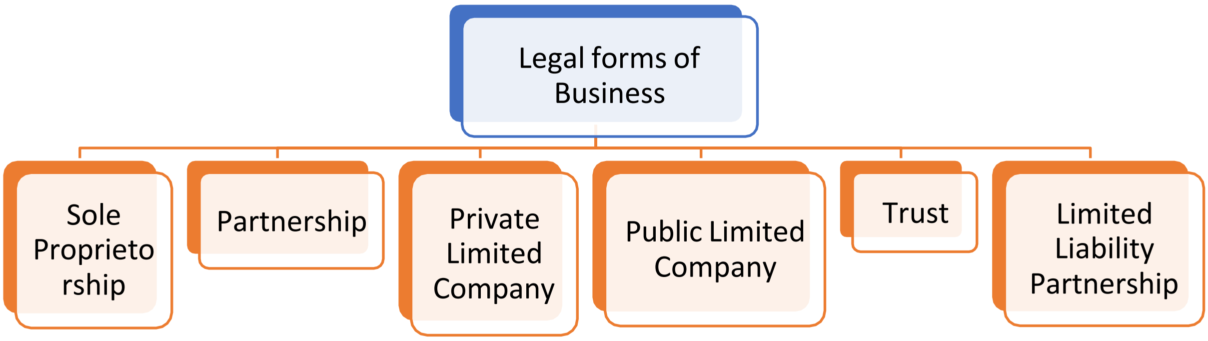
Doing Business in India

2021-22

VALUECENT CONSULTANCY PRIVATE LIMITED



Legal Forms of Business Entities

India has different forms of legal structures, following is the broad overview:

Different types of entity that can be formed in India		
Legal forms	**Characteristics**	**Consideration**
Unincorporated Entities		
A. Liaison Office	A liaison office acts as a representative of the parent foreign company in India. However, a liaison office cannot undertake any commercial activities and must maintain itself from the remittances received from its parent foreign company. Liaison office cannot enter any commercial activity directly or indirectly, there- fore, earn any income in India. The approval for setting up a liaison office is generally valid for 3 years, prior permission taken by RBI and can be extended by the RBI before the date of expiry of validity.	It is an option usually preferred by foreign companies that wish to explore business opportunities in India.
B. Branch Office	Main purposes of branch are as follows: • Export/Import of goods • Rendering professional or consultancy services • Carrying out research work, in which the parent company is engaged. • Promoting technical or financial collaborations between Indian companies and	Branch Offices established with the approval of RBI, may remit outside India profit of the branch, net of applicable Indian taxes and subject to RBI guidelines. Permission for setting up branch offices is granted by the Reserve Bank of India (RBI): • Branch Office is required to register itself with the Registrar of Companies and to comply

	parent or overseas group company. • Representing the parent company in India and acting as buying/selling agents in India. However, a branch office cannot carry out any retail, manufacturing or processing activities. The branch office is permitted to remit surplus revenues to its foreign parent company subject to the taxes applicable.	with certain procedural formalities. • Profits earned by the branches can be freely remitted to Head Office subject to payment of applicable taxes. • Branch Offices are required to submit annual activity report from its CA/CPA to RBI. • For income tax purposes branch is treated as extension of Foreign Company and on income attributable to business in India is taxable as same of a Foreign Company. Transactions between Branch and Head Office are subject to Transfer Pricing Regulations.
C. Project Office	A foreign company, subject to obtaining approval from the RBI may set up a project office in India under the automatic route subject to certain conditions being fulfilled including existence of a contract with an Indian company to execute a project in India. Such offices cannot undertake or carry on any activity other than the activity relating and incidental to execution of the project.	Project offices are generally preferred by companies engaged in one-time turnkey or installation projects.
D. Partnership under Partnership Act, 1932	A partnership is a relationship created between persons who have agreed to share the profits of a business carried on by all of them, or any of them acting for all of them. A partnership is not a legal entity independent of its partners . The partners own the business assets together and are personally liable for business debts and taxes.	In the absence of a partnership agreement, each partner has an equal right to participate in the management and control of the business and the profits / losses are shared equally amongst the partners. Any partner can bind the firm and the firm is liable for all the liabilities incurred by any partner on behalf of the firm. Investment by foreign entities is permitted in Indian partnership firms subject to prior approval of RBI.
E. Trust	A trust arises when one person (the "**trustee**") holds legal title to property but is under an equitable duty to	A foreign resident may only be the beneficiary of a trust, which is set up as a venture capital fund and only after receiving

	deal with the property for the benefit of some other person or class of persons called beneficiaries. The trust, as such, does not incur rights or liabilities.	the prior consent of the concerned department of Government of India.
Incorporated Entities		
A. LLP (Limited Liability Partnership)	Limited Liability Partnership is prevailed by 'The Limited Liability Partnership Act, 2008' and various Rules made there under. Minimum 2 partners and there is no limitation of maximum number of partners. An LLP with FDI operating in sectors/activities where (i) 100% FDI is allowed through the automatic route; and (ii) there are no FDI linked performance conditions, can be converted into a company, under the automatic route.	A person can be admitted as a partner as per the LLP Agreement. All LLP except for those having turnover less than Rs. 40 Lacs or Rs. 25 Lacs contribution in any financial year are required to get their accounts audited annually as per the provisions of LLP Act 2008. LLP's can enter into Compromise / arrangements / merger / amalgamation.
B. Companies under the Companies Act		
1. Private Limited Company	A private limited company has distinguishing characteristics. It must, in its articles of association, restrict the right to transfer shares; the number of members in a private limited company is minimum of 2 and a maximum of 200 members (excluding the present and past employees of the company); its Articles of Association must prohibit any invitation to the public to subscribe to the securities of the company.	Under the Companies Act, 2013 a natural person who is an Indian citizen and resident in India can incorporate a one person company. However, it shall be required to convert itself into public or private company, in case its paid up share capital is increased beyond INR 5 million or its average annual turnover exceeds INR 20 million Therefore, the most ideal entity for NRIs and Foreign Nationals to invest or start a business in India would be a Private Limited Company. Companies Act, 2013 permits NRIs, PIOs, Foreign Nationals and Foreign Residents to act as a Director of an Indian Company. Foreign Company can also set up wholly owned subsidiary in sectors where 100% foreign direct investment

		is permitted under the FDI policy.
2. Public Limited Company	A public limited company is defined as a company which is not a private company (but includes a private company that is the subsidiary of a public company). A public limited company shall have a minimum of 7 members but may have more than 200 shareholders and may invite public to subscribe to its securities.	A foreign company shall, within a period of 30 days of the establishment of its place of business in India, register itself with the registrar of companies, as either a private or a public company. Limited Company can be incorporated by the Foreign promoter if the number of investors in the venture would be more than 7 and the company would have to raise equity funds from a number of shareholders.
Others		
Wholly Owned Subsidiary Company	Foreign Company can also set up wholly owned subsidiary in sectors where 100% foreign direct investment is permitted under the FDI policy	For registration and incorporation, set of applications have to be filed with Registrar of Companies (ROC). Once a company has been duly registered and incorporated as an Indian company, it is subject to Indian laws and regulations as applicable to other domestic Indian companies.
Joint Venture	A joint venture (JV) is a tactical partnership where two or more people or companies agree to put in goods, services and/or capital to a uniform commercial project. In sectors where 100 percent FDI is not allowed in India, a joint venture is the best medium, offering a low risk option for companies wanting to enter into the vibrant Indian market. Corporate joint ventures are regulated by the Companies Act, 2013 and the Limited Liability Partnership Act, 2008.	Establishing a joint venture company is the preferred form of corporate structure for foreign investors doing business in India.
Proprietorship	It simply refers to a person who owns the business and is personally responsible for its debts. A sole proprietorship can operate under the name of its owner or it can do business under a fictitious name. The	A sole proprietor need only register his or her name and secure local licenses, and the sole proprietor is ready for business. Sole proprietorships carry little, if any, ongoing formalities.

	fictitious name is simply a trade name--it does not create a legal entity separate from the sole proprietor owner.	Sole proprietorships carry little, if any, ongoing formalities. But Owners cannot raise capital by selling an interest in the business.

Tax Structure in India:

The authority of the government to levy tax in India is derived from the Constitution of India, which allocates the power to levy taxes to the Central and State governments. All taxes levied within India need to be backed by an accompanying law passed by the Parliament or the State Legislature. Taxes are levied by governments on their citizens to generate income for undertaking projects to boost the economy of the country and to raise the standard of living of its citizens.

All tax assesses are required to obtain unique tax identification number, called Permanent Account Number (PAN). All resident corporate tax assesses are supposed to file their tax returns by 30th September of every year even in the event of loss. Non-resident corporate are also required to file tax returns if they have business entity or office in India or have income from any Indian source, asset, business, etc.

Types of Taxes:

1. Direct Taxes
2. Indirect Taxes

Direct Taxes	Characteristics	Consideration
Income Tax	The Union Budget 2018 provided for Corporate Tax Rate to be 25% for companies having turnover upto Rs. 2500 million in the financial year 2016-17. Minimum Alternate Tax rate is 18.5% which becomes an effective rate of either 20.5868% or 21.5488% in case of Indian companies. Foreign companies that have a Permanent Establishment or Branch/Project Office in India are taxable at higher basic rate of 40% which, with applicable surcharge and health & education cess, resulting in a rate of either 42.432% or 43.68%	**Dividend Distribution Tax:** Tax is applicable when the company have to pay dividend to its shareholders then before paying dividend company must give corporate dividend tax first @ 15% Plus surcharge @ 10% and Health & Education cess @ 4% the net tax payable is 17.16%. **Capital Gains Tax:** This is a tax that is payable whenever you receive a sizable amount of money. It could be from an investment or from the sale of a property. It is usually of two types, short term capital gains from investments held for less than 36 months and long-term capital gains from investments held for longer than 36 months.

		Securities Transaction Tax: This tax is levied is by adding the tax to the price of the share. This means that every time you buy or sell shares, you pay this tax. All securities traded on the Indian stock exchange have this tax attached to them. **Perquisite Tax**: Perquisites are all the perks or privileges that employers may extend to employees. **Wealth Tax** : There is no Wealth Tax from April 2015 onwards. **Inheritance/ gift tax** : There is no inheritance or gift tax in India.
Indirect Tax		
1. Goods & Service Tax	GST Act was passed in the Parliament on 29th March 2017. The Act came into effect on 1st July 2017. Business in India that supplies goods or services and turnover exceeds the threshold limit of Rs. 2 million (Rs. 1 million for North Eastern and hill states) will have to register under GST. Businesses registered under any of the pre-GST laws like VAT, Excise or Service Tax have to register under GST by default. Goods and Service Tax (GST) is an Indirect Tax which has replaced many Indirect Taxes in India.	**Central Goods & Service Tax:** (CGST) which is collected by the Central Government. **State Goods & Service Tax:** (SGST) which is collected by State Government. **Integrated Goods & Service:** Tax (IGST) which is also collected by Central Government.
2. Custom Duty	Custom duty is a type of indirect tax that is levied on all the goods that are imported to the country as well as some goods exported from the country. The duty levied on the country. The duty levied on the former is referred to as import	**Basic Customs Duty:** This duty is imposed on the value of goods at a specified rate as it is fixed on an ad-valorem basis. After being amended time and again, it is currently regulated by the Customs Tariff Act,

	duty while that on the latter is referred to as the export duty. To simplify it, any tariff that is introduced on goods across national borders is referred to as custom duty.	1975. The Central Government, however, holds the rights to exempt specific goods from this tax. **Countervailing Duty:** CVD or Additional Customs Duty is levied on imported goods that fall under Section 3 of the Customs Tariff Act of 1975. It is the same as the Central Excise Duty which is levied on similar goods that are produced in India. **Education Cess:** The cess used to be levied at 2% and an additional 1% of the aggregate of customs duties. **Protective Duty**: This duty is imposed in order to shield the domestic industry against the imports at rates that are recommended by the Tariff Commissioner. **Safeguard Duty:** As the name suggests, this duty serves as a means of safeguarding the rise in exports. Sometimes, if the government feels that a rise in exports can damage the existing domestic industry, it may levy this duty. **Anti-Dumping Duty:** This duty is based on the dumping margin, i.e. the difference between the export price and the normal price. It is only imposed when the goods that are imported are below the fair market price.

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