LEGAL ENTITIES IN INDIA

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Scope of the book

Choosing a form of a business entity is crucial to a successful organization. The choice of a business entity will depend on its objects, benefits, size of the business and many other factors. This book provides basic information and knowledge about some common business entities in India. This book contains the meaning, advantages, disadvantages, annual legal compliances and formation of the following business entities:

1. **Sole Proprietorship**
2. **Partnership Firm**
3. **Limited Liability Partnership (LLP)**
4. **Companies**
    a. **Private Companies**
    b. **Public Company**
    c. **One Person Company**

In this scenario, with so many options of the types of business entities and so many different rules applicable to each of them, it is important to know and grasp the benefits and drawbacks of each type of business entity and the laws governing them in order to commence and carry on a successful business.

Therefore, with the objective to provide the basic working and understanding of the various procedural requirements involved in the setting up of different types of business entities, this book is published for the benefit of its readers.

This book is a preliminary guide providing an overview on the subject, however it is prudent and necessary to consult and take professional assistance before venturing into or adopting any of the options discussed here. Although due care has been taken in publishing this book, the possibility of errors, omissions and /or discrepancies cannot be ruled out. This publication is released with an understanding that the Idaarah Tijaarat Raabehah shall not be responsible for any errors, omissions and /or discrepancies or any action taken on that behalf.

Target Audience

- Mumineen who want to commence their business in India
- Mumineen who have existing businesses in India and want to convert their business into a different entity
- Mumineen Students

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Do You Want To Start Your Own Business In India **BUT HAVE NO IDEA WHICH ENTITY IS BEST FOR YOU?**

The world is booming with business opportunities and economic development. The business world awaits newcomers and their innovative ideas that will benefit the society, the country, and eventually the world. However, the legal aspects of building the infrastructure of any business are often forgotten or disregarded in the midst of the struggle. The laws of a country are the key to the survival and consistency of any and every business. Love for the country and loyalty towards one's home ground is elucidated by Rasulullah[SAW] as he states:

حُبُّ الوَطَنِ مِنَ الإِيمَانِ

'Love for one's country is integral to faith'

Furthermore, al-Dāʿi al-Ajal Syedna Taher Saifuddin[RA] further expounds this emotion of loyalty and love of one's country as he states:

"اِنَّ وَفَاءَ الإنسَانِ للدَّولَةِ التي هُوَ وَادِعٌ تحت
عَلَمِهَا مُستَمتِعٌ بِنِعمِها فَرضُ الإنسَانِيَة"

"Allegiance to the country under whose flag a person prospers and from whose resources he benefits is obligated by his humanity." [1]

Likewise, al-Dāʿi al-Ajal Syedna Aali Qadr Mufaddal Saifuddin[TUS] emphasizes on patriotism and allegiance towards one's country and the necessity to abide by its laws in one of his *bayān mubārak*:

"تميں جرِ بهي گام ما رهتا هوئ اهنا وفادار رهجو، انے مُلك ني ترقي ما
حصّة ليجو، جرِ بهي مُلك ما رهتا هوئ، جرِ وهاں نا قوانين هوئ ـ
اپنے اهنے برابر پالوو جوئيے"

"Be loyal to the country in which you reside and actively participate in the nation's development. Abide by the laws and regulations of the country you reside in." [2]

We, as the Dawoodi Bohra community, are prominently recognized as traders. Allah Taʿālā has bestowed immense bounties and boundless benefits in business; there are no limits to its potential. Mumineen carry the faith in their hearts

[1] Al-Dāʿi al-Ajal Syedna Mohammed Burhanuddin[R.A], *Rawḍat Hidāyāt* –Volume 2, pg 302

[2] Refer: Al-Dāʿi al-Ajal Syedna Aali Qadr Mufaddal Saifuddin[TUS], Uganda Safar Mubrak-1439H

[3] Refer: Al-Dāʿi al-Ajal Syedna Taher Saifuddin[RA], Ṯamarāt ʿUlūm al-Hudā

"وليعلموا ان التجارة الدنيوية التي يكتسبون بها ارزاقهم، هي ايضا عبادة يرضون بها رزاقهم، فليتوقعوا ثواب ما يلحقهم من الكدّ والتعب في التجارة، اذا واقفوا الشريعة في بيعهم وشرائهم وكرائهم والإجارة، وغير ذلك من احكام الاخذ والإعطاء، والقضاء والإقتضاء مما به يتعاملون،"

that conducting business in this world for earning a *halāl* livelihood is not merely an act of the temporal world, rather, it is considered to be a form of *ʿibādat* which pleases Allah Taʿālā and grants divine rewards of *hajj* and *ʿumrah* when practiced in adherence to Sharīʿat Ġarrāʾ[3]. 'It is obligatory that one should conduct his business according to the laws and principles of Sharīʿat Ġarrāʾ, which mainly comprises of understanding permissible and prohibited business activities and maintaining faith in Allah Taʿālā which is ultimately the economic system of Islam.'[4]

Before engaging in any economic activity, a *muʾmin* needs to gain the basic knowledge about the principles of business in Sharīʿat Mohammmediyah - the guiding principles that are based on the tenets and canons found in *bāb al-buyūʿ* of Daʿāʾim al-Islam (Vol.2) on ethical behaviour in economic activities along with adhering to the laws of one's country and proper documentation.

Thus, a *muʾmin* should first seek *ʿilm al-fiqh* (knowledge) and later engage in trades and businesses as al-Dāʿi al-Ajal Syedna al-Qadi al-Noman[RA] illustrates in Daʿāʾim al-Islam in the *bāb al-buyūʿ* (chapter of businesses) that one should always learn and seek perfection in *fiqh* before engaging in any business activity as stated by Amirul Mumineen[AS] quite distinctly:

الفِقْهُ ثُمَّ الْمَتْجَرُ

A person approached Amirul Mumineen[AS] seeking his advice for trade. Amirul Mumineen[AS] asked him: have you acquired fiqh (knowledge) of deen? The person answered: I have some knowledge about it. Amirul Mumineen[AS] stated: First understand the law of Sharīʿat and then engage in trade. A person who buys or sells without seeking knowledge of *halāl* and harām (practices) will inevitably become mired *in ribā* (interest) and will keep drenching in it.[5]

Awliyāʾullah's[AS] divine teachings guide mumineen towards the concept that Business Planning is a necessary prerequisite according to the trends of the current world[6] which is one of the many reasons that led to creating a form of partnership deed under the commandments of al-Dāʿi al-Ajal Syedna Aali Qadr Mufaddal Saifuddin[TUS], that adheres to the principles of Sharīʿat Mohammediyah. He elaborates the necessity and aim that is encompassed in creating this partnership deed in one his sermons:

"اٰپس ما partnership شريعة نا قانون موافق هوئ، هر ايك party ما
جرِ بهي اتفاق تهائي يرِ عن تراض - خوشي سي هوئ، برابر legal
documents تيار تهائ، تاكرِ اٰپس ما محبة سي unity نا ساتهے زيادة وپار
تهائ، انے شيطان نا وَساوِس سي دورِ رهے."

"Partnerships should be in accordance with the canons of Shari'at, there should be a mutual understanding between both the parties, legal documents should be prepared in order to maintain unity and achieve growth in the business, and to abstain from the insinuation of Satan."[7]

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[4] Al-Dāʿi al-Ajal Syedna Aali Qadr Mufaddal Saifuddin[TUS], *Multaqā Safīnat al-Barakāt*, Pg 576-579

"وپار كرو، "واسترزق ربك" ..حرام انے حلال نے سمجهوو انے پابندي كروو لازم چهے، يرِ اسلام نو مكمل اقتصادي نظام انے فلسفة چهے"

[5] *Al-Dāʿi al-Ajal Syedna al-Qadi al-Noman[Q.R], Daʿāʾim al-Islam, volume 2,(Beirut: Moassasah al aalami lilmatbuaat,2005)*

[6] *Refer: Al-Dāʿi al-Ajal Syedna Taher Saifuddin[RA],* Asheʿat al-Faiḍ al-Azali

"ويجب على المؤمنين الاسرياء ان يمهدوا بمتاجرهم تمهيدات بليغة على مقتضى تجارة ازمانهم"

[7] Al-Dāʿi al-Ajal Syedna Aali Qadr Mufaddal Saifuddin[TUS], Dar es Salaam-1438H

Choosing a form of BUSINESS ENTITY

There are several factors to be considered while selecting an appropriate form of business entity. Some are as follows:

1. Nature of Business activity.
2. Scale of Operations.
3. Number of participants/owners:
4. Capital Requirements.
5. Degree of Risk and Liability.
6. Division of Profit.
7. Tax Planning.

Choosing a Form of Business Entity

Choosing the correct form of a business entity is crucial to a successful organization. The choice of a business entity will depend on the object, nature and size of the business which varies on a case to case basis and will also depend upon the business owners' ability to take risks and expand one's business. There are several factors to be considered while selecting an appropriate form of business entity. Some are as follows:

01. Nature of Business Activity

This is an important factor as one's business activity provides a clear vision to choose a suitable business entity.

02. Scale of Operations

The size of the business operations is another major aspect that influences one's choice of a business entity.

Scale of Operations		
	Small →	Sole Proprietorship or One Person Company
→	Medium →	Partnership or LLP
	Large →	Company

03. Number of participants/owners:

Each form of entity has its restrictions in the terms of number of people that can participate in the entity. Hence based on number of people wanting to participate in the entity will also decide which form of entity to be opted for. For e.g. in case of a partnership there is a cap on the number of partners.

04. Capital requirements

The quantum of investment will also influence the decision to choose a business entity. Enterprises which require small or medium investments will opt for Sole Proprietorship or Partnership or may be LLP. Enterprises requiring huge investments (like iron and steel plants, large scale infrastructure projects, etc) should be organised as Companies. The mode of investment i.e. self-funded or borrowed funds, will also determine one's choice of the business entity.

05. Degree of risk and liability

The element of risk and the willingness of the owners to bear it is an important consideration in the selection of a form of business organisation. The amount of risk involved in a business depends, among other factors like, on the nature and size of business. Smaller the size of business, smaller the amount of risk.

A sole proprietor is personally liable for all the debts of the business to the extent of his entire property. Likewise, in partnership, partners are individually and jointly responsible for the liabilities of the partnership firm.

Companies and LLPs have a real advantage as far as risk management is concerned over the other forms of business organisation. Creditors can enforce payment of their claims only to the limit of the company's and LLP's assets. Thus, while a shareholder/member/partner may lose the entire money he invests into or has agreed to invest into the company or the LLP, he cannot be forced to contribute additional funds from his other assets to satisfy the business debts of the company or LLP.

06. Division of Profit

Profit is the guiding force of any business and it has a tremendous influence on the selection of a particular form of business organisation. The type of business entity would depend on the number of business owners intending to share the profits.

07. Tax Planning

The impact of tax is different on various business entities. One has to choose the correct business entity for effective tax planning.

The consideration of the various factors listed above clearly shows that:

(a) These factors do not exist in isolation but are interdependent and all these factors are important in their own right. Nevertheless, the factors of nature of business and scale of operations, number of owners involved, are the basic ones in the selection of a form of ownership for setting up of a business organisation.

All other factors are dependent on these basic considerations. For instance, the financial requirements of a business will depend on the nature of business and the scale of operations planned. To take another example, if a businessman wants to individually set up a trading enterprise (say, a retail store) on a small scale, his financial requirements will be small and he can choose a sole proprietorship, however if two or more persons are involved, then the choice is between a partnership, LLP or a company.

(b) The various factors listed above are only a few indicators, and in no case do they constitute an exhaustive list. Depending upon the requirements of the business, the demands of the situation and sometimes even the personal preference of the owner/s, a choice of a business entity is made.

(c) The problem in choosing the best form of a business organisation is one of analysing and weighing relative advantages and disadvantages to find the one that will yield the highest net advantage, for that weight may be assigned to different factors depending upon their importance in each form of organisation and the type of organisation that yields the maximum advantage may be ultimately selected.

The Types of LEGAL ENTITIES

Below are the Types of Legal Entities, Choose Your Entity Wisely:

1. **Sole Proprietorship**
2. **Partnership Firm**
3. **Limited Liability Partnership (LLP)**
4. **Private Companies**
5. **Public Companies**
6. **One Person Company** *(to be formed as Private Limited Company)*

Sole Proprietorship

01. What is Sole Proprietorship?

Proprietorship in India is a type of unregistered business entity that is owned, managed and controlled by one person. A sole proprietorship concern is synonymous with the sole proprietor. The micro and small businesses that are operating in the unorganized sector prefer operating as a proprietorship concern. It is very easy to start a sole proprietorship in India as it has very little regulatory compliance for setting up. Proprietorship is ideal for the entrepreneurs who are getting into the business on a smaller scale and individually. The liability of the sole proprietor is unlimited and there is no perpetual existence. This means that the entire burden will fall on the shoulders of a single owner, and if that individual passes away, the business would end as well. The sole proprietorship is completely under the control of the proprietor.

To start any business as a sole proprietorship concern, few licenses and permits are required.

02. Registration

As mentioned earlier, a Sole Proprietorship concern does not require any registration and is not governed by any special legislation. Nonetheless, its existence is established by obtaining registration with income tax authorities and opening a bank account in the name of the proprietorship.

Mandatory Requirements to Start a Sole Proprietorship

- PAN card
- Bank Account

03. Advantage:

01 Complete Control

Proprietorship concerns are owned by just one person. The owner has full authority and can make all the decisions.

02 Easy Setup

As no registration is required to start a sole proprietorship, it can be created and can commence operations immediately.

03 Easy Compliance

The significant advantage of a Proprietorship is that it doesn't require any additional compliance in most cases.

In most cases, the PAN (issued by Income Tax Authorities) of the Proprietor and the Proprietorship are the same. Hence, in most cases, only income tax returns in the form of ITR3 are required to be filed every year.

04 Dissolution

If an individual has to cease operation, there is no legal compliance for closure of a sole proprietorship concern.

05 Requires less investment

Starting a sole proprietorship in India requires very little expenses. Hence, anyone who wants to start a business individually and immediately can opt for a sole proprietorship concern.

06 Information is not disclosed in public

The financial reports of a sole proprietorship are not public like that of a LLPs, where the financial statements are required to be made public by law.

04. Legal Compliances

Sole Proprietor is formed, managed and controlled by one individual. No deed or agreement is required to constitute a Sole Proprietorship. However, in actual practice and keeping in mind the nature of the business activity various approvals, licenses and registrations may be required under the following enactments as prevailing in the various States or under Central legislations, such as

1. ***Shops and Commercial Establishments Act (State specific)***
2. ***Law relating to Professional Tax (State specific)***
3. ***Trade Licence (State Specific)***
4. ***Registration under Micro, Small and Medium Enterprises Development Act, 2006.***
5. ***Registration as a Small Scale Industry (State specific)***
6. ***Few states like Rajasthan have provided details of approvals required for doing business in the state.***
   https://swcs.rajasthan.gov.in/ApprovalsList.aspx

The proprietorship concerns are required to file income tax returns, however in most cases the returns of an individual and his proprietorship concern are merged

Under the current provisions of the Income Tax Act, all the proprietors below the age of 60 will file ITR only if the total income exceeds Rs. 2.5 lakhs. If the proprietor is over 60 years and below 80 years, he should file ITR only if his income exceeds Rs. 3 lakhs. Proprietors over the age of 80 years are required to file income tax if the income exceeds Rs. 5 lakhs.

Partnership Firm

01. What is Partnership Firm?

Partnership firm is required when two or more parties sign a formal agreement to commence, manage and operate a business and share the profits and losses. The Partnership Act has been in existence in India since 1932.

02. Types of Partnership

Types of Partnership

- Partnership at will
- Particular Partnership
- Partnership for a fixed duration

According to the nature of agreement among partners, there can be three types of partnership as follows:

01 Partnership At-will

Such a partnership exists on the will of the partners. That is, it can be brought to an end whenever any partner gives notice of his intention to do so. In such case a firm will have to be dissolved.

Whereas in a Shariat-Compliant Partnership, partners are bound to fix a duration for their partnership despite having an option to exit the partnership at will by giving a notice according to the notice period decided mutually among partners.

02 Particular Partnership

A particular partnership is formed for undertaking a particular venture. It comes to an end automatically with completion of the venture.

03 Partnership for a fixed duration

Such partnership is for a fixed period of time say 2 years, 5 years or any other duration.

Partnership Firms also can be classified into two types

Registered Partnership **Unregistered Partnership Firms.**

There are no penalties for the non-registration of the partnership firms, however, in certain states like Maharashtra, registration of a partnership firm is mandatory. A partnership firm can be registered only after formation. Unregistered partnership firms have been denied certain rights in Section 69 of the Partnership Act.

Following are the disadvantages of an unregistered firm:

- An unregistered partnership cannot recover any sum due from third parties if the amount in question is more than Rs. 100/-
- The partners of an unregistered firm cannot file suit against another partner of the firm or the firm itself.
- An unregistered partnership firm cannot claim a set-off in a suit filed against the firm.

Hence, it is strongly recommended to register the partnership firm with the Registrar of Firms (ROF). An unregistered firm can be registered at any time. Every state government has established the office of the Registrar of Firms, which is vested with the power to register a firm, issue the Certificate of Registration of the Firm and a copy of the extracts of the register of firms where the partnership name has been entered.

03. Types of Partners

01 Active Partners (also referred as working partner)

Partners who take active part in the conduct of day-to-day business of the firm are called active partners. These partners carry on business on behalf of the other partners.

02 Sleeping or dormant partners

Sleeping or dormant partners are those who do not take active part in the management of the business. Such partners only contribute capital in the firm and are bound by the activities of other partners. However, they share in the profits and losses of the business.

03 Others

Active and sleeping partners are as a matter of fact, the full-fledged partners i.e. they share the profits and losses of the business and are liable for its dues. However, in addition to a share in the profits and losses, active partners can receive remuneration from the firm. There are other types of partners also who may be associated with partnership directly or indirectly. They are not full-fledged partners; such partners may include the following:

(a) Nominal Partners

Nominal partners are those who do not have interest in the business but lend their name to the firm. They do not make any capital contribution, and are not entitled to take part in management, but are liable, like other partners, to third parties. Such partners generally have a pecuniary interest (like a share in the profits) in lending their name to a firm. However, in certain cases they may not have any pecuniary interest in doing so. For example, a reputed industrialist may, without any profit motive lend his name to a firm run by his family members.

(b) Partners by holding out

If a person by his words or conduct holds out to another that he is a partner, he will be prevented from denying that he is a partner. The person who thus becomes liable to third parties to pay the debts of the firm is known as a partner by holding out.

Al Dai al-Ajal Syedna Qadi Noman bin Mohammed QR have described 3 types of partners, one who is an investing partner, second who is a working partner and third who is investing as well as a working partner. While he has also stated than Aimmat Tahereen have disliked investing through عروض ; assets, and have preferred to invest by means of money.

03. Advantages of Partnership Firm

The following are some of the major advantages of a partnership firm:

01 Easy to Start

Partnership firms are easy to start. The only requirement for starting a partnership firm in most cases is a partnership deed. Hence, a partnership can be started on the same day.

02 Decision Making

Decision making is the crux of any organization. Decision making in a partnership firm could be faster as there is no concept of the passing of resolutions. The partners in a partnership firm enjoy a wide range of powers and in most cases can undertake any transaction on behalf of the partnership firm.

03 Raising of Funds

Multiple partners make the contribution among the partners more feasible. Moreover, investors also view a partnership more favourably while investing instead of a proprietorship firm.

04 Sense of Ownership

Every partner owns and manages the activities of the firm. Their tasks might be varied in nature but people in a partnership firm are united for a common cause. Ownership creates a higher sense of accountability, which paves the way for a diligent workforce.

04. Disadvantages of Partnership Firm

The following are some of the major disadvantages of a partnership firm:

01 Unlimited Liability

Every partner is personally liable for the losses of a partnership firm. The liability created by any partner in the partnership firm will make all the partners personally liable. To limit the liability of partners in a partnership firm, the LLP structure was created by the Government.

02 Number of Members

The maximum number of members a partnership firm can have is restricted to 20. In case of an LLP, there is no restriction on the maximum number of partners.

05. Registration

A partnership firm can be registered whether at the time of its formation or even subsequently. One needs to file an application with the Registrar of Firms of the area in which the principal place of business is located.

01 Application for registration of partnership should include the following information namely, name of the firm, name of the place where the business is carried on, names of any other place where business is carried on, date of partners joining the firm, full name and permanent address of partners and duration of the firm. The Application should be duly signed by all the partners of the firm or by their duly authorised agents.

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02 Every partner needs to verify and sign the application.

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03 Ensure that the following documents and prescribed fees are enclosed with the registration application:

- Application for Registration in the prescribed Form -1
- Duly filled Affidavit
- Certified copy of the Partnership deed (The deed so created by the partners should be on a stamp paper in accordance with the Indian Stamp Act/ stamp paper as applicable in the State where the Partnership Deed is executed)
- Proof of ownership of the place of business or the rental/lease agreement thereof.

The application for registration of partnership firm is filed with the Registrar of Firms having jurisdiction over the place of business of the partnership firm. After receipt of the application complete in all aspects with all required documents the Registrar of Firms issues the Certificate of Registration of Firm.

The registration procedure set out above is a standard format, however, it may differ from state to state.

06. Minimum Requirements of Partnership Firm

01 Minimum Two Person

Minimum of two persons are required to become partners of the firm. However, maximum 20 partners are allowed in a firm (10 in banking business). The partners must come together to carry on any legal business with the motive of earning profits.

02 No FDI is Allowed

Foreign investment in a partnership firm is not permitted. In the firm, only an Indian citizen can become a partner and start the partnership firm.

03 No Minimum Capital

No minimum capital is prescribed; it must be based on the business requirements. The Stamp Duty on the deed is based on the capital of the firm.

04 Unique Name

Name of the firm should be unique, and it must not be same or similar to the name of any existing trademark which is registered or applied.

07. Other Legal Compliance for Partnership Firm

01 PAN Number Allotment

It is important to note that registration with the Registrar of Firms is not the same as the registration with the Income Tax Department. Income Tax Return is necessary to be submitted at the end of the financial year and within due date of filing. However, unlike a Limited Company or LLP, there is no need to file the annual return for a partnership firm.

It is necessary for all the firms to apply for registration with the Income Tax Department and obtain a PAN Card. The PAN is a ten-digit alphanumeric number allotted by the Income Tax Department. The partnership firm needs to make an application in the prescribed form before the Income Tax Department for the allotment of PAN. The acknowledgement of the application for the partnership firm is received within the same day; however, the PAN is allotted within a week's time.

02 TAN Number Allotment

The TAN is a number allotted for TDS Compliance. TAN number is a permanent number allotted to business for complying with the provisions of withholding tax. One is required to deduct TDS while making payments; hence the next step is to obtain TAN number, which is mandatory to submit TDS Returns.

Limited Liability Partnership (LLP)

01. What is Limited Liability Partnership (LLP)?

Limited Liability Partnership has become an alternative form of business that provides the advantages of a Company and the flexibility of a Partnership firm in a single organization. The concept of LLP in India was introduced by the Limited Liability Partnership Act of 2008. This unique hybrid is suitable for setting small, medium-sized businesses.

The LLP is a separate legal entity which is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP. That means Creditor cannot claim Partners personal assets to recover their dues.

It is very easy to manage and incorporate a Limited Liability Partnership in India. To register an LLP minimum of two partners are required, there is no upper limit in the number of partners. The LLP agreement should state the rights and the duties of the Partners. In a LLP, one partner is not responsible for the misconduct and negligence of the other partner(s). However, the partners are responsible for the compliances and all the provisions that are specified in the LLP agreement.

02. Advantages of LLP

The following are some of the major advantages of LLP:

01 No requirement of minimum contribution

There is no minimum capital requirement in LLP. An LLP can be formed with the least possible capital. Moreover, the contribution of a partner can consist of tangible, movable, immovable or intangible property or other benefits to the LLP.

02 No limit on owners of the business

An LLP requires a minimum of 2 partners while there is no limit on the maximum number of partners. This is in contrast to a private limited company wherein there is a cap of 200 members.

03 Lower registration cost

The cost of registering LLP is affordable.

04 100%Foreign Direct Investment (FDI) allowed

FDI is permitted under the automatic route in LLPs operating in sectors / activities where FDI is allowed through the automatic route and there are no FDI linked performance conditions. Onus shall be on the Indian company / LLP accepting downstream investment to ensure compliance with the above conditions

05 No requirement of compulsory Audit

A Limited Liability Partnership is required to get tax audit done only in the case that: -

The contributions of the LLP exceed Rs. 25 Lakhs, or
The annual turnover of the LLP exceeds Rs. 40 Lakhs

06 Taxation Aspect on LLP

For the purpose of income tax, LLP is treated on a par with partnership firms. LLP is liable for payment of tax on its income. Share of profits distributed amongst the partners in a LLP is not liable to tax in the hands of its partners. Thus, there is no additional burden of tax in the hands of the partner. Section 40(b): Any payment of salary, bonus, commission or remuneration allowed as deduction.

03. Disadvantages of LLP

The following are some of the major disadvantages of a LLP:

01 Penalty for Non-Compliance

Even if an LLP does not have any activity, it is required to file an income tax return and MCA annual return each year. In case an LLP fails to file Form 8 or Form 11 (LLP Annual Filing), a penalty of Rs.100 per day, per form is applicable. There is no cap on the penalty and it would accumulate over the years.

In case of a proprietorship or partnership firm, there is no requirement for filing an annual return. Hence, only penalty under the Income Tax Act would be applicable.

02 Inability to Have Equity Investment

An LLP does not have the concept of equity or shareholding like a company. This means LLP cannot offer shares for investment. Thus, most LLPs would have to rely on funding from promoters and debt funding.

03 Higher Income Tax Rate

The income tax rate for a company with a turnover of up to Rs.250 crores is 25%. (Further reduced in 2019 for new companies involved in manufacturing). However, LLPs are taxed at a 30% rate irrespective of the turnover.

05. Registration

To register an Indian LLP, one has to first apply for a Designated Partner Identification Number (DPIN), which can be done by filing e-Form for acquiring the DIN or DPIN. Digital Signature Certificate of the partners is required to be obtained and registered on the portal. Thereafter, the LLP name has to be approved by the Ministry of Corporate affairs (MCA). Once the LLP name is approved, one can register the LLP by filing the incorporation form.

The registration of LLP is almost same as Private Company.

Step 01 Application for DIN or DPIN

All designated partners of the proposed LLP shall obtain "Designated Partner Identification Number (DPIN)". One needs to file eForm DIR-3 in order to obtain DIN or DPIN. In case one has a DIN (Director Identification Number), the same can be used as a DPIN.

Step 02 Acquire/ Register DSC

The Information Technology Act, 2000 provides for use of Digital Signatures on the documents submitted in electronic form in order to ensure the security and authenticity of the documents filed electronically. This is the only secure and authentic way that a document can be submitted electronically. As such, all filings done by the LLP(s) are required to be filed with the use of Digital Signatures by the person authorised to sign the documents.

Acquire DSC -A Licensed Certifying Authority (CA) issues the digital signature. Certifying Authority (CA) means a person who has been granted a license to issue a digital signature certificate under Section 24 of the Indian IT-Act 2000.

Register DSC - Role check can be performed only after the signatories have registered their Digital signature certificates (DSC) with LLP application.

Step 03 New User Registration

To file an eForm or to avail any paid service on LLP portal; one is required to register oneself as a user in the relevant user category, such as registered and business user.

Step 04 Incorporate a LLP

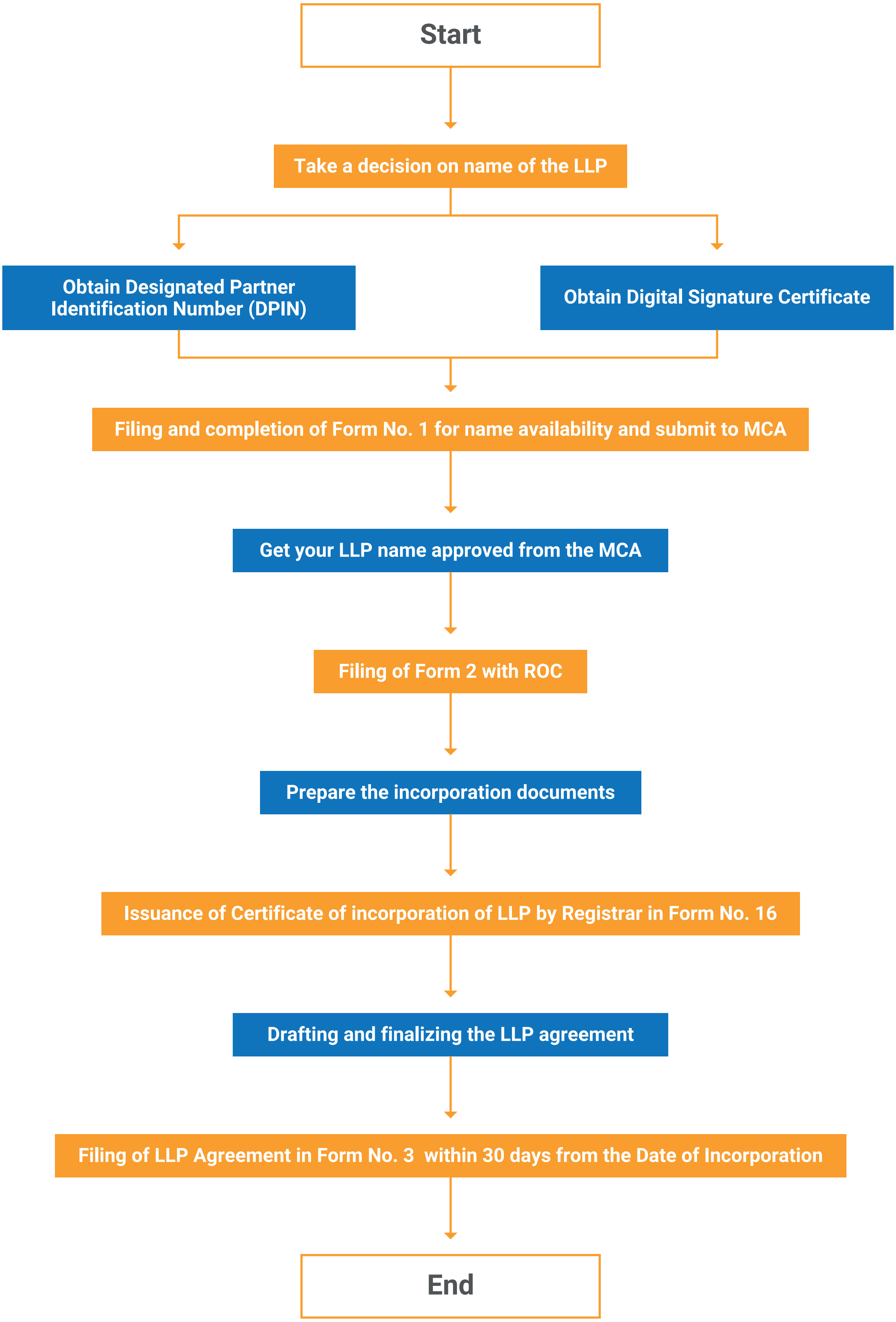
Apply for the name of the LLP to be registered by filing Form 1 (Application for reservation or change of name) for the same. After that depending upon the proposed LLP, file required incorporation Form 2 (Incorporation document and Subscriber's statement)

Once the form has been approved by the concerned official of the Ministry, one will receive an email regarding the same and the status of the form will get changed to Approved.

Step 05 File LLP Agreement

After incorporation of LLP, an initial LLP agreement is to be filed within 30 days of incorporation of LLP. The user has to file the information in Form 3 (Information with regard to Limited Liability Partnership Agreement and changes, if any, made therein).

For more info about filing visit ***https://www.mca.gov.in/MinistryV2/aboutefilingforllp.html***


Start
Take a decision on name of the LLP
Obtain Designated Partner Identification Number (DPIN)
Obtain Digital Signature Certificate
Filing and completion of Form No. 1 for name availability and submit to MCA
Get your LLP name approved from the MCA
Filing of Form 2 with ROC
Prepare the incorporation documents
Issuance of Certificate of incorporation of LLP by Registrar in Form No. 16
Drafting and finalizing the LLP agreement
Filing of LLP Agreement in Form No. 3 within 30 days from the Date of Incorporation
End

06. Annual Compliances of LLP

All LLPs registered under the LLP Act, 2008 need to file Annual Returns and Statement of Accounts for every financial year. It is mandatory for a LLP to file a return irrespective of whether it has done any business or not. There are three mandatory compliance requirements to be followed by LLPs.

01 Filing of Annual Return

- Annual returns are filed in Form 11. This form is a summary of the management affairs of the LLP, such as number of partners and their names. Form 11 needs to be filed within 60 days of the closure of the Financial year. Hence this Annual Return should be filed on or before 30th May every year by the LLP.

- In case the annual turnover of the LLP crosses Rs 5 crores or the Capital contribution from Partners exceeds more than Rs 50 Lakhs the Annual return should be accompanied by a Certificate from Practising Company Secretary.

02 Filing of Statement of the Accounts or Financial Statements

- AAll LLPs are required to maintain their Books of Accounts in Double Entry System. They also need to prepare a Statement of Solvency (Accounts) every year ending on 31^{st} March. For this purpose, LLP Form 8 should be filed with the Registrar of Companies on or before 30^{th} October every year.

- It should be noted that LLPs whose annual turnover exceeds Rs. 40 lakh or whose contribution exceeds Rs. 25 lakhs are required to get their accounts audited by a qualified Chartered Accountant mandatorily.

- The penalty for non-filing of these forms with the ROC is Rs. 100 per day per form.

03 Filing of Income Tax Returns

Every LLP is required to close its financial year on 31st March every year as per the Income Tax Act and is also required to file their returns with the Income Tax Department. The LLP whose annual turnover exceeds Rs. 40 lakhs or capital contribution exceeds Rs. 25 Lakhs are required to get their accounts audited under the provisions of the Income Tax Act. Maintenance of book of accounts is mandatory for LLP, irrespective of annual turnover.

However, it is mandatory for LLP to file return of income electronically under digital signature, if its accounts are required to be audited under section 44AB of the Income Tax Act.

07. Foreign Ownership of LLP

One of the partners in an LLP must be an Indian citizen, while the other partners can be foreign citizens/companies (except Pakistan and Bangladesh citizen).

Government approval was required before 2015 for investments in LLP by NRIs and foreign nationals. Thus, the process of LLP incorporation by NRIs and foreign nationals was cumbersome and expensive. So, the NRIs and foreign nationals preferred company registrations over LLP. But now, with the relaxation of FDI norms the NRIs and foreign nationals can easily register their LLPs.

Form NO. DIR-3
[Pursuant to section 153 of The Companies Act, 2013 & Rule 9(1) of The Companies (Appointment and Qualification of Directors) Rules, 2014 & Rule 10 of Limited Liability Partnership Rules, 2009]

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Application for allotment of Director Identification Number before appointment in an existing company or LLP

- All fields marked in * are to be mandatorily filled.
- Income-tax Permanent Account Number (Income-tax PAN) is mandatory in case of Indian nationals and in such case applicant details should be as per Income-tax PAN. In case the details as per Income-tax PAN are incorrect, applicant is advised to first correct the details in Income-tax PAN. Refer instruction kit for details.
- In case of foreign nationals, Passport number is mandatory.

1. *Applicant's name (Enter full name and do not use abbreviations)

(a) First name
(b) Last name
(c) Middle Name

2. *Father's name (Even Married women must also give father's name)

(a) First name
(b) Last name
(c) Middle Name

Photograph

(Attach a latest passport size
...licking on

LLP FORM NO. 3
[Pursuant to rule 21(1) & (2) of Limited Liability Partnership Rules, 2009]

Information with regard to Limited Liability Partnership Agreement and changes, if any, made therein

Note - All fields marked in * are to be mandatorily filled.

1. *Form filed for
   - Filing information with regard to LLP Agreement
   - For information with regard to changes in LLP Agreement

2. *Limited Liability Partnership Identification Number (LLPIN) Pre-fill

3. Name of the Limited Liability Partnership (LLP)

4. (a) Address of registered office of the LLP

   (b) *e-mail ID

LLP FORM NO. 2

[Pursuant to rule 8 and rule 11 of Limited Liability Partnership Rules, 2009]

Incorporation Document and Subscriber's Statement

Note – All fields marked in * are to be mandatorily filled.

Part A: Incorporation document

1. *Indicate Registrar's reference number for name approval (Service Request Number (SRN) of Form 1) [Pre-Fill]
2. Name of Limited Liability Partnership (LLP)
3. State in which the registered office of the LLP is to be situated
4. Name of the office of Registrar in which the proposed LLP is to be registered
5. *Address of registered office of the LLP

*Line I

Line II

*City *District

State *PIN Code

Country

ISO country code *Phone Fax

*e-mail ID

6. Business activities to be carried out by the LLP on incorporation

(Note: In case business activities consists of banking, insurance, venture capital, mutual fund, stock exchange, asset management, architect, architecture, merchant banking, securitization and reconstruction, chit fund and non banking financial activities, a copy of the in-principle approval of the regulatory authority should be attached)

7. *Based on business activities, main division of industrial activity of the LLP as per NIC-2004

Description of main division of industrial activity

8 (a). *Total number of designated partners

(b). *Total number of partners

Page 1 of 7

RUN-LLP

Reserve Unique Name-LLP

LLP details

○ New Request ○ Resubmission

SRN

Enter SRN which is under RSUB status

Pre-fill

New Incorporation / Conversion

Select if you are reserving a name for incorporating a new LLP/ converting into LLP

CIN

Enter CIN of the company to be converted

LLPIN

Enter LLPIN only if you are applying for change of name for an existing LLP

Proposed Name 1

Enter your proposed name

Proposed Name 2

Enter your proposed name

Auto Check

Comments

Please make sure to mention the objects of the proposed LLP and any other relevant comments. Please attach Sectoral Regulator approvals, NOCs or any other required documents below, if applicable

Choose File No file chosen

Once you have submitted the name reservation request it will then be checked and, if found feasible, approved by the Central Registration Centre (CRC). You will receive an email from the CRC advising the outcome of the name reservation request.

Submit

Types of COMPANIES

Below are the Types of Companies as per the Companies Act, 2013:

1. **Private Companies**
2. **Public Companies**
3. **One Person Company** *(to be formed as Private Limited Company)*

Types of Companies

- Private Limited Company
- Public Company
- One Person Company

Introduction

A company is engaged in a business and has a common seal and a separate legal identity with perpetual existence. Companies in India are governed by Companies Act, 2013. A company has a separate legal identity which is distinct from its members. The existence of a company does not cease to exist even after the death of its directors or members. A company can sue and can be sued by other parties which may or may not be involved in the business of the company. The properties of the company are also separate from those of its members. The members cannot attain the property or cannot claim the property or other assets of the company on their behalf. The companies in India are divided into various categories. The two major types are private limited companies and public limited companies. Private limited companies differ from a public limited company in many ways.

Classification of Companies:

The Companies Act, 2013 provides for the different kinds of companies that can be promoted and registered under the Act. The three basic types of companies which may be registered under the Act are:

1. **Private Companies;**
2. **Public Companies; and**
3. **One Person Company** *(to be formed as Private Limited Company)*

Section 3 of the Companies Act 2013 read with the Companies (Incorporation) Rules, 2014 states that:

A company may be formed for any lawful purpose by–

- seven or more persons, where the company to be formed is a public company;
- two or more persons, where the company to be formed is a private company; or
- one person, where the company to be formed is a One Person Company

by subscribing their names or his name to a memorandum and complying with the requirements of the act in respect of registration.

Limited Company

01. What is Limited Company?

A company means engaged in a business who have a common seal and a separate legal entity. But as per Companies Act, 2013, a company is the one which is registered under the Act or any other previous company laws. The companies in India are governed by Companies Act, 2013. A company has a separate legal entity with those of its members and has perpetual existence. The existence of a company does not cease to exist even after the death of its directors or members. A company can sue and can be sued by other parties which may or may not be involved in the business of the company. The properties of the company are also separate from those of its members. The members cannot attain the property or cannot claim the property or other assets of the company on their behalf. The companies in India are divided into various categories. The two major types are private limited companies and public limited companies. Private limited companies differ from a public limited company in many ways.

Types of Companies

- Company Limited by shares
- Company Limited by Guarantee
- Unlimited Liability

These three types are explained hereinafter:

01 A company limited by shares

Under this category the members of a company are liable only to the extent of the shares held by them. Generally, such situations come into play when the company faces any kind of losses or during the time of winding up.

02 A company limited by guarantee

When the company is limited by guarantee then the partners or members of the company are only bound to pay the amount they have guaranteed to the company.

03 Unlimited liability

A company which has unlimited liability clause shall prescribe its members to have liability which cannot be determined. The personal assets of the members can also be utilized to make good the losses of the company.

02. Features of Limited Company

01 For Businesses Raising Funding

Fast-growing or capital intensive businesses that require funding from big capitalists usually opt for formation and registration of a limited company. The management and ownership of limited companies can be different and hence permits professional management. As there is no cap on capital and number of shareholders (in case of public limited) it is a preferred mode. Public limited companies are permitted to be listed on the stock market, where share of a public limited companies can be traded. Ideally mu'mineen cannot invest in companies listed on stock markets since these companies are most often than not involved in obtaining finances on interest from banks and institution or by way interest paying public deposits. However, one may invest in any company that adopts shariah compliant business practices.

02 Limited Liability

Businesses often need to borrow money. In structures such as General Partnership, partners are personally liable for all the debt raised. If it cannot be repaid by the business, the partners would have to sell their personal assets to do so. In a limited company, only the amount invested in the share capital would be lost in case of losses in business; the directors' or shareholders' personal property would be safe.

03 Start-up Cost

Fee for filing SPICe, MoA and AoA has been reduced to Zero for proposed companies where the authorized capital is upto Rs.15 Lakhs in case of company having share capital or where the number of members are upto 20 in case of company not having share capital.

04 Requires Greater Compliance

In exchange for the convenience of easily accommodating funding, the company set-up needs to meet the compliances under the Companies Act, 2013. This ranges from a statutory audit, annual filings with the Registrar of Companies (RoC), annual submission of IT returns, as well as quarterly board meetings, the filing of minutes of these meetings, and more. The compliances for a public limited company are greater than those of private limited companies.

05 Few Tax Advantages

The company is assumed to have many tax advantages, but this is not actually the case. There are some segment specific and industry-specific advantages, but taxes are to be paid at a flat rate on profits.

03. Advantages of Limited Company

- There is a Limited risk to personal assets of the shareholders and directors of a limited company as it is a Separate Legal Entity.
- In a Limited Company there would Limited Liability for members.
- Shares of a company limited by shares are transferable by a shareholder to any other person. The transfer is easy as compared to the transfer of proprietorship or a partnership
- Just as one person can bring a legal action in his/her own name against another in that person's name, a company being an independent legal entity can sue and be sued in its own name.
- A company has 'perpetual succession', that is continued or uninterrupted existence until it is legally dissolved.
- For a private company, the earlier minimum number of the share capital was Rs. 1,00,000, but now there is no such minimum capital compulsion. Therefore, there is no pressure of fund requirements.
- It is easy to fetch funding in a limited company by allotting shares.

04. Registration

Requirements for Registration of Private Limited Companies

01 The company shall comply with the limit of minimum and the maximum number of members prescribed under the Act i.e in case of private limited company the range of shareholders is between 2 to 200 and in case of public limited companies the range of shareholders is 7 to unlimited number.

02 The company shall also comply with the number of directors prescribed by the Act i.e 2 to 15. All the directors shall have Director Identification Number (hereinafter referred as DIN) which is issued by the Ministry of Corporate Affairs (hereinafter referred as MCA). One of the directors has to be a resident of India which means that the particular director must be staying in India for at least 182 days in the previous calendar year.

03 After this, the name of the company shall also be sent to the registrar of companies. The company shall send at least five or six names for approval and all these names shall be expressive and unique. It shall be kept in mind that the names are not similar to the names of the already existing companies. The name of a company indicates whether is it is a private or public company by compulsory use of words “private limited” and “limited”, the latter being a public limited company.

04 The company has to have an address of its registered office. As the company has not been registered the promoter shall be liable to send the temporary address of the office of the company. When the company gets registered, the provided temporary address becomes the registered address. All the documents of the company shall be kept at the registered office address and all the main affairs of the company shall be conducted at the registered office address.

05 With the changing times and evolution of technology, all the transactions are generally conducted digitally. Therefore, the companies shall obtain a digital signature certificate which shall be used for the determination of authenticity of the documents provided by the company. A digital signature of the directors shall also be obtained so that it can be marked on all the documents by all the directors of the company seeking registration.

06 At the time of incorporation of a company, the company requires certificates from various professionals such as chartered accountants, company secretaries, cost accountants etc.

05. Registration Process

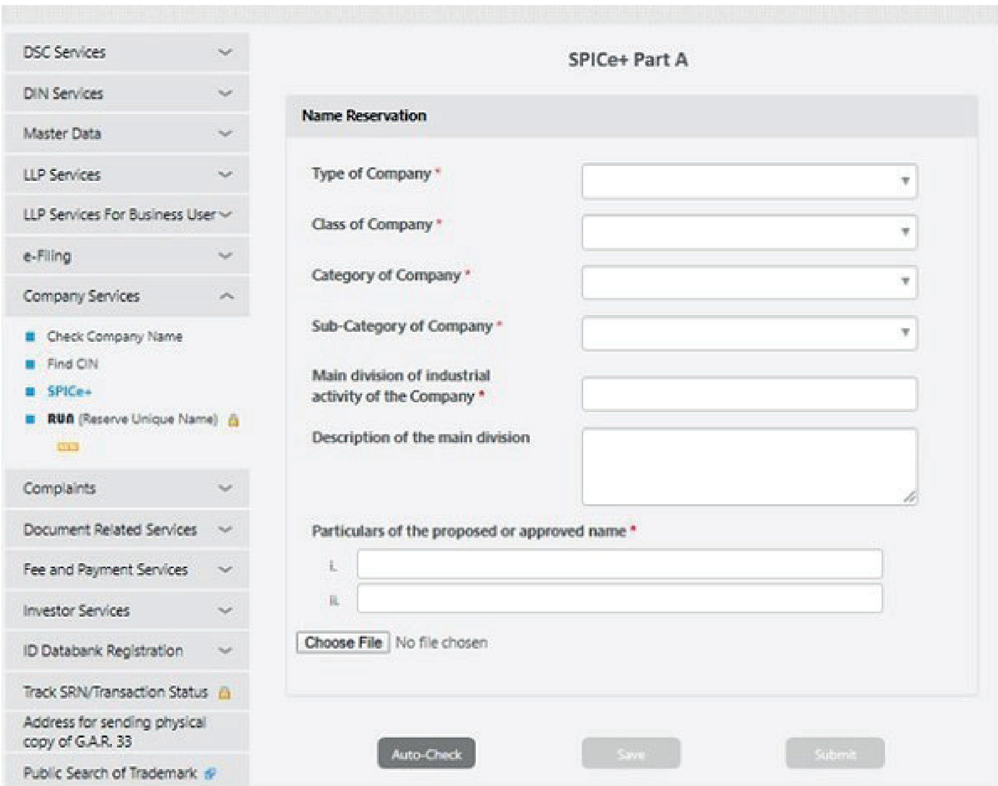
Step 01 Application for Digital Signature Certificate (DSC)

Private Limited company incorporation is a complete digital process and therefore requirement of Digital Signature Certificate is a mandatory criterion. Directors as well as subscribers to the memorandum of the company need to apply for a DSC from the certified agencies. Obtaining a DSC is a complete online process and it can be done within 24 hours. This process involves 3 simple verifications that are document verification, video verification and phone verification.

Step 02 Application for the Name Availability

Name application for private limited company can be done through SPICe RUN form which is a part of SPICe+ form. While making name application of the company industrial activity code as well as object clause of the company has to be defined.

Note: It should be ensured that business name does not resemble the name of any other already registered company and also does not violate the provisions of emblems and names (Prevention of Improper Use Act, 1950). You can easily check the name availability by using our company name search tool to verify the same on the MCA portal.



Step 03 Filing of SPICe Form (INC-32)

Post name approval, details with respect to registration of the company has to be drafted in the SPICe+ form. It is a simplified proforma for incorporating a company electronically. The details in the form are as follows:

- Details of the company
- Details of members and subscribers
- Application for Director Identification Number (DIN)
- Application for PAN and TAN
- Declaration by directors and subscribers
- Declaration & certification by professional

Step 04 Filing of e-MoA (INC-33) and e-AoA (INC-34)

SPICe e-MoA and e-AoA are the linked forms which have to be drafted at the time of application for company registration.

Memorandum of Association (MOA) is defined under section 2(56) of the Companies Act 2013. It is the foundation on which the company is built. It defines the constitution, powers and objects of the company.

The Articles of Association (AOA) is defined under section 2(5) of the Companies Act. It details all the rules and regulations relating to the management of the company.

Step 05 Issuance of PAN, TAN & Certificate of Incorporation

Post approval of the above mentioned documents from the Ministry of Corporate Affairs; PAN, TAN & Certificate of Incorporation will be issued from the concerned department. Now, the company is required to open a current bank account by using these documents.

In SPICe+, apply for the following services:

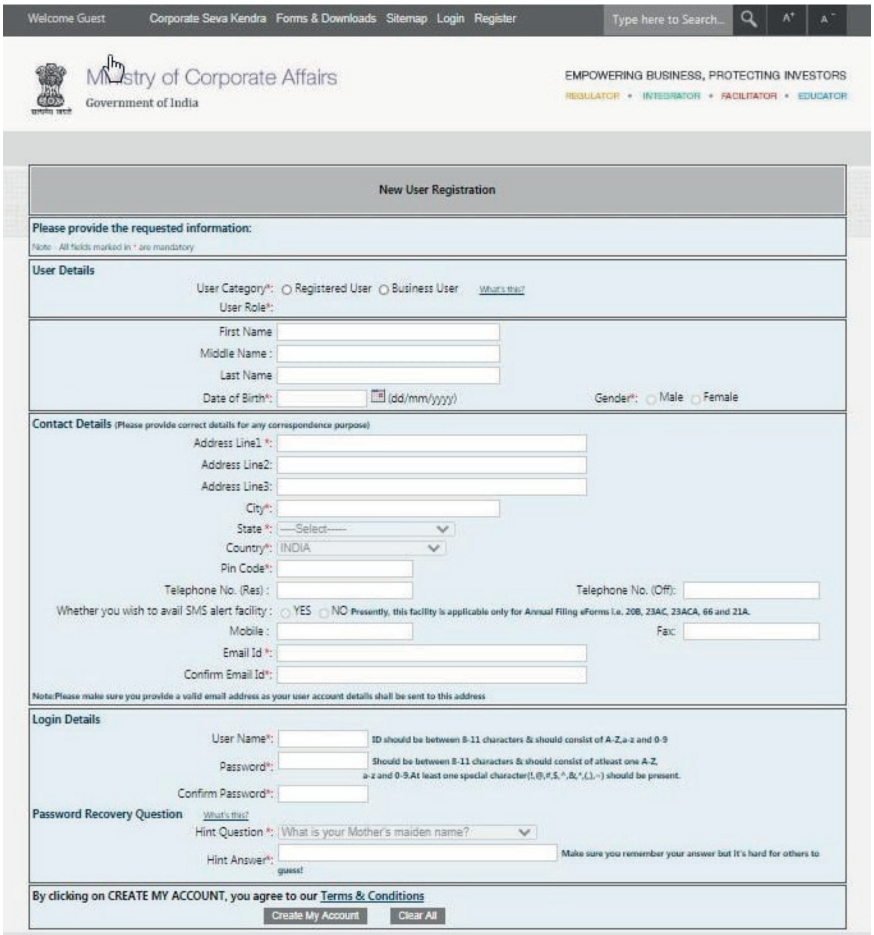
- Incorporation
- DIN (Director's Identification Number) allotment
- Mandatory issue of PAN
- Mandatory issue of TAN
- Mandatory issue of EPFO registration
- Mandatory issue of ESIC registrations
- Mandatory issue of Profession Tax registration(Maharashtra)
- Mandatory Opening of Bank Account for the Company and
- Allotment of GSTIN (if so applied for)

For more detail visit:

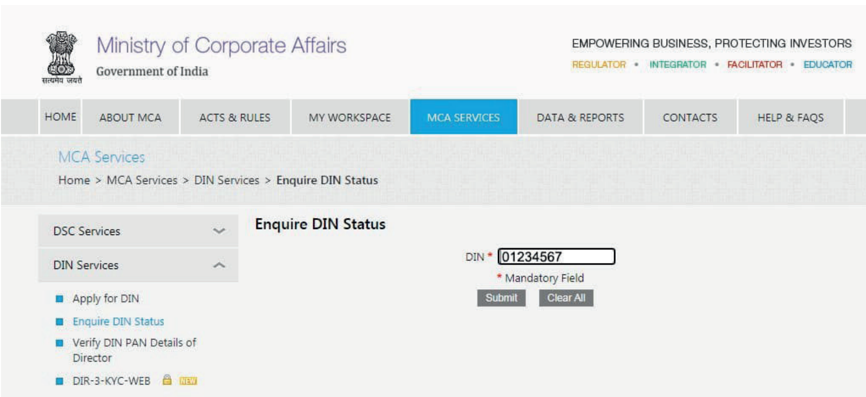
https://www.mca.gov.in/MinistryV2/incorporation_company.html

For more FORMS

https://www.mca.gov.in/MinistryV2/companyformsdownload.html



Din Status Check



One Person Company (OPC)

01. What is OPC?

The structure of the one-person company (OPC) in recent times was launched as a refinement of the structure of a sole proprietorship firm. In an OPC, a single promoter gains full authority over the company whilst restricting his/her liability towards his/her contribution to the enterprise. Therefore one person can be the sole shareholder and director (however, a director nominee is present, but has zero power until the real director proves incapable of carrying on). Also, there can be no opportunity for contributing to employee stock options or equity funding. Additionally, the OPC should have less than Rs. 2 crores turnover and if an OPC has an average turnover of Rs. 2 crores or more for three years or acquires a paid-up fund of Rs. 50 Lakhs and over, it has to be converted to a private limited company or public limited company within six months.

02. Features of One Person Company

01 For Solo Entrepreneurs

A big improvement over the sole proprietorship concern, making one's liability is limited. The OPC is an alternate for sole proprietorship concern. However, do note that if it has revenues of over Rs. 2 crores and paid-up capital of over Rs. 50 Lakhs, it needs to be converted into a private limited company.

02 High Compliance Requirements

While there are no board meetings, one is required to conduct a statutory audit, submit annual returns and comply with the various requirements of the Companies Act, 2013.

03 Minimal Tax Advantages

The OPC, like the private limited company, has some industry-specific advantages. But taxes are to be paid at a flat rate on profits, the DDT applies, as does MAT. If you're looking for a structure with the lowest tax burden, the LLP does offer some better benefits.

04 Start-up Costs

Fee for filing SPICe, MoA and AoA has been reduced to Zero for proposed companies where the authorized capital is upto Rs.10 Lakhs in case of company having share capital.

02. Benefits of OPC Registration

01 Limited Liability

The shareholder and directors' personal property is always safe in an OPC, no matter the debts of the business.

02 Continuous Existence

Sole Proprietorships come to an end with the death of the proprietor. As an OPC has a separate legal identity, it would pass on to the nominee director, therefore, continue to exist.

03 Greater Credibility

As an OPC needs to have its books audited annually, it has greater credibility among vendors and lending institutions.

03. Registration

“One Person Company” as a company which has only one person as member. Rule 3 of the Companies (Incorporation) Rules 2014 say, only a natural person who is an Indian citizen and resident in India:-

(a) shall be eligible to incorporate a One Person Company;

(b) shall be a nominee for the sole member of a One Person Company.

“Resident in India” means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one calendar year.

A natural person can be member of only one “One Person Company”, at any point of time and the said person shall not be a nominee of more than a One Person Company. The subscriber to the memorandum of a One Person Company shall nominate a person, after obtaining prior written consent of such person, who shall, in the event of the subscriber’s death or his incapacity to contract, become the member of that One Person Company. The name of the person nominated shall be mentioned in the memorandum of One Person Company and such nomination in Form INC-32 (SPICe+), Single Application for Incorporation of Company, along with consent of such nominee obtained in Form INC-3 and fee as provided in the Companies (Registration offices

and fees) Rules, 2014 shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles. Form INC-32 is form for incorporation of one Person Company.

Step 01 Check eligibility and documents

Step 02 Apply for DSC & DIN of all the directors

Step 03 Application for name reservation

Step 04 File Spice+ form INC - 32for company incorporation

Step 05 Apply PAN and TAN for your new company

Step 06 RoC issues a certificate of incorporation with a PAN and TAN

Step 07 Open bank account and start operation.

For more detail visit:

https://www.mca.gov.in/MinistryV2/onepersoncompany.html

04. Difference between a Sole Proprietorship and an OPC

A one-person company is different from a sole proprietorship because it is a separate legal entity that distinguishes between the promoter and the company.

The promoter's liability is limited in an OPC in the event of a default or legal issues. On the other hand, in sole proprietorships, the liability is not restricted and extends to the individual and his or her entire assets would be liable to repay the debts due by the sole proprietorship business unlike OPC.

FORM NO. INC-3

[Pursuant to section 3(1) of the Companies Act, 2013 and pursuant to Rule 4(2), (3), (4), (5) & (6) of the Companies(Incorporation) Rules, 2014]

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One Person Company - Nominee Consent Form

ZI03 NCA

Form language (•) English ( ) Hindi

Refer the instruction kit for filing the form.

1. (a) *SRN of Form INC-1 (In case of new company) or Corporate Identity Number (CIN) of the company (In case of existing company) [Pre-fill]

   (b) Global location number (GLN)

2. (a) Name of the One Person Company

3. * Consent

   I ______ hereby give my consent to become the member of ______, in the event of death of ______ subscriber/member of the company or his incapacity to contract.

4. Particulars of the nominee

   Director Identification number(DIN) [Pre-Fill]

   *Income-tax permanent account number (PAN) [Verify Details]

   *First Name

   Middle Name

   *Surname

   Family Name

   * (•) Father's Name ( ) Mother's Name ( ) Spouse's name

   *Gender ( ) Male ( ) Female ( ) Transgender

   * Nationality IN *Date of Birth

   * Place of Birth (District and State)

   * Educational Qualification

   * Occupation type {current date/time}

   ( ) Self-employed ( ) Professional ( ) Homemaker ( ) Student ( ) Serviceman

Permanent Residential Address

*Line I

Line II

*City

*State/Union Territory | * Pin code

ISO Country Code

Country

*Phone (with STD/ISD Code) –

Mobile (with country code) – | Fax

*email id

*Whether present address is same as the permanent address ○ Yes ○ No

Present Address

*Line I

Line II

*City

*State/Union Territory | *Pin code

*ISO Country Code

Country

*Phone (with STD/ISD Code) –

Mobile (with country code) – | Fax

email id

*Duration of stay at the present address 0 year(s) 0 month(s)

If duration of stay at present address is less than one year then address of previous residence

*Proof of Identity

*Residential Proof

Declaration

I do solemnly declare that I am an Indian citizen and resident in India and I have not been convicted of any offence in connection with the promotion, formation or management of any company or LLP and have not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law or LLP Act in the last five years. I further declare that I am not a nominee in any other One Person Company and I shall comply with the eligibility criteria specified in Rule 3(3) within the prescribed period. I understand that the person nominating me may withdraw my nomination without my consent.

To be physically signed by

Nominee

*Date 10-06-2016

*Place

Conclusion

The decision to start a business by choosing any entity type varies from person to person and business to business. Depending upon the nature of business, advantages and demerits, you choose a specific type of entity for doing your business.

Outline of Legal Entities In India

Basis of Differences	Sole Proprietorship	Partnership Firm	Limited Liability Partnership (LLP)	Limited Company	One Person Company
Meaning	Sole Proprietorship is a type of enterprise owned and run by one person and in which there is no legal distinction between the owner and the business entity.	Partnership is an association of two or more persons to carry on a business in the capacity of co-owners	The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.	A limitedc ompany is a company which is owned by non-government al organisations or a relatively small number of shareholders or members of a company and registered under Companies Act, 2013	One person company (OPC) means a company formed with only one (single) person as a member and registered under Companies Act, 2013 with limited liability for its owner
Limit of Members	01	2-20	2-unlimited	Private company 2-200 Public company Unlimited	1
Directors	NA	NA	NA	2-15	1-15
Separate Legal Entity and	✗	✗	✓	✓	✓
Size of Business	Smaller scale	Medium scale	Medium scale	Higher scale	Small to medium scale
Transfer of Ownership	Single	Co-ownership amongst Partners	Co-ownership amongst Partners	Co-ownership with Members	Single Member or Ownership

Basis of Differences	Sole Proprietorship	Partnership Firm	Limited Liability Partnership (LLP)	Private Company	One Person Company
Prevailing laws	NA	Partnership Act	Limited Liability Act	Companies Act	Companies Act
Charter Documents	NA	Partnership Deed	LLP Agreement	Memorandum of Association and Articles of Association	Memorandum of Association and Articles of Association
Perpetual Life of Business/Entity	✗	✗	✓	✓	✓
Annual statutory filings	Only income tax returns (if applicable)	Only income tax returns	Annual statement of solvency & Annual return in ROC	Annual statement of Accounts & Annual return with ROC	Annual statement of Accounts & Annual return with ROC
Tax Advantage	Minimal	Minimal	Medium Benefits	Max Benefit	Max Benefit
Foreign Direct Investment	✗	✗	✓	✓	✓

WORK CITED

BOOKS & REFERENCES

- The Companies Act, 2013
- The Indian Partnership Act, 1932
- Limited Liability Partnership Act, 2008
- Setting up Business Entities and Closure by ICSI

WEBSITES

- http://www.mca.gov.in/
- https://www.indiafilings.com/
- http://www.legalserviceindia.com
- https://www.incometaxindiaefiling.gov.in
- http://www.ipindia.nic.in/

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