GUIDE TO SET UP BUSINESS IN INDIA

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Contents

1 ABOUT INDIA

1.1 Introduction

India is the seventh largest country by area, the most populous country and the most populous democracy in the world. India is a diversified country encompassing different languages, cultures and religions.

With major reforms and development projects being adopted, India has become one of the fastest growing economies of the world.

In the past two decades, India has emerged as one of the most attractive investment destination globally due to its transformation from an inward looking state based economy into a globalized market-based economy.

1.2 History

"So far as I am able to judge, nothing has been left undone, either by man or nature, to make India the most extraordinary country that the sun visits on his rounds. Nothing seems to have been forgotten, nothing overlooked."

--**Mark Twain, from Following the Equator**

India is namely called as "Bharat," based on the name of a legendary emperor. The people of India have had a continuous civilization since 2500 B.C, this civilization declined around 1500 B.C., probably due to ecological changes.

India has fought a freedom struggle over a period of two hundred year (1857-1947) and country received independence on 15th August 1947, celebrated as Independence Day in India and sooner become a republic nation by framing the 'Constitution of India' on 26th January, 1950.

1.3 Geography

India is the seventh largest country by area and the most populous country in the world with a total area of 3,287,263 square

kilometres. India measures 3,214 km (1,997 mi) from north to south and 2,933 km (1,822 mi) from east to west, with over 1.46 billion people, India is the most populous democracy in the world.

India has total 28 states and 8 union territories. The capital of India is Delhi, which is officially the National Capital Territory of India. The most widely spoken language in India is Hindi and English.

India has a diversified financial sector which is undergoing rapid expansion. The sector comprises of commercial banks, insurance companies, non-banking financial companies, co-operatives, pension funds, mutual funds and other small financial entities. The financial sector in India is predominantly a banking sector with commercial banks accounting for more than

60 per cent of the total assets held by the financial system.

In recent times, India has become one on the most desired nations for foreign investments due to presence of skilled work force, suitable demographic conditions, consumption based economy and consistent focus economic trend of the market.

Indian economy is the fifth largest economy in the world, and has the third largest purchasing power parity in the world. Further, it is expected that as India continues to grow, its need for development of its physical and human infrastructure will correspondingly increase. Recent global developments have demonstrated that India has strong fundamentals and robust domestic consumption levels which make it a resilient economy that can withstand globally.

2 LEGAL SYSTEM IN INDIA

2.1 Constitution of India

Indian Constitution is quasi-federal in nature i.e. it has the features of both a federal constitution as well as unitary constitution. In a federal constitution, there is a two tier of Government with well assigned powers and functions. The Central Government and the State Government work in co-ordination and at the same time act independently.

In addition, a unitary state is a sovereign state with one constitutionally created legislature in which Central Government is supreme and any administrative divisions exercise only those powers that the Central Government chooses to delegate.

In India, there are two sets of Government-Central and the State Government and the distribution of powers among them have been provided in Union, State and Concurrent List.

Constitution of India is the supreme law of India. It lays down the framework demarcating fundamental political code, structure, procedures, powers and duties of government institutions and sets out fundamental rights, directive principles and the duties of citizens. It is the longest written constitution of any country on earth.

The Constitution of India allocates the 'fields of legislature' between Central and the State Government through three lists:

a) **Union List:** The Union List has 100 entries and the parliament has exclusive power to make laws with respect to any of the matters as enumerated in Union List.

b) **State List:** The State List has 61 entries and the legislature of any state has exclusive power to make laws for such state or any part thereof with respect to any of the matters provided in this List

c) **Concurrent List:** The Concurrent List has 52 entries. Parliament and the legislature of any state also have power to make laws with respect to any of the matters enumerated in Concurrent List.

2.2 Political Structure in India

Doing business in India involves spending a lot of time building relationships with all sort of people whether in business or in government or in community or in politics. The main political parties in India are Bharatiya Janata Party (BJP) & Congress Party, and a loose coalition of leftist and regional parties.

2.3 Court System in India

India has a three-tier unitary independent judiciary system comprising of Supreme Court, headed by the Chief Justice of India, High Courts and a large number of District and Session Courts.

India follows the common law system and incorporates essential characteristics of common law jurisdictions, for instance courts follow previous decisions on the same legal issue and decisions of appellate court are binding on lower courts. As a result of adopting all these principles the Indian legal system is akin to the English legal system.

2.3.1 Supreme Court of India

As per Indian constitution, the highest judicial forum and final court of appeal in India is **SUPREME COURT**.

The Supreme Court has original jurisdiction over cases involving fundamental rights and over disputes between States and the Centre

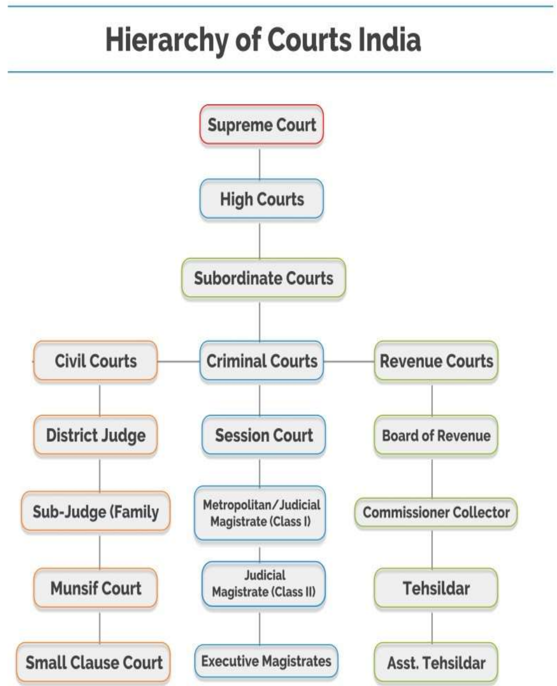
It takes up appeals primarily against verdicts of the High Courts of various States of the Union and other courts and tribunals.

2.3.2 High Courts

High courts are the judicial authority having jurisdiction over each State, India has total 24 High Courts at the State and Union Territory level governing the legal issues and matters of that respective State.

2.3.3 District Courts

In Indian language, District Courts are termed as **"JILA NYAYALAYA"** The District Court administers justice at district level. There are separate District Courts for each district to address the matters of the respective district. These courts are under administrative and judicial control of the High Court of the relevant state.



3 WHAT MAKES INDIA AN ATTRACTIVE BUSINESS DESTINATION

Recent changes in FDI Policy have made India an attractive business destination. Apart from liberalized FDI norms, some of the prominent reasons why people prefer working in India include:

- Stable political environment and responsive administrative set up;
- Well established judiciary to enforce rule of law;
- Land of abundant natural resources and diverse climatic conditions;
- Progressive simplification and rationalization of direct and indirect tax structures;
- Cost competitiveness;
- Low labour costs;
- Huge untapped market potential;
- Robust banking and financial institutions

All these factors makes India a lucrative market for making investment by the foreign entities.

The government of India has taken several strong measures to revive growth cycle in India by launching various initiatives which include:

3.1 Make in India

The Make in India program was launched by Prime Minister Mr. Narendra Modi in September 2014, with a view to encourage manufacturing in India to create an aura of self-dependency and self-reliance in the Indian markets. It aims to transform India as a global design and manufacturing hub. Make in India is a door for various investment opportunities in India. The motive to launch such initiative is job creation and skill enhancement in various sectors of economy. Under this initiative, country desk are open for investment from various countries like China, France, Germany, Israel, Japan, Korea, Russia, Taiwan, United Kingdom and United States of America. FDI in India is increased by 37% after the introduction of Make in India initiative. Various sectors under FDI Policy has been relaxed like Defence manufacturing, Railways, space, single brand retail, etc. Across various parts of India Industrial Corridors are in pipeline which requires immense amount of capital and also an opportunity for investments:

- Delhi-Mumbai Industrial Corridor;
- Amritsar-Kolkata Industrial Corridor;
- Bengaluru-Mumbai Economic Corridor;
- Vizag-Chennai Industrial Corridor;
- Chennai-Bengaluru Industrial Corridor

3.2 Digital India

With a view to make the government services available to citizens of India electronically, Government of India (GOI) launched digital India scheme on 2nd July 2015, the initiative aims to improve the electronic base for government services.

3.3 Startup Policy

With a view to promote budding entrepreneurs, Government of India launched the start-up scheme which provide for relaxations in regulatory norms, tax benefit & funding to start-up firms. The Start-up India initiative is also aimed at promoting entrepreneurship.

Our honourable Prime Minister **Mr. Narendra Modi** has vision of creating a vibrant, innovative entrepreneurship ecosystem in India. As part of the initiative, flurry of reforms have been announced with the objective of ease of doing business in India by various ministries.

To conclude, India might not be the No. 1 country for foreign investment but the initiatives and efforts of the government will soon make India the most desirable country for foreign investment.

3.4 Ease of Doing Business

The Ease of doing business index is a tool established by the World Bank Group. The lower the numerical value better is the environment to start and operating business performance. The data is based on the 190 countries around the globe.

India- Ease of Doing Business Rankings

India ranked 63rd in ease of doing business among the 190 countries in 2020. India has achieved significant improvement in these ranking with jumping 65 places from 2014 onwards. The recent regulatory reforms are showing their impact. India rank 1 among all the South Asian countries. India is also in the list of top 10 improvers for the second consecutive year and also the first BRICS and South Asian country recognized as top improver in consecutive year. India is very near to achieve the target of getting the name in list of top 50 countries.

Simeon Djankov, director of development economics at the World Bank in an interview told that *"This is the third year in a row that India has made it to the top 10 (improvers) in doing business, a success that very few countries have done over the 20 years of the project."*

4 BUSINESS RELATED LAWS IN INDIA

Business laws are the laws which governs all the business transactions and the conduct of people associated with it. Key business-related laws in India are:

i. **Companies Act, 2013**: governs the incorporation, management, restructuring and closure of companies;

ii. **Limited Liability Partnership Act, 2008**: governs the incorporation, management, restructuring and closure of LLPs;

iii. **Indian Contracts Act, 1872**: lays down the general principles relating to the formation and enforceability of contracts;

iv. **Foreign Exchange Management Act, 1999**: provides for management of foreign exchange regime and also regulates the inflow and outflow of foreign exchange and investment into/from India);

v. **SEBI Act, 1992**: regulates India's securities market

vi. **Competition Act, 2002**: regulates combinations (merger control) and anti-competitive behaviour;

vii. **Income Tax Act, 1961**: prescribes the provision related to direct tax

viii. **Goods and Services Tax Act, 2017**: a value-added tax levied on most goods and services sold for domestic consumption

In addition to the above, there may be some additional business-related laws depending upon industry, nature of business and other factors.

5 CAPITAL MARKETS IN INDIA

Indian Capital market is that part of financial system in India which concerns with raising capital by dealings in shares, bonds, stocks and other short term and long term investments**,** the Indian capital market is further divided in-

5.1 Equity Market –

In India, trading in equity instruments such as equity shares, preference shares and other securities are traded through equity market. Stocks are securities that are a claim on the earnings and assets of a company.

5.2 Debt Market –

In a developing economy like India, debt instruments are very important source of funds in financial markets. Debt Market is the market where fixed income securities of various types and features are traded, the instruments in these markets generally generate fix returns and volatility level is low in comparison to equity markets.

5.3 Credit Market –

The credit market is a broad market for companies looking to raise funds through debt issuance. Indian credit market encompasses bank loans, bonds, notes, investment-grade bonds as well as short-term commercial paper.

5.4 Foreign Exchange Market –

Foreign exchange market in India provides for platform for conversion of one currency into another currency. Today over 70% of the trading in foreign exchange continues to take place in the Indian Financial Market and it consists of over 70 Authorized Dealers (mostly banks) who transact currency among themselves and come out "square" or without exposure at the end of the trading day.

6 ESTABLISHING BUSINESS PRESENCE

For a foreign Investor in India, it is very important to choose a right kind of business or corporate entity. Foreign entity can enter in Indian business market mainly by two options, either by establishing a Liaison/Branch/Project Office in India or by incorporating a company/ LLP for the purpose of making FDI (Foreign Direct Investment) in India.

Various forms of business structures have been discussed below in detail:

6.1 Liaison Office

Liaison Office is set up to represent the parent company in India and work as a channel of communication between the parent company and business entities in India. It can't undertake any business activity in India and cannot earn any income in India. Expenses of Liaison office are met by the Head Office through inward remittances received in Convertible Foreign Exchange.

It can be a good prelude for any foreign entity looking for a sourcing division in India or to test and understand the Indian market or to carry out the research and development activities or to improve the relations with the authorities and business community, etc.

6.1.1 Features

Some of the key features of Liaison Office are:

- **Name and Permissible Activities:** The name of Indian liaison office shall be same as parent company. A Liaison Office is not permitted to carry out any business activity or earn any income in India. It can only work as a channel of communication between parent company and business entities/regulatory authorities in India. Permitted Activities for Liaison Office include:

    ✓ Representing the parent company / group companies in India.

    ✓ Promoting export / import from / to India.

    ✓ Promoting technical/ financial collaborations between parent / group companies and companies in India.

    ✓ Acting as a communication channel between the parent company and Indian companies.

- **Expenses of Liaison Office:** Expenses of Liaison office are met by the Head Office through inward remittances received in Convertible Foreign Exchange.

- **Bank Account:** Liaison Office may open current account with designated AD Category I Bank in India to receive remittances from its Head Office outside India. Liaison Office cannot maintain more than one bank account without the prior permission of Reserve Bank of India.

- **Closure of Liaison Office:** Requests for closure of Liaison Office and for remittance of winding-up proceeds needs to be submitted to designated AD Category - I bank along with prescribed documents.

6.1.2 Things to know before establishing a Liaison Office in India

Some of the key points that must be kept in mind before establishing a Liaison Office are:

Track record
The non-resident entity applying for Liaison Office should have a profit making track record during the immediately preceding three financial years in the home country and net worth of not less than USD 50,000 or its equivalent.

Application for establishment of Liaison Office
The applications for establishment of Liaison Office in a sector in which 100% FDI is allowed are routed through designated AD Category I Bank. The application is required to be submitted to AD Category-I bank (AD Bank) in Form FNC along with the prescribed documents mentioned in the Form and the LOC (wherever applicable), as per the guidelines issued by the Reserve Bank of India.

Before issuance of approval letter, AD Bank forwards a copy of Form FNC along with the details of the approval proposed to be granted by it to the General Manager, Reserve Bank of India, CO cell, New Delhi for allotment of Unique Identification Number (UIN) to each Liaison office.

An applicant that has received a permission for setting up of a Liaison Office shall inform the designated AD Bank as to the date on which the Liaison Office has been set up which shall not be later than 6 months from the date of the approval letter to avoid the approval getting lapsed. Any further extension more than six months, shall require RBI approval.

Permissible debits and credits from bank account
The permissible credits in bank account are:

a) Funds received from Head Office through normal banking channels for meeting the expenses of the office;
b) Refund of security deposits paid from Liaison Office's account or directly by the Head Office through normal banking channels;
c) Refund of taxes, duties etc., received from tax authorities, paid from Liaison Office's bank account;
d) Sale proceeds of assets of the Liaison Office

Permissible debits include meeting the local expenses of the office.

Validity period of Liaison Office
The validity period of a Liaison Office is generally three years, except in the case of Non-Banking Finance Companies (NBFCs) and those entities engaged in construction and development sectors, for whom the validity period is two years only.

Annual Activity Certificate
Liaison Office are required to submit Annual Activity Certificate (AAC) as at the end of March 31 each year along with the prescribed documents to the designated AD Category -I bank as well as Director General of Income Tax (International Taxation), New Delhi.

Registration with Registrar of Companies
A foreign company establishing a liaison office in India is required to file Form FC-1 with the Registrar of Companies within 30 days of the establishment of its place of business in India.

6.1.3 Procedure for establishing Liaison Office in India

Establishing a Liaison Office and to make it workable involves the following steps:

Step 1: File an application with RBI in Form FNC through AD Bank

Step 2: Obtain RBI's approval

Step 3: File Form FC-1 with the Registrar of Companies for obtaining a 'Certificate of Establishment of Place of Business in India'

Step 4: Obtaining PAN and TAN from Income Tax Authority

Step 5: Opening of bank account and obtaining other registration(s), if required

6.2 Branch Office

Branch Office are set up to represent the parent company engaged in manufacturing or trading activities in India and can work as a channel of communication between the parent company and business entities in India. It can undertake all types of profit making activity to promote business of its parent company unless specifically prohibited.

Branch office is not allowed to do any type of manufacturing or retail trading activity in India except the activity permitted by RBI. Branch Office is more popular setup by foreign corporations to test and understand the Indian market or to carry out the research and development activities or to improve the relations with the authorities and business community, and to perform the activities permitted by RBI. It does not have any ownership of its own as it is just an extension of the existing foreign company in India therefore all its expenses are met by Head Office if it fails to make sufficient profit from its operations in India.

Profits earned by the Branch Offices are freely remittable from India, subject to payment of applicable taxes and on production of prescribed documents.

6.2.1 Features

Some of the key features of Branch Office are:

- **Permissible Activities:** Branch Office can undertake all types of profit-making activity to promote business of its parent company. Permitted Activities for Branch Office include:

  - ✓ Export/import of goods;
  - ✓ Rendering professional or consultancy services (other than practice of legal profession in any matter);
  - ✓ Carrying out research work in which the parent company is engaged;
  - ✓ Promoting technical or financial collaborations between Indian companies and parent or overseas group company;
  - ✓ Representing the parent company in India and acting as buying/ selling agent in India;
  - ✓ Rendering services in Information Technology and development of software in India;
  - ✓ Rendering technical support to the products supplied by parent/group companies;
  - ✓ Representing a foreign airline/shipping company

- **Expenses of Branch office:** Branch office is a representative of the foreign parent company, therefore expenses of such office may be met by the Head Office through inward remittances received in Convertible Foreign Exchange if it fails to make sufficient profits from Indian operations.

- **Bank Account:** A Branch Office may approach any AD Category-I bank in India to open an account for its operations in India.

- **Remittance of Profit:** Profits earned by the Branch Offices are freely remittable from India, subject to payment of applicable taxes on production of prescribed documents to the satisfaction of the AD Category-I bank.

- **Extension of fund and non-fund based facilities:** AD Category I Bank may extend Fund/Non-Fund facilities to Branch Office on the basis of Board approved policy, business prudence and compliance to extant rules/regulations stipulated by DBR, RBI.

- **Closure of Branch Office:** Requests for closure of Branch Office and for remittance of winding-up proceeds needs to be submitted to designated AD Category - I bank along with prescribed documents.

6.2.2 Things to know before establishing a branch Office in India

Some of the key points that must be kept in mind before establishing a Branch Office are:

Track record
The non-resident entity applying for Branch Office in India should have a profit-making track record during the immediately preceding five financial years in the home country and net worth of not less than USD 1,00,000 or its equivalent.

Application for establishment of Branch Office
The applications for establishment of Branch Office in a sector in which 100% FDI is allowed are routed through designated AD Category I Bank. The application is required to be submitted to AD Category-I bank (AD Bank) in Form FNC along with the prescribed documents mentioned in the Form and the LOC (wherever applicable), as per the guidelines issued by the Reserve Bank of India.

Before issuance of approval letter, AD Bank forwards a copy of Form FNC along with the details of the approval proposed to be granted by it to the General Manager, Reserve Bank of India, CO cell, New Delhi for allotment of Unique Identification Number (UIN) to each branch office.

An applicant that has received a permission for setting up of a Branch Office shall inform the designated AD Bank as to the date on which the Branch Office has been set up which shall not be later than 6 months from the date of the approval letter.

Permissible debits and credits from bank account
The permissible credits in bank account are generally fund received from head office for meeting its expenses and any legitimate receivables arising in the process of its business operations. While the permissible debits are the local expenses of the office and remittance of profit/winding up proceeds.

Annual Activity Certificate
Branch office is required to submit Annual Activity Certificate (AAC) as at the end of March 31 each year along with the prescribed documents to the designated AD Category -I

bank as well as Director General of Income Tax (International Taxation), New Delhi.

Registration with Registrar of Companies
A foreign company establishing a branch office in India is required to file Form FC-1 with the Registrar of Companies within 30 days of the establishment of its place of business in India.

6.2.3 Procedure for establishing a Branch Office in India

Establishing a Branch Office and to make it workable involves the following steps:

Step 1: File an application with RBI in Form FNC through AD Bank

Step 2: Obtain RBI's approval

Step 3: File Form FC-1 with the Registrar of Companies for obtaining a 'Certificate of Establishment of Place of Business in India'

Step 4: Obtaining PAN and TAN from Income Tax Authority

Step 5: Opening of bank account and obtaining other registration(s), if required

6.3 Project Office

Project Office means a place of business in India to represent the interests of the foreign company executing a project in India but excludes a Liaison Office.

There is a general permission to non-resident companies to establish Project Office in India, provided they have secured a contract from an Indian company to execute a project in India. Also, the project must have secured the necessary regulatory clearances; and is funded directly by inward remittance from abroad; or the project is funded by a bilateral or multilateral International Financing Agency, or a company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or a bank in India for the Project. In all other cases, the application for establishment of Project Office in a sector in which 100% FDI is allowed is routed through designated AD Category I Bank.

It cannot undertake any additional activity except the activities relating or incidental to the execution of the project. The Contract governing the project requires payment in Foreign Currency.

6.3.1 Features

Some of the key features of Project Office are:

- **Permissible Activities:** Project Office is just an extension of the foreign companies in India and cannot undertake any additional activity in India except the activities relating or incidental to the execution of the project.

- **Bank Account:** Any foreign entity (except an entity from Pakistan) who has been awarded a contract for a project by the Government authority/Public Sector Undertakings or are permitted by the AD to operate in India may open a bank account without any prior approval of the Reserve Bank. Each Project Office can open two foreign currency accounts, usually one denominated in USD and other in home currency of the project awardee, provided both are maintained with the same AD Category–I bank.

- **Remittance of Profit:** AD Bank can permit intermittent remittances by Project Office pending winding up/

completion of the project provided they are satisfied with the bonafides of the transaction subject to certain conditions

- **Extension of fund and non-fund based facilities:** AD Category I Bank may extend Fund/Non-Fund facilities to Project Office on the basis of Board approved policy, business prudence and compliance to extant rules/regulations stipulated by DBR, RBI.

- **Closure of Project Office:** Requests for closure of Project Office and for remittance of winding-up proceeds needs to be submitted to designated AD Category - I bank along with prescribed documents.

6.3.2 Things to know before establishing a Project Office in India

Some of the key points that must be kept in mind before establishing a Project Office are:

Application for establishment of Project Office

There is a general permission to non-resident companies to establish Project Office in India, provided they have secured a contract from an Indian company to execute a project in India and has also secured necessary clearances. In all other cases, the applications for establishment of Project Office in a sector in which 100% FDI is allowed are routed through designated AD Category I Bank. The application is required to be submitted to AD Category-I bank (AD Bank) in Form FNC along with the prescribed documents mentioned in the Form and the LOC (wherever applicable), as per the guidelines issued by the Reserve Bank of India.

An applicant that has received a permission for setting up of a Project Office shall inform the designated AD Bank as to the date on which the Project Office has been set up which shall not be later than 6 months from the date of the approval letter

Permissible debits and credits from bank account

The permissible credits in bank account shall be foreign currency receipts from the Project Sanctioning Authority and remittances from parent/ group company abroad or bilateral/ multilateral international financing agency. While the permissible debits to the account shall be payment of project related expenditure.

Validity period of Project Office

The validity period of the Project Office is for the tenure of the project.

Annual Activity Certificate

Project Office are required to submit Annual Activity Certificate (AAC) as at the end of March 31 each year along with the prescribed documents to the designated AD Category -I bank as well as Director General of Income Tax (International Taxation), New Delhi.

Registration with Registrar of Companies

A foreign company establishing a project office in India is required to file Form FC-1 with the Registrar of Companies within 30 days of the establishment of its place of business in India.

6.3.3 Procedure for establishing Project Office in India

Establishing a Project Office and to make it workable involves the following steps:

Step 1: File an application with RBI in Form FNC through AD Bank

Step 2: Obtain RBI's approval

Step 3: File Form FC-1 with the Registrar of Companies for obtaining a 'Certificate of Establishment of Place of Business in India'

Step 4: Obtaining PAN and TAN from Income Tax Authority

Step 5: Opening of bank account and obtaining other registration(s), if required

6.4 Private Limited Company

A private Limited company is a privately owned business entity formed for any lawful purpose under the provisions of the Companies Act, 2013 having minimum of two and maximum of two hundred members and the name of the company must end with the words 'Private Limited'.

A company incorporated outside India seeking interest to start their operations in India as a start-up structure can incorporate a private limited company with substantially relaxed and lesser compliance regime as compared to a public limited Company.

6.4.1 Features

Some of the key features of Private Limited Company are:

- **Separate Legal Entity:** As a juristic legal person, both the company and its members have separate legal identity that is distinct from each other.
- **Perpetual Succession:** A company existence is uninterrupted, even the death or insolvency of shareholder(s)/ directors cannot affect the continuity of business of the company.
- **Limited liability of members:** The liability of members of a private limited company is limited to the amount of share capital remaining unpaid on the shares held by them.
- **Easy transferability of ownership:** The ownership in a private limited company is easily transferable by way of transfer of shares from one member to another subject to the restriction that the total number of members of a private limited company cannot exceed 200.
- **Easy financial assistance:** Private Limited Company is not allowed to borrow capital from public. However, its growth is not restricted hereby as it can attract finance from Private Equity Investors, banks and other financial institutions to meet its financial requirement/obligations without any restrictions.

6.4.2 Things to know before establishing a Private Limited Company in India

Some of the key points that must be kept in mind before establishing a Private Limited Company are:

Unique name
The proposed name should be unique and should not resemble to the name of an existing company or Limited Liability Partnership. It is suggested to use such a name for prospective business that is original and describes the essence of business activity.

Share Capital
Share capital of a company is divided into four parts:

i. **Authorized Share Capital:** It means such capital as is authorized by the Memorandum of a company to be the maximum amount of share capital that can be raised by a company.

ii. **Issued Share Capital:** It means such capital as the company issues from time to time for subscription
iii. **Subscribed Share Capital:** It means such part of the capital which is for the time being subscribed by the members of a company
iv. **Paid-up Share Capital:** It means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called

There is no minimum paid-up share capital prescribed for a private limited company. However, it is suggestible that the subscribers to the memorandum of association should bring in some capital for carrying on the business operations of the company.

Directors
Director is a person appointed to the Board of a company. Board of Directors of a company are entitled to exercise all such powers and to do all such acts and things as the company is authorized to exercise and do except those which are specifically required to be exercised by a company in general meeting. Minimum two directors are required to incorporate a private limited company out of which at least one must be resident in India.

Subscriber
Subscriber means a person who has agreed to subscribe to the share capital of the company and on its registration, whose name is entered as a member in the Register of Members. Minimum two subscribers are required to incorporate a private limited company. Subscribers of a company can be resident in or outside India. There is no restriction on a subscriber of a private limited company to be a director of the same company or vice versa.

Registered Office
It is mandatory for every company to have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it. Registered office of the company must be situated in India.

6.4.3 Procedure for establishing a Private Limited Company in India

Establishing a Private Limited Company and to make it workable involves the following steps:
Step 1: Name Approval: The first and the foremost step in Registering a Private Limited Company in India is reservation of name by filing SPICe+ Part A. The company is required to provide two names in order of preference. The names shall be supported with a rationale and objectives of the company to be pursued upon incorporation.

Step 2: Obtaining DSC and DIN: A Digital Signature Certificate (DSC) is mandatory for all the persons who intends to become a Director or Subscribers of the proposed Company.
Director Identification Number (DIN): it is mandatory for every Director to obtain DIN before being appointed as Director. The SPICE + form provides an option to apply for maximum 3 DIN.

Step 3: Filing an application in SPICE+ PART B, SPICE + MOA, SPICE+ AOA for incorporation of Private Limited Company with the Registrar of Companies for obtaining a 'Certificate of Incorporation'

With effect from February 23, 2020, following additional services can be mandatorily obtained at the time of incorporation of the company itself by filing AGILE-PRO-S linked web form:

- PAN
- TAN
- EPFO registration
- ESIC registration
- Opening of Bank Account
- GSTIN (optional)
- Professional Tax (optional)
- Shop and Establishment Registration (not mandatory)

Step 4: Obtaining **"Certificate of Incorporation"** from Registrar of Companies.

6.5 Public Limited Company

A Public Limited company is a business entity formed for any lawful purpose under the provisions of the Companies Act, 2013 and which is not a private company. A Public company shall have minimum of seven members. However, there is no limit on the maximum number of members in case of a Public Limited Company. The name of the company must end with the word 'Limited'.

A company incorporated outside India seeking interest to start their operations in India as a start-up structure can incorporate a public limited company with an option to raise capital from public.

6.5.1 Features

Some of the key features of Public Limited Company are:

- **Separate Legal Entity:** As a juristic legal person, both the company and its members have separate legal identity that is distinct from each other.

- **Perpetual Succession:** A company existence is uninterrupted, even the death or insolvency of shareholder(s)/ directors cannot affect the continuity of business of the company.

- **Limited liability of members:** The liability of members of a public limited company is limited to the amount of share capital remaining unpaid on the shares held by them.

- **Easy transferability of ownership:** The ownership in a public limited company is easily transferable by way of transfer of shares from one member to another.

- **Easy financial assistance:** Public Limited Company can raise capital from public along with the other modes of raising finance.

6.5.2 Things to know before establishing a Public Limited Company in India

Some of the key points that must be kept in mind before establishing a Public Limited Company are:

Unique name
The proposed name should be unique and should not resemble to the name of an existing company or Limited Liability Partnership. It is suggested to use such a name for prospective business that is original and describes the essence of business activity.

Share Capital
Share capital of a company is divided into four parts:

i. **Authorized Share Capital:** It means such capital as is authorized by the Memorandum of a company to be the maximum amount of share capital that can be raised by a company.

ii. **Issued Share Capital:** It means such capital as the company issues from time to time for subscription

iii. **Subscribed Share Capital:** It means such part of the capital which is for the time being subscribed by the members of a company

iv. **Paid-up Share Capital:** It means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called

There is no minimum paid-up share capital prescribed for a public limited company. However, it is suggestible that the subscribers to the memorandum of association shall bring in some capital for carrying on the business operations of the company.

Directors

Director is a person appointed to the Board of a company. Board of Directors of a company are entitled to exercise all such powers and to do all such acts and things as the company is authorized to exercise and do except those which are specifically required to be exercised by a company in general meeting. The Board of Directors of a public limited company shall comprise of minimum three directors out of which at least one must be resident in India.

Subscriber

Subscriber means a person who has agreed to subscribe to the share capital of the company and on its registration, whose name is entered as a member in the Register of Members. Minimum seven subscribers are required to incorporate a public limited company. Subscribers of a company can be resident in or outside India. There is no restriction on a subscriber (being an individual) of a public limited company to be a director of the same company or vice versa.

Registered Office

It is mandatory for every company to have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it. Registered office of the company must be situated in India.

6.5.3 Procedure for establishing a Public Limited Company in India

Establishing a Public Limited Company and to make it workable involves the following steps:

Step 1: Name Approval: The first and the foremost step in Registering a Private Limited Company in India is reservation of name by filing SPICe+ Part A. The company is required to provide two names in order of preference. The names shall be supported with a rationale and objectives of the company to be pursued upon incorporation.

Step 2: Obtaining DSC and DIN: A Digital Signature Certificate (DSC) is mandatory for all the persons who intends to become a Director or Subscribers of the proposed Company.

Director Identification Number (DIN): it is mandatory for every Director to obtain DIN before being appointed as Director. The SPICE + form provides an option to apply for maximum 3 DIN.

Step 3: Filing an application in **SPICE+ PART B, SPICE + MOA, SPICE+ AOA** for incorporation of Private Limited Company with the Registrar of Companies for obtaining a 'Certificate of Incorporation'

With effect from February 23, 2020, following additional services can be mandatorily obtained at the time of incorporation of the company itself by filing AGILE-PRO-S linked web form:

- PAN
- TAN
- EPFO registration
- ESIC registration
- Opening of Bank Account
- GSTIN (optional)
- Professional Tax (optional)
- Shop and Establishment Registration (not mandatory)

Step 4: Obtaining **"Certificate of Incorporation"** from Registrar of Companies

6.6 Limited Liability Partnership

Limited Liability Partnership (LLP) is a body corporate formed and registered under the Limited Liability Partnership Act, 2008 and is a legal entity separate from that of its partners. LLP has perpetual succession. Any change in the partners of LLP shall not affect the existence, rights or liabilities of the LLP.

Every LLP shall have at least two designated partners who are individuals and at least one of them shall be resident in India. In case of a LLP in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

6.6.1 Features

Some of the key features of Limited Liability Partnership are:

- **Separate Legal Entity:** As a juristic legal person, both the LLP and its partners have separate legal identity that is distinct from each other.

- **Perpetual Succession:** LLP existence is uninterrupted, even the death or insolvency of partners cannot affect the continuity of business of the LLP.

- **Limited liability of partners:** In LLP, all partners have limited liability similar to that of the shareholders of a limited company.

- **Less compliances:** The statutory compliances as applicable on LLP are less as compared to a company

Audit is not mandatory: Unlike companies, audit requirement in case of LLP arises only when contribution exceeds Rs. 25 lakh or turnover exceeds Rs. 40 Lakh in any financial year

6.6.2 Things to know before establishing a Limited Liability partnership in India

Some of the key points that must be kept in mind before establishing a Limited Liability partnership are:

Unique name
The proposed name should be unique and should not resemble to the name of an existing company or Limited Liability Partnership.

Contribution
Contribution of a partner may consist of tangible or intangible, movable or immovable property or other benefit to the LLP, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.

Designated Partners
Every LLP shall have at least two designated partners who are individuals and at least one of them shall be resident in India.

Registered Office
It is mandatory for every LLP to have a registered office to which all communications and notices as may be addressed and where they shall be received. Registered office of the LLP must be situated in India.

6.6.3 Procedure for establishing Limited Liability Partnership in India

Establishing a Limited Liability partnership and to make it workable involves the following steps:

Step 1: Obtaining Designated Partners Identification Number (DPIN)/DIN:
DPIN is similar to DIN to be obtained in case of Limited Entities. All designated partners of the proposed LLP shall obtain "Designated Partner Identification Number (DPIN).

Step 2: Obtaining Digital Signature Certificate.

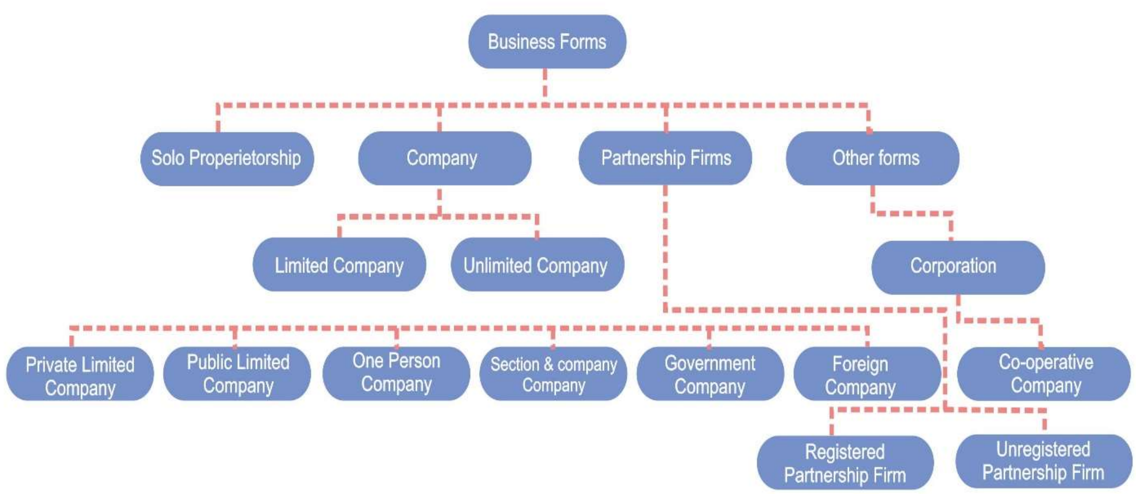
Step 3 Reservation of Name: Filing an **application in Form RUN-LLP** for reservation of name with the Registrar of Companies. At least 2 proposed names of the LLP should be provided.

Step 4: Filing an **application for incorporation of Limited Liability Partnership in Form FiLLip** with the Registrar of Companies for obtaining a "Certificate of Incorporation"

Step 5 Filing of LLP Agreement: Information pertaining to LLP Agreement is required to be filed in Form-3 within 30 days of the date of incorporation

Step 6: Obtaining PAN and TAN from Income Tax Authority

Step 7: Opening of bank account and obtaining other registration(s), if required



6.7 Business Entities Comparison

Basis of Comparison	Liaison Office	Branch Office	Project Office	Company	Limited Liability Partnership
Governing Law	Master Direction-Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) or any other place of business in India by foreign entities	Master Direction-Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) or any other place of business in India by foreign entities	Master Direction-Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) or any other place of business in India by foreign entities	Companies Act, 2013 read with allied Rules	Limited Liability Partnership Act, 2008 read with allied Rules
Minimum number of Directors/Designated Partners	Not Applicable	Not Applicable	Not Applicable	Public Company- Three (3) Directors Private Company- Two (2) Directors	Two (2) Designated Partners
Minimum number of Members	Not Applicable	Not Applicable	Not Applicable	Public Company- Seven (7) Private Company- Two (2)	Not Applicable
Validity	For NBFC & construction and development sector- 2 years For others- 3 years	Validity period of a Branch Office is generally three years	For the tenure of project.	Perpetual Succession	Perpetual Succession
Business Activity	Can undertake any of the activities as provided in RBI Regulations	Can undertake any of the activities as provided in RBI Regulations	Can undertake activities related to completion of project	Any business activity	Any business activity

Annual compliances	Filing of Annual Activity Certificate with the Reserve Bank of India together with filing of Financial Statements with the Registrar of Companies	Filing of Annual Activity Certificate with the Reserve Bank of India together with filing of Financial Statements with the Registrar of Companies	Filing of Annual Activity Certificate with the Reserve Bank of India together with filing of Financial Statements with the Registrar of Companies	Filing of Financial Statements and Annual Return with the Registrar of Companies	Filing of Financial Statements and Annual Return with the Registrar of Companies

7 FOREIGN DIRECT INVESTMENT (FDI)

Foreign investment in India is primarily regulated by:

(i) Foreign Exchange Management Act, 1999 and Rules framed thereunder;
(ii) Regulations and Notifications issued by RBI from time to time; and
(iii) FDI Policy issued by Department of Industrial Policy and Promotion

Any non-resident who wants to setup business operations or make investment in India has to adhere to Foreign Exchange Management Act (FEMA), 1999 along with Foreign Exchange Management Regulations. FDI policy is the core document related to foreign investment in India which contains the investment limits sector wise. A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/ activities which are prohibited.

7.1 Prohibited sectors for FDI

Investment by a person resident outside India is prohibited for certain specific sectors in India which are as follows:

a) Lottery Business including Government/ private lottery, online lotteries.
b) Gambling and betting including casinos.
c) Chit funds
d) Nidhi Company.
e) Trading in Transferable Development Rights (TDRs).
f) Real Estate Business or Construction of Farm Houses excluding development of townships, construction of residential/ commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014
g) Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
h) Activities/ sectors not open to private sector investment viz., (i) Atomic energy and (ii) Railway operations
i) Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities

7.2 Permitted Sectors for FDI

Foreign investment is permitted through two different routes: (a) Automatic route; and (b) Approval Route.

Under automatic route investment is allowed without any prior permission from sectoral regulators and in case of approval route a prior approval of Reserve Bank of India (RBI) which is Apex Bank of India or competent authorities under various Ministries is mandatory.

In India, 100% FDI is allowed under automatic route in most of the permitted sectors and in certain other sectors, FDI is allowed on percentage basis.

7.3 Sector wise FDI Limits as per FDI Policy 2020

Sector/ Activity Sector/Activity	FDI Limit % of Equity/ FDI Cap	Entry Route
Agriculture and Animal Husbandry • Floriculture, Horticulture, and Cultivation of Vegetables & Mushrooms under controlled conditions; • Development and Production of seeds and planting material; • Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture, Apiculture; and • Services related to agro and allied sectors • Note: Besides the above, FDI is not allowed in any other agricultural sector/activity	100%	Automatic
Plantation Sector • Tea sector including tea plantations; • Coffee plantations; • Rubber plantations; • Cardamom plantations; • Palm oil tree plantations; • Olive oil tree plantations *Note: Besides the above, FDI is not allowed in any other plantation sector/ activity*	100%	Automatic
Mining Mining and Exploration of metal and non-metal ores including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores	100%	Automatic
Mining (Coal & Lignite)	100%	Automatic
Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities	100%	Government
Petroleum & Natural Gas • Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products etc.	100%	Automatic

Petroleum & Natural Gas • Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs.	49%	Automatic
Manufacturing Manufacturing activities may be either self-manufacturing by the investee entity or contract manufacturing in India through a legally tenable contract, whether on Principal to Principal or Principal to Agent basis. Further, a manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce, without Government approval.	100%	Automatic Route
Retail trading, including through e-Commerce, in respect of food products manufactured and/or produced in India.	100%	Government Route
Defence	100%	Automatic up to 74% Government route beyond 74% wherever it is likely to result in access to modern technology or for other reasons to be recorded
SERVICE SECTOR		
Broadcasting Carriage Services • Teleports(setting up of up-linking HUBs/Teleports) • Direct to Home (DTH) • Cable Networks (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability • Mobile TV • Head end-in-the Sky Broadcasting Service(HITS)	100%	Automatic
Broadcasting Carriage Services Cable Networks (Other MSOs not undertaking up gradation of networks towards digitalization and addressability and Local Cable Operators (LCOs)	100%	Automatic

Broadcasting Content Services • Terrestrial Broadcasting FM(FM Radio) • Up-linking of 'News & Current Affairs' TV Channels	49%	Government
Broadcasting Content Services Uploading/Streaming of News & Current Affairs through Digital Media	26%	Government
Broadcasting Content Services • Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels	100%	Automatic
Print Media • Publishing of newspaper and periodicals dealing with news and current affairs • Publication of Indian editions of foreign magazines dealing with news and current affairs	26%	Government
Publishing/printing of scientific and technical magazines/specialty journals/ periodicals,	100%	Government
Publication of facsimile edition of foreign newspapers	100%	Government
Civil Aviation- Airports • Greenfield projects • Existing projects	100%	Automatic
Civil Aviation- Air Transport Services • Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline • Regional Air Transport Service	100%	Automatic up to 49% (Automatic up to 100% for NRIs) Government route beyond 49%
Civil Aviation- Air Transport Services • Non-Scheduled Air Transport Services • Helicopter services/seaplane services requiring DGCA approval • Ground Handling Services • Maintenance and Repair organizations; flying training institutes; and technical training institutions	100%	Automatic
Construction Development: Townships, Housing, Built-up Infrastructure	100%	Automatic
Industrial Parks -new and existing	100%	Automatic
Satellites- Manufacturing and Operation	100%	Upto 74%: Automatic

Satellite Data Products Ground Segment and User Segment		Beyound 74%: Government Route
Launch Vehicles and associated systems or subsystems Creation of Spaceports for launching and receiving Spacecraft	100%	Upto 49%: Automatic Beyond 49%: Government Route
Manufacturing of components and systems/sub-systems for satellites, ground segment and user segment	100%	Upto 100%: Automatic
Private security agencies	74%	Automatic up to 49% Government route beyond 49% and up to 74%
Telecom services	100%	Automatic
Cash & Carry Wholesale Trading/Wholesale Trading (including sourcing from mses)	100%	Automatic
E-commerce activities	100%	Automatic
Single Brand product retail trading	100%	Automatic
Multi brand retail trading	51%	Government
Duty free shops	100%	Automatic
Railway Infrastructure Construction, operation and maintenance of the following: • Suburban corridor projects through PPP, • High speed train projects, • Dedicated freight lines, • Rolling stock including train sets, and locomotives/coaches manufacturing and maintenance facilities, • Railway Electrification, • Signaling systems, • Freight terminals, • Passenger terminals, • Infrastructure in industrial park pertaining to railway line/sidings including electrified railway lines and connectivities to main railway line and • Mass Rapid Transport Systems	100%	Automatic
Asset Reconstruction companies	100%	Automatic
Banking- Private Sector	74%	Automatic up to 49% Government route beyond 49% and up to 74%
Banking- Public Sector subject to (Acquisition Banking & Transfer of Undertakings) Acts 1970/80. This ceiling (20%) is also applicable to the State Bank of India and its associate Banks.	20%	Government

Credit Information Companies	100%	Automatic
Infrastructure companies in Securities Markets	49%	Automatic
Insurance Insurance company	74%	Automatic
Insurance Intermediaries or Insurance including insurance brokers, re insurance brokers, insurance consultants, corporate agents, third party administrator, Surveyors and Loss Assessors and such other entities, as may be notified by the Insurance Regulatory and Development Authority of India from time to time	100%	Automatic
Pension Sector	49%	Automatic
Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010	49%	Automatic
White Label ATM Operations	100%	Automatic
Financial Services activities regulated by financial sector regulators viz, RBI, SEBI, IRDA, PFRDA, NHB or any other financial sector regulator as may be notified by the Government of India	100%	Automatic
Pharmaceuticals (Greenfield)	100%	Automatic
Pharmaceuticals (Brownfield)	100%	Automatic up to 74% Government route beyond 74%

8 TAX LAWS

8.1 Indian taxation System

Tax structure in India is divided into direct and indirect taxes. Direct taxes are levied directly on taxable income earned by individuals and corporate entities and the burden to deposit tax is on the assesse themselves.

While indirect taxes are levied on the sale of goods or provision of services and the burden to collect and deposit indirect tax is on the sellers instead of the assesse directly.

Taxes in India are primarily levied by the Central and the State Government. However, some minor taxes are also levied by the local authorities such as the Municipality and the Local Governments.

8.1.1 Direct Taxes

Income Tax-

When total income of an individual exceeds maximum income not chargeable to tax then such individual is liable to pay income tax based on rates as prescribed by the Income Tax Authority of India.

8.1.2 Indirect Taxes

Goods & Service Tax (GST)-

The Ministry of Finance, Government of India (GOI) has introduced India's most revolutionary taxation reform as GST with effect from 1st July, 2017. The main objective of GST is **"One Nation, One Tax and One Market".** GST is defined as tax on **supply of goods and services other than on alcohol for human consumption.** GST on five specified petroleum products (Crude Oil, Petrol, Diesel, ATF & Natural Gas) would be applicable from a date to be recommended by the GST Council.

GST has replaced levy of Central taxes like, Central Excise duty, Additional Excise duty, Service tax, Additional Custom duty and Special Additional duty and State level taxes like, VAT or sales tax, Central Sales tax, Entertainment tax, Entry tax, Purchase tax, Luxury tax and Octroi.

GST has four components:

(a) Central GST (CGST) - Levied on Intra-state supply of goods or services
(b) State GST (SGST) - Levied on Intra-state supply of goods or services
(c) Union Territory GST (UTGST) – Levied on Intra-Union Territory supply of goods and services
(d) Integrated GST (IGST) - Levied on the Inter-state supply of goods or services.

Input Tax Credit (ITC) is available at all stages for the input tax paid at earlier stages except for final consumers.

Central excise-
Levied on those goods manufactured in India, liability arise as soon as the goods are manufactured and liability of payment arise on the manufacturer of such goods, another name of this tax is CENVAT (Central Value Added Tax).

By the regime of GST, it is applicable on the Petroleum products, Liquor and Narcotics Products only.

Custom Duty-
Custom duty is levied when goods are imported or exported. The rate of duty varies upon the nature of item being imported/ exported.

8.1.3 Taxes Levied by Local Bodies

Municipal Taxes-

Municipal Corporation in every city imposes tax on property which is calculated as per the area of property. Municipal tax rate varies from city to city.

8.1.4 Taxes Levied By State Government

Stamp duty

This type of tax is paid on transfer of the title of a property from one person to another, rates of stamp duty varies in every State. It is basically an additional cost paid to the government on account of purchase of any property.

8.2 Tax on Corporates

8.2.1 Domestic companies

Domestic companies are taxed in India at different rates.

a) Where its total turnover or gross receipt during the previous year 2019-20 does not exceed Rs. 400 crore - 25%
b) Where it opted for Section 115BA - 25%*****
c) Where it opted for Section 115BAA - 22%*****
d) Where it opted for Section 115BAB - 15%*****
e) Any other domestic company - 30%
****Additional Surcharge of 10% shall be levied***

The aforesaid tax rate is to be increased by surcharges and applicable cess as well. Currently surcharge is 7% of such tax, where total income exceeds one crore rupees but not exceeding ten crore rupees and at the rate of 12% of such tax, where total income exceeds ten crore rupees.

Further 4% Health and Education Cess is also payable on tax amount and surcharge. All the incomes earned by domestic companies whether earned in India or outside India are taxable in India.

Long term capital gains earned by a resident on sale of listed securities may be taxed at the rate of 12.5% (provided no benefit of indexation has been availed). Long-term capital gains arising from transfer of unlisted securities shall be taxed at the rate of 12.5%. Long-term capital gains arising from transfer of listed securities, units of equity oriented or a unit of business trust which is chargeable to STT shall be taxable at the rate of 12.5% as per Section 112A.

Short term Capital gains are taxable in India at the normal rates other than short term capital gain arising from transfer of Equity Shares which is chargeable to securities transaction tax shall be taxed at 20% as per Section 111A.

Interest earned by a resident may be taxed at a rate between 5.20% to around 42.744% depending on the nature of the debt instrument.

Dividend Distribution Tax (DDT)

Effective from 01-04-2020, Dividend Distribution Tax was abolished and a withholding tax @ 10% u/s 194 was introduced on payment of dividend.

Capital gain

Whether the gain on capital asset is to be taxed as short term or long term will depend on the capital asset being transferred and the period of holding of such asset.

Professional tax

An earning professional is liable to pay professional tax**,** such tax is imposed by municipal corporations. Most of the states are in practice to charge professional tax on earning of professionals

Entertainment tax

Such type of tax basically depends on the state government, and included amusement parks, exhibitions, stage shows, arcades, video games etc.

MAT (Minimum Alternate Tax)

In order to bring companies under the Income Tax Act, the concept of Minimum Alternate Tax (MAT) has been introduced. The present rate of MAT is 15% of book profit (plus surcharge and Health and Education Cess as applicable) where the normal tax liability of the company is less than 15% of book profit. Normally, a company is liable to pay tax on the income computed in accordance with the provisions of the income tax Act, but many a times due to exemptions under the income tax Act, there is huge actual profit as shown in the profit and loss account of the company but no taxable income. MAT is a way of making companies pays a minimum amount of tax.

8.2.2 Foreign companies

Foreign companies are taxed at the rate of about 35%. The aforesaid tax rate is to be increased by surcharges and applicable cess as well. Currently surcharge is 2% of such tax, where total income exceeds one crore rupees but not exceeding ten crore rupees and is 5% of such tax, where total income exceeds ten crore rupees. Further 4% Health and Education Cess is also payable on tax amount and surcharge. While residents are taxed on their worldwide income, non-residents are only taxed on income arising from sources in India.

Long term capital gains earned by a non-resident on sale of listed securities may be taxed at the rate of 12.5% (provided no benefit of indexation has been availed). Long-term capital gains arising to a non-residents or foreign company from transfer of unlisted securities shall be taxed at the rate of 12.5% without giving benefit for indexation.

Short term Capital gains are taxable in India at the normal rates other than short term capital gain arising from transfer of Equity Shares which is chargeable to securities transaction tax shall be taxed at 20% under Section 111A.

Interest earned by a non-resident may be taxed at a rate between 5.20% to around 42.744% depending on the nature of the debt instrument.

Capital gain

Whether the gain on capital asset is to be taxed as short term or long term will depend on the capital asset being transferred and the period of holding of such asset.

Professional tax

An earning professional is liable to pay professional tax**,** such tax is imposed by municipal corporations. Most of the states are in practice to charge professional tax on earning of professionals.

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9 LABOR LAWS IN INDIA

9.1 Regulatory Norms

9.1.1 Labor Law Compliances

Labor laws in India are those bodies of laws which define the rights and obligations of workers, union members and employees working in an organization. Labor law covers industrial relations, health and safety measures at workplace, defines Employment standards and interlinks relationship between employees, employers and the government

Labor law is further divided into two broad categories i.e. collective labor law & individual labor law. Individual Labor law covers the rights of employees at workplace or at any contract of work whereas the collective labor laws governs the tripartite relationship between employee, employer and union

Some of the major laws included in it are:

9.1.2 Employees Provident Funds and Miscellaneous Provisions Act, 1952

The Act is applicable to every establishment in which twenty or more persons are employed and a factory engaged in any industry specified in Schedule I of the Act. Under this Act, both the employer and employee has to contribute 12% of the basic wages, dearness allowance and retaining allowance (if any) payable to each of the employees (whether employed by him directly or by or through a contractor).

The objective of this Act is to provide financial security and stability in cases where employee is no longer fit to work or at the time of his retirement.

9.1.3 The Employees State Insurance Act

Under this Act, the employer and employee has to contribute 0.75%* and 3.25%* each of the wage paid/payable to ESIC. Its objective is to provide benefits to employees in case of sickness, maternity and employment and to make provision for certain other matters injury or related matters. ***(*Revised Rates as applicable w.e.f 01.07.2019.)***

9.1.4 The Payment of Gratuity Act –

Gratuity is a reward offered by the employer to his employee in the event of termination of his employment provided continuous service for not less than 1 year except in case of death or disablement of employee. Payment of gratuity is mandatory for those employers having more than 10 employees in an organization/factory/plantation/port/shops /mines etc. as per the provisions contained in Gratuity Act, 1972. Gratuity shall be payable @ 15 days wages for every year of completed service.Recently the present Government has repealed some labour laws as with changing times, many of them were ineffective. Now 29 Labour Laws have been amalgamated into 4 labour codes namely:

- Labour Code (Wage Code) – 2019
- Social Security Code, 2020
- OSH Code (Occupational, Safety, Health and Working Conditions Code) – 2020
- Industrial Relations (IR) Code, 2020

For ensuring workers' right to minimum wages, the Central Government has amalgamated 4 laws in the Wage Code, 9 laws in the Social Security Code, 13 laws in the The Occupational Safety, Health and Working Conditions Code, 2020 and 3 laws in the Industrial Relations Code.

The benefits of these four Labour Codes will be available to workers of both organized and unorganized sector. Now, Employees' Provident Fund (EPF), Employees' Pension Scheme (EPS) and coverage of all types of medical benefit under Employees' Insurance will be available to all workers.

9.2 Manpower availability

In order to start or expand a business, business must ensure that it has adequate work force to handle it. One of the biggest reasons why foreign resident choose to start a business in India, is availability of huge manpower at comparatively lower rates. India is enriched with labour force, skilled professionals and dedicated employees.

10 ENVIRONMENT LAWS

Government enacted the Environment Protection Act in order to provide protection to environment and to mandate rules and policies for protection of environment.

Other major Environmental laws include:

a) The Water (Prevention & Control of Pollution) Act, 1974
b) The Air (Prevention & Control of Pollution) Act, 1981
c) The Environment (Protection) Act, 1986
d) The Public Liability Insurance Act, 1991
e) The National Environment Tribunal Act, 1995
f) The National Green Tribunal Act, 2010

11 INTELLECTUAL PROPERTY RIGHTS

11.1 Patents

A patent is a statutory right to exclude others, from making, using, selling, and importing a patented product or process without the consent of the patentee, for a limited period of time. Such rights are granted in exchange of full disclosure of an inventor's invention.

The term "invention" is defined under Section 2(1)(j) of the Patents Act, 1970 ("Patents Act") as "a new product or process involving an inventive step and capable of industrial application." Thus, if the invention fulfills the requirements of novelty, non-obviousness (inventive step), and industrial application then it would be considered a patentable invention.

There are certain innovations that are specifically excluded from patentability even if they meet the criteria of an invention as defined under Section 2(1) (j) of the Patents Act. These inventions are listed in Section 3 and Section 4 of the Patents Act.

Any person who is resident of India cannot first file for a patent application outside India unless a specific permission has been obtained from the patent office. However, a person resident in India can file a patent application outside India after 6 weeks of date of filing the patent application in India. This rule does not apply in relation to an invention for which a patent application has first been filed in a country outside India by a person resident outside India.

11.2 Trade Mark

Trademarks are protected both under statutory law and common law. The Trade Marks Act, 1999 ("TM Act") along with the rules thereunder govern the law of trademarks in India.

Under the TM Act the term 'mark' is defined to include 'a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colors, or any combination thereof.'

Thus, the list of instances of marks is inclusive and not exhaustive. Any mark capable of being 'graphically represented' and indicative of a trade connection with the proprietor is entitled to registration under the TM Act. This interpretation opens the scope of trademark protection to unconventional trademarks like sound marks. India follows the NICE Classification of goods and services, which is incorporated in the Schedule to the Trade Marks Rules, 2002 ("TM Rules"). Mark should be distinctive and should not be in the prohibited category.

11.3 Copyright

A copyright grants protection to the creator and his representatives to certain works and prevents such works from being copied or reproduced without his/their consent. The rights granted under the Copyright Act to a creator include the right to stop or authorize any third party from reproducing the work, using the work for a public performance, make copies / recordings of the work, broadcast it in various forms and translate the work to other.

A copyright is infringed if a person without an appropriate consent does anything that the owner of the copyright has an exclusive right to do. However, there are certain exceptions to the above rule (e.g., fair dealing). The Copyright Act provides for both civil and criminal remedies for copyright infringement. In the event of infringement, the copyright owner is entitled to remedies by way of injunction, damages and order for seizure and destruction of infringing articles.

12 GENERAL BUSINESS REGISTRATIONS REQUIRED IN INDIA

A Person resident outside India establishing its business presence in India is required to obtain various business registrations as detailed out under this heading:

12.1 Registration under Goods and Service Tax Act, 2017

Under the Goods and Service Tax (GST) regime, businesses whose turnover exceeds Rs. 40 Lakhs (Rs 20 lakhs for service provider) is required to mandatorily obtain GST registration as a normal taxable person.

If a business entity which is required to obtain GST registration carries on business without registering under GST, it will be treated as an offence under GST laws and such an entity may incur heavy penalty.

GST registration usually takes 10-15 working days.

12.2 Permanent Account Number

Every person who wants to invest or start business in India is required to obtain Permanent Account Number. PAN is a unique 10-digit alpha-numeric number issued to an applicant by the Income Tax Authority.

It usually takes 2-5 days to obtain e-PAN. However, the physical PAN card may take time.

12.3 Tax Deduction and Collection Account Number (TAN)

Tax Deduction and Collection Account Number (TAN) is required to be obtained by all persons who are responsible for deducting tax at source (TDS) or who are required to collect tax at source (TCS).

Just like PAN, it is also a 10-digit alpha-numeric number issued by the Income Tax Authority.

12.4 Trademark Registration

Though Trademark registration is not mandatory for any business entity in India, it is advisable to register your trademark to protect your unique brand, logo, slogan, etc.

Trademark registration is an online process and the same can be done at the comfort of your home.

Once the trademark is registered, the registered proprietor of the trademark enjoys an exclusive right in relation to that trademark within the territorial jurisdiction of India.

12.5 Start-up Registration

Start-up registration allows an eligible entity (i.e. a private limited company or a limited liability partnership) which has been in existence for a period not exceeding 10 years from the date of incorporation to access a host of tax exemption (under Section 80IAC and Section 56 of the Income Tax Act, 1961), easier compliance and various other benefits.

Only those business entities which are working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with high potential of employment generation or wealth creation can opt for start-up registration.

It is not mandatory to obtain start-up registration.

12.6 MSME Registration

The benefit of seeking Micro, Small and Medium Enterprises (MSME) registration is that it allows small business to avail various benefits/ subsidies from Government of India.

Whether a business entity is eligible for registration as a micro, small or medium enterprise depends on threshold limit for investment in plant and machinery or equipment and on its Annual turnover as follows:

Manufacturing & Service Sector

Enterprises	Investmentin Plant & Machinery and Annual Turnover
Micro	Investment Does not exceed Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs) and Turnover does not exceed Rs. 10,00,00,000/- (Rupees Ten Crores)
Small	Investment does not exceed Rs. 25,00,00,000/- (Rupees Twenty-Five Crores) and Turnover does not exceed Rs. 100,00,00,000/- (Rupees One Hundred Crores).
Medium	Investment does not exceed Rs. 125,00,00,000/- (Rupees One Hundred Twenty-five Crores) and Turnover does not exceed Rs. 5,00,00,00,000/- (Rupees Five Hundred Crores).

MSME registration is a simple online process and can be done in a single day.

Some of the benefits of MSME registration include:

- Timely payment in respect of goods sold or services rendered;
- Interest on delayed payment at three times of the rate notified by RBI
- Maximum credit period allowed is forty five days
- Liberalized norms for listing of securities on SME platform
- Priority sector lending

12.7 Import Export Code

It is mandatory for a business entity engaged in export or import of goods to obtain Import Export Code (IEC). It is a unique 10-digit code issued by Directorate General of Foreign Trade with lifetime validity. It is not possible to deal with export or import of goods or services without this code. It takes 15-20 days to obtain IEC.

12.8 Registration under Shop and Establishment Act

Registration under Shop and Establishment Act is applicable nationwide and is applicable broadly for all business organization and is required to be applied within 30 days from commencement of work.

Each state has different rules, regulations and procedures for registration under Shop and Establishment Act.

12.9 Employees' Provident Fund (EPF)

EPF registration is mandatory for all business establishments employing 20 or more employees.

12.10 Employees' State Insurance (ESI)

ESI registration is mandatory for all business establishments employing 10 or more employees.

13 APPLICABLE COMPLIANCE

Apart from various business registrations, a whole gamut of compliance is applicable on a business entity depending upon the business structure it opts for. A summary of these compliance have been detailed out below:

Frequency	Law	Compliance	Due date
Monthly	GST	Reporting of Outward Supply in GSTR-1 (in case turnover exceeds Rs. 5 Crore or person who has not opted QRMP scheme)	by 11th of the following month
		Reporting of Invoices in GSTR-1 IFF (for the person who opted QRMP scheme)	by 13th of the following month
		Payment of tax and filing of GSTR 3B having summary of outwards supplies, tax credits etc (for the person other than who opted QRMP scheme)	by 20th of the following month
		Payment of tax (for the person who opted QRMP scheme)	by 22nd/24th of the following month
	Income Tax	Deduction and deposit of Tax Deducted at Source, and Equalisation levy (payable on digital advertisement payments to non-resident service providers)	by 7th of the following month
	Labour law	Payment of provident fund (PF) contribution	by 15th of the following month
		Payment of Employee state Insurance (ESI)	by 15th of the following month
Quarterly	GST	Reporting of Outward Supply in GSTR-1 (in case turnover is up to Rs. 5 Crore & who have opted for QRMP Scheme)	by 13th of the month following the quarter
		Payment of tax and filing of GSTR 3B having summary of outwards supplies, tax credits etc (for person who opted for QRMP Scheme)	22nd/24th of the month following the quarter
	Income tax	Payment of advance tax	15th June, 15th September, 15 December and 15th March
		Filing of TDS return	by 30th/31st of the month following the quarter other than March Quarter Due date for March quarter is 31st May of the subsequent FY
		Issuance of TDS Certificate	by 15th of the month following the due date of filing of TDS return
		Filing of TCS return	15th of the month following the quarter
		Issuance of TCS Certificate	by 15th of the month following the due date of filing of TCS return
	Companies Act	Declaration for Commencement of Business in Form INC-20A	Within 180 days of Incorporation
		Conducting Board Meeting (BM) and maintenance of Minutes thereof	First BM within 30 days of incorporation

			Subsequent BM- Not more than 120 days shall elapse between two BM (Minimum 4 BM in a year)
Half-yearly	Labour law	Filing of Employee state Insurance (ESI) return	11th May (for period October to march) and 11th November (for period April to September)
Annual	GST	Filing of GST returns in GSTR-9 (if turnover exceeds 2 crores)	by 31st December of following year
		Filing of GSTR-9C (GST reconciliation statement) (if turnover exceeds Rs. 5 crores)	by 31st December of following year
	Income tax	Filing of annual income tax return	By 31st July/ 31st October/ 30th November of the following year as applicable.
		Getting the tax audit done by chartered accountant in practice if gross receipts exceed prescribed limit and filing of tax audit report	By 30th September/ 31st October of the following year as applicable.
		Preparation and filing of transfer pricing study and accountant certificate, if applicable	By 31st October of the following year.
	Companies Act	Filing of Form DIR-3 KYC	by 30th September of following year
		Getting statutory audit of financial statement done by practicing chartered accountant (Mandatory for all companies)	Before date of board meeting approving financial statements
		Conducting Annual General Meeting (AGM)	**1st AGM**- within 9 months from closure of FY **Subsequent AGM**- within 6 months from closure of FY
		Filing of Financial Statement (e-Form AOC-4)	Within 30 days from the date of AGM
		Filing of Annual Return (e-Form MGT-7)	Within 60 days from the date of AGM
		Appointment of Statutory Auditor for a term of Five Consecutive year (e-Form ADT-1)	Within 15 days from the date of AGM
	Labour Law	Filing of PF Return	25th April subsequent to financial year
		Labour Welfare Fund	Paid on annual basis as per the due date applicable in respective states

*** QRMP Scheme:** The Central Board of Indirect Taxes & Customs (CBIC) introduced Quarterly Return Filing and Monthly Payment of Taxes (QRMP) scheme under Goods and Services Tax (GST) to help small taxpayers whose turnover is less than Rs.5 crores. The QRMP scheme allows the taxpayers to file GSTR-3B on a quarterly basis and pay tax every month.

14 TRADE WITH INDIA

While setting up a permanent business establishment is one of the option available to the foreign resident for establishing its presence in India, there are numerous other options available for a foreign entity to trade with India without actually establishing its business presence as provided below:

14.1 Marketing Model

Under this trade model, the foreign entity engages an Indian company to render marketing services on its behalf. On identification of a customer, the Indian company informs the foreign entity and the foreign entity directly provides the goods to such customer. A commission is paid by the foreign entity to the Indian company for rendering marketing services.

All obligations to import the goods in India shall vest with the customer.

14.2 Marketing and Distribution Model

Under this trade arrangement, a foreign entity engages an Indian company to render marketing and distribution services on its behalf. This model is similar to marketing model except that the goods of the foreign entity are stocked with the Indian company and in the event a customer is identified, the Indian company supplies the goods to the customer directly. All rights and obligations, including payment obligations flow between the foreign company and the customer. A commission is paid by the foreign entity to the Indian company for rendering marketing, distribution and stocking services.

14.3 Agency Model

Under this model, foreign entity can appoint an Indian company as its agent. The Indian company is responsible for the marketing, stocking and distribution of goods of the foreign entity and retains a part of the consideration as its agency fees.

14.4 Teaming Agreement

Under this model, a foreign entity and an Indian company comes together as a team for development of products for an identified customer.

In such situations, the foreign entity provides its technology, know-how and other confidential details required for development of product to the Indian company which in turn undertakes the manufacturing of the products in India and supplies the same to the customer.

The rights and obligations of the parties are mutually agreed between the foreign company, Indian company and the customer.

14.5 Sub-contractor

According to this model, a foreign entity engages an Indian company to manufacture certain goods on its behalf. The goods manufactured by the Indian company are in turn exported to the customers of the foreign company. Indian company is paid for the goods manufactured by it on cost-to-cost basis along with a certain percentage of commission as may be mutually decided between the foreign entity and the Indian company.

15 DISPUTE RESOLUTION

15.1 Judicial Authorities

In order to resolve a dispute in India, there exist several judicial authorities and tribunals which function in accordance with the powers conferred on them by the central government

First and foremost, Supreme Court of India is the supreme judicial authority in India. The Supreme Court receives appeals from the High Courts.

Whereas the high court receives appeals from districts courts and undertake matters of their jurisdiction Beneath the High Courts are the subordinate civil and criminal courts that are classified according to whether they are located in rural or urban areas and by the value of disputes such courts have jurisdiction to adjudicate upon.

15.2 Tribunals

With a view to address disputes in a speedy manner considering the density of cases pending before the judicial authorities, various tribunals are set up in India. Such as National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLT), Debts Recovery Tribunals (DRT) Debt Recovery Appellate Tribunal (DRAT), Income Tax Appellate Tribunal, Labour Appellate Tribunal, Securities Appellate Tribunal, Competition Appellate Tribunal, National Green Tribunal and others

These Tribunals are bodies established by Central Government by notification in official gazette which defines the constitution, powers and function conferred on such authority.

15.3 Arbitration

Arbitration means a technique for the resolution of disputes outside the courts. Considering the pendency of dispute related matters before the judicial authority, Arbitration is a form of alternative dispute resolution (ADR). Arbitration Act was enacted by Government of India (GOI).

India’s first arbitration enactment was the Arbitration Act, 1940 which was complimented by the Arbitration (Protocol and Convention) Act of 1937 and the Foreign Awards Act of 1961.

16 CONCLUSION

Over the past few years, India is being a tremendous land for businesses and many foreign investors have invested their stake in the Indian market and emerged with productive and success driven outcomes.

Although India has a judicial system that is painfully slow, expensive and unpredictable, the tax structure in India is rigid which has certain complications in understanding, the Government of India has taken several strong measures to revive growth cycle in India by launching various initiative such as Make in India, Digital India and the Start-up policy in India. All these business-friendly reforms have significantly created a positive business environment in the country.

17 Insight That Makes Your Business Journey Easy

Starting a business in India can feel confusing — so many steps, rules, and processes to follow.

That's why we're here to share **clear, helpful insights** that make everything easier.

With CompaniesNext, you understand:

- Which business structure fits your goals
- What registrations and licenses you need
- How to stay legally compliant
- How taxes work for your business
- What to do to grow smoothly

Simple guidance. Clear direction. No confusion.

18 Why Companies Next Is the Right Choice

Choosing the right partner can save you time, reduce stress, and help your business grow faster.

Here's why entrepreneurs trust us:
✓ Experienced team in legal, tax, and compliance
✓ Simple and transparent process
✓ Personalized support for all business types
✓ Fast service with accurate results
✓ Complete end-to-end solutions

We work with you to make your business journey easier, smoother, and more successful.

19 Comprehensive Business Setup Solutions

Beyond company registration, we offer end-to-end solutions to ensure your business thrives in India from day one.

India Entry Services	Registrations
○ Company Registrations ○ Pre Entry Market Study ○ Legal and tax structuring ○ Shareholder Agreements or Joint Venture	○ GST Registration ○ Import Export Code Registration ○ Trademark Registration ○ Start-up India Registration ○ MSME Registration ○ FCRA Registration
Compliance Services	**Advisory Services**
○ Accounting and Book Keeping ○ Direct Tax Compliance Services ○ Goods and Service tax compliance ○ Payroll Services ○ Virtual CFO Services ○ Secretarial and FEMA compliance	○ Business valuations ○ Due Diligence ○ FEMA Consulting ○ Business Deck/Information Memorandum ○ Internal Audit

20 CONTACT US

Our team of dedicated professionals is committed to working with companies to help them meet their ambitions. If you need any assistance with any of the issues raised in this Guide, you may reach out to us at:

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