PRIVATE LIMITED COMPANY

MEANING:

As per provisions of section 2(68) of the Companies Act, 2013;

"Private company means a company having a minimum paid-up share capital may be prescribed, and which by its articles,—

- (i) restricts the right to transfer its shares;
- (ii) Except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for

the purposes of this clause be treated as single member."

A **private limited company** is a company which is privately held for small businesses. The liability of the members of a Private Limited Company is limited to the amount of shares respectively held by them. Shares of Private Limited Company cannot be publicly traded.

Characteristics / Main Features of Private Limited Company:

- **No minimum capital required:** There was a minimum paid-up share capital requirement of Rs. 1 lakh previously, but that is omitted now. (w.e.f 29-5-2015 vide Companies Amendment Act, 2015).
- Minimum 2 and maximum 200 members: A private company can have a minimum of just two members (but restricted to one if it is a One Person Company), and a maximum of up to 200 members.
- Transferability of shares restricted: Private companies cannot freely transfer their shares to the public like public companies. This is why stock exchanges never list private companies.
- "Private Limited": All private companies must include the words "Private Limited" or "Pvt. Ltd." in their names.

- **Privileges and exemptions:** Since private companies do not freely transfer their shares and involve limited interest by members, the law has granted them several exemptions that public companies do not enjoy like exemption from appointment of Independent Directors, adoption of additional grounds for vacation of office by the company, etc.
- **Index of members**: A private company has a privilege over the public company as they don't have to keep an index of its members whereas the public company is required to maintain an index of its members.

DISADVANTAGES OF PRIVATE LIMITED COMPANY:

- One of the main disadvantages of a private limited company is that it restricts the transferability of shares by its articles.
- In a private limited company the **number of members in any case cannot exceed 50**.
- Another disadvantage of a private limited company is that it cannot issue prospectus to the public.
- In stock exchange shares cannot be quoted.

TYPES OF PRIVATE LIMITED COMPANIES:

- 1. Company limited by Shares: The liability of the members is limited to the amount unpaid to the company with respect to the shares held by them.
- 2. Company limited by Guarantee: Here the members' liabilities are limited to the amount of money they guarantee to pay in case the company is wound-up.
- **3.** Company with unlimited liability: The liability of members is unlimited in this type of private companies. Personal assets of members can be attached and sold when the company is being wound-up.

PROCESS OF REGISTRATION OF PRIVATE LIMITED COMPANY:

The steps involved in incorporation of Private Limited Company are as under:

1. Name Reservation:

The name approval for the company is facilitated by MCA through RUN application. After login into the MCA account, one can apply for reservation of name by clicking on the RUN option. Details which are required to be mentioned in form are as under:

• Entity type - Private/Public/Section 8

- CIN (it has to be entered only when an existing company wishes to change its name and is using RUN to reserve a new name)
- 2 Proposed names
- Main objects of the Company
- Any other attachment, if required like NOC for the proposed name if it resembles any name of any existing company / LLP.

After entering the aforementioned details in the form, one can submit the form at the portal and make the payment of the prescribed fee, i.e. Rs. 1,000.00 towards name reservation fee. The name once approved shall be valid for the period of 20 days from the date of approval of name.

2. Obtain Digital Signature:

Digital Signature Certificates is a secured digital key that validates the identity of the certificate holder. A digital certificate can be handed electronically to confirm one's identity, to access data or services online or to sign documents electronically. As the MCA has made it easy for online company registration, DSC of each subscriber is required. The subscribers and witness/witnesses are expected to affix their digital signatures to the e-MOA and e-AOA.

3. Application for Registration:

Recently, the Ministry of Corporate Affairs has introduced Spice+ form which is an integrated form for company incorporation providing the following registrations:

- 1. CIN of the company
- 2. DIN allotment to the Directors
- 3. Mandatory issue of PAN
- 4. Mandatory issue of TAN
- 5. Mandatory issue of EPFO registration
- 6. Mandatory issue of ESIC registration
- 7. Mandatory issue of Profession Tax registration(Maharashtra)
- 8. Mandatory Opening of Bank Account for the Company
- 9. Allotment of GSTIN (if so applied for)

The Spice+ form includes the following forms:

• Spice (Part A and Part B)

SPICe form deals with the single application for reservation of name, incorporation of a new company and/or application for allotment of DIN and/or application for PAN and TAN. This e-Form is accompanied by supporting documents including details of Directors & subscribers, MoA and AoA, etc. Once the e-Form is processed and found complete, the company would be registered and CIN would be allocated. Also, DINs get issued to the proposed Directors who do not have a valid DIN. Maximum three Directors are allowed for using this integrated form for filing application of allotment of DIN while incorporating a company other than a Producer company. In case of a Producer company, maximum of five directors are allowed to apply for allotment of DIN. Also PAN and TAN would get issued to the Company.

Steps involved in Filling SPICE + (Part A and B) are as under:

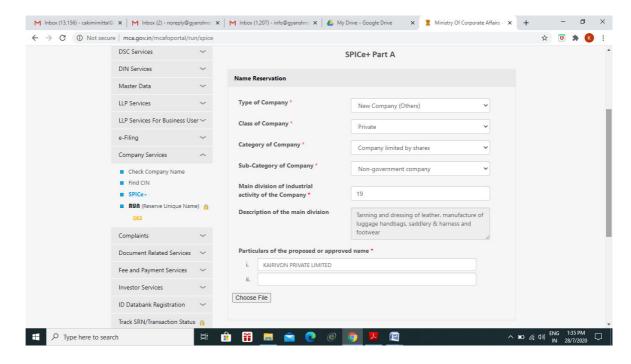
SPICE+ - Part A

SPICe+ Part A represents the section wherein all details with respect to name reservation for a new company have to be entered.

Following details needs to be entered in Spice Part-A:

- Type of Company
- Class of Company
- Category of Company
- Sub-category of the company
- Main division of industrial activity of the company
- Description of the main division
- Particulars of the proposed or approved name: Two names can be proposed in
 case application is being made ONLY for name reservation i.e. if SPICe+ Part
 A is submitted individually. In case complete SPICe+ is being submitted for
 name reservation as well as incorporation, only one name can be proposed.
- Attachment: Attach the relevant document supporting the proposed name.

- Auto-Check: Click on the 'Auto check' button after entering the proposed name.
- Ensure that any change in the proposed name shall also be validated by clicking the Auto check button.
- Save: Click on Save for saving information entered in the screen.
- Submit: On click of 'Submit' button, please select a radio button displayed in a pop-up message to confirm whether application needs to be submitted for name reservation or should be continued for incorporation. In case application is submitted for name reservation, user shall be taken to the payment page for making the payment and SRN shall be generated. In case application is proceeded for incorporation, section for SPICe+ Part B shall be enabled.



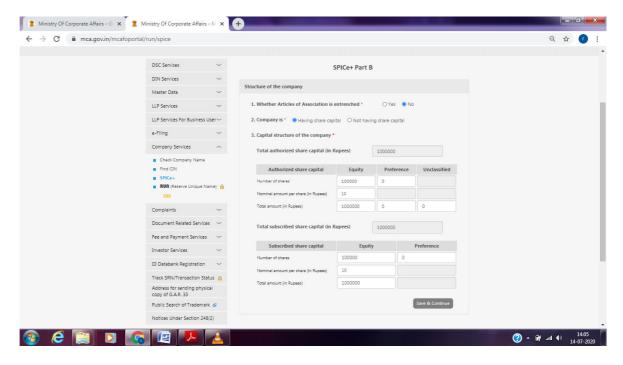
B. SPICe+ Part B

Enter the following Details:

Step-1:

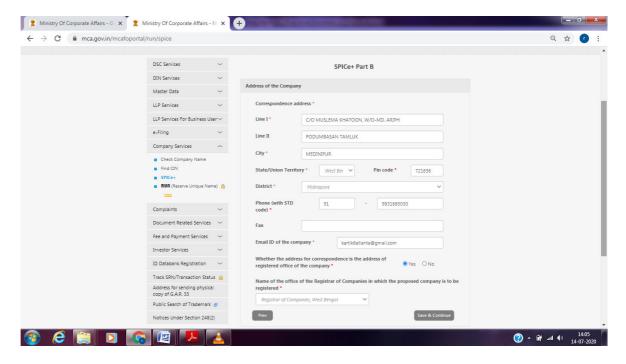
• Details regarding Articles of Association.

Capital structure of the company.



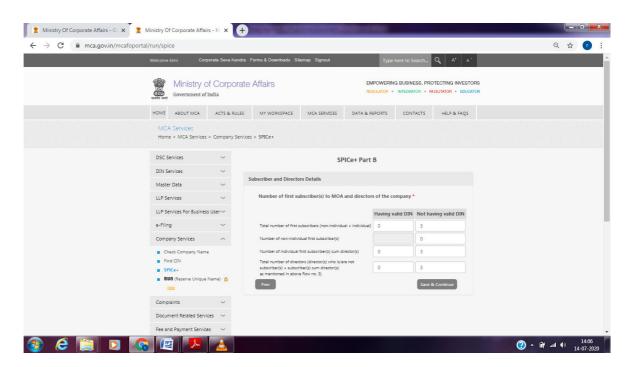
Step-2:

- Details of number of members: Enter the details of number of members in case of a company is not having share capital. Maximum number of members excluding proposed employee(s) should not be greater than 200 in case of a private company. Number of members excluding proposed employee(s) should be greater than or equal to two in case of Private company and seven in case of public company.
- Correspondence / registered address.
- Whether the address for correspondence is the address of registered office of the company
- Name of the office of the Registrar of Companies in which the proposed company is to be registered.

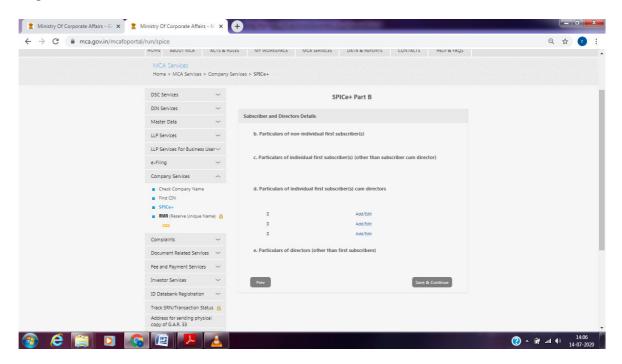


Step-3:

- Number of first subscriber(s) to MOA and directors of the company.
- Number of non-individual first subscriber(s)
- Number of individual first subscriber(s) cum director(s)
- Total number of directors (director(s) who is/are not subscriber(s) plus subscriber(s) cum director(s)
- Particulars of non-individual first subscriber(s)
- Particulars of individual first subscriber(s) (other than subscriber cum director) Having DIN
- Particulars of individual first subscriber(s) (other than subscriber cum director) Not Having DIN
- Particulars of individual first subscriber(s) cum directors Having DIN
- Particulars of individual first subscriber(s) cum directors Not Having DIN
- Particulars of directors (other than first subscribers) Having DIN
- Particulars of directors (other than first subscribers) Not Having DIN

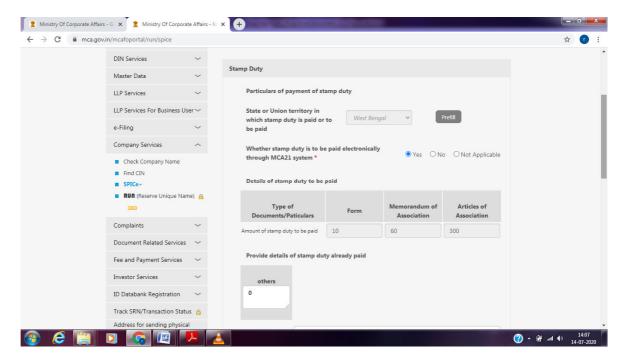


Step-4: Enter the Director Details.



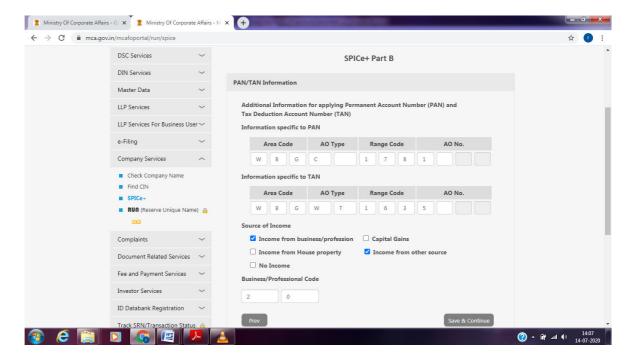
← → C 🗎 mca.gov.in/mcafop	oortal/run/spice		Q ☆ 🕧 :
	XIIII XIII XIII XIII XIII XIII XIII XI	Particulars of individual first subscriber(s) cum directors	
	First Name *	KARTIK	
	Middle Name		
	Surname *	MAITI	
	Father's First Name *	BALAI	
	Father's Middle Name	CHAND	
	Father's Surname *	MAITI	
	Gender • MALE V	Date of Birth * Sees Date * Nationality * INDIA >	
	Place of birth (District and Sta	le) • WEST BENGAL	
	Whether citizen of India *		
	Occupation type *	SelfEmployed O Professional O Homemaker O Student O Serviceman	
	Area of Occupation *	Others V	
	If 'Others' selected, please spe	cify BUSINESS	
	Investor Services	Prev Save & Continue	
	ID Databank Registration		
	Track SRN/Transaction Statu	5 👸	
	Address for sending physica copy of G.A.R. 33		
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Step-5: Enter the particulars of payment of stamp duty.

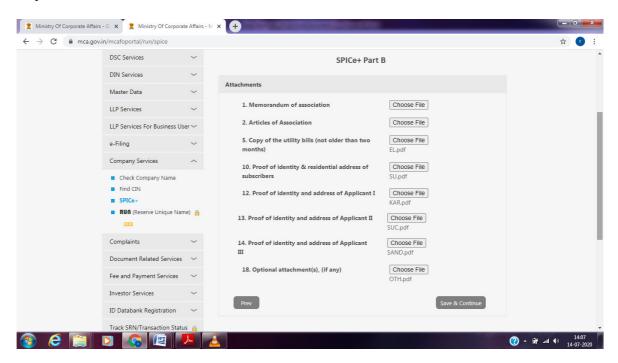


Step-6:

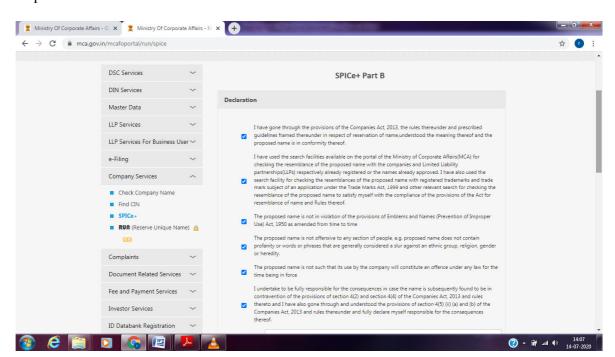
- Additional Information for applying Permanent Account Number (PAN) and Tax Deduction Account Number (TAN)
- Information Specific to PAN
- Information Specific to TAN
- Source of Income
- Business/ Profession Code

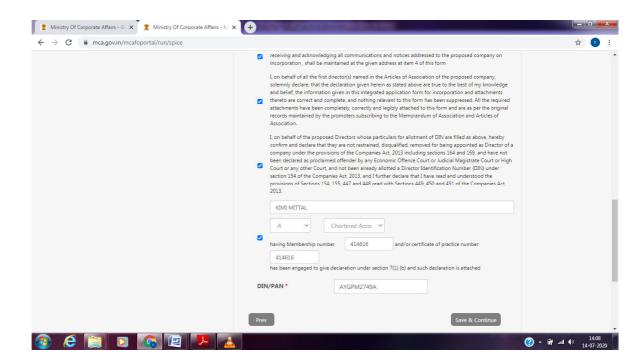


Step-7: Attach the documents.



Step-8: Fill the Declaration details:





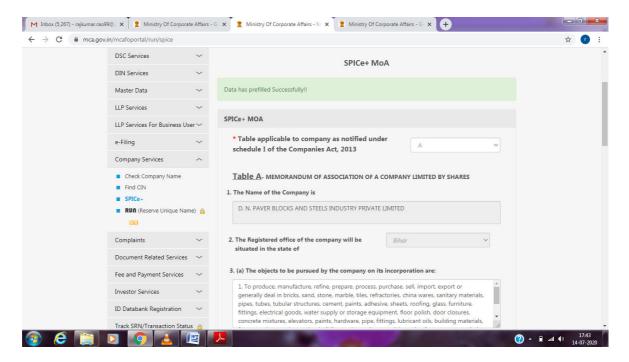
The form is accompanied by following documents:

- a) Consent of all Directors (DIR-2)
- b) KYC of all subscribers / shareholders / Directors.
- c) Address proof of Registered Office of the proposed company.
- d) Details of interest of Directors in other entities, if any.
- e) NOC from the owner of the registered office of the company (if premises is taken on rent)
- Spice MOA (for MOA of the proposed company)

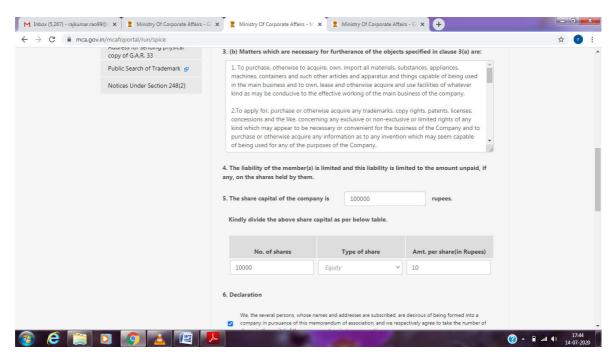
This eform contains the main objects of the company along with other objects which are ancillary to main objects. The eform is duly signed by subscribers / shareholders of the company digitally by affixing their DSC along with certification from a Practising Chartered Accountant / Company Secretary / Advocate

Steps involved in filling the eform:

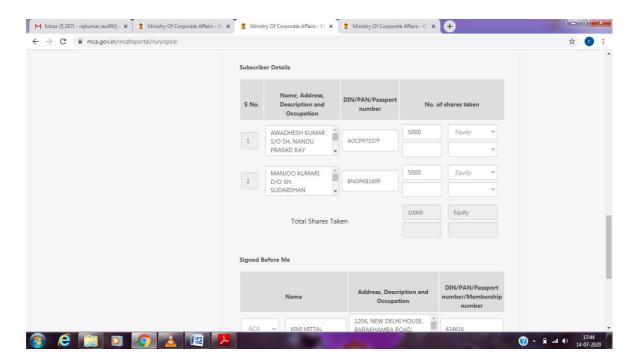
• Enter the details regarding name of the company (prefilled from Spice Form), State of registered office of the company (prefilled from Spice Form) and main objects of the company.



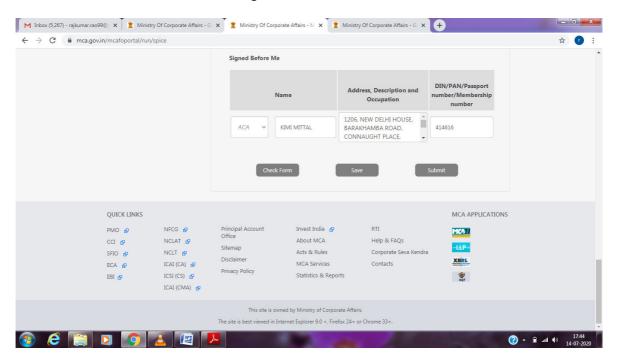
• Enter the details related to other matters ancillary to business along with details related to Authorised Share Capital of the Company.



 Enter the details of the Subscribers- Name, address, Description and Occupation along with DIN / PAN of the subscribers. Also mention the details pertaining to number and class of shares subscribed by each subscriber.



• Enter the details of the witness along with his/her DSC

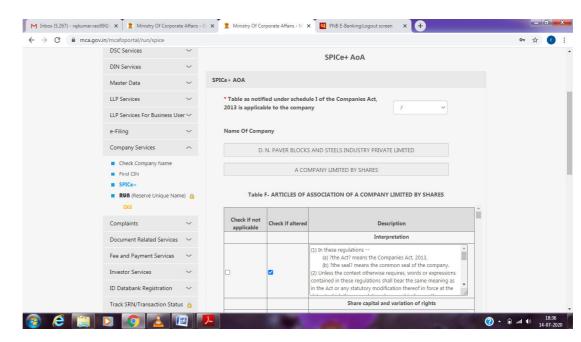


• Spice AOA (contains the articles of the proposed company)

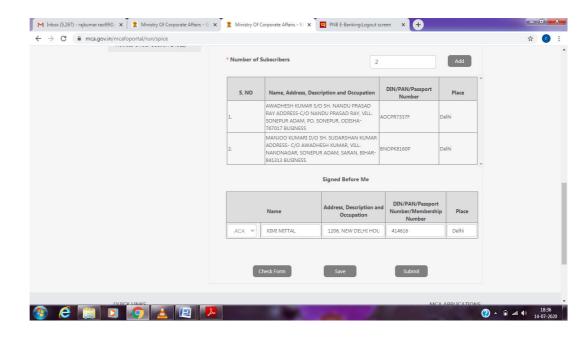
This eform contains the articles of the company as per the format specified in Companies Incorporation Rules, 2014. The eform is duly signed by subscribers / shareholders of the company digitally by affixing their DSC along with certification from a Practising Chartered Accountant / Company Secretary / Advocate.

Steps involved in filling the e-form:

• Select the Table from the dropdown available in the form. The name shall be prefilled from the Spice form. Alter the Para 2 of the form by incorporating the definition of the private limited company and the para 59 of the form by mentioning the name of first directors of the company.



• Enter the subscriber details i.e. Name Address, Description and Occupation along with witness details.



• AGILE form (For GSTIN, ESIC, EPF, Bank Account and Professional Tax Registration)

Form AGILE is an application for GST number, Employees State Insurance Corporation registration and Employees Provident Fund registration along with application for opening of bank account of the company. Startups who are looking to register their companies through SPICe e-form can likewise apply for GSTIN or Establishment code as provided by EPFO for Employer Code as provided by ESIC through e-form.

Spice INC-9

It is a form which is autofilled by auto populating the data filled in Spice eform. This is a declaration by the first shareholders of the company.

INC-22 form

In the case where the registered office of the company is different from the address of the company as mentioned in SPiceeform, then the company needs to furnish the details of the registered office address of the company within 30 days from the date of incorporation of the company in eform INC-22 as per Rule 25 of the Companies Incorporation Rules, 2014.

The Form INC 22 shall be filed together with the accompanying documents:

- 1) The enrolled document of the title of the locations of the registered office in the name of the firm; or
- 2) The signed and attested copy by a notary of rent or lease agreement in the name of the firm alongside a duplicate of rent paid receipt (the most recent one month);
- 3) The approval from the proprietor or approved inhabitant of the properties alongside the verification of possession or tenancy approval, to utilise the property by the organisation as it's registered workplace; and
- 4) The most recent two months proof of any utility service like gas, telephone, electricity, etc. as address proof of the location in the document or the name of the owner.

4. <u>MANDATORY COMPLIANCES TO BE DONE IMMEDIATELY AFTER</u> INCORPORATION:

• Requirement of Company Name Board & official publications

According to Section 12 (3), the Companies Act, 2019, each organization shall hold:

company's name, and the address of the company's registered workplace,

also, keep the equivalent ready at the entrance of the office or spot wherein its business operations are running, in an obvious situation, in clear letters, in both English and the local language of the relevant place.

The organisation ought to get its company name, registered office address and the Corporate Identity Number alongside phone number, email, fax number (assuming any), and website addresses (assuming any), all printed in business letters, letter papers, billheads and in every notification and other official publications.

• First Board Meeting

First Meeting of Board of Directors is required to be held within 30 days of Incorporation of Company. Notice of BM must be send to every director at least 7 days before the meeting.

• Issue of Share Certificates

The Company is required to issue Share Certificates to the subscribers of memorandum within 60 days of Incorporation of Company.

• Appointment of First Auditor

As per section 139(6) of the Companies Act, 2013, the first auditor of the company other than a government company shall be appointed by the Board within 30 days of Incorporation by filing eform ADT-1. In case of Board's failure, an EGM shall be called within 90 days to appoint the first auditor.

In case of Government Companies the first auditor shall be appointed by the Comptroller and Auditor-General of India within sixty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days; and in the case of failure of the Board to appoint such auditor within the next thirty days, it

shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting.

The first auditor shall hold office till the conclusion of the 1st Annual General Meeting of the company.

Declaration in Form INC-20A

As per Section 10A, Companies Act, 2013, an organisation incorporated after the initiation of the Companies (Amendment) Ordinance, 2019 and having a capital share ought not to start any business or exercise any powers except if-

A statement is documented by a director within 180 days of incorporating the company with the Registrar that each subscriber to the memorandum has share value consented to be taken by him or her on the date of creation of such an assertion; and confirmed in INC 20A form alongside the charges as might be agreed.

OTHER MANDATORY ANNUAL COMPLIANCES OF THE COMPANY:

• Board Meetings in a year:

Minimum 4 Board Meetings to be held every year with not more than 120 days gap between two meetings. In case of small company, it is sufficient to conduct only two Board Meetings.

• Filing of Disclosure of interest by Directors:

Every director at: □ First meeting in which he participates as director; or □ First meeting of Board in every FY; or □ Whenever there is change in disclosures
shall disclose in Form MBP 1 (along with list of relatives and concern of relatives in the Company as per RPT definition), his concern or interest in any company, body corporate, firm or other association of individuals (including shareholding interest).
Form MBP□1 shall be kept in the records of the company.

• Alteration in MOA and AOA:

Every alteration of Articles and Memorandum shall be filed with Registrar together with copy of altered Articles, notice of meeting and SR within 30 days

of passing Special Resolution. Every alteration made in MOA and AOA shall be noted in every copy thereof.

•	Mandatory	Registers	under	Com	panies	Act:

Every Company shall keep and maintain following Registers in the specified format:			
□ Register of Members MGT-1			
☐ Register of other Security Holders residing outside India MGT-3			
- Register of Transfer and Transmission of Shares SH-6			
– Register of Charge CHS-7			
☐ Index of the Registers			
Other than above referred registers, a Register of Directors and KMP in the prescribed format containing prescribed particulars shall also be kept at the registered office of the company.			
Filing of Resolution and Minutes of the Meeting:			
-Minutes of every general meeting, Creditors, Board and Committee shall be prepared and kept within 30 days of conclusion of every meeting concerned.			
☐ All appointments in the meeting shall be included in the minutes.			
 Minutes of each meeting shall be entered into Minutes Book along with date of such entry. 			
-Copy of every resolution (with explanatory statement, if any) or Agreement for the specified matters to be filed with ROC in Form MGT \square 14 within 30 days.			
☐ Articles of Company shall have copy of resolution effecting amendment in AOA and Agreements referred in Section 117(3) of the Act			
Appointment and Resignation of Director:			
Every person to be appointed as Director shall provide his consent in Form DIR 2 and such consent shall be filed by the Company with ROC in Form DIR 12, within 30 Days of appointment.			

Director shall intimate his resignation to the Company, which the Company shall file with ROC in **Form DIR** 12 in 30 days and Company shall put resignation details on its website and in its Directors' Report.

• Appointment of Subsequent Auditor:

The BOD shall appoint the auditor in first AGM of company who shall hold the office till the conclusion of 6th AGM and shall inform the same to ROC by filing **ADT-1**. The responsibility to file Form ADT 1 is that of the company and not of the auditor **within 15 days** from the date of appointment.

Shareholders will ratify the appointment of Auditor in every AGM but there is no need to file ADT-1 for ratification.

• Annual General Meeting:

Every Company is required to hold an Annual General Meeting on or before **30th September** every year during business hours (9 am to 6pm), on a day that is not a public holiday and either at the registered office of the Company or within the city, town or village where the registered office is situated. A 21 clear days' notice is required to be given for the same.

• Filing of Director's Report and Annual Accounts:

Every Company is required to file its Financial Statements along with Director's report required under section 134 within 30 days of its Annual General Meeting with Registrar of Company in E-Form AOC-4. The same shall be digitally signed by one director and certified by CA/CS/Cost Accountant in Practice.

• Filing of Annual Return:

Every company is required to file its Annual Return with Registrar of Companies within 60 days of Annual General Meeting in E-Form MGT-7. A company having turnover of INR 50 Crore or more shall be certified by a Practicing CS in Form MGT-8.

• Regularization of Additional Director:

If company wants to appoint additional director as director, then it shall regularize the person as director in General Meeting by passing Shareholder Resolution. File **form DIR-12** for Change in Designation of Director along with ordinary resolution within 30 days of AGM.