

“First Master the Fundamentals” – Larry Bird

In the previous article, we had highlighted the differences between Company and Limited Liability Partnership which are important for an entrepreneur to choose the suitable form of business organization.

In this article we have attempted to answer the questions in the form of FAQs which normally arise in the minds of an entrepreneur if he chooses to incorporate a Private Limited Company. Consciously legalese and section numbers have been avoided to make it “entrepreneur-friendly”.

FAQS FOR FORMATION OF A PRIVATE LIMITED COMPANY

1. What is a Digital Signature Certificate (DSC) ?

Obtaining a DSC from a certified authority (list available in www.mca.gov.in) is the first step in the incorporation of a Private Limited Company which has become a complete electronic filing exercise. It is sufficient if one of the promoters obtains the DSC.

2. What is Directors Identification Number (DIN) ?

Directors Identification Number (DIN) is a unique identification number to be obtained by a person intending to become a director of a company. This is required for both Indian and foreign directors and has no expiry period. It can be used for any number of companies.

Recently Ministry of Corporate Affairs (MCA) has come out with a provision of “PAN based DIN” wherein it has made it mandatory for Indian nationals to provide their PAN numbers while obtaining DIN.

3. What is Authorised Share Capital and Paid up Share Capital ?

- Authorised Share Capital is the maximum capital which can be raised from the shareholders. Paid up Share Capital is the amount of share capital for which consideration is received from the shareholders either in cash or otherwise and against which shares are allotted.
- Authorised Share Capital determines the filing fees at the time of incorporation as well as for e-filing of other forms during the life of the company. This may be arrived at depending on the funding requirement of the business via shares. Paid up capital may be determined based on the business forecast.
- Minimum Authorised and Paid up capital is Rs. 1,00,000.

4. What is the minimum and maximum number of directors and shareholders ?

- Minimum number of directors is 2 and maximum number is as fixed by Articles of Association.
- Minimum number of shareholders is 2 and maximum number is 50 excluding persons who are current employees and who have been formerly employed and continue to be members after the employment has ceased.

5. What is a Memorandum of Association (MOA) ?

MOA is a charter document which states the main, ancillary and other objects of the proposed company as well as the authorized capital. Once registered, it becomes a public document which can be inspected by the general public.

Drafting of the objects clause is a specialized activity which is undertaken after detailed discussion with the promoters about the immediate business they propose to undertake as well as several other lines of activity they plan to get into in the future. It is drafted broadly to enable diversification of business as and when required. It enables investors and lenders to understand where the funds are going to be utilized.

6. What is an Articles of Association (AOA) ?

AOA is a statutory document which contains the rules and regulations for the management of company, board structure and administration, any specific agreements amongst the shareholders, restriction on transfer of shares, conduct of business through meetings etc.

While the Companies Act provides standard format of the AOA, it can be customized to reflect the understanding and agreement of the shareholders within the broad framework of law. This is normally resorted to in Joint Venture Companies or Venture Capital Funded Companies.

For example, clause relating to “Affirmative vote matters” which require approval by certain minimum number of directors / shareholders, as the case may be. Illustrative list is given below:

- Guarantees, charges and borrowings
- Intellectual Property Rights
- Changes in the nature of business
- Mergers, acquisition and disposals
- Change of name
- Winding up
- Material litigation
- Change in share capital
- Appointment of Key Managerial Personnel

There are more questions to be answered to understand the entire gamut of incorporation of a Private Limited Company. Wait till we release the next issue of Lexspeak.....!!!!!!!.