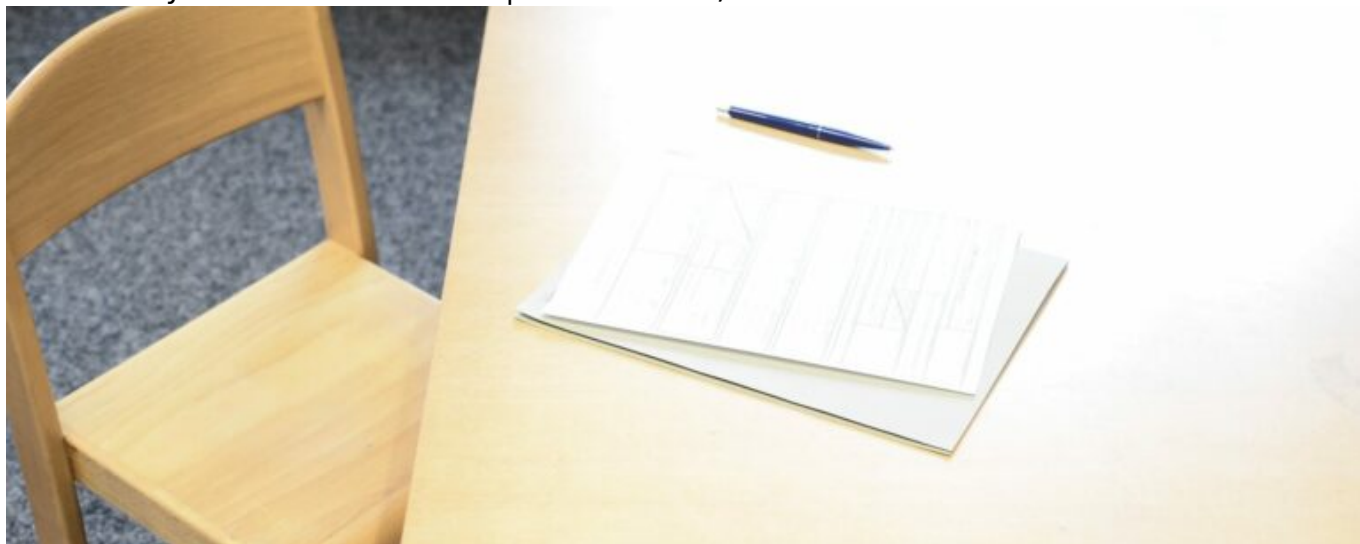


Business Registration In India: A Legal Overview

written by Prashant Kataria | October 13, 2022



Want to start a business but don't know the legal process for Business Registration In India? Here's a detailed look at what you need to do. While most countries dealt with the worst pandemic in recent memory, the global economy suffered drastically as a consequence. The slowdown (and in some cases, a halt) in international trade demonstrated that supply chain gaps exist and that countries need to broad-base their sourcing and make their supply chain robust. One question we have discussed an ample number of times is how did India fare during such turbulent times?

The country continues to appear to be a promising investment destination, inviting a fair number of foreign companies to set up operations. The introduction of a unified indirect tax law system, the renewed insolvency, and bankruptcy code to turn around stressed assets and improve the flow of money in the economy, consolidated labour codes, and several other significant changes have all contributed to its overall economic growth. There is enormous growth potential in India; therefore, Business Registration In India is bound to benefit both the parent company and the economy as a whole. Even though Business Registration In India may appear difficult while seeing through a looking glass, it is possible to do so with the right approach and well-thought-out strategy. Even for startups, where a 'gung-ho' approach is used, in our view, a well-thought-out plan is essential. Along with the Startup India program, which is creating an environment to support the development of new firms, this would enable long-term economic growth and create jobs on a large scale. New businesses will succeed as a result of their originality and design.

Businesses That Can Be Started In India

For Setting up a Business in India, first and foremost it is necessary to know the types of business entities possible under Indian law. There are 8 types of business entities that can be established. They are:

Private Limited Company: A Private Limited Company is a privately held small business that is recognized as a separate legal entity upon incorporation. Private Limited Company shares cannot be exchanged openly.

Public Company: A public limited corporation must have at least three directors, seven shareholders, and an unlimited number of stockholders. The stock can either be listed on a stock exchange or remain unlisted. Once a company is listed on a stock exchange as a Public Limited Company, its

shareholders can trade the company's shares.

Partnership: A partnership is a formal business arrangement that does not have the benefit of restricted liability. A partnership agreement establishes a partnership as a legal entity.

One Person Company: One Person Company is established by a single individual. They also manage, operate, and maintain it.

Limited Liability Partnership: Business assets are different from personal assets under a limited liability partnership, providing the best-limited liability protection. The partners rely on the amount of share capital to cover the liabilities of the firm.

Joint-Venture Company: Joint venture enterprises in India are unregistered temporary partnerships formed for the sole purpose of carrying out a specific business plan. In India, the parties engaged contribute capital and divide earnings and/or losses according to a predetermined ratio.

Liaison Office: A liaison office is primarily designed to investigate and comprehend the business and investment environment, as well as to serve as a representative. This office is not permitted to engage in any direct or indirect business, trading, or industrial activity and must rely on remittances from the parent firm via conventional banking channels.

Branch/Project Offices: For international corporations looking to establish a temporary presence in India, a branch office is an excellent business approach. The branch office functions as an extension of the main office's operations and conduct similar business and activities.

Process of Business Registration in India

The process of business registration in India differs depending on the sort of business described above to register your business in India. However, 7 steps are repeated throughout the process. They are as follows:

Step 1: Director Identification Number Application

The Director Identification Number (DIN) is a unique 8-digit number provided under Section 153 of the Companies Act, 2013. DIN requires full name, father's name, DOB, identity proof, address and proof of address, Permanent Account Number (PAN) card copy, and two pictures of all proposed directors.

Step 2: Digital Signature Certificate Application

The legitimacy of the documents and information supplied in the DIN-1 Form can only be assured by obtaining a valid digital signature on all papers submitted during the e-filing procedure. Every business in India must obtain a Digital Signature Certificate (DSC) as part of the Business Registration In India process to ensure a safe method of submitting documents electronically. Businesses should receive DSC only from organizations that have been approved by the Controller of Certification Agencies.

Step 3: MCA Portal Registration

All business owners must create an account on the MCA Portal and receive a login ID. To complete the conditions listed below, you must first register an account before submitting an electronic form.

Step 4: Filing Memorandum of Association and Articles of Association

Applicants must create charter documents, such as a Memorandum of Association (MOA) and Articles of Association (AOA), and file them with the MCA.

Step 5: Application for Company's Name

The proposed business name should be distinct and indicative of the company's products and services since it sets them apart from competitors in the same business. The MCA's web service for incorporating a firm, RUN (Reserve Unique

Name) is only available once. RUN cannot be used again if it is declined due to name similarity or failing to conform with the Companies Incorporation Rules. If the Controller of Certification rejects the name application, there is just one option: resubmit the application with a different pair of two names. If a RUN service application is denied twice, a new application must be submitted.

Step 6: Registering Company's Details

The proposed company name must be distinct and appropriately reflect the goods and services provided by the company. It sets them apart from competitors in the same business. The MCA has now launched an online company formation tool called RUN (Reserve Unique Name). This service is only available once.

Step 7: Acquiring PAN & Tax Account Number

To pay income tax or conduct any financial transaction, the Income-tax Department assigns a 10-digit number to a person or corporation known as a Permanent Account Number (PAN). Tax deduction and collection Account Number (TAN) is a unique 10-digit alphanumeric code assigned to people who deduct or collect tax at source on behalf of the Income Tax Department.

To obtain a PAN, only authorized agents authorized by the National Securities Depository Ltd. or the Union Trust of India Investors Services Ltd. should be employed. In addition to a PAN, you must obtain a TAN (Tax Account Number) for the business in India. It is available from any Assessing Officer in a State Income Tax Department.

Legal and Taxation Regulations in India - For Business Registration In India Founder's Agreement

The Founder's Agreement typically comprises information about the founding members and outlines the rights, liabilities, ownership, dispute resolution, and other characteristics of the founders and the company. This is a crucial document that may mitigate future disputes amongst the founders if drafted well.

IP Registration

IP registration grants the owner of the trademark legal exclusivity for the use of the mark, and it is always critical to obtain trademark registration well in advance of the services entering the market.

Import Export Code

Import Export Code registration is essential for individuals importing or exporting products and services from India. The Directorate General of Foreign Trade, Ministry of Commerce and Industries, Government of India, issues the IE Code. IE code can be obtained by applying via the Directorate General of Foreign Trade Website under the services tab under IEC Profile Management.

Goods & Services Tax Registration

If a turnover of INR 20 lakhs are reached per annum for any business entity, tax is owed under the GST system (INR 10 lakhs for North-Eastern states and the Special Category States). Every business in India that is required to pay GST must register and obtain a unique Goods and Services Tax Identification Number.

EPF and ESI Registration

All enterprises with 20 or more employees must register with the Employees Provident Fund (10 persons in some states in India). Employees earning less than INR 15,000 per month must be covered by EPF in such cases.

Employees State Insurance Registration is mandatory for all establishments (excluding manufacturers) with more than 10 employees in ESI-notified zones. Employees earning less than INR 21,000 a month are covered under this scheme. Further, any establishment that is exempt from ESI registration must get an Exemption Certificate from the appropriate government in consultation with ESI Corporation.

Conclusion

Import-related businesses are in high demand in India. Even COVID-19 was unable to slow the company's expansion, which happened at its speed. Imports are critical to the country's international trade. As a result, the government has encouraged domestic production and exports. Despite its desire to export, India will continue to rely on imports in the long run. India is becoming an appealing location for outsourcing industrial production, particularly specialized manufacturing, after becoming a global hub for outsourcing and services. Furthermore, India's growing middle class is comparable to that of the United States. Its ability to pay for and desire to buy high-quality consumer goods has grown significantly, resulting in a sizable domestic market for corporations that establish consumer manufacturing and sales operations in India.

Frequently Asked Questions

What are the top three things to keep in mind while doing business in India?

1. Choosing a business structure and executing a Founder's Agreement
2. Understanding Indian taxation and accounting laws
3. Adhering to the business registration process

How can a foreign entity establish a business in India?

There are two methods for a foreign entity to establish a business in India. They are:

1. A Private Limited Company can be formed in India by a foreign entity. Foreign direct investment of up to 100 percent in a private limited business or limited corporation is permitted under the automatic method in most sectors, which requires no Central Government approval. However, there are sectors where the Central Government has imposed sectoral caps and made provisions of seeking its prior approval.
2. The Foreign Entity can register for a Branch Office, Liaison Office, or Project Office. This will require RBI and/or Government approval.

What are the routes/sectors for FDI in India?

Foreign Direct Investment (FDI) can be made through two channels: the automatic route and the government route. Under the automatic route, the foreign investor or Indian company does not need RBI or Government of India clearance for the investment. Prior approval of the Government, Ministry of Finance, and Foreign Investment Promotion Board are necessary under the government route.