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Setting Up a Business in India

What Every Founder Must Know

Before Day One

A complete guide covering business structure selection, tax registrations, FEMA compliance, Year 1 obligations, share structure, and the most common setup mistakes — written from the CA's chair, for founders and investors.

3–5 Days

Pvt Ltd
Incorporation

40+

Year 1 Filing
Obligations

30 Days

FC-GPR Filing
Deadline (FEMA)

0

Min. Paid-Up
Capital Required

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About This Guide

India has never been more open for business — and yet, the number of founders who get their foundational setup wrong has not declined. The company is incorporated in the wrong structure. The wrong tax regime is chosen. Agreements go unsigned. And two years in, the scramble to fix what should have been right from Day 1 costs far more than doing it correctly the first time.

This guide is written from the CA's chair — the person who inherits the consequences of decisions made at inception. It is designed for first-time founders, NRIs looking to set up in India, and foreign investors entering the Indian market.

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01

Business Structure — Choosing the Right Foundation

Your choice of structure determines tax liability, funding ability, liability exposure, and the volume of annual compliance you will manage. There is no one-size-fits-all answer — but there is a wrong answer for every business type.

Structure	Best For	Key Advantage	Key Limitation
Sole Proprietorship	Solo traders, freelancers, local services	Zero compliance overhead	No liability protection — personal assets at risk
Partnership Firm	Small family/professional practices	Simple setup, flexible profit sharing	Partners personally liable; no perpetual succession
LLP	Professionals, consultants, service businesses	Limited liability + low compliance vs Pvt Ltd	Cannot issue equity; VC cannot invest
Private Limited Co.	Startups seeking funding, scalable businesses	Limited liability; equity funding possible	Higher compliance; mandatory audit from Day 1
OPC (One Person Co.)	Solo founders needing corporate status	Limited liability without a co-founder	Cannot raise equity. Mandatory conversion abolished w.e.f. April 1, 2021 — no turnover ceiling. Conversion to Pvt Ltd is now voluntary.
Section 8 Company	NGOs, foundations, social enterprises	Tax exemptions; eligible for CSR funds	Profits cannot be distributed

02

Incorporation — What Actually Happens

Incorporating a Private Limited Company is done through the MCA portal via the **SPICe+ form**. When done correctly with clean documentation, it completes in **3–7 working days**. Here is what happens at each step:

The Incorporation Journey

- **Name Reservation (RUN / SPICe+ Part A):** Submit 2 proposed names. MCA approves or rejects in 1–2 days. Names must not conflict with existing registered names or trademarks.
- **DIN & DSC for Directors:** All directors need a Director Identification Number and a Digital Signature Certificate. Can run in parallel — typically 1–2 days.
- **SPICe+ Part B:** Contains MOA/AOA, address proof, identity proof, and share structure. Also auto-generates PAN, TAN, EPFO, ESIC and opens a bank account — all in one filing.
- **Certificate of Incorporation (COI):** Once approved by the Registrar of Companies, you receive the CIN and COI — your company's birth certificate.
- **First Board Meeting:** Must be held within 30 days of incorporation. Appoint auditors, approve bank signatories, and set up the compliance calendar.

03

Tax Registrations — What You Need and When

Incorporation gives you a company — but before you transact, you need the right registrations in place. Not having these before your first invoice creates complications that take months to untangle.

MANDATORY FROM DAY 1	REGISTER WHEN APPLICABLE
✓ PAN — Auto-issued with SPICe+. Needed for all tax filings and banking.	✓ Import Export Code (IEC) — Before your first import or export (DGFT).
✓ TAN — Auto-issued with SPICe+. Needed to deduct TDS on salaries, rent, contractors.	✓ MSME / Udyam Registration — Priority lending, government tenders, lower bank charges.
✓ GST Registration — ₹40L for goods (₹20L special category states); ₹20L for services (₹10L special category states), or interstate/e-commerce supply from Day 1, regardless of turnover.	✓ Shops & Establishments Act — If you have an office or shop; state-specific rules apply.
✓ Professional Tax — Required in Maharashtra, Karnataka, Tamil Nadu if you employ people.	✓ FSSAI — Any business handling food products at any stage of the supply chain.

Share Structure — Get It Right Before Money Enters

The initial share structure — how many shares, at what face value, held in what proportion — seems administrative at the time. It becomes a source of significant legal and tax complications later if done carelessly.

What to Decide Before Incorporating

- **Authorised vs Paid-Up Capital:** Authorised is the maximum you can issue. Paid-up is what has actually been subscribed. Keep authorised capital higher than your immediate need — raising it later attracts stamp duty and ROC costs.
- **Face Value of Shares:** ₹10 is standard. ₹1 or ₹2 face value is useful if you anticipate complex ESOP structures. This decision is very hard to reverse.
- **Founder Shareholding Proportion:** If two co-founders agree on 50:50 today, what happens if one exits in Year 2? A Shareholders' Agreement defining vesting schedules, drag-along rights, and exit mechanisms should be drafted before incorporation.
- **ESOP Pool:** If you plan to hire talent with equity, carve out an ESOP pool (typically 10–15%) at inception. Doing this post-funding with investor dilution is far more complex.
- **Stamp Duty on Share Transfers:** Physical share transfer instruments attract stamp duty in most states. Plan your cap table with professional advice from the outset.

FEMA for NRIs and Foreign Investors

India welcomes foreign investment — but through a tightly regulated framework under FEMA (Foreign Exchange Management Act), administered by the RBI. Getting this wrong attracts significant penalties and can delay funding rounds by months.

Key FEMA Rules Every Foreign Investor Must Know

- **FDI Routes — Automatic vs Approval:** Most sectors allow FDI under the Automatic Route. A few — defence, media, pharmaceuticals — require Government Route approval first. Confirm your sector's policy before structuring the investment.
- **Valuation Requirements:** When a foreign investor acquires shares, the price cannot be below Fair Market Value determined by a SEBI-registered merchant banker or CA using the DCF method. Undervalued issuances to foreign investors are a FEMA violation.
- **FC-GPR Filing:** Within 30 days of receiving foreign investment, the Indian company must file Form FC-GPR with the RBI through the FIRMS portal. This cannot be filed late without a compounding application and penalty.
- **NRI as Director vs Investor:** An NRI can be a director of an Indian company. However, their remuneration, dividend repatriation, and equity holding are all regulated separately under FEMA.
- **Downstream Investment:** If your Indian company invests in another Indian company and foreign capital is involved, FEMA's downstream investment rules apply. A complex area that catches many holding structures off-guard.

Year 1 Compliance — The Full Picture

Most founders dramatically underestimate the compliance burden of a Private Limited Company in its first year. Non-compliance attracts late fees, penalties, and in some cases, disqualification of directors.

MANDATORY FILINGS — YEAR 1 (PRIVATE LIMITED)

- ✓ First Board Meeting within 30 days of COI
- ✓ Auditor appointment (Form ADT-1) within 30 days
- ✓ Statutory Audit — mandatory regardless of turnover
- ✓ Income Tax Return (ITR-6) by October 31
- ✓ Tax Audit if applicable (Form 3CD)
- ✓ MCA Annual Return (MGT-7A) by November 29
- ✓ Financial Statements (AOC-4) by October 29
- ✓ Monthly/Quarterly GST Returns (GSTR-1, GSTR-3B)
- ✓ TDS deduction & monthly deposit by 7th of next month
- ✓ TDS quarterly returns (24Q, 26Q)
- ✓ Director KYC (DIR-3 KYC) by September 30 annually
- ✓ Board Meetings — minimum 4 per year (gap ≤ 120 days)
- ✓ Maintenance of all Statutory Registers
- ✓ Advance Tax payments if liability exceeds ₹10,000
- ✓ Provident Fund & ESI contributions if applicable
- ✓ Professional Tax returns (state-specific)

Bank Account & Commencement Declaration

After incorporation, many founders miss the **Declaration of Commencement of Business (Form INC-20A)** — mandatory for companies incorporated on or after November 2, 2018. Without filing this within 180 days, the company cannot borrow money, commence operations, or make a capital call — and a **₹50,000** penalty applies, with **₹1,000** per day continuing.

Getting the Bank Account Right

- **Open the account in the company's name** — never use a personal account for business transactions post-incorporation. The ITO will flag commingled funds during any scrutiny.
- **Deposit subscribed share capital first:** Promoters/subscribers must deposit their share subscription amount into the company's current account before you file INC-20A.
- **Avoid premature deposits:** Any deposits before incorporation is complete are not legally share capital — they are unsecured loans, with different legal and tax treatment.
- **Current Account, not Savings:** A company must operate a current account. Using a savings account is non-compliant with RBI norms for business entities.

08

Common Mistakes & What Smart Founders Do Instead

After 25 years of setting up companies across industries, certain errors repeat with remarkable consistency. Here is an honest list.

■ MOST COMMON MISTAKES	■ WHAT SMART FOUNDERS DO
Choosing wrong structure, then wanting to pivot to Pvt Ltd for funding	Engage a CA before incorporation, not after the first notice
Issuing shares without a Shareholders' Agreement	Set up a compliance calendar from Day 1 with all deadlines
Missing the FC-GPR filing after foreign investment	Maintain statutory registers even before revenue begins
Treating GST compliance as a Year 2 problem	Execute Founders' Agreement and SHA before inviting investors
No vesting schedule for co-founder equity	Separate personal and company finances from the very first transaction
Not appointing an auditor within 30 days of COI	Register IP (trademark, copyright) early — not after a dispute
Operating from personal accounts post-incorporation	Build professional fees into Year 1 budget honestly
Copying MOA/AOA templates without adapting the objects clause	File all returns on time — even nil returns

PRE-FILING CHECKLIST

Eight Things to Do Before You File a Single Form

YOUR PRE-FILING CHECKLIST

01. Choose your business structure based on funding, liability, and growth trajectory
02. Decide your share structure, face value, and co-founder equity splits before incorporation
03. Draft a Shareholders' Agreement and Founders' Agreement before any money changes hands
04. Prepare clean address proof and director KYC documents to avoid SPICe+ delays
05. Understand the GST registration threshold for your business type — and when to register
06. If foreign investment is involved, understand the FEMA reporting timeline before money arrives
07. Budget honestly for Year 1 compliance: audit fees, CA fees, filing fees, professional tax
08. Appoint an auditor and hold your first board meeting within 30 days of the COI

The businesses that come out strongest are not the ones that were lucky — they are the ones that acted early, stayed compliant, and made decisions based on numbers rather than headlines. The cost of doing it right is always lower than the cost of fixing what went wrong.

Ready to set up your business the right way?

R. Mahesh & Associates handles end-to-end incorporation, compliance setup, and advisory for founders and foreign investors entering India. Over 25 years of specialised experience.

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