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DOING BUSINESS IN INDIA

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Seminar on 'Practical Aspects
of Doing Business with India'

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Tel Aviv

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Celebrating a Century

Bangalore

Kolkata

Mumbai

New Delhi



INDIA - LAND OF OPPORTUNITIES

Key Attractions:

- India - 7th largest country , 2nd most populated - over 1.2 billion people.
- Largest democracy – pluralistic culture - multi-lingual and multi-ethnic.
- Hindi and English - predominant languages.
- India – federal union of states - sovereign, socialist, secular, democratic republic - 28 States and 7 Union Territories.
- The Constitution of India (Constitution) adopted parliamentary form of government in 1950
- System of separation of powers - 3 arms of governance, the Legislature, the Executive and an independent Judiciary.





INDIA - LEGAL FRAMEWORK

Key Structure:

- Indian legal system is easily categorized as 'mature'.
- Main sources of law - Constitution, primary and delegated legislation, customary law and precedents.
- Former British colony - principles of common law.
- Quick to adapt to its freedom from the past and create new laws - commercial laws - totally non-archaic.
- Litigation may take time - Indian courts slightly overburdened - situation improving.
- Arbitration - easy alternative - cross border agreements - can recourse to arbitration outside India - subjecting the agreement to a procedural law different from Indian law.





INDIA - INVESTORS' PARADISE

- Forecasted growth rate of real gross domestic product - 6.5% for 2013-2014.
- Foreign Direct Investment ("FDI") inflows during the financial year 2011-2012 - \$46,847 Million
- Growth rate of FDI inflows - 31 % in 2011-2012.
- 3rd Rank - Most prospective host economies for 2012 - 2014.
- 7th Rank - Most promising investor home economies for 2012 - 2014.
- Massive and cost effective manufacturing hub with a large domestic market.
- 5th largest economy in terms of purchasing power parity.
- Large and rapidly growing consumer market.
- Agriculture self-sufficiency, rich mineral base and an abundance of other natural resources.

Sources:

UN World Economic situation and prospects 2013

UNCTAD World Investment Report 2012

Department of Industrial Policy and Promotion, Government of India





INDIA - COMMERCIAL ADVANTAGES

Key Advantages:

- 22 recognised stock exchanges and over 6,000 listed companies.
- High quality professional management including managerial personnel, accountants, hardware and software engineers and lawyers available.
- Liberalized foreign exchange laws encouraging foreign investments into India.
- Income from investments - fully repatriable - post deduction of tax.
- Licensing requirements - not stringent.
- Employer friendly labour laws





INDIA - FOREIGN INVESTMENTS (FI)

- Indian Government - welcomes FI in all permitted sectors, especially for:
 - development of infrastructure;
 - setting up Special Economic Zones (SEZs);
 - establishing manufacturing units;
 - technological up gradation of Indian industry through 'greenfield' investments; and
 - projects having the potential of creating employment opportunities on a large scale.
- Governed by Foreign Exchange Management Act, 1999 ("**FEMA**").
- Foreign investment - permitted in almost all sectors - except gambling and betting, lottery business, atomic energy, and agricultural or plantation activities of agriculture. Retail trading - subject to some conditions.
- Most sectors - automatic route - no prior approvals required - certain sensitive sectors such as defence, broadcasting etc. - approval from Foreign Investment Promotion Board (FIPB). Process of approval - substantially liberalised.





INDIA - BUSINESS ENTITIES

- Various options - available to not residents - intending to set up business in India:
 - branch office / liaison office of foreign companies;
 - wholly owned subsidiaries or joint venture companies;
 - partnership / proprietorship concern / association of persons; and
 - limited liability partnerships (recently introduced).
- Defence Industries - ownership structure - Joint Ventures - 26% FDI cap.





LIAISON OFFICE

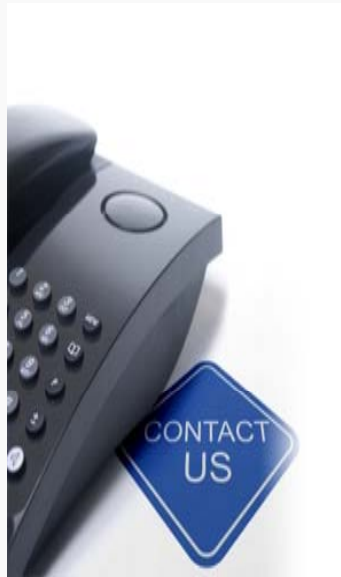
Approval for establishing a liaison office in India is granted by Reserve Bank of India (RBI).

Can:

- Channel of communication between head office and entities in India;
- Collect information about possible market opportunities;
- Provide information about the company and carry out other marketing activities;
- Promote export/import from/to India; and
- Facilitate technical/financial collaboration between parent company and companies in India.

Cannot:

- Undertake any commercial activity directly or indirectly; and
- Earn any income in India.





PROJECT OFFICE

RBI – granted general permission to foreign entities to:

- establish Project Offices subject to specified conditions; and
- remit outside India the surplus of the project on its completion.

Can:

- Set up temporary project/site offices in India to execute specific projects in India.

Cannot:

- Undertake or carry on any activity other than the activity relating and incidental to execution of the project.





BRANCH OFFICE

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

Can:

- Export/Import goods and Promote technical or financial collaborations;
- Render professional or consultancy services and carry out research work of the parent company;
- Represent the parent company in India and act as buying/selling agents;
- Render services in Information Technology and development of software;
- Render technical support to the products of the parent company; Provide foreign airline/shipping services; and
- remit profits of the branch outside India - net of applicable Indian taxes.

Cannot:

- carry out manufacturing activities on its own but is permitted to subcontract these to an Indian manufacturer





Preferred Business Vehicles:

- Private or Public - private limited company preferred - burdened with fewer compliances and disclosure requirements under the Companies Act, 1956 ("**Act**").
- Green field or brown field investments - Green field investments preferred - Government support.
- Joint venture company or Wholly owned subsidiary - Joint Venture preferred - Access to financial resources from Indian partners, and established contacts, distribution and marketing set up of the Indian partner.





PROCEDURE FOR SETTING UP A JOINT VENTURE IN INDIA

- Step 1 - Locate an Indian partner and reach a commercial understanding.
- Step 2 - Form a Joint Venture Agreement setting out the rights and responsibilities of the Parties.
- Step 3 - In case the Joint Venture Company is a new company, incorporate a new company (public or private) and invest in agreed ratio. In case there is an existing company, acquire shares in the company.
- Step 4 - Commence Business Activities.





PROCEDURE FOR INCORPORATION OF A COMPANY IN INDIA

Type of company

- Private Limited Company or a Public Limited Company.
- Private limited company - minimum paid-up capital of Rs 100,000, minimum of 2 directors and minimum of 2 shareholders.
- Public limited company - minimum paid-up capital of Rs 500,000, minimum of 3 directors and minimum of 7 shareholders.

Application for DIN

- DIN is a unique identification number for an existing director or a person intending to become a director of a company.
- Directors must have a valid Director Identification Number (DIN) allotted by the Ministry of Corporate Affairs.





PROCEDURE FOR INCORPORATION OF A COMPANY (CONTINUED)

Requirement of DSC



- At least one of the directors of a company should have a valid Digital Signature Certificate ("**DSC**") issued by the Certifying Authorities (CA) and approved by the Ministry of Corporate Affairs.
- The Information Technology Act, 2000 provides - use of Digital Signatures - documents submitted in electronic forms - to ensure the security and authenticity of the documents filed electronically.

Applying for approval of names

- Four to six names are required to be selected in the order of preference
- The names must be unique and should not resemble the name of any existing company in India.
- Other miscellaneous requirements regarding names containing India, Hindustan etc.





PROCEDURE FOR INCORPORATION OF A COMPANY (CONTINUED)

Approval of the name

Registrar - intimate within 2 to 3 days from the date of receipt if complete application - availability of the proposed name.



Filing forms and documents

Following name approval the following documents must be submitted to the Registrar along with adequate filing fees within a period of 60 days from the date of name approval

- Memorandum of Association (MOA)
- Articles of Association (AOA)
- Form 1 - providing details of promoters of the company
- Form 18 - providing details of registered office of the company
- Form 32 - providing details Directors of the company





PROCEDURE FOR INCORPORATION OF A COMPANY (CONTINUED)

Obtaining certificate of incorporation

- The ROC will issue a Certificate of Incorporation after careful review of documents submitted.
- After Incorporation each Indian company is allotted a unique 21 Digit Corporate Identity Number (CIN). Once this number is filled, company details are automatically filled in E-Forms issued by MCA by using pre-fill function.

Commencement of business

- A Private limited company may commence its business activities from the date of its incorporation.
- Public Limited Company is required to obtain a separate certificate of commencement of business according to section 149(2A) of the Act.





PERMANENT ACCOUNT NUMBER

- The income-tax registration number - Permanent Account Number (PAN) - unique ten-digit alphanumeric number issued by the Indian Revenue Authorities.
- Under the Income-tax Act, 1961, any person responsible for paying to a non-resident any sum chargeable to tax is required to deduct withholding tax at the rates as per the Finance Act or Double Tax Avoidance Agreement ('DTAA or tax treaty'), whichever is more beneficial to the deductee, at the time of credit in books or payment, whichever is earlier.
- Section 206AA of the Income Tax Act, 1961 requires every person entitled to receive any sum or income or amount, on which tax is deductible to furnish its PAN or Tax Identification Number (TIN) to the person responsible for deducting tax.
- In case PAN is not obtained and furnished by non-residents [including foreign companies], then the withholding tax rate can increase, depending on facts and circumstances of the case.

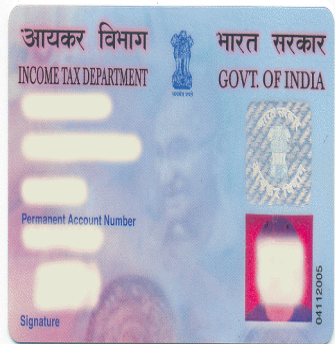




PROCEDURE FOR GETTING PAN CARD FOR FOREIGN COMPANIES

1. Application for PAN can be made in Form 49A notified by Central Board of Direct Taxes.
2. If the applicant company has no office in India, application should be submitted along with a copy of registration certificate of their country duly attested by Indian Embassy in the country where applicant is located.
3. If the applicant company has an office in India, application should be submitted along with a copy of certificate of registration issued by Registrar of Companies.
4. Application should be signed by an authorized signatory on behalf of the applicant, i.e. director of the company
6. Duly filled and signed PAN application form along with the supporting documents must be submitted to any of the TIN-FCs or PAN Centers managed by NSDL.

An acknowledgment with a unique 15-digit acknowledgment number is given on submission of the PAN application form. This can be used to check the status of the application.





OPENING A BANK ACCOUNT

As per Know Your Customer ("KYC") requirements issued by the RBI, the following documents should be submitted to the bank in order to open a corporate bank account in India:

1. Certificate of incorporation and DIN.
2. Memorandum & Articles of Association.
3. Resolution of the Board of Directors to open an account and list of officials authorized to operate the account.
4. Identification of authorized signatories should be based on photographs and signature cards duly attested by the company.
5. Power of Attorney, if granted, to its managers, officers or employees to transact business on its behalf.
6. Copy of PAN allotment letter.
7. List of directors and copy of Form 32 (if directors are different from AOA).
8. Certified true copy of Certificate of commencement of business (public limited company).
9. Proof of the name of the company, Principal place of business, mailing address of the company, Telephone/Fax number apart from the above. (Telephone bill)





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