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*Guide*

*For*

*Foreign Nationals*

*Wanting to Do Business in India*

2013 Edition

*Anil Chawla Law Associates LLP*  
*Business Lawyers and Strategic Advisors*

[www.indialegalhelp.com](http://www.indialegalhelp.com)

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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 entrepreneurs from across the world, who are looking at India as a country with immense potential. It is not meant for global groups who have the benefit of large legal departments in every country of the world.

Typically, if you are planning an investment in the range of less than USD ten million and are planning to set up a business in India with less than 100 employees, this Guide should be useful for you. This Guide is for foreign nationals who are planning to set up businesses in India using the automatic approval route of Reserve Bank of India.

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

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

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

## **2. Sectors where FDI is permitted under automatic route**

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

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

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

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

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

- Tea Plantation
- Mining and mineral separation of titanium bearing minerals & ores
- Petroleum refining by the Public Sector Undertakings
- Manufacture of items reserved for production in Micro and Small Enterprises (MSEs)
- Defense Industry
- Broadcasting including FM (FM Radio), Cable Network, Direct-to-Home, Headend-In-The-Sky (HITS) Broadcasting Service, Setting up hardware facilities such as up-linking, HUB etc. (Automatic in some cases up to 49%)
- Print Media
- Airports - Existing projects (Automatic up to 74%)
- Non-Scheduled Air Transport Service (Automatic up to 49%)
- Ground Handling Services under Civil Aviation sector (Automatic up to 49%)
- Courier services
- Satellites – Establishment and operation
- Private Security Agencies
- Telecom services including Internet Service Provider and Infrastructure provider providing dark fibre, right of way, duct space, tower etc. (Automatic up to 49%)
- Single Brand product retail trading
- Multi Brand Retail Trading
- Banking and Financial Services including banks, Non-Banking Financial Services, Commodity Exchanges, Asset Reconstruction Companies, Credit Information Companies and Insurance
- Pharmaceuticals – existing companies
- Power Exchanges

**Almost everything that does not fall under the above two categories is under the Automatic Route.** In other words, if the activity that you have in mind is not mentioned above, you can, generally speaking, presume that it is open for investment without need for any approval or permission from any authority. All that you need to do is to bring the money in India through the normal banking channels and fill up some forms that your Bank in India will ask you for.

It will however, be advisable to check if there are any specific conditions or caps on investments in the sector that you are planning to enter before you move your investments.

### **3. Available Structures For Testing the Waters**

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

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

A Liaison Office can undertake the following activities in India:

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

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

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

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

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

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

### **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 Organisations / Non - Profit Organisations / 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.

**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 Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Fort, Mumbai-400 001, along with the prescribed documents including

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

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

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

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.



### **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.

#### **4. Permitted Structures For Investment**

A company incorporated under the Companies Act of India is the most preferred vehicle for doing business in India.

The other option available is Limited Liability Partnership (LLP) firm. Unless there are some compelling reasons to choose the LLP route, it is not advisable to do so since the additional restrictions imposed on LLP's (with foreign partners) does not make it worthwhile.

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.

##### **Company under The Companies Act, 1956 of India**

Company, under the Companies Act, 1956 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, who are the ultimate owners and 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 fifty shareholders. A private company must have a minimum paid-up capital of Rs. 100,000-. India does not permit single person owned company.

A public company must have at least seven shareholders. There is no upper limit on number of shareholders of a public company. A public company must have a minimum paid-up capital of Rs. 500,000-

The minimum paid-up capital must be paid up immediately on incorporation of the company. For example, let us take a limited company with an authorized share capital of Rs. Ten Million. The subscribers of Memorandum and Articles of Association of the company (first shareholders) must agree to subscribe to shares of face value of Rs. 500,000- immediately on incorporation of the company. Balance amount of Rs. 9,500,000- can be brought into the company at any time or not brought in at all as per decision of the directors of the 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 company with authorized share capital of Rupees One Million, Rs. Ten Million, Rs. Hundred Million and Rs One Billion in the states of Delhi, Maharashtra, Gujarat and Madhya Pradesh are given below.

Authorized Share Capital	Cost Of Incorporation of Private Limited Company			
	Delhi	Maharashtra	Gujarat	Madhya Pradesh
	Rupees			
Rs. One Million	51,310	51,900	54,720	51,610
Rs. Ten Million	200,410	205,500	235,320	200,710
Rs. Hundred Million	810,410	860,500	1,160,320	810,710
Rs. One Billion	6,660,410	7,160,500	5,660,320	5,660,710

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

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

Time taken for incorporating a company is likely to be less than 2 weeks if the Shareholders and Directors are Indian. In case of foreign shareholders and directors time is taken up for getting Income Tax Registration for the foreign citizens and also for sending papers for signature. A reasonable estimate of time for completing all formalities with all foreign promoters is about six weeks.

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

A foreigner can act as Director / Managing Director / Whole-time Director / Manager of an Indian company. No permissions are needed for this.

A foreign citizen appointed as Director / Managing Director / Whole-time Director / Manager 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.

Board of Directors is required to meet at least once in every three months. Meetings of Board of Directors can be held anywhere in the world.

Meeting of shareholders must be held at least once every year. Meeting of shareholders has to be held in the city where the registered office of the company is located.

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. However, 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.

## **5. Steps to Get a New Company Incorporated in India**

- Each of the first shareholders and directors of the new company needs to get a Permanent Identification Number (**PAN**) from Income Tax Department of Government of India
- Each of the first shareholders and directors of the new company needs to get Director Identification Number (**DIN**).
- At least one of the promoters must have a **digital signature**. The digital signature is to be purchased from a company in India.
- 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.
- 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 and also does not violate the provisions of emblems and names (Prevention of Improper Use Act, 1950) by availing the services of checking name availability on the portal.
- Apply to the concerned Registrar of Companies (RoC) to ascertain the availability of name in eForm1 A by logging in to the portal. A fee of Rs. 500/- has to be paid alongside and the digital signature of the applicant proposing the company has to be attached in the form. If proposed name is not available, the user has to apply for a fresh name on the same application.
- After the name approval the applicant can apply for registration of the new company by filing the required forms (that is Form 1, 18 and 32) within 60 days of name approval.

- Arrange for the drafting of the memorandum and articles of association by the solicitors, vetting of the same by RoC and printing of the same.
- Arrange for stamping of the memorandum and articles with the appropriate stamp duty.
- Get the Memorandum and the Articles signed by at least two subscribers in his/her own hand, his/her father's name, occupation, address and the number of shares subscribed for and witnessed by at least one person.
- Ensure that the Memorandum and Article is dated on a date after the date of stamping.
- Login to the portal ([www.mca.gov.in](http://www.mca.gov.in)) and fill the following forms and attach the mandatory documents listed in the eForms as follows
  - Declaration of compliance - Form-1
  - Notice of situation of registered office of the company - Form-18.
  - Particulars of the Director's, Manager or Secretary - Form-32.
- Submit the above-mentioned eForms after attaching the digital signature, pay the requisite filing and registration fees and send the physical copy of Memorandum and Article of Association to the RoC.
- After processing of the Form is complete and Corporate Identity is generated, obtain Certificate of Incorporation from RoC.

A public limited company needs to get a Certificate of Commencement of Business (not required for a private company). This is a formality and may need another two-three weeks.

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

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

## **6. PAN for Foreign Citizen Resident Outside India**

Getting Permanent Identification Number (**PAN**) from Income Tax Department of Government of India is necessary before one invests in a company in India or becomes a Director in an Indian company. Getting a PAN is a simple process that any foreign citizen resident outside India can do without the need for professional help.

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

### Proof of Identity Document

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

### Proof of Address Document

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

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

The next step is to visit the website <https://tin.tin.nsdl.com/pan/form49AA.html> and fill the form 49AA online. Steps to be followed after filling the online form are as follows:

- A confirmation screen with all the data filled by the applicant will be displayed.
- The applicant may either edit or confirm the same.
- On confirmation, an acknowledgement will be displayed. The acknowledgement will contain a unique 15-digit acknowledgement number.
- The applicant is requested to save and print this acknowledgement.
- 'Individual' applicants should affix two recent color photographs with white background (size 3.5 cm x 2.5 cm) in the space provided in the acknowledgement. The photographs should not be stapled or clipped to the acknowledgement. The clarity of image on PAN card will depend on the quality and clarity of photograph affixed on the acknowledgement.
- Signature should only be within the box provided in the acknowledgement. The signature should not be on the photograph affixed on right side of the form.
- Signature should be provided across the photo affixed on the left side of the form in such a manner that portion of signature/impression is on photo as well as on acknowledgement.
- The fee for processing PAN application is **Rs. 962.00**. Payment can be made only by way of **Demand Draft payable at Mumbai**. Demand draft should be drawn in favour of '**NSDL - PAN**'. Demand draft shall be payable at Mumbai and the acknowledgement number should be mentioned on the reverse of the demand draft.
- The acknowledgement duly signed, affixed with photograph along with Demand Draft and proof of identity (name in the application should be same as in the proof of identity) & proof of address as specified in the application form is to be sent to NSDL at '**Income Tax PAN Services Unit, National Securities Depository Limited, 3<sup>rd</sup> floor, Sapphire Chambers, Near Baner Telephone Exchange, Baner, Pune - 411045**'.
- Super scribe the envelope with 'APPLICATION FOR PAN - Acknowledgement Number' (e.g. '**APPLICATION FOR PAN - 881010100000097**').
- Your acknowledgement, Demand Draft, if any, and proofs, should reach NSDL within 15 days from the date of online application.



## **7. Share Capital Structure**

An Indian company can have only two types of share capital

- Equity Share Capital – with voting rights
- Preference Share Capital – with right to vote limited to matters that affect preference shares

Preference Shares carry a preferential right to dividend.

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.

## **8. 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 instructions in this regard are issued by Reserve Bank of India.

Borrowers can raise ECB from internationally recognized sources, such as (a) international banks, (b) international capital markets, (c) multilateral financial institutions (such as IFC, ADB, CDC, etc.) / regional financial institutions and Government owned development financial institutions, (d) export credit agencies, (e) suppliers of equipments, (f) foreign collaborators and (g) foreign equity holders.

A "foreign equity holder" to be eligible as "recognized lender" under the automatic route would require minimum holding of paid-up equity in the borrower company as set out below:

- i. For ECB up to USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender,
- ii. For ECB more than USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender and ECB liability-equity ratio not exceeding 4:1

The maximum amount of External Commercial Borrowing (ECB) which can be raised by a corporate other than those in the hotel, hospital and software sectors is USD 750 million or its equivalent during a financial year. Of the overall limit, ECB up to USD 20 million or its equivalent in a financial year should be with minimum average maturity of three years and above USD 20 million or equivalent and up to USD 750 million or its equivalent should be with a minimum average maturity of five years. ECB within the abovementioned limits are considered on Automatic Approval route and hence do not require any permission from authority.

Ceiling on Interest on ECB – Reserve Bank of India follows the concept of All-in-cost. All-in-cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee, and fees payable in Indian Rupees. The payment of withholding tax in Indian Rupees is excluded for calculating the all-in-cost. The all-in-cost ceilings for ECB are reviewed from time to time. The following ceilings are applicable as on the date of this Guide:

<b>Average Maturity Period</b>	<b>All-in-cost Ceilings Over 6 month LIBOR*</b>
Three years and up to five years	350 basis points
More than five years	500 basis points

\*for the respective currency of borrowing or applicable benchmark

In the case of fixed rate loans, the swap cost plus margin should be the equivalent of the floating rate plus the applicable margin.

There is no minimum limit of interest on ECB.

ECB funds should be used mainly for import of capital goods, new projects and modernization / expansion of existing production units.

Amount received by way of ECB is NOT allowed to be used for the following:

- a. For on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate [investment in Special Purpose Vehicles (SPVs), Money Market Mutual Funds (MMMFs), etc., are also considered as investment in capital markets].
- b. For real estate sector,
- c. For working capital, general corporate purpose and repayment of existing Rupee loans.

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

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

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

## **9. Bank Accounts of Foreign Residents in Indian Rupees**

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

- A Ordinary Non-Resident Rupee (NRO) Accounts)
- B Non-Resident (External) Rupee Accounts (NRE Accounts)
- C Non-Resident (Non-repatriable) Rupee Deposit Scheme

### **Ordinary Non-Resident Rupee (NRO) Accounts**

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

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

**Permissible Credits / Debits to NRO account are as follows:**

#### **Credits**

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

- v. Sale proceeds of assets including immovable property acquired out of rupee/foreign currency funds or by way of legacy/inheritance.
- vi. Resident individual may make a rupee gift to a NRI/PIO who is a close relative of the resident individual by way of crossed cheque /electronic transfer. The gift amount would be within the overall limit of USD 200,000 per financial year.
- vii. Resident individual to lend to a Non resident Indian (NRI)/ Person of Indian Origin (PIO) close relative by way of crossed cheque /electronic transfer, subject to conditions within the overall limit of USD 200,000 per financial year.

#### **B. Debits**

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

Balances in NRO accounts are **not normally eligible for remittance abroad**. Any such remittance requires approval of Reserve Bank. Funds derived by remittances from abroad and which cannot be said to have lost their identity as remittable funds will only be considered for remittance abroad.

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

#### **Non-Resident External Rupee (NRE) Accounts**

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

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

overseas trusts in which at least 60% of the beneficial interest is irrevocably held by such persons (OCBs).

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

### **Non-Resident (Non-repatriable) Rupee Deposit Scheme**

This scheme is essentially a facility for non-resident individuals and entities wanting to make investments into India. The Scheme is open to all non-residents including foreign citizens of non-Indian origin (except Pakistani and Bangladeshi nationals) and overseas entities. Accounts under the Non-resident (Non-repatriable) Rupee Deposit Scheme may be opened in Indian rupees by a bank out of the funds in freely convertible currency transferred for the purpose to India in an approved manner. Balances held in the accounts will not be allowed to be remitted abroad under any circumstances.

The deposit may be held for periods ranging from 6 months to 3 years. Interest accrued on the deposit is repatriable.

## **10. Bank Accounts in Foreign Currency**

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

Permitted exporters of goods and services and other beneficiaries of inward remittances in convertible foreign currency are allowed to open and maintain with banks in India accounts expressed in foreign currency and titled "Exchange Earners Foreign Currency (EEFC) Accounts". They may credit to such accounts amounts not exceeding 50% of such remittances and operate on such accounts. In the case of 100% Export Oriented Units or units located in Export Processing Zones or in Software Technology Parks or in Electronic Hardware Technology Parks, amounts up to 70% of the remittances can be credited to such accounts.

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

Bank allows utilization of funds held in EEFC account for making all bona fide payments of the account holder in foreign exchange connected with his trade and business related transactions which are of a current account nature (besides certain permitted capital account transactions) without any restrictions except in the case of remittance of agency commission. In case agency commission on export exceeds 12.5% of invoice value, prior approval of Reserve Bank is needed.

### **Foreign Currency Accounts for Non-Resident Indians**

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

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

FCNR(B) accounts are similar to NRE accounts mentioned in the previous chapter. The provisions applicable to NRE accounts apply to FCNR(B) accounts as well. The banks are allowed to accept deposits from NRIs and OCBs in such currencies as specified by Reserve Bank from time to time. At present, accounts are permitted to be maintained only in Pound Sterling, U.S. Dollar, Euro and Japanese Yen.

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

### **Other Foreign Currency Accounts**

**Foreign Currency Accounts of Overseas Companies executing Projects in India –** Overseas companies executing projects in India are permitted, on application to Reserve Bank, to open foreign currency accounts with banks in India for meeting local expenses in connection with the projects in India.

**Foreign Currency Accounts of Overseas Buyers –** Reserve Bank may consider applications from overseas buyers for opening foreign currency accounts with banks in India provided they are funded by remittances in any permitted currency from abroad for making payments to Indian exporters.



## **11. Technology Transfer, Brand Licensing and Royalty**

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

An Indian company can sign a Technical Collaboration / Trademark License Agreement / Marketing Agreement with a foreign company and pay royalty on sales to the foreign company. There is no upper limit on royalty payments. However, remittances under the agreements where payment of royalty exceeds **5% on local sales and 8% on exports and lump-sum payment exceeds USD 2 million** will be subject to approval of Ministry of Commerce and Industry, Government of India. If royalty payments are within the above limits, no permissions are required.

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.

## **12. Indian Visa for Directors and Employees**

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

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

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

\* Employment Visa is granted up to five years duration in case of foreign technician / expert coming in pursuance of a bilateral agreement between Government of India and foreign agreement / collaboration agreement approved by Government of India. In case of highly skilled foreign personnel employed in IT software and IT enabled sectors, duration of employment visa may be up to three years.

## **Business Visa**

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

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

**Documents required** for grant of business visa are as follows:

- a. A valid travel document and a re-entry permit, if required under the law of the country concerned.
- b. Proof of financial standing and expertise in the field of intended business.

- c. Documents/ papers pertaining to proposed business activity such as registration of the company under the Companies Act, proof of registration of the firm with the State Industries Department or the Export Promotion Council concerned or any recognized promotional body in the relevant field of industry or trade etc.

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

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

### **Duration of Business Visa**

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

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

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

### **Extension of Business Visa**

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

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

### **Employment Visa**

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

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

**Validity of Employment visa** will be as follows:-

- A foreign technician/expert coming to India in pursuance of a bilateral agreement between the Government of India and the foreign government, or in pursuance of a collaboration agreement that has been approved by the Government of India, can be granted an Employment visa for the duration of the agreement, or for a period of five years, whichever is less, with multiple entry facilities.

- In the case of highly skilled foreign personnel being employed in the IT software and IT enabled sectors, the Missions/Posts can grant Employment visa with validity up to 3 years or the term of assignment, whichever is less, with multiple entry facility.
- A foreigner coming to India for employment not covered in the above can be granted Employment visa with **validity up to two years or the term of assignment**, whichever is less, with multiple entry facility.
- In the case of Employment Visa issued for a period of 180 days or less, registration is not required with Foreigners Registration Officer (FRO) / Foreigners Regional Registration Officer (FRRO). The Missions/Posts may issue multiple entry Employment Visa for a period of 180 days or less.
- However, if the Employment visa is valid for a period of more than 180 days, it will carry an endorsement to the effect that the E-visa holder must register with the FRRO/FRO concerned within 14 days of arrival.
- On registration, the FRRO/FRO concerned may issue Residential Permit for the validity of the visa period. However, if there is any change in the residential address, the foreign national concerned shall immediately report the change of address, in writing, to the FRRO/FRO concerned.
- The Employment visa may be extended by the State Governments / Union Territory / FRRO / FRO beyond the initial visa validity period, up to a total period of 5 years from the date of issue of the initial Employment Visa, on an year to year basis, subject to good conduct, production of necessary documents in support of continued employment, filing of Income Tax returns and no adverse security inputs about the foreigner. The period of extension shall not exceed five years from the date of issue of the initial Employment visa.

**Documents required** for employment visa are as follows:

- The foreign national must have a valid travel document and a re-entry permit, if required under the law of the country concerned.
- The foreign national must submit proof of his/her employment of contract or engagement by the company / organization, etc. in India.
- The foreign national must submit documentary proof of his educational qualifications and professional expertise.
- The foreign national must submit documents pertaining to the proposed employment, like the registration of the company under the Companies Act, proof of registration of

the firm in the State Industries Department or the Export Promotion Council concerned, or any recognized promotional body in the field of industry and trade etc.

### **Other Notable Points for Business & Employment Visa**

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

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

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

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

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

### **Visa for Family Members & Cook**

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

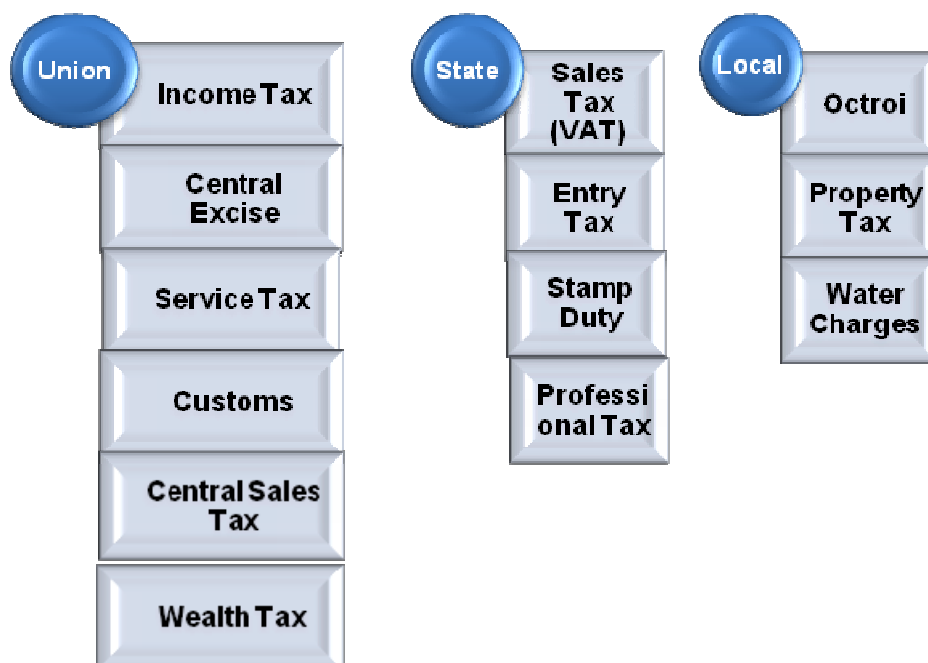
Cook may be granted employment visa. The prescribed minimum salary of USD 25,000 per annum does not apply to ethnic cooks.

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



### 13. Indian Taxation System

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



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

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

#### Union Taxes

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

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

### Income Tax

Income Tax Act, 1961 prescribes that income earned by all residents is subject to Income Tax. Indicative rates of income tax as applicable for incomes earned during financial year 2012-13 (1 April 2012 to 31st March 2013) are as follows:

Net Annual Income Range	Income Tax + Education Cess		
	Individual below 60 years of age	Firm	Company
Up to Rs. 200,000	NIL	<b>30.9%</b> of Income	<b>30.9%</b> of Income (if income less than Rs. 10 million)  <b>32.445%</b> of Income (if income is more than Rs. 10 million)
Rs. 200,000 to Rs. 500,000	10.3% of total income minus Rs. 200,000		
Rs. 500,000 to Rs. 1000,000	Rs. 30,900 + 20.6% of total income minus Rs. 500,000		
Above Rs. 1000,000	Rs. 133,900 + 30.9% of total income minus Rs. 1,000,000		

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

The person receiving a dividend does not have to pay any tax on it. However, the company distributing dividend has to pay 15% of the amount distributed as dividend in addition to the income tax that the company is liable to pay.

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

### Central Excise

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

### **Service Tax**

Service Tax is payable on the value of services provided in respect of all services except a few services on the negative list. Service tax is 12.36% of the value of services. Rebate is provided in respect of service tax paid on input services. Export of services is not liable to service tax.

### **Customs Duty**

Customs duty is levied on imports and exports of goods.

### **Central Sales Tax**

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

### **Wealth Tax**

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

### **State Taxes**

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

### **Sales Tax (Value Added Tax – VAT)**

Sales Tax or Commercial Tax or Value Added Tax (VAT) is levied on sale value of goods (as opposed to excise which is on production value). Rebate is provided on VAT paid on inputs purchased within the state. For example, if a trader buys some product within the state

where he is located for Rs. 100 + vat of 12% = Rs. 112, and sells it at Rs. 125 + 12% = Rs. 140, he will have to deposit with VAT authorities a sum of Rs. 15 – Rs. 12 = Rs. 3.

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

### **Entry Tax**

Entry Tax is applicable in some states (Andhra Pradesh, Assam, Haryana, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Manipur, Odisha, Rajasthan, Uttar Pradesh and West Bengal). This is payable on purchase price of goods purchased by a company from areas outside the city / town where the company is located. Entry Tax substitutes octroi which is levied by municipal authorities as goods are entering a city. Octroi is assessed and paid at the entry point of cities. This often causes long waiting and inconvenience whenever goods are entering a city. Due to the problems associated with octroi, many states have replaced octroi with entry tax. Entry Tax is around 0.5-4% of the value of goods. It is payable on a quarterly / monthly basis as per self-assessment of the company concerned.

### **Stamp Duty**

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

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

### **Professional Tax**

Professional tax is imposed at the state level. However, not all the states impose this tax. The following states impose this levy in India – Karnataka, West Bengal, Andhra Pradesh, Maharashtra, Tamil Nadu, Gujarat, and Madhya Pradesh. Business owners, working individuals, merchants and people carrying out various occupations come under the purview of this tax.

## **Local Taxes**

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

### **Octroi**

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

### **Property Tax**

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

### **Water Charges**

Strictly speaking, this is not a tax but a charge based on actual consumption. However, in most cities of India water charges are not collected based on water consumption since water metering is not very common. In most cities households are provided a 12 mm pipe connection and a fixed charge per household is levied. This is in the range of about Rs. 100 to Rs. 200 per month. Rates for commercial establishments and industries are much higher and are often based on actual usage.

## **14. Labour Laws**

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

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

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

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

A quick glance at the three laws is as follows:

### **The Employees' State Insurance Act, 1948**

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

### **Payment of Gratuity Act, 1972**

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

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

### **The Employees' Provident Funds and Miscellaneous Provisions Act, 1952**

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

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

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

## **15. Business Culture**

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

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

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

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

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

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.

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



addressed respectfully. This is a hierarchical culture, so greet the eldest or most senior person first.



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

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

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

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

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

## **16. 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.

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