

PunjjiTimes

May-June, 2021

WE PLAN, YOU PROSPER



Compendium of FAQs

BUSINESS ESSENTIALITY



Meri Punji
WE PLAN, YOU PROSPER



Formation of Companies, Trust, Firm, Society and Offshore Entity



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FEMA and RBI



Will



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Company Law and Secretarial Compliances

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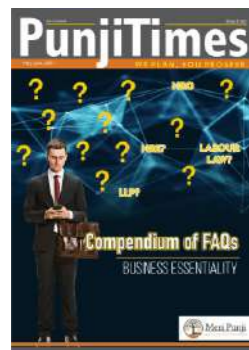
From the Editor's Desk

In any process there are number of steps which a common man is not aware of. This gets further overwhelming if one has to deal Government agencies. Most of times an individual is not even aware of what is required. To get relevant answers an individual has to go through a umpteen number of google searches and at the end he/she is not even sure whether they have got it all right.

In our effort to provide a comprehensive list of Frequently Asked Questions (FAQs), this issue of Punji Times lists out all relevant questions along with their answers related to business entities.

The list of FAQs may not be comprehensive but will surely give an initial guidance to move in the right directions.

Best,
Team Meri Punji



Punji (noun/Hindi) - Capital meaning, wealth in the form of money or other assets owned by a person or organization or available for a purpose such as starting a company or investing.

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FAQ ON Entrepreneurship/ Start-ups



1. What are the types of businesses one in a Start-up?

The types of businesses that start-ups could consider are:

Proprietorship: Simplest and the easiest form of business. No registration is required for the business. But, the major drawback being that the liability of the entrepreneur is unlimited and joint business is not possible.

Partnership: Under this form of business registration is only optional. But the major drawback being that the liability of partners is unlimited.

Limited Liability Partnership (LLP): Registration of this form of business is mandatory. The LLP has a separate legal entity. The promoters of the LLP are not personally liable towards the LLP. The liability is limited to the extent of contribution towards to the LLP.

Company: Registration of this form of business is mandatory. The entrepreneurs need to select the type of company they wish to incorporate i.e., Public Company, Private Company, One-Person Company. The promoters of a Company are not personally liable

towards the Company. The liability is limited to the extent of share capital subscribed by them.

2. What is the Start-up India Action Plan?

Under the Start-up India Action Plan, start-ups that meet the definition as prescribed under G.S.R. notification 127 (E) are eligible to apply for recognition under the program.

An entity shall be considered as a Start-up:

- Up to a period of ten years from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India.
- Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded one hundred crore rupees.
- Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business

model with a high potential of employment generation or wealth creation. An entity formed by splitting up or reconstruction of an existing business shall not be considered a 'Start-up'.

3. What is the process of registration of Start-up?

The process of recognition of an eligible entity as start-up shall be as under: —

- A Start-up shall make an online application over the mobile app or portal set up by the Department for Promotion of Industry and Internal Trade (DPIIT).
- The application shall be accompanied by—
 - a copy of Certificate of Incorporation or Registration, as the case may be, and
 - a write-up about the nature of business highlighting how it is working towards innovation, development or improvement of products or processes or services, or its scalability in terms of employment generation or wealth creation.
- The DPIIT may, after calling for such documents or information and making such enquires either—
 - recognise the eligible entity as Start-up; or
 - reject the application by providing reasons.

4. What is the tax-exemption available for start-ups?

Post getting recognition a Start-up may apply for Tax exemption under section 80 IAC of the Income Tax Act. Start-up can avail tax holiday for 3 consecutive financial years out of its first ten years since incorporation.

Eligibility Criteria for applying to Income Tax exemption (80IAC):

- The entity should be a recognized Start-up;
- Only Private limited or a Limited Liability Partnership is eligible for Tax exemption under Section 80IAC;
- The Startup should have been incorporated after 1st April, 2016.

5. What is the angel tax exemption under the Income Tax Act?

Post getting recognition a Start-up may apply for Angel Tax Exemption. Eligibility Criteria for Tax Exemption under Section 56 of the Income Tax Act:

- The entity should be a DPIIT recognized Start-up
- Aggregate amount of paid up share capital and share premium of the Start-up after the proposed issue of share, if any, does not exceed INR 25 Crore.

6. Can an existing entity register itself as a "Start-up" on the Start-up India Portal?

Yes, as per the law an existing entity can register itself as a start-up, provided that it meets the prescribed criteria for a start-up. They will also be able to avail various tax and IPR benefits that are available to start-ups. The criteria are the same as those mentioned in the article above.

7. What is the fees payable for registering a start-up?

The start-ups are not required to pay any fee to the Ministry of Commerce and Industry for obtaining the DPIIT Certificate of Recognition for Start-ups.

8. What is unique start-up recognition number?

DPIIT Certificate of Recognition for Start-ups is after examination of the application and documents submitted. Once the ministry approves the application it allots unique start-up recognition number.



Q 1. Who has to Apply?

A. Every individual already acting or aspiring to become an independent director on the board of a company.

Q 2. Where to Apply?

A. They have to apply online at MCA website www.mca.gov.in in ID Data Bank Services under MCA Services tab on home page. The applicant has to first create a user account on website and then has to fill his/her DIN/PAN/Passport number (as may be applicable) and thereafter he/she will be automatically redirected to IICA website for further processing.

Q 3. Whether having DIN is mandatory for individuals Registration?

A. No, the individual can also register by using his PAN or Passport number.

Q 4. What is the Fee for Individual Registration?

A. Individuals can apply by paying a fee of **INR 5000 (+GST)** for one year, **INR 15000(+GST)** for 5 years or **INR 25000(+GST)** for lifetime registration.

Q 5. When renewal application shall be filed?

A. The renewal application shall be filed within a period of 30 days from the expiry of 1 year or 5 years subscription as the case may be.

Q 6. What is Time Period for Enrollment in Databank?

A. Existing independent directors should register by June 30, 2020 (after latest extension allowed) and individuals aspiring to become ID shall register before appointment anytime.

Q 7. What has to be done after Enrollment?

A. After enrollment the individuals are also required to pass a "online self assessment test" within 1 year from the date of registration in databank failing which their names shall be removed from the databank.

Q 8. What if existing IDs fails to enroll by June 30, 2020 or the candidates after enrollment fails to pass the test within 1 year?

A. If they fails to do so their names shall be removed from the databank.

Q 9. Is there any Exemption from Test?

A. Yes individuals who had already served as a director or KMP (Key Managerial Personnel) for atleast 10 years in a listed public Company/ unlisted public company having a paid up share capital of Rs 10 Crores or more/listed body corporate are exempted from taking the test. **Provided that** any period during which an individual was acting as a director or as a key managerial personnel in two or

more companies/bodies corporate at the same time shall be counted only once.

Q 10. What is the pass percentage to clear the test?

A. The individuals are required to score atleast 60 % marks in the online test.

Q 11. How many times can an individual take the Test?

A. There is no limit on number of attempts an individual may take for passing this online test within one year.

Q 12. What is the schedule for the test after enrollment in databank?

A. The test has already started w.e.f March 01, 2020 and there are 3 slots to choose from on any given day.

Q 13. What if the individual fails to pass the test or misses the test on any given day?

A. He can rebook the slot after a period of 15 days from the previous booked slot date and time.

Q 14. Where the test will be conducted?

A. There are no physical tests being held but the whole process is online.

Q 15. Whether any mock tests are also available?

A. Yes the candidates can take the mock test before the actual test in order to familiarize themselves with the test environment.

Q 16. Which subject areas would be covered in test?

A. The test is broadly based on relevant topics on functioning of an individuals acting as independent directors and competence in Companies Law, Securities Law, Basic Accountancy and Corporate Governance, etc.

Q 17. What are the chances for appointment after clearing the test?

A. The passing of test is only an opportunity to get appointed as independent director in companies. The companies may or may not appoint a particular person as an ID in its board after passing the test. It all depends upon the companies requirements, individuals skills and various other factors.

Q 18. Whether there are any risks and liabilities of Independent Directors?

A. Yes independent directors are always exposed to legal risks and liabilities because they are entrusted with higher responsibilities under Companies Act, 2013, SEBI norms and other applicable legislations. A detailed study of their roles and responsibility must be done by the individuals before any appointment.

Q 19. Can exempted individual take the test voluntary?

A. Yes they can take the test for self assessment.

Q 20. How can a company register with IICA to access name of proposed ID(s)?

A. A company can also register by following the similar process by using CIN (Corporate Identification Number).

Q 21. Whether IICA or Government of India is responsible for accuracy of credentials submitted by the applicant?

A. The government is not responsible however the companies are required to carry out their own due diligence before appointment of any person from the data bank.

Q 22. Who can avail information in the Databank?

A. The data bank can be accessed only by the companies required to appoint IDs after paying some fees.

FAQ ON INDEPENDENT DIRECTOR

FAQ ON DIRECTORSHIP

1

What is Director?

A director is an elected individual who, along with other directors, is responsible for a company's corporate policy. Collectively, directors form the board of directors.

2

How many directors are required to be appointed in a company?

Section 149(1) of the Companies Act, 2013 requires that every company shall have a minimum number of 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company. A company can appoint maximum 15 fifteen directors.

A person can be appointed as director in how many companies at a time?

3

A person can hold the office of director simultaneously in 20 companies. The number of 20 companies includes the office of alternate directorship. A person cannot be a director in more than 20 companies at a given time. However, the maximum number of public companies in which a person can be a director simultaneously is 10. An individual cannot be appointed as a director in more than 10 public companies at a given time.

What are the qualifications of Director?

4

The Act has a dedicated provision which is Section 162 that underlines the reasons for which a person may not appoint as a director. There is no such provision regarding the qualification under the Act. However, requirements can be listed as below:

1. The person must have completed the age of eighteen or above.
2. Nationality can be that of Indian or otherwise.
3. The person should have his own [Digital Signature Certificate](#) (DSC) through which Director's Identification Number (DIN) shall be obtained.
4. The person has to furnish a written declaration expressing his consent to act in the position of Director and he is not a person who falls under the category of disqualified members.
5. There is no academic qualification that needs to be held by the person who is desirous of obtaining the directorship of a company.

5

What are the disqualification of Director?

The minimum eligibility requirement for the appointment of directors has been laid down under [section 164](#) of the Companies Act, 2013. The disqualification for a person to be appointed as a director are:

1. Person of unsound mind.
2. If he is an undischarged insolvent.
3. When is applied to be declared as insolvent and such application is pending.

4. When he is sentenced for imprisonment for an offence involving moral turpitude for a period of a minimum of 6 months.
5. If the Tribunal or court has passed an order disqualifying him for being appointed as a director.
6. If he has not paid his calls in respect to any shares of the company.
7. When he is convicted of an offence which deals with related party transaction.
8. When he has not complied with the requirements of Director Identification Number.

6

Who are the first directors of the company?

The subscribers of the memorandum appoint the first directors of a company. They are generally listed in the articles of the company. If the first director is not appointed, then all the individuals, who are subscribers become directors. The first director holds the office only up to the date of the first annual general meeting, and the subsequent director is appointed as per the provisions laid down under section 152.

What are the different types of Directors?

7

There are different types of directors:

Executive director

He/she is the full-time working director of the company. They have a higher responsibility towards the organization. The company and its employees expect them to be efficient and careful in all the dealings.

Non-Executive Directors

He/she are non- working directors and are not involved in the everyday working of the company. They might take part in the planning or policy-making process. They challenge the executive directors to come up with decisions and solutions that are in the best interest of the company.

Managing directors

They have a substantial ability to make decisions, manage and direct other members of the company. A Public Company or a subsidiary of a Public Company that has a share capital of more than Five Crore rupees must have a Managing Director.

Independent directors

They are the ones who do not have any direct relationship with the company. Their experience is their asset and gives expert advice to the board when required. Public companies who have paid-up share capital, turnover, or outstanding loans of Rs. 100 Crores, Rs.100 Crores, and Rs.50 Crores or more need two independent directors.

Qualifications to be an independent director:

- Must have expertise and experience;
- Must be a person of integrity;
- Should not be a promoter of the company or its subsidiaries;
- Should have no relations (financial/personal) with the promoters, or directors of the company;
- Should not have been key managerial personnel of the company or any of its holdings and subsidiaries;
- Should not hold total voting power exceeding two percent in such company.

Residential director

A director who has lived in India for at least 182 days is a residential director. A company should have one residential director.

Small Shareholder Directors

They are the ones who can appoint a single director in a listed

FAQ ON DIRECTORSHIP

company. By issuing a notice to at least 1000 shareholders or 1/10th of the shareholders whichever is lesser, to approve this action.

Women directors
The companies who have their securities listed on the stock exchange or have a paid-up capital of Rs. One hundred crores/turnover of Rs. Three hundred crore or more must have a women director.

Additional Directors
An individual can act as an additional director by taking the position of a director until the next Annual General Meeting.

Alternate director
When a director is absent for more than three months; an alternate director comes on board on his behalf. He acts as a director for a temporary period. And can only hold office as permissible to the director whose office this director holds.

Nominee Director
Shareholders, central government or third parties appoint them. Nominee directors come on board when there is grave mismanagement or the board members abuse their powers.

How Director can be removed? **8**

- The directors of a company may be removed by:
1. Its shareholders
 2. National Company Law Tribunal (NCLT)
 3. Resignation

What are the Forms filed for appointment/resignation / change in designation of director? **9**

Companies have to file e-Form DIR-12 on **MCA Portal** to notify ROC about the particulars related to appointment/Change/Resignation of directors and Key Managerial Personnel within 30 days of such event by the Company pursuant to Sections 7(1) (c), 168 & 170 (2) of the Companies Act, 2013 and Rule 17 Of Companies (Incorporation) Rules, Rule 8, 15 & 18 of Companies (Appointment and Qualification of Directors) Rules, 2014.

What are the documents required for appointment of director? **10**

- A) Documents required from Director:** PAN Card, Residence Proof, Consent letter for appointment.
- B) Documents required from Company:** Board Meeting Resolution for Appointment and Letter of Appointment.

Can a company grant loan to Director? **11**

- Section 185 (as amended by the Companies (Amendment) Act, 2017):**
- Limits the prohibition on loans, advances, etc. to Directors of the company or its holding company or any partner of such Director or any partner of such Director or any firm in which such Director or relative is a partner
 - Allows the company to give a loan or guarantee or provide

security in connection with any loan to any person/ entity in whom any of the Directors are interested, subject to:- – Passing of Special Resolution by the company in a General Meeting (Approval of at least 75% of the members is required). – Utilization of loans by the borrowing company shall be solely for its principal business activities

- The penalty provisions as set out under Section 185 (4) of the Act, in addition to the Company, now extends to an officer in default of the company (which includes any Director, Manager or KMP or any person in accordance with whose directions BODs are accustomed to act).

What is Director Identification Number? How it can be applied? **12**

Every individual, who is to be appointed as director of a company shall make an application electronically in Form DIR-3 (Application for allotment of Director Identification Number) to the Central Government for the allotment of a Director Identification Number (DIN).
The Central Government shall, within one month from the receipt of the application under section 153, allot a Director Identification Number to an applicant.

How to intimate changes in particulars of a Director? **13**

Every director having DIN in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of 30 days of such change(s) in Form DIR-6 (Intimation of change in particulars of Director to be given to the Central Government). DIR-6 will be filed along copy of the proof of the changed particulars all of which shall be scanned, signed digitally by applicant and submitted electronically. Form requires pre-certification by the professional CA/CS/CMA in practice.

FAQ ON

NEW LABOUR CODE



1. What is Code on Wages, 2019?

- The Code seeks to regulate wage and bonus payments in all public and private enterprises belonging to the organized or unorganized sector.
- The term 'Wages' includes salary, allowance, or any other component capable of being expressed in monetary terms.
- The Central Government will make wage-related decisions for establishments operating under its authority, and for establishments in industries such as aviation, telecom, banking and insurance among others (State governments will make decisions for all other classes of establishments). The Code will have an overriding effect, notwithstanding any other law in force, award, agreement, settlement, or contract of service to the contrary.

2. What is Industrial Relations Code, 2020?

- The definition of 'worker' under the code is similar to (but not same as) the definition of 'workman' under Industrial Disputes Act, 1947, with minor changes such as exclusion of apprentices from scope of definition. A worker means 'any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether terms of employment be express or implied, and includes working journalists'.
- The term 'Industry' has been given a broader definition, including within its scope all systematic activities carried on by co-operation between employers and workers. Notable exclusions are charitable organizations, sovereign functions of the government, domestic service and other activities that may be notified by the Central Government.
- A situation where 50% of more workers are on casual leave simultaneously, is said to fall within the scope of term 'strike'.
- IR Code retains the definition of 'retrenchment', however, termination due to continued ill-health is no longer considered retrenchment.
- A new concept of 'fixed term employment' has been introduced. It refers to workers that are hired for a fixed period but will enjoy the same benefits and entitlements as are available to permanent workers.

3. What are Occupational Safety, Health and Working Conditions Code, 2020?

- The definition 'Factory' has been expanded to 20 workers for premises where the process uses power and 40 workers where the process uses no power.

- Provisions of Code pertaining to contract labour would only apply to establishments involving 50 or more contract laborers.

4. What is National Security Code, 2020?

- Employee Provident Fund (EPF)**
 - Provident fund and pension scheme will apply to all establishments employing 10 or 20 employees, and to any other establishments as may be notified by government.
- Employees State Insurance (ESI)**
 - ESI Scheme will apply to establishments employing 10 or more employees.
 - In case of a pandemic, epidemic or a national disaster, the Central Government can make changes to the employer's or the employee's contribution under Employees State Insurance for up to three months.
 - If the employer fails to pay ESI contributions, the ESIC may pay the benefits to the employee and recover it from the employer the capitalized value of the benefit, including the contribution amount, interest and damages, as an arrear of land revenue or otherwise.
- Gratuity**
 - Fixed-term employees (i.e. employed for a fixed duration) will be entitled to pro-rated gratuity based on the term of their contract.
 - The threshold period of such an employment will also be a continuous working period of 5 years, as is the case for other categories of employees.
- Maternity benefit**
 - In addition to maternity benefit in terms of paid leaves, every woman is entitled to medical bonus of up to INR 3,500 (if pre-natal confinement and post-natal care is not provided by employer).
- Unorganized workers**
 - The Code makes an attempt at bringing within its fold the unorganized sector of the economy. For instance, the Code allows schemes for unorganized workers to be funded by a company's CSR fund.
 - The Code empowers the Central Government to frame social security schemes for unorganized workers, gig workers (workers outside the traditional employer-employee relationship) and online platform workers (those who access organizations or individuals through an online platform and provide services or solve specific problems.)

5. What is the Registration Process?

- Every new establishment to which the Code applies is required to register.
- Establishments already registered under any other Central Law would not be required to register again.
- Aadhaar-based registration is mandated for all categories of workers.

6. What is Floor wage?

- The Central Government will fix a floor wage, taking into account living standards of workers.
- Floor wages can vary with geographical areas.
- Minimum wages fixed by the Central or State governments for establishments falling

under their jurisdiction must not be lower than such floor wage.

7. How much deductions are permissible?

Deductions (not exceeding 50% of total wage) from an employee's wages may be made on grounds including fines, absence from duty, accommodation provided by employer or recovery of advances given to employee, among others.

8. How to determination of bonus?

- Employees will be entitled to an annual bonus in case their wages do not exceed a specified monthly amount. Currently, under the Payment of Bonus Act, 1965, this amount is INR 21,000.
- The annual minimum bonus will be at least 8.33% of the wages, or INR 100, whichever is higher.
- If the allocable surplus exceeds the total minimum bonus payable to employees, a part of the gross profit must be distributed between the employees in proportion to their annual wages. An employee can receive a maximum bonus of 20% of their annual wages.

9. What is Offences under the new Code?

- The Code lays down penalties for offences committed by an employer in contravention of any provisions of the Code.
- Such penalties depend on the nature and gravity of such offence. The highest penalty prescribed is imprisonment for 3 months and/or a fine up to INR 1 lakh.
- The Inspector-cum-Facilitator is required to give employers who are first-time offenders an opportunity to comply with provisions of Code before initiating prosecution.

10. What is Worker re-skilling fund?

- This is a new concept introduced under IR Code, where a fund shall be created for contribution by employer of an amount equal to fifteen days wages last drawn by worker immediately before retrenchment, and contributions from other sources prescribed by appropriate government.
- The fund shall be utilized within 45 days of retrenchment, or as may be prescribed.

11. What is Model Standing Orders?

- This provision will apply to establishments employing 300 or more workers. Central Government will be drafting Model Standing Orders basis which employers must prepare their own draft standing orders from date of commencement of IR Code.
- Employers must consult trade unions or negotiating union before submitting standing orders to certifying officer.

12. What are the duties of Employers?

- Issuing appointment letters to employees.
- Ensuring a workplace that is free from hazards that may cause injury or disease.
- Providing periodical health examination to employees in notified establishments.
- Informing relevant authorities in case an accident at workplace leads to either death or serious bodily injury to an employee.
- There are other duties prescribed for employers in respect of mines, docks, factories, plantations and construction work which include instructing employees about safety protocols and provisioning for a risk-free work environment.

FAQ ON WORK ETHICS

1. What is work ethics?

Work ethic is an attitude of willpower and commitment toward one's job and career. Work ethic refers to a set of behavioural rules that create a positive work environment. A strong work ethic can lead to employees being fairly treated, which in turn motivates them and develops a sense of loyalty towards the organization.

2. What are the various attributes an employer looks for in an employee that show good work ethics?

Some major attributes are as follows:

- **Dependability:** Employer's value employees who come to work on time.
- **Responsibility:** Employer's usually like employees who take responsibilities.
- **Adaptable:** A good employee must adapt to a dynamic work environment.
- **Self-motivated:** He must find motivation from within to work instead of seeking external motivation.
- **Willingness and motivated to learn.**
- **He must honesty and integrity.**

3. What is the importance of work ethics?

Work ethics are important due to the following reasons:

- Employees working in an ethical manner have a willingness to work which in turn enhances their productivity.
- Work ethics lead to feeling of camaraderie and team spirit among employees.
- Employee working ethically improve the brand value and goodwill of the organization that they work for.
- It is easier to implement a decision or policy among ethical employees.
- Employees working ethically will lead to the success of the business they are a part of.

4. How can an employee improve his work ethics?

Some tips to improve on work ethics are:

- **Review your work:** Present systematic work that you have dual checked for quality and steadiness.
- **Seek professional development** by attending seminars or reading industry publications.
- **Show respect to your colleagues.**
- **Act as an ambassador of the organization** you work for.

5. Can you teach work ethics?

While it is true that work ethics are something you are born or learn in your childhood, it can be taught to a certain extent through seminars, workshops etc.

FAQ ON CORPORATE COMPLIANCE



1
What is compliance?

The definition of compliance encompasses several things. **First**, a compliance program should help the company prevent, detect, and respond to illegal or unethical conduct. **Second**, it requires developing standards and procedures that promote compliance with laws and regulations. **Third**, the company must build a culture that encourages ethical conduct and compliance with the law. Developing an effective compliance program doesn't just happen by chance. A company must commit the resources from end to end – from a thorough risk assessment to an employee training program to proper investigations of alleged misconduct.

An effective compliance program will help to avoid or minimize legal or regulatory penalties and potential civil litigation. It can help to promote ethical conduct across your company, as well as avoid or minimize reputational damage that often comes in the wake of a public compliance issue. Additionally, effective compliance program can assist members of the Board of Directors in meeting their fiduciary duties.

2
Why is a compliance program important for my company?

3
What are the modes available for issue of further shares?

Following modes are available for issue of further shares:

Public Companies:

- (a) Issue of shares to the existing equity share holder through right basis;
- (b) Issue of shares to employees under a scheme of employees' stock option; and
- (c) Issue of shares to any person through preferential allotment/private placement.

Private Companies:

- (a) Right issue/ bonus issue;
- (b) Issue of shares to employees under a scheme of employees' stock option; and
- (c) Issue of shares to any person through preferential allotment/private placement.

4
Can subsidiary company hold shares in its holding company?

Subsidiary company cannot hold shares in its holding company and any such holding shall be void. A subsidiary company may hold shares in its holding company only in the following circumstances:

- (a) Where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company;
- (b) Where the subsidiary company holds such shares as a trustee;
- (c) Where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

5
Who can be appointed as director?

An individual holding a valid DIN and not disqualified from being appointed as Director under Section 164 of the CA, 2013, is eligible to be appointed as Director. He shall give his consent to act as a director in writing along with the disclosure of his interest and a declaration that he is not disqualified to become a director.

6
What are the broad steps involved in appointment of a director?

- The broad steps involved in appointment of a director are:
- Obtaining Digital Signature;
 - Obtaining DIN by filing Form DIR-3;
 - Declaration that he is not disqualified from being appointed as the Director in form DIR-8;
 - Written consent of director for his appointment in form DIR-2;
 - Interest of the Director if any, in any other entity in form MBP-1
 - Approval of Board of directors by Board Resolution;

7
Are all companies required to hold Board Meetings every quarter?

- Approval of Shareholders by shareholders Ordinary Resolution
- Intimation of appointment of director to Registrar of Companies in Form DIR-12.

CA 2013, and Secretarial Standard 1, all companies – whether private limited companies or public companies are required to hold at least four meetings of its Board of Directors in each quarter every year where the gap between two consecutive board meetings is not more than one hundred and twenty days. As per the notification No. GSR 466 E dated 05 June 2015, in case of a Section 8 company, the Board of Directors of the Company shall hold at least one meeting within six calendar months. In case of an OPC, if there is only one director on the Board of Director, the quarterly board meetings are not required to be held. However, if the OPC has more than one director, or in case of Small Company and Dormant Company, it will suffice the requirement, if they hold at least

FAQ ON CORPORATE COMPLIANCE

one meeting in each half of the calendar year and the gap between two meetings should not be less than ninety days. Further, any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if, in case of such OPC, the resolution by such director is entered in the minutes book.

Following matters shall not be considered through video conference or other audio visual means:

- (i) Approval of annual financial statements;
- (ii) Approval of board's report;
- (iii) Approval of prospectus;
- (iv) Audit Committee Meetings for Consideration of financial statement including consolidated financial statement, if any, to be approved by the Board of directors and
- (v) Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover

8
What are the matters which cannot be considered at a meeting held through video conference or other audio visual means?

The first AGM of a company should be held within a period 9 months from the end of close of financial year. Example – If a company's financial year commences ends on 31 March, the first AGM of the company shall be held latest by 31 December of that year.

9
When should a company convene its first AGM?

10
Can AGM be held at a place situated outside the limit of city, town or village in which the Registered Office is situated?

AGM cannot be held at a place situated outside the limit of city, town or village in which the Registered Office is situated. Provided in case of Government companies, AGM can be held at a place which the Central Government may approve i.e. a Government Company can convene its AGM at a place other than limit of City, town, village in which the registered office is situated if the Central Government may approve. Also, AGM of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

Quorum for the AGM of a Private Limited Company is 2 members personally present, Public Limited Company, quorum for AGM is based on the number of members in the Company, as stated below:
Quorum required Total number of member in the Company (members to be personally present)

5	Less than 1000
15	1000 to 5000
30	More than 5000

11
What shall be the Quorum of an AGM?

12
Who shall sign the Financial Statements of a Company?

The Financial Statements of a company is required to be signed as per the provisions of Section 134 of the CA, 2013 by:

- Chairperson if he is authorized or two directors out of which one shall be MD, if any
- CEO, the CFO and the Company Secretary, wherever they are appointed, to sign the financial statements of the company.

A company may maintain books of account and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the ROC a notice in Form AOC-5 giving the full address of that other place.

14
When should the first auditors be appointed?

The first auditors should be appointed by the Board within 30 days of the registration of the company and in case of failure of the Board to appoint such auditors, the auditors shall be appointed by the members in general meeting. Further, such auditor shall hold office till the date of the conclusion of the first annual general meeting.

13
Can a company maintain books of account in any place other than Registered Office?

15
What is the term of appointment of an individual and a firm as a statutory auditor?

The following companies shall not appoint an individual as statutory auditor for more than one term of 5 years and a firm as statutory auditor for more than two terms of 5 year each:

- Listed company;
- All unlisted public companies having paid up share capital of INR 10 Crores or more;
- All private limited companies having paid up share capital of INR 50 Crores or more;
- All companies having paid up share capital below the threshold limit mentioned in the afresaid two points, but having public borrowings from financial institutions, banks or public deposits of INR 50 Crores or more.

FAQ ON GIFT & ITS TAXATION

Q Are monetary gifts received by an individual or Hindu Undivided Family (HUF) taxable?

A If the following conditions are satisfied then any sum of money received (i.e., monetary gift may be received in cash, cheque, draft, etc.) by an individual/ HUF will be charged to tax:

- Sum of money received without consideration.
- The aggregate value of such sum of money received during the year exceeds Rs. 50,000.

Q Are there any cases in which sum of money received without consideration, i.e., monetary gift received by an individual or HUF is not charged to tax?

A If the conditions given in preceding FAQ are satisfied then sum of money received without consideration (i.e., monetary gift) by an individual or HUF will be charged to tax. However, in the following cases monetary gift will not be charged to tax.

- Money received from relatives.
- Money received by a HUF from its members.
- Money received on the occasion of the marriage of the individual.
- Money received under will/ by way of inheritance.
- Money received in contemplation of death of the payer or donor.
- Money received from a local authority as defined under section 10(20) of the Income-tax Act.
- Money received from any fund, foundation, university, other educational institution, hospital or other medical institution, any trust or institution referred to in Section 10(23C).
- Money received from a trust or institution registered under section 12AA.

Relative for this purpose means:

- a Spouse of the individual;
- b Brother or sister of the individual;
- c Brother or sister of the spouse of the individual;
- d Brother or sister of either of the parents of the individual;
- e Any lineal ascendant or descendent of the individual;
- f Any lineal ascendant or descendent of the spouse of the individual;
- g Spouse of the persons referred to in (b) to (f).

Q Apart from marriage are there any other occasions in which monetary gift received by an individual will not be charged to tax?

A Gift received only on the occasion of marriage of the individual is not charged to tax. Apart from marriage there is no other occasion in which gift received by an individual is not charged to tax. Hence, gift received on occasions like birthday, anniversary, etc. will be charged to tax.

Q Are monetary gifts received from friends liable to tax?

A Gifts received from relatives are not charged to tax. Friend is not a relative as defined in the above list and hence, gift

received from friends will be charged to tax (if other criteria of taxing gift are satisfied).

Q Are monetary gifts received from abroad liable to tax?

A If the aggregate value of monetary gift received during the year by an individual or HUF exceeds Rs. 50,000 and the gifts are not covered under the exceptions prescribed in the preceding FAQ, then gifts whether received from India or abroad will be charged to tax.

Q An Individual received different gifts (cash) from his friends, none of the gift exceeded Rs. 50,000 but the total of the gifts received during the year exceeded Rs. 50,000. What will be the tax treatment in such a case?

A Sum of money received without consideration by an individual or HUF is chargeable to tax if the aggregate value of such sum received during the year exceeds Rs. 50,000.

The important point to be noted in this regard is the "aggregate value of such sum received during the year". The taxability of the gift is determined on the basis of the aggregate value of gift received during the year and not on the basis of individual gift. Hence, if the aggregate value of gifts received during the year exceeds Rs. 50,000, then aggregate value of such gifts received during the year will be charged to tax.

Q Are gifts of immovable property received by an individual or HUF charged to tax?

A If the following conditions are satisfied then immovable property received by an individual or HUF will be charged to tax:

- Immovable property, being land or building or both, is received by an individual/HUF.
- The immovable property is received without consideration (i.e., received as a gift) or for a consideration which is less than the stamp duty value of the property by an amount exceeding Rs. 50,000.
- The immovable property is a 'capital asset' within the meaning of section 2(14) for such as individual or HUF.
- The stamp duty value of such immovable property received without consideration exceeds Rs. 50,000.

Q Are gifts of immovable property located abroad liable to tax?

A If the aggregate value of monetary gift received during the year by an individual or HUF exceeds Rs. 50,000 and the gifts are not covered under the exceptions prescribed then gifts whether received from India or abroad will be charged to tax.

Q Would any taxability arise if an immovable property is received for less than its stamp duty value?

A Apart from taxing immovable property received without consideration, i.e., received as gift, the Income-tax Law has

also designed the provisions for taxing immovable property received for less than its stamp duty value. If following conditions are satisfied, then immovable property received by an individual or HUF for less than its stamp duty value will be charged to tax:

- Any immovable property is acquired by an individual or a HUF.
- The immovable property is a 'capital asset' within the meaning of section 2(14) of the Act for such individual or HUF.
- Such property is acquired for a consideration but the consideration is less than the stamp duty value and the difference exceeds Rs. 50,000.

In above case the excess of stamp duty value over the purchase price of the property will be treated as income of the purchaser.

Q An individual received gift of jewellery from his friends. The total value of jewellery received during the year as gift from all the friends amounted to Rs. 84,000. What will be the tax treatment of gift in this case?

A If the aggregate fair market value of prescribed movable property received by an individual or HUF without consideration during the year exceeds Rs. 50,000, then the total value of such properties received during the year without consideration will be charged to tax. In this case the total value of jewellery received during the year exceeds Rs. 50,000 and hence, Rs. 84,000 will be charged to tax.

Q Does any taxability arise if prescribed movable property is received by an individual or HUF for less than its fair market value?

A If the following conditions are satisfied then prescribed movable property received by an individual or HUF will be charged to tax:

- Prescribed movable property is acquired by an individual or HUF.
- The aggregate fair market value of such properties acquired by the taxpayer during the year exceeds the consideration of these properties by more than Rs. 50,000. In other words, the aggregate fair market value of all such properties is higher than the consideration and the difference is more than Rs. 50,000.

Q Who pays the gift tax?

A The donor is generally responsible for paying the gift tax. Under special arrangements the donee may agree to pay the tax instead. Please visit with your tax professional if you are considering this type of arrangement.

FAQ ON GIFT & ITS TAXATION

What is the new tax regime for FY 2020-21?

The Budget 2020 introduces a new regime under section 115BAC giving an option to individuals and HUF taxpayers to pay income tax at lower rates. The new system is applicable for income earned from 1 April 2020 (FY 2020-21), which relates to AY 2021-22.

What are the new Personal Income Tax Slabs of for FY 2020-21?

Budget 2020 has proposed a new and simplified personal income tax regime where the tax rates are reduced compared to the earlier years for those who forego deductions, and exemptions.

Taxpayers can follow either old regime with deductions or the new tax slabs without deductions. The tax slabs in the new regime are as follows

Tax Rates Comparison

Taxable Income	Old Rates	New Rates
0 - 2.5 Lakh	Exempt	Exempt
2.5 - 5 Lakh	5%	5%
5 - 7.5 Lakh	20%	10%
7.5 - 10 Lakh	20%	15%
10 - 12.5 Lakh	30%	20%
12.5 - 15 Lakh	30%	25%
above 15 Lakhs	30%	30%

Will the Rebate u/s 87A is applicable under New Regime also?

Yes, Rebate u/s 87A of Rs. 12500 is also applicable under New Regime if the Net taxable Income is less than Rs 5 Lakhs. If the Net income exceeds Rs 5 Lakhs, then the above tax slabs will be applicable.

What are important observations on new tax slabs?

The Important observations on the new tax slabs are as follows

- A. New Tax Regime is good if you want higher take home gross salary.
- B. If you have Higher deductions, you get Higher tax savings that might not be possible in the new tax regime.
- C. One needs to work with their employer to switch to new tax regime.

What are the Deductions retained in new Tax regime?

The following are some of the new tax Deduction retained under new Tax regime

- A. Gratuity received at the time of Retirement
- B. Retrenchment Compensation received
- C. Amount received on Voluntary Retirement
- D. Commutation of Pension
- E. Employer Contribution to PF
- F. Withdrawal of NPS on Closure of Account or maturity
- G. around 20 such deductions were retained; a comprehensive list is expected to be published by the CBDT.

What is the Tax Audit Limit for MSMEs?

The threshold limit for Tax Audit has been increased to Rs. 5 Crores from current Rs. 1 Crore. This has been increased to reduce the compliance burden on small retailers, traders, shop keepers who comprise the MSME Sector.

Condition: This increased limit will be applicable only to those business which carry out less than 5% Cash Transactions.

Can a person change Tax Regime year on year?

The persons who have Income from sources of Salary, House Property, Capital Gain and from other sources are allowed to select tax regime year on year basis. However, those having Income from Business Profession are allowed to select tax regime only once in lifetime.

Is Standard Deduction of Rs. 50000 available under new tax regime to Individuals having Income from Salary?

The main condition of availing an option of paying tax at concessional rates on Income up to Rs. 15 Lacs is "to forego certain tax deductions and exemptions". Here Deductions includes Standard deduction which is otherwise available of Rs. 50000 to those having Income from Salary. It means that Standard Deduction is not available under new tax regime.

If Employee does not give Intimation of going for new tax regime to the employer while deciding tax liability and later on wish to go for new regime while filing Income Tax Return, can he do so?

The CBDT via circular dated 13th April has clarified that an Employee can change the tax structure at the time of filing income tax and that the amount of TDS will be adjusted accordingly.

What are the Exemptions and deductions not claimable under the new tax regime?

The following are the deductions and exemptions you

cannot claim under the new tax system:

1. Leave Travel Allowance (LTA)
2. House Rent Allowance (HRA)
3. Minor child income allowance
4. Helper allowance
5. Children education allowance
6. Other special allowances [Section10(14)]
7. Interest on housing loan on the self-occupied property or vacant property (Section 24)
8. Chapter VI-A deduction (80C,80D, 80E and so on) (Except Section 80CCD(2) and 80JJAA)
9. Without exemption or deduction for any other perquisites or allowances
10. Deduction from family pension income.

Are Deductions for business expenditure not allowed under the new regime?

Deductions and exemptions not allowed for business income:

1. Additional depreciation under section 32.
2. Investment allowance under section 32AD
3. Sector-specific business deductions under section 33AB and 33ABA
4. Expenditure on scientific research under section 35
5. Capital expenditure under section 35AD
6. Exemption under section 10AA for SEZ units.

Are Unabsorbed depreciation and business loss under the new regime?

In the case of a business income, an individual or HUF cannot claim set-off of the brought forward business loss or unabsorbed depreciation. The deductions not available under the new regime to the extent they relate to deductions/exemptions withdrawn.

FAQ ON NEW TAX REGIME

Who can open a NRE Account?

Any Non Resident Indian or Person of Indian Origin can open a NRE Account. Individuals from Bangladesh & Pakistan can also open NRE Accounts, but would need prior permission of Reserve Bank of India (RBI) to do so. A person can mean an individual, a company, a partnership, a trust etc can open a NRE Account.

Who is a NRI?

A NRI or Non Resident Indian is an individual who resides outside India, but is an Indian Citizen.

Who is a PIO?

A 'Person of Indian Origin (PIO)' is a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions:

- Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
- Who belonged to a territory that became part of India after the 15th day of August, 1947; or
- Who is a child or a grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b); or
- Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c)

A PIO will include an 'Overseas Citizen of India' cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955. Such an OCI Card holder should also be a person resident outside India.

Can the NRE Account be a Joint Account?

Yes, the NRE Account can be a Joint Account, provided all the account holders are either NRIs or PIOs or any combination of the two.

What is the Currency of the NRE Account?

The NRE Account is an INR denominated account.

What kind of accounts can be opened as a NRE Account?

NRE Account can be a Savings Account, a Current(Checking) Account, a Fixed Deposit Account or a Recurring Deposit Account.

What is the period of Fixed Deposits or Recurring Deposits?

The Fixed Deposit or Recurring Deposit can be for a period between one year to three years. However it is at the discretion of the bank where the NRE account has been opened, to allow a period above three years.

What are the permitted credits into a NRE Account?

The permitted credits into the NRE Account are:

- Inward Remittances from outside India
- Interest Accruing on the account balance
- Interest on Investment
- Transfer from other NRE or FCNR Account
- Maturity proceeds of any investment made originally from this account
- Current Income like rent, dividend, pension, Interest etc.
- Foreign currency, suitably converted into INR at the forex rates of the bank on the given day

What are the permitted debits from the NRE Account?

The permitted debits are:

- Local Disbursements
- Remittance outside India
- Transfer to another NRE/FCNR Account
- Investments in India

How much can be repatriated abroad from the NRE Account?

NRE account balance can be fully repatriated, which means the total balance of the NRE account can be sent abroad.

What is the taxation on the NRE Account?

Income earned in the account is exempt from Income Tax in India. The balance is also exempt from Wealth Tax. Which means that this account is tax free, in India.

Can Loans be availed in India on the security of the NRE Account?

Yes, the banks can give loans on the security of the NRE Account to the account holder or third parties, as per their lending norms. There are no limits prescribed by the RBI on the same.

Where can the loans be utilized?

The loans taken on the basis of the NRE account cannot be repatriated abroad. It can be used in India only for the purposes specified in the loan application as read along with the regulations.

How can the loans be repaid if these are taken by the account holder?

The repayment of the loan can be done by inward remittance. It can also be repaid by utilizing the balance held by the account holder in their NRO Accounts.

Can the person taking the loan utilize premature withdrawals?

No, premature withdrawals are not allowed if the loan has been taken basis the security of the NRE Account.

What is the Rate of Interest of NRE Account?

The rate of interest on NRE Account are based on the directives of RBI under the guidelines issued by the department of Banking Regulations. These are generally in the range of 1.5% to 2.5% per annum.

Can the NRE Account be operated under a Power of Attorney (POA)?

Yes, the NRE Account can be operated under a POA. There are restrictions on the application of the POA. These restrictions are applicable to withdrawals for local payments or remittance to the account from abroad.

What happens when there is a change in the status of the Non Resident to Resident, as regards NRE Account?

The NRE Account is then designated as a Resident account or the funds held in this account are transferred to a Resident Domestic Account, at the option of the account holder.

What is the time limit for the change of the account status of the person who becomes a Resident from Non Resident?

The account holder should immediately intimate the bank of the change of the status.

FAQ ON NRE ACCOUNT

Who can open a NRO Account?

Any Non Resident Indian or Person of Indian Origin can open a NRO Account. Individuals from Bangladesh & Pakistan can also open NRO Accounts, but would need prior permission of Reserve Bank of India (RBI) to do so. A person can mean an individual, a company, a partnership, a trust etc. can open a NRO Account. Post Offices in India can open NRO Accounts.

Who is a NRI?

A NRI or Non Resident Indian is an individual who resides outside India, but is an Indian Citizen.

Who is a PIO?

A 'Person of Indian Origin (PIO)' is a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions:

- Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
- Who belonged to a territory that became part of India after the 15th day of August, 1947; or
- Who is a child or a grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b); or
- Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c)

A PIO will include an 'Overseas Citizen of India' cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955. Such an OCI Card holder should also be a person resident outside India.

Can the NRO Account be a Joint Account?

Yes, the NRO Account can be a Joint Account, provided all the account holders are either NRIs or PIOs or any combination of the two.

What is the Currency of the NRO Account?

The NRO Account is an INR denominated account.

What kind of accounts can be opened as a NRO Account?

NRO Account can be a Savings Account, a Current(Checking) Account, a Fixed Deposit Account or a Recurring Deposit Account.

What is the period of Fixed Deposits or Recurring Deposits?

The Fixed Deposit or Recurring Deposit can be for a period as are opened for a resident, per the regulations of RBI. There is no special treatment of a Fixed Deposit or Recurring Deposit in an NRO Account.

What are the permitted credits into a NRO Account?

The permitted credits into the NRO Account are:

FAQ ON NRO ACCOUNT

- Inward Remittances from outside India.
- Interest Accruing on the account balance.
- Rupee Gifts or loan made by a resident to an NRI or PIO, within the limits of Liberalized Remittance Scheme (LRS).
- Transfer from other NRO.
- Legitimate dues in India.
- Current Income like rent, dividend, pension, Interest etc.

What are the permitted debits from the NRO Account?

The permitted debits are:

- Local Disbursements.
- Remittance outside India up to INR 1 million, subjects to the conditions in the Foreign Exchange Management (Remittance of Assets) regulations 2016.
- Transfer to another NRO/FCNR Account.
- Investments in India.

How much can be repatriated abroad from the NRO Account?

NRO account balance cannot be repatriated. The repatriation can only be up to 1 Million INR and under the Regulations of FEMA (Remittance of Assets) issued in 2016.

What is the taxation on the NRO Account?

Income earned in the account is fully Taxed in India.

Can Loans be availed in India on the security of the NRO Account?

Yes, the banks can lend on the security of the NRO Account to the account holder or third parties, as per the general lending norms.

How can the loans be repaid if these are taken by the account holder?

The repayment of the loan can be done by inward remittance. It can also be repaid by utilizing the balance held by the account holder in their NRO Accounts.

Can Loans be availed outside India?

Loans outside India are not permitted under the NRO Account

What is the Rate of Interest of NRO Account?

The rate of interest on NRO Account are based on the directives of RBI under the guidelines issued by the department of Banking Regulations. The rates are the normal rates as are applicable to resident accounts.

Can the NRO Account be operated under a Power of Attorney (POA)?

Yes, the NRO Account can be operated under a POA. There are restrictions on the application of the POA. These restrictions are applicable to withdrawals for local payments in INR or remittance to the account from abroad. For sending money abroad the rules as above of 1 million INR apply.

What happens when there is a change in the status of the Non Resident to Resident, as regards NRO Account?

The NRO Account is then designated as a Resident account or the funds held in this account are transferred to a Resident Domestic Account, at the option of the account holder. When a resident moved abroad all his domestic accounts are to be designated as NRO accounts.

What is the time limit for the change of the account status of the person who becomes a Resident from Non Resident?

The account holder should immediately intimate the bank of the change of the status.

What is mean by Private Company Closure?

The Process of closing a Private Limited Company is known as Strike off or company closure. Company closure is done under newly notified rules Companies (Removal of Names of Companies) Rules, 2016 which governed by section 248 of Companies Act, 2013. If you are not running your company, we recommend you to close your Private Limited Company.

How to Close Private Company in India?

A Company closure is filed under Form STK 2 (Earlier form was FTE) along with the government fees of Rs.10,000/- and some necessary docs. However it is important to note the cases where closure can be filed. A Company closure can be filed after the following steps:

Pay all Liabilities: The first step is to repay all the liabilities of the company and ask for written No Objection Certificate from them. However, in case you have not started the business/operations, then this clause does not apply to you.

Need 75% Consent: This is a very new requirement which is to be complied for Private Limited Company closure. To wind up the company, you need at least 75% consent of the shareholders/members of the company or can be done by passing a Special Resolution in EGM. Further, one director is also needs to be notified to take care of all the responsibility for company closure.

Prepare Application: Once consent is assigned, next step is to prepare application and file the same with the ROC.

Why to close a Private Limited Company?

If you are not running a company and not even complying with the law then you can file Private Limited Company closure to avoid being in default. A dummy company, defunct company, non operative companies can file for Company closure to avoid late penalties etc.

How can i close my Private Limited Company?

The closure of a limited company depends on whether it is solvent (able to pay its bills) or insolvent (unable to pay its bills). If it is solvent, the easiest way to close it is for the directors to apply to the Registrar of Companies to have it struck off the register. Alternatively, you can start a members' voluntary liquidation. If your company is insolvent, the directors can propose a creditors' voluntary liquidation process.

This course of action will require at least 75% of the voting shareholders (by value of their shares) to agree to the closure by passing a winding-up resolution.

What does strike off of a company mean?

Strike Off means removing the name of the Company from the Register of Companies maintained by the Registrar of Companies.

It is more like a Closure of the Company and the Company will not be in existence after being Struck Off and cannot perform any operation thereafter.

What is the procedure for Closing a Private Limited Company?

Shutting down a company is a long and complicated procedure. A Private Limited Company can be closed down in various manners depending on the requirement of the owner.

- The owner can sell the company.
- Can close down the company by declaring the company 'Defunct'(Striking of the company).
- Winding up or dissolving the company.

Selling of Private Limited Company:

A company can be sold by transferring the majority shares to the person best suited for the company. The procedure of eventually winds up the company, but only the majority of the shares are transferred with the responsibility of stocks.

Declaring the company Defunct:

Any company that wants to strike off its name from the registrar of the company can declare itself defunct by applying Form STK-2 and then the company can be shut down by the registrar of the company.

Winding Up of Private Limited Company:

Winding up of the private limited company is necessary in the case where the company needs to conclude its business or due to bankruptcy. The winding up method can be initiated intentionally by the shareholders or creditors, or it can also be done on the order of the tribunal (Compulsory Winding up).

If the company is not dissolved and the assets are not collected as per the legal proceedings, the company is considered in operation, and hence the directors will be liable for completing all the compliances associated with the private limited company.

What are the main steps to close a Private Limited Company?

Companies may pursue a strike off by following each

of the following specified steps:

Holding of Board Meeting:

The passing of Board Resolutions has been mandated for major enactments in the corporate sphere.

Closing of liabilities:

A company desirous of a strike off must have closed off all its liabilities.

Holding of General Meeting:

A general meeting of shareholders should be held by the company by passing a resolution for striking off the name of the Company.

Furnishing of Applications and documents:

Companies on the pursuit of strike-off must file an application to the Registrar of Companies (ROC), accompanied by the following documents:

- Indemnity Bond duly notarized by all directors (in Form STK 3).
- A statement of liabilities comprising of all assets and liabilities of the companies in Form-STK-8 (certified by a Chartered Accountant).
- An affidavit in Form STK 4 (by all directors of the company).
- CTC of Special Resolution or consent of 75% shareholders (duly signed by every director of the company).
- A statement concerning any pending litigations with respect to the company.

Implications of dissolution

If a company confirms its dissolution, it shall cease its operations as a company from the date of such dissolution, and the Certificate of Incorporation issued to it by the ROC shall be deemed to have been cancelled, except for the discharge of any existing liabilities or obligations.

How long does it take to Strike off of a company?

It usually takes at least 3 months for a company to be officially dissolved, but the length of time can vary considerably if the process is complex. Generally, however, a company will cease to exist no less than 3 months of the winding-up notice being advertised in the Gazette.

What happens after the registrar strikes off the name of the Company?

There are serious consequences for Directors of companies which are involuntarily struck off, particularly if the company is still trading.

- The company ceases to exist as a legal entity from the date of dissolution
- The assets of the company become vested in the state
- Where the company ceases to exist, banks will be unwilling to provide finance and future contracts with customers/ suppliers
- Directors of companies that are involuntary struck off may be disqualified from acting as a Director or in the management of any company.
- The company's Shareholders and Officers are trading without the protection of limited liability and can be held personally liable for the debts of the company

When a company be struck off?

The company can be struck off under following circumstances:

- When a company has failed to commence its business within one year of its incorporation.
- When a company is not actively carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant Company.
- In such circumstances either the registrar of companies will strike off the name of the company on his own or the company voluntarily apply for the strike off.

Can a struck off company still trade?

When a company is struck off, the name would be removed from the company register and it cannot trade, sell its assets or make payments or even it can not get involved in any other business activities. The name of the company would be made available for new companies to use.

The company cannot be struck off if in the last three months

- The company has Changed its name or relocated its registered office to another state.
- Made a disposal for the value of property or rights held by it (subject to conditions).
- Engaged in any other activity other than what is necessary or expedient for making an application under the concerned provision, and so and so forth.
- Filed an application to the Tribunal for the granting of Compromise or Arrangement, and a consensus for the same hasn't yet been arrived at.
- Been wound up under Chapter XX, whether voluntarily, by the Tribunal or under the Insolvency and Bankruptcy Code (IBC), 2016.



1. Why is Holding a Board meeting?

- to approve the alteration in MOA and for changing its registered office from one state to another;
- to fix time, date and venue for holding general meeting of the company for passing special resolutions approving such alteration;
- to approve notice of the general meeting along with the explanatory statement, and to;
- to authorise the Company Secretary/Director to issue notice of the general meeting on behalf of the Board of directors of the company.

2. Whom to Issue the notice of the general meeting?

- To all members;
- Directors and;
- The auditors of the company.

3. Why is holding the general meeting and pass the special resolutions?

For alteration in MOA and for changing its registered office from one state to another state and Filing of e-form MGT-14 is required to be filed within 30 days of EGM with attachments i.e Altered MOA and Certified true copy of the resolution along with the explanatory statement annexed with the notice of such meeting.

4. What is the need for publication of the advertisement?

Now the company shall publish an advertisement in the vernacular language newspaper of the district and in English language with the widest circulation in the state . Such advertisement shall also be sent to the Central Government, debenture-holders and creditors of the company on its publication. Filing of e-form: INC-26 is to be filed maximum 30 days before filing of INC-23.

5. What is the need to prepare a List of Creditors and Debenture Holders?

Intimate them accordingly regarding the shifting of registered office from this state to another state. This list is required to be filed with the application. The list should be duly verified by an affidavit. List should be verified by the Statutory Auditor of the Company. The list should not precede the date of filing of petition by more than one month .

6. Why Application to the Registrar under whose jurisdiction registered office of the company is situated?

Intimation to the Registrar of Company regarding the changing of the Registered office from this state to another state so for this Filing of e-form: INC-23 is required to be filed within 30 days of filing INC-26 with attachments.

7. What are the attachments needed to be filed with the ROC?

Following is the mandatory attachment to be filed with the ROC:

- a copy of altered MOA
- copy of board resolution
- notice of EGM
- a copy of the minutes of the EGM
- certified true copy of the resolution passed in EGM
- a copy of the acknowledgment of service or a copy of the application with complete annexures to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application
- a copy of advertisement, any objection by creditors or debenture holders if received and counter response by the company, if any
- a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month. The list of creditors and debenture holders shall also have a declaration by the company Secretary or at least two directors of the company, out of which one shall be a managing director, if any; indicating that ;
- a full enquiry into the affairs of the company have been duly made and, the list of creditors are correct, the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there exists no other debts of or claims against the company to their knowledge;
- no employee has been retrenched due to change in registered office from one state to another;

8. Why is Simultaneously with the INC-23, Company also apply to the Chief Secretary of the concerned State Government or Union Territory & ROC where the registered office is situated at the time of filing application?

Filing of e-forms: GNL-2 is to be filed via courier and to ROC simultaneously with INC-23. The attachments of INC-23 shall be attached with GNL-2. The Central Government shall then pass its order confirming the alteration upon such terms as it deems fit. If there is any objection, the central government shall hold hearing and pass necessary directions to the company at its own discretion.

9. What is the next step upon receipt of order?

The copy of the order shall also be filed with the Registrar of each state by filing of e-forms: INC-28 shall be filed within 30 days from the receipt of order.

10. Is there any e-form filed with the ROC?

Lastly, the Registrar shall be notified through mail. Now filing of e-forms: INC-22 is required to be filed within 30 days from the receipt of the confirmation order along with following attachments:

- Sale Deed/Rent Agreement or Lease Deed along with along with Property Tax Receipt, Rent receipt as the case may be.
- Copy of altered MOA
- Utility Bill latest by two months
- NOC from the registered office premises owner
- Copy of Central government (Regional Director)order.

11. Steps after obtaining new certificate from Roc?

- Make alteration in the MOA with respect to the state in every copy of Memorandum.
- Each stationery, banner, signboard, bills, invoice etc. should show the new address and necessary advice should be sent to shareholders, debenture holders, and other concerned parties.
- Necessary changes are required to be made in the letter heads, books, records etc. of the company. The necessary changes are required to be made in PAN. TAN and ST2 etc and inform to all the Government departments, banks, customers and others wherever required.

12. In File Necessary Amendment Application under following Acts?

- Goods and Services Act
- Shops & Establishment Act
- Factories Act
- Foreign Exchange Management Act
- Inter-State Migrant workmen Act
- Private Security Agency Act
- EPF
- ESI
- Other Labour Laws
- Industry Specific Laws



FAQ ON THE SHIFTING OF REGISTERED OFFICE FROM ONE STATE TO ANOTHER STATES

FAQ ON COMPOUNDING OF OFFENCE WITH RBI

1. What is meant by Compounding?

Compounding of an offence is a settlement mechanism, by which, the offender is given an option to pay money in lieu of his prosecution, thereby avoiding a prolonged litigation.

2. Who can apply for compounding?

Any person who contravenes any provision of the FEMA, 1999 or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act or contravenes any condition subject to which an authorization is issued by the Reserve Bank, can apply for compounding to the Reserve Bank. Applications seeking compounding of contraventions under section 3(a) of FEMA, 1999 may be submitted to the Directorate of Enforcement.

3. When should one apply for compounding?

When a person is made aware of the contravention of the provisions of FEMA, 1999 by the Reserve Bank or any other statutory authority or the auditors or by any other means, she/he may apply for compounding. One can also make an application for compounding, suo mo-to, on becoming aware of the contravention.

4. Are any fees required to be paid for seeking compounding?

Yes, the application in the prescribed format along with necessary documents and a demand draft for Rs. 5000/- (Rupees five thousand only) drawn in favour of the "Reserve Bank of India" should be sent to the Reserve Bank of India while sending the request for compounding.

5. What are sensitive contraventions?

Cases involving serious contravention suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation are categorized as sensitive contraventions.

6. Is it mandatory to appear for the personal hearing?

It is not mandatory to attend/opt for the personal hearing. In case a person opts not to attend the personal hearing he//she may indicate his/her preference in writing. The application would be disposed of on the basis of documents submitted to the Compounding Authority. It may be noted that appearing for, or opting out of the personal hearing does not have any bearing, whatsoever, on the amount imposed in the compounding order, as the amount imposed is calculated based on the Guidance note on computation matrix as contained in the Master Direction on compounding of contraventions under FEMA.

7. Can the applicant authorise another person to attend the personal hearing?

Yes, another person may be authorised by the applicant to attend the personal hearing on his behalf but only with proper written authority. It has to be ensured that the person appearing on behalf of the applicant is conversant with the nature of contravention applied for. However, the Reserve Bank

nature of contravention applied for. However, the Reserve Bank encourages the applicant to appear directly for the personal hearing rather than being represented/ accompanied by legal experts/consultants, etc. as the compounding is only for admitted contraventions.

8. How is the compounding process brought to conclusion?

The Compounding Authority passes an order indicating details of the contravention and the provisions of FEMA, 1999 that have been contravened. The sum payable for compounding the contravention is indicated in the compounding order. The process of compounding is brought to a conclusion by payment of the amount imposed.

9. How is the compounding process brought to conclusion?

The Compounding Authority passes an order indicating details of the contravention and the provisions of FEMA, 1999 that have been contravened. The sum payable for compounding the contravention is indicated in the compounding order. The process of compounding is brought to a conclusion by payment of the amount imposed.

10. How does the application for compounding finally get disposed of?

On realization of the sum for which contravention is compounded, a certificate shall be issued by the Reserve Bank, indicating that, the applicant has complied with the order passed by the Compounding Authority.

11. What happens if the amount is not paid within 15 days of the order?

In case of non-payment of the amount indicated in the compounding order within 15 days of the order, it will be treated as if the applicant has not made any compounding application to the Reserve Bank and the other provisions of FEMA, 1999 regarding contraventions will apply. Such cases will be referred to the DoE for necessary action.

12. Can there be an appeal against the order of the Compounding Authority?

As compounding is based on voluntary admissions and disclosures, there is no provision under the of Foreign Exchange (Compounding Proceedings) Rules, 2000, for an appeal against the order of the Compounding Authority or for a request for reduction of amount imposed or extension of period for payment of the amount imposed.

13. What is the timeframe for completing the compounding process?

Ans. The compounding process is completed within 180 days from the date of receipt of the application complete in all aspects, by the Reserve Bank.



COMPANY INCORPORATION

1. What is a Company and what are different types of Companies?

A Company is an association of people which is formed and registered under this Act or any previous company laws. A company is a separate legal entity which is different from its shareholders. It is an important feature of Company that there is a difference between people who have control over the affairs of a Company and the people who actually own it.

Different types of Companies are as follow:

- Private Limited Company
- Public Limited Company
- Limited Liability Company
- Unlimited Liability Company
- Non-Profit Organizations (which are also known as Sec.25 Companies)

2. What are the types of Companies that I can register in India?

Here are the various types of companies you can register in India:

- One Person Company (OPC)
- Private Limited Company
- Public Limited Company
- Limited Liability Partnership (LLP)
- Non-Profit Organizations (Sec. 25 Companies)

3. What is MOA and AOA?

MOA stands for Memorandum of Association whereas AOA means Articles of Association. Both these documents act as important source of information for various shareholders and other stakeholders associated with a Company.

MOA reveals the name, aims, objectives, registered office address, clause regarding limited liability, minimum paid up capital and share capital of a Company. In short, it explains the relationship of a Company with outside world.

AOAs are the necessary documents to be submitted when the company is incorporated with the registrar of Companies (ROC). When AOAs are in conjunction with the MOA, they are called the Constitution of the Company.

4. What is a Private Limited Company?

A private limited Company restricts the number of members to 200. The private limited company can start with just two members only. A private company is a separate legal entity having perpetual succession, with limited liability only up to the share of capital. A shareholder is not personally liable to the amount of the debt and its personal assets won't attach to pay the debt.

5. Can small business get registration under the private limited company?

Yes, a small business can get its business registered under **private limited company registration** in India. It provides them with the credibility and an image of their business in the eye of the financial institution, suppliers and potential clients. It helps the company to get the loans at little compliance from banks or potential clients while entering into the deals.

6. Is there any high qualification required to become a director or shareholder in the private limited company.

No, professional or educational qualification is required to become a shareholder in the private limited company. Any individual in the capacity of the person, with the sound of mind, can start a company.

7. What are the eligibility criteria for shareholder or director to be appointed for Private company registration?

The person should be of –

- Sound Mind
- Major of age
- Citizen or resident of India

8. What is the Director Identification Number (DIN)?

Any individual intends to become the director of the company must apply to the Director Identification Number, there is no special form is required to have the DIN from now onwards. One can apply for the DIN with the SPICe form. No special form is required.

Proof of the Identity and address is required to be submitted along with the requisite fee. The DIN usually takes 3-4 days to get approved. Once you get the DIN, the same can be used for the lifetime.

COMPANY INCORPORATION

9. What will be the address of the registered office of the company?

The Registered Office does not mean to be owned only; it can be rented premises also. The registered office is used for the purpose of holding a general meeting, keeping records and receiving correspondence from all the statutory government timely. It also specifies the jurisdiction of the registered office.

10. Can we change the Registered Office of the Company?

Yes, we can easily change the registered office of the company any time after the specified procedure is completed. The changed address can be situated within the same state or in a different state, depending upon the conditions.

11. Benefits of small businesses in Private limited company?

It provides credibility to business in the eyes of financial institutions, suppliers and potential clients. It makes easier for companies to get loans at favorable rates from banks or in convincing potential clients while entering into deals.

12. Can sole proprietorship be converted in private company registration?

Yes, sole proprietorship can be converted into private company registration after following the companies act, 2013 procedures.

13. Is a foreign entity allowed to be Director or shareholder of the private limited company?

Yes, any foreign nationals, entity or an NRI can become a director or shareholder of a private limited company in India.

14. What are the forms that are required for Private Limited Company Registration in India?

SPICE+ is an integrated Web form offering 10 services by 3 Central Govt Ministries & Departments. (Ministry of Corporate Affairs, Ministry of Labour & Department of Revenue in the Ministry of Finance) and One State Government (Maharashtra), thereby saving as many procedures, time and cost for Starting a Business in India. SPICE+ is part of various initiatives and commitment of Government of India towards Ease of Doing Business (EODB).

15. How much Capital is required for running a Private Limited Company?

There is no bar in particular on the minimum capital requirement to run a private company.

16. Can private limited company invites the general public for shares?

No, a private limited Company cannot invite the general public to subscribe to the company shares.

17. How many directors are required for company registration?

A private limited company needs a minimum of 2 directors and a maximum of 15 directors to register a company.

18. Can Private Limited Company has FDI or Foreign direct investment?

Yes, a private company is allowed to have foreign direct investment in their company.

19. What are the important documents required before starting up with the registration process?



The most basic and important documents required before starting up with the incorporation of the company is PAN card, Aadhaar card, ID's, photo and contact details of all the directors, bank statement, electricity bill, rent agreement with the slip or proof of ownership.

20. How to Register a Private Limited Company?

- Apply for name reservation of the Company in Form RUN.
- Apply for **Digital Signature Certificate** which is required to file the forms of company registration. The Procedure to register a company is online and requires DSC.
- Within 20 days of the approval of the name of the company the **SPICE+ form** which is an advanced combination of 8 forms shall be filled up and applied at once.
- **DIN**- Apply Director Identification Number.
- File the necessary documents like MoA, AoA, EPFO, ESIC, Identity Proof, Address proof, PAN and TAN to go for Private limited company registration.
- It is mandatory to fill up the AGILE form to obtain the **GSTIN**.
- Once the file is submitted on the MCA portal, it shall be scrutinised and certificate of incorporation shall be granted by the MCA Officer.

21. Can Private Limited Company suitably make FDI in India?

Yes, perfectly suitable! The private limited companies have been a hugely popular form of business entity amid foreign investors for making the direct foreign investment (**subject to FDI Guidelines**) in any country, by means of a wholly-owned subsidiary, a joint venture, etc.

What is the full form of LLP?

1

The full form of LLP is a Limited Liability Partnership.

What is Limited Liability Partnership?

2

LLP is an alternative corporate business form that it gives the benefits of limited liability of a company and the flexibility of a partnership. The LLP can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name. The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.

What is the minimum number of partners required to start LLP?

3

A minimum two partners are required to start an LLP.

How to form/incorporate an LLP?

4

The procedure for formation of an LLP is very similar to that of a Private Limited Company incorporation procedure. A minimum of two Partners are required to start the LLP formation procedure and a registered office location is required within India. It is important to remember that FDI in LLP is allowed only with the prior approval of the Reserve Bank of India (RBI). Therefore, it is recommended that NRIs and Foreign National promoters opt to incorporate a Private Limited Company, where 100% FDI is allowed under the automatic route.

How can I get an LLP registered in India?

5

To register a Indian LLP, you need to first apply for a Designated Partner Identification Number (DPIN), which can be done by filing eForm for acquiring the DIN or DPIN. You would then need to acquire your Digital Signature Certificate and register the same on the portal. Thereafter, you need to get the LLP name approved by the Ministry. Once the LLP name is approved, you can register the LLP by filing the incorporation form.

What is the procedure for LLP registration in India?

6

LLP registration procedure is the easiest and transparent process as it has a blend of the benefits of a company and partnership firm namely, limited liability feature of a company and the flexibility of a Partnership firm. LLP registration process includes following steps:

1. Get a digital signature (DSC)
2. Apply for Director Identification Number (DIN)
3. Get the name of the company approved through 'Reserve your Unique Name' service (RUN)
4. Incorporation of LLP
5. File 'Limited Liability Partnership Agreement'

LLP INCORPORATION

7

Is there any government fees to register LLP in India? How much does it cost?

- Following are the details of the fees levied by the Government for the registration of LLP.
- Digital signature (DSC) – Rupees 1500-2000 (Depending on the Agency)
 - Apply for Director Identification Number (DIN) – Rupees 1000 for two partners
 - Get the name of the company approved through 'Reserve your Unique Name' service (RUN) – Rupees 1000
 - Incorporation of LLP- Depends on capital contribution: Contribution up to Rs. 1 lakhs – Rs. 500
 - File 'Limited Liability Partnership Agreement- Depends on capital contribution. Contribution up to Rs 1 lakhs – Rs 50 for filing Form 3 and stamp duty based on the state where LLP is formed

8

Who can become a partner in LLP?

- Any individual or body corporate may be a partner in an LLP. However, an individual shall not be capable of becoming a partner of an LLP, if—
- he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
 - he is an undischarged insolvent; or
 - he has applied to be adjudicated as an insolvent and his application is pending.

9

What are the documents required for LLP registration?

- To register an LLP in India, the following documents are required:
- PAN Card of the Partners
 - Address Proof of the Partners
 - Utility Bill of the proposed Registered Office of the LLP
 - No-Objection Certificate from the Landlord
 - Rental Agreement Copy between the LLP and the Landlord

10

When should I file my annual report with ROC of an LLP?

LLPs in India must file its Annual Return within 60 days from the end of close of financial year and Statement of Account & Solvency within 30 days from the end of six months of close of financial year. Unlike Companies, LLPs mandatorily have to maintain their financial year, as April 1st to March 31st. Therefore, LLP annual return is due on May 30th and the Statement of Account & Solvency is due on October 30th of each financial year. In addition to the MCA annual return, LLPs must also mandatorily file an income tax return every year.

11

Which is better LLP or Pvt Ltd Co?

Private Limited Company is the simplest and a very popular form of Business Registration in India. It can be registered with a minimum of two people. Limited liability protection to shareholders, ability to raise equity funds, separate legal entity status make it the most recommended type of business entity for millions of small and medium-sized businesses that are family owned or professionally managed.

Limited liability partnership is a partnership with limited liability. LLP is basically a combination of both Company and Partnership. It is an alternative form of business registration in India which is generally preferred by Professionals, medium and small scale business. Limited It is governed by LLP Act, 2008 and as per LLP agreement formed at the time of Incorporation.

12

What are the benefits of registering as LLP in India?

- Here are some of the many benefits of registering as an LLP in India.
- An LLP is easier to start and manage and the process has fewer formalities
 - It has a lesser cost of registration as compared to a Company
 - LLP is like a corporate body having its existence other than its partners.
 - LLP can be started with any amount of minimum capital
 - In an LLP, each partner is not responsible or liable for another partner's mischief or negligence.
 - No requirement of compulsory Audit

13

What is the difference between partner and designated partner at LLP in India?

Designated partner are like Director and partners are like shareholders. The liability of the Partner is limited solely to Partnership Agreement. The Designated Partners are responsible towards the day to day functioning , liabilities prescribed by LLP Agreement as well as for all penalties imposed on Limited Liability Partners for contravention of any provisions applicable and to be complied with by the LLP.

14

Whether an entity which has objectives like "charitable or other not for profit objectives" would be able to set up under LLP Act?

No. The essential requirement for setting LLP is 'carrying on a lawful business with a view to profit'.

LLP INCORPORATION

CONVERSION OF PVT LTD COMPANY TO LLP

Understanding Limited

Liability Partnership

LLP is a combination of both Company and Partnership. It is especially suitable for small to medium-sized business enterprises.

It is governed by Limited Liability Partnership Act- 2008 which came into force from April 1, 2008. This Act was proposed for promoting the Micro Small Medium Enterprise.

[LLP registration](#) has the advantage of self-governance and less compliance as compared to other types of corporate entities

Process Of Conversion Of

Company Into LLP

Obtain Director Identification Number (DIN)

The minimum number of designated partners for the incorporation of an LLP is two. One of them must be an Indian resident. Currently, DIN is only allotted only at the time of incorporation or while adding a person as a director or designated partner in a company or an LLP. Hence, first such members need to be added as directors in the company to obtain DIN. DIN will be required for those who would become designated partners.

Further, it is important to apply for a DSC before applying for the DIN. A Body Corporate can also be a partner in a Limited Liability Partnership through a nominee.

Meeting of Board of Directors of Company

- Call a meeting of the Board of Directors.
- Pass requisite Resolution for Conversion of Company into LLP.
- Pass requisite Resolution to authorize any director to file all the necessary [forms with MCA](#).
- Requisite resolution to authorize any director to file all the necessary forms with MCA.

Application for Name Availability

The company will have to apply for reservation of name of LLP And GET NAME APPROVAL CERTIFICATE FROM ROC.

Filing of Incorporation Form with Required Documents

File E Form FILLiP with ROC along with following Attachments:

- Address proof of the registered office of LLP.
- The subscription sheets.
- Consent to act as a designated partners and partners
- Identity and Resident proofs of designated partners and partners
- Detail of LLP(s) and/ or company(s) in which partner/ designated partner is a director/ designated partner.

Filing of Application for Conversion into LLP

Form 18 is the form for conversion of a company into an LLP. But it needs to be filed with Form for incorporation itself.

This form has information about the conversion of the company into LLP such as:

- Whether all the shareholders of the company have given their consent for the conversion of a company into the LLP.
- If all the partners of the LLP comprise all the shareholders of the company and no one else.
- An up to date Income-tax return is file as per Income tax act, 1961.
- Documents including the latest balance sheet and annual returns under the Companies Act, 2013 filed with MCA.
- Validating if any conviction, ruling, order, a judgment of any Court, Tribunal or other authority in favour of or against the company is subsisting as on date?
- Getting to know regarding any security interest in the assets of the company is subsisting or still in force.
- Whether any earlier application for conversion of the said company into limited liability partnership was refused by the Registrar.
- If there is a presence of any secured creditors.

File E-Form- 18 With ROC Along

With Following Attachments:

- Statement of the consent of shareholders (Mandatory)
- Statement of accounts of the company certified as true and correct by the independent auditor
- List of all the secured creditors along with their consent
- Copy of acknowledgement of latest income tax return (Mandatory)

Certificate of Incorporation as LLP from ROC

After complying to all the formalities by the company and approved by the Ministry, ROC to issues a COI as to the conversion of LLP.

Drafting of Limited Liability Partnership Agreement

Contents of Agreement are:

- Name of LLP
- Name of Partners & Designated Partners
- Form of contribution
- Profit Sharing ratio
- Rights & Duties of Partners
- Proposed Business
- Rules for governing an LLP

Filing of E-Form-3

This form provides information about the LLP Agreement entered into between the partners. This form is to be filed in 30 days from the date of conversion of the company into an LLP.

Attachment Required: LLP Agreement

Filing of E-Form -14 (Intimation to ROC)

After receiving incorporation certificate of LLP it has to be filed within 15 days of the date of conversion.

ATTACHMENTS OF E-FORM 14

- Copy of Certificate of Incorporation (COI) of LLP.
- Copy of incorporation document submitted in E-Form FILLiP to ROC.

Effect Of Conversion

The following are some of the implications due to the conversion of a company into a LLP:

- The private company is dissolved after conversion.

CONVERSION OF PVT LTD COMPANY TO LLP

- The name of the private limited company will remove from the register of the ROC.
- The conversion will not affect existing liabilities, obligations, agreements, contracts and continued employment.

Company has to intimate all the authorities concerned about the conversion and make necessary changes in all the registrations and licenses.

Advantages Of Conversion

- On the conversion of a private limited company into LLP, all assets and liabilities of the company will convert into those of the LLP. However, no instrument of transfer required. Hence there will not be any stamp duty implications on such transfers as well.
- There is no limit to the number of partners; which is not so in case of private limited companies.
- There is no compulsion on holding a minimum number of meetings and maintaining statutory records.

Eligibility Criteria Under LLP Act

For Conversion Of Private

Company Into LLP:

A company may apply to convert into LLP in accordance with Schedule III if and only if-

- There is no security interest in its assets subsisting or in force at the time of application; and
- the partners of the LLP to which it converts comprise all the shareholders of the company and no one else.

Pre-conditions For Conversion Of

Private Limited Company

Into LLP:

1. There is no security interest in its assets subsisting or in force at the time of application;
2. The all the shareholders of the company shall be partners of LLP;
3. Consent from all shareholders of

the company must be given for conversion;

4. Consent from all creditors of the company must be given for conversion;
5. All due returns of ROC, Income Tax and other statutory authorities must have been filed;
6. NOC from regulatory authority, if necessary have been obtained for conversion;
7. The company shall furnish a Statement of Assets and Liabilities certified by Auditor not older than 30 days on the date of filing conversion application.

Companies Which Cannot Be

Converted Into LLP?

1. Companies engaged in the businesses of banking, finance and insurance;
2. Companies having secured loan/ security interest on assets;
3. Companies having FDI where performance linked conditions are applicable;
4. Companies having External Commercial Borrowings;
5. Companies having FDI under approval route.

Is The Consent Of All Creditors

Mandatory For Conversion?

Yes, Consent of all the creditors is mandatory for conversion of Company into LLP.

Is The Consent Of All Shareholders

Of Company Is Mandatory For

Conversion?

Yes, Consent for conversion of all shareholders is mandatory.

Is It Necessary To Intimate The

Registrar of Companies about

The Conversion Of Company

Into LLP?

Yes, the LLP shall within 15 (Fifteen) days from the date of conversion intimate

about such conversion to the registrar of companies in Form-14.

Do We Need To Apply For Fresh

Pan & Tan After Conversion?

Yes, after conversion the entity have to get fresh PAN & TAN applied.

Do We Need To Open A New Bank

Account After Conversion?

Yes, new account in the name of converted entity is mandatory to be opened.

Choice of LLP vs Private Limited Company

LLP is majorly suitable for small businesses that have annual sales turnover of fewer than Rs 40 lakhs and a capital contribution of fewer than Rs 25 lakhs. LLPs that satisfy these conditions do not have to go through the audit every year, on the other hand, it is necessary for a private limited company to conduct an audit of its financial statement each year. Though, in case, LLP has an annual turnover of Rs 40 lakhs or a capital contribution of more than 25 lakhs, the need for compliance become almost similar for both the private limited company and LLP, forcing the owners of LLP to convert into a Private Limited Company.

Can we convert LLP to Private Limited Company?

Provision mentioned in the Section 366 of the Companies Act, 2013 and Company (Authorised to Register) Rules, 2014, says that an LLP can be converted into a Private limited Company.

Is LLP better than Private Limited Company?

It offers limited liability, offers tax advantages, can accommodate an unlimited number of partners, and is credible in that it is registered with the Ministry of Corporate Affairs (MCA). At the same time, it has less compliance than a private limited company and is also significantly cheaper to start and maintain.

Can LLP take loan from bank?

Unlike private limited company, you cannot raise equity funding in llp from any person other than its partner. However debt funding such as term loan, overdraft from bank is possible.

Benefits of Conversion of LLP into Private Limited Company

Preservation Of Brand Value

Conversion of LLP into Private Limited Company facilitates business entities to continue the brand name without making any further efforts on brand advertisements.

Carry Forward Of Unabsorbed Losses And Depreciation

After the conversion, no expenditure will be incurred on bookkeeping, as the losses and depreciation incurred in LLP will be carried forward on the conversion of entity

Employee Stock Ownership Plan To Employees

Conversion of LLP to Private Company facilitates Companies to offer stock ownership and ESOP plans. Such plans help companies to attract efficient employees, as it offers incentive plans for them to work in the company.

Easy Fund Raising

If the company registration process is strict, it helps the company structure to be more credible among others. This leads to easy fundraising from external sources.

Separate Legal Existence

Conversion of company facilitates the separate ownership and management to pay attention to their potential work. The Shareholders assign responsibility to run and operate the company without losing control in form of voting.

Limited Liability Of Owners

Conversion prohibits the liability of the owners only to the capital subscribed and unpaid by them.

Reasons for LLP Registration

- Making small businesses aware with the concept of LLP.
- Easy to commence and control
- Gives the advantage of limited liability and also provides flexibility to organize their firm internally.
- Audit is not needed if an annual sale is more than Rs 40 lakhs and capital contribution does not cross the limit of Rs 25 lakhs.
- LLP is not bound to pay Dividend Distribution Tax (DDT).
- It is not necessary for a LLP to conduct Board meeting or annual meeting.
- Registration process of LLP is simple as compared to Private Limited Company.

Documents Required for Conversion of LLP into a Private Limited Company

- Address Proof of the applicant
- Identity Proof of the applicant
- Passport size photograph of the applicant

List of Documents required filing with ROC for conversion of LLP into Company: E-form URC-1

Company required filing e-form URC- 1 along with all the below mentioned documents:

- i. A list showing the names, addresses, and occupations of all persons named therein as members with details of shares held by them
- ii. a list showing the particulars of persons proposed as the first directors of the company
- iii. an affidavit from each of the persons proposed as the first directors, that he is not disqualified to be a director under sub-section (1) of section 164 and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief
- iv. a list containing the names and addresses of the partners of the Limited Liability Partnership
- v. Copy of LLP Agreement
- vi. a statement of assets and liabilities of the Limited Liability Partnership duly certified by a chartered accountant in practice which is made as on a date not earlier than thirty days of the filing of form no.URC-1
- vii. a copy of latest income tax return of the Limited Liability Partnership
- viii. an undertaking that the proposed directors shall comply with the requirements of Indian Stamp Act, 1899 (2 of "1899)
- ix. written consent or No Objection Certificate from all the secured creditors of the applicant
- x. written consent from the majority of Partners
- xi. a statement specifying the following particulars:—
 - ◆ the nominal share capital of the company and the number of shares into which it is divided;
 - ◆ the number of shares taken and the amount paid on each share;
 - ◆ the name of the company, with the addition of the word "Limited" or "Private Limited" as the case may require, as the last word or words thereof;

E-form INC- 33 / INC-33 / INC-34

Company required to file e-form INC-

CONVERSION OF LLP TO PVT LTD COMPANY

- 32/ INC-33/ INC-34 along with URC-1 as linked form with all the attachment as required in normal Incorporation of Company like:
- xii. MOA & AOA
(Physical in case of more than 7 subscribers otherwise INC-33 and INC-34)
 - xiii. INC-9
 - xiv. DIR-2 etc.

Process of Conversion of LLP into a Private Limited Company

- **Name Approval**
Obtain 'Name Approval' from the ROC (Registrar of Companies) by giving an application in e-format.
- **Securing DSC And DIN**
It is necessary for all the seven directors of the company to obtain Digital Signature Certificate (DSC) and Director Identification Number (DIN). DIN can be obtained by filing an application form on MCA portal. Central government approves the application of DIN through the office of regional director, the ministry of corporate affairs. Before submitting the form make sure to self-attest it along with address proof and identity proof with one passport size photo of the applicant.
- **Filing Of Form URC-1**
Once you have obtained the approval of name from Registrar of Companies, the applicant is required to prepare and file the form No URC-1.
- **Memorandum Of Association And Article Of Association**

Formulate Memorandum of Association (MOA) and Articles of Association (AOA) and submit it to the Registrar of Companies. Once you have obtained approval of the company name, the Registrar of Companies issues the form URC-1. The primary reason of conversion of LLP into Private Limited Company is the growth in business. LLP framework does not fit for venture capitalists or for private equity, also investors are more comfortable in investing in private limited company. For the purpose of FDI also, private limited companies are considered to be as the preferable choice over LLP. Hence, the conversion of LLP to private limited company can be a wise decision and shall be performed by taking all prescribed regulations into consideration.

How to file conversion form in case of more than seven partners in the LLP?

In case of more than 7 partners in the LLP at the time of conversion into Company then Company have to file Scan copy of physically prepared MOA & AOA. In above mentioned situation company have to file 1. URC-1 and 2. INC-32. No need of INC-33 and INC 34 in the above mentioned situations.

Whether at the time of Conversion whether Latest deed shall be attached in the form URC-1?

As per Rules, at the time of Conversion LLP have to file "copies of the principal and all subsequent deeds including the latest deed" with the ROC in e-form URC-1

GST

- Q1.** Can one start using provisional GSTIN till new one is issued?
- A.** Provisional GSTIN (PID) should be converted into final GSTIN within 90 days. Yes, provisional GSTIN can be used till final GSTIN is issued. PID & final GSTIN would be same.
- Q 2.** A taxable entity's business is in many states. All supplies are below 10 Lakhs. Entity makes an Inter State supply from one state. Is the entity liable for registration?
- A.** Entity is liable to register if the aggregate turn over (all India) is more than Rs. 20 lacs (Rs. 10 lacs in Special Category States) or if the entity is engaged in inter-State supplies.
- Q3.** Whether civil contractor doing projects in various states require separate registration for all states or a single registration at state of head office will suffice?
- A.** A supplier of service will have to register at the location from where he is supplying services.
- Q4.** Is an advocate providing interstate supply chargeable under Reverse Charge liable for registration?
- A.** Exemption from registration has been provided to such suppliers who are making only those supplies on which recipient is liable to discharge GST under RCM.
- Q5.** When is registration in other state required? Will giving service from Nasik to other state require registration in other state?
- A.** If services are being provided from Nasik then registration is required to be taken only in Maharashtra and IGST to be paid on inter-state supplies.
- Q6.** Please tell if rental income upto 20 lacs attracts GST or attracts any other charge?
- A.** GST is to be levied only if aggregate turnover is more than 20 LACS. (Rs. 10 lacs in 11 special category states). For computing aggregate supplies turnover, all supplies made by entity would be added.
- Q7.** Is separate registration required for trading and manufacturing by same entity in one state?
- A.** There will be only one registration per state for all activities.
- Q8.** Is there any concept of area based exemption under GST?
- A.** There will be no area based exemptions in GST.
- Q9.** How long can one wait to register in GST?
- A.** An unregistered person has 30 days to complete its registration formalities from its date of liability to obtain registration.
- Q.10** If an entity wish to newly register under GST, when can it do so?
- A.** Entity should be able to apply for new registration at the GST Portal gst.gov.in from 0800 hrs. on 25th June, 2017.

Input Tax Credit

- Q.11.** Is SGST of Rajasthan charged by supplier on purchase from Rajasthan can be utilized for payment of SGST in Madhya Pradesh?
- A.** SGST of one State cannot be utilized for discharging of output tax liability of another state.
- Q12.** How one can use SGST credit for the payment of IGST on another state?
- A.** SGST Credit can be used for payment of IGST liability under the same GSTIN only.
- Q13.** Can one State CGST be used to pay another state CGST?
- A.** The CGST and SGST Credit for a State can be utilized for payment of their respective CGST/SGST liabilities within that State for the same GSTIN only.
- Q14.** Do registered dealers have to record Aadhaar/PAN while selling goods to unregistered dealers?
- A.** There is no requirement to take Aadhaar/PAN details of the customer under the GST Act.
- Q15.** All Expenses like freight/transport/packing which are charged in Sales invoice are taxable in GST? How to charge in bill?
- A.** All expenses will have to be included in the value and invoice needs to be issued accordingly. Please refer to Section 15 of CGST Act and Invoice Rules.



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