**PROCESS FOR A FOREIGN COMPANY TO START BUSINESS IN INDIA**

To set up a business venture in India, a foreign company has the following choices :

**Form an Indian Company**

To Form an Indian company, incorporation of a company under the Companies Act, 1956 should be done through

* Joint Venture with an Indian partner, for example, strategic collaborations with Indian partner organizations
* Wholly owned subsidiary, set up a wholly-owned subsidiary in sectors which permit 100% Foreign Direct Investment [FDI] under the FDI policy. 100% foreign equity in such Indian companies is permissible, subject to equity caps prescribed in the FDI policy concerning the various areas of activity and depending on the investor’s decision.
* Limited Liability Partnership (LLP), a new form of business structure in India, that combines the advantages of a company (a separate legal entity having perpetual succession) with the benefits of organizational flexibility associated with a partnership. The FDI policy for LLPs has been notified recently making this a possible viable entity form for Indian business operations of foreign investors.
* For registration and incorporation, one has to file an application with the Registrar of Companies (ROC). Once such a company has been incorporated and duly registered as an Indian company, it is subject to Indian law and regulations as applicable to all other domestic Indian companies.

**As a Foreign Company**

The entry into India for a business venture via the mode of Registration of Liaison Office, Branch Office or Project Office requires RBI and/or Government approval. Hence, the cost and time taken for registration of liaison office, branch office or project office for a foreign company are higher as compared with the incorporation of a private limited company. Also, to open a branch office, liaison office or project office, one has to be an Indian, foreign nationals cannot do so, thus limiting the scope for foreign nationals.

* Liaison Office/Representative Office: A Representative office acts as a communication channel or liaises between the headquarters or the principal place of business and offshore entities in India. The office can not undertake any commercial activity directly or indirectly and therefore cannot have any income/earnings in India.
* Project Office: Temporary project/site offices are frequently set up by foreign companies when they expect to execute specific projects in India. Project offices cannot take up or initiate on any activity other than those relating to the execution of the project. A general permission to foreign entities to establish Project Offices is granted by the RBI, subject to specified conditions.
* Branch Office: Typically Branch offices of a foreign company carrying out manufacturing and trading activities abroad are set up in the region/market of manufacture for the following purposes:
  + Import/Export of goods/merchandise – raw material and finished product.
  + To bring about better technical/financial collaborations between Indian companies and the parent or overseas group company.
  + Providing consultancy, advisory or professional services.
  + Supplementing research work and experimentation, in which the parent company is engaged – more economical.
  + Catering to software development and Information Technology services.
  + Authorized buying/selling agents in India for the parent company.

**The Process of Incorporation of a foreign Company in India**

* An application in Form 1A of the Companies (Central Government’s) General Policy Forms, 1956 setting out the names of the company in order in preference, is to be filled with the Registrar of Companies along with the prescribed fee. (Rs 500/- presently).
* The Memorandum and Articles of Association of the proposed company is required to be drafted.
* There should be at least two subscribers to the Memorandum and Articles of Association in case of a private limited company and minimum of seven subscribers in case of public limited company. As per the Indian laws at present foreign nationals and foreign companies, through authorized representatives, can subscribe to the Memorandum and Articles of Association of a company without the prior approval of the Reserve Bank of India.
* If the name of the Parent Companies is proposed to be part of the name of the company, then a No Objection Certificate addressed to the Registrar of Companies is required to be submitted, by way of Board resolution.
* The subscribers shall obtain the name approval and subscribe to its Memorandum and Articles of Association. The minimum capital to be subscribed by the Memorandum of Association is Rupees 100,000/- (Rs. One hundred thousand only)(US$ 2000 approx) in case of private limited company and Rupees 500,000/- (Rs. Five hundred thousand only)(US$ 10000 approx )in case of public limited company.
* Authorized Capital would be dependent on the Funds requirement of the new Company. Filing fees depend on the proposed Authorized Capital of new Company.
* The Memorandum and Articles of Association is required to be stamped as per the Indian Stamp Act, and signed by the subscribers at the relevant page in their own handwriting.

Following documents are required to be filed, signed and filed along with the Memorandum and Articles of Association of the proposed company :

* Declaration of compliance in Form 1.
* Notice of the location of the registered office of the company in Form 18.
* Particulars of Directors (name of the Directors, father’s name, address, age and nationality of the nominee directors) in Form 32.
* Consent of the Directors in Form 29 (in case of a public limited company).
* Power of Attorney to make corrections and submissions.
* Approval for Foreign Investment (if applicable).

All the documents referred to above are required to be filed for registration within six months from the date of availability of name along with registration fee, which is calculated on the basis of the authorized capital of the company. The Registrar of Companies after scrutinizing the documents registers the company and issues certificate of incorporation. Private Company is eligible to commence its business immediately after obtaining the certificate of incorporation. However, public companies are required to obtain a certificate of commencement of business before initiating any business activity.