



A foreign subsidiary company is "a company incorporated outside India and is either controlled by a resident entity in India or has more than 50% of its share capital owned by a resident entity in India, and the foreign entity assumes the role of a holding or parent company.[1] The regulatory compliance requirements applicable to such companies depend on various factors, such as the nature of the business, industry-specific regulations, annual turnover, number of employees, and other relevant criteria. Therefore, it is imperative to understand the specific compliance obligations applicable to a company based on its individual characteristics.

Foreign subsidiary companies in India must comply with various legal and regulatory requirements as it ensures that they operate within the legal framework of the country and avoid any legal or regulatory penalties. The compliances for foreign subsidiary companies in India under the legal framework are in adherence to provisions of the Income Tax Act[2], Companies Act[3], Transfer Pricing Guidelines, and Foreign Exchange Management Act (FEMA) guidelines.

These compliances for foreign subsidiary companies in India entail fulfilling statutory requirements such as income tax filing with the relevant income tax department, filing annual returns with the Ministry of Corporate Affairs, and other necessary filings with regulatory authorities such as the Reserve Bank of India or Securities and Exchange Board of India (SEBI).

- Registration and Incorporation
  - I. Timeframe for completion
  - II. Taxation
  - III. Employment and Labour Laws
  - IV. Corporate Governance:

- V. Intellectual Property Rights
- VI. Regulatory Compliances
- Conclusion
- FAQs
- Why is compliance important for foreign subsidiary companies in India?
- What is the checklist for compliance of foreign subsidiary companies in India
- What are the consequences of non-compliance for foreign subsidiary companies in India?

#### Registration and Incorporation

Registration and company incorporation in India as a foreign subsidiary company in India involves several steps and compliance requirements.[4]Documents required for setting up a company in India as foreign subsidiary company in India[5] (Though the list is not exhaustive):

- Obtaining a Digital Signature Certificate (DSC) and Director Identification Number (DIN) for the proposed directors of the company.
- Applying for the name of the company with the Registrar of Companies (ROC). The name must comply with the guidelines set out in the Companies Act, 2013.
- Filing the incorporation documents, including the Memorandum and Articles of Association, with the ROC.
- Obtaining a Certificate of Incorporation from the ROC.
- Applying for a Permanent Account Number (PAN) and Tax Deduction and Collection Account Number (TAN) for the company.
- Obtaining any necessary licenses or permits required to conduct business in India.
- According to Rule 8 of the Company Rule, 2014, if a foreign company merges with its subsidiary in India, then the foreign company's name can be used along with the word "India" or the name of any Indian State or city.

#### I. Timeframe for completion

The time required for company incorporation in India as foreign subsidiary company varies depending on several factors, such as the availability of documents and the time taken for approval by the relevant authorities. However, the process can generally be completed within 2-3 months.

#### II. Taxation

Foreign subsidiary companies in India are subject to various tax obligations, including compliance with income tax, goods and services tax (GST), and transfer pricing regulations. These includes:

**Income Tax:** Foreign subsidiary companies are required to pay income tax on their profits earned in India. The tax rate for foreign companies is 40%, plus a surcharge and education cess. Additionally, foreign companies are subject to withholding tax on various payments made to them by Indian residents, such as dividends, interest, and royalties.

**Goods and Services Tax (GST):** Foreign subsidiary companies that are engaged in the supply of goods or services in India are required to register for GST.

**Transfer Pricing Regulations:** Transfer pricing regulations in India require that transactions between a foreign subsidiary company and its related parties (including the parent company) be conducted on an arm's length basis. If the transaction is not conducted on an arm's length basis, the Indian tax authorities can adjust the prices and tax the subsidiary company accordingly.

#### III. Employment and Labour Laws

Foreign subsidiary companies operating in India are required to comply with various employment and labour laws that govern the rights and obligations of

employers and employees. These areas follows:

**Minimum Wages:** The Minimum Wages Act, 1948, sets out the minimum wage rates that must be paid to employees engaged in various industries and occupations. Employers are required to pay their employees at least the minimum wage rates specified by the state or central government, whichever is higher.

**Employee Benefits:** The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, requires employers to contribute a percentage of their employees' salary to the Employees' Provident Fund (EPF) and other social security schemes. Employers are also required to provide employees with other benefits such as medical insurance, gratuity, and maternity leave as per the applicable laws.

**Workplace Safety:** The Factories Act, 1948, and other related laws require employers to provide a safe and healthy working environment for their employees. Employers are required to comply with various safety standards related to the design, construction, and maintenance of the workplace.

**Anti-Discrimination and Harassment:** The Indian Constitution and various labour laws prohibit discrimination based on gender, religion, caste, or race.[6] Employers are required to provide equal opportunities to all employees and prohibit sexual harassment at the workplace under the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

#### IV. Corporate Governance:

Foreign subsidiary companies operating in India must adhere to corporate governance regulations that govern the composition of the board of directors, shareholder meetings, and annual filings. These regulations are as follows:

**Board Composition:** Foreign subsidiary companies are required to have a board of directors with at least two directors, one of whom must be a resident of India.[7] The board must meet at least four times a year, and the minutes of the meetings must be maintained as per the applicable laws.

**Shareholder Meetings:** Foreign subsidiary companies must hold an annual general meeting (AGM) of shareholders to present the annual financial statements and to appoint or reappoint directors. Shareholders are also entitled to receive notice of the meeting, participate in the meeting, and vote on the resolutions proposed at the meeting.

**Annual Filings:** Foreign subsidiary companies must file various documents with the Ministry of Corporate Affairs, such as the annual financial statements, the director's report, and the auditor's report. The annual financial statements must be audited by a qualified auditor, and the auditor's report must be filed along with the financial statements.

#### V. Intellectual Property Rights

Foreign subsidiary companies must comply with all applicable IPR laws and regulations in India, such as the Patents Act, 1970, the Copyright Act, 1957, and the Trademarks Act, 1999. Failure to comply with these laws can result in penalties and legal action by the authorities.

These are some of the compliance requirements for foreign subsidiary companies related to IPR protection in India:

**Registration of IPR:** Foreign subsidiary companies must register their IPR with the relevant authorities, such as the Controller General of Patents, Designs, and Trademarks, to establish their ownership and protection under the law.

**Enforcement of IPR:** Foreign subsidiary companies must enforce their IPR

rights by taking legal action against infringers, such as filing a lawsuit or obtaining an injunction, to prevent the unauthorized use or reproduction of their IPR.

**Confidentiality and Non-Disclosure:** Foreign subsidiary companies must ensure that their employees, contractors, and business partners maintain confidentiality and do not disclose their IPR to third parties without their prior consent.

## VI. Regulatory Compliances

The regulatory requirements related to environmental protection, data privacy, and foreign exchange regulations include:

**Environmental Protection:** Foreign subsidiary companies must comply with the various environmental laws and regulations in India, such as the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, and the Hazardous Waste Management Rules, 2016. Compliance involves obtaining necessary permits, maintaining environmental records, and complying with the prescribed emission and waste disposal standards.<sup>[8]</sup>

**Data Privacy:** Foreign subsidiary companies must comply with the data privacy regulations under the Personal Data Protection Bill, 2019, which mandates the collection, processing, and storage of personal data in a transparent and lawful manner.

**Foreign Exchange Regulations:** Foreign subsidiary companies must comply with the foreign exchange regulations under the Foreign Exchange Management Act, 1999, which governs the inflow and outflow of foreign currency in India. Compliance involves obtaining necessary approvals, maintaining proper records, and adhering to the prescribed limits for transactions.

## Conclusion

Compliance requirements for foreign subsidiary companies operating in India are those related to company registration, taxes, employment and labour laws, intellectual property rights, corporate governance, environmental protection, data privacy, and foreign exchange regulations. This highlights the importance of compliance with these requirements to avoid penalties and legal action by the authorities. Compliances for foreign subsidiary companies in India involve maintaining proper records, filing necessary forms and returns with the applicable authorities, and adhering to the prescribed standards and limits.

Non-compliance can lead to reputational damage, financial losses, and legal consequences. Therefore, foreign subsidiary companies should ensure that they comply with all applicable laws and regulations in India to operate smoothly and maintain a good reputation in the market.

## FAQs

**Why is compliance important for foreign subsidiary companies in India?**

Compliance is crucial for foreign subsidiary companies operating in India to avoid penalties and legal action by the authorities. Non-compliance can lead to reputational damage, financial losses, and legal consequences. It also helps companies maintain a good reputation in the market and operate smoothly.

**What is the checklist for compliance of foreign subsidiary companies in India**

1. Compliance with Indian Companies Act, 2013 and other applicable laws.
2. Proper maintenance of accounting records and financial statements.
3. Filing of statutory reports and forms with relevant authorities within

prescribed timelines.

What are the consequences of non-compliance for foreign subsidiary companies in India?

The consequences of non-compliance for foreign subsidiary companies in India can be severe, including penalties, fines, and legal action by the authorities. Non-compliance can also lead to reputational damage, financial losses, and disruption of business operations. It can affect the ability of setting up a company in India, as well as its relationships with customers, suppliers, and other stakeholders.

---

[1]<https://rbi.org.in/home.aspx>

[2] The Income Tax Act in India [Act No. 43 of 1961]

[3] Companies Act, 2013 [Act No. 18 of 2013]

[4] [https://www.mca.gov.in/MinistryV2/incorporation\\_company.html#](https://www.mca.gov.in/MinistryV2/incorporation_company.html#)

[5] <https://www.mca.gov.in/mca21/>

[6] Article 14, The constitution of India, 1950

[7] <https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>

[8]<https://cpcb.nic.in/7thEditionPollutionControlLawSeries2021.pdf>

King Stubb & Kasiva,

Advocates & Attorneys

Click Here to Get in Touch

New Delhi | Mumbai | Bangalore | Chennai | Hyderabad | Mangalore | Pune | Kochi | Kolkata

Tel: +91 11 41032969 | Email: info@ksandk.com