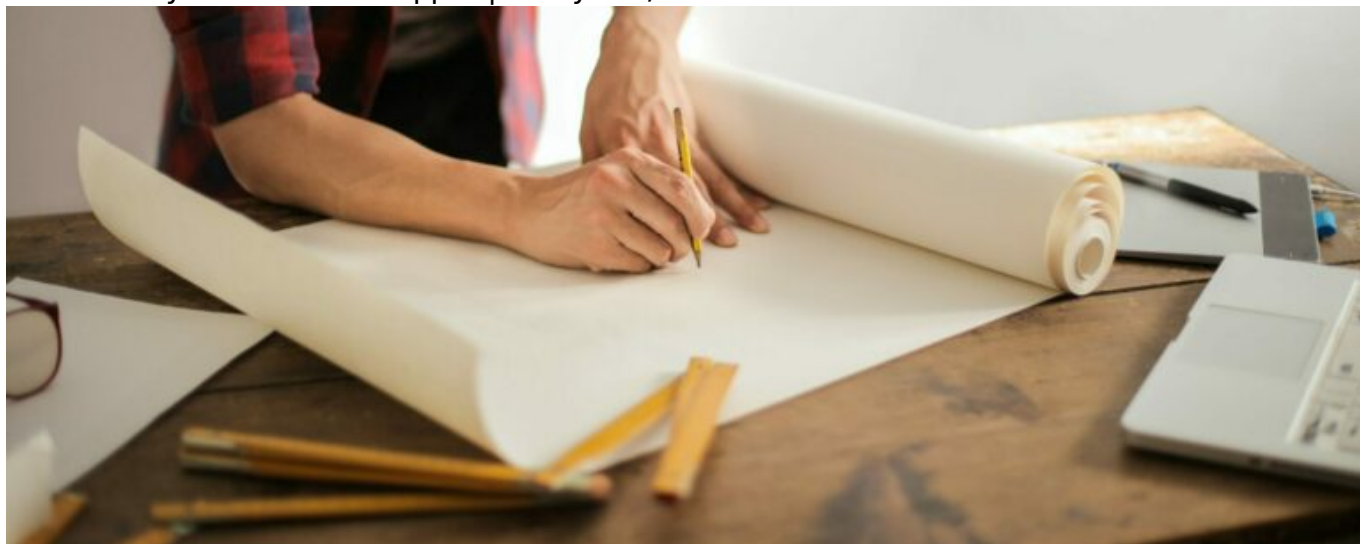


The Five-Point Legal Checklist For Registering A Company

written by Rohan Chinnappa | July 27, 2022



Legal Checklist For Registering A Company

It is no secret that the procedure of creating and establishing a company is demanding in every way possible. However, the establishment of a company is incomplete without registration with the Registrar of Companies (ROC). For a company to truly enjoy the advantages given to corporate bodies under law, it must be formally recognised as an independent legal entity. This requires registration, followed by the incorporation of the company. In recent years, the registration and incorporation process has shifted online, making the process swift. This article focuses on important checkpoints for the registration of four kinds of business structures i.e., private companies, limited liability partnerships, one-person companies and public companies in India. The steps of registration are as follows:

Name Approval

The first step toward getting a company registered is to select the name of the company and have it approved by the Ministry of Corporate Affairs (MCA). This is to ensure that the proposed name selected does not contain any word(s) as prohibited in Section 4(2) & (3) of the Companies Act, 2013 read with Rule 8 of the Companies (Incorporation) Rules, 2014. The simplest way to do this is through the latest web service portal introduced by MCA called SPICe+ (Simplified Proforma For Incorporating Company Electronically). The applicant (anyone on behalf of the company) is prescribed to run a company name search through the web portal before applying for name approval through SPICe+. [1]

New users are required to create a login account first before using the SPICe+ service. Upon paying INR 1000, part A of SPICe+ is available for the applicant to submit an application with the option for two names through the incorporation form. Within 20 days of applying, the Registrar of Companies (ROC) will choose between the two names and approve one. If the name must be changed, the portal consists of RUN (Reserve Unique Name) web service that helps to ensure that the name of the company does not resemble or nearly resemble any other company or LLP in existence. Upon name approval, the company shall move to Part B of the form.

The Central Registration Centre (CRC), which is a central authority established by the MCA for quicker disposal of applications for name availability/reservation, also has the power to either accept or reject the

name. It can also accept the resubmission of such an application within 15 days for rectification of defects, if any, after allowing or rejecting the name. Such procedure for obtaining approval of company name is followed by private companies, one-person companies (OPC) and public limited companies. However, to ascertain the availability and reservation of the name of an LLP, e-Form 1 and e-Form 2 must be filed along with compliance with rules under the Limited Liability Partnership Rules, 2009. [2]

Obtaining DSC & DIN

After the company name is reserved, the next step is to apply for a certificate of incorporation. However, to file the application, supplementary forms, and other required documents through the web portal, a Digital Signature Certificate (DSC) is required from a proposed partner of the LLP or a proposed Director of a Company. In both private and public limited companies, DSC is made compulsory for the signing of documents and forms required for incorporation.

It is to be noted that DSCs are on the same footing as the physical signature of a person in the eyes of the law. A DSC can be obtained from any authorized agency (recognized by the Government of India) by logging onto the website of a certifying authority licensed to issue digital certificates. Documents needed for issuing a DSC are the DSC application, photo ID proof and address proof.

Another important document for registration is the Director Identification Number i.e., DIN for directors. DIN can be applied for either through SPICE+ or by filing a DIR-3 (Director's consent) form available on the MCA portal. In the case of an OPC, the application for obtaining the DSC & DIN of all the directors should be made before registration. As far as LLPs are concerned, anyone wishing to be a designated partner of the company must apply for a DPIN (Designated Partner Identification Number). This can be used interchangeably with DIN for registration purposes of an LLP.

MOA & AOA

After obtaining the DSC and DIN, two fundamental documents of a company i.e., the MOA (Memorandum of Association) and AOA (Article of Association) along with the application of incorporation under form INC-32 must be attached as per Rule 38 of Company (Incorporation) Rules, 2014. The rule states that under SPICEe+, MOA and AOA should be filed through INC-33 (eMoA) and INC-34 (eAoA.) Public, private or one-person companies must draft the MOA and AOA. LLPs, however, do not mandatorily need MOA or AOA for registration. [3]

The draft prepared by the directors or the company owner should consist of all the key features, rules and regulations and internal management of the company. MOA contains six mandatory clauses: name clause, registered office clause, objects clause, liability clause, capital clause, and subscription clause. AOA contains provisions as per the business requirements of the company. As per Rule 13 of the Company (Incorporation) Rules, the MOA and AOA must be signed by each subscriber of the MOA with their name, address, designation and occupation attached to it. [4] It must be ensured that the MOA and AOA are dated on a day after the stamping.

Application For Certificate Of Incorporation

Part B of the SPICEe+ portal provides multiple services for registering a company and other document-based services. After filing for DSC, DIN, e-MOA and e-AOA, the next step for a company is to finally apply for a certificate of incorporation. The Companies Act requires companies to verify and provide

detailed disclosures about promoters and directors at the time of incorporation. [5] Thus, the application for company incorporation can be successfully submitted only if accompanied by certain documents. The documents required are listed as follows,

For Private Ltd. [6] companies, Public Ltd. [7] companies and OPCs [8]

- Proof of identity of shareholders and directors
- Proof of address of shareholders and directors
- PAN of shareholders and directors
- Passport-sized photographs of shareholders and directors
- Utility bills (for proving usage of proposed office)
- NOC from landlord
- DIN
- DSC
- MOA AND AOA

Other mandatory compliances consist of filing AGILE-Pro-S (Application for Registration of the GSTIN, ESIC, EPFO) [9] and declaration by subscriber/first director under form INC-9 along with the application of incorporation certificate. [10] However, it is optional to apply for GSTIN. Declarations that all necessary compliances have been followed should be made by professionals such as a Company Secretary or a Chartered Accountant. Under part B, the company also has the facility to obtain PAN (49A) and TAN(49B) numbers. The ROC within whose jurisdiction the proposed registered office is situated then processes the SPICe INC-32 form for the incorporation certificate. [11]

For LLPs [12],

- Proof of identity of partners
- Proof of address of partners
- PAN of partners
- Passport-sized photographs of partners
- Ownership proof of proposed offices
- NOC from landlord
- DPIN
- LLP Agreement

For all four types of organisations, once the incorporation documents are submitted, the incorporation certificate is issued.

Certificate Of Commencement

After the company receives the incorporation certificate, it must obtain a certificate of commencement as mandated by the Company (Amendment) Ordinance, 2018. The certificate can be obtained by filing a declaration with the directors of the company at the time of the commencement of the business under Form-20A. [13] For public companies, the company needs to file a declaration (eForm-20) and attach the statement in lieu of the prospectus or file a declaration (eForm-19) and attach the prospectus to it. Certificate of commencement for business is applicable only for private & public limited companies and not for LLPs.

In case no declaration has been filed with the Registrar within 180 days from the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, they may initiate action for the removal of the name of the company from the register of companies.

Lastly, after all, formalities and procedural requirements have been

completed, companies are required to open a bank account in the name of the registered company. The company or LLP will be then considered successfully registered and incorporated.

If you're curious about other aspects of forming a company, you can read more about the purpose and components of a founder's agreement, or the basics of seed funding in India on our blog.

[1] Name search portal: <http://www.mca.gov.in/>

[2] 'LLP forms', MCA, available at <https://www.mca.gov.in>

[3] 'LLP registration procedure', Clear Tax, available at <https://cleartax.in/s/>

[4] Rule 13, Company (Incorporation) Rules, 2014

[5] 12.1, 'Report of the expert committee on company law', MCA

[6] 'List of documents required for a private ltd company', Ebizfiling, available at <https://ebizfiling.com/>

[7] 'Public Limited Company Registration', IndiaFilings, available at <https://www.indiafilings.com/public-limited-company>

[8] 'One Person Company', IndiaFilings, available at <https://www.indiafilings.com/one-person-company>

[9] 'FAQs for INC-35', Agile pro-S, MCA available at <https://www.mca.gov.in/MinistryV2/agile.html>

[10] Rule 20, Company Incorporation Rules, 2014

[11] Rule 38 (2)(1), Companies (Incorporation) Fourth Amendment Rules, 2016

[12] 'Documents for registering LLP', ClearTax, available at <https://cleartax.in/s/>

[13] 10A (3), Company (Amendment) Ordinance, 2018

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