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REGISTRATION AND INCORPORATION OF THE COMPANIES IN INDIA

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ABSTRACT

A crucial step in establishing a business entity in India is company registration and incorporation, followed according to the provisions of the Companies Act, 2013, and authorized by the Ministry of Corporate Affairs. This process formally recognizes a business as a legal entity. It endows the company with its own legal identity, provides limited liability protection to its shareholders, and ensures continuity of existence. Such legal stature encourages trust and accountability in the business environment. The process commences with deciding on the appropriate business structure, such as a Private Limited Company, Public Limited Company, or One Person Company (OPC), depending on the scale and nature of the business. The company name requires MCA approval, followed by preparing vital documents including the Memorandum of Association (MOA) and Articles of Association (AOA). Reforms have introduced the electronic SPICe (Simplified Proforma for Incorporating Company Electronically Plus) process, enabling simultaneous application for Director Identification Number (DIN), Permanent Account Number (PAN), and Tax Account Number (TAN). Upon scrutinizing the application, the Registrar of Companies (ROC) grants the Certificate of Incorporation, confirming the company's legal identity. The registration process imparts significant benefits, including legal recognition, limited liability for shareholders, and eligibility for various incentives. It marks the inaugural step in a company's regulatory journey, necessitating compliance with post-registration requirements such as opening a corporate bank account and obtaining Goods and Services Tax (GST) registration based on the nature of the business and applicable legal provisions. Researcher tries to find out the legal framework, procedures and significance of company registration and incorporation in India, along with its impact on business operations under companies Act, 2013.

Keywords: Companies Act 2013, Legal Entity, Limited Liability, Certificate of Incorporation, Ease of Doing Business

Introduction

Starting company or any kind of business in India is a very exciting journey in itself. Incorporation and registration of company in India represents a critical process through which a business entity acquires legal personality distinct from its promoters and members. This legal transformation carries profound implications for business operations, liability protection, and regulatory compliance. Under Indian law, company incorporation is governed primarily by the Companies Act, 2013,

which replaced the earlier Companies Act, 1956, introducing significant reforms to streamline the incorporation process while strengthening corporate governance standards too. Over the years, India's legislative framework has evolved to accommodate modern business practices, technological innovations, and global investment trends, thereby simplifying incorporation while ensuring accountability and transparency. Judicial interpretations have further shaped the principles of corporate law, defining key doctrines such as the separate legal entity of companies, promoter liability, ultra vires acts, and circumstances in which the

corporate veil may be lifted. Understanding the regulatory, procedural, and practical dimensions of incorporation is crucial for businesses seeking sustainable growth and long-term legal security. This article examines the multifaceted legal dimensions of company incorporation in India, exploring the historical evolution, regulatory framework, judicial interpretations, and emerging trends that shape this foundational business transaction in the Indian corporate landscape. As we all know that India is among one of the world's fastest growing economy with a business friendly legal framework.

Historical Background and Legal Context

The evolution of company law in India closely follows its colonial history and subsequent post-independence development. The very first consolidated legislation governing companies was the Indian Companies Act, 1866, based on the English Companies Act of 1862. This was later replaced by the Indian Companies Act, 1913 and subsequently by the Companies Act, 1956, which remained the primary corporate legislation for over five decades.

Post-independence the Companies Act, 1956, while comprehensive, eventually became outdated in addressing modern corporate challenges. This led to the enactment of the Companies Act, 2013, which introduced fundamental changes to company formation and governance. The 2013 Act was further amended in 2015, 2017, and 2019 to address implementation challenges and further simplify the incorporation and registration process of companies in India.

In the landmark case of *Salomon v. Salomon & Co. Ltd.* (1897), the House of Lords established the principle of separate legal entity, which was later adopted by Indian courts in cases such as *State Trading Corporation of India v. Commercial Tax Officer* (AIR 1963 SC 1811) and *Electronics Corporation of India Ltd. v. Commissioner of Income Tax* (1989 177 ITR 268 AP), firmly establishing the concept of corporate

personhood as separate legal personality in Indian jurisprudence.

Relevant Laws and Regulations

The process of company incorporation in India is primarily governed by the Companies Act, 2013, which serves as the cornerstone legislation regulating the formation, management, and operation of companies. This Act lays down the essential framework for incorporation. Defining the various types of companies that may be formed under Section 3. The requirements relating to the Memorandum of Association under Section 4 and provision concerning for article of association under article 5

Complementing the Act are the Companies (Incorporation) Rules, 2014, which elaborate the procedural aspects of incorporation. Notable among these are Rule 8, which lists names requiring the approval of the Central Government, Rule 9, which prescribes the procedure for reservation of company names, Rule 12, which mandates declarations by professionals involved in the incorporation process, and Rule 38, which introduces the Simplified Proforma for Incorporating Company Electronically Plus (SPICe+) to facilitate online incorporation.

Additionally, several Companies (Amendment) Acts have been enacted to simplify and modernize the incorporation process. The Companies (Amendment) Act, 2015 streamlined the private placement process, the Companies (Amendment) Act, 2017 eliminated the requirement of minimum paid-up capital, and the Companies (Amendment) Act, 2019 reclassified certain offences as civil defaults to promote ease of doing business.

The regulatory framework is administered primarily by the Ministry of Corporate Affairs (MCA), which oversees company incorporation through the Central Registration Centre (CRC) for name approval and the MCA21 portal for the electronic filing of incorporation documents. The Registrar of Companies (RoC), appointed under Section 396 of the Companies Act, is

responsible for registering companies and maintaining their statutory records, ensuring compliance with legal requirements. The National Company Law Tribunal (NCLT) functions as the judicial authority for adjudicating disputes arising in connection with incorporation and other corporate matters.

In addition to the Companies Act and its related rules, certain other legislations play a crucial role in the incorporation process. The Foreign Exchange Management Act (FEMA), 1999 regulates foreign investment in Indian companies, providing specific guidelines for entities with foreign participation in their capital structure. The Income Tax Act, 1961, through Section 139A, mandates that every company obtain a Permanent Account Number (PAN) as part of its incorporation process to enable tax compliance. Similarly, the Goods and Services Tax (GST) Act, 2017 requires registration under GST for companies engaged in the supply of taxable goods or services. Together, these statutes and regulatory authorities form a comprehensive legal framework ensuring that the incorporation of companies in India is carried out in a transparent, efficient, and compliant manner, aligning with the broader objectives of corporate governance and economic development.

Key Judicial Precedents

Indian courts have played a crucial role in shaping the foundational principles of company incorporation through a series of landmark judgments. One of the earliest and most significant rulings came in

Tata Engineering and Locomotive Co. Ltd. v. State of Bihar (AIR 1965 SC 40), where the Supreme Court reaffirmed the doctrine of separate legal entity, holding that a company possesses a distinct legal personality independent of its shareholders. This principle forms the fundamental of company law, ensuring that the rights and liabilities of a company are separate from those of its members.

The Indian judiciary has also developed the principle of lifting the corporate veil, as seen in Delhi Development Authority v. Skipper Construction Co. (1996) 4 SCC 622, where the Supreme Court held that the veil of incorporation may be pierced in situations where the company structure is misused to evade tax, perpetrate fraud, or defeat the law and morality. This doctrine ensures that the privilege of separate legal personality is not abused for improper purposes.

Further, the doctrine of ultra vires was clearly explained by the Supreme Court in A. Lakshmanaswami Mudaliar v. Life Insurance Corporation of India (AIR 1963 SC 1185), where it was held that a company cannot undertake activities beyond the scope of its objects clause stated in the Memorandum of Association, and any such acts would be void. This judgment emphasized the importance of clearly defining a company's objectives during incorporation.

In matters concerning promoters' liability, the Madras High Court in Weavers Mills Ltd. v. Balkies Ammal (AIR 1969 Mad 462) established that promoters are personally liable for contracts made on behalf of a company before its incorporation, unless the company, after being formed, expressly adopts or ratifies such contracts. This case clarified the legal position of promoters and their obligations prior to incorporation.

Additionally, the doctrine of defective incorporation was discussed in Mohan Lal Jain v. Tara Apartments Owners Association (MANU/DE/0356/1993), where the Delhi High Court recognized the concept of a de facto corporation, holding that where there has been substantial compliance with the statutory requirements of incorporation, the existence of the company may still be recognized to protect third parties who have relied on its corporate status.

These judicial decisions together have significantly influenced Indian corporate law or jurisprudence by defining key doctrines such as separate legal personality, lifting of the

corporate veil, ultra vires acts, promoter liability, and de facto incorporation, by providing clarity and balance between corporate privileges and legal accountability.

Detailed Incorporation Process and Legal Requirements

1. Types of Companies Under Indian Law

Under Section 3 of the Companies Act, 2013, several types of companies can be incorporated and registered in India depending on their structure, ownership, and objectives. A Private Limited Company, defined under Section 2(68), is one that restricts the right to transfer its shares, limits the number of members to 200, and requires a minimum of two directors as per Section 149(1). This form of company is commonly chosen by small and medium enterprises due to its flexibility and limited liability protection. And the next one is Public Limited Company, as per Section 2(71), requires a minimum of seven shareholders with no maximum limit. Its shares are freely transferable, and it must have at least three directors under Section 149(1). Such companies are generally larger and may raise capital from the public.

Another structure is the One Person Company (OPC), introduced under Section 2(62) of Companies Act, 2013 to encourage entrepreneurship by allowing a single individual to incorporate a company. It mandates the appointment of a nominee as per Section 3(1)(c) and requires at least one director, though it can have up to fifteen. Additionally, Section 8 Companies, also known as non-profit companies, are incorporated for charitable or social purposes and operate under a license granted by the Central Government. Their profits must be reinvested into their objectives and cannot be distributed as dividends. Furthermore, a Limited Liability Partnership (LLP), governed by the LLP Act, 2008, combines the flexibility of a partnership with the limited liability of a company, requiring a minimum of two partners but placing no upper limit on the number of partners.

2. Pre-Incorporation Requirements

Before the incorporation of the company there are, several prerequisites must be fulfilled. Each proposed director must obtain a Digital Signature Certificate (DSC) which is mandatory under Section 7(1)(b) of the Companies Act, 2013. This certificate is issued by authorized agencies and enables the electronic signing of documents. In addition to this every director must possess a Director Identification Number (DIN), obtained under Section 153 through Form DIR-3 or the SPICe+ form. These two requirements ensure the authenticity and traceability of company officials.

All proposed directors and subscribers must also provide their valid identification and address proof, including a Permanent Account Number (PAN). The company must also have a designated registered office address, proof of which must be submitted at the time of registration. Now the next step is the name approval process, which is conducted through the RUN (Reserve Unique Name) service of the MCA. Under Sections 4(2) and 4(3), the name must not be identical or misleading, nor contain prohibited or offensive words. Once approved, the name remains valid for a period of 20 days.

Step-by-Step Incorporation Procedure

The process of incorporation and registration begins with name reservation, for which applicants submit up to two proposed names via the RUN service. Upon approval, the name remains valid for 20 days, allowing time for filing the incorporation documents.

Next, the company prepares essential documents including the Memorandum of Association (MOA), which defines the objectives, liability, and capital clauses as per Section 4, and the Articles of Association (AOA), which govern internal management under Section 5.

A declaration from professionals under Form INC-8 (as per Section 7(1)(b)) and the directors' consent in Form DIR-2 (under Section 152(5)) are also required.

The incorporation application is then filed through the SPiCe+ form, an integrated electronic form that simplifies multiple registrations. Part A of SPiCe+ contains company and director details.

while Part B includes registrations for PAN, TAN, GST, EPFO, and ESIC. Appropriate fees, based on authorized capital under Schedule X, along with applicable stamp duty, must be paid. The Central Registration Centre (CRC) reviews the documents, and any discrepancies are to be resolved within 15 days. Once the application is verified, the Registrar of Companies issues the Certificate of Incorporation, which contains the company's Corporate Identity Number (CIN) and confirms its legal existence under Section 9. The certificate also includes the company's PAN and TAN details, marking the company's formal recognition as a separate legal entity.

Practical Challenges

The workscope of the incorporation process typically follows a streamlined pattern obtaining the DSC, acquiring the DIN, reserving the name, filing the SPiCe+ form, and finally obtaining the Certificate of Incorporation.

Companies face several practical, legal, and regulatory challenges during the incorporation process, despite digital reforms like SPiCe+ simplifying procedures.

1. Name Availability and Approval: Choosing a unique and acceptable company name is often challenging. The Registrar of Companies (RoC) scrutinizes proposed names to prevent duplication or misleading similarities with existing companies. Courts have repeatedly upheld the RoC's discretion, as in *Aditya Birla Finance Ltd. v. Registrar of Companies* (2018). Names containing restricted words or reserved phrases may also require prior government approval, which can delay incorporation.

2. Drafting the Memorandum and Articles of Association: Preparing the MOA and AOA is a critical step. The object clause in the MOA must clearly define the company's activities, or the company risks future ultra vires challenges—

actions outside the company's legal powers. Poorly drafted documents can lead to legal disputes, rejection of filings, or operational limitations.

3. Verification of Registered Office: Companies must provide proof of a legitimate registered office. The RoC has the authority to physically or electronically verify the office, and failure to meet requirements can result in rejection of incorporation applications, as highlighted in *Registrar of Companies v. John Tinson & Co. Pvt. Ltd.* (2002).

4. Compliance with Director and Subscriber Requirements: Proposed directors must obtain Digital Signature Certificates (DSC) and Director Identification Numbers (DIN). Any errors in personal documents, identification proofs, or consents can delay registration. Similarly, subscribers must submit accurate PAN, address proofs, and identity documents.

5. Capital and Regulatory Compliance: Even during incorporation, companies must comply with capital structure regulations and, in cases involving foreign investment, FEMA rules. Non-compliance with sectoral caps, foreign investment limits, or prior government approvals can cause legal issues or rejection of the incorporation application.

6. Procedural Errors and Technical Issues: Errors while filing the SPiCe+ form, missing declarations, or incorrect attachments are common hurdles. These can lead to queries from the RoC and delay processing. While digital systems have reduced manual errors, inexperience or misunderstanding of form requirements still causes challenges.

7. Legal Risks and Misuse: Promoters must maintain proper formalities and ensure compliance from the outset. Misuse of the corporate structure, inadequate capitalization, or commingling of funds can lead to piercing of the corporate veil, exposing promoters to personal liability even after incorporation.

8. Time and Administrative Delays: Although SPiCe+ has streamlined incorporation to 1–3

days in many cases, discrepancies in verification, delays in DSC/DIN issuance, or RoC queries can still extend the timeline, affecting business planning.

Overcoming Challenges During Incorporation

Companies can overcome the common challenges faced during incorporation through careful planning, accurate documentation, and professional guidance. One of the first and most important steps is selecting a distinctive company name. The name should be checked against existing company records on the MCA portal to avoid duplication or similarity and should comply with restrictions on reserved or sensitive words.

The second one Drafting the Memorandum and Articles of Association with precision is equally critical, particularly the object clause, which must clearly outline the company's activities to prevent future ultra vires disputes.

Next the third Ensuring that all documents of directors and subscribers, including PAN, identity proofs, address proofs, and consent forms, are complete and accurate before filing reduces delays during verification. Proof of a legitimate registered office must also be ready and meet the requirements set by the Registrar of Companies.

Fourth Compliance with digital requirements, such as obtaining Digital Signature Certificates (DSC) and Director Identification Numbers (DIN) in advance, streamlines the online incorporation process via SPICe+.

Fifth Companies receiving foreign investment must strictly follow FEMA regulations, including sectoral caps and prior government approvals where required.

Sixth Engaging professional advisors, such as Company Secretaries or Chartered Accountants, can help prevent procedural errors, ensure correct filing of SPICe+ forms, and certify statutory declarations.

Seventh Maintaining proper corporate formalities from the outset, including separating

personal and company funds and avoiding any misuse of the corporate structure, minimizes the risk of the corporate veil being lifted.

Finally, careful planning and timely follow-up with the RoC for queries ensures that delays in processing, verification, or approvals are minimized. Overall, meticulous preparation, adherence to legal requirements, and professional support are essential to ensure a smooth and legally compliant incorporation process.

Recommendations

Improving the process of company incorporation in India requires a combination of better guidance, technological innovation, and regulatory clarity. Entrepreneurs and promoters can benefit greatly from enhanced support through government proactive initiatives, advisory services, and online resources that explain the procedural and compliance requirements in detail, ensuring that incorporation documents are prepared accurately from the outset. Greater reliance on digital verification systems, including e-KYC, automated form checks, and AI-assisted scrutiny, can minimize errors and reduce delays in registration, while secure digital registries such as blockchain could enhance transparency and prevent document forgery. Raising awareness about corporate governance which is very much important in recent time and legal formalities before incorporation can also prevent misuse of the corporate structure, lowering the risk of penalties or piercing of the corporate veil.

Collaborations of various regulatory processes, such as tax registration, labor compliance, and foreign investment approvals, into a seamless workflow would make the process more efficient, particularly for companies with international investors.

Conclusion

Incorporation and registration process of the companies in india had evolved from the erstwhile complex,autocratic,huge unnecessary

bureaucratic, paper based, time consuming to a streamline efficient digital procedures. our majestic refined company law 2013, with its massive amendment with fundamental judicial interpretations gave us a robust mechanism for the healthy business friendly environment. as the process of the incorporation evolved driven by legislative reform, digital innovations and judicial interpretation but still there are such challenges like – proper drafting of constitutional documents, regulatory compliances. They can effectively managed with the professional support and legal formalities. The adoption of digital platforms like SPICe+ and the anticipated MCA 3.0 system has streamlined incorporation, reduced procedural delays, and enhanced transparency, making it easier for entrepreneurs to establish businesses. Overall, with careful planning, regulatory clarity, and the use of modern digital tools, India is well-positioned to provide a robust, efficient, and legally secure foundation for new companies, promoting entrepreneurship and economic growth across the country. Ultimately, a successful incorporation process is not merely an administrative formality but a strategic step that ensures a company's legal validity, corporate governance, and long-term sustainability. With careful planning, professional support, technological adoption, and regulatory clarity, India is well-positioned to provide a robust and investor-friendly ecosystem for new businesses. This evolving landscape not only supports entrepreneurship but also strengthens the broader economic fabric, enabling sustainable growth, enhanced transparency, and the emergence of innovative enterprises that contribute significantly to national development. In essence, company incorporation in India is a critical first step for any business, providing legal recognition, operational legitimacy, and a framework for corporate accountability. With proper planning, professional assistance, adherence to legal formalities, and the adoption of technological solutions, the incorporation process can be streamlined and optimized, ensuring long-term

success for businesses while supporting the nation's economic growth and global competitiveness. The future outlook is therefore highly positive, with increasing efficiency, clarity, and transparency expected to make India an even more attractive destination for entrepreneurs and investors alike.

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