

Setting Up a Structure in India – An overview of various options

<u>Particulars</u>	<u>Liaison Office</u>	<u>Branch Office</u>	<u>Joint Venture Company</u>	<u>Wholly owned Subsidiary - Company</u>	<u>Limited Liability Partnership(LLP)</u>
<u>Basic Objective</u>	Place of Business to act as a channel of communication between Head Office and entities in India. This entity does not undertake any commercial/trading/industrial activity, directly or indirectly.	An entity, in which the control remains with the parent company. Directors, work assignments, share capital, etc are all associated with the parent company. It carries on purely trading/representation activity on behalf of the parent company. The parent company is legally responsible for the actions of the branch.	A separate legal entity in which the control is distributed amongst shareholders. The work activity is specific to the entity. It can be called a mix, in which two or more entities, having common objectives, come together and form an organization to have synergies. This type of entity can undertake manufacturing activities.	This is a limited Liability company with the ownership vested with the parent company. However it has a separate legal entity, its own set of activities, independently elected board of directors. The activities could be different from the parent company. This type of entity can undertake manufacturing activities.	This is a limited Liability form of Partnership, wherein the Partners are liable only to the extent of their contribution.
<u>Activities Permitted.</u>	Represent parent company in India, Promote export import from/to India, Promoting technical/financial collaborations between parent/group companies and companies in India, acting as a communication channel between the parent company and Indian Entities	Trading, Export/import of goods, Rendering professional or consultancy services, Undertaking research work, rendering technical support services on behalf of parent company etc.	Undertaking trading/ manufacturing activities subject to sectoral caps as prescribed by RBI from time to time	Undertaking trading/ manufacturing activities subject to sectoral caps as prescribed by RBI from time to time	

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<u>Establishment</u>	Application with relevant enclosures to be submitted to Reserve Bank Of India (RBI) for permission. Subsequent to obtaining permission, the entity needs to be registered with Registrar of Companies.	Application with relevant enclosures to be submitted to Reserve Bank Of India (RBI) for permission. Subsequent to obtaining permission, the entity needs to be registered with Registrar of Companies.	In case the activity falls under automatic route, the entity needs to be registered with Registrar of Companies. Concurrently, RBI procedures have to be followed for regularization. However, in case the activity does not fall under the automatic route, permission from Foreign Investment Promotion Board(FIPB)is required to be obtained.		Application with relevant enclosures to be submitted to Reserve Bank Of India (RBI) for permission. Subsequent to obtaining permission, the entity needs to be registered with Registrar of Companies. It is mandatory that one of the partners has to be a resident Indian.
<u>Ownership of Property</u>	Allowed to operate from Leased Premises Only. It is not permitted to purchase any property in India	Allowed to operate from Leasehold/Freehold Premises. They are permitted to own property in India.			
<u>Fundings</u>	Maintains itself out of the remittances received from Parent Company through normal banking channels.	Maintains itself through initial capital contribution from overseas, borrowings in India and through income generated from operations in India.			Contribution by partners as per mutual agreement
<u>Formation Time</u>	4 Weeks	4 Weeks,	6 weeks under Automatic Route. 24 weeks in case FIPB permission is required.		4 Weeks
<u>Ease of Operation</u>	Easy	Easy	Moderate		Easy
<u>Ease of Closure</u>	Easy	Easy	Difficult / time consuming		Moderate, voluntary or by order of competent authority

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Provisions of Income Tax Act					
Income Tax(33.66%)	Not Applicable	On profits earned in India			The income is taxed at 30%. In addition to the tax; education cess as applicable would be levied.
Dividend Distribution Tax(15%)	Not Applicable	Not Applicable	Applicable	Applicable	Profit after Tax is distributed to partners, hence Dividend Distribution Tax is not applicable.
Tax Deduction at Source(Withholding Tax) Provisions*	Applicable	Applicable	Applicable	Applicable	Applicable
<i>* The % of tax payable varies from case to case. For further details, write to tax@kdpaccountants.com</i>					
Provisions of Registrar of Companies(ROC)	* It is required to be registered with ROC at the time for formation. * Required to file Annual Performance report with accompanying annual financial statements	Required to file annual return with accompanying details			Compulsory registration required with ROC, Required to file annual return with accompanying details
Provisions of Foreign Exchange Management Act (FEMA)	Applicable	Applicable	Applicable	Applicable	Applicable
Formation Cost(US \$)	Approx 1200 \$ LO	1500 \$ Fipb Permission - Additional1000 \$	\$2000+ Service Tax 12.36%. \$ 1250 extra in case of FIPB permission	\$2000+ Service Tax 12.36%. \$1250 extra in case of FIPB permission	Approx \$ 1250
Annual Cost of Maintaining an Entity(US \$)	5000	7500	10000	10000	5000

Frequently Asked Questions (FAQs)

Q1- Is the process of formation of LLP very complicated?

A1- The process is very simple and is as under

- Obtain and register Digital Partner Identification number and signature certificate
- Post confirmation of name availability upload the incorporation document and agreement
- Obtain Certificate of Incorporation and LLP is ready to function.

Q2- What is the process for dissolution of LLP .

A2- LLP can be dissolved voluntarily or by National Company Law Tribunal

Q3- What is the extent of Liability of a partner of an LLP

A3- The liability of the partner is limited to that of one's own capital contribution.

Q4 - I wish to set up a business in India, which is more appropriate entity?

A4 - It is primarily your objective of this entity that will decide the appropriate structure. Broadly, we advise clients that in case you only wish to be represented in India and all transactions would be carried out by the HO, it is advisable to operate under the umbrella of Liaison Office.

If you wish to simply "trade" in India, you may evaluate the option of a Branch office.

If you wish to set up a manufacturing entity or a full fledged office in India and leverage bank borrowings from Indian banks, you will have to look at a LLC.

For more information, contact advisor@kdpaccountants.com

Q5 - Do I need to appoint Local Directors for an LLC in India?

A5 - It is not necessary for you to appoint local director. A company can be formed with foreign directors. However, it is generally found advisable to keep a local director for ease of operation etc.

For more information, contact company@kdpaccountants.com

Q6 - What is the minimum capital requirement for formation of an Entity in India.

A6 - There are no minimum capital requirements for establishing a Liaison Office in India. However, a minimum capital requirement for establishing a Limited Liability Company is INR 1 Lac.

For more information, contact company@kdpaccountants.com

Q7 - Is capital investment in the Entity, repatriable?

A7 - Capital Investments in the entity is repatriable subject to guidelines laid down by Foreign Exchange Management Act, Reserve Bank of India.

For more information, contact fema@kdpaccountants.com

Q8 - Can a Foreign Director be the authorized Signatory for Bank Accounts

A8 - Any person authorized by the Power of Attorney and the Board Resolution can operate the bank accounts.

For more information, contact company@kdpaccountants.com

Q9 - Is it necessary to draft Memorandum and Articles of association(MOA/AOA)

A9 - It is Mandatory to draft MOA/AOA only in case of Limited Liability Companies, and not in case of Liaison Offices.

For more information, contact company@kdpaccountants.com

Q10 - What is PAN

A10 - PAN is Permanent Account Number issued by the Income Tax Authorities, It is mandatory to mention the PAN for various transactions executed during the normal course of business activities

For more information, contact tax@kdpaccountants.com

Q11 - What is TAN

A11 - TAN is Tax deduction and allocation Number. This number is issued by the Income Tax Authorities to facilitate deductions in case of Withholding Tax.

For more information, contact tax@kdpaccountants.com

Q12 - Is permission under Automatic Route and Permission under FIPB Route classified separately.

A12 - As per the Liberalisation initiatives initiated, under the Automatic Route certain activities need no initial permission, however, post-execution, reporting requirements with related authorities is mandatory.

For more information, contact fema@kdpaccountants.com

Q13 - Whether I can wind up a company? How long does it take?

A13 - Winding up formalities need to be completed with Reserve Bank of India, Income Tax, Registrar of Companies.

The procedure could involve about 8 weeks.

For more information, contact company@kdpaccountants.com

Q14 - I have relatives in India who have my power of attorney, is this adequate to proceed with paperwork for registration?

A14 - . Generally speaking, Person authorized by a legal Power of Attorney can execute papers to commence registration process. It is however necessary for the Power of Attorney to include a specific clause permitting the authorized person to form a legal structure in India.

For more information, pl write to us at legal@kdpaccountants.com

Q15 - What will be the implications of Double Taxation Avoidance Agreement(DTAA) on the profits after tax in the Indian company transferred overseas.

A15 - . The implications of DTAA will vary case to case, particularly depending upon the agreement entered with each specific country. At present India has signed about 85 agreements with different countries.

For any specific query on the DTAA, pl write to us at dtaa@kdpaccountants.com

Q16 - When am I required to submit my annual accounts and to which authorities in India?

A16 - . For Branch and LO, you are required to file the annual accounts with ROC on annual basis. A LO is not required to file the annual return with Income Tax Act. Though recently, tax authorities have started issuing notices requiring LOs to file return. It is therefore our advise that LO s should file a return with IT authorities and declare NIL income.

For more information, contact company@kdpaccountants.com

All LLCs are required to file their Tax Returns on annual basis as per prescribed dates with Income Tax Authorities and Registrar of Companies (ROC). These prescribed dates are different for different companies. For more information on the dates applicable to you, write to us at info@kdpaccountants.com

Q17 - Can I sell my shares in an Indian LLC to another foreigner / Indian?

A17 - . You are allowed to sell the shares to a foreigner (subject to sartorial caps as prescribed by RBI and to an Indian subject to compliance with the valuation guidelines issued by the RBI. For any specific assistance on the subject, pl write to us at rbi@kdpaccountants.com

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