

PROCEDURE COMPANY INCORPORATION

INCORPORATION OF A COMPANY

- A foreign company can commence operations in India by incorporating a company under the Companies Act, 1956 through:

(1) Joint Ventures; or

(2) Wholly Owned Subsidiaries

- Other than incorporating a company, a foreign company can also start un-incorporated entity in following ways

(1) Branch Office

(2) Liaison Office

(3) Project Office

It is important to note that the above i.e. un-incorporated entities, cannot do any direct trading or manufacturing activity in India.

GOVERNMENT POLICY

As per the existing Policy of the Government of India, an Automatic Route has been approved for direct 100% FDI in all sectors, which are not reserved or expressly prohibited by the Government. However, concerned sector permission and licenses (applicable to all) has to be taken, for commencement of activities.

SHAREHOLDERS AND DIRECTORS

- A. There is no need to appoint local director or shareholder to incorporate a company in India.
- B. Foreign nationals can incorporate company in India and hold foreign equity to the extent of 100% which is dependent upon sector in which company will operate and is subject to approval

from either Reserve Bank of India(RBI) or Foreign Investment Promotion Board (FIPB).

COMPANY INCORPORATION

In India, company can be incorporated either as a **Private Limited** or **Public Limited**. The incorporation procedure all over India is same. First one has to get the name approval of the proposed company from Registrar of Companies (ROC). After name approval, along with the application for incorporation, the Memorandum and Articles of Association in addition to other necessary prescribed documents has to be submitted with the ROC. The Memorandum of Association stipulates the constitution and objects of the company. The Articles of Association contains the rules and regulations of the company for the management of its affairs. After examining the documents the ROC issues a Certificate of Incorporation. Thereafter a private company becomes entitled to commence its business and a public company after obtaining the certificate of commencement of business from ROC. Since year 2007 ROC have introduced a new system of e-filing, under which all forms are to be submitted online and the original documents in person.

THE PROCEDURE FOR INCORPORATING A COMPANY IN INDIA IS AS UNDER

1. Obtain Director Identification Number (DIN) and Digital Signature Certificates (DSC) for each Director / Promoter before making any application to ROC.
2. Apply for the name availability of the proposed company to ROC. For this one has to fill Form 1A and submit online along with requisite fee with ROC.
3. Once Name is approved and made available by the ROC it remains valid for 6 months. If you do not incorporate the proposed

company within 6 months you can renew the name by paying prescribed fee.

4. After getting the name following documents are prepared

1. Memorandum of Association
2. Articles of Association
3. Letter of authority to a person for carrying out corrections
4. Declaration by the Promoter Directors
5. Form 32 for the Directors
6. Form 18 for registered office address
7. Demand Draft in favour of Registrar of companies for the prescribed amount towards registration fee.

5. Memorandum and Articles of Association are to be duly stamped before filing with ROC

6. All the above documents are also filed in original with ROC,

7. On the receipt of the documents ROC will scrutinize the papers and if any modification is required he will direct to make such changes accordingly.

8. Once ROC is satisfied and scrutiny is completed he will issue certificate of Incorporation.

The company would come into existence from the date of certificate of incorporation. It is required that company have a registered corporate office,

IN PRIVATE COMPANIES Minimum Shareholders required is 2 and Minimum Directors required is 2 and Minimum Paid up Capital - INR 100,000

IMPORTANT THINGS TO KNOW ABOUT COMPANIES IN INDIA

1. Any person whether Indian or Foreigner can be the Director in Indian Company.
2. Any Individual/Company whether Indian or Foreigner can be the Shareholder in Indian Company, however foreigner would be required to comply with foreign exchange laws in India.
3. Minimum 4 meetings of Board of Directors are required to be held in one year. Board meeting can be held any where in the world. It is not necessary to hold such meetings only in India.
4. The registration fee and Stamp Duty depends upon the authorized capital of the proposed Company.

COST OF INCORPORATION

Cost of incorporation varies and could not give precise structure, It depends mainly upon the Authorized Share Capital Structure of the Company. As per the current notification of the Government, stamp duty is 0.6% of the total Authorized Share Capital of the company. In addition to stamp duty, there is payable fee on registration + other documentation expense, which shall be 500\$ + professional fees

FOLLOWING FLOW CHART WOULD DEMONSTRATE THE PROCEDURE FOR INCORPORATION OF COMPANY

