

## **How to Set Up a Company in India**

### **1. Selection of the type of company**

The Promoters of a company may be individual entrepreneurs or body corporate engaged in efforts to incorporate a company. They have the power of defining the object of the company and deciding various matters for the company proposed to be incorporated. It is dependent upon the purpose/s for which the company is to be incorporated, the proposed scale of operations, capital involved, etc. The promoters can select any type of company they wish to form themselves into viz. private company/ public company/ non-profit making company etc.

### **2. DIN Requirement**

As per proviso to Section 253 of the Companies Act, 1956, inserted by the Companies (Amendment) Act, 2006, w.e.f. 1-11-2006, no company shall appoint or re-appoint any individual as director of the company unless he has been allotted a Director Identification Number under Section 266B.

#### **2.1 Requirement for digital signatures**

After 16th Sept., 2006, every document prescribed under the Companies Act, 1956 is required to be filed with the digital signature of the managing director or director or manager or secretary of the Company. Therefore, it is compulsorily required to obtain the digital signatures of at least one director to sign the e-Form 1A and other documents. It may be noted that if the director or other persons covered have digital signatures, their signatures may be used for the above said purpose and there is no need to take new signatures again.

### **3. Selection of name**

Six names are required to be selected in order of preference, after taking notes of numerous provisions, clarifications, circulars and rules made by the Ministry of Corporate Affairs, etc. In case a key word is required, the significance of each key word should be given in the e-Form 1A.

#### **3.1 Application for ascertaining the availability of the selected name**

The promoters are required to make an application for the availability of a selected name to the concerned Registrar of Companies, to be submitted electronically to the Ministry of Corporate Affairs on the portal of MCA. The application should be in e-Form 1A as prescribed by Notification No. GSR 56(E), dated 10th Feb., 2006, duly digitally signed by any one promoter or managing director or director or manager or secretary of the company, along with the fee required to ascertain whether the selected name is available for adoption by the promoters of the proposed company.

#### **3.2 Approval of the name**

After receipt of the completed application in e-Form 1A, the Registrar shall intimate whether the proposed name is available for adoption or not. The confirmation of the name made available by the Registrar shall be valid for a period of six months. In case the promoters fail to submit all the required documents for incorporation within that period, they are required to submit another application after payment of the requisite fees.

#### **4. Preparation of the Memorandum of Association (MOA) and Articles of Association (AOA)**

Drafting of the MOA and AOA is generally a step subsequent to the availability of the name made by the Registrar. It should be noted that the main objectives should match with the objectives shown in the e-Form. These two documents are basically the charter and internal rules and regulations of the companies. Therefore, they must be drafted with the utmost care under expert advice. The clauses referring to other objectives may be drafted in a broader sense.

#### **5. Preparation and Filing of Incorporation Documents**

Within 60 days of approval of the name, the next step requires the preparation of the constitution & other relevant documents of the proposed company and registration of those with the Registrar of Companies' (ROC) Office.

#### **6. Certificate of Incorporation (section 33 and 34)**

On the satisfaction of the Registrar that the requirements specified in sections 33(1) and 33(2) have been complied with by the company, he shall retain the documents and register the MOA, AOA and other documents. Section 34(1) casts an obligation on the Registrar to issue a Certificate of Incorporation, normally within 7 days of the receipt of the documents.

#### **7. Commencement of Business**

A Private Limited Company or a company not having share capital may commence its business activities from the date of its incorporation. However, a Public Limited Company having share capital is required to obtain a certificate of commencement of business before it can commence business.