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Procedure for Incorporation of Company

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ABSTRACT

This article deals with the procedure for the incorporation of company in India . This article focuses on the detailed steps to be followed for the company formation.

After going through this article, one will learn the proper steps and legal verifications which are required for corporate company formation according to The Companies Act, 2013. The cases cited help in a better understanding of the concept. The alteration process is also discussed in this article.

Keywords: *Incorporation, Association, Corporate Identification Number.*

I. INTRODUCTION

The registration and incorporation of a company involve various stages. This stage must be passed with observance and obligation of legal procedures. These stages are discussed thoroughly in this article. This article explains the various types of company and the detailed procedure for registration and incorporation of a company.

The company is registered by the persons having their meal together. The process begins with the decision of a type of company and ends with the commencement of business.

II. PROCESS FOR THE REGISTRATION AND INCORPORATION OF THE COMPANY IN INDIA

(A) Promoter

A promoter is an individual, syndicate, association, partnership or company which takes all the necessary steps to create and mould a company and set it going. The promoter originates the scheme for the formation of the company, gets together the subscriber, and the memorandums, get articles of association, and memorandum of association, prepared executed, and registered, find the bankers brokers, and legal advisors, locate the first director of the preliminary contracts and makes arrangement for the preparation, advertisement, and circulation of the prospectus and placement of the capital. The relationship between the promoter and the company that he has floated must be dim to be a fiduciary relationship this relationship continues up to the time

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the directors take into the hand what remains to be done for the formation of the company.

(B) Types Of Company

Public company- Public company is a company which has a minimum paid-up share capital and does not restrict the right to transfer its shares and can invite public for subscription for the securities of the company.

Private company- It is a company which has minimum paid up share capital and contains restrictive clauses like the right to transfer the shares, in One person company it restricts the number to 200. It also prohibits an invite to public for subscription.

One Person company- It is a kind of private company which has only one member. The name of the person with his prior written consent who is in the event of directors death or his incapacity to contract became the member of the company and this information self-filled with the registrar at the time of Incorporation.

(C) Name Of The Company

The name of the company is to be decided and give name accordingly. The private company should contain the word “PRIVATE LIMITED” at the end of companies name and Public company should contain “LIMITED” word at the end of public company. The name should not identical or resembles the name of other company registered under this act and it should not undesirable in the opinion of the central government. The name should not contain any words or expression which likely gives very much close idea that company is connected with anyway in Central Government, State government or any local authority, corporation or body constituted by Central or State Government under any law for the time being in force.

III. PREPARATION OF MEMORANDUM OF ASSOCIATION (MOA)

(A) Meaning-

Memorandum of Association is a fundamental condition upon which alone the company has been incorporated it contains the objects always the company is formed at it identify the possible scope of its operation beyond which the companies actions cannot go it defines as well as confines the powers of the company this helps and intending shareholders to find out the purposes for which his money is going to be used by the company and the risk he is taking in making the Investments.

(B) Forms of Memorandum

Section 4(6) states that memorandum of a company shall be in the form given in Schedule I of

tables A,B,C,D and E according to applicability of the company.

(C) Contents of the Memorandum

- a. Name clause-** The company can be registered with any name, but it should not be to identical to an existing company. In case of two similar names between the names and be such as is likely to deceive and it suggest some connection or association with an existing company the name of this companies rejected by the registrar.

Case Law- Ewing Vs. Buttercup Margarine Co. Ltd (1917)

The plaintiff sold margarine (butter) in retail shops, mainly in Scotland and the north of England. It had used the name 'Buttercup Dairy Company'. The name 'Buttercup Margarine Company' is a company under which defendants proposed to sell margarine wholesale. The plaintiff, carrying the business under the name of the Buttercup Dairy Co., claimed an injunction against the Buttercup Margarine Co. Ltd., on the grounds that the public might think that the two businesses were connected. The court held that Ewing was successful, and the injunction was granted.

i. Change of name clause

Alteration of name a company can change its name at any time by passing a resolution within a return approval of Central Government give the company is adding or deleting the word private then the approval of Central government is not required the special resolution and the approval of Central Government multi file with the registrar.

- 1. Registered Office-** The clause states that the registered office of the company must be there within 30 days of its incorporation and the clause contain the State in which the office is situated.

ii. Alteration of registered office

A company can change its registered office by passing a special resolution. confirmation of Regional Director only in the case when change is from jurisdiction of Registrar of one jurisdiction to the other. The copy of special resolution and confirmation by Regional Director is to be filled. If the registered office shift from one state to another the alteration of memorandum is required. The settlement of list of creditors and debentures confirmation by the central government is mandatory this information must be filled with the Registrar of companies.

- b. **Object Clause-** This clause states the object for which the company is proposed to be incorporated. A company cannot do anything beyond its object and any act done will be ultra vires and cannot be ratified by all of the shareholder.
- c. **Capital Clause-** This clause indicates some amount of capital with which the company is registered it is known as registered authorized or nominal capital this clause also States the number and value of shares into which the capital of the company is divided a company cannot issue more shares and stated under these clause without altering the memorandum.

IV. PREPARATION OF ARTICLES OF ASSOCIATION

(A) Meaning

Article regulate the internal management of the company define the power of its officer its set out supervision for the manner in which the company is to be administered.

(B) Contents of Articles

Articles of association contains rules and regulations about- notice of the meetings, voting rights, proxy, quorums, share capital and their division in equity of different shares, constitution and composition of audit committee, remuneration committee, remuneration of directors, winding up of a company etc.

V. PREPARATION OF MORE DOCUMENTS

1. Power of Attorney

The promoter can execute a power of attorney in favour of one of them or an advocate or some other professionals like Chartered Accountant or Company Secretary.

2. Consent of Directors

List of people who have agreed to become the first directors of the company along with their concern should be filled with the resistor all the important information relating to the directors including directory education number must also refill with the register the directors also required to give a return and the taking to take up and pay for their shares.

3. Declaration by subscriber

The subscribers to the memorandums shall file a declaration that they are not convicted of any offence in connection with the promotion, formation and management of any company or they are not found guilty of any fraud or a breach of duty to any company during the preceding 5 years. They shall also make a declaration that for the registration of the company all the

documents and its information is correct and true to the best of your knowledge and believe.

VI. FILING OF APPLICATION AND DOCUMENTS FOR REGISTRATION

The Central Registration Center (CRC) is a place where the above-mentioned documents must be submitted to the Registrar.

1. Certificate Of Incorporation

After verifying the documents and being satisfied that they are in order and the requisite fee had been paid and all the requirements had been complied with, the registrar of the Central Registration Centre (CRC) will enter the name of the company in the CRC and the registrar shall allot the company Corporate Identity Number (CIN) which is distinct identity of the company. If the registrar is of the view that there are some minor defects and required, it to be rectified and if the effects are material than the registrar may refuse to register the company.

2. Effect Of Registration

From the incorporation date, the subscribers, and other members of the company, is capable of all the actions and functions of the incorporated company. Have the power to hold, acquire and dispose of the property whether movable or immovable. It can perform all the works of the legal entity.

3. Commencement Of Business

Public company requires the certificate of commencement of business to commence the business. Public companies can issue prospectus once incorporated.

VII. CONCLUSION

The formation of a company requires legal process which contains a transparent procedure containing consents, verifications, preparation of memorandums and articles, preparing documents etc.

This process of registration of company in India is done under the Companies Act, 2013. It generally for the Private, Public companies.
