# Regulatory Landscapes for Foreign Companies Setting up Subsidiaries in India

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## Introduction:

India stands as a beacon of opportunity for foreign companies seeking to expand their footprint and tap into a vast consumer base. Setting up a subsidiary in India represents a strategic move for businesses aiming to capitalise on the country's dynamic market. However, amid the allure of this lucrative venture, it is crucial for foreign entities to navigate the intricate web of regulatory and legal compliances unique to India. This article serves as a comprehensive guide, shedding light on the compliance requirements that foreign companies must diligently follow when embarking on the journey to establish a subsidiary in India.

The incorporation of a foreign subsidiary in India is a strategic pursuit driven by the overarching goal of expanding business operations beyond the borders of the company's country of origin. A subsidiary, whether wholly or partially owned by a foreign holding company, operates under the umbrella of the parent brand while maintaining a distinct legal identity for compliance purposes. The primary role of the holding company is to provide substantial funding support to its subsidiary.

## What is a subsidiary?

A Subsidiary company or a subsidiary has been defined under Section 2(87) of the Companies Act, 2013 wherein the holding company– *(i) controls the composition of the Board of Directors; or (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies.*

A foreign company has been defined under Section 2(42) of the Companies Act, 2013 as *any company or body corporate incorporated outside India which,*

1. *has a place of business in India whether by itself or through an agent, physically or through electronic mode; and*
2. *conducts any business activity in India in any other manner.*

## Setting up a Subsidiary:

Setting up a subsidiary company in India involves a systematic process that encompasses various legal and procedural steps. The initial crucial decision revolves around determining the type of subsidiary company to establish. Foreign companies typically opt for a private limited company, where the parent enterprise owns more than 50% of the subsidiary, or a wholly-owned subsidiary, where the parent entity owns all shares, especially in sectors allowing 100% foreign direct investment (FDI). The registration process kicks off with obtaining a Digital Signature Certificate (DSC) for the proposed directors, as the entire registration is conducted online, necessitating electronic signatures. Directors must also secure a Director Identification Number (DIN) from the Ministry of Corporate Affairs (MCA), a unique identifier obtained through an online application process.

Selecting a unique and compliant name for the subsidiary is the next step, requiring approval through the MCA's online portal and adherence to naming guidelines. Following this, legal documents known as the Memorandum of Association (MoA) and Articles of Association (AoA) must be drafted. These documents delineate the company's objectives, rules, and regulations in accordance with the Companies Act, 2013.

Once the name is approved, and the MoA and AoA are in order, the incorporation process moves forward by filing necessary documents with the Registrar of Companies (ROC) through the MCA's online portal. This includes submission of the MoA, AoA, and other requisite forms, with the incorporation facilitated through the SPICe+ form on the Ministry of Corporate Affairs portal. This structured approach ensures compliance with legal formalities, paving the way for the successful establishment of a foreign subsidiary in India. The final stages of establishing a subsidiary company in India involve critical procedural and regulatory steps. Following the payment of the required registration fees to the Registrar of Companies (ROC), which is contingent on the authorized capital of the subsidiary, the ROC evaluates the submitted documents. If everything is in order, the ROC issues a Certificate of Incorporation (CoI), a pivotal document that officially recognizes the subsidiary company's registration.

Post incorporation, the process extends to obtaining essential identification numbers and complying with tax-related formalities. The next steps include applying for a Permanent Account Number (PAN) and Tax Deduction and Collection Account Number (TAN) from the Income Tax Department. PAN is a unique identification number for taxation purposes, while TAN is essential for deducting and collecting taxes at the source. Simultaneously, it is imperative to initiate the process of opening a bank account in the subsidiary's name within India. This bank account becomes instrumental for conducting financial transactions and managing the subsidiary's financial affairs.

Beyond the company registration and tax-related procedures, comprehensive compliance extends to other regulatory realms. This includes securing Goods and Services Tax (GST) registration, adhering to labour laws, and ensuring compliance with any industry-specific regulations that may apply. This holistic approach to compliance guarantees that the newly established subsidiary not only complies with legal formalities but also operates seamlessly within the regulatory framework of India, setting the foundation for its successful integration into the business landscape of the country.

## Mandatory Compliances:

Establishing a subsidiary company in India requires a minimum of two shareholders, who can either be foreign companies or individuals. Additionally, a mandatory criterion involves having at least two directors, with one of them being a resident Indian director residing in India. Interestingly, there is no obligatory share allocation requirement for the Indian director. Additionally, foreign subsidiary companies are obligated to conduct an annual general meeting (AGM) of shareholders. This meeting serves as a platform to present the annual financial statements and appoint or reappoint directors.

Unlike many jurisdictions, there is no minimum capital stipulation for subsidiary registration in India. The registration process typically spans 12-15 business days from document submission. Subsidiary companies are subject to a 25% income tax rate on profits. Post-registration, the process of opening a bank account is facilitated remotely, with internet banking credentials promptly provided. Monthly and annual costs encompass government fees and professional fees associated with the operation of the company in India. The documentation process involves notarized and apostilled documents, including passports, driving licenses, certificate of incorporation, board resolution, among others. Shareholders play a crucial role in this process, as they are entitled to receive notice of the meeting, actively participate, and vote on proposed resolutions.

## Conclusion:

Operating as foreign subsidiary companies in India involves strict adherence to corporate governance regulations that govern key aspects of their functioning. These regulations are designed to ensure transparency, accountability, and compliance with Indian corporate laws. Furthermore, the regulatory framework necessitates the filing of various documents with the Ministry of Corporate Affairs. This includes annual financial statements, the director's report, and the auditor's report. This comprehensive governance structure aims to uphold the integrity of foreign subsidiary companies operating in India and fosters a commitment to robust corporate governance practices.

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