

Chapter 11 - Setting up of Business outside India and Issues Relating thereto

This chapter focuses on key considerations for Indian companies setting up businesses outside India.

To regulate and govern Overseas Investment and Foreign Direct Investment, the Foreign Exchange Management Act (FEMA) 1999, was introduced.



Section 6 of FEMA 1999, gives RBI the power to regulate foreign exchange for investment abroad.

FEMA Overseas Investment Rules

In August 2022, RBI combined the earlier



FEMA Overseas Direct Investment (ODI) Regulation and other regulation



into



FEMA (Overseas Investment) Rules and Regulation, 2022.

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Strategic Sector

One of the key change in New Regime (Policy) of Overseas Investment (OI) Regulation, is introduction of "Strategic Sector" concept.

Usually, Overseas Investment are made in form of Limited liability structure, but investment in Strategic Sector may not require a limited liability structure for foreign entity. This allows unincorporated entities in such sectors.

Strategic Sector include

- Energy (oil, gas, coal)
- Natural Resources (like Mineral ores)
- Submarine Cable System
- Start-ups, and
- Other sectors as defined by Central Government.

What is Overseas Investment (OI)?

$$OI = \text{Financial Commitment (FC)} + \text{Overseas Portfolio Investment (OPI)}$$

FC refers to, Aggregate of

- ODI

- Debt Investment

- Non fund Commitment

to foreign entity including

Step down subsidiary.

OPI refers to investment in foreign

securities where investor holds

less 10% of share capital

without any control.

Tip → 10% or more it becomes ODI.

by an Indian Entity

to

Foreign Entity.

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Indian Entity can be one of the following:

- A company defined under Company Act 2013
- LLP under the LLP Act 2008
- Partnership firm under Partnership Act 1932
- A body corporate under any Indian law

Prohibited Investments

Certain Overseas investments by Indian

Residents are prohibited:

1. Real Estate Activity
2. Gambling in any form
3. Indian Rupee linked financial product
4. FC in more than 2 layers of subsidiaries

Real estate does not include development of township, construction of residential or commercial premise, roads or bridges for sale/lease.

When does Investment require prior approval from CG?

Certain investment require prior approval from central government and RBI

1. Investment in Pakistan or restricted countries
2. Financial commitment exceeding USD 1 billion or 100% of Net worth

In some cases before making any Overseas Investment, NOC must be obtained

- ① From bank, if account classified as Non Performing Assets.
- ② From bank, if person classified as Willful defaulter.
- ③ From regulator, if person is under investigation.

Reporting requirement for overseas Investment

- ① Financial Commitment must be reported at time of outward remittance.
- ② Disinvestment should be reported within 30 days.
- ③ Restructuring should be reported within 30 days.
- ④ OPI transfer should be reported within 60 days.
- ⑤ Submit Annual Performance Report (APR) by 31st December for each foreign entity.

Government's Support for Overseas Investment

1. Relaxation of Restrictions like raising funds via Pledge of Shares, local and foreign assets.
2. Improvement in India's economic stability and social factors.
3. Fostering (promoting) climate for mutual growth and development of India and global economy.
4. Inflow of foreign exchange helps domestic company expand their network globally.

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Issues in Choosing Business Location Outside India

1. Geographical Consideration

- Infrastructure development like Post, Airport, Storage.
- Access to transportation and supply chain
- Talent Pool Availability of skilled resources
- Risk factors like Pandemic and natural calamities.

2. Economic Aspects

- Ease of doing business - visa availability, entry barriers, exit.
- Cost of doing business - ROI comparison with other locations.
- Labour laws - Availability of labour, labour union, work culture.
- Taxation - Local tax environment, tax incentives, etc.

3. Political Aspect

- Country relation with its neighbouring countries.
- Impact of local regulation, permits, license, approvals.

4. Social Aspects

- Trade Relation with trade bodies like WTO
- Expatriate Friendliness - ease of relocation of key personnel.

like availability of house, indian food, language

5. Technological Aspects

- Safeguarding of Intellectual Property in business location.
- Communication infrastructure like Power, Telecom, etc.
- Check Technological ecosystem like innovation, R&D.
- Research technological regulation regarding data privacy, Cybersecurity.

Here comes part B of this chapter, which focuses on
Setting up of Business in other Countries

Setting up a Business in New Zealand

1. Registering a Company

- Reserve the company name using realme login via New Zealand Companies Office
- Name will be reserved for 20 working days.
- There should be at least 1 share, 1 shareholder, 1 director.
- Once processed, you will receive Certificate of Incorporation by email.

2. IR & GST Registration

- Apply for IRD Income Revenue Department number and GST registration by furnishing required information.

3. New Zealand Business Number (NZBN)

- NZBN is assigned automatically to companies after completion.

4. Register for trademark if any via IPONZ (Intellectual Property office New Zealand)

1. Registering a Company

- Submit application for name reservation to Accounting and Corporate Regulatory Authority (ACRA) via Bizfile+.
- Pay fees of SGD 15.
- Once name is approved, it is reserved for 120 days.
- Submit the necessary documents and pay SGD 300.
- Registration is processed in 15 minutes.

2. Types of Companies in Singapore

- Exempt Private Company
- Private Company limited by Shares
- Public Company limited by Shares
- Public Company limited by Guarantee
- Unlimited Private Company
- Unlimited Exempt Private Company
- Unlimited Public Company

3. Employee Compensation Insurance

- Under Work Injury Compensation Act (WICA), every employer must insure employee against workplace injuries.
- Insurance can be purchased through NTUC directly on Bizfile+.
- Insurance mandatory unless waived by minister.

4. GST Registration - mandatory if turnover exceeds SGD 1 million.

Setting up a Business in Hong Kong China

1. Register a Company

- Apply for name reservation to Companies Registry.
- Once name is approved, submit the incorporation form (NNC 1), article of association and notice of registration office.
- For approval, paper submission takes four working days, in case of e-registry, it is processed in 1 day.

2. Employees Compensation Insurance & MPF Scheme

- Employers must provide Compensation Insurance to cover liability for employee injury or fatalities.
- Employers must enroll employees in Mandatory Provident fund scheme and make contribution.
- Enrollment can be done via private insurance company or MPF registered intermediaries.
- This process can also be completed online.

1. Registering a Company

- Apply to New York State Department of State Division of Companies
- Make application of name reservation with \$20 fee, name to be reserved for 60 days
- Once approved, file company's Article of Organisation with the state.
- Processing time is usually 7 days. For expedient (speedy) processing -
 - 2 hour turnaround = \$ 150
 - Same day = \$ 75
 - 24 hour = \$ 25

2. Apply for Federal Employer Identification Number (FEIN)

- Just like the PAN and PF Number in India.
- Apply to US Internal Revenue Service for FEIN for tax purposes.

3. Apply for State Sales Tax

- Register as Sales Tax Vendor if selling taxable goods or service
- Make application to New York State Department of Taxation and Finance in form OTF-17.
- Register 20 days before starting business.

4. Worker's Compensation and Disability Insurance

- New York employers must obtain and maintain worker's compensation insurance and disability insurance for its employees by purchasing a worker's compensation insurance policy and disability benefits insurance.
- Company must give its Federal EIN to insurance carrier when obtaining worker's compensation.
- Insurance can be purchased from an authorized private insurance carrier or through NYS Insurance Fund.

Setting up a Business in United Kingdom

1. Register a Company

- Make application to Companies house via form IN01
- Submit the required information like Statement of Compliance, Company's Capital Structure, details of first officers and registered office.
- Business can apply by themselves (Self Registration) or through Third Party agents.

2. Register for PAYE (Pay AS You Earn)

- Like PAN number in India
- Apply to HMRC (His Majesty Revenue and Custom)
- Register for PAYE to deduct taxes from employee's wages
- Employers must report PAYE every time employees are paid.
- PAYE reporting done on real time basis.

3. Register for Value Added Tax (VAT)

- Like GST in India, UK has VAT
- Register for VAT if taxable turnover exceeds GBP 85,000
- Business may also voluntarily register for this.

4. Employer Insurance

- As per Employer's liability Act 1969, every employer has to obtain insurance of its employee.
- Minimum cover of GBP 50,00,000, in case of failure penalty of GBP 2500 each day.
- Proof of insurance must be displayed at workplace.

Setting up a Business in Canada

Planning a business

Assessing readiness, choosing a business structure, market research and writing a business plan.

Choosing a business name

Selecting a good name, checking if a name is taken, registering and protecting business name.

Registering business with the government

Registering or incorporating business, plus how to apply for a business number or tax account.

Applying for business permits and licences

Permits and licences that may need for business from all three levels of government.



Setting up a Business in Australia

1. Australian Business Number (ABN) 📄:

- An ABN is a unique identifier for a business used by customers, suppliers, and the Australian Taxation Office (ATO).
- Registration for an ABN is free.

2. Business Name 📌:

- A business name helps distinguish your business from others, allowing customers to identify it easily.

3. Tax Registrations for Business 💰:

- Not all taxes apply to every business. The tax obligations depend on the type of business you are setting up.

4. Licences and Permits 📄:

- Depending on the location and industry of the business, various licenses and permits are required (e.g., zoning laws, food license).

5. Company Registration 🏢:

- If opting for a company structure, it must be registered as a legal entity.

6. Trademark ™:

- Registering a trademark protects your business name and brand from being used by others.

