

Incorporation of Company/LLP in India

FAQs



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About Swift

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Or visit us at www.swiftindia LLP.com

Executive Summary

India has established itself as one of the fastest growing economies in the world, attracting significant inbound investment and becoming a prime destination for foreign direct investment (FDI). The Indian government has implemented various measures to promote ease of doing business in the country, including opening up new sectors for FDI, increasing sectoral limits for existing sectors, and simplifying FDI policies.

If you are interested in setting up a business in India and have questions about forming a Company or LLP, this booklet provides basic answers to common queries. It is intended to serve as a broad guide to help you make informed decisions about starting and running your business in India. However, please note that the information provided here is generic in nature and should not be construed as legal advice on any specific queries. Indian laws and regulations are subject to change, so it is recommended that you seek professional advice and guidance to ensure compliance with all applicable laws and regulations.

It is important to take into account tax implications and other relevant regulations before making any decisions regarding the formation of a business entity in India. We are happy to provide any further information, clarification or advice you may require.

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1. What Are The Different Forms of Entities for Doing Business in India?

I. LLP

A corporate business vehicle that enables professional expertise and entrepreneurial initiative to combine and operate in flexible, innovative and efficient manner. LLP is a body corporate and a legal person separate from its partners. Earlier, Foreign Direct Investment (“**FDI**”) in LLP’s was permitted only through the government approval route and LLP’s were also not allowed to make downstream investments. However, FDI is now permitted under automatic route in LLPs operating in sectors/activities where 100% FDI is allowed through automatic route and there are no FDI – linked performance conditions.

In addition to the above, LLPs receiving FDI are also allowed to make downstream investment in other companies/LLPs operating in those sectors where 100% FDI is permitted through automatic route.

II. Indian subsidiary company either as – Private Limited Company or Public Limited Company.

- a. **Private Limited Company:** A private limited company is the most popular form of business entity used by the foreign investors in India. A private limited company has certain distinguishing characteristics. There are various requirements for forming a private limited company in India which are further discussed in this document.
- b. **Public Limited Company:** A public limited company is defined as a company which is not a private limited company (but includes a private limited company which is subsidiary of a public limited company). A public limited company shall have minimum of 7(seven) members (no limit on maximum number of members), free transferability of securities and may invite public to subscribe to its securities. A public limited company may also list its securities on a recognized stock exchange by way of an Initial Public offering (“IPO”).

III. Liaison Office

Setting up a liaison office in a sector in which 100% FDI is allowed under the automatic route requires the prior consent of the AD. For the remaining sectors, RBI grants its approval after consultation with the Ministry of Finance.

A liaison office acts as a representative of the parent foreign company in India. However, a liaison office cannot undertake any commercial activities and must maintain itself from the remittances received from its parent foreign company. The approval for setting up a liaison office is generally valid for 3 years and can be extended by making an application to AD before the date of expiry of validity. It is an option usually preferred by foreign companies that wish to explore business opportunities in India.

IV. Branch Office

Similar to a liaison office, the branch office of a foreign company in India must be set up with the prior consent of the ADO for sectors under which 100% FDI is permissible under automatic route, with approval under other sectors accorded after consultation with Ministry of Finance. It can represent the

foreign parent company in India and act as its buying or selling agent in India. However, a branch office cannot carry out any retail, manufacturing or processing activities. The branch office is permitted to remit surplus revenues to its foreign parent company subject to the taxes applicable. Operations of a branch office are restricted due to limitation on the activities that it can undertake. The tax on branch offices is 40% plus applicable surcharges and the education cess. It is an option that is useful for companies that intend to undertake research and development activities in India.

V. Project Office

A foreign company, subject to obtaining approval from the AD, may set up a project office in India under the automatic route subject to certain conditions being fulfilled including existence of a contract with an Indian company to execute a project in India. A project office is permitted to operate a bank account in India and may remit surplus revenue from the project to the foreign parent company. The tax on project offices is 40% plus applicable surcharges and the education cess. Project offices are generally preferred by companies engaged in onetime turnkey or installation projects

VI. Partnership

A partnership is a relationship created between persons who have agreed to share the profits of a business carried on by all of them, or any of them acting for all of them. A partnership is not a legal entity independent of its partners. The partners own the business assets together and are personally liable for business debts and taxes. In the absence of a partnership agreement, each partner has an equal right to participate in the management and control of the business and the profits / losses are shared equally amongst the partners. Any partner can bind the firm and the firm is liable for all the liabilities incurred by any partner on behalf of the firm. Investment by foreign entities is permitted in Indian partnership firms subject to prior approval of RBI.

VII. Trust

A trust arises when one person (the “trustee”) holds legal title to property but is under an equitable duty to deal with the property for the benefit of some other person or class of persons called beneficiaries. Like a partnership, a business trust is not regarded as a legal entity. The trust, as such, does not incur rights or liabilities. The beneficiaries do not generally obtain rights against or incur liabilities to third parties because of the transactions or actions undertaken by the trustee in exercising its powers and carrying out its duties as a trustee. If the trustee of a business trust is a corporation, the participants may effectively limit their liability to the assets of the corporate trustee and the assets held by the corporation on trust for the beneficiaries. A foreign resident may only be the beneficiary of a trust, which is set up as a venture capital fund and only after receiving the prior consent of the concerned department of Government of India.

Note: For different forms of incorporated and to be incorporated entities for doing business in India please refer to our research paper on “Doing Business in India” in the web link¹

1. http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Doing-Business-in-India-P2.pdf

2. What are The Laws Applicable for Doing Business in India Through Company/LLP?

I. The Companies Act, 2013 (“CA 2013”)

Companies in India are regulated and governed by the provisions of the CA 2013 and rules made thereunder as amended from time to time. The authority that oversees companies and their compliances is the Registrar of Companies (“**RoC**”). CA 2013 facilitates incorporation of companies and regulates management operational and administration functions.

II. The Limited Liability Partnership Act, 2008 (“LLP Act”)

The LLPs in India are regulated and governed by the provisions of LLP Act and the rules made thereunder as amended from time to time. The LLP Act contains provisions for the formation and regulation of LLPs and matters connected therewith or incidental thereto. The LLP Act specifically relates to the incorporation of LLPs in India. The authority that oversees LLP and its compliances is the RoC.

III. Foreign Exchange Management Act, 1999 (“FEMA”)

FDI in business entities such as company or LLP is regulated in India by FEMA. While 100% FDI is allowed in many of the sectors under the automatic route, however there are few restricted sectors in which FDI is not allowed under the automatic route and requires prior approval of Government of India (“**Gol**”).

FDI in sectors/activities to the extent permitted under automatic route does not require any prior approval either by the Gol or Reserve Bank of India (“**RBI**”). The investors are only required to intimate and file documents, disclosing the investment with the concerned regional office of RBI within 30 (thirty) days of issue of shares to foreign investors. FEMA also provides list of negative sectors, where FDI is either totally prohibited or may require a prior approval of the Gol or concerned Ministry.

IV. Income Tax Act, 1961 (IT Act)

Any person investing or doing business in India should consider various direct (income) and indirect (consumption) taxes which are levied and collected by the Central Government and the State Governments respectively. Corporate houses, be it domestic or foreign, are required to pay taxes in India under the IT Act. The various taxes levied by the Government includes:

- a. Corporate tax levied on both domestic as well as foreign companies. It is levied on the profits of the company as per applicable tax rate;
- b. Dividend distribution tax is tax paid by corporates on the dividend that they distribute to their shareholders. However, the Finance Act, 2020 abolished DDT. Accordingly, from April 1, 2020, dividends declared by an Indian company would be subject to tax in the hands of the recipient at applicable rates, as income from ‘other sources’. For resident shareholders, the Private limited company is required to withhold tax at the rate of 10% (plus surcharge and cess). For non-resident shareholders, subject to tax treaty relief, the rate of tax is 20% (plus surcharge and cess). The same amount is to be withheld by the Private limited company at the time of payment.;

- c. Capital gain tax is paid on gains made on transfer of capital assets. The capital gain tax may be short term or long term depending upon the period of holding capital asset.
- d. Indirect taxes levied like Goods and Service Tax ("**GST**"), Excise Duty, Customs Duty/Octroi or any applicable taxes based on the business of the entity.

Investments into India are often structured through holding companies in various jurisdictions for number of strategic and tax reasons. For instance, Investors from the United States of America ("**USA**") investing directly into India may face difficulties in claiming credit of Indian capital gains tax on securities against tax applicable in the USA taxes, due to the conflict in source rules between the USA and India. In such a case, the risk of double taxation may be avoided by invest-ing through an intermediary holding company. Hence, anyone interested in investing in India should consider various tax treaties and regulations amongst the country of origin and India, if any.

V. Goods and Services Tax Act, 2017 (GST)

The GST regime is comprised of three major pillars: the Central Goods and Services Tax Act, 2017 ("**CGST Act**") which provides for the taxing powers of the Central Government, individual State / Union Territory Goods and Services Tax Acts ("**SGST Act**" and "**UTGST Act**" respectively) which provide for the taxing powers of each State / Union Territory, and the Integrated Goods and Services Tax Act, 2017 ("**IGST Act**"), which grants exclusive rights to the Centre to tax inter-state commerce.

VI. Sector specific legislations

Depending upon the business activity of the entity, various sector specific laws may become applicable. Accordingly, the entity will be required to obtain necessary local and business registrations from the sector specific regulator in addition to the compliance with the above-mentioned laws. Example: Foreign Trade Policy read with the hand-book of procedures if the company is into exports and/or imports of goods/services.

VII. Central and State specific labor and other related laws

Employment laws in India do not stem from any single legislation. There are several national and state level laws governing subjects ranging from conditions of employment to social security, health, safety, welfare, trade unions, industrial and labour disputes, etc.

Separately, in the bid to promote ease of doing business in India, reducing red-tapism of labour inspectors and improving working conditions of workers and ease of compliance for employers through use of technology, the Indian government has codified 29 national labour statutes into four labour codes:

- i. The Code on Wages, 2019 ("**Wages Code**")
- ii. The Industrial Relations Code, 2020 ("**IR Code**")
- iii. The Code on Social Security, 2020 ("**SS Code**")
- iv. The Occupational Safety, Health and Working Conditions Code, 2020 ("**OSH Code**").

These four labour codes have been enacted, although a separate notification is awaited on their effective date.

3. How to Incorporate a Company?

I. Introduction — Private limited company/Public limited company

A. What is a private limited company?

Private limited company is an entity, in which the shares are closely held by group of persons or by group entities. Private limited company requires minimum of 2 (two) members and 2 (two) directors², one of whom should be a resident director. It restricts/prohibits 3 (three) key aspects in its articles and they are:

- a. Restriction on number of members to 200 (two hundred) (excluding the present and former employees of the company who hold shares);
- b. Restriction on transfer of shares; and
- c. Prohibition on offering securities to public.

B. Does private limited company enjoy any privileges or exemptions from compliances of various provisions of the CA 2013?

Yes, a private limited company, enjoys certain privileges and exemptions when compared to a public limited company with regard to compliances of certain provisions of the CA 2013. Some of the privileges enjoyed by a private limited company are:

- a. Certain exemptions are granted with respect to borrowing monies from members up to aggregate limit of paid-up share capital & free-reserves³
- b. The articles of association of the private limited company may override certain provisions of CA 2013 with respect to conducting shareholders meeting⁴
- c. Directors can vote on a contract in which they are interested upon disclosing their interest
- d. It is exempted from filing of certain board resolutions with RoC⁵
- e. Certain provision related to remuneration of managing director and whole time-director and the terms and conditions of appointment are not applicable to private limited companies⁶
- f. The transactions entered with Holding, Subsidiary, Associate Company of a private limited company does not fall within the purview of the related party transactions⁷
- g. Private limited company can grant loans/guarantee/security to a director and person in whom he is interested subject to the fulfilment of the certain conditions⁸

2. Refer Sec 149(3) of the Companies Act which mandates the requirement of at least one resident director

3. Refer Sec 73(2)(a) to (e) read with https://www.mca.gov.in/Ministry/pdf/Exemptions_to_private_companies_05062015.pdf

4. Refer Sec 101 to 107 & 109 read with https://www.mca.gov.in/Ministry/pdf/Exemptions_to_private_companies_05062015.pdf

5. Refer Sec 179 read with rule 8 of Companies (Meeting of Board & its power) Rules, 2014 and https://www.mca.gov.in/Ministry/pdf/Exemptions_to_private_companies_05062015.pdf

6. Refer Sec 196 and https://www.mca.gov.in/Ministry/pdf/Exemptions_to_private_companies_05062015.pdf

7. Refer Sec 2(76) and 188 of the Companies Act and https://www.mca.gov.in/Ministry/pdf/Exemptions_to_private_companies_05062015.pdf

8. Refer Sec 188 of the Companies Act and https://www.mca.gov.in/Ministry/pdf/Exemptions_to_private_companies_05062015.pdf

- h. The restrictions on the powers of the board with respect to borrowings exceeding paid up capital & free reserves and the sell/lease/dispose off undertaking does not apply to private limited companies and the same can be approved only by way of the board's approval⁹
- i. For rights issue, certain provisions of the section which deals with the time limits has been relaxed. Thus, reducing the overall time to complete the rights issue process.¹⁰
- j. The candidature is not required for the appointment of director in a general meeting.¹¹

C. What is Public Limited Company?

A public limited company is a company, which is not a private limited company. Public limited company requires minimum 7 (seven) members and 3 (three) directors. Further, its securities are freely transferable subject to certain contractual restrictions between the members, if any. A public limited company can issue and allot shares to any number of persons. However, if the offering exceeds certain number of persons at a time, then it should offer it by way of public offering.

D. What are the requirements for incorporation of private limited company?

- a. Identify the initial subscribers (minimum two) to the proposed entity;

Note: Press Note 3 under the Exchange Control Regulations in India (**PN3**): As per PN3 dated April 17, 2020, the FDI (Foreign Direct Investment) policy in India has been amended to restrict any FDI being made from Bangladesh, China (including Hongkong/Macao/Taiwan), Pakistan, Nepal, Myanmar, Bhutan and Afghanistan ("**Neighboring Countries**") or where the beneficial owner of an investment into India is situated in or is a citizen of any Neighboring Countries ("**Neighboring Country Investments**"). If proposed Private limited company is likely to receive FDI from any such Neighboring Country Investments at the time of incorporation, it shall require a prior approval of the Indian Government regardless of the sector/activities the investment is being proposed. Hence, from the perspective of initial shareholding structure of a Private limited company proposed to be set up, please confirm whether any of the proposed shareholders of Private limited company trigger any of the above directly or indirectly as it would need a prior approval of the Indian Government.

- b. Identify individuals who give consent and act as first directors of the company (minimum two);
- c. Identify one director who should be a resident of India;
- d. Obtain Digital Signature Certificate ("DSC") for proposed directors of the company;
- e. Obtain DSC for identified subscribers of the company (to be obtained wherever the subscribers are Indian residents.)
- f. Conduct name and trademark search for the proposed names and ensure the proposed names are not identical or undesirable with existing names available for incorporation#. Post availability finalize two 2 names for the proposed Indian company;
- g. Provide the objects and the proposed business actions;
- h. Finalize the Authorized Share Capital ("ASC") and the Paid-up Share Capital ("PSC") requirement of the company;

9. Refer Sec 180 of the Companies Act and https://www.mca.gov.in/Ministry/pdf/Exemptions_to_private_companies_05062015.pdf

10. Refer Sec 62(1)(a) & 62(2) of the Companies Act and https://www.mca.gov.in/Ministry/pdf/Exemptions_to_private_companies_05062015.pdf

11. Refer Sec 160 of the Companies Act and https://www.mca.gov.in/Ministry/pdf/Exemptions_to_private_companies_05062015.pdf

- i. Identify the place of the registered office of the company. (Please note that the registered office of the company should be a physical office space where the employees shall be stationed for carrying out the business operations. There is no concept of virtual office with post box facility in India);
- j. Finalize Memorandum and Articles of association (By-laws), along with other necessary documents and pay stamp duty on all the documents as may be required;
- k. Create a Director Business User Login ID on MCA V3 portal and Associating the DSC of the directors from the Individual login before filing incorporation application Web form SPICE+;
- l. Filing of integrated web form SPICE+ for reservation of name (PART A) and incorporation of company (PART B) along with applicable fee, which may either be approved or rejected subject to two re-submission opportunity as the case may be by the Registrar, Central Registration Centre (“CRC”).
- m. Once the form is approved, following additional facility / registrations will be existing in the name of Company which shall be applied with incorporation application under PART B –
 - Director Identification Number (“DIN”) for applicant directors (subject to maximum of three);
 - Permanent Account Number (“PAN”);
 - Tax Deduction Account Number (“TAN”);
 - Goods and service tax (“GST”) (if required) (Optional);
 - Employees Provident Fund Organization Registration (“EPFO”) (Mandatory);
 - Employee State Insurance Corporation Registration (“ESIC”) (Mandatory);
 - Profession Tax Registrations (Mandatory for the State of Maharashtra, Karnataka and West Bengal);
 - Shops and Establishment Registration (Optional) (Currently available for the State of Delhi only); and
 - Opening of bank account of the company.
- n. Identify the bank with which the company intends to open its bank account

Note - Key features of SPICE+ are as below:

- The proposed entity under incorporation may submit Part A for reserving a name first and thereafter submit Part B for incorporation & other services or file Part A and B together at one go for incorporating a new company and availing the bouquet of services as above.
- Registration for EPFO and ESIC shall be mandatory for all new companies incorporated and no EPFO & ESIC registration numbers shall be separately issued by the respective agencies.
- Registration for Profession Tax shall also be mandatory for all new companies incorporated in the State of Maharashtra, Karnataka and West Bengal.
- Registration for Shops and Establishments is optional and can be availed only in the State of Delhi.
- All new companies incorporated through SPICE+ would also be mandatorily required to apply for opening the company’s Bank account through the said web form.

E. What are the charter documents with respect to a private limited company?

Memorandum of Association (**MoA**) and Articles of Association (**AoA**) are the two charter documents of private limited company

F. What is MoA?

MoA contains the objectives to be pursued by the company to operate and is considered as the supreme document of the company which is submitted to the RoC at the time of incorporation of the company. The purpose of this is to enable shareholders, creditors and others who deal with company to know its permitted range of activities and the business that they intend to carry out.

G. What is AoA?

AoA is a document containing all the rules and regulations defining the framework that governs a company. It defines the responsibilities of the directors, and the means by which the shareholders exert control over the Board of Directors. For a private limited company, its AoA must have following three restrictions which are as follows.

- a. Restricts number of members to 200 (two hundred) (excluding the present and former employees of the company who holds shares);
- b. Restricts transfer of shares; and
- c. Prohibits offering securities to public.

H. Is there any requirement of minimum ASC and PSC for the incorporation of private limited company in India?

Currently, there is no requirement of having minimum ASC and PSC for incorporation of Private Limited Company in India. However, while determining the ASC and PSC, it is suggested to keep in mind the immediate working capital requirements which the company would need for conducting its initial operations and before it starts generating the revenue in India and the requirement of minimum net owned fund for certain categories of companies as raising of capital by way of issuance of shares is subject to valuation (in case of entity with FDI) and allied compliances.

ASC is the maximum share capital allowed to be issued by the company. ASC can be further enhanced after incorporation of the company, considering future fund requirements.

PSC is the amount which the shareholders will invest in the capital of the company.

I. What are the requirements for incorporation of public limited company?

Except that there is a requirement of minimum 7 (seven) shareholders and minimum 3 (three) directors, one of whom should be a resident director, all the requirements for the incorporation of a private limited company are also applicable to a public limited company.

J. What are the charter documents with respect to a public limited company?

In general, the charter documents of public limited company are same as of private limited company. Except that the AoA of a public limited company shall not contain the restriction applicable to a private limited company. Charter documents which are explained in 6 and 7 above are the charter documents for the public companies.

II. Directors

A. Can a person resident outside India and citizen of other country become a director of an Indian entity?

Yes, except for citizens of certain countries, any person, being a citizen of any other country can become a director subject to obtaining DIN as mentioned below. However, where in cases the person seeking appointment is a national of a country which shares a land border with India, necessary security clearance from Ministry of Home Affairs, Government of India would be a pre-requisite.

B. Can a body corporate or company be a director of an Indian entity?

No. Except a natural person, CA 2013 does not allow any body corporate or a company to be a director.

C. What is a DSC?

Digital Signature is a digital code (in form of USB token) created for affixing it on the digital documents electronically. The Information Technology Act, 2000 in India has made provisions for use of digital signatures on the documents submitted in electronic form to ensure security and authenticity of the documents filed electronically. DSC is a hardware in the form of USB token and is password protected which can be changed by the DSC holder at any point of time. Password of DSC is accessible to only those who have applied for DSC.

D. What is the use of DSC?

DSC is used for filing documents and e-forms with the Ministry of Corporate Affairs (“MCA”) under the CA 2013, tax returns and e-forms under different regulations as applicable to the entity. The filings with many other Government authorities may also be carried out by electronic filings using DSC.

E. Who issues DSC in India?

The office of Controller of Certifying Authorities (“CCA”), issues certificate to the certification agencies which are the trusted entities and are responsible to issue DSC to the end user. Upon submission of application and identity and address proofs, it takes around 2-3 days for obtaining the DSC.

F. What is the process to obtain DSC?

- Apply to a registered authority in India;
- Submit following documents & information –
- In case of Indian Nationals:

- Proof of Identity - PAN is Mandatory for Indian National,
- Proof of Identity- PAN is Mandatory for Indian National,
- Proof of Residence - driving license, passport (if it has address) or Aadhaar or utility bill (not older than 2 (two) months) like gas or electricity or bank statement;
- Passport size color photograph (in JPEG format);
- In case of Indian national, all the documents are required to be self-certified by the applicant.
- Mobile number and email ID of an Individual for whom DSC needs to be obtained.
- In case of Foreign Nationals:
 - Proof of Identity – Self-attested copy of Passport, Self-attested copy of VISA (If the proposed individual is out of native country) and Self-attested copy of Resident Permit certificate (If applicant is in India)
 - Proof of Residence - Attested copy of any other Government issued Address Proof, or driving license or utility bill (not older than 2 (two) months) like gas or electricity or bank statement
 - Mobile Number and email ID of an Individual for whom DSC needs to be obtained.
- Submit the scan copies of above documents to the authorities via email and Authority verifies the information and process the same.
- Upon successful process, the applicant should do tele-verification / email verification and video-verification.
- Only upon completion of the above verifications, the authority issues DSC to the end user

The above process is indicative in nature and requirement may change based on the nationality/citizenship of the applicant and subject to change in process as may be amended from time to time under applicable laws.

G. What is DIN?

DIN is a unique identification number allotted to an individual, who is proposed to be appointed as director of a company and it is compulsory for every individual intending to be a director to obtain this number. Upon submission of necessary documents in e-form DIR 3, DIN would be allotted instantly subject to submission of sufficient and legible documents.

H. Can I use same DIN for being appointed as Designated Partner in LLP?

Yes, DIN can be used for being appointed as Designated Partner in any LLP. One individual can have only one DIN and it is valid for lifetime.

I. How can I acquire DIN and what is its process?

▪ Obtain DIN for a director in case of incorporation of new company

Any person proposed to become a first director in a new company shall have to make an application through e-form No. INC-32 (SPICe +). An application for allotment of DIN up to three (3) Directors, shall be filed in e-form No. INC-32 (SPICe +), with RoC, in case of proposed directors not having approved DIN¹².

12. Refer: Rule 38 of The Companies (Incorporation) Amendment Rules, 2018

■ Obtain DIN for director in an existing Company

Any person intending to become a director in an existing company and who does not have a valid DIN shall make an application in e-form DIR-3 along with copies of identity and address proof, copy of Board resolution proposing the appointment of such person as a director from the company in which such person is intending to become a director and copy of security clearance certificate from Ministry of Home affairs (if applicable)

J. What are the documents required for obtaining DIN?

DIN can be obtained by filing the supporting documents as follows:

i. In case of Indian Nationals

- a. ID Proof of the Applicant: PAN.
- b. Address Proof of the Applicant: Any one of the following documents would suffice as proof:
 - i. Utility Bill in the name of the applicant
 - ii. Driver's License of the applicant
 - iii. Bank Statement in the name of the applicant.

ii. In case of Indian Nationals (at the time of Incorporation)

- c. ID Proof of the Applicant: PAN
- d. d.Address Proof of the Applicant: Any one of the following documents would suffice as proof:
 - i. i. Electricity Bill in the name of the applicant (not older than two months)
 - ii. Telephone bill in the name of the applicant. (not older than two months).
 - iii. Bank Statement in the name of the applicant. (not older than two months)

All the above documents are required to be self-attested in case of an Indian resident.

iii. In case of Foreign Nationals

In addition to the documents mentioned above for Indian Nationals, following documents will be required in case of Foreign National:

- a. Certified copy of passport as an identity proof.
- b. All supporting documents including photograph should be certified by the Indian Embassy or a notary in the home country of the applicant. If a foreign director has a valid multiple-entry Indian visa or Person of Indian Origin card or Overseas Citizen of India card, then the attestation could also be done by Public Notary/Gazetted Officer in India or practicing CA/CS /CWA.

In case any documents are not in English language then the same needs to be translated in English from certified translator and such translated documents are also required to be notarized and apostilled / legalized from home country.

K. Is there any requirement of verification of Know Your Customer (“KYC”) of a director

Yes, as per the amended rules, every individual who has been allotted a DIN as on 31st March of a financial year shall submit e-form DIR 3 KYC to the Central Government on or before 30th September of immediate next financial year. Hence, each individual possessing DIN needs to update his KYC details annually within prescribed timelines for retaining his DIN in 'Active' status.

L. What are the supporting documents to file e-form DIR-3 KYC

i. In case of Indian Nationals

- a. ID Proof of the Applicant: any one of, Passport, PAN, Driving license, Election (voter identity) card, Ration card or Aadhaar Card. (If the applicant holds Aadhaar and Passport both, in that case both the documents are mandatory);
- b. Address Proof of the Applicant: Any one of the following documents would suffice as proof:
 - i. Electricity or Telephone Bill in the name of the applicant
 - ii. Driver's License of the applicant
 - iii. Bank Statement in the name of the applicant.

All the above documents are required to be self-attested in case of an Indian resident.

ii. In case of Foreign Nationals

In addition to the documents mentioned above for Indian Nationals, for Foreign National certified copy of passport is required.

All supporting documents including photograph should be certified by the Indian Embassy or a notary in the home country of the applicant. If a foreign director has a valid multiple-entry Indian visa or Person of Indian Origin card or Overseas Citizen of India card, then the attestation could also be done by Public Notary/Gazetted Officer in India or practicing CA/CS / CWA.

In case any documents are not in English language then the same needs to be translated in English from certified translator and such translated documents are also required to be notarized and apostilled / legalized from home country.

M. What if the director fails to file his KYC?

In case the individual fails to file KYC with the MCA within prescribed timelines, then the DIN of the said individual shall be de-activated. The de-activated DIN shall be re-activated only after e-form DIR-3-KYC is filed with ROC along with the fee as prescribed under law.

N. Does a director need to obtain DIN for each company where he may be appointed as a director?

No. DIN is a unique number allotted to each individual who has applied for it. A person can be a director / designated partner in any number of companies or LLPs (subject to maximum number permissible in CA 2013 or LLP Act) with same DIN. The CA 2013 does not allow a person to have more than one DIN and if any person obtains more than one DIN, it is a punishable offence under the CA 2013 and shall need to surrender his DIN.

O. What is the minimum and maximum number of directors required for forming a private limited company?

There should be at least 3 (three) directors and maximum up to 15 (fifteen) in a public limited company. To appoint more than 15 (fifteen) directors, approval of shareholders would be necessary.

P. What is the minimum and maximum number of directors required for forming a Public Limited Company?

Yes, there should be at least 1 (one) director who stays in India for a period of not less than 182 (one hundred and eighty-two) days during each financial year. In case of a newly incorporated company, the requirement shall apply proportionately at the end of the financial year in which it is incorporated.

Q. Is there a requirement of having resident director for forming a Private Limited Company and Public Limited Company?

There should be at least 1 (one) director who stays in India for a period of not less than 182 (One hundred and eighty two) days during each financial year. In case of a newly incorporated company, the requirement shall apply proportionately at the end of the financial year in which it is incorporated.¹³

R. Are there any disqualifications for appointment of a director?

person is not¹⁴ eligible for appointment as a director if

- a. he is of unsound mind;
- b. he is an undischarged insolvent;
- c. he has applied to be adjudicated as an insolvent;
- d. he has been convicted by a court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than 6 (six) months and a period of 5 (five) years has not elapsed from the date of expiry of the sentence;
- e. an order passed by the court or tribunal for disqualifying him for appointment as a director and the same is in force till date;
- f. he has not paid any calls in respect of any shares of the company held by him, either individually or jointly, and 6 (six) months have elapsed from the last day fixed for the payment of the call;
- g. he has been convicted of the offence dealing with related party transactions¹⁵ at any time during the last preceding 5 (five) years;
- h. if he does not hold valid DIN;
- i. he has not complied with the provisions of number of directorships.

13. Refer: Section 149(3) of the Companies (Amendment) Act, 2017

14. Refer Sec 164 of the Companies Act, 2013

15. Refer section 188 of the Companies Act, 2013

In furtherance to the above, no person who is or has been already a director of a company shall be eligible for appointment if-

- a. such company in which he is a director has not filed financial statements or annual returns for any continuous period of 3 (three) financial years;
- b. has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for 1 (one) year or more.

III. Shareholders

A. What is the minimum and maximum number of shareholders required for forming a private limited company?

There should be at least 2 (two) shareholders¹⁶ with a maximum of 200 (two hundred) shareholders (excluding the present and former employees of the company who hold shares) for forming a private limited company.

B. How can one become a shareholder of private limited company / public limited company?

A person can become shareholder of a private limited company / public limited company by –

- i. Subscribing to memorandum of association;
- ii. By acquiring shares subsequently either, by direct purchase from company or transfer from existing shareholders; and
- iii. By holding shares and whose name is entered as a beneficial owner in the records of a depository.

C. Can one own 100% shareholding of private limited company/public limited company?

Yes, a body corporate can hold 100% shareholding of a company. This concept is popularly known as Wholly owned subsidiary (“**WoS**”). However, for a Private Limited Company there should be at least 2 (two) (and for public limited company, at least 7 (seven) shareholders). Therefore, one person can hold all the shares in his name except nominal amount of share(s). The nominal share(s) can be held by a nominee shareholder. The holding of such shares as a nominee i.e. a registered holder requires proper disclosure at the time of formation of a company and required to complete certain filings with the RoC, post the incorporation of the company and the beneficial interest in such nominal share(s) shall be retained with the parent/majority shareholder.

16. Refer section 3(1)(b) of the Companies Act, 2013

D. What are the minimum and maximum shareholders for Public Limited Company?

There should be at least 7 (seven) shareholders¹⁷ and there is no limit for a maximum number of a shareholder(s) for a Public Limited Company.

E What are the different classes of shares?

There are two kinds of shares as follows:

- i. Equity shares; and
- ii. Preference shares

F. Can the Company be incorporated with only preference share capital?

No, the Company cannot be incorporated with only preference share capital, as preference shares are redeemable in nature which may tantamount to diminution of the share capital of the company in the event of redemption of this share capital. Also, the feature of the Company being an artificial person and having perpetual succession; equity share capital should always form part of the share capital of the Company.

G. What is ASC and PSC?

- i. ASC¹⁸: It means such capital as is authorized by the memorandum of a company to be the maximum amount of share capital of the company. The payment of the registration fees and the stamp duty fees on the incorporation of the company depends upon the amount of the authorized share capital.
- ii. PSC¹⁹: It means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called.

IV. Incorporation Process

Name Reservation and Incorporation Application

A. How to incorporate a company?

Two-step process is followed for incorporating a company in India -

- a. File an application for reservation of name; and
- b. Once the name is reserved, file a separate application under single form for obtaining DIN and filing incorporation documents.

17. Refer section 3(1)(b) of the Companies Act, 2013

18. Ref section 2(8) of the Companies Act, 2013

19. Refer section 2(64) of the Companies Act, 2013

B. How to apply for name for proposed Private Limited Company with the Central Registration Centre (“CRC”)?

Name(s) of a company can be reserved through **Web Form Part A of SPICE+**. In case the applicant wants to apply name, incorporation and other integrated services together, he can do so together by filing necessary information in Part A and Part B.

Through this e-form the applicant can propose two names for private limited company and upon approval of the name from the RoC, the incorporation application is required to be applied for within 20 (twenty) days from the date of approval of the name reservation application. The approval of name is sole discretion of the CRC.

C. What are the documents required to be attached while reserving name through PART A of SPICE+ WEB form?

As such no documents are required to file name reservation application. However, it is mandatory to attach relevant documents and No Objection Certificates (“**NOCs**”) only when a name requires the approval of a sectoral regulator or NoC, etc. in terms of Companies (Incorporation) Rules, 2014.

In case the name of the proposed company is similar to name of the parent company, then following documents are required.

- a. In case of body corporates, certified true copy of board resolution approved by the body corporate shareholders along with the charter documents of such body corporates;
- b. NoC from the foreign body corporate, if the name is similar to that of the parent company;
- c. If the proposed name is linked to a registered trademark, NoC from the trademark owner;
- d. List of main objects.

Note: In case all the aforesaid documents are being executed outside India including identity and address proofs of foreign nationals, the same needs to be notarized, apostilled/ consularized, in the home country, as may be applicable.

Further, basis the main objects listed in the name application, one business code list has to be selected as provided in the help kit.

D. How do I apply for a name if the proposed name includes the name of a trademark?

In case the proposed name includes a reference of a registered trademark name, the consent of the owner or applicant for registration of the trade mark along with KYC details (bearing signatures) of Trademark owner should be attached the application in Part A of SPICE+. In case the TM owner is a body corporate, the NOC should be provided in the form of a Board Resolution along with KYC documents.

E. What next after name reservation?

Once, the name has been approved, execute various Incorporation documents like MoA, AoA etc., and file along with the e-form titled “SPICE+” for incorporating a company.

F. What is SPICe? What are its salient features?

SPICe+ stands for “Simplified Proforma for Incorporating Company Electronically+”. This is another initiative by the MCA with specific objective of providing speedy incorporation related services within stipulated time frames, which are in line with international best practices

SPICe+ is an integrated web form offering 10 (ten) services by 3 (three) Central Government Ministries & Departments. (Ministry of Corporate Affairs, Ministry of Labor & Department of Revenue in the Ministry of Finance) and One State Government (Maharashtra), thereby saving as many procedures, time and cost for starting a business in India. SPICe+ is part of various initiatives and commitment of GoI towards ease of doing business.

SPICe+ will be the sole, simplified and versatile form available for incorporation of companies in India. It is a single application for-

- a. Application for allotment of DIN for first directors (not exceeding 3);
- b. Incorporation application;
- c. Obtaining PAN and TAN for the proposed entity;
- d. Obtaining registration for EPFO and ESIC; Registration of Professional Tax (for the State of Maharashtra);
- e. Opening of bank account; and
- f. Allotment of GSTIN (if so applied for).

If the applicant provides the details pertaining to its registered office in the incorporation form, then it is not required to file e-Form INC-22 separately for intimating the RoC about its registered office.

G. Whether it is compulsory for the company to have a physical registered office?

Yes, the registered office of the company should be a physical office space where the employees shall be stationed for carrying out the business operations and is available for physical inspection, verification and for obtaining registrations under the laws applicable to the company. There is no concept of virtual office in India. In the event if the authorities have reasonable cause to believe that the company is not carrying on any business or operations, the authorities may cause a physical verification of the registered office of the company in such manner as may be prescribed. Further, pursuant to the amended rules, if any default is found to be made in complying with the requirements as mentioned above RoC may initiate action for the removal of the name of the company from the register of companies and has power to strike-off a company if the address of registered office address is found to be bogus or incomplete/improper address.

H. What are the documents required for filing incorporation application (e-form SPICe+) with the RoC?

Following documents are to be filed on the MCA online portal along with the following documents:

- a. Copy of MoA and AoA;
- b. Resolution passed by promoter body corporates approving incorporation of subsidiary company;

- c. In case the proposed name is similar to any existing/parent company, NoC in form of resolution passed by such existing/parent company;
- d. Declarations by first directors & subscribers;
- e. Proof of identity and residential address of the subscribers;
- f. Disclosure of interest in other entities by the first directors in prescribed form;
- g. Declaration by representative of corporate promoters;
- h. Undertaking on non-holding of PAN²⁰
- i. If the subscriber does not have a DIN, identity and address proof of subscribers including those of the witness;
- j. Where the directors [including subscriber cum director, not exceeding 3 (three) in no's] do not have a DIN, identity and address proof of such director [including VISA copy (if any)];
- k. Proof of office address and utility bill of the registered office of the company (not older than 2 months), including NoC from owner of the premises as required. Also in case of leased premises or the rented premises the authorization from the owner and authorized occupant of the premises along with proof of ownership or occupancy authorization is required to be submitted;
- l. If the proposed name requires approval of the central government or is based on the registered trademark the copy of approval received from the central government or from the owner of the trademark (including certificate of trademark) respectively; and
- m. Copy of any specific/in-principle approval obtained from any sectoral regulator.

I. Does the “ease of doing business in India” also allow to apply for obtaining tax registration number (PAN, TAN and GST) at the time of filing for incorporation of a company?

Yes, as a part of scheme of ease of doing business in India, the company can simultaneously obtain registration of PAN, TAN and GST (if so applied for) at the time of the filing of the application for incorporation of the company under e-form SPICe+. This reduces the time limit for starting business post incorporation of the company by 15-20 days.

J. What is the sequence of uploading linked forms to SPICe+?

SPICe+----> eMOA [if applicable] ----> eAOA [if applicable] ----> URC-1[if applicable] ----> AGILE-PRO [mandatory in all the cases] ----> INC-9 [if applicable]

K. How is approval process undertaken for incorporation?

Once e-form SPICe is processed and found complete and in order, Registrar at Central Registration Center will register the incorporation application and issue following approvals:

- a. Approve and allot the proposed name of the company;
- b. Allot DIN for the proposed first directors (not exceeding 3) not having DIN;

20. Every proposed foreign director who does not hold PAN in India at the time of making incorporation application shall submit a written undertaking stating that he is not required to hold PAN under Income Tax law and that, he will apply for and update PAN details as soon as it becomes applicable to him.

- c. Corporate Identification Number (“**CIN**”) will be generated and a Certificate of Incorporation (“**COI**”) in form INC-11 is issued electronically which will also include the PAN and TAN of the company
- d. Takes on record, appointment of first directors;
- e. Takes on record, registered office address of the company
- f. PAN & TAN is issued with COI. It also communicated to the applicant electronically.
- g. GSTIN (if so applied for) is generated on approval;
- h. ESIC, EPFO, Profession tax registration are generated on approval; and
- i. Bank account as selected in the form will be opened in the name of company with the respective bank.

Once COI is issued by the RoC, it serves as an evidence of incorporation of the company.

L. What is the time frame for incorporating a company under SPICe+?

Excluding the time required in the documentation, ideally, it takes 3-4 working days' to complete the incorporation process and obtain Col from the RoC. This also includes obtaining tax registration, ESIC, EPFO, GSTIN (if applied), PAN and TAN, thereby reducing the time limit by 15-20 days' post obtaining Col.

M. Whether the Col issued by the RoC will have any validity period?

The registration is permanent and is valid until the time, the company winds up its affairs on its own or is being struck-off by the RoC.

N. Are the documents filed on the MCA Portal <http://mca.gov.in/> for incorporation of company or LLP be available on the public domain?

While the incorporation application of company or LLP is not available in the public domain, the certain basic details in form of Master data including details of directors details, registered office address email id for correspondence etc., shall be made available on the public domain of MCA.

V. Post-incorporation Compliances

A. What are the immediate post-incorporation compliances applicable for a Private limited company?

The immediate post-incorporation compliances are as follows:

- a. To hold first Board meeting for initial corporate actions as required under the CA, 2013;
- b. On receipt of FDI to undertake FEMA reporting actions and compliances with the RBI;
- c. Issue duly stamped and executed share certificates to the initial subscribers within 60 (sixty) days from the date of incorporation;
- d. Appointment of Auditor within 30 (thirty) days of Incorporation.
- e. Director to file a declaration of commencement of Business within a period of 180 (one hundred and eighty) days from the date of incorporation of the company in e-form INC 20A with a proof that every subscriber to the memorandum has paid the value of the shares as agreed for and the photograph of registered office address of the Company. (i.e external and internal premises of registered office of the Company)

4. How to Incorporate LLP

I. Introduction

A. What is an LLP?

LLP is defined as partnership formed and registered under the LLP Act. It is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership. LLP can continue its existence irrespective of changes in the partners. It can enter contracts and hold property in its own name. LLP is a separate legal entity. The liability of the LLP shall be met out of the property of the LLP but liability of the partners is limited to their agreed contribution in the LLP.

No partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct.

B. What are the applicable Acts / provisions that govern an LLP?

LLP is primarily governed by the LLP Act, 2008 and the rules framed thereunder, the FEMA, the Income Tax Act and other legislation as may be applicable based on the business of the LLP.

II. Partners & Designated Partner (“DP”)

A. Who can be Partners?

Any individual or a body corporate can be a partner in a LLP

B. Who is a DP?

Designated Partner (“**DP**”) mean any partner designated as such pursuant to Section 7 of the LLP Act. DP is a term used in the LLP who have been designated as such for doing the duties and discharging the liabilities of such partners under the LLP Act.

The DP's are responsible for the management and the execution of all the acts and things required to be carried out by the LLP including compliance of the provisions such as filing of documents/returns/statements as required by the LLP Act.

C. What are the requirements to become a Partner or DP in an LLP?

A person, who is proposed to be appointed as DP, needs to obtain a valid DSC and DIN. A partner who is not a DP need not have any identification number.

D. What are the minimum and maximum number of Partners and DP in an LLP?

There must be minimum of 2 (two) partners for formation of an LLP. There is no limit to the maximum number of partners, however there must be 2 (two) DP's.

E. What are the requirements to become a Partner or DP in an LLP?

- Any individual or body corporate may be a partner in a LLP. However, an individual shall not be capable of becoming a partner of a LLP, if
 - a. has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
 - b. is an undischarged insolvent; or
 - c. he has applied to be adjudicated as an insolvent and his application is pending.
- Only an individual can be appointed as a DP and at least one of the DP shall be a resident of India. In case of a LLP in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as DP's. A person, who is proposed to be appointed as DP, needs to obtain a valid DSC and DIN. A partner who is not a DP need not have any identification number.

F. Can existing partnership firm or a Private limited company be converted into an LLP?²¹

Yes, an existing partnership firm or a Private limited company can be converted into an LLP by complying with the applicable provisions of LLP Act, CA 2013 and any other rules made thereunder and by filing requisite e-forms with the RoC.

G. What are the ways to make contribution by the Partners?²²

A partner's contribution may consist of both tangible and/or intangible property and any other benefit to the LLP. The monetary value of contribution of each partner is accounted for and disclosed in the books of accounts of the LLP in the manner as may be prescribed in the rules. However, contribution by foreign nationals should be in the form of tangible only.

H. What is the nature and extent of liability of partner of an LLP?²³

Every partner of an LLP, for the purpose of the business of the LLP, is an agent of the LLP but not of the other partners.

Liability of partners is limited except in case of unauthorized acts, fraud and negligence. But a partner is not personally liable for the wrongful acts or omission of any other partner. An obligation of LLP whether arising in contract or otherwise, is solely the obligation of the LLP. The liabilities of LLP are met out of the property of the LLP.

21. Refer Section 55 and 56 of the LLP Act, 2008

22. Refer Section 32 of the LLP Act, 2008

23. Refer Section 28 of the LLP Act, 2008

III. Incorporation²⁴

A. What are the steps involved in formation of an LLP?

Procure DSC and DIN: Procure DSC and DIN for the individuals acting as DP's of LLP. A person, who already has a DIN, is not required to obtain any new DIN. Existing DIN can be used for DP (However, DIN should have all latest details such as resident of India, name, address etc.). Any person proposed to become the DP in a new LLP shall have to make an application through e-form FiLLiP. An application for allotment of DIN up to two DP's, shall be filed in e-form FiLLiP with the RoC, in case of proposed DP's not having approved DIN.

Creation of Business User Account on MCA V3 portal: Every director/ Designated Partner shall have their individual Business user account on the MCA V3 portal through which the DSC of the Directors/Designated partner will be associated in order to file all the LLP forms including Form FiLLiP. The Creation of Business User account is mandatory only for the Designated Partners of the LLP

Name reservation: The first step in incorporation of an LLP is reservation of name of the proposed LLP. There are two ways of reserving name of the proposed LLP.

- i. File an application under LLP-RUN for ascertaining availability and reservation of the name of an LLP; and
- ii. Name can be proposed in e-form FiLLiP, an application for incorporation of LLP.

Incorporate LLP: After reserving a name under LLP-RUN, applicant should file e-form FiLLiP for incorporating a new LLP. E-form FiLLiP contains the details of LLP proposed to be incorporated, Partners'/ DP's details and consent of the Partner/ DP's to act as Partners/ DP's. On approval of the form, the RoC will issue the Col.

LLP Agreement: After incorporation of LLP, the Partners should execute LLP Agreement and a copy of executed agreement is required to be filed with the RoC in e-form 3 within 30 (thirty) days from the date of incorporation of LLP.

B. What are the documents required for filing name application (FiLLiP) with the Registrar?²⁵

- i. Consent of Partners;
- ii. In case of Partners are body corporates, certified true copy of board resolution passed by such body corporate Partners;
- iii. Proof of address of registered office of LLP;
- iv. Subscribers' sheet including consent;
- v. Detail of LLP(s) and/ or company(s) in which Partner/ DP is a director/ partner;
- vi. Copy of approval obtained from any sectoral regulator/in-principle approval;
- vii. Identity and address proof of individuals acting as Partner and/or DP;
- viii. List of main objects of an LLP;

24. Refer Section 11 of the LLP Act, 2008

25. Refer Section 16 of the LLP Act, 2008

- ix. If the name proposed is linked to registered trademark, NoC from the trademark owner;
- x. NoC of foreign body corporate for usage of name (In case of foreign entities intending to incorporate LLPs in India).

Note: All the aforesaid documents executed outside India including identity and address proofs of foreign nationals should be duly executed and are required to be notarized, apostilled /consularized.

C. What is FiLLiP +? What are its salient features?

FiLLiP+ is the form for Incorporation of LLP and it is sole, simplified and versatile form available for incorporation of LLP. It is a single application for-

- i. Application for allotment of DIN for first designated partners (not exceeding 3);
- ii. Incorporation application; and
- iii. Obtaining PAN and TAN for the proposed LLP.

D. How many names can be proposed during filing of Name Reservation Application with the Registrar?

There are two ways of reserving name of the proposed LLP:

- i. Two names can be reserved in an application under LLP-RUN;
- ii. One name can be proposed in e-form FiLLiP in application for incorporation of LLP.

E. Whether LLP requires a registered office?²⁶

Yes, an LLP requires a registered office and the same is required to be specified in the incorporation document of an LLP. The registered office of an LLP should be a physical office space where the employees shall be stationed for carrying out the business operations and is available for physical inspection, verification and for obtaining registrations under the laws applicable to an LLP. There is no concept of virtual office in India.

F. What are the key details an LLP Agreement would consist of? ²⁷

The LLP Agreement should contain following details in addition to other information:

- i. Name of LLP and names of Partners and DP's;
- ii. Details of agreed profit and loss sharing ratio of the Partners' contribution;
- iii. Rights & duties of the Partners and DP's;
- iv. Procedures to be followed by the Partners and DP's in decision making and convening of meetings;
- v. Specific provisions governing day to day management of affairs of LLP;
- vi. Terms related to admission and cessation of Partners and DP's;
- vii. Terms related to keeping of books of accounts and audit norms;

26. Refer Section 13 of the LLP Act, 2008

27. Refer Section 23(2) of the LLP Act, 2008

viii. Terms related to liability of Partners and DP's and consequences of breach of agreement etc. An executed copy of the LLP Agreement will be filed with the registrar through filing LLP e-form 3 within 30 (thirty) days from the date of incorporation.

G. What is the time frame within which an LLP can be formed?

Formation of an LLP has two parts. In first part, it has to apply for name reservation followed by formal incorporation of an LLP. Once LLP is incorporated, it should file the LLP Agreement within the timelines as mentioned above.

IV. Applicability of FEMA for LLP

A. Whether non-residents can incorporate LLP?

Yes, the LLP Act allows foreign nationals including foreign companies & LLPs to incorporate an LLP in India provided at least 1 (one) DP is resident of India. However, the LLP/partners have to comply with all relevant foreign exchange laws/rules/ regulations and guidelines.

B. Whether FDI is permitted in LLP?

Yes, FDI is permitted in LLP. The LLP with FDI can undertake or operate only in those sectors/ activities where 100% FDI is allowed under automatic route of FDI scheme.

V. Initial post-incorporation compliances applicable to LLP

A. What are the initial post-incorporation compliances applicable to an LLP?

The compliances to be undertaken post incorporation of an LLP are –

- i. Open Bank account;
- ii. Other statutory registrations such as Goods and Service Tax, Shops & Establishments, Professional Tax, EPF, ESI, GST, etc.;
- iii. On receipt of FDI, to undertake reporting actions with the RBI within 30 days from the date of receipt of funds.

5. Conclusion

With the initiatives taken by the GoI towards the “Ease of doing business in India” an entrepreneurial revolution is being experienced in India. Among other initiatives, MCA has introduced a single WEB form, which is an integrated application covering securing DIN for director, CoI, getting the mandatory EPF, ESI, tax registration numbers and opening of Bank Account. Such steps taken by the ministry does ensure that the time taken to register a new company is significantly reduced, which has resulted in incorporation of the company at a faster pace.

The CA, 2013 has ushered in a new era of corporate democracy making a shift from “government control” to “self-governance”. With the automated process kicking in, government also intends to further reduce the number of steps and ensure that an entrepreneur faces minimum hassle while starting a new company.

While on the other hand since the introduction of LLP Act in 2008, LLPs have been looked upon as an attractive vehicle for undertaking business in India. An LLP is a form of business entity which is preferred due to its simple process for formation /unwinding and does not involve too many legal formalities. Also with the easing out of the FDI norms for the LLPs by the government, which now allows foreign investment in LLPs under the automatic route (without approval), the LLP structures amongst multinationals are gaining high acceptance.

With these new reforms being introduced, Indian and foreign entrepreneurs would truly find ease in starting their businesses in India.

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