



BUSINESS BACKGROUND INFORMATION



ENTRY OPTIONS FOR A FOREIGN COMPANY IN INDIA

A foreign company is one that has been incorporated outside India and conducts business in India. These companies are required to comply with the provisions of the Companies Act, 1956. A foreign company can set up Liaison, Project, or Branch offices in India. Such companies have to register themselves with Registrar of Companies (ROC) within 30 days of setting up a place of business in India.

Liaison Offices

One of the ways for foreign companies to enter the India markets is the setting up of a Liaison/Representative Office. A Liaison Office is not allowed to undertake any business activity in India and cannot earn any income in India. The role of such an office is, therefore, limited to collecting information about possible market opportunities and providing information about the company and its products to prospective Indian customers.

The opening and operation of such offices is regulated by the Foreign Exchange Management Act, 1999 (FEMA). Approval from the Reserve Bank of India (RBI) is required for opening such offices. There are certain standard conditions imposed for operation of such offices.

- Expenses of such offices are to be met entirely through inward remittance of foreign exchange from the Head Office abroad.
- Such offices should not undertake any trading or commercial activities and their activities should be limited to collection and transmitting information between the overseas Head Office and potential Indian customers.
- Such offices should not charge any commission or receive other income from India customers for providing liaison offices.

Liaison / representative offices also have to file an annual activity certificate and other documents from Indian customers for providing liaison offices.

Permission to set up such offices is initially granted for a period of 3 years and this may be extended from time to time. For permission/assistance, you may contact:

Reserve Bank of India, Foreign Investment Division,
Exchange Control Department,
Shahid Bhagat Singh Marg,
Mumbai – 400001, India.
Tel: +91 22 2661602
Fax: +91 22 2665330 / 2654992
Website: www.rbi.org.in

Project Offices

Foreign companies planning to execute specific projects in India can set up temporary project/site offices in India. Specific approval from the RBI is required for setting up a project office. Such approval is generally accorded in respect of projects approved by appropriate authorities or where the projects are financed by an Indian bank/financial institution or a multilateral/bilateral international financial institution.

For permission/assistance, you may contact the concerned Regional Office of Reserve Bank of India under whose jurisdiction the office will be situated.

Branch Offices

Government of India has allowed foreign companies engaged in manufacturing and trading activities abroad to set up Branch Offices in India for the following purposes:

- To represent the parent company/other foreign companies in various matters in India e.g. acting as buying/selling agents in India.





- To undertake research work in the area in which the parent company is engaged.
- To undertake export and import trading activities.
- To promote possible technical and financial collaborations between the Indian companies and overseas companies.
- Rendering professional or consultancy services.
- Rendering services in information technology and development of software in India.
- Rendering technical support to the products supplied by the parent/Group companies.

A Branch office is not allowed to carry out manufacturing and processing activities direct/indirectly. The Branch Office will have to submit an activity certificate from a Chartered Accountant on an annual basis to the Reserve Bank of India. For annual remittance of profit, the Branch Office may submit required documents to the authorized Bank. Permission for setting up branch offices is granted by the Reserve Bank of India on a case-by-case basis. RBI normally considers the operating history of the applicant company worldwide and its proposed activities in India for granting the approval.

A foreign company can commence operations in India through incorporation of a company under the provisions of the Indian Companies Act, 1956. Foreign equity in such Indian companies can be up to 100% depending on the business plan of the foreign investor, prevailing investment policies of the Government and receipt of requisite approvals. For registration as an Indian company and its incorporation, an application has to be filed with Registrar of Companies (ROC). Once a company has been duly registered and incorporated as an Indian company, it will be subject to the same Indian laws and regulations as applicable to other domestic Indian companies.

Joint Venture with an Indian Partner

Foreign Companies can set up operations in India by forging strategic alliances with Indian partners. Setting up of operations through joint ventures may entail the following advantages for a foreign investor:

- Established distribution/marketing set up of the Indian partners.
- Available financial resources of the Indian partner.
- Established contacts of the Indian partner, which helps smoothen the process of setting up of operations.

Wholly-Owned Subsidiaries

Foreign companies may set up a wholly-owned subsidiary, which is an Indian Company with an independent legal status, distinct from the parent company. Under the current foreign investment policy, a wholly-owned subsidiary can be established either under the automatic route, if the conditions specified therein are complied with or obtain an approval from the Foreign Investment Promotion Board. Applications for establishment of wholly-owned subsidiaries other than those where automatic route is available are approved by the Foreign Investment Promotion Board on a case by case basis, taking into account factors such as credentials of the foreign parent, nature of the industry, export commitments, whether proprietary technology is sought to be protected or sophisticated technology is proposed to be brought in, etc.

The web site of Secretariat of Industrial Assistance is www.dipp.nic.in

INVESTMENT IN EXPORT PROCESSING ZONES

In order to encourage exports, the Government of India offers special incentives to investors to set up units to manufacture goods for exports. Such units may be set up in Export Processing Zones (EPZs) or may be 100 per cent Export Oriented Units (EOUs) outside EPZs. 100 per cent foreign equity is welcome in EOUs and EPZs.





The EPZs are designed to provide an internationally-competitive, duty-free environment at low cost for export production. Each zone provides basic infrastructure and facilities like developed land, standard design factory buildings, roads, power, water supply and drainage and customs clearance facilities. While EOUs adopt the same regime as an EPZ, they offer a wider option in project location with reference to sourcing of raw materials, port of export, availability of technological skill, existence of an industrial base and the need for a larger area of land for the project. Applications for the approval of EOU/EPZ units are to be addressed to the Development Commissioners of Exports Processing Zones in the case of EPZs and to the Secretariat for Industrial Assistance (SIA) in case of EOUs.

For further details, visit www.sezindia.nic.in

Additional incentives are offered to units engaged in the field of electronics and software, which can be set up under the electronic Hardware Technology Park, or Software Technology Park programs.

Incentives for EPZs and EOUs:

- Exemption from customs duty on industrial inputs
- No import licenses required
- Supplies from the Domestic Tariff Area to EOUs/EPZ units regarded as deemed exports and hence exempt from payment of excise duty.
- Exempted from payment of corporate income tax for ten consecutive years. Export earnings exempt from tax even after the tax holiday is over.

Special Economic Zones (SEZs)

SEZs, set up as enclaves separated from domestic tariff areas by physical barriers, are intended to provide a duty free environment for export promotion. Each Zone is headed by a Development Commissioner. Units may be set up in SEZ for manufacture, trading, re-conditioning, repair or for service activity. The units in the Zone have to be a net foreign exchange earner but they shall not be

subjected to any predetermined value addition or minimum export performance requirements as in the case of EOUs. Sales in the Domestic Tariff Area by the SEZ units shall be subject to positive foreign exchange earning and on payment of full Custom Duty and import policy in force.

The Government has since converted all the existing Export Processing Zones into Special Economic Zones.

The Special Economic Zones are responsible for administration of the Export-Oriented units located within the zones.

Main benefits for those setting up SEZs in India include:

- Duty free import/domestic procurement of goods for development, operation and maintenance of SEZ units.
- 100% Income Tax exemption on export income for SEZ units for the first five years, 50% for next five years thereafter and 50% of the ploughed back export profit for next five years.
- Exemption from minimum alternate tax under section 115j8 of the Income Tax Act.
- External commercial borrowing by SEZ units up to US\$ 500 million in a year without any maturity restriction through recognized banking channels.
- Exemption from Central Sales Tax.
- Exemption from Service Tax.
- Single window clearance for Central and State level approvals.
- Exemption from State sales tax and other levies as extended by the respective State Governments.

For more information, please refer to website: www.sezindia.nic.in





TAXATION SYSTEM IN INDIA

India has a well-developed tax structure with clearly demarcated authority between Central and State Governments and local bodies.

Central Government levies taxes on income (except tax on agricultural income, which the State Governments can levy), customs duties, central excise and service tax.

Value Added Tax (VAT), stamp duty, state excise, land revenue and profession tax are levied by the State Governments.

Local bodies are empowered to levy tax on properties, octroi and for utilities like water supply, drainage etc.

Indian taxation system has undergone significant reforms during the last decade. The tax rates have been rationalized and tax laws have been simplified resulting in better compliance, ease of tax payment and better enforcement. The process of rationalization of tax administration is ongoing in India.

Foreign companies are taxable on income that arises out of their Indian operations, or, in certain cases, income that is deemed to arise in India. Royalty, interest, gains from sale of capital assets located in India (including gains from sale of shares in an Indian company), dividends from Indian companies and fees for technical services are all treated as income arising in India. Current rates of corporate tax for foreign companies are as under.

CORPORATE TAX	Tax Amount
(i) Domestic Company	33.39% (including surcharge of 10%)
(ii) Foreign Company	41.82% (including surcharge of 10%)
(iii) Minimum Alternate Tax	15%
Short Term Capital Gains	
(i) Resident	30%
(ii) Non-Resident	40%
Long Term Capital Gains	
(i) Resident	10%
(ii) Non-Resident	20% with indexation

For details, see www.incometaxindia.gov.in and Central Board of Excise and Customs www.cbec.gov.in

Repatriation of Earnings

A foreign national may open bank accounts in India and receive funds from abroad. A foreign national is allowed to repatriate 75% of his net after-tax earnings after the Government and the Exchange Control authorities approve his employment. If employment is for a short duration, such approvals are not necessary, provided the amount of remittance is within approved limits.

LEGAL AND ACCOUNTING SYSTEM

Accounting System

India has a well-developed market economy infrastructure and sophisticated financial sector. As a result of various policy initiatives, several multinational financial companies have made significant investments in the Indian financial sector. India follows global practices in accounting as established by International Financial Reporting Standards. Convergence is expected to be achieved by 2011.

For more details, see Ministry of Corporate Affairs www.mca.gov.in

Accounting Standards

The Institute of Chartered Accountants of India, being a premier accounting body in the country, took upon itself the leadership role by establishing Accounting Standards Board (ASB), more than twenty five years ago, to fall in line with the international and national expectations.

Present Status in Harmonization

ASB formulates Accounting Standards on the basis of the International Accounting Standards (IASs) issued by the International Accounting Standards Board (IASB). Of the 41 IASs issued so far, 34 are at present in force, the remaining have been withdrawn by the IASB. Corresponding to the IASs, so far, 28 Indian Accounting Standards on the different subjects have been issued.





Accounting standards are made mandatory in India in a phase manner. Specific relaxation is given to particular kinds of enterprises depending upon their size and nature.

Legal Systems

India's legal and judicial systems are highly sophisticated and well developed. India is also fortunate that its judiciary is manned by highly qualified and learned judges. In addition, there are enough laws to safeguard the rights of people and provide justice.

Alternative Mechanism for Redressal – Arbitration

Arbitration of disputes, particularly in commerce and industry, has had a good history in India. International arbitration under the aegis of Arbitration Tribunal of FICCI works effectively in this area.

More details are to be found on website www.ficci.com/icanet/

TRADE FACILITATION MEASURES

Electronic Data Interchange

In the recent past, a number of initiatives and measures have been taken by the government to simplify the customs procedures for expeditious clearance of imported/exported cargo and to reduce the transaction cost of Indian imports and exports. One such measure is Electronic Data Interchange (EDI).

The Implementation of EDI at Customs stations has revolutionized the functioning of customs. The system features on-line assessment, duty payment, and examination of goods. Under EDI, the objections or queries raised by the customs officers are processed on the system, thereby capturing the complete record of the lifecycle of an import/export document.

Customs automation has been extended to all the major ports, airports and inland Container Depots (ICDs)/Container Freight Stations (CFS). Electronic Message Exchange (EME) has also

commenced with several of Customs community partners like RBI, Directorate General of Foreign Trade (DFGT), Directorate General of Commercial Intelligence and Statistics (DGCI&S), Apparel Export Promotion Council (APEC) etc.

Website of Central Board of Exercise & Customs could be accessed at www.cbec.gov.in

INTELLECTUAL PROPERTY RIGHTS

The importance of intellectual property in India is well established at all levels- statutory, administrative and judicial. India ratified the agreement establishing the World Trade Organisation (WTO). This Agreement, inter-alia, contains an Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) which came into force from 1st January 1995. It lays down minimum standards for protection and enforcement of intellectual property rights in member countries which are required to promote effective and adequate protection of intellectual property rights with a view to reducing distortions and impediments to international trade. The obligations under the TRIPS Agreement relate to provision of minimum standard of protection within the member countries legal systems and practices. India has complied with the obligations contained in the TRIPS Agreement and amended/enacted IP laws.

The Agreement provides for norms and standards in respect of following areas of intellectual property

- Copyrights and related rights
- Trade Marks
- Geographical Indications
- Industrial Designs
- Lay out Designs of Integrated Circuits
- Protection of Undisclosed Information (Trade Secrets)
- Patents
- Plant varieties





India is also an active member of the World Intellectual Property Organisation (WIPO), Geneva and UNESCO, Paris. Department of Industrial Policy & Promotion is the nodal Department in the Government of India for all matters concerning WIPO, and Ministry of Human Resources Development for UNESCO.

India is also member of two major treaties, namely, Paris Convention for the Protection of Industrial Property (relating to patents, trademarks, designs, etc.) of 1883 and the Berne Convention for the Protection of Literary and Artistic Works (relating to copyright) of 1886. Apart from these, India is also a member of the Patent Cooperation Treaty (PCT) which facilitates obtaining of patents in several countries by filing a single application.

Copyrights

India's copyright law, laid down in the Indian Copyright Act, 1957 as amended by Copyright (Amendment) Act, 1999, fully reflects the Berne Convention on Copyrights, to which India is a party. Additionally, India is party to the Geneva Convention for the Protection of rights of Producers of Phonograms and to the Universal Copyright Convention. The copyright law has been amended periodically to keep pace with changing requirements. The amendment to the copyright law in May 1995, has ushered in comprehensive changes and brought the copyright law in line with the developments in satellite broadcasting, computer software and digital technology. The amended law has made provisions for the first time, to protect performer's rights as envisaged in the Rome Convention

Several measures have been adopted to strengthen and streamline the enforcement of copyrights. These include the setting up of a Copyright Enforcement Advisory Council, training programs for enforcement officers and setting up special policy cells to deal with cases relating to infringement of copyrights.

Trade Marks

Trademarks have been defined as any sign, or any combination of signs capable of distinguishing the goods or services of one

undertaking from those of other undertakings. Such distinguishing marks constitute protectable subject matter under the provisions of the TRIPS Agreement. The Agreement provides that initial registration and each renewal of registration shall be for a term of not less than 7 years and the registration shall be renewable indefinitely. Compulsory licensing of trademarks is not permitted.

Patents

The basic obligation in the area of patents is that, invention in all branches of technology whether products or processes shall be patentable if they meet the three tests of being new involving an inventive step and being capable of industrial application. The TRIPS Agreement provides for a minimum term of protection of 20 years counted from the date of filing. India had already implemented its obligations under Articles 70.8 and 70.9 of TRIP Agreement.

A comprehensive review of the Patents Act, 1970 was also made and a bill to amend the Patents Act, 1970 was passed by Parliament on 14 May 2002.

Please see Office of the Controller General of Patents, Designs and Trade Marks (CGPDTM) www.ipindia.nic.in

