

JOSEKUTTY V.E., ICLS

Deputy Registrar of Companies, T.N.,

Coimbatore

ACTS & RULES

- The Companies Act, 2013

2015

- The Companies (Amendment) Act, 2015
- The Companies (Incorporation) Rules, 2014 come into force on the 1st day of April, 2014
- The Companies (Incorporation) Amendment Rules, 2015 come into force on the 1st day of May, 2015
- The Companies (Incorporation) Second Amendment Rules, 2015 come into force on the 29th day of May,

THE COMPANIES ACT, 2013

Section 3(1)

 The company may be public company with 7 or more members, private company with 2 or more members or OPC with one person

Section 4(1) to (5)

Name Availability

Section 4 (6-7)

• Memorandum of Association

Section 5

• Articles of Association

Section 7

• Incorporation Procedure

Section 11

• Commencement of business (now removed)

The Companies (Amendment)

Act, 2015

- Removed minimum PUC prescribed for public and private companies
- Common seal made non-mandatory
- Section 11 (Commencement of Business) removed
- Section 76A inserted to provide for fine of one crore rupees to ten crore rupees for acceptance of deposits in violation of section 73 or section 76 or rules made thereunder

THE COMPANIES INCORPORATION RULES, 2014

Rule 8 Undesirable names Rule 13 Signing of memorandum and articles Rule 14 Declaration by professionals in INC-8 Rule 15 · Affidavit from subscribers and first directors in INC 9 Particulars of every subscriber to be filed with the Registrar at the time of Rule 16 incorporation

ntegrated process of incorporation

Effective from 1.5.2015

DPC, Private Co, Public Co & Producer Co.

Section 4(5)(1) & Rule 9 relating to Reservation of Name provisions are not applicable

DIR 12 and INC 22 are not applicable

FORMATION OF A COMPANY -SECTION 3

PUBLIC COMPANY

FOR LAWFUL PURPOSE

= 7/MORE

SUBSCRIBING NAMES TO MEMORANDUM

PRIVATE COMPANY

ONE PERSON

= 2/MORE

COMPANY= 1

ONE PERSON COMPANY-

COMPANIES (INCORPORATION) RULES, 2014

Sole Member and Nominee (Rule 3)

a natural person + an Indian citizen + resident in India

Not in more than 1 company

Minor- Not allowed as member/nominee/hold beneficial interest

Conditions to the Company (Rule 3)

cannot be incorporated or converted into a section 8 company

- cannot carry out Non-Banking Financial Investment activities

Cannot convert into any kind of company unless 2 years expired from INC, except threshold limit

ONE PERSON COMPANY-

COMPANIES (INCORPORATION) RULES, 2014

How a Nominee is Appointed?

(Rule 4)

Nomination is to be filed in

Form No INC.2

Consent of nominee is to be obtained in

Form No INC.3

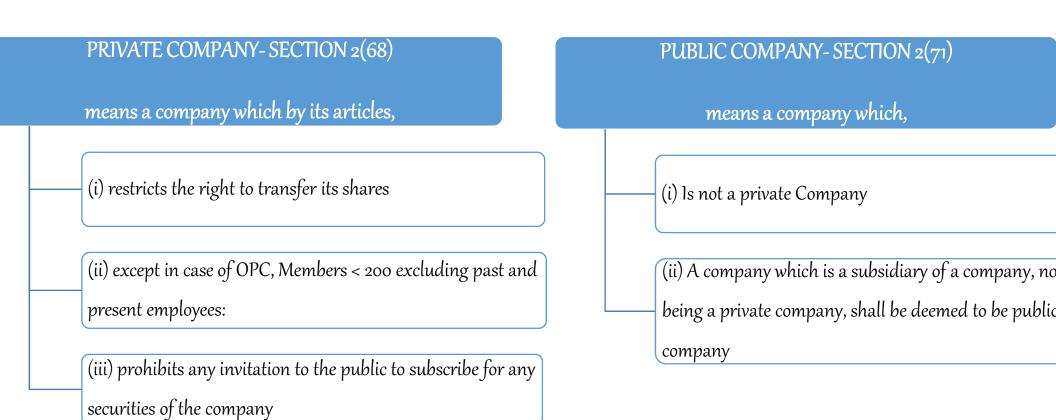
In case of Death/Incapacity to contract by a member (Rule 4)

Nominee shall become the member and he shall nominate another person as nominee within 15 days his appointment

Company shall file with ROC an intimation of cessation & nomination in Formation No 1NC.4 within 30 days

PRIVATE COMPANY and PUBLIC COMPANY

Minimum limit of INR 1,00,000 and INR 5,00,000 W.E.F.29.05.2015



PRIMARY DOCUMENTS OF A COMPANY

OF ASSOCIATION

ARTICLES OF ASSOCIATION

MEMORANDUM OF ASSOCIATION - SECTION 4

Name Clause

Names with last word Limited or Private Limited (OPC) as the case
 may be shall be stated

Registered Office Clause

State of Tamil Nadu or State of Tamil Nadu under the jurisdiction of ROC,
 Coimbatore (Optional)

Objects Clause

· Main object and Matters which necessary for the furtherance of the Main object

Liability Clause

• The liability of members is limited and this liability is limited to the amount unpaid, if any, on the shares held by them

Share Capital Clause

• The Amount of share capital with which it is to be registered & division thereof into shares of a fixed amount.

Subscription / Nominee Clause

• INC7/INC2 MOA differ and in the case of OPC, the name of the person who shall be the Nominee of such Sole Member of the OPC

ARTICLES OF ASSOCIATION -SECTION 5

- · shall contain the regulations for management of the company
- · shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company
- The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if
 conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied
 with
- · shall only be made either on formation of a company, or by an amendment in the articles agreed to by
- In case of a private company all the members of the company
- In case of a public company by a special resolution

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ENTRENCHMENT PROVISIONS IN THE ARTICLES

COMPANIES (INCORPORATION) RULES, 2014

Where the articles contain the provisions for entrenchment, the company shall give notice to ROC of such provisions

(A) in Form No.INC.2 or Form No.INC.7, as the case may be at the time of incorporation or

(B) in case of existing companies, the same shall be filed in Form No.MGT.14 within thirty days from the date of entrenchment of the articles

INCORPORATION- ACT AND RULES

RESERVATION OF NAME- SECTION 4(2)

COMPANIES (INCORPORATION) RULES, 2014

Form No. 1NC.1

· An application for the reservation of a name shall be made in Form No. INC.

(i) will

SECTION 4(2) The name stated in the memorandum shall not-

- be identical with or resemble too nearly to the name of an existing company; or
- be such that its use by the company—
 constitute an offence under any law for the time being in force; or
 (ii) is undesirable in the opinion of the Central Government

THE NAME SHALL BE CONSIDERED UNDESIRABLE, IF-

1. it attracts the provisions of section 3 of the Emblems and Names (Prevention and Improper Use)
Act, 1950 (12 of 1950);

2. it includes the name of a registered trade mark or a trade mark which is subject of an application for registration..

3. it includes any word or words which are offensive to any section of the people

THE NAME SHALL BE CONSIDERED UNDESIRABLE ALSO, IF-

s identical with or too nearly esembles the name of

- .. A LLP in India or
- the LLP incorporated outside and reserved by such ompany / LLP with the ROC

3. Any part includes the words indicative of a separate type of business constitution/legal person/connotation thereof

4. it resembles closely the popular or abbreviated description of an existing company or LLP;

5. it is not in consonance with the principal objects of the company as set out in the memorandum of association NOT ALWAYS BUT

when there is some indication of objects in the name, then it shall be....

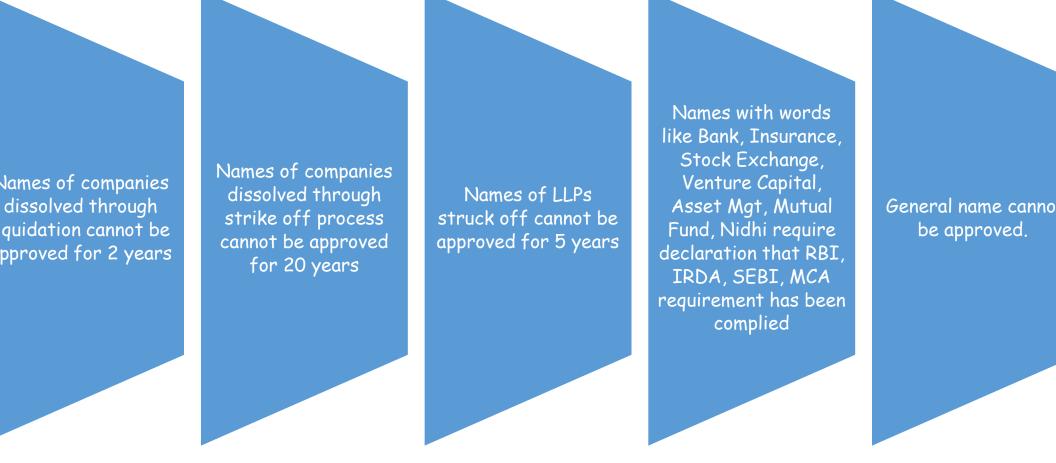
INC RULES RELATING TO APPROVAL OF COMPANY NAMES

If the name includes name of a registered TM or pending application NOC is required from the owner or applicant of such TM.

When the name is indicative of object, it should be in consonance with the objects specified.

Name of companies doing Finance, Chit and Nidhi business should be indicative of the objects. Vague and abbreviated names cannot be approved. For eg. 23K Limited, ABC Limited etc. DJMO Limited cannobe approved, even if i denotes names of the promoters.

INC RULES RELATING TO APPROVAL OF COMPANY NAMES



INC RULES RELATING TO APPROVAL OF COMPANY NAMES

If name includes
name of foreign
ountry or foreign
cities, MOU
showing business
relation with that
country is
required

In case of change of object, name should be changed within 6 months.

For proper names of persons other than relatives, NOC is required.

For names of relatives proof of relation is required.

Significance and proof is required for using coined words.

Changed names will not be allowed for 3 years.

Section 8 company should use the words like foundation, Forum Association, Federation, Chamber, Confederation, Council, Electora Trust etc.

CANCELLATION OF NAME { SECTION 4(5)(ii)

A NEW CONCEPT

If applied by furnishing wrong and incorrect information, the Registrar shall:

- Before Incorporation -Cancel name and penalty to the applicant which may extent to Rs. One Lakh.
- After incorporation- either direct the company
- change name within 3 Months,
- take action for striking off the name of the company or
- make petition for winding up

APPLICATION FOR INCORPORATION OF COMPANIES - SECTION 7(1) & COMPANIES (INCORPORATION) RULES, 2014

An application shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated for registration of a company 1N-

Form No.1NC.2

• E-Form INC-2 deals with incorporating One Person Company.

Form no. INC.7

• E-Form INC-7 deals with incorporation of a new company (other than OPC).

SIGNING OF MEMORANDUM SECTION 7(1)(A) & Rule 13

The MOA and AOA shall be igned by each subscriber to the MOA, who shall add his name, address, description and occupation, if any, in the presence of at least or

2. Where the subscriber is a

COMPANY or a LLP, it shall be
signed by director, officer or a

partner of LLP duly authorized by
a board resolution or resolution
approved all the partners
respectively

Provided that in either case, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of Association.

SIGNING OF MEMORANDUM SECTION 7(1)(A) & Rule 13

Where subscriber to the memorandum is a foreign national residing outside India-

n a country in any part of the Commonwealth

 his signatures and address on the MOA and AOA and proof of identity shall be notarized by a Notary (Public) in that part of the Commonwealth

In a country which is a party to the Hague

Apostille Convention, 1961

 shall be notarized before the Notary (Public) of the country of his origin and be duly apostillised in accordance with the said Hague Convention

Other countries

shall be notarized before the Notary (Public) of such country & the certificate
of the Notary (Public) shall be authenticated by a Diplomatic or Consular
Officer empowered in this behalf

COMPANIES (INCORPORATION) RULES, 2014

Form No. 1NC.8

SECTION 7(1)(B) & Rule 14

Form No.1NC.9

SECTION 7(1)(B) & Rule 14

Affidavit from subscribers and first directors

that...

- A Declaration by an Advocate/a CA/CWA/CS in practice, who is engaged in the
 formation of the company that all the requirements of this Act and the rules made
 thereunder in respect of registration and matters precedent or incidental thereto have
 been complied with
- That he is not convicted offence in connection with the promotion.... formation or management of any company
- That he has not been found guilty of any fraud or misfeasance etc. to any company during the preceding 5 years and
- That all the documents filed contain information that is correct and complete and true to the best of his knowledge and belief

PARTICULARS OF SUBSCRIBERS TO THE MEMORANDUM

COMPANIES (INCORPORATION) RULES, 2014

Particulars of every subscriber to be filed like,

Basic details like Name, Father's name, Nationality etc.

PAN

Permanent residential address and also Present address, Mail ID etc.

Proof of Identity

Residential proof

the specimen signature and latest photograph self attested shall be in the prescribed **Form No.INC.10**

If the subscriber is already a director or promoter of a company(s), the particulars relating to Name of the company, CIN and Whether interested as a director or promoter

PARTICULARS OF FIRST DIRECTORS AND THEIR CONSENT TO ACT

COMPANIES (INCORPORATION) RULES, 2014

Form DIR.12

• The particulars of each of the first directors and his interest in other firms or bodies corporate along with his consent to act as director of the company in D1R-2 shall be filed with Form.No.D1R.12

Attachments

- · Declaration by first director in Form INC-9
- · Declaration & Consent of the appointee director, managing director, in Form No. DIR-2
- Interest in other entities of director

VERIFICATION OF REGISTERED OFFICE

COMPANIES (INCORPORATION) RULES, 2014

Attachments

- The registered document of the title of the premises; or
- The notarized copy of lease or rent agreement + a copy of rent paid receipt not older than 1 month;
- The authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and
- The proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months

<u>Form</u>

INC.22

PRIVATE COMPANY

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- one lakh rupees or such higher paid-up share capital as may be prescribed, and which by this articles,—
- (i) restricts the right to transfer its shares;
- (ii) except in case of One Person Company, limits the number of its members to two hundred:
- Provided that where two or more persons hold one or more shares in the company jointly, they shall, for the purposes of this clause, be treated as a single member:
- Provided further that—
- (A) persons who are in the employment of the company; and
- (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

INTEGRATED INCORPORATION FORM

Sections 4,7,12,152 and 153 of the Companies Act, 2013 and Rules

-Single application for Name Reservation, Incorporation and for allotment of DIN.

-Accompanied by supporting documents including details of Directors & subscribers, MOA and AOA etc.

-Once the Form is processed and found complete, company gets registered ,CIN would be allocated, and also DINs gets allotted to the proposed Directors(Max – 3) who do not have a valid DIN.

-The MOA as per Form INC 30 and AOA as per Form INC 31 to be prepared along with the provisions of rule 13.

Form

1NC.29

COMMON MISTAKES

PRIVATE COMPANY - Sec 68(2)

· Old definition under the Companies Act, 1956 is being used.

DIR -12

• MD appointment in DIR -12 not supported by AOA provisions

Section 196(2)

• MD appointment not restricted to 5 Years as per Section 196(2) of the Act

1D Proof

Identity Proof not as per Rule 16(1)(m) — PAN + Voter ID/Passport/Driving
 Licence/Aadhar Card copy

Residential Proof

Residential Proof not older than 60 days — Bank Statement/Electricity
 Bill/Telephone/Mobile Bill

COMMON MISTAKES

1NC Rule 25

• Lease Deed is not notarized as per INC Rule 25(2)(b)

Lease Deed

• Lease Deed is not supported by rent receipt with in one month as per INC Rule 25(2)(b).

Seal of Company

· Lease Deed contain name and seal of the company yet to be incorporated.

Foreign Subscribers

Foreign Subscribers visiting India on Tourist Visa execute MOA & AOA

EB Bills

· Electricity Bills without address attached as proof of registered office

COMMON MISTAKES

MOA MOA subscription sheet not in own hand writing Witness statement as per INC Rule 13 is not made (1 witness to subscribers Witness who have subscribed and....) Date of signature of the first director in affidavit and date of witness by Date Notary differs in INC-9 Scanned Copies Scanned copies are not Legible EB Bills Electricity Bills without address is attached as proof of registered office

HOW TO FILE INC 29

MOA

· As per INC 30

AOA

• INC 31 with Private company modification

1NC -9

For subscribers and first Directors

DIR-2

· Consent to act as Director

Regd Office Add

· As per INC Rule 25 or Address for correspondence.

Thank You...