

FORMATION OF A COMPANY - A COMPARISON BETWEEN INDIA AND JAPAN

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ABSTRACT

This research paper aims to compare the process of forming a company in India and Japan. Both countries have different legal and regulatory frameworks for company formation, which significantly affect the ease of doing business. The paper examines the various steps involved in the company formation process, including registration, incorporation, and compliance requirements. The study finds that India has simplified its company formation process in recent years, with the introduction of the online registration system and the elimination of the requirement for a minimum capital. However, there are still significant bureaucratic hurdles and delays in obtaining various clearances and licenses. On the other hand, Japan has a highly streamlined and efficient company formation process, with a focus on ensuring the quality and reliability of the companies. The Japanese government provides various incentives and support to encourage the formation of small and medium-sized enterprises. Overall, this paper provides a comparative analysis of the company formation process in India and Japan, highlighting the differences in their legal and regulatory frameworks and the impact of these differences on the ease of doing business.

Keywords: Company Law, India, Japan, Formation of a Company, Business, Company

INTRODUCTION

Forming a company is a complex process that involves multiple legal and regulatory requirements. The ease of doing business depends on the efficiency of the company formation process. India and Japan are two major economies in Asia, with distinct legal and regulatory frameworks for company formation. This paper aims to provide a comparative analysis of the company formation process in India and Japan.

DEFINITION OF A COMPANY

A company is a legal entity formed by the group of individuals to engage in & operate a business, commercial or industrial enterprise. According to Chief Justice Marshall of USA, “A company is an artificial person, invisible, intangible, and existing only in the contemplation of the law”.

CHARACTERISTICS OF A COMPANY

1. *Artificial legal person:*

It is created by law as many legal formalities have to be fulfilled for its formation. It is not a human being but a legal person, however, it acts through human beings.

2. *Common Seal:*

A company should have its name engraved in legible character on its seal.

3. *Perpetual Existence:*

Members may come & go but the life of a company remains unaffected. The company never dies except it is wound up according to law.

4. *Voluntarily Association:*

It is a group of persons to carry out a business for profit making. Exception: Section 8 of Companies Act 2013

5. *Separate Legal Entity:*

After the incorporation of a company it becomes a separate legal entity from its members. In the eyes of law, a company is regarded as an individual person & its personality is corporate personality.

6. Sue & be sued:

As it is a legal person it can be sued by any person, also can sue any person.

7. Contracts:

A company can enter into contract by its own name.

8. Limitations to its action:

A company can only perform those actions which are return in its memorandum of association (MOA).

9. Limited Liability:

In a limited company, the members of the company are only liable to contribute towards payment of their debts to a limited extent.

COMPANY FORMATION PROCESS IN INDIA

The company formation process in India is governed by the Companies Act, 2013, and the rules and regulations made thereunder. The following are the steps involved in the company formation process in India:

1. Obtaining Digital Signature Certificate (DSC):

The first step in the company formation process is to obtain a digital signature certificate(DSC) for the proposed directors of the company.

2. Obtaining Director Identification Number (DIN):

The next step is to obtain a director identification number (DIN) for the proposed directors of the company. It is a unique identification number allotted to directors of Indian companies. It is mandatory for all directors to obtain a DIN.

3. Name Reservation:

The third step is to apply for name reservation of the proposed company with the Registrar of Companies (ROC). The company's proposed name must be approved by the

Registrar of Companies (ROC). The name must be unique and not similar to any existing companies.

4. Incorporation:

Once the name is approved, the company can be incorporated by filing the necessary documents, such as Memorandum of Association (MOA), Articles of Association (AOA), and other required forms, with the ROC.

5. Obtaining Permanent Account Number (PAN) and Tax Deduction and Collection Account Number (TAN):

After incorporation, the company must obtain a permanent account number (PAN) and a tax deduction and collection account number (TAN). PAN is a unique identification number assigned to the company for tax purposes. The TAN is required for deducting and collecting taxes.

6. Registration for Goods and Services Tax (GST):

Depending on the nature of the business, the company may need to register for Goods and Services Tax (GST) with the relevant authorities. The GST is a unified tax system in India. Companies must register for GST if their annual turnover exceeds a certain threshold.

7. Other Compliances:

There are various other compliances that the company must adhere to, such as obtaining licenses and clearances from various authorities, filing annual returns and financial statements, and conducting regular board meetings and shareholder meetings.

COMPANY FORMATION PROCESS IN JAPAN

The company formation process in Japan is governed by the Companies Act and other relevant laws and regulations. The following are the steps involved in the company formation process in Japan:

1. Preparation of Articles of Incorporation:

The first step in the company formation process is to prepare the articles of incorporation, which include the name and purpose of the company, the amount of capital, names as well as addresses of the directors and shareholders.

2. Notarization of Articles of Incorporation:

Notary public notarized the articles of incorporation. This ensures the validity of the document.

3. Payment of Capital:

The minimum capital required for a company in Japan is JPY 1 million. The capital must be paid into a designated bank account before the company is registered.

4. Registration with Legal Affairs Bureau:

The company must be registered with registration process. This involves submitting various documents, such as the articles of incorporation and proof of payment of capital.

5. Registration with Tax Office:

Company should register with the Tax Office. This involves obtaining a tax identification number and registering for various taxes.

6. Other Compliances:

There are various other compliances that the company must adhere to, such as obtaining licenses and permits, filing annual tax returns, and conducting regular board meetings and shareholder meetings.

The process of forming a company in India and Japan differs in some significant ways. Here are some of the differences:

On the Basis	INDIA	JAPAN
Company Formation Requirements:	A minimum of two persons is required to start a private limited company.	A single person is required to start a company, known as a "Godokaisha."
Registration Process	The process involves obtaining a Director Identification Number (DIN), Digital Signature Certificate (DSC), and filing various documents with the Registrar of Companies (ROC).	The process involves registering with the Legal Affairs Bureau.
Share Capital	Companies are required to have a minimum authorized and subscribed share capital.	There is no such requirement.
Board of Directors	Every company must have a board of directors comprising a minimum of two directors.	A Godokaisha may have a single director.
Company Law	India has the Companies Act.	Japan has the Company Law

CONCLUSION

In conclusion, the company formation process in India and Japan differs significantly in terms of the legal and regulatory frameworks. India has simplified its company formation process in recent years, but there are still bureaucratic hurdles and delays. Japan has a highly streamlined and efficient company formation process, with a focus on ensuring the quality and reliability of the companies. Understanding these differences can help businesses make informed decisions about where to invest and operate.

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