

An Analysis on the “Incorporation of Company”

navneet k. arora & co.
COMPANY SECRETARIES

navneet k. arora & co.
COMPANY SECRETARIES



JE-9/104, Khirki Extn. Commercial Complex,
(Opposite M Block Tikona Park),
Malviya Nagar, New Delhi-110017
+91 11 29545877

info@navneetaroracs.com
aroranavneet@rediffmail.com
www.navneetaroracs.com

Proprietor 's Profile at a Glance

Navneet K. Arora & Co., Company Secretaries

BASIC DETAILS

- ✂ Name of the Proprietor – **CS Navneet Arora**
- ✂ Year of Passing of ICSI Final Examination – **June 1990**
- ✂ Date of becoming Associate Member of ICSI (ACS - 8421) – **3rd March 1992**
- ✂ Date of becoming Fellow Member of ICSI (FCS - 3214) – **21st July 1997**
- ✂ Date of holding Certificate of Practice (CP - 3005) – **20th November 1998**
- ✂ Experience (No. of Years) – **25 Years (15 Years in Practice)**



EDUCATIONAL QUALIFICATION:

- ✂ Master of Commerce.
- ✂ Fellow Member of The Institute of Company Secretaries of India
- ✂ Post Graduate Diploma in Financial Management

PROFESSIONAL ASSOCIATION / RECOGNITION / MEMBERSHIP OF CONFEDERATION BODIES:

- ✂ Member - **All India Management Association New Delhi (AIMA).**
- ✂ Professional Member - **PHD Chamber of Commerce and Industries, New Delhi.**
- ✂ Appointed as **Peer Reviewer** by ICSI to conduct peer review of Practicing Member of ICSI.
- ✂ ICSI Certified participant of **National Workshop on Diligence Report for Banks.**
- ✂ **Convener South Delhi Study Group of NIRC of the ICSI** -2011, 2012, 2013 & 2014. Also Past Governing Body Member of Kanpur Chapter of NIRC of the ICSI & Past Member of various Professional Development Committee of NIRC of the ICSI.
- ✂ Regular Participant, Speaker of Seminars / Workshop on the Professional Development Program of various Professional Management Institutes including Institute of Company Secretaries of India (ICSI), Asia Pacific Institute of Management (AIM), National Foundation for Corporate Governance (NFCG) etc.

Incorporation of Company

- ❑ Company is said to be incorporated when it fulfill the formalities of registration and obtain **“CERTIFICATE OF INCORPORATION”** by submitting the MoA, AoA and written consent of all the directors.
- ❑ To Commence business, should raise the required capital and obtain the **“CERTIFICATE OF COMMENCEMENT OF BUSINESS”**

Definition of “Company” under Companies Act, 2013

Section 2 (20) of Companies Act defines – “Company incorporated under this Act or under any previous Company law.

A Company may be formed as a Private Company, Public Company, Producer Company, Non Profit making organization, Limited Liability or Unlimited Liability Company with capital or with guarantee or with both, Limited Liability Partnership. One Person Company.

Different forms of Companies

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.

Different forms of Companies

Formation of Companies with Charitable Objects etc

- As per Companies Act 2013 "Section 8 Company" means a company which is proved to the satisfaction of the Central Government that an association of persons proposed to be registered under this Act as a limited company
 - (a) is about to be formed as a limited company for promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object, and
 - (b) intends to apply its profits, if any, or other income in promoting its objects and
 - (c) intends to prohibit the payment of any dividend to its members,the Central Government may, by license, as may be prescribed, and on such condition as it deem fit, allow that person or association of person to be registered as a limited company under this section without the addition to its name of the word "Limited" or the words "Private Limited".

Producer Company

- As per Companies Act 2013 Section 465 "Producer Company" means a body corporate having objects or activities specified in section 465 and registered as Producer Company under this act.

[All Companies as stated above may be formed with Limited Liability or with Unlimited Liability]

Different forms of Companies

One Person Company

- As per Companies Act 2013, Section 3 “One Person Company” means a Company which has only one person as a member.
- Only a natural person who is an Indian citizen and resident in India-
 - (a) shall be eligible to incorporate a One Person Company;
 - (b) shall be a nominee for the sole member of a One Person Company
- A single person can form a Company being himself the director as well as member of the Company having a nominee.
- No person shall be eligible to incorporate more than a One Person Company or become nominee in more than one such company.
- No minor shall become member or nominee of the One Person Company or can hold share with beneficial interest.
- Such Company cannot be incorporated or converted into a company under section 8 of the Act.
- Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporate.

Government Company

- As per Companies Act 2013, Section 2(45) “Government Company” means a Company which not less than fifty- one percent of the paid up share capital is held by the Central Government or by any State Government or Government or partly by the Central Government and partly by one or more State Government and includes a company which is a subsidiary company of such a Government company.

Steps / Procedure for formation of One Person Company

Following Steps / Procedure shall be followed to Incorporate One Person Company:

1. A One Person Company can be incorporated by a single person having the same capacity of member as well as Director of the Company having a nominee, who in the event of death of the Member will become the member of that one person Company.
2. Details of the person so nominated shall be filed with the Registrar of Companies in **Form Inc.2** along with consent of such nominee in **form Inc. 3** along with memorandum and Articles of Association of Company.
3. The person nominated by the subscriber or member of a One Person Company may, withdraw his consent by giving a notice in writing to such sole member and to the One Person Company
4. Where the sole member of One Person Company ceases to be the member in the event of death or incapacity to contract and his nominee becomes the member of such One Person Company, such new member shall nominate within fifteen days of becoming member, a person who shall in the event of his death or his incapacity to contract become the member of such company, and the company shall file with the Registrar an intimation of such cessation and nomination in **Form No INC.4** along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 within thirty days of the change in membership and with the prior written consent of the person so nominated in **Form No.INC.3**
5. The subscriber or member of a One Person Company may, by intimation in writing to the company, change the name of the person nominated by him at any time for any reason including in case of death or incapacity to contract of nominee and nominate another person after obtaining the prior consent of such another person in **Form No INC.3**. Further the Company is required to file such change with the Registrar of Companies in **Form no Inc.4**

Conversion of One Person Company

Conversion of One Person Company into Private / Public Company:

1. When the paid up share capital of an One Person Company exceeds fifty lakhs rupees or its average annual turnover during the immediately preceding three consecutive financial years exceeds two crore rupees it will cease to be entitled to continue as a One Person Company. Such Company will be required to convert into a private limited company or a public limited company within six months.
2. Such One person Company have to alter its Memorandum & Articles of Association by passing a resolution as prescribed in the Act.
3. The One Person Company, within period of sixty days from the date of applicability of sub-rule (1), give a notice to the Registrar in **Form No.INC.5** informing that it has ceased to be a One Person Company and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover.
4. A One Person company can get itself converted into a Private or Public company after increasing the minimum number of members and directors to two or minimum of seven members and two or three directors as the case may be, and by maintaining the minimum paid-up capital as per requirements of the Act.

CONVERSION OF PRIVATE COMPANY INTO ONE PERSON COMPANY.-

Conversion of private company into One Person Company.- :

1. A private company other than a company registered under section 8 of the Act having paid up share capital of fifty lakhs rupees or less or average annual turnover during the relevant period is two crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting .
2. Before passing such resolution, the company shall obtain No objection in writing from members and creditors.
3. The one person company shall file copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in **Form No. MGT.14**.
4. The company shall file an application in **Form No.INC.6** for its conversion into One Person Company along with fees, and by attaching the following documents :
 - (i) The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital company is **fifty lakhs** rupees or less or average annual turnover is less than **two crores** rupees, as the case may be;
 - (ii) the list of members and list of creditors;
 - (iii) the latest Audited Balance Sheet and the Profit and Loss Account; and
 - (iv) the copy of No Objection letter of secured creditors.
5. On being satisfied and complied with requirements stated herein the Registrar shall issue the Certificate.

Steps / Procedure for formation of Company

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 as well as physically. 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 three 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). **{Permission of the contents in the MOA & AOA & Licence to establish Section 8 company is required from Central Government [Regional Director (MCA)] of the respective state in which registered office of the proposed company will be situated}.**
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.

Procedure for formation of Company

1. An Application is filled with the Registrar for Incorporation in **Form No. Inc.7** for registration of a Company.
2. Preparation of Memorandum of Association (MOA) & Articles of Association (AOA) as prescribed in the Companies (Incorporation) Rules, 2014.
3. A declaration shall be filed in **Form No. Inc.8** by a Professional as prescribed in the Act and concerned Rules. Further an affidavit is required to 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** and the specimen signature and latest photograph duly verified by the banker or notary shall be in the prescribed **Form No.INC.10**.
4. The particulars of first directors 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** as per the Companies (Registration offices and fees) Rules, 2014.
5. The Certificate of Incorporation shall be issued by the Registrar in **Form No.INC.11**.
6. The declaration filed by a director shall be in **Form No.INC.21** along with the fee as and the contents of the form shall be verified by a Company Secretary in practice or a Chartered Accountant or a Cost Accountant in practice:
7. The verification of the registered office shall be filed in **Form No.INC.22** along with the fee.
8. Further every Company is required to obtain a Certificate of Commencement of Business to initiate its business activities.

Guidelines-Memorandum of Association (MOA)

- It stipulates constitution and object of the company
- Seven or more (two for Private & Five for Producer Companies) persons shall subscribe to M.O.A.

Form of M.O.A

- 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.

Contents of M.O.A

- a) Name Clause.
- b) Situation Clause {State in which Registered Office of the Company will be situated}.
- c) Object Clause. {The object to be pursued by the company on its incorporation, Matters which are necessary for furtherance of the objects specified in clause 3(a)}.
- d) Liability Clause {Whether Liability of the Company and its subscribers are limited to the extent of their shareholding or unlimited}.
- e) Capital Clause {Classification of Authorized Share Capital of the Company- Equity or Preference Share Capital}. MCA has defined their fees schedule in accordance with the Authorized Share Capital of the Company.
- f) Subscriber Clause.

Guidelines - Articles of Association (AOA)

- AOA Contains rules and regulations of company for management of its day to day affairs.

Form of A.O.A

- Company limited by shares can adopt all or a regulation Table F in Schedule I.
- 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.

Contents

- For unlimited Company, A.O.A shall state number of member and amount of share capital (if any) with which it's registering.
- For company limited by guarantee, shall state number of member with which it's registering and extent of guarantee.

MOA & AOA shall be

- (a) Printed,
- (b) Divided in paragraphs and consecutively numbered, and,
- (c) Signed by each subscriber in presence of one witness (who shall attest signature and add his address, description and occupation).

Schedule of Filing Fee as per Section 403 of the Companies Act 2013

Registration Fees:

- In respect of Company having a share Capital:-

S. No.	Particulars	Amount in (Rs.)
1.	For Registration of a Company whose nominal share capital does not exceeds Rs.1,00,000/-	5000.00
2.	For exceeding Rs.1,00,000 but does not exceeds Rs.5,00,000	400.00 for every Rs.10,000/-
3.	For exceeding Rs.5,00,000 but does not exceeds Rs.50,00,000	300.00 for every Rs.10,000/-
4.	For exceeding Rs.50,00,000 but does not exceeds Rs.1.00,00,000	100.00 for every Rs.10,000/-
5.	For exceeding Rs.1,00,00,000	75.00 for every Rs.10,000/-

COMMENCEMENT OF BUSINESS

- Private Limited Company and Public Limited Company can commence its activity after obtaining Certificate of Commencement of Business after completing following requisite formalities required under section 11 of the Act.
- The declaration has to be filed by a director shall be in Form No.INC.21 along with the fee as and the contents of the form shall be verified by a Company Secretary in practice or a Chartered Accountant or a Cost Accountant in practice,
- Provided that in the case of a company requiring registration from sectorial regulators such as Reserve Bank of India, Securities and Exchange Board of India etc., the approval from such regulator shall be required.

Our Gamut Of Services

- **Corporate Law Advisory, Corporate Compliance Management Advisory Services for Public, Private, OPC and LLP Organization.**
- **Secretarial Audit / Due Diligence Audit / Corporate Governance Compliance Certification Services.**
- **Advisory Services for Initial Public Offer, Right Offer, Preferential Offer, Public Offer through Book-Building Process, Capital Restructuring, Public, Private & Preferential offer of Tax Free Bonds.**
- **XBRL Data Conversion & E-filing of Corporate Returns with MCA and other Statutory Authorities.**
- **Corporate Restructuring, Valuation & Strategic Advisory services Including Merger, Demerger, Amalgamation & Takeover Advisory Services.**
- **Project Management, Profitability Analysis Study & Financial Advisory Services.**
- **Implementation of Strategic Issues including preparation of documents, submission and appearances thereof before various regulatory authorities such as Ministry of Corporate Affairs, ROC, CLB, RD, NCLS etc.**
- **India Entry Advisory Services, FEMA Compliance Management Services, Branch / Liaison office Formation & Compliance, Joint Venture, WoS Company Incorporation & Management, Advisory services for seeking approval from Secretarial for Industrial Assistance (SIA) / Foreign Investment Promotion Board (FIPB) & E-filing Of International & Indian Corporate Returns.**
- **Intellectual Property Right Related Services viz Compliance Management of Trade Mark, Copy Rights & Patents.**
- **Other Offerings:**
 - ❑ **Virtual Office Management Services,**
 - ❑ **Accountancy, Direct And Indirect Taxation & E-filing Compliance Management Services.**



Thanking you

&

Assuring of best services at all times

navneet k. arora & co.
COMPANY SECRETARIES

E8/1, Near Geeta Bhawan Mandir, Shivalik Road, Malviya Nagar, New Delhi-110017

☎ 011- 65233450, 011-29545877, 9810328141, 011-26686432

Disclaimer: For Authentication of Data/Information provided please refer the respective Acts and LAWS. For any further query, you may please contact us at "contact@navneetaroracs.com"