

Basics of Companies Act & Formation of a Private Limited Company

K.BALAJI,
Partner, SSB & Associates,
Chartered Accountants,
Bangalore

Definition & Nature

Definition

Section 2(10): "Company" means a company as defined in section 3 of the Act.

Section 3: Company means company formed and registered under this Act or an existing company.

Nature of Companies

- Company limited by Shares
- Company limited by Guarantee having Share capital
- Company limited by Guarantee not having Share capital
- Unlimited company

Classification of Companies

Basis	Companies
Members & Directors	<ul style="list-style-type: none"> ▪ Limited Liability ▪ Unlimited Liability
Size/Membership	<ul style="list-style-type: none"> ▪ Private ▪ Public ▪ Government
Place of Registration	<ul style="list-style-type: none"> ▪ Indian Company ▪ Foreign Company
Management Control	<ul style="list-style-type: none"> ▪ Holding Company ▪ Subsidiary Company
Business Activities	<ul style="list-style-type: none"> ▪ Manufacturing ▪ Service ▪ Non-Banking Finance Activities ▪ Section 25 ▪ Producer

Characteristics of a Company

- Incorporated as a separate legal entity
- Limited Liability of members
- Transferability of Shares is simple
- Artificial legal person
- Can Borrow funds – Secured or Unsecured
- Perpetual succession, will not affect by death of any member/s
- Right to own property in the name of the company
- Right to sue legally
- Right to enter into contracts
- Flexibility and Structuring of Investments
- Separation of control from the ownership


FORMATION OF A PRIVATE LIMITED COMPANY

Process Involved in Incorporation of a Private Limited Company

COMPANY FORMATION

- **Meaning of a Private Limited Company**
- **Pre-requisites**
- **Steps involved in formation**
 1. DIN generation and Approval
 2. Application for Name in e-form 1A after fulfilling the Guiding Principles
 3. Preparation of e-form 1 and attachments
 - Memorandum of Association
 - Articles of Association
 - Witness
 - Power of Attorney [optional]
 4. Preparation of e-form 32 and e-form 18
 5. Filing of e-form 1, 32 & 18 with requisite fee as per Schedule X applicable to a new company
 6. Scrutiny and issue of Certificate of incorporation by ROC/DROC/AROC.

Meaning of a Private Limited Company	COMPANY FORMATION
<p>Private limited company is a company having minimum share capital of Rs.1 lakh and restricts the following:</p> <ol style="list-style-type: none"> 1. Right to transfer the shares of the company 2. Number of members to 50 excluding past and present employees 3. Invitation to public to subscribe for any shares or debentures of the company. 4. Invitation or acceptance of deposits from persons other than its members, directors or their relatives. 	

Pre-requisites	COMPANY FORMATION
<ul style="list-style-type: none"> ▪ For forming a private limited company <ul style="list-style-type: none"> - Minimum subscribers - 2 - Minimum directors - 2 - Minimum capital - Rs.1 Lakh - Approved DIN of Directors - Digital Signature Certificate -Any one subscriber (Class-II) ▪ Softwares <ul style="list-style-type: none"> - Windows 2000 / Windows XP - Internet Explorer v6.0 and above - Adobe Reader V7.0.5 - Java Runtime Environment (JRE) 	
	

STEP 1: DIN Generation and Approval		
COMPANY FORMATION		
Status	Documents Required	DIN1.doc
Resident	<p>1. Proof of identity should contain date of birth and father's name.</p> <p>2. Proof of Residential address [Public Notary or a Gazetted Officer of a Government or a practising professional (Chartered Accountant/ Company Secretary/ Cost Accountant) or a Company Secretary in full time employment of the company]</p>	[To go through the FAQ's in MCA]
NRI & Foreign Citizen	<p>3. Documents stated in 1 & 2</p> <p>4. Certification by the notary in the home country of the applicant or MD/CEO of the company in which he is a director or Company Secretary in full time employment of the Company.</p> <p>5. In case of a Foreign National certified copy of Valid Passport</p>	Causes for rejection.pdf

STEP 2: Application for Name Approval in eform1A and Guiding Principles	
COMPANY FORMATION	
<p>Preparation and Filing of e-Form 1A - Form 1A.PDF</p> <p>1. Guidelines for availability and selection of name</p> <ul style="list-style-type: none"> • To avoid Undesirable names • Names does not violate the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950. • For use of key words, as part of the name Key Words.doc • To state the Significance of key or coined word in the proposed name • Name should indicate the main objects of the company • In case of Venture Capital Company, approval letter from Dept. of Economic Affairs. • Names starting with small letters having small letters but shall not contain phonetic of visual resemblance to the name of a company in existence. eg: i2 Technologies Pvt Ltd. Guidelines Section20 21dec2009.pdf <p>2. Main Objects of the Proposed Company</p> <p>3. To state the Proposed Authorised Capital</p> <p>4. Application in e-form 1A to the concerned Registrar of Companies on payment of fee of Rs. 500/-</p> <p>5. Prescrutinise the e-form 1A before e-filing.</p> <p>6. Scrutiny and Approval of the name by ROC/DROC/AROC</p> <p>7. Re-submission and User-clarification as per regulation 17 of Companies Regulations, 1956</p>	

STEP 3: Preparation of eform 1 and attachments**COMPANY FORMATION**Drafting of Memorandum of Association [MOA.doc](#)

1. Name Clause
2. Situation Clause
3. Objects Clause
 - Main Objects
 - Incidental or Ancillary Objects
 - Other Objects
4. Liability Clause
5. Capital Clause
6. Association Clause
 - Subscribers signature and filling up of personal details
 - Shares subscribed not less than Rs.1 Lakh
 - Witness

STEP 3: Preparation of eform 1 and attachments (contd..)**COMPANY FORMATION**Drafting of Articles of Association [AOA.doc](#)

1. Shall state as per Sec 27(3), matters specified under Section 3(1)(iii)(a), (b), (c) and (d)
2. Buy-back of share capital u/s 77A
3. Transfer and transmission of shares
4. Nomination
5. General Meetings – Notice period to call AGM/EGM
6. First Directors and appointment of Directors
7. Power and duties of Board of Directors
8. Board Meeting
9. Common Seal
10. Winding Up
11. Subscribers signature and filling up of personal details
12. Witness

STEP 3: Preparation of eform 1 and attachments (contd..)**COMPANY FORMATION****Stamp duty payable . [Form1.PDF](#)**

- MoA duly stamped - Rs.1000/-
- AoA duly stamped - Rs.500/- (for every Rs.10 lakhs)
- PoA (optional) duly stamped - Rs.200/-
- Form 1 duly stamped - Rs.20/-

List of states for which e-stamp facility is available. [States list.doc](#)

Transition period for mandatory e-payment of stamp duty has been extended upto 31.03.2010 and from 1st April 2010 company shall compulsorily make e-payment of stamp duty vide notification no. [S.O.3314\(E\) 31-12-09.pdf](#) .

Declaration for having complied the provisions of Companies Act, Rules and applicable stamp duty related to the formation of the company has to be signed by either:

- Supreme Court or High Court Advocate
- High Court pleader or attorney
- Whole time practicing CA or CS
- Director, manager or secretary of the company named in the Articles

STEP 3: Witness**COMPANY FORMATION**

Status	Person to Witness
Resident	<ul style="list-style-type: none"> ▪ Any person who has the capacity to contract as per Indian Contract Act, 1872. ▪ In case the subscriber has filled the MoA and AoA other than from a place of his residence then indicate on the place "CAMP" [Mention city or town]
Non-Resident Rule 16(6) of (Central Government) General Rules and Forms, 1956	Foreign nationals residing outside India in countries which are signatory to the Hague Apostille Convention, 1961, their signatures and address on the Memorandum of Association and proof of identity, where required shall be notarised by notary of the country of their origin and be duly apostilled in accordance with the said Hague Convention

STEP 4: Preparation of eForm 32 and eForm 18**COMPANY FORMATION**

e-Form	Details / Attachments
e-Form 32 Consent Ltr Directors.doc Form32.PDF	<ul style="list-style-type: none"> ▪ Details of Directors appointed. ▪ Consent letter of appointee Directors.
e-Form 18 Form18.PDF	<ul style="list-style-type: none"> ▪ Registered Office Address ▪ Address of Jurisdictional Police Station of Registered Office.

STEP 5: Filing of eform 1, 32 & 18**COMPANY FORMATION**

Filing of eform 1, 32 & 18 with requisite fee as per Schedule X applicable to a new company.

[Schedule X.doc](#)

STEP 6: Scrutiny & Issue of Certificate of incorporation by ROC/DROC/AROC
COMPANY FORMATION

- **The documents submitted by the company will be scrutinised by :**
 - The case worker before transferring the efile to ROC/DROC/AROC.
 - The ROC/DROC/AROC will further scrutinise and ask for re-submission/user-clarification if the documents are not in order.
 - Upon re-submission/user-clarification the ROC/DROC/AROC, approve for Incorporation after ensuring the completeness of documents efiled.
 - Re-submission and User-clarification as per regulation 17 of Companies Regulations, 1956.
- After attestation of Certification by either of the above stated authorities, the Certificate of Incorporation will be directly sent to the Registered office of the company indicated in e-form 18.

Thank You

Any Questions ???