

BIRTHING OF A COMPANY

“Ignorantia Facti Excusat, Ignorantia juris non excusat”

“Ignorance of fact may be an excuse but ignorance of law is not an excuse”

All you wanted to know about the law and procedure related to formation of a Private Limited Company in India.

FAQS FOR FORMATION OF A PRIVATE LIMITED COMPANY

1. What are the forms to be filed with ROC for registration of a company?

After name availability, following forms need to be filed with ROC for registering the company with Registrar.

e-Form 1 – Declaration stating that the requirements of the Act and the rules thereunder have been complied with in respect of registration of the proposed company.

e-Form 32 – Details of the proposed directors (minimum 2 number)

e-Form 18 – Situation of the Registered Office

Memorandum of Association (MOA) & Articles of Association (AOA) – To be executed by the promoters. Subscription sheet should be hand written in the presence of a witness, stating their full name, father’s name, residential address, occupation, number of shares to be subscribed etc alongwith their signature.

Power of Attorney (POA) – To be signed by all the subscribers of MOA authorizing one of the subscribers or any other person to act on their behalf for the purpose of incorporation and accepting the certificate of incorporation. This is an optional document.

2. What is the significance of Registered Office?

While the business may be carried on from either Registered Office or other corporate office, Registered Office determines the jurisdiction of ROC for incorporation of the Company as well as registration / filing of returns with various authorities like RBI, DGFT, Service Tax, VAT etc. Further, it becomes relevant in case of any disputes since the jurisdiction of the court will be decided based on the jurisdiction of Registered Office.

Registered Office can be shifted at any time to any other place in India by following the procedure laid down in the Act.

Within in city limits	Approval of Board
Outside city limits	Approval of Board alongwith approval of Shareholders
Within state from jurisdiction of one ROC to another ROC	Approval of Board and Shareholders alongwith confirmation of Regional Director
Outside state	Approval of Board and Shareholders alongwith confirmation by the Company Law Board

Entrepreneurs would do well to bear this in mind while choosing to register their company. The city of registered office becomes relevant in view of the costs and long drawn procedures involved in shifting of registered office from one state to another.

3. Is there any stamp duty to be paid?

Yes. Stamp duty is required to be paid on MOA, AOA, e-Form 1 and POA, if any. Duty amount varies from one state to another state since the levy is under the respective state Stamp Act. (http://www.mca.gov.in/MCA21/dca/eStamp/eStamp_rate.pdf)

In Karnataka following stamp duty is applicable:

E-Form 1A	Rs.20
MOA	Rs.1000
AOA	Rs.500 on every Rs.10 lakhs of Authorized Capital or part thereof
POA	Rs.100

4. What is a Certificate of Incorporation?

Once the documents are submitted online, ROC scrutinizes the same and indicates corrections required, if any. Upon re-submitting the rectified form or providing satisfactory explanation, ROC registers the company and issues a digitally signed Certificate of Incorporation. As such issue of hardcopy of the certificate has been done away with.

Certificate of Incorporation is a birth certificate with a unique 21 digit, alpha-numeric identification number called “Corporate Identification Number” (CIN).

Specimen CIN: **U24200KA2012PTC025987**

1st digit – Listing status

Next 5 – Industry code

Next 2 – State code

Next 4 – Incorporation year

Next 3 – Ownership

Next 6 – ROC registration number

5. When can a company start its operations?

A Private Limited Company can start its operations immediately after receipt of Certificate of Incorporation.

The 1st step would be to apply for a PAN and open a bank account after allotment of PAN. Other statutory registrations explained in the earlier issues need to be completed.

6. Is there any specific compliance required in case of incorporation of a company by a non-resident?

Yes. Following compliances are required to be fulfilled in case of incorporation of a company by a non-resident (could be an NRI / PIO / foreign citizen / foreign company):

- Prior approval of RBI / FIPB / Ministry is required for foreign capital investment in certain cases in terms of the applicable FEMA regulations and FDI Policy Circular.
- Each page of MOA & AOA alongwith subscription page must be attested & apostilled by the Consulate General of India of the home country of subscribers.
- Subscription page of MOA and AOA must be witnessed and notarized by a Notary of the home country of subscribers.
- In case of subscribers being non-resident company, extracts of the Board Resolution of the investing company, approving the investments and authorizing a person for representing the company and acting on its behalf in respect of the incorporation. This also should be notarized by the Public Notary of investing country and attested & apostilled by the Consulate General of India.
- If the representative of the subscriber is an Indian, above notarization and attestation procedure is not required.
- If the subscriber comes to India and signs the documents, notarization and attestation procedure is not required. As proof for the same, Emigration Seal on the Passport from Indian Airport Authorities becomes relevant. However, signature must be witnessed by a practicing professional in India.

Seeking the assistance of a good legal professional would help entrepreneurs in easing the birthing pains.....!!!!