Form of Legal Structures in India

The foreign company can set up a corporate entity such as a Limited Liability Company and a non-corporate entity such as a Liaison Office, Branch Office or Project Office in India. The decision regarding the final structure is based on commercial and taxation considerations.

1. Setting up a Corporate Entity

a) Limited Liability Company (LLC)

A foreign company can set up a wholly-owned subsidiary or joint venture company in India to carry out its activities. Such a company shall be treated as an Indian resident despite having foreign shareholding. Minimum two members are required for a private limited company, and seven members for a public limited company.

b) Limited liability partnership (LLP)

LLP is a new form of business structure in India. It combines the independent legal status & perpetual succession nature of a company, with the organizational flexibility of a partnership firm. At least two partners are required to form an LLP and they have limited liability in the business.

The comparison between the different category of corporate entities are explained below:

<table>
<tr><th>S.no</th><th>Particular</th><th>Private Limited</th><th>Public Limited</th><th>Limited Partnership</th></tr>
<tr><td>1</td><td>Financial Year</td><td colspan="2">April-March</td><td>April-March</td></tr>
<tr><td>2</td><td>Accounting</td><td colspan="2">Mandatory</td><td>Mandatory</td></tr>
<tr><td>3</td><td>Minimum Capital</td><td colspan="2">Not Required</td><td>Not Required</td></tr>
<tr><td>4</td><td>Statutory Audit</td><td colspan="2">Mandatory</td><td>In case annual turnover is INR 4 million or capital contribution is INR 2.5 million.</td></tr>
<tr><td>5</td><td>Foreign Investment</td><td colspan="2">Mandatory to report</td><td>Mandatory to report</td></tr>
<tr><td>6</td><td>Allotment of Shares / Capital</td><td colspan="2">Mandatory to report</td><td>Mandatory to report</td></tr>
<tr><td>7</td><td>Registered Office</td><td colspan="2">Mandatory</td><td>Mandatory</td></tr>
<tr><td>8</td><td>Resident Director</td><td colspan="2">One</td><td>Not Required</td></tr>
<tr><td>9</td><td>Directors / Partners</td><td>Two Directors</td><td>Three Directors</td><td>Two Designated Partners</td></tr>
<tr><td>10</td><td>Members</td><td>Two Members</td><td>Seven Members</td><td>Two Designated Partners</td></tr>
<tr><td>11</td><td>Currency</td><td colspan="2">INR</td><td>INR</td></tr>
<tr><td>12</td><td>Shareholder / Partner’s Meeting</td><td colspan="2">Mandatory</td><td>Not Mandatory</td></tr>
<tr><td>13</td><td>Director Meeting</td><td colspan="2">Mandatory</td><td>Not Mandatory</td></tr>
<tr><td>14</td><td>Constitutional</td><td colspan="2">Memorandum and Article of</td><td>Partnership Deed</td></tr>
</table>

	Documents	Association		
15	Income Tax Rate	17.16% (Manufacturing) 25.17% (Other domestic)		34.32%
16	Listing on Stock Exchange	Not Applicable	Applicable	Not Applicable

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blishing a limited company gives a strong presence and functional flexibility to foreign companies in India. The compliance obligation for foreign investment and operations is higher for a public company. On the other hand, LLP provides for more flexibility as it is required to file lesser paperwork than a limited company while still availing benefits and features of the former.

2. Setting up a non-corporate Entity

a) Liaison office

A liaison or a representative office can be opened in India subject to the approval of the Reserve Bank of India and the Ministry of Corporate Affairs. A liaison office can represent group companies in India, promoting import/export in India, promoting technical/financial collaborations on the parent company or group's behalf and Coordinating communications between parent/group companies and Indian companies.

A liaison office, however, cannot raise funds within India and has to manage its expenses via inward remittances received from the head office through normal banking channels. It is a suitable corporate entity to primarily oversee networking, create visibility about a company, and chart out future business opportunities in India.

b) Branch Office

A foreign company can conduct their business in India through its branch office that can be opened after obtaining specific approval from the Reserve Bank of India. A branch office can undertake the activities such as import & export of goods, rendering professional or consultancy services, carrying out research work in an area in which its parent company is engaged, promoting technical/financial collaborations on behalf of the parent company/ overseas group company, representing parent/group companies in India and acting as buying/selling agent in India, providing IT services and developing software in India and providing technical support for products supplied by parent company/group. The expenses of a branch office are to be managed by either remittance from abroad or income generated in India.

c) Project office

A foreign company engaged by an Indian company to execute a project in India may set up a project office without obtaining approval from the Reserve Bank of India subject to prescribed reporting compliances.

A project office is prohibited from undertaking any activity other than the activity relating to and incidental to the execution of the project. The expenses are to be managed either by remittances received from abroad through normal banking channels or through income generated in India.

The comparison between the different category of non-corporate entities are explained below:

S.no	Particular	Liaison Office	Branch Office	Project Office
1	Financial Year	April-March	April-March	
2	Accounting	Not Mandatory	Mandatory	
3	Annual Certificate	File an Annual Activity	File an Annual Activity Certificate	

		Certificate	
4	Approval	Prior Approval of Reserve Bank of India	Prior Approval of Reserve Bank of India
5	Activities	Limited activities are allowed	Limited activities are allowed
6	Registered Office	Mandatory	Mandatory
7	Limitation of Liability	Unlimited	Unlimited
8	Income Tax Rate	NIL	41.6%

3. Conclusion

Choosing the right business entity would depend on the goals, prospects and aims of business in India along with the tax and commercial considerations. While unincorporated entities would provide for quicker registration and commencement of operations, they would also be limited in their scope of activities. The incorporated entities would provide greater operational flexibility but would come with relatively more compliance obligations.