorporation) Rules, 2014	Rules 8, 8A, 8B, 9, 9A, 12, 13, 14, 15, 16, 17, 18, 23A, 25, 27, 38 and 38A
The Companies (Appointment and Qualification of Directors) Rules, 2014	Rules 8, 9 and 17
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7, 8 and 12

Particulars	Section(s), Rule(s) and Name of e-Form(s)
e-Forms/web forms to be filed	SPICe+ (INC 32), SPICe+ MOA (INC-33), SPICe+ AOA (INC-34), AGILE- PRO- S (INC 35) INC-22.
Forms to be filed as an attachment with respective forms	INC-9- {Mandatory where total number of subscribers and/or directors are greater than 20, and/or any subscriber and/or director does not have DIN/PAN } DIR-2 and DIR-8

***\*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.

### **6.1 PROCEDURE WITH CHECK POINTS**

S. No.	Particulars																		
1.	<p>Ensure:</p> <ul style="list-style-type: none"> <li>• that the minimum number of Members and Directors of the proposed company are as below- <ul style="list-style-type: none"> <li>(a) Number of Members for: {Section 3(1) of the Act}</li> <table border="1"> <thead> <tr> <th>Type of Co.</th> <th>Minimum</th> <th>Maximum</th> </tr> </thead> <tbody> <tr> <td>Private Co.</td> <td>2</td> <td>200</td> </tr> <tr> <td>Public Co.</td> <td>7</td> <td>No Limit</td> </tr> </tbody> </table> <li>(b) Number of Directors for: {Section 149(1)(a) of the Act}</li> <table border="1"> <thead> <tr> <th>Type of Co.</th> <th>Minimum</th> <th>Maximum</th> </tr> </thead> <tbody> <tr> <td>Private Co.</td> <td>2</td> <td>15</td> </tr> <tr> <td>Public Co.</td> <td>3</td> <td>15</td> </tr> </tbody> </table> </ul> </li> </ul>	Type of Co.	Minimum	Maximum	Private Co.	2	200	Public Co.	7	No Limit	Type of Co.	Minimum	Maximum	Private Co.	2	15	Public Co.	3	15
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S. No.	Particulars
	<p>The subscribers, who are individuals in the Memorandum of Association (MOA) shall be deemed as first directors until the directors are duly appointed by the members in accordance with Section 152 of the Companies Act, 2013 and rules made thereunder (Section 152 of the Act).</p> <ul style="list-style-type: none"> <li>• Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 174 or any other number as may be prescribed under section 174 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 3 (three) persons can be obtained through incorporation with integrated form SPICe-1 (INC-32) (Section 152 of the Act read with rule 152 of the Companies Incorporation Rules, 2014).</li> <li>• Not a total number of directors, at least one director has stayed in India for a total period of not less than 182 days during the financial year. Provided that in case of newly incorporated company, residential status shall be determined proportionately. However, it is not required in case the director is appointed by the Central Government or State Government (Section 152 of the Act).</li> <li>• A person, who is intended to be appointed, shall not be eligible for appointment, if he/she has any disqualification for appointment under section 164 of the Act (Section 164 of the Act read with companies provisions a government company and regulations in COA 2012 about COA 2012).</li> <li>• A person proposed to be appointed as a director in a company other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013 (Section 152 of the Act)             <ul style="list-style-type: none"> <li>- shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies.</li> <li>- shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public companies.</li> </ul> </li> </ul>
2.	In case of one person company, an individual being sole member is deemed to be the first director of the company, if the articles of association has not mentioned the names of first directors (Section 152 of the Act).
3.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form 208-2 (Part 2 of the Companies Appointment and Qualification of Directors) Rule, 2014.
4.	Forms in electronic in writing, on or before appointment, from the appointed director as Form 208-2 regarding that he/she is not disqualified under Section 164 of Companies Act, 2013, to act as a Director (Section 164 of the Act read with rule 17 of the Companies Appointment and Qualification of <b>Directors</b> ) Rule, 2014.
5.	The particulars of first directors to be integrated with Form SPICe-1 (INC-32) at the time of incorporation of company.

For the detailed procedure, please refer Company Law Procedures & Compliances by Dr. Sanjeev Gupta, 2nd edn, 2021. You can buy from your bookseller or online at [www.bharatlaws.com](http://www.bharatlaws.com)

**[COMPANY LAW Procedures & Compliances \(in 2 vols.\)](#)**