

Q&A Guide To Doing Business In India – Company Structure

written by King Stubb & Kasiva | December 27, 2022



India is a country with enormous economic growth potential. It is abundant in both human and natural resources, making it convenient to do business in India. A new era began in the 1990s with the introduction of a new industrial policy, which hastened the liberalisation of international trade and led to significant monetary, fiscal, and regulatory reforms that have increased the corporate sector's potential and provided unique commercial opportunities to foreign investors looking to setting up a business in India.

With this change, Multinational businesses (MNCs) from all over the world were drawn to invest. All of these factors encouraged businesses to establish operations in India and startup lawyers in India to appropriately guide and assist business personnel in doing business in India.

People who are interested in doing business in India need to be well-informed about the multifaceted, real conditions prior to setting up a business in India and making good investments. To understand the dynamic nature of the country before setting up a business in India, one must get the assistance of lawyers to understand the know-how of a business and be well-versed with the questions mentioned below:

Q. Are there any exchange control or currency regulations or registration requirements under anti-money laundering laws?

Yes, the main legislation enacted to prevent money laundering operations in India is the Prevention of Money Laundering Act, 2002^[1] ("PMLA"), and the Prevention of Money Laundering (Maintenance of Records) Rules, 2005^[2] ("PMLA Rules"). The Reserve Bank of India ("RBI"), the Securities and Exchange Board of India ("SEBI"), and the Insurance Regulatory and Development Authority of India ("IRDAI") are specialised agencies that deal with money laundering issues. These institutions also set anti-money laundering standards based on

PMLA and PMLA Rules.[3]

Additionally, in light of the growing concerns about money laundering activities and to stop the company from being used for such actions, before setting up a business in India, one must appoint a supervisor (preferably a start-up lawyer) who will be in charge of overseeing the firm's compliance with anti-money laundering regulations. It is advisable to seek the supervision of professionals associated with start-up legal services such as a principal in a firm of auditors, external accountants, insolvency practitioners, or tax advisers.

Q. Which is the most common type of incorporation in India?

An investor must choose between two types of entities—incorporated or unincorporated—to manage their business in India after the regulatory processes are completed.

Unincorporated entities^[4]

The following options are available to foreign businesses looking to establish unincorporated corporations in India:

- *Liaison office.*
- *Branch office.*
- *Project office.*

RBI and/or government approval is required for a branch office, liaison office, or project office registration. As a result, registering a branch office, liaison office, or project office for a foreign company would cost more money and take longer than forming a private limited company. Foreign nationals are also not permitted to open project offices, liaison offices, or branch offices. As a result, this approach can only be used as a foreign company's strategy to enter the Indian economy.^[5]

Incorporated entities

The following options are available to international businesses looking to establish unincorporated corporations in India:

- Limited liability partnership ^[6]

A type of business entity called an LLP enables individual partners to take advantage of economies of scale by cooperating while also shielding them from liabilities incurred as a result of other partners' bad choices or wrongdoing. LLP is also a foreign national's or foreign citizen's entry strategy into India, as 100% FDI in LLP is now permitted. An LLP is a great option for investment vehicles and professional firms because it cannot have shareholders and must be represented by partners.^[7]

- Companies under the Companies Act

The Companies Act of 2013 substantially divides businesses into private and public entities and establishes a legal framework based on this division.^[8]

- Private Limited Company

Compared to public companies, private companies represent a different set of connections in terms of ownership, risk, and profit. Private enterprises don't have access to capital markets; hence their shareholders are protected less strictly. However, they stand for a crucial organisational structure for corporate operations. There is a rationale for lessening the regulatory burden on private enterprises as a result.^[9]

- Public Limited Company

A foreign corporation may also begin operations in India by establishing an owned subsidiary company with 100% ownership.^[10]

Q. What are the formation, registration, and reporting requirements for the

most common corporate business entities used by foreign companies in India? The process of incorporation through registration must be based on accurate information that the company's promoters must disclose with full responsibility for its accuracy. The details required for registration may be outlined in the rules. The Memorandum of Association's contents, however, ought to be covered by substantive law rather than the Rules. The registration process should be quick and in line with the government's e-Governance agenda.

- Incorporation of a Private Limited Company or Limited Company

The simplest and quickest method of entering India for foreign nationals and foreign businesses is the incorporation of a private limited company. The automatic route, where no Central Government approval is needed, allows foreign direct investment of up to 100% into private limited companies or limited companies. The quickest, cheapest, and easiest way for foreign businesses and individuals to enter India is by forming a private limited company as an owned subsidiary of a foreign business or joint venture.

- FCGPR filing requirements

The Reserve Bank recently set up an online tool called FIRMS (Foreign Investment Reporting and Management System), which enables reporting of nine foreign investment forms, including FC-GPR, FC-TRS, LLP-I, LLP-II, CN, DRR, ESOP, DI, and In Vi, in a single form called SMF (Single Master Form).[\[11\]](#)

- FDI Process and Documents

Transfer of Funds, by an inward remittance sent through regular banking channels; or by a debit to the afflicted person's NRE/FCNR account held with a licensed dealer. With FDI transactions, one must have the following preliminary paperwork: FIRC copies and a KYC report generated by the authorised dealer bank of the non-resident investor. If money is received from an NRE account, the bank must issue an NRE letter rather than a FIRC.[\[12\]](#)

The applicant reporting the transaction has filled out the Single Master Form on the FIRMS Portal to register as both an entity user and a business user. The registration process is now described below:

STEP 1: Registration for Business User

STEP 2: Log in to the Single Master Form (SMF) The applicant must choose FC-GPR as the return type, after which information must be entered in accordance with the following tabs.

STEP 3: Details in FC-GPR

STEP 4: Submitting the Form[\[13\]](#)

Q. What are the main environmental regulations and considerations that a business must take into account when setting up and doing business in India? Several statutes regulate environmental and pollution control issues, including the Environment (Protection) Act of 1986, the Water (Prevention and Control of Pollution) Act of 1974, the Air (Prevention and Control of Pollution) Act of 1981, the Hazardous Wastes (Management, Handling and Trans-Border Movement) Rules of 2008, the Manufacture, Storage and Import of Hazardous Chemicals Rules of 1989, the Indian Forest Act of 1927, the Forest (Conservation) Act of 1980, When these environmental regulations are explicitly related to a corporation's business operations, that company is compelled to abide by their provisions. The applicable statutes outline the penalties for failing to abide by the pertinent provisions and rules created following them.

Q. When is a business entity subject to tax in India?

A resident business must pay taxes on its global revenue. Only income received in India, income that accrues or arises in India, or income that is deemed to accrue or arise in India is subject to taxation for non-resident companies. Based on their turnover, the following rates are applicable to foreign businesses for AY 2022-23:[14]

Nature of Income	Tax Rate
Royalty received or fees for technical services from the government or any Indian concern under an agreement made before April 1, 1976, and approved by the central government	50%
Any other income	40%

The effective rate of tax[1]

Particulars	Income up to ₹ 1 crore	Income above ₹ 1 crore to ₹ 10 crores	Income above ₹ 10 crores
Non-resident other than a foreign company	30.9%	34.608%	34.608%
Foreign company	41.20%	42.024%	43.26%

A non-resident company means a company which is not a resident company under the Income Tax Act. The resident company means either a company registered in India or a place and management of such a company in India.

Conclusion

Any business that registers in India is required to abide by a wide range of legal requirements, such as those listed above. Further, the answers to the aforementioned questions make it clear that several compliance requirements must be adhered to and the same can be fulfilled by hiring a start-up lawyer in India who can assist better as the regime of the start-up legal services in India is expanding; otherwise, directors' risk being disqualified, incurring penalties, and in some cases, even being imprisoned.

Moreover, the advantages the country offers to foreigners for doing business in India; including basic infrastructure, business-friendly legislations, and a consistently growing economy, can be taken advantage of by businesses if they hire a start-up lawyer in India to assist them in setting up a business and making a strategic approach of fulfilling all the required compliances.

FAQ

What are the 3 most important tips for conducting business in India?

Three important tips before doing business in India are:

1. Comply with all legal and regulatory requirements.
2. Before settling on a place, one should evaluate the local workforce, infrastructure, and laws. Finding the ideal partner for your product or service is frequently also essential.
3. Recognize the corporate culture

What are the legal aspects of business in India?

Understanding taxation and accounting laws, adhering to labour laws, ensuring the protection of intellectual property, ensuring effective contract management, etc.

What are the 5 different legal forms of business ownership?

There are five basic forms of business entities:

1. Sole Proprietorship
2. Partnership
3. Corporation
4. S Corporation

5. Limited Liability Company–LLC

[1] Prevention of Money Laundering Act, 2002, Act 15 of 2013

[2] Prevention of Money-laundering (Maintenance of Records) Rules, 2005

[3] rbi.org.in/commonperson/English/Scripts/Notification.aspx?Id=913

[4] <https://ksandk.com/startups/setting-up-a-business-in-india/>

[5] https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10404

[6] <https://www.icsi.edu/media/webmodules/publications/FinalCLStudy.pdf>

[7]

<https://www.mea.gov.in/images/pdf/0IFCPublication2009GuidebookonFDIfor0I.pdf>

[8] <https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks.html>

[9]

<https://www.icsi.edu/media/webmodules/publications/CapitalMarketandSecuritesLaw.pdf>

[10] https://dpiit.gov.in/sites/default/files/faqs_3.pdf

[11] <https://m.rbi.org.in/scripts/femaview.aspx?femaid=65>

[12] <https://taxguru.in/rbi/fc-gpr-filing.html>

[13] <https://rbidocs.rbi.org.in/rdocs/FEMAMASTER/PDFs/SMF-FIRMS347E34AF5938415DAD0904E0584FB5A1.PDF>

[14] <https://www.incometax.gov.in/iec/foportal/help/company/return-applicable-0#:~:text=2%25%20%2D%20Taxable%20income%20above%20%E2%82%B9,Taxable%20above%20%E2%82%B910%20crore>