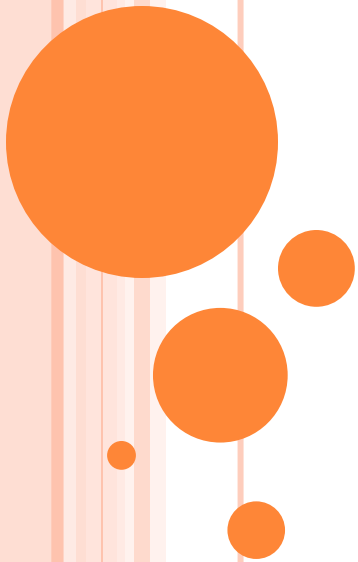


FORMATION OF A COMPANY AND ITS REQUIREMENTS



WHAT IS A COMPANY?

- A company is a **legal entity** formed by a group of individuals to engage in and operate a business enterprise in a commercial or industrial capacity.
- A company's business line depends on its **structure**, which can range from a partnership to a proprietorship, or even a corporation.
- Companies may be either **public or private**.
- A company is generally organized to **earn a profit** from business activities.





PUBLIC LIMITED COMPANY

- A company whose securities are **traded on a stock exchange** and can be **bought and sold by anyone**.
- Public companies are **strictly regulated**, and are required by law to publish their complete and true financial position so that investors can determine the true worth of its stock (shares).
- According to the regulations of the corporate law, a PLC has to **compulsorily present** its financial stats and position publicly to maintain transparency.
- Also called **publicly held company**.



PRIVATE COMPANY

- A private company is a firm held under **private ownership**.
- Private companies may issue stock and have shareholders, but their shares **do not trade on public exchanges**.
- As a result, private firms do not need to meet the Securities and Exchange Commission's (SEC) strict filing requirements .
- In general, the shares of these businesses are less liquid, and their valuations are more difficult to determine.



PRIVATELY HELD COMPANY VS. PUBLIC COMPANY

BASIS	PRIVATELY HELD CO.	PUBLIC COMPANY
MEANING	Wholly owned privately by private investors, management, founders, etc.	Sells all or its part of shares to the public by IPO . Similarly, it contains investors, founders, etc.
PUBLIC STOCK EXCHANGE	Not traded on Public Stock Exchange	Traded on Public Stock Exchange like NYSE, Tokyo Stock Exchange, etc.
REPORTING REGULATIONS	Very few regulations & greater freedom comparatively.	As per SEC, regulations are very stringent for these co.'s
INFORMATION AVAILABILITY	Almost no information is available.	A lot of primary as well as some secondary data is available.
SOURCES OF FUNDS	Fairly limited . Either in case of equity or debt. Also only from private investors.	More sources available of both equity & debt. Through IPO, bonds, CPs, etc.
SIZE	Small comparatively.	Large - dealing in dollars.
VALUATION	Very difficult due to lack of information	Easier due to a lot information availability.
STRUCTURE	As of a sole proprietorship, partnership, etc.	As of a corporation.
CONTROL	Owners & management have higher control over their co.	Lower control
FORMATION & DISSOLUTION	Easy with lesser regulation .	Lengthy procedure with multiple requirements .

Distinction Between Private Ltd. & Public Ltd. Company

Private Ltd.

- ❑ Minimum capital required is 1,00,000
- ❑ Minimum 2 and maximum 50 members
- ❑ At least 2 directors
- ❑ No restriction on appointment of directors
- ❑ Non-transferable shares
- ❑ Restriction on invitation to subscribe for shares
- ❑ No restriction on managerial remuneration
- ❑ Can start business without obtaining certificate of commencement

Public Ltd.

- ❑ Minimum capital required is 5,00,000
- ❑ Minimum 7 members. No limit on maximum members
- ❑ At least 3 directors
- ❑ No restriction on appointment of directors
- ❑ Transferable shares
- ❑ Invitation to subscribe for shares is allowed
- ❑ Managerial remuneration cannot exceed 11% of net profit
- ❑ Can start business only after obtaining certificate of commencement



FORMATION OF A COMPANY

1. Promotion of a Company
2. Registration of a Company
3. Certificate of Incorporation; and
4. Commencement of the Business.



I. PROMOTION OF A COMPANY

- A business enterprise does not come into existence on its own. It comes into existence as a result of the **efforts of an individual or group of people or an institution**. That is, it has to be promoted by some person or persons.
- The process of business promotion begins with the conceiving of an idea and ends when that idea is translated into action i.e., the establishment of the business enterprise and commencement of its business.



WHO IS A PROMOTER IN COMPANY?

- He **conceives the idea** of starting a business and takes all the measures required for bringing the enterprise into existence.
- For example, Dhirubhai Ambani is the promoter of Reliance Industries.
- The promoters find out the ways to collect money, investigate business ideas, arrange for finance, assemble resources and establish a going concern.



II. REGISTRATION OF A COMPANY

- It is registration that brings a company into existence. A company is properly formed only when it is duly registered under the Companies Act.

Procedure of Registration

- In order to get the company registered, the important documents required to be filed with the Registrar of Companies are as follows.
- 1. **Memorandum of Association**: The Memorandum of Association or MOA of a company defines the **constitution and the scope of powers** of the company. In simple words, the MOA is the foundation on which the company is built.



- It is to be signed by a minimum of 7 persons for a public company and by 2 in case of a private company. It must be properly stamped.
- **2. Articles of Association:** The Articles of Association (AoA) is a document that defines the **purpose of a company and specifies the regulations for its operations.** The document outlines how tasks should be accomplished within an organization, including the preparation and management of financial records, and the process of director appointments.
- This document is signed by all those persons who have signed the Memorandum of Association.



- 3. **List of Directors**: A list of directors with their names, address and occupation is to be prepared and filed with the Registrar of Companies.
- 4. **Written consent of the Directors**: A written consent of the directors that they have agreed to act as directors has to be filed with the Registrar along with a written undertaking to the effect that they will take qualification shares and will pay for them.
- 5. **Notice of the Address of the Registered Office**: It is also customary to file the notice of the address of the company's registered office at the time of incorporation. It is to be given within 30 days after the date of incorporation.



6. Statutory Declaration: A statutory declaration by

- a. any advocate of the Supreme Court or
- b. of a High Court, or
- c. an attorney or pleader entitled to appear before a High Court or
- d. a practicing chartered accountant in India, who engages in the Company formation or
- e. by a person indicated in the articles as director, managing director, Secretary or manager of the company, mentioning that the requisites of the Act and the rules there under have been complied with. It is to be filed with the Registrar of Companies.



- When the required documents have been filed with the Registrar along with the prescribed fee, the Registrar **scrutinizes** the documents. If the Registrar is satisfied, the name of the company is entered in the register. Then the Registrar issues a certificate known as **Certificate of Incorporation**.



III. CERTIFICATE OF INCORPORATION

- On the registration of Memorandum of Association, Articles of Association and other documents, the Registrar will issue a certificate known as the '**Certificate of Incorporation**'. The issue of certificate is the evidence of the fact that the company is incorporated and the requirements of the Companies Act have been complied with.



IV. CERTIFICATE OF COMMENCEMENT OF BUSINESS

- As soon as a **private company** gets the certification of incorporation, it can commence its business. A public company can commence its business only after getting the '**certificate of commencement of business**'. After the company gets the certificate of incorporation, a public company issues a prospectus for inviting the public to subscribe to its share capital. It fixes the minimum subscription. Then it is required to sell the minimum number of shares mentioned in the prospectus.
- After completing the sale of the required number of shares, a certificate is sent to the Registrar along with a letter from the bank stating that all the money is received.
- The Registrar then scrutinizes the documents. If he is satisfied he issues a certificate known as 'Certificate of Commencement of Business'. This is the conclusive evidence for the Commencement of Business.



STEPS AND PROCEDURE FOR PRIVATE COMPANY REGISTRATION IN INDIA

- ▶ The minimum amount of the paid-up capital needed at the time of incorporation of the company is at present INR-100,000/-.
- ▶ Approval to the proposed names of the company and reservation of the same with the office of the concerned ROC, with the help of Form INC - 1 & INC - 7.
- ▶ Making of DINs (Director Identification Numbers and DSCs (Digital Signature Certificates), with support of the Ministry of Corporate Affairs (MCA), Government of India. (www.mca.gov.in/)
- ▶ Submitting the MOA and AOA of the company within six months from the reservation of approved company name.
- ▶ Filing Form INC - 22 & DIR - 12 and other relevant Forms.
- ▶ Obtaining the certificate of company registration.
- ▶ Obtaining the certificate of Commencement of Business for starting the company.



STEPS AND PROCEDURE FOR PUBLIC LIMITED COMPANY REGISTRATION IN INDIA

- ▶ Minimum 7 shareholders and 3 directors need to form a public ltd. company.
- ▶ Minimum share capital of worth 5 lacs require for the same.
- ▶ Require DSC - digital signature certificate for any one of the directors that can be apply while submitting the address proof and identity proof with self attested of the same director.
- ▶ Get DIN number - Director Identification Number that can be get while submitting directors personal details with attested copy to the concern DIN authority.
- ▶ An application is to be made for pre-name. Where there is need to list atleast 6 names in priority wise.
- ▶ An application for name availability is to be made comprised of 6 names and main objective clause; what a company pursue after incorporation.
- ▶ Representing the application to Registrar of Company along with the necessary documents like Memorandum and Articles of Association, duly filled Form DIR - 12, Form INC - 22, and Form INC - 7.
- ▶ In final process, get follow with ROC while paying registration fees; and make changes if require to MOA / AOA in other legal documents of the proposed company.
- ▶ Finally, after getting approval from all these prescribed steps; get apply for the certificate of commencement of Business and company incorporation and formation.

