Consulate general of india

Business, Company

Consulate General of India Toronto SETTING UP BUSINESS IN INDIA BY FOREIGN COMPANIES A foreign company planning to set up business operations in India has the following TWO options: 1. AS AN INDIAN COMPANY A foreign company can commence operations in India by incorporating a company under the Companies Act, 1956 through: a. Joint Ventures; or b. Wholly Owned Subsidiaries Foreign equity in such Indian companies can be up to 100% depending on the requirements of the investor, subject to equity caps in respe ct of the area of activities under the Foreign Direct Investment (FDI) policy. Details of the FDI policy, sectoral equity caps & procedures can be obtained from Department of Industrial Policy & Promotion, Government of India (www. dipp. nic. in). 1. (a) Joint Venture With An Indian Partner Foreign Companies can set up their operations in India by forging strategic alliances with Indian partners. Joint Venture may entail the following advantages for a foreign investor: ï,· ï,· ï,· Established distribution/ marketing set up of the Indian partner Available financial resource of the Indian partners Established contacts of the Indian partners which help smoothen the process of setting up of operations. 1. (b) Wholly Owned Subsidiary Company Foreign companies can also set up wholly owned subsidiary in sectors where 100% foreign direct investment is permitted under the FDI policy. Incorporation of Company For registration and incorporation, set of applications have to be filed wit h Registrar of Companies (ROC). Once a company has been duly registered and incorporated as an Indian company, it is subject to Indian laws and regulations as applicable to other domestic Indian companies. 1 For details please visit the website of Department of Company Affairs under Ministry of

Finance at http://dca. nic. in. 2. AS A FOREIGN COMPANY Foreign Companies can set up their operations in India through: ï,· ï,· ï,· Liaison Office/Representative Office Project Office Branch Office Such offices can undertake any permitted activities. Companies have to register themselves with Registrar of Companies (ROC) within 30 days of setting up a place of business in India. 2. (a) Liaison Office/ Representative Office Liaison office acts as a channel of communication between the principal place of business or head office and entities in India. Liaison office cannot undertake any commercial activity directly or indirectly and cannot, therefore, earn any income in India. Its role is limited to collecting information about possible market opportunities and providing information about the company and its products to prospective Indian customers. It can promote export/import from/to India and also facilitate technical/financial collaboration between parent company and companies in India. Approval for establishing a liaison office in India is granted by Reserve Bank of India (RBI). 2. (b) Project Office Foreign Companies planning to execute specific projects in India can set up temporary project/site offices in India. RBI has now granted general permission to foreign entities to establish Project Offices subject to specified conditions. Such offices cannot undertake or carry on any activity other than the activity relating and incidental t o execution of the project. Project Offices may remit outside India the surplus of the project on its completion, general permission for which has been granted by the RBI. 2. (c) Branch Office Foreign companies engaged in manufacturing and trading activities abroad are allowed to set up Branch Offices in India for the following purposes: i. ii. iii. Export/Import of goods Rendering professional or consultancy services Carrying out research work, in which the parent company is engaged. 2 iv. v. vi. vii. viii. Promoting technical or financial collaborations between Indian companies and parent or overseas group company. Representing the parent company in India and acting as buying/selling agents in India. Rendering services in Information Technology and development of software in India. Rendering technical support to the products supplied by the parent/ group companies. Foreign airline / shipping company. A branch office is not allowed to carry out manufacturing activities on its own but is permitted to subcontract these to an Indian m anufacturer. Branch Offices established with the approval of Reserve Bank of India (RBI), may remit outside India profit of the branch, net of applicable Indian taxes and subject to RBI guidelines Permission for setting up branch offices is granted by the RBI. 2 (d) Branch Office on " Stand Alone Basis" Such Branch Offices would be isolated and restricted to the Special Economic Zone (SEZ) alone and no business activity/transaction will be allowed outside the SEZs in India, which include branches/subsidiaries of its parent office in India. No approval shall be necessary from RBI for a company to establish a branch/unit in SEZs to undertake manufacturing and service activities subject to specified conditions. Application for setting up Liaison Office/ Project Office/ Branch Office may be submitted in form FNC 1 (available at RBI website at www. rbi. org. in). 3 SUMMARY OF STEPS INVOLVED IN FORMING A COMPANY 4 Company Formation in India Companies Act Companies incorporated or registered in India are governed by the Companies Act 1956 (Available at www. mca. gov. in). Shareholders and Directors A. There is no need to appoint local director or shareholder to incorporate a company in India. B. Foreign nationals can incorporate company in India and hold foreign equity to the extent of 100% which is dependent upon sector in which company will operate a nd is subject to approval from either Reserve Bank of India (RBI) or Foreign Investment Promotion Board (FIPB). Memorandum & Articles of Association The memorandum and articles are the primary legal document of a company. Memorandum contains the name of the company, authorized share capital, initial members and object clause. Articles are a set of internal regulations that govern the day to day operations of the company. Both memorandum and articles have to be filed with Registrar of companies at the time of incorporation or if there are any changes thereafter. At least two subscribers (shareholder) are required in the memorandum and each of the subscribers must subscribe to at least one share in the company. Share Capital Shares must be expressed in a fixed amount. " No par value" or " bearer" shares are not permitted. Shares to be subscribed must be expressed in Indian rupees. Annual Meetings An annual general meeting (AGM) must be held once in every financial year and not more than 6 months after the end of financial year. However, a company need not hold its first AGM until 18 months of its incorporation. Public Filings The names and personal particulars of the directors and secretary, register of charges, share capital, registered office address etc. must be filed with the Companies Registry for public inspection upon incorporation and if there is any change thereafter. 5 Accounts & Auditors Every company is required to appoint an auditor each year at its AGM. An auditor must be qualified by virtue of the Institute of Chartered Accountants of India Act 1949 and completely independent of the company.

Audited accounts of the company serve as tool for various stakeholders like creditors, bankers, investors and revenue authorities. 6 Guidelines to setup company in India Steps to be taken to get incorporated a private limited company ï‚· Select, in order of preference, a few suitable names, not less than four, indicative of the main objects of the company. Ensure that the name does not resemble the name of any other company already registered and also does not violate the provisions of Emblems and names (prevention of improper use) Act, 1950. Apply to the concerned ROC to ascertain the availability of name in Form-1 A of General Rules and Forms along with a fee of Rs. 500/-. If proposed name is not available apply for a fresh name on the same application. Arrange for the drafting of the Memorandum and Articles of Association by the solicitors, 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 Articles signed by at least two subscribers in his own hand, his father’s name, occupation, address and the number of shares subscribed for and witnessed by at least one person. Ensure that the Memorandum and Article is dated on a date after the date of stamping. Get the following forms duly filled up and signed: Declaration of compliance — Form-1. Notice of situation of registered office of the company — Form-18. Particulars of Director, Manager or Secretary — Form-32. Present the following documents with ROC with filing fee and registration fee: The stamped and signed copies of Memorandum and Articles of Association (3 copies). Form-1, 18 & 32 in duplicate. Any agreement referred to in the M&A. Any agreement proposed to be entered into with any individual for appointment as Managing or whole time Director. Name availability letter issued by ROC. Power of Attorney from the subscribers in favour of any p erson for making corrections on their behalf in the documents and papers filed for registration. Pay the Registration and Filing Fee by Demand Draft / Banker's Cheque if it exceeds Rs. 1000/-. Obtain Certificate of Incorporation from ROC. Additional Steps to be taken for formation of a Public Limited Company ï,· ï,· Consent of Directors to act as such in Form No. 29. Arrange for payment of application and allotment money by Directors on shares taken or agreed to be taken. 7 ï,· ï,· ï,· ï,· ï,· File the statement in lieu of prospectus with ROC in schedule-iv of the Companies Act. File a declaration in Form-20 duly signed by one of the Director. Obtain the Certificate of Commencement of Business. As per Citizens Charter name availability will be disposed of in 3 working days. Application for registration of a company — 10 working days. FORMING A COMPANY 1. REGISTER THE COMPANY The first thing you need to do to set up a software project or call center, or in fact any business, in India is to form a company. The Companies Act 1956, se ts down rules for establishing public and private companies. The most common corporate form is the limited one, and not the unlimited company. It is formed only after registering the Memorandum and Articles of Association with the ROC (Registrar of Compani es) of the state in which your company's main office will be located. These are the most important documents that you will submit to the ROC. The Memorandum sets out the constitution of the company (name of the company, the nature of liability of its members), and includes its objects (the purpose for the formation of the company, the parameters within which it has to carry out its activities). The company cannot do any act that is outside the object of the company even if all the shareholders approve it unanimously. The Articles of Association are the rules and regulations for managing the company’s internal affairs and for achieving its specified objects and purposes. 2. GET THE COMPANY’S NAME APPROVED Send your company’s name to be approved by the ROC in the state/Union Territory in which you will maintain its registered office. The approval is subject to certain conditions–no existing company should have the same name, and the name must incorporate the words â€•Private Ltdâ€– at the end, if a private company, and â€•Limitedâ€– if public. 3. PAY A REGISTRATION FEE Pay a registration fee, scaled according to the company’s share capital, which is stated in its Memorandum. Once you obtain all the documents described in Step 1 and the registration fee, the ROC grants the certificate of incorporation to you (the applicant). 4. INVITE SUBSCRIPTION TO SHARE CAPITAL After getting the certificate of incorporation, if yours is a private company, you can start business. If yours is a public company, you can invite th e public for subscription to your share capital. In accordance with the Companies Act, you must issue a 8 prospectus, giving information about your public company. The prospectus must be filed with the ROC before issuance to the public. But if you decide to obtain capital privately, you can file a â€•Statement in Lieu of Prospectusâ€– with the ROC. You can start business after attaining a Certificate of Commencement of Business from the ROC. 5. SEEK FDI AND FOREIGN TECHNOLOGY COLLABORATION For both private and public companies, you look for FDI (Foreign Direct Investment) and investment from NRIs (Non Resident Indians), including OCBs (Overseas Corporate Bodies), predominantly owned by NRIs, to complement and supplement domestic investment. You also seek foreign technology collaboration agreements. FDI and foreign technology collaboration are are approved either through the automatic route (no prior government approval is necessary) under powers delegated to the RBI (Reserve Bank of India), or the government (government approval is necessary). Automatic approval FDI With the government committed to an early implementation of the second phase of reforms and further liberalizing the FDI regime, all items/activities are under the automatic route for FDI/NRI and OCB investment, except the following: Proposals that require an Industrial Licence, including items requiring Industrial Licence under the Industries (Development and Regulation) Act, 1951; more than 24% foreign investment in the equity capital of units m anufacturing items reserved for small-scale industries; and items requiring an Industrial Licence under the locational policy notified by the Government, in the New Industrial Policy, 1991 ï,· ï,· ï,· ï,· Proposals where the foreign collaborator has a previous venture/tie-up in India Proposals relating to share acquisition in existing Indian companies, by a foreign/NRI/ OCB investor Proposals falling outside the notified sectoral policy/caps or under sectors where FDI is not permitted and/or where the investor chooses the FIPB and not the automatic route. Proposals for investment in public-sector units, or EOU/EPZ/EHTP/STP units, would be in the automatic route, subject to the above parameters. Foreign technology collaboration agreements The RBI also gives automatic permission for foreign technology agreements in all areas of electronics provided the technology price does not exceed $2 million and royalty payments don’t exceed 5% of domestic sales and 8% of exports. Payments are subject to an overall ceiling of 8% of total sales, over a 10-year period from the date of agreement, or a 7-year period, from the date of starting production, 9 whichever is earlier. Investment applications under the automatic process are made to the RBI and approved within three weeks. However, automatic route for technology collaboration is not available to those who have, or had any previous technology transfer/trade-mark agreement in the same or allied field in India. Government approval The FDI/foreign technology collaboration agreement proposals, which don't conform to the automatic-approval guidelines, require government approval through the FIPB. The government has set up a special FIPB as a fast track mechanism to invite and facilitate foreign investment in large projects, considered beneficial for India, but are not covered by the automatic-approval process and norms under which SIA (Secretariat for Industrial Assistance) is authorized to grant investment approvals. Setting up a call center For a call center you need effective company representatives and state-of-the-art communications and information technologies. You need adequate telecom facilities, trained consultants, access to a wide database, Internet and other on -line information support infrastructure, to provide information and support to customers round the clock. A call center is sometimes defined as a telephone-based shared-service center, for specific customer-related functions like marketing, selling, information dispensing, advice and technical support. To set up a call center, you must get an NOC (no-objection certificate) from the Deputy Director General (Customer Relations) at the Department of Communications, New Delhi. The NOC grants special permission to use voice circuits over international gateways to serve overseas customers, with the undertaking that it will not be connected to a PSTN (Public Switched Telephone Network) within India. The government has set terms/conditions for call-center operators. The new policy initiatives aim to liberalize such operations in India, and are permitted on a nonexclusive basis against requests from IT service providers. The call centers can either be international or domestic. ï‚· However, interconnectivity of international and domestic call centers is not permitted. Though, interconnection of two domestic call centers of the same company is permissible, subject to DoT approval. ï‚· International call centers are permitted on IPLCs (International Private Leased Circuits) only, and will cater to calls from foreign end PSTN. However , no PSTN connectivity will be permitted at the Indian end. Linking to any private or public network is not permitted, even within the same organization. 10 ï‚· Domestic call centers can have PSTN connectivity at one end, or both ends, or at multiple points, in a more complex configuration, with only incoming and with outgoing disabled at all places, wherever PSTN termination is provided. ï‚· No other interconnectivity, except as permitted above, with any public or private network, is permitted to the call-center setup. ï‚· Investment proposals outside the purview of the RBI ï‚· Other proposals including those in the services sector that don’t conform to the guidelines for automatic approval, or seek higher foreign equity investment are approved by SIA (Industry Ministry). Setting up a software technology park ï‚· STPI (Software Technology Parks of India) is an autonomous society set up by the government under the Ministry of Information Technology, to promote exports of computer software. ï‚· STP (Software Technology Parks) is a 100% export-oriented scheme for the development and export of computer software, using data communication links, or in the form of physical media including the export of professional services. The major attraction of this scheme is the single-point contact service to STP units. ï,· To become a certified member unit under the STP scheme, approval from the competent authority is required. ï,· Requirements for setting up STP ï,· An application in the prescribed format to register and establish an STP unit must be submitted to the STPI ï,· Details of the software project in terms of strengths, area of expertise, marketing arrangement, business plans, and means of finance must be furnished ï,· Each page of the application should be signed in initials by the competent authority, with the company’s seal on it ï,· Certificate of Incorporation under the Companies Act of 1956, Memorandum of Association, and its Articles of Association must be given 100% FDI companies should first register under the Company’s Act ï,· The time frame for processing and granting approvals is within 15 days, barring unavoidable circumstances. The application must accompany a demand draft of Rs 2, 500 drawn in favor of The Director, Software Technology Parks of India, Bangalore, as processing fees. 11