SERIES ON DOING BUSINESS IN INDIA

3RD RELEASE ON SETTING UP BUSINESS IN INDIA

FEMA. FDI. INCOME TAX. GST. LAND. LABOUR

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Setting up Business in India:

The following are the various legal entities vide which business can be set up in India-

1. FOREIGN COMPANY INCORPORATION PROCESS- LO/BO/PO

Foreign Company

RBI approval required in following cases:

(i) Applicant is a citizen of or is registered/incorporated in Pakistan ;
(ii) Applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a BO/LO/PO in Jammu and Kashmir, North East region and Andaman and Nicobar Islands;
(iii) Principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting (s.t. certain relaxations) and
(iv) Applicant is a Non-Government Organization (NGO), a Non-Profit Organization, or a Body/ Agency/ Department of a foreign government.

1. Application (Form FNC) to a AD Category 1 bank Form FNC along with supporting documents

2. Post evaluation and before approval- bank forwards a copy of the Form FNC along with the details of the approval proposed to be granted by it to RBI for allotment of Unique Identification Number (UIN) to each BO/LO

Exceptions- Foreign banks and insurance companies do not require UIN from forex department RBI

3. After receipt of the UIN from the Reserve Bank, the AD Category 1 bank issues the approval letter to the non-resident entity for establishing BO/LO in India

4. Inform designated AD Category 1 bank as to the date on which the BO/LO/PO has been set up - The bank in turn shall inform RBI.

Note : In case the BO/LO/PO for which approval has been granted is not opened within 6 months from the date of the approval letter, the approval shall lapse. In cases where the non-resident entity is not able to open the office within the stipulated time frame due to reasons beyond its control, the AD Category-I bank may consider granting extension of time for a further period of 6 months for setting up the office. Any further extension of time shall require the prior approval of RBI

5. Applications for establishing a BO/LO in India by foreign banks and insurance companies will be directly received and examined by the Department of Banking Regulation, RBI, Central Office and IRDA, respectively. No UIN for such representative offices is required from the Foreign Exchange Department, Reserve Bank of India.

Note : There is a general permission to non-resident companies to establish POs in India, provided:

i. They have secured a contract from an Indian company to execute a project in India
ii. Project must have secured the necessary regulatory clearances;

Project is funded directly by inward remittance from abroad; or the project is funded by a bilateral or multilateral International Financing Agency, or a company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or a bank in India for the project

Foreign Company

6. March 31 – Submit Annual Activity Certificate (AAC) to AD Category 1 Bank

Other Registrations

Applicants from Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong, Macau or Pakistan desirous of opening BO/LO/PO in India shall have to **register with the State Police authorities**

- **Registration with RoC** if reqd. as per companies Act, 2013
- BO/LO to obtain **PAN from Income Tax authorities**

NOTE : Branches of Foreign Banks

Foreign banks do not require separate approval under FEMA, for opening branch office, however they require necessary approval under the provisions of the Banking Regulation Act, 1949, from Department of Banking Regulation, Reserve Bank.

Foreign company after being registered with the RBI ought to get itself registered with the Ministry of Corporate Affairs (MCA), for it to be registered as an establishment of a foreign company in India

7. Necessary documents shall be filled with the Registrar of Companies (RoC) within 30 days of establishment

Note : As per Section 380 of Companies Act, following documents shall be filled :

- Certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;
- Full address of the registered or principal office of the company
- List of the directors and secretary of the company containing such particulars as prescribed under Rule 3.
- Name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company
- Full address of the office of the company in India which is deemed to be its principal place of business in India
- Particulars of opening and closing of a place of business in India on earlier occasion or occasions
- Declaration that none of the directors of the company or the authorized representative in India has ever been convicted or debarred from formation of companies and management in India or abroad.

Other Documents as may be prescribed.

8. Rule 3(3) of the Companies (Registration of Foreign Companies) Rules, 2014 requires application in **Form FC-1** to be supported with an attested copy of approval from the Reserve Bank of India under Foreign Exchange Management Act and the rules and regulations thereunder or a declaration from the authorised representative of such Foreign Company that no such approval is required.

2. INCORPORATION OF COMPANY: OVERVIEW

- To set up a Company in India, one needs to register its Company first to the Registrar of Companies through **MCA 21 online portal**. Starting a new business has always been a challenging and exciting process. Here's a step-by-step guide to register the company in India:

1. Obtain Director Identification Number (DIN)

Obtain the provisional DIN by filing application Form DIN-1 online. The application form must then be printed and signed and sent for approval to the ministry along with proof of identity and address. Upon verification and approval, a permanent DIN is issued.

2. Obtain Digital Signature Certificate (DSC)

The digital signature certificate can be obtained from one of six private agencies authorized by MCA 21. Company directors must submit the prescribed application form along with proof of identity and address.

3. Reserve the company name online

Company name approval must be done electronically. The applicant can check the availability of the desired company name on the MCA 21 web site. A maximum of 6 names may be submitted. Once approved, the selected name appears on the website. Form INC 32 (SPICe) to be duly filled and submitted to RoC for incorporation of company. PAN and TAN are shall be auto generated based on details filed in the SPICe form.

4. Stamp the company documents

The request for stamping the incorporation documents should be accompanied by unsigned copies of the Memorandum and Articles of Association (MAA), and the payment receipt. The Superintendent returns the copies, one of which is duly stamped, signed, and embossed. Then the MAA must be signed by the company promoters and required information filled in their own handwriting. Filing of electronic Memorandum of Association (eMoA - INC 33) & Articles of Association (eAoA- INC 34) in SPICe . For foreign subscribers physical MoA and AoA to be executed and attached.

5. Get the Certificate of Incorporation

Central Registration Centre (CRC) verifies/scrutinises all the documents and forms and may suggest few changes to be made in the attachments or form itself. One needs to make necessary changes accordingly. Forms e-form 1; e-form 18; and e-form 32 are required to be electronically filed on the website of the Ministry of Company

Affairs: Scanned copies of the consent of the initial directors, and also of the signed and stamped form of the MAA must be attached to Form 1. One copy of the MAA, Articles of Association, Form 1, Form 32, Form 18 and the original name approval letter, consent of directors and stamped power of attorney must be submitted to the Registrar of Companies. The certificate of incorporation is sent automatically to the registered office of the company by registered mail.

6. Make a seal

Companies require a seal to issue share certificates and other documents. The cost depends on the number of words to be engraved, the number of seals required, and the time period for delivery. Obtain certificate of incorporation (CoI). CIN, PAN & TAN numbers are allotted at the time of registration. A company having share capital is required to file a declaration of receipt of subscription amount and verification of registered office within 180 days of incorporation and prior to commencement of business.

- After obtaining a Certificate of Incorporation, Company shall obtain PAN and TAN with **Income Tax Department**. Following steps are to be followed-

1. **Obtain a Permanent Account Number (PAN)**

The PAN application is made using Form 49A through TIN NSDL Site. After PAN is obtained a printed PAN card would be delivered. The application for PAN can also be made online but the documents still need to be physically sent for verification. After the verification, Income Tax Department issues a PAN card and number is also provided in the card.

2. **Obtain a Tax Account Number (TAN)**

The application for TAN must be filed using Form 49B and submitted at any TIN Facilitation Center. After verification of application, the same is sent to the Income Tax Department and the TAN is issued. The application for a TAN can be made either online through the NSDL website or offline.

- Company needs to obtain its registered place of business before it starts its business. For registration, it must submit the following documents to the **municipal corporation**-

1. **Register with the Office of Inspector, Shops and Establishment Act (State/Municipal)**

A statement containing the employer's and manager's names and the establishment's name, postal address, and category must be sent to the local shop inspector with the applicable fees. Establishments must be registered within 30 days of the opening of the business.

Therefore, the trade license shall be obtained if it is a trading company. If the company is manufacturing company, it must obtain license from a Commercial Tax Officer. If the company is exporting company, it must obtain license for export from appropriate authority. Once it gets a trade licence it must get the premis

- Company needs to obtain its GSTIN before it starts supplying goods or services or both. For registration, it must submit the following documents to the **GST Department**-

1. **Register for GST**

Every business whose Annual turnover exceeds Rs 20 lakh (for special states, the amount is Rs 10 lakh) has to register for GST. Please go to the GST portal and follow the procedure instructed.

3. INCORPORATION OF LLP: OVERVIEW

The following steps to be followed for obtaining registration of LLP in MCA 21 online portal-

Step 1: Digital Signature Certificate (DSC)

Obtain class 2 or class 3 Digital Signature Certificate (DSC) for at-least 1 designated partners of LLP

Step 2: Availability check for LLP Name

For a quick search on already existing names of LLP a facility is provided by MCA to check list of similar/closely resembling names of existing companies/LLPs. Trademark is also to be checked.

Step 3: Reservation and approval of name for LLP through run-LLP

Filing the proposed name of an LLP for approval from the Registrar of Companies through RUN – LLP and can also be done through FiLLiP.

Step 3: Filing for incorporation of LLP/FLLP/DPIN and obtain Certificate of Incorporation

FiLLiP is to be duly filled and submitted to RoC for incorporation of an LLP. For a Foreign LLP (FLLP) Form 27 is to be filed in and digitally signed by FLLP (DPIN must be obtained through FiLLiP.

Step 4: LLP Agreement

Form 3 (Information with regard to LLP agreement and changes, if any made therein) to be filled within 30days of incorporation of LLP.

4. COMPARATIVE ANALYSIS OF DIFFERENT BUSINESS ESTABLISHMENTS IN INDIA

Particulars	Private	Public	LLP
Min Members	2	7	2 partners
Max Members	200	Unlimited	No Limit
Min Directors	2	3	2 Designated Partners
Max Directors	15	15	NA
Resident Director	1 Mandatory	1 Mandatory	1 Designated Partner
Transfer of ownership	Ownership can be transferred	Ownership can be transferred	Ownership can be transferred
Subscription of shares	Public subscription not allowed	Public subscription allowed	Public subscription not allowed
Issue of Prospectus	Not Mandatory	Mandatory (In case of public issue)	Not Mandatory
Managerial Remuneration	No limit for managerial personnel	Shareholder approval is required, If remuneration payable is above limits	Remuneration is based on LLP agreement
Required Name approval	With the ROC, Name must include “Private Limited”	With the ROC, Name must include “Limited”	With the ROC, Name must include “LLP”
Governing Law	Companies Act,2013	Companies Act, 2013	LLP Act, 2008
Annual Statutory Filings	Annual statement of accounts & annual return with ROC	Annual statement of accounts & annual return with ROC	Annual statement of solvency & annual return with ROC
Legal Status	Pvt Co is a separate legal entity registered under Companies Act, 2013. The Directors are liable for defaults made under the act	Public Co is a separate legal entity registered under Companies Act, 2013. The Directors are liable for defaults made under the act	LLP is a separate legal entity registered under LLP Act, 2008. The Designated partners of LLP are liable for contraventions under the act

LETS DISCUSS FURTHER!

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