

**PROCEDURE FOR REGISTRATION OF
PARTNERSHIP FIRM/SOCIETY/TRUST,
ETC., AS A COMPANY LIMITED
BY SHARES OR LIMITED
BY GUARANTEE UNDER THE ACT**

123

{Section 366 read with Section 7 of the Act read with Rule 3 of the Companies (Authorised to Register) Rules, 2014 and Rule 38 of the Companies (Incorporation) Rules, 2014}

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Reference at a glance:

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 3, 4 ,5, 6, 7, 366, 367, 368, 369, 371, 372, 373, 374 and 403
The Companies (Authorised to Register) Rules, 2014	Rules 3 and 4
The Companies (Incorporation) Rules, 2014	Rules 8, 9, 12, 13, 14, 15, 16, 17, 18, 25, 27, 38 and 38A
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 to be filed	URC-1, SPICe+ INC-32 SPICe+ INC-33 SPICe+ INC-34 AGILE-PRO-S INC-9 INC-22

123.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>With the exception and subject to provisions of section 366 of the Act and the Companies (Authorised to Register) Rules, 2014, any company formed whether before or after the commencement of this Act,</p> <ul style="list-style-type: none"> - in pursuance of any Act of Parliament other than this Act or of any other law for the time being in force or being otherwise duly constituted according to law, and - consisting of two or more members, <p>may at any time, get itself registered under this Act</p> <ul style="list-style-type: none"> - as an unlimited company, or - as a company limited by shares, or - as a company limited by guarantee <p>provided that</p> <ol style="list-style-type: none"> (a) a company registered under the Indian Companies Act, 1882 or under the Indian Companies Act, 1913 or the Companies Act, 1956, shall not register in pursuance of section 366 of the Act (b) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other law for the time being in force, shall not register in pursuance of section 366 of the Act as an unlimited company or as a company limited by guarantee (c) a company shall be registered in pursuance of section 366 of the Act as a company limited by shares only if it has a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons; (d) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose; (e) where a company not having the liability of its members limited by any Act of Parliament or any other law for the time being in force is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting

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"> • 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-11) (Section 152 of the Act read with rule 152 of the Companies Incorporation Rules, 2014). • 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). • 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). • 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"> - shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies. - shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public company.
1.	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).
2.	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 Incorporation and Qualification of Directors Rules, 2014).
3.	Forms an certificate in writing, on or before appointment, from the appointed director as Form 208-3 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 Incorporation and Qualification of Directors Rules, 2014).
4.	The particulars of first directors to be integrated with Form SPICe-1 (INC-11) 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

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