

# Setting Up of Business in India by Foreign Companies



*Foreign investments are a very vital part of a country's economy. Government of India has always shown keen interest in formulating the consolidated Foreign Direct Investment (FDI) Policy and other investment policies, with an intent and objective to promote foreign investment in the country, through a transparent and hassle free regulatory system. Last year, the government liberalised norms for foreign investment in certain sectors like construction-development, railways, defense and medical devices. The Indian government's liberalised approach and a robust business environment have strengthened the faith of foreign investors. Global brands lined up to invest in India as the government opened more sectors to foreign investment. This article highlights various ways in which foreign companies may enter India and start business in various forms of entities. The procedure and compliances required for incorporation of such entities by foreign investor is also discussed in detail. Read on...*

Below are some quick facts on India's foreign investment:

- FDI inflows during April-October of the financial year 2014-15 grew by 26 per cent to \$17.34 billion from \$13.82 billion in the same period a year earlier.<sup>1</sup>
  - Total FDI inflows into India in the period April 2000–August 2014 touched US\$ 341,357 million. Total FDI inflows into India during the period April–August FY15 was US\$ 17,445 million.<sup>2</sup>
  - Mauritius led the share of top investing countries by FDI equity inflows into India with US\$ 3,934 million during April-August FY15, followed by Singapore (US\$ 1,892 million), the Netherlands (US\$ 1,562 million) and Japan (US\$ 897 million).<sup>3</sup>
- India, being one of the fastest growing economies in the world which has also sustained the downturn of 2008-09, offers huge potential and promising business opportunities for global investment community.



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<sup>1</sup> Source: [http://articles.economicstimes.indiatimes.com/2015-01-02/news/57611477\\_1\\_consolidated-fdi-policy-circular-industrial-policy-the-dipp](http://articles.economicstimes.indiatimes.com/2015-01-02/news/57611477_1_consolidated-fdi-policy-circular-industrial-policy-the-dipp)

<sup>2</sup> Source: <http://www.ibef.org/economy/foreign-direct-investment.aspx>

<sup>3</sup> Source: [http://indiainbusiness.nic.in/newdesign/index.php?param=investment\\_landing/247/1](http://indiainbusiness.nic.in/newdesign/index.php?param=investment_landing/247/1)

Liberalised policies, simplified regulatory norms and adoption of 'best practices' in production of goods and services have been the key factors in attracting foreign investment in the country.

### Choosing the Form of Business for Investment in India

Foreign investment can come into the country in various forms and entities. Each form has its own set of merits and demerits. The key is to balance the advantages and disadvantages of various forms of business. A prospective foreign investor will have to keep in mind various aspects before entering into the Indian market, including regulatory requirements, sources of financing, setting up of infrastructure, etc.

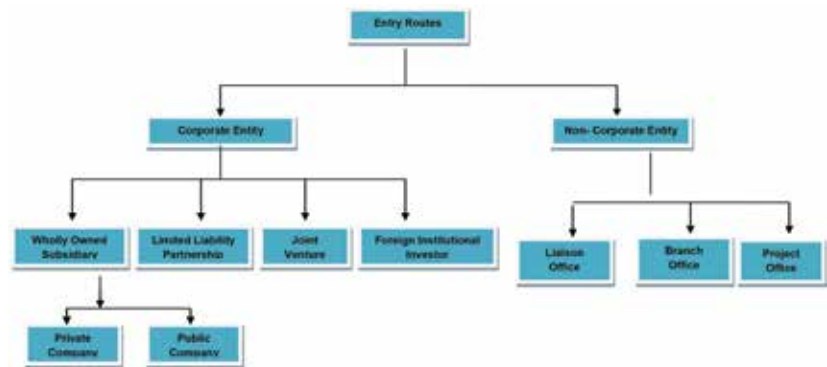
#### Key factors on which choosing the form of business depends:

- **Nature of Business**  
Nature of business for which the foreign entity is desirous of making investment in India is one of the crucial factors. There are certain sectors where foreign investment is either partially allowed or completely prohibited by the Indian government. A joint venture might be most suitable form if the foreign company is willing to provide technical know-how to an already established Indian entity and in turn Indian company may contribute in terms of infrastructural set up, manpower, etc. Similarly, a liaison office might be set up in India to spread awareness about the foreign company, explore new markets or to promote its business interests.
- **Scale of Operations**  
Another key factor in choosing the right form of setting up business in India is the scale of operations with which the foreign company is willing to start its business. If the volume of proposed operations is large then it is preferable to set up a wholly owned subsidiary company (private or public). If the foreign investor intends to invest for short duration or for a specific project in India, then a liaison office can be set up. Foreign companies engaged in the business of manufacturing and trading activities outside India, may set up a branch office to facilitate import/ export of their goods or for providing

services to their customers in India. Similarly, a limited liability partnership (LLP) is suitable for small and medium scale business.

- **Amount of Capital to be Invested**  
One of the major concerns before setting up a business entity in India by a foreign investor is the amount of capital proposed to be invested. Setting up of and complying with regulatory norms in case of a branch office or a liaison office requires less capital as compared to incorporating a wholly owned private or public subsidiary. Moreover, complying with the statutory requirements in case of a wholly owned subsidiary is also a costly affair.

### Entry Routes Available to Foreign Investor



A foreign entity planning to invest in India can do so either by forming a corporate entity or a non-corporate entity. Let's have a closer look at both the forms of doing business:

#### Formation Of Corporate Entity

If a foreign investor chooses to enter the Indian market through this route, then the following choices are available:

##### 1. Wholly Owned Subsidiaries

Foreign investors may set up wholly owned subsidiaries (either public or private company) under the Companies Act, 2013. This will ensure an independent legal status, different from its parent foreign company, limited liability and a separate existence if its own.

#### Things to be kept in mind before incorporation:

- **Activities allowed by the government:** There are certain activities in which foreign investment is allowed completely and in some activities it is partially allowed. Also, some commercial sectors are open to foreign investment under automatic

route, which means no prior approval from government is required, while others require prior approval from government. There is also a list of activities in which foreign investment is completely prohibited. Therefore, this is an important aspect to be kept in mind before setting up of a wholly owned subsidiary in India.

- **Minimum requirement of capital:** Till now, for incorporation of a private limited wholly owned subsidiary, minimum amount of capital required was ₹1,00,000/- (Rupees One Lakh), while minimum capital required to set up a public limited wholly owned subsidiary was ₹5,00,000/- (Rupees Five Lakhs). This cost was exclusive of setting up of infrastructure and other running cost of the proposed Indian company. However, with effect from end of May, 2015, the government has done away with the requirement of minimum capital for both, private and public limited companies. Hence, now foreign entities can set up their wholly owned subsidiaries without any initial capital, and can instead invest in setting up of infrastructure and promotion of their business.
- **Requirement of minimum number of directors and shareholders:** There is a minimum requirement of directors and shareholders, as mentioned below:
  - A) Private Limited Company  
Minimum Shareholders: 2 (Two)  
Minimum Directors: 2 (Two)
  - B) Public Limited Company  
Minimum Shareholders: 7 (Seven)  
Minimum Directors: 3 (Three)

It must be noted here that while only individuals can become directors; a shareholder can also be a company (including foreign company). Also, at least one of the directors on the Board of the company must be resident in India.

- **Statutory compliances:** A wholly owned subsidiary, either public or private limited, will have to comply with all the laws, rules and regulations as applicable, including but not limited to the Companies Act, 2013, Foreign Exchange Management Act, 1999, Shops and Establishment Act, Income Tax Act, etc., failing to which may result in heavy penalties. This will result in increase in the running expenses of the Indian subsidiary as professional guidance shall be mandatorily required to stay compliant with all the applicable laws.

### Steps for incorporation:

**Approving Authority:** Registrar of Companies (RoC) and Reserve Bank of India (RBI)

- I. Obtaining approval from FIPB (Foreign Investment Promotion Board), if required:  
If the activities of the Indian wholly owned subsidiary fall under Government approval route, then the approval from FIPB has to be obtained.
- II. Obtaining DSC (Digital Signature Certificate) of proposed directors:  
Digital Signature Certificates (DSC) are the digital equivalent (that is electronic format) of physical or paper certificates. DSC is required to sign any electronic document like e-forms. DSC can be obtained from any licensed Certifying Authority.
- III. DIN (Director Identification Number) of proposed directors:  
It is mandatory for proposed directors to obtain DIN (Director Identification Number) under the Companies Act, 2013. DIN can be applied electronically in Form DIR-3 on the website of Ministry of Corporate Affairs (MCA), along with required documents and filing fee.
- IV. Applying for availability of name:  
The foremost step in formation of a company (public or private) is to apply for availability of name of the proposed company. One must comply with the naming guidelines in this regard. Form INC-1 has to be filed with MCA for reservation of name of the proposed company.
- V. Drafting of Memorandum of Association (MoA) and Articles of Association (AoA):  
Memorandum of Association (MoA) is the charter of the company and it sets out its scope of activities. Articles of Association (AoA), on the other hand, regulate the internal working of the company. Both these documents are very crucial to the company and hence, are drafted with caution.
- VI. Filing incorporation documents (within 60 days of filing Form INC-1):  
Once the name is approved from the Registrar of Companies, documents for incorporation have to be filed in Form INC-7 and Form DIR-12, within 60 days of date of filing of form INC-1.
- VII. Filing of documents for registered office of the company (within 30 days of incorporation):  
The company must have a place of business as its registered office. Form INC-22 has to be filed along with the required documents, either at the time of filing documents for incorporation

or within 30 days of date of incorporation of the company.

#### VIII. Certificate of Commencement of Business:

A company, after its incorporation, could commence its business only when the subscribed amount has been deposited by the subscribers in the bank account of the company. A declaration from subscribers of the company in Form INC-21 was to be filed within 180 days of its incorporation. In a recent amendment, government has done away with the above mentioned requirement of obtaining Certificate of Commencement of Business (effective from end of May, 2015).

#### New Form INC-29

In its effort to simplify the process of incorporating a company in India and to attract foreign investors, government introduced an integrated e-Form INC-29, which is available for online filing from May 1, 2015.

Form INC-29 at a glance:

- A single form for application of DIN, name availability and filing of other incorporation documents;
- This facility is in addition to present procedure for incorporation of companies;
- Time for incorporation of company will be significantly reduced.

However, there are certain limitations of the same, which includes the following:

- DIN can be applied only for 3 (three) directors;
- Only 1 (one) name can be applied for, instead of 6 (six);
- If anyone of the above applications is rejected, then whole process will have to be started afresh.

Despite of such limitations, introduction of this integrated Form INC-29 for incorporating a company is a welcome step.

#### Post incorporation compliances (immediately after incorporation)

Foreign Exchange Management Act (FEMA), 1999

- I. Obtaining FIRC (Foreign Inward Remittance Certificate): As soon as the subscription amount

from foreign subscriber is received in India, authorised dealer bank will issue FIRC.

- II. Reporting to the Reserve Bank of India (RBI): The company is required to report to RBI in Form FC-GPR, along with other documents, within 30 days of issue of shares and shares for the same have to be allotted within 180 days of the receipt of subscription amount.

#### Companies Act, 2013

In case of a wholly owned subsidiary, 100% shares of the Indian company are held by the foreign entity (in its own name as well as through a nominee). Therefore, declarations from registered shareholder and beneficial shareholder have to be filed in Form MGT-6, within 30 days of receipt of such declarations.

#### 2. Limited Liability Partnership

Limited Liability Partnership or LLP is a fairly new concept in India. An LLP is a corporate entity formed under the Limited Liability Partnership Act, 2008 and one of its important characteristics is that its partners have limited liability (unlike partnership firms registered under the Indian Partnership Act, 1932). Though a partnership, an LLP has perpetual succession and separate legal existence from its members. Thus, an LLP is a corporate structure that combines benefits of both, a company and a partnership firm.

As the compliance cost for a LLP is much lower than other forms of business and because of its greater flexibility, LLP can be a good option for foreign entities to start business in India. This form of business is best suited to service industry, as well as small and medium scale enterprises.

#### Things to be kept in mind before incorporation:

- *Compliances under FEMA, 1999:* There are certain conditions subject to which foreign investment is allowed in LLPs. Foreign investment in LLPs is allowed only through prior government approval route and that too in sectors/activities where 100% foreign investment is allowed under automatic route. Therefore, an intending foreign investor must go through all the conditions subject to which a LLP can be formed in India.
- *Scale of operations:* Carrying out business through an LLP is well suited for small or medium scale enterprises, particularly in service sector. If proposed foreign investor intends to set up business in India with limited operations, then LLP might be a suitable option.

**Carrying out business through an LLP is well suited for small or medium scale enterprises, particularly in service sector. If proposed foreign investor intends to set up business in India with limited operations, then LLP might be a suitable option.**

- *Requirement of minimum number of partners:* An LLP must have at least two partners, who can be individuals or any body-corporate. Also, there must be atleast two designated partners, who should be individuals. At least one of designated partners must be resident in India. However, there is no bar on maximum number of partners.

Foreign entity desirous of investing in India should consider the above mentioned requirements and other conditions before deciding to incorporate LLP in India.

### Steps for incorporation:

*Approving Authority:* Registrar of Companies (RoC) and Reserve Bank of India (RBI)

- I. Obtaining approval from FIPB (Foreign Investment Promotion Board):  
As already mentioned, foreign investment in LLP is allowed through prior Government approval route and only in sectors where 100% foreign investment is permitted under automatic route. There are several other conditions also, as specified by Government, which needs to be fulfilled. Hence, proposed foreign investor shall make an application to FIPB seeking approval.
- II. Obtaining DSC (Digital Signature Certificate) of proposed partners:  
As mentioned in case of wholly owned subsidiary, DSC can be obtained from any licensed Certifying Authority.
- III. DIN (Director Identification Number)/ DPIN (Designated Partner Identification Number) of proposed partners:  
It is mandatory for proposed partners to obtain DIN/ DPIN under the Companies Act, 2013. DIN/ DPIN can be applied electronically in Form DIR-3 on the website of Ministry of Corporate Affairs (MCA), along with required documents and filing fee.
- IV. Applying for availability of name:  
The fore most step in formation of an LLP is to apply for availability of name of the proposed LLP. Care must be taken to comply with the naming guidelines in this regard. Form 1 has to be filed with MCA for reservation of name of the proposed LLP.
- V. Filing of incorporation documents:  
Once the name of proposed LLP has been approved, incorporation documents, which include subscriber's statement, details of partners and registered office, *etc.* are required to be filed in e Form 2.

- VI. Drafting and execution of LLP agreement:  
LLP Agreement is one of the most crucial documents as it governs the rights and duties of partners. It may be drafted as per the convenience and mutual understanding among partners of LLP. Various aspects covered under the agreement may include amount and manner of contribution, rights and duties of partners, description of business of proposed LLP, *etc.*

- Value. Filing of LLP agreement:  
LLP is formed once the Form 2 is approved by the Ministry. LLP agreement shall be then filed within 30 days of incorporation of LLP in Form 3.

### Post incorporation compliances (immediately after incorporation)

#### Foreign Exchange Management Act (FEMA), 1999

- I. Obtaining FIRC (Foreign Inward Remittance Certificate):  
As soon as the amount of consideration from foreign investor is received in India, authorised dealer bank will issue FIRC.
- II. Reporting to the Reserve Bank of India (RBI):  
LLP is then required to report to RBI (through its authorised dealer) in Form FOREIGN DIRECT INVESTMENT-LLP(I), along with other documents, within 30 days of the receipt of amount of consideration.

### 3. Joint Venture Company

Another option available for foreign entity to invest in India is to set up a joint venture company, which means collaboration with an Indian company and contributing in terms of capital, infrastructure, knowledge, technology, *etc.* It may involve an entirely new business, or an existing business that is expected to significantly benefit from the introduction of the new participant. A joint venture company can be set up as a separate legal entity, distinct from both, the foreign entity and Indian entity.

### Things to be kept in mind before incorporation:

- *Limited control:* Unlike a wholly owned subsidiary, a joint venture company offers a limited degree of control to both the entities. This is due to a very obvious reason that both, the Indian as well as the foreign company, have almost equal stake in a joint venture. Therefore, if a foreign entity is willing to reap the advantages like sharing of risks, easy entry into Indian markets, taking advantage of

infrastructure set up, etc., rather than exercising full control of the new company, then setting up of a joint venture with an Indian company is best suited.

- *Cultural and social differences:* Every country has its own way of doing business. In a joint venture, two or more companies from different mindsets, social and cultural backgrounds come together for doing business. Indian company might fear complete acquisition by its foreign collaborator. On the other hand, foreign entity might be apprehensive about Indian entity before investing such a huge amount of capital. Thus, both the collaborators must be sure about their compatibility with each other and willing to sort out their differences for a smooth and profitable business ahead.
- *Choosing the right partner:* Before entering into a joint venture with any Indian company, the foreign investor must understand what it shall gain from this joint venture. It must suit to the requirements of foreign entity. For example, if a foreign investor is ready to contribute in terms of capital, knowledge and skill and technology but lacks in setting up of infrastructure, manpower, access to Indian markets, then the proposed Indian collaborator must compensate for it.
- *Documentation in a Joint Venture:* Transactions in a joint venture demand efficient, clear and foolproof documentation. Depending upon the nature of the structure, definitive agreements would be drafted and executed, which will set out terms and conditions for both the partners. A few examples are, joint venture agreement, shareholder's agreement, memorandum and articles of association or any other agreement for collaboration.

### Setting up of a joint venture

A joint venture may mean either to set up an entirely new company (public or private) in India with an Indian partner or it may involve investing in an already existing company in India.

### Steps for incorporation

*Approving Authority:* Registrar of Companies (RoC)

- A new joint venture company:  
Procedure for incorporation and post incorporation statutory compliances of a new joint venture company will be similar to that of incorporation of a wholly owned subsidiary

(public or private) in India, with only difference in its shareholding pattern. In this case, both Indian and foreign partners shall have their agreed percentage of stakes in the joint venture company.

- Investment in an existing Indian company:  
A foreign investor company may subscribe a percentage of shares of an existing Indian company by way of allotment or transfer of shares already allotted. This will help saving the initial cost of incorporation and other infrastructures. It will also save time of both the partners and the business can be started immediately once the initial formalities are completed.

In this case, if shares are allotted to the foreign investor, then the details of the same shall be reported by the Indian company to the Reserve Bank of India (RBI) in Form FC-GPR, within 30 days of allotment, through its authorised dealer.

On the other hand, if the shares are transferred from an existing shareholder (transferor) to the foreign investor, then Form FC-TRS shall be filed with RBI, through its authorised dealer, within 60 days of receipt of full and final amount of consideration. It must be noted here that in this situation, filing of Form FC-TRS is the responsibility of the transferor, if he is resident in India.

### 4. Foreign Institutional Investor

A Foreign Institutional Investor (FII) means an entity established outside India and which proposes to make investment in India in securities. Foreign entities, willing to invest in India as FIIs, should first register themselves with the Securities and Exchange Board of India (SEBI). A wide range of foreign entities are allowed to register themselves as FIIs such as pension funds, mutual funds, insurance companies, investment trusts, banks, university funds, endowments, foundations, sovereign wealth funds, hedge funds and charitable trusts. In fact, asset management companies, investment managers, advisors or institutional portfolio managers set up and/or owned by NRIs are also eligible to be registered as FIIs. FIIs are not only allowed to invest in securities traded in primary and secondary markets, but also in mutual funds, dated government securities and derivatives traded on stock exchange. As already discussed, Indian economy offers huge potential for FIIs to invest in India.

### Steps for registration with SEBI

*Approving Authority:* Securities and Exchange Board of India (SEBI)

**A body corporate incorporated outside India, including a firm or association of persons, may open a Liaison Office (LO) in India. As the name suggests, it can only take up liaison activities in India and thus, act as a channel for communication between its head office abroad and Indian parties. This form of business is best suited if the proposed foreign investor intends to mark its presence in India and spread awareness about its products and services among Indian customers.**

- I. Application to SEBI in Form A:  
Foreign entity proposed to invest in India as FII, has to make an application to the SEBI in Form A, along with required documents and requisite fee.
- II. Additional information:  
On receipt of application, SEBI may ask for some additional information or documents from the applicant, before granting registration certificate. The applicant or its authorised representative may also be required to make personal representation before SEBI.
- III. Criteria for grant of registration certificate:  
There are few points of considerations by SEBI, before it may grant certificate of registration to the applicant. Some of these are as mentioned below:
  - a) the applicant's track record, professional competence, financial soundness, experience, general reputation of fairness and integrity;
  - b) whether the applicant is registered and regulated by an appropriate foreign regulatory authority;
  - c) Whether the grant of certificate to the applicant is in the interest of the development of the securities market; etc.
- IV. Procedure for grant of certificate:  
SEBI, after being satisfied with the information and documents furnished by the applicant, will grant certificate of registration in Form B, within 3 (three) months from the date when the required information/ documents is furnished to SEBI.

#### **Post registration compliances**

FIIs must comply and at all times after registration with SEBI, to the guidelines, rules and regulations as prescribed by SEBI and the Reserve Bank of India (RBI) in this regard.

#### **Prohibitions**

FIIs are not allowed to invest in any company which is engaged or proposes to engage in the following activities:

- i. Business of chit fund, or
- ii. Nidhi company, or
- iii. Agricultural or plantation activities, or
- iv. Real estate business\* or construction of farm houses, or
- v. Trading in transferable development rights (TDRs).

\* *Real estate business does not include construction of housing/commercial premises, educational institutions, recreational facilities, city and regional level infrastructure, townships.*

#### **Formation of Non-Corporate Entity**

Foreign entity may not be keen to invest a huge amount of capital in India during its initial stage. It might simply be interested in evaluating business opportunities and explore markets in India. In such a case, it may form a non-corporate entity in India.

Here, we shall discuss some common entry routes for the foreign investor:

##### **1. Liaison Office/Representation Office**

A body corporate incorporated outside India, including a firm or association of persons, may open a Liaison Office (LO) in India. As the name suggests, it can only take up liaison activities in India and thus, act as a channel for communication between its head office abroad and Indian parties. This form of business is best suited if the proposed foreign investor intends to mark its presence in India and spread awareness about its products and services among Indian customers. However, a major drawback of establishing an LO is that the foreign entity cannot carry any business activities through LO.

##### **Purpose of an LO**

- Representing in India the parent company/group companies.
- Promoting export/import from/to India.
- Promoting technical/financial collaborations between parent/group companies and companies in India.
- Acting as a communication channel between the parent company and Indian companies.

##### **Steps for incorporation**

*Approving Authority:* Reserve Bank of India (RBI)

- I. Permission from RBI:  
Application in Form FNC is required to be submitted, along with other required documents,

to the Foreign Exchange Department, through authorised dealer.

There are two routes under which application in Form FNC is considered by RBI:

- i) Reserve Bank Route: This route is followed where the principal business of the foreign entity falls under sectors where 100 per cent Foreign Direct Investment (FDI) is permissible under the automatic route.
- ii) Government Route: The application is considered under this route where principal business of the foreign entity falls under the sectors where 100 per cent FDI is not permissible under the automatic route.

## II. Additional criteria:

There are few additional criteria which are considered by RBI on case to case basis. These are mentioned below:-

- i. A profit making track record of the foreign company during the immediately preceding three financial years in the home country.
- ii. Net Worth\* of foreign company not less than US\$ 50,000 or its equivalent.

*\*Means total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement certified by a Certified Public Accountant or any Registered Accounts Practitioner by whatever name.*

Initially, the permission is granted by RBI for a period of 3 (three) years, which can later be extended by the authorised dealer.

## III. Foreign Insurance Companies and Foreign Banks:

Foreign Insurance companies can establish liaison offices in India only after obtaining approval from the Insurance Regulatory and Development Authority (IRDA).

Similarly, foreign banks can establish liaison offices in India only after obtaining approval from the Department of Banking Operations and Development (DBOD), Reserve Bank of India.

## Post establishment compliances (immediately after establishment)

- I. After establishment, LO is required to intimate to Registrar of Companies (RoC) in Form FC-1, within 30 days of establishment.
- II. Foreign entity setting up LO is required to submit a report containing information in prescribed format, within 5 (five) working days of the LO becoming functional to the Director General of

Police (DGP) of the state concerned in which LO has established its office.

## 2. Branch Office

If the foreign investor company is engaged in the business of manufacturing and trading, and it wishes to undertake certain business activities in India as well, then it can set up a branch office (BO) with specific approval of RBI.

### Purpose of BO

- Export/Import of goods (only on wholesale basis).
- Rendering professional or consultancy services.
- Carrying out research work, in areas in which the parent company is engaged.
- Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- Representing the parent company in India and acting as buying/selling agent in India.
- Rendering services in information technology and development of software in India.
- Rendering technical support to the products supplied by parent/group companies.
- Foreign airline/shipping company.

### Things to be kept in mind before incorporation

- A BO set up in India is not allowed to carry any kind of retail trading in India.
- A BO is also not allowed to carry out manufacturing or processing activities in India, directly or indirectly.
- Profits earned by the BO are freely remittable from India, subject to payment of applicable taxes.

### Steps for incorporation

*Approving Authority:* Reserve Bank of India (RBI)

#### I. Permission from RBI:

The manner and procedure for making application to RBI seeking permission to set up a branch office in India is similar to that of setting up a LO. Application is to be made in Form FNC.

#### II. Additional Criteria:

As in case of a LO, there are few additional criteria for BO also, which are considered by RBI on case to case basis. These are mentioned below:-

- i. A profit making track record of the foreign company during the immediately preceding five financial years in the home country.



- ii. Net Worth\* of foreign company not less than US\$ 100,000 or its equivalent.

*\*Means total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement certified by a Certified Public Accountant or any Registered Accounts Practitioner by whatever name.*

### III. Branches of Foreign Banks:

Foreign banks are required to obtain necessary approval under the provisions of the Banking Regulation Act, 1949, from Department of Banking Operations & Development, Reserve Bank, to open a branch office in India.

### IV. Branch Office in Special Economic Zones (SEZs):

Foreign companies can establish its branch in Special Economic Zones (SEZs) to undertake manufacturing and service activities. The general permission is granted by RBI and is subject to the following conditions:

- i. such branches/units are functioning in those sectors where 100 per cent FDI is permitted;
- ii. such units comply with the provisions of the Companies Act as applicable to the companies incorporated outside India;
- iii. such units function on a stand-alone basis.

### Post establishment compliances (immediately after establishment)

The post establishment compliances of a branch office are similar to that as in case of a liaison office.

### 3. Project Office

A project office (PO) is essentially a branch office, but for a limited period of time and limited purpose. If a foreign company has secured a project from an Indian company, then in order to carry out such project conveniently and efficiently, it may open a PO in India. However, it must be borne in mind that a PO cannot carry out any other activity other than those which are incidental to or related to the project.

### Steps for incorporation

No prior approval is required from RBI to set up

**A project office (PO) is essentially a branch office, but for a limited period of time and limited purpose. If a foreign company has secured a project from an Indian company, then in order to carry out such project conveniently and efficiently, it may open a PO in India.**

a project office. Reserve Bank has granted general permission to foreign companies to set up a PO, subject to following conditions:

- i) Foreign entity has secured a project from an Indian company; and
- ii) the project is funded directly by inward remittance from abroad; or
- iii) the project is funded by a bilateral or multilateral International Financing Agency; or
- iv) the project has been cleared by an appropriate authority; or
- v) a company or entity in India awarding the contract has been granted term loan by a public financial institution or a bank in India for the project.

Here, the condition as mentioned in point no. (i) is mandatory and out of rest of the three conditions, any one or more conditions can be fulfilled. However, if the above criteria are not met, the foreign entity has to approach the Reserve Bank of India, Central Office, for approval.

### Setting Up Of Project Offices by Foreign Non-Government Organisations/Non-Profit Organisations/Foreign Government Bodies/Departments

If any of the above foreign entities, by whatever name called, intends to set up a PO in India, then such entities are required to apply to the Reserve Bank for prior permission to establish an office in India, whether project office or otherwise. This is because it falls under the Government Route.

### Post establishment compliances (immediately after establishment)

The post establishment compliances of a project office are similar to that as in case of a liaison office or branch office. Additionally, the foreign company establishing a project office in India is to furnish report through the concerned AD branch, to the Reserve Bank of India, containing required information, within two months of its establishment.

### India: Land of Investment Opportunities

Having discussed the investor friendly regulatory systems and various routes available to foreign investors to enter into Indian market, it cannot be denied that India is today one of the most attractive destinations for business investment opportunities. Not only foreign entities earn a good return on their investment in India, but also Indian economy gets a boost! ■