



OPENING UP SHOP

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India has developed a reputation as a difficult place to do business. For the last two decades or so, there have however been a series of administrative moves in furtherance of economic liberalisation and to the cause of ease of doing business in India. A large share of the perceived difficulty was on account of the legal and regulatory set up in India. The Indian Constitution provides for a federal structure, where both the Union/Central government and the respective State governments have the power to legislate on a given set of subjects. On certain subjects, including labour and employment, both the Union/Central government and the State governments have been given the authority to legislate and

make law. The extant structure, when combined with the large and varied landscape and different cultures present in the country, often makes adherence to laws a time-consuming and exhausting task for most entities.

INDUSLAW is a multi-speciality law firm, with offices in Bangalore, Delhi, Mumbai and Hyderabad. We have a dedicated labour and employment team that is highly experienced in advising foreign corporations in entering Indian markets and setting up their local operations across the country. Alongside, advising and assisting corporations on the continuous compliance requirements under the Central as well as State laws, we also advise and assist in

conducting internal investigations, compliance audit exercises, drafting policies, drawing employment contracts and conducting collective bargaining negotiations.

We have provided an indicative checklist below which will allow your organization to evaluate the legal and regulatory framework for starting a business establishment in India. The information in the checklist relates to the requirements under the Central laws and some of the common requirements under all State laws. The checklist may be further customized and dedicated for any specific region in the country (and specific business purpose), as per the requirements.

I. LABOUR AND EMPLOYMENT REQUIREMENTS

There are as many as one hundred and sixty five (165) labour legislations in India of which fifty (50) have been enacted by the Union/Central government and the rest by the State governments for their respective states. There is a further distinction in these legislations between workmen or blue collar employees and high paid employees or managerial employees. A large majority of these legislations apply only to blue collar employees. Managerial

employees are majorly governed by the terms and conditions of their contracts of employment. That said, there are certain legislations like the state specific Shops & Establishment Acts, the centrally enacted The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, The Maternity Benefit Act, 1961 which are overarching in nature and cover both categories.

An indicative list of the compliance requirements having a universal character have been listed below.

- Shops and Establishments registrations in each of the concerned States for the opening of shops and establishments in such states.
- Employee's Provident Fund registrations for making social security contributions to employees.

This guide is intended as general information only. For legal advice and assistance with your business needs, please contact our Indian firm, IndusLaw.



- The company would be required to execute offer letters, employment contracts or non-disclosure agreements with its employees that are equitable contracts and don't impose conditions that are viewed by the courts in India as unnecessary and burdensome obligations on the employees.
- The company would be required to have in place a code of conduct/employee handbook, leave policy, sexual harassment policy amongst others.
- The company needs to put in place processes governing how the company deals with

whistleblowers, acts of misconduct and/or sexual harassment and the investigations related to such disclosures or reported incidents.

- The company needs to maintain registers, records and file periodic returns as prescribed.
- The company needs to provide the employees with such working conditions and benefits as prescribed.



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II. CORPORATE LAW REQUIREMENTS

A. COMPLIANCES FOR INCORPORATION

For the purpose of this proposal, we have assumed that you would like to establish a presence in India through a private limited company whereas there are a number of other corporate structures available where we could assist in either devising the best possible option for your business and/or establish those structures if already elected by you. The incorporation of a company in India however is a step by step process involving the following compliances under the Companies Act, 2013 which is the central law governing the incorporation and operations and management of companies in India.

- Every private limited company in India must have at least two (2) directors on the board of the company, one of whom is required to be a resident Indian. The directors of the Company need to be identified and a Director Identification Number, which is issued by the registrar of companies, needs to be obtained for such directors. A Digital Signature Certificate also needs to be obtained for each of the directors of the Company.
- The name of the proposed company needs to be approved by the registrar of companies.
- The charter documents must be drafted and filed with the registrar of companies, along with other statutory forms disclosing relevant details such as the first directors of the company, consent of such directors to act as directors,

criminal/conviction history of the directors, registered office address of the company.

- Statutory forms and other necessary documents need to be filed in respect of the foreign investments in the company with the authorised dealer banks and the Reserve Bank of India which is India's central bank.

INDUSLAW provides assistance and advice on issues arising under the Companies Act, 2013 as well as the foreign exchange laws in India (including matters such as the approvals for investments, mode of investments, structuring of investments, filing of statutory forms, maintenance of statutory registers and records, obtaining certifications) ensuring continuous compliance with all requirements thereunder.

B. POST INCORPORATION REGISTRATIONS

Once the corporate entity is incorporated, certain registrations will be necessary for various operational purposes. Listed below are the common post-incorporation registrations required in India. There could be variations and/or more registrations maybe required depending on the exact nature of business.

- Permanent Account Number (PAN) for tax filing purposes.
- Tax Deduction and Collection Account Number (TAN) in respect of tax deductions made at source from payments made to employees/others.

- Goods and Services Tax (GST) registration for payment of taxes in respect of sale of goods and/or provision of services.
- Professional Tax registrations in each of the concerned states in respect of tax deductions made from payments made to employees in such states.
- Import and Export Code for carrying on the import or export of goods and services in India.

INDUSLAW has the required expertise to assist and advise your organisation in the procurement of the required licenses and permits.



III. PAYROLL AND BENEFITS PROVIDERS

In India, the vast majority of smaller employers outsource payroll and benefit responsibilities to third party companies. The larger employers however have their own internal teams processing payroll and are responsible for all related compliance requirements.

Depending on the preference, we would be happy to recommend payroll providers to fit your business requirements.

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INDUSLAW continues to assist foreign corporations in structuring their entry and employment models in India on an extremely regular basis. IndusLaw is pleased to offer its services for all of the required work identified above and assist your organization in commencing its operations in India.

If you have any questions, please contact either of the following representatives:

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We look forward to working with you.



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