

India

Capital City	New Delhi
Major Financial Center	Mumbai
Population (2020)	1.380 billion
Location	Southern Asia, bordering the Arabian Sea and the Bay of Bengal, between Myanmar and Pakistan
Major Languages	Hindi, English
Legal System	Common Law
Square Miles	1,269,210 sq mi
Gross Domestic Product (2020)	USD 2.68 trillion
Major Exports	Petroleum products, gems and jewelry, drug formulation, agriculture products
Currency	Indian rupee (INR)
U.S. Dollar Exchange Rate (as of September 2015)	USD 1 = INR 89.31
Euro Exchange Rate (as of September 2015)	EUR 1 = INR 73.15

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Chapter 13

What Type of Entity Should We Use to Set Up Our Business?

One of the key issues faced by the prospective investors in India is choosing the appropriate type of legal structure through which they can set up their businesses. The following key factors play an important role for a foreign entity to identify the most appropriate legal structure for setting up a business in India:

- i. Timelines for setting up of business operations
- ii. Intended business activities
- iii. Liability issues
- iv. Tax treatment
- v. Regulatory compliances
- vi. Capital requirements
- vii. Accounting issues

The most suitable form of legal structures preferred by the foreign entities in India are private limited company, limited liability partnership, liaison office, project office, and branch office.

Private Limited Company

Private limited company (“company”) is a type of legal entity structure preferred by most foreign entities for undertaking commercial activities in India.

A company is owned by shareholders (a minimum of two shareholders with an upper limit of two hundred). There is no requirement of a minimum paid-up share capital. A company is managed by its board of directors (minimum of two directors), and unlike a branch office, liaison office, and project office, a company is as an independent legal entity under Indian laws.

EXAMPLE: A UK company establishes a private limited company in India and subsequently executes a contract with an Indian party to supply computer chips, but then fails to deliver. In this situation, the Indian purchaser would normally be limited to suing the Indian private limited company directly for breach of contract, and not the UK company.

A company may be established within seven to ten days of online submission of the requisite incorporation documents with the Registrar of Companies (“ROC”).

The Indian government allows foreign direct investment in a company via either the automatic route or approval route, depending upon the sector in which the investment is proposed to be made according to applicable law (see explanation in Chapter 15).

EXAMPLE: If a prospective investor intends to set up an entity in India on a long-term basis for the purpose of expanding its well established business of manufacturing brakes, it may opt for setting up a private limited company.

Limited Liability Partnership

A limited liability partnership (“LLP”) is an independent legal entity and is viewed as an alternative to the limited company structure (see above). The LLP structure provides the benefits of limited liability and allows its members the flexibility of organizing their internal structure as a partnership based on a mutual agreement. Due to the flexibility of its structure and operation, LLP is a suitable vehicle for many foreign investors. Further, the liability of the partners in a LLP is limited to the extent of their capital contribution in the LLP.

An LLP can normally be established within seven to ten days of online submission of the requisite incorporation documents with the ROC.

Per Indian law, foreign direct investment is permitted in an LLP engaged in the sectors/activities in which foreign investment of up to 100% is allowed under the automatic route (see Chapter 15) and there are no investment linked performance conditions (subject to certain exceptions for investments from Pakistan and Bangladesh and investors falling under the legal definition of a Foreign Portfolio Investor or a Foreign Venture Capital Investor).

EXAMPLE: A Swedish company seeks to invest in an Indian LLP, which is involved in the business of cash & carry wholesale trading/wholesale trading, under automatic route. This would be permitted without any investment linked performance conditions.

Branch Office, Liaison Office, and Project Office

Many times, a foreign entity will seek to establish a presence in India but will not want to establish a separate legal entity. For accounting, tax, and other reasons, the foreign entity may instead want the Indian office to function as a part of the head office overseas. If that is the case, the foreign entity will normally choose to establish a liaison office, branch office, or project office, and not as a limited company. However, there are limitations as to the nature of business that can be carried on by a liaison office, a branch office, or a project office (see below).

Indian law considers each of these three entities as extensions of the head office overseas and not as separate legal entities. The employees of these entities are considered as the employees of the overseas company. The activities of these entities are considered as the activities of their head offices.

A foreign entity seeking to establish a branch office/liaison office in India is required to obtain permission from the Reserve Bank of India (RBI) and file an application in Form FNC with the RBI for this purpose. Applications from such foreign entities are processed under either (i) the automatic route, i.e. where no approval from the RBI/Government is required before investing, or the (ii) government route, i.e. where prior approval from RBI/Government is required to be taken before any investment is made.

Applications are processed under the automatic route if the business of the entity establishing the liaison/branch office falls under sectors where 100% foreign direct investment is allowed. However, in case that the principal business of the foreign entity falls within sectors where 100% foreign direct investment is not permissible under the automatic route, then such application would be considered under the Government route. Indian law further provides that if the principal business of the foreign entity falls in four sectors namely defence, telecom, private security and information and broadcasting, then prior approval of the RBI would not be required in cases where Government approval or license/permission by the concerned Ministry/Regulator has already been granted.

Foreign entities from Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong, Macau or Pakistan intending to open a branch office/liaison office/project office in India need prior approval from the RBI and further, need to be registered with the State Police Authorities.

Further, the application for opening a branch office/liaison office/project office in Jammu and Kashmir, North East region and Andaman and Nicobar Islands also requires prior approval of the RBI.

There are certain other additional factors considered by the RBI when processing applications such as the international standing and track record of the head

office as well as value of its assets. Note that foreign entities are also required to register and file appropriate documentation with the ROC within thirty days of setting up a place of business in India, either as a branch office, liaison office, or project office. The following are the required forms and supporting documents to be filed with the RBI and ROC for liaison offices and branch office:

Reserve Bank of India (RBI)	Registrar of Companies (ROC)
<p>a) Form FNC-1</p> <p>b) English version of the Certificate of Incorporation/Registration or Memorandum & Articles of Association attested by Indian Embassy/Consulate or Notary Public in the home country of the foreign entity.</p> <p>c) Audited Balance sheet of the foreign entity for the last three/ five years in case of branch office/liaison office respectively. If the foreign entity's home country laws/regulations do not insist on auditing of accounts, an Account Statement certified by a Certified Public Accountant (CPA) or any Registered Accounts Practitioner by any name, clearly showing the net worth may be submitted.</p> <p>d) Bankers' Report from the foreign entity's banker in the host country / country of registration showing the number of years the foreign entity has had banking relations with that bank.</p> <p>e) Power of Attorney in favour of signatory of Form FNC in case the Head of the overseas entity is not signing the Form FNC.</p>	<p>(i) Form FC-1 along with the prescribed fee.</p> <p>(ii) Certified copy of the English version of the Certified copy of the charter, statutes, or memorandum and articles of the company or other instrument constituting or defining the constitution of the company duly notarised and apostilled/ consularization in the home country of the foreign entity.</p> <p>(iii) List of directors and secretary of the foreign entity.</p> <p>(iv) Power of attorney or Board resolution in favour of the authorized representative(s).</p> <p>(v) RBI approval letter.</p>

The branch and liaison offices are also required to obtain a Permanent Account Number (PAN) from the Income Tax Authorities.

1. Branch Office

Unlike a company, a branch office can only engage in the business activities specifically permitted by Indian law, which are stated below:

- i. Exporting and importing goods.
- ii. Rendering professional or consulting services.
- iii. Carrying out research work in which the parent company is engaged.
- iv. Promoting technical or financial collaborations between Indian companies and parent or overseas group companies.
- v. Representing the parent company in India and acting as buying/selling agents in India.
- vi. Rendering services in Information Technology and development of software in India.
- vii. Rendering technical support for the products supplied by the parent/group companies.
- viii. Serving as a foreign airline and shipping company.

Note that the foreign entities may also establish a branch office in Special Economic Zones to undertake manufacturing and service activities under general permission of the RBI subject to complying with the prescribed conditions.

With regard to liability, the branch and company structure also differ. For a company, liability arising from the actions of the business or its employees is generally limited to the Indian company only. The same is not true for a branch, since Indian law treats a branch as merely an extension of its head office overseas.

EXAMPLE: Suppose a foreign entity establishes a branch office in India, and the branch office enters into a contract to supply goods and fails to perform. The Indian purchaser would normally have the choice of either suing the foreign entity's head office overseas directly or its branch office in India. This is because the branch operates as a part of the business overseas, not as a stand-alone business entity.

There are no capital requirements for setting up a branch office and the branch's expenses including, the rent and the salaries of the employees, may be paid either out of the income generated by the branch office itself or out of remittances received into the bank account of the branch office through normal banking channels from its overseas head office.

EXAMPLE: An Austrian company wishes to establish a branch office in India. In this situation, the Austrian company would not be subject to any minimum capital requirements. The branch's expenses may be paid out of either the income generated by the branch office or out of the remittances received from its parent company overseas through normal banking channels.

A foreign entity seeking to establish a branch office in India is required to make an application to the RBI, for its approval. The approval to establish the branch office is normally granted by the RBI within two months subject to submission of the complete documentation.

Under Indian laws, the branch office in India has general permission to carry out permitted activities from leased property subject to lease period not exceeding five years.

2. Liaison Office

Just as with a branch office, the liaison office is merely an extension of its head office overseas and is not considered as a separate legal entity. It is also strictly regulated as to the types of activities it may engage in.

A liaison office may only pursue the following activities:

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

Unlike a branch office or a company, a liaison office is not permitted to earn income from its operations in India.

Also, just as with a branch office, there are no capital requirements for setting up a liaison office. However, the expenses of maintaining the liaison office, including the rent and the salaries of the employees are to be paid out of remittances received into the bank account of the liaison office through normal banking channels from its overseas head office.

Foreign entities seeking to establish a liaison office in India are required to make an application to the RBI, for its approval. The approval to establish the liaison office is normally granted by the RBI within two months subject to submission of the complete documentation.

The approval to set up a liaison office is initially granted for a period of three years and may be extended thereafter by the Authorised Dealer Bank for further periods of three years each from the date of expiry of the original approval/ extension granted by the RBI, subject to the foreign entity being in compliance with

the prescribed conditions at the time the request is submitted. It is further provided that the foreign entities engaged in construction and development sectors and Non-Banking Finance Companies are permitted to open a liaison office for two years only. No further extension would be considered for liaison offices of entities which are Non-Banking Finance Companies and those engaged in construction and development sectors (excluding infrastructure development companies). Upon expiry of the validity period, the liaison office should either close down or be converted into a joint venture/wholly owned subsidiary in conformity with the extant Foreign Direct Investment policy.

Under Indian laws, the liaison office in India has general permission to carry out permitted activities from a leased premises as long as the applicable lease period does not exceed five years.

3. Project Office

The project office, unlike the company, branch office, or liaison office, may only be established to execute specific projects in India. In order to operate a project office no prior permission is required from the RBI, subject to the project office securing from an Indian company a contract to execute a project in India. In case of a proposal for opening a project office relating to the Defence sector, no separate approval of RBI would be required if the foreign entity has been awarded a contract by with the Ministry of Defence or Service Headquarters or Defence Public Sector Undertakings.

Project offices are required to be funded in one of the following ways.

- i. The project is funded directly by inward remittance from abroad.
- ii. The project is funded by a bilateral or multilateral international finance agency.
- iii. The project has been cleared by an appropriate government authority.
- iv. A company or entity in India awarding the contract has been granted a term loan by a public financial institution or a bank in India for the project.

EXAMPLE: A city just outside of Mumbai has a new project to extend its existing railway lines. The primary contractor for the project is an Indian company which executes a contract for a French company to perform certain engineering services. The primary contractor has been granted a term loan from a major bank in India. In this situation, the French engineering company would be allowed to operate a project office in India for the duration of its contract with the primary contractor.

A foreign entity operating a project office is also required to provide a report detailing information such as the name and address of the foreign entity, reference number and date of awarding the contract, total amount of contract, particulars of the entity awarding the contract, location of the project office, etc., together with such documents as prescribed to the local RBI office and other authorities under whose jurisdiction the project office is established.

A project office may also undertake or carry on any activity relating or incidental to the execution of the project.

EXAMPLE: Suppose a German company establishes a project office to install equipment on the same railway project mentioned above. During the course of the project, it becomes necessary for the German company to also provide specific engineering services related to the project. In this situation, the project office may engage in these engineering services as long as they are deemed related or incidental to the project.

There is no capital requirement for setting up a project office. However, the expenses of maintaining the project office, including the rent and the salaries of the employees, are to be paid out of remittances received into the bank account of the project office through normal banking channels from its overseas head office.

Under Indian laws, the project office in India has general permission to carry out permitted activities from leased property subject to the lease period not exceeding five years.

Chapter 14

What are the Legal Issues Associated with the Start-Up of a Company?

There are several legal and practical issues associated with the starting up a private limited company (“company”) in India. The start-up process involves several steps including registration of the company with the Registrar of Companies (“ROC”), as well as obtaining other government licenses and approvals that may be required, depending upon the business activities the company seeks to engage in. Shelf companies are not readily available in India.

1. Role of Promoters and Shareholders

The promoters of a company are responsible for undertaking the process of incorporation and such promoters may be individuals or business entities. There must be a minimum of two promoters for all private limited companies except a one person company. The promoters are also responsible for paying expenses associated with the company’s incorporation/registration, however, they may be reimbursed by the company for those expenses post registration.

Each of the promoters is required to hold a minimum of one share upon the company’s registration. The promoters are generally free to transfer those shares to existing shareholders or third parties, thereafter, if they wish to do so subject to the board approval and other conditions as may be applicable.

After registration is completed, the shareholders’ potential legal liability is generally limited to the par value of the shares they will hold after registration is completed.

Registration of the company can generally be completed within a period of ten days upon submission of all required forms and supporting documents online.

2. Reservation of the Company's Name

The first step in the company registration process is the name reservation. In order to reserve the name, one of the promoters is required to submit the required form, online at the official website of the Ministry of Corporate Affairs located at www.mca.gov.in.

The promoter submitting the name reservation form is required to provide the proposed name of the company together with one alternative name and the application fee. The application will be rejected by the ROC, if:

- a. in its opinion, the name is undesirable or its usage constitutes an offence under applicable law; or
- b. the requested name is identical to or nearly resembles the name of another company, or the name is contained in another party's registered trademark, or in a trademark application under consideration;

The proposed name may be reserved for twenty one days.

3. Director Identification Number

One of the most important steps to register a company is for the promoters to select and register the initial company directors. Only individuals may be appointed as directors (no business entities) and required to supply information requested in the required form. Companies are required to have a minimum of two directors and one of the directors must be someone who has resided in India for a minimum 182 days in the previous financial year from the date of appointment.

EXAMPLE: A Swedish company seeks to establish a subsidiary in India and seeks to appoint the company's CEO in Stockholm and an American living in India as the company's initial two directors. In order to do so, the two directors will need to file the requisite form and the American living in India must have resided there for a minimum of 182 days in the financial year before he was appointed director.

4. Attachment of e-Memorandum and e-Articles of Association

Indian companies are required to register online, on the official website of the Ministry of Corporate Affairs located at www.mca.gov.in, the e-Memorandum of

Association and e-Articles of Association in their prescribed forms (“Charter”). The Charter sets forth the company’s main objective in seeking incorporation, amount of registered capital, and basic rules the company is required to follow after incorporation is successfully completed. The Charter documents shall be attached to the SPICe plus application form.

The Charter will generally, also, include the frequency with which directors’ and shareholders’ meetings take place, what constitutes a quorum at meetings, notice requirements for meetings, the numbers required to pass a resolution at a meeting, etc.

5. Registered Capital and Paid-Up Capital

The most important concepts to understand with regard to the required investment into the company are the company’s authorized capital and paid-up capital.

Authorized capital is stated in the Charter and indicates the total amount that can be invested into the company by the shareholders. Paid-up capital is that part of the authorized capital which has been actually paid by the shareholders against the shares allotted to them.

EXAMPLE: A company is registered in India with an authorized capital of INR 500 million. In this situation INR 500 million represents the total amount that shareholders of this company may invest (without amending the charter). But the company shareholders actually pay into the company INR 250 million upon the company incorporation/registration. In this situation, the company’s authorized capital is INR 500 million and paid-up capital is INR 250 million.

Note that the company’s paid-up capital (under normal circumstances) represents the shareholders’ total exposure to liability associated with the company. There is no minimum paid-up capital requirement under Indian law.

EXAMPLE: Malaysian investors in India establish an Indian company with a registered capital of INR 1 million. The investors may pay INR 50,000 into the company at the time of incorporation. In this situation (under normal circumstances), the Malaysian shareholders total exposure to liability associated with the company is limited to INR 50,000 (which has already been paid in).

6. Registered Office

Every company is required to have an office address and have it registered with the ROC. In order to accomplish this the company is required to file the prescribed form online with the ROC together with authorization to use the premises signed by the owner or landlord (together with proof of ownership or lease).

7. Additional Requirements

The company shall also be required to file the following:

- i. Permanent Account Number (Tax Registration Number) – application to be filed with the nominated agency of the Income Tax Department, Government of India, such as National Securities Depository Limited (NSDL).
- ii. Tax Deduction and Collection Account Number (“TAN”) – application to be filed with the nominated agency of the Income Tax Department, Government of India, such as NSDL.
- iii. Form SPICe needs to be accompanied by e-form AGILE Pro which is a consolidated application form which enables application of registration for the following i.e. registration of GSTIN, EPFO, ESIC, professional tax registration and opening of bank account.

The above registrations can normally be completed within fifteen to thirty working days from the date of providing all the required information and documents to the relevant government authorities.

8. Director Signing Authority

Many times, as a controlling mechanism, the company will designate that a combination of two or more directors signing together are authorized to sign on behalf of the company. Also, many companies will designate that a director(s) may sign on behalf of the company only together with the company seal. This makes the physical presence of the company seal another kind of control mechanism.

EXAMPLE: A company is registered in India, and the company’s board of directors designates that any two of the four company directors can execute documents involving sums of more than US \$100,000 on behalf of the company with the company seal. The company only issues one seal, which resides at the company’s registered office in the room of the company’s managing director.

In this situation, each time the company directors want to execute a document on behalf of the company involving a sum exceeding US \$100,000, practically speaking, they would be required to go to the managing director in possession of the seal in order to execute such documents.

9. Company Auditor

The directors are required to appoint the first auditors within 30 days from the date of registration.

10. Official Fees

The amount of official fees payable to the ROC is calculated based upon the amount of the company's authorized capital using a detailed table set forth in the applicable statute.

11. Public Access to Company Details

After the company is incorporated, many details regarding the company's structure are easily available to the public at the government website, including the company's Corporate Identification Number, ROC Code, authorized capital, paid-up capital, date of incorporation, address of registered office, e-mail address, date of last annual general meeting, balance sheet, company status, and the names of directors.

Chapter 15

What are the Legal Issues Associated with Operating as a Foreign-Held Company?

Indian law regulates the activities of:

- i. subsidiaries of foreign registered companies.
- ii. branches, representative/liaison, and project offices of foreign registered companies
- iii. joint venture companies registered in India in which a foreign registered company or foreign individual is a shareholder together with a local party
- iv. companies registered in India owned or controlled by a person resident outside India.

EXAMPLE: A Swedish investor and Indian investor establish a limited company in which the Swedish investors hold 40% of the shares and the Indian investors 60%. This joint venture company would be subject to regulation as a foreign-held company.

1. Regulated Activities

Under relevant law, investment from foreign investors and non-resident investors in some sectors is completely prohibited and in other sectors foreign investment is allowed subject to certain rules as further explained below:

Prohibited sectors are as follows.

- (a) Real estate business or construction of Farm houses (except development of townships, construction of residential/ commercial premises, roads or bridges, and Real Estate Investment Trusts (REITs) registered and regulated under SEBI (REITs) Regulations, 2014 etc.;

- (b) Activities/sectors not open to private sector investment, e.g. atomic energy and railway transport (other than Sub-urban corridor projects from public private partnership, mass rapid transport system etc.);
- (c) Trading in transferable development rights (TDRs);
- (d) Gambling and betting including casinos etc;
- (e) Lottery business including government/ private lottery, online lotteries, etc.;
- (f) Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes;
- (g) Companies engaged in agricultural (excluding floriculture, horticulture, development of seeds, animal husbandry, pisciculture and cultivation of vegetables, mushrooms, etc. under controlled conditions and services related agro and allied sectors) and plantation activities or plantation activities (other than tea plantations);
- (h) Nidhi Company: It means a company which has been incorporated with the object of cultivating the habit of thrift and savings among its members, receiving deposits from and lending to its members for their mutual benefit; and
- (i) Business of chit fund meaning, a transaction in which a person enters into an agreement with a specified number of persons with every one of them subscribing to a certain sum of money (or a certain quantity of grain instead) by way of periodical installments over a definite period of time and that each such subscriber shall, in his turn, as determined by lot, auction or tender or in any other manner as specified in the chit agreement, be entitled to the prize amount.

In addition to the above, foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also completely prohibited for the lottery business and gambling and betting activities. (“Prohibited Activities”).

2. Approval Required

Foreigners may invest in India using one of the following two routes depending upon the type of business activity they seek to engage in

- (i) automatic route, for which no approval is required (activities which qualify for the foreign company to utilize the automatic route include sectors/ activities such as airports inclusive of greenfield projects (100% ownership) and existing projects (100% ownership), air transport services inclusive of scheduled air transport service/ non-scheduled air transport service (up-to 49 % ownership & up to 100% for NRIs and OCIs) and helicopter services/seaplane services (100% ownership) requiring

Directorate General Civil Aviation (DGCA) approval, other services under civil aviation sector inclusive of ground handling services subject to sectoral regulations and security clearance (100 % ownership) and maintenance and repair organizations (100% ownerships), courier services, construction development: townships, housing, built-up infrastructure, industrial parks, cash & carry wholesale trading/wholesale trading (including sourcing from MSEs), e-commerce activities, single brand product retailer trading (100% ownership), tea sector including tea plantation (100% ownership), railway infrastructure, commodity exchange, Credit Information Companies (CIC), infrastructure company in the Securities Market, Non-Banking Finance Companies (NBFC), power exchanges, agriculture & animal husbandry, petroleum & natural gas, mining and exploration of metal and non-metal ores, teleports (100% ownership), cable networks, telecom services (up-to 49 % ownership), single brand product retail trading (up-to 49 % ownership), asset reconstruction companies (100 % ownership), insurance (up-to 49%), banking private sector (up-to 49 % ownership),

and

- (ii) approval route, for which an approval is required (activities requiring the foreign company to obtain prior approval under the Government/ Approval Route includes sectors/activities like terrestrial broadcasting (FM radio) (up-to 49%), up-linking of 'news & current affairs' TV channels, up-linking of non-'news & current affairs' TV channels/ down-linking of TV channels (up-to 49%), print media (up-to 26%), publishing/printing of scientific and technical magazines/specialty journals/ periodicals, publication of facsimile edition of foreign newspapers (up-to 100%), satellites- establishment and operation (up-to 100%), private security agencies (from 49% up-to 74%), multi brand retail trading (up-to 51%), banking- public sector (up-to 20%), mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities (up-to 100%), defence industry subject to industrial license under the Industries (Development & Regulation) Act, 1951 (from 49% up-to 100%), telecom services (above 49 % ownership), banking private sector (above 49 % ownership - up-to maximum of 74 % ownership), pharmaceutical sector of brownfield projects (above 74% ownership).

Foreign companies seeking to engage in activities which are covered under the government approval route are required to obtain the approval from competent authority/department including filing an online application with them. Further, the competent authority includes Foreign Investment Facilitation Portal ("FIFP") wherein the application seeking government approval have to be made online. Generally, the aforesaid authority takes 6-8 weeks to grant it approval from the date of filing the application. Also, the competent authority may ask for any fur-

ther information and/or clarification from the foreign investor before granting its approval.

A proposal for foreign investment under the approval route would be examined by the aforesaid competent authority as per the standard operating procedure laid down by the Government of India. In case of proposals involving total foreign equity inflow of more than INR 5000 crore, the application for seeking of approval for foreign investment shall be placed before the Cabinet Committee on Economic Affairs (“CCEA”). CCEA generally takes 8-10 weeks to grant its approval. Also, they may ask for any further information and/or clarification from the foreign investor before granting its approval.

3. Reporting Requirements

In addition to the above, foreign-held companies operating in India are subject to the following requirements.

a. Inward Remittance

Foreign-held companies are required to issue a capital instrument within 60 days from the date of receipt of the inward remittance received through normal banking channels including the escrow account.

EXAMPLE: Danish investors establish a company in India to engage in telecommunication services and receive approval from the competent authority to begin operations. The company’s original application before the competent authority states that the Danish investors will remit INR.15 million within the first three months of the company’s operation. Upon the receipt of these funds, the company will issue equity shares to the investors within a period of 60 days.

b. Issuance of Shares

Any Indian company with foreign investors is required to file Form FC-GPR within 30 days from the date of issue of shares.

The Reserve Bank of India (“RBI”) has introduced a user manual (the “SMF Manual”) in the year 2018 wherein the procedure for filing a single master form to integrate the existing reporting norms for foreign investment in India. Under the

aforesaid form, the reporting of foreign direct investment which was previously a two-step procedure, comprising the Advance Remittance Form (“ARF”) and Form FC-GPR, has now been merged into a single Form FC-GPR which shall be filed online. One key aspect under the SMF Manual is that it states that there is no provision for an authorised dealer bank to resend or attach any clarification once an SMF is filed.

EXAMPLE: A UAE company incorporates a subsidiary in India. After the completion of the incorporation process, when the new shares are allotted to the UAE company, the Indian subsidiary of the UAE company will be required to report the allotment in the form FC-GPR to RBI.

Chapter 16

What is the Process to Obtain a Work Permit?

All foreigners seeking to work in India on a long term basis are required to obtain a work permit, referred to in India as an Employment (E) Visa (Employment Visa) from the Indian Missions/Posts abroad.

The procedure and requirements to obtain an Employment Visa in India are less defined than in many other countries, and presiding officials have wide discretion in deciding who qualifies. The following, however, is a description of the general process and requirements.

1. Conditions for Grant of Employment Visa

a) Indian law allows the following foreign nationals to be eligible for an Employment Visa:

Highly skilled and/or qualified professionals, who are being engaged or appointed by a company/organization/industry/undertaking in India on a contract or an employment basis including but not limited to:

- i. Foreign nationals coming to India as a consultant on contract for whom the Indian Company pays a fixed remuneration (this may not be in the form of a monthly salary).
- ii. Foreign artists engaged to conduct regular performances for the duration of the employment contract given by hotels, clubs, and other organizations.
- iii. Foreign nationals who are coming to India to take up employment as coaches of national/state level teams or reputable sports clubs.
- iv. Foreign sportsmen who are given a contract for a specified period by the Indian clubs/organizations.
- v. Self-employed foreign nationals coming to India to provide engineering, medical, accounting, legal or such other highly skilled services in their capacity as independent consultants provided the provision of such services by foreign nationals is permitted under law.

- vi. Foreign language teachers/interpreters.
- vii. Foreign specialist chefs.
- viii. Foreign engineers/technicians coming to India for installation and commissioning of equipment/machines/tools in terms of the contract for supply of such equipment/machines/tools.
- ix. Foreign nationals deputed for providing technical support/services, transfer of know-how/services for which the Indian company pays fees/royalty to the foreign company.

b) Please note that the following rules are also applicable for grant of Employment Visa:

- i. There should not be a qualified Indian available to do the job which the applicant for Employment Visa would be performing. Further, an Employment Visa is not granted for routine, ordinary or secretarial/clerical jobs. Employment visa is also not granted to a citizen of Pakistan.
- ii. Employment must either be in a company/firm/organization registered in India or in a foreign company/firm/organization engaged for execution of some project in India. Thus, a foreign company/organization that does not yet have any project office/subsidiary/joint venture/branch office in India cannot sponsor a foreign national/employee of a foreign company for an Employment Visa. However, if the Indian company/organization has awarded a contract for execution of a project to a foreign company that does not have any base in India, such foreign company can sponsor the employee for Employment Visa.
- iii. Threshold remuneration for a foreign employee to be eligible for an Employment Visa in India is USD 25,000 per annum (INR 16.25 lakhs per annum). However, this condition does not apply to (i) ethnic cooks, (ii) language teachers (other than English language teachers)/translators, (iii) staff working for the concerned embassy/high commission in India and (iv) Foreigners, eligible for 'E' visa for honorary work with the NGOs registered in India without salary.
- iv. The foreign employee must comply with all legal requirements like payment of tax liabilities etc.
- v. The name of the sponsoring employer/organization should be clearly mentioned in the visa sticker.
- vi. The foreign employee is required to secure the Employment Visa from the Indian Missions/Posts located in the country of his origin or in the country of his domicile provided the period of his permanent residence in that particular country is more than 2 years, prior to entering India.
- vii. The Indian organization/entity that sponsors an Employment Visa does not necessarily have to be the legal employer of the foreign national.

2. Documentation for Employment Visa

The following documents are required to be submitted by the foreign employee with the Indian Missions/Posts abroad for obtaining an Employment Visa:

- i. A completed visa application form.
- ii. A current valid passport i.e. minimum validity of 180 days at the time of filing of the application, with 2 blank pages and a re-entry permit (if applicable).
- iii. Recent passport photograph.
- iv. Documentary proof of educational qualifications and professional expertise.
- v. Proof of employment.
- vi. Terms and conditions of employment.
- vii. Position title and job description on the letterhead of the Indian company.
- viii. Letter of recommendation from the Indian company employing the foreigner.
- ix. Proof of registration of employer's organization in India.

The Indian Missions/Posts receiving the application may also require additional supporting documents for processing the Employment Visa application. The processing time for the Employment Visa application will depend upon the policy and procedures of the Indian Missions/Posts in that particular country.

3. Employment Visa Period

Employment Visas are issued for a maximum period of five years. The nature of employment is the major deciding factor for determining the period for which the Employment Visa can be issued. The duration of the Employment Visa depends on the following:

- i. A foreign technician/expert may get an Employment Visa for a period of five years or the duration of the bilateral agreement between India and the foreign government, whichever is less, with multiple entries.
- ii. Highly skilled foreign personnel being employed in the IT software and IT enabled sectors, the duration is up to three years or the term of assignment, whichever is less, with multiple entries.
- iii. A foreigner coming to India for employment not covered in (i) and (ii) above can be granted Employment Visa with validity up to two years or the term of assignment, whichever is less, with multiple entries.

Employment Visa may be extended by the State Governments/Union Territories/Foreigner Regional Registration Office (FRRO)/Foreigners Registration Office (FRO) beyond the initial visa validity period, up to a total period of five years from the date of issue of the initial Employment Visa, on a year to year basis, sub-

ject to good conduct, production of necessary documents in support of continued employment, filing of Income Tax returns and no adverse security inputs about the foreign national. The period of extension should not exceed five years from the date of issue of the initial Employment Visa.

4. Intra Company Transfers

Employment Visas may also be applied for by high level or crucial employees of a foreign company who are required to work in that foreign company's office in India.

EXAMPLE: A Korean national who has worked for a Singaporean company as the CFO of its Thailand office for the past five years learns that he will be transferred to work in the Singapore company's office in Mumbai. In this situation, the Korean may qualify to receive an Employment Visa as an internal transfer.

There are no set requirements to receive an Employment Visa as an internal transfer, and they are granted on a case by case basis; however, in general, it is preferred that the applicant have a four-year university degree, and the official may take into account the availability of local staff to fill the position.

The X Visa of the spouse of a foreign employee may be converted into Employment Visa if the said foreign employee has come to India on Intra Company Transfers subject to fulfilment of the conditions applicable at the relevant time with prior approval of the Ministry of Home Affairs.

5. Dependents

Spouses and children of the Employment Visa holder may qualify to receive an X visa to reside (not work) in India. The dependents are required to obtain the X Visa prior to entering India.

The following supporting documents are required to be submitted together with the X visa application for the spouse/children of a foreign employee:

- i. A completed visa application form
- ii. A current valid passport of the spouse/children of the foreign employee
- iii. Recent passport photographs
- iv. Marriage certificate (in case of the spouse)/Birth certificate (in case of the children)
- v. Passport and Indian visa issued to the foreign employee

The dependent's visa will be valid for the same period as the visa of the principal visa holder (or for such shorter period as may be considered necessary by the Indian Mission). Such family members may also obtain a student/research visa etc. provided they are otherwise eligible. The dependent visa of the family members/ dependents of such foreign national may be extended by the FRRO/ FRO for a total period of 5 years from the date of issue of the initial visa, coinciding with the period stated in visa of the principal visa holder.

6. Registration of Foreign Nationals

An Employment Visa issued for a period of 180 days or less (with multiple entries) does not require FRRO/FRO registration. Whereas, an Employment Visa issued for a period of more than 180 days, the foreign national should register with the concerned FRRO/FRO within 14 days (except for nationals of specific countries, in which case the period may be as short as twenty-four hours or seven days) from arrival in India. FRRO offices are bigger offices and work mostly in metropolitan areas whereas FRO are smaller offices and are available at all other places. Note that each local FRO or FRRO may have different registration requirements.

On registration, the FRRO/FRO concerned may issue a Residential Permit for the validity of the visa period. However, if there is any change in the residential address, the foreign national is required to immediately report the change of address, in writing, to the FRRO/FRO concerned.

EXAMPLE: A foreign employee from the UK arrives in India on September 1st with an Employment Visa valid for one year. That foreign employee would be required to register with the local FRRO/FRO by September 14th.

A foreigner holding an Employment Visa and/or his dependents are required to appear (in person or through an authorized representative) before the FRRO/FRO and present the following documents:

- i. Recent passport photographs (Employment Visa holder and/or X Visa holder)
- ii. A current valid passport and Indian Visa (Employment Visa holder and/or X Visa holder)
- iii. Form C copy from the Hotel or Lodge/Electricity bill or Telephone bill or Municipal bill of the relative or friend in case staying with them along with a letter and photo-id card of the said relative or friend. In case of rented accommodation, copy of the lease agreement (first and last page & page containing its validity) (Employment Visa holder and/or X Visa holder)
- iv. Proof of monthly salary/stipend (Employment Visa holder)

- v. Request letter from the company for registration of spouse, children of the foreigner who is employed by the company on Employment Visa. (X Visa holder)
- vi. Undertaking from the company for registration for the spouse, children of the foreigner who is employed by the company on Employment Visa. (X Visa holder)

Foreigners may also be required to provide the FRRO/FRO with an HIV test from a World Health Organization recognized institution.

At the end of the registration process the foreign applicant will be issued a residence permit, which will usually have the same validity period as the Employment Visa. If there is any change in the residential address, then the foreign employee should immediately report the change of address, in writing with the concerned FRRO/FRO. Registration is required to be done only once during the validity of the Employment Visa, irrespective of the number of times the foreigner leaves and re-enters India. Only if the foreigner re-enters India on a new visa will he be required to register again.

EXAMPLE: A Norwegian national enters India with an Employment Visa, and within fourteen days registers with his local FRRO/FRO and receives a residence permit. If he leaves and returns to India during the validity period stated in his Employment Visa he will not be required to re-register with the FRRO/FRO. However, if in the future he changes jobs and has to obtain a new Employment Visa, he will be required to re-register with the FRRO/FRO.

Note that only children above the age of sixteen are required to register with the FRRO/FRO.

EXAMPLE: Same facts as above except the Norwegian Employment Visa holder is accompanied by his fifteen year old son who has already secured an X visa. In this situation, the son would not be required to register with the FRRO/FRO until he turns sixteen.

7. Employment Visa for NGO Work in India

Employment Visas are also granted to the foreigners who wish to come to India for honorary work (without salary) with NGOs registered in India. Employment Visa in such cases bears special endorsement “TO WORK WITH NGO” (Name of the NGO and place of work). The foreigners may be paid honorarium up to a ceiling of USD 160.54 per month. Following conditions have to be complied for obtaining Employment Visa in this case:

- i. Submission of proof of employment with the NGO registered in India
- ii. Employment Visa may be granted for one year initially, with multiple entries, which may be further extended by the FRRO/FRO beyond the initial visa validity period, up to a total period of five years from the date of issue of the initial Employment Visa, on a 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 foreign national. The period of extension should not exceed five years from the date of issue of the initial Employment Visa.
- iii. All registration formalities as per rules, after foreigner's arrival in India, shall be strictly complied with and the registration must be done with the FRRO/FRO within 14 days from the date of his/ her arrival as stated previously.

Chapter 17

What Incentives are Available to Foreign Investors by the Government Authority?

The Indian government encourages specific types of business projects in India by granting incentives to those projects. These incentives include tax incentives, import duty exemptions and reductions, and land purchase subsidies as further set forth below.

This chapter discusses some of the incentive programs offered to investors by the Indian government.

Special Economic Zones

Special Economic Zones (“SEZ”) are areas within India designated by the government to give investors who establish businesses (referred to as units) in those areas the following investment incentives:

- i. Income tax holidays and extended carry forward of losses;
- ii. Exemption from excise duty on the procurement of goods, including raw materials from a Domestic Tariff Area (“DTA”) used for setting up the SEZ unit. DTA refers to the whole of India, including territorial waters; however, it does not include areas within SEZs);
- iii. Duty free import of raw materials, capital goods, spare parts, etc.
- iv. Duty free exports;
- v. Duties draw back on goods and services purchased from the DTA;
- vi. Supplies to SEZs are zero rated under IGST;
- vii. No import license required for certain goods;

SEZ Tax Incentives

a. Tax Exemptions on Income from Exports

The following tax incentives are available to SEZ units for a period of up to fifteen years on income derived from exports:

- i. 100% tax exemption on the profits derived from exports during the first five consecutive years;
- ii. 50% tax exemption on profits from exports during the next five consecutive years;
- iii. 50% of the ploughed back profit for next 5 years (Sunset clause for units will become effective from 01.04.2020);
- iv. Tax exemption equal to an amount not exceeding 50% of the profits (subject to special considerations) during the remaining five years.

Such incentives become available to the SEZ unit starting from the year in which the unit begins to manufacture or produce items or to provide services.

EXAMPLE: A US computer company establishes a call centre in India inside an SEZ. In this situation, the project (referred to as a unit) would receive the following tax incentives for a period of fifteen years, commencing from the year the call centre begins operation:

Years 1 to 5	100% tax exemption
Years 6 to 10	50% tax exemption
Years 11 to 15	a tax exemption equal to an amount not exceeding 50% of the profits (subject to special considerations)

Note that the above tax incentives apply only to the unit's income derived from the goods or services exported. For the company's income derived from domestic sales, normal tax rules would apply.

EXAMPLE: Suppose a unit located in an SEZ realizes total income of INR 100 million in one year. Of this INR 100 million, INR 80 million represents revenue from export sales and the remaining INR 20 million represents proceeds from the sale of goods to customers in India. In this situation, the unit would qualify for the above tax incentives only with respect to the INR 80 million from export sales. For the remaining INR 20 million, normal tax rules would apply.

b. Customs Duty Exemptions

SEZ units are allowed exemption from Customs Duty on imports from outside India on raw materials, capital goods, and spare parts.

c. Central Excise Duty Exemption

SEZ units are granted exemption from Central Excise Duty on goods sourced from within the DTA.

Normally, goods sold by manufacturers located in the DTA to purchasers in the DTA are subject to Central Excise Duty. However, the goods supplied by parties in a DTA to a SEZ unit are treated as “deemed exports,” and therefore, such goods are exempt from Central Excise Duty.

EXAMPLE: Suppose an SEZ unit buys goods from a supplier in the DTA. Normally, Central Excise Duty would be applicable to such supplies; however, in this situation, because the purchaser is located in an SEZ, no Central Excise Duty is applicable.

d. Integrated Goods and Service Tax Exemption

Integrated Goods and Service (“GST”) is applicable on the sale and purchase of goods and services between parties. However, purchases made by units in an SEZ are exempt from GST. Supplies to SEZs are zero rated under IGST.

Additional Benefits under SEZs

SEZ units are also afforded the following benefits:

- i. SEZ units may, subject to certain conditions, pay managerial remuneration up to a limit of INR 24 million per annum to its managing director, director, manager, and managerial personnel without approval from the government, (in the event that the business is not earning profit or has only small profit), which is not otherwise allowed to non-SEZ companies.
- ii. A foreign person may be appointed as a director even if he does not satisfy the requirement of being a resident in India for at least twelve months prior to his appointment.

EXAMPLE: A French national is hired by a company located in an SEZ to be its managing director. Normally, in this situation, the French national would be required to reside in India a minimum of one year prior to being legally allowed to accept the position of managing director or other managerial position, i.e. whole-time director or manager. However, in this situation, because the company is located in an SEZ, the rule does not apply.

SEZ Requirements

Investors seeking to establish a unit in an SEZ are required to submit an application with the Development Commissioner's office under whose jurisdiction the Special Economic Zones operate.

The Development Commission will then forward the application to the Approval Committee. In order to be approved, the application must meet the following criteria:

- i. The project must meet positive Net Foreign Exchange earnings requirements.
- ii. There must be adequate space and other infrastructure support available for the project.
- iii. The investor agrees to comply with the environmental and pollution control standards.
- iv. The investor submits proof of residence in India, namely, a passport, ration card, driver's license, voter identity card, or any other proof, plus an audited balance sheet for the last three years and income tax returns.
- v. The proposal fulfils the sector specific requirements.

After approval of the proposal by the Approval Committee or Board of Approval (as applicable), the Development Commissioner will then issue a Letter of Approval. The Letter of Approval sets forth the items to be manufactured, service activities, including trading or warehousing, and the projected annual report and Net Foreign Exchange Earnings for the unit's first five years of operations.

The Letter of Approval is valid for a period of five years starting from the date operations begin. At the end of that five-year period, the investor will be required to apply to renew the Letter of Approval with the Development Commissioner for an additional five-year period.

Export Oriented Unit

The Export Oriented Unit program seeks to attract projects that earn foreign exchange earnings through the sale of exports.

An Export Oriented Unit may be set up for manufacturing and providing services such as related repairing, reconditioning, remaking, and re-engineering services for export (no trading activities). The following are some of the incentives available to investors qualifying as an Export Oriented Unit:

- i. Exemption from Central Excise Duty in the procurement of capital goods, raw-materials, consumables spare parts, etc. from the Domestic Tariff Area
- ii. Exemption from Customs Duty on the import of capital goods, raw materials, consumables, spare parts, etc.

- iii. Reimbursement for integrated goods and Service Tax paid on domestic purchases
- iv. Second hand capital goods, without any age limit, allowed to be imported duty free

The primary requirement of an Export Oriented Unit is that it achieves what is referred to as Positive Net Foreign Exchange Earning (“NFE”). NFE is calculated over five-year periods starting from the commencement of production according to the document (referred to as a legal undertaking) executed by the Export Oriented Unit and the Development Commissioner.

Normally, only projects with a minimum investment of INR 10 million in the project’s production facility building and machinery are considered for Export Oriented Unit status; however, projects with less investment are sometimes considered.

Applications for establishing manufacturing EOU units are submitted to the Units Approval Committee. On approval, the Development Commissioner issues a Letter of Permission / Letter of Intent which is valid for a period of three years (renewable), during which time operations should begin. Once the unit begins production, the Letter of Permission / Letter of Intent issued is valid for a period of five years.

Additional Incentives Available

The Indian government, also, offers the following additional investment incentives to qualifying investors.

a. Tax Incentives in the Infrastructure Sector

Companies engaged in power generation, its transmission and distribution or are involved in developing and maintaining a notified infrastructural facility like an industrial park or SEZ or laying and operating a natural gas distribution network are eligible for tax exemption of 100% profits for any 10 consecutive years within the first 15 years of operation.

b. Tax Incentives Available to Other Sectors

Tax rebates of 30%, 50% and 100% are offered from 5 to 10 years on the profits of companies engaging in any of the following:

- i. Integrated business of handling, storage, and transportation of food grains.
- ii. Commercial production or refining of mineral oils.
- iii. Processing, preservation, and packaging of fruits or vegetables.
- iv. Operating and maintaining a hospital in a rural area.

Chapter 18

What are the Legal Issues Associated with Foreign Ownership of Land?

The acquisition or transfer of immovable property in India, by a foreign party is governed by the regulations framed by the Reserve Bank of India (“RBI”) as set forth below.

1. Acquisition or Transfer of Immovable Property by Foreign Nationals

A foreign national may acquire or transfer the immovable property in India, if at the time of purchase that foreign national qualifies as a ‘person resident in India’. This rule, therefore, makes the legal definition of ‘person resident in India’ quite important. In order for a foreign national to qualify as a ‘person resident in India’, he is required to have resided in India for more than 182 days during the preceding financial year (financial year is defined here as April 1st to March 31st) for employment, business, vocation or any other purpose in India. Further, the type of Indian visa granted to such foreign national must clearly indicate his intention to stay in India indefinitely.

However, RBI prohibits acquisition or transfer of immovable property in India by the citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau, Hong Kong and Democratic People’s Republic of Korea without its prior approval, unless they are Overseas Citizens of India (“OCI”) or the immovable property under consideration is acquired on lease, not exceeding five years.

Further, the acquisition or transfer of immovable property by a foreign national shall be through normal banking channels and shall be subject to applicable tax laws and other duties/levies in India.

The State Governments have been advised to be extra vigilant in matters relating to acquisition and transfer of immovable property in India, by foreign nationals and to verify the relevant travel documents and nature of visa before registering a sale or purchase of immovable property in India.

EXAMPLE: A Japanese businessman working in New Delhi seeks to purchase a house in India. The Japanese man resided in India during the previous financial year for a total of 254 days while working for an Indian company. In this situation, the Japanese businessman would qualify as a resident and be permitted to make the purchase.

Immovable property may also be acquired by a foreign individual by way of inheritance from a resident of India. Note, however, that no citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau, Hong Kong and Democratic People's Republic of Korea may acquire immovable property, through inheritance, without prior approval of the RBI.

EXAMPLE: An Indian man who owns a house in Mumbai dies with a will leaving the house to his friend who lives in the UK and has UK nationality. The UK national could inherit the house in Mumbai under the will without qualifying as a resident of India.

EXAMPLE: Same facts as above, but the person inheriting land in India is an Iranian citizen. In this situation, the Iranian citizen would not be allowed to obtain title to the land unless prior approval is granted by the RBI.

Note that when the above described foreign nationals own immovable property in India and then sell that immovable property and receive the proceeds of the sale from the purchaser, they may only remit those sale proceeds outside India after obtaining approval from the RBI to do so.

EXAMPLE: Same facts as above, but shortly after receiving title, the UK national seeks to sell the house and send the sale proceeds to the UK. In this situation, in order to transfer the sale proceeds outside India, he would be required to first obtain approval from the RBI.

Indian law also grants rights to own an immovable property (other than agricultural land/ plantation property/ farmhouse) in India, to individuals who qualify as Non-resident Indian (NRI) and/or OCI, by way of purchase, gift or inheritance. Further, an NRI or an OCI is also entitled under the Indian laws to transfer the immovable property to a person resident in India, an NRI or an OCI, by way of sale or gift. In case the transfer is by way of gift, the transferee should be a relative as defined by law. An NRI or an OCI, however, need not qualify under the residency criteria to acquire or transfer the immovable property in India.

EXAMPLE: The son of an Indian national who grew up in the US and has US citizenship moves to Hyderabad and seeks to buy a house. Such person may do so as an OCI (without qualifying as an Indian resident) as long as the purchase price for the house is remitted in from a source outside India.

Note that the above explained requirement to obtain RBI approval before remitting the sales proceeds from the sale of immovable property outside India does not apply to NRIs and OCIs.

However, repatriation of sale proceeds outside India of an Indian residential property, by NRIs or OCIs, is restricted to not more than two such properties.

EXAMPLE: Same facts as above, and the son of the Indian national later sells the house and receives the sale proceeds from the purchaser and wishes to remit the sale proceeds to the US. In this situation, he may do so without obtaining approval from the RBI as long as the seller has not previously repatriated the proceeds from the sale of two residential properties in India.

2. Acquisition of Immovable Property by Branch Office and Project Office of Foreign Companies

Foreign companies with branch offices or project offices, in India, engaged in specified business activities (see Chapter 13) or designated projects, respectively, are permitted to acquire immovable property in India for their own use and to pursue such business activities or designated projects, as the case may be. However, Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau, Hong Kong and Democratic People's Republic of Korea companies are not allowed to acquire immovable property in India for a Branch/Project Office without prior RBI approval.

Further, the acquisition of immovable property by a branch office or project office shall be through normal banking channels and shall be subject to applicable tax laws and other duties/levies in India.

A declaration in the required form (called IPI) should be filed with the RBI within ninety days from the date of acquisition of the immovable property. Such immovable property can also be mortgaged with an authorised dealer bank as a security for the purpose of borrowings.

In the event that such branch/project office is closed and immovable property sold, the sale proceeds of such immovable property may be repatriated only with the prior approval of the RBI.

EXAMPLE: A Canadian import/export company establishes a branch office in India to export Indian made handicrafts and importing certain consumer goods into India. The Canadian company then seeks to purchase office space in which to operate. This is permissible under the law, with no prior approval required from the RBI.

EXAMPLE: A Dutch company is awarded a project in India and establishes a project office to carry out the project. The company may purchase the land and buildings necessary or incidental to carrying out that project, with no prior approval required from the RBI.

EXAMPLE: A branch office of a Spanish company which qualifies to purchase immovable property in India for a business purpose seeks to purchase a warehouse. In this situation, the company may purchase the land and buildings with no prior approval from the RBI as long as the branch office finances the purchase by remitting the purchase price from outside of India through normal banking channels.

EXAMPLE: A Swedish company with a project office in India purchases land and buildings, and after three years, the Swedish company sells the land and buildings. In order for the Swedish company to transfer such sales proceeds outside India, it must first obtain approval from the RBI to do so.

3. Acquisition of Immovable Property by Indian Subsidiaries of Foreign Companies

In contrast to the rules applicable to the foreign companies with branch offices/project offices/liaison offices in India, Indian law does not place restrictions on acquisition or transfer of immovable property in India by the Indian subsidiaries of foreign companies.

Further, the acquisition must be made through normal banking channels and shall be subject to applicable tax laws and other duties/levies in India.

EXAMPLE: A Singaporean company registers a wholly owned subsidiary in India, and that subsidiary purchases land for the purpose of leasing the land to third parties. This purchase is permissible under the law, with no prior approval required from the RBI as long as the purchase is made through normal banking channels and applicable taxes are paid.

4. Leases

Persons resident outside India, including but not limited to branch offices, project offices and the liaison offices of foreign companies operating in India, have general permission to acquire or transfer the immovable property in India, on leases not exceeding five years.

EXAMPLE: An Austrian man seeks to enter into a lease agreement for a house for ten years to use as a residence. In order to proceed with this arrangement, the Austrian would be required to qualify as an Indian resident (see Section 1 above).

EXAMPLE: A Canadian company with a liaison office in India enters into a lease agreement to rent space in a warehouse in New Delhi for five years. This company would not require any approval from the RBI.

5. Title Search

Every prospective purchaser/lessee of the immovable property in India should perform a thorough title search of such immovable property prior to purchasing it or taking it on lease.

Such title search will help the prospective purchaser/lessee to ascertain or confirm:

- i. the status of the title and rights of the seller/lessor
- ii. the property boundaries
- iii. whether there are mortgages, liens, or other encumbrances recorded on the title
- iv. whether there are leases recorded on the title
- v. whether the land is subdivided

as well as other relevant information.

The title search may be performed at the local sub-registrar office of the district where the immovable property is located. Note that the status of the immovable property title is normally open for public inspection.

Further, if the immovable property is owned by a company, then the title search with respect to mortgages, liens, or other encumbrances created thereon by the seller or the lessor (as the case may be) may, also, be verified from the information available in public domain on the web portal of the Ministry of Corporate Affairs.

6. Documentation

Transferring the title of immovable property requires that a conveyance/sale deed be executed by the purchaser and the seller, be properly registered with the jurisdictional sub-registrar for the area where the immovable property is situated, after payment of the adequate stamp duty.

Leasing immovable property for a period of more than eleven months requires that a lease deed be executed by the parties and properly registered with the jurisdictional sub-registrar, after payment of the adequate stamp duty.