Unlocking The Benefits: Advantages Of A Wholly Owned Subsidiary In India
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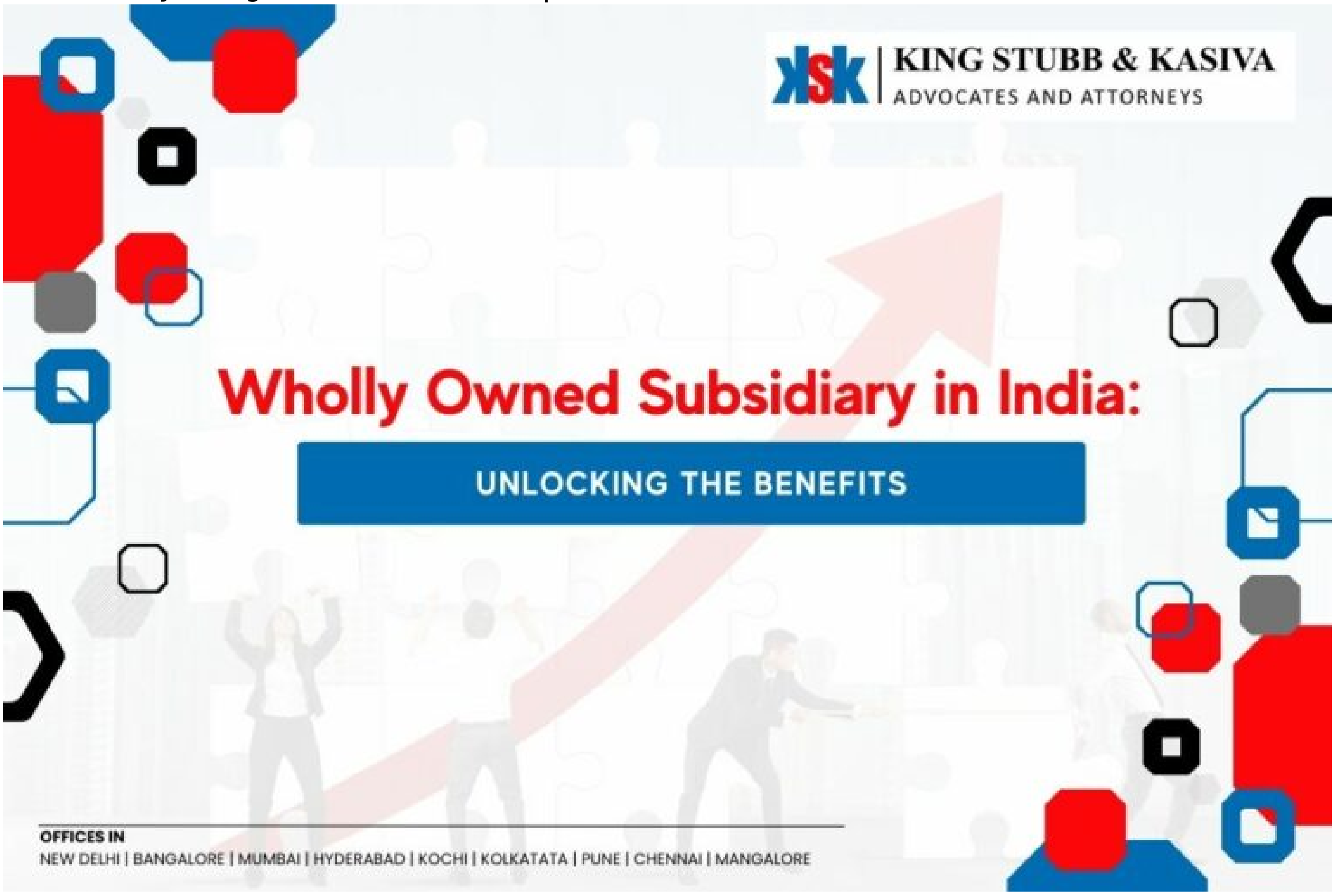

India is known for its fast-growing economy. Owing to the boost in opportunities in the business sector, there is an inclination of foreign nationals in Indian industries. Depending on the desirability for incorporation of company registration can be done as a private company or public company. However, in India formation of a wholly owned subsidiary is preferred by foreign companies.

According to the Companies Act 1956, "A company will be referred to as a Wholly Owned Subsidiary when all the shares are owned by the parent company". In simple terms, when the entire share capital of an entity is held by another Indian or foreign company. The term "Wholly owned subsidiary" has not been explicitly defined under the Companies Act, 2013 but in Section 2(87) of the Companies Act 2013 defines "subsidiary".

It will be an intimidating undertaking to start a new business so incorporation of wholly owned subsidiary in India seems fruitful. As the wholly owned company permits the parent company in charge of decision-making without the burden of losses. The provision for formation creates an opening for the coordination of global corporate strategy. That is why for the expansion of business globally wholly owned subsidiary in India is a center piece.

Advantages Of A Wholly Owned Subsidiary

A wholly owned subsidiary consists of numerous advantages such as benefits in allowance of tax implications, encourages diversification and limited liability. Full utilisation of a subsidiary can only be extracted after understanding the advantages it provides. Broadly, it provides benefits in the sector of strategic, financial, and operational.

Crucial business overhauls are handled by the parent company leading to a decrease in the subsidiary’s costs. After a joint agreement between two entities profit from pooled resources thus leading to a reduction in the cost of procurement of new technology. Using state-permitted deductions helps the parent company drastically reduce its tax obligation. When several subsidiaries are held by a single parent company, losses from one firm can be used to offset via profit from another. By the protection of intellectual property of the parent company in a wholly owned subsidiary, a parent company can ensure consistency in branding and messaging across all subsidiaries. This helps to reinforce the parent company's brand identity and reputation and makes it easier for customers to recognize and trust the brand. A wholly owned subsidiary can provide a way for a parent company to enter new international markets by leveraging the subsidiary's local presence and knowledge. This can help the subsidiary secure funding and capital from local sources, which may be more accessible than foreign sources. Because a wholly owned subsidiary is a separate legal entity from the parent company, it can adapt more easily to local regulations, customs, and business practices. This can help the subsidiary navigate complex regulatory environments and build relationships with local suppliers and partners. Effectiveness can be improved by the parent company by division of big corporations into smaller leading to better management.

Legal Requirements For Setting Up A Wholly Owned Subsidiary In India

A. Procedure For Incorporation

- Legal Application For Name Approval

Two distinct names shall be provided by the applicant followed by prime objects of WOS Company which will be submitted for approval from MCA. Out of two names one name will be approved. The name of the trademark or initial name coupled with a suffix can be kept by the parent company.

- Application For Digital Signature Certificate (Dsc)

After the application for name approval is applied, digital signing of the application forms of DSC of shareholders or directors shall be applied. However, in case the DSC is already with directors/shareholders then this step can be skipped.

- Submission Of Incorporation Forms

After the generation of DSC, preparation for submission of incorporation application in SPICE+ forms along with MOA, AOA, INC 9, AGILE Form, Declarations and KYC Documents of directors/shareholders be started for final approval. Duly apostilled should be done in case documentation is executed and signed in a foreign country. The apostilled should be done as per the Incorporation rules of the country of origin. 5-7 days are usually required to get the incorporation certificate after the submission. The certification will act as proof of registration of the company. Simultaneously certificates of PAN, TAN, ESIC, EPFO, and Professional Tax registration certificates will also be received.

- Opening Of Bank Account

Business operations could be started by the applicant after opening a current account in the bank after submitting the required documents like MOA, AOA, PAN, TAN and others along with the Incorporation Certificate. Payment with respect to shares by shareholders shall be done through banking channels.

- Registration Due To Regulatory Compliance

For the engagement of business activity of shareholders GST registration is mandatory. Moreover, additional licenses, permits, and registrations from various government agencies may be required with respect to the nature of the business activity of the subsidiary.

B. Compliance Requirements For Subsidiary Companies

Several legal requirements for wholly owned subsidiary in Indiaare required to be fulfilled the by subsidiary company for setting up. Core legal requirements for wholly owned subsidiary in India are as under:

- Incorporation of subsidiary company in India under Companies Act,2013 which includes process like obtaining Digital Signature Certificate (DSC), Director Identification Number (DIN), and filing of various forms and documents with the Registrar of Companies (ROC).
- Minimum capitalization requirement specified by the government i.e., INR 1lakh for private limited companies and INR 5lakhs for public limited companies shall be met by the subsidiary company.
- Compulsory requirements of licenses and registrations like PAN, Tax Deduction, TAN, GST and other licenses and permits in terms of industry-specific should be obtained.
- Tax-related regulations like annual income tax returns, advance tax payments and TDS provisions must be complied with. It also needs to comply with labour laws of India.
- Qualified Chartered Accountants must conduct statutory audits such as annual financial audits and tax audits. It shall also maintain the statutory records in terms of registration of members, directors, charges, and other required documents along with the ROC returns.
- If business activity engages foreign exchange transactions, then FEMA regulations shall be complied such as annual returns filling with RBI and getting approvals for transactions of a certain type.

C. Tax Implications Of Setting Up A Wholly Owned Subsidiary

It is to be kept in mind that tax implications depend on factors such as nature of the subsidiary, its activities, and its location. However, there are a few general tax implications to be considered:

- Corporate Tax- With the current rate of 25%, corporate income tax should be paid on profits by the subsidiary. Moreover, qualification for reduction of the tax rate of 17.47% will be applied if activities indulged is in research and development.
- Dividend Distribution Tax (DDT)- 15% of DDT rate will be subjected tothe subsidiary if it distributes dividends to the parent entity.
- Transfer Pricing- Transfer pricing regulations will be attracted if the parent entity is transacted by the subsidiary. And such transactions ought to be conducted between related parties at an arm’s length. Non-compliancewith transfer pricing regulations may result in penalties.
- Withholding Tax- Withholding tax at an applicable rate will be subjected if the parent entity receives any type of income paid by subsidiaries such as technical service fees, royalties, or interest. The rate differs based on income type and the residency of the parent entity with which India has a treaty related to tax.
- Goods and Service Tax(GST)- GST will be liable to be paid if activities include supply of goods and services by the subsidiary. The rate of GST is based on the kind of goods supplied orservices provided.
- Other Taxes- Other taxes may be liable to pay solely based upon the activities.

Risks And Challenges Of Setting Up A Wholly Owned Subsidiary In India

A. Initial Cost And Expenses

Setting up a wholly owned subsidiary in India might be a complex and expensive procedure. Challenges faced with respect to initial costs and expenses include the Regulatory Compliance Costs (RCC), Infrastructure Costs (IC), Human Resources Costs (HRC), Taxation and Customs Duties and Currency fluctuations. Overall, setting up may involve high costs and high-risk endeavour. It is necessary to conduct thorough research and have good understanding of the costs and challenges before indulging in setting up a wholly owned subsidiary in India.

B. Navigating Local Regulations And Bureaucracy

One of the major challenges faced during setting up a wholly owned subsidiary in India is navigating through its local regulations and bureaucracy. Compliance with multiple laws and regulations is mandatory in setting up a wholly owned subsidiary in India. The registration process in India can be time-consuming as it involves multiple steps. There might be a requirement for registration with multiple regulatory bodies with respect to ROC. A business that requires to be sourced locally can be challenging to navigate and increases the cost of doing business.

Challenges are also faced during tracing the labour regulations. Thus, the process of navigating the local regulations and bureaucracy while setting up a wholly owned subsidiary in India might be tiring but offers its own set of benefits.

C. Cultural Differences And Communication Barriers

Cultural and communication barriers might be faced by the subsidiary in India. India contains over 22 official languages and multiple dialects although English is used widely in business settings, it is to be kept in mind that all employees might not speak or be fluent in English. Organization’s social dynamics need to be understood as India’s culture is very prominent. Indirect and non-confrontational method of communication is mostly used in India.

D. Competition From Established Local Companies

A significant challenge faced by a subsidiary company in India is to compete with local companies. A well-established market presence and brand recognition of a local company can give tough competition to the subsidiary company so, they need to adapt well-developed strategies to stand out from the rest.

Conclusion

Expanding business operations of foreign company via wholly owned subsidiary in India offers numerous advantages. Zero interference of local partners with full control on implementing business strategies. Subsidiary can have an extra leverage in Indian market by an established brand of a foreign company especially if it already known for its quality and innovation. There is major availability of skilled workers in India and their recruitment in the subsidiary company will build a strong workforce of top talents.

Foreign companies searching for low-cost investments can benefit from India as labour cost isvery cheap. Attractive offers are offered to foreign companies looking for investment by the Indian government such as subsidies, favourable regulatory policies etc. However certain measures ought to be kept in mind while a foreign company is thinking of setting up a wholly owned subsidiary in India.

Thorough market research should be conducted to understand the working of the markets and the legal requirements for wholly owned subsidiary in India. Careful evaluation should be done to determine the most appropriate location to set up a subsidiary. To have a better understanding of complexities of Indian market the foreign company should take local expertise as they have better experience in market. Laws and regulations vary with different types of industry and location.

So, the foreign company needs to understand the working of the system before the incorporation of a wholly owned subsidiary in India. Appropriate measures and strategies should be planned out by the foreign company to adapt into unique challenges as Indian market seeks an approach which should be flexible for the changing conditions of the market. Setting up a wholly owned subsidiary in India is challenging and complex but with correct measures to tackle market and better understanding of market, foreign companies can achieve their business objectives.

FAQs

How does a wholly owned subsidiary differ from a joint venture?

The main difference between a wholly owned subsidiary and a joint venture is the level of ownership and control. In a wholly owned subsidiary, the parent company has complete ownership and control over the subsidiary's operations, whereas in a joint venture, the partners share ownership and control according to the terms of the agreement.

How can a wholly owned subsidiary benefit a foreign company's business operations in India?

A wholly owned subsidiary can benefit a foreign company's business operations in India by providing full control and autonomy over operations, enabling easier compliance with Indian laws and regulations, and allowing for greater flexibility in business decision-making.

What are the risks and challenges associated with setting up a wholly owned subsidiary in India?

Setting up a wholly owned subsidiary in India comes with several risks and challenges, including regulatory environment, Legal requirement, Cultural differences, Infrastructure challenges, Talent retention, Currency fluctuations in the foreign exchange market, Political and economic risk.

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