A guide for foreign nationals to start a business in India
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India is one of the fastest-growing economies in the world with a population of approximately 1.4 billion[1]. India serves as a favourable destination to start a business in India due to its business- friendly policies. According to the World Bank's 2022 report on ease of doing business, India was ranked 63 among 190 countries [2] . In the last few years, India has opened multiple avenues and has provided schemes for foreigners to invest in the Indian economy. Such avenues have attracted large foreign direct investments and this inflow is increasing every year.

The Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India regularly updates it's consolidated policy framework for Foreign Direct Investment (FDI) in India. The Indian Government is also encouraging foreign nationals to invest in start-ups, small businesses and MSMEs. The Indian Government has also carried out structural changes to the laws which permit foreign direct investment in India and therefore the procedure for setting up business in India by foreign companies and foreign national have been significantly simplified.

Foreign nationals and companies can set up businesses in India in various ways. This article will provide an extensive guide on how to set up a company in India.

Different ways in which foreigners can start a business in India

There are different types of business structures in which a foreign company can opt to establish a business in India. Foreign companies can decide depending on the nature of their business and other affecting factors as to which type of business structure would be beneficial for them. Here are a few options for setting up a business in India:

1. Company registered under the provisions of the Companies Act, 2013

A company incorporated under the Companies Act, 2013 is the most preferred route for doing business in India. The other option available is a Limited Liability Partnership (LLP) firm. Depending on the capital the Foreign National intends to invest, the intended nature of the business and the resources available in India to manage the business; a foreign national may either opt for a for incorporating a Company or forming a LLP. While the LLP structure is easy to form and maintain in terms of compliances, however, when it comes to tapping into funding and allocability of shares to the investors, a company would be more advantageous.

- Private Limited Company: The fastest way to set up a business in India is through registering as a Private Limited Company (PLC). Almost all sectors (except for few prohibited sectors) can welcome Foreign companies to set up business in India via FDI (either through the Automatic Route or through the Government Route) A PLC must have at least two shareholders and can have a maximum of fifty shareholders. A Private Limited Company must have a minimum paid-up capital of Rs. 100,000..
- Public Limited Company: A Public Limited Company must have at least 7 (seven) shareholders. There is no upper limit on the number of shareholders of a public company. A public company must have a minimum paid-up capital of Rs. 500,000.

If the company has a foreign shareholding, the foreign citizens should bring their contribution to the share capital by transferring from their foreign bank account through normal banking channels and through the same banking channels, the foreign nationals may also receive their annual dividends/profits, if any. A foreign national can act as Director / Managing Director / Whole-time Director / Manager of an Indian company.

2. Other Permissible Structures

1. Liaison office: A foreign company has the option to set up a liaison office (also known as Representative Office) for all liaison activities in India. A foreign company will bear all the expenses of a liaison office. A Liaison Office can undertake only liaison activities in India i.e. it can act as a channel of communication between the Head Office (established abroad) and parties in India. The Liason Office is not allowed to undertake any business activities in India and cannot earn any income/profits in India.
2. Branch office: Branch offices are allowed to be set up in India with specific approval from the Reserve Bank of India (RBI) for companies that are incorporated outside India and are engaged in manufacturing or trading activities.
3. Joint Venture: A foreign company, to form a joint venture in India, will have to connect with a local partner, in the respective location where the business is to be established. The foreign company and the local partner will sign a Memorandum of Understanding (MOU), which outlines the basis for the joint venture agreement.
4. Wholly-owned Subsidiary: An Indian company will become a wholly-owned subsidiary of the foreign business when it makes a 100% FDI investment in it. A foreign company can make a 100% FDI to register its business in India.
5. Project Office: A foreign company can set up a project office in India to execute projects given to them by Indian companies. However, to establish such a project office foreign company is required to obtain approval from the Reserve Bank of India (RBI).

Apart from a Liaison Office, all other structures mentioned herein are permitted to remit back to the Foreign investors any profits earned through the proper banking channels in accordance with the laws in India pertaining to foreign exchange. It is to be noted that while remitting funds, subject to the aforementioned laws pertaining to foreign exchange, the amounts to be remitted must be submitted to the bank along with Form A -2 (to be submitted to the bank by the applicant/remitter). The applicable withholding taxes may also be applicable while remitting funds to Foreign investors.

What are the documents required for foreigners and applications to authorities for
registration in India?

There are several ways for setting up a business in India by a foreign company. Each such form of business requires different documents and formalities for registration. To get a foreign company registered following documents are required:

1. Process for Joint Venture
   - MOU states the basics of a joint venture agreement.
   - Foreign companies and local partners shall negotiate and discuss all the terms of the joint venture agreement. The said agreement must be consistent with domestic and international law.
   - The MOU that would be signed by the parties in a joint venture should contain essential clauses such as a dispute resolution clause, clauses that elaborate on the holding of shares, Governing law clause, clauses pertaining to the transfer of shares, confidentiality clause, non-compete, non-solicit, ownership of developed intellectual property, etc.
2. Process for a Company
   - As per the Companies Act, 2013, a minimum of two shareholders will be required and the Directors will have to be appointed. All directors have to apply for DIN and procure digital signature certificates.
   - For the reservation of name, an application through e-form RUN (“Reserve Unique Name”) will have to be applied. Additionally, an application through SPICe+ e-form will have to be filed along with the MOA and AOA of the Company. By filing the SPICe+ e- form the company would be registered. A wholly-owned subsidiary would also receive Professional Tax Registration, a Bank Account, Shops and Establishment Registration, GST number, Employees Provident Fund registration, and Employees State Insurance Registration along with a PAN and TAN by filing an AGILE-PRO-S form.
   - Lastly, the ROC online fees and stamp duty as per the authorized capital of the company will also have to be paid during the incorporation process.
3. Process for Liaison Office
   - The foreign company must have a profit-making record and net value should not be less than USD 50,000 to set up a liaison office in India.
   - Application to establish a liaison office to the Foreign Exchange Department through a designated Authorised Dealer Category–I Bank (AD) [3].
   - It should file the English version of the certificate of incorporation/registration or MOA or AOA.
   - Latest audited balance sheet attested by the Indian Embassy or Notary Public
   - The RBI will give the liaison office a unique identification number
   - Obtain a PAN from Income Tax Authorities and all the expenses should be met entirely through inward remittances of foreign exchange.
   - Get approval from the IRDAI (Insurance Regulatory and Development Authority).
4. Process for Branch Office

- The foreign company should be engaged in trading or manufacturing activities and have a net value of not less than USD 1,00,000 in its home country.
- Forward the application to establish a liaison office to the Foreign Exchange Department through a designated Authorised Dealer Category–I Bank (AD).
- File the English version of the certificate of incorporation/registration or MOA or AOA.
- Latest audited balance sheet attested by the Indian Embassy or Notary Public.
- RBI will give the branch office a unique identification number [4].
- The foreign company has to obtain PAN from Income Tax Authorities
- Approval from the Reserve Bank of India (RBI) under FEMA 1999 and approval from the Insurance Regulatory and Development Authority (IRDA).

Conclusion

The Indian government has taken several efforts to increase foreign investments in India. These efforts have been a success as FDI in India is increasing every year. India is a relationship- driven society with multiple business opportunities. Commerce and trade in all forms are encouraged by the government. India's rank in the ease of doing business has also improved in the last 5 years. If you are an NRI/Foreign National looking to start a business in India, take advantage of established law firms providing incorporation services in India in order to ease the process of setting up in India and doing business in India.

FAQs

Can a foreigner open a Person Company in India?

Yes, other persons than an Indian citizen or a Resident in India, can register a one-person company anywhere in India. This means a non-resident Indian (NRI)or a foreigner can set up an OPC in India. The new amendment of 2021 via Companies (Incorporation) Second Amendment Rules, 2021 has made it possible

Can a foreigner do retail business in India?

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[2] https://economictimes.indiatimes.com/news/economy/indicators/india-jumps-to-63rd-position-in-world-banks-doing-business-2020-report/articleshow/71731589.cms?from=mdr

[3] https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10404

[4] https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10404

[5] https://www.mca.gov.in/Ministry/pdf/SecondAmndtRules_02022021.pdf

[6] https://dpiit.gov.in/sites/default/files/pn5_2012_2.pdf