

Understanding the legal and regulatory framework for private companies in India

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According to Section 2(38) of the Companies Act, 2013, a private company can be defined as “a company having a minimum paid-up share capital as may be prescribed, and which by its articles the right to transfer the shares of the company is restricted and the number of members of the company are limited”. Private companies in India are regulated by the Companies Act, 2013 which acts in regulating the total number of members of the company, number of directors of the company, rights of shareholders of the company and lists down methods of raising capital.

- [Legal And Regulatory Framework For Private Companies In India](#)
- [Differences between Private And Public Company In India](#)
- [Incorporation Of A Private Company In India](#)
- [Compliance Requirements Of Private Companies In India](#)
- [Conclusion](#)
- [FAQs](#)
- [What are the key provisions of the Companies Act, 2013 that apply to private companies?](#)
- [What are the consequences of non-compliance for private companies in India?](#)
- [What are the compliance requirements for private companies in India?](#)

Legal And Regulatory Framework For Private Companies In India

The Companies Act, 2013 has laid down various rules and regulatory frameworks governing different activities of Private Companies in India. These are as follows: -

1. Number of Directors in a Private Company in India – According to Section 149 of the Companies Act, there is a statutory limit of minimum 2 directors in a company. Moreover, according to sub-clause (1) of Section 149, maximum 15

directors can be appointed to the board of the company. Furthermore, out of the minimum two directors, one director of a private company must have stayed in India for a minimum period of 182 days of the previous calendar year.

2. Prohibition on public offer by a private company – any private company in India is not allowed to invite general public to subscribe to any securities of the company. Therefore, the capital of the company can be raised only by accepting deposits from its members, relatives, directors and other allowed entities of the company.
3. Nomenclature of the private company – According to the Companies Act, the nomenclature of the company should be in such a manner that “Pvt. Ltd.” Should always be suffixed with the name.

There are various other regulations that regulate the subscribers to the memorandum, qualifications of directors and other details of the company. Other allied laws which govern the operations of private companies are Securities Contracts (Regulation) Act 1956, Foreign Exchange Management Act, Securities and Exchange Board of India Act 1992 and many more.

Differences between Private And Public Company In India

According to the laws governing companies in India, there are multiple differences between private and public companies. The differences are as follows:

1. With respect to a minimum number of members of a company, a private company can be started with only two members while a public company needs minimum seven members. The maximum number of members for a private company is limited to two hundred while there is no upper limit for public companies.
2. For raising the capital of the company, a public company can invite investments. However, a private company can only accept investments from a selected group of people.
3. There is a mandatory requirement to issue and prepare a prospectus for a public company. However, such a requirement is not mandatory for a private company. Similarly, there is no mandatory statutory annual general meeting for a private company but a public company needs to hold various meetings as specified by the Companies Act.

Incorporation Of A Private Company In India

The incorporation of PLC in India is governed by the Companies Act, 2013. There are various steps in the incorporation of a private company in India which are as follows:

1. Reservation of name of the company – An application for reservation of name needs to be filed by the promoters to the Ministry of Corporate Affairs, which should not be in copyright violation with any other company. Thus, the first step in incorporation of a PLC in India is finding a unique name.
2. Preparation of Digital Signature Certificate – After the application for filing the name of the company is made, the next step involves preparation of Digital Signature Certificates or DSC of the first directors and members of the company.
3. The 3rd stage of incorporation of a company is preparation of required documents including KYC formalities and other information pertaining to directors and initial subscribers and members of the company.
4. The 4th step in incorporation of PLC in India involves filing of various forms pertaining to incorporation such as SPICe Form 32, copy of PAN card of the directors and the company including the Aadhar card and other details.

Compliance Requirements Of Private Companies In India

There are a number of compliances that need to be completed by every private company in India according to the Registrar of Companies which is responsible for the administration of statutory rules pertaining to the companies. There are various compliances requirements for private companies in India which are as follows:

1. Compliance requirements pertaining to Board Meetings : According to the Companies Act, every private company needs to hold an annual general meeting (AGM) every year and a maximum gap of 15 months should be there between two AGMs.
2. Disclosure by Directors : Every director of a private company needs to disclose their interests in any private company other than the company in which they hold the post of director. This needs to be done at the beginning of every meeting.
3. Audit Compliances : there are various mandatory audit compliances that must be undertaken by the company. For instance, compliance pertaining to audit of accounts by a qualified and registered chartered accountant must be done by the end of every financial year.

There are many other compliances including the appointment of auditors, filing of various forms and abiding by the procedure stated by the Registrar of Companies. Various other taxation compliances must also be completed by the company.

There are various penalties and sanctions which may be levied upon the company in event of non-compliance with statutory guidelines. For instance, a fine of Rs. 1 Lakh to Rs. 5 Lakh may be levied upon the directors of a private company for not following their duties. Similarly, a fine of Rs. 50 thousand to Rs. 5 lakhs may also be levied upon failure to comply with provisions of appointments and qualifications of directors. Other penalties and punishments are also levied upon contravention of different rules.

Conclusion

The compliance mechanism in a private company is of utmost importance due to the reason that many different penalties and other sanctions are imposed upon defaulting parties including directors which may result in the downfall of public image of the company.

Moreover, a proper compliance mechanism results in better focus of the company upon the core business and operational areas without taking any pressure of legal troubles which may arise in the future and gives leverage to the companies to deliver better results.

Therefore, companies should focus on proper compliance mechanisms either by themselves or by engaging professional services.

FAQs

What are the key provisions of the Companies Act, 2013 that apply to private companies?

Various provisions of Companies Act, 2013 such as Section 2(68), Section 149 and other relevant sections are applicable to private companies.

What are the consequences of non-compliance for private companies in India?

In case of contravention of sections 139 to 146 (both inclusive), the company shall be punishable with a fine which shall not be less than Rs. 25,000/- but which may extend to Rs. 5,00,000/- and every officer in default shall be punishable with a fine which shall not be less than Rs. 10,000/-.

What are the compliance requirements for private companies in India?

A startup running as a private limited company has to follow a number of compliances as laid down by various statutes and other regulatory bodies. This includes but is not limited to the periodic filing of tax and other returns, holding the board and other meetings, maintaining statutory books and accounts, etc.

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