
Guide

For

Foreign Nationals

Wanting to Do Business in India

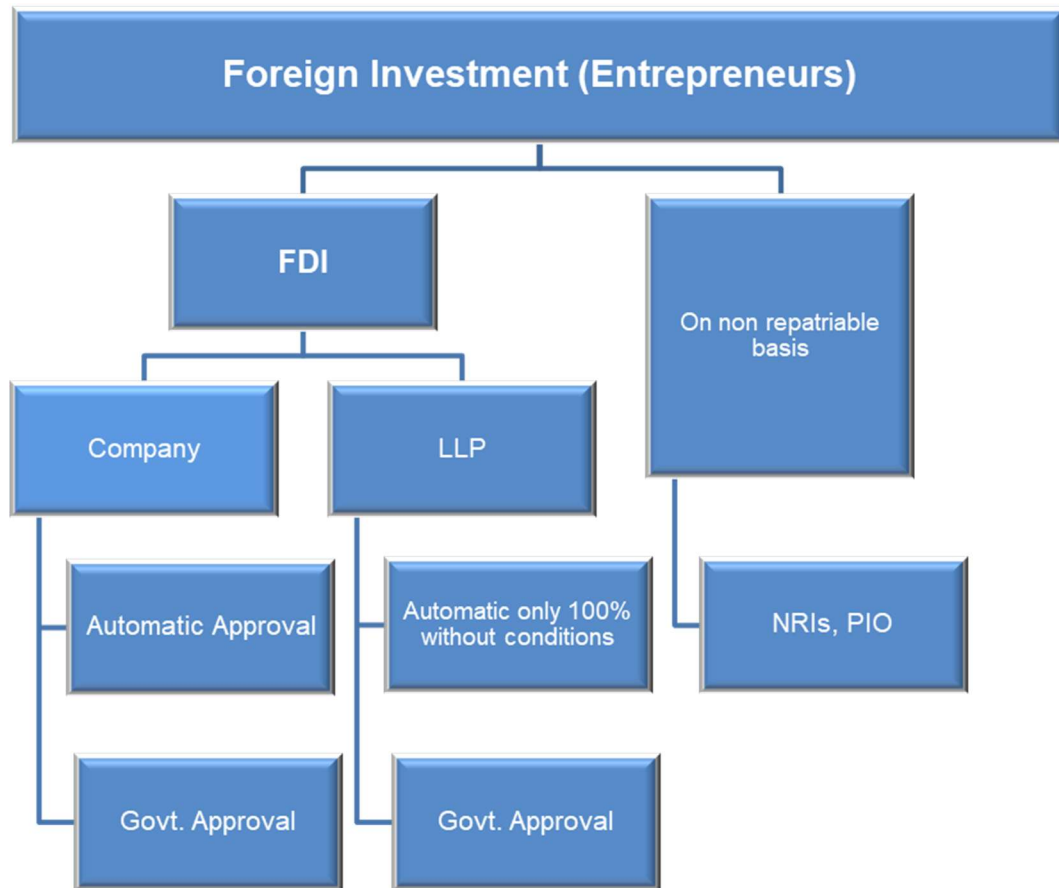
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Anil Chawla Law Associates LLP
Business Lawyers, Strategic Advisors and Insolvency Professionals

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Avenues for Foreign Entrepreneurs



FDI – Foreign Direct Investment

LLP – Limited Liability Partnership Firm

NRI – Non-resident Indian

PIO – Person of Indian Origin

Govt. - Government

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Notes:

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

1. For whom is this guide useful

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

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

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

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

This Guide is not for you if you are an institutional investor investing in Indian stock market or debt market. So, Foreign Portfolio Investors (FPIs) or Venture Capital Funds are not likely to find this guide useful. However, if you are an entrepreneur planning to set up an enterprise whether in manufacturing sector or in services sector, this Guide will help you get a quick overall view.

This Guide is the first step in your business's journey to India. It will help you get an overall view of what lies ahead.

Dr. Anil Chawla
Senior Partner,
Advocate and Insolvency Professional

2. Who can invest

India welcomes citizens of almost all countries to invest in India. However, with effect from 17 April 2020, citizens / companies of all countries that share land border with India (**Pakistan, Afghanistan, Bangladesh, China, Nepal, Bhutan, and Myanmar**) require government approval even when investing in sectors that are under automatic route. Notably, **entities from other countries with beneficiary / beneficiaries from any of these countries will also need government approval.**

3.1.1 (a) A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited. However, an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government route. Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.

(b) In the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction/purview of the para 3.1.1(a), such subsequent change in beneficial ownership will also require Government approval.

Notably, this clause imposes restrictions on the basis of beneficiaries of the investing entity.

3. Sectors / activities and Government policy

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

Department for Promotion of Industry and Internal Trade
Ministry of Commerce and Industry
Government of India

Consolidated FDI Policy
(Effective from October 15, 2020)

Foreign citizens or companies can make investments in shares or debentures of an Indian company, through either the Automatic Route or the Government Route. Under the Automatic Route, the non-resident investor or the Indian company does not require any approval from Government of India for the investment. Under the Government Route, prior approval of the Government of India is required. Proposals for foreign investment under Government route are examined by the competent authority as per the Standard Operating Procedure available at <http://www.fifp.gov.in/Forms/SOP.pdf> or https://dpiit.gov.in/sites/default/files/fifp_Revised_SOP_22August2023.pdf

Competent authorities or concerned departments for granting approval are as follows:

S. No.	Activity/ sector	Administrative Ministry/ Department
(i)	Mining	Ministry of Mines

(ii)	Defence	
	a) Items requiring Industrial Licence under the Industries (Development & Regulation) Act, 1951, and/or Arms Act, 1959 for which the powers have been delegated by Ministry of Home Affairs to DPIIT	Department of Defence Production, Ministry of Defence
	b) Manufacturing of Small Arms and Ammunitions covered under Arms Act 1959	Ministry of Home Affairs
(iii)	Broadcasting	Ministry of Information & Broadcasting
(iv)	Print Media/Digital Media	
(v)	Civil Aviation	Ministry of Civil Aviation
(vi)	Satellites	Department of Space
(vii)	Telecommunication	Department of Telecommunications
(viii)	Private Security Agencies	Ministry of Home Affairs
(ix) (a)	Applications involving investments from an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country {as required in terms of Press Note 3 of 2020 read with Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2020 dated 22.04.2020}	Concerned Administrative Ministry/Department as identified by the DPIIT
(ix)(b)	Cases pertaining to sectors/activities under Government approval route requiring security clearance as per the extant Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, FDI Policy and security guidelines, as amended from time to time	Nodal Administrative Ministries/Departments
(x)	Trading (Multi Brand Retail Trading and Food Product retail trading)	Department for Promotion of Industry and Internal Trade

(xi)	FDI proposals by Non-Resident Indians (NRIs)/ Export Oriented Units requiring approval of the Government	
(xii)	Applications relating to issue of equity shares under the FDI policy under the Government route for import of capital goods/machinery/equipment (excluding second-hand machinery)	Concerned Administrative Ministry/Department as identified by the DPIIT
(xiii)	Applications relating to issue of equity shares for pre-operative/pre-incorporation expenses (including payments of rent etc.)	
(xiv)	Financial services activity which are not regulated by any Financial Sector Regulator or where only part of the financial services activity is regulated or where there is doubt regarding the regulatory oversight	Department of Economic Affairs
(xv)	Applications for foreign investment into a Core Investment Company or an Indian company engaged only in the activity of investing in the capital of other India Company(ies)	
(xvi)	Banking (Public and Private)	Department of Financial Services
(xvii)	Pharmaceuticals	Department of Pharmaceuticals

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

- a) Lottery Business including Government/private lottery, online lotteries, etc.
- b) Gambling and Betting including casinos etc.
- c) Chit funds
- d) Nidhi company
- e) Trading in Transferable Development Rights (TDRs)

- f) Real Estate Business or Construction of Farm Houses
'Real estate business' shall not include development of townships, construction of residential / commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.
- g) Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- h) Activities/sectors not open to private sector investment e.g.(I) Atomic Energy and (II) Railway operations (other than permitted activities mentioned in para 5.2).

Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business, Gambling and Betting activities.

Foreign residents are allowed to invest through **Government Route** in some specified sectors. Some of the sectors under Government Route are as follows:

- Mining and mineral separation of titanium bearing minerals & ores
- Defence Industry (up to 74% Automatic) Government route beyond 74% wherever it is likely to result in access to modern technology or for other reasons to be recorded
- Broadcasting (FM Radio) and up - linking of News and Current Affairs TV channels (maximum permitted FDI - 49%)
- Uploading / Streaming of News and Current Affairs through Digital Media (maximum permitted FDI - 26%)
- Print Media (maximum permitted FDI - 26%) (Publishing of Scientific and technical journals and facsimile editions of foreign newspapers is under government route up to 100%)
- Scheduled and Regional Air Transport Service (beyond 49% Government route up to 100%; Automatic up to 100% for NRIs)
- Satellites – Establishment and operation Specific details in this regard are provided in PIB note dated 21 Feb 2024 as follows:

Under the amended FDI policy, 100% FDI is allowed in space sector. The liberalized entry routes under the amended policy are aimed to attract potential investors to invest in Indian companies in space.

The entry route for the various activities under the amended policy are as follows:

1. **Upto 74% under Automatic route:** Satellites-Manufacturing & Operation, Satellite Data Products and Ground Segment & User Segment. Beyond 74% these activities are under government route.
 2. **Upto 49% under Automatic route:** Launch Vehicles and associated systems or subsystems, Creation of Spaceports for launching and receiving Spacecraft. Beyond 49% these activities are under government route.
 3. **Upto 100% under Automatic route:** Manufacturing of components and systems/ sub-systems for satellites, ground segment and user segment.
-

- Private Security Agencies (Automatic up to 49%). Government route beyond 49%; Maximum permitted FDI - 74%.
- Telecom services including Internet Service Provider and Infrastructure provider providing dark fiber, right of way, duct space, tower etc. (Automatic up to 49%, beyond 49% Government route)
- Multi Brand Retail Trading (Maximum permitted FDI - 51%, Government route) (permitted in a few states only)
- Private Banks (Maximum permitted FDI - 74%, Government route beyond 49%)
- Public Banks (Maximum permitted FDI - 20%)
- Pharmaceuticals – Brownfield (Automatic up to 74%, Government route beyond 74%)
- Infrastructure Company in the Securities Market (Automatic up to 49%)
- Pension Sector (Automatic up to 49%)
- Power Exchanges (Automatic up to 49%)

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

4. Available structures for testing the waters

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

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

A Liaison Office can undertake the following activities in India:

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

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

- i Export / Import of goods.
- ii Rendering professional or consultancy services.
- iii Carrying out research work, in areas in which the parent company is engaged.
- iv Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- v Representing the parent company in India and acting as buying / selling agent in India.
- vi Rendering services in information technology and development of software in India.

- vii Rendering technical support to the products supplied by parent/group companies.
- viii Foreign airline / shipping company.

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

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

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

- a such units are functioning in those sectors where 100 per cent FDI is permitted;
- b such units comply with Chapter XXII of the Companies Act, 2013, which relates to Companies Incorporated Outside India;
- c such units function on a stand-alone basis.

Procedure for LO / BO Permission

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

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

Government Route — Where principal business of the foreign entity falls under the sectors where 100 per cent FDI is not permissible under the automatic route. Applications from entities falling under this category and those from Non - Government Organizations / Non - Profit Organizations / Government Bodies / Departments are considered by the Reserve Bank in consultation with the Ministry of Finance, Government of India.

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

Track Record

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

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



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

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FED Master Direction No.10/2015-16

January 01, 2016

(Updated as on May 18, 2021)

(Updated as on March 29, 2019)

(Updated as on February 28, 2019)

(Updated as on May 10, 2018)

(Updated as on May 17, 2016)

To,

All Authorised Dealer Category – I banks

Dear Madam / Sir,

Master Direction - Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) or any other place of business in India by foreign entities

Net Worth [total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement certified by a Certified Public Accountant or any Registered Accounts Practitioner by whatever name].

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

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

The application for establishing BO / LO in India should be forwarded by the foreign entity through a designated AD Category - I bank to the General Manager, Reserve Bank of India, Central Office Cell, Foreign Exchange Department, 6, Sansad Marg, New Delhi – 110001, along with the prescribed documents including:

- English version of the Certificate of Incorporation / Registration or Memorandum & Articles of Association attested by Indian Embassy / Notary Public in the Country of Registration; (in

case an English version is being submitted it has to be attested by a notary and cross verified / attested by Indian Embassy / Consulate)

- Audited Balance Sheet for the past three / five years in case of branch office / liaison office respectively. If the applicant's country does not insist on audit of accounts, an Account Statement certified by a Certified Public Accountant showing the net worth;
- Bankers' Report from the applicant's banker in the host country / country of registration showing the number of years the applicant has had banking relations with that bank.

The Branch / Liaison offices established with the Reserve Bank's approval will be allotted a Unique Identification Number. The BOs / LOs shall also obtain Permanent Account Number (PAN) from the Income Tax Authorities on setting up the offices in India.

Project Office

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

- i. the project is funded directly by inward remittance from abroad; or
- ii. the project is funded by a bilateral or multilateral International Financing Agency; or
- iii. the project has been cleared by an appropriate authority; or
- iv. a company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or a bank in India for the project.

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

Other Restrictions

In the following cases, applicants shall require prior approval of Reserve Bank of India.

- (a) Applicants (whether individual or company) from Pakistan;
- (b) Foreign citizens or companies of Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong, Macau wanting to open a BO / LO / PO in Jammu and Kashmir / North East region / Andaman and Nicobar Islands;

- (c) Principal business falls in one of the four sectors – Defence, Telecom, Private Security and Information and Broadcasting.
- (d) Foreign entity is a Non-Government Organisation or Non-Profit Organisation or Body / Agency / Department of a foreign government. If such entity is engaged, partly or wholly, in any of the activities covered under Foreign Contribution (Regulation) Act, 2010, it shall obtain a certificate of registration under the said Act and shall not seek permission under Foreign Exchange Management Act.

Reserve Bank of India shall process application in consultation with the Government of India. Applicants from countries mentioned in (a) and (b) above desirous of opening BO / LO / PO in India shall also have to register with the state police authorities.

Using a Local Associate

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

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

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

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

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

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

5. Permitted structures for investment

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

The option of **Limited Liability Partnership (LLP) firm has become available since November 2015**. The relevant extract from FDI Policy dated 15 October 2020 is as follows:

FDI in LLPs is permitted subject to the following conditions:

- (i) FDI is permitted under the automatic route in Limited Liability Partnership (LLPs) operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions.
- (ii) An Indian company or an LLP, having foreign investment, is also permitted to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions.
- (iii) Conversion of an LLP having foreign investment and operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions, into a company is permitted under automatic route. Similarly, conversion of a company having foreign investment and operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions, into an LLP is permitted under automatic route.

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

More details about LLP are given below.

LLP Firm under The Limited Liability Partnership Act, 2008

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

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

Parameter	Partnership Firm	LLP	Pvt. Ltd. Co.	Comments
Applicable Law	The Indian Partnership Act, 1932	The Limited Liability Partnership Act, 2008	The Companies Act, 2013	
Cost of Formation	Less than Rs. 5,000. Registration is not compulsory.	About Rs. 20,000- to Rs. 100,000- (depends on capital). Registration is compulsory.	> Rs. 50,000- depends on authorized share capital and state where registered office is located.	Indicative figures. Actual may vary.
Minimum Capital	Not prescribed	Not prescribed	Not prescribed	Used to be Rs. 100,000 for private ltd. co. and Rs. 500,000 for public limited company
Distinct Entity	Firm has no distinct identity separate from partners.	LLP is a separate entity distinct from its partners.	Company is a separate entity distinct from its shareholders.	
Minimum number of members	Two partners	Two partners	Two shareholders	It is possible to incorporate a one-person company with just one member. Though it is not a preferred option.
Maximum members	10 for banking business. For other businesses 20.	No upper limit on number of partners	Maximum 200 members	There is no upper limit for a public limited company.
Charter Documents	Partnership Deed	LLP Agreement	Memorandum of Association and Articles of Association	A Certificate of Incorporation is necessary for LLP and a company.
Resident Director	No requirement of resident partner. But since foreign investment is not permitted, foreigners cannot be partners.	One of the Designated Partners must be resident of India	At least one director must be resident of India	The person who is resident of India need not be citizen of India.
Managed By	Partners	Designated Partners	Directors	
Statutory Formalities during the life of the entity	Almost nil formalities	Two forms to be filed every year. Burden of compliances low.	Complicated. Professional assistance from Company Secretary necessary.	
Audit	Not Required	Not Required for small firms	Compulsory	

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

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

Some salient points about LLP's are as follows:

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

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

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

- Airports – Greenfield projects and Existing Projects

- Civil Aviation Sector – Maintenance and Repair Organizations
- Sectors / activities not listed in the FDI Policy

LLP structure can be most useful for foreign professional individuals or companies providing consulting or other services either on stand-alone basis or in partnership with Indian professionals.

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

Capital	Cost Of Incorporation of Limited Liability Partnership			
	Delhi	Maharashtra	Gujarat	Madhya Pradesh
	Rupees			
Rs. 10,000-	18,900	19,300	18,900	20,800
Rs. One Million	37,400	42,400	42,400	42,400
Rs. Ten Million	48,450	58,450	53,450	53,450
Rs. Hundred Million	53,450	63,450	58,450	58,450
Rs. One Billion	87,650	97,650	92,650	92,650

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

It is recommended that adequate attention is paid to drafting of the LLP Deed since management of the LLP Firm and relations between the Partners of the Firm are governed by the LLP Deed. A well-drafted LLP Deed may cost Rs. 100,000- or more depending on the complexity and the legal professional involved.

Company under The Companies Act, 2013

Companies Act 2013 replaced the Companies Act 1956. The Companies (Amendment) Act, 2020 has substantially amended the Companies Act, 2013. The purpose of the amendment is to decriminalize many offences, permit Indian companies to list abroad and such other matters.

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

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

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

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

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

A private limited company must have at least two shareholders and can have maximum two hundred shareholders. There is no compulsion of minimum paid up share capital for setting up a private limited Company.

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

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

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

Authorized Share Capital	Cost Of Incorporation of Private Limited Company			
	Delhi	Maharashtra	Gujarat	Madhya Pradesh
	Rupees			
Rs. One Million	76,810	77,400	80,220	82,610
Rs. Ten Million	2,25,410	2,30,500	2,60,320	2,25,710
Rs. Hundred Million	8,35,410	8,85,500	11,85,320	8,35,710
Rs. One Billion	67,60,410	72,60,500	57,60,320	57,60,710

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

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

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

Time taken for incorporating a company is likely to be less than 2 weeks if the Shareholders and Directors are Indian.

In case of foreign shareholders and directors, the most important step is to get digital signature (DSC) as well as Director Identification Number (DIN) for foreign citizens / residents. This needs submission of relevant identity and address proofs. It is advisable to avail the services of a Practicing Company Secretary (PCS) for incorporation of a company. The PCS will help coordinate with the DSC vendor for submission of KYC documents and related formalities. The PCS will also help get DIN by filling up the relevant form and submitting to mca website.

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

A foreigner can act as Director of an Indian company. No permissions are needed for this. It is possible to have a company with only foreign citizens as directors. However, section 149(3) of the Companies Act, 2013 makes it mandatory for every company to have a Director who stays in India for a total period of at least 182 days during the financial year. In case of newly incorporated company, a Resident Director shall need to stay for proportionate number of days in the financial year in which the company was incorporated. It may be noted that such a resident Director need not be a citizen of India.

A foreign national may use the services of a legal professional or local business associate for meeting the above requirement. In case the foreign national becomes a resident of India after incorporation of the company, it will not be necessary for him / her to use the services of the legal professional or local business associate.

Let us see this by an example. An Indian company is incorporated by three foreign residents on say 1st August 2025. One of the three promoters shifts to India on 1st November 2025. So, the company has been in existence for a total of 243 days during the financial year 1st April 2025 to 31st March 2026. The company will need to have a director resident in India for 122 days. Since the promoter moved to India on 1st November, the number of days spent by him in India during the financial year were 151 days. Hence, the company has satisfied the requirements of section 149(3) of the Companies Act, 2013.

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

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

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

- (i) for taking up employment in India; or
- (ii) for carrying on a business or vacation in India.

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

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

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

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

Meeting of shareholders must be held at least once every year. Meeting of shareholders has to be held once every year. Relevant extracts from section 96 of the Companies Act, 2013 read as follows:

¹[(1) Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance:

Provided further that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year:

Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation:

Notably, for companies not listed on any stock exchange, annual general meeting can be held at any place in India and can also be held by electronic mode if all the members give consent in writing.

Entrepreneur driven small and medium companies are generally speaking not listed on stock exchanges. Hence for such companies, meetings of Board Directors as well as of shareholders can be held by video conferencing.

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

6. Steps to get a new LLP firm incorporated in India

Note: Procedures of incorporation and related processes are in a state of flux in India. Government of India is constantly trying to simplify processes and procedures for improving the Ease of Doing Business in India. Hence, as and when you go for incorporation, the actual procedures, costs and processes may be drastically different from the ones given in this chapter. Kindly consult a Practicing Company Secretary or other professional for the correct relevant procedure, cost and process.

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

- Each of the first partners, who are Indian citizens (including non-residents) of the new LLP Firm needs to get a Permanent Identification Number (**PAN**) from Income Tax Department of Government of India.
- Foreign partners do not need a Permanent Identification Number (**PAN**) from Income Tax Department of Government of India.
- Each person wanting to become a Designated Partner must have a **digital signature (DSC)**. The digital signature is to be purchased from a company in India. One needs a digital signature to apply for DPIN (explained below). Documents needed for getting a DSC and DPIN are usual KYC documents. The Practicing Company Secretary assisting you with incorporation will be able to guide you in this regard.
- Each of the first Designated Partners of the new LLP Firm needs to get Designated Partner Identification Number (**DPIN**). If the partners already possess a Director Identification Number (DIN) as required under Companies Act, 2013, then a fresh application for DPIN shall not be made. DIN in such cases is considered equivalent to DPIN. A person who does not have DPIN may either apply for it separately or may apply for it as part of the Form for Incorporation of LLP. Maximum two persons can apply as part of the Form for Incorporation of LLP.
- Decide the state in which the registered office of the LLP Firm will be located. It is easy for an LLP Firm to change the registered office within a state. It is a bit difficult to change the location of office of an LLP Firm when the change involves moving from one state to another. The LLP Agreement should provide for change of registered office from one state to another. In case of shifting from one state to another, consent of secured creditors is necessary. Moreover, it is required to publish a public notice in newspapers.
- Decide the Contribution (capital) to be contributed by each of the partners.

- Decide the main objects of the LLP Firm.
- Select, in order of preference, at least one suitable name up to a maximum of six names, indicative of the main objects of the LLP Firm.
- Ensure that the name does not resemble the name of any other already registered LLP Firm by availing the services of checking name availability on the portal of Ministry of Corporate Affairs. The selected name should also not violate the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950. It should not also resemble name of any other LLP or company or registered trade mark.
- You will need the services of a Practicing Company Secretary to do further steps for incorporation of the LLP Firm.
- After due formalities are completed by the Practicing Company Secretary (PCS), Corporate Identity is generated and a Certificate of Incorporation is issued by the RoC (Registrar of Companies).
- Arrange for the drafting of the LLP Agreement by a law firm / company secretary, and printing of the same.
- PCS will arrange for stamping of the LLP Agreement with the appropriate stamp duty.
- Get the LLP Agreement signed by the partners. It may be noted that it is not necessary for an LLP Firm to have an LLP Agreement. In case a firm decides to do without an LLP Agreement, the provisions of First Schedule of LLP Act will apply. However, it is advisable to have an LLP Agreement meticulously drafted by a competent professional. Generally speaking, a practicing company secretary or chartered accountant is not competent to draft an LLP Agreement involving one or more foreign partner(s) unless you are looking for something standard off-the-shelf (in which case ChatGPT may be cheaper option).
- Instruct the PCS to file the LLP Agreement with the RoC in prescribed form within 30 days of the incorporation of the LLP Firm (Optional step).

Professional assistance is necessary for completing the above steps. It is suggested that a PCS is engaged for the job. Sometimes, Practicing Chartered Accountants also take up the above job in India.

7. Steps to get a new company incorporated in India

Note: Procedures of incorporation and related processes are in a state of flux in India. Government of India is constantly trying to simplify processes and procedures for improving the Ease of Doing Business in India. Hence, as and when you go for incorporation, the actual procedures, costs and processes may be drastically different from the ones given in this chapter. Kindly consult a Practicing Company Secretary or other professional for the correct relevant procedure, cost and process.

- Each of the first shareholders and directors, who are Indian citizens (including non-residents) of the new company needs to get a Permanent Identification Number (**PAN**) from Income Tax Department of Government of India.
- Foreign shareholders and directors do not need a Permanent Identification Number (**PAN**) from Income Tax Department of Government of India.
- Each of the promoters must have a **digital signature (DSC)** and also needs to get **Director Identification Number (DIN)**. One person can have only one DIN (or DPIN). It is an offence to get more than one DIN. The digital signature is to be purchased from a company in India. One needs a digital signature to apply for DIN. Documents needed for getting a DSC and DIN are usual KYC documents. The Practicing Company Secretary assisting you with incorporation will be able to guide you in this regard.
- Decide the state in which the registered office of the company will be located. While it is easy for a company to change the registered office within a state, it is cumbersome and expensive to shift from one state to another.
- Decide the Authorized Capital of the proposed company. There is no minimum or maximum prescribed capital for a company.
- Decide whether the company will be a private limited company or public limited company.
- Decide the main objects of the company.
- Select, in order of preference, at least one suitable name up to a maximum of six names, indicative of the main objects of the company.
- Ensure that the name does not resemble the name of any other already registered company by availing the services of checking name availability on the portal of Ministry of Corporate Affairs. The selected name should also not violate the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950. It should not also resemble name of any other company or registered trade mark.

- After the name approval, you will need the services of a Practicing Company Secretary to do further steps for incorporation of the company.

It is now possible to apply for Permanent Account Number (PAN) under income tax as well as registrations under Goods and Services Tax (GST), Employees State Insurance (ESI) and Employees Provident Fund at the time of incorporating a company. This avoids application to multiple authorities before starting business.

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

One needs to arrange for drafting of the memorandum and articles of association. Often, the Practicing Company Secretary handling company incorporation will have a standard draft which can be used in most cases. However, if the new company is a joint venture company it is advisable to have a well drafted Shareholders' Agreement (SHA). The SHA can be incorporated into Articles of Association of the new company. Generally speaking, a Practicing Company Secretary is not the best person to get the SHA drafted. A specialist legal professional with experience of SHAs is likely to be better equipped for the job.

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

Company incorporation work by Practicing Company Secretary does not include the formalities that one needs to complete with Reserve Bank of India even when the investment is under 100% Automatic Approval Route.

Quick Easy Approach For Foreign Companies And Citizens

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

- Two Indian resident-citizens (A and B) who already have PAN and DIN incorporate an Indian company with the name, objects and authorized capital as required by the promoter based abroad.

- A and B are the initial directors of the new Indian company.
- As and when the foreign promoter has completed all the formalities related to DIN etc., A and B transfer all shares held by them in the new company to the foreign promoter.
- After transfer of shares, new directors are appointed. Immediately thereafter, both A and B resign as directors.
- In case it is so required, either A or B can continue as a director to comply with the requirements of resident director.
- Either A or B or both can continue to hold one share each of Rs. 10 as long as so required by the foreign promoter. This can make it easy to hold Annual General Meetings without incurring travel costs.

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

8. PAN for foreign residents (Indian citizens)

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

We suggest that an Indian citizen (who wishes to set up a company in India) should first get a digital signature after submitting attested documents as mentioned in Chapter 5. Once the digital signature is obtained, application for PAN becomes a simple online process.

The agencies for issue of PAN are as follows:

- ✓ Tax Information Network of Income Tax Department
<https://tin.tin.nsdl.com/pan/form49Adsc.html>
- ✓ UTI infrastructure Technology and Services Ltd.
<https://www.pan.utiitsl.com/PAN/newA.html>
- ✓ Instant E-PAN through Income-tax E-filing Portal
<https://www.incometax.gov.in/iec/foportal>

Please remember that no other person or agency can issue PAN. Any website or person who claims to provide PAN may be a fraud.

Using digital signature (DSC) it is possible to get PAN online without the need to submit any physical documents.

Please consult your Practicing Company Secretary in case you are not able to get the PAN on your own from one of the above websites.

9. Share capital structure

An Indian company can have only two types of share capital

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

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

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

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

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

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

10. External commercial borrowing

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

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



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FED Master Direction No.5/2018-19

March 26, 2019
(Updated as on December 22, 2023)
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(Updated as on August 01, 2022)
(Updated as on June 09, 2022)
(Updated as on December 10, 2021)
(Updated as on April 12, 2021)
(Updated as on August 08, 2019)

To
All Authorised Dealer Category – I banks and Authorised Banks
Madam / Dear Sir,

Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations

Under the ECB framework, ECBs can be raised either under the automatic route or under the approval route. For the automatic route, the cases are examined by the Authorized Dealer Category – I (banks). Under the revised Master Directions applicable from March 2019 (last updated on 22nd December 2023), most Indian companies (except for very large ones) will be covered by the Automatic Route. Under the approval route, the prospective borrowers are required to send their requests to the RBI through their banks for examination.

The ECB Framework comprises of two options – Foreign Currency Denominated ECBs (FCY denominated ECBs) and Indian Rupee Denominated ECBs (INR denominated ECBs). Applicable regulations for the two options are as follows:

Sr. No.	Parameters	FCY denominated ECB	INR denominated ECB
i	Currency of borrowing	Any freely convertible Foreign Currency	Indian Rupee (INR)
ii	Forms of ECB	Loans including bank loans; floating/ fixed rate notes/ bonds/ debentures (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; FCCBs; FCEBs and Financial Lease.	Loans including bank loans; floating/ fixed rate notes/bonds/ debentures/ preference shares (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; and Financial Lease. Also, plain vanilla Rupee denominated bonds issued overseas, which can be either placed privately or listed on exchanges as per host country regulations.
iii	Eligible borrowers	All entities eligible to receive FDI. Further, the following entities are also eligible to raise ECB: i. Port Trusts; ii. Units in SEZ; iii. SIDBI; and iv. EXIM Bank of India.	a) All entities eligible to raise FCY ECB; and b) Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/ cooperatives and Non-Government Organisations.
iv	Recognised lenders	The lender should be resident of FATF or IOSCO compliant country, including on transfer of ECB. However, a) Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders; b) Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and c) Foreign branches / subsidiaries of Indian banks are permitted as recognised lenders only for FCY ECB (except FCCBs and FCEBs). Foreign branches / subsidiaries of Indian banks, subject to applicable	
		prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.	

The minimum average maturities and all-in-cost ceiling for the two options are as under:

v	Minimum Average Maturity Period (MAMP)	MAMP for ECB will be 3 years. Call and put options, if any, shall not be exercisable prior to completion of minimum average maturity. However, for the specific categories mentioned below, the MAMP will be as prescribed therein:	
		Sr.No.	Category
		(a)	ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year.
		(b)	ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans
		⁴ (c)	ECB raised for (i) working capital purposes or general corporate purposes (ii) on-lending by NBFCs for working capital purposes or general corporate purposes
		(d)	ECB raised for (i) repayment of Rupee loans availed domestically for capital expenditure (ii) on-lending by NBFCs for the same purpose
		(e)	ECB raised for (i) repayment of Rupee loans availed domestically for purposes other than capital expenditure (ii) on-lending by NBFCs for the same purpose
		for the categories mentioned at (b) to (e) – (i) ECB cannot be raised from foreign branches / subsidiaries of Indian banks (ii) the prescribed MAMP will have to be strictly complied with under all circumstances.	
vi	All-in-cost ceiling per annum	⁵ Benchmark Rate plus 550 bps spread: For existing ECBs linked to LIBOR whose benchmarks are changed to ARR. Benchmark rate plus 500 bps spread: For new ECBs.	Benchmark rate plus 450 bps spread.

Whether the ECB is FCY denominated or INR denominated, the ECB cannot be utilized for any of the following end-uses – Real estate activities, investment in capital market, equity investments, working capital purposes (with some exceptions), general corporate purposes (with some

exceptions), repayment of Rupee loans (with some exceptions) and on-lending to entities for the above activities except in case of some NBFCs.

All ECBs will be subject to the overall annual limits as provided in the Master Directions. The ECB proposals **beyond specified limits will come under the approval route.**

Issuance of any type of guarantee by Indian banks, Financial Institutions and Non-Banking Financial Companies (NBFCs) from India relating to ECB is not permitted.

The borrowing company must obtain a Loan Registration Number (LRN) from the Reserve Bank of India before drawing down the ECB. The application for Loan Registration Number mentions an authorized dealer bank which will receive the money and also be involved with repayment.

In addition to the above, a special window has been created for start-ups. Three key differences in the **facility for start-ups** as against for other companies are as follows:

- In case of start-ups, the all-in-cost can be as mutually agreed between the borrower and the lender, while in case of other companies the all-in-cost is fixed at a maximum of benchmark rate plus 550 bps for existing ECBs and benchmark rate plus 500 bps for new ECBs.
- Minimum average maturity period for start-ups is three years for all categories of start-ups.
- Maximum amount under the start-up facility is restricted to USD 3 million per financial year, while other borrowers can borrow up to USD 750 million per annum.

11. Bank accounts of foreign residents in Indian rupees

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

- A Ordinary Non-Resident Rupee (NRO) Account
- B Non-Resident (External) Rupee Account (NRE Account) – Strictly for NRI's
- C Special Non-Resident Rupee Account (SNRR Account)
- D Escrow Account

Ordinary Non-Resident Rupee (NRO) Account

NRO account is the simplest form of bank account that any non-resident individual or entity (except from Pakistan or Bangladesh) may open with a bank in India without approval or permission from Reserve Bank of India or any other authority. In case of entity / individual from Pakistan, approval of Reserve Bank is required. In case of entity from Bangladesh also, approval of Reserve Bank is required. However, in case of individuals from Bangladesh, concerned bank may permit opening of NRO account subject to verifying that the individual(s) hold valid visa and valid residential permit.

Funds in the NRO account should be used for meeting bonafide expenses and transactions in Indian Rupees. NRO accounts may be opened / maintained in the form of current, savings, recurring or fixed deposit accounts. The accounts may be held jointly with residents and / or other non-residents and / or Persons of Indian Origin on 'former or survivor' basis.

Permissible Credits to NRO account: Inward remittances from outside India, legitimate dues in India and transfers from other NRO accounts are permissible credits to NRO account. Rupee gift / loan made by a resident to a NRI/PIO relative within the limits prescribed under the Liberalised Remittance Scheme may be credited to the latter's NRO account.

Permissible Debits to NRO account: The account can be debited for the purpose of local payments, transfers to other NRO accounts or remittance of current income abroad. Apart from these, balances in the NRO account cannot be repatriated abroad except by NRIs and PIOs up to USD 1 million.

NRO accounts may be designated as resident accounts on the return of the account holder to India for any purpose indicating his intention to stay in India for an uncertain period. Likewise, when a resident Indian becomes a person resident outside India, his existing resident account should be designated as NRO account.

Non-Resident External Rupee (NRE) Accounts

Only Non-resident Indians (NRIs) and Persons of Indian Origin (PIOs) are permitted to open and maintain these accounts with authorized dealers and with banks authorized by Reserve Bank to maintain such accounts.

Income from interest on balances standing to the credit of NRE Accounts is exempt from Income Tax. In all other respects, NRE accounts are similar to NRO account.

Operations on an NRE account may be allowed in terms of Power of Attorney or other authority granted in favour of a resident by the non-resident account holder, provided such operations are restricted to withdrawals for local payments or remittance to the account holder himself through banking channels.

Special Non-Resident Rupee (SNRR) Account

A person resident outside India, having a business interest in India, may open a Special Non-Resident Rupee Account (SNRR account) with an authorised dealer in India or its branch outside India for the purpose of putting through permissible current and capital account transactions with a person resident in India in accordance with the Act, rules and regulations framed under the Act, and for putting through any transaction with a person resident outside India. Opening of SNRR accounts by Pakistan and Bangladesh nationals and entities incorporated in Pakistan and Bangladesh requires prior approval of Reserve Bank.

Explanation: A unit in an International Financial Services Centre (IFSC) under section 18 of the Special Economic Zones Act, 2005 may open an SNRR account with an authorised dealer in India (outside IFSC) for its business related transactions outside IFSC.

The SNRR account shall carry the nomenclature of the specific business for which it is in operation and shall not earn any interest.

The operations in the SNRR account shall not result in the account holder making available foreign exchange to any person resident in India against reimbursement in rupees or in any other manner. The balances in the SNRR account in India shall be eligible for repatriation and transfers from any NRO account to the SNRR account are prohibited.

Escrow Account

Resident or non-resident corporate/ acquirers may open Escrow account in INR with an authorized dealer in India as an Escrow agent. Escrow account may be used for (a) Issue of equity shares by an Indian company and for (b) Swap of equity instruments.

12. Bank accounts in foreign currency

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

A person resident in India may open an EEFC account with a bank in India.

Credits permitted to an EEFC account are as follows:

- (a) 100 percent of the foreign exchange earnings by way of inward remittance through normal banking channel, (other than loans or investments);
- (b) Payments received for the purpose of counter trade;
- (c) Advance remittance received by an exporter towards export of goods or services;
- (d) Professional earnings including director's fees, consultancy fees, lecture fees, honorarium and similar other earnings received by a professional by rendering services in his individual capacity;
- (e) Interest earned on the funds held in the account;
- (f) Re-credit of unutilised foreign currency earlier withdrawn from the account;
- (g) Repayment of trade related loans/ advances (which were granted to the account holder's importer customer out of balances held in the EEFC accounts);
- (h) Disinvestment proceeds received by the resident account holder on conversion of shares held by him to ADRs/ GDRs under the DR Scheme, 2014; and
- (i) Payments received in foreign exchange by an Indian start-up arising out of sales / export made by the start-up or its overseas subsidiaries.

Debits permitted to an EEFC account are as follows:

- Payment outside India towards capital or current account transactions in accordance with the relevant rules and regulations;
- Payment in foreign exchange towards cost of goods purchased from a 100 percent Export Oriented Unit or a Unit in an Export Processing Zone / Software Technology Park / Electronic Hardware Technology Park;
- Payment of customs duty;

- Trade related loans / advances, by an exporter account holder to his importer customer outside India;
- Payment in foreign exchange to a person resident in India for supply of goods / services including payments for air fare and hotel expenditure.

Withdrawals in Rupees are permitted from this account, provided the amount so withdrawn cannot be re-credited to the account.

The sum total of the accruals in the account during a calendar month should be converted into Rupees on or before the last day of the succeeding calendar month after adjusting for utilization of the balances for approved purposes or forward commitments.

Foreign Currency Accounts by NRIs and PIOs

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

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

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

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

Foreign Currency Accounts for Companies Executing Projects

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

- i. The Project Office has been established in India, with the general / specific permission of Reserve Bank, having the requisite approval from the concerned Project Sanctioning Authority.

- ii. The contract, under which the project has been sanctioned, specifically provides for payment in foreign currency.
- iii. Each Project has only one Foreign Currency Account.
- iv. The permissible debits to the account shall be payment of project related expenditure and credits shall be foreign currency receipts from the Project Sanctioning Authority, and remittances from parent / group company abroad or bilateral / multilateral international financing agency.
- v. The Foreign Currency account has to be closed at the completion of the Project.

In case of disputes between the Project Office and the project sanctioning authority or other Government/ Non-Government agencies etc., the balance held in such account shall be converted into INR and credited to a special account which shall be dealt with as per the settlement of the dispute.

Other Foreign Currency Accounts

Organisers of international Seminars, Conferences, Conventions, etc. – can open temporary foreign currency accounts in India.

An exporter who has undertaken a construction contract or a turnkey project outside India or who is exporting services or engineering goods from India on deferred payment terms may open, hold and maintain a Foreign Currency Account with a bank in India.

A unit located in a Special Economic Zone (SEZ) - may open hold and maintain a foreign currency account with an authorized dealer in India to credit all foreign exchange funds received by the unit.

Ship-manning / crew managing agencies in India may maintain non-interest-bearing foreign currency account in India for the purpose of undertaking transactions in the ordinary course of their business.

Indian agent of shipping or airline companies incorporated outside India can maintain foreign currency account in India for meeting the local expenses of the overseas company.

Firms and companies dealing in diamonds may open Diamond Dollar Accounts.

13. Technology transfer, brand licensing and royalty

It was mentioned in Chapter 4 about using a local associate for testing the waters. Local associate may be useful not just as an initial support but also as a long-term business partner. While joint ventures with equity participation from foreign company as well as Indian associate are common, often foreign companies enter into a technology transfer / franchisee / marketing support / brand licensing agreement with the Indian associate. This way the foreign company can take benefit of the Indian market without making any significant investments.

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

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

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

14. Indian visa for directors and employees

Note: Rules for visas are changed often by Government of India. Some of the rules given in this chapter may be obsolete when you apply for visa. Please check from official websites. The official site of Ministry of Home Affairs, GOI is <https://www.mha.gov.in/MHA1/TourVisa.html>

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

Types of visas (relevant to businesses) issued by India are as follows:

S. No.	Main category of visa	Sub-categories	Description	Remarks
1	e-Visa	e-TV	e-Tourist Visa	A foreign national may undertake recreation, sight seeing, casual visit to meet friends or relatives and attending a short term yoga programme
		e-BV	e-Business Visa	A foreign national may visit for Business purposes
		e-Med V	e-Medical Visa	A foreign national may undertake medical treatment including treatment under Indian systems of medicine.
2	Transit Visa	TR	Transit Visa	For travelling through India to a destination outside India
3	Tourist Visa	T-1	Tourist Visa for individual tourists	-
		T-2	Tourist Visa for group tourists	For group tourists as part of organized tour including tourist coming by chartered flights
		T-3	For Cruise tourism	For foreign nationals coming on cruise tourism
4	Medical Visa	MED	For all foreign nationals coming on Medical Visa	-
5	Medical Attendant Visa	MED X	For foreign nationals coming as Medical Attendants	-
6	Business Visa	B-1	Business Visitor coming to attend business meetings, technical meetings etc. for a short period	-
		B-2	Business Visitor from small and medium business	For all such business visitors from small and medium business [with turnover upto Rs.10 crore] who are required to visit India frequently in connection with their business activities.

		B-3	Business Visitor from large business	For all such business visitors from large business [with turnover of Rs.10 crore and above] who are required to visit India frequently in connection with their business activities.
		B-4	Business Visa for Investors	For those who are eligible for Business Visa in terms of the eligibility conditions prescribed for Permanent Residency Status.
		B-5	Crew of non-scheduled airlines chartered flights operated by such airlines and Special flights.	-
		B-6	Foreign academicians/ experts covered under GIAN	-
		B-7	Foreign nationals who are partners in the business and/ or functioning as Directors of the company	-
		B-8	Other Miscellaneous categories eligible for Business Visa not covered by above sub-categories	-
		B-Sports	Foreign nationals who are engaged in commercial sports events in India on contract (including coaches) with remuneration.	-
		B-1 X B-2 X B-3 X B-4 X	For dependents of Business Visa holders	Depending on the type of Business Visa granted, the dependents may be granted B-1 X, B-2 X, B-3 X and B-4 X visa.
7	Employment Visa	E-1	Short term remunerative employment up to 6 months	-
		E-2	Long term remunerative employment beyond 6 months	-
		E-3	For Intra-company transferee	-
		E-4	For honorary work with NGOs	-
		E-5	Staff/ Faculty in South Asian University and Nalanda University	-
		E-1 X E-2 X E-3 X E-4 X E-5 X	For dependents of Employment Visa holders	Depending on the type of Employment Visa granted, the dependents may be granted E-1 X, E-2 X, E-3 X, E-4 X and E-5 X visa.

8.	Project Visa	P	For those coming to execute projects in Steel and Power sectors with sector specific numerical ceilings	-
		P-X	Dependents of Project Visa holders	-
9	Intern Visa	I-1	Intern under French VIE programme	-
		I-2	Intern with business house, including those sponsored by AIESEC	For all those coming for internship in Business houses earning some remuneration including those sponsored by AIESEC.
		I-3	Intern with NGOs and Educational Institutions including those sponsored by AIESEC	For all those coming for internship with NGOs and Educational Institutions including those sponsored by AIESEC.
		I-4	Intern with Foreign Media Organizations/ Indian Media Organizations in India	-
10	Films Visa	F	For foreign nationals coming for shooting of a feature film/ reality TV show and/ or commercial TV serials.	-
13	Conference Visa	C-1	For participants of conferences organized by Government authorities including Public Sector Undertakings, Autonomous bodies under Government	-
		C-2	For participants of conferences organized by non-Governmental agencies/ organizations	-
17	Entry Visa	X- 1	For Persons of Indian Origin who do not possess OCI card	-
		X-2	Foreign nationals married to Indian Citizen/ Persons of Indian Origin/ OCI cardholder and their children (other than those who are	-

			registered as OCI cardholder)	
		X-3	For those coming to join Auroville Foundation or Missionaries of Charity or Aurobindo Ashram, Puducherry or similar approved organizations	-
		X-4	For those who own property in India	-
		X- Misc.	For purposes which are not covered by any other visa category	-
		X-SP	For Sports Persons	-

22	Pakistan Specific Visas	V	Visitor Visa	-
		PG-1	Pilgrim Visa (under Religious Protocol)	-
		PG-2	Group Pilgrim Visa for minority communities in Pakistan	-
23	Bangladesh Specific Visa	X- Double Entry	Double Entry Visa	For those coming to India to apply for visa to foreign missions accredited to both India and Bangladesh.
24	Visa on Arrival	VA	Double entry visa for 60 days (being offered to Japanese Nationals)	-

Note : The applicant will apply for the broad category of visa and the granting officer will decide exact sub-category.

E-visa

E-visa facility is available to nationals of most of the countries of the world. Please check at <https://indianvisaonline.gov.in/evisa/tvoa.html> to see if your country is covered under the list of countries eligible for e-visa.

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

1. Please visit <https://indianvisaonline.gov.in/evisa/tvoa.html> to apply for e-visa.
2. E-visa is issued when sole objective is one of the objectives specified by Government of India. Some eligible objectives are as follows:
 - a) Recreation and sightseeing
 - b) Casual visit to meet friends and relatives
 - c) Attending short term yoga programme

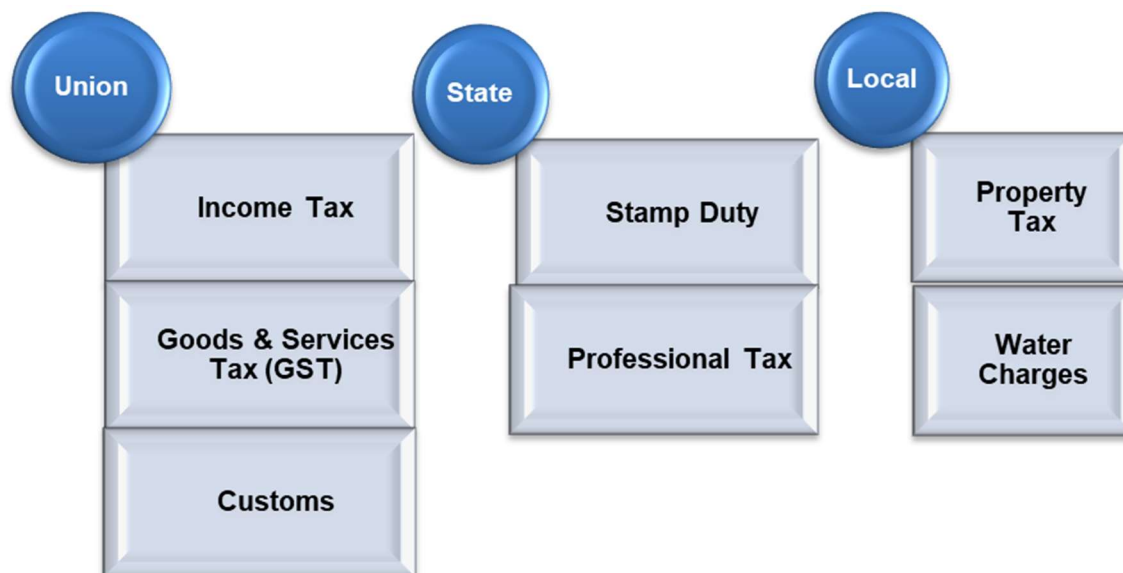
- d) Medical treatment, including treatment under Indian systems of medicine
 - e) As attendant to e-Medical visa holder
 - f) Business purpose
 - g) Attending a conference/ seminar/ workshop
3. e-Visa has 8 sub-categories viz. e-Tourist Visa, e-Business Visa, e-Conference Visa, e-Medical Visa, e-Medical Attendant Visa, e-Ayush Visa, e-Ayush Attendant Visa and e-Emergency X-Misc Visa. A foreign national will also be permitted to club these activities provided he / she had clearly indicated the same in the application form along with requisite documents.
4. The validity of e-Visa would be according to the e-Visa service requested in the application form as –
- a) For **e-Tourist Visa (01 year / 05 years)**, the validity would be 365 days / 05 years from the date of grant of ETA (Electronic Travel Authorization) with Multiple entries and Maximum stay in India during one calendar year should not exceed 180 days.
 - b) For **e-Tourist Visa (30 days)**, the validity would be 30 days from the date of the first arrival in India. Double entries will be granted within the e-Visa validity period stamped on the Passport. The first arrival must be between the date of issue and expiry of ETA.
 - c) For **e-Business Visa**, the validity would be 365 days from the date of grant of ETA with Multiple entries and continuous stay during each visit which shall not exceed 180 days and no registration would be required if stay is for a period of less than 180 days. However, if the intention is to stay for more than 180 days, then the foreigner shall get himself/herself registered with the FRRO/FRO concerned (<https://indianfrro.gov.in>) within two weeks after the expiry of 180 days of his/her arrival in India.
 - d) For **e-Conference Visa**, the validity would be 30 days from the date of arrival in India with Single entry.
 - e) For **e-Medical Visa**, the validity would be 60 days from the date of first arrival in India and triple entry will be allowed within the e-Visa validity period stamped on the Passport.
 - f) For **e-Medical Attendant Visa**, the validity would be 60 days from the date of first arrival in India and triple entry will be allowed within the e-Visa validity period stamped on the Passport.

5. For e-Tourist Visa (01 year / 05 years), e-Business Visa, e-Medical, e-Medical Attendant and e-Conference visa, applicants may apply online minimum 4 days in advance of the date of arrival. Such application can be made 120 days in advance from proposed date of travel.
6. For e-Tourist Visa (30 days), applicants may apply online minimum 4 days in advance of the date of arrival. Such application can be made 30 days in advance from proposed date of travel.
7. E-visa is not extendable and is not convertible to any other type of visa.
8. e-Visa will be allowed for a maximum of two times in a calendar year to a foreigner.
9. Passport must have at least six-month validity.
10. An applicant should have return ticket or onward journey ticket, with sufficient money to spend during his/her stay in India.
11. Pakistani passport-holders and persons of Pakistani origin are not eligible for e-visa.
12. E-tourist Visa fees depend on the type of visa applied for and the country from which application is submitted (min USD 10 and max USD 80; plus bank charges 2.5%). Kindly refer https://indianvisaonline.gov.in/evisa/images/Etourist_fee_final.pdf
13. Applicant should carry a copy of Electronic Travel Authorization (ETA) along with him / her at the time of travel.
14. E-visa is valid for entry through 31 airports - Ahmedabad, Amritsar, Bagdogra, Bengaluru, Bhubaneshwar, Calicut, Chennai, Chandigarh, Cochin, Coimbatore, Delhi, Gaya, Goa (Dabolim), Goa (Mopa), Guwahati, Hyderabad, Indore, Jaipur, Kannur, Kolkata, Lucknow, Madurai, Mangalore, Mumbai, Nagpur, Port Blair, Pune, Tiruchirappalli, Trivandrum, Varanasi & Visakhapatnam.
15. E-visa is also valid for entry through five seaports - (1) Mumbai (2) Cochin (3) Goa (4) Chennai and (5) Mangalore for cruise tourists.
16. There are no restrictions for exit. A holder of e-visa may exit from any airport or seaport or land port.

Please refer <https://indianvisaonline.gov.in/evisa/tvoa.html> for the latest on e-visas and also for applying.

15. Indian taxation system

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



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

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

A. Union Taxes

Parliament of India approves laws that impose taxes. Generally speaking, every year in the month of February the finance minister presents a budget to the Parliament. The presentation of annual budget of Union of India to the Parliament is watched by whole country with bated breath since union taxes are modified. However, after the introduction of GST the importance of Union Budget has reduced considerably. GST Council consisting of representatives from Union Ministry of Finance as well as state governments meets many times in a year and makes changes to GST rates and procedures to GST as may be required from time to time.

Major sources of central revenue are as follows:

Income Tax

Income Tax Act, 1961 prescribes that income earned by all residents is subject to Income Tax.

In February 2020, Union Finance Minister introduced a new method of calculating individual's income tax liability. One may either choose the new regime with slightly lower rates but without any deductions OR one may choose to be under the old regime where some deductions were permitted.

If an individual opts for the **new regime**, then his / her income will be taxed as per the following tax slabs for financial year 2025-26 (1 April 2025 to 31 March 2026): Rs. 0 to Rs. 400,000 – Nil, Rs. 400,000 to Rs. 800,000 – 5%, Rs. 800,000 to Rs. 1,200,000 – 10%, Rs. 1.2 million to Rs. 1.6 million – 15%, Rs. 1.6 million to Rs. 2.0 million – 20%, Rs. 2.0 million to Rs. 2.4 million – 25%, and income above Rs. 2.4 million will be taxed at 30%.

Individuals are eligible for rebate of Rs. 60,000 from the FY 2025-26. As a result of the rebate, individuals earning up to Rs.1.2 million will have no tax liability. For salaried individuals, the tax liability will be zero for incomes up to Rs.1.275 million due to the Rs.75,000 standard deduction.

For individuals, surcharge is applicable on the income tax amount for higher levels of income. In addition, education and health cess at the rate of 4% is levied on the total of tax and surcharge. Surcharge rates are as follows:

Taxable Income	Surcharge
Above Rs 5 million but below Rs 10 million	10%
Above Rs 10 million but below Rs 20 million	15%
Above Rs 20 million	25%

Indicative rates of income tax as applicable for incomes earned during financial year 2025-26 (1 April 2025 to 31st March 2026) for LLPs and Companies are as follows:

Net Annual Income Range	Income Tax + Surcharge + Education Cess	
	LLP Firm	Company
All incomes	30% of Income	30% of Income + Surcharge + Cess 15% or 22% or 25% of income for some companies + Surcharge + Cess

When the total income of an LLP exceeds Rs.10 million, the income tax amount is increased by a surcharge of 12% plus cess of 4%.

When a Pvt Ltd company earns less than Rs.4 billion, it should pay a tax of 25%. When the company's annual revenue exceeds Rs.4 billion, it must pay a 30% tax. Pvt Ltd companies can also choose between the new rates of 22% (for existing companies) and 15% (for new companies). Surcharge for companies is either 7% or 10% or 12%.

From financial year 2020-21 (assessment year 2021-22) dividend paid by a company is taxed in the hands of the shareholder as regular income.

In contrast, the share of income received from an LLP firm is tax free in the hands of the partner of the LLP. So, while it appears that the tax rate for LLP Firm is higher, the total taxation may be lower in case of an LLP.

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

Income Tax in India is fairly complex with deductions for many expenses and categories of taxpayers. There are specialists who advise on income tax. Most Indian entrepreneurs and businessmen have a consultant (often a Chartered Accountant) to advise on income tax matters and do related compliances.

Goods and Services Tax (GST)

GST is levied on all goods and services sold within India. There is no GST on exports. Rebate / setoff for GST paid on inputs is available. Exports are not subject to GST. Refund of GST paid on inputs for exports is provided. All imports are subject to GST in addition to customs duty. Most common rate of GST is 18%. Other rate slabs are 5%, 12% and 28%.

Generally, the seller of goods or services collects GST from the buyer. However, in case of select services (for example, legal services) the buyer of the services has to pay directly to the authorities. The arrangement is called "reverse charge".

Compliance requirements for GST are not complex. There are, however, some challenges in ensuring that input credit is availed properly for all goods and received. Moreover, frequent changes keep creating difficulties for businesses.

B. State Taxes

India is a federal union comprising twenty-eight states and eight union territories. Each state has different rates of taxes in respect of what falls within the power of the states.

Stamp Duty

Stamp Duty is payable on various types of documents – agreements, transfer deeds, conveyance / mortgage of immovable property. Rates vary from state to state. The old system was that a stamp vendor used to sell stamp papers of different value. The vendor who sold a stamp paper put the names of contracting parties, type of document, date of purchase of stamp paper along with his rubber stamp and date of purchase of stamp paper at the back of the stamp paper. The document was printed / typed on the stamp paper. It was important to take care that the date of execution of document was not prior to the date of purchase of stamp paper as noted at its back. This system has been replaced with e-stamping in many states.

In most states it is now possible to get e-stamping done on documents. E-stamping eliminates the need to purchase stamp papers. In case of e-stamping, the stamp vendor takes all the details of the document required to be stamped and prints out a certificate indicating the value of stamp duty paid along with the details of the document. The certificate should be stapled to the document.

In case an agreement is executed in multiple copies, stamp duty should be paid on only one copy. It is customary to mention in the body of the document the person who will retain the original stamp certificate or stamp paper version of the document. Any signed copy (with original signatures) of the document with photocopy of stamp certificate is deemed to be an original and carries equal weight as the one with the original stamp certificate.

Professional Tax

Professional tax is imposed at the state level. However, not all states impose this tax. Please check whether professional tax is applicable in the state where you wish to operate. Business owners, working individuals, merchants and people carrying out various occupations come under the purview of this tax. As per Constitution of India, the maximum amount that can be charged as Professional Tax is Rs. 2,500 per annum.

C. Local Taxes

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

Property Tax

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

Water Charges

Strictly speaking, this is not a tax but a charge based on actual consumption. However, in most cities of India water charges are not collected based on water consumption since water metering is not very common. In most cities households are provided a 12 mm pipe connection and a fixed charge per household is levied. This is in the range of about Rs. 250 to Rs. 500 per month. Some cities have introduced metering of water and are charging on the basis of actual consumption. Rates for commercial establishments and industries are much higher and are mostly based on actual usage.

16. Labour laws

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

- a) Do not employ anyone with a salary of less than Rs. 15,000- per month (EPF limit). If you can keep all your employees above Rs. 21,000 per month (ESI limit), that is even better.
- b) Keep the number of employees on your rolls to a bare minimum. This can be done by outsourcing all that is either not critical or not specific to your business.
- c) If it is possible, keep the number of employees less than 20.

If you are able to ensure that you do not have any employees earning less than Rs. 15,000- per month, the only (well, almost, the only) labour laws that will be applicable to you are as follows:

- **The Employees' State Insurance Act, 1948** – (ESI Act) applicable when number of employees is ten or more and only to employees earning up to Rs. 21,000 p.m. (Rs. 25,000/- per month in the case of persons with disability)
- **Payment of Gratuity Act, 1972** – applicable when number of employees is ten or more
- **The Employees' Provident Funds and Miscellaneous Provisions Act, 1952** – (EPF Act) applicable when number of employees is twenty or more

A quick glance at the three laws is as follows:

The Employees' State Insurance Act, 1948

Employer is required to deduct 0.75% of employee's salary and add 3.25% of the salary from his side. Total contribution to be deposited is 4% of salary of all employees earning Rs. 21,000- per month or less. Employees in receipt of a daily average wage up to Rs.176/- are exempted from payment of contribution. Employers will however contribute their own share in respect of these employees. Incidentally, the minimum wage payable to any employee in most states is higher than the above-mentioned daily average wage. Employees covered by the insurance receive medical benefits as well as all insurance benefits.

Payment of Gratuity Act, 1972

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

For every completed year of service or part thereof in excess of six months, gratuity is payable at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned. Upper ceiling on gratuity amount is Rs. 2 million.

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

Employer is required to deduct 12% of the salary of employee, add equal amount of contribution from its side and deposit the total with provident fund.

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

Employee Pension Scheme (EPS) is a pension scheme under which part of the employer's contribution is diverted towards EPS.

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

In case the nature of your business requires you to employ large number of workers, many of whom are earning less than Rs. 15,000- per month, you should be prepared to deal with all the labour related matters including unions. If this is the case, you should either partner with an Indian associate who understands Indian workers and related laws or you should get a professional manager who is an expert on such matters.

17. Business culture

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

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

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

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

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

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

Everyone in India has one or more mobile phones. Calling people on mobile at odd hours (keeping in mind the time when the person receiving the call goes to sleep and wakes up) is considered normal. Not picking up a call from someone known is considered rude. Use of answering machine facility is rare in the country. Typically, if one misses a call from someone known, calling back as early as possible is considered almost mandatory.

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



The usual form of greeting does not involve shaking hands even though shaking hands is common. Men may shake hands with other men and women may shake hands with other women; but handshakes between men and women are not common. However, this is changing fast. A lot of women do not mind shaking hands with men.

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

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

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

A note about vegetarianism – Majority of Indians eat meat at least occasionally. However, among business owners you are most likely to meet strict vegetarians who will not even touch eggs, fish or meat. Many Indians who otherwise eat meat, turn vegetarian on some particular day / days of the week or on some days during the year. Most Hindus, who eat meat, will abstain from beef and pork. Of course, Muslims will not even talk about pork. There are also other dietary restrictions. For example, some Jains and handful of Hindus do not consume onion and garlic. It is advisable to always ask your Indian associate or partner his / her food choices on the day that you are eating together. It is most appreciated if you are willing to go with his / her food choices.

Punctuality is the norm as far as business meetings are concerned. However, on social occasions, where large numbers of people are invited, it is customary to be late. It is advisable to

ask others who may be invited to the same event whether it will be appropriate to be late. As a general rule, if someone is waiting for you in particular, you must not be late. On the other hand, if you are faceless part of a large crowd, it is fine to be late.

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

18. Corruption

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

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

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

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

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

A few words of caution:

- ✓ Choose the consultant very carefully. It is best to go through references.
- ✓ Never deal with a professional who claims to be able to get for you something that is not legal or proper. Remember that India has laws for transparency in governance. Sooner or later, your illegal act will be discovered. At that time, the professional, who managed it for you, will disappear and you will be left with mud on your face.
- ✓ Do not do anything which is illegal as per your understanding of Indian law or as per the professional advice available to you.
- ✓ Be extremely meticulous about ensuring that the professionals employed by you file returns, forms etc. to various departments / authorities before the prescribed due dates.

19. GIFT – International Financial Services Centre



Gujarat International Finance Tec-City, also called GIFT City, in Gujarat is India's first operational smart city and hosts India's first and only International Financial Services Centre (IFSC). It's a hub for financial and IT companies from around the world, offering an ideal ecosystem for both local and international businesses. The IFSC at GIFT City enables onshore and offshore financial services and its mission is to offer cross-border financial products and services within a competitive tax environment.

It is home to many multi-national banks, including HSBC, JP Morgan, and Barclays. Furthermore, it includes fintech entities, two international stock exchanges, as well as India's first international bullion exchange.



Potential for IFSC in India



- India is a large purchaser of international financial services
- IFSC can be a significant contributor for achieving self-reliance in International financial services raising overseas bonds / capital, trading in INR -USD derivatives
- IFSC can become India's gateway to world financial market (for outbound and inbound investments)
- Leasing & financing of aircrafts of major Indian airlines currently done overseas

GIFT city offers many facilities, tax breaks, subsidies and government support.

Tax Framework for IFSC

Particulars	Units in IFSC	Investors
Income-tax	<ul style="list-style-type: none"> 100% tax exemption for 10 consecutive years out of 15 years MAT / AMT @ 9% of book profits applies to Company / LLP as a unit in IFSC. MAT not applicable to companies in IFSC opting for new tax regime Dividend income distributed by Company in IFSC to be taxed in the hands of the shareholder. 	<ul style="list-style-type: none"> Interest income paid to non-residents <ul style="list-style-type: none"> ✓ Monies lent to IFSC units not taxable ✓ Long Term Bonds & Rupee Denominated Bonds listed on IFSC exchanges taxable at lower rate of 4% Transfer of specified securities listed on IFSC exchanges by a non-resident or Category III AIF located in IFSC not treated as transfer - Gains accruing not chargeable to tax in India Specified securities include Bond, GDR, Foreign currency denominated bond, Rupee-denominated bond of an Indian company, Derivatives, Unit of a Mutual Fund, Unit of a business trust, Unit of Alternative Investment Fund and Foreign currency denominated equity share of a company
Goods and Services Tax	<ul style="list-style-type: none"> No GST on services – <ul style="list-style-type: none"> ✓ received by unit in IFSC ✓ provided to IFSC / SEZ units or Offshore clients GST applicable on services provided to DTA 	<ul style="list-style-type: none"> No GST on transactions carried out in IFSC exchanges
Other taxes duties	<ul style="list-style-type: none"> State Subsidies – Lease rental, PF contribution, electricity charges 	<ul style="list-style-type: none"> Exemption from STT, CTT, stamp duty in respect of transactions carried out on IFSC exchanges

However, the city is not for everyone. You may consider setting up a business in GIFT city only if you are one of the following businesses:

Ideal destination for IT/ITeS Companies to setup following businesses in, Domestic Area and Special Economic Zone (SEZ) Area		
<ul style="list-style-type: none">• Operation Hub• Back Office• High End Processing• Shared Services• Global Delivery Centre• KPO & BPO• Vertical IT/ITeS Parks• FTWZ	<u>Technology offerings and platforms</u> <ul style="list-style-type: none">• Artificial Intelligence• Data Analytics• Robotics• E-commerce• Tier IV Data Centre	<ul style="list-style-type: none">• Research and Development• Data/Information management• Innovation Centre• ERP/Software and application development• Web/Digital Content Development

Even if you are setting up a business in one of the above areas, generally speaking, it makes sense to set up in GIFT city if your business is not focused on catering to Indian consumers. The cost of setting up and operating in GIFT city is likely to be substantially higher than working from any other city in India. So, please do consider all factors carefully before you decide to move into GIFT city.

For more details, please visit <https://www.giftgujarat.in/>



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

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