

## **How to form a company in India**

The following steps are required to form a company (private or public) in India.

1. Get 'name availability' from Registrar of Companies (ROC).
2. Draft and execute Memorandum & Articles of Association and other documents.
3. Pay duties and fees
4. File Memorandum & Articles of Association and other documents with ROC
5. Represent with ROC for any reservations or comments he may have
6. Procure incorporation certificate from ROC.
7. Subscribe to the agreed share capital of the company
8. Obtain commencement certificate (for public companies)

### **How to get Name Availability**

Company law requires that the name of each company should be unique. As such, the proposed name of the company to be formed has to be approved by the Registrar of Companies and blocked till registration. The following is the process to get availability of name.

1. Promoters have to file an application in Form 1A giving the following particulars:
  - Names and addresses of promoters
  - Proposed name of the company
  - Alternative names of the proposed company. This is required if the proposed name is not available.
  - Type of company - Private or Public
  - Brief objects of the company
  - Proposed Directors and their addresses
  - Proposed address of the company
  - Authorised Share Capital (Authorised capital is the one upto which company can issue shares. The paid up capital can be lower than this).
  - Details of Group companies, if any
  - Details of fees paid for name availability
  - Note about significance of the proposed name. This is because regulations have some criteria based on which names are to be allowed.
2. A fee of INR 500 is to be paid along with the application.
3. Typically it takes 4 working days for the ROC to confirm availability of name/s. There may happen iteration with the ROC to get the desired name.
4. If the proposed names are not approved, more alternative names have to suggested.
5. On approval of name, the Registrar will issue a name allotment letter and will block the name.

## **Memorandum & Articles of Association – Facts to Remember**

The following are some critical facts to remember in executing M&A of A.

1. The promoters *in their own handwriting* have to give the following details in the Memorandum and Articles of association of the company:

- Name
- Occupation
- Father's/husband's name
- Complete Address
- Number of Shares subscribed

The Memorandum and Articles have to be signed by all the promoters and witnessed.

The person/s witnessing has/have to give the following details *in their own handwriting*:

- Name
- Occupation
- Father's/husband's name
- Complete Address

### ***Signing outside India***

In case the Memorandum and Articles is to be signed by any of the promoters out side India, then the signing should be done in the presence of Consul of India at the Indian Consulate.

### ***Share Capital***

The minimum authorised share capital for incorporating a Private Limited company is INR 100,000.

The minimum authorised share capital for incorporating a Public Limited company is INR 500,000.

### ***Number of Promoters***

For incorporating a Private Limited Company a minimum of two promoters are required.

For incorporating a Public Limited Company a minimum of seven promoters are required.

***Number of Directors***

For incorporating a Private Limited Company a minimum of two directors are required.

For incorporating a Public Limited Company a minimum of three directors are required.

***Fee Structure***

The following is the fees required to be paid to the ROC for incorporation of the company.

<b>Authorised Capital</b>	<b>Incremental capital</b>	<b>Fee / incremental fee (INR)</b>
Upto INR 100,000		4,000
From INR 100,000 to INR 500,000	For every INR 10,000	@ 300
From INR 500,000 to INR 5,000,000	For every INR 10,000	@ 200
From INR 5,000,000 to INR 10,000,000	For every INR 10,000	@ 100
Over INR 10,000,000	For every INR 10,000	@ 50

***Commencement of Business***

A commencement of business certificate has to be obtained from the ROC in case of Public Limited Companies before any business activity can be taken up.

## **Information Required for Name Approval**

The following information is required for seeking name approval.

1. Name of the applicant which should be one of the promoters
2. Address of the applicant - this is where all communication will be sent by Registrar of Companies (ROC)
3. Proposed name of the company
4. Alternative names
5. Significance of the first word of the proposed name. This makes it easier to get a desired name.
6. Names of the proposed first directors – minimum 2 in the case of a private company and 3 in the case of a public company
7. Addresses, dates of birth, father's/husband's names of the proposed directors
8. Authorised Share Capital – minimum INR 100000 in the case of a private limited and INR 500000 in the case of a public company
9. Objects of the company in brief.
10. Address of Registered office of the proposed company. If a place is not finalized, this information can be given at the time of incorporation.
11. Application fee for approval of name of INR 500 has to be remitted in cash.