



## SIMPLIFIED PROCESS FOR INCORPORATING COMPANIES

### *Introduction*

In the last couple of years, the Indian government has taken many initiatives to ease the process of incorporating a company in India and reduce the time frame to establish a business in India. On October 1, 2016, the Ministry of Corporate Affairs of the Government of India (the “MCA”) amended the Companies (Incorporation) Rules, 2014 to further simplify this process.

### *Simplified form for incorporation of companies*

The MCA has introduced a new form for incorporation, i.e., the Simplified Proforma for Incorporating Company Electronically (the “New Form”). The New Form is a consolidated form for allotment of the director’s identification number for up to three (3) directors, approval of name of the company and/or incorporation of the company.

The key features of the New Form are as follows:

- The New Form can be used for incorporation of any type of company, i.e., a private limited company, a public limited company, a company formed with charitable objects, a producer company and a one person company.
- Subsidiaries of foreign companies can also be incorporated using the New Form.
- As a part of the incorporation process, the name of the company is required to be approved by the MCA, and this application can now be made under the New Form. Alternatively, if the applicant has filed a separate name approval application, the service request number of the application can be specified in the New Form.
- The New Form has to be mandatorily filed along with the electronic versions of the charter documents, i.e., the memorandum and the articles of association, which are based on the standard formats provided in the Companies Act, 2013.
- In the electronic version of the memorandum of association, the following items need to be included: (i) the details of the proposed or approved name; (ii) the state in which the registered office is to be located; (iii) the objects of the company; (iv) the share capital (authorized and paid-up); and (v) the names of the shareholder(s). Further, the subscriber page in the charter documents is to be signed by the subscriber(s) and witnesses using a digital signature certificate (“DSC”).
- In the electronic version of the articles of association, the applicant has the option of not selecting articles that do not apply to the company, and specify entrenchment and additional articles which the applicant wishes to be made applicable to the company.



- The New Form also provides for applications to be made for obtaining a permanent account number, a tax deduction account number and/or an employers' registration under the employees' State Insurance Act, 1948 through the e-biz platform of the Indian government.

### ***Will the New Form simplify incorporation of a company?***

In May 2015, the Indian government had introduced an integrated e-form for company incorporation under which a combined application for allotment of the director's identification number for up to three (3) directors, approval of name of the company and incorporation of the company could be made. However, this integrated form was not widely used, and most applicants continued to file separate forms for each step of the incorporation. This integrated form will be discontinued with effect from November 1, 2016.

Further, until recently, company incorporation was dealt with by the jurisdictional Registrars of Companies (who also deal with most other company law related matters) depending on the state in which the company was proposed to be incorporated. Earlier this year, the MCA established the Central Registration Centre (the "CRC") which solely deals with applications for approval of name and for incorporation of a company. The CRC approves the proposed name within one (1) day of filing the application, and companies can be incorporated within two (2) to three (3) days of filing the application, provided all documents are in order. However, applicants still took significant time to prepare the incorporation documents as most documents required handwritten signatures and also apostillation (in case the applicant was a foreign company).

In light of this, the Indian government has introduced the New Form and enabled electronically signed charter documents to be filed electronically using DSCs.

Having said that, in our view, there remain some concerns with the New Form, particularly for foreign applicants. One, DSCs will now have to be obtained for each of the subscriber(s) or the authorized representative of the subscriber(s) and the witnesses, in addition to the directors of the company. DSCs are issued by approved companies in India, and the applicant is required to submit the original copy of the form along with apostilled identification proof. Two, the New Form still requires submission of scanned copies of several documents such as the board resolution of the subscriber(s), proof of address and copies of utility bills in respect of the registered office, and a no-objection certificate for use of name if the proposed name is a registered or pending registration trademark. Further, it is unclear if the foregoing documents will have to be apostilled. If yes, then it will defeat the purpose of introducing a "completely digitized form."

Given that the New Form has been introduced with the objective of discontinuing the earlier integrated form as well as the traditional route of filing separate forms for incorporation, we hope that the MCA brings clarity on the foregoing aspects soon, and applicants can reap the full benefit of a completely digitized incorporation regime.