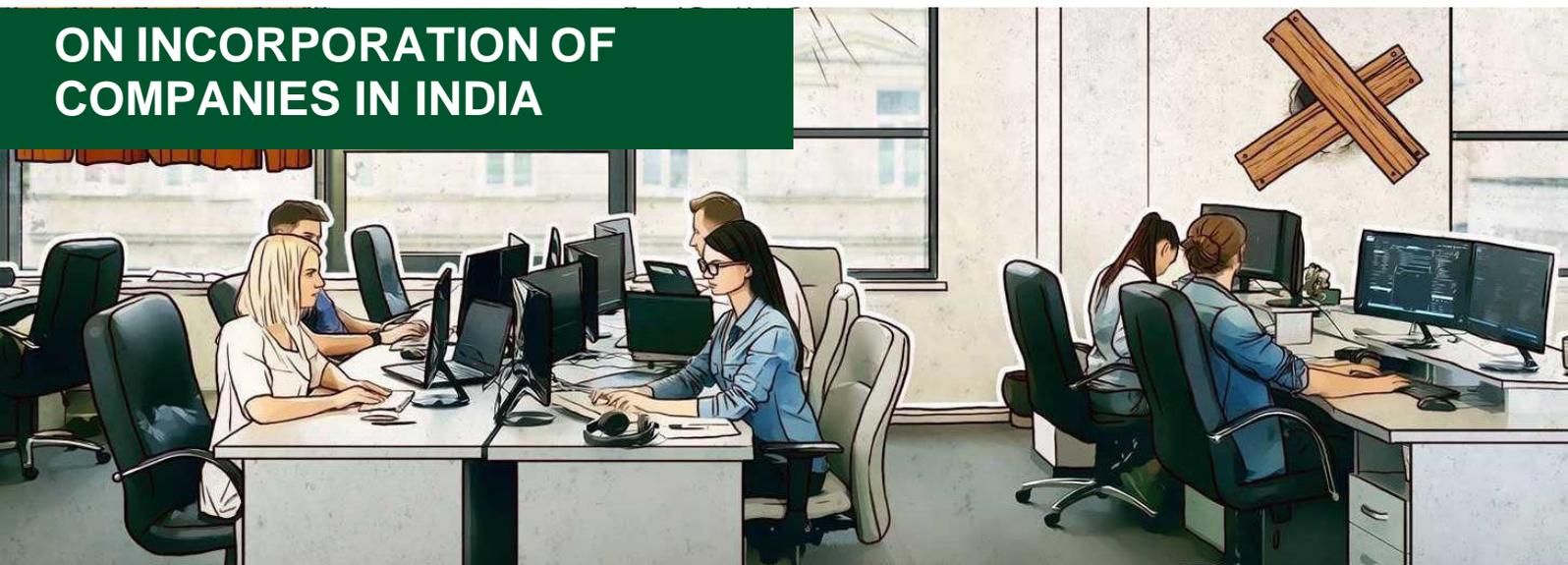


## ON INCORPORATION OF COMPANIES IN INDIA



The process of incorporation of companies in India has undergone several changes. These changes have been introduced as part of Government of India's ease of doing business initiatives. Business reforms over the past several years have helped India move to 63<sup>rd</sup> position as per the World Bank Group's Doing Business 2020 study.

This primer aims at disseminating important information on the laws and regulations governing incorporation of companies in India.

1. **Which law governs incorporation of companies in India?**

The Companies Act, 2013 (**Companies Act**) and rules made thereunder.

2. **What are the types of companies in India?**

- (i) **One-person company (OPC):** basic characteristics are: (a) requires only 1 director, 1 member and 1 nominee of the member; and (b) only a natural person who is an 'Indian citizen' and 'resident in India' is eligible to incorporate an OPC.
- (ii) **Private limited companies:** basic characteristics are: (a) it is prohibited from raising capital from public; (b) the total number of shareholders / members are limited to 200; and (c) requires minimum of 2 directors and 2 shareholders.
- (iii) **Public limited companies:** basic characteristics are: (a) it can raise capital from the public; and (b) requires minimum 3 directors and 7 shareholders.

3. **Which authority oversees incorporation and other related company compliances?**

The Registrar of Companies (**ROC**).

4. **How are applications for incorporation made in India?**

An application for incorporation of companies in India is to be made electronically on the website of the Ministry of Corporate Affairs (**MCA**)

## 5. What are the points / information to be considered for incorporating a company?

- (i) Obtain digital signature certificate (**DSC**) of the directors / subscribers.
- (ii) Decide on the name of the proposed company in accordance with the naming guidelines prescribed under the Companies Act and rules.
- (iii) Decide the capital structure of the proposed company.
- (iv) Provide names of the proposed directors and subscribers - Obtain details / information of the directors and first subscribers such as full name, address, date and place of birth, nationality, educational qualification, email address, phone number, proof of address as prescribed under the Companies Act.
- (v) Provide a contact number and email address of the proposed company.
- (vi) Draft the charter documents of the proposed company – the memorandum of association (**MOA**) and articles of association (**AOA**).
- (vii) Decide the place of situation of the registered office of the company.
- (viii) Obtain declarations and other documents as prescribed under the Companies Act from the first subscribers and first directors.
- (ix) Appoint an authorized signatory for making an application for obtaining Goods and Services Tax Identification Number (**GSTIN**), Employees Provident Fund Organization (**EPFO**) registration, Employees State Insurance Corporation (**ESIC**) registration, Profession Tax registration and opening of bank accounts (mandatory). It is to be noted that these applications shall be made by the authorized signatory who is a citizen and resident of India, having valid permanent account number (**PAN**) under Indian tax laws.
- (x) Proof of identity and address proof of the subscribers as per the Companies Act and rules. PAN is mandatory in case of Indian nationals and passport is mandatory in case of foreign nationals.



**6. What is a Digital Signature Certificate (DSC)?**

A DSC facilitates signing of forms electronically. All forms / documents are required to be filed on the MCA website / portal using the DSCs of the authorized persons. The use of a DSC has legal validity under Indian law (the Information Technology Act, 2000).

**7. What are the additional factors to be considered in case of foreign nationals?**

- (i) All documents would be required to be notarized and apostilled (in case the country is a party to the Hague Apostille Convention, 1961). Apostilization is a process for certification of foreign public documents (e.g., passport, birth certificate etc.) by a competent authority of one country, which may be relied upon by authorities of another country.
- (ii) All documents would be required to be notarized before the Notary Public (in case the country is not a party to the Hague Apostille Convention, 1961).
- (iii) The identity and / or address proofs which are in a language other than English should be translated in English from a professional translator carrying his details (name, signature, address) and bearing his seal. Also, translation done by the notary of home country is also acceptable.

**8. What is the essential consideration at the time of formation of Board of Directors (BOD) of the proposed company?**

There should be at least 1 resident Indian director on the BOD of the proposed company. A resident Indian director means a person who stays in India for a period of at least 182 days during the financial year.

**9. Can a body corporate / company / limited liability partnership (LLP) be a subscriber / member in the proposed company?**

The Companies Act permits investment in the proposed company by a body corporate / company / LLP. A body corporate under the Companies Act includes a company incorporated outside India.

**10. What are the compliances / disclosures required to be made by a company / LLP / body corporate (who is a subscriber / member of a proposed company) at the time of incorporation of the proposed company?**

- (i) The company / LLP / body corporate would be required to authorize a person to subscribe to the MOA of the proposed company on its behalf and make investment in the proposed company. Details such as name, address, and designation of the authorized person would be required at the time of filing the incorporation form.
- (ii) Details such as the registration number of the body corporate, its registered office or principal place of business, email address would be required at the time of filing the incorporation form.
- (iii) In case of foreign bodies corporate, in addition to the aforesaid information; a copy of certificate of incorporation and document stating its registered office would be required at the time of filing the incorporation form.



11. **What are the forms to be filed for incorporating companies online?**

Web-form SPICE+ along with linked forms SPICE+ e-MOA, SPICE+ e-AOA and e-Form AGILE PRO are required to be filed together at the time of incorporation.

12. **What does SPICE+ stand for?**

SPICE+ stands for Simplified Proforma for Incorporating Companies Electronically.

13. **What are the services offered by web-form SPICE+?**

SPICE+ consists of two (2) parts: Part A and Part B.

**Part A** facilitates name reservation for the proposed company and **Part B** offers a bouquet of services such as:

- (i) Incorporation.
- (ii) Director Identification Number allotment up to 3 directors.
- (iii) Mandatory issue of PAN.
- (iv) Mandatory issue of Tax Deduction and Collection Account Number (**TAN**).
- (v) Mandatory issue of Establishment Code through EPFO registration Mandatory issue of Employer Code through ESIC registration.
- (vi) Mandatory issue of Profession tax registration (mandatory in the state of Maharashtra).
- (vii) Mandatory opening of bank accounts for the proposed company.
- (viii) Allotment of GSTIN (optional).



14. **What services does form AGILE PRO offer?**

AGILE PRO allows for application of GSTIN, ESIC registration, EPFO registration and Profession tax registration and mandatory opening of bank account of the proposed company.

15. **What are the steps involved in incorporating companies online?**

The following are the steps involved in incorporating companies online:

**Step 1:** Obtain DSC of the first directors / subscribers.

**Step 2:** Application for reservation of name with the Central Registration Centre, MCA, through web-form SPICE+ (Part A). Typically, name approval takes 2-3 days.

**Step 3:** Once the name gets approved, an application for incorporation of companies shall be made in SPICE+ (Part B) within 20 days from date of name approval. SPICE+ shall be accompanied by filing of e-MOA and e-AOA along with AGILE PRO for obtaining GSTIN / EPFO/ ESIC / Profession Tax registration and opening of bank account (linked forms). The application shall be accompanied by all documents / information as elucidated in Clause D.

**Step 4:** Where the ROC on examination of SPICE+ finds it necessary to call for further information or finds the application incomplete or defective in any respect, he may give the applicant 2 chances of

resubmission. The total period of resubmission shall not exceed 30 days.

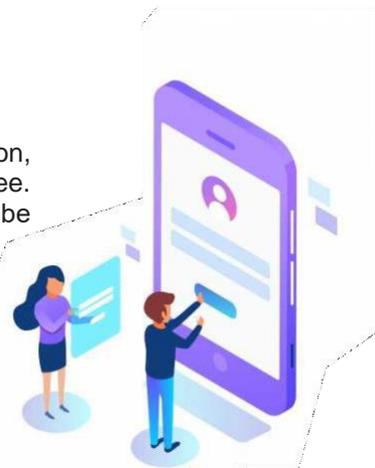
**Step 5:** The Certificate of Incorporation shall be issued by the ROC in Form INC-11.

16. **What are the fees for registration?**

- (i) The cost of application for name reservation is INR 1000.
- (ii) For companies having authorized share capital up to INR 1.5 million, MCA has granted exemption from payment of incorporation fee. However, stamp duty for filing of MOA and AOA would be required to be paid. Stamp duty payable varies from state to state.

17. **What are the effects of registration of a company?**

The incorporated entity shall be capable of exercising all such functions as prescribed under the Companies Act and shall enjoy perpetual succession with a power to acquire, hold, dispose of property (movable / immovable / tangible / intangible). It shall have the power to contract and sue and be sued in its own name.



18. **What are the compliances to be undertaken post incorporation of the Company?**

- (i) Aboard meeting shall be convened within 30 days from date of incorporation of the company.
- (ii) The first auditor of the company shall be appointed within 30 days from date of incorporation, who shall hold office until the conclusion of the first annual general meeting of the company.
- (iii) The newly incorporated entity shall be required to file a declaration for 'Commencement of Business' within 180 days from date of incorporation.
- (iv) A return of Significant Beneficial Owners (**SBO**) of the company shall be filed with the ROC within 30 days from date of receipt of declaration.

19. **How does the Companies Act define SBO?**

A SBO means an individual, who acting alone or together, or through one or more persons or trust (including a trust and persons resident outside India) holds beneficial interests, directly and / or indirectly of not less than 25% percent or such percentage as prescribed in the rules, in shares of a company, the right to exercise or the actual exercising of significant influence or control over the company. It is to be noted that if an individual does not hold any right or entitlement indirectly in the company, he shall not be considered as SBO.

20. **What is the significance of filing the declaration of Commencement of Business?**

A company is not permitted to commence business and cannot exercise any borrowing powers unless it has filed the declaration with the ROC. This compliance requires a declaration from the subscribers that they have paid the value of shares subscribed by them.

21. **What are the timelines for issuance of shares post incorporation of the company?**

- (i) The Companies Act mandates issuance of shares to subscribers within a period of 2 months from the date of incorporation.
- (ii) In case of foreign subscribers, the equity instruments shall



be issued within 60 days from receipt of consideration. Where the issue of such instruments by the Indian company to a person resident outside India is reckoned as Foreign Direct Investment, Form SMF- FCGPR shall be filed within 30 days from date of issuance.

22. **What are the income-tax implications arising on a domestic company in India?**

Under the provisions of the Income-tax Act, 1961 (IT Act), corporate tax rate levied on a company incorporated in India is 30% (plus applicable surcharge and cess). A special regime of corporate taxation was introduced in 2020, whereby the corporate tax rate applicable to a company incorporated in India will be 22% (plus applicable surcharge and cess), subject to the relevant conditions. A company while computing profits can deduct all its expenses incurred for the purposes of business from its gross receipts/turnover.

23. **What on the income-tax implications arising on the shareholders on receipt of dividends?**

Prior to 2020, a domestic company distributing dividends to its shareholders was obligated to pay Dividend Distribution Tax (**DDT**) and accordingly, shareholders were exempt from tax on dividends received. From 2020, DDT has been abolished and shareholders are taxable on receipt of dividends at the applicable rates. A company, though not liable to pay DDT, is, however, obligated to withhold taxes at the applicable rates. It would be relevant to mention that shareholders who are tax residents of a foreign country can claim the benefit of the relevant Tax Treaty applicable to them for any beneficial tax rate, subject to furnishing of the required documents

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