

After incorporation of company necessary compliances like auditor appointment, stamp duty payment on share certificate, Shops and Establishment Registration is a must. This article points out 16 Post Incorporation Compliance which should be the priority for the company.

## Post Incorporation Compliance for a Private Limited Company

A Company being creation of law is required to comply with the provisions of the Companies Act, 2013, which prescribes certain specific activities to be performed immediately after incorporation of the Company. These activities are warranted because of specific provisions under the Companies Act, 2013 or under other state level laws like that of Shops and Establishment Act, State Stamp Act or professional Tax. A suggestive list is as under:

Sl. No.	Type of compliance	Remarks
1.	Convening of First Board meeting	Mandatory
2.	Disclosure of Interest by Directors	Mandatory
3.	Provisioning of Maintenance of Statutory Registers	Mandatory
4.	Developing of Accounting System for the Company	Mandatory
5.	Opening of Bank Account for the Company	Need based, however, mandatory for submitting declaration for commencement of business
6.	Declaration for commencement of business	Mandatory
7.	Demand and Collection of Paid up Capital from the Shareholder	Mandatory, however to be decided by Director
8.	Appointment of Auditor within 30 Days of Incorporation	Mandatory, if not done punishable
9.	Issue of Share Certificate within 60 Days	Mandatory, if not done punishable
10.	Payment of Stamp Duty on Issuance of Share Certificate	Mandatory, if not done punishable
11.	Obtain Registration under Shops and Establishment Act	Mandatory, if not done punishable
12.	Professional Tax Registration of Company and its Directors	Mandatory, if not done punishable
13.	Protect Intellectual Property Rights like Trademark, Copyright, Patent and Design	Strongly recommended
14.	Need-Based Registration and licences	Need-based
15.	Drafting of Employer related documents and HR Policies	Optional
16.	Drafting of agreements like NDA, Privacy Policy for Website and Agreements to be Entered with Vendors	Optional

### 1. Convening of First Board Meeting:

The board meetings are meeting of director which is to be held at least one in every quarter (the gap between the two meetings should not be more than 120 days) for a private limited company however, for small company (having capital of fifty lacs and turnover is not more than two crores) minimum of two meetings must be held within the financial year at a gap of six months. There is no limit on a maximum number for which a board meeting can be held. The first meeting of the directors after

incorporation of the companies is very important as it must deal with various provisions of the Companies Act and a decision is to have arrived with respect to each such requirement.

## **2. Disclosure of Interest by Directors:**

Section 184 of the Companies Act, require every director to disclose his concern or interest, whether directly or indirectly, in a contract or arrangement, or proposed contract or arrangement in the first meeting of a board of directors of the company and thereafter in the first board meeting to be held in every financial year. Any change in the interest of director is to be intimated to the Board of Directors within 30 days of such change. Any non-disclosure shall make any such contract or arrangement voidable at the option of the company. Such disclosure to be made in the prescribed form MBP-1. In case of public limited companies, such disclosure needs to be filed with ROC in prescribed form MGT-14.

## **3. Provisioning of Maintenance of Statutory Registers:**

Every company is under obligation to maintain certain register under Section 85, Section 88 etc. of the Companies Act, 2013 and required to keep and maintain at its registered office in the prescribed form, any failure in maintaining the statutory register is an offence for which company as well as directors may be fined and prosecuted.

## **4. Developing of Accounting System for the Company:**

Section 128 of the Companies Act, requires every company to prepare and keep at its registered office, books of account and other relevant books of account and financial statement of every financial year to give a true and fair view of the state of affairs of the company. The books of account need to be maintained with the double entry system to be preserved for eight financial years. The accounts need to be maintained at the registered address of the company or at any other place where directors decide under intimation to ROC.

## **5. Opening of Bank Account for the Company:**

To transact business the company is required to open and maintain a current account with any bank in India through which all the receipts and payments of banking nature shall be transacted. Selection of a bank account is very important for day to day operation of business it is strongly recommended to open the current account in a bank branch which is situated near to the office of the company. The mode of operation of the said bank account has to be decided in the first board meeting and a copy of the resolution passed with respect to an operation of a bank account is required to be given to the banker at the time of opening of bank account. Any subsequent changes in the mode of operation are also required to be intimated to the bank.

## **6. Declaration for commencement of business:**

A company incorporated after the commencement of the Companies (Amendment) Ordinance, 2018 and having a share capital shall not commence any business or exercise any borrowing powers unless—

(a) a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and

(b) The company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.

If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.

Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.]

#### **7. Demand and Collection of Paid up Capital from the Shareholder:**

The promoters of a company subscribe to the equity shares of a company by putting their signatures against the number of shares they subscribe in the Memorandum of Association. The subscribed amount needs to be paid as initial capital to the company after its incorporation. Directors are under a duty to ask and collect from the shareholders in the company account.

#### **8. Appointment of Auditor within 30 Days of Incorporation:**

As per Section 139 of the Companies Act, 2013 every company is required to appoint its first auditor within 30 days of incorporation by its board of directors and in case the board of directors fails to appoint the auditor within said period of 30 days then they shall call an extraordinary general meeting of shareholders for appointing an auditor. The appointment of auditor through shareholder must be completed within 90 days.

#### **9. The issue of Share Certificate within 60 Days:**

The board of directors must issue share certificate to the shareholders of the company within 60 days of becoming their shareholders. For a new company, the first subscriber becomes shareholder from the date of incorporation. Hence, the share certificates to them must be issued by the board of directors. The share certificate shall be signed by the two directors or one director and company secretary of the company who shall apart from other thing mention the folio number, share certificate number and a distinctive number of share for which the certificate is issued. Failure of issuing share certificate within 60 days is an offence for which company is punishable with a fine of rupees twenty thousand.

#### **10. Payment of Stamp Duty on Issuance of Share Certificate:**

Every state government has made a law imposing stamp duty on the issue of a share certificate, which is to be paid to the respective state government after such an issue. The rates of stamp duty and the method of its payment differs from state to state. However, in most of the state, the stamp duty payable is 0.1% of the market value of the shares. The non-payment of stamp duty is a very serious offence for which apart from punishment imprisonment has also been prescribed.

#### **11. Obtain Registration under Shops and Establishment Act:**

Every state has either passed its own law or adopted law of other states to regulate shops and commercial establishment from the point of view of working hours and basic facilities to be provided to the employees/labour of the companies. Within 30 days of incorporation of a company, it is liable

to obtain a registration under the law of shops and establishment as may be applicable in the respective state. The failure of obtaining shops and Establishment registration is a criminal offence.

**12. Professional Tax Registration of company and its Directors:**

State government like Maharashtra, Karnataka, Gujarat etc. has imposed a tax on the profession which in its ambit includes company, LLP, all directors, all designated partners and all employers which need to obtain a professional tax registration with the professional tax department and pay professional tax at prescribed rates. However, all Union Territories including NCT of Delhi and certain states like Haryana, Punjab, Rajasthan, Uttar Pradesh etc. does not have any law to tax profession.

**13. Protect Intellectual Property Rights like Trademark, Copyright, Patent and Design:**

The companies should not leave any opportunities in securing the intellectual property rights which may be in form of business name, its logo, punchline, name of brand, device marks which shall be attached to products, service marks, name of domain, literature, software codes, inventions and three-dimensional shapes.

**14. Need Based Registration and Licences:**

Based on the business activity and the goods in which the company is dealing, there are other licences and registration which are required examples are Sales Tax Registration, CST Registration, Drug Licence, Food Licence etc.

**15. Drafting of Employer Related Documents and HR Policies:**

The legal documents such as Employment Agreement, Human Resource Policy, Leave Policy, standing orders are necessary documents and must be drafted thoughtfully so that the interest of company is protected vis a vis and erring employee.

**16. Drafting of Agreements like NDA, Privacy Policy for Website and Agreements to be Entered with Vendors:**

The commercial understandings must be reduced in form of a legal agreement setting terms and conditions of the engagement in its fullest. The non-disclosure agreement protects a company of its business idea, dealing etc. The visitors of the website must be intimated by way of a privacy policy about the use of cookies and the information which companies gather while they visit website of the companies. Similarly, agreement with vendors, contractors, suppliers also need to be properly drafted.