

Setting Up A Business In India: An Overview

written by KSANDK | October 3, 2022



As per reports, India has recorded a significant amount of economic growth which surpassed that of China's GDP in 2022. The country is currently the fifth-largest economy in the world and the current government in India is dedicated to its economic growth, rolling out initiatives like 'Make in India', 'Digital India', and 'Skill India', along with other business-friendly policies that have greatly improved the business ecosystem in the country. Various multinational corporations (MNCs), growing startups and foreign entities are increasingly interested in Setting Up a Business In India for such reasons.

The First Steps for Setting Up a Business In India

Since the business ecosystem in India is constantly evolving and there is a surge in the number of companies looking for setting up a business in India, it is useful to understand the types of business formations available to them. Indian regulations offer foreign businesses two different sorts of business formation structures. Each of these company structures has certain benefits and drawbacks, as well as varying requirements for minimum capital, registration procedures, and the range of permitted business operations. The majority of the time, it depends upon the operational requirements and the actual purpose of the Indian company. They are divided into incorporated and unincorporated structures.

Under the incorporated structures, the following options are available:

- **Subsidiary/Wholly Owned Subsidiary Company:** An Indian company whose controlling stake is held by a parent company. A subsidiary/wholly owned subsidiary can be incorporated in the form of a Public Limited Company or a Private Limited Company.
- **Limited Liability Partnership (LLP):** The LLP is another alternate corporate business structure that offers the benefits of a company's limited liability but gives its members the freedom to organize their internal administration however they see appropriate, based on an agreement reached by both parties, much like in a partnership firm.

In addition to the above, there are a few alternatives available as unincorporated structures, which are:

- **Liaison Office (LO):** The LO serves as a communication link between the LO's primary office and other enterprises in India. It is a representative office of an overseas organization.

- Branch Office (BO): Similar to the LO, the BO is likewise established with previous RBI approval (routed through a regional banker, Authorized Dealer (AD) Bank), but the BO has a considerably broader range of permitted operations.

Under unincorporated structures, there is also an option for the companies to get registered as trusts/partnerships. However, the same is not widely considered by foreign entities for setting up a business in India, owing to the limited permissible operations.

Essentials For Setting Up a Business In India

- Compliance with the requirements of The Companies Act, 2013 for the incorporation of a company read with the rules framed under the Act.
- A minimum number of two subscribers in the case of a private company and seven in the case of a public company.
- A minimum number of two directors in the case of a private company and three directors in the case of a public company, and one director shall be resident in India. To qualify as a resident means staying for 182 days or more in the preceding financial year.
- No minimum capital requirement
- Having a registered office within thirty days of incorporation of the company
- The name of the subsidiary company may or may not be the same as the holding company.

Essentials For Setting Up A Branch Office/Liaison Office In India

- Within thirty days of setting up a business in India or opening a location of the business in India, every foreign firm is required to submit specific information to the registrar.
- According to the Companies (Registration Offices and Fees) Rules of 2014, these companies must submit Form FC-1 and pay the necessary fees to the registrar.
- According to Schedule III of the Rules, after setting up a business in India all foreign corporations are required to create a financial statement of their Indian commercial operations, which must be presented to the registrar within six months of the end of the fiscal year.
- Every foreign company shall, along with the financial statement required to be filed with the registrar, attach the statement of related party transactions, repatriation of profits and transfer of funds.
- Any statutes, charters, memorandum of incorporation, articles of incorporation, or other documents that make up or specify the corporate constitution must be duly certified.
- Foreign corporations must file all of their paperwork with the registrar in English; if not, they must attach an English translation that has been properly validated under the regulations.

Guidelines For Setting Up a Business in India

There are a variety of rules and regulations applicable to foreign entities which are looking forward to setting up a business in India. They are mainly governed by the rules and policies of FDI, FEMA, RBI, and Companies Act 2013. A brief on these regulations is given below:

- Companies Act 2013: The Companies Act, 2013, among other things, specifies in detail how directors must be qualified, compensated, removed from office, and retired, as well as how board and shareholder meetings must be conducted, resolutions must be passed, related party transactions must be disclosed,

books of accounts must be maintained, annual accounts must be prepared and presented, and periodic filings with the Registrar of Companies must be made.

- Labour regulations: Businesses with production lines and factories would also have to consider and comply with a number of statutes such as the Employees' State Insurance Act, 1948; the Maternity Benefits Act, 1961; the Industrial Disputes Act, 1948; The Contract Labor (Regulation and Abolition) Act, 1970; the Trade Union Act, 1926; the Equal Remuneration Act, 1976; the Payment of Gratuity Act, 1972, etc.
 - Tax and stamp duty: After Setting Up a Business In India all Indian companies are required to pay tax and stamp duty on the money they make from their commercial activities during any given fiscal year as well as on the transactions they engage in.
 - Foreign exchange laws: An offshore company that operates directly in India (without using an agent) will be categorised as a liaison office, branch office, or project office by the Reserve Bank of India (RBI) in accordance with the terms of the Foreign Exchange Management Act (FEMA) 1999.
- Government Schemes And Benefits For Setting Up a Business In India
- To encourage foreign investment in India's different industries, the Indian government has launched a number of programs. To entice investors who wishes for setting up a business in India, it periodically announces several alluring policies and plans. The specific ministries of each business have worked hard to relax the laws and standards governing foreign investment in that area.

The National Infrastructure Pipeline, a decrease in corporate taxes, alleviating Non-Banking Financial Companies (NBFC), bank liquidity issues, and trade policy initiatives to support local manufacturing are a few of these. Through public procurement directives, the Phased Manufacturing Program (PMP), and the schemes for production-linked incentives of several ministries, the Indian Government has also strongly encouraged the domestic manufacturing of commodities.

Conclusion

Having discussed the regulations and the government's efforts in attracting foreign companies to India, we can safely deduce that the business ecosystem is shifting away from outdated/conventional policies and regulations. Given India's fast-expanding market, several foreign businesses have decided to set up operations because of the potential of the country. The Indian economy has benefited greatly from foreign direct investment. As they become more aware of the potential of Indian enterprises and human resources, a rising number of international investors are also interested in investing in the country. For their business activities in India, foreign corporations must choose the right structure and path, nevertheless, given the wide range of choices and the associated complexities. The best way for a foreign firm for setting up a business in India will primarily depend on the criteria that are unique to that company, such as the scope of its activities, plans for expansion, and business objectives.

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