REGISTRATION OF COMPANIES IN INDIA

Written by ***Rakshita Mathur***

3rd Year BALLB Student, Guru Gobind Singh Indraprastha University, New Delhi, India

ABSTRACT

In this paper we shall explore the registration of companies in the Indian set-up. An insight will be seen into the steps which are followed to register the companies in this economy as well as the meanings of different companies.

During the fiscal year 2021–2022, India received the greatest ever inflow of Foreign Direct Investment, totaling $83.57 billion.

Under the Atmanirbhar Bharat Abhiyan (Self-reliant India) initiative, Hon. PM Shri Narendra Modi proposed a special economic and comprehensive package worth more than $270 billion, or 10% of India's GDP.

According to projections, India's Gross Domestic Product (also known commonly as the GDP of the country) would grow at the quickest rate in the world in 2022, 6.7%.

The real GDP of India is anticipated to increase by 9% in 2021–22, 2022–23, and 7.1% in 2023–24. According to this forecast, India would have the world's fastest expanding major economy over the next three years.

India is therefore a diverse and an exceptional economy that functions at a fast pace, especially in comparison to the rest of the world. This makes India an attractive option for investment.

The focus shall lie of the process of the registration with regards to different domestic and foreign companies. Since the economy is continually changing, so too are investment and competitive methods. To maintain the economy's quick growth in light of India's economic structure, it is crucial to make procedures like registration appealing.

Keywords: Registration; Company; Investment; Stock

INTRODUCTION

Numerous foreign enterprises have chosen to establish themselves in India due to the country's potential and its rapidly growing market. Over the past few years, efforts have been made to ease the process of starting a business in India and to entice foreign companies to do so.

A "foreign company" is defined by the Companies Act, 2013 (hereinafter referred to as the "Act") as "any company or body corporate incorporated outside India that: (i) has a place of business in India, whether by itself or through an agent, physically or through electronic means; and (ii) conducts business activities in India in any other way."

“A foreign company can begin conducting business in India by incorporating or registering, opening a liaison, project, or branch office there, or by doing both. In order to have a permanent establishment in India, a foreign corporation or national may establish a private limited company in compliance with the Act or a limited liability partnership in accordance with the Limited Liability Act, 2008.”[i]

By incorporation or registration, opening a liaison, project, or branch office there, or both, a foreign firm can start doing business in India. A foreign corporation or national may create a private limited company in line with the Act or a limited liability partnership in accordance with the Limited Liability Act, 2008 in order to have a permanent establishment in India.

“Following are the entry strategies for foreign companies to establish a legal presence in India:

As an Indian Company

1. Joint Ventures

2. Wholly owned subsidiaries

As a Foreign Company

1. Branch Office

2. Liaison Office

3. Project Office”[ii]

WAYS IN WHICH FOREIGN COMPANIES CAN BE REGISTERED IN INDIA

“In India, a foreign national may form a foreign private limited company. In India, forming a private limited company is the quickest way to start a business. The automatic route of the FDI policy permits FDI of up to 100% into private limited companies. A private limited company can be incorporated by a foreign national as a joint venture or a wholly-owned subsidiary.”[iii]

Joint venture

A foreign entity will select a local partner in India in order to establish a joint venture there to conduct its operations. The Letter of Intent or Memorandum of Understanding (MOU), which specifies the framework for the joint venture agreement, is signed by the foreign business and the local partner. The joint venture agreement, which must be in accordance with local, national, and international legislation, contains all of the commercial terms.

A venture can be started by foreign firms by forging a strategic alliance with Indian corporate entities. International joint ventures are now essential when two commercial entities collaborate to achieve a purpose. Joint ventures are more and more often seen as the ideal strategy for entering industries in which India does not permit 100% (100%) Foreign Direct Investment ("FDI").

Joint ventures are a popular low-risk alternative for foreign companies wishing to enter the Indian market, providing they thoroughly investigate their Indian partners before signing a contract. It allows the foreign investor to benefit from the partner's established Indian market and consumer base, distribution networks, local knowledge, and management.

Governing Statutes

“There are no separate laws for Joint ventures in India.

Contractual Joint Venture is governed by the Partnership Act, 1932 because it is like a partnership that is binding by the legal agreement no separate Legal Entity is formed.

Equity-based Joint Ventures are regulated by the Companies Act 2013 because a new legal entity is formed which are either Public or Private Sector companies.”[iv]

Detail of Process Register Joint Venture Agreement

The processes to file a joint venture agreement are listed below:

Step 1: Draft the agreement

The first step in having the joint venture agreement registered is to ensure that it is properly drafted. This document should include a clear statement of the joint venture's objectives, organisational structure, and method for distributing revenues and losses. Verifying that all parties agree to the terms and conditions outlined in the agreement is essential.

Step 2: Get a legal review

It is advised to have the contract reviewed by an attorney before you sign it to ensure that it complies with all relevant laws and regulations. This will help avert any potential legal disputes in the future.

Step 3: Sign the agreement

Once the joint venture agreement has been examined by counsel and all parties have agreed to its terms, the following step is to have everyone sign it. This confirms the legality of the Agreement and the agreement of the Parties to the terms and conditions thereof.

Step 4: File with relevant government agencies

To make the joint venture agreement legally binding, it must subsequently be submitted to the necessary government offices, such as the Ministry of Commerce or the Registrar of Companies. It is crucial to confirm the precise requirements for the jurisdiction in which the joint venture will be founded as this procedure differs from one country to the next.

Step 5: Obtain the necessary licenses and permits

The joint venture agreement must then be presented to the required government agencies, like the Ministry of Commerce or the Registrar of Companies, to confer legal force. As this process varies from one country to the next, it is imperative to establish the particular requirements for the jurisdiction in which the joint venture will be founded.

Step 6: Commence Operations

Once the joint venture agreement has been registered and all necessary licences and licences have been obtained, the parties can begin their activities and work together to achieve their common goals.

Wholly-owned subsidiary

"The Companies Act, 2013 does not define a Wholly Owned Subsidiary, but it defines a 'subsidiary company' as, "a company in which the holding company— (i) controls the composition of the Board of Directors; or (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies: Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed."'"[v]

A foreign individual or business may use the automated procedure to invest 100% FDI in an Indian company in order to register as a foreign entity in India. When the Indian company invests 100% FDI in the foreign entity/business, it becomes a wholly-owned subsidiary of that entity/business.

A foreign corporation may register a liaison office, project office, or branch office there in order to conduct business in India. The opening of these offices, however, requires permission from the RBI or the government.

These foreign companies can establish wholly-owned subsidiaries in India thanks to the Indian market, which provides them with a convenient and beneficial business environment. Foreign firms may establish 100% (One Hundred Percent) FDI using an automatic mechanism (as specified below), subject to the limitations set by the Reserve Bank of India ("RBI"), the Foreign Exchange Management Act, 1999, and the Act.

Foreign companies may invest in the following industries using the following entry points:

"Automatic Route "

Under the automatic system, the foreign business or individual's investment will not require RBI or Indian government approval. This route is less limited and more open.

"Government/Approval"

If the foreign holding company's main activity is in an industry that isn't allowed to accept 100% FDI under the automatic route, the Foreign Investment Promotion Board ("FIPB"), inside the Ministry of Finance, must approve applications from companies in this category.

"Liaison office"

A foreign company may set up a liaison office in India for any liaison-related operations. The parent company (a foreign corporation) will pay all liaison office expenses out of international remittances.

"A liaison office" is a location that serves as a channel of communication between an overseas insurer's Principal Place of Business or Head Office (HO) and entities in India, but which does not engage in any direct or indirect commercial, trading, solicitation, or industrial activity and is supported by foreign remittances received from the overseas insurer through conventional banking channels.

A liaison office serves as a line of contact between the Indian entities and the parent firm, main place of business, or head office. It does not, however, engage in any direct or indirect commercial, trading, or industrial activity; instead, it is restricted to gathering and disseminating information to potential Indian clients.

The following RBI requirements must be met by businesses interested in opening a liaison office:

• The applicant must be a body corporate organised outside of India;

• The branch office's net value cannot be less than US $50,000 or its equivalent; and

• The parent firm must have made money during the previous three fiscal years in its place of origin.

In India, liaison offices are not allowed to run any businesses or make any money. The costs of liaison offices are covered by remittances of foreign currency received from the main office outside of India.

"Project office"

A foreign corporation may establish a project office in India for the purpose of carrying out projects assigned to them by an Indian enterprise. To open such a project office, the foreign firm may need to obtain approval from the Reserve Bank of India.

As the name suggests, project offices are established by foreign companies to carry out certain projects in India in compliance with contracts and to represent the parent company's interests there.

International companies can only receive broad clearance from the RBI if they have a contract with an Indian company to complete a project there and under the following conditions:

- The project is directly sponsored by remittances received from abroad; it is funded by a bilateral or multilateral international financing agency; it has received approval from the relevant authorities; or it is funded in some other manner.
- A public financial institution or an Indian bank has provided a term loan for the project to the corporation or entity in India that will be awarding the contract.
- If the aforementioned requirements are satisfied, RBI has granted broad authority for project offices to be established in India. If the aforementioned requirements are not met, the foreign corporation must request authorisation from the RBI.
- An AD Bank (Authorised Dealer) submits and automatically approves the application for registering a project office of a foreign company. After receiving RBI permission, the foreign company must apply to the RoC for project office registration within 30 (thirty) days.

Any action outside of what is connected to and incidental to the project's execution is banned for project offices. Additionally, the RBI has given project offices broad approval to send project surpluses outside of India as and when the project is finished.

"Branch office"

A foreign company may establish a branch office in India. To build a branch office, a sizable worldwide firm must be able to show profitability. For a foreign company to successfully establish a temporary presence in India, a branch office is a viable strategy. A division of a foreign corporation, the branch office is permitted to conduct business on the parent company's behalf.

"A branch is a part of the parent company and is dependent upon it. Management decisions flow directly from company headquarters, offering executives a greater measure of direct control."[vi]

The following RBI requirements must be met by businesses interested in opening a branch office:

• The applicant must be a body corporate organised outside of India;

• The branch office's net value cannot be less than US$100,000 or its equivalent; and • The parent firm must have a track record of profitability over the last five fiscal years.

After being established with the prior approval of the RBI and subject to RBI regulations and associated taxes, a branch office is permitted to send profits from the branch outside of India. Businesses having their corporate headquarters outside of India that are involved in manufacturing or commerce are permitted to open branch offices there with the prior approval of the RBI. These branch offices are authorised to represent the parent firm in India and carry out a range of operations, including but not limited to:

• Importing and exporting goods

• Providing advice or professional services

• Promoting collaborations in technology or finance between Indian businesses and their parent firms

• Representing the parent company as a buying/selling agent in India.

STEPS OF REGISTRATION

Branch Office, Liaison Office and Project Office use the following steps to open foreign offices in India.

STEP 1: Application for Authorised Signatory's Digital Signature

A digital signature is equivalent to a physical or paper signature under information technology laws. All applications to the registrar of companies are now required to be made in digital format and authenticated by the digital signatures of the potential shareholders or directors, as appropriate. The filing process begins with the distribution of digital signatures to each promoter.

STEP 2: Submitting an application to the RBI via AD Bank

A foreign company must submit the relevant FNC form to the RBI through an Authorised Dealer (AD Bank) in order to register a branch office. The AD Bank is crucial since they serve as the channel for all communications with the RBI. Our positive working relationships with many Indian banks enable us to receive permission swiftly. The permission is valid for six months after it has been granted, but you can request an extension if necessary.

STEP 3: Verification of KYC by Parent Company Banker

After submitting the FNC Form to the AD Bank, a request for document verification is sent to the foreign company's banker. Additionally known as swift-based verification, this technique. The next step in the approval process is carried out after receiving confirmation that the documents have been validated by the foreign banker. The RBI/AD Banker has the right to request more information or paperwork as needed.

STEP 4: RBI Approval for Establishing a Branch Office in India

The AD Banker must approve the opening of a branch office according to established policy; only in extreme cases, such as when the automatic route is unavailable, are cases forwarded to the RBI for prior approval. Rapid verification takes place for one week before approval.

STEP 5: Branch Office Registration with the ROC

A form FC-1 application for branch office registration of the foreign company must be submitted within 30 days of acquiring RBI authorisation to create a branch office in India. If there are any Indian directors, the statutory papers must be sent electronically to the ROC together with the authorised signatory's digital signature and the director's DIN number.

STEP 6: PAN Card, Tax Deduction Number, and Bank

The income tax division assigns a unique 10 digit alphanumeric number as a permanent account number, also known as a PAN Number. To comply with TDS laws, each and every taxpayer must be issued a Tax Deduction Account Number. These identification numbers are necessary in order to comply with tax rules. The branch office's bank account may be opened after the Income Tax Department issues a Pan Number.

STEP 7: State Police Registration

The branch office must also register with the state police (at the Superintendent of Police's office). The application must be submitted with the RBI's approval, the KYC documents for the foreign company, and all permitted individuals in India.

STEP 8: GST Registration and IEC

By this time, the branch office of the foreign firm would have acquired the bank account and chequebook, thus we would need a copy of the check to submit an application for GST Registration and Import Export Code for the branch office.

CONCLUSION

In the 1990's, "the Government implemented a programme of structural reforms, aimed at stabilising the economy and promoting reliance on market mechanisms, broadly referred to as 'liberalisation'. The main components of the structural reforms programme were exchange and trade liberalisation; financial sector reforms and control of the budget deficit; inflation and money supply. A great deal of significance was placed on promotion of foreign technology transfers and foreign investment in key areas, as well as, the further development of the private sector."[vii]

To the extent that it is allowed, foreign direct investment (FDI) can help India achieve its goal of 8% annual growth. Prior to 2009, India lacked a national organisation with a clear mission to encourage and facilitate FDI. After that, Invest India was created, but it wasn't until 2015 that it was given the authority to step up its investment promotion operations and the resources and reach to participate fully in the FDI market.

The path of Invest India can be summarised in terms of nine critical success factors (CSFs), which show how the organisation overcame obstacles to generate consistent success demonstrated by facilitating USD 31 billion of

FDI and the development of around 303,900 new employment directly. Invest India has had a role in some of India's outstanding FDI.

Performance in 2020, when the nation set a new record by earning USD 64 billion, despite a global decline of 35% (UNCTAD 2021). Invest India's path offers invaluable lessons for other investment promotion agencies (IPAs), which in the light of the Covid-19 issue will need to be in a phase of assessment and change even though some obstacles still persist.

Economy is ever-evolving; therefore, the investment and competition strategies too are constantly changing. It is therefore, important to make the processes such as registration desirable to keep the economy growing at an accelerated rate with regard to the economic set-up in India.

ENDNOTES

[i] S. 2 (42), The Companies Act, 2013

[ii]"https://www.lexology.com/library/detail.aspx?g=c4144c24-5ca9-4fd3-9ec4-0bb588fc1717"

[iii] Ibid

[iv]"https://legalserviceindia.com/legal/article-7598-joint-venture-creation-and-legal-liabilities.html"

v"Mohd Nadeem Bhat, Firdos Ikram, Mohd Nayyer Rahman & Mohd Hammad Naeem"(2022) "Economic freedom of the world: wholly owned subsidiaries and joint ventures as binary response, Transnational Corporations Review", DOI: 10.1080/19186444.2022.2127610

[vi] Wolters Kluwer, Branch Office or Subsidary?, Essential Complaince Insights. P – 3.

[vii] "OECD India Investment Roundtable, Opportunities & Policy Challenges for Investment in in India, Background Paper, Department of Industrial Policy & Promotion", Government of India, P – 6.