India: Entry Strategy

Legal Structures in India

A foreign business looking to set up its operations in India can consider the following options:

Wholly-owned subsidiary company

A foreign company can set up a wholly owned subsidiary company in India to carry out its activities. Such company shall be treated as an Indian resident despite having 100% foreign-shareholding. Minimum two members are required for a private limited company, and seven members for a public limited company. Such company must comply with the provisions of the FDI policy.

Joint venture with an Indian partner (equity participation)

Foreign companies can also form strategic alliances with Indian partners, for carrying out business operations in India. Such company also must comply with the provisions of the FDI Policy.

Limited liability partnership (LLP)

LLP is a new form of business structure in India. It combines the independent legal status & perpetual succession nature of a company, with the organizational flexibility of a partnership firm. At least two partners are required to form an LLP and they have limited liability in the business.

Incorporation Approach

Pre Incorporation

- Drafting of Shareholder Agreement (not mandatory but suggestive)
- Regulatory Approval if required (varies with the sector)
- Obtain Director Identification Number (DIN) and Digital Signature Certificate (DSC)
- Identification & Reservation of Name

Incorporation

- Drafting Memorandum of Association (MOA) & Article of Association (AOA) – Constitutional Documents
- Power of Attorney to filling the MOA and AOA
- Certificate of Registration
- Public Company is required to obtain a Certificate of Commence of business

Post Incorporation

- Opening a bank account
- Allotment of shares
- Income Tax Registration
- Import Export Code
- Sales Tax Registration
- Central Excise Registration
- Service Tax Registration

Overview of Setting up a Company in India

Procedure to set up a company in India

A limited liability company, commonly referred to as a Company, is the most common business structure in India. The shares in a company limit the shareholder's liability to the extent of his/her investment (including any uncalled amounts) in the shares of the Company. The decision regarding the final structure, however, is based on commercial and taxation considerations.

The procedure and scope of our services for setting up a company is explained hereafter:

Proposed Name of Company

In order to reserve the available name, the applicant provides:

- 1 to 6 proposed names in order of preference;
- Proposed "Main Object" of the company;
- Details of minimum two Promoters (first subscribers);
- Details of minimum two Directors.

Once the name is approved, it is reserved for a period of 60 days. The proposed company could be incorporated immediately upon the approval of the proposed name.

First Director(s) and Subscriber(s)

Every company is required to have a minimum Two (2) Directors and Two (2) Subscribers (for a Private Limited Company) and Three (3) Directors and Seven (7) Subscribers (for a Public Limited Company).

Director Identification Number (DIN)

Each of the proposed directors is required to obtain a DIN.

- Proof of identity & proof of residence is required.
- A prescribed format duly signed by the applicant is also required.
- Attestation: All supporting documents need to be attested by various institutions and officers

Digital Signature Certificate (DSC)

A Digital Signature Certificate (DSC) is required to electronically certify the documents which are filed with the Registrar of Companies (ROC), and sometimes even the Tax Authorities, during the lifetime of the Company. Atleast one Director of the Company must have a DSC.

Memorandum & Article of Association

The Memorandum of Association (MOA) and the Articles of Association (AOA) are the Constitution documents of a Company.

The MOA contains six crucial clauses about the Company, among other things:

- Name of the Company
- Registered Office
- Objects (main and ancillary objects of the company)
- Liability Clause (Limited or Unlimited Liability of the members of the Company)
- Capital clause (Authorized Capital of the Company)
- Association Clause (The subscribers' details)

Overview of Setting up a Company in India

The Article of Association (AOA) provides the basic methods and rules of the working of the Company, through which it also binds the Company and the Members to follow these rules. These Articles are not to be breached by the Members of the Company. Also no clause of the AOA can supersede the scope outlined as per the Memorandum of Association (MOA).

Registered Office

Every Company must, from the date of Incorporation (and subsequently) have a Registered Office to which all communications and notices would be sent and which must be open and accessible to the public.

The registered office of the Company shall be within India and a place to which all corporate communications can be sent and received on all days.

All Statutory records are required to be kept at the registered office of the Company.

Incorporation

Once the constitutional documents are approved by the Registrar of Companies and a certificate of registration is issued, a private company can commence business activities. In addition to the said certificate of registration, a Public Company is required to obtain a certificate of Commencement of business from the Registrar of Companies prior to commencing its business activities.

Share Capital

The minimum paid-up capital for a private limited company is INR 100,000 and for a public company is INR 500,000.

Post Incorporation

After the Company is incorporated there are other compliances which are required to be undertaken, such as:

- Opening a Bank Account
- Allotment of shares
- Maintenance of the statutory books along with the Minutes book of the Company's Meetings
- Maintenance of the financial books of Accounts
- Register of Members to be maintained
- Filing of annual accounts and returns with the Income tax authorities and with the Registrar of companies.
- Holding the Annual General Meeting (AGM)

Statutory Registration

Following are the necessary statutory registrations required to be obtained:

- Income Tax Registration
- Import Export Code
- Sales Tax Registration
- Central Excise Registration
- Service Tax Registration

India: A Growth Story

India is the world's largest democracy with a trillion dollar economy

Over the past decade the Indian economy has witnessed a robust growth, strong capital market and liberalized Foreign Direct Investment regime.

India offers to the world

- One of the Fastest growing economies in the world
- Integrated with the world economy and growing international trade relations
- Major Export Partners: US, Germany, UAE, China, Japan, Thailand, Indonesia and European Union. India is also tapping newer markets in Africa and Latin America
- One of the most important economies in the G-20 being a part of the 'BRICs' consortium.
- Indian Economy is majorly powered by domestic demand
- Cumulative FDI equity Inflows: US$ 36.5 billion
- English speaking work force
- Labour Force: 428.9 million (based on the 2009-10 national sample survey)
- Established, independent judiciary with hierarchy of courts
- Legal Protection of for intellectual property rights
- Well established and common legal system
- Free Press

We are strongly positioned to assist in entry or growth plan for the Indian market.

Gautam Khurana
Managing Partner
India Law Offices

What is the FDI Policy in India

The FDI Policy is relevant to foreign entities seeking to establish an Indian presence either by setting up a wholly owned company in India or joint venture with an Indian Partner or acquiring a stake in an existing Indian Company.

Over the last two decade, the government of India has significantly liberalized the FDI Policy for foreign investment in India. Currently, the FDI Policy permits up to 100% foreign investment in most sectors, including service sector.

Under the current FDI Policy, foreign investment is permitted by all categories of investors and in all sectors except the prescribed prohibited sectors. Apart from these prohibited sectors, foreign investments can be made in other sectors under:

- Automatic route, i.e., no prior approvals, under delegated powers exercised by the Reserve Bank of India (RBI)

- Approval route, i.e., by the Government through the Foreign Investment Promotion Board (FIPB) under the Ministry of Finance

In sectors referred to as ‘Automatic Route’, FDI does not require any prior approval from government of India; however, in these situation, the Indian Company is required to undertake reporting with RBI through authorized dealer i.e., bank in India for receipt consideration and issue of shares.

Our Offices

Delhi Offices

D-19 (GF) & D-31,
South Extension-I,
New Delhi-110049
India

Mumbai Office

106, Durga Chambers,
8A Veera Desai Ind. Estate,
Veera Desai Rd., Andheri (W)
Mumbai-400 053
India

Bangalore Office

No - S 45,
Vatika Business Centre, Divyasree
Chambers, 2nd Floor,
Wing A, 11, O' Shaugnessy Road,
Langford Town,
Bangalore 560025

Chennai Office

23/10, I Avenue,
Shastri Nagar, Adyar,
Chennai – 600 034, India