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PROCEDURE FOR INCORPORATING A COMPANY IN INDIA
"A SNAP SHOT"

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Incorporation of Companies in India and setting up of branch offices of foreign corporations in India are regulated by the Companies Act, 1956. The Companies Act of 1956 sets down rules and regulations for the establishment of both public and private companies in India.

For the purpose of incorporation in India under the Companies Act, 1956, the first step for the formation of a company is the approval of the name by the Registrar of Companies (hereinafter referred as "ROC") in the State/Union Territory in which the company will maintain its registered office. This approval is subject to certain conditions. For instance, there should not be an existing company by the same name. Further, the last words in the name are required to be "Private Ltd." in the case of a private company and "Limited" in the case of a Public Company.

Foreign companies engaged in manufacturing and trading activities are permitted by the Reserve Bank of India to open its branch offices in India. Application for permission to open a branch, a project office or liaison office is made via the Reserve Bank of India by submitting form FNC-5 to the Foreign Investment and Technology Transfer Department of the Reserve Bank of India. For opening a project or site office, application may be made on Form FNC-10 to the regional offices of the Reserve Bank of India. A foreign investor need not have a local partner, whether or not the foreigner wants to hold full equity of the company. The portion of the equity thus not held by the foreign investor can be offered to the public.

The ROC generally informs the applicant within seven days from the date of submission of the application, whether or not any of the names applied for is available. Once a name is approved, it is valid for a period of six months, within which time Memorandum of Association and Articles of Association together with miscellaneous documents are required to be filed. A company is formed by registering the Memorandum and Articles of Association with the Registrar of Companies.

After the duly stamped Memorandum of Association and Articles of Association, documents and forms are filed and the filing duly fees are paid, the ROC scrutinizes the documents and, if necessary, instructs the authorized person to make necessary corrections. The ROC will give the certificate of incorporation after the required documents are presented along with the requisite registration fee, (**Annexure A**) which is scaled according to the share capital of the company, which will be stated in its Memorandum of association. In case the Memorandum and Articles is to be signed by any of the promoters out side India, then the signatures are required to be made in the presence of Consul of India at the Indian Consulate.

Minimum number of Directors and shareholders: -

- ❖ For incorporating a Private Limited Company a minimum of two directors are required and minimum two shareholders.
- ❖ For incorporating a Public Limited Company a minimum of three directors are required and minimum seven subscribers.



Thereafter, a Certificate of Incorporation is issued by the ROC, from which date the company comes in to existence. It takes about one to two weeks from the date of filing Memorandum of Association and Articles of Association to receive a Certificate of Incorporation.

A **private company** can commence business on receipt of its certificate of incorporation. A **public company** has the option of inviting the public for subscription to its share capital. Accordingly, the company has to issue a prospectus, which provides information about the company to potential investors. The Companies Act specifies the information to be contained in the prospectus. The prospectus has to be filed with the ROC before it can be issued to the public. In case the company decides not to approach the public for the necessary capital and obtains it privately, it can file a statement in lieu of prospectus with the ROC. On fulfillment of these requirements, the ROC issues a Certificate of Commencement of business to the public company. The company can commence business immediately after it receives this certificate.

To sum up, a company is formed by registering the Memorandum and Articles of Association with the Registrar of Companies of the State in which the main office of the proposed company would be located. After the duly stamped Memorandum of Association and Articles of Association, documents and forms are filed and the filing fees are duly paid, the ROC scrutinizes the documents and, if necessary, instructs the authorized person to make necessary corrections. The ROC grants the certificate of incorporation after the required documents

are presented along with the requisite registration fee, which is scaled according to the share capital of the company, as stated in its Memorandum. Thereafter, a Certificate of Incorporation is issued by the ROC and the company officially comes in to existence w.e.f the date shown on this certificate. It usually takes one to two weeks from the date of filing Memorandum of Association and Articles of Association to receive a Certificate of Incorporation. As a recent development in incorporation procedures, various forms and applications under Companies Act, 1956 and the Rules and Regulations are being facilitated through e-filing which is projected by Ministry of Company Affairs.

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ANNEXURE-A

Fee Structure

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

Authorized Capital	Incremental capital	Fee/ incremental fee (INR)
Up to 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