

FOREIGN CORPORATES

Strategy
for
Entry
in India

Reasons for Preferred destination - India

- Largest Democracy , 2nd largest Populous Country & 7th largest continent in the world
- Government liberalisation & de-regulation policies, Mauritius Tax Heaven Route
- English Communicable
- Vast growth potential and untapped market
- Intelligent hard working human resources
- One of highly developing economies, BRICs
- Inflow of \$ 8.34 b in February, 2008 only

Channels of Entry in India

- Non – FDI Channel
- FDI (Foreign Direct Investment) Channel

Non – FDI Channel

- Liaison Office (LO)
- Branch Office (BO)
- Project Office (PO)

Liaison Office (LO) :

Purposes

- can not do any business or earning activity, directly or indirectly
- Only a kind of representative office
- Can undertake supportive, promotional, research, facilitative activities to parent company
- Act as a communication between parent company and rest of the world
- Can not charge any service charges from parent company
- Livelihood on capital receipts from parent company only received through proper banking channels in India

Incorporation / Formation Formalities

LO contnd.

- Reserve Bank of India (RBI) formalities
- Registrar of Companies (ROC) formalities

RBI Formalities

LO contnd.

- Form FNC -1
- MoA & AoA alongwith English Transcript
- Latest Audited Financial Statements
- History, Registered Office address, Directors & Secretary details
- Details of proposed Activities
- Reasons to why to set up in India

RBI Formalities

LO contnd.

- Proposed eligibility that entities with profit making track record of preceeding three years & Net worth of \$ 50000
- All applications thru class – I ADs (Authorised Dealers)
- Permission is granted for three years renewable thereafter
- Permission is granted in three to four weeks except for Entities of six countries named Iran, Afghanistan, China, Sri Lanka, Bangladesh & Pakistan which may take even upto an year

RoC Formalities

LO contnd.

- ❖ Within 30 days of having started business i.e. appoint first employee or opening bank account or taking office on lease or entering any other agreement, etc
- ❖ Form 44 with ROC, New Delhi
- ❖ MoA, AoA or Charter alongwith English Transcript wherever applicable certified by a) Notary of that country or b) Consular of Indian Embassy in that country or c) APOSTILLE
- ❖ Approval Letter of RBI
- ❖ Latest audited financial statements,
- ❖ History, Registered Office address details, details of Directors and Sectreatory of parent company

RoC Formalities

LO contnd.

- ❖ A detailed statement on proposed activities in India
- ❖ A similar set of documents to be filed with jurisdictional ROC of the registered office of LO in India
- ❖ To appoint one person as Authorised Officer for LO
- ❖ No DIN is required
- ❖ To Obtain DSC (Digital Signatures Certificate) of that Officer

Other Operational Formalities

LO contnd.

INCOME TAX:

- Obtain PAN
- Comply TDS (Withholding Tax)
- To file Income Tax Return (recommendatory)
- To file Fringe Benefits Tax (FBT) Return
- Transfer Pricing Rules as per Sections 92 to 92F of Income Tax Act are not applicable

Other Operational Formalities

LO contnd.

ROC:

- to file Form 52 alongwith audited financial statements alongwith fee of Rs.10,000/= within nine months of end of accounting year
- Not required to hold any AGM or EGM
- To comply ROC provisions per Sections 591 to 602 of Companies Act and rules thereunder
- To file Form 49 and/or Form 52 of Companies Act for amendments in particulars of LO or parent company

Other Operational Formalities

LO contnd.

RBI:

- To file every year its annual report
- To file every year a CA certified Activity Certificate that operations have been undertaken as per approved objects
- To file FIRC's (Foreign Inward Remittance Certificates) for receipts from parent company

Other Operational Formalities

LO contnd.

OTHER LAWS:

- to obtain IEC (Import-Export Code) Number for import of any brochure, etc from parent company
- To take TDS Number for any payment made under VAT Act - WCT (Works Contract Tax) wherever applicable
- To take Service Tax Number wherever Services Receiver has to deposit Service Tax. For e.g. Insurance business or transport business

Other Operational Formalities

LO contnd.

- To comply Labour Laws, PF, ESI, FEMA, IRDA, etc. wherever applicable meaning thereby that all laws of the land are to be complied with
- Can have lease deed for a period not more than five years at any point of time
- Can not borrow or obtain finance in India
- Can not acquire or dispose off immovable assets without RBI Approval

Branch Office (BO) : Purposes

- It can do all activities of LO
- can do any business or earning activity, directly or indirectly, as approved by RBI
- It can not do manufacturing activities except for SEZ Zone or thru sub-contracting to an Indian entity
- For establishment in SEZ Zone, prior approval from RBI is not required
- Can charge service charges from parent company
- Initial livelihood on capital receipts from parent company only received through proper banking channels in India

RBI Formalities

BO contnd.

Similar as those are in case of Liaison Office except:

- Eligible only those parent entities having profit track record of preceeding five years and minimum networth of \$ 10,000 as per latest audited financials
- Permission is granted without any time limit period

RoC Formalities

BO contnd.

Similar as those are in case of LO

Other Statutory Formalities

BO contnd.

Similar to as those are in case of LO
except:

- Income Tax Return is mandatory to file
- Transfer Pricing implications as per Income Tax Act are applicable
- Can avail benefits under DTAA (Double Taxation Avoidance Agreements)

Project Office (PO) : Purposes

Its purposes are altogether different from LO & BO as:

- It is a temporary / site office created as a SPV (Special Purpose Vehicle).
- To execute specialised Contract (generally turnkey projects) between a foreign entity and an Indian Company
- That Indian Entity should be one which has been financed by an Indian Financial Institution or by a Bank

Project Office (PO) :

Purposes contnd.

- Or That Project is approved by appropriate agency like concerned Ministry in India
- Or the Project is funded by International Finance Agency
- Initial livelihood on capital receipts from parent company only received through proper banking channels in India

RBI Formalities

PO contnd.

These are not similar as in cases of LO or BO as:

- No prior permission of RBI is sought
- RBI to be intimated alongwith contract copy, contract details, Bank Details, Address details immediately after opening the office
- For six countries (stated above), prior permission is mandatory

RoC Formalities

PO contnd.

These are similar as in case of LO or BO

Other Statutory Formalities

PO contnd.

Similar as in case of LO or BO

FDI Channel Definitions:

- FDI means investment made by an investor to acquire a lasting interest in enterprise outside its economy
- An investment made with an objective to acquire control
- Normally above 10% of networth of invested entity otherwise it may be termed as portfolio investment
- FDI can be in the modes of Equity or re-investment of Profits or intra company loans

Modes & Methods

FDI Channel contnd.

- Joint Venture Agreements with an existing Indian Company with or without financial and / or technical collaborations
- Investment in an Wholly Owned Subsidiary (WOS) in India
- Foreign Capital Markets through Public Issues in the form of ADRs, GDRs, AIM listing, NASDAQ listing, etc.

Modes & Methods

FDI Channel contnd.

- Through Private or Preferential Placements
- Purchase of Shares of an Indian Company by a foreign investor from another foreign investor and execution takes place outside India as in case of Vodafone – Hutch deal

JV & WOS Modes

FDI Channel contnd.

- Joint Venture Agreements, drafting of Agreement is to be taken care of utmost importance
- Since JV is with an existing Indian Company, all laws applicable to domestic company shall be applicable
- WOS is also a domestic Indian Company created thru ROC as other public or private companies are created in India and all Indian Laws are applicable upon it

JV & WOS Modes

FDI Channel contnd.

- Public WOS Companies are created if parent company is a Public Company but Section 4(7) of Companies Act allows to have private Companies also in India by parent public companies

FDI Policy

FDI Channel contnd.

- It is governed primarily thru FIPB (Foreign Investment Promotion Board), Department of Economic Affairs, Ministry of Finance, Government of India.
- Inflow of Foreign Investment in India is thru two modes / routes :
 - (a) Automatic Route
 - (b) FIPB Route

Automatic Route

FDI Policy contnd.

- ✚ All Foreign Investments in India fall under 100% Automatic Route except:
- ✚ Activities/ Sectors requiring IL (Industrial Licences) i.e. SSI category, situated in and around large cities or specifically stated by Industrial Policy
- ✚ Proposals for acquisition of shares in an existing financial services company where SEBI (Acquisition & Takeover Regulations) are applicable

Automatic Route

FDI Policy contnd.

- ✚ Sectors where FDI is specifically prohibited like Atomic Energy, Chit Fund, Nidhi, Lottery business, Gambling & Betting, Plantation & Agriculture (except floriculture, horticulture, tea plantations) , etc.
- ✚ Companies existing in India under a JV or tie up in the similar field
- ✚ Indian JV Company can not invest more than 200% of its Networth as per latest audited financials or it should not be in RBI caution list or under investigation of Enforcement Directorate, SEBI or IRDA

Compliance Formalities

FDI Policy contnd.

- ▶ Under Automatic Route, intimation to be given to RBI on receipt of share Application Money, FIRC's are filed with RBI
- ▶ Further on allotment of shares, all details in Form FC – GPR alongwith share certificates copies, CA Certificate (for compliance of FDI & FEMA rules), CS Certificate (for compliance of Co. Laws, SEBI rules) should be filed to RBI

FIPB Route

FDI Policy contnd.

- Under FIPB route, FDI can be upto limits specified pertaining the sector / activity of the company with approval from FIPB.
- An upto date FDI Policy containing sector wise details of applicability of FIPB or automatic route and conditions attached thereto of each sector are attached herewith. [FDI-1 TO 9.pdf](#)

Sector wise

FDI Policy contnd.

- Press Notes No. 2 & 3 of 2007 which govern Telecom Sector limit cap up to 74% are attached hereunder

[FDI-T1 TO 5.pdf](#)

Compliance Formalities

FDI Policy contnd.

- ▶ Under FIPB Route, Application to FIPB is filed in Form FC – IL alongwith all relevant details of parent company, Indian company, Project details, etc.
- ▶ No prior approval of RBI is sought
- ▶ Further on receipt of application money, copies of FIRC's to be filed within 30 days to RBI with FIPB approval letter
- ▶ On allotment of shares, all details in Form FC – GPR alongwith share certificates copies, CA Certificate (for compliance of FDI & FEMA rules), CS Certificate (for compliance of Co. Laws, SEBI rules) should be filed to RBI

Repatriation of Funds

- ◆ Repatriation means taking back the legitimate funds in the hands of the entities after paying all statutory dues in India
- ◆ Not generated thru revaluation of Assets
- ◆ Repatriation can be mid term as well as at the time of exit finally from India
- ◆ Simple without hurdles
- ◆ OPIC, Overseas Private Investment Corporation, a US backed Insurer of Foreign Commercial Dealings

Repatriation Formalities

contnd.

- ◆ An entity has to file thru AD (Authorised Dealer) to RBI
- ◆ an application in Form A2
- ◆ Latest audited financials
- ◆ NOC from Income Tax & other statutory applicable authorities

Repatriation Formalities

contnd.

- ◆ CA Certificate & Company Undertaking stating:
- ◆ That all ascertained liabilities have either been paid or adequately provided for including those of employees (including gratuity)
- ◆ That a statement reflecting manner and computations of repatriable funds

- ◆ Company Undertaking to state further:
- ◆ That no receipts from outside India are pending unrepatriable
- ◆ That no legal proceedings against the company are pending in India

Statutory Formalities of Expatriates

- ✦ All expatriates on coming here in India and having working Visa of more than 180 days, intimate to RPF0 (Regional Passport Facilitation Office) within 15 days about their stay in India
- ✦ Income Tax is payable by all expats for all incomes / receipts by them outside as well as inside India pertaining their activities in India
- ✦ Companies are also liable to deduct TDS on all moneys received to expats outside India pertaining their activities in India.

Thanks You all



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