

2018

RUN

SPICE

E- MOA
& AOA

No ROC
Fee up
to 10 Lac

Foreign
subscriber

Non-
STP
Mode

Process Incorporation of Company “Private Limited Article Series- 311

In this Editorial the author shall deliberate the Provisions of Companies Act, 2013 as on 1st February, 2018 in respect of Incorporation of Private Limited / Public Limited Company (Including all the Notifications, Circulars, most important Companies Amendment Act, 2017). Author shall discuss followings (i) Provisions of the Act (ii) Step Wise Process of Incorporation of Company (iii) FAQ's on Incorporation of Company. This Editorial includes the “RUN” “SPICE”. For Section 7 Incorporation of Company 11 Rules, 15 Notifications, 2 Circulars has been issued by the Central Government since 01.04.2014.



INCORPORATION OF COMPANY

Moving from the Companies Act 1956 to the Companies Act 2013 is like shifting from your old house to a new one. All the provisions become changed with new Act, 2013. Due to new act many amendments were introduced by Central Government from time to time by Notification, Amendments etc. Same like this many amendments have been made in last approximately 4 years in relation to Incorporation of New Company. Let's look at the Journey of Major Amendments in relation to Incorporation of Company since 1st April, 2014 to till date i.e. 01st February, 2018.

Date	Journey So Far
01.04.2014 TO 30.04.2015	New forms for Incorporation Company Introduced i.e. INC-1 - Name Approval; DIR-3 - Director Identification Number INC-7 - Incorporation of Company DIR-12 - Appointment of Directors INC-22 - Registered Office of Company All the above mentioned 3 forms were required to file for Incorporation of Company.
01.05.2015 TO 30.09.2016	Integrated Incorporation Process in form INC-29 . This form was 5 in one form. Company could apply DIN, Name, Appointment of Director, Registered Office and Incorporation in single form with lesser ROC Fees. Still there was some restriction in INC-29. (like: if Company filed INC-1 for proposal of name then it was not possible for the Company to file INC-29) Note* Above mention route of INC-7 was also available.
01.10.2016	Through Companies (Incorporation) Fourth Amendment Rules, 2016 a new form "SPICE" i.e. INC-32 (Specified Performa for Incorporation Company Electronically).

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<p>TO</p> <p>26.01.2018</p>	<p>This form was one step ahead to INC-29. E.g. Electronic MOA & AOA introduced in this Form. However, Company having both the way they can apply name in SPICE or apply name in INC-1 then can file Spice. PAN & TAN application become mandatory as part of the SPICE.</p> <p>Note* Above mention route of INC-7 was also available for some specific purposes</p>
<p>26.01.2018</p>	<p>This Date is revolutionary in the History of Companies Act for the purpose of "Ease of Doing Business". Following Alteration made by Central Government:</p> <ol style="list-style-type: none">i. New Process of Name Approval "RUN" notified and e-form INC-1 omitted.ii. INC-7 form omitted. Only way out for incorporation of Company is SPICE.iii. No ROC fees for Incorporation of Company up to 10 lack of authorized capital.iv. Updated version of SPICE notified.
<p>Another Alteration</p>	<p>Except the above mentioned amendment some other amendments have been made since 01.04.2014 to till date e.g.</p> <ul style="list-style-type: none">• No Requirement of Minimum Paid up share Capital.• No requirement of DIN at the time of Incorporation of Company.• Only one form for Incorporation of Company.• E-MOA & AOA

PROCESS OF INCORPORATION

STEP – I: Apply for Name Approval:

A. Login on MCA Website

Applicant have to login into their account on MCA Website. (Pro-existing users can use earlier account or new users have to create a new account.)

After Login use have to click on the icon “**RUN**” in MCA Service. An online form shall be open. Applicants have to fill the information online. (This form can't be download)

Note* since 26th January, 2018 e-form INC-1 has been omitted from the Companies Act, 2013.

B. Details required to be mentioned in online form:

- (i) Entity type (i.e. Part I, OPC, Section 8 etc.) (below table taken from MCA link: <http://www.mca.gov.in/MinistryV2/runServicerFAQ.html>)

Entity Type	Suffix allowed	Example
New Company (Others)/ Part I company	Limited/ Private Limited	ABC Limited DEF Private Limited
Producer Company	Producer company limited	GHI Producer Company Limited
Unlimited Company	Unlimited	JKL Unlimited
Private (OPC)	(OPC) Private Limited	MNO (OPC) Private Limited
IFSC Company	(IFSC) Limited/ (IFSC) Private Limited/ IFSC Limited /IFSC Private Limited	PQR IFSC Limited/ PQR (IFSC) Limited STU IFSC Private Limited/ STU (IFSC) Private Limited
Section 8 company	Other than 'Limited/ Private Limited/ (OPC) Private Limited'	VWX Electoral Trust
Nidhi Company	Nidhi Limited	MNO Nidhi Limited

- (ii) CIN (Corporate Identification Number and it has to be entered only when an existing company wishes to change its name and is using RUN to reserve a new name)
- (iii) Proposed name (Auto Check Facility)
- (iv) Comment (Mention Objects of the proposed Company and any other relevant information Like Trade Mark etc.)

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(v) Choose File (Any attachment)

C. Choose File:

This option is available to upload the PDF documents. If applicant want to attach any file, can be upload at this option.

D. Submission of Form on MCA Website:

After completion of above steps user shall submit the Form with MCA website.

E. Payment of Fees:

There is no option of pay later challan in RUN. Applicant has to pay fees immediately after submission of form. After payment challan shall be generated.

I. Validity of Reserved Name:

Reserved name shall be valid for 20 days from the date of approval of Name.

QUICK QUESTION - RUN

i. Whether DIN or DSC required for filing of Run form?

DSC & DIN not required for filing of RUN form for reservation of Name. Only account of MCA portal is mandatory.

ii. How many resubmission options are allowed in RUN?

No Resubmission of application is allowed in case of reservation of Name. The application either Approve or Reject.

iii. What shall be the validity of the Name after approval?

- i. Reserved name shall be valid for 20 days in case of allotment of name for New Company.
 - ii. Reserved name shall be valid for 60 days in case of allotment of name for existing Company (Change of Name).
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iv. How many name can be apply through this form?

Only one Name can be mentioned in RUN form. Earlier INC-1 allowed 6 names according to the preference.

v. What shall be the government fees for RUN?

As per Register office Fees Rules, Fees shall be Rs. 1,000/-

vi. Is it mandatory to attach documents while reserving name?

No.

It is mandatory to attach relevant documents and No Objection Certificates(NOCs) only when a name which requires the approval of a Sectoral Regulator or NoC etc. if applicable, as per the Companies(Incorporation) Rules, 2014, is being applied for.

Please note that only one file is allowed to be uploaded as an attachment and the size of the file should not exceed 6MB. In case of multiple attachments, please scan all documents into a single file not exceeding 6MB in size, and then upload the same.

vii. Whether there is any requirement to mention details of Directors in the RUN?

No, there is no need to mention the name or number of proposed Directors in RUN.

NOTE: * Approval of Name through "RUN" is an optional way. Companies can also Directly apply for the Name in SPICE form.

STEP – II: Preparation of Documents for Incorporation of Company:

After approval of name or for Incorporation of Company applicant have to prepare the following below mentioned Documents;

- ▽ INC-9 Affidavit / declaration by first subscriber(s) and director(s) (on duly authorized Stamp Papers).
- ▽ DIR-2 declaration from first Directors along with Copy of Proof of Identity and residential address.

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- ∇ NOC from the owner of the property.
- ∇ Proof of Office address (Conveyance/ Lease deed/ Rent Agreement etc. along with rent receipts);
- ∇ Copy of the utility bills (not older than two months)
- ∇ In case of subscribers/ Director does not have a DIN, it is mandatory to attach: Proof of identity and residential address of the subscribers
- ∇ All the Subscribers should have Digital Signature.

STEP – III: Fill the Information in Form:

Once all the above mentioned documents/ information are available. Applicant has to fill the information in the e-form “Spice” INC-32.

Features of SPICe (inc-32) form:

- Maximum details of subscribers are SEVEN (7). In case of more subscribers, physically signed MOA & AOA shall be attaching in the Form.
- Maximum details of directors are TWENTY (20).
- Maximum THREE (3) directors are allowed for filing application of allotment of DIN while incorporating a Company.
- Person can apply the Name also in this form.
- By affixation of DSC of the subscriber on the INC-33 (e-moa) date of signing will be appear automatically by the form.
- Applying for PAN / TAN will be compulsory for all fresh incorporation applications filed in the new version of the SPICe form.
- In case of companies incorporated, with effect from the 26th day of January, 2018, with a nominal capital of less than or equal to rupees ten lakhs or in respect of companies not having a share capital whose number of members as stated in the articles of association does not exceed twenty, fee on INC-32 (SPICe) shall not be applicable

Single Window Form:

Earlier if a Person wants to incorporate Company then it has to apply for the DIN, Approval of the Name Availability, Separate form for first Director, Registered office address, PAN, TAN etc. But this form is a single window for Incorporation of Company.

This form can be used for the following purposes:

- ∇ Application of DIN (upto 3 Directors)
- ∇ Application for Availability of Name

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- ∇ No need to file separate form for first Director (DIR-12)
- ∇ No need to file separate form for address of registered office (INC-22)
- ∇ No need to file separate form for PAN & TAN

QUICK QUESTION - SPICE

viii. How to file the SPICE form in case of more than 7 subscribers in the Company?

In case of incorporation of a company having more than 7 subscribers, MOA & AOA shall be filled with INC 32 in the respective format as specified in Table A to J in Schedule I without filing form INC 33 and INC 34. (Means Physical attachment of MOA & AOA in e-form INC 32)

ix. Whether e-MOA & AOA can be file in case of MOA & AOA is signed by a person at a place outside of India?

In case of incorporation of a company where any of the subscribers of the MOA/AOA is **signing at a place outside India**, MOA & AOA shall be filled with INC 32 in the respective format as specified in Table A to J in Schedule I without filing form INC 33 and INC 34. **(Means Physical attachment of MOA & AOA in e-form INC 32)**

x. Whether Companies are required to make payment of Stamp Duty in case of incorporation of Company with authorized Capital of Rs. 10 Lakh or below?

Yes, Company has to pay the Stamp Duty. Because Stamp Duty is state matter. Companies Act, has given exemptions for the ROC fees not for the stamp duty.

xi. How many DIN can be apply through SPICE Form?

Maximum 3 (Three) DIN can be apply through SPICE form.

If applicant want to incorporation Company with more than 3 Directors and more than 3 persons doesn't have DIN. In such situation applicant have to incorporate Company with 3 Directors and have to appoint new directors later on after incorporation.

xii. How many DIN can be apply through SPICE Form?

Only One (1) Name can be apply through SPICE form.

In case after filing of e-form, due to non Availability of name form came for resubmission. In such case applicant have to propose new name and have to alter the name on all the attachment of the Form.

STEP – IV: Preparation of MOA & AOA:

After proper filing of SPICE form applicant has to download the e-form INC-33 (MOA) and IN-34 (AOA) form the MCA site. After downloading of form fill all the information in the forms as per requirement of Table A to J of Schedule I.

After completely filing of the form affix DSC of all the subscribers and professional on subscriber sheet of the MOA & AOA.

STEP – V: Fill details of PAN & TAN:

It is mandatory to mention the details of PAN & TAN in the Incorporation Form INC-32. Link to find out of Area Code to file PAN & TAN are given in Help Kit of SPICE Form.

STEP – VI: Submission of INC-32,33,34 on MCA-:

Once all the 3 forms ready with the applicant, upload all three documents Linked form on MCA website and make the payment of the same.

STEP – VII: Certificate of Incorporation-:

Incorporation certificate shall be generating with CIN, PAN & TAN.

QUICK QUESTION - SPICE**xiii. Whether there is need to file any separate form for PAN & TAN?**

No need to file any separate form. Details in relation to Area Code and other details shall be mention in the form INC-32 itself and PAN & TAN shall be generate with Certificate of Incorporation.

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- xiv. **Whether e-MOA & AOA can be file in case of MOA & AOA is signed by a person at a place outside of India?**

No, In such situation applicant have to file the physically signed copy of MOA & AOA (Appostile) in their respective formats in Table A to J of Schedule I.

MOA & AOA and any other documents signed by the subscribers at any place outside India required to be appostile in that country.

CAUTION TO BE TAKEN BY PROFESSIONALS

1. **Obtain engagement letter from subscriber:** - As per certification in e-form DIR-12 & INC-22, a professional declares that he has been engaged for the purpose of certification Therefore it is advisable to obtain an engagement letter.
2. **Verification of original records pertaining to registered office:** - As per certification in e-form INC-22, a professional declares that he has verified all the particulars(including attachments) from original records.
3. **Ensure all attachments are clear enough to read:** - As per certification in e-form DIR-12 & INC-22, a professional declares that all attachments are completely and legibly attached.
4. **Ensure registered office of the company is functioning for the business purposes of the company:** - - As per certification in e-form INC-22, a professional declares that he has personally visited the registered office.
5. Take a declaration to the effect that all the original documents have been handed over after incorporation. Since as per section 7(4) copies all documents/information as originally filed should be preserved at the registered office of the company, therefore a professional should take a declaration while handing over the incorporation documents.

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6. **MCA Circular 10/2014**: - According to this circular ROC/RD in case of omission of material fact or submission of false/incomplete/ misleading information can after giving opportunity to explain refer the matter to governance division of MCA, which in turn may initiate proceedings under section 447 and/or ask the respective professional institute to take requisite disciplinary action.

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