

# PROCESS & PROVISIONS OF INCORPORATION OF PRODUCER COMPANY



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## **Short Summary:**

A producer company combines the best features of a cooperative society and a Private Limited Company, offering collective benefits to its member producers under a robust and definitive legal framework. Only business entities registered as Private Limited Companies are eligible for Producer Company registration in India. Hence, the entire process of registering a Producer Company is like that of a Private Limited Company.

Companies made up of farmers or agriculturists are known as Producer Companies, sometimes called Farmer Producer Companies. The fundamental objective is to enhance its members' standard of living and guarantee the sustainability of their earnings, assets, and profits in the long run.

## **Background:**

India's economy is primarily focused on agriculture. Approximately 60% of the population relies on agricultural pursuits as their primary source of income. However, primary producers and farmers in India have faced significant challenges for an extended period.

To tackle these issues, the Government of India established an expert committee, headed by Y.K. Alagh, an economist, to investigate the situation. The concept of Producer businesses was introduced to the Indian economy in the year 2002. Since then, they have facilitated primary producers in obtaining input, credit, production technology, and market access.

✓ **Applicable Section:**

Section 378A to 378ZU (Specifically 378C) and 12 of Companies Act, 2013.

✓ **Applicable Rule(s)**

The Producer Companies Rules, 2021

✓ **Meaning of the Producer Company (Section 378A(1)):**

“Producer Company” means a body corporate having objects or activities specified in section 378B and registered as Producer Company under the Companies Act, 1956.

✓ **Constitution of the Producer Company (Section 378C(1)):**

Producer Company is constituted by

- minimum of Ten or more producers (individuals); or
- Two or more producer institutions; or
- Combination of the above two (10+2)

✓ **Who will bear the cost incurred to incorporate the Company?**

- A. The promoters should pull the amount needed for incorporation of a company. The amount (loan) given by the promoters in the initial stage will be reimbursed by the company.
- The payment however needs to be approved by the members in the first general meeting of the Producer Company

**Allowed Activities for Producer Companies:**

A producer company is basically a body corporate registered as Producer Company under Companies Act, 2013 and shall carry on or relate to any of following activities classified broadly: -

- (a) Production, harvesting, processing, procurement, grading, pooling, handling, marketing, selling, export of \*primary produce of the Members or import of goods or services for their benefit.
- (b) Rendering technical services, consultancy services, training, education, research and development and all other activities for the promotion of the interests of its Members.
- (c) Generation, transmission and distribution of power, revitalization of land and water resources, their use, conservation, and communications relatable to primary produce.
- (d) Promoting mutual assistance, welfare measures, financial services, insurance of producers or their primary produce.

**NOTE (Some Important points):**

- i. All the shareholders/ subscribers must be farmers.
- ii. At Least 5 Directors: Directors should be individual only.
- iii. Although a Producer Company is of the nature of a Private Limited Company where the maximum limit on the number of shareholders is 200, there is no such restriction or maximum limit on the number of members in a Producer Company.
- iv. Generally, in most cases, Promoters and Directors are the same in Companies.

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- v. Producer company shall always be Private Limited Company. (Section 378C(5))
  - vi. The Producer Company shall not, under any circumstance, whatsoever, become or be deemed to become a public limited company under this Act.
  - vii. In a case where the membership consists solely of individual Members, the voting rights shall be based on a single vote for every Member, irrespective of his shareholding or patronage of the Producer Company. (Section 378D)
  - viii. A Producer Company's objective is to advance its members' interests by facilitating activities related to the production, marketing, sale, and export of their primary products.
  - ix. The minimum paid-up capital should be Rs.5 lakhs to complete the incorporation of a producer company.
  - x. Producer companies can only have equity share capital.
  - xi. The name of the Company should end with "PRODUCER COMPANY LIMITED".
  - xii. The minimum paid up capital requirement for producer company is Rs. 5 Lakh.
  - xiii. It can never be converted into a public company however it can be converted into a multi-state co-operative society.
  - xiv. Having a DIN is not necessary during the incorporation process for first directors.
  - xv. Maximum 5 DIN can be applied through Incorporation form.
  - xvi. Physical MOA and AOA shall be prepare and attach in Incorporation form.
  - xvii. There is no requirement for putting any professional declaration in INC-8.

- xviii. It is essential for all subscribers/ directors to possess a Digital Signature Certificate (DSC) when submitting Incorporation forms to ROC-CRC. As the DSC of Directors/ subscribers are required to affix on INC-9.
- xix. As a promoter, you have the option to submit an application for Incorporation while also reserving a name through Spice Part B.
- xx. GST, EPFO, ESIC, Professional Tax Registration and opening of Bank account can be done through Agile Pro S vide GST 128(E) dated 18<sup>th</sup> February 2020 by rule 38A amended by (Amendment) Rules, 2020.
- xxi. INC-9 – Declaration by first subscribers and directors shall be auto generated after submission of Spice Part B. There is no need to prepare INC -9 on paper. However, if a person does not have PAN or DIN then need to prepare the same on plain paper.

## ***PROCESS FOR INCORPORATION OF PRODUCER COMPANY :***

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For Incorporation of Company, it is required to file form SPICE+ (Simplified Proforma for Incorporation of company electronically)

**Spice+ would have two parts viz.:**

- A. Part A – Name Approval
- B. Part-B- Incorporation of Company

**Note:** According to the Companies Act of 2013, a company has two options. First to apply for Name Approval and then proceed with the incorporation process.

Second, proceed to submit the application for Name Approval and Incorporation together in a single form.

**STEP – I:**

***Spice PART A-for Name reservation for new companies***

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**A. Login on MCA Website**

An application for reservation of name shall be made through the Web Service available at [www.mca.gov.in](http://www.mca.gov.in) by using web service on MCA V3 Portal through web form Spice+ Part A (Simplified Proforma for Incorporating Company Electronically).

Applicants have to login into their account on MCA Website (Business User or Register User). (Pre-existing users can use earlier accounts or new users have to create a new account.)

**Information Required:** At the time of filing of the Name application, the applicant must have the following information. (Desired Name, Desired Object along with Object Code). Two proposed names can be apply altogether.

**Details required to be mentioned in form for Name Application:**

The screenshot shows the 'SPICe+ Part A' form for 'Name Reservation'. The form includes the following fields:

- Type of Company \*
- Class of Company \*
- Category of Company \*
- Sub-Category of Company \*
- Main division of industrial activity of the Company \*
- Description of the main division
- Particulars of the proposed or approved name \*
- i. [Text input field]
- ii. [Text input field]

At the bottom, there is a file upload section with a 'Choose File' button and the text 'No file chosen'.

Entity Type	Suffix allowed	Example
New Company (Others)/ Part I company	Limited/ Private Limited	ABC Limited DEF Private Limited
Producer Company	Producer company limited	GHI Producer Company Limited
Unlimited Company	Unlimited	JKL Unlimited
Private (OPC)	(OPC) Private Limited	MNO (OPC) Private Limited
IFSC Company	(IFSC) Limited/ (IFSC) Private Limited/ IFSC Limited /IFSC Private Limited	PQR IFSC Limited/ PQR (IFSC) Limited STU IFSC Private Limited/ STU (IFSC) Private Limited
Section 8 company	Other than 'Limited/ Private Limited/ (OPC) Private Limited'	VWX Electoral Trust
Nidhi Company	Nidhi Limited	MNO Nidhi Limited

- (i) Class of Company (whether Private, Public, OPC)
- (ii) Category of Company (whether Company limited by shares, limited by Guarantee or unlimited)
- (iii) Sub-category Union Government, State Government, Non-Government Company, Subsidiary of Company incorporated outside India)
- (iv) Main Division of Industrial Activity (enter number belonging to Industrial Activity)
- (v) Description of main division
- (vi) Particulars of Proposed or Approved Name.

(User has to enter the name he wants to reserve, for incorporation of a new company. Users are requested to ensure that the proposed name selected does not contain any word which is prohibited under Section 4(2) & (3) of the Companies Act, 2013 read with Rule 8 of the Companies (Incorporation) Rules, 2014. Users are also requested to read and understand Rule 8 of the Companies (Incorporation) Rules, 2014 in respect of any proposed name before applying for the same.

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Stakeholders are requested to also check the Trademark search to ensure that the proposed name is not in violation of provisions of Section 4(2) of the Companies Act, 2013, failing which it is liable to be rejected.

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**(i) Choose File (Any attachment)**

You have the option to upload PDF documents. Attaching additional documents is only necessary if a name requires approval from a Sectoral Regulator or NOC, as per Companies (Incorporation) Rules, 2014. It is important to note that only one file is permitted. If you have multiple files, it is recommended to scan them into a single document.

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**Important Points (for Name Application):**

- i. Fees for Name application is Rs. 1000.
- ii. <sup>1</sup>If an application came for resubmission, applicant have to resubmit the application within 15 days with ratification of the defects, if any.
- iii. After approval of name, the name shall be reserved for 20 days from the date of approval.
- iv. If the applicant wants, then by payment of extra fees they can extend the period of Name from 20 Days to 60 days. (Fees Rs. 1000 for the first 20 days extension up to 40 days and Rs. 2000 for next 20 days extension up to 60 days)
- v. Applicants have to further apply for Incorporation of Company through Spice Part B form from the same MCA ID on which Name has been reserved.
- vi. For the Name application there is no requirement of any DIN or DSC of applicant.

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<sup>1</sup> W.e.f. 23<sup>rd</sup> February 2020 {Notification G.S.R. 128(E) dated 18<sup>th</sup> February, 2020



**STEP – II:**

Once the name is approved, the applicant must move forward with the Company Incorporation process within 20 days of name approval (unless an extension is requested by paying an additional fee). For Incorporation of Company as mentioned above, applicant have to file Spice+ Part B on MCA Website.

Before start to fill Spice+ Part – B applicant should arrange the following documents and prepare the following documents:

**a) Preparation of Documents for Incorporation of Company:**

Once the name is approved, the applicant must prepare the documents listed below.

- i. Applicant required to obtain the certificate proving the subscribers are Farmer (known as Farmer certificate from local authority).
- ii. Digital Signature of all the Subscribers and Directors.  
If they do not have Digital Signature, then immediately apply for the same.
- iii. Proof of registered office address (Conveyance/ Lease deed/ Rent Agreement etc. along with rent receipts), if any.
- iv. Copy of the utility bill of registered office. It should not be older than two months. (Electricity Bill, Water Bill, Gas Bill, Telephone Bill etc.)
- v. NOC from the owner of the property. (on plain paper and NOC from the person whose name mentioned on utility bill)
- vi. In case of subscribers/ Director does not have a DIN, it is mandatory to attach Proof of identity and residential address of the subscribers/ Directors as mentioned below i.e.

- Self-attested copy of PAN
  - Voter Card/ Driving License/ Passport; any one
  - Bank Statement/ Utility Bill; anyone (not older than two month0
- vii. Copy of Photograph of two person authorized for ESIC, EPFO and Bank account documentation. (This person can be proposed directors or any outsider).
- viii. Drafting of MOA & AOA.

**b) Fill the Information in Spice+ Part B:**

Once all the above-mentioned documents is available. Applicant has to fill the information in the e-form “Spice+ part B”. List of Information required from Subscribers/ Directors are given at the end of the article.

**Traits of Spice+ Part B form:**

- i. Web based: This form is web-based. All the necessary information can be filled out online. Once the information form is completed, you can download it to attach your DSC.
- ii. Online Information: This form once online information filed will be save there only and can be access in dashboard of the Log in ID.
- iii. Fill details of PAN & TAN:  
It is mandatory to mention the details of PAN & TAN in the Incorporation Form Spice+ Part B. Link to find out of Area Code to file PAN & TAN are given in Help Kit of SPICE+.
- iv. Details of Registered Office:

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The applicant must mention the address of the registered office in this form. Applicants have to mention the Latitude and Longitude of the registered office address.

**Note:** If the applicant has not yet determined the registered office address at the time of incorporation, it is in accordance with the Act. It is important to include the correspondence address in Spice Part B and submit INC 22 within 30 days of incorporating the company with the registered office address.

v. Attachment of MOA & AOA:

The applicant have to prepare the MOA & AOA in physical and signed physically and attach with Spice+ Part B.

- vi. Generation of Linked Forms: After complete filing of information in web-based form, applicant have to save the form. After that applicant have to click on **mini dashboard** in their login ID to fill other forms.

**c) Fill details of GST, EPFO, ESIC, BANK Account in AGILE PRO-S:**

After proper filing of SPICE+ Part B, e-Moa, e-AOA form, applicant has to move on to filling out information in the AGILE PRO form Dashboard Link. All the information which are common in PART-B and AGILE PRO shall be auto fill in AGILE Pro. It is also web based form.

- GST: If Company wants to apply for GST it has to select YES in the form and fill the information in the form.
- EPFO/ ESIC: It is mandatory to apply for ESIC and EPFO.  
As per their concerned department company not required to file return till the date applicability of provisions of same on such

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company, if company has applied for Dormant Status on their website.

- Bank Account: It is mandatory to open a bank account through this form. The bank account branch shall be assigned according to nearest branch to the Registered office of the Company.

**NOTE (Some Important points):**

- i. The company must mention the main business activity in this form also.
- ii. The company must give the details of two authorized people to deal with ESIC, EPFO and Bank account formalities (this person can be any one of the directors or outsiders also).
- iii. Need to attach a photograph of both authorized persons.
- iv. Need to mention mobile no and email ID of an authorized person.
- v. OTP shall be generated on Mobile and Mail ID of authorized person.
- vi. Need to mention the jurisdiction of Police Station.
- vii. Details of ESIC and EPFO office as per jurisdiction of registered office.
- viii. The person who is signing Spice Part B Digitally the same person shall affix his Digitals on Agile Pro.

**d) Fill details of INC-9:**

INC-9 shall also be generated web-based and need affixation of Digital Signature of Directors/ subscribers on the same. It shall not be generated web-based in two situations when at least one directors/ subscriber not having DIN and PAN both or no. of directors + subscribers are more than 20.

**e) Download PDF of all the web-based forms-:**

Once the user clicks on the save button for all the forms such as Spice Part B, Agile Pro and INC-9, they will need to download these forms in order to obtain digital signatures from the directors, subscribers, and professionals.

**f) Filing of forms with MCA-:**

Once all the above-mentioned forms are completed by the applicant and have been digitally signed, they can be uploaded as linked forms on the MCA website. The payment for these forms can then be made.

**g) Certificate of Incorporation-:**

Certificate of Incorporation shall be issued by the Registrar in Form No INC 11 and the certificate of Incorporation shall mention permanent account number of the company where it is issued by the Income Tax Department [Rule 18]

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**POINTS TO REMEMBER WHILE FILLING THE INFORMATION IN FORM:**

- i. Maximum details of TWENTY (20) directors can be mention in Incorporation form..
- ii. Maximum FIVE (5) directors are allowed for filing application of allotment of DIN while incorporating a Company.
- iii. Applicant can apply the Name also in this form.
- iv. Applying for PAN/TAN/EPFO/ESIC/Bank Account will be compulsory for all fresh incorporation applications filed in the new version of the SPICe+ Part B form.
- v. Companies can apply for GST, also through AGILE PRO form.

**FEATURES - SINGLE WINDOW FORM:**

In the past, individuals had to go through a series of steps to incorporate a company, including applying for a DIN, getting approval for the name availability, filling out a separate form for the first director, providing a registered office address, and obtaining PAN and TAN numbers. However, this form serves as a convenient and streamlined process for incorporating a company.

This form can be used for the following purposes:

- ∇ Application of DIN (upto 3 Directors)
- ∇ Application for Availability of Name
- ∇ No need to file separate form for first Director (DIR-12)
- ∇ No need to file separate form for address of registered office (INC-22)
- ∇ No need to file separate form for PAN & TAN
- ∇ No need to file separately for GST,
- ∇ No need to file separate form for EPFO, ESIC, Profession tax
- ∇ No need to file separate application with bank for Bank account number..

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