



COMPANY FORMATION IN INDIA

MAIN FORMS OF COMPANY/BUSINESS IN INDIA

There are various models for starting a Business/Company in India, some of them useful for a foreign entity are as follows:

Liaison Offices (LO)

Foreign Investors willing to look into the Indian market and promote their business before start of commercial operations can establish a liaison office. The liaison office acts as channel of communication with head office. A liaison office is permitted to do promotional activities and networking in India. A liaison office is not allowed to do any business activity or earn income in India.

Branch office/Project Office

Entities engaged in manufacturing/trading activities outside India can set up a branch office/ project office in India. A project office is a place to represent the interest of the foreign company executing a project in India for export/import of goods and rendering of services. Profits of a branch office are permitted to be remitted outside India subject to taxation in India. However, a branch office cannot engage itself in manufacturing/processing activities in India.

Subsidiary/Joint Venture in form of Private Limited/Limited Companies/Partnership Firms

Foreign entities which are starting operations in India, including setting up production processes, can set-up wholly owned subsidiaries or JV with Indian or Foreign partners with the maximum flexibility to conduct business in India. Permitted Sources of funding could be Equity or Equity with Debt.

SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

Of the major tax laws applicable in India, those that impact a foreign entity are as follows:

Central (Federal)

1. Income Tax [including withholding taxes, dividend distribution tax]
2. Excise Duty
3. Service Tax
4. Customs Duty

State

1. VAT
2. Profession Tax

LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

Liaison office: Prior approval of the Reserve Bank of India (RBI) is required and Intimation to Director General of Police of the State within 5 working days of entity becoming operational is required to be submitted.

Branch office: Prior approval of RBI required (other than activities in Special Economic Zones, or SEZs), Intimation to Director General of Police of the State within 5 working days of entity becoming operational.



Subsidiary/ Joint Venture: No Prior approval required, Only post facto filings with RBI if comes under Automatic Route, Any other case Government of India (GOI)/Foreign Investment Promotion Board (FIPB) approval is required.

CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY

1. India is a land of different cultures – too aggressive or forceful or confronting behavior should be avoided
2. Both strongly held traditional values and emerging modern business practices are prevalent
3. Greet with a handshake or namaste
4. Always use formal titles (Mr., Dr., Sir, Madam) when greeting for first time
5. Punctuality – be prepared for delays in appointments, particularly in Government offices
6. Most Indians are reluctant to say no directly - try to understand the message behind the words
7. Get to know your counterpart as a person and gain his trust
8. Be willing to share a cup of tea/coffee and indulge in small talk before getting down to the main business
9. Do not be offended at personal questions

OTHER COUNTRY-SPECIFIC ISSUES RELATED TO ESTABLISHING A COMPANY

1. Prohibited Sectors

Certain sectors are prohibited for investment by a Non resident Entity including: Retail Trading (except single brand), Atomic Energy, Lottery Business, Gambling & Betting; Real estate business or construction etc.; Agriculture (excluding floriculture, horticulture, seed development, animal husbandry, pisciculture, cultivation of vegetables & mushrooms under controlled conditions, services related to agro and allied sectors) and plantations (other than tea plantations)

2. Foreign Direct Investment (FDI) approval is required

For sectors like - Petroleum sector (except refining), LNG/Gas pipelines, Commodity Exchange Infrastructure Companies in the Securities Market, Credit Information companies, Investment companies in infrastructure & services, Defence & Strategic Industries, Atomic Minerals etc.

3. Automatic Approval

100% or below investment is permitted under automatic route for sectors not covered in 2 above.

4. Other legal requirements

If you want to set up a business in India, you will be required to obtain registration with various authorities and obtain various permits like construction permits, Personal Account Number (PAN), Tax Deduction and Collection Account Number (TAN), registration under shop and establishment Act, Social Security registration, etc.