INTRODUCTION
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GUIDE TO GOING GLOBAL SERIES

To compete and be successful today, companies need to develop and scale their businesses globally. Each country presents its own set of unique laws, rules and regulations and business practices that companies must understand to be successful. In order to help clients meet the opportunities and challenges of expanding internationally, we have created a handy set of global guides that cover the basics companies need to know when going into and doing business in new countries. The Guide to Going Global series reviews business-relevant corporate, employment, intellectual property and technology, executive compensation, and tax laws in key jurisdictions around the world.

CORPORATE

The Guide to Going Global – Corporate has been created based on our research, our experience and feedback we have received from clients in both established and emerging businesses that have expanded internationally. We hope it will be a helpful resource for you.

The Guide to Going Global – Corporate covers corporate basics in 54 key jurisdictions across the Americas, Asia Pacific, Europe and the Middle East. We touch on a wide range of corporate issues for companies expanding internationally, including establishing a corporate presence and choice of entity, liability considerations, tax presence and tax filings, capital requirements, the formation process, director, officer and shareholder requirements, registration processes, office lease processes and possible exit strategies.

With more than 600 lawyers, DLA Piper’s global Corporate group is one of the largest in the world, with one of the widest geographical footprints of any global law firm and experience across the legal areas companies need as they expand internationally. With both global experience and local knowledge, we partner with our clients wherever they do business to find solutions and manage their risk in relation to their challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to seek advice regarding the specific matters that concern you. If you wish to speak to any of our contributors, you may find their contact details at the end of the guide.

We hope you find this guide valuable, and we welcome your feedback.
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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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INDIA

FORM OF ENTITY
Private limited company

Separate and distinct legal entity. Managed by a board of directors, which is responsible for making major business decisions and overseeing the general affairs of the corporation. Directors are elected by the shareholders of the company. Officers, who run the day-to-day operations of the company, are appointed by the directors.

ENTITY SET UP
Private limited company

- Preferred choice of corporate entity by foreign investors because it is simpler to administer
- Minimum number of shareholders required is two, with a maximum of 200 non-employee shareholders, share transfers are restricted
- Minimum capitalization requirement: No Minimum capitalization requirement. However companies continue to use INR 0.1 million
- Must apply and register with the Registrar of Companies (ROC)
- Must have a Board of Directors with a minimum of two Directors (only individuals) and must appoint an auditor; Board of Directors should consist of at least one India resident local director
- Directors must secure a Directors Identification Number (DIN) and Digital Signature, prior to incorporation. The current incorporation form is an integrated form for allotment of DIN, reservation of name and incorporation of a new company
- Typical charter documents include: Certification of incorporation; Articles of Association (AOA); Memorandum of Association (MOA)
- Board of directors has overall management responsibility; officers have day-to-day responsibility
• Shareholders typically purchase shares in the company, either equity (equivalent to common) or preference (equivalent to preferred)

• Taxed on its earnings at a corporate level and also taxed on any distributed dividends. Shareholders are taxed on dividends received in excess of INR 1 million. Sale or redemption of shares in the company is taxed as capital gains. Any indirect transfer of India shares can trigger indirect tax provisions

**Limited liability partnership**

• The Limited Liability Partnership (LLP) Act which was notified in April 2009 allowed LLPs to be incorporated in India

• LLP is a hybrid form of business with the features of both a legal entity as well as traditional partnership

• Government approval dispensed with for foreign Investments in LLP where FDI is allowed under the automatic route, in sectors /activities where 100% FDI is allowed and no-FDI linked performance condition has been stipulated

• Minimum of 2 partners (owners) are required. There is no limit to the maximum number of Partners. A legal entity can be a member of an LLP

• Every LLP must have at least 2 designated partners who are individuals and at least one of them must be a resident in India. In case of an LLP where all partners are legal entities or one or more partners are individuals and legal entities, at least 2 individuals who are partners of such LLP or nominees of such legal entities must act as designated partners

• Designated partners are responsible for all acts of an LLP and designated partners must also be accountable for regulatory and legal compliancesNo minimum capitalization requirements

• Similar process of incorporation as a Private Limited Company

• Designated partners must secure a Designated Partners Identification Number (DPIN) and Digital Signature, prior to incorporation. If Designated partners already have a DIN, then the DIN can be used

• Typical charter documents include the LLP agreement. Partners typically contribute to the LLP as defined in the LLP agreement and also agree on a profit sharing ratio

• An LLP is required to get audit done only in case:
  - Contributions of an LLP exceed INR2.5 million or
  - annual turnover of an LLP exceeds INR4 million

• Taxed on its earnings at a corporate level and not taxed on any dividend distributions. Partners are not taxed on dividends

• While Compliance may be less cumbersome than a PLC, the cost of non-compliance is severe
• The FDI policy allows Foreign Direct Investment under automatic route in an LLP in specified sectors and has removed the specific prohibition on LLPs availing External Commercial Borrowings (ECBs). The ECB policy framework includes LLPs as eligible borrowers

• May not be suitable for all types of business, even though may be more tax efficient than a corporate structure in terms of repatriation. Suited best for professionals and small to medium businesses

Branch office

• Foreign company needs prior approval of the Reserve Bank of India (RBI) to establish a branch and is not permitted to expand its activities or undertake any new trading, commercial or industrial activity other than that expressly approved by the RBI

• Must register itself with Registrar of companies and file audited accounts

• Only specified activities permitted, cannot undertake any manufacturing activity in India

Liaison office

• Suitable for foreign companies that wish to set up a representative office as a first step to explore and understand the business and investment climate in India

• Serves as a communication channel between parent company overseas and its present or prospective customers in India

• Must obtain prior approval from RBI before establishing liaison office

• Must register itself with Registrar of companies and file audited accounts

• Limited activity: Can establish business contacts and may gather market intelligence to promote the products or services of the overseas parent company but cannot undertake any business activity in India or earn any income in India

**MINIMUM CAPITAL REQUIREMENT**

Private limited company

Minimum paid up capital of INR 100,000 now optional; Minimum Authorized capital requirements are based on name of the entity in India.

**LEGAL LIABILITY**

Private limited company

Private limited companies provide limited liability to its shareholders and the shareholders have no personal liability beyond the amount they originally paid for their shares.
TAX PRESENCE

Private limited company

A private limited company is taxed at two levels. First the company pays a corporate tax on its corporate income; then the company pays dividend distribution tax on profits distributed to shareholders. Further the shareholders pay an additional tax on dividend received in excess of INR1 million.

Sale or redemption of shares in the company is taxed as capital gains. Any indirect transfer of India shares can trigger indirect tax provisions.

INCORPORATION PROCESS

Private limited company

Reserve name; submit Memorandum of Association and Articles of Association with the appropriate Registrar of Companies (ROC) in state where the incorporation is sought. Current online incorporation forms provide for the reservation of name, allotment of DIN and the allotment of tax IDs (PAN and TAN) along with the incorporation.

BUSINESS RECOGNITION

Private limited company

Highly regarded.

SHAREHOLDER MEETING REQUIREMENTS

Private limited company

1st Annual General Meeting (AGM) to be held within 18 months from incorporation subject to other conditions.

Subsequent (AGM) within six months from close of year.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Private limited company

At least four times in a year. Maximum gap between two meetings should not be more the 120 days. Every director is required to attend at least one meeting in a year.

ANNUAL COMPANY TAX RETURNS

Private limited company
On or before September 30th for companies exceeding a revenue threshold (INR10 Mn) and where no international transactions are involved; on or before November 30th for companies with any international transactions.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

Private limited company

Every company to file a business commencement declaration within 180 days from incorporation certifying that the initial share capital has been remitted by the shareholders and that the company has adhered to registered office verification rules.

In addition, every company to file verification of its registered office within 30 days from incorporation.

Audit of accounts to conducted for every financial year within 5 months from the close of the financial year. Annual returns to be submitted to ROC within 30 days from the date of AGM and audited financial statements to be submitted to ROC within 60 days from the AGM.

Financial year

Every company’s financial year will be the period ending on 31 March every year. Only exception available is for subsidiaries of foreign companies to enable them to align with financial year of the Parent company. However such a change is required to be approved by National Company Law Tribunal (NCLT).

**BUSINESS EXPANSION**

Private limited company

No need to change as business expands. Can be easily converted into a public company at any time if required.

**EXIT STRATEGY**

Private limited company

Cease operations; file closure documents with ROC.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

Private limited company

Annual shareholder meetings; quarterly board meetings.

**DIRECTOR / OFFICER REQUIREMENTS**

Private limited company
At least two directors; new company law regulations mandate the appointment of a local director. Consequently, recommend three directors, one from India and two from parent company’s location.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

Private limited company

Must appoint a Company Secretary, where the paid up capital of the company exceeds the prescribed limit (INR 50 million - threshold increased to INR 100 million effective 1 April 2020). Till such threshold can appoint a third-party service provider to manage corporate compliance.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Private limited company

None except for the forthcoming local director requirement.

LOCAL OFFICE LEASE REQUIREMENT

Private limited company

Local office or a virtual office capable of accepting letters/post is mandatory before incorporation. The local office address acts as the Registered office of the entity in the Incorporation documents.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Private limited company

None.

SUFFICIENCY OF VIRTUAL OFFICE

Private limited company

No. See Provision of local registered address by law firm or third-party service provider.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Private limited company
Allowed for incorporation; preferable to use it temporarily.

**PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER**

Private limited company

Allowed for incorporation. However considering the liability that could fall on the local directors, provision of local director by law firm or third party Service Providers is based on references and on a case to case basis.

**NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS**

Private limited company

None except for the local director requirement.

**RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS**

Private limited company

None. However reporting requirements apply.

**SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF**

Private limited company

Directors are elected by the shareholders and are the highest authority in the management of the company, and govern the organization by establishing broad policies and objectives. In contrast, officers are appointed by the directors to oversee day-to-day operations of the company. Directors are personally liable for breach of fiduciary duty, *ultra vires* acts, negligence, *mala fide* acts, breach of statutory duties.

**PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS**

Private limited company

Identity of directors and officers is publicly disclosed; identity of shareholders of private, non-listed companies is not publicly disclosed. But this can be obtained on payment of certain nominal fees.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**
Private limited company

There must be a minimum of two shareholders and maximum of 200. For directors, the minimum is two and maximum of 15.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

Private limited company

Two shareholders.

**REMOVAL OF DIRECTORS OR OFFICERS**

Private limited company

Removal of directors is allowed by majority of the shareholders. Size of the Board of Directors cannot fall below two.

**REQUIRED AND OPTIONAL OFFICERS**

Private limited company

None.

**BOARD MEETING REQUIREMENTS**

Private limited company

At least four times in a year. Maximum gap between two meetings should not be more the 120 days. Every director is required to attend at least one meeting in a year.

**QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS**

Private limited company

For a shareholder meeting, usually a majority of shareholders must be present during the shareholder meeting. Corporate shareholders can appoint authorized signatories to attend the meetings on their behalf. For directors, at least two Directors must be present during a board meeting; alternatively, at least two directors must execute written resolutions. Written resolutions (referred to as circular resolutions) cannot be used for all purposes. Meetings can also be held via videoconference which is recorded and stored. Meetings via video conference cannot be used for certain purposes.

**MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST**
THE BANK ACCOUNT BE LOCAL?

Private limited company

Bank account can only be opened after Incorporation and the Bank Account should be in India.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY’S BOOKS BE KEPT LOCALLY?

Private limited company

An annual audit is mandatory. The auditor can be located in any state in India. The company’s books of accounts should be kept locally either with the company or with a third party service provider. The Act now stipulates mandatory rotation of auditors. Instead of the annual appointment, individual auditors can hold office for a maximum period of five years whereas Audit firms are allowed to retain the post for up to 10 years. The first auditor of the company should be appointed by the Board within 30 days from incorporation or within 90 days from incorporation by the shareholders on failure to appoint within 30 days.

Corporate books, such as the minute book and other statutory registers, should be kept with the company. The Common Seal, if available, should also be kept with the company. The requirement for common seal has now been made optional and the directors signature is acceptable in lieu of the common seal of the company.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Private limited company

No minimum par value for private limited companies. Normally, used par value is INR10 per share.

INCREASING OF CAPITALIZATION IF NEEDED

Private limited company

Effectuated by amending the charter document, which requires authorization from both the board of directors and a majority of the shareholders. Further filling requirements with the ROC will apply along with the payment of filing fees calculated based on the amount of authorized capital being increased.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Private limited company

Funds can be repatriated abroad from India via dividends or redemption (commonly referred to as buyback of equity).
RESTRICTIONS ON TRANSFERABILITY OF SHARES

Private limited company

In general, shares of a private limited company are not freely transferable. Shares can be transferred via private sales, with the approval of the board and subject to conditions of the charter documents. A public offer to sell shares or invite fresh capital subscriptions cannot be made, i.e., shares cannot be offered to the public. Shares can generally be transferred between existing shareholders.

OBTAINING A NAME AND NAMING REQUIREMENTS

Private limited company

The name should reflect the main objects/business of the Indian company. In case the Indian company would use the same name as used abroad, then, a letter from the foreign company would also have to be given. In all states, a corporate ending such as “private limited” must be used.

SUMMARY OF “KNOW YOUR CLIENT” REQUIREMENTS

Private limited company

Know your client requirements are mandatory for incorporation as well as for bank account opening. Significant beneficial owner filing requirements apply to all shareholders who hold more than 10% or more in the company.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Private limited company

Both the board of directors and a majority of shareholders must formally approve any amendment to the charter documents.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Private limited company

In addition to incorporation, an entity needs to obtain registration under the Shops and Establishment Act, Permanent Account Number (PAN) and Tax Identification Number (TAN) under Income Tax, Profession Tax under Labor law, Goods & Services Tax (GST), Importer Exporter Code (IEC) for enabling import and export, Provident Fund, if the number of employees exceeds a threshold, and Employees State Insurance (ESI), if salary of employees is below a threshold.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Private limited company
Not widely used.

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