

Entry Options For Foreign Investors

Foreign investor wanting to do business in / with India have the following options through which they can establish their business entities in India:

1. As an Incorporated Entity

- i. By incorporating a company under the Companies Act, 1956 through
 - a. **Joint ventures:** means an association of two or more individuals or business entities who combine and pool their respective expertise, financial resources, technology, skills, experience, and knowledge in furtherance of a particular project or undertaking. when the parties to the joint venture decide to assign a separate identity and an independent legal existence to the joint venture, distinct and separate from the parties constituting it, they may opt for the incorporated form of joint venture. An incorporate joint venture is a limited liability company with the parties to the joint venture being the shareholders.

b. Wholly owned subsidiaries: A company is deemed to be a subsidiary of another company under one of the following conditions:

- i. When the composition of its board of directors is controlled by another company;
- ii. When more than half of the nominal value of its equity share capital is held by another company;
- iii. When the holding company is the subsidiary of another holding company.

In both cases, a private limited company is preferred over a public limited company because a private limited company is entitled to various privileges and exemptions under the Companies Act, such as:

- 1) A private limited company can be incorporated with only persons as subscribers to the Memorandum of Association, whereas seven persons are required to incorporate a public limited company.
- 2) The board of directors of a private company can comprise two directors, whereas a minimum of three directors are required in case of public company.

- 3) A private company needs to have a minimum paid up share capital of Rs. 1 Lakh as against Rs. 5 Lakhs for a public company.
- 4) A private limited company can stipulate its own provisions relating to issue of share capital, kinds of share capital and voting rights.
- 5) A private company is not required to obtain the certificate for commencement of business but can commence business immediately upon incorporation.
- 6) A private company can make its own provisions relating to general meetings.
- 7) There are no restrictions on remuneration to managing directors.
- 8) Directors of a private company can participate even in those resolutions in which they are interested.
- 9) A private company can include restrictive covenants with regard to the transferability of its shares, which is not tenable for public limited companies.

2. As an unincorporated Entity

ii. As a foreign company through

a. Liaison office / Representative office: the role of liaison office is limited to collecting information about possible market opportunities and providing information about the company and its products to prospective Indian customers.

It can promote export/import from/ to India and also facilitate technical / financial collaboration between parent company and companies in India.

Liaison Office cannot undertake any commercial activity directly or indirectly and cannot, therefore, earn any income in India. All expenses of liaison offices have to be met by inward remittances.

Approval for establishing a liaison office in India is granted by Reserve Bank of India.

b. Branch Office: foreign companies engaged in manufacturing and trading activities abroad are allowed to set up branch offices in India for the following purposes:

- i.** Export / Import of goods.
- ii.** Rendering professional or consultancy services.
- iii.** Carrying out research work, in which the parent company is engaged.
- iv.** Promoting technical / financial collaborations between Indian companies and parent or overseas group company.
- v.** Representing a parent company in India and acting as buying / selling agents in India.
- vi.** Rendering services in information technology and development of software in India.
- vii.** Rendering technical support to the products by the parent / group companies.
- viii.** Foreign airline / shipping company.

Branch offices established with the approval of RBI, may remit outside India profit of the branch, net of applicable Indian Taxes, and subject to RBI guidelines.

Permission for setting up Branch offices is granted by Reserve Bank of India.

c. Joint venture by way of Contract: in case of a joint venture by contract, the rights and liabilities of the parties to the joint venture, inter se, are set forth in the contract.

The contract is the constitutional document that sets forth the tenure, the proposed capital contribution of the respective parties, the profit sharing mechanism, the performance guidelines, the dispute redressal mechanism, and the determination clause.

d. Joint venture by way of Partnership: the Indian Partnership Act, 1932 governs the law relating to partnerships in India. Though, a partnership may be expressed or implied, registered or unregistered, it is always preferable to have the Partnership in writing and duly registered with a view to avoid ambiguity, uncertainty and to enjoy various benefit and exemptions under various other statutes.