

Ashok Maheshwary & Associates LLP

344, Tower B2, Spaze I-Tech Park, Sector -49, Sohna Road, Gurgaon-122018

T: 91 124 4637530, F: 91 124 4148180

www.akmglobal.com

Ashok Maheshwary & Associates LLP is an accounting firm in India with International presence. Our core practice areas include: Corporate Finance, Joint Ventures & Restructuring, International Tax, Dispute Resolution, Transaction Advisory, Mergers & Acquisitions, Entry Strategy for Foreign Investors and Transfer Pricing study & documentation.

About us

1. Offices in Gurgaon, New Delhi, Mumbai, Pune, Bangalore and Singapore and a well spun net of local and international associates. Over **36 years** of experience across varied industries.
2. Specialize in advising clients on complex transaction from tax and regulatory perspective integrated with industry expertise.
3. Our partner, **Amit Maheshwari**, is a part of taxation committee of **FICCI** and also co-chairs the trade and development committee of Indian American Chamber of Commerce.
4. High level of service quality and focus on skill development, with partners regularly invited as speakers at national and international forums.
5. Long term personalized client relationships with the ability to assist them right from devising strategies to enter in the Indian market to managing their compliances and supporting them in complex tax litigation.
6. Our Financial Advisory firm, Financial Pundits LLP has inter-alia, been into large and complex Debt Syndication, Trade Finance, Private Equity Advisory, Merger & Acquisitions, Financial Restructuring Deals. We also assist our clients in making a road map for potential fund raising via IPO and Private Placements.
7. Close association with a number of renowned Accounting and Auditing firms (which are part of top 100/200 CPA Firms) in the US to develop, support and facilitate US-India bilateral business opportunities—both for Indian businesses entering the US market as well as US businesses establishing a business presence in India.
8. **Member** of reputed international alliances, **Leading Edge Alliance**, the second largest global association of accounting firms in the world (#9 in worldwide ranking of networks, associations and alliances), **TPA Global Group**, an independent and specialist provider of expert transfer pricing, tax valuation and customs services to provide transfer pricing and valuation services to their clients globally.
9. Working relationship with **TMI Associates** (the fifth-largest law firm in Japan) to make inroads in the **Japanese market**. One of their attorneys was seconded to our office.
10. Clients include Fortune 1000, Fortune 500 companies, Listed Multinationals, Listed Companies, exciting startups and Large domestic corporate houses.

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11. The firm has been ranked as a **Tier 3 firm** in tax in India in **World Tax Guide 2017**, International Tax Review's directory to the leading tax advisory practices, including law firms, around the world.
12. The firm also got ranked as a **Tier 2 firm** for **Transfer Pricing** services in India in **World Transfer Pricing Guide 2017**. Published by International Tax Review, World Transfer Pricing Guide is the comprehensive guide to the world's leading Transfer Pricing firms in each jurisdiction.
13. **Nominated** by **International Tax Review** for **Asia Tax Award 2016** in “**National Transfer Pricing Firm**” and “**Best Newcomer Asia**” categories.

Initiatives

We also contribute stories/articles for the media (electronic/ press like Worldwide Tax by Tax Analysts.com of the US, The Economic Times, Business Standard, Live Mint & The Wall Street Journal, The Financial Express, Daily News & Analysis, The Hindu Business Line, Money control, Business Today, Press Trust of India, CCH, etc) on the International tax and Transfer Pricing matters (including latest developments) providing our views as to their impact on business environment in India.

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ENTRY OPTIONS FOR FOREIGN INVESTORS IN INDIA

OVERVIEW OF FOREIGN INVESTMENT

Foreign investment refers to the investments made by the residents of a country in the financial assets and production process of another country. The foreign investment is necessary for all developing nation as well as developed nation but it may differ from country to country. The developing economies are in a most need of these foreign investments for boosting up the entire development of the nation in productivity of the labour, machinery etc. The foreign investment provides a channel through which developing countries gain access to foreign capital which is needed most for the development of the nations in the area of industry, telecom, agriculture, IT etc.

Foreign Investment in India-Foreign Direct Investment (FDI) governs inflow into India, regulated by the Foreign Exchange Management Act, 1999 (FEMA, 1999) and its rules, regulations made there under which is subjected to review on an ongoing basis.

WHY INDIA?

India, a South Asian nation, is the seventh-largest country by area, the **second-most populous country** and the most populous democracy in the world. India boasts of an immensely rich cultural heritage including numerous languages, traditions and people. The country holds its uniqueness in its diversity and hence has adapted itself to international changes with poise and comfort. While the economy has welcomed international companies to invest in it with open arms since liberalization in 1990s, Indians have been prudent and pro-active in adopting global approach and skills. One of the fastest growing economies in the world, India has sustained recent global downturn and also emerged as one of the leading nations in terms of GDP growth rate and FDI inflows. Therefore, the country is attracting various multi-national investors to invest into India.

The Indian Government is continuously taking various initiatives to facilitate investment in India. “**Make in India**” is a major new national programme of the Government designed to facilitate investment, foster innovation, enhance skill development, protect intellectual property and build best in class manufacturing infrastructure in the country.

The Government of India has recently announced the government’s latest initiative “**Start Up India, Stand up India**”. This program is designed to encourage financing for start-ups and incentives to boost entrepreneurship. Start-ups had already been a part of the government’s campaign to promote job creation through entrepreneurship.

In recent years, India has emerged as one of the most attractive destinations not only for investments but also for doing business, evident by its significant jump by 12 places in Ease of Doing Business rankings between 2014 and 2015.

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ENTRY ROUTES FOR INVESTMENT IN INDIA

Under the Foreign Direct Investment scheme, investments can be made in shares, mandatorily and fully convertible Debentures and mandatorily and fully convertible Preference Shares of an Indian company by non-residents through two routes:

- Automatic Route: Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the Reserve Bank or Government of India for the investment.
- Government Route: Under the Government Route, the foreign investor or the Indian company shall obtain prior approval of the Government of India (Foreign Investment Promotion Board {FIPB}, Department of Economic Affairs (DEA), Ministry of Finance or Department of Industrial Policy & Promotion, as the case may be) for making investment. The Government of India in its recent budget has already proposed to abolish approval of FIPB.

ISSUES

What options are available with the foreign Investors for starting operations in India?

ENTRY OPTIONS

A **foreign investor/entity** can commence its operations in India through the following routes:

As an Incorporated Entities- A foreign investor can set up its operations in India by forming a separate entity in the form of:

1. Wholly Owned Subsidiary (WOS) - *Foreign companies can set up its wholly-owned subsidiary in sectors where 100% foreign direct investment is permitted under the automatic route (where no government approval is required) under the FDI policy.*
2. Joint Venture (JV) - *Foreign Companies can set up their operations in India by forging strategic alliances with Indian partners.*
3. Limited Liability Partnership (LLP) – *LLP is a new form of structure in India. Foreign companies can set up an LLP in sectors where 100% foreign direct investment is permitted under the automatic route (where no government approval is required) under the FDI policy.*

As an Unincorporated Entities– If an Investor is not willing to form a separate entity, he can also start operations in India by setting up its office as a foreign Company in the form of:

1. Liaison Office (Representative Office) {LO} - *Setting up a liaison or representative office is a common practice for foreign companies seeking to enter the Indian market. The role of such*

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offices is limited to collecting information about the possible market and to providing information about the company and its products to prospective Indian customers.

2. Branch Office (BO) - *As a Branch Office in India, foreign companies can conduct full-fledged business in India. BO can carry the same or substantially the same trading activities as carried out by their parent or group companies. However, BO is not allowed to directly carry out manufacturing activities, though it is permitted to sub-contract these services to an Indian manufacturer.*
3. Project Office (PO) - *Foreign Companies having obtained specific project contracts in India can set up a temporary project office. If certain conditions are satisfied, the PO can be even set-up without any prior approval from the RBI.*

COMPARATIVE ANALYSIS AMONG THE MOST COMMON BUSINESS STRUCTURE IN INDIA

Particulars	Liaison Office	Branch Office	Wholly Owned Subsidiary	Limited Liability Partnership
Characteristic	Representative office with no right to undertake commercial activities in India.	Commercial activities on behalf of head office.	Company with entire share capital owned by foreign investor.	Limited Liability Partnership is hybrid form of structure. It combines the benefits of both the Company and Partnership firm into a single form of organization.
Ownership	Part of overseas company	Part of overseas company	Foreign company directly or through holding company structure.	Foreign Company through the Partnership Agreement.
Management	Managed by Authorised Representative, resident in India	Managed by Authorised Representative, resident in India	Managed by the Directors (at least one resident director)	Managed by the Designated Partners (at least one resident partner)
Status	Foreign Entity	Foreign Entity	Domestic entity	Domestic entity
Criteria for set up	1. Parent Company should have a profit making track record during the immediately	1. Parent Company should have a profit making track record during the immediately	1. A Private Company shall have some paid up share capital and minimum two subscribers.	1. An LLP shall have minimum two Designated Partners and some amount of capital contribution is to be

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	<p>preceding three financial years in the home country.</p> <p>2. Net Worth of the Parent Company not less than USD 50,000 or its equivalent.</p>	<p>preceding five financial years in the home country.</p> <p>2. Net Worth of the Parent Company not less than USD 100,000 or its equivalent.</p>	<p>2. No requirement of track record of parent company as shareholder.</p>	<p>brought up by the Partners.</p> <p>2. No requirement of track record of parent company as Partner.</p>
Setting up requirements	<p>Prior approval of RBI (except in the case of insurance companies)</p>	<p>Prior approval of RBI for branches (other than SEZs)</p>	<p>If activities/sectors fall under the ambit of the automatic route, no prior approval but only post facto filings with the RBI required Otherwise, Government/ FIPB approval and thereafter compliance with post facto filings required</p>	<p>If activities/sectors fall under the ambit of the automatic route, no prior approval but only post facto filings with the RBI required Otherwise, Government/ FIPB approval and thereafter compliance with post facto filings required</p>
Permitted activities	<p>Representing in India the parent company.</p> <p>Promoting export/import from/to India.</p> <p>Promoting technical/financial collaborations between parent/ group companies and companies in</p>	<p>Export/import of goods.</p> <p>Rendering professional or consultancy services.</p> <p>Carrying out research work, in areas in which the parent company is engaged.</p>	<p>Any activity specified in memorandum of association of company</p> <p>Wide range of activities permitted, subject to FDI guidelines</p>	<p>Wide range of activities permitted, subject to FDI guidelines</p>

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	<p>India.</p> <p>Acting as a communication channel between the parent company and Indian companies.</p>	<p>Promoting technical or financial collaborations between Indian companies and parent or overseas group company.</p> <p>Representing the parent company in India and acting as buying/ selling agent in India.</p> <p>Rendering services in Information Technology and development of software in India.</p> <p>Rendering technical support to the products supplied by parent/group companies.</p> <p>Foreign airline/shipping company.</p>		
Applicable laws	FEMA (Establishment in India of branch or office or other place of business) Regulations 2000	FEMA (Establishment in India of branch or office or other place of business) Regulations 2000	The Companies Act, 2013	The Limited Liability Partnership Act, 2008

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Limitation of Liability	Unlimited liability	Unlimited liability	Liability limited to the extent of equity participation in the Indian company.	Liability limited to the extent of capital contribution of the Partners.
Annual Compliance	<ol style="list-style-type: none"> 1. Yearly filings include the filing of audited accounts of the LO, World Accounts with Registrar of Companies. 2. Yearly submission of Activity Certificate & Annual Report with the RBI and AD Bank. 3. Yearly submission of Activity Certificate and Annual report with the concerned Director General of Police. 4. Yearly submission of Annual Activity Certificate (AAC) along with audited financials to Directorate General of 	<ol style="list-style-type: none"> 1. Yearly filings include the filing of audited accounts of the BO, World Accounts with Registrar of Companies 2. Yearly submission of Activity Certificate & Annual Report with the RBI and AD Bank. 3. Yearly submission of Activity Certificate and Annual report with the concerned Director General of Police. 4. Yearly submission of Annual Activity Certificate (AAC) along with audited financials to Directorate General of 	<ol style="list-style-type: none"> 1. Yearly filing of financials and Annual Return with the Registrar of Companies. 2. Annual Compliance with the Reserve Bank of India in case shares are allotted to foreign entity. 3. Yearly Filing of Director Disclosure Statement with the ROC. 4. Yearly Filing for the Appointment of Auditor with ROC. 	<ol style="list-style-type: none"> 1. Yearly filing of financials and Annual Return with the Registrar of Companies. 2. Annual Compliance with the Reserve Bank of India in case capital is contributed by the foreign entity.

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	Income Tax.	Income Tax.		
Compliance requirements under the IT Act	Generally, no tax liability, since it cannot carry out any commercial or income earning activities Suggest to file an IT return for each financial year	Company obliged to pay tax on income earned and required to file returns of income in India No further tax on repatriation of profits, which are permissible in both cases, required.	Liable to be taxed on global income on a net basis. Dividend declared freely remittable but subject to distribution tax on dividends declared/distributed / paid, pursuant to which dividend is tax free for all shareholders - limited inter-corporate dividend set off applicable.	Liable to be taxed on global income on a net basis. Profits can be freely repatriated without any taxes.

OUR SERVICES

For starting operations in India, it is important to understand the process and the governing laws of the country. Depending upon the nature of business, there are numerous approvals a company requires from the government before starting operations. The mode of entry also plays an important role in achieving the strategic objective.

We provide incorporation services, helping various multinational companies to set up and run their operations smoothly in India, assisting them in taking required regulatory approvals and making best possible decisions for their operations.