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IT & TECHNOLOGY COMPANY SETUP IN INDIA

Legal, Tax & Intellectual Property Advisory Manual

A definitive blueprint for Software (SaaS), AI, FinTech, and ITES corporate structuring.

Strictly Confidential & Privileged

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Contents

1. Executive Summary: The IT Regulatory Landscape

The architecture of an Information Technology (IT) entity in India—encompassing SaaS platforms, frontend/backend development agencies, AI laboratories, and IT Enabled Services (ITES)—requires far more than standard corporate registration. It demands a sophisticated alignment of **Intellectual Property (IP) ring-fencing, Data Privacy compliance (DPDP Act, 2023), equity structuring for technical talent, and cross-border tax optimization.**

STRATEGIC TECH INSIGHT

For tech startups, the codebase and UI/UX architecture are the primary assets. Failure to secure IP Assignment Agreements from founding developers before incorporation is the leading cause of failed Due Diligence (DD) during Series A/B funding rounds. The entity, not the individual coders, must possess undisputed ownership of the proprietary technology.

This manual provides founders, CTOs, and foreign investors with a Big-4 grade roadmap to architect a scalable, VC-ready, and compliant IT enterprise under Indian jurisdiction.

2. Entity Selection: The Tech-Scalability Matrix

Venture Capital (VC) and Private Equity (PE) funds exhibit a rigid mandate regarding corporate structures. The matrix below delineates the preferred vehicles for technology enterprises.

Parameter	Private Limited Company	LLP	US C-Corp (Subsidiary)
Best For	Scalable SaaS, AI, DeepTech, FinTech	Bootstrapped Dev Agencies, IT Consulting	Global SaaS targeting US enterprise clients
Fundraising	**Exceptional.** Standard for institutional capital.	**Poor.** Cannot issue equity shares.	**Exceptional** for US VCs (Y-Combinator model).
ESOPs	Easily structured via Equity/Options.	Impossible to issue equity to tech talent.	Highly flexible.
Compliance Burden	High (Statutory Audits, MCA filings)	Moderate	Very High (FEMA + IRS + MCA dual compliance)

Recommendation: Over 95% of funded tech startups utilize the **Private Limited Company** structure. For service-based IT development agencies without external funding aspirations, an LLP provides tax efficiency and lower compliance overhead.

3. The Genesis: IT-Specific Incorporation Protocol

The transition to a registered statutory body is governed by the MCA's **SPICe+ (INC-32)** system. For IT companies, the drafting of the charter documents requires specialized attention.

3.1. Drafting the Main Objects Clause (MoA)

The Memorandum of Association (MoA) must explicitly cover current operations and future technical pivots.

- **Software Development & SaaS:** Authorization to design, develop, host, and monetize web applications, mobile architectures, and cloud-based software.
- **Emerging Technologies:** Explicit inclusion of Artificial Intelligence, Machine Learning, blockchain integration, and data analytics to prevent ultra-vires issues during future product launches.

3.2. Phase 2: SPICe+ Execution

1. Procurement of Digital Signature Certificates (DSC) for founders.
2. Name Reservation (must not infringe on registered tech trademarks).
3. Filing SPICe+ Part B with e-MoA (INC-33), e-AoA (INC-34), and AGILE-PRO-S (INC-35) for GSTIN, EPFO, ESIC, and Bank Accounts.

4. Cap Table, Co-Founders & ESOP Architecture

The distribution of initial equity dictates board control and future dilution trajectories.

CRITICAL RISK ALERT

Never issue 50/50 equity splits between two co-founders without a documented deadlock-resolution mechanism in the Founders' Agreement.

- **Reverse Vesting:** Founders should not receive their full equity upfront. Implement a 4-year reverse vesting schedule with a 1-year cliff. If a CTO leaves within 6 months, their unvested shares return to the company pool.
- **ESOP Pool:** Reserve a 10% to 15% Employee Stock Ownership Plan (ESOP) pool at incorporation. High-tier engineering talent (React/Node.js architects) often demand equity over high base salaries in early-stage startups.
- **Capital Infusion:** Paid-up capital must be deposited into the corporate bank account within 60 days to file **INC-20A** (Commencement of Business).

5. Intellectual Property (IP) & Data Protection

For an IT company, IP and Data are the only balance sheet assets that truly matter.

5.1. Codebase & Brand Protection

- **IP Assignment Agreements:** Every developer, UI/UX designer, and independent contractor MUST sign an IP Assignment Agreement transferring all copyrights in the code/designs to the company.
- **Trademarking:** The SaaS product name, corporate logo, and proprietary algorithms should be trademarked under Class 9 (Software) and Class 42 (SaaS/IT Services).
- **Software Copyright:** Unlike patents, software source code in India is protected under the Copyright Act, 1957 as "literary work."

5.2. Digital Personal Data Protection Act, 2023 (DPDPA)

Tech companies handling Indian user data act as "Data Fiduciaries." Immediate compliances include:

1. **Consent Architecture:** UI must incorporate explicit, affirmative consent pop-ups for data collection. Pre-ticked boxes are illegal.
2. **Data Minimization:** Collecting unnecessary data (e.g., asking for location when the app only needs an email) violates the Act.
3. **Grievance Officer:** Appointment of a Data Protection Officer (DPO) and publishing their details on the frontend application.

6. IT-Specific Registrations & Tax Exemptions

Tech companies possess unique advantages under Indian sovereign schemes.

7. Core Commercial Contracts (The Tech Stack)

A robust legal stack is as critical as the software stack. Avoid generic templates.

- **Master Service Agreement (MSA) & SOWs:** Defines the overarching relationship with enterprise clients, payment milestones, and limitation of liability.
- **SaaS Agreement / EULA:** The End User License Agreement dictates how users interact with your software, prohibiting reverse engineering and data scraping.
- **Service Level Agreement (SLA):** Quantifies uptime guarantees (e.g., 99.9% uptime) and penalty credits for server downtime.

Registration Type	Strategic Advantage
DPIIT Startup India	Grants the entity "Recognized Startup" status. Unlocks 80% rebate on patent fees, fast-track IP examination, and exemption from Angel Tax (Sec 56(2)(viib)).
Section 80-IAC	100% Income Tax exemption on corporate profits for 3 consecutive years (subject to Inter-Ministerial Board approval).
STPI Registration	Software Technology Parks of India registration is vital for IT export units. Offers custom duty exemptions on hardware imports and relaxed forex norms.
LUT for GST	Letter of Undertaking (LUT) allows IT firms to export software/services globally without paying integrated GST upfront.

8. The Fiduciary Calendar: ROC & IT Compliance Matrix

Failure to maintain the corporate veil through timely compliance will trigger severe penalties and restrict the ability to close funding rounds.

Statutory Mandate	Section	Type	Strict Deadline	Default Consequence
First Board Meeting	173(1)	Event	Within 30 days of CoI	INR 25,000 penalty
Statutory Auditor (ADT-1)	139(6)	Event	Within 30 days of CoI	INR 300/month late fee
Commencement (INC-20A)	10A	Event	Within 180 days of CoI. *(Requires bank proof)*	**Company Strike-off**
CERT-In Reporting	IT Act	Event	Within 6 hours of a cyber security incident	Severe penal action
Director KYC (DIR-3)	Rule 12A	Annual	30th September	DIN Deactivation
Annual General Meeting	96	Annual	Max 6 months from FY end	Up to INR 1,00,000
Financials (AOC-4)	137	Annual	Within 30 days of AGM	INR 100 per day
Annual Return (MGT-7)	92	Annual	Within 60 days of AGM	INR 100 per day
Foreign Liabilities (FLA)	FEMA	Annual	15th July (If foreign FDI exists)	RBI compounding

Architect Your Tech Enterprise With Precision

As a premier legal advisory firm specializing in the IT, SaaS, and Digital sectors, **Startup Solicitors LLP** merges Big 4 compliance rigor with modern legal tech. We provide end-to-end architecture for incorporation, software IP protection, ESOP structuring, and VC readiness.

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