

Business Set-up India



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Business Entities

Type of Entity Structure In India

LLP (Limited Liability Partnership)

Foreign investment permitted in sectors where 100% FDI is permitted under automatic route without any performance-linked conditions

PO (Project Office)

- Execute specific projects
- Where criteria prescribed are not met, approval is required from the RBI to set up a PO

WOS (Wholly Owned Subsidiary) / JV (Joint Venture)

Any activity subject to FDI policy

LO (Liaison Office)

- Acts as channel of communication
- No commercial activities

Branch Office

- Export / Import of goods/ Professional service/Research activities/Technical or financial collaboration/ Buying and selling agents/ IT and software development services/ Technical support for products supplied by parent company/ represent foreign airlines or shipping companies
- No manufacturing (except in SEZ units)

“Important note : Selection of form of entity for investment into India should be based on certain parameters such as nature of activities, period of investment, business model for India operations, tax considerations etc”



Comparison Chart

Comparison Chart

Particulars	LO	BO/PO	WOS	LLP
Setting up requirement	Prior RBI approval (except in case of insurance companies)	Prior RBI approval for branches Prior approval not required where conditions are met	If activities fall under automatic route, no prior RBI approval	Foreign investment permitted in sectors where 100% FDI is permitted under automatic route without any performance-linked conditions
Permitted activities	Act as representative	Activities permitted by RBI	Any activity specified in MoA of company	Any activity specified in LLP agreement subject to above
Funding of local operations	Expenses to be met from inward remittances received from HO	Expenses to be met from inward remittances received from HO or from earning from permitted activities	Funding through equity or other prescribes modes of funding or internal accruals	Funding through partner contribution or internal accruals
Limitation of liability	Unlimited	Unlimited	Limited liability to the extent of equity participation	Limited liability to the extent of partner contribution
Legal entity	Not a separate entity	Not a separate entity	Separate legal entity	Separate legal entity
Compliance under Companies Act	Registration and periodical filing of accounts/ other documents	Registration and periodical filing of accounts/ other documents	Compliance needed with substantial higher statutory compliances and filing requirements	Statutory compliances and filing requirements lesser than WOS

Comparison Chart

Particulars	LO	BO/PO	WOS	LLP
Compliance under foreign exchange	Annual compliance certificate with RBI	Annual activity compliance certificate with RBI	Periodic and annual filings relating to receipt of capital and issue of shares to investors	Periodic and annual filings relating to receipt of contribution from foreign investors
Compliance under Income tax Act	No tax liability Advisable to file an Income tax return along with an Annual Activity certificate	Company obliged to pay taxes on income earned and file annual return in India	Liable to tax on global income on net basis	Liable to tax on global income on net basis
Tax rate	No tax	40 percent plus surcharge and education cess	30 or 22 or 15 percent (subject to conditions) plus surcharge and education cess	30 percent plus surcharge and education cess
Repatriation of funds	No income earning activity allowed	No tax on repatriation of profits	Repatriation of funds in form of dividend subject to tax in hands of shareholders	LLP does not distribute dividends. Share of profit returns is exempt in the hands of the partners
Permanent Establishment	PE of foreign entity in India	PE of foreign entity in India	Independent taxable entity	Independent taxable entity



Legal Requirements

Legal Requirements under each category

Particulars	Private	Public	LLP
Min Members	2	7	2 partners
Max Members	200	unlimited	No Limit
Min Directors	2	3	2 Designated Partners
Max Directors	15	15	Not Applicable
Resident Director (person who has stayed in India for a total period of not less than 182 days in the Financial Year)	1 Mandatory	1 Mandatory	1 Designated Partner
Transfer of ownership	Ownership can be transferred	Ownership can be transferred	Ownership can be transferred
Subscription of shares	Public subscription not allowed	Public subscription allowed	Public subscription not allowed
Managerial Remuneration	No limit for managerial personnel	Shareholder approval is required, If remuneration payable is above limits	Remuneration is based on LLP agreement
Governing Act/ Law	Companies Act, 2013	Companies Act, 2013	LLP Act, 2008

Process for Incorporations of Company

Steps	Process/ Compliances
Step 1 - Obtain Director Identification Number (DIN)	<ul style="list-style-type: none"> DIN is a unique identification number issued by the Ministry of Corporate Affairs (MCA) for a person intending to become a director of a company. Along with personal information of directors, following KYC documents are required: <ol style="list-style-type: none"> Color Passport Size Photo of each Copy/Scanned Copy of PAN Card (Self Attested) Copy /Scanned Copy of AADHAR Card and any other address proof (like Bank Statement / utility Bill). (Self Attested)
Step 2 - Digital Signature Certificate (DSC) for proposed 'Directors'	<ul style="list-style-type: none"> DSC can be obtained by approaching Certifying Authorities (CAs) with original supporting documents and self-attested copies Following KYC documents are required: <ol style="list-style-type: none"> Address Proof Aadhaar card (not mandatory) PAN card Photo Email Id and Phone Number
Step 3 – Name Approval	<ul style="list-style-type: none"> Up to 2 Names of choice (in sequence of priority) The name reserved for company shall be available for adoption for a period of 20 days
Step 4 - Finalization of supporting documents	<ul style="list-style-type: none"> Filing of electronic Memorandum of Association & Articles of Association Details Of Authorized capital and Paid up capital to be provided Declaration/ consents by first subscriber and Director(s) Proposed company address along with Proof of registered office address - lease agreement, NOC from the owner and utility bill Payment of stamp duty/ filing fees

Process for Incorporations of Company

Steps	Process/ Compliances
Step 5 - Filing	Filing of e-forms along with necessary supporting documents with the Ministry of Corporate Affairs (MCA)
Step 6 - Verification of documents	After payment of all fees & stamp duties, MCA scrutinizes all forms and may suggest changes in forms and/or attachments
Step 7 - Consent to establish & operate	Once all the Forms are duly approved by MCA, the digitally signed “Certificate of Incorporation” is issued to the company



Taxability Repatriation

Taxability on Sending funds outside India

- Indian companies can repatriate profits to its parent company in various forms such - As dividend, buyback of shares, share reduction, sale of shares, payment in the form of fee for technical services, royalty, management fees, etc. There are tax implications arising under each of the aforementioned alternatives.
- The most common way of repatriation is in the form of dividends. Indian Finance Act 2020 proposed a significant reform by abolishing the dividend distribution tax (DDT) and moving to classical system of dividend taxation in the hands of the shareholders from Financial Year 2020-21.
- Under the new system, dividend income will be taxable in the hands of the shareholder (i.e. XYZ at 20 percent plus surcharge and cess). Further, deduction of interest expense to earn such income shall not exceed 20% of such income.

A group of people are silhouetted against a vibrant sunset sky. Some individuals are standing on a dark, elevated surface, while others are reaching their arms up towards the bright sun. The sky is filled with soft, glowing clouds in shades of orange and yellow. The overall mood is one of triumph and achievement.

3 Our Leadership Champions

Our Leadership Champions



KAPIL MAHANI
GST & Customs
Ex-Ernst & Young
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+91 9899616182

- ▶ **Role:** Tax and Strategic Advisory
- ▶ **Experience:** Over 13 years
- ▶ **Clients Managed:** Nokia, Huawei, Future Group, Godfrey, Ebix, Grohe, Lixil, Nivea, Mahindra
- ▶ **Qualification:** FCA, B.Com (Hons.)

- ▶ Kapil Mahani is a global tax expert currently leading India and Gulf Tax Practice. In the past Kapil has been part of EY's Indirect Tax practice at senior position
- ▶ Kapil was Special Invitee in GST and Indirect Tax Committee of ICAI for the period 2019-20
- ▶ He is frequently quoted and cited in various discussion on GST/VAT/ Customs and is a regular speaker and presenter in the India and abroad
- ▶ With an experience of more than a decade, Kapil is presently serving on the Board of several companies as GST & Custom advisor/ auditor apart including compliance automation through robotics & automation.
- ▶ He is steering 'Invest in India' campaign by decoding various State and Central Level Incentives launched under Invest India campaign including customs benefits available in India like private Bonded warehouse, SEZ/ Free Trade Warehousing zone operations.
- ▶ Authored book Titled 'Practical Guide to new return and E invoicing by Wolters Kluwer' which got advance appraisal from GSTN CEO , 'Practical Guide to Sabka Vishwas Scheme' & 'GST Audit and Annual Return Manual with detailed guide on Input Tax' published PAN India
- He is also involved in health checks of various companies for the customs matters including private bonded warehouses, Classification issues , Free Trade agreements and SVB matters.

Our Leadership Champions



DEVAN GUPTA
**Assurance & Business
Structuring**

Ex-KPMG; PwC

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- ▶ **Role:** Business Structuring and Corporate Advisory
- ▶ **Experience:** Over 13 years
- ▶ **Clients Managed:** NDTV, HCL, Medanta, Ebix
- ▶ **Qualification:** FCA, B.Com (Hons.)

- ▶ Devan Gupta is an expert in the field of audit, assurance and business advisory and served multiple clients both Public and Private Limited Companies
- ▶ In the past, he has worked as a manager in KPMG
- ▶ Devan is a leader for the India and Middle East Market and focused on providing solutions to the client on the transaction advisory and structuring
- ▶ Devan is a prominent speaker in various forums with the capacity of 500 odd audience and has presented before Indian ministry, for various issues faced by textile and logistic industry
- ▶ During his tenure he has worked with various CFOs of the Companies having turnover of Rs 1000 Cr or more and share special bond with them
- ▶ Successfully implemented IFC on listed client under the companies act 2013 which help in creating SOP's under GST and has handled various technical issues on Barter transaction , Fair value under IAS 18/11, Grossing vs Net Accounting, Transaction with related parties, ESOP, Challenges faced by E-Commerce Companies etc
- ▶ Devan has been an active participant before the various Audit Committee and Board of Directors of various companies and has played a key role in conducting various Due Diligences and diagnostic reviews

Our Leadership Champions



ASHISH KUMAR
Assurance & Tax
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- ▶ **Role:** Assurance
- ▶ **Experience:** Over 13 years
- ▶ **Qualification:** FCA, B.Com (Hons)

- ▶ Ashish has worked in the area of Indirect Tax served multiple clients both Public and Private Limited Companies
- ▶ Successfully implemented GST on logistic and textile clients, provided critical advisory in relation to changes in business processes to comply with GST
- ▶ Experience in handling assessment and appeal proceedings before VAT authorities of different States and Excise Department
- ▶ He has expertise in the field of Auditing and Assurance viz. internal audit, System audits, Business Consultancy, Financial Planning & Consultancy
- ▶ He handles clientele in the field of Manufacturing, Trading Industry, Start up companies and Entertainment Industry
- ▶ He is managing start-up ventures at all stages of the business cycle from identifying appropriate entry routes to assisting in deal structuring and providing post set-up services
- ▶ Effectively managed VAT and Service Tax and Excise Compliance of large Corporate
- ▶ He is having rich experience in GST Audit

Our Leadership Champions



PRIYANKA GOENKA
Direct tax & regulatory
Ex-Ernst & Young,
KPMG
priyanka@Cretumadvisory.com



+91 98914 18032

- ▶ **Role:** Taxation and business structuring
- ▶ **Experience:** Over 14 years
- ▶ **Clients Managed:** LG, Lockheed, ADM, Hitachi, Panasonic, Isquared
- ▶ **Qualification:** FCA, B.Com (Hons.)

- ▶ Priyanka Goenka has over 14 years of experience in Domestic, International tax, Transfer Pricing & Regulatory planning
- ▶ She has worked as a Senior Manager with Ernst & Young LLP
- ▶ Wide experience across domains like Infrastructure, Defence, EPC, Oil & Gas service provider, Infrastructure, Consumer and Industrial markets at strategic & tactical levels
- ▶ Accomplished various assignments involving double tax treaty planning, structuring inbound/outbound investments, tax efficient contract structuring, permanent establishment review, indirect transfers, secondment matters, royalty, FTS, withholding tax etc.
- ▶ Worked closely with the Japanese & Korean Business desk at EY on multiple tax projects for MNCs
- ▶ Interpreting corporate laws, foreign exchange regulations and FDI guidelines on issues relating to permissibility of transactions/ investment in India
- ▶ Interpreting corporate laws, foreign exchange regulations and FDI guidelines on issues relating to permissibility of transactions/ investment in India

Our Leadership Champions



AANCHAL MALHOTRA

M&A, PE, Valuations

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- ▶ **Role:** Mergers & Acquisitions, Investment Banking and Technology
- ▶ **Experience:** Over 13 years
- ▶ **Clients Managed:** NITI Aayog, Dalian Wanda, Ministry of Afghanistan, Ministry of Liberia, Honda
- ▶ **Qualification:** ACA, B.Com (Hons.)

- ▶ Serving as an advisor for Mergers and Acquisitions, Fund raising, valuations and project appraisals for government and private corporates
- ▶ In past, she has worked as an Asst Vice President with Ernst & Young post working as Asst Vice President with Moody's Analytics
- ▶ Aanchal is a leader for the India and Middle East Market and focused on providing solutions to the client in the areas of transaction advisory and performance improvement
- ▶ Aanchal is a prominent speaker in various forums in government sector and valuations; she has presented many projects across India under an initiative for NITI Aayog
- ▶ During her tenure she has worked with various CEOs, CFOs of the Companies having turnover of Rs 5,000 Cr or more
- ▶ She is leading the development of the technology in consulting services industry globally
- ▶ She has worked on projects of strategic importance such as Rail development project in Afghanistan, Road development corridor in Liberia,
- ▶ She has wide experience in structuring transactions on Public Private Partnership for Government, financial feasibility, fund raising for startups and corporates and valuations.

Our Leadership Champions



ARUN KHETAN
Foreign Trade Policy
Expert

- ▶ **Role:** Foreign Trade Policy consultant
- ▶ **Experience:** Over 24 years
- ▶ **Clients Managed:**
- ▶ **Qualification:** B. Com (Hons)

- ▶ Arun Khetan has over 24 years of experience in the field of Foreign Trade Policy (FTP), Customs, Excise & Service Tax.
- ▶ He has an insightful approach to tap the Indirect Taxes available under FTP and to marry them with the ones available under the purview of Customs & Excise.
- ▶ Expertise in advising on all the FTP Schemes irrespective of the level of simplicity or intricacy and its compliance.
- ▶ Has advised corporate about structuring their Indirect Tax systems and manage their supply chain in a way which is most beneficial time wise and coastwise
- ▶ Effective Liaising with DGFT and RLAs for clients to facilitate the smooth flow of Indirect Tax benefits under various Schemes, viz. Advance Authorization, EPCG, FPS/MEIS/ SEIS, EOU/ SEZ
- ▶ Has represented clients at Customs typical issues like conversion of Free S/Bills to DEPB S/Bills, and advised lawyers on legal points resulting in the case being decided in client's favour
- ▶ Has provided the last mile connectivity by assisting clients in sale of MEIS/SEIS duty entitlements to enable them to monetize the same

Our Leadership Champions



JAI TAHALANI
Legal
Ex-Ernst & Young
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- ▶ **Role:** Legal research and drafting
- ▶ **Experience:** Over 10 years
- ▶ **Clients Managed:** Ebix, Empaxis, Grohe
- ▶ **Qualification:** LLB, Bcom (Hons)

- ▶ Jai Tahalani is a qualified practicing Advocate with experience in litigation related to Taxation, Banking Law & Bankruptcy, Recovery Matters, Arbitration & Dispute Resolution, Corporate Law, Commercial Law, Constitutional law, Contract law, Intellectual Property Rights, Legal drafting & pleadings, Drafting, vetting and reviewing of commercial contracts and agreements
- ▶ Jai has been representing clients before various forums, including Supreme Court, various High Courts across India, all District Courts at Delhi and several tribunals such as ITAT, CESTAT, BIFR, DRT, CAT, and NCLT
- ▶ Jai has successfully represented clients before Supreme Court, various High Court and other judicial, quasi-judicial and adjudicating authorities
- ▶ He has handled various arbitration proceedings at DAC at Delhi High Court and ICA pertaining to complicated commercial matters
- ▶ Actively engaged in providing advisory related to a range of indirect tax issues and litigations.
- ▶ Drafted numerous documents such as Legal Notice, Complaint, Written Statement, Rejoinder, Petitions, Appeal, Application, Complaints, Writ, SLP and vetting of agreements
- ▶ Well versed with court procedure such as filing of case, tendering evidence, and others



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