



## **Company Incorporation under the Indian Companies Act, 1956**

The following kinds of company can be registered under the Companies Act:

- (a) **Public limited company:** A public limited company has wider membership and the number of shareholders is unlimited. It must have a minimum of seven members.
- (b) **Private limited company:** The minimum number of members is two, and the maximum is limited to 50, excluding employees and former employees who continue to be members after their employment ceases.
- (c) **Company limited by guarantee:** Such companies may or may not have a share capital and are generally non-profit-making bodies. Only associations which are about to be formed as a limited company for the promotion of commerce, science, religion, charity or any other similar objects and which intend to apply their profits or any other income to the promotion of their purpose and to prohibit the payment of any dividend to their members eligible to be placed in this special class. In the case of such associations, the central government may be registered as a company with limited liability without the additional to the name of word or words 'limited' or 'private'.
- (d) **Company with unlimited liability:** Companies with unlimited liability are practically non-existent in India.
- (e) **Government company:** A company in which not less than 51 per cent of the paid-up capital is held by the central government or by a state government is called a 'government company' and the provisions of the companies Act, subject to such exemptions as may be notified by the central government, apply to such companies.
- (a) **'Foreign companies'**, means a body corporate incorporated outside India, and includes a firm or other association of individuals as defined under section 2(b) of the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000. Such Foreign companies are required to obtain permission of Reserve Bank of India to carry on in India, any activity of a trading, commercial or industrial nature or to establish in India, a branch, a liaison office or a project office or any other place of business by whatever name called.

### **Formation of Companies**

Every company must register its memorandum and articles of association with the Registrar of Companies in the state in which its registered office is to be situated. The memorandum, which constitutes the basis for the existence of the company as a corporate body and which determines the ambit of its power includes the following information:

- a. the company's name, with the word 'limited' or 'private limited' (in the case of a private company) at the end;
- b. the province in which the registered office is situated;
- c. the objects for which the company is formed:
  - (i) the main objects to be pursued by the company on its incorporation, and any objects incidental or ancillary to the attainment of such objects; and
  - (ii) any other objects of the company not included in (i) above;
- d. in the case of companies other than trading corporations, whose objects are not to be confined to any one state, the states to whose territories the objects extend;
- e. the nature of the liability of the members;
- f. the amount of the authorized share capital, divided into shares of a fixed amount;
- g. the names of the subscribers and the number of shares taken by each of them.

The memorandum of a company limited by guarantee must state that each member guarantees the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for the payment of the debts and liabilities of the company and all costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributors among themselves in such amounts as may be required, not exceeding a specified amount. The memorandum of the company is the charter or the constitution and no company can carry on any objectives not authorized by its memorandum.

The unlimited company or a company limited by guarantee or a private company limited by shares must also register its articles of association with the Registrar of Companies. A public company limited by shares has, however, the option of registered or not registering its articles. In the event of not having its own articles of association registered, the model regulations given in Table A of Schedule I, appended to the Act, will automatically apply. Even if the articles are registered, the provisions of Table A apply to the extent that they are not excluded or modified. The usual practice for companies is to prepare their own articles to satisfy the requirements of their business.

The articles must be printed, divided into paragraphs, numbered consecutively, and should be signed by each subscriber to the memorandum of association. Each subscriber must also add his address, description and occupation in the presence of at least one witness, who must attest the signatures. Limited companies may, but unlimited liability companies and those limited by guarantee must, register their articles, and if a limited company does not register any articles of association, it is regulated by Table A of the First Schedule of the Indian Companies Act 1956.

The contents of the articles of association vary according to the nature of the business of the company. Generally, however, the clauses of the articles regulate the internal management of the company. They provide for the appointment of directors, their duties and powers, for the rights attributable to the holders of shares, stating how these are to be balloted among the members, for the transfer of shares, for increase and reduction of capital, for borrowing powers, etc. They also provide for meetings of members, for voting and for the passing of resolutions of different kinds.

The certificate of incorporation given by the Registrar of Companies is conclusive evidence of the incorporation of a company and of compliance with the necessary formalities in relation to its incorporation.

Companies issuing a prospectus for the purpose of inviting the public to subscribe for their shares have to provide maximum possible disclosure and transparency in the prospectus. The provisions relating to prospectuses and the penalties prescribed for failure to comply with them are designed to act as a deterrent against any untrue or incomplete statement being made in the prospectus. The form of application for shares or debentures or a company cannot be issued unless it is accompanied by a prospectus, which complies with the prescribed requirements.

If the company has not issued a prospectus inviting the public to subscribe for its shares, it cannot commence business or exercise borrowing powers unless a statement in lieu of a prospectus is filed with the Registrar and the directors have paid the application and allotment monies on shares taken up or contracted to be taken up by them. Such a statement or prospectus is not required to be filed by private companies. In fact, private companies cannot invite public subscription. All contracts made by a company which are required for compliance with these provisions as to the filing of the prospectus (and/or statement in lieu of prospectus) are provisional only, but become automatically binding when the company is given a certificate to commence business. No allotment of share capital offered to the public can be made unless the minimum amount necessary to provide for certain specified matters has been subscribed and the sum payable on application for such shares has been received by the company.