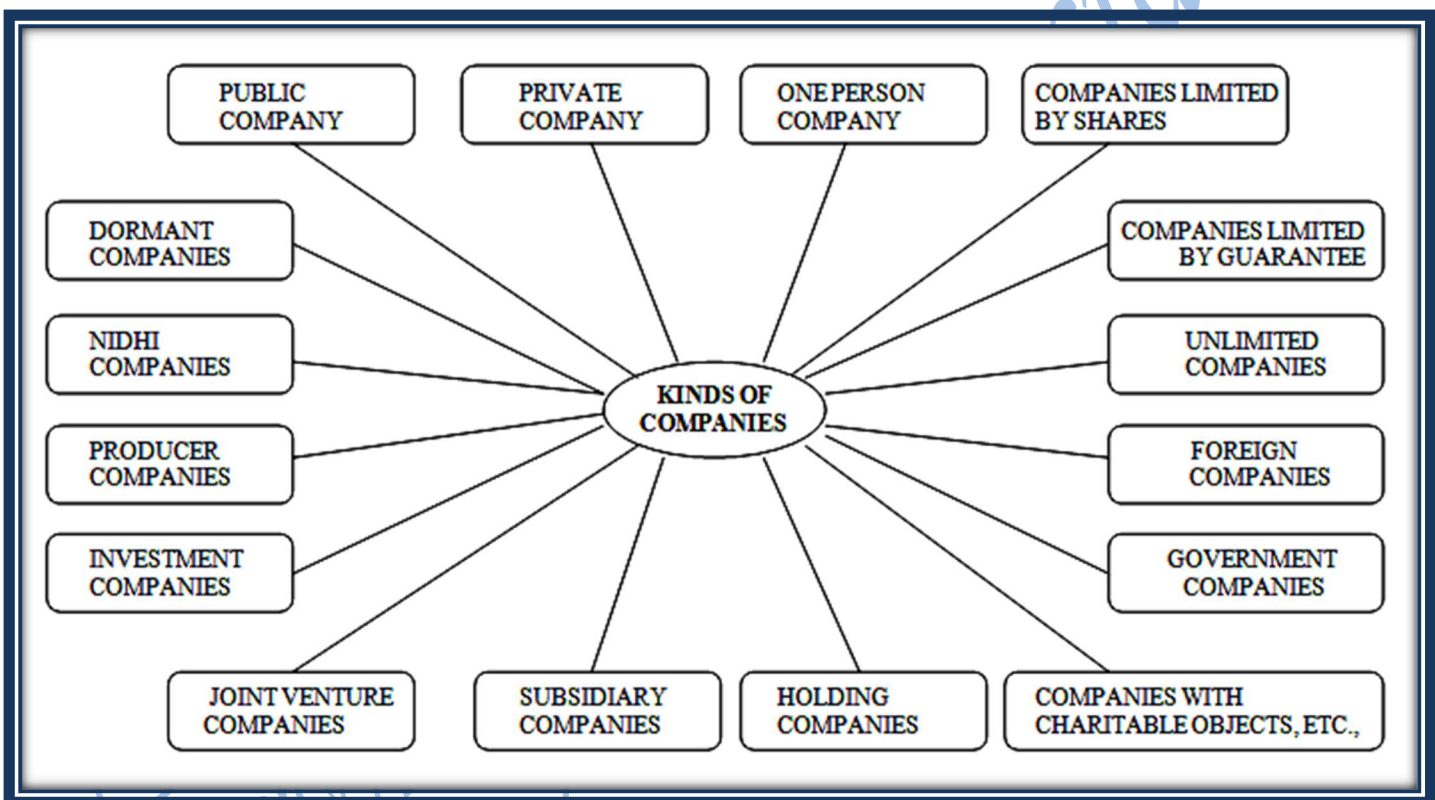


INCORPORATION OF COMPANIES

Incorporation of a Company is the process of formation of a company. The term “company” is defined under Section 2 (20) of the Companies Act, 2013. “Company” means a company incorporated under this Act or under any previous company law.



PRE- REQUISITES OF INCORPORATION

	Public Limited Company	Private Limited Company	One Person Company
Minimum Paid up share capital	No limit	No limit	No limit
Minimum no. of Subscribers	7	2	1
Maximum no. of subscribers	No limit	200	1
Minimum no. of Directors	3	2	1

Maximum no. of Directors	15	15	15
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PROCESS OF INCORPORATION OF COMPANIES

1. OBTAINING DSC

Digital Signature Certificate (DSC) is a digital equivalent for signing electronic documents. The validity period of a DSC is one or two years. The forms required to be filed for incorporation of a company needs to be signed with DSC.

Kinds of DSCs:

- A) Class 2 DSC:** The identity of the applicant of DSC is verified against trusted, pre-verified database.
- B) Class 3 DSC:** This is the highest level where the applicant of DSC needs to present himself in front of Registration Authority (RA) and prove his identity.

Documents required for DSC Application (If applicant is Indian National)

- Identity proof ----- Self Attested copy of PAN card
- Address proof ----- Self Attested copy of Adhaar card/ Voter's id/ Passport/ Driving License
- Passport size photo

Documents required for DSC Application (If applicant is Foreign National)

- Identity proof ----- Self Attested copies of Passport, VISA, and Resident Permit Certificate (if applicant is in India)
- Address proof ----- Self Attested copy of Voter's id/ Passport/ Driving License/ any other address proof issued by Government.
- Passport size photo

[Note: All the identity and address proofs of the applicant should be attested by Embassy of the Native country of the applicant/ Apostilized by Native country after Public Notary (if such country is in Hague convention)/ Consularized by Native country after Public Notary (if the country is not in Hague convention)]

2. RESERVATION OF NAME

Name applications will be processed by Central Registration Centre (CRC) and such name will be subjected to comprehensive check by the CRC and thereafter they approve or reject. To avoid rejection of name, it is ideal to undergo search whether there is any name of company or trademark existing.

The proposed name should not be undesirable, i.e., identical, resembling, restricted, or prohibited under the conditions of Rule 8 of the Companies (Incorporation) Rules, 2014.

The proposed names cannot be considered as distinguishable with existing name of Company/LLP on the basis of the followings;

- Plural version of any of the words appearing in the name
- Type and case of letters, spacing between letters and punctuations marks, joining words together or separating the words
- Different tense of the same word
- Using different phonetic spellings or spelling variations
- Mis-spelled words, whether intentionally or not
- The addition of an internet related designation such as .com, .net, etc.,
- The addition of words like NEW, MODERN, THE, etc.,
- Different combination of the same words
- Mere translation or transliteration in Hindi or English

The name shall be considered undesirable if,

- It violates the Emblems and Names (Prevention and Improper Use) Act, 1950.
- It includes name of a trademark whether registered or applied for registration and there No Objection Certificate not received for such usage
- it includes any word(s) offensive to any section of people.

Name for a proposed company can be reserved by filing Part- A of Form SPICe+. If the applicant wants to apply for name, incorporation and other integrated services together, Part- A and Part- B can be filed together. In SPICe+, Part- A is for reservation of name and Part- B is application for incorporation. Part- A and Part- B of SPICe+ can also be filed separately. Firstly, Part- A can be filed with 2 proposed names and approval of name can be awaited. Secondly, on receipt of approval of name incorporation filings can be made by filing Part- B of SPICe+.

While applying for name for reservation, 2 proposed names can be given out of which one can be approved. In brief, explanation for such proposed names and object of the proposed company should be mentioned.

Before the Companies (Incorporation) Amendment Rules, 2020 became effective (i.e., 23/02/2020), reservation of name was made via RUN (Reservation of Unique Name), a web form. After that amendment, RUN can be used only for change of name for an existing company.

3. DRAFTING OF MEMORANDUM OF ASSOCIATION

The Memorandum of Association (MOA) is the charter of a company and it is the document that defines the area within which a company can operate. The MOA shall be in any of the respective forms specified in Table A, B, C, D and E as per Schedule I of the Act.

TABLE	APPLICABILITY
A	Company limited by shares
B	Company limited by guarantee and not having share capital
C	Company limited by guarantee and having share capital
D	Unlimited company and not having share capital

E	Unlimited company and having share capital
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The MOA has 6 clauses, namely,

- | | |
|-----------------------------|-----------------------|
| 1. Name clause | 4. Liability clause |
| 2. Registered office clause | 5. Capital clause |
| 3. Object clause | 6. Subscribers clause |

[If the company is a One Person Company, Nominee clause shall be included]

4. DRAFTING OF ARTICLES OF ASSOCIATION

The Articles of Association (AOA) of a company are the bye-laws or rules and regulations governing the management of internal affairs and the conduct of business. An entrenchment provision in articles of enables a company to follow more restrictive procedures. The AOA can be in any of the respective forms specified in Table F, G, H, I and J as per Schedule I of the Act.

TABLE	APPLICABILITY
F	Company limited by shares
G	Company limited by guarantee and having share capital
H	Company limited by guarantee and not having share capital
I	Unlimited company and having share capital
J	Unlimited company and not having share capital

5. FILING OF INCORPORATION FORMS

Within 20 days from the date of approval of name of the company, filings for incorporation should be made. Such filings include Form SPICe+ (i.e., Part- B), SPICe+ MOA, SPICe+ AOA and AGILE PRO.

SPICe+ MOA, SPICe+ AOA and AGILE PRO are linked forms for SPICe+

Part- B of SPICe+ includes;

- | | |
|---|--------------------------------|
| 1. Incorporation | 6. EPFO registration |
| 2. DIN allotment | 7. ESIC registration |
| 3. Appointment of first Directors | 8. Profession Tax registration |
| 4. Notice of Registered Office of the Company | 9. Opening of Bank Account |
| 5. Issue of PAN & TAN | 10. Allotment of GSTIN |

Basic documents required for Incorporation

1.	Declaration by first subscribers and directors	
2.	Proof of Office Address	Registered document of title of premises or Notarized copy of lease/ rental agreement with rental receipts (not older than one month) or Authorization from the owner of the premises to use the premises as registered office of the company
3.	Copies of Utility Bills	Telephone Bill/ Gas Bill/ Electricity Bill etc., not older than 2 months
4.	Interest of first directors	

5.	Proof of identity of subscribers	Voter ID/ Passport/ Diving License
6.	Proof of address of subscribers	Bank Statement/ Electricity Bill/ Telephone Bill/ Mobile Bill
7.	Proof of identity of first directors	Voter ID/ Passport/ Diving License
8.	Proof of address of first directors	Bank Statement/ Electricity Bill/ Telephone Bill/ Mobile Bill

Copy of PAN is ideally needed to be verified while filing

6. ISSUE OF CERTIFICATE OF INCORPORATION

When the Registrar is satisfied with the documents submitted for incorporation, he issues Certificate of Incorporation which has the distinct Corporate Identification Number (CIN) of the company.

If the Registrar is not satisfied, the application will be resent for resubmission along with reasons for not approving. On consideration of such reasons, the application should be corrected accordingly and resubmitted. Usually, two re- submissions are allowed, which will thereafter be rejected.

Sowmya & Associates