

2020

SPICE+

Web
Based

E- MOA
& AOA

No ROC Fee
up to 15 lac
cap

GST, PAN,
TAN

EPFO,
ESIC,
BANK
ACCOUNT

Process - Incorporation of Company Article Series- -----

In this Editorial, the author shall deliberate the Provisions of Companies Act, 2013 and Companies (Incorporation) Amendment Rules, 2020 wef 23th February, 2020 in respect of Incorporation of Private Limited / Public Limited Company (Including all the Notifications, Circulars, most important Companies Amendment Act, 2017). Author shall discuss followings (i) Provisions of the Act (ii) Step Wise Process of Incorporation of Company (iii) FAQ's on Incorporation of Company. This Editorial includes the "SPICE+" "AGILE". For Section 7 Incorporation of Company 11 Rules, 15 Notifications, 2 Circulars has been issued by the Central Government since 01.04.2014.

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GOYAL DIVESH & ASSOCIATES
24/03/2020

PROCESS OF INCORPORATION OF COMPANY

One of the most important questions faced by new entrepreneurs is the type of business entity they need to create. Proprietorship or partnership, one person company or normal private company? With each having its own merits and drawbacks, it is natural for most people to feel a bit confused which one to opt for. In this eidoitorial we shall discuss about Private and Public Limited Companies.

Moving from the Companies Act 1956 to the Companies Act 2013 is like shifting from your old house to a new one. All the provisions become changed with new Act, 2013. Due to new act many amendments were introduce by Central Government from time to time by Notification, Amendments etc. Same like this many amendments have been made in previous years in relation to Incorporation of New Company. Let's look at the Journey of Major Amendments in relation to Incorporation of Company since 1st April, 2014 to till date i.e. August 13, 2020.

Date	Journey So Far
01.04.2014 TO 30.04.2015	New forms for Incorporation Company Introduced i.e. INC-1 - Name Approval; DIR-3 - Director Identification Number INC-7 - Incorporation of Company DIR-12 - Appointment of Directors INC-22 - Registered Office of Company All the above mentioned 3 forms were required to be filed for Incorporation of Company.
01.05.2015 TO	Integrated Incorporation Process in form INC-29 . This form was 5 in one form. Company could apply DIN, Name, Appointment of Director, Registered Office and Incorporation in single form with lesser ROC Fees. Still there was some restriction in INC-29.

30.09.2016	<p>(like: if Company filed INC-1 for proposal of name then it was not possible for the Company to file INC-29)</p> <p>Note* Above mention route of INC-7 was also available.</p>
01.10.2016 TO 26.01.2018	<p>Through Companies (Incorporation) Fourth Amendment Rules, 2016 a new form "SPICE" i.e. INC-32 (Specified Performa for Incorporation Company Electronically).</p> <p>This form was one step ahead to INC-29. E.g. Electronic MOA & AOA introduced in this Form. However, Company had both the ways, they could apply name in SPICE too or apply name in INC-1 then could file Spice as well. PAN & TAN application became mandatory as part of the SPICE.</p> <p>Note* Above mention route of INC-7 was also available for some specific purposes</p>
26.01.2018	<p>This Date is revolutionary in the History of Companies Act for the purpose of "Ease of Doing Business". Following Alteration made by Central Government:</p> <ol style="list-style-type: none"> New Process of Name Approval "RUN" notified and e-form INC-1 omitted. INC-7 form omitted. Only way out for incorporation of Company is SPICE. No ROC fees for Incorporation of Company up to 10 lacs of authorized capital. Updated version of SPICE notified.
Another Alteration	<p>Except the above mentioned amendment some other amendments have been made since 01.04.2014 to till date e.g.</p> <ul style="list-style-type: none"> No Requirement of Minimum Paid up share Capital. No requirement of DIN at the time of Incorporation of Company. Only one form for Incorporation of Company.

	• E-MOA & AOA
29.03.2019	(a) GSTIN with effect from 31st March, 2019 (b) EPFO with effect from 8th April, 2019 (c) ESIC with effect from 15th April, 2019
06.02.2020 & 18.02.2020	a) SPICe+ b) Employees' Provident Fund Organization (EPFO) c) Registration and Profession Tax Registration and d) Opening of Bank Account e) AGILE-PRO f) RUN utility only available in case of change on Name.

A. TYPE OF COMPANIES:

- A. Private Limited Company
B. Public Limited Company

B. INITIAL REQUIREMENTS:

	PRIVATE COMPANY	PUBLIC COMPANY
1.	MINIMUM NO. OF TWO DIRECTORS	MINIMUM NO. OF THREE DIRECTORS
2.	MINIMUM NO. OF TWO SHAREHOLDERS	MINIMUM NO. OF THREE SHAREHOLDERS
3.	ALL THE SHAREHOLDERS MUST HAVE DSC	ALL THE SHAREHOLDERS MUST HAVE DSC
4.	NO REQUIREMENT OF MINIMUM SHARE CAPITAL	NO REQUIREMENT OF MINIMUM SHARE CAPITAL
5.	IF AT TIME OF INCORPORATION DIRECTORS LESS THAN 3. THEN DIN OF 3 PERSONS CAN BE APPLY	IF AT TIME OF INCORPORATION DIRECTORS LESS THAN 3. THEN DIN OF 3 PERSONS CAN BE APPLY

	THROUGH SPICE+	THROUGH SPICE+
6.	NO NEED OF ANY STAMP PAPER	NO NEED OF ANY STAMP PAPER
7.	ELECTRONIC MOA & AOA	ELECTRONIC MOA & AOA
8.	ELECTRONIC INC-9	ELECTRONIC INC-9

C. INFORMATION/ DOCUMENTS REQUIRED FOR INCORPORATION

I. Documents required for First Subscribers:

1. PROOF OF IDENTITY: Self-Attested Copy of any of following:
 - Passport
 - Driving License
 - Aadhaar Card
2. RESIDENTIAL PROOF: Self-Attested Copy of any of following:
 - Bank Statement (Not older Than 2 (Two) Month)
 - Electricity Bill (Not older Than 2 (Two) Month)
 - Telephone Bill (Not older Than 2 (Two) Month)
 - Mobile Bill (Not older Than 2 (Two) Month)
3. Self-Attested Copy of PAN Card
4. Digital Signature Certificate- DSC- All Subscriber.

II. Information required of subscribers:

1. Occupation Type of Subscriber:
 - Self Employed: (Government, Teaching or Other) (If Other, then specify)
 - Professional
 - Homemaker
 - Student
 - Serviceman
2. Education Qualification
3. Mobile No.
4. Email ID
5. Duration of Stay at Present Resident Address.

6. Directorship in Other Companies.
7. Number of Share Subscribed

III. **Documents/ Information required for Directors:**

1. DIN of Director, if any
2. Education Qualification
3. Mobile No.
4. Email ID
5. Occupation Type of Subscriber:
 - Self Employed: (Government, Teaching or Other) (If Other, then specify)
 - Professional
 - Homemaker
 - Student
 - Serviceman
6. Self-Attested Copy of PAN Card
7. Directorship in Other Companies

IV. **Documents Required for Registered office:**

1. Proof of Registered Office address, if any
 - Conveyance
 - Lease deed
 - Rent Agreement along with the rent receipts
2. Copies of the utility bills
 - Telephone Bill
 - Electricity Bill
 - Mobile Bill
 - GAS Bill
3. A proof that the Company is permitted to use the address as the registered office of the Company if the same is owned by any other entity/ Person.
4. Email ID of Company.
5. Registered Office is:
 - Owned by Company
 - Owned by Director (NOC required)
 - Taken on lease by company (Lease Deed)
 - Owned by any other entity/Person. (NOC required)

6. Address of Police Station.

THE CENTRAL GOVERNMENT HAS MADE MAJOR CHANGES IN INCORPORATION PROCESS WHICH WOULD SAVE TIME OF INCORPORATION. IT HAS INTRODUCED EASY (WEB BASED) PROCESS OF INCORPORATION WHICH IS TERMED AS "SPICE+" THIS FORM DIVIDED INTO TWO PARTS

SPICE+ would have two parts viz.:

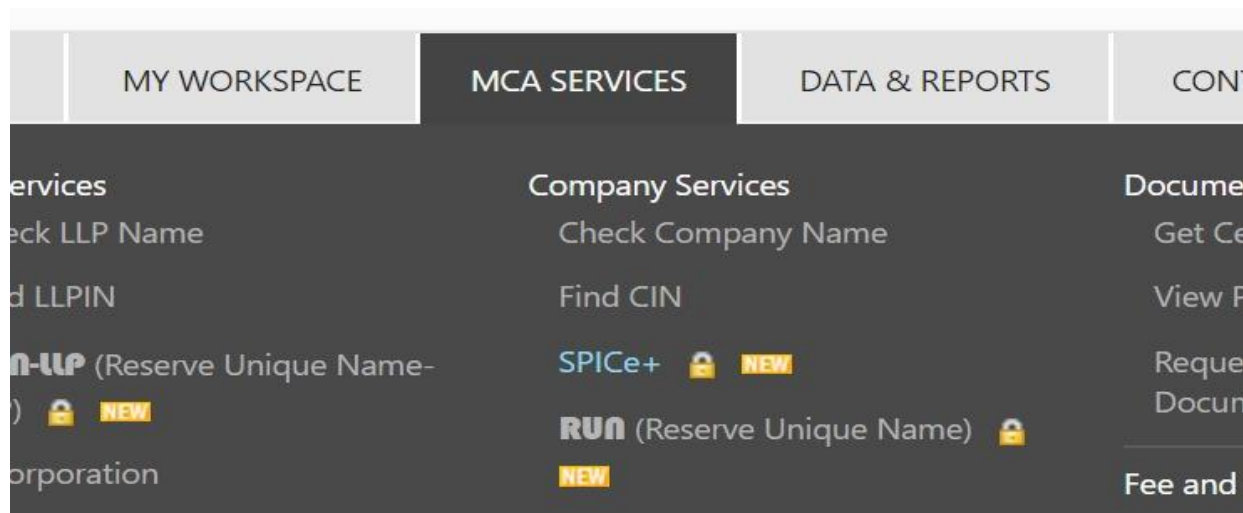
A. Part A – Name Approval

B. Part-B- Incorporation of Company

Promoters having two options available with them. (i) Directly go for incorporation without name approval, (ii) first apply for name approval, and then apply for incorporation of Company.

STEP – I:

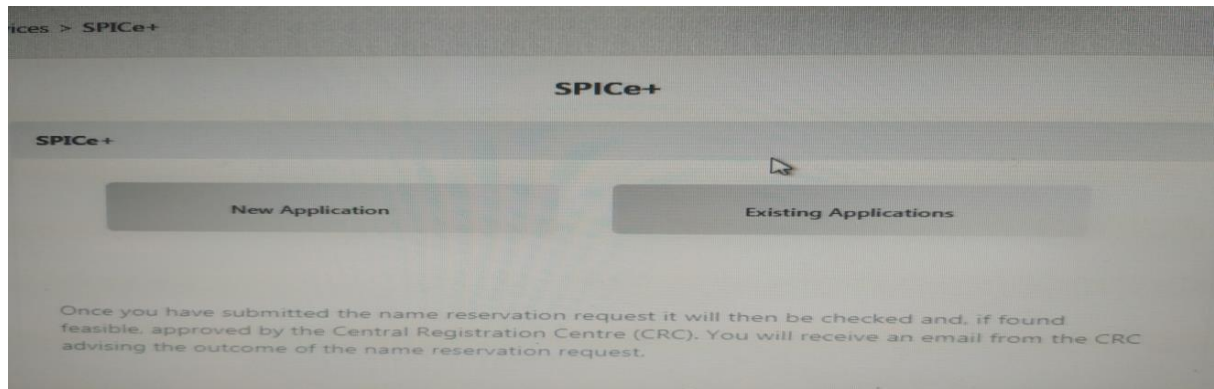
PART A-for Name reservation for new companies



a) Login on MCA Website

Applicant have to login into their account on MCA Website. (Pre-existing users can use earlier account or new users have to create a new account.)

After Login the following screen will appear:



b) Steps: II Click on New Application and following window will open:

(This form can't be downloaded; it has to be filled on real time basis)

Details required to be mentioned in online form:

The screenshot shows the 'SPICe+ Part A' form for 'Name Reservation'. The form contains several fields: 'Type of Company *' (dropdown), 'Class of Company *' (dropdown), 'Category of Company *' (dropdown), 'Sub-Category of Company *' (dropdown), 'Main division of industrial activity of the Company *' (text box), 'Description of the main division' (text box), and 'Particulars of the proposed or approved name *' (two text boxes labeled i. and ii.). At the bottom, there is a 'Choose File' button and the text 'No file chosen'.

- (i) Type of Company (i.e. Producer, Part I, OPC, Section 8 etc.) (below table taken from MCA link: <http://www.mca.gov.in/MinistryV2/SPICePlusFAQs.html>)

Entity Type	Suffix allowed	Example
New Company (Others)/ Part I company	Limited/ Private Limited	ABC Limited DEF Private Limited
Producer Company	Producer company limited	GHI Producer Company Limited
Unlimited Company	Unlimited	JKL Unlimited
Private (OPC)	(OPC) Private Limited	MNO (OPC) Private Limited
IFSC Company	(IFSC) Limited/ (IFSC) Private Limited/ IFSC Limited /IFSC Private Limited	PQR IFSC Limited/ PQR (IFSC) Limited STU IFSC Private Limited/ STU (IFSC) Private Limited
Section 8 company	Other than 'Limited/ Private Limited/ (OPC) Private Limited'	VWX Electoral Trust
Nidhi Company	Nidhi Limited	MNO Nidhi Limited

(ii) Class of Company (whether Private, Public, OPC)

(iii) Category of Company (whether Company limited by shares, limited by Guarantee or unlimited)

(iv) Sub-category Union Government, State Government, Non-Government Company, Subsidiary of Company incorporated outside India)

(v) Main Division of Industrial Activity (enter number belonging to Industrial Activity)

(vi) Description of main division

(vii) Particulars of Proposed or Approved Name. (User has to enter the name he wants to reserve, for incorporation of a new company).

Note: Users are requested to ensure that the proposed name selected does not contain any word which is prohibited under Section 4(2) & (3) of the Companies Act, 2013 read with Rule 8 of the Companies (Incorporation) Rules, 2014. Users are also requested to read and understand Rule 8 of the Companies (Incorporation) Rules, 2014 in respect of any proposed name before applying for the same. For Name Search: <http://www.mca.gov.in/mcafoportal/showCheckCompanyName.do>

Stakeholders are requested to also check the Trademark search to ensure that the proposed name is not in violation of provisions of Section 4(2) of the Companies Act, 2013, failing which it is liable to be rejected. For Trade Mark Search: <http://www.ipindia.nic.in/index.htm>

Note: Two fields are available i.e. the two proposed names can be entered

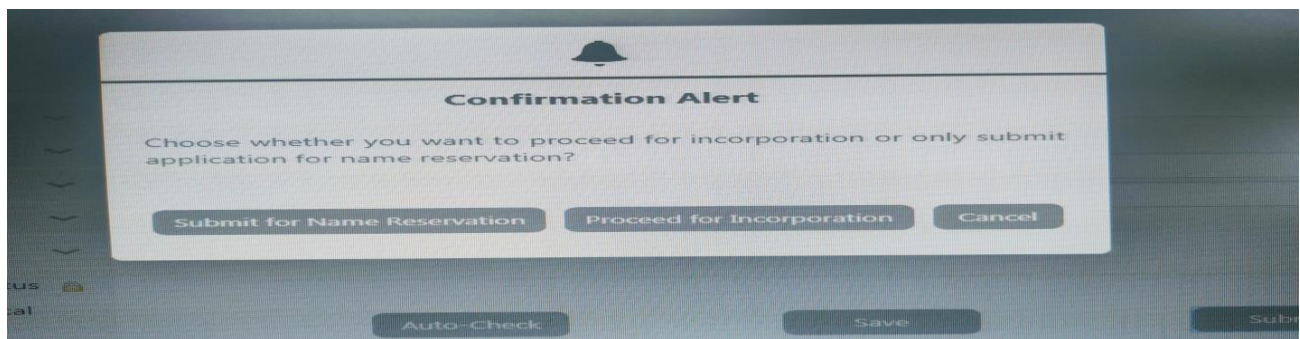
(i) Choose File (Any attachment)

This option is available to upload the PDF documents. It is not mandatory to attach any document except in case where a name which requires the approval of a Sectoral Regulator or NOC etc, if applicable, as per Companies(Incorporation) Rules, 2014. Only one file is allowed, if have multiple then scan into one document. The attachment size cannot exceed 6 MB for both Part A and Part B taken together.

Steps: III Fill the given Information and save the application as follows:

- Fill the Information
- Save the Application
- Submit the Application

After Submit below given window will open:



c) Here stake holder having two options:

Option 1: Submit Name application and make payment of the same for name approval.

Payment of Rs. 1,000/-

Option 2: Click on "Proceed for Incorporation"

After click on "Proceed for Incorporation" below given window will open:

NOTE: * Approval of Name through "PART-A" is an optional way. Companies can also directly apply for the Information after continuation with PART B form.

It is advisable to go through PART-A route

Part B- Incorporation of Company

The screenshot displays the 'Structure of the company' form on the MCA21 portal. The form includes the following sections:

- 1. Whether Articles of Association is entrenched *** with radio buttons for Yes and No.
- 2. Company is *** with radio buttons for Having share capital (selected) and Not having share capital.
- 3. Capital structure of the company ***
 - Total authorized share capital (in Rupees)** with a text input field.
 - A table for authorized share capital with columns: Authorized share capital, Equity, Preference, and Unclassified. Rows include Number of shares, Nominal amount per share (in Rupees), and Total amount (in Rupees).
 - Total subscribed share capital (in Rupees)** with a text input field.
 - A table for subscribed share capital with columns: Subscribed share capital, Equity, and Preference. Rows include Number of shares, Nominal amount per share (in Rupees), and Total amount (in Rupees).

Before start to fill Part – B promoters have to prepare following documents:

STEP – II: Preparation of Documents for Incorporation of Company:

After approval of name in PART-A or for Incorporation of Company applicant have to prepare the following below mentioned Documents;

- ✓ DIR-2- Declaration from first Directors along with Copy of Proof of Identity and residential address.(On Plain Paper and make sure address on all ID proof should be same)
- ✓ NOC from the owner of the property. (on plain paper and NOC from the person whose name mentioned on utility bill)
- ✓ Proof of Office address (Conveyance/ Lease deed/ Rent Agreement etc. along with rent receipts);
- ✓ Copy of the utility bills (not older than two months)
- ✓ In case of subscribers/ Director does not have a DIN, it is mandatory to attach: Proof of identity and residential address of the subscribers
- ✓ All the Subscribers should have Digital Signature.

****No need of any stamp paper for Incorporation of Company.**

STEP – III: Fill the Information in Form:

Once all the above-mentioned documents/ information is available. Applicant has to fill the information in the e-form “Spice+”.

Features of SPICE+ form:

- ✓ Web based: This is web-based form, that means this form can't be download. It will be filled on MCA website online only.
- ✓ Online Information: This form once online information filed will be save there only and can be access in dash board of the Log in ID.
- ✓ Fill details of PAN & TAN:

It is mandatory to mention the details of PAN & TAN in the Incorporation Form Spice+. Link to find out of Area Code to file PAN & TAN are given in Help Kit of SPICE+.

- ✓ Attachment of Documents: In web-based form only promoters have to attach documents pdf files.
- ✓ Download PDF form: After complete filing of information in web-based form. Download PDF file of the form from dashboard.
- ✓ Process after Downloading of PDF: Below given steps have to use for incorporation of company.

STEP – IV: Preparation of MOA & AOA (Electronic or Physical):

After proper filing of SPICE+ form applicant has to move on filling of information in INC-33 (MOA) and INC-34 (AOA) form Dashboard Link. All the information which are common in PART-B and MOA/AOA shall be auto fill in MOA and AOA.

- MOA and AOA are also web-based forms which shall be available on dash board in particular link.
- After opening of web-based form fill all the information in the MOA/ AOA as per requirement of Table A to J of Schedule I.
- After completely filing of the MOA/ AOAdownload PDF MOA/AOA.
- After download PDF affix DSC of all the subscribers and professional on subscriber sheet of the MOA & AOA.

(Make Sure Professional and Subscriber sign the form on same date)

STEP – V: Fill details of GST, EPFO, ESIC, BANK Account in AGILE PRO:

After proper filing of SPICE+, Moa, AOA form applicant has to move on filling of information in the AGILE PRO form Dashboard Link. All the information which are common in PART-B and AGILE PRO shall be auto fill in AGILE Pro. It is also web based form.

- GST: If Company wants to apply for GST it has to select YES in the form and fill the information in the form.
- EPFO/ ESIC: It is mandatory to apply for ESIC and EPFO.
- However, as per their concerned department company not required to file return till the date applicability of provisions of same on such company.
- Bank Account: It is mandatory to open bank account through this form. Bank account branch shall be assigned according to nearest branch to the Registered office of the Company.

STEP – VI: Fill details of INC-9:

INC-9 shall also be generated web-based and need affixation of Directors/ subscribers on the same. It shall not be generated web-based in one situation when atleast one directors/ subscriber not having DIN and PAN both.

STEP – VII: Download PDF of all the web-based forms:-

After filing of all web-based form i.e.

- Spice+
- MOA/ AOA
- Agile Pro
- INC-9

Download PDF of such forms from dash board given link. After downloading of PDF affix DSC on all the forms accordingly.

STEP – VIII: Filing of forms with MCA-:

Once all forms ready with the applicant, upload all four documents Linked form on MCA website and make the payment of the same.

STEP – IX: Certificate of Incorporation-:

Incorporation certificate shall be generated with CIN, PAN & TAN details over it.

KEY POINTS OF SPICE+:

- a) Stakeholders will not be required to even enter the SRN of the approved name as the approved Name will be prominently displayed on the Dashboard and a click on the same will take the user for continuation of the application through a hyperlink that will be available on the SRN/application number in the new dashboard.
- b) From 15th February 2020 onwards, RUN service would be applicable only for 'change of name' of an existing company
- c) The approved name and related incorporation details as submitted in Part A, would be automatically Pre-filled in all linked forms also viz., AGILE-PRO, eMoA, eAoA, INC-9
- d) Registration for EPFO and ESIC shall be **mandatory for all new companies** incorporated w.e.f 15 February 2020 and no EPFO & ESIC registration nos. shall be separately issued by the respective agencies



- e) Registration for Profession Tax shall also be **mandatory for all new companies** incorporated in the State of Maharashtra w.e.f 15th February 2020
- f) All new companies incorporated through SPICe+ (w.e.f 15th February 2020) **would also be mandatorily required to apply for opening the company's Bank** account through the AGILE-PRO linked web form.
- g) Declaration by all Subscribers and first Directors in INC-9 shall be auto-generated in pdf format and would have to be submitted only in Electronic form in all cases, except where:
- (i) Total number of subscribers and/or directors is greater than 20 and/or
 - (ii) Any such subscribers and/or directors has neither DIN nor PAN.

POINTS TO REMEMBER WHILE FILLING THE INFORMATION IN FORM:

- Maximum details of subscribers are SEVEN (7). In case of more subscribers, physically signed MOA & AOA shall be attached in the Form.
- Maximum details of directors are TWENTY (20).
- Maximum THREE (3) directors are allowed for filing application of allotment of DIN while incorporating a Company.
- Person can apply the Name also in this form.
- By affixation of DSC of the subscriber on the INC-33 (e-moa) date of signing will be appear automatically by the form.
- Applying for PAN/TAN/EPFO/ESIC/Bank Account will be compulsory for all fresh incorporation applications filed in the new version of the SPICe plus form.
- Company can apply for GST, also through AGILE PRO form.



- In case of companies incorporated, with effect from the 26th day of January, 2018, with a nominal capital of less than or equal to rupees fifteen lakhs or in respect of companies not having a share capital whose number of members as stated in the articles of association does not exceed twenty, ROC fee on SPICE+ shall not be applicable

FEATURES - SINGLE WINDOW FORM:

Earlier if a Person wants to incorporate Company then it has to apply for the DIN, Approval of the Name Availability, Separate form for first Director, Registered office address, PAN, TAN etc. But this form is a single window for Incorporation of Company.

This form can be used for the following purposes:

- ▽ Application of DIN (upto 3 Directors)
- ▽ Application for Availability of Name
- ▽ No need to file separate form for first Director (DIR-12)
- ▽ No need to file separate form for address of registered office (INC-22)
- ▽ No need to file separate form for PAN & TAN
- ▽ No need to file separately for GST,
- ▽ No need to file separate form for EPFO, ESIC, Profession tax
- ▽ No need to file separate application with bank for Bank account number..

QUICK QUESTION – SPICE+

- How to file the SPICE+ form in case of more than 7 subscribers in the Company?**

In case of incorporation of a company having more than 7 subscribers, MOA & AOA shall be filled with SPICE+ in the respective format as specified in Table A to J in Schedule I without filing form INC 33 and INC 34.

(Means Physical attachment of MOA & AOA in e-form INC 32)

ii. Whether e-MOA & AOA can be filed in case of MOA & AOA is signed by a person at a place outside of India?

In case of incorporation of a company where any of the subscribers of the MOA/AOA is **signing at place outside India**, MOA & AOA shall be filled with SPICE+ in the respective format as specified in Table A to J in Schedule I without filing form INC 33 and INC 34.

(Means Physical attachment of MOA & AOA in e-form INC 32)

iii. Whether Companies are required to make payment of Stamp Duty in case of incorporation of Company with authorized Capital of Rs. 10 Lakh or below?

Yes, Company has to pay the Stamp Duty. Because Stamp Duty is state's matter. Companies Act, has given exemptions for the ROC fees not for the stamp duty.

iv. How many DIN can be apply through SPICE+ Form?

Maximum 3 (Three) DIN can be apply through SPICE+ form.

If applicant want to incorporation Company with more than 3 Directors and more than 3 persons doesn't have DIN. In such situation applicant have to incorporate Company with 3 Directors and have to appoint new directors later on after incorporation.

v. Whether there is need to file any separate form for PAN & TAN?

No need to file any separate form. Details in relation to Area Code and other details shall be mention in the form SPICE+ itself and PAN & TAN shall be generate with Certificate of Incorporation.

CAUTION TO BE TAKEN BY PROFESSIONALS

1. **Obtain engagement letter from subscriber:** - As per certification in e-form DIR-12 & INC-22, a professional declares that he has been engaged for the purpose of certification Therefore it is advisable to obtain an engagement letter.
2. **Verification of original records pertaining to registered office:** - As per certification in e-form INC-22, a professional declares that he has verified all the particulars(including attachments) from original records.
3. **Ensure all attachments are clear enough to read:** - As per certification in e-form DIR-12 & INC-22, a professional declares that all attachments are completely and legibly attached.
4. **Ensure registered office of the company is functioning for the business purposes of the company:** - - As per certification in e-form INC-22, a professional declares that he has personally visited the registered office.
5. Take a declaration to the effect that all the original documents have been handed over after incorporation. Since as per section 7(4) copies all documents/information as originally filed should be preserved at the registered office of the company, therefore a professional should take a declaration while handing over the incorporation documents.
6. **MCA Circular 10/2014:** - According to this circular ROC/RD in case of omission of material fact or submission of false/incomplete/ misleading information can after giving opportunity to explain refer the matter to governance division of MCA, which in turn may initiate proceedings under section 447 and/or ask the respective professional institute to take requisite disciplinary action.

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