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Agenda

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- Types of Entities and Regulatory Framework
- Start-up India initiative
- Protection of IP
- Founders' Agreement

Classification of Entities

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	Private Company	Public Company	One Person Company	Limited Liability Partnership
Minimum Members	2	7	1	2
Minimum Directors/Partners	2	3	1	2
Minimum Capital/ Contribution	No Minimum prescribed	No Minimum prescribed	No Minimum prescribed	No Minimum prescribed
Maximum Capital/ Contribution	No Limit	No Limit	No Limit	No Limit

Advantages

Private Company	Public Company	One Person Company	Limited Liability Partnership
Continuity of existence	Liquidity to shareholders.	Suitable for small business units as it offers Corporate form of sole proprietorship.	Limited Liability of the partners.
Less number of members makes it easy to manage.	Easy to raise capital from public.	Minimal or No compliances.	Corporate form of partnership.
Many compliance related exemptions available	No restrictions on number of members.	Limited liability of the shareholders	Minimal compliances required.
Only four board meetings in a year required	Company’s shares can be listed on Stock exchange.	—	Greater flexibility.
Limited liability of the shareholders	Limited liability of the shareholders	—	Tax Benefits.

LLP vs Company

Particulars	Company	LLP
Compliances	Tax compliances are similar for both a company and LLP. However, when it comes to compliance relating to the MCA, LLP enjoys significant advantages in terms of compliances, filings and maintenance of statutory records.	The nature of compliances, filings and maintenance of statutory registers is much more in a company.
DDT	The Finance Bill 2020 has abolished the DDT for dividends declared, distributed or paid on or after 1 April 2020. Consequently, dividends will be taxed in the hands of the shareholders at applicable tax rates.	An LLP is not required to pay DDT on profits distributed to its members. The said distribution of profits would not be taxable in the hands of the members of the LLP.
Tax Rate	Gross turnover of more than 400 crore - 30% Gross turnover upto 400 crore - 25% The companies also have the option of paying tax at the rate of 22% in both the above categories, subject to the companies complying with certain prescribed conditions. The tax rates are different for manufacturing companies.	For all LLPs, the tax rate will be 30% plus applicable surcharge and cess, depending on the income of the LLP.
FDI	There are few sectors which are prohibited for FDI. For other sectors which don't fall within prohibited sectors, FDI is either permitted upto the prescribed limit as per extant FEMA Regulations or is permitted upto 100% under the automatic route.	FDI is permitted in an LLP, in those sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI linked performance related conditions.

Things to consider to establish a start-up

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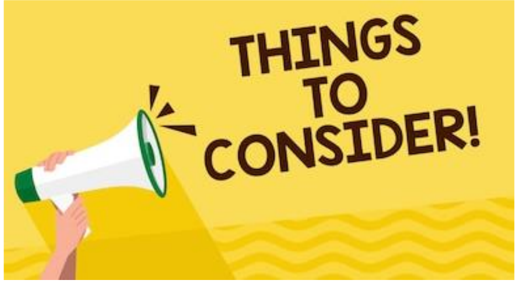
Location of the business;

Presence of founders/promoters;



Ease of doing business; and

Regulatory considerations.

Process of Incorporation

1. Obtaining DIN and DSC
2. Approval of name of proposed company
3. Drafting of MOA and AOA (in case of company)
4. Incorporation
5. LLP Agreement (in case of LLP only)

Note: As per Finance Act 2018, all directors of Indian companies will have to obtain a PAN under Income Tax Act, 1961. Thus, foreigner nationals holding director position in Indian companies would be required to obtain PAN whether they are taxable in India under Income tax Act, 1961 or not and may have to file Income Tax returns in India.

After obtaining the certificate of incorporation the Company has to Obtain Business consents, licenses, and other applicable registrations and Commence Business.

Startup Incentives

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Who is an eligible start-up:

- Being incorporated or registered in India up to 10 years from its date of incorporation;
- Annual turnover not exceeding Rs 100 crores in any of the preceding financial years;
- Aims to work towards development or improvement of a product, process or service and/or have scalable business model with high potential for creation of wealth & employment;
- It is not formed by splitting up or reconstruction of a business already in existence;
- It can be incorporated as a private limited company, registered partnership firm or a limited liability partnership.

Startup Incentives (Cont.)

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Exemption u/s 56 (2) (viib) of IT Act. The startup will not have to pay tax on excess of Issue price over the FMV of shares issued to resident shareholders;

IPR Benefits-by providing access to high quality Intellectual Property services and resources, including fast-track examination of patent applications and rebate in fees. They will enjoy 80% reduction in cost of filing patents.

100% deduction of the profits and gains from income of Startups for a period of three years in a block of first ten years provided that annual turnover does not exceed Rs. 100 crores in any financial year;

Startups can apply for government tenders. They are exempted from the “prior experience/turnover” criteria applicable for normal companies answering to government tenders;

A 10,000 crore rupees fund is set-up by government to provide funds to the startups as venture capital. The government is also giving guarantee to the lenders to encourage banks and other financial institutions for providing venture capital;

Self-certification under Labour & Environment laws whereby start-ups shall be allowed to self-certify compliance with labour and environment laws to reduce the regulatory burden on them.

A startup can close its business within 90 days from the date of application of winding up.

Protection of Intellectual Property Rights

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The Intellectual Property (IP) Rights usually give the creator, an exclusive right over the use of the IP for a certain period of time. With increase in globalization, the "Intellectual Capital" has become one of the key wealth drivers in the current economy. There are different kinds of IP Rights carrying its own advantages and some of the IPs which are important for a start-up are:

- Trademarks – which protects the brand, logo, tradename;
- Patents – which protects the product;
- Copyrights – which protects your authorship;
- Trade Secrets; and
- Industrial Design.

Avoid These Legal Mistakes

- Choosing Wrong Legal Structure For Business.
- Not making the deal clear with co-founders.
- Non-execution of Non Disclosure Agreement while discussing business.
- Lack of employment documentation with employees of the Company.
- Not carefully considering the IP Protection.
- Not having a good Terms of Use Agreement and Privacy Policy for your website.
- Failure to obtain all necessary licenses and permits.
- Non-compliance with securities laws.
- Thinking any legal problems can be solved later.

Importance of Founders’ Agreement

Founders’ Agreement

This agreement is a contract that a company's founders enter to govern their business relationships. The Agreement lays out the rights, responsibilities, liabilities, and obligations of each founder. This agreement inter alia comprises the following clauses:

- Capital Contribution- Initial and Future
- Roles and Responsibilities of the Founders
- Restriction on transfer of shares by the Founders like Lock in, ROFR etc
- Decision Making
- Composition of Board of Directors
- Non-Compete, Non-Solicitation and Confidentiality clause
- Intellectual Property Rights
- Dispute Resolution

Thank You!

Q&A