Formation Of A Private Limited Company In India
Floraison India Compliances Private Limited is a Bangalore-based business consulting organization. As a company which provides integrated consulting services, we partner our clients from the stage of inception to assist them in successfully commencing their operations and further hand-hold them to run their company efficiently.

At Floraison, we strive to cultivate strong relationships with our clients by providing them with solutions, which cater to their precise requirements. Customizability is therefore the essence of all the services provided by us. We believe true success is not just fulfilling our clients’ requirements, but exceeding their expectations. And, to be successful, we work as an cohesive team all the way, using the best of tools and methodologies.

Floraison is a member of:
  » Confederation of India Industry
  » Bangalore Chamber of Industry and Commerce
  » Indo-German Chamber of Commerce

For more information on the company, Please visit us at www.floraison.in
Disclaimer
This publication is a product of Floraison India Compliances Private Limited. The items contained herein are provided for general information purposes only. Floraison strives to maintain up-to-date information from its own and other reliable sources; however, no responsibility is accepted for any errors and/or omissions or results of any actions based upon this information, without consulting Floraison first. Though all efforts have been made to ensure the accuracy of the content, the same should not be construed as a statement of law or used for any legal purposes. The information is for reference purposes only and should not be dealt with as advice.
“In every phenomenon the beginning remains always the most notable moment.”

Thomas Carlyle
in this issue

Introduction Page 1

Forming A Private Limited Company In India: The Process Page 2

Overview Of The Procedure Page 4
  ▶ Obtaining DIN and DSC Page 4
  ▶ Approval Of Name Page 4
  ▶ Memorandum and Articles of Association Page 5
  ▶ Contents of Memorandum of Association (Section 13) Page 5
  ▶ Filing of other Documents Page 5
  ▶ Statutory Declaration In e-Form No.1 Page 6
  ▶ Miscellaneous Documents Page 6
  ▶ Payment Of Registration Fee Page 6
  ▶ Certificate of Incorporation Page 6

Need For The Registration Of The Company Under Company’s Act, 1956 Page 7
Starting any business in India has become rather easy and quick. According to the latest World Bank report of 2007, the incorporation of a company takes approximately 35 days in India. The Government of India has been developing and refining the supporting infrastructures continuously including the power supply, telecommunication network, besides facilitating foreign investment in almost all sectors, especially in the tourism, information technology, and agriculture sectors. Evidently, India's economy is galloping ahead quite prominently, and plays the pivotal role in the world trade and economy.

A private limited company is a legal entity or a type of incorporated firm which (like a public firm) offers limited liability to its shareholders but which (unlike a public firm) places certain restrictions on its ownership. These restrictions are spelled out in the firm's articles of association or bylaws and are meant to prevent any hostile takeover attempt. The major restrictions are:

(1) Stockholders (shareholders) cannot sell or transfer their shares without offering them first to the other stockholders for purchase,

(2) Stockholders cannot offer their shares or debentures to the general public over a stock-exchange,

(3) Number of stockholders cannot exceed a fixed figure (commonly 50).

**Private Limited Companies include** Banking, Commerce & Finance, Corporate, Commercial, & General Law and Entrepreneurship, Management, & Leadership subjects.
forming a private limited company in India: the process

1. Procurement of DIN – 1 (provisional) for all directors
2. Application for approval of DIN 1 to Ministry of Corporate Affairs, Noida (This is mandatory).
3. Application for Digital Signature Certificate (This is mandatory for at least one director)
4. Application for name approval to Registrar of Companies, Karnataka
5. Confirmation of name availability, as per the guidelines set by the Ministry of Corporate Affairs

The Companies Act requires a minimum of two directors and two shareholders for the incorporation of a private limited company.

Directors' Identification Number is an unique number allotted to an individual who is an existing director or intends to be appointed as a director in a company.

A Digital Signature Certificate, like a hand written signature, establishes the identity of the sender filing the documents through internet which sender cannot revoke or deny.

For the purpose of incorporation, the promoters will have to suggest six names for the proposed company, in order of preference.

The Registrar of Companies generally informs the applicant within three 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 two months, within which time Memorandum of Association and Articles of Association together with other documents are required to be filed (Form 1, 18, 32 and Power of Attorney).

A Certificate of Incorporation is issued by the ROC, from which date the company comes into existence. A private company can commence business on receipt of its certificate of incorporation.

The first Board Meeting has to be conducted within 30 days of obtaining the certificate of incorporation with a clear and pre-fixed agenda.

Forming a private limited company in India: the process (cont...)

Submission of documents for Company incorporation to Registrar of Companies, Karnataka through online submission.

Procurement of the certificate of incorporation of the company from the Registrar of Companies, Karnataka.

1st Board Meeting held in the registered office with original directors.
Obtaining DIN and DSC:
Under the new e-filing system, it is mandatory to obtain the following:

a. Directors Identification Number (DIN)
   DIN is a unique identification number of an Indian citizen who is an existing director or is to be appointed director of a company. In case of e-Filing, it is a pre-requisite for filing certain company related documents.
   Without DIN a person cannot become a director in any company. DIN is mandatory for directors (of Indian companies) who are not the citizens of India. However the directors of foreign companies having branch offices in India are not required to apply for a DIN.

b. Digital Signature Certificate (DSC)
   The Signing authority (Director) is required to obtain a DSC for the purpose of signing e-forms.
   A Digital Signature Certificate or DSC is the electronic format of paper certificates like drivers' licenses, passports or membership cards, etc. These paper or physical certificates act as identity proofs of an individual.
   The digital certificate can be presented electronically for the following purposes:
   I) To prove one's identity.
   II) To access information or services on the internet.
   III) To sign certain digital/ electronic documents, such as e-forms.
   A DSC is issued by a licensed Certifying Authority. Digital Signatures are legally admissible in a Court of Law, as per the IT provisions.

Name Approval And Registration Of The Private Limited Company With ROC, Karnataka

- The most important step in the formation of a Private Limited Company is the approval of the name by the Registrar of Companies (ROC). This approval is provided subject to certain conditions: for instance, there should not be an existing company by the same name.

- The name of a private company must end with the words 'Private Limited'.

- The application should mention at least six suitable names of the proposed company, in order of preference along with the significance of each name. It should be noted that all the six names should comply with the nature of business of the company.

- The ROC generally informs the applicant within three days from the date of submission of the application, whether or not any of the names applied for, is available.
Memorandum and Articles of Association

The Memorandum and Articles of Association are the most important documents to be submitted to the ROC for the purpose of incorporation of a company. The Memorandum of Association is a document that sets out the constitution of the company. It contains, amongst others, the objectives and the scope of activity of the company besides also defining the relationship of the company with the outside world.

The Articles of Association contain the rules and regulations of the company for the management of its internal affairs. While the Memorandum specifies the objectives and purposes for which the Company has been formed, the Articles lay down the rules and regulations for achieving those objectives and purposes. The Articles are compulsory for Private companies, Companies Limited by guarantee and Unlimited Companies. They are however, optional for public companies limited by shares. In the absence of special Articles, TABLE A of Companies Act becomes the Articles of the Company.

The ROC will give 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. A private company can commence business on receipt of its certificate of incorporation.

Contents of Memorandum of Association (Section 13)

- The name of the Company with 'Limited' in case of a public company and 'Private Limited' in the case of a Private Company.
- The State in which the registered office of the company will be situated.
- The objects of the company, in the case of a company in existence immediately before the commencement of the companies (Amendment) Act, 1965.
- In the case of the Company formed after the commencement of the Amendment Act, 1965, the memorandum must contain
  - (a) The main objects of the company, together with other objects incidental or ancillary to the attainment of the main objects;
  - (b) Other objects of the company not included in (a) above.
- In the case of a company (other than a trading corporation), with objects not confined to one State, the states to whose territories the objects extend.
- The Declaration about the liability of the members.
- A statement as to the amount of share capital, and its Division into shares of fixed amount.

Filing of other Documents

In addition to these steps, following two forms prescribed under the company law are required to be filled with Registrar for the purpose of registration of a private company:

- I. e-Form No. 18; and
- II. e-Form No. 32.
Statutory declaration in e-Form No. 1

A declaration under section 33(2) of the Companies Act, in e-Form No. 1 of the Companies (central Governments) general Rules and Forms, 1956, by an Advocate of the Supreme or High Court, or an Attorney or Pledger entitled to appear before the High court, or a Company Secretary, or a Chartered Accountant in Whole time Practice, or by a person named in the articles as a director, manager or secretary of the Company, states that all the requirements of the Companies Act, 1956, and the rules there under have been complied with, in respect of registration and matters precedent and incidental thereto, is to be filed with the Registrar.

Miscellaneous Documents

The documents/forms stated below are filed along with Memorandum of Association and Articles of Association on payment of filing fees (depending on the authorised capital of the company):

1) Declaration of compliance, duly stamped
2) Notice of the situation of the registered office of the company
3) Particulars of Directors, Manager or Secretary
4) Authority executed on a non-judicial stamp paper, in favour of one of the subscribers to the Memorandum of Association or any other person authorizing him to file the documents and papers for registration and to make necessary corrections, if any
5) The ROC's letter (in original) indicating the availability of the name

Payment of registration fee

The payment of registration fee depends on the nominal capital of the company to be incorporated in the case of companies having share capital. Schedule X of the Companies Act, 1956 prescribes the fees to be paid to the Registrar.

Certificate of Incorporation:

After the duly stamped Memorandum of Association and Articles of Association, documents and forms are filed and the filing fees are paid, the ROC scrutinizes the documents and, if necessary, instructs the authorised person to make necessary corrections. Thereafter, a Certificate of Incorporation is issued by the ROC, the date from which the company comes into existence. It takes one to two weeks from the date of filing Memorandum of Association and Articles of Association to receive a Certificate of Incorporation. Although a private company can commence business immediately after receiving the certificate of incorporation, a public company cannot do so until it obtains a Certificate of Commencement of Business from the ROC.
Need for the registration of the company under Company's Act,

a. No Company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying the business of Banking, unless it is registered as a company under this act, or is formed in pursuance of some other Indian Law.

b. No Company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this act, or is formed in pursuance of some other Indian Law.
Our Other Publications:

- Foreign Direct Investment in India
- New Age Entrepreneurship
- Entry Strategies into India
- Getting a name approved prior to company incorporation
- MSMED Act 2006
- Fact File on Karnataka and Bangalore
- Everything about a liaison office in India
- Salaried Employee Vs Consultant
- Liabilities of Directors in a corporate organization
- Obtaining a Trademark for your corporate name or logo
- HR Support Services @ Floraison
- Inducting a trainee into your organisation
- Payroll Implementation Services @ Floraison
- Fringe Benefit Tax - Heads of Expenses that are chargeable to FBT
- Penalties under VAT and CST Act
- Procedure and Checklist for obtaining membership & approval for STPI
- Adopting the right accounting principles
- Applicability of Accounting Standards to different entities
- Ways to enhance employee retention

And more...

Floraison India Compliances Pvt. Ltd.,
#185/7, 2nd Floor, "Chandra Plaza",
25th Cross, 8th F Main Road,
Jayanagar 3rd Block
Bangalore - 560 011, India

Tel: + 91-80-26538257 / 58 / 59
Fax: + 91-80-26538273
E-mail: inflo@floraison.in

www.floraison.in