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SETTING UP BUSINESS IN INDIA:
A CRITICAL REGULATORY & PRACTICAL PRIMER (2026 EDITION)

ESSENTIAL INFORMATION AND REQUIRED DOCUMENTS

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Introduction

The process of incorporation of companies in India has undergone a massive paradigm shift over the past several years. Driven by the Government of India's focus on the "Ease of Doing Business" initiative and the deployment of the next-generation MCA21 V3 Portal, the corporate setup workflow has evolved into an integrated web-based architecture. This updated primer serves as a practical, step-by-step master questionnaire for multinational legal counsels, foreign promoters, and corporate groups planning to establish a presence specifically a Wholly Owned Subsidiary (WOS) in India.

Part I: Fundamental Corporate Structures and Authorities

1. Which statutory framework governs the incorporation and regulation of companies in India?

The primary legislation is the Companies Act, 2013 ("Companies Act"), read in conjunction with the specific rules made thereunder (such as the Companies (Incorporation) Rules, 2014) as amended up to date, alongside notifications issued by the Ministry of Corporate Affairs (MCA).

2. What are the primary types of corporate entities structured in India?

- Private Limited Company: The ideal vehicle for foreign corporate investments and joint ventures. It prohibits public fund-raising, limits its total number of shareholders to 200, and requires a minimum of 2 shareholders and 2 directors.
- Public Limited Company: Designed for large-scale operations requiring public equity capital. It requires a minimum of 7 shareholders and 3 directors.

- One-Person Company (OPC): A specialized structure requiring only 1 director, 1 member, and 1 nominee. Crucial Eligibility Note: Only a natural person who is an Indian citizen and resident in India is permitted to form an OPC.

3. Which regulatory authority oversees incorporation and ongoing corporate compliance?

The Registrar of Companies (ROC), functioning under the oversight of the MCA, acts as the primary jurisdictional regulator for incorporation. Final approval for centralized name applications and incorporation documentation is managed through the Central Registration Centre (CRC).

4. How are corporate incorporation applications processed in India?

All applications are processed electronically via advanced web-forms hosted on the MCA V3 portal. Physical document submissions for incorporation have been completely phased out in favor of dynamic, authenticated e-filings.

Part II: Establishing a Wholly Owned Subsidiary (WOS) & Foreign Entrant Requirements

5. What exactly is a Wholly Owned Subsidiary (WOS) in India, and how is it structured?

A WOS is an independent legal entity incorporated in India whose 100% equity shares are owned by a foreign parent body corporate. To comply with the legal requirement of having a minimum of 2 shareholders for a private company, the foreign parent corporation holds 99.9% of the shares, while the remaining nominal share (e.g., 1 share) is held by a nominee shareholder (often an individual or group executive) who holds it in trust for the parent entity.

6. Can a foreign body corporate/company be a subscriber/member in the proposed Indian WOS?

Yes. The Companies Act explicitly permits foreign bodies corporate to invest in and subscribe to the Memorandum of Association (MOA) of an Indian company, subject to compliance with the Foreign Exchange Management Act (FEMA) and the Foreign Direct Investment (FDI) Policy of India.

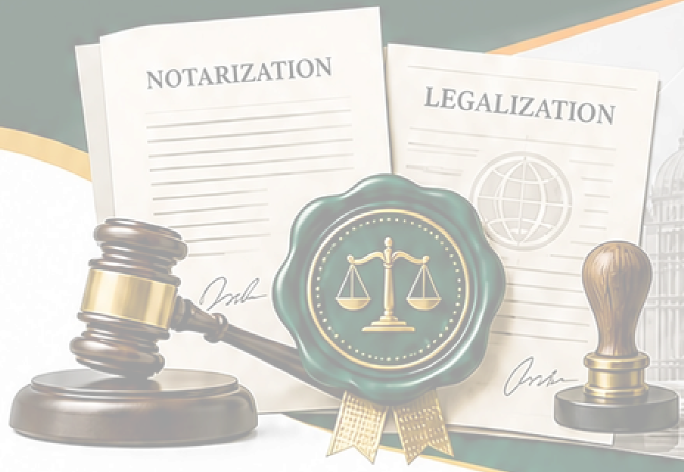
7. What specific disclosures must a foreign parent company provide during the incorporation of a WOS?

The foreign entity must furnish:

- A certified copy of its Certificate of Incorporation or Registration from its home country.
- The address of its registered office or principal place of business.
- A formal Board Resolution passed by the parent company authorizing:
    a. The incorporation of the WOS in India.
    b. The maximum investment/subscription amount.
    c. The nomination of a specific individual as its Authorized Signatory to sign the Indian MOA and incorporation documents.

8. What is the critical statutory requirement regarding the composition of the Board of Directors?

Under Section 149(3) of the Companies Act, the Board of Directors of the proposed company must have at least one Resident Indian Director. A resident director is defined as an individual who has stayed in India for a total period of not less than 182 days during the financial year. For foreign groups, this resident director is often a local professional consultant, transition manager, or senior Indian employee.



Part III: The Notarization, Apostille, and Legalization Workflow

9. Why are notarization and apostilization mandatory for establishing a WOS?

Because the primary shareholders and subscribers are located outside India, the Indian regulator (ROC) requires authentication to verify that the signatures, identity proofs, and corporate charters submitted are genuine. Under Rule 13 of the Companies (Incorporation) Rules, 2014, all foreign documentation must undergo authentication based on the country of origin.

10. What is the process if the parent company's home country is a party to the Hague Apostille Convention, 1961?

If the country of origin is a signatory to the Hague Convention, a clear two-step verification path applies:

- Notarization: The physical document (e.g., Passport, Board Resolution, Charter) must be signed and witnessed before a local certified Notary Public.
- Apostilization: The notarized document must then be submitted to the designated competent government authority in that home country (e.g., the Secretary of State in the US, or the Foreign, Commonwealth & Development Office in the UK) to receive the square Apostille Certificate sticker. Once apostilled, it is legally validated for direct submission to the ROC in India.

11. What is the alternative protocol if the home country is NOT a party to the Hague Apostille Convention?

If the country is not a signatory to the Hague Convention, the documents must undergo formal Legalization via the Indian Embassy/Consulate:

1. Documents are witnessed and signed before a local Notary Public.

2. The notary's signature is authenticated by the apex state/federal agency of the home country.
3. The documents are then physically presented to the Consular Section of the nearest Indian Embassy or High Commission in that country to be officially stamped and legalized.

12. What are the strict legal compliance mandates regarding non-English documentation?

If any identity proof, address proof, or corporate charter document is in a language other than English, it must be translated into English by a certified, professional translator. The translated copy must clearly display the translator's name, full address, signature, professional credentials, and official seal. Alternatively, a translation certified directly by a Notary Public of the home country is also legally acceptable.

Part IV: Digital Architecture and the SPICe+ Ecosystem

13. What is a Digital Signature Certificate (DSC) and how is it used?

A DSC is an electronic key issued by licensed Certifying Authorities (CA) that replaces physical signatures on electronic forms. Under the Information Technology Act, 2000, digital signatures carry full legal parity with physical signatures. For an Indian incorporation, Class 3 DSCs must be obtained for all proposed first directors and subscribers.

14. What are the components of the dynamic, integrated SPICe+ web-form assembly?

The SPICe+ (Simplified Proforma for Incorporating Companies Electronically) system is an integrated suite of web-forms comprising:

- SPICe+ Part A: A dedicated web interface used exclusively for the reservation of the proposed corporate name.
- SPICe+ Part B: The master digital vehicle that orchestrates a unified web-filing architecture for corporate establishment.
- Linked Forms: Includes the SPICe+ e-MOA (INC-33), SPICe+ e-AOA (INC-34), and the AGILE-PRO-S form.

15. What distinct statutory registrations are processed simultaneously via SPICe+ Part B and AGILE-PRO-S?

Rather than interacting with multiple separate ministries, a single submission simultaneously triggers the automatic allotment of:

1. Incorporation: Issuance of the Certificate of Incorporation (COI).
2. DIN Allotment: Allocation of Director Identification Numbers for up to 3 proposed directors.

3. PAN & TAN: Automated issuance of the Permanent Account Number and Tax Deduction Account Number by the Income Tax Department.
4. EPFO & ESIC: Immediate generation of the Employer Establishment Code and Employer Code for social security.
5. Profession Tax: Mandatory registration based on state location (e.g., Maharashtra, Karnataka).
6. Corporate Bank Account: Automated, mandatory interface to open the company's current account with a partner bank.
7. GSTIN Allotment: Optional generation of the Goods and Services Tax Identification Number.

Part V: Tactical Action Plan for Company Incorporation

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16. What are the operational steps required to take a company from concept to formal incorporation?

Step 1: Procure Digital Signatures: Obtain Class 3 DSCs for the designated directors and foreign subscribers' authorized signatories.

Step 2: Name Reservation: File the proposed corporate name through the SPICe+ Part A web interface. The name is vetted by the CRC and, once approved, remains reserved for 20 days.

Step 3: Document Compilation & Foreign Attestation: Gather identity/address proofs, draft the MOA/AOA, and pass the foreign parent company's Board Resolution. Send these documents through the precise Notarization and Apostille/Embassy Legalization pipeline.

Step 4: Final Portal Upload: Complete and link SPICe+ Part B, and AGILE-PRO-S on the MCA V3 portal. Attach all legalized documents and digitally sign using the DSCs.

Step 5: Resubmission Management: If the ROC flags anomalies, the applicant is granted up to 2 opportunities for resubmission, with a maximum cumulative timeline of 30 days to resolve queries.

Step 6: Issuance of COI: Upon complete satisfaction, the ROC issues the official Certificate of Incorporation (COI) in Form INC-11, which features the company's unique Corporate Identity Number (CIN).

17. What are the regulatory government fees associated with registration?

- Name Application: A standard fee of INR 1,000 applies.

- Incorporation Fee Exemption: To encourage capital entry, the MCA waives the base registration fee for companies with an authorized capital of up to INR 15 Lakhs (INR 1.5 Million).
- Stamp Duty: While base registration fees may be waived, state-level Stamp Duty for the execution of the MOA and AOA remains fully payable. This duty varies depending on the specific state where the company's registered office is situated.

18. What are the corporate income tax structures governing domestic companies in India?

- Standard Regime: A baseline corporate tax rate of 30% (plus applicable surcharge and health/education cess).

- Concessional Regime (Section 115BAA): Most newly incorporated service and trading entities opt for this beneficial track. It offers a flat, non-escalating corporate tax rate of 22% (effective rate of 25.17% inclusive of all mandatory surcharges and cesses), provided the company does not claim specific exemptions or deductions.

DISCLAIMER

Regulatory Notice & Legal Disclaimer:

The information contained in this primer is intended solely for educational and informational purposes to disseminate insights on the corporate regulatory environment in India as of 2026. It does not constitute formal legal advice, solicitation, or a professional-client relationship between the reader and the firm. Corporate and foreign exchange regulations (FEMA) in India

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are subject to frequent statutory amendments and dynamic notifications by the Ministry of Corporate Affairs (MCA) and the Reserve Bank of India (RBI). Readers are strongly advised not to act upon any information contained herein without seeking independent, structured professional counsel tailored to their specific cross-border transaction or business framework.

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