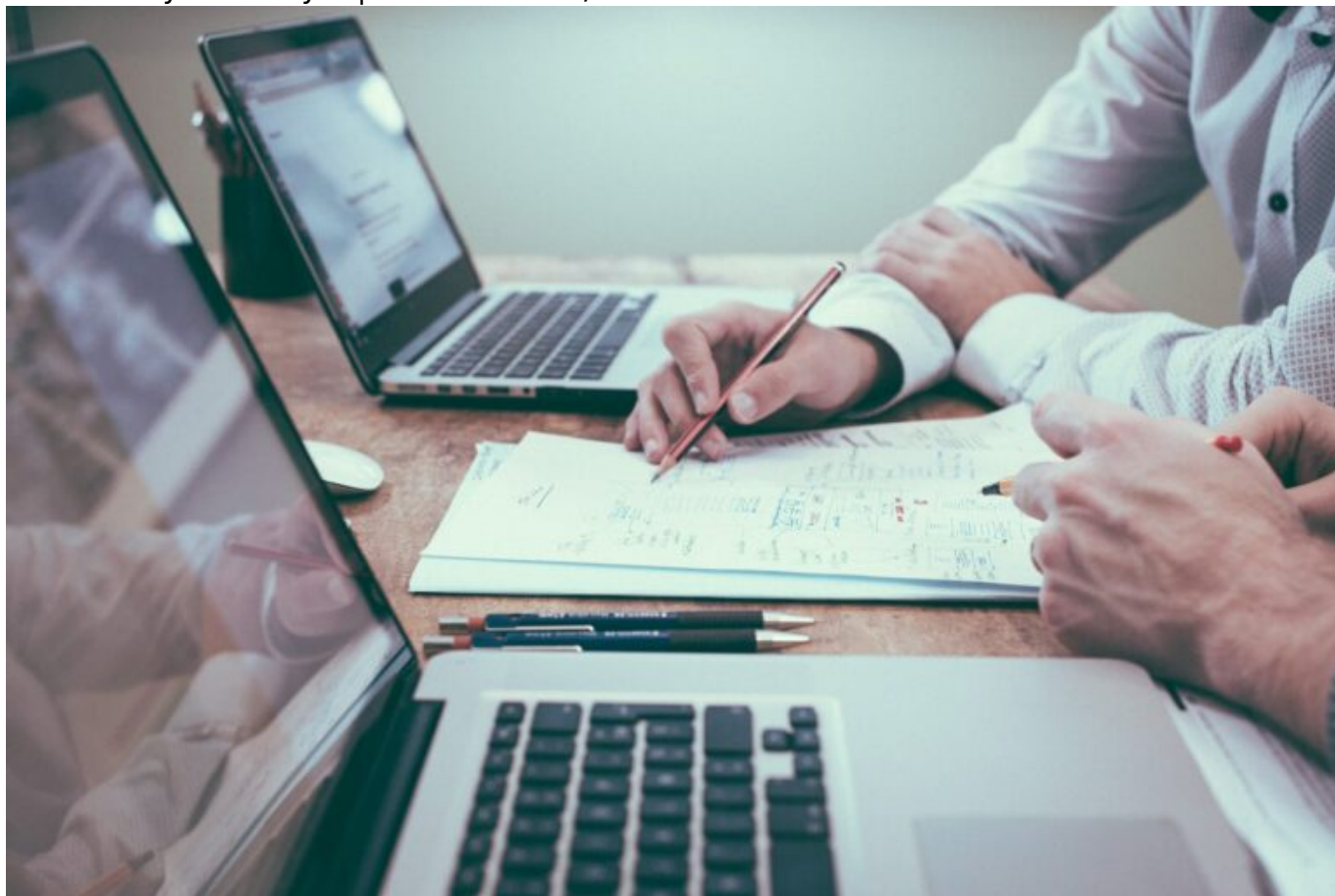


## Setting Up a Private Limited Company in India: Benefits and Procedure written by K. Vidya | November 23, 2022



A private limited company is a type of corporation owned by a group of individuals. It is owned by individuals known as shareholders and is founded with a specific objective in mind. Setting up a Private Company in India has its benefits and involves specific procedures for the same. In India, start-ups and organizations with ambitious expansion plans typically choose private limited companies as their corporate structure.

The fact that India's economy is one of the world's fastest-growing is just one of the many reasons for joining the market and setting up a Private Limited Company in India. Schemes and policies such as "Start-up India" and digitization are assisting the Indian economy in embracing the convenience of conducting business, commonly known as "ease of doing business". Despite this, companies need to know how to incorporate and register a private limited company in India. This article will highlight the same in the following manner:

- What is a Private Limited Company?
- Characteristics of a PLC
- KSK's expertise in aiding in setting up a PLC in India
- Procedure to set up a PLC in India
- Benefits of setting up a PLC in India

What is a Private Limited Company?

Section 2(68) of the Companies Act, 2013 defines Private Limited Corporations as having a minimum paid-up share capital of INR One lakh (1,00,000/-) or a greater paid-up share capital and a maximum of 200 members.

A private ownership structure characterizes a Private Limited Company. A Private Limited Company's members are only liable for the number of shares they own. It is not permitted to publish a prospectus on the open market or

to solicit or accept public deposits. Private Company shares cannot be freely transferred. This entity is well suited for start-ups and is also very credible due to the compliance requirements.

#### Characteristics of a PLC

A PLC is known for multiple characteristics which make it different from other forms of organizations and make it suitable for start-ups.

#### Members and Directors

In India, a Private Limited Company can have members between a minimum of 2 and a maximum of 200. A minimum of 2 and a maximum of 15 directors are required to establish a Private Limited Company. No one may serve as a director of a Company unless they possess a Director Identification Number (DIN). Further one of the directors must be a resident of India, which means he/she should have stayed in India for not less than 182 days in the previous calendar year.

#### Minimum Paid-Up Capital

A Private Limited Company must have a paid-up capital of at least INR of 1 lakh. The companies, at their own discretion, if authorized by the AoA, may increase their paid-up share capital as they deem fit.

#### Limited Liability Structure

In a PLC, the liability of all members or shareholders is restricted to the extent of the shares held by them. Hence, even if the Company faces a loss, the shareholders are only obligated to sell the assets held by them to satisfy the debt. These assets do not extend to their personal and individual assets.

#### Separate Legal Entity and Perpetual Succession

A Company has a separate legal existence in the eyes of law and thus, it can sue and be sued in its name. This also leads to the characteristic of perpetual succession since the Company continues to exist even in case of death, insolvency, or bankruptcy of its members. This means that the Company's life is eternal in this sense.

#### KSK's Expertise in Aiding in Setting up a PLC in India

King Stubb & Kasiva is a well-established law firm, that deals with corporate advisory and other ancillary legal services. They have a team that is well-equipped with the knowledge and speed to ensure that they are ahead of everyone. They have a consistent grasp of the updates in corporate and commercial law and their application. In addition, the team is also well-equipped and trained to be able to guide companies from the incorporation stage to the operation stage. It is advisable to seek legal services to ensure proper compliance with the procedure for Company incorporation in India. They have significant experience in dealing with several large-scale and medium-scale private companies as well.

#### Procedure to Set Up a PLC in India

##### Step 1: Digital Signature Certificate

Obtaining a Digital Signature Certificate (DSC) for the subscribers (shareholders) is the initial step. All registration forms are required to be digitally signed, and the entire registration process is conducted online. Each subscriber and witness listed in the Memorandum of Association (MOA) and Articles of Association (AOA) must have a DSC. It must be obtained from certifying organizations with government authorization.

##### Step 2: Apply for the name availability of the Company

A Private Limited Company is required to cover three aspects while deciding

on a name.

- Main name (post the trademark search for the availability)
- Mention of 'Private Limited Company at the end
- After receiving confirmation from MCA that the requested name has been reserved, the applicant has 21 days to submit a request for incorporation using the same.

Step 3: Filling the SPICe+ Form (INC-32)

The MCA created the SPICe+ Form (INC-32) to facilitate the formation and registration of companies. The same form is used to register for or obtain the following:

- Directors of a Limited Liability Company are required to get a Director Identification Number (DIN).
- Applications for Employees' Provident Fund Organization (EPFO) and Employees' State Insurance Corporation (ESIC) are also filed.
- Application for the Company's Tax Deduction Account Number (TAN) is filed.
- Application for the Company's Permanent Account Number (PAN) is filed.

Step 4: Filing the Memorandum of Association (MOA) and Articles of Association (AOA)

Electronic filing of the MOA and AOA is necessary under INC-33 and INC-34 forms respectively because the MOA is the company's charter and the AOA includes all internal rules and regulations. However, submitting the MOA and AOA electronically is mandatory under these forms only when the first subscribers are people from the following category:

- Non-Individual persons in India;
- Indian persons who are subscribers but not directors;
- Indian persons who are both subscribers and directors;

There are also certain situations where electronic submission of MOA and AOA may not be accepted such as when the foreign subscribers do not have a valid business visa and so on. In case the first subscribers are foreign subscribers:

- Foreign nationals who are subscribers but not directors, and who possess a valid business visa and a DIN (to be notarized and apostilled from the home country);
- Foreign nationals who are both subscribers and directors with a valid business visa, passport (to be self-attested), residential proof and a DIN (to be notarized and apostilled from the home country).

Step 5: Applying for the company's PAN and TAN

The Ministry of Corporate Affairs (MCA) provides the Company's PAN and TAN and it is mandatory to obtain the same. PAN is required to pay tax by the company and TAN is required to deduct tax for the company.

Step 6: Registered address

The company has to provide the documents for the registered office address proof, such as a rent/lease agreement along with a copy of the latest utility bills (electricity bill, water bill, etc.) not more than two (2) months old. In certain cases, a no – objection certificate (NOC) may also be required to be submitted from the owner of the premises of the registered office.

Step 7: Payment of Fees

There are fees for multiple registrations which need to be paid, as provided below. These are subject to the nominal share capital, the number of shareholders, and so on.

- SPICe+ Form filing fee

- Registration fee for MOA
  - Registration fee for AOA
  - Stamp Duty applicable on all the three aforementioned forms
- Step 8: Obtaining the Certificate of Incorporation and other registrations
- Once the entire process is completed and the MCA has properly scrutinized all documents, if it is satisfied, it issues the Certificate of Incorporation along with all other documents including the MoA, the AoA, the PAN and the TAN of the company and so on.

#### Benefits of Setting up a PLC in India

India has seen massive business growth in recent years due to favorable laws, government schemes and initiatives, the rising start-up culture, and so on. Several such qualities ensure the ease of doing business in India and encourage people to set up companies in India.

- **Large Population:** With one of the world's most populous countries, there is a massive market without borders and a huge workforce. A good majority of the population consists of young people with innovative ideas. India's financial capacity has been flourishing, thus attracting a lot of foreign investments as well.
- **Encouraging Business Laws and Governmental Support:** The recent laws have been passed keeping in mind the ease of setting up a business in India. Several favorable laws about taxation such as GST, land acquisition, etc. have been passed. The Government of India has also introduced several schemes to encourage the start-up ecosystem such as the flagship scheme Start-up India[1], and so on.
- **Sustainable Progress and Low Operational Cost:** India is an emerging and powerful economy in the world with the youth constantly shifting to urban centres, thus indulging in businesses. Furthermore, the operation cost of setting up a business in India, including internet charges, infrastructure, and skilled labor is relatively low, which is beneficial to establish a business in India.

In addition to these, there are several benefits offered by setting up a PLC in India, which make this form of business the best suitable for start-ups, such as:

- **Limited Liability and Separate Entity:** The company has a separate legal existence and thus, the liability of the members and shareholders is limited and restricted only to the amount of shares held by them. This ensures that they do not have the risk of losing their personal assets.
- **Credibility:** These companies portray credibility for customers and investors due to the compliances involved in setting up a Private Limited Company in India.
- **Raising Funds:** As a PLC, funds can be raised through equity capital by issuing shares, taking loans, and so on. Obtaining loans also become easier because of the company's credibility.

#### Conclusion

Private Limited Companies enjoy a great sense of credibility in India and are also suitable for raising funds, especially as required by start-ups. The characteristics of PLCs are such that they fulfil and benefit the requirements of start-ups and even foreigners are indulging in setting up a business in India. In recent times, government initiatives have also ensured ease of doing business in India.

There are certain procedures to be followed for Private Limited Company

incorporation in India, which have also been simplified and streamlined by the Ministry of Corporate Affairs. All these aspects combined are very much proof that setting up a business in India has become simpler and more convenient.

#### FAQs

What are the primary steps involved in setting up a Private Company in India? The following are the primary steps involved in setting up a Private Company in India:

1. Obtaining a Digital Signature Certificate (DSC) for the subscribers
2. Applying for the name of the company (post trademark search for the name)
3. Filling the SPICe+ form (INC-32)
4. Filing the MOA and AOA with the MCA
5. Applying for the company's PAN and TAN
6. Submission of the registered office address proof
7. Payment of requisite fees
8. Obtaining the Certificate of Incorporation and other documents.

What are the benefits of setting up a PLC for start-ups?

The following are the primary reasons why PLCs are suitable for start-ups:

1. Limited liability
2. The minimum number of members is 2
3. The minimum number of directors is 2
4. The favourable laws and government schemes to assist the start-ups
5. Relatively convenient ways to raise funds by way of angel investors, venture capitalists, etc in exchange for equity

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[1]<https://www.startupindia.gov.in/>.