

Entry Strategies For Foreign Investors

A foreign company planning to set up business operations in India has the following options

AS AN INDIAN COMPANY

A foreign company can commence operations in India by incorporating a company under the Companies Act, 1956 through

- i) Joint Ventures
- ii) Wholly Owned Subsidiaries

Foreign equity in such Indian companies can be up to 100% depending on the requirements of the investor, subject to equity caps in respect of the area of activities under the Foreign Direct Investment (FDI) policy. For details refer to <http://www.dipp.nic.in>

Incorporation of Company For registration and 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 is subject to Indian laws and regulations as applicable to other domestic Indian companies. For details please visit the website of Department of Company Affairs under Ministry of Finance at <http://dca.nic.in>

AS A FOREIGN COMPANY

- i) Liaison Office/Representative Office
- ii) Project Office
- iii) Branch Office

Such offices can undertake any permitted activities. Companies have to register themselves with Registrar of Companies (ROC) within 30 days of setting up a place of business in India.

Liaison Office/Representative Office

Liaison office acts as a channel of communication between the principal place of business or head office and entities in India. Liaison office can not undertake any commercial activity directly or indirectly and can not, therefore, earn any income in India. Its role is limited to collecting information about possible market opportunities and providing information about the company and its products to prospective Indian customers. It can promote export/import from/to India and also facilitate technical/financial collaboration between parent company and companies in India. Approval for establishing a liaison office in India is granted by Reserve Bank of India (RBI).

Project Office

Foreign Companies planning to execute specific projects in India can set up temporary project/site offices in India. RBI has now granted general permission to foreign entities to establish Project Offices subject to specified conditions. Such offices can not undertake or carry on any activity other than the activity relating and incidental to execution of the project. Project Offices may remit outside India the surplus of the project on its completion, general permission for which has been granted by the RBI.

Branch Office

Foreign companies engaged in manufacturing and trading activities abroad are allowed to set up Branch Offices in India for the following purposes:

- i) Export/Import of goods
- ii) Rendering professional or consultancy services
- iii) Carrying out research work, in which the parent company is engaged.
- iv) Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- v) Representing the parent company in India and acting as buying/selling agents in India.
- vi) Rendering services in Information Technology and development of software in India.
- vii) Rendering technical support to the products supplied by the parent/ group companies.
- viii) Foreign airline/shipping company.

A branch office is not allowed to carry out manufacturing activities on its own but is permitted to subcontract these to an Indian manufacturer. Branch Offices established with the approval of RBI, may remit outside India profit of the branch, net of applicable Indian taxes and subject to RBI guidelines. Permission for setting up branch offices is granted by the Reserve Bank of India (RBI).

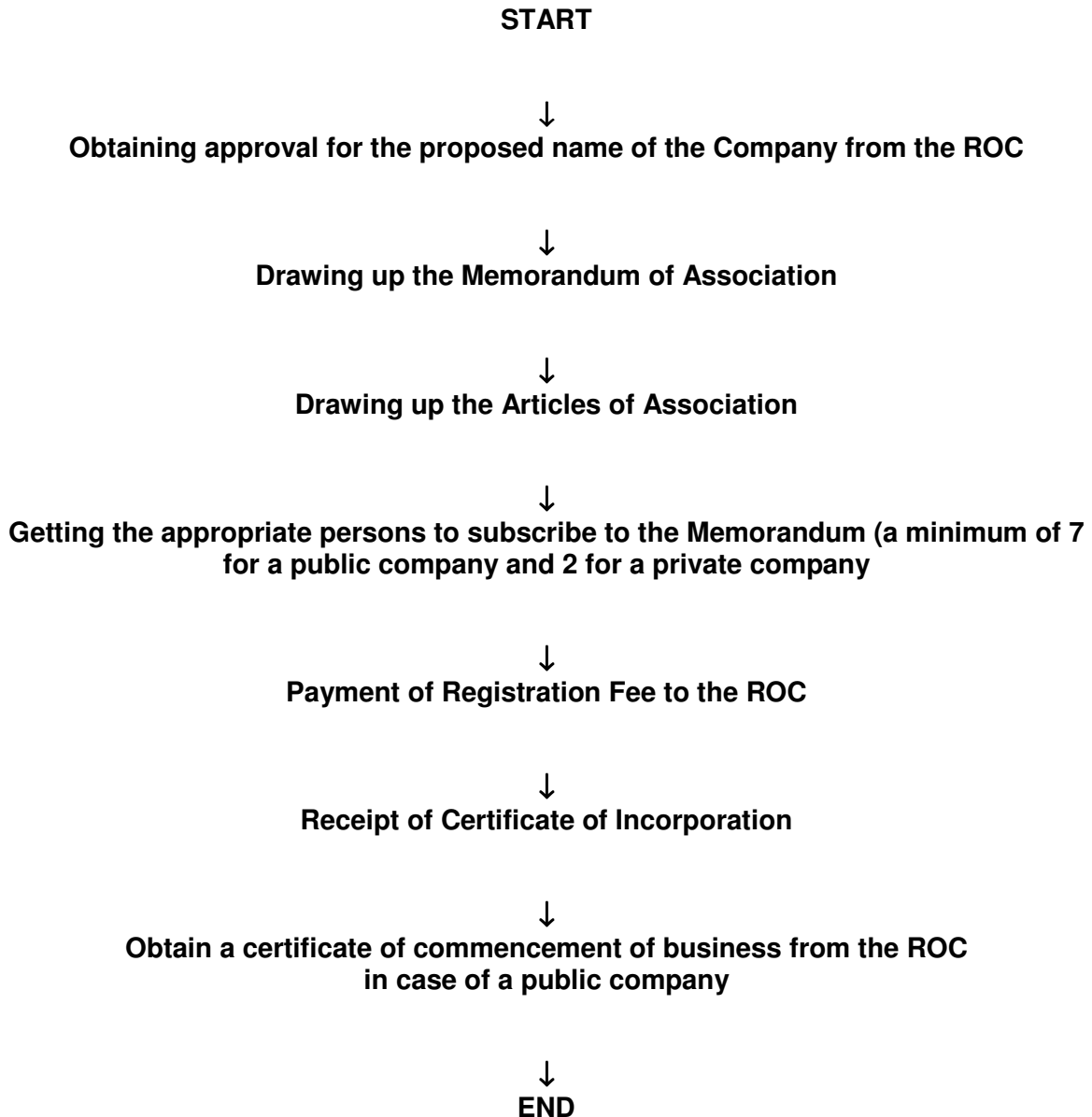
Branch Office on "Stand Alone Basis" Such Branch Offices would be isolated and restricted to the Special Economic zone (SEZ) alone and no business activity/transaction will be allowed outside the SEZs in India, which include branches/subsidiaries of its parent office in India.

No approval shall be necessary from RBI for a company to establish a branch/unit in SEZs to undertake manufacturing and service activities subject to specified conditions.

Application for setting up Liaison Office/ Project Office/ Branch Office may be submitted in form FNC 1 available at RBI website at www.rbi.org.in

Source: Ministry of Commerce, Govt of India

Company Formation



Source: Ministry of Commerce, Govt of India

Steps to Get a Company Incorporated

1. Select, in order of preference, a few suitable names, not less than four, indicative of the main objects of the company.
2. Ensure that the name does not resemble the name of any other company already registered and also does not violate the provisions of Emblems and names (prevention of improper use) Act, 1950.
3. Apply to the concerned ROC to ascertain the availability of name in Form-1 A of General Rules and Forms along with a fee of Rs.500/-. If proposed name is not available apply for a fresh name on the same application.
4. Arrange for the drafting of the Memorandum and Articles of Association by the solicitors, vetting of the same by ROC and printing of the same.
5. Arrange for stamping of the Memorandum and Articles with the appropriate stamp duty.
6. Get the Memorandum and Articles signed by atleast two subscribers in his own hand, his father's name, occupation, address and the number of shares subscribed for and witnessed by atleast one person.
7. Ensure that the Memorandum and Article is dated on a date after the date of stamping.
8. Get the following forms duly filled up and signed:-
 - i) Declaration of compliance – Form-1
 - ii) Notice of situation of registered office of the company – Form-18.
 - iii) Particulars of Director, Manager or Secretary – Form-32.
1. Present the following documents to ROC with filing fee and registration fee:-
 - i) The stamped and signed copies of Memorandum and Articles of Association (3 copies).
 - ii) Form-1, 18 & 32 in duplicate.
 - iii) Any agreement referred to in the M&A.
 - iv) Any agreement proposed to be entered into with any individual for appointment as Managing or whole time Director.
 - v) Name availability letter issued by ROC. Power of Attorney from the subscribers in favour of any person for making corrections on their behalf in the documents and papers filed for registration.
1. Pay the Registration and Filing Fee by Demand Draft/Banker's Cheque if it exceeds Rs.1000/-.
2. Obtain Certificate of Incorporation from ROC.

Additional Steps to be taken for formation of a Public Limited Company

3. Consent of Directors to act as such in Form No.29.
4. Arrange for payment of application and allotment money by Directors on shares taken or agreed to be taken.
5. File the statement in lieu of prospectus with ROC in schedule-iv of the Companies Act.
6. File a declaration in Form-20 duly signed by one of the Director.
7. Obtain the Certificate of Commencement of Business.
8. As per Citizens Charter name availability will be disposed of in 3 working days.

Forms mentioned above can be downloaded from:

http://dca.nic.in/downloads_2003.htm

Source: Ministry of Commerce, Govt of India

Approval/Clearances Required For New Projects

Approvals/Clearances Required	Department to be Approached and Consulted
Incorporation of Company	Registrar of Companies
Registration/IEM/Industrial license	DIC for SSI/SIA for large and medium industries
Allotment of land	State DI/SIDC/Infrastructure Corporation /SSIDC
Permission for land use (in case industry is located outside an industrial area)	<ul style="list-style-type: none"> a. State DI b. Dept. of Town and Country Planning c. Local authority/district collector
NOC and consent under Water and Air Pollution Control Acts	State Pollution Control Board
Approval of construction activity and building plan	<ul style="list-style-type: none"> a. Town and country planning b. Municipal and local authorities c. Chief Inspector of Factories d. Pollution Control Board e. Electricity Board
Sanction of Power	State Electricity Board
Use and storage of explosives	Chief Controller of Explosives
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Boiler Inspection Certificate	Chief Inspector of Boilers
Finance	<ul style="list-style-type: none"> i. SFC/SIDC for term loans ii. For loans higher than Rs. 15 Million, all India financial institutions like IDBI, ICICI, IFCI etc.
Registration under States Sales Tax Act, and Central and State Excise Act	<ul style="list-style-type: none"> i. Sales Tax Department ii. Central and State Excise Depts.
Extraction of Minerals	State Director of Mines and Geology
ISI Certificate	Regional Office of the Bureau of Indian Standards (BIS)

Quality Marking Certificate	Quality Marking Center of the State Government
Weights and Measures	Inspector of Weights and Measures
Code Number for Export and Import	Regional Office of Director General of Foreign Trade.

SIDC : State Industrial Development Corporation
 SSI : Small Scale Industries
 SIA : Secretariat of Industrial Assistance
 SSIDC : Small Scale Industrial Development Corporation
 SFC : State Financial Corporation
 DIC : District Industry Center
 GOI : Government of India
 IDBI : Industrial Development Bank of India
 ICICI : Industrial Credit and Investment Corporation of India
 IFCI : Industrial Finance Corporation of India
 Source: Ministry of Commerce, Govt of India

Important Government Websites:

Department of Industrial Policy & Promotion	http://dipp.nic.in/
Department of Commerce	http://commerce.nic.in
Directorate General of Foreign Trade	http://dgft.delhi.nic.in
Ministry of Environment of Forests	http://envfor.nic.in
Ministry of Small Scale Industries	http://ssi.nic.in
Reserve Bank of India	http://www.rbi.gov.in
Ministry of Finance	http://www.finmin.nic.i
Department of Company Affairs	http://www.nic.in/dca

Investment Related Policies

FOREIGN DIRECT INVESTMENT (FDI) POLICY

FDI under automatic route is now allowed in all sectors, including the services sector, except a few sectors where the existing and notified sectoral policy does not permit FDI beyond a ceiling.

Automatic Route No prior approval is required for FDI under the Automatic Route. Only information to the RBI within 30days of inward remittances or issue of shares to Non Residents is required. RBI has prescribed a new form, Form FC-GPR (instead of earlier FC-RBI) for reporting shares issued to the Foreign Investors by an Indian company.

For details please contact:

Chief General Manager,
 Reserve Bank of India,
 Foreign Investment and Technology Transfer Division,
 Exchange Control Department,
 Shaheed Bhagat Singh Road,
 Mumbai – 400001.

Tel.:+ 91-22-2266 1603

Fax + 91-22-2266 5330

TAXATION IN INDIA

India is moving towards reforming its tax policies and systems so as to facilitate globalization of economic activities. The corporate tax rate for foreign companies is 40%. The net tax rate is far lower than this on account of various deductions and exemptions available under the tax laws. Tax holidays are available in Special Economic Zones set up to make industry globally competitive. Infrastructure Sector Projects enjoy special tax treatment/holidays. A user friendly tax administration is being introduced with round the clock electronic filing of customs documents from 31.3.04. For details regarding taxes in India, please contact Ministry of Finance, Government of India, North Block, New Delhi – 110001 through their website <http://finmin.nic.in/topics/taxation/index.html>

INVESTMENT FACILITATION

Secretariat for Industrial Assistance (SIA) in Department of Industrial Policy and Promotion, Government of India provides a single window service for entrepreneurial assistance, Investor facilitation and monitoring implementation of the projects.

Secretariat for Industrial Assistance (SIA)
Department of Industrial Policy and Promotion
Ministry of Commerce & Industry
Udyog Bhavan, New Delhi-110 011
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Source: Ministry of Commerce, Govt of India