

Legal compliances to start an e-commerce business in India

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Abstract

Of late, internet has emerged as the mode of quick and rapid purchase revolution making inroads in the busy life of the consumers. Be it for communication or explorations. 'Internet' has become the central-hub for all activities performed by an individual. A day will come when people would be calling a person as illiterate who's unable to operate internet. Resultantly, internet growth has led to a host of new developments, such as consumers turning more and more to the internet for buying goods at an affordable pricing. Internet has truly been a catalyst in changing the basic fundamentals of doing business over the web.

E-Commerce has its roots from foreign jurisdictions. The concept has evolved in developed nations like United States. These jurisdictions have appropriate laws and adequate infrastructure to cater the needs of online stakeholders.

The legal requirements for running and conducting e-commerce business in India also involve compliance with laws like Contract Act, Company Law, Indian Penal Code, etc. Further, online shopping also involves compliance with the banking and financial norms applicable in India. The most vulnerable categories that have opened their online shops pertain to online pharmacies, online gambling and gaming, electronics, etc. These e-commerce portals are not at all complying with the respective laws of these segments.

Even the Indian government is lax in implementing the regulatory and compliance requirements against these illegal online Pharmacies, gambling portals and other similar e-commerce platforms. For instance, take the example of PayPal in this regard. If PayPal has to allow online payments receipt and disbursements for its existing or proposed e-commerce activities, it has to take a license from Reserve Bank of India (RBI) in this regard. Further, cyber due diligence for Paypal and other online payment transferors in India is also required to be observed.

Keywords: E-commerce is Electronic Commerce, Permanent Account Number (PAN), Tax deduction Account Number (TAN), Value Added Tax (VAT) registration and obtaining of Tax Identification Number (TIN), Professional Tax if applicable, Service Tax.

Introduction

Change is the law of nature. Adaptability is the nature of human being. Gone are those days when businesses were conducted from a stationary position. Now business will be done in the virtual world, which is on the rise and its presence is going to be felt by one and all in India. But India needs to be geared up and ready to face the new issues, innovation and challenges. Well the term E-commerce is Electronic Commerce, and today we have a complete 26 alphabet prefixed with 'E' to denote plethora of meaning. Business Standard mentions that India will be the fastest growing market. IBN writes India is still small as it is Rs 38 trillion over all retail trade industry. In 2014, E- com formal sales crossed 1 trillion and it created a buzz in the global market. Economic Times states that the start-ups have logistical challenges providing more opportunity and Amazon, Ali Baba, Snap Deal etc to have new avenues.

Internet has become the epi-centre for all. Net savvy customers are going crazy in online like never before to buy goods and services. Of the queries regarding successful and legal opening of e-commerce business in India, I'll be explaining the legal formalities required for starting e-commerce business in India. I would like to mention that we have no dedicated e-commerce laws and regulations as such in India, as a matter of fact they are still in the making. The Information Technology Act 2000 (IT Act 2000) governs the

online disputes of e-commerce in India. But Act in true sense is falling deficient.

The cyber law of India mandates that the e-commerce entrepreneurs and owners must ensure Cyber law due diligence in India. The said Law has already become very stringent and many foreign and Indian companies and online websites have been prosecuted in India for non compliance of cyber due diligence.

This has led to a sort of confusion and uncertainty prevailing among e-commerce entrepreneurs in India. While some have opened e-commerce outlets through websites others are still exploring a more appropriate and legal way of running and conducting an e-commerce business in India.

Methodology

As there are different types of businesses in India, Legal issues also differ as per the nature of the business. For instance, trading of medical drugs through electronic medium requires more stringent e-commerce and legal compliances when compared to other e-commerce oriented business. Websites dedicated to Health care products are scrutinised more aggressively than other e-commerce activities. In fact, regulatory and other legislative steps are been taken to arrest the online trading of banned drugs are already in the loop.

Apart from this there are several legal Compliances that are required in order to incorporate and start a company for e-commerce activity in India. A business can be operated as:

- (1) Sole Proprietorship
- (2) Partnership
- (3) Company – Public/Private
- (4) Limited Liability Partnerships (LLP)
- (5) One Person Company (OPC)

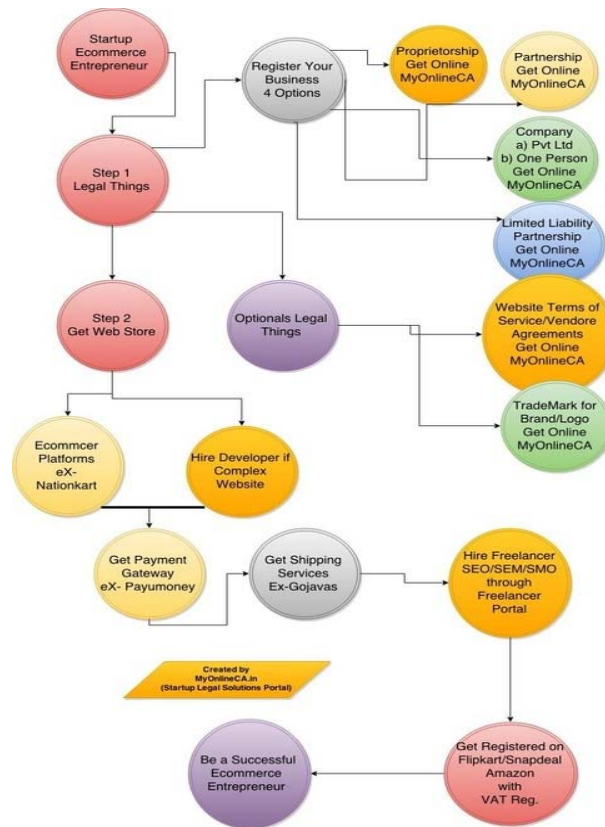
On umpteen occasions people decide to open a private company to substantiate an e-commerce activity and this paper would cover that aspect alone. To incorporate a private limited company you must approve its name, registered office address, must have at least 2 directors with Director Identification Numbers (DINs), must have a minimum authorised capital of Rs. 1 Lac, Memorandum of Association (MOA) and Articles of Association (AOA), Digital Signature Certificates (DSCs) wherever applicable, etc. The moment these conditions and requirements are fulfilled and satisfied, a Certificate of Incorporation which is the birth certificate of the company is sent by post to the registered office of the newly incorporated company.

A private limited company is under an obligation to comply with income tax related formalities. These include obtaining permanent account number (PAN), Tax deduction Account Number (TAN), Value Added Tax (VAT) registration and obtaining of Tax Identification Number (TIN), Professional Tax if applicable, Service Tax, etc. In certain cases, compliance with Labour Laws and EPF legislations are also required. For instance, the Bombay Shops and Establishment Act is a legislation implemented by various States in India. The Act lays down mutual statutory obligations and rights of employers and employees. Registration of shop/establishment is mandatory within 30 days of commencement of work. Other workmen and labour related legislations cover areas like employees provident fund, employees state insurance, etc.

However, e-commerce in India is also required to be conducted in a legally permissible manner. This is more so when the Information Technology Act 2000 (IT Act 2000) prescribes stringent penal and pecuniary penalties for violation of its provisions during e-commerce transactions. The e-commerce players must ensure Cyber Law due diligence while operating in India. It becomes more relevant to comply because Cyber Law has become very stringent and now foreign companies and related websites are frequently been prosecuted in India for nonexercise of cyber due diligence.

The legal compliances for incorporating E-Commerce business in India also involve compliance with laws like contract law, Indian penal code, etc. Furthermore, Customers inflicting online purchases also involve compliance with the banking and financial norms existing in India. For instance, let's consider PayPal as an example in this regard. If PayPal has to allow online payments receipt and disbursements for its existing or proposed e-commerce activities, it has to opt and take a license from Reserve Bank of India (RBI). Further, Paypal has to work in consonance with the Cyber laws.

To start an e-commerce venture one can follow these simple steps. You need following legal compliances which are explained hereunder:



However, it is more important to brief you about the business registrations

One has to register any type of a business one intends to run as-

1) As a Firm 2) As a LLP 3) As a Company

1) As a Firm

Firm Registration is also two types:

a) Sole Proprietorship Firm: If you are single owner then just go to nearby Bank and open a Current Account. It is mandatory to have a "Current Bank Account" in Proprietorship Firm. For this the documents required are as per the RBI Guidelines.

VAT Registration will be needed: If you are dealing in products. e.g.: Wanna sell on Flipkart, Snapdeal etc. The norms specifies that if your turnover exceeds Five Lacs then its mandatory that the business unit has to get VAT Registered. Basically it's a tax imposed by the State. It may differ from State by State. It may attract a cost between seven thousand to ten thousand and in few states they demand security also like FD.

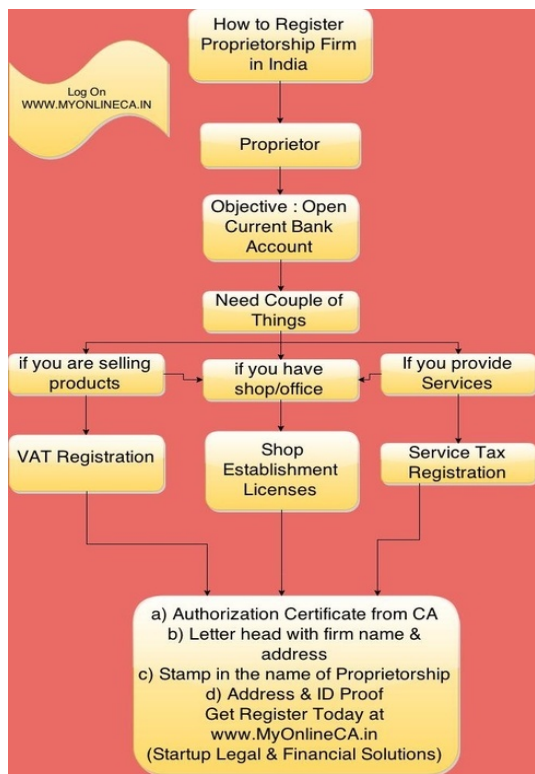
OR

Service Tax Registration: Suppose if you are a service provider then you have to register under service tax registration. Compliances specify that if your turnover exceeds nine lac per annum then you have to register under service tax registration. The cost involved is between 2k to 4k.

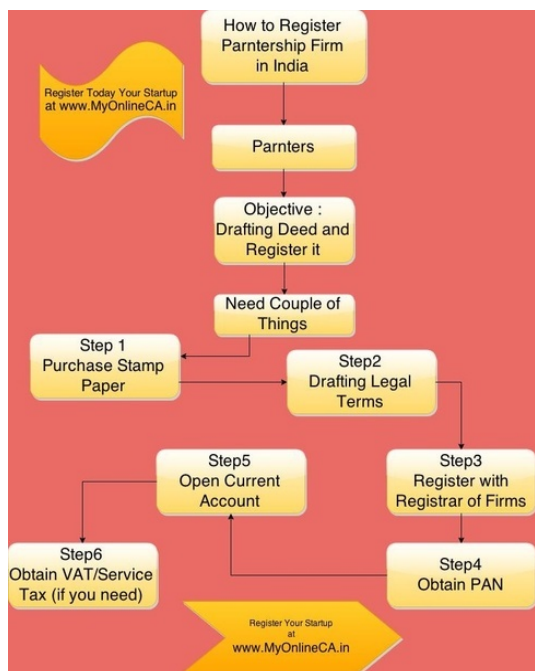
OR

Shop Establishment Licenses: Suppose if you have a shop or an office then you are under an obligation to obtain these licenses. When compared to VAT or Service Tax the cost involved is peanuts. Documents required are, Certificate from Chartered Accountant regarding nature of business so that

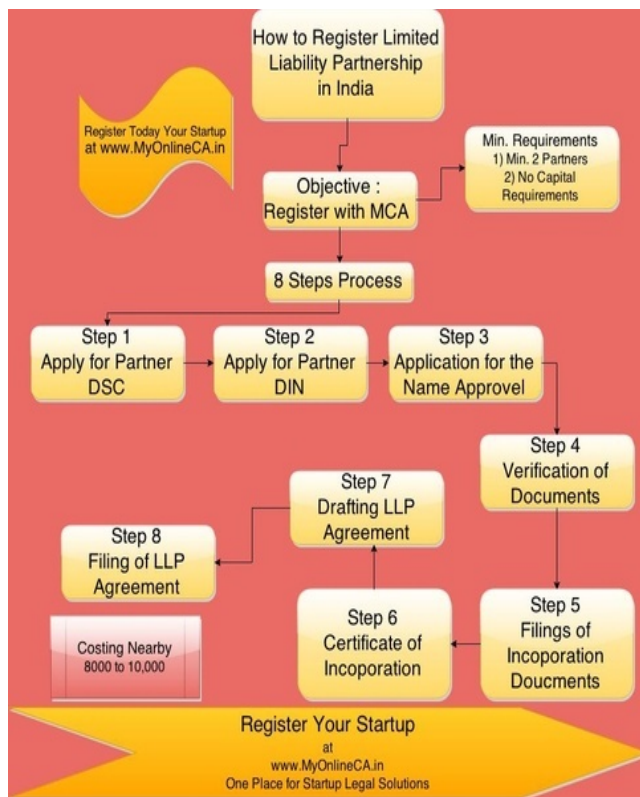
you can open your Current account. Summary of Proprietorship and relevant documents supporting your status like Objective of the Business, address proof, Stamp in the name of the Firm, Letter Heads etc.



b) Partnership Firm: It is bit complex process when compared to the Proprietorship. In partnership you need to have a minimum of two partners. One has to bring the requisite form from the Partnership Registration Office and purchase a Stamp Paper of Rs Five Hundred and draft the objective of the business, your legal terms and conditions and the liability of the partners along with the nature of business you intend to carry out and the nature of Partnership. Apply for PAN & Open Current account in the name of the Firm.



2. As a LLP: LLP (Limited Liability Partnership) is a newly introduced concept in India. In simple words it's blend of a Partnership and a Company. Usually in Partnership Firm the Liability is unlimited and extends to the personal properties of the Partners. However LLP is a corporate business vehicle that enables professional expertise and entrepreneurial initiative to combine and operate in a flexible innovative and efficient manner, providing benefits of limited liability while allowing its members the flexibility for organising their internal structure as a partnership. It is a legal entity, separate from its partners having perpetual succession. In LLP the liability is limited to the extent of agreed contribution.

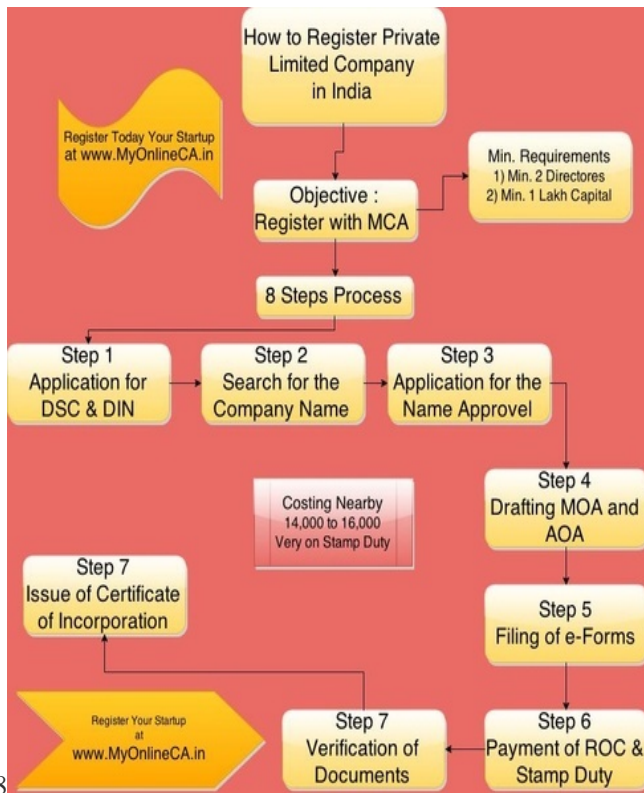


3) Company: A company can be primarily registered in 2 types:

a) Private Limited Company: A minimum of 2 members and maximum 200 are required for registering a Pvt. Ltd Company. The Directors of the company can also be the Share Holders of the Company. Minimum Paid up capital is Rs 1 Lac. DIN (Director Identity Number) for all the directors and DSC (Digital Signature Certificate) for two Directors is issued. Process of registering is the company is in 8 steps as shown in the Chart.

b) Public Limited Company: In such companies the minimum seven members are required and there is no cap on the maximum number of members. Minimum paid up capital is Rs 5 Lac. Minimum number of Directors should be Three. DIN (Director Identity Number) for all the directors and DSC (Digital Signature Certificate) for any one of the Directors is issued. Process of registering is the company is as shown in the Chart.

A Public Limited Company has most of the characteristics of a Pvt. Ltd Company. Amongst the various forms of corporate in India; public company is one of the reputed and highly esteemed corporate that can issue securities in respect of raising funds.



References

1. Economic Times
2. E-Commerce websites
3. Book on Company Law, by N.D. Kapoor
4. Book on IT Act.

c) **One Person Company(OPC):** The concept of OPC is a new vehicle/Form of business, introduced by The Companies Act, 2013{No. 18 of 2013}, thereby enabling entrepreneur(s) carrying on the business in the Sole-Proprietor form of business to enter into a corporate framework.

One Person Company is a hybrid of Sole-Proprietor and Company form of business, and provided with concessional/relaxed requirements under the Act.

In such type of company the shareholder will be only one person who is a natural person and has stayed in India for not less than 182 days during the immediately preceding one calendar year. However he can nominate another person who shall become the shareholder in case of his death/incapacity. Such companies must have minimum of one director and Maximum can be 15.

Findings

E-commerce entrepreneurs and owners in India must understand that legal aspects of doing electronic commerce business in India are different for different categories. For instance, if the businessman or the Company is willing to trade in electronic trading of medical drugs, it requires more stringent e-commerce and legal compliances as compared to other e-commerce activities. Digital communication channels for drugs and healthcare products are scrutinised more aggressively than other e-commerce activities.

Conclusion

To conclude the researcher recommends that all e-commerce entrepreneurs and owners must do a proper techno legal due diligence before opening an e-commerce website. The internet intermediary liability in India may be frequently invoked against e-commerce websites in India as the Information Technology (Intermediary Guidelines) Rules 2011, prescribes stringent liabilities for e-commerce websites in India.