# Setting up of Business outside India and Issues Relating Thereto

Lesson 11

## KEY CONCEPTS

■ Overseas Direct Investment ■ Automatic Route ■ Approval Route ■ Foreign Investment

## Learning Objectives

**To understand:**

- Regulatory framework under Foreign Exchange Management Act, 1999
- Eligibility, prohibitions, method of fundings, investment under automatic route and approval route
- Issues in choosing location outside India such as: Geographical location, economical aspects, political aspects, social aspects, technological aspects

## Lesson Outline

## REGULATORY FRAMEWORK

- The Foreign Exchange Management Act, 1999
- FEM (Overseas Investment) Rules, 2022 (hereinafter referred as "OI" Rules)
- FEM (Overseas Investment) Regulations, 2022 (hereinafter referred as "OI" Regulations)
- FED Master Direction No.15/2024-25

## INTRODUCTION

The year 1991 was the golden year for Indian economy. The foreign investment policies of the country changed and opened gates for foreign investments to enter the Indian Territory. This also made Indians eligible to set up business abroad or make an investment abroad as the case may be.

Prior to 1991, exports were a predominant way of expanding business abroad and hence the emphasis was on export promotion strategies with restrictions on cash outflows so as to conserve our foreign exchange reserves.

Till 1991, India's economic integration with the rest of the world was very limited. Business houses across industries realised that for expansion and growth of Indian companies, it is necessary that they increase their share in the world market not only by exporting their products but also by acquiring overseas assets and establishing their presence abroad. This meant that business had to be set up outside India in order to ensure their presence in the concerned markets. This requirement, paved the way to formulate regulations to make investments abroad. Accordingly, the policy for outward capital flows has evolved.

While India has traditionally been an attractive destination of FDI, it has also emerged as an important source of foreign investments for various countries particularly after the introduction of economic reforms in 1991. The policy on Indian investments overseas was first liberalised in 1992. Under this policy, an Automatic Route for overseas investments was introduced and cash remittances were allowed for the first time with restrictions on the total value. The basic intent for opening up the regime of Indian investments overseas had been the need to provide Indian industry access to new markets and technologies with a view to increase their competitiveness globally and help the country's export efforts.

The introduction of Foreign Exchange Management Act in the year 1999 changed the entire perspective on foreign exchange particularly those relating to investment abroad. This new change brought in more of management of "Foreign Exchange" and not "Regulation" unlike the earlier Act. This Act made sweeping changes in relaxing the norms for most of the policies including the overseas investments. It aimed to facilitate external trade and payments as well as to promote an orderly development and maintenance of foreign exchange market in India.

Overseas investment is a substantial way to enter the international market, and in the last decade, India has been successful to establish its presence felt in the global arena. India has been instrumental in signing various memorandum of understandings (MOUs), free trade agreements (FTAs) and Bilateral talks with other nations. Recently, India has signed various Free Trade Agreements (FTAs) with its trading partners, including agreements such as India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement (CECPA), India-UAE Comprehensive Partnership Agreement (CEPA) and India-Australia Economic Cooperation and Trade Agreement (IndAus ECTA). This paves way for India to increase its economy's competitiveness on a global scale and allows Indian corporates to increase their overseas direct investments. The projections for overseas markets look promising in few realms. For instance, the Indian industry is expected to grow its revenue from Africa through IT services, infrastructure, agriculture, pharmaceuticals, and consumer products. According to the Ministry of External Affairs, India has initiated a move to set up a direct sea and air link between India and the Latin American region as Indian corporates plan significant investments in the mining, oil, IT and pharmaceutical sectors in that region. Overseas investment by Indian companies is anticipated to upsurge, backed by stable market conditions and the considerable impact of the investment on local economies.

According to the Reserve Bank of India, "Overseas Direct Investment" or "ODI" means investment by way of acquisition of unlisted equity capital of a foreign entity, or subscription as a part of the memorandum of association of a foreign entity, or investment in ten per cent, or more of the paid-up equity capital of a listed foreign entity or investment with control where investment is less than ten per cent of the paid-up equity capital of a listed foreign entity. Where an investment by a person resident in India in the equity capital of a foreign entity is classified as ODI, such investment shall continue to be treated as ODI even if the investment falls to a level below ten per cent. of the paid-up equity capital or such person loses control in the foreign entity.

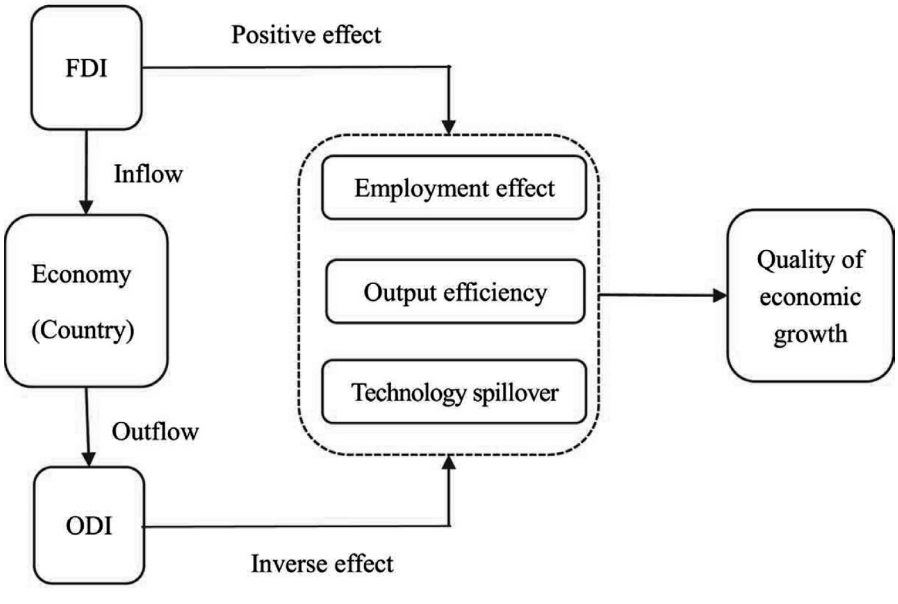
## EVOLUTION

The origin of India's overseas investment can be traced back to the early 1960s. During that time, Sri Lanka and some African countries had emerged as attractive investment destinations for a selected number of Indian business conglomerates like Tata, Birla and Kirloskar, which sought to expand their production bases by investing in cross-border activities. Even though a few Indian enterprises had begun to assume a global foothold through direct overseas investments since the 1960s, Overseas Investment became a prominent feature of Indian businesses only in the aftermath of economic reforms of 1991.

The phenomenal upsurge in India's Overseas Investment flows in the 1990s and consecutive decades can, to a considerable degree, be attributed to a dramatic shift in India's domestic and foreign policy environment.

Prior to the 1990s, India's restrictive macroeconomic, trade and industrial policies were predominantly responsible for the inward-orientated nature of Indian businesses which often led them to seek protection from incoming FDI and imports. In the 1990s, however, significant reforms in trade policy like the abolition of import licensing system, gradual removal of non-tariff barriers (NTBs), major reductions in tariff rates, etc. led to an increased inflow of cheaper imports, which compelled Indian firms to become more competitive in the global market.

Post 1991, Overseas Investment has emerged as an important pathway for private as well as public enterprises to garner greater market access and gain global presence in the areas of mutual synergies and knowledge. Such investments have resulted in enhanced economic integration via business cooperation between India and the other countries, increased foreign trade and entitlements on such investments are an important source of foreign exchange earnings.




India's outbound investments have evolved dramatically, not only in terms of volume but also in terms of geographic distribution and sectoral makeup. A developing nation like India, constantly looks for opportunities to invest extensively outside India as it helps the economy as a whole. Overseas investments by Indian

companies also helps in improving the performance of the country's service and manufacturing sectors and aids in the battle against rising unemployment rates. With rising M&A activity, companies will get direct access to newer and more extensive markets and better technologies, enabling them to increase their customer base and achieve a global reach.

## INVESTMENTS & DEVELOPMENTS

India is primarily a domestic demand-driven economy, with consumption and investments contributing to 70% of the economic activity. With an improvement in the economic scenario and the Indian economy recovering from the Covid-19 pandemic shock, India is relatively well placed than the rest of the world. Despite major headwinds that continue to pose risks in the short term, the Indian economy has remained strong owing to robust policy measures in place. This gives Indian businesses an advantage to make investments abroad and broaden their operational footprint in such nations. New innovations from abroad would be brought to India with the help of knowledge spillover, and India itself would contribute to the growth of other nations. In this manner, a mutual benefit is achieved. In this regard, there have been several overseas investments made by Indian companies.

The Government has reduced the restrictions on Indian companies investing overseas by removing the cap on raising funding through the pledge of shares, local assets, and foreign assets in order to encourage international investment. In addition to this, improving social and economic stability in the nation enables RBI to support foreign investments and other international collaborations. One of the key elements of economic progress in every nation is its robust foreign investments. It demonstrates the confidence and trust that one country has in another and also aids in domestic companies to explore better worldwide networks, markets, technology, talents, and resources while enhancing their brand image. In this view, the government has undertaken a number of steps to support Indian investments abroad.

## LAWS /AUTHORITY GOVERNING SETTING UP OF BUSINESS OUTSIDE INDIA

**Reserve Bank of India**

The Reserve Bank of India has started issuing Master Directions on all regulatory matters beginning January 2016. The Master Directions consolidate instructions on rules and regulations framed by the Reserve Bank under various Acts including banking issues and foreign exchange transactions. The process of issuing Master Directions involves issuing one Master Direction for each subject matter covering all instructions on that subject. Any change in the rules, regulation or policy is communicated during the year by way of circulars/press releases. The Master Directions will be updated suitably and simultaneously whenever there is a change in the rules/ regulations or there is a change in the policy. All the changes will get reflected in the Master Directions available on the RBI website along with the dates on which changes are made. Explanations of rules and regulations will be issued by way of Frequently Asked Questions (FAQs) after issue of the Master Directions in easy to understand language wherever necessary.

In keeping with the spirit of liberalisation and to promote ease of doing business, the Central Government and the Reserve Bank of India have been progressively simplifying the procedures and rationalising the rules and regulations under the Foreign Exchange Management Act, 1999.

Overseas Investments are prohibited unless made in accordance with the FEMA Act, OI Rules and OI Regulations. The investments already made in accordance with the erstwhile ODI Regulations will be deemed to have been made under OI Rules and Regulations.

## FOREIGN EXCHANGE MANAGEMENT ACT, 1999

Section 6 of the Foreign Exchange Management Act, 1999 provides powers to the Reserve Bank to specify, in consultation with the Government of India, the classes of permissible capital account transactions and limits up to which foreign exchange is admissible for such transactions. Section 6(3) of the aforesaid Act provides powers

to the Reserve Bank to prohibit, restrict or regulate various transactions referred to in the sub-clauses of that sub-section, by making Regulations.

In exercise of the above powers conferred under the Act, the Reserve Bank, with effect from August 22, 2022, has combined erstwhile FEMA (Transfer or Issue of Foreign Security) Regulations, 2004 ('erstwhile ODI regulations') and FEMA (Acquisition and Transfer of immovable property outside India) Regulations, 2015 into FEMA (Overseas Investment) Rules, 2022 ('OI Rules') and FEMA (Overseas Investment) Regulations, 2022 ('OI Regulations') and the erstwhile regulations stand superseded.

RBI has also issued the compiled FEMA (Overseas Investment) Directions, 2022 ('OI Directions') which has been replaced by FED Master Direction No.15/2024-25 covering the OI Rules and OI Regulations grouping the requirements under four categories viz. Definition and Associated Details, General provisions, Specific provisions and Other operational instructions to the AD Banks. It also provides for certain compliance requirements from the erstwhile ODI Master Directions, which are not covered in OI Rules or Regulations.

A significant step has been taken with operationalisation of a new Overseas Investment regime. The new regime simplifies the existing framework for overseas investment by persons resident in India to cover wider economic activity and significantly reduces the need for seeking specific approvals. This will reduce the compliance burden and associated compliance costs.

The changes brought about through the new rules and regulations are summarised below:

i. enhanced clarity with respect to various definitions;

ii. introduction of the concept of "strategic sector";

iii. dispensing with the requirement of approval for:

   a. deferred payment of consideration;

   b. investment/ disinvestment by persons resident in India under investigation by any investigative agency/ regulatory body;

   c. issuance of corporate guarantees to or on behalf of second or subsequent level step down subsidiary (SDS);

   d. write-off on account of disinvestment;

iv. introduction of "Late Submission Fee (LSF)" for reporting delays.

"Strategic sector" shall include energy and natural resources sectors such as Oil, Gas, Coal, Mineral Ores, submarine cable system and start-ups and any other sector or sub-sector as deemed fit by the Central Government. The restriction of limited liability structure of foreign entity shall not be mandatory for entities with core activity in any strategic sector. Accordingly, Overseas Direct Investment (ODI) can be made in such sectors in unincorporated entities as well. An Indian entity is also permitted to participate in a consortium with other international operators to construct and maintain submarine cable systems on co-ownership basis. AD banks may allow remittances for ODI in strategic sector after ensuring that Indian entity has obtained necessary permission from the competent authority, wherever applicable.

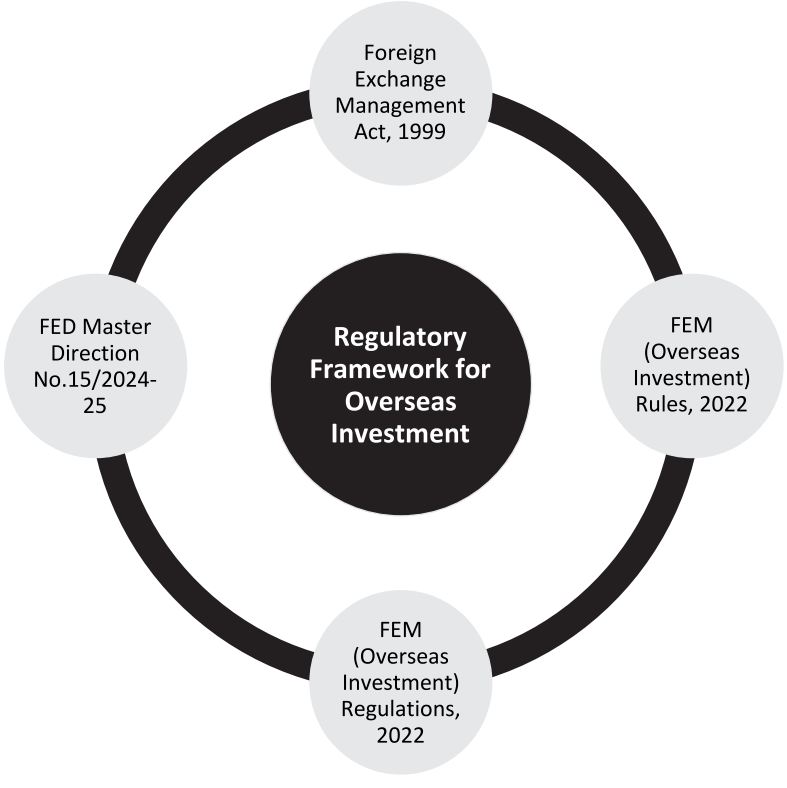
## OI Rules v/s OI Regulations

OI Rules provides the regulatory framework for making of overseas investment covering the permissions, conditions for making overseas investment, restrictions from making Overseas Direct Investment ('ODI'), pricing guidelines, transfer, liquidation and restructuring of ODI. While the OI Rules have been framed by CG, however, the same will be administered by the RBI as per Rule 3(1).

Segregation of the regulatory and the operational part in OI rules and regulations respectively.

OI Regulation, are issued by RBI under section 47 of FEMA, 1999. OI Regulations, on the other hand, provides only the operational part covering conditions for undertaking Financial Commitment ('FC'), other than by

investment in equity capital, consideration in case of acquisition or transfer of equity capital of a Foreign Entity ('FE'), mode of payment, obligations of Persons Resident in India ('PRII'), reporting requirements, consequence of delay in reporting and restrictions on further FC/ transfer.




## OVERSEAS INVESTMENT

Under the erstwhile ODI regulations, effective till August 21, 2022, there was a concept of direct investment outside India in JV and WOS that excluded portfolio investment and FC.

OI Rules combine the two to define Financial Commitment and separately define the term Overseas Portfolio Investment ('OPI').

"Financial commitment" by a person resident in India means the aggregate amount of investment by way of ODI, debt other than Overseas Portfolio Investment (OPI) and non-fund based facility or facilities extended by it to all foreign entities. An Indian entity may lend or invest in any debt instruments issued by a foreign entity or extend non-fund based commitment to or on behalf of a foreign entity, including overseas Step down Subsidiaries of such Indian entity, subject to the following conditions:

a) the Indian entity is eligible to make ODI;

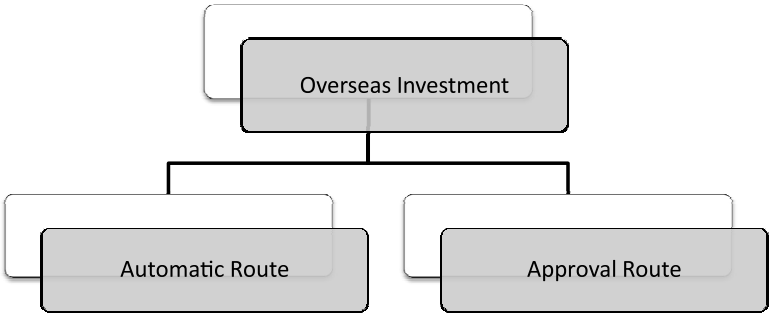
b) the Indian entity has made ODI in the foreign entity;

c) the Indian entity has acquired control in the foreign entity on or before the date of making such financial commitment.

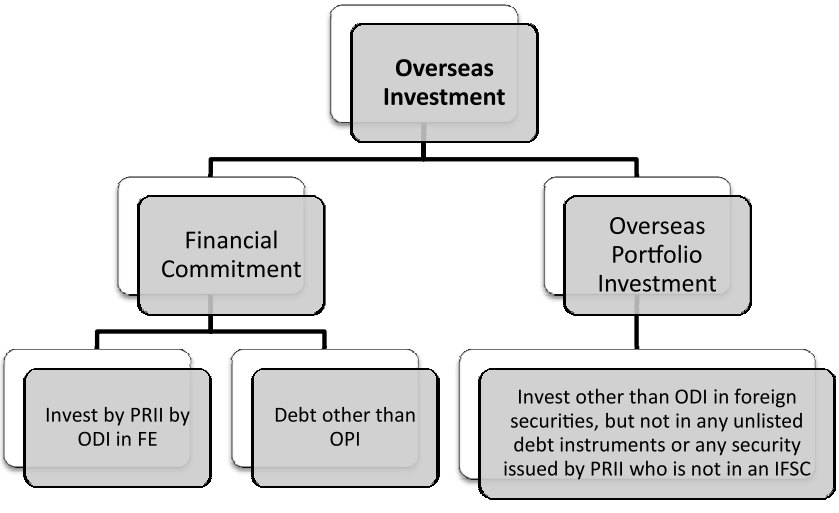
"Overseas Investment" or "OI" means financial commitment and Overseas Portfolio Investment by a person resident in India;

➔ OI = FC + OPI

Overseas Investment (or financial commitment) can be made under two routes viz. (i) Automatic Route and (ii) Approval Route subject to the provisions contained in the OI Rules, OI Regulations and OI Directions.




The classification as ODI depends on the nature of instruments in which investment is made, the nature of the entity in which investment is made and whether control has been acquired or not.




## ELIGIBILITY (ENTITIES ARE REFERRED TO AS "INDIAN ENTITY" AND FOREIGN ENTITY)

**"Indian entity"**

The extant concept of Indian party (IP) where all the investors from India in a foreign entity were together considered as IP, has been substituted under the new regime with the concept of Indian entity where each investor entity shall be separately considered as an Indian entity. Indian entity shall mean:

- a Company defined under the Companies Act, 2013 or
- a Body Corporate incorporated by any law for the time being in force or
- a Limited Liability Partnership formed under the Limited Liability Partnership Act, 2008 or
- a Partnership Firm registered under the Indian Partnership Act, 1932.

**"Foreign Entity"**

The extant concept of Joint Venture (JV) and Wholly Owned Subsidiary (WOS) is substituted under the new regime with the concept of foreign entity, which means an entity formed or registered or incorporated outside India, including in International Financial Services Centre (IFSC) in India, that has limited liability.

'Limited liability' would mean a structure such as a limited liability company, limited liability partnership, etc. where the liability of the person resident in India is clear and limited.

In case of a foreign entity being an investment fund or vehicle, duly regulated by the regulator for the financial

sector in the host jurisdiction and set up as a trust outside India, the liability of the person resident in India shall be clear and limited not exceeding the interest or contribution in the fund in any manner. Further, the trustee of such fund shall be a person resident outside India.

"Subsidiary"/ "step down subsidiary (SDS)" of a foreign entity means an entity in which the foreign entity has control and the structure of such subsidiary/SDS shall comply with the structural requirements of a foreign entity, i.e., such subsidiary/SDS shall also have limited liability where the foreign entity's core activity is not in strategic sector. The investee entities of the foreign entity where such foreign entity does not have control (as defined above) shall not be treated as SDSs and therefore need not be reported henceforth.

## NON-APPLICABILITY

Rule 4 of the OI Rules states that nothing in these rules or the Foreign Exchange Management (Overseas Investment) Regulations, 2022 shall apply to–

- Investments made by a financial institution in an IFSC. The OI Rules prescribes the conditions for investment in IFSC vide Schedule V to OI Rules;
- Acquisition or transfer of any investment outside India made out of Resident Foreign Currency Account;
- Acquisition or transfer of any investment outside India made out of foreign currency resources held outside India by a person who is employed in India for a specific duration irrespective of length thereof or for a specific job or assignment, duration of which does not exceed three years; or
- Acquisition or transfer of any investment outside India made in accordance with Section 6(4) of FEMA Act i.e. where the investment in the foreign security or any immovable property situated outside India was acquired when the person was resident outside India or inherited from a person who was resident outside India.

The erstwhileODI Master Directions provided general permission for purchase/acquisition of securities by a person resident in India as bonus shares on existing holding of foreign currency shares and also for rights shares against holding of shares in accordance with provisions of law. The person resident in India, acquiring the rights, may renounce such rights in favour of a person resident in India or a person resident outside India. The OI Rules covers the same under Rule 7.

## PROHIBITIONS

1. No person resident in India shall make ODI in a foreign entity engaged in –
   - real estate activity;
   - gambling in any form; and
   - dealing with financial products linked to the Indian rupee without specific approval of the Reserve Bank.

   The expression "real estate activity" means buying and selling of real estate or trading in Transferable Development Rights but does not include the development of townships, construction of residential or commercial premises, roads or bridges for selling or leasing.
2. Any ODI in start-ups recognised under the laws of the host country or host jurisdiction as the case maybe, shall be made by an Indian entity only from the internal accruals whether from the Indian entity or group or associate companies in India and in case of resident individuals, from own funds of such an individual. Further Master Direction 9 provides that any ODI in startups in accordance with rule 19(2) of OI Rules shall not be made out of funds borrowed from others. The AD bank, before facilitating the transaction, shall obtain necessary certificate in this regard from the statutory auditors/chartered accountant of the Indian entity/investor.

3. No person resident in India shall make financial commitment in a foreign entity that has invested or invests into India, at the time of making such financial commitment or at any time thereafter, either directly or indirectly, resulting in a structure with more than two layers of subsidiaries:

   Provided that such restriction shall not apply to the following classes of companies mentioned in Rule 2 of the Companies (Restriction on Number of Layers) Rules, 2017 as may be amended from time to time, namely –

   a. a banking company as defined in the Banking Regulation Act, 1949;

   b. a non-banking financial company as defined in the Reserve Bank of India Act, 1934 which is registered with the Reserve Bank and considered as systematically important non-banking financial company by the Reserve Bank;

   c. an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999; and

   d. a government company referred to in the Companies Act, 2013.

## AUTOMATIC ROUTE

Rule 9 of OI Rules, 2022 lays down the general rule for overseas investments under the automatic route. It states that subject to prescribed limits and conditions laid down in these rules and ODI Regulations 2022, any overseas investment by a person resident in India shall be made in a foreign entity engaged in bona-fide business activity, directly or through step-down subsidiary or the special-purpose vehicle. This is rule is subject to limitation stated as "Save as otherwise provided in these rules or the Foreign Exchange Management (Overseas Investment) Regulations, 2022.

Step-down subsidiary, in respect of a foreign entity, has been defined as an entity in which the foreign entity has control. It is also provided that for investments made through a step-down subsidiary to qualify as overseas investment and be permissible under OI Rules, the step-down subsidiary shall comply with the structural requirements of a foreign entity, i.e. it shall have limited liability. Earlier, overseas direct investments (ODI) was only allowed in an entity engaged in bona-fide business activity either directly, or through one layer of SPV. In this context, the new Rule seems to be expansive in as much as it allows overseas investment into an entity engaged in bona-fide business, including through multiple layers of step-down subsidiary or special purpose vehicle. In other words, it may now be possible to invest in a foreign holding company (SPV) which has one of more layers of foreign subsidiaries as long as the ultimate foreign subsidiary is engaged in a bona fide business activity.

'Bona-fide business activity' has been defined as any business activity permissible under any law in force in India and the host country / host jurisdiction. Hence, the business activity must be permitted under the laws of India as well as the host country for it to qualify as 'bona-fide' business activity.

The definition of the term bona-fide business activity is a welcome move as it brings about a certain level of clarity. Having said that, confusion still prevails in terms of what is meant by permitted under laws of India (and also the laws of the host country). There may be activities, such as gambling, which are state subjects and may be permitted in some states whilst not being permitted in others. Additionally, whether a pure holding company will qualify as a bona-fide business activity also remains a question due to the manner in which the definition has been worded.

"Control" means the right to appoint majority of the directors or to control management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of

their shareholding or management rights or shareholders' agreements or voting agreements that entitle them to ten per cent. or more of voting rights or in any other manner in the entity;

"Overseas Direct Investment" or "ODI" means investment by way of acquisition of unlisted equity capital of a foreign entity, or subscription as a part of the memorandum of association of a foreign entity, or investment in ten per cent, or more of the paid-up equity capital of a listed foreign entity or investment with control where investment is less than ten per cent. of the paid-up equity capital of a listed foreign entity; Explanation.– For the purposes of this clause, where an investment by a person resident in India in the equity capital of a foreign entity is classified as ODI, such investment shall continue to be treated as ODI even if the investment falls to a level below ten per cent. of the paid-up equity capital or such person loses control in the foreign entity;

Accordingly, where a foreign entity is set up without any outward remittance of cash (for example in Delaware where a company can be incorporated without capital contribution), and the Indian resident has control of such entity, the transaction should qualify as an ODI. Similarly, a gift of controlling shares of a foreign entity from a non-resident to resident may also result in the resident having made ODI into the foreign entity.

## APPROVAL ROUTE

Rule 9 of OI Rules, 2022 also provides that overseas investment under the automatic route, shall not be made into a company incorporated in Pakistan (including by way of swap of securities) or such other country as may be decided by the Central Government, from time to time.

The OI Rules provide for investments that will require prior approval of CG, RBI and NOC from lender banks/ regulatory bodies etc. The Erstwhile ODI Regulations only mandated prior approval of RBI in case eligibility conditions stipulated were not met by the Indian party or resident individual. The OI Rules read with the OI Directions provide that:

**Approval from Central Government:** The applications for overseas investments (including financial commitment) in Pakistan / other countries as may be restricted by the Central Government from time to time or in strategic sectors / specific geographies beyond the prescribed limits, shall be made to the Central Government through the RBI. As such, the applications shall be forwarded by the AD banks to the RBI for onward submission to the Central Government.

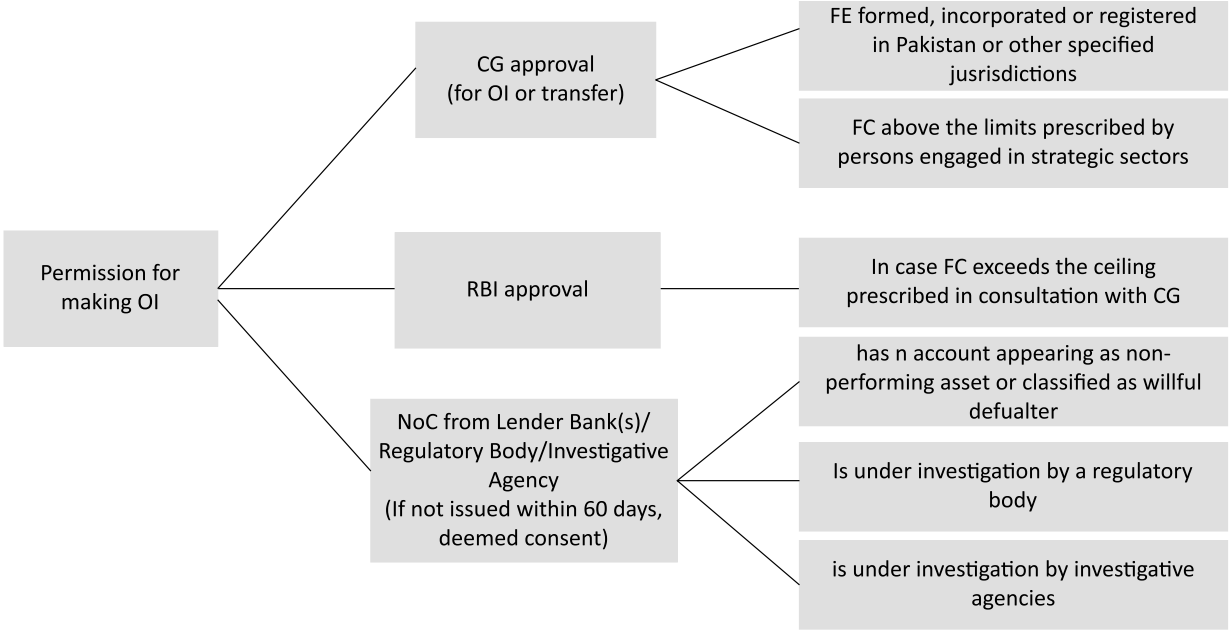
**Approval from Reserve Bank:** As set out under the Erstwhile Regime, the OI Rules also provide that financial commitment by an Indian entity, exceeding USD 1 billion (or its equivalent) in a financial year shall require prior approval from the RBI even when the total financial commitment of the Indian entity is within the eligible limit.

In essence, the Rule provides that approval with respect to investment in restricted geography / sector has to be obtained from the Central Government, whereas approval for investments beyond the monetary limit has to be obtained from the RBI.

The erstwhile ODI Master Directions prohibited an Indian Party from making direct investment in countries identified by Financial Action Task Force ('FATF') as 'non co-operative countries and territories' as per the list available on FATF website or as notified by RBI. The OI Rules do not expressly provide for such prohibition, however, empowers the CG to advise countries or jurisdictions where overseas investment shall not be made.

Further, as provided in the erstwhile ODI Master Directions for prior approval of RBI for any FC exceeding USD 1 billion or its equivalent in a financial year even when the total FC of the Indian Party was within the eligible limit under automatic route (i.e. within 400% of the net worth as per the last audited balance sheet), the requirement continues under the current regime as well. Procedure for seeking approval of RBI has been provided in the OI Directions.

Approval requirement has been dispensed for deferred payment of consideration, investment/ disinvestment by PRII under investigation by any investigative agency/ regulatory body, issuance of corporate guarantee to or on behalf of second or subsequent step down subsidiary and write-off on account of disinvestment.




## No Objection Certificate

Rule 10 provides that if any person resident in India who –

i. has an account appearing as a non-performing asset (NPA); or

ii. is classified as a willful defaulter by any bank; or

iii. is under investigation by a financial services regulator or by investigative agencies in India such as the Central Bureau of Investigation (CBI), Directorate of Enforcement ("ED") or Serious Frauds Investigation Office ("SFIO").

shall obtain a No Objection Certificate (NOC) from the lender bank, regulator or investigative agency, as the case may be, by making an application in writing to such bank or regulatory body or investigative agency concerned before making any financial commitment or undertaking any divestment under the OI Rules Or OI Regulations.

Given that this requirement is only for financial commitment and disinvestment, it seems to not be applicable for making OPI investments.

It is provided that if the bank, regulator or investigative authority, as the case may be, fails to furnish the NOC within 60 days from the receipt of application, an NOC may be presumed to have been obtained.

The No Objection Certificate issued under Rule 10 shall be addressed by the lender bank or regulatory body or investigative agency concerned to the designated AD bank with an endorsement to the applicant.

Further, the OI Directions clarify that where an Indian entity has already issued a guarantee in accordance with the OI Rules before an investigation has begun or account is classified as an NPA/ willful defaulter and is subsequently required to honour such guarantee, such remittance will not constitute fresh financial commitment and hence NOC shall not be required.

### Pricing Guidelines

Master Direction 24-25 for Overseas Investment has provided for valuation in pricing guidelines follows:

(1) The AD bank, before facilitating an overseas investment related transaction, shall ensure compliance with the provisions contained in rule 16 of OI Rules (providing for "arm length pricing"). With respect to the documents to be taken by the AD bank, they shall be guided by their board approved policy, which may, inter alia, provide for taking into consideration the valuation as per any internationally accepted pricing methodology for valuation. The AD bank shall put in place a board approved policy within two months from the date of these directions..

(2) Such policy may also provide for scenarios where the valuation may not be insisted upon, such as (i) transfer on account of merger, amalgamation or demerger or liquidation, where the price has been approved by the competent Court/Tribunal as per the laws in India and/or the host jurisdiction or (ii) price is readily available on a recognised stock exchange, etc. The policy shall also clearly provide for additional documents such as the audited financial statements of the foreign entity, etc. that may be taken by the AD banks for ascertaining the bona fides in cases involving write-off of the investment.

## METHOD OF FUNDING

The mode of payment by a person resident in India for making overseas investment shall be in accordance with regulation 8 of the OI Regulations. A person resident in India making Overseas Investment may make payment –

(i) by remittance made through banking channels;

(ii) from funds held in an account maintained in accordance with the provisions of the Act;

(iii) by swap of securities;

(iv) by using the proceeds of American Depository Receipts or Global Depositary Receipts or stock-swap of such receipts or external commercial borrowings raised in accordance with the provisions of the Act and the rules and regulations made thereunder for making ODI or financial commitment by way of debt by an Indian entity.

It is further provided in the OI Directions that:

a. Overseas investment by way of cash is not permitted.

b. In terms of Regulation 5(B) of Notification No. FEMA 10(R)/2015-RB, namely, Foreign Exchange Management (Foreign Currency Accounts by a resident in India) Regulations, 2015, an Indian entity can make remittances to its office/branch outside India only for the purpose of normal business operations of such branch or office. Accordingly, no remittance shall be made by any Indian entity to its branch/ office outside India for making any overseas investment.

c. A person resident in India shall not make any payment on behalf of any foreign entity other than by way of financial commitment as permitted under the OI Rules/Regulations.

d. Any investment/financial commitment in Nepal and Bhutan shall be done in a manner as provided in Notification No. FEMA 14(R)/2016-RB, namely, Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016. All dues receivable on investments (or financial commitment) made in freely convertible currencies, as well as their sale/winding up proceeds are required to be repatriated to India in freely convertible currencies only.

**Obligations of person resident in India.–** OI Regulation 9 specifies following obligation of a person resident in India w.r,t, ODI i.e.

(1) A person resident in India acquiring equity capital in a foreign entity, which is reckoned as ODI, shall submit to the AD bank share certificates or any other relevant documents as per the applicable laws of the host country or the host jurisdiction, as the case may be, as an evidence of such investment in the foreign entity within six months from the date of effecting remittance or the date on which the dues to such person are capitalised or the date on which the amount due was allowed to be capitalised, as the case may be.

(2) A person resident in India, through its designated AD bank, shall obtain a Unique Identification Number or "UIN" from the Reserve Bank for the foreign entity in which the ODI is intended to be made before sending outward remittance or acquisition of equity capital in a foreign entity, whichever is earlier.

(3) A person resident in India making ODI shall designate an AD bank and route all transactions relating to a particular UIN through such AD:

Provided that where more than one person resident in India makes financial commitment in the same foreign entity, all such persons shall route all transactions relating to that UIN through the AD bank designated for that UIN.

(4) A person resident in India having ODI in a foreign entity, wherever applicable, shall realise and repatriate to India, all dues receivable from the foreign entity with respect to investment in such foreign entity, the amount of consideration received on account of transfer or disinvestment of such ODI and the net realisable value of the assets on account of the liquidation of the foreign entity as per the laws of the host country or the host jurisdiction, as the case may be, within ninety days from the date when such receivables fall due or the date of such transfer or disinvestment or the date of the actual distribution of assets made by the official liquidator.

(5) A person resident in India who is eligible to make ODI may make remittance towards earnest money deposit or obtain a bid bond guarantee from an AD bank for participation in bidding or tender procedure for the acquisition of a foreign entity:

Provided that in case of an open-ended bid bond guarantee, it shall be converted into a close-ended guarantee not later than three months from the date of award of the contract.

## Reporting requirements

The OI Regulations provide for various reporting requirements for FC and OPI including in case of disinvestment and restructuring. Reporting is very crucial as the OI Directions provide for prohibition on further FC or any outward remittance to continue until any delay in reporting is regularized with payment of Late Submission Fees ('LSF') for an amount and in the manner as provided in the OI Directions. LSF amount is levied per return and the maximum amount for LSF will be limited to 100% of amount involved in the delayed reporting. The erstwhile ODI regulations restricted only in case of non-filing of Form APR. The format of forms has been provided in the Master Directions on Reporting under the FEMA Act. Incomplete filing will be considered as non-submission. The option of LSF shall be available up to three years from the due date of reporting/submission under OI Regulations.

In case a person resident in India responsible for submitting the evidence of investment or filing any forms/ returns/reports, etc. as per OI Regulations/earlier corresponding regulations, neither makes such submission/ filing within the specified time nor makes such submission/filing along with LSF as provided in regulation 11 of OI Regulations, such person shall be liable for penal action under the provisions of FEMA, 1999.

As per the OI Regulations, all reporting by a person resident in India, as specified, shall be made through the

designated AD bank in the manner provided in this regulation and in the format provided by the Reserve Bank. A person resident in India who has made ODI or making financial commitment or undertaking disinvestment in a foreign entity shall report the following, namely –

a. financial commitment, whether it is reckoned towards the financial commitment limit or not, at the time of sending outward remittance or making a financial commitment, whichever is earlier;

b. disinvestment within thirty days of receipt of disinvestment proceeds;

c. restructuring within thirty days from the date of such restructuring.

A person resident in India other than a resident individual making any Overseas Portfolio Investment (OPI) or transferring such OPI by way of sale shall report such investment or transfer of investment within sixty days from the end of the half-year in which such investment or transfer is made as of September or March-end.

In case of OPI by way of acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme, the reporting shall be done by the office in India or branch of an overseas entity or a subsidiary in India of an overseas entity or the Indian entity in which the overseas entity has direct or indirect equity holding where the resident individual is an employee or director.

**Annual Performance Report (APR):** A person resident in India acquiring equity capital in a foreign entity which is reckoned as ODI, shall submit an APR with respect to each foreign entity every year by 31st December and where the accounting year of such foreign entity ends on 31st December, the APR shall be submitted by 31st December of the next year. No APR shall be required where–

i. a person resident in India is holding less than 10 per cent. of the equity capital without control in the foreign entity and there is no other financial commitment other than by way of equity capital; or

ii. a foreign entity is under liquidation.

*Explanation*.– For the purposes of this sub-regulation–

(a) the APR shall be based on the audited financial statements of the foreign entity:

Provided that where the person resident in India does not have control in the foreign entity and the laws of the host country or host jurisdiction, as the case may be, do not provide for mandatory auditing of the books of accounts, the APR may be submitted based on unaudited financial statements certified as such by the statutory auditor of the Indian entity or by a chartered accountant where the statutory audit is not applicable;

(b) in case more than one person resident in India have made ODI in the same foreign entity, the person holding the highest stake in the foreign entity shall be required to submit APR and in case of holdings being equal, APR may be filed jointly by such persons;

(c) the person resident in India shall report the details regarding acquisition or setting up or winding up or transfer of a step down subsidiary or alteration in the shareholding pattern in the foreign entity during the reporting year in the APR.

Filing of Annual Return: An Indian entity which has made ODI shall submit an Annual Return on Foreign Liabilities and Assets within such time as may be decided by the Reserve Bank from time to time, to the Department of Statistics and Information Management, Reserve Bank of India.

## ISSUES IN CHOOSING LOCATION OUTSIDE INDIA

Choosing business location depends on the entry barriers in the governing law as some of the countries provide easy access to the businesses such as Property transfer, Reliability of electricity, Labor market regulation, Trade regulation and costs, Court efficiency, Creditors' rights, Credit information, Shareholders' rights, Tax regulation, Foreign direct investment, Overall business regulatory environment. However, the same can be categorised as under:

**Geographical Location of the business**

- Infrastructure (ports, airports, storage, specific storage types – such as cold-storage, secure storage)
- Access (transportation of goods, materials and personnel)
- Relevance to supply-chain: raw material sourcing, processing, despatch of finished produce
- Availability of talent pool for productions (labour), services and management
- Risks: The outbreak of COVID-19 highlights the pitfalls of global interdependency and the challenge for global governance. Epidemics and pandemics do not just come and go, they impact the economy and society as well. One should consider threats to the organization due to pandemic and other risks such as earthquake, tsunami etc.

**Economic Aspects**

- Ease of doing business: entering, establishing, restructuring and closing the business, visa availability
- Cost of doing business: return on investment computations *vis-à-vis* comparable locations
- Laws relating to labour and Quality of labour force; availability of labour force; unemployment rate; labour unions; attitudes towards work and labour turnover; motivation of workers and work force management
- Laws relating to taxation: investment allowances, subsidies, distribution of profits, repatriation of profits, withholding taxes, existence of double-taxation avoidance agreements, information sharing requirements such as FATCA, TRC, etc.

  A complete picture of the local, regional, and state tax environment must be obtained in order to make certain that the business can operate profitably. In several areas of the country, states have made changes to their tax structures, and it is important to understand how these changes negatively or positively impact a company's project.
- Incentives: Local, regional, and/or state economic development incentives available to help the company lower project costs. Incentives should never drive site selection decisions, but they are important to ensure the economic feasibility of the project.

**Political Aspects**

- Friendly country, MFN status
- Long-standing and established legislative precedents with companies going through regulatory recourse
- Their relations with nearing countries and neighbours and your country
- Regulatory environment: Impact of local, regional, and state governmental regulations on business and project. Critical issues such as building plan approvals, environmental permits, utility connection

approvals, and waste disposal permits can have a significant financial and timing impact on a company's project.

**Social Aspects**

- Trade bodies, interaction between commercial entities of both nations
- Expatriate-friendliness of the nation for relocating key employee personnel.

**Technological Aspects**

- Intellectual property protection: create, maintain and extract IP at the location or provision thereof from another location to the nation with free entry and egress.
- Power, communication, telecom – availability, quality and cost issues like infrastructure, geography, time zone, political considerations/conditions, safety of investments, economic policy and stability of the country, culture and language have a critical bearing on the strategy for globalization. Value systems and institutions are also becoming increasingly important from a long term perspective, in order to have the support of stakeholders. Ultimately, any chosen business strategy has to be executed within the parameters of legal and regulatory compliances. At the same time, it is necessary to factor in global tax costs and plan to the possible extent within the framework of law.

## Setting up of a Business in New Zealand

**Regulator: New Zealand Companies Office**

After choosing business name, business structure, apply online for registration with the Companies Office including IRD number application, registration for GST and New Zealand Business Number (NZBN). To file an online application to incorporate a company with the Company's office, you must have:

- A RealMe Login
- an online services account with the Companies Register.

**Secure your business name**

Whether you're new to being self-employed or in business, a small investment now will mean you won't lose your ability to market and protect your name while getting other things in order. Use our ONECheck tool as your starting point to check if the name is available for a business name, trademark, web domain, and social media.

i. **Register a domain name**: Get a web address. This is a low cost, quick and easy process. Entrepreneurs can visit Domain Name Commission's list of authorised registrars.

ii. **Reserve your company name:** To reserve a company name online, entrepreneurs can visit the New Zealand Companies Office Web site (www. companies.govt.nz). A new company's name must be unique and can be reserved for up to 20 working days with the Companies Office. To be incorporated under the Companies Act 1993, a company must have a name reserved by the Registrar of Companies, at least one share, at least one shareholder, at least one director, a registered office, and an address for service.

The applicant(s) can apply for company registration online by completing forms on company details and paying the registration fee.

To register the company online, you can either click on the link in the email sent, when your company name reservation is approved, or log in to your account or follow these steps:

1. Select 'My unfinished business'

2. Select 'My tasks'
3. Find the 'Complete Coy Application' task
4. Progress through each screen (Directors, Shareholders, Tax Registration), entering the requested information
5. Select how you want to pay your application fee
6. Select 'Review' to check the information you've provided and then 'Submit'.

When the application is processed, the founder(s) will receive a notification within a few minutes by email along with the appropriate director and shareholder consent forms, which are generated by the Companies Office. The applicant must then fax the signed director and shareholder consent forms within 20 working days, after which the application will expire. The certificate of incorporation will be issued via email in a few minutes when the last consent form is accepted.

Promoters can apply online for a company IRD (Inland Revenue Department) number and register for the GST (Good and Service Tax) at the same time as incorporating a company online with the New Zealand Companies Office. The list of the information needed when applying for a company IRD number and registering for GST is as follows:

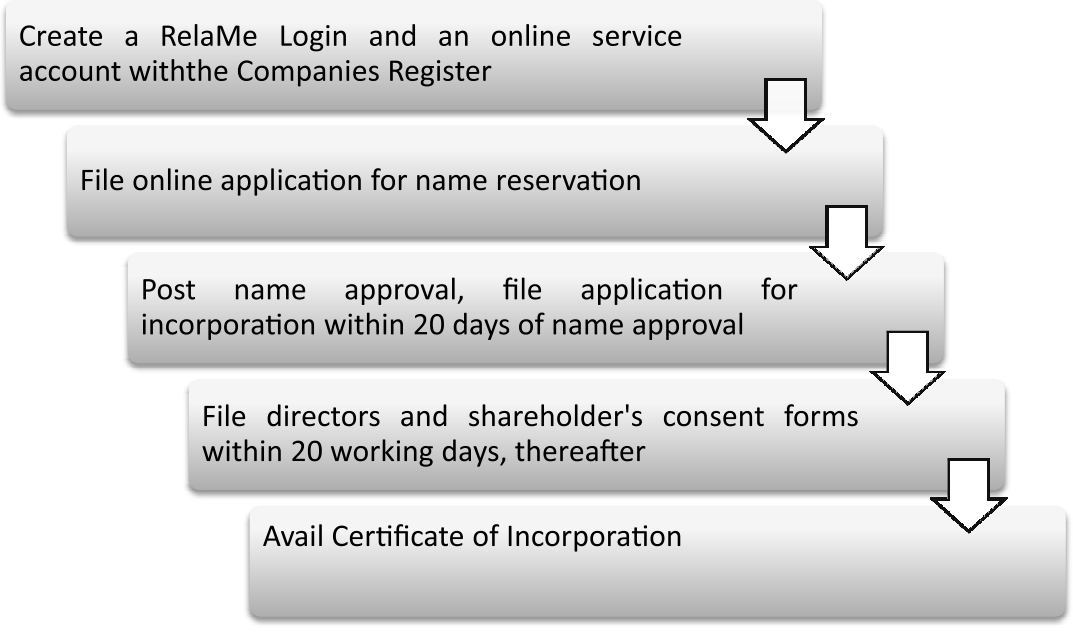
- Contact details
- The date the company will begin employing
- The number of employees and contractors (including the number of employees that will have a student loan)
- IRD number – The IRD number of each Director and all individual shareholders that are NZ residents, Main Business Activity, Place of Business and Postal Address, Trading Name of the company (if different from the Business Name), Company Contact details, a Business Industry Description and Code, and whether or not the Fringe Benefit Tax for employees is applicable.
- GST number – GST accounting method, frequency of filing returns, business activity code, details of how you would like refunds to be paid, whether or not the company will be making tax exempt supplies, Business Industry Description and Code, and whether or not the company will be making imports/ exports and ACC uses the business activity code to calculate levies for personal injury cover and residual claims *(www.businessdescription.co.nz).*
- The New Zealand Business Number (NZBN) is a unique identifier for a business in New Zealand. NZBN links to the information others need in order to work with the Company, like a trading name, phone number or email. An NZBN makes it easier to carry on the business because the same information doesn't need to be repeated when dealing with new clients or on occurrence of any new event. In case of a company, an NZBN is automatically issued. Sole traders, self-employed people or partnerships can register for an NZBN online and it's free of cost.

iii. **Check for trademarks:** Get an initial assessment report from the Intellectual Property Office (IPONZ) before you invest in applying for a registered trade mark. This can be done by applying online for a search and preliminary advice (SPA) report on the IPONZ website. It's low cost, easy and it will be received within five days. We can also search the trade mark register for free.

Before registering, make sure the business name has been given the green light from IPONZ SPA check.

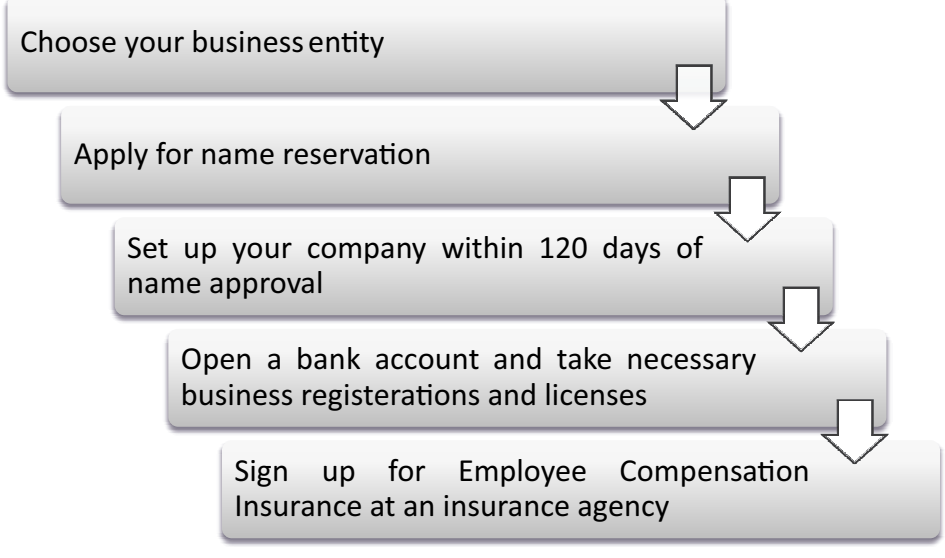
iv. **Regulatory Check:** Specific regulations might apply in the industry or region. For example, fair trading, consumer guarantees, privacy, health and safety, food licensing. Central and Local government regulations applicable to the business must be checked. At least one director must be a New Zealand resident, unless they are an Australian resident who is also a director of an Australian company.

Since July 1st 2008, it has been mandatory to file most documents with the Companies Office online. Starting in November 2014, clients had the ability to pay the incorporation prescribed fees using internet banking.




## Setting up of Business in Singapore

**Regulator: Accounting and Corporate Regulatory Authority (ACRA)**



## Guideline for choosing type of Business Entity

| Entity type/ Description | Sole proprietor | Partnership or limited partnership | Limited liability partnership | Company |
|---|---|---|---|---|
| Definition | Owned by 1 person | Owned by 2 or more persons | Partnership where the partner's personal liability is limited | Separate legal entity from shareholders and directors |
| Ownership | Owned by 1 person | 2 to 20 people for a partnership 2 or more for a limited partnership | 2 or more | Varies based on entity type |
| Legal status | Not a separate legal entity from the owners | Not a separate legal entity from the partners | Separate legal entity from the partners | Separate legal entity from the owners and directors |
| Set up/ registration cost* | 115 SGD for one year | 115 SGD for one year | 115SGD | 315 SGD |

**The registration cost includes government fees only and is subject to change after the publication of this article.*

**Registration online with ACRA including company name search and filing the company incorporation and tax number (GST)**

The Accounting and Corporate Regulatory Authority (ACRA) is the national regulator of business, public accountants and corporate service providers in Singapore. Incorporation is done through Bizfile+, an electronic filing system.

BizFile+ is ACRA's online filing and information retrieval system. It enables the public to access a suite of over 300 electronic services ranging from the submission of statutory documents, and to retrieve and purchase information pertaining to business entities registered with ACRA. Currently, BizFile+ handles more than 1 million transactions each year. Since 2007, Bizfile platform (further enhanced to Bizfile+) has been providing one-stop business facilitation services to customers at the point of registration. These services include reserving domain names, goods and services tax (GST) registration, subscribing for the relevant e-newsletter and registering for e-service alerts on latest government procurement opportunities, activating Customs Account and application for a corporate bank account.

The process starts with new company name application. The application for approval and reservation of a company name is to be submitted online at bizfile.gov.sg. An application fee of SGD 15 is payable for each approved company name. Once the application is submitted, the applicant can select to either pay the fee and continue with the incorporation later, or to immediately proceed to incorporation application.

Name application can be approved within a few minutes from payment if the name is available. However, it may take between 14 working days to 2 months if the application needs to be referred to another agency for approval or review. The lodger can proceed to register the business immediately after the name application is approved.

Once a name has been approved, it will be reserved for 120 days on payment of prescribed reservation fee.

As of 2 June 2017, every newly incorporated business receives a free copy of its Business Profile upon the successful filling up of the incorporation forms and paying the incorporation fee. The processing time is about 15 minutes from the time of successful submission of all documents and all information, and the registration fee payable is SGD 300. The ACRA will issue a notice of incorporation via electronic mail to the law firm or professional firm engaged for the purposes of incorporation upon the successful incorporation of the company together with the registration number of the company.

The registration with the Inland Revenue Authority of Singapore (IRAS) for the goods and services tax (GST) when (a) its annual taxable turnover exceeds SGD 1 million can be done using the same online forms.

**Key Notes:**

There are 7 types of companies which can be incorporated in Singapore. On submitting the company name application, the relevant company type must be specified. The available options are:

1. Exempt private company
2. Private company limited by shares
3. Public company limited by shares
4. Public company limited by guarantee
5. Unlimited private company
6. Unlimited exempt private company
7. Unlimited public company

The private limited company is governed by the Singapore Companies Act and must comply with its laws under ACRA and the Inland Revenue Authority of Singapore (IRAS). Designations include:

- Company name – Must be approved by the ACRA.
- Shareholders – Minimum of one.
- Directors – At least one director must reside in Singapore.
- Company Secretary – Also must be a Singapore resident.
- Paid-up capital – At least S$1
- Registered address – A physical office address is required

| Business Structure | Key Features |
|---|---|
| Private Limited Company (Pte Ltd) | – Separate legal entity: can own property, sue/be sued<br>– Limited liability for shareholders<br>– Corporate tax rate of 17% with incentives<br>– Perpetual succession |
| Exempt Private Company | – Same as Pte Ltd<br>– Maximum of 20 shareholders<br>– No corporate shareholders |

| Business Structure | Key Features |
|---|---|
| Public Company Limited by Shares | – Can raise capital from the public<br>– No limit on number of shareholders<br>– Typically listed on stock exchange |
| Public Company Limited by Guarantee | – Suitable for non-profits and charities<br>– No shareholders; members guarantee liability<br>– Profits reinvested into organizational activities |
| Foreign Subsidiary Company | – Independent legal entity<br>– Greater operational flexibility<br>– Subject to Singapore laws and tax |
| Foreign Branch Office | – Extension of parent company<br>– Easier to set up<br>– Not a separate legal entity |
| Representative Office | – Used for market research or liaison<br>– Cannot engage in income-generating activities<br>– No tax obligations |

**Sign up for Employee Compensation Insurance at an insurance agency:**

*Agency: Insurance Agency*

Under Section 23(1) of the Work Injury Compensation Act (WICA), Chapter 354, of Singapore, every employer shall insure and maintain insurance under one or more approved policies with an insurer against all liabilities which the company may incur under the provisions of this Act in respect of any employee employed by the company unless the Minister, by notification in the Gazette, waives the requirement of such insurance in relation to any employer. The purchase of Workman Injury Compensation Insurance (WICI) has been incorporated into ACRA's online registration process as of November 2017. Business owners can now apply for WICI from NTUC Income (via ACRA's online Bizfile+ system) immediately after completing the online registration process. Time and cost may depend on the arrangement between the company and the insurance agency.

**Work Injury Compensation Insurance (WICI) — Coverage Requirements in Singapore**

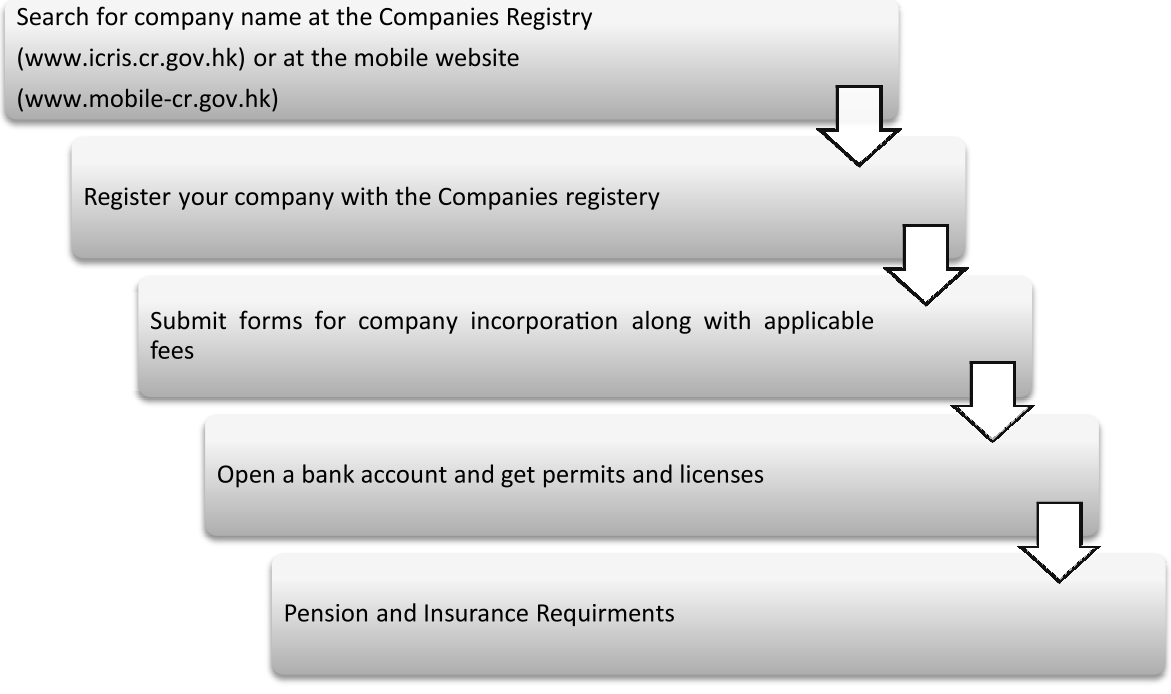
| Coverage Type | Employee Category | Insurance Requirement | Employer Liability |
|---|---|---|---|
| Mandatory Coverage | Manual workers (any salary level) | ☑ Required | ☑ Employer liable under WICA |
| | Non-manual workers earning ≤ SGD 2,600/month | ☑ Required | ☑ Employer liable under WICA |

| Coverage Type | Employee Category | Insurance Requirement | Employer Liability |
|---|---|---|---|
| Optional Coverage | Non-manual workers earning > SGD 2,600/month | ✗ Not mandatory | ☑ Employer still liable under WICA |

**Compliance :**

- Insurance must be purchased from MOM-approved insurers
- Coverage must be maintained throughout employment
- Failure to insure eligible employees may result in:
  - Fines up to SGD 10,000
  - Imprisonment up to 12 months
  - Or both

## Setting up of a Business in Hong Kong SAR, China




*Agency : Companies Registry*

**Choose a company name and obtain a certificate of incorporation and a business registration certificate**

A company name (which may be in English, traditional Chinese or both) can be searched online free of charge at the Companies Registry (www.icris.cr.gov.hk) or at the mobile website (www.mobile-cr.gov.hk). When an application is delivered online at the e-Registry, the applicant will be informed of the acceptability of the company name before he/she proceeds with the payment process.

If there is no existing company registered with the name chosen by the applicant, a certificate of incorporation and a business registration certificate will be issued upon the filing of an incorporation form signed by the

founder member(s) (for companies limited by shares this is a Form NNC1), a copy of the articles of association and a Notice to Business Registration Office (IRBR1). The incorporation form contains comprehensive information on the address of the registered office and particulars of the first secretary and first directors of a company. Paper submissions for incorporation normally require approximately four working days for the certificates to be issued (excluding the day of submission of form NNC1).

With the implementation of the "e-Registry" in 2011, applicants can now complete the incorporation and business registration process by submitting electronic applications online to the Companies Registry (*www.eregistry.gov.hk*) or using the mobile application "CR eFiling". In straightforward cases, this enables registered users to complete the relevant procedures and download the electronic Certificate of Incorporation and Business Registration Certificate in less than a day. According to the performance pledge of the Companies Registry (at *www.cr.gov.hk/en/about/performance.htm*), the service standard for applications for registration of local companies which are submitted electronically is one hour.

At the moment of incorporation, the company will also be automatically registered with the Inland Revenue Department for registration for tax purposes.

**Sign up Employee's Compensation Insurance and Mandatory Provident Fund (MPF) Schemes with a private company or a bank**

*Agency: Compensation Insurance and Mandatory Provident Fund (MPF) providers (banks/insurance firms)*

Pursuant to the Employees' Compensation Ordinance (Chapter 282 of the Laws of Hong Kong) ("ECO"), an employer must take out insurance to cover liabilities for his employees (both full- and part-time) who experience accidents arising out of and in the course of employment, and resulting in injuries or fatalities.

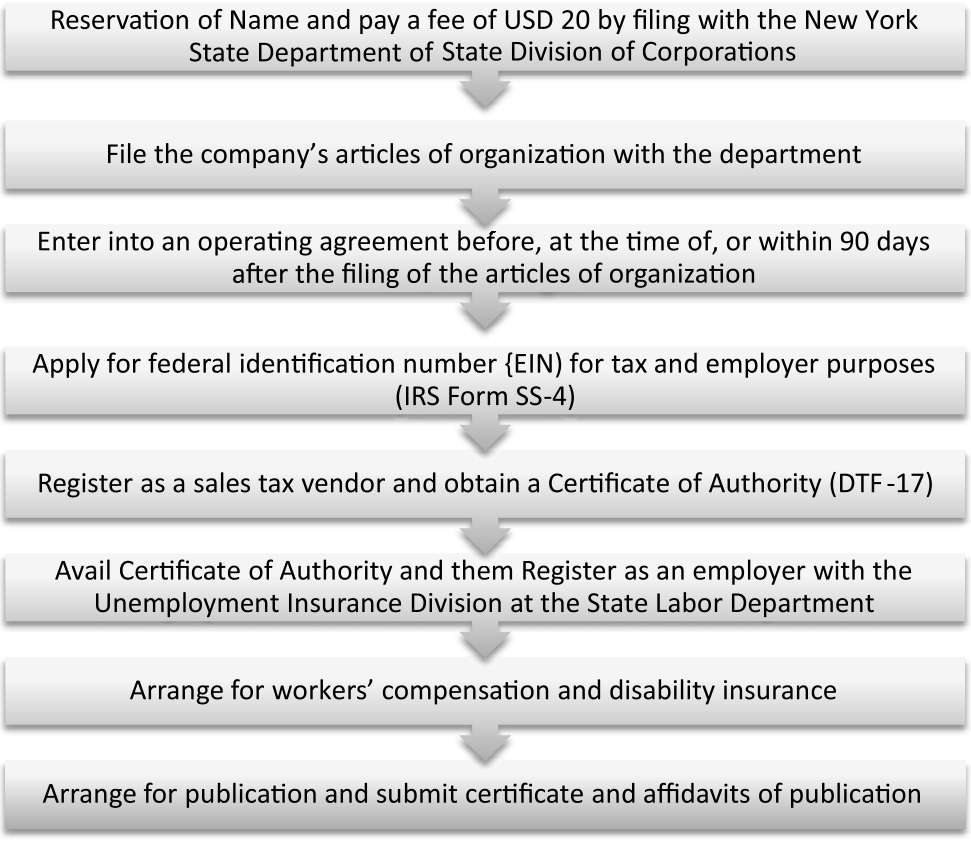
In addition, under the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of the Laws of Hong Kong), employers must enroll their regular employees (i.e. employees who are at least 18 but under 65 years of age and employed for 60 days or more) and where applicable, their casual employees (i.e. employees are at least 18 but under 65 years of age and employed in the construction or catering industry on a day-to-day basis or for a fixed period of less than 60 days) in an MPF scheme administered by an MPF approved trustee in Hong Kong and make MPF contributions accordingly. Scheme enrollment can be arranged through MPF registered intermediaries, which include banks and insurance companies. This requirement does not apply for persons exempted from joining a Mandatory Provident Fund ("MPF") scheme.

The newly incorporated company can apply for setting up the Employee's Compensation Insurance and MPF Scheme anytime after incorporation.

The procedure can be done online via various private insurance/MPF providers' web portals. However, most businesses prefer to have advisory meeting with insurance/MPF provider rather than reviewing all information online by themselves.

## Setting up of Business in New York City

A limited liability company (LLC) is a hybrid, combining the most sought after characteristics of a corporation (credibility and limited liability) with those of a partnership (flexibility and pass-through taxation). Plus, an LLC is not saddled with many of the reporting and documentation formalities that a corporation faces. For example, an LLC does not have to hold regular, annual meetings. These characteristics make it an extremely popular business structure.




*Agency: New York State Department of State, Division of Corporations*

1. **Reserve the company's business name (optional), file the company's articles of organization and adopt the company's operating agreement**

   The company founders may reserve the name of the company with the New York State Department of State Division of Corporations prior to filing the company's articles of organization. To reserve a name, the founders should file an application for Reservation of Name and pay a fee of USD 20. The name reservation can be done online at the following: http://www.dos.ny.gov/corps/llccorp.html. The application holds the name for 60 days and may be extended twice for additional periods of 60 days. The fee to extend the reservation of name is also USD 20. The company name must contain the words "Limited Liability Company," "L.L.C.," or "LLC."

   The founders must file the company's articles of organization with the New York Department of State Division of Corporations. Forms can be purchased at a legal supply store or downloaded from the department's website. The application processing time is about seven business days. However, optional expedited processing is available according to the following fee schedule:

   - 2-hour turnaround: USD 150 (additional fee)
   - Same-day service: USD 75 (additional fee)
   - 24-hour turnaround: USD 25 (additional fee)

   New York State requires an LLC to have a written operating agreement but such agreement does not have to be filed with the state. The business members may enter into an operating agreement before, at the time of, or within 90 days after the filing of the articles of organization. Regardless of when

such an agreement was entered into, it may be effective upon the formation of the LLC or at a later date specified in the operating agreement (provided, however, that under no circumstances shall an operating agreement become effective prior to the formation of such company). Section 203(e) of NY LLC Law contains specific requirements as to what is required to be in the articles of incorporation.

**2. Apply for federal identification number (EIN) for tax and employer purposes**

*Agency: US Internal Revenue Service*

The company needs to apply for a federal Employer Identification Number ("EIN"), which is used for tax and employer purposes. Founders must file IRS Form SS-4 (available from the US Internal Revenue Service).

It is possible to apply online at http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Employer-ID-Numbers-EINs (processing time: immediate), by telephone (processing time: immediate), by fax (processing time: 4 business days), or by mail (processing time: 4 weeks). If applicants apply online, they do not need fill out IRS Form SS-4.

**3. Register to collect state sales tax**

*Agency: New York State Department of Taxation and Finance*

Businesses that "sell taxable tangible personal property, perform taxable services, receive amusement charges, or operate a hotel or motel, and restaurants, taverns, or other establishments that sell food and drink" must register as a sales tax vendor and obtain a Certificate of Authority, as well as those businesses that buy and sell for resale (for example, a wholesale distributor).

To register, the founders must file Form DTF-17 or register online at the website of the New York State Department of Taxation and Finance (http://www.tax.ny.gov/) After the company has registered, it generally must file quarterly sales and use tax returns regardless of whether it has started or done any business.

If the company expects to make taxable sales in the State of New York, it must register with the Tax Department at least 20 days before it begins business. New York State will then send to the company a Certificate of Authority which must be displayed at your place of business at all times.

**4. Register as an employer with the Unemployment Insurance Division at the State Labor Department**

*Agency: New York State Department of Labor*

Founders must register as an employer by completing Form NYS-100 to determine whether or not the company is liable under the New York State Unemployment Insurance Law. If the company is determined liable, the Department of Labor will send the company quarterly combined withholding, wage reporting and unemployment insurance returns for reporting wages paid to the company's employees. General business employers may register online at the New York State Department of Labor website (https://applications.labor.ny.gov/eRegWeb/registerEmployer/uiEPMWelcomeMain.faces) or by completing Form NYS-100 and submitting it by mail or fax.

**5. Arrange for workers' compensation and disability insurance**

*Agency: New York State Workers' Compensation Board*

As New York employers, the LLC founders must obtain and maintain workers' compensation insurance and disability insurance for its employees by purchasing a workers' compensation insurance policy and a disability benefits insurance policy from an authorized private insurance carrier or through the NYS Insurance Fund (or by self- insurance for workers' compensation).

The company's federal Employer Identification Number ("EIN") is the company's primary identification with respect to communications with the Workers' Compensation Board or by becoming a member of a group self- insurer authorized by the board. The company must give its EIN to its insurance carrier when obtaining or maintaining its workers' compensation or disability coverage. Workers' compensation insurance floor is calculated using each employee's risk classification, salary, and total payoff.

Each "covered employer" must post and maintain at the place of business a prescribed form, Notice of Compliance, Form DB-120, stating that the provisions have been named for the payment of disability benefits to all eligible employees. An employer who has employed in New York State one or more employees at least 30 days in any calendar year is a "covered employer" subject to the Disability Benefits Law after the expiration of four weeks following the 30th day of such employment (WCL §202). These 30 days of employment need not be consecutive days.

**6. Arrange for publication and submit certificate and affidavits of publication**

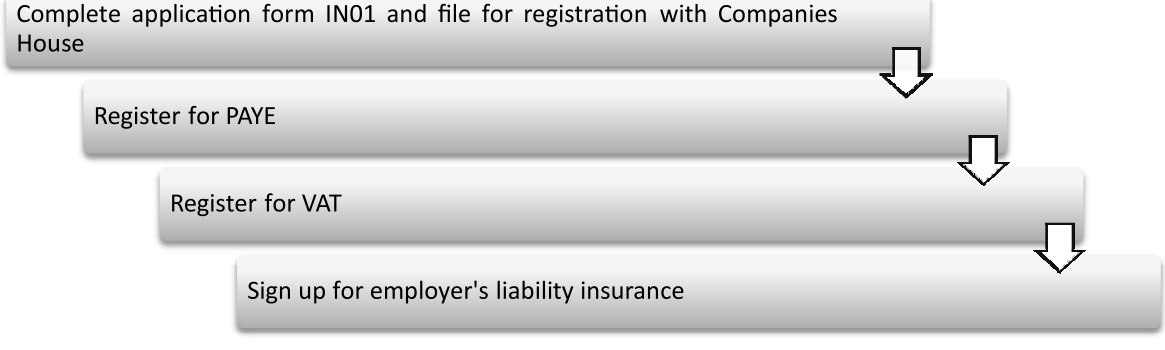
*Agency: New York State Department of State, Division of Corporations*

Section 206 of the New York State Limited Liability Company Law requires that within 120 days (after the effectiveness of the initial articles of organization), a limited liability company (LLC) must publish in two newspapers a copy of the Articles of Organization or a notice related to the formation of the LLC once a week for six successive weeks. The newspapers must be designated by the county clerk of the county in which the office of the LLC is located, as stated in the Articles of Organization. One newspaper must be "printed daily" and the other "printed weekly".

The State of New York requires that within 120 days after the effectiveness of the Articles of Organization, a Limited Liability Company (LLC) must publish a notice of its formation once a week for six consecutive weeks in two newspapers — one daily and one weekly — designated by the county clerk of the county listed in the Articles of Organization as the LLC's office location. After publication, each newspaper will issue an Affidavit of Publication. These affidavits must be submitted along with a Certificate of Publication to the New York Department of State, Division of Corporations, located at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231. The filing fee is USD 50.

To identify the appropriate county clerk for publication purposes, entrepreneurs should refer to the updated New York State County Directory available at: https://www.ny.gov/counties

## Setting up of a Business in United Kingdom




*Agency : Companies House*

**Complete application form IN01 and file for registration with Companies House**

Founders of the Company have the option to check for unique company name and file for registration

themselves, or to retain incorporation professionals to do so. The option to complete registration is through paper application or electronically.

In case the company chooses to file for incorporation itself online, model articles of incorporation and company memorandum are generated automatically by the registration website www.gov.uk/register-a-company-online. In addition the above forms, all companies must provide the following information to the relevant Registrar of Companies (i.e., for England and Wales, Scotland, or Northern Ireland):

- Statement of compliance with all requirements of the 2006 Companies Act;
- Application form IN01, which includes:
  - proposed company name;
  - country of registration office (e.g. England and Wales (or Wales), Scotland or Northern Ireland);
  - Whether the liability of the members is to be limited and if so whether by shares or guarantee; and;
  - Whether the company is public or private;
- In the case of a company with a share capital, the application must also include a statement of the capital and initial shareholdings, including the name and address of the subscriber.
- A statement of the proposed officers, being the first director and company secretary (unless in the case of a private company, where the appointment of a company secretary is optional);
- A statement of the intended registered office address.

On completing the online form if the company name provided cannot be used the website will alert you to this and you have the option of selecting another name. Fees for filing incorporation documents are as follows: GBP 12 for a Web filed incorporation and GBP 40 for paper filers (or GBP 100 for a same day service). The standard digital registration fee through a third party agent is GBP 10 (or GBP 30 for a same day service). There is no requirement for a company to use a third party agent. Third party agents may charge additional fees as well as the standard registration fee.

In case the company chooses to retain incorporation agents to file for registration, in addition to the above documents, the application file must include the agents' name and address. Note that in case the company wants to amend model articles of association or company memorandum it cannot file for registration online via www.gov. uk/register-a-company-online. Instead, the company must use professionals to compose incorporation documents and submit them via specialized software to Companies House.

From 30 June 2016, new companies have to provide their People with Significant Control information as part of the incorporation process. The data on beneficial ownership will be accessible and searchable from the database of Companies House.

**Register for PAYE**

*Agency: HMRC*

The company must contact the HMRC to set up a contribution scheme for national insurance and pay-as-you-earn (PAYE) tax, which deducts tax from employee wages or salary. The company will be issued with an activation PIN within 5 business days – typically less - and will have to activate this PIN within 28 days (or else request a new PIN). The company will use the PIN to register and enroll online. For security reasons, a check is run on the data provided. A small percentage of registrations who fail the security check can take longer. Otherwise, activation is instant.

Since 6 April 2013, companies have to report their PAYE in real time. This means that companies must either report online or require their accountants to submit reports every time they pay their employees.

**Register for VAT**

*Agency: HMRC*

A business will need to register for VAT if its taxable goods and services supplied within the UK for the previous 12 months is more than the current registration threshold of GBP 85,000 or the business expects it to go over that figure in the next 30 days alone, it must register for VAT. However, the business may also voluntarily choose to register for VAT if its VAT taxable goods fall under the GBP 85,000 threshold.

Most businesses, including Limited Companies, can register for VAT account online at: *https://online.hmrc.gov.uk/* registration or send paper forms through the post. Most applications for VAT registration can be completed online but there are some circumstances where a business has to apply by post. To register online for VAT or use other VAT online services, a business will first need to sign up for HMRC Online Services or the Government Gateway.

**Sign up for employer's liability insurance**

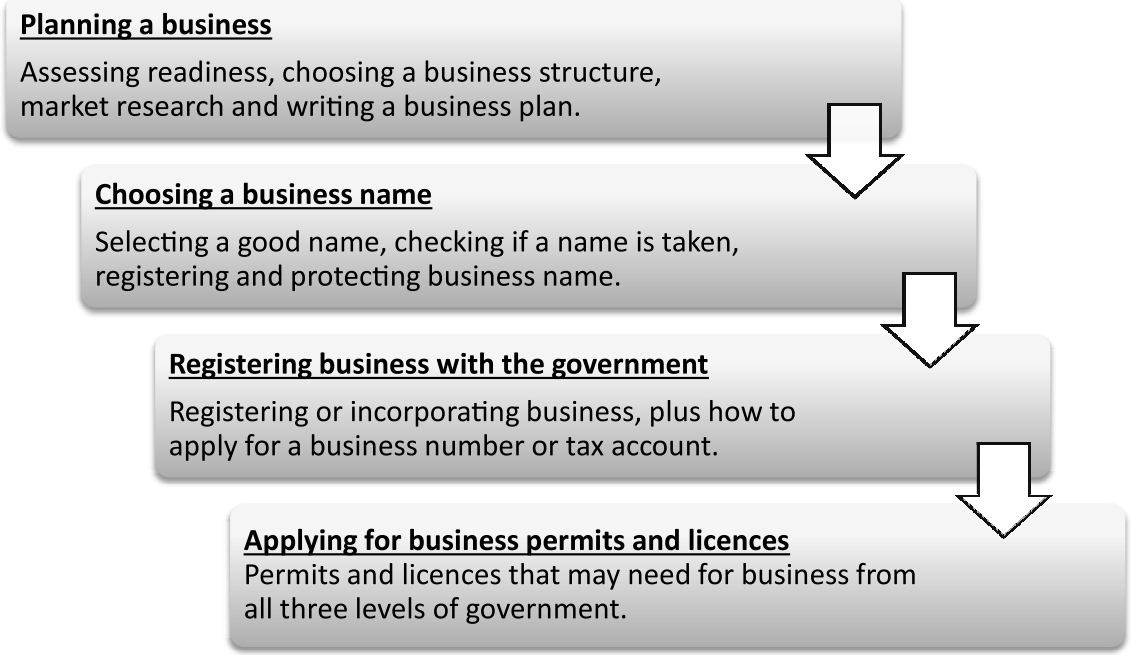
*Agency: Insurance company*

The Employers' Liability (Compulsory Insurance) Act of 1969 requires all employers in the United Kingdom to maintain employers' liability insurance from an approved insurance company. The minimum legal requirement for employers' liability insurance is a limit of indemnity of GBP 5,000,000. In addition, a fine of GBP 2,500 per day can be imposed if employer's liability insurance is not taken out.

The Employers' Liability (Compulsory Insurance) Act of 1969 requires that proof of insurance be posted at the workplace. Since October 1, 2008, it is possible to display this information electronically, although a company that wishes to do this will need to ensure that its employees know how and where to find the certificate and have reasonable access to it.

## Setting up of a Business in Canada

Following are the steps involved in setting up of business in Canada:



## Setting up of a Business in Australia

To run the business in Australia, one need to register the business. This makes sure that business gets taxed at the right rate, avoids penalties and protects brand and ideas. Following are the steps in brief for setting up of business in Australia:

| Step | Description | Agency |
|---|---|---|
| **1. Australian Business Number (ABN)** | A unique 11-digit identifier used by customers, suppliers, and the ATO. Free to register. | Australian Business Register (ABR) |
| **2. Business Name Registration** | Distinguishes your business from others. Required unless trading under your own legal name. | Australian Securities & Investments Commission (ASIC) |
| **3. Tax Registrations** | Includes GST, PAYG, and other taxes depending on business type. | Australian Taxation Office (ATO) |
| **4. Licences and Permits** | Vary by industry and location (e.g., food, construction, retail). | Local councils, state/territory regulators |
| **5. Company Registration** | If choosing a company structure, register as a separate legal entity. | ASIC |
| **6. Trade Mark Protection** | Optional but recommended to protect brand and business name. | IP Australia |

### LESSON ROUND UP

- Section 6 of the Foreign Exchange Management Act, 1999 provides powers to the Reserve Bank to specify, in consultation with the Government of India, the classes of permissible capital account transactions and limits up to which foreign exchange is admissible for such transactions.
- Overseas Investment (or financial commitment) can be made under two routes viz. (i) Automatic Route and (ii) Approval Route
- All transactions relating to a JV / WOS should be routed through one branch of an Authorised Dealer bank to be designated by the Indian Party.
- The mode of payment by a person resident in India for making overseas investment shall be in accordance with Regulation 8 of the OI Regulations.
- The Department of Promotion of Industry and Internal Trade (DPIIT) is the nodal Department for formulation of the policy of the Government on Foreign Direct Investment (FDI).

### TEST YOURSELF

*(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)*

1. What are the different routes of overseas investment?
2. What are the major issues in choosing location outside India?
3. Explain how the political issue plays a vital role in taking the foreign investment decisions?

| LIST OF FURTHER READINGS |
|---|
| • Bare Act - The Foreign Exchange Management Act, 1999<br>• FEM (Overseas Investment) Rules, 2022<br>• FEM (Overseas Investment) Regulations, 2022<br>• FED Master Direction No.15/2024-25 |

| OTHER REFERENCES (Including Websites/ Video Links) |
|---|
| • https://www.indiacode.nic.in/<br>• https://www.business.govt.nz<br>• https://www.acra.gov.sg/how-to-guides/setting-up-a-local-company<br>• https://www.rbi.org.in/<br>• https://www.finmin.nic.in |