



ANIL AGRAWAL AND COMPANY

Chartered Accountants



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TYPES OF BUSINESS ENTITIES IN INDIA

India is an emerging market with wide scope and opportunities for both Indian and foreign investors. The Government of India offers entrepreneurial friendly policies which makes invasion and growth of businesses in India easier.

There are various forms of business entities in India:

- 1) Private Ltd Company
 - 2) Public Ltd Company
 - 3) Unlimited Company
 - 4) Sole proprietorship
 - 5) Limited Liability Partnership(LLP)
 - 6) Liaison Office
 - 7) Branch Office
 - 8) Project Office
 - 9) Subsidiary Company
 - 10) Joint Hindu Family business
 - 11) Partnership
 - 12) Cooperatives
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Private Ltd Company

A private company has the following features:

1. Restricts the right of the shareholders to transfer their shares.
2. Has a minimum of 2 and maximum of 50 members.
3. does not invite public to subscribe to its share capital
4. Must have a minimum paid up capital of Rs. 1 lakh or such a higher amount which may be prescribed from time to time.

Public Ltd Company:

A public Ltd company has the following characteristics:

1. It allows the shareholders to transfer their shares.
2. Has a minimum of 7 members, and for maximum there is no limit.
3. it invites the general public to subscribe to its shares
4. Must have a minimum paid up capital of Rs 5 lakh or such a higher amount as may be prescribed from time to time.

Unlimited Company

Unlimited Company is a form of business organization under which the liability of all its members are unlimited. The personal assets of the members can be used to settle the debts. It can at any time reregister as a limited company under section 32 of the Companies Act.

Sole proprietorship

Sole proprietorship is a form of business entity where a single individual handles the entire business organization. He is the sole recipient of all profits and bearer of all losses. There is no separate law that governs sole proprietorship.

Limited Liability Partnership

Under LLP (Limited Liability Partnership) the liability of at least one member is unlimited whereas rest all the other members have limited liability, limited to the extent of their contribution in the LLP. Unlike general partnership this kind of partnership does not get terminated by the death or insolvency of the limited partners. It is governed by Limited Liability Partnership Act of 2008.

Liaison Office

Liaison Office is a kind of representative office which is set up to understand the business and investment environment. It is barred from taking up any commercial/industrial/trading activity and its role is limited to aggregation of information and promotion of exports/imports. It has to maintain itself out of inward remittances received from the parent company.

Branch Office

Foreign companies which are into manufacturing and trading activities abroad are permitted to set up branch offices in India for various purposes like rendering of professional and consultancy services, export/import of goods etc. Branch offices are not permitted to carry out manufacturing activities on their own. RBI is the statutory body that grants permission to foreign companies for setting up branch offices in India.

Project Office

Foreign companies can set up temporary project offices in India for carrying out activities related to that specific project.

Subsidiary Company

In India, the sectors where 100% foreign direct investment is permitted, in those sectors, foreign companies can set up wholly owned subsidiary. The wholly owned subsidiary can be either of the following business entities:

- a) Private Ltd Company
- b) Public Ltd Company
- c) Unlimited Company
- d) Sole Proprietorship

Joint Hindu Family

Joint Hindu Family is a form of business organization wherein the members of a family can only own and manage the business. It is governed by Hindu Law.

Partnership

Partnership is “the relation between persons who have agreed to share the profits of the business carried on by all or any one of them acting for all”. It is governed by the Indian Partnership Act 1932.

Cooperatives

Cooperatives is a form of voluntary organization, wherein the members work together for the promotion of the interests of its members. There is no restriction to the entry or exit of any member. It is governed by Cooperative Societies Act 1912.

Regulatory requirements and statutory bodies involved in starting a business

Companies Act 1956/2013

It is “an act to consolidate and amend the law relating to companies and certain other associations”. It regulates the formation, functioning, the winding up of the companies and also the relationship between the company, government and public.

Ministry of Corporate Affairs

It regulates the Companies Act 1956/2013 and other allied acts.

The ministry governs the following acts:

1. The Partnership Act 1932
2. The Chartered Accountants Act 1949
3. Companies Fund Act 1951
4. The Companies Act 1956/2013
5. The Chartered Secretaries Act 1980
6. The Monopolies and Restrictive Trade Practices Act in 1969
7. The Companies Amendment Act 2006

Office of Registrar of Companies

The responsibility of the Registrar of Companies is to register the companies for their respective states and Union Territories and ensuring that the companies abide to the legal requirements of the Companies Act.

The Ministry of Environment and Forest

It is the major administrative entity for:

1. Governing and ensuring environmental protection
2. Designing the environmental policy framework in India
3. Undertaking conservation and survey of flora, fauna, forest and wildlife

The Environment Protection Act

It is an all inclusive legislation which affirms the Central Government to protect and improve environmental quality control and reduce pollution from all sources. Under the Act, the Central Government shall have the power to take all such actions which it considers necessary or appropriate for the purpose of protecting and improving the quality of environment and for abating environmental pollution.

RBI

It regulates and controls the monetary system of the country.

SEBI

It is a statutory body that controls the Indian capital market.

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PROCEDURE FOR INCORPORATION OF PRIVATE LIMITED COMPANY UNDER COMPANIES ACT 2013

Step 1: Obtain Digital Signature of all Directors [Time involved – 3 working days]

All the Directors of proposed company is required to Obtain a Digital Signature Certificate from authorized DSC issuing authority in order to sign the Eforms related to incorporation like form INC.1 and other documents.

Step 2: Obtain Director Identification Number [Time involved – 1 working day]

Every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number in form DIR.3 to the Central Government in such form and manner and along with such fees as may be prescribed. Therefore, before submission of eForm INC.1 for availability of name, all then directors of the proposed company must ensure that they are having DIN and if they are not having DIN, it should be first obtained.

Step 3: Name availability for proposed company [Time involved – 6-7 working days]

Application for the reservation/availability of name shall be in Form no. INC.1 along with prescribed fee of Rs. 1,000/-. Selection of Company name should be in accordance with name guidelines given in Rule8 of Companies (Incorporation) Rules, 2014.

After approval of name, ROC will issue a Name availability letter w.r.t. approval for availability of name for a proposed company. The name will be valid for a period of 60 days from the date on which the application for Reservation was made.

Note: The applicant cannot start business or enter into any agreement, contract, etc. in the name of the proposed company until and unless a certificate of registration is issued by the registrar of companies as per the provisions of the Companies Act, 2013 and the rules made there under.

Step 4: Preparation of the Memorandum of Association (MOA) and Articles of Association (AOA) and applying for Certificate of Incorporation [Time involved – 6-7 working days]

Drafting of the MOA and AOA is generally a step subsequent to the availability of name made by the Registrar. It should be noted that the main objects should match with the objects shown in e Form INC.1. These two documents are basically the charter and internal rules and regulations of the company. Therefore, it must be drafted with utmost care and with the advice of the experts and the other object clause should be drafted in a very broader sense.

As per Rule12 of Companies (Incorporation) Rules, 2014, application for incorporation of a private and Public company, with the Registrar, within whose jurisdiction the registered office of the company is proposed to be situated, shall be filed in Form no. INC 7 along with Form no. INC.22 for situation of registered office of the Company, (as the case selected in form no. INC 7) and DIR 12 with the following attachments:

- a) Memorandum of Association as per Table A of schedule I
- b) Articles of association as per Table F of Schedule I
- c) Declaration in Form No. INC8 by Professionals.
- d) Affidavit from each of the subscriber to the Memorandum in Form No. INC9 and from persons named as the first directors, if any, in the articles.
- e) Proof of residential address (the address for correspondence till its registered office is established;)
- f) For verification of signature of subscribers [Pursuant to rule 16 (1)(q) of companies (Incorporation) Rules, 2014 in form no. INC 10
- g) NOC in case there is change in the promoters (first subscribers to Memorandum of Association)
- h) Proof of Identity (the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum and the particulars of the persons mentioned in the articles as the first directors of the company along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed;)
- i) Entrenched Articles of Association, if any.
- j) PAN Card (in case of Indian national)
- k) Copy of certificate of incorporation of the foreign body corporate and proof of registered office address
- l) Certified true copy of board resolution/consent by all the partners authorizing to subscribe to MOA
- m) Optional attachment, if any

Form no. DIR.12:

As per Rule 17 of Companies (Incorporation) Rules, 2014, the particulars of each person mentioned in the articles as first director of the company and his interest in other firms or bodies corporate along with his consent to act as director of the company shall be filed in Form No. DIR12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014. Along with the above details in the Form no. INC.7, Form no. DIR 12 to be filed with the following attachments:

- Declaration by first director in Form INC9 is mandatory to attach in case of a new company.
- Declaration of the appointee Director, in Form DIR2;
- Interest in other entities of director it is mandatory to attach in case number of entities entered is more than one.
- Optional attachment(s), if any

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Form no. INC 22:

As per Rule 25 of verification of registered office Section 12(2) of the Companies Act, 2013 states that the Company shall furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed. Section 12(4) of the Companies Act, 2013 states that Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within fifteen days of the change, who shall record the same. Along with the above details in Form No. INC.7, Form no.DIR.22 to be filed.

If after filling the Requisite forms for incorporation with the Registrar of Companies along with fees, ROC is satisfied with the contents of the documents filed, ROC will issue the Certificate of Incorporation in Form no.INC 11.

Declaration at the time of commencement of business

As per Rule24 of Companies (Incorporation) Rules, 2014, the declaration filed by a director shall be in Form No. INC.21 along with the fee as and the contents of the form shall be verified by a Company Secretary in practice or a Chartered Accountant or a Cost Accountant in practice:

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PROCEDURE FOR INCORPORATION OF LIMITED LIABILITY PARTNERSHIP (LLP)

Following are Step wise Registration process for incorporation of Limited Liability Partnership (LLP)

Step 1: Obtain Digital Signature of all Designated Partners [Time involved – 3 working days]

Partner/Designated partner of LLP/proposed LLP, whose signatures are to be affixed on the e forms has to obtain class 2 Digital Signature Certificate (DSC) from any authorized certifying agency. Digital Signature of Designated Partner need to be registered on the website of Ministry of Corporate Affairs.

Step 2: Obtain Designated Identification Number (DIN) [Time involved – 1 working day]

Every individual intending to be appointed as designated partner of a limited liability partnership has to make an application for allotment of Director Identification Number. MCA has vide its notification amended the limited liability partnership rules, 2009. Now instead of DPIN, every partner who will be appointed as designated partner will need to apply for DIN and not DPIN. All the necessary documents shall need to be scanned and attached in the eForm and submitted online. Thereafter, system will generate a provisional DIN.

Step 3: Filing of Form 1 for Name Availability [Time involved – 6-7 working days]

Application for name availability shall be made in Form 1. Applicant need to provide 4-6 proposed name of LLP and any one name at the discretion of ROC will be approved. Please note that significance of each word in the proposed name has to be explained to ROC and also how the name reflects nature of business proposed to be undertaken by LLP

Step 4: Filing of Form 2 for Incorporation and Subscription Document Mention Total Number of Partners and Designated Partners. [Time involved – 6-7 working days]

Once name is approved, we need to apply for incorporation certificate by filing Form 2. Following documents need to be attached along with Form 2:

- a) Subscriber's sheet duly certified by CA/CS etc
- b) Proof of registered office of LLP along with NOC from landlord/owner
- c) Copy of electricity bill
- d) Consent of Designated partners

In case the name includes banking, insurance, venture capital, mutual fund, stock exchange, Chartered Accountant, Company Secretary, Cost Accountant, Advocate, CA, CS, CWA, asset management, non banking financial, architect, merchant bankers, chit fund, securitization and reconstruction etc, a copy of the in principle approval of the regulatory authority or council governing concerned profession should be attached with Form 2

On submission of complete documents the Registrar after satisfying himself about compliance with relevant provisions of the LLP Act will register the LLP and will issue a certificate of incorporation.

Step 5: Drafting of LLP Agreement [Time involved – 3-4 working days]

Once LLP is registered, an LLP agreement need to be filed within 30 days of registration in Form No. 3.

The following clauses are important to be incorporated in agreement:

- a) Name, Object and Register Office of LLP
- b) The initial Contribution of the LLP by Partners of valuation of Non Monetary contribution
- c) The net profits or losses sharing ratios
- d) Detail of Designated Partners
- e) Interest payable on Capital Loan prescribed u/s. 40(b) of the Income tax Act, 1961
- f) Remuneration payable to the working partners or as prescribed u/s. 40(b) of the Income tax Act, 1961
- g) Mode of operation of Bank Accounts
- h) Maintenance of Book of Accounts
- i) Appointment of arbitrator
- j) Rights and Duties of Partners
- k) Rights and Duties of Designated Partners
- l) Indemnity clause
- m) Goodwill clause
- n) for change in name
- o) Procedure to appoint Auditor
- p) Admission of New Partner
- q) Meeting
- r) Cessation of Existing Partners
- s) Winding up of LLP

- t) Amendments of LLP
- u) Extent of Liability of LLP
- v) Liability of Partners in LLP
- w) Ancillary or other business carried over by LLP

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About Us

We are a partnership CA firm of repute in New Delhi established in year 2003 with extensive cross functional experience of dealing with both multinational and domestic entities. We provide specialized services relating to International and domestic Taxation, Regulatory (ROC and RBI) and Assurance. The firm has been founded by Mr. Anil Agrawal, FCA who is alumni of Ernst & Young and has more than 12 years of experience in the fields of International Taxation and Regulatory matters. Our client comprises of Subsidiaries of foreign cos, Joint Ventures, Indian Corporates, LLPs, Firms, NGOs & HNI's.

We have dedicated team of Chartered Accountants, Company Secretary, Semi qualified and adequate support staff who are competent people with sharp insight and unique skill set. Our Current area of operation is NCR region comprising of Delhi, Gurgaon, Manesar and Noida. Our present multinational clientele includes clients from Turkey, USA, Australia, Dubai, Japan and Netherland.

OUR SERVICE AREA

- **Income Tax Assessment & Litigation**
- **Transfer Pricing Audit/Assessment & Documentation**
- **International & Domestic Tax Advisory & Compliance**
- **Assurance/ Auditing Service**
- **Expatriate Tax/ NRI Tax Advisory & Compliance**

OUR SERVICE AREA

- **Outsourcing of Accounting & Payroll**
- **DVAT/CST Advisory & Compliance**
- **Service Tax Advisory & Compliance**
- **Valuation Services**
- **FEMA/RBI regulations advisory & compliance**
- **Company law Advisory & Compliance**

CONTACT US



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