INTRODUCTION


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.
This publication is provided to you as a courtesy, and it does not establish a client relationship between DLA Piper and you, or any other person or entity that receives it.

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.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that corporate law is dynamic, and the legal regime in the countries surveyed could change.

No part of this publication may be reproduced or transmitted in any form without the prior consent of DLA Piper.
INDIA

Last modified 11 July 2021

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 2, with a maximum of 200 non-employee shareholders; share transfers are restricted.

- Minimum capitalization requirement: no minimum capitalization requirement. However, companies continue to use INR0.1 million.

- Must apply and register with the Registrar of Companies (ROC).

- Must have a board of directors with a minimum of 2 directors (only individuals) and must appoint an auditor; board of directors should consist of at least 1 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 as well as taxed on any distributed dividends. Shareholders are taxed on dividends 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 may 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 the LLP where FDI is allowed under the automatic route; in sectors or activities where 100-percent FDI is allowed and no-FDI linked performance condition has been stipulated.

• Minimum of 2 partners (ie, 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 1 of them must be a resident in India. In case of an LLP where all partners are legal entities or 1 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 be accountable for regulatory and legal compliances. No minimum capitalization requirements.

• Similar process of incorporation to 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, the DIN may be used.

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

• An LLP is required to get audit done only if:
  - Contributions of an LLP exceed INR 2.5 million or
  - Annual turnover of an LLP exceeds INR 4 million

• Taxed on its earnings at a corporate level and not taxed on any dividend/Profit Share 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 an 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. Suited best for professionals and small to medium businesses.

Corporate tax rates for LLP are higher as compared to a Private Limited company up to a specified threshold of income.

Branch office

- A foreign company needs prior approval from 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 the 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 the parent company overseas and its present or prospective customers in India.

- Must obtain prior approval from RBI before establishing a liaison office.

- Must register itself with the Registrar of Companies and file audited accounts.

- Limited activity: may 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 the 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 2 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 may 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 the 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 6 months from close of year.

**BOARD OF DIRECTOR MEETING REQUIREMENTS**

Private limited company

At least 4 times in a year. Maximum gap between 2 meetings should not be more than 120 days. Every director is required to attend at least 1 meeting in a year.

**ANNUAL COMPANY TAX RETURNS**
Private limited company

On or before September 30th for companies exceeding a revenue threshold (INR 10 million) and where no international transactions are involved; on or before November 30th for companies with any international transactions. The AGM, annual return due dates for 2020 were extended on account of the Covid-19 pandemic, remains to be seen if there are extensions for 2021.

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 is the period ending on March 31 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 the 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 2 directors; new company law regulations mandate the appointment of a local director. Consequently recommend 3 directors: 1 from India and 2 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 (formerly INR50 million – threshold increased to INR100 million effective April 1, 2020). Until such threshold, the company may 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. They 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 and 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. However, this may 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 2 shareholders and a maximum of 200. For directors, the minimum is 2 and the maximum is 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 2.

**REQUIRED AND OPTIONAL OFFICERS**

Private limited company

None.

**BOARD MEETING REQUIREMENTS**

Private limited company

At least 4 times in a year. Maximum gap between 2 meetings should not be more the 120 days. Every director is required to attend at least 1 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 may appoint authorized signatories to attend the meetings on their behalf. For directors, at least 2 directors must be present during a board meeting; alternatively, at least 2 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

A 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 may be located in any state in India. The company’s books of accounts should be kept locally with either the company or 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 5 years, whereas audit firms may 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 a common seal has now been made optional, and the director's 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 INR 10 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 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 (ie, 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 uses the same name as used abroad, a letter from the foreign company must also 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 the opening of a bank account. Significant beneficial owner filing requirements apply to all shareholders who hold more than 10 percent 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 must 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 exceed a certain threshold; and Employees State Insurance (ESI), if the salary of employees is below a certain threshold.
PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Private limited company

Not widely used.

KEY CONTACTS

Prakash Subramaniam
Dawn Consulting
prakash@dawnconsulting.com
T: +91 (80) 4114 2626
Disclaimer

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication.

This may qualify as 'Lawyer Advertising' requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2022 DLA Piper. All rights reserved.