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# Registration or Incorporation of a Company

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Date of Submission: 01-04-2023

Date of Acceptance: 10-04-2023

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Section 3 of the Companies Act, 2013 provides for the lawful purpose of the formation of a company by any such person including-

- (a) Seven or more members, in case of a public company
- (b) Two or more members, in the case of a private company
- (c) One person, in the case of a one-person company

The members are required to subscribe their names to a memorandum in compliance with this Act. Memorandum of one person's company shall indicate the name of the other person, with his prior written consent, who shall in the event of the subscriber's death or his incapacity to contract becomes a member of the company. The written consent of such other person shall also be filed with the registrar at the time of incorporation of the one-person company along with its memorandum and articles.

According to section 4 of the act, the name stated in the memorandum of association shall not be identical to or resembles any existing company already registered under this act or any previous company law. The use of an identical name by a company will amount to an offense. The Registrar may inform the applicant within three days of receipt of the application and may ask for other information regarding the application or ask for re-submission of the application with the new name.

The preparation of a memorandum and articles is the next primary step in the formation of a company. According to section 4(1), the memorandum shall state the name, registered office, objects, liability of members, and share capital in case of a company having a share capital. In the case of one person company, the name of the person who, in the event of the death of the subscriber, shall become a member of the company stated. Section 5(1) provides that the articles of a company shall contain the regulations for the management of the company. According to Section 7(1)(a) read with Rule 13 of the (Incorporation) Rules, 2014, the memorandum and articles must be signed by each subscriber to the memorandum. Each subscriber should give his address, description, occupation, etc., and the number of shares subscribed by them. One witness is required in whose presence the subscribers are required to sign the documents. The next step is obtaining the Director Identification Number, for the proposed first directors of the company. All or some of the subscribers to the memorandum may be proposed as the first directors of the company to be incorporated. The consent of the persons to act as first directors must also be obtained.

An application is to be made in Form No. INC 32 along with the following documents, as per Section 7(1), with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated:

- i) Memorandum and Articles - Section 7(1)(a)
- ii) Declaration by an advocate, C.A, etc. - Section 7(1)(b)
- iii) Declaration from subscribers and first directors- Section 7(1)(c)
- iv) Address for communication- Section 7(1)(d)
- v) Particulars of subscribers to the memorandum- Section 7(1)(e)
- vi) Particulars of persons named as first directors- Section 7(1)(f)
- vii) Particulars of the interest of the persons named as first directors- Section 7(1)(g)

All the documents are to be filed electronically and authenticated by digital signature. Section 7(2) states that the Registrar based on documents and information filed under Section 7(1) shall register all the documents and information referred to and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act. Section 9 of the Act provides for the effect of registration. After the certificate of incorporation has been issued by the Registrar the subscribers of the company become members of the company and the company becomes a body corporate capable of enjoying all the functions of an incorporated company under this Act.