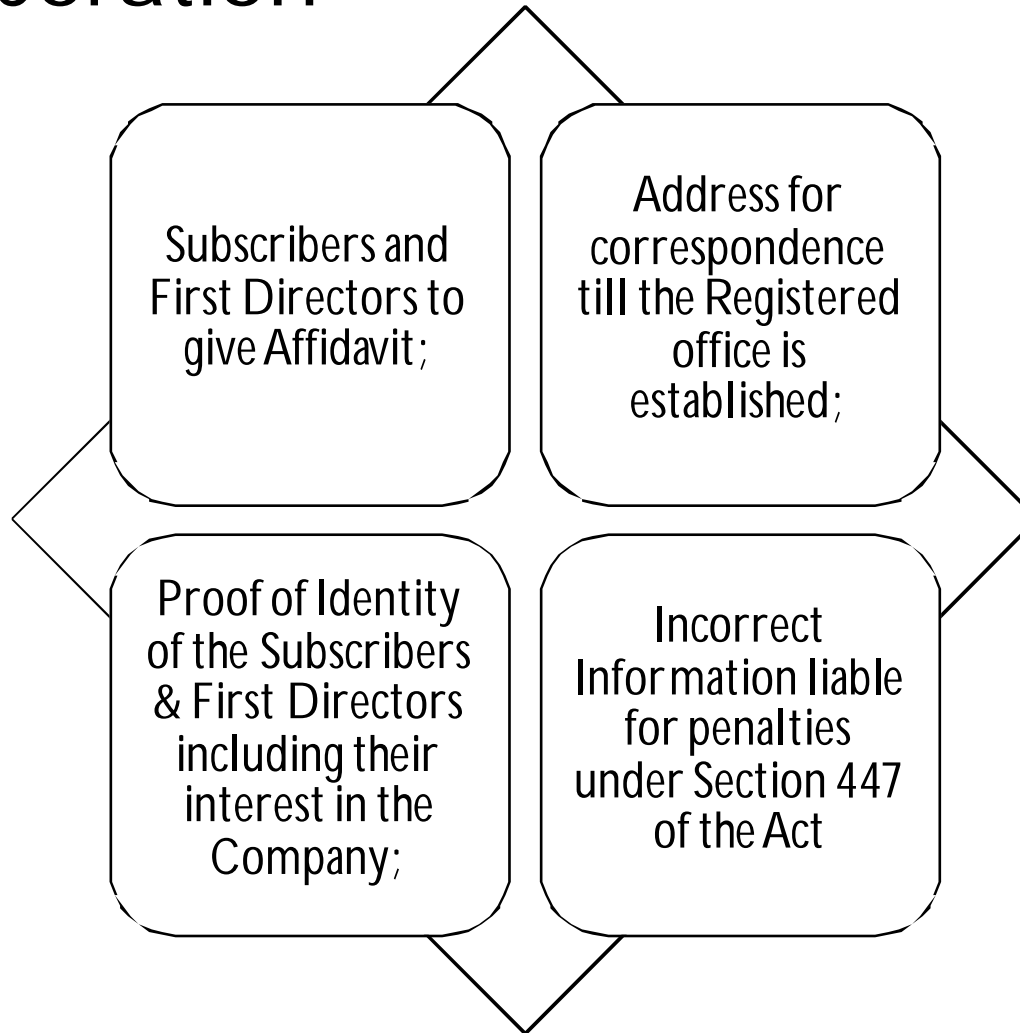


Additional Requirements at the time of Incorporation



E-Forms for Incorporation of company

DIR-12

Particulars of appointment of Directors and the key managerial personnel and the

[Pursuant to sections 7(1)(c), 168 & 170 (2) of The changes among them Companies Act, 2013 and rule 17 of the companies (Incorporation) Rules 2014.]

List of documents which needs to be attached with e-Form DIR-3 in PDF format.

1. Form DIR-2 Consent Letter
2. FORM DIR 8
3. INTEREST IN OTHER ENTITIES

Changes vide Companies Incorporation Rules, 2015

- Integrated Process of Incorporation effective 1.5.2015
 - Single Form for Incorporation for Allotment of DIN (for new applicants), Reservation of Name in e-Form INC-29;
 - Only one name to be proposed for incorporation;
 - Draft MOA and AOA can be selected from templates specified in e-form INC-30 and e-form INC-31 respectively;
 - Verification of the Registered Office can be submitted in e-Form INC-29 to save time of another filing;
 - Integrated with Direct Allotment of PAN, TAN and ESIC Registration on Incorporation;
 - Any defect or rectification required shall be called upon by the Registrar to rectify the mistake in 15 days and thereafter Certification of Incorporation to be issued by the Registrar;

Changes vide Companies Incorporation Rules, 2015 (Certification)

- (i) the draft memorandum and articles of association have been drawn up in conformity with the provisions of sections 4 and 5 and rules made thereunder; and
- (ii) all the requirements of Companies Act, 2013 and the rules made thereunder relating to registration of the company under section 7 of the Act and matters precedent or incidental thereto have been complied with. The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order;
- (iii) I have opened all the attachments to this form and have verified these to be as per requirements, complete and legible;
- (iv) I further declare that I have personally visited the proposed registered office given in the form at the address mentioned herein above and verified that the said proposed registered office of the company is functioning for the business purposes of the company (wherever applicable in respect of the proposed registered office has been given).
- (v) It is understood that I shall be liable for action under Section 448 of the Companies Act, 2013 for wrong certification, if any found at any stage.

Certain Changes



Company to be small to satisfy both the criteria simultaneously;

Capital Criteria

- Paid Up Capital less than Rs. 50 Lacs

Turnover Criteria

- Turnover Less than Rs. 2 Crore

Situation of Registered Office

Form No INC-22 to be filed

Notarized copy of lease/rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;

Authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and

Document of connection of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner/document as the case may be which is not older than 2 months

Shifting Of Registered Office

FORM INC-23

Time Limit reduced to 15 days for information of shifting of registered office;

Special Resolution required for shifting of RO from local limits;

Approval of RD required for Shifting of RO from one state to the other.

Applicable only on confirmation by issue of certificate to that effect;

Penalty of ₹1000 per day to extend up to ₹1lac

FORMS COMPARISON

NEW FORMS	OLD FORMS	DETAILS OF FORMS –CERTIFICATION REQUIRED
DIR-3	DIN- 1	Application for allotment of DIN E-form DIR-3 shall be filed along with attestation of photograph, identity proof and proof of residence of the applicant by the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant, in whole-time practice."
INC-7	1	Filing incorporation documents
DIR-12	32	Change of director (Certification required)
MR-1	25C	Appointment Of MD/WTD/Manager (Certification required)
INC-1	1A	Reservation of Name
INC-22	18	Situation of Registered office (Certification required)
INC-24	1B	Form for change of name of the company

What Rules says (General Circular 6/2014)

INC-1

- Application for Reservation of Name

INC-2

- Application for Incorporation

INC-3

- Nominee Consent Form

What Rules says (General Circular 6/2014)

INC-4

- Change in Member/Nomination in case of Death
- Time limit of 30 days for filing
- To File INC-3 before such change

INC-5

- Intimation of Cessation
- Time limit of 30 days for filing

INC-6

- Application for conversion of OPC

Penalty for Contravention

Company

- Fine up to Rs. 10,000/-

Subsequent
Contravention

- Rs. 1,000 per day after the first contravention

Disqualification of directors

DIR-8

**Information by
Director about
Disqualification
u/s 164(2)**

DIR-9

**Information by
Company to
Registrar about
Disqualification**

**Time Limit 30
days**

DIR-10

**Application for
Removal of
Disqualification**

Concept of Dormant Company



- Company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar for obtaining the status of a dormant company.

Forms to be filed for Dormant Companies

MSC-1

- Application for Status as Dormant

MSC-3

- Return of Dormant Companies

MSC-4

- Application for Conversion of Status into ACTIVE

Memorandum & Articles

To be on the same lines as per the earlier law

- bifurcation of Objects Clause into Main, Ancillary & Others removed;

Applicability of the respective forms specified in Table A, B, C, D and E in Schedule I as may be applicable to such Company;

Permission given to include additional matters in its Articles as is considered necessary by the management;

Memorandum & Articles

- The provisions of specific requirements by the management can be at the time of formation or at a later stage by passing special resolution;
- Special resolution for private Company to have consent of all the members.
- Article may also contain provisions for entrenchment which can be altered only by passing special resolution. For both the purpose, the Notice of the same to be given to the Registrar in the form and manner specified.

Memorandum & Articles

- Can adopt Model Articles at the time of Incorporation;
- Model Articles given in Table F,G,H,I and J in Schedule I to the extent as may be applicable to the Company;
- The Company can take the draft from the same and suitably modify the requisite clause as per their requirements;

Existing Companies What to do

- Act will always over-ride the Clauses of the MOA and AOA;
- Requisite amendment in the Clauses will be required to be made by each of the Company;
- The same to be amended by passing Special Resolution in the EGM/AGM and file Form MGT-14 for giving effect thereto;

Memorandum Drafting

Table A- For Company Limited by Shares

- Name Clause;
- Registered Office Clause;
- Object Clause;
- Liability Clause;
- Capital Clause;
- Signatures of the Subscribers.

Memorandum Drafting

Table B – Specified for Company Limited by Guarantee & Not Having Share Capital

- Capital clause to have guarantee clause to undertake to contribute an amount not exceeding Rs. ___ in the event of winding up towards the cost, charges and expenses for the same.
- Guarantee valid till the time he is a member or one year after he ceases to be a member for the amount contracted by the Company during his tenure of Director;

Memorandum Drafting

Table C – Specified for Company Limited by Guarantee & Having Share Capital

- Capital clause to have guarantee clause to undertake to contribute to the assets and charges in the event of winding up towards the cost, charges and expenses for the same.
- Guarantee valid till the time he is a member or one year after he ceases to be a member for the amount contracted by the Company during his tenure of Director;

Memorandum Drafting

Table D – Specified
for Company with
Unlimited Liability
& Not having Share
Capital

- Liability Clause to state that the Liability of the Member shall be UNLIMITED;
- Subscribers Signature does not have the amount of contribution to be made.

Table E – Specified
for Company with
Unlimited Liability
& having Share
Capital

Articles of Association

Table F

- Can be adopted as base for drafting of Articles for Company Limited by Shares;

Table G

- Can be adopted as base for drafting of Articles for Company Limited by Guarantee & having Share Capital;

Table H

- Can be adopted as base for drafting of Articles for Company Limited by Guarantee & NOT having Share Capital;

Articles of Association

Table I

- Can be adopted as base for drafting of Articles for Company of an Unlimited Liability & No Share Capital;

Table J

- Can be adopted as base for drafting of Articles for Unlimited Company & Having Share Capital.

Signing of MOA & AOA

- Name, Address, Description & Occupation;
- Attestation by Witness with same details with certificate;
- Body Corporate Subscribers to file copy of resolution in Board Meeting, in case of LLP to be signed by all partners;
- Foreign Subscribers witnesses procedure unchanged;
- Certificate to State
 - I witness to subscriber/subscriber(s), who has/have subscribed and signed in my presence (date and place to be given); further I have verified his or their Identity Details (ID) for their identification and satisfied myself of his/her/their identification particulars as filled in

No commencement of business

- A company having a share capital shall not commence business or exercise any borrowing powers unless a declaration is filed with Registrar by a director verified in the manner as may be prescribed that:
 - ✓ every subscriber to the memorandum has paid the value of shares agreed to be taken by him;
 - ✓ Paid-up capital is not less than ` 5 lakh/1lakh
 - ✓ the company has filed with the Registrar the verification of its registered office.

(removed by Companies Amendment Act, 2015)

Striking of Name in Certain Cases

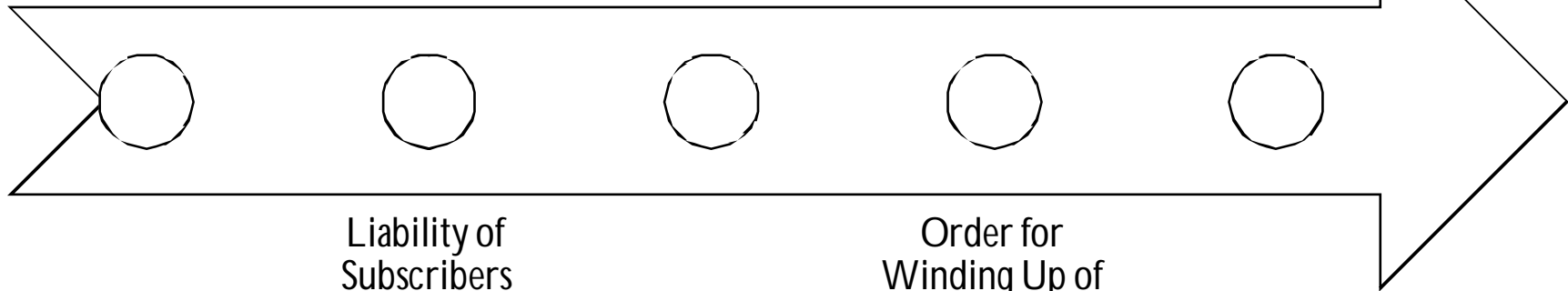
- Non payment of subscription money within 180 days;
- Non commencement of Business within 1 year from the date of incorporation; (removed by Companies Amendment Act, 2015)
- Non Application for Change of Status as Dormant Company voluntarily to ROC, in the event of non carrying of business or operation for 2 immediately preceding FY;

Effect of Incorrect Information

Pass such orders by the Tribunal and modify MOA & AOA to that extent;

Removal of Name from the records;

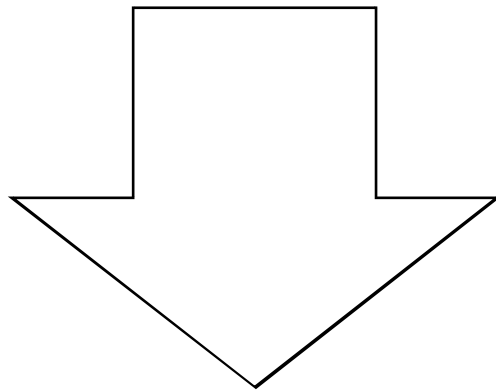
Opportunity of being heard to be given before passing any such Order



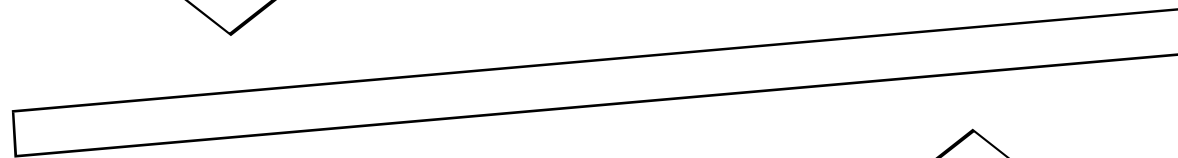
Liability of Subscribers can be made UNLIMITED;

Order for Winding Up of the Company or any other action as the Tribunal may deem fit.

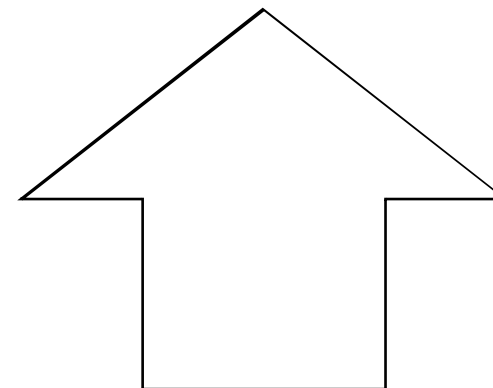
One Person Company (OPS)



Only a Natural person, citizen of India and a resident of India can float OPS (Draft Rules)



Nominee also to be a citizen of India, Natural Person and a resident of India.



Other Restrictions (Rules)

Restriction on Incorporating more than 1 such Companies;

If the nominee becomes the owner, the time limit of 180 days given to meet the compliance;

Minor cannot be a Nominee or Shareholder in a Company

Cannot be formed for Charitable Objects/NBFC/ Investment Activities

One Person Company (OPS)

Clause 2 of the Act- OPS has only Single Member;

Person will be the Subscriber to MOA & AOA;

In the Name OPS to be prefix added to the Name viz.. XYZ Private Limited (OPS);

Mandatory Nomination form to be filed with the Registrar at the time of Incorporation;

Nomination can be amended and changed;

Consent of the Nominee, required for the same and can be withdrawn in future;