



The Companies Act 2013

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E-newsletter

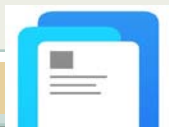
FEBRUARY, 2016

About the E-newsletter

Dear Users,

Thecompaniesact2013.com imports yet another innovation for all the valuable users in the form of e-newsletter. This is the issue of the *February month, 2016* comprising contemporary articles, latest notifications, circulars & orders.

The notion is to render all the updates about Company law of the current month in a compiled format and serve a better pavement for easy accessibility to the users.



CONTENTS

ARTICLE

WEBSITE UPDATES





INTRODUCTION OF

INTEGRATED PROCESS OF INCORPORATION

To simplify and fast track the procedure for company registration in India, the Ministry of Corporate Affairs (MCA) has introduced Form INC-29 'Integrated Incorporation Form' Vide Notification No G.S.R (e) Dated 01-05-2016.

Form INC-29 for Company Registration has merged the process of getting Director Identification Number (DIN), Name Approval and Incorporation Application into one single process – thereby significantly reducing the time taken to start a company in India. It is available with effect from 01.05.2015 for One Person Company, Private Company, Public Company and Producer Company.



KEY FEATURES OF E-FORM INC-29

1. INC-29 does away with filing of multiple applications/forms, saving time and payable fees. It combines the processes relating to:-
 - Allotment of Director Identification Number (DIN) (up to three Directors),
 - Incorporation of a company, and
 - Appointment of first Directors of the company
2. The new E-Form does away with the need for reserving a name for the company prior to applying for its incorporation.
3. Declarations are in-built in the e-Form. Separate attachments containing such declarations are not required.
4. The E-Form is enabled for future integration with e-Biz platform of DIPP (Department Of Industrial Policy and Promotion) for generating applications for PAN (Permanent Account Number), ESIC (Employee State Insurance Corporation) and EPFO (Employee Provident Fund Organisation) numbers on the platform and therefore provide a single interface for these applications also.

INC-29 COMPANY REGISTRATION PROCESS IN INDIA

1. Obtaining Digital Signature Certificate (DSC)

As company incorporation is now done online, one of company's directors' signatures will be needed on all the electronic documents. To make this possible, he/she would need a Class-II Digital Signature Certificate (DSC). This is available from a vendor of any one of the six Certifying Authorities appointed by the Ministry of Corporate Affairs (MCA), including Tata Consultancy Services, (n) Code and e-Mudhra.

Following Documents are required to submit for obtaining Valid DSC:

- Hard copy of completed Class-II form;
- Identity Proof: Copy of PAN card or, in case of foreign national, Copy of Passport;
- Address Proof: Copy of (any one) Passport/Election/Voter ID/Ration Card/Driver's License/Utilities Bill/AADHAR Card. If the Utilities Bill (Gas/Telephone) is submitted, it should be in the name of the Applicant and not older than two months from the filing of the form (12 months, in case of foreign national)

2. Search for Company Name Availability

One doesn't need to wait for the DSC to begin this process. In fact, given how tricky it can be, it's best to start searching for proposed company name as soon as application for DSC is filed. The reasons are that the INC-29 only allows to propose one company name and the MCA is very picky about the ones it approves.

3. Drafting of MOA & AOA

Once the name is approved, the MCA requires further definition of the proposed company. These will be provided through the Memorandum of Association (MOA) and Articles of Association (AOA). Both need to be self-attested.

4. Getting Documents in Order

Following are all the documents and information one need to prepare:

a. DIN Application:

Up to three directors may apply through INC-29 for the Director Information Number (DIN). To apply, a scanned copy of a Passport-sized photograph, the PAN card (Passport in case of foreign national), soft copy of Driver's License/Voter ID/Latest Utilities Bill will be needed. Indian nationals would have to self-attest these documents. Foreign nationals residing in commonwealth countries would need them apostilled, while those in commonwealth nations can have them notarised. If proposed company has more than 3 directors without DINs, then it

would needed to provide details and apply for DINs separately for other than three directors.(DSCs would also be required).

b. Name Approval

Select a name for your company and describe its significance and main objects in a single line.

c. MOA & AOA

Prepare Memorandum and Articles of Association, which would contain the main objects of your business.

d. Registered Office Verification:

As part of the filing, proposed company need to provide details about the registered office address. For this, a copy of the latest utility bill for the office address, a copy of the Rental Agreement along with an NOC from the owner (if rented property) and sale deed (if property is owned).

e. Appointment Letters and Declarations:

Letters of appointment of directors, CEO, managers, declaration by first director in INC-9, and declaration by appointee director and managing director in Form DIR-2. All of these would need to be self-attested. A Company Secretary would also need to give a declaration toward the proposed company verifying the authenticity of the declarations.

5. Filing of INC-29

The form needs to be filed very carefully as only one opportunity to resubmit is available. For example:- if form is found to have five errors by the ROC, but correction is done in three of them, the ROC will reject the form and one would have to pay the filing fees again and go through immense trouble to get a refund on the government fees and the stamp duty. This is why ensure that documents are in order.

6. Verification by ROC & Issue of Certificate of Incorporation

The ROC will verify the documents. If any changes are needed, they will be notified. If it's all clear, the certificate of incorporation will be issued within seven to eight working days. It will be e-mailed to the directors. The MCA now only issues digital certificates.

COMPARISON BETWEEN PREVIOUS INCORPORATION PROCESS AND LATEST INCORPORATION PROCESS



Particular	Integrated Incorporation Process	Normal Incorporation Process
Both the options are available with Companies for Incorporation.		
Purposes	5-in-1 form	N. A.
No. of Forms required to File	1 (ONE)	5 (FIVE)
Steps of Incorporation	Single Step Incorporation	Three Steps Incorporation
Form Filing Requirement	Only one Form INC-29.	<ul style="list-style-type: none"> • DIR-3- Application for DIN • INC-1 – Application for Name Approval • INC-7 – Incorporation of Company • DIR-12 – Appointment of First Directors • INC-22 – Situation of Registered Office
Digital Signature	Only One DSC required.	DSC of both Subscribers Required.
Incorporation of Section 8 Company	Section 8 Company can't be incorporate by this process.	Section 8 Company can be incorporated by this process.
DIN Allotment	Maximum 3 Persons can apply for DIN through this process.	Separate DIR-3 is to be filed for each person.
Narrower Name Proposal	Person can give only ONE Name for Approval.	Person has option to give SIX Names in the order of preference.
Name Keeping	While applying name applicant has to undertake necessary diligence regarding the name keeping, considering the guidelines issued by MCA for Name	Person has option to give maximum SIX names. Therefore, comparatively less diligence requires.

	<p>approval.</p> <p>Drawback: Be sure for the proposed name because you can give only one name and if this name is not available with MCA you have to apply again will changes in all the documents. This is major drawback of this process.</p>	
Time frame	<p>Approval of DIN, Name and Incorporation will be altogether.</p> <p>Generally, it takes 4-5 days.</p>	<p>First DIN form will approve generally it takes 1 day. Second Name will Approve, generally it takes 7-10 days. Third Incorporation Approves, generally it takes 7- 10 days. So overall Incorporation of Company takes 20-25 days.</p> <ul style="list-style-type: none"> • Apply for DIN in form DIR 3: It is a STP form DIN is generated in e-form Challan. • INC 1 takes 7-15 days for approval, maximum re-submission cases are there. • INC 7, DIR-12 and INC-22 takes 15-25 days for approval. <p>In total 21-25 days.</p> <p>If we calculate all of above incorporation of a Company under process can takes a month or more.</p>
Attachment of ID Proof	<p>In case of Directors/ Shareholders who having DIN, it is not required to attach separate Address Proof/ ID Proof.</p>	<p>Even Director/Shareholders having DIN, is required to attach separate Address Proof/ ID Proof.</p>
Approval Process	<p>The form will be assisted by a separate team at ROC back office. Therefore, approval may be quick</p>	<p>The approval of e-form takes comparatively more time</p>

Professional Certification	INC-29 requires Professional Certification.	All Forms needs certification except INC-7
Refund of MONEY	In case of rejection of form, company can apply for refund of money by form.	No refund allowed.
No Tracking System	Here we are applying for 3 approvals in 1 e-form only and if anyone of them is not approved then complete application will fail. Exp. If there is issue in DIN application, then the entire application will reject.	Here you are applying in 2 separate forms. If one fails then other is safe.
Consolidation of Fees	Fee Structure will be: INC-29 – 300/-	Fee Structure would be: 1. DIN- 500/- 2. INC-7- 300/- 3. INC-22- 300/- 4. DIR-12- 300/-
	*(Stamp Duty may included in the abovementioned fees as per respective State laws)	
PAN & TAN	Both can Apply along with incorporation.	Same as on integrated Incorporation Process.
Attachment	<ul style="list-style-type: none"> • All most same in both processes. • Here is no duplicity of documents. 	All most same in both processes.

ADVANTAGES OF INC - 29



- 1 Now Company can be incorporated within 24 working Hours after filing of INC 29 with MCA portal .Separate queue for processing INC-29 has been created at ROC back office.
2. Currently, INC - 29 is only an option for incorporating the company. One can also incorporate the company with old procedure also.
3. If form is rejected, refund can be taken.
- 4 One can also apply for Permanent Account Number (PAN) and Tax Deduction Account Number (TAN)
5. If the address for correspondence is not the address of registered office of the company. In this case, the company shall establish its registered office within fifteen days or the approval of this application for Incorporation and shall also intimate such address of registered office within thirty days of the Incorporation via e-form INC-22.

DISADVANTAGES OF INC-29



1. Narrower Name Proposal

The Registrar has so far asked applicants to submit 6 names in order of priority Even with the luxury of options, company names take 7 working days to be approved, The INC-29 will allow applicants to submit only a single name. So, while applying applicant has to undertake the necessary diligence regarding the name, keeping in mind the guidelines issued by MCA for Name approval.

2. No Tracking System

Under the previous procedure, one always knew which form is deficient. Since through INC-29, you are applying for 3 approvals i.e, Name, DIN and company registration, if any one fails all the others also fails, For example if there are deficiencies in DIN application, then the entire application will be rejected and you have to file afresh.

3. Section 8 Companies not Included

Incorporation of a charitable company under section 8 (Formation of Company with Charitable objects) and company defined under chapter XXI (Unregistered Companies) of the Companies Act, 2013 are not facilitated under this integrated incorporation form.

FEW HIGHLIGHTS OF FORM INC-29:

- 1) For the purpose of simplifying the filling of forms for Incorporation of a company, the Integrated Process shall apply with effect from **01/05/2015**.
- 2) For the purpose of sub-rule (1), the application for allotment of Director Identification Number up to three directors, reservation of a name, incorporation of company and appointment of directors of the proposed company shall be filed in Integrated Form. No. INC-29, for One Person Company, Private Company, Public Company and Producer Company with the registrar within whose jurisdiction the registered office of the company is proposed to be situated, along with the fees of rupees two thousand in addition to the registration fees as specified in Companies (Registration of Offices and Fees) Rules, 2014.
- 3) For the purpose of filing Integrated Incorporation Form, the particulars of maximum of three directors shall be allowed to be filled in INC-29 and allotment of Director Identification Number of Maximum of three proposed directors shall be permitted in Form INC-29 in case of proposed directors not having approved Director Identification Number.
- 4) The Promoter or Applicant of the proposed company shall propose only one name in e-Form INC-29.
- 5) The Promoter or Applicant of the proposed company may prepare Memorandum of Association as per templates in INC-30 and may opt for templates of Articles of Association in Form INC-31 in accordance with the provisions of Rule 13 for preparation of Memorandum of Association and Articles of Association.
- 6) The promoter of the applicant shall sign and witness the Memorandum of Association and Articles of Association in the forms downloaded from the portal of the Ministry of Corporate Affairs and scanned legibly and attach to e-Form INC-29 in accordance with the provisions of Rule 13 for preparation of Memorandum of Association and Articles of Association.
- 7) The facility to file Integrated application for Incorporation in Form INC-29 is available as an option to the process for separate applications for allotment of Director Identification Number, reservation of name and incorporation of a company as provided in these Rules.
- 8) For an application filed using the Integrated process of incorporation as provided in this Rule, the provision of sub-clause (i) of sub-section (5) of section 4 of the Act and Rule 9 of these rules shall not apply.
- 9) A company using the provisions of this rule may furnish verification of its registered office under sub-section (2) of section 12 of the Act by filling e-Form INC -29 in which case the company shall attach along with such e-Form. INC-29 any of the documents referred to in sub- rule (2)of Rule 25.

- 10) The requirement of filing e-Form INC-28 may be dispensed with if, the proposed company maintains its registered office at the given correspondence address.
- 11) The Registrar within whose jurisdiction the registered office of the company is proposed to be situated shall process INC-29 including application for allotment of Director Identification Number.
- 12) (a) Where the Registrar, on examining e-Form INC-29, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects or re-submit the form within fifteen days from the date of such intimation given by the registrar.
- (b) After the resubmission of the document, if the registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days to remove such defects or deficiencies.
- *(ba) After the resubmission of the documents and on completion of second opportunity, if the registrar still finds that the documents are defective or incomplete, he shall give third opportunity to remove such defects or deficiencies;' Provided that the total period for re-submission of documents shall not exceed a total period of thirty days. (***Inserted Vide [Notification No. G.S.R\(E\) Dated 22.01.2016](#)**)
- (c) In case the Registrar is of the opinion that the document is defective or incomplete in any respect after giving such "**two opportunities**", the e-Form 29 of the proposed company shall be rejected. [**Substituted with "Three Opportunities" Vide [Notification No. G.S.R\(E\) Dated 22.01.2016](#)**]

CONCLUSION

This initiative on day one looks promising. This E-form INC-29 focuses on the ease of doing business initiatives. The lengthy time period of approximately 48 days has been reduced to 48 hours. This is a priority area for Prime Minister of India, who has made it a personal mission to improve India's scores on this parameter. Once the form stabilizes then this will certainly change image of India. Other revenue departments are also likely to join this integrated process.

Click to view the form [INC-29](#)

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