



The Private Limited Company in India

By Hammurabi & Solomon

Establishing a company in a foreign country can be challenging in terms of designing the legal structure and organising a streamlined and efficient incorporation process. Alliuris member firms provide corporate legal services, in particular for the formation of companies in their home country.

This article provides a brief overview of the legal form of a limited company in India.

The Pvt. Ltd.

A private limited company (Pvt. Ltd.) is the most popular form of corporate entity for small and medium-sized companies in India. A private limited company is an independent and privately held legal entity, wherein the liability of a shareholder extends only up to the number of shares held by them. Its main advantages lie in the ease of administration and the limitation of responsibility.



Legal Framework & Incorporation Laws in India governing a Pvt. Ltd. Company

- Governed by the Companies Act, 2013 (notably Sections 2, 4, 9, 12, 14, 30, 62, 66, 123, etc.), along with the Companies (Incorporation) Rules, 2014 and subsequent amendments (including 2015 & 2023).
- First Amendment Act, 2015: abolished minimum paid-up capital, made common seal optional, eliminated the declaration of commencement requirement.
- Second Amendment Act, 2017: refined corporate governance norms, redefined related-party provisions, and rationalised penalties.

Choice of Seat and place of incorporation

India's federal structure must be considered when choosing a location. Different States and Union Territories in India may have varying laws, policies, and incentives in place.

Shareholder

A Pvt. Ltd. In India shall have a minimum of 2 and a maximum of 200 shareholders (individuals or legal entities, including foreigners). However, the second shareholder (nominee shareholder) may hold the share/s on behalf of the first shareholder.

Illustration: Suppose a French company, "A SA", intends to establish a wholly owned subsidiary (WOS) in India under the name "A India Pvt. Ltd." Indian company law requires a minimum of two shareholders in a private limited company. Although 100% foreign shareholding is permitted under the automatic route in most sectors, to comply with the two-shareholder requirement, A SA may hold 99.99% of the shares and appoint a nominee to hold the remaining 0.01% of the shares on its behalf. This nominee arrangement must be duly documented through a declaration of trust or nominee agreement, ensuring that beneficial ownership remains entirely with A SA and is in compliance with applicable legal and regulatory requirements under the Companies Act, 2013 and the Foreign Exchange Management Act (FEMA).

Moreover, it is significant to mention that a shareholder can be a natural person or a legal entity. The essential duty of each shareholder is to provide the company with capital. In return, the shareholder receives dividends, whereby the decision as to whether and in what amount dividends are distributed is made by the directors. The shareholders have only a right of approval. Unlike the shareholders of a limited company in other countries, the position of the Indian shareholder resembles that of a silent investor or promoter. The shareholders have only a few rights. These can be exercised at general meetings. Essentially, they can vote on matters affecting the company's substrate, including, for example: liquidity, the sale of assets, the articles of association, appointment and dismissal of directors, mergers and amalgamations, among others. The first Annual General Meeting (AGM), it shall not be necessary for the company to hold any AGM in the year of its incorporation when an AGM is held within a period of 9 months from the date of closure of the first financial year of the company.

Illustration: For a company incorporated on 1 January 2015, the first financial year should be closed on 31 March 2016. The AGM in such case shall be required to be convened on or before 31 December 2016. The said meeting shall be treated as the AGM for the year 2015 and 2016. However, for a company incorporated on 31 December 2014, the first financial year shall be closed on 31 March 2015 and AGM shall be convened on or before 31 December 2015.

After its first financial year, a company must convene an AGM every year within 6 months from the closing of the financial year (also, before the 30 September).

Management

The company's governing bodies are the Annual General Body Meeting, which must be held once a year, and the Board of Directors. In India, the Board of Directors has a management as well as a supervisory function (which in other countries is carried out by the shareholders or a Supervisory Board). It consists of at least two directors, who can at the same time be shareholders. The Board of Directors must meet at least once in every 120 (One Hundred and Twenty) days and four times a year, either in person or through video conferencing (requirements apply). The directors must be natural persons, and at least one of them must be a resident of India. One of the appointed directors may be nominated as the managing director, but this is not mandatory.

Formation

The incorporation process of an Indian Pvt. Ltd. normally takes 2 to 3 weeks and involves filing of e-Forms SPICe+ A and SPICe+ B among other e-Forms on the portal of the Ministry of Corporate Affairs (MCA). However, for a Pvt. Ltd. with foreign shareholders and directors, additional time is required, as from abroad the process is more complex: the required documents must be signed in front of a public notary, legalized by the competent Court (apostille) and by the Indian Consulate.

The first step in the incorporation process in India is to obtain a Director Identification Number (DIN) and a Digital Signatures Certificate (DSC) for the proposed directors (minimum two). After the company's name is reserved, the memorandum of associations (MoA) and the articles of association (AoA) must be submitted to the Registrar of Companies (ROC) in the state where the incorporation is sought. If the application is admissible the company is entered in the ROC's register under a Company Identification Number (CIN) and a Certificate of Incorporation (COI) is issued. Additionally, Form INC-22 (it serves as a verification of registered office) must be filed within 30 days to confirm the registered office and a nameplate of the Company is legally required too.

Share Capital

The requirement of maintaining a minimum paid-up capital of INR 100,000 (approx. 1500 EUR) for a private limited company is no longer required (post 2015 amendment to the Companies Act, 2013). The liability of shareholders remains limited to the nominal value of their respective shareholding in the company. Accordingly, there is no statutory minimum capital threshold, and companies may be incorporated with even nominal capital. However, if the proposed name includes certain words such as "India," "Corporation," or "Global," additional scrutiny and justification may be required by the Registrar of Companies under the Companies (Incorporation) Rules, 2014. In some regulated sectors, minimum capital requirements may also be prescribed by sectoral regulators.

Registration with Local Authorities

After the Pvt. Ltd has been formed, a separate bank account of a company is required to be obtained and the subscription money has to be infused, several mandatory registrations with the local authorities must be completed depending on the kind of business. These may include, for example, a shops and commercial establishment registration (state-wise) and relevant labour law registrations as may be applicable from state to state. The obtainment of special licenses or permissions may also be necessary.

Tax Registration

The PAN (Permanent Account Number) is obtained automatically once the incorporation process is concluded. Afterwards, a TAN (Tax Deduction Account Number) must be requested. If the company shall provide services in India, a Service Tax registration must also be completed. A Sale Tax/VAT registration is necessary if any goods are to be sold.

Anti-money laundering measures

India is a high-risk country for money laundering; thus, different measures are in place. Know your client requirement are required both for incorporation and for the opening of a bank account. A higher due diligence and significant filing obligations apply to foreign clients (especially from FATF grey listed countries) and to shareholder who shall hold more than 10% of a company.

Foreign Investment Control

Various sectors, such as some types of financial trading (Chit funds, Nidhi company) and of real estate business are excluded from foreign direct investments in India (acquisition of business assets or establishment of business operations by foreigners). Other investments can be accomplished through two routes, depending on the type of business. Foreign direct investments under the Automatic Route do not need an approval from the government. However, under the Approval Route (or Government Route), which applies among others to multi brand retail trading and print and digital media, a prior permission from the competent authority is needed, and limitations may apply. Since April 2020, investments by an entity that belongs to, or is incorporated in, or is beneficially owned by a citizen of or a person situated in a country sharing a land border with India must enter through the Approval/ Government Route, regardless of sector.

In the case of cash payments by foreign shareholders, additional foreign exchange requirements and procedures under the Foreign Exchange Management Act (FEMA) and the Reserve Bank of India (RBI) must be complied with.

Customs (Export / Import)

Companies operating in the field of import and export must obtain an Import Export Code Number from the Directorate General of Foreign Trade. A specific permission or license may be required depending on the type of goods.

Bank Account

To be functional, a private limited company needs an Indian bank account. The process takes about one to three months and can be initiated only after the incorporation is completed.

Accounting

Annual returns must be filed annually with the Registrar of Companies (ROC). Form MGT 7 and AOC 4 are due on the 29th October. They entail general information on the company, such as the shareholder structure and the directors, as well as financial information like the balance sheet and profit and loss account. Additionally, all private limited companies must be audited yearly by a chartered accountant, who evaluates the books and produces an audit report. ROC Form ADT1 must be filed for auditor appointment within the 14th October.

Formation Expenses

The formation costs include government filing fees, stamp duty, DIN and DSC issuance charges, FEMA related filings and notarial/ legalisation expenses where applicable (especially for foreign shareholders). These costs amount to approx. INR 2,50,000 or EUR 2500, however, since the government fee and other statutory charges are dynamic in nature, they shall be treated as such. Legal advice costs for the draft of the standard formation documents (charter documents like Memorandum of Association, Articles of Association, any other agreement) as well as the Directors Agreement amount to approx. INR 3,00,000/- or EUR 3,100/-, however, the costs may differ depending upon the complexity of the documents and iterations. In the event that individual changes to the charter documents or any other agreements are necessary, costs are calculated on the basis of hourly rates.

Taxation

A private limited company is taxed at two levels. First, the company pays corporate tax. The standard corporate tax rate is 25% of the taxable income. A surcharge of 7% or 12% applies depending on the annual turnover. A health and Education Cess of 4% of the income tax plus surcharge is also levied on Indian companies. Then, the shareholders pay dividend distribution tax. Its effective rate ranges from 17,65 to 20,56%. An

additional 10% dividend distribution tax applies to dividends higher than INR 1 million (approx. 12.000 EUR).

Goods and Services Tax

There are four kinds of Goods and Services Tax, which is similar to VAT: Central GST, State GST, Integrated GST and Union Territory GST. They apply to manufacturers, service providers, retailers, and consumers, and can range from 0% to 28% depending on the type of good or service.

Staff

If necessary, we can use our connections to recruit suitable employees or managing directors for your company.

Domiciliation Service

The proof of a registered office (accompanied by a no objection certificate from the owner) is necessary to complete the incorporation process. In case no proper space has been identified, the company may be registered on a communication address provided by a local law firm or a third-party provider. However, the company must obtain a registered address within 60 days.

Hammurabi & Solomon will be happy to provide domiciliation services.

Shelf company

The establishment of an Indian company with foreign shareholders can be quite lengthy and requires in total four to seven months. To speed up the process, a shelf company (also called 'ready-made' or 'off-the-shelf') established by local Indian shareholders can be purchased and transferred to foreign shareholders. The process will then take approximately three to four months in total.

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