

Whether SPICE - Ease of doing business

BACKGROUND:

A significant step is taken by Ministry of Corporate Affairs by introduce [E-Form INC-32](#) under [SPICE](#). SPICE means Simplified Proforma for Incorporating Company Electronically. Through this notification, MCA has notified speedy process for incorporating a company in E-form INC-32 along with Electronic Memorandum of Association in E-form INC-33 and Electronic Article of Association in E-form INC-34.

Situation:

The SPICE form was introduced with a function to prepare E-MOA & E-AOA (Electronic MOA/ AOA). This facility is first time providing by the Ministry in the history of India for Incorporation of Company via this attribute there is no opportunity to prepare the Manual MOA & AOA and no option to physically sign the MOA & AOA by subscribers and witness.

Question for discussion in this article is:

"Whether SPICE form is step towards 'ease of doing business' or to be a magnet for foreign sponsor for prompt incorporation of Company in India?

Let's first discuss the provision linking to Question:

As per the utility of [SPICE form](#), if a person opts to incorporate Company through SPICE form then it is binding to adopt E-MOA & AOA. Company can't use the manual MOA & AOA for Incorporation of Company thorough SPICE. As the motto behind introduction of this form was to bring "ease of doing business" in India by foreign Investor or others.

But whether a foreign person can be subscriber of MOA to incorporate a Company by method of SPICE by fulfilling the requirement of Notary/apostille the subscriber sheet of MOA & AOA.

Statutory Provisions Contained Under the Act:

Provisions of the Companies Act, 2013 to the extent relevant for our discussion, are stated as under (with necessary comments and modifications, wherever felt necessary)

As stated in Rule 13 the Companies (Incorporation) Rules, 2014: The Memorandum and Articles of Association of the company shall be signed in the following manner, namely:- Where subscriber to the memorandum is a foreign national residing outside India-

(a) In a country in any part of the Commonwealth, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary (Public) in that part of the Commonwealth.

(b) in a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary (Public) of the country of his origin and be duly apostilled in accordance with the said Hague Convention.

(c) in a country outside the Commonwealth and which is not a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity, shall be notarized before the Notary (Public) of such country and the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (40 of 1948) or, where there is no such officer by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic.C.10), or in any Act amending the same;

(d) Visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa.

Interpretation Note:

As avowed in Rule 13 the Companies (Incorporation) Rules, 2014: Where subscriber to the memorandum is a foreign national residing outside India. Then his/her subscriber sheet should to be Notary/Apostille as per the requirement.

It may be noted that If Company chooses the SPICE method to incorporate a Company. Then it will be mandatory for the Company to adopt E- MOA & AOA and to affix DSC of subscriber instead of physical sign of the subscribers. Consequently, if a Company will not prepare any physical document (subscriber sheet) then it is unfeasible to get notary / apostille. It is impracticable to notary/apostille any e-form (like INC-33- e-MOA).

If Company can't get subscriber sheet of foreign national Notary / apostille then it is non-compliance of Rule-13 and such proposed company will not be permissible to incorporate lacking of compliance of provisions of Rule 13.

CONCLUSION:

Hence, taking into consideration the provisions of Rule 13 and e-form INC-33 one can opine that for a foreign National it is not allowed to incorporate the Company in India through SPICe Form, he have to follow the course of action of INC-1, DIR-12, INC-22 (this is time consuming process).

Thus, here one can opine that SPICe form is not supportive in ease of doing business and make in India since its fail to be a magnet for foreign sponsor for prompt incorporation of Company.

Any other opinion is also welcome for further clarity of the provision of the Companies Act.

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