
Guide

For

Foreign Nationals

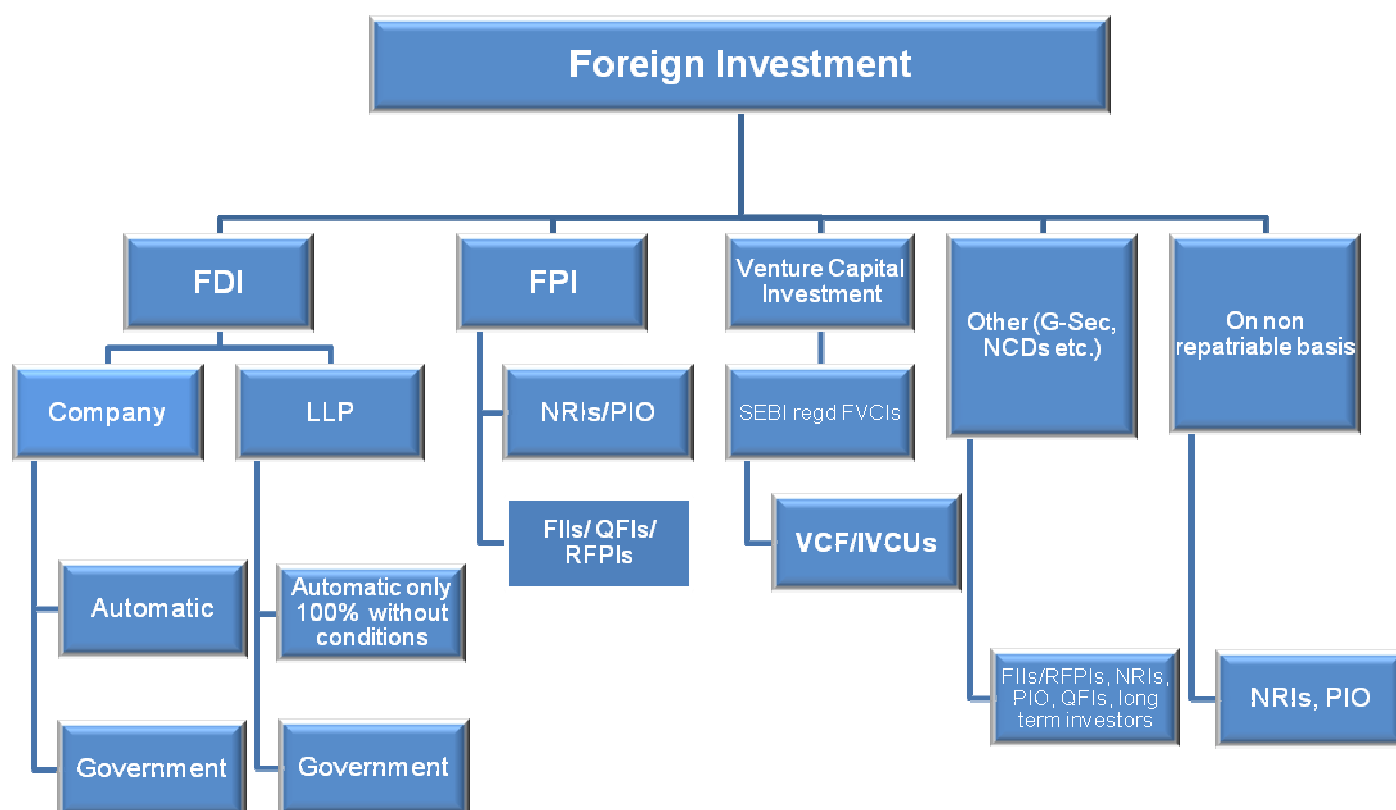
Wanting to Do Business in India

March 2016 Edition
(Thoroughly revised Fifth Edition)

Anil Chawla Law Associates LLP
Business Lawyers and Strategic Advisors

www.indialegalhelp.com

(This Guide is strictly for information only. While all efforts have been made to ensure accuracy and correctness of information provided, no warranties / assurances are provided or implied. Readers are advised to consult a Legal Professional / Company Secretary / Chartered Accountant before taking any business decisions. Anil Chawla Law Associates LLP does not accept any liability, either direct or indirect, with regard to any damages / consequences / results arising due to use of the information contained in this Guide.)



FDI – Foreign Direct Investment
FPI – Foreign Portfolio Investment
FII – Foreign Institutional Investors
FVCI – Foreign Venture Capital Investor
G-Sec – Government Securities
IVCU – Indian Venture Capital Undertaking
LLP – Limited Liability Partnership Firm
NCD – Non-convertible Debenture
NRI – Non-resident Indian
PIO – Person of Indian Origin
QFI – Qualified Foreign Investor
RFPI – Registered Foreign Portfolio Investor
SEBI – Securities and Exchange Board of India
VCF – Venture Capital Fund

Table of Contents

	Description	Page No.
1.	For Whom is this Guide useful	1
2.	Sectors where FDI is permitted under automatic route	2
3.	Available Structures For Testing the Waters	4
4.	Permitted Structures For Investment	9
5.	Steps to Get a New LLP Firm Incorporated in India	17
6.	Steps to Get a New Company Incorporated in India	19
7.	PAN for Foreign Residents	23
8.	Share Capital Structure	25
9.	External Commercial Borrowing	26
10.	Bank Accounts of Foreign Residents in Indian Rupees	33
11.	Bank Accounts in Foreign Currency	36
12.	Technology Transfer, Brand Licensing and Royalty	38
13.	Indian Visa for Directors and Employees	39
14.	Indian Taxation System	48
15.	Labour Laws	54
16.	Business culture	56
17.	Corruption	58
	About Us	59

Notes:

Anil Chawla Law Associates LLP is registered with limited liability and bears LLPIN AAA-8450.

This Guide is an academic exercise. It does not offer any advice or suggestion to any individual or firm or company.

1. For Whom Is This Guide Useful

This Guide is meant for global entrepreneurs and business houses, who are looking at India as a country with immense potential.

Typically, if you are planning an investment in the range of less than USD fifty million, this Guide should be useful for you. This Guide is for foreign nationals who are planning to set up businesses in India using the automatic approval route of Reserve Bank of India.

The Guide takes an entrepreneur's view of every matter. It is practical and down-to-earth. It is not intended to be an academic treatise and is surely not a text book either. It is written by a law firm that is entrepreneur-driven and prides itself on taking a hardcore pragmatic perspective on every matter.

An entrepreneur is one who makes possible and profitable what seems impossible and unviable to everyone else. We, Anil Chawla Law Associates LLP, are committed to making your India-entry dreams not just possible, but smooth, easy and profitable too. We are in the business of holding your hand through the difficult terrain that Indian business environment appears to most outsiders.

This Guide is the first step in your business's journey to India. It will help you get an overall view of what lies ahead. As and when you decide to take the plunge, please remember that we shall be at your service as a friend willing to help you at each step.

2. Sectors where FDI is permitted under automatic route

Government of India has put in place a policy framework on Foreign Direct Investment (FDI). This framework is embodied in the Circular on Consolidated FDI Policy. The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India makes policy pronouncements on FDI through Press Notes/ Press Releases. The procedural instructions are issued by the Reserve Bank of India vide A.P. Dir. (series) Circulars. The regulatory framework, over a period of time, thus, consists of Acts, Regulations, Press Notes, Press Releases, Clarifications, etc.

Foreign citizens or companies can make investments in shares or debentures of an Indian company, through either the Automatic Route or the Government Route. Under the Automatic Route, the non-resident investor or the Indian company does not require any approval from Government of India for the investment. Under the Government Route, prior approval of the Government of India is required. Proposals for foreign investment under Government route are considered by FIPB (Foreign Investment Promotion Board).

The following sectors are classified as **Prohibited Sectors**. Foreigners are not permitted to invest in these sectors, directly or indirectly:

- (a) Lottery Business including Government /private lottery, online lotteries, etc.
- (b) Gambling and Betting including casinos etc.
- (c) Chit funds
- (d) Nidhi company
- (e) Trading in Transferable Development Rights (TDRs)
- (f) Real Estate Business or Construction of Farm Houses
- (g) Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- (h) Activities / sectors not open to private sector investment e.g. Atomic Energy and Railway Transport (other than permitted activities).
- (i) Foreign Technology collaboration in any form for Lottery Business and Gambling and Betting activities (including licensing for franchise, trademark, brand name, management contract)

Foreign residents are allowed to invest through **Government Route in the following sectors** subject to caps on investments and other conditions imposed in the FDI Policy:

- Tea Plantation
- Mining and mineral separation of titanium bearing minerals & ores
- Petroleum refining by Public Sector Undertakings
- Manufacture of items reserved for production in Micro and Small Enterprises (MSEs) by a unit which is not a MSE
- Defense Industry
- Broadcasting including Teleports, Mobile TV, FM (FM Radio), Cable Network, Direct-to-Home, Headend-In-The-Sky (HITS) Broadcasting Service, Setting up hardware facilities such as up-linking, HUB etc. (Automatic in some cases up to 49%)
- Print Media
- Airports - Existing projects (Automatic up to 74%)
- Non-Scheduled Air Transport Service (Automatic up to 49%)
- Ground Handling Services under Civil Aviation sector (Automatic up to 49%)
- Satellites – Establishment and operation
- Private Security Agencies
- Telecom services including Internet Service Provider and Infrastructure provider providing dark fibre, right of way, duct space, tower etc. (Automatic up to 49%)
- Single Brand product retail trading
- Multi Brand Retail Trading (permitted in a few states only)
- Banking and Financial Services including banks, Non-Banking Financial Services, Commodity Exchanges, Asset Reconstruction Companies, Credit Information Companies, Infrastructure Company in Securities Market and Insurance
- Pharmaceuticals – Brownfield
- Power Exchanges

Almost everything that does not fall under the above two categories is under the Automatic Route, subject to some limits on share of equity that you can hold. In other words, if the activity that you have in mind is not mentioned above, you can, generally speaking, presume that it is open for investment without need for any approval or permission from any authority. All that you need to do is to bring the money in India through the normal banking channels and fill up some forms that your Bank in India will ask you for. It will however, be advisable to check if there are any specific conditions or caps on investments in the sector that you are planning to enter before you move your investments.

3. Available Structures For Testing the Waters

It is often advisable for a foreign entity to get a feel of the country before committing large investments. At this stage, one may be interested in using structures that allow easy entry as well as exit. For testing the waters, establishing a Liaison Office (LO) or Branch Office (BO) in India is ideally suited.

A Liaison Office (also known as Representative Office) can undertake only liaison activities, i.e. it can act as a channel of communication between Head Office abroad and parties in India. It is not allowed to undertake any business activity in India and cannot earn any income in India. Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the Head Office outside India. The role of such offices is, therefore, limited to collecting information about possible market opportunities and providing information about the company and its products to the prospective Indian customers. Permission to set up such offices is initially granted for a period of 3 years and this may be extended from time to time.

A Liaison Office can undertake the following activities in India:

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

Companies incorporated outside India and engaged in manufacturing or trading activities are allowed to set up Branch Offices in India with specific approval of the Reserve Bank. Such Branch Offices are permitted to represent the parent / group companies and undertake the following activities in India:

- i Export / Import of goods.
- ii Rendering professional or consultancy services.
- iii Carrying out research work, in areas in which the parent company is engaged.
- iv Promoting technical or financial collaborations between Indian companies and parent or overseas group company.

- v Representing the parent company in India and acting as buying / selling agent in India.
- vi Rendering services in information technology and development of software in India.
- vii Rendering technical support to the products supplied by parent/group companies.
- viii Foreign airline / shipping company.

Normally, the Branch Office should be engaged in the activity in which the parent company is engaged. In addition, the following should be noted:

- a Retail trading activities of any nature is not allowed for a Branch Office in India.
- b A Branch Office is not allowed to carry out manufacturing or processing activities in India, directly or indirectly.
- c Profits earned by the Branch Offices are freely remittable from India, subject to payment of applicable taxes.

Reserve Bank has given **general permission** to foreign companies for establishing branch/unit **in Special Economic Zones (SEZs)** to undertake manufacturing and service activities. The general permission is subject to the following conditions:

- a such units are functioning in those sectors where 100 per cent FDI is permitted;
- b such units comply with part XI of the Companies Act, 1956 (Section 592 to 602);
- c such units function on a stand-alone basis.

Procedure for LO / BO Permission

A body corporate incorporated outside India (including a firm or other association of individuals), desirous of opening a Liaison Office (LO) / Branch Office (BO) in India have to obtain permission from the Reserve Bank. The applications from such entities will be considered by Reserve Bank under two routes:

Reserve Bank Route — Where principal business of the foreign entity falls under sectors where 100 per cent Foreign Direct Investment (FDI) is permissible under the automatic route.

Government Route — Where principal business of the foreign entity falls under the sectors where 100 per cent FDI is not permissible under the automatic route. Applications from

entities falling under this category and those from Non - Government Organizations / Non - Profit Organizations / Government Bodies / Departments are considered by the Reserve Bank in consultation with the Ministry of Finance, Government of India.

The following additional criteria are also considered by the Reserve Bank while sanctioning Liaison/Branch Offices of foreign entities:

Track Record

For BO — The foreign entity wishing to set up a BO must have a profit making track record during the immediately preceding five financial years in the home country.

For LO — The foreign entity wishing to set up a LO must have a profit making track record during the immediately preceding three financial years in the home country.



भारतीय रिज़र्व बैंक
RESERVE BANK OF INDIA
www.rbi.org.in

RBI/ FED/ 2015-16/6

FED Master Direction No. 10/ 2015-16

January 1, 2016

To,

All Category – I Authorised Dealer banks and Authorised Banks

Madam / Dear Sir,

Master Direction - Establishment of Liaison/ Branch/ Project Offices in India by Foreign Entities

Net Worth [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].

For BO — not less than USD 100,000 or its equivalent

For LO — not less than USD 50,000 or its equivalent

The application for establishing BO / LO in India should be forwarded by the foreign entity through a designated AD Category - I bank to the General Manager, Foreign Exchange Department, Central Office Cell, Reserve Bank of India, New Delhi Regional Office, 6, Parliament Street, New Delhi – 110 001, along with the prescribed documents including

- English version of the Certificate of Incorporation / Registration or Memorandum & Articles of Association attested by Indian Embassy / Notary Public in the Country of Registration
- Latest Audited Balance Sheet of the applicant entity

The Branch / Liaison offices established with the Reserve Bank's approval will be allotted a Unique Identification Number.

The BOs / LOs shall also obtain Permanent Account Number (PAN) from the Income Tax Authorities on setting up the offices in India.

Project Office

Reserve Bank has granted general permission to foreign companies to establish Project Offices in India, provided they have secured a contract from an Indian company to execute a project in India, and

- i. the project is funded directly by inward remittance from abroad; or
- ii. the project is funded by a bilateral or multilateral International Financing Agency; or
- iii. the project has been cleared by an appropriate authority; or
- iv. 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.

However, if the above criteria are not met, the foreign entity has to approach the Reserve Bank of India, Central Office, for approval.

Using a Local Associate

While opening BO / LO is the legal option available to foreign entities coming to India, a popular option is to have a relationship with a local associate in India. The local associate can do all that a BO / LO may do at a much lower cost. The local associate may also bring in some understanding of Indian business methods, markets and also some valuable contacts.

The key to using the local associate most efficiently is to define in clear terms the role of local associate. Typically, the local associate may do some or all of the following functions:

- Carry out Market Research either using his own resources or using third party resources
- Act as a distributor or indenting agent for the foreign entity
- Act as a sourcing or purchasing agent for the foreign entity
- Provide pre-sales and after-sales support & services to Indian clients of the foreign entity
- Act as quality inspection agency with regard to any goods purchased from India by the foreign entity

The relationship with local associate can be formalized by either a Memorandum of Understanding (MOU) or by a formal agreement.

The advantage of using a local associate is also that in case the operations in India gather steam and it is decided to make investments and strengthen presence in India, the local associate can act as a collaborator.

Generally speaking, no approval from any authority is required for the relationship with a local associate.

4. Permitted Structures For Investment

A company incorporated under the Companies Act of India is the most preferred vehicle for doing business in India. Limited Liability Partnership Firm is the other permitted structure. Other forms of business organizations like proprietary firm, partnership firm, trust etc. are either not permitted or not advised for foreigners wanting to do business in India.

The option of **Limited Liability Partnership (LLP) firm has become available since November 2015** (vide Press Note No. 12, 2015) is. The relevant extract from the Press Note is as follows:

FDI in LLPs is permitted, subject to the following conditions:

- (a) FDI is permitted under the automatic route in LLPs operating in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions.
- (b) An Indian company or an LLP, having foreign investment, will be permitted to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions.
- (c) FDI in LLP is subject to the compliance of the conditions of LLP Act, 2008.

It should be noted that **foreign investment is permitted in an LLP only if the LLP is engaged in activities where (a) 100% foreign equity ownership is permitted under automatic route and (b) there are no performance conditions prescribed under the FDI Policy**. For example, an LLP engaged in construction development or industrial parks will not be eligible to receive foreign direct investment (FDI) since there are “FDI-linked performance conditions” for the two sectors even though 100% FDI under automatic route is permitted in the two sectors.

We recommend the LLP structure due to its simplicity, ease of incorporation, tax advantages and also because it is much easier to wind up an LLP as compared to a company. More details about LLP are given below.

LLP Firm under The Limited Liability Partnership Act, 2008

The Limited Liability Partnership Act, 2008 came into force in 2009. Before the passing of the Act, partners in a partnership firm had unlimited liability. A limited liability partnership (LLP) firm can be seen to combine the simplicity of a partnership firm with the advantage of limited liability earlier available only in case of a company.

A quick comparison of a partnership firm, LLP and a private limited company is as follows:

Parameter	Partnership Firm	LLP	Pvt. Ltd. Co.	Comments
Applicable Law	The Indian Partnership Act, 1932	The Limited Liability Partnership Act, 2008	The Companies Act, 2013	
Cost of Formation	Less than Rs. 5,000. Registration is not compulsory.	About Rs. 10,000- to Rs. 20,000-. Registration is compulsory.	> Rs. 25,000- depends on authorized share capital and state where registered office is located.	Indicative figures. Actual may vary.
Minimum Capital	Not prescribed	Not prescribed	Not prescribed	Used to be Rs. 100,000 for private ltd. co. and Rs. 500,000 for public limited company
Distinct Entity	Firm has no distinct identity separate from partners.	LLP is a separate entity distinct from its partners.	Company is a separate entity distinct from its shareholders.	
Minimum number of members	Two partners	Two partners	Two shareholders	It is possible to incorporate a one-person company with just one member. Though it is not a preferred option.
Maximum members	10 for banking business. For other businesses 20.	No upper limit on number of partners	Maximum 200 members	There is no upper limit for a public limited company.
Charter Documents	Partnership Deed	LLP Agreement	Memorandum of Association and Articles of Association	A Certificate of Incorporation is necessary for LLP and a company.
Resident Director	No requirement of resident partner. But since foreign investment is not permitted, foreigners cannot be partners.	One of the Designated Partners must be resident of India	At least one director must be resident of India	The person who is resident of India need not be citizen of India.
Managed By	Partners	Designated Partners	Directors	
Statutory Formalities during the life of the entity	Almost nil formalities	Two forms to be filed every year. Burden of compliances low.	Complicated. Professional assistance from Company Secretary necessary.	

Parameter	Partnership Firm	LLP	Pvt. Ltd. Co.	Comments
Audit	Not Required	Not Required for small firms	Compulsory	
Foreign Investment	Not Permitted	Permitted only in activities where 100% FDI is allowed by automatic route without conditions.	Subject to FDI Policy	LLP's have been allowed to received foreign investment in November 2015.
Legal Proceedings Against the Entity, its owners and directors	Legal proceedings to be carried out against the partners personally	Legal proceedings are carried out against the LLP firm and not the partners personally.	Legal proceedings are carried out against the Company and not its shareholders and directors.	This applies only in case of civil disputes. Corporate veil is often lifted in case of criminal matters. Even in defaults under labour laws and such other laws, directors are held liable.
Winding Up	Very Easy	Easy	Very Difficult	
Punishment for default	Mild	Mild to Moderate	Extremely High; May involve imprisonment up to seven years	

Some salient points about LLP's are as follows:

- LLP gives the benefits of limited liability of a company and the flexibility of a partnership.
- LLP firm can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name.
- LLP firm is a separate legal entity. It is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.
- Further, no partner is liable on account of independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct.
- Mutual rights and duties of partners within a LLP are governed by an agreement between the partners or between the partners and the LLP as the case may be.

LLP structure is becoming popular in India due to its simplicity and also because of the extremely harsh penalties imposed by Companies Act, 2013. Unless there are compelling reasons to choose company structure, for small to medium scale of operations LLP structure is highly recommended. As operations grow, LLP firm can be converted into a company.

As mentioned earlier, foreign investment is permitted through LLP only in the sectors where 100% FDI is permitted without any performance-conditions. Some of the important sectors where foreign investment can be routed through LLP structure are as follows:

- Mining and exploration of metal and non-metal ores
- Airports – Greenfield projects
- Civil Aviation Sector – Maintenance and Repair Organizations
- Courier Services
- E-commerce Activities (B2B)
- Sectors / activities not listed in the FDI Policy

Cost of incorporating a LLP Firm is related to the capital of the LLP Firm and the state in which the registered office of the LLP Firm is located. Indicative costs for incorporating a LLP Firm with capital of Rupees Ten Thousand, Rupees One Million, Rs. Ten Million, Rs. Hundred Million and Rs One Billion in the states of Delhi, Maharashtra, Gujarat and Madhya Pradesh are given below.

Capital	Cost Of Incorporation of Limited Liability Partnership			
	Delhi	Maharashtra	Gujarat	Madhya Pradesh
	Rupees			
Rs. 10,000-	13,900	14,300	13,900	15,800
Rs. One Million	27,400	32,400	32,400	32,400
Rs. Ten Million	38,450	48,450	43,450	43,450
Rs. Hundred Million	38,450	48,450	43,450	43,450
Rs. One Billion	37,650	47,650	42,650	42,650

Note: The above figures give an indicative estimate. Actual costs may vary.

Company under The Companies Act, 2013

Companies Act 2013 replaced the Companies Act 1956. Some parts of the old law are still in force while largely the new law has become effective. This can be confusing for a foreigner who is not keeping touch with the laws of India on a day-to-day basis. So, please ask your company secretary / legal consultant to check.

Company, under the Companies Act 2013 is a voluntary coming together (and registering under the Companies Act) of persons for the purpose of doing business having a distinct name and limited liability. It is a juristic person having a separate legal entity distinct from the

members who constitute it, capable of rights and duties of its own and endowed with the potential of perpetual succession.

The major constituents of a company are its members (shareholders), who are the ultimate owners and appoint its directors. It is an important feature of the company form of business, that there is a gap between the ownership and control over the affairs of the company. In real sense the members are the owners of a company, but it is being managed by the directors who are elected representatives of its members.

At the time of incorporation, the promoters of the company must disclose the names of the initial shareholders, names of first directors, first registered office of the company, objects for which the company is being formed and its authorized share capital. Authorized share capital is the maximum capital that the shareholders propose to bring into the company. The cost of incorporating a company is related to its authorized share capital. Paid-up capital of a company is the actual amount of money that the shareholders of the company have contributed as share capital on any particular date. Paid-up capital must be less than or equal to the Authorized Share Capital.

A company may be either a private limited company or may be a public limited company.

A private limited company must have at least two shareholders and can have maximum two hundred shareholders. Till 25th May 2015, it was necessary that a private company have a minimum paid-up capital of Rs. 100,000-. The Companies (Amendment) Act, 2015 removed the compulsion of minimum paid up share capital for setting up a private limited Company.

The Companies Act, 2013 also permits a private company to be a One Person company with just one shareholder. In such a company, it is necessary to file the name (along with consent) of one other person who will become the shareholder in case of death or incapacity of the original shareholder. Such a company will be required to mention the fact that it is a One-person-company on all its letter-heads, business correspondence etc.

A public company must have at least seven shareholders. There is no upper limit on number of shareholders of a public company. After the coming into force of The Companies (Amendment) Act, 2015, there is no requirement of minimum paid up share capital for incorporating a public limited Company.

Cost of incorporating a company is related to the authorized capital of the company and the state in which the registered office of the company is located. Indicative costs for incorporating a private limited company with authorized share capital of Rupees Ten Thousand, Rupees One Million, Rs. Ten Million, Rs. Hundred Million and Rs. One Billion in the states of Delhi, Maharashtra, Gujarat and Madhya Pradesh are given below.

Authorized Share Capital	Cost Of Incorporation of Private Limited Company			
	Delhi	Maharashtra	Gujarat	Madhya Pradesh
	Rupees			
Rs. 10,000-	25,125	26,200	26,420	32,450
Rs. One Million	67,610	68,200	71,920	73,450
Rs. Ten Million	251,710	256,800	267,520	254,050
Rs. Hundred Million	1,086,710	1,136,800	966,620	1,089,050
Rs. One Billion	9,186,710	9,686,800	7,716,620	9,189,050

Note: The above figures give an indicative estimate. Actual costs may vary.

The cost of incorporating a public limited company will be nominally higher than a private limited company (Difference in cost < Rs. 5,000).

It is not difficult to increase the authorized share capital by paying the difference in fees. However, if share capital is coming by way of foreign investment and is subject to government approval (as against automatic approval by Reserve Bank of India), significant time may be consumed for getting approval of government for increase of authorized share capital.

Time taken for incorporating a company is likely to be less than 2 weeks if the Shareholders and Directors are Indian. In case of foreign shareholders and directors, the most important step is to get identity and address proof attested by Indian consulate of the home country of the foreign persons. This is necessary for getting digital signature and for getting Director Identification Number (DIN) for the foreign citizens. Foreign citizens often find that visit to Indian consulate can be bothersome and hence time is taken for this. Moreover time is spent in sending papers for signature. A reasonable estimate of time for completing all formalities with all foreign promoters is about six weeks.

If the shareholders of the company are foreign citizens, they should bring their contribution to share capital by transfer from their foreign bank account through normal banking channel.

A foreigner can act as Director of an Indian company. No permissions are needed for this. It is possible to have a company with only foreign citizens as directors. However, section 149(3) of the Companies Act, 2013 makes it mandatory for every company to have a Director who has stayed in India for a total period of at least 182 days in the previous calendar year. It may be noted that such a resident Director need not be a citizen of India.

(3) Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.

A foreign national may use the services of a legal professional or local business associate for the first year of doing business in India. During the first year, if the foreign national becomes resident of India, in the subsequent year it will not be necessary for him / her to use the services of the legal professional or local business associate.

A foreign citizen appointed as Director of an Indian company may live abroad. In other words, he / she need not be resident of India. He / she may conduct the business of the company while living abroad.

Schedule V of the Companies Act, 2013 read with section 196 of the Act make it mandatory that a person appointed as Managing Director / Whole-time Director of a company is resident of India.

Explanation I.—For the purpose of this Schedule, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India,—

(i) for taking up employment in India; or

(ii) for carrying on a business or vacation in India.

Explanation II.—This condition shall not apply to the companies in Special Economic Zones as notified by Department of Commerce from time to time:

Appointing a non-resident as Managing Director will require permission of Government of India.

Board of Directors is required to meet at least once in every three months. Under sec. 173 of the Companies Act, 2013, the Board must meet at least four times in every year with not more than 120 days between two meetings. A small company can hold only one meeting in every half of the calendar year with at least 90 days between two meetings.

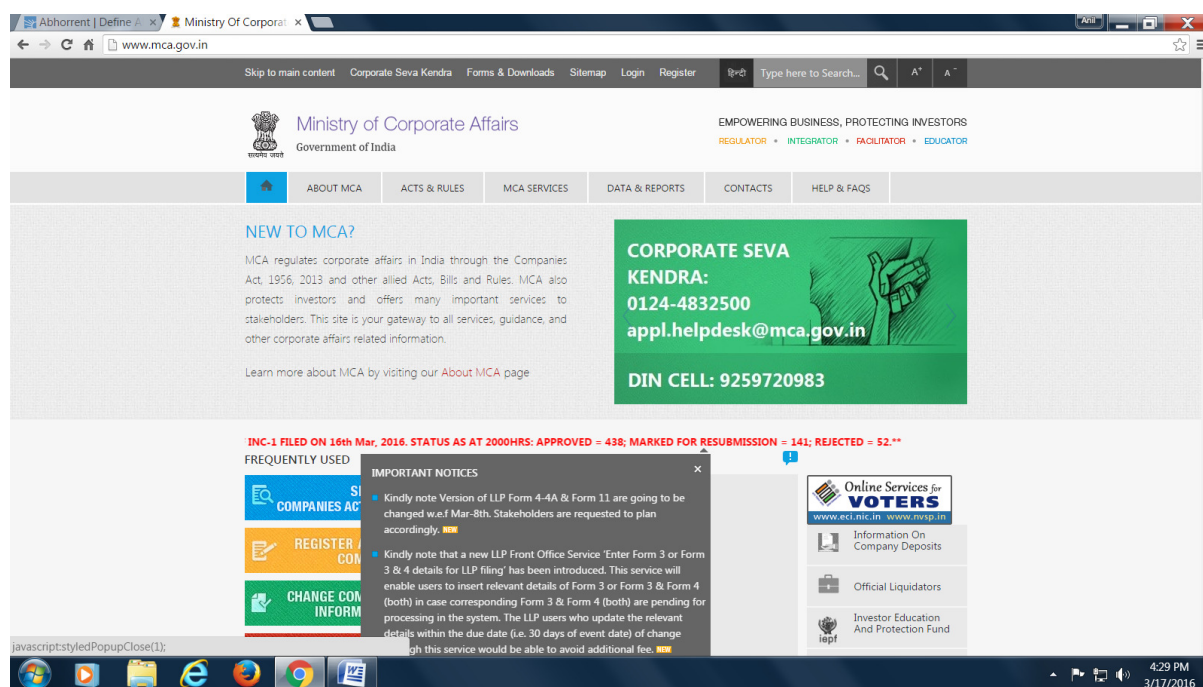
Meetings of Board of Directors can be held anywhere in the world. Under section 173(2) of the Companies Act, 2013 a Director may participate in a meeting of Board of Directors either in person or through video conferencing.

Meeting of shareholders must be held at least once every year. Meeting of shareholders has to be held in the city where the registered office of the company is located. While the Companies Act, 2013 permits participation in board meetings through video conferencing, such an option is not available in case of meetings of shareholders. Some foreign companies find a way out of this problem by having two shareholders in India each holding, say, one share of face-value Rs. 10 each. In the annual general meeting the only shareholders attending are these two Indian resident shareholders. This way the

requirement of holding a meeting of shareholders every year is satisfied without incurring any travel costs.

A foreign / offshore legal entity or person can act as a founder of the Indian company which will be owned 100% by the foreign citizens or companies. There is no legal requirement for one shareholder or director to be Indian citizen though the Companies Act, 2013 makes one Indian resident director mandatory (as discussed above). For the sake of convenience, many foreign owned companies have an Indian shareholder and director. Such Indian shareholder and director is typically a professional with no investment in the company and holding only one token share of Rs. 10.

Many or rather most of the provisions of the Companies Act, 2013 mentioned above have been notified for coming into force as on September 2014.



Screen shot of www.mca.gov.in

5. Steps to Get a New LLP Firm Incorporated in India

Every LLP Firm must have at least two Partners and two Designated Partners. The Partners can be Designated Partners.

- Each of the first partners, who are Indian citizens (including non-residents) of the new LLP Firm needs to get a Permanent Identification Number (**PAN**) from Income Tax Department of Government of India.
- Foreign partners do not need a Permanent Identification Number (**PAN**) from Income Tax Department of Government of India. A foreign citizen must have a valid passport along with proof of address (if passport does not have address). A copy of the passport as well as of proof of address should be authenticated by Indian consulate of the home country of the foreign citizen. Even in case where the foreign citizen is present in India, the copies have to be authenticated by Indian consulate abroad.
- Each person wanting to become a Designated Partner must have a **digital signature**. The digital signature is to be purchased from a company in India. In practice, one needs a digital signature to apply for DPIN (explained below).
- Each of the first Designated Partners of the new LLP Firm needs to get Designated Partner Identification Number (**DPIN**). If the partners already possess a Director Identification Number (DIN) as required under Companies Act, 2013, then a fresh application for DPIN shall not be made. DIN in such cases is considered equivalent to DPIN.
- Decide the state in which the registered office of the LLP Firm will be located. It is easy for a LLP Firm to change the registered office within a state. It is not difficult to change the location of office of an LLP Firm even when the change involves moving from one state to another. The procedure for change in location of office will be as provided in the LLP Agreement.
- Decide the Contribution (capital) to be contributed by each of the partners.
- Decide the main objects of the LLP Firm.
- Select, in order of preference, at least one suitable name up to a maximum of six names, indicative of the main objects of the LLP Firm.
- Ensure that the name does not resemble the name of any other already registered LLP Firm by availing the services of checking name availability on the portal of

Ministry of Corporate Affairs. The selected name should also not violate the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950.

- Apply to the concerned Registrar of Companies (RoC) to ascertain the availability of name in Form 1 by logging in to the portal (<http://www.mca.gov.in>). A fee of Rs. 200/- has to be paid alongside and the digital signature of the applicant proposing the LLP Firm has to be attached in the form. If proposed name is not available, the user has to apply for a fresh name on the same application.
- After the name approval the applicant can apply for registration of the new LLP Firm by filing Form 2 within 3 months of name approval.
- Login to the portal (www.mca.gov.in) and fill Form 2 and attach the mandatory documents i.e subscription sheet, consent of the designated partners and proof of address of registered office of LLP Firm.
- Submit the above-mentioned Form 2 after attaching the digital signature, pay the requisite filing and registration fees.
- After processing of the Form is complete and Corporate Identity is generated, a Certificate of Incorporation is issued by the RoC.
- Arrange for the drafting of the LLP Agreement by solicitors / company secretary, and printing of the same.
- Arrange for stamping of the LLP Agreement with the appropriate stamp duty.
- Get the LLP Agreement signed by the partners. It may be noted that it is not necessary for an LLP Firm to have an LLP Agreement. In case a firm decides to do without an LLP Agreement, the provisions of First Schedule of LLP Act will apply.
- File the LLP Agreement with the RoC in prescribed form – Form 3 within 30 days of the incorporation of the LLP Firm (Optional step).

6. Steps to Get a New Company Incorporated in India

- Each of the first shareholders and directors, who are Indian citizens (including non-residents) of the new company needs to get a Permanent Identification Number (**PAN**) from Income Tax Department of Government of India.
- Foreign shareholders and directors do not need a Permanent Identification Number (**PAN**) from Income Tax Department of Government of India. A foreign citizen must have a valid passport along with proof of address (if passport does not have address). A copy of the passport as well as of proof of address should be authenticated by Indian consulate of the home country of the foreign citizen. Even in case where the foreign citizen is present in India, the copies have to be authenticated by Indian consulate abroad.
- Each of the promoters must have a **digital signature**. The digital signature is to be purchased from a company in India. One needs a digital signature to apply for DIN (explained below).
- Each of the first shareholders and directors of the new company needs to get Director Identification Number (**DIN**). One person can have only one DIN (or DPIN). It is an offence to get more than one DIN.
- Decide the state in which the registered office of the company will be located. While it is easy for a company to change the registered office within a state, it is cumbersome and expensive to shift from one state to another.
- Decide the Authorized Capital of the proposed company. There is no minimum or maximum prescribed capital for a company.
- Decide whether the company will be a private limited company or public limited company.
- Decide the main objects of the company.
- Select, in order of preference, at least one suitable name up to a maximum of six names, indicative of the main objects of the company.
- Ensure that the name does not resemble the name of any other already registered company by availing the services of checking name availability on the portal of Ministry of Corporate Affairs. The selected name should also not violate the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950.

- Apply to the concerned Registrar of Companies (RoC) to ascertain the availability of name in Form INC-1 by logging in to the portal (<http://www.mca.gov.in>). A fee of Rs. 1000/- has to be paid and the digital signature of the applicant proposing to set up the company has to be attached in the form. If proposed name is not available, the user has to apply for a fresh name on the same application.
- After the name approval the applicant can apply for registration of the new company by filing the required forms (that is Form INC 7, DIR 12 and INC 22) within 60 days of name approval.
- Arrange for the drafting of the memorandum and articles of association by the solicitors / company secretary, vetting of the same by RoC and printing of the same.
- Arrange for stamping of the memorandum and articles with the appropriate stamp duty.
- Get the Memorandum and the Articles signed by at least two subscribers in his/her own hand, his/her father's name, occupation, address and the number of shares subscribed for and witnessed by at least one person.
- Login to the portal (www.mca.gov.in) and fill the following forms and attach the mandatory documents as follows
 - Application for Incorporation of a Company - Form-INC 7 (along with INC-8, INC-9, INC-10 and prescribed affidavit)
 - Notice of situation of registered office of the company - Form-INC 22.
 - Particulars of the Director's, Manager or Secretary - Form-DIR 12.
- The promoters also need to submit a proof of identity and proof of address.
- Submit the above-mentioned eForms after attaching the digital signature, pay the requisite filing and registration fees.
- After processing of the Form is complete and Corporate Identity is generated, obtain Certificate of Incorporation from RoC.
- The Companies Act, 2013 has introduced a single window system for incorporating a public / private company through Form INC-29. This is a consolidated application for incorporating a new company without following the above prescribed procedure. It allows multiple applications to ROC for DIN, name availability of the Company, vetting of MOA and AOA etc. in a single form and consolidates the entire process of company incorporation.

Earlier it was necessary for every company to get a Certificate of Commencement of Business. However, the concerned section 11 of the Companies Act, 2013 has now been omitted and it is no longer required to get a Certificate of Commencement of Business.

A Practicing Company Secretary is the best person to get the above steps completed. The charges may vary from city to city and also based on the reputation of the Practicing Company Secretary. It is advisable to tell the Company Secretary the proposed authorized share capital, the state in which the company is proposed to be incorporated, number of first shareholders / directors and whether the proposed company will be a private limited or public limited. Based on this information, the Company Secretary will be in a position to give an offer for the total costs including fees payable to the Government, stamp duty, other expenses and his / her fees.

Many Chartered Accountants also offer services in relation to incorporating a company. However, strictly speaking, this is the job of a company secretary and not of a chartered accountant.

The above steps do not include the formalities that one needs to complete with Reserve Bank of India even when the investment is under 100% Automatic Approval Route.

Quick Easy Approach For Foreign Companies And Citizens

Often a foreign company / citizen or Non-Resident Indian wishes to start operations in India very quickly. Delays in getting digital signature and DIN lead to the company incorporation process getting delayed. During such times, it may be a good option to follow the following steps:

- Two Indian resident-citizens (A and B) who already have PAN and DIN incorporate an Indian company with the name, objects and authorized capital as required by the promoter based abroad.
- A and B are the initial directors of the new Indian company.
- As and when the foreign promoter has completed all the formalities related to DIN etc., A and B transfer all shares held by them in the new company to the foreign promoter.
- After transfer of shares, new directors are appointed. Immediately thereafter, both A and B resign as directors.
- In case it is so required, either A or B can continue as a Director to comply with the requirements of resident director.

- Either A or B or both can continue to hold one share each of Rs. 10 as long as so required by the foreign promoter. This, as mentioned earlier, can make it easy to hold Annual General Meetings without incurring travel costs.
- The new company can apply for PAN immediately after it is incorporated.
- Once PAN has been allotted, other formalities like registration with Sales Tax, Central Sales Tax, VAT & other such authorities can be completed.

Foreign promoter does not have to travel to India for completing the above formalities. By following the above procedure, it is possible to create and own a company in India without ever stepping on Indian soil. Of course, once the company and all registrations are in place, it is time to get down to business and for that you may surely have to visit the country.

7. PAN for Foreign Residents (Indian Citizens)

Getting Permanent Identification Number (**PAN**) from Income Tax Department of Government of India is necessary before any Indian citizen, (even when resident outside India) based invests in a company in India or becomes a Director in an Indian company. It is advisable for foreign citizens investing in India to get PAN. Getting a PAN is a simple process that any person resident outside India can do without the need for professional help.

One essentially needs two documents – one for proof of identity and one for proof of address. The documents required are as follows:

Proof of Identity Document

- Copy of Passport or
- Other National ID attested by Indian Embassy / Consulate / High Commission / Apostille or
- Person of Indian Origin (PIO) card issued by Government of India or
- Copy of Overseas Citizen of India (OCI) card issued by Government of India

Proof of Address Document

- Copy of Passport or
- Other National ID attested by Indian Embassy / Consulate / High Commission / Apostille or
- Bank account statement in country of residence, duly attested by Indian Embassy / High Commission / Consulate / Apostille in the country where applicant is located or
- Person of Indian Origin (PIO) card issued by Government of India or
- NRE bank account statement
- Overseas Citizen of India (OCI) card issued by Government of India

In essence, if you have a **copy of your passport, you do not need anything else.**

The next step is to visit the website <https://tin.tin.nsdl.com/pan/form49AA.html> or <http://www.myitiitsl.com/PANONLINE/form49AA.jsp> and fill the form 49AA online. Steps to be followed after filling the online form on nsdl.com are as follows (steps might vary slightly in case of myitiitsl.com) :

- A confirmation screen with all the data filled by the applicant will be displayed.
- The applicant may either edit or confirm the same.
- On confirmation, an acknowledgement will be displayed. The acknowledgement will contain a unique 15-digit acknowledgement number.
- The applicant is requested to save and print this acknowledgement.
- 'Individual' applicants should affix two recent color photographs with white background (size 3.5 cm x 2.5 cm) in the space provided in the acknowledgement. The photographs should not be stapled or clipped to the acknowledgement. The clarity of image on PAN card will depend on the quality and clarity of photograph affixed on the acknowledgement.
- Signature should only be within the box provided in the acknowledgement. The signature should not be on the photograph affixed on right side of the form.
- Signature should be provided across the photo affixed on the left side of the form in such a manner that portion of signature/impression is on photo as well as on acknowledgement.
- The fee for processing PAN application is **Rs. 989.00**. Payment can be made only by way of **Demand Draft payable at Mumbai**. Demand draft should be drawn in favour of '**NSDL - PAN**'. Demand draft shall be payable at Mumbai and the acknowledgement number should be mentioned on the reverse of the demand draft.
- The acknowledgement duly signed, affixed with photograph along with Demand Draft and proof of identity (name in the application should be same as in the proof of identity) & proof of address as specified in the application form is to be sent to NSDL at '**Income Tax PAN Services Unit, NSDL e-Governance Infrastructure Limited, 5th floor, Mantri Sterling, Plot No. 341, Survey No. 997/8, Model Colony, Near Deep Bungalow Chowk, Pune - 411016**'.
- Super scribe the envelope with 'APPLICATION FOR PAN - Acknowledgement Number' (e.g. '**APPLICATION FOR PAN - 881010100000097**').
- Your acknowledgement, Demand Draft, if any, and proofs, should reach NSDL within 15 days from the date of online application.

8. Share Capital Structure

An Indian company can have only two types of share capital

- Equity Share Capital – with voting rights
- Preference Share Capital – with preferential rights as regards either dividend or repayment

Right to vote of holders of Preference Shares is limited to matters that directly affect the rights attached to Preference Shares.

Equity shareholders vote in general meetings (meetings of members / shareholders) with voting rights in proportion to the share of the paid-up equity capital of the company. Hence, control on management of a company is directly proportional to the number of equity shares held in the company by a person.

One needs to be holding 10% (ten per cent) of the paid-up equity capital of a company to call for an extraordinary general meeting of the shareholders. Even to file a complaint before a Tribunal that the affairs of the company are being conducted in a manner which is prejudicial to public interest or is oppressive to any member or members, one needs to hold one tenth of the paid-up equity capital of the company. Hence, it is advisable for foreign entities to hold at least 10% of the paid-up equity capital of the Indian company at all times.

Many matters that come up before a meeting of the shareholders of a company require to be passed by a Special Resolution. Typical examples of such matters include modification of memorandum or articles of association, increase of authorized share capital, remuneration to directors, change of registered office, reduction of share capital, winding up of the company etc.

A person who holds less than 26% of the paid-up equity shares of a company will not be able to veto a Special Resolution. Hence, we advise our foreign clients to hold at least 26% of paid-up equity of an Indian company if they desire to have a say in the management of the company.

There has been no change in the above due to the change from the Companies Act, 1956 to the Companies Act, 2013.

9. External Commercial Borrowing

An Indian company can take loans from banks and financial institutions in India as well as from sources abroad. There are no restrictions on an Indian company owned by foreign residents with regard to borrowing in India.

An Indian company is allowed to borrow from abroad. Loans taken by a company from sources located outside India are called External Commercial Borrowings (ECB). Detailed directions in this regard are issued by Reserve Bank of India.



भारतीय रिज़र्व बैंक
RESERVE BANK OF INDIA
www.rbi.org.in

RBI/FED/2015-16/15

FED Master Direction No.5/2015-16

January 1, 2016

To

All Authorised Dealer Category – I banks and Authorised Banks

Madam / Dear Sir,

Master Direction - External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers

Under the ECB framework, ECBs can be raised either under the automatic route or under the approval route. For the automatic route, the cases are examined by the Authorized Dealer Category – I (banks). Under the approval route, the prospective borrowers are required to send their requests to the RBI through their banks for examination. While the regulatory provisions are most similar, there are some differences in the form of amount of borrowing, eligibility of borrowers, permissible end uses, etc. under the two routes.

The ECB Framework comprises of the following three tracks:

Track I	Medium term foreign currency denominated ECB with minimum average maturity of 3/5 years
Track II	Long term foreign currency denominated ECB with minimum average maturity of 10 years
Track III	Indian Rupee (INR) denominated ECB with minimum average maturity of 3/5 years

The list of entities eligible to raise ECB under the three tracks is as follows:

Track I	Track II	Track III
<ul style="list-style-type: none">i. Companies in manufacturing and software development sectors.ii. Shipping and airlines companies.iii. Small Industries Development Bank of India (SIDBI).iv. Units in Special Economic Zones (SEZs).v. Export Import Bank of India (Exim Bank) (only under the approval route).	<ul style="list-style-type: none">i. All entities listed under Track I.ii. Companies in infrastructure sector.iii. Holding companies.iv. Core Investment Companies (CICs).v. Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (INVITs) coming under the regulatory framework of the Securities and Exchange Board of India (SEBI).	<ul style="list-style-type: none">i. All entities listed under Track II.ii. All Non-Banking Financial Companies (NBFCs).iii. NBFCs-Micro Finance Institutions (NBFCs-MFIs), Not for Profit companies registered under the Companies Act, 1956/2013, Societies, trusts and cooperatives (registered under the Societies Registration Act, 1860, Indian Trust Act, 1882 and State-level Cooperative Acts/Multi-level Cooperative Act/State-level mutually aided Cooperative Acts respectively), Non-Government Organisations (NGOs) which are engaged in micro finance activities¹.iv. Companies engaged in miscellaneous services viz. research and development (R&D), training (other than educational institutes), companies supporting infrastructure, companies providing logistics services.v. Developers of Special Economic Zones (SEZs)/ National Manufacturing and Investment Zones (NMIZs).

The minimum average maturities for the three tracks are as under:

Track I	Track II	Track III
i. 3 years for ECB upto USD 50 million or its equivalent. ii. 5 years for ECB beyond USD 50 million or its equivalent.	10 years irrespective of the amount.	Same as under Track I.

The list of recognized lenders / investors for the three tracks is as follows:

Track I	Track II	Track III
i. International banks. ii. International capital markets. iii. Multilateral financial institutions (such as, IFC, ADB, etc.) / regional financial institutions and Government owned (either wholly or partially) financial institutions. iv. Export credit agencies. v. Suppliers of equipment. vi. Foreign equity holders. vii. Overseas long term investors such as: a. Prudentially regulated financial entities; b. Pension funds; c. Insurance companies; d. Sovereign Wealth Funds; e. Financial institutions located in International Financial Services Centres in India viii. Overseas branches / subsidiaries of Indian banks ²	All entities listed under Track I but for overseas branches / subsidiaries of Indian banks.	All entities listed under Track I but for overseas branches / subsidiaries of Indian banks. In case of NBFCs-MFIs, other eligible MFIs, not for profit companies and NGOs, ECB can also be availed from overseas organisations ³ and individuals ⁴ .

The all-in-cost requirements for the three tracks are as follows:

Track I	Track II	Track III
<p>i. The all-in-cost ceiling is prescribed through a spread over the benchmark as under:</p> <p>a. For ECB with minimum average maturity period of 3 to 5 years - 300 basis points per annum over 6 month LIBOR or applicable bench mark for the respective currency.</p> <p>b. For ECB with average maturity period of more than 5 years – 450 basis points per annum over 6 month LIBOR or applicable bench mark for the respective currency.</p> <p>ii. Penal interest, if any, for default or breach of covenants should not be more than 2 per cent over and above the contracted rate of interest.</p>	<p>i. The maximum spread over the benchmark will be 500 basis points per annum.</p> <p>ii. Remaining conditions will be as given under Track I.</p>	<p>The all-in-cost should be in line with the market conditions.</p>

The end-use prescriptions for the three routes are given in the following table:

Track I	Track II	Track III
<p>i. ECB proceeds can be utilised for capital expenditure in the form of:</p> <p>a. Import of capital goods including payment towards import of services, technical know-how and license fees,</p>	<p>1. The ECB proceeds can be used for all purposes excluding the following:</p> <p>i. Real estate activities</p> <p>ii. Investing in capital market</p> <p>iii. Using the proceeds for equity investment domestically;</p> <p>iv. On-lending to other</p>	<p>NBFCs can use ECB proceeds only for:</p> <p>a. On-lending to the infrastructure sector;</p> <p>b. providing hypothecated loans to domestic entities for acquisition of capital goods/equipment; and</p> <p>c. providing capital</p>

Track I	Track II	Track III
<p>provided the same are part of these capital goods;</p> <p>b. Local sourcing of capital goods;</p> <p>c. New project;</p> <p>d. Modernisation /expansion of existing units;</p> <p>e. Overseas direct investment in Joint ventures (JV)/ Wholly owned subsidiaries (WOS);</p> <p>f. Acquisition of shares of public sector undertakings at any stage of disinvestment under the disinvestment programme of the Government of India;</p> <p>g. Refinancing of existing trade credit raised for import of capital goods;</p> <p>h. Payment of capital goods already shipped / imported but unpaid;</p> <p>i. Refinancing of existing ECB provided the residual maturity is not reduced.</p> <p>ii. SIDBI can raise ECB only for the purpose of on-lending to the borrowers in the Micro, Small and Medium Enterprises (MSME sector), where MSME sector is as defined under the MSME Development Act, 2006, as amended from time to time⁵.</p> <p>iii. Units of SEZs can raise ECB only for their own requirements⁵.</p> <p>iv. Shipping and airlines companies can raise ECB only for import of</p>	<p>entities with any of the above objectives;</p> <p>v. Purchase of land</p> <p>2. Holding companies can also use ECB proceeds for providing loans to their infrastructure SPVs.</p>	<p>goods/equipment to domestic entities by way of lease and hire-purchases</p> <p>2. Developers of SEZs/ NMIZs can raise ECB only for providing infrastructure facilities within SEZ/ NMIZ.</p> <p>3. NBFCs-MFI, other eligible MFIs, NGOs and not for profit companies registered under the Companies Act, 1956/2013 can raise ECB only for on-lending to self-help groups or for micro-credit or for bonafide micro finance activity including capacity building.</p> <p>4. For other eligible entities under this track, the ECB proceeds can be used for all purposes excluding the following:</p> <p>i. Real estate activities</p> <p>ii. Investing in capital market</p> <p>iii. Using the proceeds for equity investment domestically;</p> <p>iv. On-lending to other entities with any of the above objectives;</p> <p>v. Purchase of land</p>

Track I	Track II	Track III
<p>vessels and aircrafts respectively⁵.</p> <p>v. ECB proceeds can be used for general corporate purpose (including working capital) provided the ECB is raised from the direct / indirect equity holder or from a group company for a minimum average maturity of 5 years.</p> <p>vi. ECBs for the following purposes will be considered only under the approval route⁵:</p> <p>a. Import of second hand goods as per the Director General of Foreign Trade (DGFT) guidelines;</p> <p>b. On-lending by Exim Bank.</p>		

Notes:

5. The respective conditions will be applicable for all three tracks.

The **individual limits** of ECB that can be raised by eligible entities **under the automatic route per financial year for all the three tracks** are set out as under:

- a. Up to USD 750 million or equivalent for the companies in infrastructure and manufacturing sectors;
- b. Up to USD 200 million or equivalent for companies in software development sector;
- c. Up to USD 100 million or equivalent for entities engaged in micro finance activities; and
- d. Up to USD 500 million or equivalent for other entities.

The ECB proposals **beyond aforesaid limits will come under the approval route**. For computation of the individual limits under Track III, exchange rate prevailing on the date of agreement should be taken into account.

In case the ECB is raised from direct equity holder, aforesaid individual ECB limits will also subject to ECB liability: equity ratio requirement. For ECB raised under the automatic route, the **ECB liability of the borrower** (including all outstanding ECBs and the proposed one) **towards the foreign equity holder should not be more than four times of the equity contributed by the latter**. For the ECB raised **under the approval route**, this ratio should

not be more than 7:1. This ratio will not be applicable if total of all ECBs raised by an entity is up to USD 5 million or equivalent.

For the purpose of the ECB liability : equity ratio, the paid-up capital, free reserves (including the share premium received in foreign currency) as per the latest audited balance sheet can be reckoned for calculating the 'equity' of the foreign equity holder. Where there are more than one foreign equity holders in the borrowing company, the portion of the share premium in foreign currency brought in by the lender(s) concerned shall only be considered for calculating the ratio.

Issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by banks, Financial Institutions and Non-Banking Financial Companies (NBFCs) from India relating to ECB is not permitted.

Borrowing Indian company may enter into loan agreement complying with the ECB guidelines with recognized lender for raising ECB under Automatic Route without the prior approval of the Reserve Bank. The borrowing company must obtain a Loan Registration Number (LRN) from the Reserve Bank of India before drawing down the ECB. The application for Loan Registration Number mentions an authorized dealer bank which will receive the money and also be involved with repayment.

The designated authorized dealer bank has the general permission to make remittances of installments of principal, interest and other charges in conformity with the ECB guidelines issued by Government / Reserve Bank of India from time to time. The borrowing company is not required to seek any permissions or approvals in this connection.

10. Bank Accounts of Foreign Residents in Indian Rupees

There are two types of Rupee denominated accounts that a foreign citizen or entity may open with a bank in India:

- A Ordinary Non-Resident Rupee (NRO) Accounts
- B Non-Resident (External) Rupee Accounts (NRE Accounts) – Strictly for NRI's

Ordinary Non-Resident Rupee (NRO) Accounts

NRO account is the simplest form of bank account that any non-resident individual or entity (except from Pakistan or Bangladesh) may open with a bank in India. NRO account does not require approval or permission from Reserve Bank of India or any other authority (in case of Pakistan and Bangladesh approval of Reserve Bank is required). Funds in the NRO account should be used for meeting bona fide expenses and transactions in Indian Rupees. The operations on the accounts do not allow making available foreign exchange to any person resident in India against reimbursement in rupees or in any other manner in India.

NRO accounts may be opened / maintained in the form of current, savings, recurring or fixed deposit accounts. The accounts may be held jointly with residents and / or with non-residents.

Permissible Credits / Debits to NRO account are as follows:

Credits

- i. Proceeds of remittances from outside India through normal banking channels received in foreign currency which is freely convertible.
- ii. Any foreign currency, which is freely convertible, tendered by the account holder during his temporary visit to India.
- iii. Transfers from rupee accounts of non-resident banks.
- iv. Legitimate dues in India of the account holder. This includes current income like rent, dividend, pension, interest, etc.

- v. Sale proceeds of assets including immovable property acquired out of rupee/foreign currency funds or by way of legacy/inheritance.
- vi. Resident individual may make a rupee gift to a NRI/PIO (NRO account holder) who is a close relative of the resident individual by way of crossed cheque /electronic transfer. The gift amount would be within the overall limit of USD 75,000 per financial year.
- vii. Resident individual may lend to a Non resident Indian (NRI)/ Person of Indian Origin close relative (NRO Account Holder) by way of crossed cheque /electronic transfer, subject to conditions within the overall limit of USD 75,000 per financial year.

B. Debits

- i. All local payments in rupees including payments for investments in India subject to compliance with the relevant regulations made by the Reserve Bank.
- ii. Remittance outside India of current income like rent, dividend, pension, interest, etc. in India of the account holder.
- iii. Remittance up to USD one million, per financial year, for all bona fide purposes.
- iv. Transfer to NRE account of NRI within the overall ceiling of USD one million per financial year subject to payment of tax, as applicable

Balances in NRO accounts are **eligible for remittance abroad subject to some restrictions and limits**. The limits and restrictions vary upon the country of origin and also of nationality. Citizens of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan, Iran, Nepal and Bhutan face more restrictions than citizens of other countries.

Where an account (current/savings) is opened by a **foreign tourist visiting India**, with funds remitted from abroad in an approved manner or by sale of foreign exchange brought by him to India, the bank may convert the balance in the account at the time of departure of the tourist from India provided the account has been maintained only for a short period not exceeding six months. In case the account has been maintained for a period more than six months, applications for repatriation of balance will have to be made by the account holder to Reserve Bank.

Non-Resident External Rupee (NRE) Accounts

In contrast with the NRO accounts, NRE account holders are **permitted to freely repatriate** balances held in such accounts along with interest accrued thereon outside India at any time without approval of Reserve Bank.

These accounts are permitted to be opened in the names of non-resident individuals of Indian nationality or origin (NRIs), overseas companies, firms, societies and other corporate bodies which are owned directly or indirectly to the extent of at least 60% by NRIs and overseas trusts in which at least 60% of the beneficial interest is irrevocably held by such persons (OCBs).

In other words, NRE accounts are of use **strictly by Non-Resident Indians** and firms / companies owned by them. NRE account cannot be opened by a foreign citizen who is not of Indian origin.

11. Bank Accounts in Foreign Currency

Reserve Bank of India does not look too kindly upon foreign currency accounts. Indian companies (even when wholly owned by foreign residents) can open a bank account denominated in foreign currency only if the company earns foreign exchange. Such an account is called **Exchange Earners' Foreign Currency (EEFC) Account**.

Permitted exporters of goods and services and other beneficiaries of inward remittances in convertible foreign currency are allowed to open and maintain with banks in India accounts expressed in foreign currency and titled "Exchange Earners Foreign Currency (EEFC) Accounts". 100% foreign exchange earnings can be credited to the EEFC account subject to the condition that the sum total of the accruals in the account during a calendar month should be converted into Rupees on or before the last day of the succeeding calendar month after adjusting for utilization of the balances for approved purposes or forward commitments.

Banks maintain EEFC account in any convertible foreign currency and in any form (current, savings or term deposit accounts). Savings bank accounts in the names of firms, companies, etc. are not permitted.

The following debits are allowed to an EEFC account:

- i. Payment outside India towards a permissible current account transaction and permissible capital account transaction.
- ii. Payment in foreign exchange towards cost of goods purchased from a 100 percent Export Oriented Unit or a Unit in (a) Export Processing Zone or (b) Software Technology Park or (c) Electronic Hardware Technology Park
- iii. Payment of customs duty.
- iv. Trade related loans/advances, extended by an exporter holding such account to his importer customer outside India.
- v. Payment in foreign exchange to a person resident in India for supply of goods/services including payments for airfare and hotel expenditure.

There is no restriction on withdrawal in Rupees of funds held in an EEFC account. However, the amount withdrawn in Rupees shall not be eligible for conversion into foreign currency and for re-credit to the account. EEFC account holders are permitted to access the forex market for purchasing foreign exchange.

Foreign Currency Accounts for Non-Resident Indians

Non-resident Indians or persons of Indian origin are allowed to open foreign currency accounts with banks in India under the following schemes:

- Foreign Currency (Non-Resident) Accounts (Banks) Scheme - [FCNR(B)]
- Resident Foreign Currency (RFC) Accounts

FCNR(B) accounts are similar to NRE accounts mentioned in the previous chapter. The provisions applicable to NRE accounts apply to FCNR (B) accounts as well. FCNR (B) accounts are only in the form of term deposits of 1 to 5 years. Loans up to Rs.10 million can be extended against security of funds held in FCNR (B) deposit either to the depositors or third parties. Accounts can be in any freely convertible currency.

RFC accounts are to enable eligible returning Indians to open and maintain foreign currency accounts with banks in India.

Other Foreign Currency Accounts

Foreign Currency Accounts of Overseas Companies executing Projects in India – Overseas companies executing projects in India are permitted to open foreign currency accounts with banks in India for meeting local expenses in connection with the projects in India. Indian Banks open non-interest bearing Foreign Currency Account for Project Offices in India subject to the following:

- i. The Project Office has been established in India, with the general / specific permission of Reserve Bank.
- ii. The contract, under which the project has been sanctioned, specifically provides for payment in foreign currency.
- iii. Each Project Office can open two Foreign Currency Accounts, usually one denominated in USD and other in home currency, provided both are maintained with the same bank.
- iv. The permissible debits to the account shall be payment of project related expenditure and credits shall be foreign currency receipts from the Project Sanctioning Authority, and remittances from parent/group company abroad or bilateral / multilateral international financing agency.
- v. The Foreign Currency accounts have to be closed at the completion of the Project.

12. Technology Transfer, Brand Licensing and Royalty

It was mentioned in Chapter 3 about using a local associate for testing the waters. Local associate may be useful not just as an initial support but also as a long-term business partner. While joint ventures with equity participation from foreign company as well as Indian associate are common, often foreign companies enter into a technology transfer / franchisee / marketing support / brand licensing agreement with the Indian associate. This way the foreign company can take benefit of the Indian market without making any significant investments.

An Indian company can sign a Technical Collaboration / Trademark License Agreement / Marketing Agreement with a foreign company and pay royalty on sales to the foreign company. There is **no upper limit on royalty payments**.

Executing an agreement which provides for royalty, either lump sum or as percentage of sales or both, can be considered even when Indian company is a joint venture of the foreign entity and its Indian partner. In such an arrangement, the foreign partner shall benefit on one hand from the dividends on equity shares held by it and on other hand from royalty payments.

An agreement providing for royalty can be executed even when the Indian company is a wholly owned subsidiary of the foreign company.

13. Indian Visa for Directors and Employees

An Indian company can employ foreign citizens in India as well as outside India. No permissions are needed for this. However, the foreign citizen needs an employment visa if he / she intends to reside in India.

Types of visas (relevant for business) issued by India are as follows.

S. No.	Type of Visa	Period for which granted	Entry	Documents Required with Application	Extendable In India
1.	E-visa	30 days	Single	Passport (no other document) + return ticket + photo	No
2.	Tourist	180 Days	Multiple	Proof regarding assured financial standing i.e. return ticket and availability of sufficient money to spend during stay in India	No
3.	Transit	15 Days	Single	Confirmed onward journey ticket	No
4.	Business	Up to 5 years	Multiple	Documents to prove bona fide purpose (Company's letter, etc.), proof of financial standing	Yes
5.	Employment	2 years* or period of Contract, whichever is less	Multiple	Proof of employment (appointment document), terms and conditions	Yes
6.	'X' (Entry) for Foreigners of Indian Origin	5 years	Multiple	Proof of being of Indian Origin	Yes

* Employment Visa is granted up to five years duration in case of foreign technician / expert coming in pursuance of a bilateral agreement between Government of India and foreign agreement / collaboration agreement approved by Government of India. In case of highly skilled foreign personnel employed in IT software and IT enabled sectors, duration of employment visa may be up to three years. CEO/Senior executive of a US company may be granted Employment Visa for a period of 3 years or co- terminus with the contract, whichever is earlier.

E-visa

E-visa facility is available to nationals of the following countries:

A-D	E-L	M-R	S-Z
Albania	East Timor	Madagascar	Saint Christopher and Nevis
Andorra	Ecuador	Malawi	Saint Lucia
Anguilla	El Salvador	Malaysia	Saint Vincent & the Grenadines
Antigua & Barbuda	Eritrea	Malta	Samoa
Argentina	Estonia	Marshall Islands	San Marino
Armenia	Fiji	Mauritius	Senegal
Aruba	Finland	Mexico	Serbia
Australia	France	Micronesia	Seychelles
Austria	Gabon	Moldova	Singapore
Bahamas	Gambia	Monaco	Slovakia
Barbados	Georgia	Mongolia	Slovenia
Belgium	Germany	Montenegro	Solomon Islands
Belize	Ghana	Montserrat	South Africa
Bolivia	Greece	Mozambique	Spain
Bosnia & Herzegovina	Grenada	Myanmar	Sri Lanka
Botswana	Guatemala	Namibia	Suriname
Brazil	Guinea	Nauru	Swaziland
Brunei	Guyana	Netherlands	Sweden
Bulgaria	Haiti	New Zealand	Switzerland
Cambodia	Honduras	Nicaragua	Taiwan
Canada	Hungary	Niue Island	Tajikistan
Cape Verde	Iceland	Norway	Tanzania
Cayman Island	Indonesia	Oman	Thailand
Chile	Ireland	Palau	Tonga
China	Israel	Palestine	Trinidad & Tobago
China- SAR Hongkong	Jamaica	Panama	Turks & Caicos Island
China- SAR Macau	Japan	Papua New Guinea	Tuvalu
Colombia	Jordan	Paraguay	UAE
Comoros	Kenya	Peru	Ukraine
Cook Islands	Kiribati	Philippines	United Kingdom
Costa Rica	Laos	Poland	Uruguay
Cote d'Ivoire	Latvia	Portugal	USA
Croatia	Lesotho	Republic of Korea	Vanuatu
Cuba	Liberia	Republic of Macedonia	Vatican City-Holy See
Czech Republic	Liechtenstein	Romania	Venezuela
Denmark	Lithuania	Russia	Vietnam
Djibouti	Luxembourg		Zambia
Dominica			Zimbabwe
Dominican Republic			

The following points should be noted for e-visa facility.

1. Please visit <https://indianvisaonline.gov.in/visa/tvoa.html> to apply for e-visa.
2. E-visa is issued when sole objective of visiting India is recreation, sight seeing, casual visit to meet friends or relatives, short duration medical treatment or casual business visit.
3. Application for e-visa can be submitted minimum 4 days and maximum 30 days in advance of the date of arrival in India. Example: If you are applying on 1st Sept then applicant can select arrival date from 5th Sept to 4th Oct.
4. Recent front facing photograph with white background and photo page of Passport containing personal details like name, date of birth, nationality, expiry date etc. to be uploaded on the website. Passport must have at least six-month validity and should have at least two blank pages. Travel documents other than passport are not accepted for e-visa. Diplomatic / official passport holders not eligible for e-visa.
5. E-tourist Visa fees is country/Territory specific (min \$00 and max \$60).
6. It is necessary to carry a copy of e-visa at the time of travel.
7. Validity of visa is 30 days from the date of arrival in India.
8. E-visa is valid for entry through 16 airports - Ahmedabad, Amritsar, Bengaluru, Chennai, Cochin, Delhi, Gaya, Goa, Hyderabad, Jaipur, Kolkata, Lucknow, Mumbai, Tiruchirapalli, Trivandrum & Varanasi. However, there are no such restrictions for exit.
9. e-visa is allowed for a maximum of two visits in a calendar year.
10. E-visa is single entry, non-extendable, non-convertible & is not valid for visiting Protected/Restricted and Cantonment Areas.
11. Persons with Pakistani passport or of Pakistani origin are not eligible for e-visa.

Business Visa

A Business visa may be granted to a foreigner for the following **purposes** (relevant to this Guide):-

- i. Foreign nationals who wish to visit India to establish industrial/business venture or to explore possibilities to set up industrial/business venture in India.

- ii. Foreign nationals coming to India to purchase/sell industrial products or commercial products or consumer durables.
- iii. Foreign nationals coming to India for technical meetings/discussions, attending Board meetings or general meetings for providing business services support.
- iv. Foreign nationals coming to India for recruitment of manpower.
- v. Foreign nationals who are partners in the business and/or functioning as Directors of the company.
- vi. Foreign nationals coming to India for consultations regarding exhibitions or for participation in exhibitions, trade fairs, business fairs etc.
- vii. Foreign buyers who come to transact business with suppliers/ potential suppliers at locations in India, to evaluate or monitor quality, give specifications, place orders, negotiate further supplies etc., relating to goods or services procured from India.
- viii. Foreign experts/specialists on a visit of short duration in connection with an ongoing project with the objective of monitoring the progress of the work, conducting meetings with Indian customers and/or to provide technical guidance.
- ix. Foreign nationals coming to India for pre-sales or post-sales activity not amounting to actual execution of any contract or project.
- x. Foreign trainees of multinational companies/corporate houses coming for in-house training in the regional hubs of the concerned company located in India.
- xi. Foreign nationals coming as tour conductors and travel agents and / or conducting business tours of foreigners or business relating to it, etc.

Documents required for grant of business visa are as follows:

- a. A valid travel document and a re-entry permit, if required under the law of the country concerned.
- b. Proof of financial standing and expertise in the field of intended business.
- c. Documents/ papers pertaining to proposed business activity such as registration of the company under the Companies Act, proof of registration of the firm with the State Industries Department or the Export Promotion Council concerned or any recognized promotional body in the relevant field of industry or trade etc.

The **conditions to be fulfilled** for grant of a Business visa are as follows:-

- i. The foreign national must have a valid travel document and a re-entry permit, if required under the law of the country of nationality of the applicant.
- ii. The foreign national should be a person of assured financial standing. The foreigner must submit proof of his/her financial standing and documentation in support of intended business visit to India. Proof of his financial standing and expertise in the field of intended business will be checked thoroughly by the Indian Missions while granting the visa.
- iii. The foreign national should not be visiting India for the business of money lending or for running a petty business or petty trade or for full time employment in India, etc.
- iv. The foreign national shall comply with all other requirements like payment of tax liabilities etc.
- v. The Business Visa must be issued from the country of origin or from the country of habitual domicile of the foreigner provided the period of residence of that foreigner in that particular country is more than 2 years. If the period of permanent residence of the applicant in the particular country is less than two years, the Mission / Post concerned will issue Business visa only after personal interview, review of documentation and prior clearance from the Mission where the applicant has permanent residence. Such cases will be examined by the Missions / Posts on merits on case-to-case basis and, after issue of Business visa, intimation will be sent to the Indian Mission / Post in the applicant's country of origin.
- vi. The documents pertaining to proposed business activity such as the registration of the company under the Companies Act, proof of registration of the firm with the State Industries Department or the Export Promotion Council concerned or any recognized promotional body in the relevant field of industry or trade etc. will be checked to decide the category of visa applicable to the foreigner
- vii. The grant of Business Visa is subject to any instructions issued by the Government of India on the basis of reciprocity with other foreign countries from time to time.

Duration of Business Visa

A Business Visa with multiple entry facility may be granted for a period up to five years or for a shorter duration as per the requirement. A stay stipulation of a maximum period of six months will be prescribed for each visit by the concerned Indian Mission keeping in view the nature of the business activity for which such Business Visa is granted.

In case Missions/ Posts abroad, while issuing Business Visa, decide to prescribe a stay stipulation of maximum 6 months for each visit, a clear endorsement may be made stating "each stay not to exceed 6 months (or the duration of stay stipulation) and registration not required". In case no such stay stipulation is being prescribed, a simple endorsement stating "registration within 14 days" may be made.

Indian Missions may also grant Business Visa with 10 years validity and multiple entry facility to the nationals of the United States of America. This visa will be issued with the stipulation that the stay in India during each visit shall not exceed six months.

Extension of Business Visa

In case business visa is granted for a period less than five years by the Indian Missions, the same can be **extended up to a maximum period of five years subject to following:**

- (a) The gross sales / turnover from the business activities, for which the foreigner has been granted visa, is not less than Rs.10 million per annum (to be achieved within 2 years of setting up the business).
- (b) First extension on business visa shall be granted by the Ministry of Home Affairs.
- (c) Further extensions, if required, may be granted by the State Governments/ Union Territory (UT) administrations / Foreigners Registration Officer (FRO) / Foreigners Regional Registration Officer (FRRO) on year-to-year basis subject to good conduct, production of necessary documents in support of continued business activity and no adverse inputs, security related or otherwise, about the foreigner.
- (d) The period of extension shall not be beyond five years from the date of issue of the Business visa.
- (e) If the extension of Visa is denied by Ministry of Home Affairs / FRO / FRRO / State Government / UT Administration, the foreigner shall leave India forthwith on expiry of the period of validity of the visa.

Employment Visa

An Employment Visa is granted to foreigners desiring to come to India for the purpose of employment, subject to fulfillment of the following conditions:

- i. The applicant is a **highly skilled and/or qualified professional**, who is being engaged or appointed by a company in India on contract or employment basis.

- ii. Employment Visa shall not be granted for jobs for which qualified Indians are available. Employment Visa shall also not be granted for routine, ordinary or secretarial / clerical jobs.
- iii. The foreign national seeks to visit India for employment in a company registered in India or for employment in a foreign company engaged for execution of some project in India.
- iv. The foreign national being sponsored for an Employment Visa in any sector should draw a **salary in excess of USD 25,000 per annum**. There are a few exceptions to this limit. The exceptions are generally speaking not relevant for business.
- v. The foreign national must comply with all legal requirements like payment of tax liabilities etc.
- vi. The Employment Visa must be issued from the country of origin or from the country of domicile of the foreigner provided the period of permanent residence of the applicant in that particular country is more than 2 years.
- vii. The documents/ papers pertaining to the proposed employment, like the registration of the company under the Companies Act, proof of registration of the firm in the State Industries Department or the Export Promotion Council concerned, or any recognized promotional body in the field of industry and trade etc will be thoroughly checked to decide the category of visa that may be issued to the foreigner.
- viii. The name of the sponsoring employer shall be clearly stipulated in the visa sticker.

Validity of Employment visa will be as follows:-

- A foreign technician/expert coming to India in pursuance of a bilateral agreement between the Government of India and the foreign government, or in pursuance of a collaboration agreement that has been approved by the Government of India, can be granted an Employment visa for the duration of the agreement, or for a period of five years, whichever is less, with multiple entry facilities.
- In the case of highly skilled foreign personnel being employed in the IT software and IT enabled sectors, the Missions/Posts can grant Employment visa with validity up to 3 years or the term of assignment, whichever is less, with multiple entry facility.
- A foreigner coming to India for employment not covered in the above can be granted Employment visa with **validity up to two years or the term of assignment**, whichever is less, with multiple entry facility.
- In the case of Employment Visa issued for a period of 180 days or less, registration is not required with Foreigners Registration Officer (FRO) / Foreigners Regional

Registration Officer (FRRO). The Missions/Posts may issue multiple entry Employment Visa for a period of 180 days or less.

- However, if the Employment visa is valid for a period of more than 180 days, it will carry an endorsement to the effect that the E-visa holder must register with the FRRO/FRO concerned within 14 days of arrival.
- On registration, the FRRO/FRO concerned may issue Residential Permit for the validity of the visa period. However, if there is any change in the residential address, the foreign national concerned shall immediately report the change of address, in writing, to the FRRO/FRO concerned.
- The Employment visa may be extended by the State Governments / Union Territory / FRRO / FRO beyond the initial visa validity period, up to a total period of 5 years from the date of issue of the initial Employment Visa, on an year to year basis, subject to good conduct, production of necessary documents in support of continued employment, filing of Income Tax returns and no adverse security inputs about the foreigner. The period of extension shall not exceed five years from the date of issue of the initial Employment visa.

Documents required for employment visa are as follows:

- A valid passport and a re-entry permit, if required under the law of the country of nationality of the applicant.
- Proof of his/her employment or contract or engagement by the company / firm / organization, etc. in India.
- Documentary proof of his / her educational qualifications and professional expertise.
- Documents pertaining to the proposed employment, like the registration of the company under the Companies Act, proof of registration of the firm in the State Industries Department or the Export Promotion Council concerned, or any recognized promotional body in the field of industry and trade etc.

Other Notable Points for Business & Employment Visa

Business Visa as well as Employment Visa cannot be converted to any other kind of visa during the stay of the foreigner in India except if he / she marries an Indian national.

Business / Employment visa of a foreigner who falls ill after entry into India rendering him / her unfit to travel and require specialized medical treatment can be converted to Medical visa if he / she is eligible for grant of Medical Visa and medical certificate is obtained from government / government-recognized hospital.

A foreign national coming for executing projects / contracts will have to come only on an Employment Visa.

A foreign company that does not have any Project office / subsidiary / joint venture / branch office in India cannot sponsor a foreign national / employee of a foreign company for Employment visa. However, an Indian company which has awarded a contract for execution of a project to a foreign company that does not have any base in India, can sponsor employee of foreign company for Employment visa. The employee so sponsored need not be an employee of the Indian company.

No change of employer is permitted during the currency of the Employment Visa within India except in respect of change of employment between a registered holding company and its subsidiary and vice-versa or between subsidiaries of a registered holding company.

Visa for Family Members

Family members/dependants of a foreigner who is granted 'Business visa' / 'Employment Visa' may be granted 'X' visa subject to usual security checks provided the family members are otherwise eligible for grant of such a visa. Its validity will be co-terminus with the validity of the visa of the principal visa holder or for such shorter period as may be considered necessary by the Indian Mission.

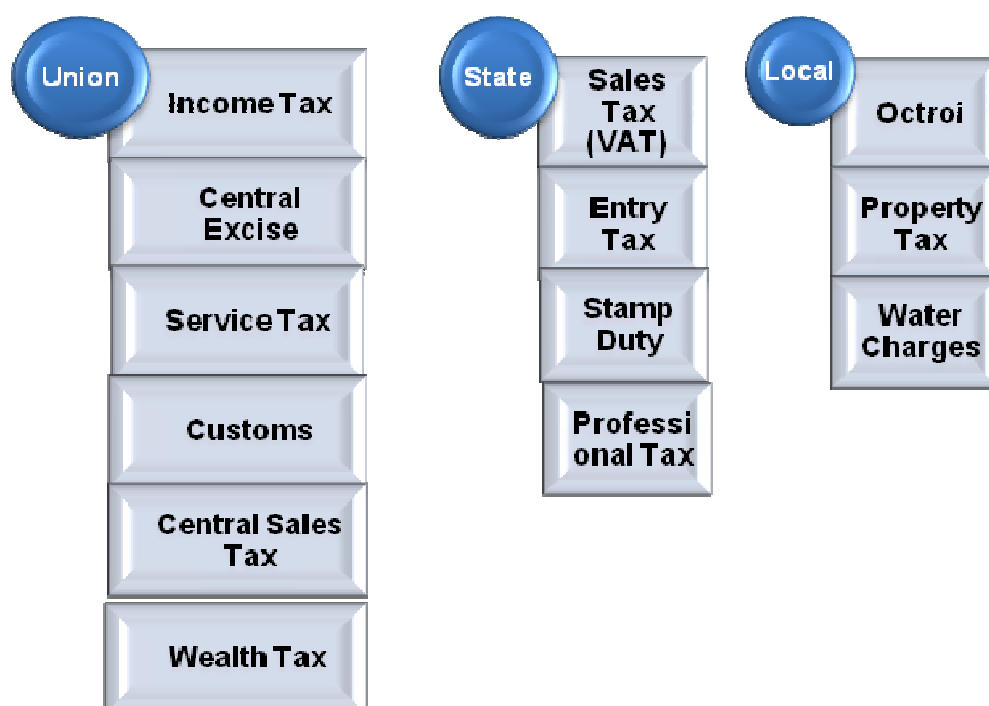
Employees exempted from the salary limit

Cook may be granted employment visa. The prescribed minimum salary of USD 25,000 per annum does not apply to ethnic cooks.

Similarly, translators / interpreters may also be granted employment visa. The prescribed minimum salary does not apply in case of translators / interpreters also.

14. Indian Taxation System

India has a three-tier taxation structure which can be summed up as follows:



India is a federal republic with clear division of powers between the Central Government and the Government of States. Constitution of India has created a two-tier structure dividing powers between the Union of India and the states. Local bodies like municipal corporations / village panchayats derive their powers from the powers of the state by suitable legislation passed by each state legislature. This delegation by the states to local bodies has added a third tier to the taxation structure as provided in the Constitution.

Let us have a quick look at the three tiers of taxation and different taxes in each tier.

Union Taxes

Parliament of India approves laws that impose taxes. Generally speaking, every year in the last week of February (often on 28th February) the Finance Minister presents a budget to the Parliament. The presentation of annual budget of Union of India to the Parliament is watched by whole country with bated breath since union taxes are modified. Normally, the

Government of India does not modify taxes except at the time of annual budget. Major sources of central revenue are as follows:

Income Tax

Income Tax Act, 1961 prescribes that income earned by all residents is subject to Income Tax. Indicative rates of income tax as applicable for incomes earned during financial year 2015-16 (1 April 2015 to 31st March 2016) onwards are as follows:

Net Annual Income Range	Income Tax + Education Cess		
	Individual below 60 years of age	LLP Firm	Company
Up to Rs. 250,000	NIL	30.9% of Income	30.9% of Income 29.87% of income if the turnover is less than Rs. 50 Million
Rs. 250,000 to Rs. 500,000	10.3% of total income minus Rs. 250,000		
Rs. 500,000 to Rs. 1000,000	Rs. 25,750 + 20.6% of total income minus Rs. 500,000		
Above Rs. 1000,000	Rs. 128,750 + 30.9% of total income minus Rs. 1,000,000		
Above Rs. 10,000,000-	Rs. 2,909,750 + 30.9% of total income minus Rs. 10,000,000 + 12% of the total	34.608% of income	33.063% of income
Above Rs. 100,000,000-			34.608% of income

Income Tax prescribes that any person responsible for making payment to another person (in specified transactions and subject to some limits) must deduct tax at source (TDS).

The person receiving a dividend does not have to pay any tax on it if the amount of dividend received is less than Rs. 1,000,000- in a financial year. Budget 2016-17 has imposed a tax of 10.3% on all dividends above the limit of Rs. One Million received by an individual during a year. The company distributing dividend has to pay 15.45% of the amount distributed as dividend in addition to the income tax that the company is liable to pay.

It may be mentioned here that **LLP Firm is a tax advantageous structure as compared to a limited company**. The profit distributed by an LLP Firm to its partners is not subject to any distribution tax and the income is exempt in the hands of the partners.

Income Tax in India is fairly complex with deductions for many expenses and categories of taxpayers.

Central Excise

Central Excise is levied on production value of goods. Rate of excise duty varies on the basis of description of the product. Excise duty has to be paid before the product moves out of the factory. Credit is allowed in respect of excise paid on inputs. Excise duty is not levied on goods that are exported.

Service Tax

Service Tax is payable on the value of services provided in respect of all services except a few services on the negative list. Service tax is 14.5% (with effect from 1 June 2016; 14% before 1 June 2016) of the value of services. Rebate is provided in respect of service tax paid on input services. Export of services is not liable to service tax.

Customs Duty

Customs duty is levied on imports and exports of goods.

Central Sales Tax

Central Sales Tax (CST) is levied whenever goods are sold from one state within India to a party located in another state of the country. The purchasing party is supposed to provide a declaration in the prescribed form to the seller. If the declaration is received, rate of CST is 2%. If the declaration is not received the transaction is treated as sale within the state in which the seller is located and sales tax / VAT as applicable in the said state is levied.

Wealth Tax

Wealth Tax is levied on some assets (less liabilities) owned by an individual or company. There is a long list of assets which are exempted from wealth tax. Most industrial and commercial assets are exempted. Houses used for residential purpose are also exempted. Assets up to a value of Rs. 3,000,000- (Rupees Three Million) are exempted. Rate of wealth tax is 1% of value of net assets after deducting the value of exempted assets and liabilities.

State Taxes

India is a federal union comprising twenty-eight states and seven union territories. Each state has different rates of taxes in respect of what falls within the power of the states. In recent years, there have been some attempts to arrive at uniformity of sales tax (VAT) rates. While some level of uniformity has been achieved, there are large differences from state to state regarding tax on different items.

Sales Tax (Value Added Tax – VAT)

Sales Tax or Commercial Tax or Value Added Tax (VAT) is levied on sale value of goods (as opposed to excise which is on production value). Rebate is provided on VAT paid on inputs purchased within the state. For example, if a trader buys some product within the state where he is located for Rs. 100 + vat of 12% = Rs. 112, and sells it at Rs. 125 + 12% = Rs. 140, he will have to deposit with VAT authorities a sum of Rs. 15 – Rs. 12 = Rs. 3.

Rates of VAT vary from state to state and are different for various items.

Entry Tax

Entry Tax (called LBT or Local Body Tax in Maharashtra) is applicable in majority of the states. This is payable on purchase price of goods purchased by a company from areas outside the city / town where the company is located. Entry Tax substitutes octroi which is levied by municipal authorities as goods are entering a city. Octroi is assessed and paid at the entry point of cities. This often causes long waiting and inconvenience whenever goods are entering a city. Due to the problems associated with octroi, many states have replaced octroi with entry tax. Entry Tax is around 0.5-4% of the value of goods. It is payable on a quarterly / monthly basis as per self-assessment of the company concerned.

Stamp Duty

Stamp Duty is payable on various types of documents – agreements, transfer deeds, conveyance / mortgage of immovable property. Rates vary from state to state. Stamp papers of different value are available. The vendor who sells a stamp paper puts the names of contracting parties, type of document, date of purchase of stamp paper along with his rubber stamp and date of purchase of stamp paper at the back of the stamp paper. The document is printed / typed on the stamp paper. The date of execution of document should not be prior to the date of purchase of stamp paper as noted at its back.

In some states it is now possible to get e-stamping done on documents. E-stamping eliminates the need to purchase stamp papers.

Professional Tax

Professional tax is imposed at the state level. However, not all the states impose this tax. The following states impose this levy in India – Karnataka, West Bengal, Andhra Pradesh, Maharashtra, Tamil Nadu, Gujarat, and Madhya Pradesh. Business owners, working individuals, merchants and people carrying out various occupations come under the purview of this tax. As per Constitution of India, the maximum amount that can be charged as Professional Tax is Rs. 2,500 per annum.

Local Taxes

Local Taxes are levied by either municipal corporations (in case of cities) or by village panchayats (in case of villages). The freedom of a municipal corporation or village panchayat is limited by the relevant Act passed by State Legislature.

Octroi

Octroi has fallen out of favor with government authorities across the country. Octroi is still levied to some extent in only two states (Maharashtra and Punjab) and one Union Territory (Andaman & Nicobar Islands). Even in these states, octroi is being phased out and hopefully India will soon be an octroi-free country. Octroi is paid in cash at the time of goods entering the city. This causes significant logistics problems since the transporter or carrier has to get the assessment done and pay before the goods are cleared for entry into the local area by the octroi authorities.

Property Tax

Property tax is collected by municipal or village authorities based on the estimated rental value that a property is expected to fetch. Rates of property tax vary greatly from city to city. However, in general, the first step is to estimate the annual rental value. Most cities have elaborate norms for estimation of annual rental value based on the locality, type of construction, usage of property and the floor area of property. Property Tax is a percentage of the estimated annual value and is around 10-20% of the annual rental value. It is customary for the property owner (and not the tenant) to pay the property tax.

Water Charges

Strictly speaking, this is not a tax but a charge based on actual consumption. However, in most cities of India water charges are not collected based on water consumption since water

metering is not very common. In most cities households are provided a 12 mm pipe connection and a fixed charge per household is levied. This is in the range of about Rs. 100 to Rs. 200 per month. Rates for commercial establishments and industries are much higher and are often based on actual usage.

15. Labour Laws

Labour laws in India can be a challenge for many foreigners who start a business in India for the first time. The tricks to avoid much of labour trouble in India can be summed up as follows:

- a) Do not employ anyone with a salary of less than Rs. 10,000- per month. If you can keep all your employees above Rs. 15,000 per month, that is even better.
- b) Keep the number of employees on your rolls to a bare minimum. This can be done by outsourcing all that is either not critical or not specific to your business.
- c) If it is possible, keep the number of employees less than 20.

If you are able to ensure that you do not have any employees earning less than Rs. 10,000- per month, the only (well, almost, the only) labour laws that will be applicable to you are as follows:

- **The Employees' State Insurance Act, 1948** – applicable when number of employees is ten or more and only to employees earning less than Rs. 15,000 p.m. and in some areas of the country
- **Payment of Gratuity Act, 1972** – applicable when number of employees is ten or more
- **The Employees' Provident Funds and Miscellaneous Provisions Act, 1952** – applicable when number of employees is twenty or more

A quick glance at the three laws is as follows:

The Employees' State Insurance Act, 1948

Employer is required to deduct 1.75% of employee's salary and add 4.75% of the salary from his side. Total contribution to be deposited is 6.5% of salary of all employees earning less than Rs. 15,000- per month. Employees covered by the insurance receive medical benefits as well as all insurance benefits.

Payment of Gratuity Act, 1972

Under the Act, the employer is required to pay gratuity to an employee as and when he leaves employment either on termination or resignation or superannuation or death of an employee if the employee has worked for a continuous period of five years or more.

For every completed year of service or part thereof in excess of six months, gratuity is payable at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned.

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

Employer is required to deduct 10% of the salary of employee, add equal amount of contribution from its side and deposit the total with provident fund.

The employee can withdraw from provident fund either when he / she is out of job or at the time of retirement or under some other emergencies.

In addition to the above, irrespective of the number of employees if your unit is not a factory it will need to be registered with labour department under the relevant state's **Shops and Establishment Act**. Different states have different provisions under their Shops and Establishment Acts. However, in general the Acts provide for working hours, holidays and leaves of employees.

In case the nature of your business requires you to employ large number of workers, many of whom are earning less than Rs. 10,000- per month, you should be prepared to deal with all the labour related matters including unions. If this is the case, you should either partner with an Indian associate who understands Indian workers and related laws or you should get a professional manager who is an expert on such matters.

16. Business Culture

India is a relationships-driven society. Everyone is connected to everyone else with whom one does business. Dealing with strangers is avoided – reasons for this are not too far to seek. With a judicial system that is painfully slow, expensive and unpredictable, one wants to avoid going to courts. If one is dealing with someone on whom one can exert some pressure, whether it is emotional or from relatives and friends, one is assured of some recourse if matters turn sour.

Relationships are built upon mutual trust and respect. In general, Indians prefer to have long-standing personal relationships prior to doing business. It may be a good idea to go through a third party introduction. This gives you immediate credibility.

Doing business in India involves spending a lot of time building relationships with all sort of people whether in business or in government or in community or in politics. This is strange for foreigners who come to India from Western Europe or USA. However, this does not surprise anyone who has done business in most of Africa or South America or Asia.

It is not unusual for business associates to try to establish relationships that extend to families and friends. This seems strange to western mindset where business and personal life are kept separate. The dividing line in India is either non-existent or very thin. So, if you receive a request from your Indian associate to go to a picnic together with families on the weekend, do not be surprised.

Language of contracts in India is often flowery and extremely elaborate. Indian advocates and solicitors sometimes draw up such elaborate and complex contract documents that virtually no one bothers to read through the whole of it. It is not uncommon for parties to a contract to rely on the informal or email or verbal assurances that they have among themselves while the formal contract is seen as no more than a necessary evil that one would rather not touch. We, Anil Chawla Law Associates LLP, advise strongly against this approach.

Indian entrepreneurs and senior managers often work for more than 10 hours a day and work on weekends too. Calling up business associates on a Sunday or at 8 pm is not considered something extraordinary.

Everyone in India has one or more mobile phones. Calling people on mobile at odd hours (keeping in mind the time when the person receiving the call goes to sleep and wakes up) is considered normal. Not picking up a call from someone known is considered rude.

Answering machine facility is almost unknown in the country. Typically, if one misses a call from someone known, calling back as early as possible is considered almost mandatory.

India is a hierarchical society. Even in some large cities where due to western influence calling each other by first name has become acceptable, the hierarchical mindset remains deep rooted. As a general rule, calling people by first name is avoidable unless the person is equivalent or lower to you in age and rank. Anyone who is older (or of higher rank) must be addressed respectfully. This is a hierarchical culture, so greet the eldest or most senior person first.



The usual form of greeting does not involve shaking hands even though shaking hands is common. Men may shake hands with other men and women may shake hands with other women; however there are seldom handshakes between men and women.

Indians consider it rude to say a clear 'no'. Indians will offer you the response that they think you want to hear. Since they do not like to give negative answers, Indians may give an affirmative answer but be deliberately vague about any specific details. This will require you to look for non-verbal cues, such as a reluctance to commit to an actual time for a meeting or an enthusiastic response.

A problem that many foreigners face when dealing with Indian business houses over email etc. is the tendency of Indians to fall silent. Often, when an Indian does not wish to pursue the matter further, the tendency is to fall silent rather than close the matter with a clear 'no'.

Indians enjoy eating together. All food on the table must be shared. The western habit of individual portions being served and each one ordering one's own food is a strict no-no. A group orders food together. So, before ordering there is quite some discussion to ensure that everyone's tastes are taken care of and no food is wasted. Often people make compromises only to ensure consensus in the group. For example, if everyone else in the group wants ice cream for dessert, someone who wants coffee is likely to go with the group and have ice cream. If everyone on the table is inclined to have Indian vegetarian food, it will be rude for one individual to order chicken for oneself.

Punctuality is the norm as far as business meetings are concerned. However, on social occasions, where large numbers of people are invited, it is customary to be late. It is advisable to ask others who may be invited to the same event whether it will be appropriate to be late. As a general rule, if someone is waiting for you in particular, you must not be late. On the other hand, if you are faceless part of a large crowd, it is fine to be late.

Clothing in almost all business situations is conservative though it is not formal. Women, in particular, are advised to avoid dresses that expose legs or other such body parts.

17. Corruption

India is infamous for corruption. There is so much talk of corruption in India that anyone outside India gets the impression that one can pay money to get anything and everything done in India. Nothing could be farther from truth.

India has the most vocal opponents to corruption. India is a vibrant democracy with active opposition parties and media. So, there is constant blowing up or exposure of scams and corrupt practices. In reality, many other countries have more corruption than India but there it is well covered and people exposing face the risk of life.

A fundamental rule that any foreign businessman coming to India must remember is that in India, generally speaking, **government officials accept bribes to do what is perfectly legal**. No government official will normally do anything that is not permissible under law. Corruption, hence, is a sort of speed-money to get the wheels of government to move faster. It is like the tip that one pays in a restaurant.

Giving bribes in India is an art. It is not advisable for foreigners to attempt to do it on their own at least till they have understood the system well. There are consultants, chartered accountants, company secretaries and other professionals who gladly do it for their clients. Of course, they do not say that they are acting as bribe-routers. They promise to deliver results while taking care of all incidental expenses.

Our advice to all foreigners wishing to do business in India is – **Avoid dealing directly with any government official**. Always use the services of an experienced professional.

A few words of caution:

- ✓ Choose the consultant very carefully. It is best to go through references.
- ✓ Never deal with a professional who claims to be able to get for you something that is not legal or proper. Remember that India has laws for transparency in governance. Sooner or later, your illegal act will be discovered. At that time, the professional, who managed it for you, will disappear and you will be left with mud on your face.

Anil Chawla Law Associates LLP

Business Lawyers and Strategic Advisors

Strategic Advice at all stages of business life-cycle
Adviser and Facilitator for Business Relationships
Design of Global Structures for Businesses
Guiding all types of associations & collaborations
Research to help understand Indian laws, rules and regulations
Simplifying and solving complex legal issues
International Treaty Related Disputes
International Arbitration

We are a law firm that takes an entrepreneur's perspective on every issue. We do not make money by pushing clients through the arduous process of courts. We think the way you do.

We can be your trusted aide in India.



Anil Chawla Law Associates LLP

MF-104, Ajay Tower, E5/1 (Commercial), Arera Colony, Bhopal – 462 016 (MP) INDIA

Website – www.indialegalhelp.com

E-mail – info@indialegalhelp.com

Cell: (+91 / 0) 94250 09280 (Anil Chawla)

Note: This Guide is Free. However, generally speaking, we do not provide free legal advice. Kindly consult your advocate for assistance / advice on any specific matters.

We follow a transparent system for fees. Please look at our **Indicative Rates** (<http://www.indialegalhelp.com/files/indicativerates.pdf>) before contacting us.