

Study material on

**"INCORPORATION OF COMPANIES, OPC, &
CHANGES IN SHARE CAPITAL"**

CORPORATE



INCORPORATION OF COMPANIES UNDER THE COMPANIES ACT 2013

CHOICE OF FORM OF BUSINESS ENTITY

Selecting the form of business entity is one of the most significant decisions when starting a business. This is a decision which is required to be revisited periodically as the business develops. There are options for conversions and re-conversions, as and when it seems appropriate. The choice amongst the various forms of business entities depends upon many aspects like objects of the proposed business, likely number of members, amount to be invested, advantages of one form of business on another etc.

Nature, Form and Types of Business Enterprises

Business enterprises can be broadly divided into two broad categories, namely, one which is non-corporate in form and the other which has a corporate character. Enterprises which fall in the former category are sole proprietorship, partnerships and HUF. Business organisation which comprises the latter category are companies and co-operative undertakings. The basic difference between the corporate and the non-corporate form of organisation is that while a non-corporate form of business can be started without registration, corporate bodies cannot be set up without registration under the laws which govern their functioning.

Corporate Form of Business Enterprises

1) The Co-Operative Organisation

Co-operative organisation is a voluntary association with unrestricted membership and collectively owned funds, organize on democratic principle of equality by persons of moderate means and incomes, who join together to supply their needs and wants through mutual action, in which the motive of production and distribution is service rather than profit. Besides being a form of ownership co-operative organizations are a means of protecting the interests of the relatively weaker sections of society against exploitation by big businesses operating for the maximization of profits. The basic feature which differentiates the co-operative organisation from other form of business enterprise is that its primary motive is service to the members rather than making profits. A co-operative society is required to be registered under the Co-operative Societies Act, 1912. The Co-operative Societies receive a number of special concessions from the law and the government in order to encourage healthy development of Co-operatives.

2) Company

Type of organisation is characterized by the fact that ownership and management are separate. The capital of the company is provided by a group of people called shareholders who trust the management of the company in the hands of the persons known as the Board of Director. A company is an artificial legal person created by process of law which makes it an entity separate and distinct from its members who constitute it. As natural consequences of incorporation and transferability of shares, the company has perpetual succession. Thus, it can be said that this form of organisation is suitable when the capital requirements of a business are very large and the risks need to be spread among a larger number of persons.

Companies (Incorporation) Rules, 2014

Private Company

As per Companies Act 2013, Section 2(68) "Private Company" means a company which has a minimum paid-up share capital of one lakh rupees or such higher paid-up capital as may be prescribed, and which by its articles:

- (a) Restricts the right to transfer its shares, if any;
- (b) Except in case of One Person company limits the number of its member to two hundred not including-
 - (i) Persons who are in employment of the company, and
 - (ii) person who, having been in formerly in employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased shall not be included in the number of members, and;
- (c) Prohibits any invitation to the public to subscribe for any securities of the company.

Public Company

- As per Companies Act 2013, Section 2(71) "Public Company" means a Company which:
 - (a) is not a Private Company;
 - (b) Has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed;
 - (c) is a Private Company which is a subsidiary of a company which is not a Private Company shall be deemed to be public company for the purpose of this Act even where such subsidiary company continues to be a private company in its articles.

Following Steps / Procedure Shall Be Followed To Incorporate A Private Company:

1. Obtain DIN (Director Identification Number) of the Proposed Directors.
2. Obtain Digital Signature Certificate of a person who will sign the documents electronically. Presently DSC can be obtained from E-Mudhra, MTNL, TCS, SIFY etc.
3. Filing of Form No. **INC-1** for Name Availability:-
 - Name of Seven Subscribers in the case of Public, Five in the case of Producer Company and Two subscribers in the case of Private Limited Company.

- Three / Four Proposed Name of the Company.
 - Proposed Activities of the Company in brief.
 - DIN No, Name, Address, PAN No & Occupation of at least proposed Director along with Name / CIN No of Companies, in which they are already promoters / Directors, are required.
4. Preparation of Memorandum of Association (MOA) & Articles of Association (AOA).
5. Stamping of Memorandum & Articles of Association from Collector of stamps from the state in which the registered office of the company is proposed to be situated. MCA has started depositing of E- stamps through payment online through their portal.

<u>Reservation Of Name</u>	An application for the reservation of a name shall be made in Form No. INC-1 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.
<u>Application For Incorporation Of Companies.-</u>	An application shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in Form no. INC-7 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 for registration of a company.
<u>Signing Of Memorandum And Articles.-</u>	<p>Memorandum of Association-It stipulates constitution and object of the company. Seven or more for public Limited (two for Private & Five for Producer Companies) persons shall subscribe to M.O.A.</p> <p>-It shall be in such one of the forms in Tables A, B, C, D and E in Schedule -I of the Act as applicable.</p> <p>Clauses of M.O.A- Name Clause, Situation Clause, Object Clause, Liability Clause, Capital Clause and Subscriber Clause.</p> <p>Articles of Association- AOA Contains rules and regulations of company for management of its day to day affairs.</p> <p>- Company limited by shares can adopt all or a regulation Table F in Schedule I.</p> <p>-For company limited by Guarantee and not having share capital can adopt all or a regulation Table H in Schedule I and Company Limited by Guarantee and having Share Capital may adopt all or a regulation in Table G in Schedule I.</p> <p>-For unlimited Company, A.O.A shall state number of member and amount of share capital (if any) with which it's registering.</p> <p>-For company limited by guarantee, shall state number of member with which it's registering and extent of guarantee.</p> <p>MOA & AOA shall be</p> <p>(a) Printed,</p> <p>(b) Divided in paragraphs and consecutively numbered, and,</p> <p>(c) Signed by each subscriber in presence of one witness (who shall attest signature and add his address, description and occupation).</p>
<u>Declaration By</u>	The declaration by an advocate, a Chartered Accountant, Cost accountant or

<u>Professionals</u>	Company Secretary in practice shall be in Form No. INC.8.
<u>Affidavit From Subscribers And First Directors.-</u>	(Section 7) The affidavit shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in Form No.INC-9
<u>Particulars of every subscriber</u>	<p><u>IF INDIVIDUAL-</u></p> <ul style="list-style-type: none">-Full name and photo affixed and scan with MOA and AOA,- Father's/Mother's/ name:- DOB-Nationality- Educational Qualification-Occupation-Place of Birth (District and State)-PAN-Permanent residential address and also Present address- Email ID, Phone Number and FAX of subscriber <p><u>Proof of Identity:</u></p> <p><u>For Indian Nationals:</u> PAN Card (mandatory) and any one of the following Voter's identity card Passport copy Driving License copy Unique Identification Number (UIN)</p> <p><u>For Foreign nationals and Non Resident Indians</u> Proof of nationality Passport – attested by Consulate Residential proof such as Bank Statement, Electricity Bill, Telephone / Mobile Bill- attested by Consulate</p> <p>The specimen signature and latest photograph duly verified by the banker or notary shall be in the prescribed Form No.INC.10.</p> <p><u>IF BODY CORPORATE-</u></p> <ul style="list-style-type: none">-Corporate Identity Number of the Company or Registration number of the body corporate, if any-GLN, if any;-The name of the body corporate, the registered office address or principal place of business and E-mail Id.-If the body corporate is a company, CTC of the board resolution and if the body corporate is a LLP or partnership firm CTC of the resolution agreed to by all the partners.

<u>Particulars And Consent Of First Directors Of The Company</u>	The particulars of each person mentioned in the articles as first director of the company and his interest in other firms or bodies corporate along with his consent to act as director of the company shall be filed in Form No.DIR.12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.
<u>Certificate of incorporation</u>	The Certificate of Incorporation shall be issued by the Registrar in Form No. INC-11 .

FORMS TO BE FILLED FOR DIN & OTHER DIRECTOR RELATED FORMS

<u>FORM NO.</u>	<u>PURPOSE</u>	<u>DOCUMENTS</u>
DIR-2	Consent to act as Director in a company	Providing the required information (Proof of Address and Proof of Identity).
DIR-3	Application for Allotment of DIN	<p style="text-align: center;"><u>Proof of Identity</u></p> <ul style="list-style-type: none"> -Income Tax PAN-Mandatory -Driving license -Passport-Mandatory in case of foreign nationals <p style="text-align: center;"><u>Proof of residence</u></p> <ul style="list-style-type: none"> -Passport -Election/Voter cards -Ration card -Driving license -Electricity/Telephone bill -Aadhaar card <p>Copy of verification by the applicant as per eForm No. DIR-4</p>
DIR-4	Verification of applicant for application for DIN	Have to be signed by the applicant on an Affidavit, by paying the stamp duty.
DIR-5	Application for surrender of DIN	<p style="text-align: center;"><u>Proof of Identity</u></p> <ul style="list-style-type: none"> -Income Tax PAN-Mandatory -Driving license -Passport-Mandatory in case of foreign nationals <p style="text-align: center;"><u>Proof of residence</u></p> <ul style="list-style-type: none"> -Passport -Election/Voter cards -Ration card -Driving license -Electricity/Telephone bill -Aadhaar card

DIR-6	Intimation of change in Director given to Central Government	-Proof of respective change -DIR-7
DIR-7	Verification of applicant for change in DIN particulars	-Income Tax PAN-Mandatory -Passport -Election/Voter cards -Driving license -Address proof -To be in the form of Affidavit
DIR-8	Intimation by Director about his Interest in other Companies	NA
DIR-10	Application for Removal or Disqualification of Director	Documents relating to grounds on the basis of which Director is removed/disqualified.
DIR-11	Notice of resignation of Director to Registrar	- Notice of Resignation filled by company -Proof of dispatch -Acknowledgement received from company
DIR-12	Particulars of appointment of KMPs and Directors or change among them	-Letter of appointment -DIR-2, Consent to act as a Director -Declaration by First Director -Notice of Resignation -Interest in other Entities -Evidence of cessation

DIN PROCEDURE

<u>Application For Allotment of Director Identification Number</u>	<p>- Every individual, who is to be appointed as director of a company shall make an application electronically in Form DIR-3, to the Central Government for the allotment of a Director Identification Number (DIN) along with fees and;</p> <p>(i) photograph; (ii) proof of identity; (iii) proof of residence; (iv) verification by the applicant for applying for allotment of DIN in Form DIR-4; (v) Specimen signature duly verified.</p>
	Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by practicing CA, CS, CWA, Company secretary in full time employment or MD or Director of of the company in which the applicant is to be appointed as director.

<p><u>Allotment of DIN</u></p>	<p>On the submission of the Form DIR-3 on the portal and payment of the requisite amount of fees through online mode the provisional DIN shall be generated by the system automatically which shall not be utilized till the DIN is confirmed by the Central Government.</p>
<p><u>Cancellation or surrender or Deactivation of DIN</u></p>	<p>-The Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application DIR-5 received from any person, cancel or deactivate the DIN.</p> <p>- With declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN.</p>
<p><u>Intimation Of Changes In Particulars Specified In DIN Application.</u></p>	<p>-Every individual who has been allotted a DIN shall, in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of 30 days of such change(s) in Form DIR-6.</p> <p>- The applicant shall file Form DIR-6 with relevant changes, attach copy of the proof of the changed particulars and verification in the Form DIR-7 all of which shall be digitally signed by CA, CS or CWA in practice, scanned and submitted electronically.</p> <p>-The DIN Cell, on being satisfied with proof, shall accept the changes and intimate the same to the concerned Registrar and the respective Director.</p>

NAME AVAILABILITY GUIDELINES

The applicants and Registrar of Companies are advised to adhere following guidelines while applying or approving the proposed name:

(I) It is not necessary that the proposed name should be indicative of the main object. However, in case the proposed name is indicative of any activity, the same will be appropriately reflected in the main object clause of the Memorandum of Association;

(ii) If the Company's main business is finance, housing finance, chit fund, leasing, investments, securities or combination thereof, such name shall not be allowed unless the name is indicative of such related financial activities, viz., Chit Fund/ Investment/ Loan, etc.;

(iii) If it includes the words indicative of a separate type of business constitution or legal person or any connotation thereof, the same shall not be allowed. For eg: co-operative, sehkari, trust, LLP, partnership, society, proprietorship etc.

(iv) Abbreviated name such as 'ABC limited' or '23K limited' cannot be given to a new company. However the companies well known in their respective field by abbreviated names are allowed to change their names to abbreviation of their existing name (for Delhi Cloth Mills limited to DCM Limited, Hindustan Machine Tools limited to HMT limited) after following the requirement of Section 13 of the Companies Act, 2013;

(v) If the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding should not be allowed for a period of 2 years from the date of such dissolution since the dissolution of the company could be declared void within the period aforesaid by an order of the Court. Moreover, if the proposed name is identical with the name of a company which is struck off, then the same shall not be allowed before the expiry of 20 years from the publication in the Official Gazette being so struck off since the company can be restored anytime within such period by the competent authority;

(vi) If the proposed names include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual fund' etc., the name may be allowed with a declaration by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant;

(vii) If the proposed name includes the word "State", the same shall be allowed only in case the company is a government company. Also, if the proposed name is containing only the name of a continent, country, state, city such as Asia limited, Germany Limited, Haryana Limited, Mysore Limited, the same shall not be allowed.

(viii) If a foreign company is incorporating its subsidiary company, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian state or city, if otherwise available;

(ix) Change of name shall not be allowed to a company which is defaulting in filing its due Annual Returns or Balance Sheets or which has defaulted in repayment of matured deposits and debentures and/or interest thereon;

(x) With a view to maintain uniformity, the following guidelines may be followed in the use of keywords, as part of name, while making available the proposed names under section 4 and 13 of the Companies Act, 2013.

RESERVATION OF NAME.-

An application for the reservation of a name shall be made in **Form No. INC.1** along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

ATTACHMENTS REQUIRED IF FORM IS TO BE FILLED FOR CHANGE OF COMPANY'S NAME-

- In case of change of name of an existing company, a copy of Board resolution;
- If change of name is due to direction received from the Central Government , then copy of such direction;
- In case the proposed name(s) are based on a registered trademark or is a subject matter of an application pending for registration under the Trade Marks Act, 1999, the approval of the owner of the trademark or the applicant of such application for registration of Trademark;
- Copy of Central Government's approval In case the proposed name contains such word(s) or expression(s) for which the approval of Central Government is required,;
- Proof of relation;
- In principle approval from the concerned regulator;
- NOC from the sole proprietor/partners/other associates;
- NOC from existing company,
- Copy of affidavit, in case proposed name including phrase 'Electoral Trust'
- Resolution of unregistered companies in case of Chapter XXI (Part I) companies;
- Order of competent authority as required in Rule 8(8)
- NOC from such other persons as required in rule 8(4)

In determining whether a proposed name is identical with another, the following shall be disregarded:

- (i) The words Private, Pvt, Pvt., (P), Limited, Ltd, Ltd., LLP, Limited Liability Partnership;
- (ii) The words appearing at the end of the names – company, and company, co., co, corporation, corp, corpn, corp,;
- (iii) The plural version of any of the words appearing in the name;
- (iv) The type and case of letters, spacing between letters and punctuation marks;
- (v) Joining words together or separating the words does not make a name distinguishable from a name that uses the similar, separated or joined words;
- (vi) The use of a different tense or number of the same word does not distinguish one name from another;

(vii) Using different phonetic spellings or spelling variations does not distinguish one name from another. For example, J.K. Industries limited is existing then J and K Industries or Jay Kay Industries or J n K Industries or J & K Industries will not be allowed. Similarly if a name contains numeric character like 3, resemblance shall be checked with 'Three' also;

(viii) Misspelled words, whether intentionally misspelled or not, do not conflict with the similar, properly spelled words;

(ix) The addition of an internet related designation, such as .COM, .NET, .EDU, .GOV, .ORG, .IN does not make a name distinguishable from another, even where (.) is written as 'dot';

(x) The addition of words like New, Modern, Nav, Shri, Sri, Shree, Sree, Om, Jai, Sai, The, etc. does not make a name distinguishable from an existing name such as New Bata Shoe Company, Nav Bharat Electronic etc. Similarly, if it is different from the name of the existing company only to the extent of adding the name of the place, the same shall not be allowed. For example, 'Unique Marbles Delhi Limited' can not be allowed if 'Unique Marbles Limited' is already existing; Such names may be allowed only if no objection from the existing company by way of Board resolution is produced/ submitted;

4(xi) Different combination of the same words does not make a name distinguishable from an existing name, e.g., if there is a company in existence by the name of "Builders and Contractors Limited", the name "Contractors and Builders Limited" should not be allowed;

(xii) If the proposed name is an exact Hindi translation of the name of an existing company in English especially an existing company with a reputation, e.g., Hindustan Steel Industries Ltd. will not be allowed if there exists a company with name 'Hindustan Ispat Udyog Limited';

Further vide General circular No. 12/2013, the Ministry clarified that-

If the name applied includes the words indicative of a separate type of business constitution or legal person or any connotation thereof, the same shall not be allowed for, for eg: Cooperative, sahkari, trust, LLP, partnership, Society, Proprietor, HUF, Firm, Inc, PLC, GmbH, SA, PTE, Sdn, AG, etc.

FORMS RELATING TO REGISTERED OFFICE OF COMPANY

<u>FORM NO.</u>	<u>PURPOSE</u>	<u>DOCUMENTS</u>
<u>INC-22</u>	Notice of situation or change of situation of registered office and verification	<ul style="list-style-type: none">-Proof of Registered Office address (Conveyance/ Lease deed/Rent Agreement along with the rent receipts) etc.-Copies of the utility bills as mentioned above (not older than two months);-A proof that the Company is permitted to use the address as the registered office of the Company if the same is owned by any other entity/ Person (not taken on lease by company);-Copy of order of competent authority;-List of all the companies (specifying their CIN) having the same registered office address, if any

<p><u>INC-23</u></p>	<p>Application to Regional Director for approval to shift the Registered Office from one state to another state or from jurisdiction of one Registrar to another Registrar within the same State</p>	<ul style="list-style-type: none">-Proof of service of the application to the Registrar, Chief Secretary of the state, SEBI or any other regulatory authority (if applicable);-Details of prosecution or inspection or inquiry or investigation filed against the company and its officers in default;-Copy of notice of the general meeting along with relevant explanatory statement;-Copy of special resolution sanctioning alteration;-Copy of the minutes of the general meeting authorizing such alteration;-Power of attorney/vakalatnama/Board resolution;-List of creditors and debenture holders;-Affidavit from Directors in terms of Rules;-Affidavit verifying the application;-Affidavit by the company secretary of the company and the directors in regards to the correctness of list of creditors and affairs of the company;-Affidavit by directors about no retrenchment of employees;-Copy of newspaper advertisement for notice of shifting the registered office;- Affidavit verifying the list of creditors;
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LIST OF SECTIONS TO BE CONSIDERED WHILE DRAFTING ARTICLE OF ASSOCIATIONS		
SR.NO	SECTION	PARTICULAR
1	2(54)	Definition of Managing Director
2	43	Kinds of share capital
3	44	Nature of shares or debentures
4	48	Variation of shareholders rights
5	50	Company to accept unpaid share capital, although not called up
6	51	Payment of dividend in proportion to amount paid up
7	55(2)	Issue and redemption of preference shares
8	58(1)	Refusal of registration and appeal against refusal
9	61(1)	Power of limited company to alter its share capital
10	62(1)	Further issue of share capital
11	63(2)	Issue of bonus shares
12	68(2)	Power of company to purchase its own securities
13	85(2)	Companies register of charges
14	88(4)	Register of members, etc
15	103	Quorum of meeting
16	104	Chairman of Meeting
17	106(1)	Restriction on voting rights
18	115	Resolutions requiring special notice
19	119(1)	Inspection of minutes books of general meeting
20	152(6)	Appointment of director
21	161	Appointment of additional director, alternate director and nominee director
22	163	Option to adopt principle of proportional representation for appointment of directors
23	164(3)	Disqualifications for appointment as a Director (for private company)
24	166(1)	Duties of directors
25	167(4)	Vacation of office of director (for private company)
26	174(4)	Quorum for meetings of Board
27	197(4)	Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits
28	203	Appointment of key managerial personnel
29	286	Obligations of directors and managers
30	304	Circumstances in which company may be wound up voluntarily
31	320	Distribution of property of company

FORMS, PURPOSE AND THE VARIOUS ATTACHMENTS REQUIRED WHILE FILING FOR INCORPORATION FILING

<u>FORM NO.</u>	<u>PURPOSE</u>	<u>ATTACHMENTS REQUIRED</u>
INC-1	Application for Reservation of Name	No mandatory Attachments
INC-7	Application for Incorporation of Co.	.Memorandum of association .Articles of association .Declaration in Form No. INC.8 .Affidavit from each of the subscriber to the memorandum in Form No. INC.9 .Proof of residential address . Specimen Signature in Form INC.10 . Proof of identity .Entrenched Articles of association . Copy of In-principle approval granted by sectorial regulator if already taken . NOC in case there is change in the promoters (first subscribers to Memorandum of Association) . Proof of nationality (in case the subscriber is a foreign national) .PAN card (in case of Indian national) .Copy of certificate of incorporation of the foreign body corporate and registered office address .Copy of resolution/consent by all the partners or board resolution authorizing to subscribe to MOA
INC-22	Notice of situation or change of situation of registered office and verification	.Proof of Registered Office address (Conveyance/ Lease deed/Rent Agreement along with the rent receipts) etc. .Copies of the utility bills as mentioned above (not older than two months); .A proof that the Company is permitted to use the address as the registered office of the Company if the same is owned by any other entity/ Person (not taken on lease by company); .Copy of order of competent

INC-21	Declaration prior to the commencement of business or exercising borrowing powers	authority; .List of all the companies (specifying their CIN) having the same registered office address, if any .Certificate of Registration issued by the RBI (Only in case of Non-Banking Financial Companies)/ from other regulators Specimen signature in form INC-10
INC-23	Application to Regional Director for approval to shift the Registered Office from one state to another state or from jurisdiction of one Registrar to another Registrar within the same State	.Proof of service of the application to the Registrar, Chief Secretary of the state, SEBI or any other regulatory authority (if applicable); .Copy of notice of the general meeting along with relevant explanatory statement; .Copy of special resolution sanctioning alteration; .Copy of the minutes of the general meeting authorizing such alteration; .Power of attorney/vakalatnama/Board resolution; .List of creditors and debenture holders; .Affidavit from Directors in terms of Rules; .Affidavit verifying the application; .Affidavit by the company secretary of the company and the directors in regards to the correctness of list of creditors and affairs of the company; .Affidavit by directors about no retrenchment of employees; .Details of prosecution/inspection/inquiry/Investigation filed against the company and its officers in default; .Copy of newspaper advertisement for notice of shifting the registered office; .Affidavit verifying the list of creditors;

INC-24	Application for approval of Central Government for change of name	Minutes of the members' meeting .Optional attachment(s) (if any)
INC-27	Conversion into either company	.Minutes of the members' meeting; .Altered Articles of Association; .Order of competent authority; . Order for Condonation of delay; . Optional attachment(s) (if any)
INC-28	Notice of order of court/Any Authority	Copy of court order or NCLT or CLB or by any competent Authority optional attachments

OFFLINE FILING REQUIRED TO BE DONE AS ATTACHMENT TO ONLINE FORMS

<u>FORM NO.</u>	<u>PURPOSE</u>
INC-8	Declaration by Professional about compliance
INC-9	Affidavit by subscriber/s to MOA
INC-10	Verification of photo and specimen signature by Banker or Notary
INC-11	Certificate of Incorporation by ROC
INC-13	Memorandum of Association
DIR-12	Consent of Director to act as same and his interest in other firms or body associate

ONE PERSON COMPANY

Till recently if one has to start a Company he needed 1 more person as the law mandates 2 shareholders but Companies Act, 2013 brought a new revolutionary concept of One Person Company. OPC provides a whole new bracket of opportunities for young businessmen's who wants to start their own business having a separate legal identity. Single entrepreneur can manage his own business. There can be 1 Director, 1 shareholder but as per Section 149 he may appoint more than 15 Directors after passing a special resolution. So the key difference between OPC and sole proprietorship is that in case of OPC the liability of promoter is limited in the event of default or legal issues.

Important features of One Person Company:

1. OPC can have 1 member/shareholder
2. OPC can be incorporated as a Private Company only
3. OPC can be company limited by shares or guarantee or unlimited company
4. OPC limited by shares shall have the following points:
 - a. Paid up capital Rs. 1 Lakh
 - b. Prohibits invitation to public to subscribe to securities.
 - c. Restricts right to transfer
5. An OPC is required to give legal identity by specifying a name under which activities of the business could be carried on.

Eligibility norms for Incorporation:

As per Rule 3(1) of Company Incorporation Rules, 2014 only a natural person who is a resident of India shall be eligible to form/incorporate an OPC.

A nominee of OPC should be a natural person and resident. No person shall be eligible to be nominee in more than 1 OPC.

The nominee so appointed shall become member in following cases:

- a. In the event of sole members death
- b. In the event if sole member becomes incapacitated

A nominee so appointed shall give his consent which shall be filed with ROC at the time of Incorporation along with MOA and AOA.

As per Rule 4 of Incorporation Rules, 2014:

1. In Memorandum of OPC, the sole owner shall specify the name of the nominee in subscriber in Form INC-2

2. Consent of nominee is to be filed in INC-3
3. Form INC-4 for cessation or nomination.

Incorporation stage:

Name Availability:

Din no.

Present residential address

Educational Qualification

ID proof

Other information's to be provided

Applicant shall provide following details:

1. Proposed name (max.6 names)
2. Proposed business
3. Capital contributed
4. State
5. Details of nominee

After obtaining name availability

File incorporation documents with ROC following are the attachments:

1. MOA and AOA
2. Proof of Identity of member and nominee
3. Residential proof of member and nominee
4. Consent of nominee in INC-3
5. Affidavit from 1st subscriber and Director to the memorandum in INC-9
6. Specimen signature in INC-10
7. List of companies having same registered office address
8. Consent of Director
9. Proof of registered office
10. Copy of PAN card of member and nominee
11. Details of duration of stay at present address if it is less than 1 year then address of previous residence
12. Details of name of nominee
13. Details of entrenchment of articles.

Annual return in case of OPC shall be signed by company secretary if there is no company secretary then by director.

Financial statement:

Signed by one person alone

Cash flow not mandatory

Board report to be annexed to financial statement

Should file a copy of financial statement within 180 days from closure of financial year

As per section 96(1) holding AGM is not mandatory.

At least 1 board meeting should be held in each half of the calendar year and gap between 2 meetings should not be less than 90 days. If OPC has only 1 Director then it is exempted from holding Board meeting.

Provision of compulsory rotation of auditors is not required.

OPC has to get their accounts audited just like normal company.

OPC can file intimation of cessation in INC-5.

Cessation of OPC status:

As per Rule 6(1) of Companies Incorporation, 2014 an OPC cease to be entitled to continue in following cases:

1. Paid up capital exceeds 50 Lacs
2. Turnover for 3 preceding years exceeds 2 cr
3. Intimation of increase in threshold has to be filed in INC-5

Provisions not applicable to OPC:

Sections	Particulars
98	Powers of tribunal to call meetings of members
100	Calling of EGM
101	Notice of meeting
102	Statement to be annexed to notice
103	Quorum of Meeting
104	Chairman of meeting
105	Proxies

106	Restriction on voting rights
107	Voting by show of hands
108	Voting by electronic means
109	Demand Poll
110	Postal ballot
111	Circulation of member's resolution.

Due date of filing forms of OPC:

Form No.	Due date of Filing
INC-1	N.A.
INC-2	60 days
INC-3	15 days
INC-4	30 days
INC-5	60 days
INC-6	N.A
MGT-14	30 days

Thus OPC is a **One Man Army**. It shall boost the confidence of small entrepreneurs.

INCORPORATION FILING FOR OPC

<u>FORM NO.</u>	<u>PURPOSE</u>	<u>ATTACHMENTS REQUIRED</u>
INC-1	Application for Reservation of Name	No mandatory Attachments
INC-7	Application for Incorporation of Co.	MOA,~AOA ~Proof of identity of the member and the nominee ~Residential proof of the member and the nominee ~Copy of PAN card of member and nominee Consent of Nominee in form INC.3 ~Affidavit from the subscriber and first Director to the memorandum in Form No. INC.9 ~List of all the companies (specifying their CIN) having the same registered office address, if any~ Specimen Signature in Form INC.10~Entrenched Articles of Association~ Proof of Registered Office address (Conveyance/ Lease deed/Rent Agreement etc. along with rent receipts) ~Copies of the utility bills as mentioned above (not older than two months) ~Proof that the Company is permitted to use the address as the registered office of the Company if the same is owned by any other entity/Person (not taken on lease by company)
INC-3	One Person Co.-Nominee Consent Form	Copy of PAN card, Proof of identity, Residential Proof ~Consent of the nominee in Form No. INC.3, ~Copy of PAN card of the new nominee and/or new member, ~Proof of identity of the new nominee and/or new member, Residential proof of the new nominee and/or new member, ~Notice of withdrawal of consent filed by the nominee, ~Copy of intimation given by member for change in nominee, ~Proof of Cessation of member
INC-4	One Person Co.-Change in Member/Nominee	~Copy of board resolution authorizing giving of notice; ~Copy of the duly attested latest financial statement; ~Certificate from a Chartered Accountant in practice for calculation of the average annual turnover during the relevant period in case of conversion is on the basis of such criteria;
INC-5	One Person Company- Intimation of exceeding threshold	
INC-6	One Person Co.- Application for	.Altered Memorandum of association

Conversion

- . Altered Articles of association
- . Copy of the duly attested latest financial statement.
- . Copy of board resolution authorizing giving of notice;
- . Certificate from a Chartered Accountant in practice for calculation of the average annual turnover during the relevant period in case of conversion is on the basis of such criteria.
- . Affidavit confirming that all the members of the company have given their consent for conversion, the paid up capital of the company is Rs 50 lakhs or less and turnover is less than Rs 2 crores in the immediately preceding year.
- . Copy of minutes, list of creditors and list of members.
- . Copy of NOC of every creditors with the application for Conversion.
- . Consent of the nominee in Form No. INC.3
- . Copy of PAN card of the nominee and member
- . Proof of identity of the nominee and member
- . Residential proof of the nominee and member

PENALTIES UNDER THE COMPANIES ACT 2013

<u>Section</u>	<u>Detail</u>	<u>Applicability</u>	<u>Officer In Default</u>	<u>Fine</u>	<u>Imprisonment</u>
8	Non Compliance in Formation of company with charitable objects	Only to NPOs and NGOs	Every Director of the Company	From Rs.25,000 Upto Rs.25,00,000	Upto 3 years
11	A company having share capital shall not commence any business unless a Director filled declaration with the ROC that all shares have been fully paid up and verification regarding registered office	Public and Private Co.	Every Related Officer	Rs.1000 for every day during which defaults continues	N.A.
12	A company must have its Registered office on or from 15th day of incorporation and must inform ROC or RD about any changes	Public and Private Co.	Every Officer	Rs.1000 every day or Rs.100000 whichever is less	N.A.
15	Alteration to MOA and AOA must be noted in every copy	Public and Private Co.	Every Related officer	Rs.1000 for every copy of unaltered MOA and AOA	N.A.
16	Name of the company should not be identical to any existing company's name and any changes to name must be informed to ROC	Public and Private Co.	Every Related officer	More than Rs.5000 upto Rs.1,00,000	N.A.

17	Copy of MOA, AOA, Agreement and Resolution to be provided to members	Public and Private Co.	Every Related officer	Rs.1000 for each day or Rs.1,00,000 whichever is less	N.A.
35	Mis-statement in Prospectus	Only Public Co.	Every Related officer	Compensation To every aggrieved person	N.A.
39	Allotment of Securities-Have to file Return of Allotment Refund of Application Money if minimum amount does not receive	Company with Share capital	Every Related officer	Rs.1000 for each day or Rs.1,00,000 whichever is less	N.A.
40	Every securities should dealt in stock exchange and a separate bank account should be open for collecting application money	Company making Public Offer	Every Related officer	More than Rs.50,000 which may extend to Rs.3,00,000	Upto 1 year
46	A share certificate should be a evidence of the title of the person to such share and company should not issues duplicate certificate fraudently	Public and Private Co.	Every Related officer	Upto 3 times of Fraud amount involved	More than 6 month and upto 10 year
53	Prohibition on issue of shares on Discount	Every Company	Every Related officer	More than Rs.1 lac upto Rs.5 lac	Upto 6 months
56	Transfer or Transmission of shares	Public and Private Co. (Authorised by Articles)	Every Related officer	More than Rs.10000 upto Rs.1lac	N.A.
59	Name of a person should not be entered or omitted from Register of	Public and Private Co.	Every Related officer	More than Rs.1 lac upto Rs.3 lac	Upto 1 year

	Members without any sufficient cause and does not make any delay in entering it name				
60	Any official publication containing authorised capital must include capital which has been subscribed and paid up	Public and Private Co.	Every Related officer	Rs.5000 for each default	N.A.
64	A company alters its share capital company shall file a notice With ROC	Company with Share capital	Every Related officer	Rs.1000 for each day during which such default continues, or Rs.500000 whichever is less.	N.A.
67	No company limited by shares or by guarantee and having a share capital shall have power to buy its own shares unless provided by act	company limited by shares or by guarantee Or share capital	Every Related officer	More than Rs.1,00,000 upto Rs.25,00,000	Upto 3 years
68	A company should buy its shares according to act and article	Public and Private Co. (Authorised by Articles)	Every Related officer	More than Rs.1 lac upto Rs.3 lac	Upto 3 years
71	Company may issue debenture with an option to convert such debenture into shares, either wholly or partly at the time of redemption: ~No company shall issue any debentures carrying any voting rights. ~company shall create a debenture redemption reserve account	Public and Private Co.	Every Related officer	More than Rs.2 lac Upto Rs.5 lac	Upto 3 years

	~Debenture trustee take steps to protect the interests of debentureholders				
74	If a company fails to repay the deposit or part thereof or any interest thereon within the time	Public and Private Co.	Every Related officer	More than Rs.25 lac upto Rs.3 crore	Upto 7 years
88	If company fails to keep and maintain register of members,debenture-holders;any other security holders	Public and Private Co.	Every Related officer	More than Rs.50,000 which may extend to Rs.3,00,000	N.A.
89	Person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company ~The company shall make a note of such declaration in the register concerned and shall file within 30 days to ROC	Public and Private Co.	Every Related officer	Rs.1000 for every day during which the failure continues	N.A.
91	A company may close the register of members or debentureholder for a period upto 45 days but not exceeding 30 days at any one time giving of previous notice of at least seven days	Public and Private Co.	Every Related officer	Rs.5000 for every day subject to a maximum of Rs.1 Lac during which the register is kept closed.	N.A.
92	Every company shall file a Annual return within 60 days of AGM to ROC	Public and Private Co.	Every Related officer Company Secretary in Practice	More than Rs.50,000 which may extend to Rs.5,00,000 More than Rs.50,000 which may extend to	Upto 6 months N.A.

				Rs.5,00,000	
94	If any inspection or the making of any extract or copy required of any register under this sec is refused	Public and Private Co.	Every Related officer	Rs.1000for every day subject to a maximum Rs.1 Lac during which the refusal or default continues.	N.A.
99	Defaults in holding meeting in accordance to sec 96,97 and 98 sec 96 relates to holding AGM sec 97 relates to holding AGM ordered by Tribunal sec 98 relates to holding general meeting ordered by Tribunal	Public and Private Co.	Every Related officer	Upto Rs. 2 lac	N.A.
102	Material facts of special business to be annexed with notice of meeting	Public and Private Co.	Director,KMP,Pro moter	Upto Rs. 50k or 5 times of Benefit Amount	N.A.
105	In every notice calling a meeting of a company which has a share capital a statement should mention about the that member can appoint a proxy	Company having share capital	Every Related officer	Upto Rs.50000	N.A.
111	A company circulate to members any statement with respect to the matters referred in proposed resolution to be dealt with at that meeting.	Public and Private Co.	Every Related officer	Upto Rs.25000	N.A.
117	Company have to file Resolution and agreement with ROC within 30 days	Public and Private Co.	Every Related officer or Liquidator	More than Rs.1 lac Upto Rs.5 lac	N.A.

118	Company shall maintain the minutes of every held meetings. If a person found guilty of tampering with the minutes of the of meeting	Public and Private Co.	Every Related officer Every Related officer	Fine of Rs.5000 Upto Rs.25000 to Rs.1Lac	N.A. Upto 2 years
124	Default in payment of Unpaid Dividend	Public and Private Co.	Every Related officer	More than Rs.1 lac upto Rs.5 lac	N.A.
127	Non -Payment of dividend within 30 days from date of declaration	Public and Private Co.	Every Director of the Company	Rs.1000 for every defaulting day	Upto 2 Years
128	Maintanance of Books of Accounts at the Registered office of company	Public and Private Co.	M.D,WTD,CFO	More than Rs.50,000 which may extend to Rs.5,00,000	Upto 1 Years
134	The financial statement should be approved by Board and auditors report should be attached and to be adopted by shareholders in AGM	Public and Private Co.	Every Related officer	More than Rs.50,000 which may extend to Rs.5,00,000	Upto 3 Years
136	Its Members right to get the copy of financial statement	Public and Private Co.	Every Related officer	Fine of Rs.5000	N.A.
137	Company have to file a copy of financial statement with the ROC	Public and Private Co.	M.D,WTD,CFO	More than Rs.1 lac Upto Rs.5 lac	Upto 6 months
157	Intimation to ROC by the Co. about DIN of its Directors within 15 days	Public and Private Co.	Every Related officer	Upto Rs.25,000 which may extend to Rs.1,00,000	N.A.
159	sec 152 is for Appointment of Director sec 155 Prohibits an individual to have more than 1 DIN sec 156 is for intimation about DIN to associate companies	Public and Private Co.	Dierctor in Default	Rs.50000 and further Rs.500 per day	Upto 6 months

184	every director has to disclose it interest to other directors of the company	Public and Private Co.	Dierctor in Default	More than Rs.50000 which may extend upto Rs.100000	Upto 1 year
187	All investments made or held by Co. in any property, security or other asset shall be made and held by it in its own name	Public and Private Co.	Every Related officer	Upto Rs.25,000 which may extend to Rs.1,00,000	Upto 6 months
188	No company without the consent of board shall enter into any agreement with any related party	Public and Private Co.	Related Director or Employee	Listed Co.~Upto Rs.25,000 which may extend to Rs.5,00,000 Other Co.~Upto Rs.25,000 which may extend to Rs.5,00,000	Upto 1 year N.A.
195	No person including any director or key managerial personnel of a com. shall enter into insider trading	Public and Private Co.	Every Related officer	More than Rs.5 lac upto Rs.25 crore	Upto 5 years
197	Managerial remuneration in case of inadequate profits If any Manager withdraw remuneration excess of limit must refund	Only Public Co.	Any related Manager or Director	More than Rs.1 lac upto Rs.5 lac	N.A.
203	Appointment of KMP vacant office should be filled within 6 months in Board Meeting resolution to be passed containing conditions of appointment	Public and Private Co.	Every Director and KMP in default	Upto Rs.50,000 and Rs.1000 per day if it's a continuing offence	N.A.

204	Board report of company consist of Secretarial Audit Report	Public and Private Co.(every listed Co.)	Company Secretary in Practice	More than Rs.1,00,000 upto Rs.5,00,000	N.A.
206	If company fails to furnish any document,register or any other info to ROC or fail to produce the same	Public and Private Co.	Every Related officer	Upto Rs.100000 and Rs.500 for every defaulted day	N.A.
207	If any officer disobeys to follow the instruction of ROC under sec 206	Public and Private Co.	Related Director or Employee	Upto Rs.25,000 which may extend to Rs.1,00,000	Upto 1 year
222	Where Co. issues or transfer its securities contravening the tribunal orders	Public and Private Co.	Every Related officer	Upto Rs.25,000 which may extend to Rs.5,00,000	Upto 6 months
232	Merger and Amalgamation of companies This sec is applicable for smooth functioning of restructuring process between transferor and transferee company	Public and Private Co.	Every Related officer of any of Two company	More than Rs.1,00,000 upto Rs.3,00,000	Upto 1 year
238	Registration of offer of scheme involving Transfer of shares Circular issued by Director containg offer have to be registered	Public and Private Co.	Dierctor in Default	Upto Rs.25,000 which may extend to Rs.5,00,000	N.A.
242	If Tribunal finds that the affairs of com. Is oppressive to any member or society,they may ordered com. to alter its MOA.	Public and Private Co.	Every Related officer	Upto Rs.25,000 which may extend to Rs.1,00,000	Upto 6 months

243	If any class of members thinks that the affairs of the company is oppressive in nature for them, then they can apply to Tribunal to take actions	Public and Private Co.	Every Related officer	Upto Rs.25,000 which may extend to Rs.1,00,000	Upto 3 years
274	Filing of statement of affairs for winding up procedure	Public and Private Co.	Director in Default	Upto Rs.25,000 which may extend to Rs.5,00,000	Upto 6 months
284	Every employee of the company should cooperate and help the official liquidator to carry on the winding up procedure	Public and Private Co.	Every Employee in Default	Upto Rs.50000	Upto 6 months
299	Summon to Employee of company by Tribunal for suspect to have any property of the company	Public and Private Co.	Every Employee in Default	Appropriate cost imposed by Tribunal	N.A.
305	Director declaring without reasonable grounds that the company will pay its debts full from the proceeds of assets sold in voluntary wind up	Public and Private Co.	Related Director	More than Rs.50,000 which may extend to Rs.3,00,000	More than 3 years upto 5 years
306	The resolution of Creditors meeting for voluntary winding up have to be given to ROC within 10 days of meeting	Public and Private Co.	Related Director	More than Rs.50000 which may extend upto Rs.1 lac	Upto 6 months
307	Co. should publish its resolution for winding up in advertisement of official Gazette and any district newspaper within 14 days of passing	Public and Private Co.	Every Related officer	Rs.5000 for every defaulting day	N.A.

312	Notice of appointment of liquidator should be given to ROC within 10 days by the company	Public and Private Co.	Every Related officer	Rs.500 for every defaulting day	N.A.
336	Offences by the officers of the company during the course of liquidation ~doesn't disclose the property of company ~doesn't deliver up to the direction of the liquidator	Public and Private Co.	Every Related officer	Upto Rs.3,00,000 which may extend to Rs.5,00,000	More than 3 years extend upto 5 years
337	Fraud by Officers~Falsely induce any person to give credit to company ~To defraud creditors of the company	Public and Private Co.	Every Related officer	Upto Rs.1,00,000 which may extend to Rs.3,00,000	More than 1 years upto 3 years
338	Defaulted in maintaining proper books of accounts for 2 years after the commencement of the winding up	Public and Private Co.	Every Related officer	Upto Rs.1,00,000 which may extend to Rs.3,00,000	More than 1 years upto 3 years
344	Every document which contains name of the company or any invoice issued by the company must state that the company is going to wound up	Public and Private Co.	Every related Officer and Company Liquidator	More than Rs.50,000 which may extend to Rs.3,00,000	N.A.
392	If any foreign company contravenes the provision related to incorporation of company outside India of chapter XXII of said Act	Particular Foreign Co.	Every officer of Foreign company	Upto Rs.25,000 which may extend to Rs.5,00,000	Upto 6 months

405	If company defaults in furnishing and producing documents and other related information which is required by the Government	Public and Private Co.	Every Related officer	Upto Rs.25,000 which may extend to Rs.3,00,000	Upto 6 months
447	Any sort Fraud	Public and Private Co.	Director in Default	Upto 3 times of Fraud amount involved	More than 6 month and upto 10 year
450	If any officer contravenes any law under this act for which any specific punishment or fine is not been provided	Public and Private Co.	Every Related officer	Upto Rs.10000 and Rs.1000 if it's a continuing default	N.A.
451	If any Officer commits the repeated offence within 3 years	Public and Private Co.	Related Officer	Twice of the Offence amount	Any imprisonment put on
452	If any officer of company wrongfully obtains the company's property	Public and Private Co.	Related Officer	More than Rs.1,00,000 upto Rs.5,00,000	N.A.
454	If any officer doesn't pay penalty within 90 days of declaration of same	Public and Private Co.	Related Officer	Upto Rs.25,000 which may extend to Rs.1,00,000	Upto 6 months