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Legal and Compliance Sector

Types of Legal Entities

THERE ARE VARIOUS FORMS OF BUSINESS ENTITIES IN INDIA:

- Private Ltd Company
- Public Ltd Company
- Unlimited Company
- Sole proprietorship
- Partnership
- Cooperatives
- Limited Liability Partnership(LLP)
- Liaison Office
- Subsidiary Company

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TYPES OF LEGAL ENTITIES (CONTD..)

PRIVATE LTD COMPANY	PUBLIC LTD COMPANY	UNLIMITED COMPANY	SOLE PROPRIETORSHIP
Restricts the right of the shareholders to transfer their shares. Has a minimum of 2 and maximum of 50 members. does not invite public to subscribe to its share capital Must have a minimum paid up capital of Rs. 1 lakh or such a higher amount which may be prescribed from time to time.	A public Ltd company has the following characteristics: It allows the shareholders to transfer their shares. Has a minimum of 7 members, and for maximum there is no limit. it invites the general public to subscribe to its shares Must have a minimum paid up capital of Rs 5 lakh or such a higher amount as may be prescribed from time to time.	Liability of all its members is unlimited The personal assets of the members can be used to settle the debts. It can at any time re-register as a limited company under section 32 of the Companies Act.	A single individual handles the entire business organization. He is the sole recipient of all profits and bearer of all loses. There is no separate law that governs sole proprietorship.

TYPES OF LEGAL ENTITIES (CONTD..)

PARTNERSHIP	CO-OPERATIVES	LIMITED LIABILITY PARTNERSHIP	LIMITED LIABILITY PARTNERSHIP
Partnership is "the relation between persons who have agreed to share the profits of the business carried on by all or any one of them acting for all". It is governed by the Indian Partnership Act 1932	Co-operatives is a form of voluntary organization, wherein the members work together for the promotion of the interests of its members. There is no restriction to the entry or exit of any member. It is governed by Cooperative Societies Act 1912.	Under LLP (Limited Liability Partnership) the liability of at least one member is unlimited whereas rest all the other members have limited liability, limited to the extent of their contribution in the LLP.	Unlike general partnership this kind of partnership does not get terminated by the death or insolvency of the limited partners. It is governed by Limited Liability Partnership Act of 2008.

Extended forms of entities

BRANCH OFFICE

- Foreign companies which are into manufacturing and trading activities abroad are permitted to set up branch offices in India for various purposes like rendering of professional and consultancy services, export/import of goods etc.
- Branch offices are not permitted to carry out manufacturing activities on their own.
- RBI is the statutory body that grants permission to foreign companies for setting up branch offices in India.

PROJECT OFFICE

Foreign companies can set up temporary project offices in India for carrying out activities related to that specific project.

Detailed Study of 4 major legal entities

PRIVATE LTD COMPANY

PARTNERSHIP

LIMITED LIABILITY PARTNERSHIP

SOLE PROPRIETORSHIP

Advantages of Private Limited Company

- No Minimum Capital: A Private Limited Company can be registered with a mere sum of Rs. 10,000 as total Authorized Share capital.
- Separate Legal Entity: A Private Limited Company is a separate legal identity in the court of the law, meaning assets and liabilities of the business are not the same as the assets and liabilities of the Directors.
- Limited Liability
- Fund Raising: A Private Limited Company in India is the only form of business except Public Limited Companies that can raise funds from the Venture Capitalists or Angel investors.
- Free & Easy transfer of shares
- Uninterrupted existence : A Private Limited Company has ‘Perpetual Succession’, that is continued or uninterrupted existence until it is legally dissolved.
- FDI Allowed : 100% Foreign Direct Investment is allowed
- Builds Credibility

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Disadvantages of a Private Limited Company

- It restricts the transfer ability of shares by its articles.
- Number of members in any case cannot exceed 200.
- It cannot issue prospectus to public.
- In stock exchange shares cannot be quoted.

Advantages of Partnership

1. Bridging the Gap in Expertise and Knowledge: Complementary skills and additional contacts of each partner can lead to the achievement of greater financial results together than would be possible apart.

2. More Cash: Shared cost of start-up.

3. Cost Savings: Shared cost of start-up.

4. More Business Opportunities

5. Better Work/Life Balance: Shared responsibilities and work

6. Moral Support: Mutual support and motivation.

7. New Perspective: Shared responsibilities and work

8. Potential Tax Benefits

Disadvantages of Partnership

1. **Liabilities:** Partners in a general partnership are jointly and individually liable for the business activities of the other. If your partner skips town, you'll be liable for all the debts, not just half of them.
2. **Loss of Autonomy:** You do not have total control over the business. Decisions are shared, and differences of opinion can lead to disagreements, a "falling out," or even one partner buying out the other.
3. **Emotional Issues:** A friendship may not survive a partnership
4. **Future Selling Complications**
5. **Lack of Stability**
6. **Shared profits**

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Advantages of Limited Liability Partnership

- Legal Status of Entity -Limited Liability Partnership is a separate legal entity registered under the LLP Act, 2008. It can buy, rent, lease, own property, employ staff, enter into contracts, and be held accountable if necessary to do so. The partners of a LLP are not personally liable for the liabilities of the LLP.
- Member(s) Liability – The partners have limited liability and are liable only to the extent of their contribution to the LLP. This concept of limited liability protects the assets of the members from the liabilities of the business.
- Annual Statutory Meetings – It is not mandatory to conduct annual statutory meetings.
- Decentralization - An LLP has a decentralized management structure which makes it more convenient for a business entity where all owners want the same management rights.
- Flexibility –Every partner in a limited liability partnership has the ability to decide how much they want to contribute and how much of a partner they actually want to be in the business.
- Level of members –There are two types of partners in a limited liability partnership – designated members and non-designated members. One can operate the LLP with different levels of membership.
- Tax advantage -An LLP allows its members to join and depart with no tax burden.The members of an LLP are taxed directly as if they had earned their share of the LLP's profits themselves.Their tax is not related to the money withdrawn by them from the LLP.The LLP itself pays no tax on its profits.

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Disadvantages of Limited Liability Partnership

- Inclusion of Indian Citizen as a Partner – An NRI/Foreign national who wants to incorporate an LLP in India shall have at least one partner who is an Indian citizen. Two foreign partners cannot form an LLP without having one resident Indian partner along with them.
- Transfer of Ownership -If a partner wants to transfer his/her ownership rights then he/she has to obtain the consent of all the partners.
- Filing of various returns - Public disclosure is the main disadvantage of an LLP. An LLP must file Annual Statement of Accounts & Solvency and Annual Return with the Registrar each year. Income Tax Return must also be filed to the Income tax department for the LLP.
- Number of partners –A limited liability partnership must have at least two members. If one member chooses to leave the partnership, the LLP may have to be dissolved.
- Non- recognition - LLPs are limited by state regulations due to which they are not given due recognition in every state as a business structure.
- Huge penalties –The cost of non-compliance of procedural matters such as late filing of e-forms is very high which would lead to huge sum of penalties owing to Rs.100 for every day till the time the offence of late filing continues.

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Advantages of Sole Proprietorship

- Easy to start (no need to register your business with the state).
- No corporate formalities or paperwork requirements, such as meeting minutes, bylaws, etc.
- You can deduct most business losses on your personal tax return.
- Tax filing is easy—simply fill out and attach Schedule C-Profit or Loss From Business to your personal income tax return.

Disadvantages of Sole Proprietorship

- As the only owner, you're personally responsible for all of the business's debts and liabilities—someone who wins a lawsuit against your business can take your personal assets (your car, personal bank accounts, even your home in some situations).
- There's no real separation between you and the business, so it's more difficult to get a business loan and raise money (lenders and investors prefer LLCs or corporations).
- It's harder to build business credit without a registered business entity.

COMPARABLE ATTRIBUTES OF CHOOSING A FORM OF BUSINESS ORGANIZATION

Entity Type	Sole Proprietorship	Partnership	Private Ltd. Company	Limited Liability Partnership
Act	Companies Act, 2013	Indian Partnership Act, 1932	Companies Act, 2013	Limited Liability Partnership Act, 2008
Number of Members	1	Feb-50	2-200	2-Unlimited
Separate Legal entity	Yes	No	Yes	Yes
Liability Protection	Limited	Unlimited	Limited	Limited
Statutory Audit	Mandatory	Not Mandatory	Mandatory	Dependent
Ownership Transferability	No	No	Restricted	Yes
Foreign Participation	Yes	No	Yes	Yes
Tax Rates	Moderate	High	Moderate	High
Statutory Compliances	Moderate	Less	High	Moderate

Basic Legal Compliances

GST

IEC

PAN

TAN

Import Export Code (IEC)

WHEN IS IEC REQUIRED?

- When an importer has to clear his shipments from the customs then it's needed by the customs authorities.
- When an importer sends money abroad through banks then it's needed by the bank.
- When an exporter has to send his shipments then its needed by the customs port.
- When an exporter receives money in foreign currency directly into his bank account then its required by the bank.

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Import Export Code (IEC)

BENEFITS OF IEC REGISTRATION

1. Expansion of Business
IEC assists you in taking your services or product to the global market and grow your businesses.
2. Availing Several Benefits
The Companies could avail several benefits of their imports/ exports from the DGFT, Export Promotion Council, Customs, etc., on the basis of their IEC registration.
3. No Filling of returns
IEC does not require the filing of any returns. Once allotted, there isn't any requirement to follow any sort of processes for sustaining its validity. Even for export transactions, there isn't any requirement for filing any returns with DGFT.
4. Easy Processing
It is fairly easy to obtain IEC code from the DGFT within a period of 10 to 15 days after submitting the application. There isn't any need to provide proof of any export or import for getting IEC code.
5. No need for renewal
IEC code is effective for the lifetime of an entity and requires no renewal. After it is obtained, it could be used by an entity against all export and import transactions.

STEPS INVOLVED IN IEC (IMPORT/EXPORT CODE) REGISTRATION

- Step 1: First, you need to prepare an application form in the specified format – Aayaat Niryaat Form no. 2A format and file it with the respective Regional office of DGFT.

- Step 2: Secondly, you need to prepare the required documents with respect to your identity & legal entity and address proof with your bank details & the certificate in respect of ANF2A.

- Step 3: One your application is completed, you need to file with DGFT via DSC (Digital Signature Certificate) and pay the required fee for the IEC Registration.

- Step 4: Finally, once your application is approved then you would receive the IEC Code in a soft copy from the government.

DOCUMENTS REQUIRED FOR IEC (IMPORT EXPORT CODE) REGISTRATION

•Individual's or Firm's or Company's copy of PAN Card

•Individual's voter id or Aadhar card or passport copy

•Individual's or company's or firm's cancel cheque copy of current bank account

•Copy of Rent Agreement or Electricity Bill Copy of the premise

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GST

- GST is known as the Goods and Services Tax. It is an indirect tax which has replaced many indirect taxes in India such as the excise duty, VAT, services tax, etc. The Goods and Service Tax Act was passed in the Parliament on 29th March 2017 and came into effect on 1st July 2017.
- In other words, Goods and Service Tax (GST) is levied on the supply of goods and services. Goods and Services Tax Law in India is a comprehensive, multi-stage, destination-based tax that is levied on every value addition. GST is a single domestic indirect tax law for the entire country.
- Under the GST regime, the tax is levied at every point of sale. In the case of intra-state sales, Central GST and State GST are charged. All the inter-state sales are chargeable to the Integrated GST.
- Now, let us understand the definition of Goods and Service Tax, as mentioned above, in detail.

What are the components of GST?

There are three taxes applicable under this system: CGST, SGST & IGST.

•CGST: It is the tax collected by the Central Government on an intra-state sale (e.g., a transaction happening within Maharashtra)

•SGST: It is the tax collected by the state government on an intra-state sale (e.g., a transaction happening within Maharashtra)

•IGST: It is a tax collected by the Central Government for an inter-state sale (e.g., Maharashtra to Tamil Nadu)

Transaction	New Regime	Old Regime	Revenue Distribution
Sale within the State	CGST + SGST	VAT + Central Excise/Service tax	Revenue will be shared equally between the Centre and the State
Sale to another State	IGST	Central Sales Tax + Excise/Service Tax	There will only be one type of tax (central) in case of inter-state sales. The Centre will then share the IGST revenue based on the destination of goods.

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Advantages of GST

- Removing the cascading effect of tax
- Higher threshold for GST registration
- Composition scheme for small businesses
- Simpler online facilities for GST compliance
- Relatively lesser compliances under GST
- Defined treatment for e-commerce activities
- Increased efficiency in logistics
- Regulating the unorganised sectors

WHAT ARE THE NEW COMPLIANCES UNDER GST?

e-Way Bills

- Centralized system of waybills launched on 1st April 2018 for inter-state movement of goods and on 15th April 2018 for intra-state movement of goods in a staggered manner
- Under the e-way bill system, manufacturers, traders and transporters can generate e-way bills for the goods transported from the place of its origin to its destination on a common portal with ease.
- Tax authorities are also benefited as this system has reduced time at check -posts and helps reduce tax evasion.

E-invoicing

- Launched on a trial basis starting from January 2020 and applicable from October 2020
- This system requires large businesses with an annual aggregate turnover of more than Rs.100 crore to comply with some requirements
- They must obtain a unique invoice reference number for every business-to-business invoice by uploading on the GSTN's portal known as the invoice registration portal. The portal verifies the correctness and genuineness of the invoice. Thereafter, it authorises using the digital signature along with a QR code.
- E-invoicing allows interoperability of invoices and helps reduce data entry errors. It is designed to pass the invoice information directly from the IRP to the GST portal and the e-way bill portal. It will, therefore, eliminate the requirement for manual data entry while filing ANX-1/GST returns and for the generation of part-A of the e-way bills.

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PAN

ANY COMPANY INCORPORATED IN INDIA AND DOING BUSINESS HERE WILL HAVE TO MANDATORILY GET A PAN CARD. ANY FORM OF BUSINESS WHICH IS GENERATING AN INCOME WILL ALSO BE REQUIRED TO GET A PAN. THE PAN IS TO BE QUOTED DURING ALL THE FINANCIAL TRANSACTIONS OF THE COMPANY AS WELL AS IN THE INVOICES AND OTHER REGISTRATIONS.

Following are the documents required while applying for the PAN Card:
1.The copy of Certificate of Incorporation of the Company issued by the Registrar of Companies.
2.The Proof of address of the Company where its registered office is situated is required.
3.If the Company has no office in India, a copy of the Certificate of Incorporation from the government, where the registered office of the Company is situated which shall be apostille by the resident Country, by the Indian Embassy or by the High Commission or the Consulate of the Country where the registered office of the Company is situated. Also, the Certificate given by the Indian Authorities to set up a business in India is to be given.
4.A Bank draft for the payment of the Fees is to be given along with the application.

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●ELIGIBILITY FOR PAN

PAN Card is issued to individuals, companies, non-resident Indians or anyone who pays taxes in India.

●TYPES OF PAN

1.Individual
2.HUF-Hindu undivided family
3.Company
4.Firms/Partnerships
5.Trusts
6.Society
7.Foreigners

Documents for PAN

PAN requires two types of documents. Proof of address (POA) and Proof of Identity (POI). Any two of the following documents should meet the criteria

The Cost of PAN

The cost of PAN card is Rs. 110 or Rs. 1,020 (approximately) if PAN card is to be dispatched outside India.

Individual Applicant	POI/ POA- Aadhaar, Passport, Voter ID, Driving Licence
Hindu Undivided Family	An affidavit of the HUF issued by the head of HUF along with POI/POA details
Company registered in India	Certificate of Registration issued by Registrar of Companies
Firms/ Partnership (LLP)	Certificate of Registration issued by the Registrar of Firms/ Limited Liability Partnerships and Partnership Deed.
Trust	Copy of Trust Deed or a copy of the Certificate of Registration Number issued by a Charity Commissioner.
Society	Certificate of Registration Number from Registrar of Co-operative Society or Charity Commissioner
Foreigners	Passport PIO/ OCI card issued by the Indian Government Bank statement of the residential country Copy of NRE bank statement in India

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What is TAN (Tax Deduction and Collection Account Number)?

TAN - TAX DEDUCTION ACCOUNT NUMBER OR TAX COLLECTION ACCOUNT NUMBER - IS A TEN-DIGIT ALPHANUMERIC NUMBER ISSUED BY GOVERNMENT AGENCY INCOME TAX DEPARTMENT. TAN IS TO BE OBTAINED BY INDIVIDUALS RESPONSIBLE FOR DEDUCTING TAX AT SOURCE (TDS) OR COLLECTING TAX AT SOURCE (TCS). THE RULES PERTAINING TO THE SAME CAN BE FOUND UNDER SECTION 203A OF THE INCOME TAX ACT, 1961. HOWEVER, A PERSON WHO HAS TO DEDUCT TAX UNDER SECTION 194-IA OF THE INCOME TAX ACT DOES NOT HAVE TO OBTAIN TAN, RATHER HE OR SHE CAN USE THEIR PAN INSTEAD.

Who can Apply for TAN?
If one is paying salary or a commission to another, the entity must have a TAN. This can include:
•Individuals
•Hindu Undivided Family
•Company
•Central or state government or a local authority
•Sole proprietor
•Firms
•Associations of persons
•Trusts

USE OF TAN NUMBER

Tax deductors get uniquely identified by their ten-digit TAN. Some of the uses of TAN are:

•It has to be quoted in TDS/TCS returns, payment challans and certificates that are to be issued.

•It is used for deductions, such as salary, interest, dividend, etc.

•It records the address of the person who deducts the tax on behalf of the IT department.Additionally, it captures the PIN that is recorded with the department.

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