FAQs

Setting Up Business in India

Company Incorporation in India

1. What is a NIDHI company?

A NIDHI Company is notified under section 620-A of the Companies Act and is classified as "Mutual Benefit Financial Company" by the RBI. Essentially, a Nidhi Company differs from a regular finance investment company or a Non-Banking Finance company (NBFC), as it deals only with its shareholders or members, for mutual benefits of its members. A Nidhi Company accept deposits only its members and lends funds only to them on demand. A Nidhi Company is not entitled to carry out business/activities related with hire purchase financing, leasing finance, chit funds, acquisition of securities issued by any corporate body, etc. or issue any debt instruments (such as preference share, debentures, etc.) in any form. For more information, click here.

2. How many resubmissions are permitted for SPICe forms?

Two resubmissions are premitted for SPICe forms. For more information, click here.

3. Who is authorized to allot the DIN?

Central Government (Office of Regional Director (Northern Region), Ministry of Corporate Affairs) allots the DIN upon processing the form DIR-3 filed by the applicant. For further details please access following link.

4. Can an existing partnership firm be converted to LLP?

Yes, an existing partnership firm can be converted into LLP by complying with the Provisions of the LLP Act. Form 17 (MCA Form) needs to be filed along with Form 2 (MCA Form) for such conversion and incorporation of LLP. For more information, click here.

5. Can an existing company be converted to LLP?

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Yes, any existing private company or existing unlisted public company can be converted into LLP by complying with the Provisions of the LLP Act. Form 18 (MCA Forms) needs to be filed with the registrar along with Form 2 (MCA Forms) for such conversion. For more information, click here.

6. Can a listed company be converted to LLP?

No, only private / unlisted public company or a partnership firm can be converted into LLP. For more information, click here.

7. How many Digital Signature Certificates are valid for Ministry of Corporate Affairs 21 Program?

The different types of Digital Signature Certificates valid for MCA21 program as stipulated by ministry of corporate affairs are: Class 2: Here, the identity of a person is verified against a trusted, pre-verified database. Class 3: This is the highest level where the person needs to present himself or herself in front of a Registration Authority (RA) and prove his/ her identity. For more information, click here.

8. Who issues Digital Signature certificates?

A licensed Certifying Authority (CA) issues the digital signature. Certifying Authority (CA) means a person who has been granted a license to issue a digital signature certificate under Section 24 of the Indian IT-Act 2000. The list of licensed CAs along with their contact information is available on the MCA portal. Certifying Authorities. For further details please access following link.

9. Is there any form that is to be filed for conversion of an OPC into private or public company? Is there any other purpose for filing this form?

Form INC-6 shall be filed by an OPC for conversion of an OPC into private or public company. Yes, a private company can also file form INC-6 for converting itself into an OPC. The paid up share capital of private company should not be exceeding fifty lakh rupees and should not have average annual turnover more than two crore rupees at the time of such conversion into OPC. The company shall be having one member and shall appoint one nominee to act as member in case of death or incapacity of the member at the time of conversion into OPC. For further details please access following link.

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10. Can provisional DIN be utilized for registration of DSC at MCA portal?

No, director must have an approved DIN to register the DSC on MCA portal. For further details please access following link.

11. Whether all the directors, manager and secretary of the Company are required to register their DSC on the MCA portal?

No, only those persons who will be signing the e-Forms on behalf of the Company are required to register their DSC on the MCA portal. For further details please access following link.

12. How will foreign directors on Indian companies register their DSC on the MCA portal?

Foreign directors are required to obtain Digital Signature Certificate from an Indian Certifying Authority (List of Certifying Authorities is available on the MCA portal). The process of registration of DSC is same as applicable to others. For further details please access following link.

13. What is the duration within which the Limited Liability Partnership needs to be formed, post getting the name approved?

The approved name of LLP shall be valid for a period of 3 months from the date of approval. For more information, click here.

14. Whether the name of a Limited Liability Partnership can end with words like ‘ Limited' or ‘ Pvt. Limited'?

No, the name of an LLP cannot end with words such as ‘ Limited ’ or ‘ Pvt. Limited ’. Name of an LLP shall end with either ‘ Limited Liability Partnership ’ or ‘ LLP ’. The word ‘ limited ’ shall be allowed in name only within ‘ Limited Liability Partnership ’. For more information, click here.

15. If a partner changes his name or address, is it mandatory to inform the LLP?

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Every partner shall inform the LLP of any change in his name or address within a period of fifteen days of such change. The LLP, in turn, would be under obligation to file such details with the Registrar within thirty days of such change. For more information, click here.

16. Which forms are required to be filed to Registrar in case of appointment of new partners/ resignation of existing partners from the LLP?

E-form 3 (for change in LLP agreement and e-form 4 are required to be filed for appointment of new and resignation of existing partners within thirty days of such cessation or appointment without additional fee and with additional fee thereafter. For further details please access following link.

17. Do partnership agreements have to be registered under LLP?

Yes, it is mandatory to execute and file partnership agreement in view of Sections 2(0) & (q), 22 and 23 of the LLP Act. As per provisions of the Act, in the absence of agreement, the mutual rights and liabilities shall be as provided for under Schedule-I to the Act. Therefore, in case any LLP proposes to exclude provisions or requirements of Schedule-I, it would have to enter into an agreement, specifically excluding applicability of any or all paragraphs of the Schedule. For more information, click here.

18. How should Registrar of Companies (RoC) be informed regarding conversion of One Person Company (OPC) into public a or private company?

The OPC shall inform RoC via Form INC-5 (MCA Form), if the threshold limits exceeded and is required to be converted into private or public Company. For more information, click here.

19. How to intimate RoC that the OPC has exceeded the threshold limits and require conversion into private or public company?

The OPC shall inform RoC in form INC-5, if the threshold limits is exceeded and is required to be converted into private or public company. For further details please access following link.

20. What is the time limit for filing form INC-5?

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Form INC-5 shall be filed within sixty days of the date on which its paid-up share capital is increased beyond INR fifty lakh or the last day of the relevant period during which its average annual turnover exceeds INR two crore. For more information, click here.

21. What is the time limit for filing form INC-6?

Form INC-6 shall be filed within 30 days in case of voluntary conversion (if any One Person Company wants to convert itself into private/public company then also it can voluntarily apply through Form INC-6 after two years of its incorporation) and within six months of mandatory conversion (In case paid up share capital of an One Person Company exceeds fifty lakh rupees or its average annual turnover). For further details please access following link.

22. How many names can be applied for in SPICe (INC-32)?

Only one name can be applied. For more information, click here.

23. Can a Limited Liability Partnership (LLP) be dissolved?

Yes, any LLP can close its business in India by adopting either of the following two ways: 1. Declaring the LLP as Defunct 2. Winding up of LLP For more information, click here.

24. What are the documents required to be filed by a LLP annually?

LLP is required to file LLP Form 8 (Statement of Account & Solvency) and LLP Form 11 (Annual Return) annually. The ‘ Annual Return ’ is required to be filed within 60 days of close of the financial year and ‘ Statement of Accounts & Solvency ’ shall be filed within 30 days from the end of six months of the financial year to which it relates. Every LLP has to maintain uniform financial year ending on 31st March of a year. For further details please access following link.

25. How can the name be reserved prior to registration of company ?

For reservation of a name prior to filing SPICe (INC-32),you can use RUN facility provided by MCA for reservation of name. For further details please access following link.

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26. Is INC-22 still required to be filed with SPICe?

It is not required to be filed with SPICe (INC-32) if a company is registered with the same address as the address for correspondence (in INC-32). In case the registered address is different, INC-22 is required to be filed within 30 days of its incorporation, for intimating the registered office address. For further details please access following link.

27. What is the process for obtaining approved e-MOA (INC-33) and e- AOA (INC-34)?

The users may obtain approved e-MOA (INC-33) and e- AOA (INC-34) through certified copies facility available on MCA. For further details please access following link.

28. Is it mandatory to use eMoA and eAoA? Can physical copies of MoA/AoA be signed and attached with SPICe forms?

Yes. It is mandatory to use eMoA (INC-33) and eAoA (INC-34) . Physical copies of MoA/AoA be signed and attached only in case of foreign subscriber. For further details please access following link.

29. Whether eMOA (INC-33) and eAOA (INC-34) is to be filed with SPICe (INC-32) in respect of non-individual first subscribers who are based outside India?

No. In respect of non-individual first subscribers who are based outside India, pdf attachments of apostillised MOA and AOA shall be attached with SPICe (INC-32). For further details please access following link.

30. Is a proposed Section 8 company required to file eMOA (INC-33), eAOA (INC-34) along with SPICe (INC-32)?

No. Section 8 companies are mandatorily required to file MOA and AOA as pdf attachments to SPICe (INC-32). For further details please access following link.

31. Is PAN and AADHAAR mandatory?

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Yes. The companies (incorporation) rules notified has liberalized many requirements in respect of Proof of Identity and Proof of residence in respect of Subscribers and Directors. The Companies (Incorporation) third Amendment Rules dated 27th July 2016 has relaxed the mandatory attachment of proof of identity and residence in respect of a subscriber having a valid DIN. For further details please access following link.

32. What are the exceptional scenarios in which pdf attachments (MOA, AOA) should be used instead of eMoA, eAoA with SPICe (INC-32)?

When the applicant is : 1. Non-Individual first subscriber based outside India 2. Non-Individual first subscriber based in India 3. Indian National being Subscriber other than director 4. Indian National being Subscriber-cum-Director 5. Foreign National being Subscriber other than director having valid DIN 6. Foreign National being Subscriber-cum-Director having valid DIN 7. Foreign National being Subscriber-cum-Director not having valid DIN For further details please access following link.

33. Can I attach MOA and AOA for few subscribers and form INC-33(eMOA) and INC-34(eAOA) for other subscribers for same company?

No. In case the proposed company is required to file MOA and AOA due to any of the above mentioned conditions, then SPICe (INC-32)shall be filed ONLY with MOA and AOA. In such cases, the proposed company is NOT required to file the eMOA and eAOA under any circumstances. For further details please access following link.

34. If a body corporate is one of the subscribers/promoters, can DSC of an authorized Director be affixed?

Yes. For further details please access following link.

35. In SPICe AoA (INC-34) if additional Article is required, how to enter the same?

SPICe AoA (INC-34) has facility for adding, modifying, and deleting Articles. For further details please access following link.

36. Can we enter the conditions of private company as required under Section 5 of the Companies, Act, 2013 in SPICe AoA(INC-34)?

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Yes, SPICe AoA (INC-34) has facility for adding, modifying, and deleting Articles. For further details please access following link.

37. Can we enter the names of first directors as required under Companies Act, 2013, in SPICe AoA (INC-34)?

Yes, SPICe AoA (INC-34) has facility for adding, modifying, and deleting Articles. For further details please access following link.

38. What if there are more than seven subscribers to MoA and AoA?

Incase of more than 7 subscribers INC 32 to be filled with MoA, AoA as attachment For further details please access following link.

39. In case of subscriber to the memorandum is a foreign national residing outside India, his signatures and address etc. shall be witnessed by a Notary Public/Embassy/Consulate offices of Embassies as per the Rule 13 of the Companies (Incorporation) Rules, 2014. In such cases, how the DSC of such a witness be affixed?

In such cases, SPICe (INC-32) shall be filed with manually signed and duly attested MoA and AoA. For further details please access following link.

40. Is DSC mandatory for Subscribers?

Yes, DSC is mandatory for all subscribers and witnesses in eMoA(INC-33) and eAoA(INC-34). eMoA and eAoA shall be used only where the maximum number of subscribers do not exceed 7. In case the number of subscribers are more than 7, INC-7 shall be used and DSC is not mandatory in such cases.. For further details please access following link.

41. Whether subscribers' photo is required in SPICe forms?

No. ID and address proof required . Required in case of physical MoA/ AoA subscriber sheet. For further details please access following link.

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42. Can OPCs be incorporated using SPICe forms?

Yes. Form INC-2 is no longer be available for filing. For further details please access following link.

43. Is it mandatory for the name of the company to be indicative of the nature of its business?

No, it is not mandatory for the name to be indicative of the nature of its business.

44. Is it allowed to use words " India " " Global " " International " in the name of an Indian entity?

" India " can be used by foreign company which is incorporating its subsidiary company in India. The original name of the holding company as it is may be allowed with the addition of word " India " or name of any Indian state or city, if otherwise available. The words " Global " " International " can be used in the name of an Indian company.

45. In case of an overseas Subscriber and Director, are the documents required to be Notarised and Apostilled for incorporation of a company?

As per Rule, 13 of the Companies (Incorporation) Rules, 2014, where the subscriber to the Memorandum of Association (" MOA ") or a Director to be appointed is a foreign national residing outside India, the MOA, Articles of Association (" AOA "), proof of identity as well as address proof shall be attested in the following manner which is based on the country where the Subscriber/Director reside or the registered office is situated in case of a body corporate being the subscriber: Residing in a country which is part of the Commonwealth – by a Notary (Public) in that part of the Commonwealth; Residing in a country which is party to the Hague Apostille Convention, 1961 – by a Notary (Public) and duly apostilled in accordance with the said Hague Convention; and Residing in a country which is not party to the Hague Apostille Convention, 1961 – the documents shall be notarized before the Notary (Public) of such country and the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (40 of 1948) e. attested by Public Notary and authenticated by Indian Embassy in the country of residence. Some of the counties which falls under the list of Hague Convention are: United Kingdom of Great Britain and Northern Ireland United States of America, Singapore, Switzerland, Malaysia, Australia, China, People's

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Republic of, Japan, Germany.

46. Is it mandatory to appoint a Resident Director in a Company?

Yes, there is a mandatory requirement to appoint at least One (01) Resident Director in a Company. Section 149(3) of the Companies Act. 2013 (" The Act ") states that every Company should have at least one Director who has stayed in India for a total period of not less than 182 days in the Financial Year.

47. Is it mandatory to appoint a Resident Designated Partner in an LLP?

Yes, pursuant to the provisions of the Limited Liability Partnership Act, 2008, it is required to have one Resident Designated Partner in an LLP.

48. What are the most common structures employed to constitute a Joint Venture (JV)?

The most common structures employed to constitute a Joint Venture (JV) are: a) Unincorporated Joint Venture (UIJV) which include Cooperation Agreement/Strategic Alliances/Consortium. UIJV is preferable as no separate entity is required to be formed in case of UIJV. Merely, an Unincorporated Joint Venture Agreement is required to be entered among the parties. b) Incorporated Joint Venture which include either Company or Limited Liability Partnership (LLP)

49. What are the Important clauses included in a Joint venture Agreement?

Some of the important clauses in a Joint Venture Agreement are as below: a) Object and scope; b) Equity Participation by local and foreign investors; c) Lock in Clause; d) Financial Arrangements; e) Composition of Board and Management arrangements; f) Remedying a deadlock; g) Roles & Responsibilities of the Parties; h) Exit Clause; i) Representations, Warranties & Covenants of the Parties; j) Confidentiality; k) Dispute Resolution;

50. What are the documents involved in formation of wholly owned subsidiary in India?

a) Proof of Registered office address; b) Copy of utility Bills not older than 2 months; c) NOC from owner of the premises; d) PAN Undertaking by the proposed Directors; e) Interest of first director(s) in other entities; f) Consent Letter from the Directors in Form DIR-2; g) Declaration from the First

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Directors and Subscribers in Form INC-9; h) Board Resolution and Certificate of Incorporation from the foreign company; If company ' s name is applied with the incorporation application: a) Copy of approval, in case the proposed name contains any word(s) or expression(s) which requires approval from central government; b) Approval of the owner of the trademark or the applicant of such trademark for registration of Trademark, if the proposed name is based on a registered trademark, or is subject matter of an application pending for registration under the Trade Marks Act; Note: All the documents to be signed by the Foreign Directors and Foreign subscribers requires notarization and apostillation from the foreign country.

51. What are the documents involved in formation of Limited Liability Partnership in India?

a) Proof of identity and residential address of the Designated partners; b) Proof of Registered office address and Copy of utility Bills not older than 2 months; c) NOC from owner of the premises; d) Details of Partners and Designated Partners; e) Details LLP(s) and Company(s) in which Partners are interested; f) Subscribers' sheet including consent of Partners; g) Copy of certificate of incorporation of the foreign LLP; h) Copy of Authority under which Foreign Limited Liability Partnership is establishing the place of business in India; i) Power of Attorney in favour of Authorised Representative; If LLP ' s name is applied with the incorporation application: a) Approval of the owner of the trademark or the applicant of such trademark for registration of Trademark if the proposed name is based on a registered trademark or is subject matter of an application pending for registration under the Trade Marks Act. b) Copy of approval in case the proposed name contains any word(s) or expression(s) which requires approval from central government; Note: All the documents to be signed by the Foreign Directors and Foreign subscribers requires notarization and apostillation from the foreign country.

52. What is the valid period of existence of a Liaison Office? Can the period of existence of a Liaison Office be extended?

Permission to set up a Liaison Office is initially granted for a period of 3 years and this may be extended from time to time by the Authorized Dealer Category – I Bank in whose jurisdiction the Liaison Office is set up.

53. Can more than one Liaison Office be set up?

Yes. Requests for establishing additional Liaison Offices may be submitted through fresh FNC form

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duly signed by the authorized signatory of the foreign entity in the home country to the Reserve Bank of India.

54. Is Unique Identification Number (UIN) obtained by Project office (PO)?

No, Authorised Dealer Bank (AD Bank) need not obtain UIN from Reserve Bank of India (RBI) for PO.

55. How can I apply for a Company Name?

A proposed name can be reserved for the purpose of incorporation of a company or change of name of an existing company through the RUN service by logging into the MCA portal along with a fee of Rs. 1000/-. Further, you may use the SPICe form for the integrated process of name reservation and incorporation of a company.

56. Can I apply for a company name online?

Yes, you can avail the RUN service at MCA portal for reserving a name online.

57. Which act governs Company formation and operations?

Ministry of Corporate Affairs via Companies Act 2013 regulates incorporation of the company, responsibilities of a company, directors, dissolution of a company. For more information, click here.

58. How would I enlist another organization in India?

Incorporating a company through Simplified Proforma for Incorporating Company electronically (SPICe -INC-32), with eMoA (INC-33), eAOA (INC-34), is the default option and most companies are required to be incorporated through SPICe only. For more information, click here.

59. Would a One Person Company (OPC) be qualified to profit benefits under the Start-up India activity?

Yes. One Person Companies are eligible to avail benefits under the Start-up India initiative. For more

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information, click here.

60. Is there any endorsed fee(s) that can be charged from the Start-ups for furnishing them with a suggestion/bolster/underwriting letter?

Yes. A maximum fee of INR 5,000 can be charged by the incubators for issuing a letter of recommendation to Start-ups. In cases where an incubator is required to form a panel of external experts to assess the innovativeness of the product/service/process, a maximum fee of Rs. 10,000 can be charged by the incubators. For more information, click here.

61. To which authority the application for establishing Branch office/ Liaison Office/ Project office is required to be submitted?

Generally, the application for establishing BO / LO/ PO in India may be submitted by the non-resident entity in the prescribed form to Authorised Dealer Bank (AD Bank) identified by the applicant along with the prescribed documents.

62. Under which scenarios, the applicant is required to approach the RBI for approval?

Under the following scenarios, prior approval of RBI shall be required: The principal business of the applicant falls in the four sectors namely defence, telecom, private security and information and broadcasting. However, no prior approval of the RBI shall be required, if government approval or license/permission by the concerned ministry/ regulator has already been granted The applicant is a Non-Government Organization (NGO), Non-Profit Organization, body/ agency/ Department of a foreign government

63. What financial criteria are required to be fulfilled for setting-up a BO/LO (Branch Office or Liaison Office) in India?

The non-resident entity applying for a BO/LO in India should have a financially sound track record as below: For BO: A profit making track record during the immediately preceding five financial years in the home country and net worth of not less than US$100,000 or its equivalent For LO: A profit making track record during the immediately preceding three financial years in the home country and net worth of not less than US$50,000 or its equivalent

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64. Whether a LO, BO and PO (Liaison, Branch or Project) can acquire property for its operations?

The BO / PO of a foreign entity, excluding an LO, shall be permitted to acquire property for their own use and to carry out permitted/incidental activities except for leasing or renting out the property. Please note that entities from China, Hong Kong and Macau shall require prior approval of the RBI to acquire immovable property in India for a BO/PO BOs/LOs/POs shall have general permission to carry out permitted/ incidental activities from leased property subject to lease period not exceeding five years

65. With respect to the compliances to be undertaken by (Project Office) PO viz. maintaining of bank account at entity level, filing of AACs, complying with submission of closure documentations on completion of the project and maintaining of books of accounts, can the same be undertaken at entity level instead of at specific project level?

With respect the aforesaid compliances, the same will have to be undertaken at specific project level and not at the entity level.

66. What are the requirements in connection with closure of LO/BO/PO (Liaison, Branch or Project)?

Requests for closure of the LO/BO/PO and allowing the remittance of winding up proceeds of LO/BO/PO may be submitted to the AD (Authorized Dealer) Bank along with the prescribed documents.

67. What are the key pre-requisites for setting up Indian subsidiary in India?

Minimum two directors – mandatory one resident director but not required to be a citizen of India Minimum two shareholders – shareholders may be either corporates or individuals or resident or non-residents No minimum capital threshold, however, should have atleast two shares, if the proposed company will be limited by shares Physical space to be identified as a registered office In case of a newly incorporated company, the requirement will apply proportionately at the end of the financial year in which it is incorporated.

68. What are the steps to incorporate an Indian subsidiary?

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Drafting of Charter documents [Memorandum of Association (MoA) and Articles of Association (AoA)] Certification of incorporation (CoI) – An application in the prescribed form is to be made to the MCA for obtaining the CoI including Directors ' Identification Number for directors, Permanent Account Number and Tax deduction Account Number for the company

69. For how many days is a reserved name valid for a company proposed to be set up?

An approved name is valid for a period of 20 days from the date of approval (in case name is being reserved for a new company) or 60 days from the date of approval (in case of change of name of an existing company) For more information, click here.

70. In case of overseas shareholders and directors, are the documents required to be notarized and apostilled for incorporation of a company?

Where the shareholder or a director to be appointed in the proposed company is a company incorporated outside India (for example, in China/ Chinese national residing in China), the MoA (Memorandum of Association), AoA (Articles of Association), proof of identity as well as address proof is required to be notarized before the Notary (Public) in China and the certificate of the Notary (Public) shall be attested by the Indian Embassy in China.

71. Is there a time period to issue share certificate to the shareholders?

The company should issue and deliver the share certificates within a period of two months from the date of incorporation of the proposed company.

72. What should be the first financial year of the newly incorporated company?

The first financial year of a company means a period beginning from the date of incorporation and ending on 31 March of the following year. However, if the company is incorporated on or after 1 January of the year, the financial year will be from the date of incorporation till 31 March of the following financial year. For example, if a company is incorporate on 1 February 2019, the first financial year will be 1 February 2019 to 31 March 2020.

73. Within what time should the first board meeting be held?

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The first board meeting should be held within 30 days from the date of incorporation.

74. When should the first auditors be appointed for a newly incorporated entity?

The first auditors should be appointed by the board within 30 days of incorporation of the company. In case of failure by the board to appoint auditors, the auditors shall be appointed by the shareholders in general meeting within 90 days from the expiry of the 30 days period

75. What should be the quorum for board meetings?

Quorum for the board meeting for an Indian subsidiary is two directors. In case of physical board meeting, two directors should be present in person. Board meeting may also be held through an audio-visual means (for example, video conference) subject to compliance with conditions such as recording of the meeting, roll call, minutes of the meeting capturing the VC details, etc. There are restrictions with respect to matters which can be approved in a meeting held through this mode.

76. What is an Annual General Meeting (AGM)? When should a company convene its first AGM?

Every company shall in each year hold in addition to any other meetings, a general meeting of its shareholders as its annual general meeting for adoption of audited financial statements, declaration of final dividend, etc The first AGM of a company should be held within a period nine-month from the date of close of first financial year. In any other case, within a period of six months from the date of closing of the financial year.

77. Can AGM (Annual General Meeting) be held at a place situated outside the limit of city, town or village in which the registered office is situated?

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. However, AGM cannot be held outside India.

78. What should be the quorum of an AGM (Annual General Meeting) of Indian subsidiary?

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Quorum for the AGM of an Indian subsidiary is two members personally present. In case of corporate shareholders, the respective shareholders would be required to authorize two different individuals to represent them in the AGM. Representation letters supported by the board resolutions would be required to be maintained in this regard

79. Can a company maintain books of account in any place other than registered office?

A company may maintain books of account and other relevant papers at any place in India as the board of directors may decide and the company should make a filing with the RoC (Registrar of Companies) in the prescribed form giving the full address of that other place. However, there are certain documents which are mandatorily required to be maintained at the registered office such as minutes of the meeting.

80. Can one person simultaneously provide accounting and auditing services?

The statutory auditor of a company cannot provide following services to the company or its holding company or subsidiary company: Accounting or book keeping services Internal audit Design and implementation of any financial information system Actuarial services Investment advisory services Investment banking services Outsourced financial services Management services Other services prescribed under the rules

81. Is there any cooling period for the existing auditors after the expiry of their term?

An individual auditor who has completed his term of five years shall not be eligible for re-appointment as auditor in the company for five years from the completion term of five years. An auditor firm who has completed their two terms of five years shall not be eligible for re-appointment as auditor in the company for next five years from the completion of 10 year.

82. What is the tenure of an auditor? What is the tenure of the first auditor?

An individual can serve as an auditor for a term of five consecutive years. A firm can serve two terms of five consecutive years each, i.e., a total of 10 years as an auditor. Every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting.

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83. Who appoints the first auditor?

As per Section 139(6) of Companies Act 2013, first auditor will be appointed by the board of directors of company within 30 days of incorporation of company. If the board fails to appoint the first auditor, an extra ordinary general meeting will be called by the board to appoint the first auditor within 90 days from the receipt of the information from the board of directors.

84. What is the applicability of internal audit?

Applicability of internal audit is as follows: Listed company: Always applicable Unlisted public company: Where any of the below conditions is satisfied: Paid up share capital >= INR 500 million during the preceding financial year Turnover (income) >= INR 2 billion during the preceding financial year Outstanding loans or borrowings from banks or public financial institutions exceeding INR 1 billion or more at any point of time during the preceding financial year Outstanding deposits >= INR 250 million at any point of time during the preceding financial year Private company: Where any of the below conditions is satisfied: Turnover >= INR 2 billion during the preceding financial year Outstanding loans or borrowings from banks or public financial institutions exceeding INR 1 billion or more at any point of time during the preceding financial year

85. How long will the directors be liable for the offences occurred during his tenure?

A director shall be liable for the offences / non-compliances occurred during his tenure even after his resignation and disassociation with the company.

86. What is the duration for preserving the books of account?

The books of account shall be preserved by the company for eight financial years preceding the financial year. However, there are certain registers and documents which are required to be kept permanently.

87. What are the modes available for the company to maintain the books of account?

The company may maintain books of account in either physical or electronic form. In case the books of account are maintained electronically, the back-up of the books of account and other books and

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papers of the company shall be kept in servers physically located in India on a periodic basis.

88. Is it mandatory to appoint Company Secretary in an Indian subsidiary?

Any company having a paid-up share capital of Indian INR 50 million or above is required appoint a whole-time Company Secretary.

89. What are the implications of establishment of PE (Permanent Establishment) in India, on the expats?

The assignees would be denied the benefit of short stay exemption under tax treaty as their salary expenditure would be deemed as deduction claimed by the foreign entity. Thus, the salary income earned by expats would become taxable in India.

90. Is issue of prospectus mandatory in case of LLP in India?

No, issue of prospectus is not mandatory in case of Limited Liability Partnership (LLP) in India. For more information, click here.

91. Can limited liability partnerships (LLP) be formed utilizing SPICe frames?

No, LLPs cannot be incorporated using SPICe forms For more information, click here.

92. On approval of SPICe how PAN & TAN is communicated to the user?

On approval of SPICe forms, the Certificate of Incorporation (CoI) is issued with PAN as allotted by the Income Tax Department. An electronic mail with Certificate of Incorporation (CoI) as an attachment along with PAN and TAN is also sent to the user. Further PAN card shall be issued by the Income Tax Department. For more information, click here.

93. How is control defined for companies?

Control includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, including by virtue of

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their shareholding or management rights or shareholders agreements or voting agreements or in any other manner. For more information, click here.

94. What are the forms that need to be filed upon appointment or resignation of a partner in Limited Liability Partnership?

E-form 3 and E-form 4 are required to be filed for appointment of new and resignation of existing partners within 30 days of such cessation or appointment. If filed during the first 30 day, no fee will be levied; there is an additional fee thereafter. For more information, click here.

95. Why are Digital Signature Certificates needed?

Like physical documents being signed manually, electronic documents(such as e-forms) are required to be signed digitally using a Digital Signature Certificate (DSC). For more information, click here.

96. Which authority allots the Director Identification Number (DIN)?

Any person intending to become a director in an existing company shall file Form DIR-3 and the same gets processed by the Central Government (Office of Regional Director (Northern Region), Ministry of Corporate Affairs). Further, the person who is appointed as a director upon filing Form SPICe INC-32 (which is a Simplified Proforma for Incorporating Company Electronically) will be issued a unquie 8-digit DIN by the approving authority (Central Registration Centre). For more information, click here.

97. Do all board members have to get their Digital Signature Certificates registered on the portal?

No, only those persons who will be signing the e-Forms on behalf of the Company are required to register their DSC on the MCA portal. For more information, click here.

98. Can I use my digital signature for legal documents?

Digital Signatures (DS) are legally admissible in the Court of Law, as provided under the provisions of IT Act, 2000. For more information, click here.

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99. Which form has to be filed in case of voluntary conversion of One Person Company?

Form INC-6 has to be filed within 30 days of voluntary conversion of One-Person Company after two years of its incorporation and within six months of mandatory conversion (in case paid up share capital of an One-Person Company exceeds INR50 lakhs or its average annual turnover). For more information, click here.

100. How can I start Consultancy and/or Project Execution entity in India?

You can explore the option of either opening (1) Liaison Office or (2) Project Office For more information, click here.

101. What are SPiCe forms?

SPICe Form INC-32, which is a Simplified Proforma for Incorporating Company Electronically -SPICe or Form INC-32, can help incorporate a company with a single application for reservation of name, incorporation of a new company and/or application for allotment of DIN. For more information, click here.

102. How to inform RoC about change in membership of OPC?

The company shall file form INC-4 in case of cessation of member of OPC on account of death, incapacity to contract or change in ownership. In the same form, user needs to provide details of the new member of the OPC. For more information, click here.

103. Is a license necessary for carrying out money changing business?

Yes. No person shall carry on money changing business without the possession of a valid licence issued by the Reserve Bank. Any person found undertaking money changing business without a valid licence is liable to be penalised under the Act ibid. For more information, click here.

104. What is the objective behind expanding the FFMCs business?

To widen and allow easy access to foreign exchange facilities to residents and tourists while ensuring

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efficient customer service through competition is the major objective. For more information, click here.

105. What is JV and WOS?

A foreign entity is termed as JV (Joint venture) of the Indian Party/Resident Indian when there are other foreign promoters holding the stake of the entity along with the Indian Party. In case of WOS (Wholly Owned Subsidiary), entire capital is held by the one or more Indian Party/Resident Indian. For more information, click here.

106. What are the activities that are permitted to be undertaken by Liaison Office?

The list of activities provided by the RBI for the LO to undertake is as follows: Representing the parent company / group companies in India Promoting 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 companies

107. What are the activities that are permitted to be undertaken by Project Office?

The list for PO as follows: Non-resident companies are generally permitted to establish POs in India, provided they have secured a contract from an Indian company to execute a project in India Further, the project must have secured the necessary regulatory clearances and is funded directly by inward remittance from abroad or the project is funded by a bilateral or multilateral international financing agency, or a company or entity in India awarding the contract has been granted term loan by a public financial institution or a bank in India for the project

108. Whether a BO or PO can send outward remittances, permissible under FEMA, through any AD Category I bank or it has to be through the designated AD Category I bank only?

Wherever the BO or PO is required to remit funds outside India, within the applicable guidelines under FEMA, they may do so not necessarily through the designated AD Bank but through any AD Bank of its choice subject to obtaining no objection certificate (NOC) from the designated AD Bank.

109. Whether AD bank can approve for extension of the project account after the

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tenure of the project?

The AD Bank has the power to approve for extension of the project account after the tenure of the project for genuine reasons like completion of warranty period, statutory works like Income tax assessments, VAT/Service tax/GST assessments, to make arrangements for the sale of assets, etc. However, requisite intimations shall be required to be sent to Reserve Bank, FED, CO Cell, Sansad Marg, New Delhi 110001.

110. What are the key prerequisites for setting up of an unlisted public limited company in India?

The key prerequisites for setting up an unlisted public limited company are the following: Minimum three directors – mandatory one resident director but not required to be a citizen of India Minimum seven shareholders – shareholders may be either corporates or individuals No minimum capital threshold, should have at least seven shares, if the proposed company will be limited by shares Physical space to be identified as a registered office

111. What is the difference between SPICe and SPICe+?

While SPICe is an eform, 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). For more information, click here.

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