

## Registration of a Company in India

The present article aims to briefly describe the procedure for registration of a “Company” in India and procedure followed for establishment of Liaison and Branch Office of a Foreign company in India.

The Companies Act, 1956 governs the formation, regulation and winding up of companies in India and the Registrar of Companies appointed under the Companies Act registers companies and ensure all statutory requirements are complied by the Company.

### Objective of Registration of a Company

The Companies Act defines the procedure that governs the registration or incorporation of a Company which leads to formation or birth of a Company. It is highly significant to register a Company as the Companies Act bestows a legal personality on registered company and by virtue of registration, the company can enjoy the benefits that are bestowed on a company by virtue of the Act.

### Registration of a Private Limited Company

A private limited company can be registered by making an application to the Registrar of Companies in place where the registered office shall situate. The following are the guidelines and procedure prescribed by the Act for registering a private limited company.

- The proposed name of the company is not required to be prohibited under any law in force. The applicant is required to file e form- I A with the Ministry of Corporate Affairs to check the availability of name. This name should end with suffix “Pvt Ltd”. In case of rejection of the proposed name then fresh application is required to be made.
- Minimum paid up capital for a “private limited company” shall not be less than 1 lakhs Indian rupees.
- A private limited company is required to have minimum 2 members and not more than 50 members.
- The promoters or directors of the Company are required to file the “Memorandum of Association” and it shall include:
  - Name clause stating the name of the company. The company is required to include in suffix to the company’s name “Pvt. Ltd”.
  - Object clause stating the object of carrying on business activity and the business activities that shall be undertaken by the company.
  - Registered office clause stating the office where main business activity or business shall be carried out.
  - The capital clause mentioning about the paid up capital of the company.
  - Any other information mentioning directors, promoters of the company.
- The Articles of Association shall mention about the directors of the company and how the company shall carry the affairs of the company. It mentions about the internal management of the company and restrictions placed on the powers directors and members of the company.

- Any agreement that have entered regarding appointment of directors etc.
- The requisite stamp duty prescribed by the Stamp Act is required to be paid on “Memorandum of Association” and “Articles of Association”.
- The registration fee for registering the form I A and on Memorandum and Articles of Association is required to be paid. Form 1 is required to be filed declaring compliance to the legal requirements prescribed by the Act.
- The Registrar on being satisfied that conditions prescribed for the registration of the company are fulfilled shall issue certificate of commencement and incorporation certificate.
- This company is prohibited to invite any member of general public for subscription to any shares or debentures.

### **Registration of Public Limited Company**

A Public limited company can also be registered by making an application to the Registrar of Companies just like a private limited company. The following are the documents and requirements that are mandatory for registration of a public limited company.

- The “Public limited company” name should be suffixed by “Ltd” or “limited”.
- The minimum paid up capital required for formation of a “public limited company” shall not be less than 5 lakhs rupees.
- The minimum members to the public limited company shall be 7.
- The Promoters of the Company are required to inform to the Registrar of Companies for invitation of capital from general public for subscriptions of the shares.
- The Memorandum of Association just like the one in “private limited company” is required to be filed mentioning name, object, and registered office of the company. This document is required to be as prescribed by the Companies Act.
- The Articles of Association mentioning about the directors and procedure of working of the company are required to be filed with Registrar of the Companies. This document is also required to be as prescribed by the Act.
- The Prospectus containing invitation to the public to subscribe to the shares of the company is required to be filed with the Registrar.
- Consent of all directors to act for establishment of company in Form 29 is required to be filed with the Registrar.
- The company is order to commence the business is required to seek commencement of business certificate. It is only after this certificate is issued from the Registrar of Companies that the public limited company can commence its business.
- The promoters or directors of the Company are required to file a declaration of the compliance of the conditions prescribed by provision section 149 of the Act in form 19 and a statement in lieu of prospectus in form 20 for obtaining certificate of commencement of business.
- All the stamp duties and registration fees are required to be paid.
- Thereafter on being satisfied that all the conditions prescribed are fulfilled by the company, the Registrar of Companies shall issue certificate of Commencement of Business

and Incorporation certificate and the company comes into existence and can commence its business.

### **Establishment of Liaison office**

The FEMA (Establishment in India of branch office or other place of business) regulation 2000 governs the process of establishment of Liaison office in India. The RBI or Reserve Bank of India is the controlling authority for setting up Liaison Office in India. The applications are required to be made in form FNC I to the RBI. RBI shall scrutinise the application. It should be accompanied by:

- Attested copy of certificate of registration or incorporation attested by Indian Embassy or Indian Notary Public.
- Attested copy of memorandum of association and articles of association attested by Indian embassy or notary.
- The copy of latest audited balance sheet of the applicant company who wish to set up liaison office.
- All the other documents or brochures mentioning about activity, operations and countries of operations are required to be submitted to the RBI.
- Letter of authorisation by the applicant company authorising the local representative to file applications with RBI and receive letter of approval from the RBI in case of approval.
- The approval shall be granted by the RBI only if :
  - If the Liaison office that is being set up in India is involved only liaison activity and promise not undertake any activity that shall generate income.
  - If the liaison office does not offer or take any funds from any person in India without prior approval from RBI.
  - The liaison office shall follow all the laws of India and comply with all other conditions prescribed by the FEMA regulation.
  - The liaison office shall only be allowed to set up if minimum of 100,000 US dollars or equivalent was the profit in immediately preceding 5 financial years in the home country.
- The liaison office shall continue to function only for 3 years and further subject to approval of RBI.
- After the approval given by RBI, the liaison office is required to inform RBI about the place of office of liaison office and apply in form 44 and register with the Registrar of Companies of New Delhi within 30 days from date of approval for the registration of Liaison office.

### **Establishment of a branch office of Foreign Company**

The branch office of a foreign company is governed by the FEMA (Establishment in India of branch office and other place of business) regulation 2000. RBI is governing body for the establishment of branch office. The procedure that has been followed for establishment of liaison office is required to be followed in establishment of branch office of a foreign company by making application in form FNC-I with all accompanied documents of certificate of incorporation, memorandum and article of association. This is also subject to approval of RBI and some of the conditions are:

- The branch office shall indulge in only those activities approved by the RBI and not expand or extend to any other activities.
- The branch office after the approval from RBI shall intimate RBI regarding its registered office and register the branch office under Companies act by making application in form 44 with the Registrar of Companies, New Delhi.
- The branch office can only be allowed to set up office in India in case the minimum profits immediately preceding 3 financial years in home country were 50,000 US dollars or its equivalent.

**Conclusion:**

The Companies Act is the sole legislation that governs establishment of “all companies” in India along with other guidelines prescribed by FEMA (Establishment in India of branch office or other place of business) Regulation 2000.

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