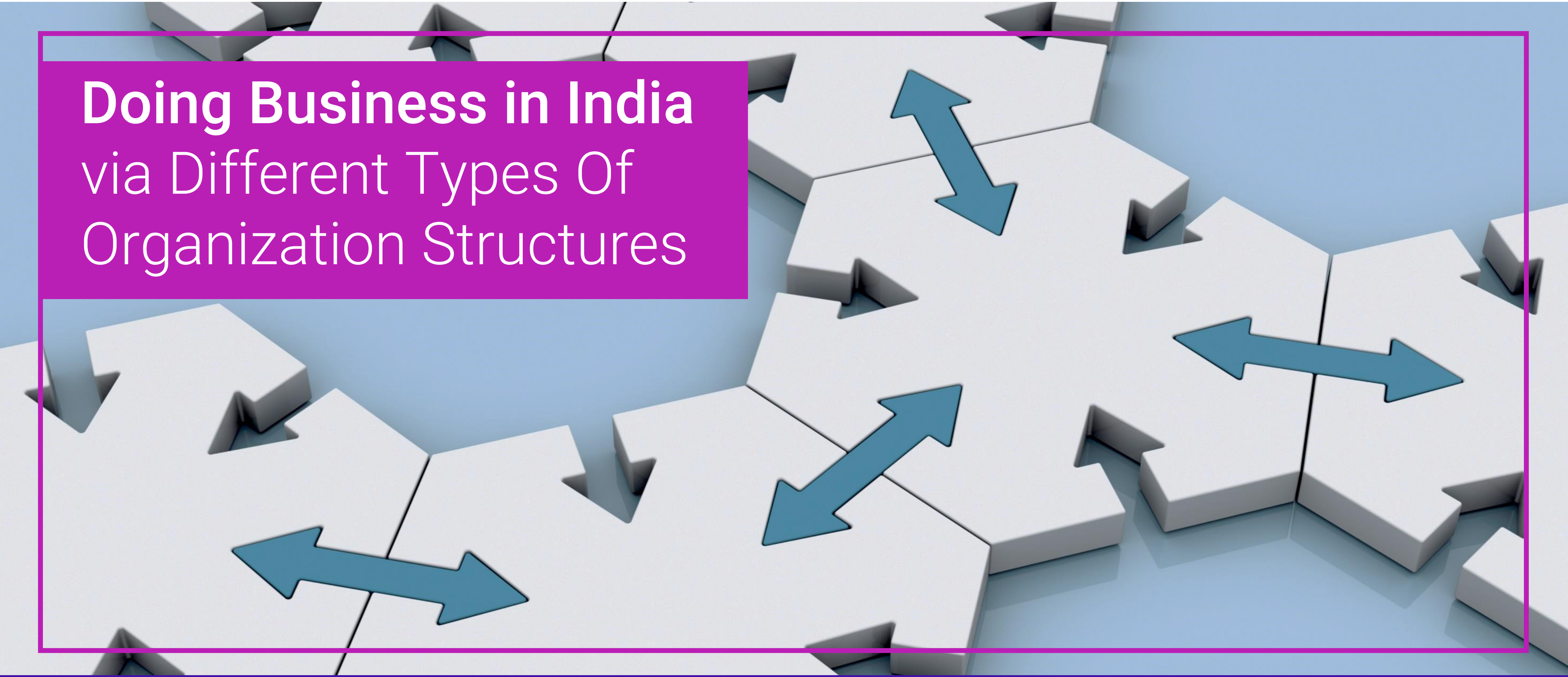
Doing Business in India via Different Types Of Organization Structures



DOING BUSINESS IN INDIA VIA DIFFERENT TYPES OF ORGANIZATION STRUCTURES

Overseas investors can invest in India by forming an incorporated entity through a Wholly Owned Subsidiary (WOS) or Joint Venture (JV) in the form of a Limited Liability Partnership (LLP) or Private Limited Company.

They can also set up their presence in India as a Foreign Company in the form of Liaison Office (LO)/Representative Office, Branch Office (BO), or Project Office (PO).

The main differences between the types of entities are detailed in this article:

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TYPES OF INCORPORATED ENTITIES IN INDIA

Wholly Owned Subsidiaries (WOS)

A. Private Limited Company

The Companies Act, 2013 governs all Private Companies in India. This is an entity type where a foreign investor(s) owns the entire share capital. A Private Company is managed by its Directors (with at least one Resident Director). A Private Company is also required to be incorporated with some amount of paid-up share capital and a minimum of two subscribers. In this structure, the liability of members is limited to the extent of share capital held by them. This structure is more suitable for companies that are part of the manufacturing or trading sector.

Compliances include various mandatory reporting requirements with the Registrar of Companies and the Reserve Bank of India (RBI). There must be a minimum of **four Director meetings per year** (at least one meeting every 120 days) and a minimum of **one shareholder meeting (AGM) per year.**

B. Limited Liability Partnership (LLP)

LLPs in India are governed by The Limited Liability Partnership Act, 2008 and the Partnership Agreement (rules laid out and accepted by all Partners). An LLP is managed by its Partners (with at least one Resident Designated Partner). The primary requirement of the LLP is to have a capital contribution and a minimum of two designated Partners. In this structure, the liability of Partners is limited to the extent of capital contribution held by each of them. This structure is more suitable for companies operating within the service industry.

Unlike Private Companies, LLPs must adhere to a lesser number of compliances.

Joint Venture (JV)

A Joint Venture is the creation of a new entity where the ownership lies with two or more stakeholders. JVs are preferable when 100% FDI is not allowed for certain business activities or when exclusive ownership by overseas investors is not permitted. A Joint Venture can be formed either as a Company or as a Partnership.

A Joint Venture may create value in the following areas:

1. Economies of Scale
2. Innovation
3. New Market Access
4. Distribution Channels
5. Goodwill
6. Technology

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UNINCORPORATED FORMS OF ENTITIES IN INDIA

Foreign Company - Liaison Office/Branch Office/Project Office (LO/BO/PO)

These entity types are extensions of the Foreign Company's headquarters, and hence, it has no separate legal existence per se. An LO/BO/PO is purely created to establish the presence of a Foreign Company in India. Therefore, it is not free to carry out business as usual activities in India, which can be undertaken by an Indian Private Company/LLP. It is also more regulated by the Reserve Bank of India (RBI) and the Registrar of Companies.

The activities permissible under these entities depend on the Foreign Exchange Regulations. As part of the eligibility criteria, the Foreign Company is required to have a profitable track record during the five Financial Years (in the home country) immediately preceding the incorporation of an entity and a net worth of USD 100,000 or more. Furthermore, the Authorized Representative should be a Resident Indian having a valid Permanent Account Number (PAN) and local address.

The main difference amongst all these three types of entities are given below:

Liaison Office (LO)/ Representative Office: This kind of entity is valid for a period of three years, and approval must be provided by the Reserve Bank of India. This is preferable if the company wants to merely promote its business activities in India. No invoicing can be raised from India, and the LO is not allowed to acquire any immovable property in India.

Branch Office (BO): A BO has no validity period. This entity type is preferable for companies who want to undertake business activities in India in the name of the Foreign Company, unlike a Liaison Office. A BO can raise an invoice in the name of the BO, and they are allowed to acquire any immovable property in India.

Project Office (PO): A Foreign Company can establish its presence in India in the form of a Project Office when any specific projects are assigned to a Foreign Company in India. So, for ease of operations, Foreign Companies may establish a Project Office, which is valid till the time of completion of the projects. A PO is allowed to acquire any immovable property in India as required for the project.

The mandatory registrations for all these entity types include PAN, TAN, Shops & Establishment Registration, and Professional Tax. Additionally, a GST and Import and Export Code (IEC) will be required for a Branch Office.

Compliances include annual compliances and reporting any change in data that has been submitted at the time of registration. Changes must be reported to the Registrar of Companies (ROC) and Reserve Bank of India under FEMA.

A Foreign Company can establish itself as one kind of entity only, which means that two different types of establishment are not permitted from the same Foreign Company.

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In order to opt for the most effective structure for doing business in India, there are multiple factors associated with each entity structure with respect to compliances, limitation of liability, set up requirements, applicable laws, etc. A major factor is the tax implication, which is to be considered on the basis of the relevant tax treaties between the two countries. Overseas investors should consider all such factors before they opt to choose their optimal entity type in India.

About Nexdigm (SKP)

Nexdigm (SKP) is an employee-owned, privately held, independent global organization that helps companies across geographies meet the needs of a dynamic business environment. Our focus on problem-solving, supported by our multifunctional expertise enables us to provide customized solutions for our clients.

We provide integrated, digitally driven solutions encompassing Business and Professional Services, that help companies navigate challenges across all stages of their life-cycle. Through our direct operations in the USA, Poland, UAE and India, we serve a diverse range of clients, spanning multinationals, listed companies, privately-owned companies, and family-owned businesses from over 50 countries.

Our multidisciplinary teams serve a wide range of industries, with a specific focus on healthcare, food processing, and banking and financial services. Over the last decade, we have built and leveraged capabilities across key global markets to provide transnational support to numerous clients.

From inception, our founders have propagated a culture that values professional standards and personalized service. An emphasis on collaboration and ethical conduct drives us to serve our clients with integrity while delivering high quality, innovative results. We act as partners to our clients, and take a proactive stance in understanding their needs and constraints, to provide integrated solutions. Quality at Nexdigm (SKP) is of utmost importance, and we are ISO/ISE 27001 certified for information security and ISO 9001 certified for quality management.

We have been recognized over the years by global organizations, like the International Accounting Bulletin and Euro Money Publications.

Nexdigm resonates with our plunge into a new paradigm of business; it is our commitment to ***Think Next***.

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