

# **Technical Guide on Incorporation of Foreign Companies in India**



**Corporate Laws & Corporate Governance Committee**  
**The Institute of Chartered Accountants of India**  
*(Set up by an Act of Parliament)*  
**New Delhi**

# **Technical Guide on Incorporation of Foreign Companies in India**



**Corporate Laws & Corporate Governance Committee**  
**The Institute of Chartered Accountants of India**  
(Set up by an Act of Parliament)  
New Delhi

© **THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**

All rights reserved. No part of this publication may be translated, reprinted or reproduced or utilized in any form either in whole or in part or by any electronic, mechanical or other means, including photocopying and recording, or in any information storage and retrieval system, without prior permission in writing from the publisher.

**DISCLAIMER:**

The views expressed in this book are of the author(s). The Institute of Chartered Accountants of India may not necessarily subscribe to the views expressed by the author(s).

The information cited in this book has been drawn from various sources. While every effort has been made to keep the information cited in this book error free, the Institute or any office of the same does not take the responsibility for any typographical or clerical error which may have crept in while compiling the information provided in this book

Basic draft of this publication was prepared by CA. Sarika Singhal

First Edition	:	July, 2021
Committee/Department	:	Corporate Laws & Corporate Governance Committee
E-mail	:	clcgc@icai.in
Website	:	www.icai.org
ISBN	:	978-93-90668-78-6
Price	:	₹ 160/-
Typeset by	:	Elite-Art, New Delhi
Published by	:	The Publication Directorate on behalf of The Institute of Chartered Accountants of India ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi –110 002 (India)
Printed by	:	TAN Prints India Pvt. Ltd. District - Jhajjar – 124 501 (Haryana) July   2021   P2880 (New)

# Foreword

---

The Government of India with its vision to reach a target of \$ 5 trillion economy and take India's economic growth to a much higher pedestal, has taken several landmark initiatives to attract more overseas capital inflow and enhance the Ease of Doing Business in India (EoDB).

One such step in this direction is to enable foreign companies to enter Indian market without any uncertainty associated with the procedures required to obtain regulatory clearances and in terms of the overall risk of starting business in India.

The Institute of Chartered Accountants of India (ICAI), as Partner in Nation Building, has always endeavoured to promote government's initiative by disseminating up to date knowledge and creating awareness amongst its members and stakeholders at large.

In this regard, the Institute of Chartered Accountants of India (ICAI) through its Corporate Laws & Corporate Governance Committee (CL&CGC) is bringing this "Technical Guide on Incorporation of Foreign Companies in India" to provide detailed guidance on the procedural aspects relating to incorporation of Foreign Companies in India.

I appreciate the Corporate Laws & Corporate Governance Committee (CL&CGC) in bringing this publication which I hope will be very useful for our members. I extend my sincere appreciation to CA. Shrinivas Y. Joshi, Chairman, CA. Anuj Goyal, Vice-Chairman and other members of the Corporate Laws & Corporate Governance Committee to bring out this important publication.

I am sure that the members and other interested readers would find the publication immensely useful.

**CA. Nihar N. Jambusaria**  
President, ICAI

Date : 30<sup>th</sup> June, 2021

Place : New Delhi



## Preface

---

India, a land of opportunities, with its massive potential has attracted a lot of domestic and foreign investors to start their business in India.

The Indian Government to further encourage the foreign company start up in India has taken various initiatives and the Ministry of Corporate Affairs (MCA) has duly supported the Central Governments' Ease of Doing Business initiatives and has simplified the process of Incorporation of companies since its enactment in the year, 2013.

However, still many of the foreign entities and the professional advisers are unaware of the simplified procedures and legal framework to set up foreign business in India.

In this regard, a need was felt to afford handy guidance to chartered accountants and other stakeholders for incorporation of foreign company in India. The Corporate Laws & Corporate Governance Committee has decided to bring out publication "Technical Guide on Incorporation of Foreign Companies in India" wherein requisite procedural formalities along with relevant legal inputs have been furnished.

This publication provides insights into the various provisions under the Companies Act, 2013 that governs the foreign company incorporation in India. It has been designed in a way that caters to the need of the professionals in incorporating a foreign company in India without external consultation. Other readers can also be benefited by the Guide.

The publication inter alia covers the frequently asked questions and important points to be taken care by Foreign Companies which will further assist them in complying with the legal and procedural responsibilities while incorporating a foreign business in India.

We would like to acknowledge support from the President of ICAI, CA. Nihar N. Jambusaria and Vice President, CA. (Dr.) Debashis Mitra for bringing out this publication. Members and Special Invitees of the Corporate Laws & Corporate Governance Committee have checked draft and offered valuable inputs and deserve our appreciation.

I would like to thank Shri Rakesh Sehgal, Director and CA. Sarika Singhal, Secretary to the Committee and team members Ms Seema Jangid, CA. Nikita Aggarwal for providing support in preparing the Draft.

It is believed that efforts taken by the Corporate Laws & Corporate Governance Committee will enable the users to in the incorporating company in a seamless manner.

**CA. Shrinivas Y Joshi**  
Chairman,  
Corporate Laws & Corporate  
Governance Committee, ICAI

**CA. Anuj Goyal**  
Vice-Chairman,  
Corporate Laws & Corporate  
Governance Committee, ICAI

Date : 28<sup>th</sup> June, 2021

Place : New Delhi

# Contents

---

Background and Introduction – Foreign Company .....	1
Ways of entering business into India .....	3
Pre-Requisites for setting up Business in India .....	6
Establishment/ Incorporation of Foreign Company in India .....	8
Post-Incorporation Compliances for Foreign Company (relating to Company Law only) .....	30
Provisions under the Companies Act, 2013 governing Foreign Companies in India .....	36
Other Laws governing Foreign Company .....	61
Overview of Some Important Sections at a glance which are applicable to a Foreign Company under the Companies Act, 2013 .....	65
Frequently Asked Questions (FAQs) .....	68
Points to be taken care of by Foreign Companies .....	87
Annexures.....	89



## Glossary

---

<b>AOA</b>	Article of Association
<b>BO</b>	Branch Office
<b>CIN</b>	Corporate Identity Number
<b>DIN</b>	Director Identification Number
<b>DSC</b>	Digital Signature Certificate
<b>FDI</b>	Foreign Direct Investment
<b>FEMA</b>	Foreign Exchange Management Act
<b>IDR</b>	Indian Depository Receipt
<b>LO</b>	Liaison Office
<b>MCA</b>	Ministry of Corporate Affairs
<b>MOA</b>	Memorandum of Association
<b>OPC</b>	One Person Company
<b>PO</b>	Project Office
<b>RBI</b>	Reserve Bank of India
<b>ROC</b>	Registrar of Companies
<b>SEBI</b>	Securities and Exchange Board of India
<b>SPICe+</b>	Simplified Proforma for Incorporating Company Electronically Plus
<b>SRN</b>	Service Request Number
<b>WOS</b>	Wholly Owned Subsidiary



# Chapter 1

## Background and Introduction – Foreign Company

---

India, with its booming economy, abundant natural resources, fertile lands, cultural diversity and its more than one billion inhabitants, is seen as an inevitable business destination. In today's increasingly globalized environment, every MNC and other international company looks at India for expanding its business. This keen interest in the economic potential of India has attracted more and more business people, business developers and export managers to set up business in India. Therefore, in such a scenario it is imperative for the Chartered Accountants to be equipped with adequate knowledge so as to guide the Foreign Companies in establishing their business in India.

This book will serve as a quick guide for Chartered Accountants facilitating the foreign companies in setting up their business in India through any of the available modes depending upon the needs and requirements of the foreign company.

All procedural formalities along with necessary inputs of law are provided. For elaborate understanding, it is advised to read provisions of law. Reference of section/rule is provided for ready reference.

### 1.1 Introduction to Foreign Company

Section 2(42) of the Companies Act, 2013 defines "foreign company" as any company or body corporate incorporated outside India which—

- a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- b) conducts any business activity in India in any other manner.

However, there is a slight change in the definition of a foreign company for the purpose of Merger, i.e. Foreign Company means any company or body corporate incorporated outside India having a place of business in India or not.

Further, if a foreign company is planning to set up a business in India, it may incorporate a company under the Companies Act, 2013 as a joint venture or

## **Technical Guide on Incorporation of Foreign Companies in India**

---

subsidiary (including wholly owned subsidiary) or set up a Liaison Office/ Representative Office or a Project Office or a Branch Office of the foreign company which can undertake activities permitted under the Foreign Exchange Management (Establishment in India of Branch Office or Other Place of Business) Regulations, 2000.

Also, it is stated under the Companies Act, 2013 that where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a Foreign Company is held by

- one or more citizens of India or
- one or more companies or bodies corporate incorporated in India or
- one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate,

such a company shall comply with the provisions of Chapter XXII and such other provisions of the Companies Act, 2013 with regard to the business carried on by it in India as if it were a company incorporated in India.

The Companies Act, 2013 governs the provisions relating to the Incorporation of Companies. Rule 2 (c) of the **Companies (Registration of Foreign Companies) Rules, 2014** defines 'electronic mode' as carrying out electronically based, whether main server is installed in India or not, including but not limited to-

- Business to business and business to consumer transactions, data interchange and other digital supply transactions;
- offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities in India or from citizens of India;
- financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;
- online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- all related data communication services.

These transactions may be conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission, or otherwise.

## Chapter 2

# Ways of entering business into India

---

The first and the foremost decision to be taken up while setting up a business in India is choosing the legal form of structure in which the foreign company will run its operation.

Choosing the right form of structure is the foundation of a business. Therefore, utmost care and caution have to be taken.

Now let us understand that what are the various types of set-ups and characteristics of the same.

### **2.1 Form of registration of a foreign company in India as a Subsidiary Company (Entry route for commercial operations)**

Foreign nationals/ Foreign Companies can form a company in India through any of the entry strategy mentioned below (**Indian Subsidiary Registration**):

- **Subsidiaries including Wholly Owned Subsidiaries (100% Indian Subsidiary)-**

A subsidiary company in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

However, a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in (i) or (ii) above is of another subsidiary company of the holding company;

## **Technical Guide on Incorporation of Foreign Companies in India**

---

Further, the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

Nonetheless, the expression "company" includes any Body Corporate and "layer" in relation to a holding company means its subsidiary or subsidiaries;

To seek the mammoth benefit available to Indian Companies, such as low-cost manpower (in the form of technical, skilled or unskilled labour), presence of local manufacturers, able to serve a large population, etc. many foreign companies establish its business in the form of Subsidiary or Wholly Owned Subsidiary Company in India.

- **Joint Ventures with other Indian Companies in case 100% FDI is not permitted-**

It means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement

In cases where 100% FDI is not permitted and the foreign company wishes to establish a company incorporated in India, and then in such cases, the foreign company can incorporate a company in India in the form of a Joint Venture, however, a valid joint venture agreement is required in such a case.

## **2.2 Form of Registration of a foreign company in India (Not having commercial operations in India)**

### **1. Liaison Office/Representative Office –**

A Liaison Office is a place of business that acts as a channel of communication between the Head Office (or by whatever name called) and entities in India but which cannot undertake any commercial/ Industrial/ trading activity, directly or indirectly, and which maintains itself from the inward remittances received from abroad through normal banking channels.

## Ways of entering business into India

---

It is generally formed for the purpose of promoting export or import; from/ to India or for promoting technical/ financial collaborations between parent/ group companies and companies in India.

### 2. **Project Office-**

It is defined as a place of business in India to represent the interests of the foreign company executing a project in India.

It is established only for the purpose of conducting activities relating to and incidental to the execution of the project in India

### 3. **Branch Office-**

A branch office is basically an extension of a Company and in relation to a company, it means any establishment which is described as such.

Branch Offices in India are generally established in India for rendering services such as carrying out research work in which the parent company is engaged or for rendering services in IT and development of software in India etc.

## Chapter 3

# Pre-Requisites for setting up Business in India

---

Once a company has decided the legal form of structure of its business in India keeping in mind its needs and requirements, then the next step that is to be taken before initiating the procedural formalities of setting up its business is to know the pre-requisites for such type of business structure. In a way, these pre-requisites are also a contributor in deciding the legal form of structure of the business to be set up.

### **3.1 For Foreign Entities setting up its business with the Objective of having Commercial Operations in India**

The pre-requisites for incorporating a subsidiary in India are as follows:

- Minimum 2 individual directors, one of whom should be an Indian Resident
- Minimum 2 shareholders (may be individual or non-individual)
- One person authorised to sign on behalf of the foreign company
- Address proof of place of business in India where the company will be registered.

The pre-requisites for incorporating a private limited company in the form of a Joint Venture with other Indian Companies in case 100% FDI is not permitted are as follows:

- A Memorandum of Understanding and a Joint Venture Agreement between the foreign entity and the Indian Company
- The rest of the requirements are the same as in the case of a wholly owned subsidiary as mentioned above

### **3.2 For Entities setting up its business with the Objective of Not having Commercial Operations in India**

As mentioned in Chapter II, a foreign entity can enter its business in India in the form of Branch Office, Liaison Office or Project Office in case it does not seek to generate revenue from its place of business established in India

## **Pre-Requisites for setting up Business in India**

---

There are no pre-requisites as such for establishing a Branch Office, Liaison Office or Project Office under the Companies Act, 2013 and Rules thereunder. However, once such place of business in India has been set up, it has to comply with various Indian Acts, Rules and Regulations.

To establish Branch Office and Liaison Office in India, Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2016 has to be adhered to, which requires prior approval of RBI before establishing such place of business in India. Approval from RBI is considered under two routes viz Reserve Bank Route or Government Route.

It further states that for availing approval from RBI following 2 criteria shall be satisfied:

### **For Branch Office —**

- a profit-making track record during the immediately preceding five financial years in the home country and
- net worth of not less than USD 100,000 or its equivalent.

### **For Liaison Office —**

- a profit-making track record during the immediately preceding three financial years in the home country and
- net worth of not less than USD 50,000 or its equivalent

However, if not financially sound, then the Parent Company/ Group Company may submit a Letter of Comfort (refer annexure-1) subject to the condition that the parent company satisfies the prescribed criterion for net worth and profit.

## Chapter 4

# Establishment/ Incorporation of Foreign Company in India

---

With the wide benefits of establishing a foreign company in India, the procedure for incorporation of a foreign company needs to be understood.

The procedure of establishment of business in India depends upon the type/form of registration in India. (As discussed in chapter-2)

There have been various examples in the past where big foreign brands and entities have set up their business in India by incorporating a subsidiary or wholly-owned subsidiary in India, for instance: Hyundai (Korean Brand) has incorporated its wholly-owned subsidiary in India with the name "Hyundai Motor India Ltd". Similarly many such examples exist such as Samsung, BMW, etc. Moreover, there also exist many examples of successful joint ventures in India between foreign firms and local ones, such as Maruti-Suzuki, which is one of the oldest (1982), or Toyota-Kirloskar (1997) etc.

The incorporation procedure in case of a subsidiary, wholly-owned subsidiary, an Indian company in the form of Joint Venture is same, subject to different documents as applicable. The procedure for the same is discussed in detail in Part I of this Chapter.

In case, where a foreign company desires to set up its business in the form of Liaison Office/ Branch Office/ Project Office then the procedure as enlisted in Part II of this Chapter is to be followed. The various compliances under the Companies Act, 2013 which need to be adhered to as per Chapter XXII of the Act are elaborated therein.

#### **4.1 For Foreign Entities setting up its business with the Objective of having Commercial Operations in India**

In case a company wishes to operate in India by forming a subsidiary, wholly-owned subsidiary, or a Joint Venture Company then it needs to follow the procedure as mentioned below.

It is to be noted that if a foreign company is incorporating its subsidiary company<sup>1</sup> in India, then the original name of the holding company may be allowed with the addition of the word “India” or name of any “Indian state or city”, subject to availability of the name and other conditions being satisfied. Rule 8 of the Companies (Incorporation) Rules, 2014 shall be referred to, while selecting the name of the Indian company to be established.

##### **STEP – I: Apply for Name Approval:**

Before application for name approval, a foreign company has to choose the name on basis of the following:

- a. foreign company can apply the same name (name in the foreign country) in India by using the word “India” in its name.
- b. If a foreign company is having any Registered Trade Mark then it can use such trademark for the Incorporation of Company in India.
- c. Any other name as decided by the Foreign Company.

Once the name has been selected, the application for name approval has to be filed in web-based form SPICE+ Part A.

---

<sup>1</sup> Subsidiary Company includes Wholly Owned Subsidiary, unless otherwise mentioned.

## Technical Guide on Incorporation of Foreign Companies in India

### 1. Login on MCA Website

mca.gov.in/mcafoportal/login.do

Welcome Guest Forms & Downloads Sitemap

**MINISTRY OF  
CORPORATE  
AFFAIRS**  
GOVERNMENT OF INDIA

EMPOWERING BUSINESS, PROTECTING INVESTORS,  
REGULATING • INTEGRATOR • FACILITATOR

Home About MCA Acts & Rules My Workspace MCA Services

MCA Services

Home > MCA Services > MCA Login

To View The Step-By-Step Video Of Filing Linked Eform. [Click Here.](#)

**User Login**

Enter Username

Forgot Password?

Enter Characters shown below :

kingly

Clear Sign in

**Why should you register with MCA?**  
Register today and avail more services

- Upload E-Forms
- Make Payments
- Annual E-Filing

**Browser / System**

- Computer with V
- JRE (Java Runtime
- Internet connect
- Internet Explorer
- You could observ
- Adobe acrobat 11 o
- Scanner for scan

Register Now

Applicant has to login into their account on MCA Website. (Pre-existing users can use earlier account and new users have to create a new account by clicking “register now” as highlighted in the image above.)

## Establishment/ Incorporation of Foreign Company in India

### 2. Form SPICe+ has to be selected

The screenshot shows the MCA21 website interface. At the top, the URL is [mca.gov.in/MinistryV2/acquiredsc.html](https://mca.gov.in/MinistryV2/acquiredsc.html). The page features the Ministry of Corporate Affairs logo and the tagline "EMPOWERING BUSINESS, PROTECTING INVESTORS" with roles: REGULATOR • INTEGRATOR • FACILITATOR • EDUCATOR. A search bar is present on the right. The main navigation menu includes Home, About MCA, Acts & Rules, My Workspace, MCA Services, Data & Reports, and E-Consultation. The "MCA Services" menu is expanded, showing various options. Under the "Company Services" section, "SPICe+" is highlighted with a red box. Other services listed include Check Company Name, Find CIN, RUA (Reserve Unique Name), Incorporation, Compliance Filing, Approval Services, Change Company Information, Charge Management, Informational Services, and Close Company. Other sections include DSC Services, DIN Services, Master Data, LLP Services, LLP Services for Business User, e-Filing, Complaints, Document Related Services, Fee and Payment Services, Investor Services, and ID Databank Services.

SPICe+ has to be selected which is available under the tab “MCA Service”. This is a post login service; therefore, user has to login first in order to open SPICe+.

## Technical Guide on Incorporation of Foreign Companies in India

### 3. Click on New Application

The screenshot displays the MCA website interface. At the top, the logo of the Ministry of Corporate Affairs is visible, along with the tagline "EMPOWERING BUSINESS, PROTECTING INVESTORS" and the roles "REGULATOR • INTEGRATOR • FACILITATOR • EDUCATOR". A search bar is present on the right. Below the header, a navigation menu includes "Home", "About MCA", "Acts & Rules", "My Workspace", "MCA Services", "Data & Reports", "E-Consultation", and "Help & FA". The main content area shows the "MCA Services" section with a breadcrumb trail: "Home > MCA Services > Company Services > SPICe+". A sidebar menu on the left lists various services, with "Company Services" expanded to show "Check Company Name", "Find CIN", "SPICe+", and "RUN (Reserve Unique Name)". The main content area features a "SPICe+" section with two buttons: "New Application" and "Existing Applications". Below these buttons, a text box explains: "Once you have submitted the name reservation request it will then be checked and, if found feasible, approved by the Central Registration Centre (CRC). You will receive an email from the CRC advising the outcome of the name reservation request."

This form can't be downloaded; it has to be filled on real-time basis

### 4. Details required to be filled in the online form:

The following information, is required to be submitted in the form

- i. Type of Company (i.e. Producer, Part I, OPC, Section 8 etc.)
- ii. Class of Company (whether Private, Public)
- iii. Category of Company (whether Company limited by shares, limited by Guarantee or unlimited)
- iv. Sub-category of Company (Union Government, State Government, Non-Government Company, Subsidiary of Company incorporated outside India, Guarantee and Association Company)
- v. Main Division of Industrial Activity (enter number belonging to Industrial Activity)
- vi. Summary of the objects to be pursued by the Company on its incorporation
- vii. Description of the main division

## Establishment/ Incorporation of Foreign Company in India

- viii. Particulars of Proposed or Approved Name. (User has to enter the name he wants to reserve for incorporation of a new company. Users are requested to ensure that the proposed name selected does not contain any word which is prohibited under Section 4(2) & (3) of the **Companies Act, 2013** read with Rule 8 of the **Companies (Incorporation) Rules, 2014**. Users are also requested to read and understand Rule 8 of the **Companies (Incorporation) Rules, 2014** in respect of any proposed name before applying for the same. For Name Search:

<http://www.mca.gov.in/mcafoportal/showCheckCompanyName.do>)

Stakeholders are requested to also check the Trademark search to ensure that the proposed name is not in violation of provisions of Section 4(2) of the Companies Act, 2013, failing which it is liable to be rejected. For Trade Mark Search: <http://www.ipindia.nic.in/index.htm>

**Note: Two fields are available i.e. two proposed names can be entered (If an applicant opts for filing Part A and Part B of SPICe+ together at one go, only one name can be proposed, whereas if the applicant opts to file Part-A separately, then two names can be proposed out of which one name would be approved.)**

*It is advisable to file Part-A separately.*

## Technical Guide on Incorporation of Foreign Companies in India

The screenshot shows the 'SPICe+ Part A' form for Name Reservation. It includes several dropdown menus for 'Type of Company', 'Class of Company', 'Category of Company', and 'Sub-Category of Company'. There are also text input fields for 'Main division of industrial activity of the Company' and 'Description of the main division'. A larger text area is provided for the 'Summary of the objects to be pursued by the company on its incorporation', with a note to mention the objects and relevant comments. Below this, there is a section for 'Particulars of the proposed or approved name' with two numbered input fields (i. and ii.) and a 'Choose File' button. At the bottom, there are three buttons: 'Auto-Check', 'Save', and 'Submit'.

Choose File (Any attachment)- This option is available to upload PDF documents.

It is not mandatory to attach any document except in a case, where the proposed name requires the approval of a Sectoral Regulator or NOC etc, as per Companies (Incorporation) Rules, 2014.

Only one file is allowed to be attached, therefore in case of multiple documents, user has to scan the documents and make it one single document. The attachment size cannot exceed 6 MB for both Part A and Part B, taken together.

## Establishment/ Incorporation of Foreign Company in India

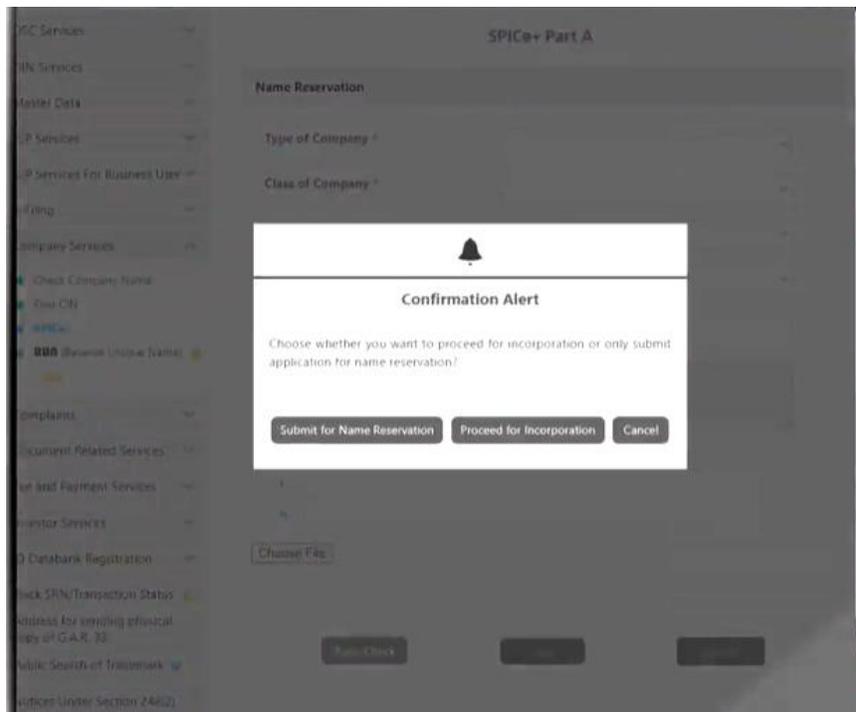
### 5. Fill the given Information and save the application as follows:

- (i) Fill the Information
- (ii) Save the Application
- (iii) Submit the Application

### 6. Stakeholders have two options:

Option 1: Submit name application and make payment of Rs. 1,000/- for the same.

Option 2: Click on “Proceed for Incorporation”



After clicking on “Proceed for Incorporation”, the user will be able to continue with SPICe+ Part B

**NOTE: \* Approval of Name through “PART-A” is an optional way. Companies can also directly apply for the Incorporation after continuation with the PART B form.**

## Technical Guide on Incorporation of Foreign Companies in India

---

### ***It is advisable to go through the PART-A route***

Further, it has to be kept in mind that the approved name is available for a limited period of time only. Therefore, the application for Incorporation of Company has to be filed within that prescribed period of time, otherwise, the approved name will be cancelled and a fresh application has to be filed in Part A again in such a case. Section 5 of the Companies Act, 2013 read with rule 9A of the Companies (Incorporation) Rules, 2014 may be referred, to check the period of availability of name.

### ***Part B- Incorporation of Company***

#### **STEP-II: Information/ Documents required from Foreign Company**

- (a) Apostille / Notarized copy of the resolution of foreign company 'mentioning the name of authorized representative, no. of subscription of shares'.
- (b) Apostille/ Notarized copy of ID Proof of authorized representative, if such person is a non-resident of India.
- (c) Apostille/ Notarized copy of Charter of Foreign Company.
- (d) Name of one Resident Director.
- (e) Name of Nominee (in case of incorporation of WOS)

#### **STEP – III: Preparation of Documents for Incorporation of Company:**

After approval of name or for directly applying for Incorporation of Company applicant has to prepare the below mentioned Documents;

- Memorandum of Association of Company\* (Physical copy of MOA shall be prepared; e-MOA (INC-33) can't be prepared). (Duly apostille\*\* or notarized in country of origin).
- Article of Association of Company\* (Physical copy of AOA shall be prepared; e-AOA (INC-34) can't be prepared). (Duly apostille\*\* or notarized in country of origin).
- INC-9 declaration by the first subscriber(s) and director(s) (Duly apostille\*\* or notarized in country of origin). *If all the subscribers having PAN/DIN then INC-9 shall be downloaded from the dashboard.*

### **Establishment/ Incorporation of Foreign Company in India**

- DIR-2 declaration from First Directors along with a copy of Proof of Identity and Residential Address. (Duly apostille or notarized in country of origin).
- If any subscriber to the proposed company is a Foreign Company or Company incorporated outside India, then mandatory to attach a “Copy of Certificate of Incorporation of the foreign body corporate and resolution passed”.
- Resolution passed by promoter company (in case the subscriber to the proposed company is a company)
- Interest of first director(s) in other entities, if any.
- Declaration from the foreign subscribers in respect of not having PAN. (Duly apostille or notarized in country of origin).
- NOC from the owner of the property.
- Proof of Office address (Conveyance/ Lease deed/ Rent Agreement etc. along with rent receipts);
- Copy of the utility bills (not older than two months)
- In case, Subscribers/ Director does not have a DIN, it is mandatory to attach: proof of identity and residential address of the subscribers (Duly apostille or notarized in country of origin)
- Digital Signature with only one Subscriber is enough for Incorporation of a Company.
- DIR-2 from the Resident Director along with a self-attested copy of PAN and Resident Proof.

**\* Specific scenarios in which the pdf attachments or electronic versions of MoA/AoA can be used with SPICe+**

The table below clarifies the specific scenarios in which the pdf attachments or electronic versions of MoA/AoA can be used with SPICe+ (INC-32):

S No.	Scenario	Forms Filed
1.	Non-Individual first subscriber based outside India	SPICe+ (INC-32) with apostilled MOA and AOA as attachments

## Technical Guide on Incorporation of Foreign Companies in India

2.	Non-Individual first subscriber based in India	SPICe+ (INC-32) with linked filing of eMOA (INC-33) and eAOA (INC-34)
3.	Indian National being Subscriber other than director	SPICe+ (INC-32) with linked filing of eMOA (INC-33) and eAOA (INC-34)
4.	Indian National being Subscriber-cum-Director	SPICe+ (INC-32) with linked filing of eMOA (INC-33) and eAOA (INC-34)
5.	Foreign National being Subscriber other than director having valid DIN	SPICe+ (INC-32) with linked filing of eMOA (INC-33) and eAOA (INC-34) along with Valid Business Visa to be submitted.  In case Business Visa is not available, apostilled MOA and AOA shall be attached and in such cases, eMOA (INC-33) and eAOA (INC-34) are NOT acceptable.
6.	Foreign National being Subscriber-cum-Director having valid DIN	SPICe+ (INC-32) with linked filing of eMOA (INC-33) and eAOA (INC-34) along with valid Business Visa to be submitted.  In case Business Visa is not available, apostilled MOA and AOA shall be attached and in such cases, eMOA (INC-33) and eAOA (INC-34) are NOT acceptable
7.	Foreign National being Subscriber-cum-Director not having valid DIN	SPICe+ (INC-32) with apostilled MOA and apostilled AOA as attachments.

### STEP – IV: Fill the Information in Form:

Once all the above-mentioned documents/ information are available. The applicant has to fill the information in the e-form “Spice+”.

# Establishment/ Incorporation of Foreign Company in India

## 1. Select Existing Application

The screenshot shows the MCA21 website interface. At the top, there is the Government of India logo and the Ministry of Corporate Affairs logo. The tagline reads "EMPOWERING BUSINESS, PROTECTING INVESTORS" with sub-points: "REGULATOR • INTEGRATOR • FACILITATOR • EDUCATOR". A search bar is present with the placeholder text "Type here to Search...". Below the header is a navigation menu with items: Home, About MCA, Acts & Rules, My Workspace, MCA Services, Data & Reports, E-Consultation, and Help & FA. The main content area shows the breadcrumb "Home > MCA Services > Company Services > SPICe+". On the left, there is a sidebar menu with categories like DSC Services, DIN Services, Master Data, LLP Services, etc., and "Company Services" expanded to show "Check Company Name", "Find CIN", "SPICe+", and "RUN (Reserve Unique Name)". The main content area is titled "SPICe+" and contains two buttons: "New Application" and "Existing Applications". Below these buttons, a text box explains: "Once you have submitted the name reservation request it will then be checked and, if found feasible, approved by the Central Registration Centre (CRC). You will receive an email from the CRC advising the outcome of the name reservation request."

The user has to click on Existing Application to start filing part B of the form (refer to image above)

## 2. Fill in the details as asked for in the form

The screenshot shows the "SPICe+ Part B" form. The section is titled "Subscriber and Directors Details" and contains the heading "Number of first subscriber(s) to MOA and directors of the company \*". Below this heading is a table with two columns: "Having valid DIN" and "Not having valid DIN". The table has four rows of input fields:

	Having valid DIN	Not having valid DIN
Total number of first subscribers (non-individual + individual)	<input type="text"/>	<input type="text"/>
Number of non-individual first subscriber(s)	<input type="text"/>	<input type="text"/>
Number of individual first subscriber(s) cum director(s)	<input type="text"/>	<input type="text"/>
Total number of directors (director(s) who is/are not subscriber(s) + subscriber(s) cum director(s) as mentioned in above Row no. 3)	<input type="text"/>	<input type="text"/>

At the bottom left of the form is a "Prev" button, and at the bottom right is a "Save & Continue" button highlighted with a red border.

## Technical Guide on Incorporation of Foreign Companies in India

---

This is a sample of details asked for, many such slides will be appearing while filling up the form.

### 3. Declarations to be submitted by clicking the checkboxes and “save and continue” to be pressed

receiving and acknowledging all communications and notices addressed to the proposed company on incorporation, shall be maintained at the given address at item 4 of this form

I, on behalf of all the first director(s) named in the Articles of Association of the proposed company, solemnly declare, that the declaration given herein as stated above are true to the best of my knowledge and belief, the information given in this integrated application form for incorporation and attachments thereto are correct and complete, and nothing relevant to this form has been suppressed. All the required attachments have been completely, correctly and legibly attached to this form and are as per the original records maintained by the promoters subscribing to the Memorandum of Association and Articles of Association.

I, on behalf of the proposed Directors whose particulars for allotment of DIN are filled as above, hereby confirm and declare that they are not restrained, disqualified, removed for being appointed as Director of a company under the provisions of the Companies Act, 2013 including sections 164 and 169, and have not been declared as proclaimed offender by any Economic Offence Court or Judicial Magistrate Court or High Court or any other Court, and not been already allotted a Director Identification Number (DIN) under section 154 of the Companies Act, 2013, and I further declare that I have read and understood the provisions of Sections 154, 155, 447 and 448 read with Sections 449, 450 and 451 of the Companies Act, 2013.

having Membership number  and/or certificate of practice number

has been engaged to give declaration under section 7(1) (b) and such declaration is attached

**DIN/PAN \***

All the declarations and other requisite details have to be submitted and the form has to be saved and continued for further process. (Refer to the image above)

## Establishment/ Incorporation of Foreign Company in India

### 4. A confirmation alert will be generated

I, on behalf of all the first director(s) named in the Articles of Association of the proposed company, solemnly declare, that the declaration given herein as stated above are true to the best of my knowledge and belief, the information given in this integrated application form for incorporation and attachments thereto are correct and complete, and nothing relevant to this form has been suppressed. All the required attachments have been completely, correctly and legibly attached to this form and are as per the original records maintained by the promoters subscribing to the Memorandum of Association and Articles of Association.

▲

**Informational Alert**

SPICe+ partB has been Submitted Successfully.

Okay

having Membership number  and/or certificate of practice number   
has been engaged to give declaration under section 7(1) (b) and such declaration is attached

**DIN/PAN \***

Prev Save & Continue

A confirmation message will appear on the screen upon successful submission of the form.

## Technical Guide on Incorporation of Foreign Companies in India

### STEP – V: Fill details of GST, EPFO, ESIC, BANK Account in AGILE PRO-S:

The screenshot shows the AGILE-PRO form interface. The form is titled "AGILE-PRO" and contains the following fields:

- Name of the company \* (Text input): FIRMM LIMITED
- 1. Do you want to apply for GSTIN \* (Radio buttons):  Yes  No
- 2. State (Same as entered in SPICe+) \* (Dropdown menu): Haryana
- 3. District (Same as entered in SPICe+) \* (Dropdown menu): Gurgaon
- 7. Whether The Establishment On Lease \* (Radio buttons):  Yes  No
- (c). Whether the building/premises of Establishment.is owned or hired. \* (Dropdown menu): Owned

A "Save & Next" button is located at the bottom right of the form. Below the form, there is a note: "Once you have submitted the name reservation request it will then be checked and, if found feasible, approved by the Central Registration Centre (CRC). You will receive an email from the CRC advising the outcome of the name reservation request."

After the proper filing of SPICE+ form, applicant has to move on to filling of information in the AGILE PRO-S form Dashboard Link. All the information which are common in PART-B and AGILE PRO-S shall be auto-filled in AGILE PRO-S. It is also a web-based form.

- **GST:** If Company wants to apply for GST it has to select YES in the form and fill the information in the form.
- **EPFO/ ESIC:** It is mandatory to apply for ESIC and EPFO.
- However, as per their concerned department company is not required to file a return till the date applicability of provisions of same on such company.

## **Establishment/ Incorporation of Foreign Company in India**

---

- **Bank Account:** It is mandatory to open a bank account through this form. Bank account branch shall be assigned according to the nearest branch to the registered office of the Company.
- **Shops & Establishment Registration:** The Company may at the time of incorporation itself apply for Shops & Establishment Registration by filling in the relevant details.

### **STEP – VI: Fill in details of INC-9:**

INC-9 shall also be generated web-based and it needs affixation of Directors/ subscribers on the same.

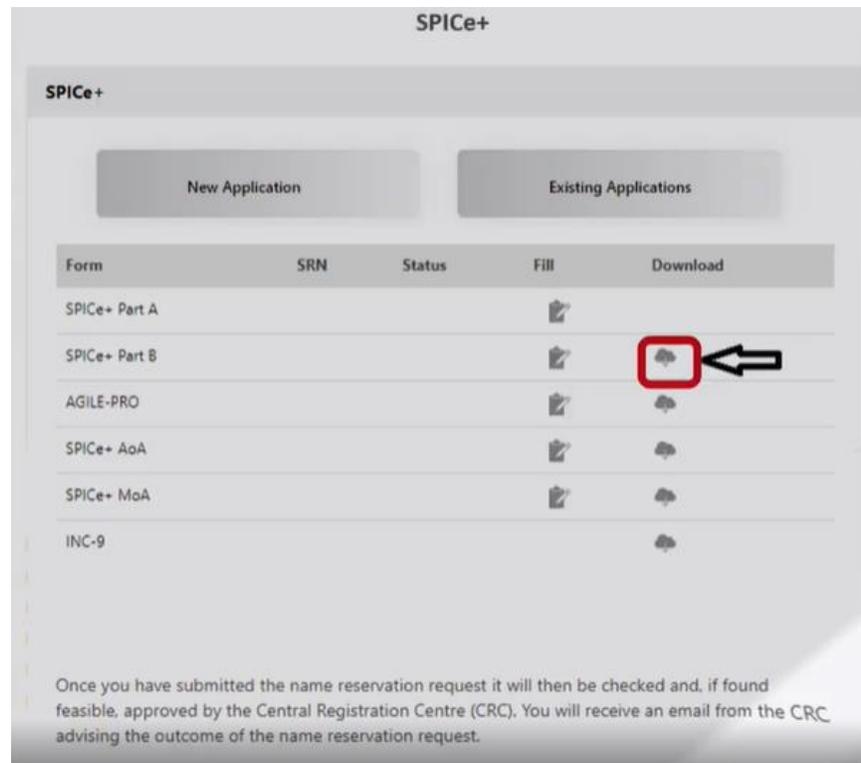
When at least one director/ subscriber does not have DIN and PAN both, it shall not be generated web-based.

### **STEP – VII: Download PDF of all the web-based forms:**

After filing all the web-based form i.e.

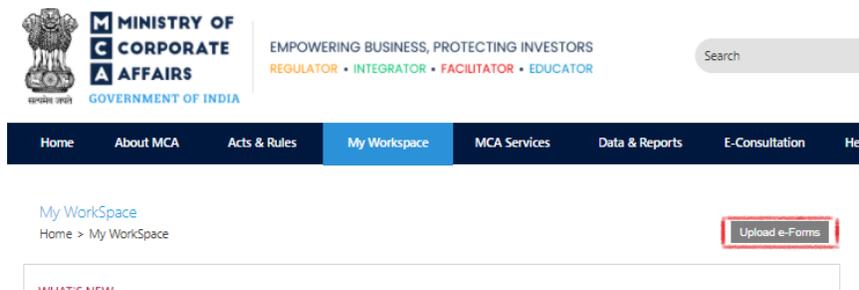
- SPICe+
- AGILE PRO-S
- INC-9 (as the case may be)

## Technical Guide on Incorporation of Foreign Companies in India



Download PDF of such forms from the dashboard. After downloading of PDF affix DSC on all the forms accordingly. SPICe+ AOA and SPICe+ MOA will be furnished as an attachment to the SPICE+. It will not be available for e-upload as shown in the image above.

### STEP – VIII: Filing of forms with MCA:



Once all forms are ready with the applicant, the form has to be uploaded on the MCA website by clicking the tab "Upload eForms" which is available on the top right corner of the screen as highlighted in the image above.

## Establishment/ Incorporation of Foreign Company in India

MCA Services  
Home > MCA Services > E-Filing > Upload E-Form

### Upload E-Form

To View The Step-By-Step Video Of Filing Linked Eform, Click Here.

Forms versions are undergoing changes. Stakeholders are requested to check the latest version before filing <http://www.mca.gov.in/MinistryV2/companyformsdownload.html>.

Please click here for useful instructions to optimize the PDF file size while affixing the Digital Signature Certificate(DSC).

Normal Forms  Resubmission SRN :SRN

Linked Forms

C:\fakepath\DOCUMENT\_FOR\_UPLAOD.pdf

C:\fakepath\DOCUMENT\_FOR\_UPLAOD.pdf  X

C:\fakepath\DOCUMENT\_FOR\_UPLAOD.pdf  X

\* You could observe issues with Adobe Reader DC version released recently,So we advise you to use Adobe acrobat 11 or above version for eform upload. Click here to get Adobe 11 version

\* If you are getting '\Need to attach mandatory DSC\' error during form upload then you need to check adobe versions used while affixing DSC. Please make sure to use adobe acrobat version 11 or above while affixing DSC. If problem still persists then please clear all DSCs and try affixing DSCs again before uploading eform.

\*Please note that your IP is being tracked for security reasons

All four documents has to be uploaded as a Linked form on the MCA website in a similar manner as shown in the image and thereafter, payment for the same has to be made.

### STEP – IX: Certificate of Incorporation:

After successful submission, the Registrar of Companies (ROC) will check the application and if no irregularities have been found, an Incorporation Certificate will be issued with CIN, PAN & TAN details over it.

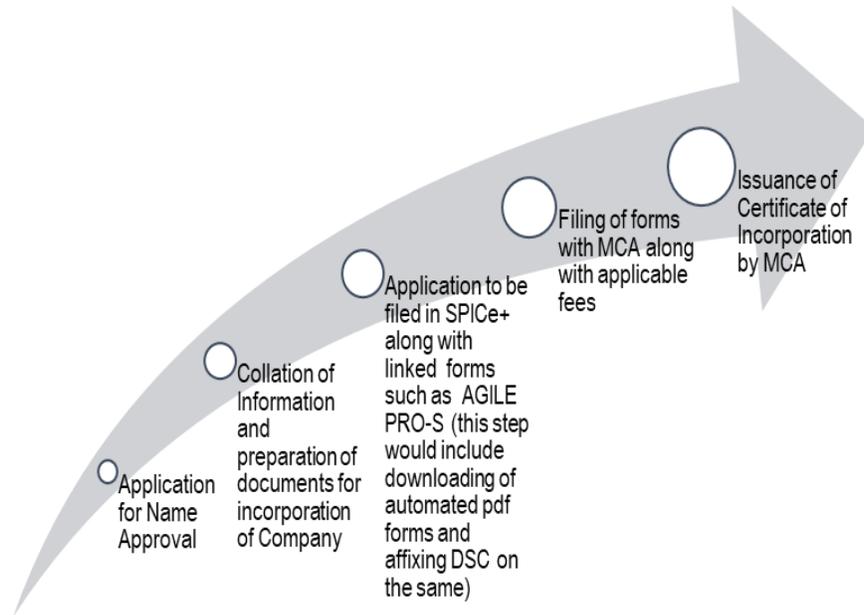
#### 4.1.1 Summarized Procedure for Incorporation of Subsidiary of a Foreign Company in India

- Application for Name Approval
- Collation of Information required from Foreign Company
- Preparation of Documents for Incorporation of Company
- Fill in the Application in Form SPICe+ Part B
- Details of GST, EPFO, ESIC, Bank Account, Shops & Establishment to be filled in AGILE PRO-S

## Technical Guide on Incorporation of Foreign Companies in India

---

- INC-9 to be filled up
- PDF forms of all the web-based form to be downloaded
- Filing of forms with MCA
- Issuance of Certificate of Incorporation



### 4.2 For Foreign Entities setting up its business with the Objective of Not having Commercial Operations in India

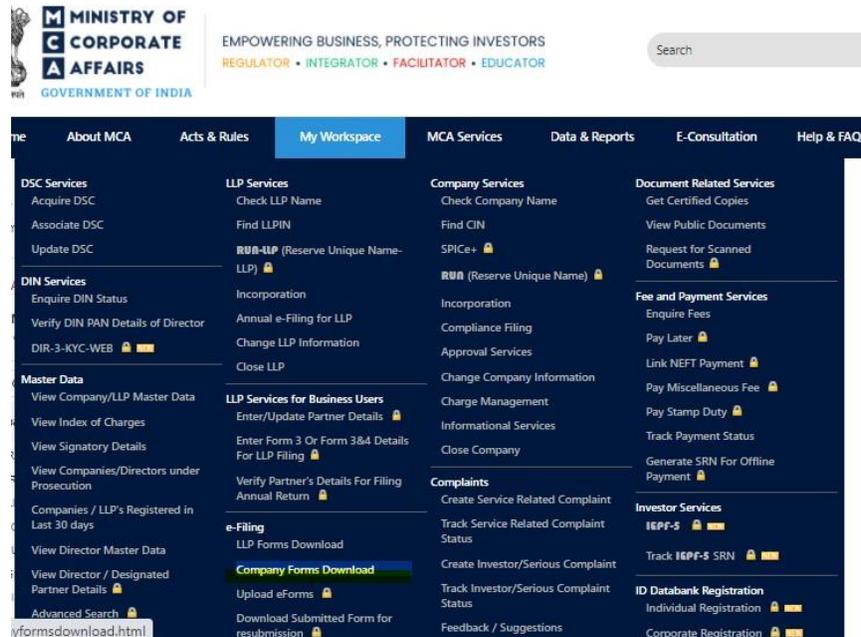
In case, a company wishes to operate through a non-commercial route in the form of Liaison Office, Project Office or Branch Office as per their business needs, requirements and eligibility criteria, then the below-mentioned procedure has to be followed by the foreign entity:

It is to be noted that the approval granted to LO/ PO/ BO shall hold good only if it is set up within 6 months of approval.

## Establishment/ Incorporation of Foreign Company in India

### STEP – I: Filing of Form FC-1 with MCA:

#### 1. Download Form FC-1 from the MCA site



The user has to visit the MCA website and thereafter he has to click on Company Forms Download (as highlighted in the image above) which is available under the tab MCA services. No need to log in with user credentials at this stage.

A screen will open with various forms available, user has to select FC-1 (this form has to be submitted within 30 days of the establishment of its place of business in India) and download the same (with Instruction Kit) and once the form has been downloaded, the file has to be extracted.

#### 2. Fill in the requisite details.

Once the downloaded FC-1 form has been extracted, the user has to open the form in PDF and start filing the details as required therein. In case of any doubt, the user may refer to the Instruction Kit, which got downloaded along with the form.

Following documents are required to be submitted while filing e-form FC-1.

## **Technical Guide on Incorporation of Foreign Companies in India**

---

- Certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language.
- Full address of the registered or principal office of the company.
- List of the directors and secretary of the company containing such particulars as prescribed under Rule 3.
- Name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company & Power of attorney or board resolution in favor of the authorized representative(s) (Mandatory).
- Reserve Bank of India approval letter\* (It is mandatory to attach an attested copy of such approval).
- Copy of permission letter of other Authority(s)/Regulator(s), if any, is required to be attached.
- Full address of the office of the company in India which is deemed to be its principal place of business in India.
- Particulars of opening and closing of a place of business in India on earlier occasion or occasions.
- A declaration that none of the directors of the company or the authorized representative in India has ever been convicted or debarred from formation of companies and management in India or abroad.
- Other Documents as may be prescribed.

\*Rule 3(3) of the Companies (Registration of Foreign Companies) Rules, 2014 requires application in Form FC-1 to be supported with an attested copy of approval from the Reserve Bank of India under the Foreign Exchange Management Act, 1999 and the rules and regulations thereunder or a declaration from the authorised representative of such Foreign Company that no such approval is required.

## Establishment/ Incorporation of Foreign Company in India

Page 6 of 7

**Note: Attention is also drawn to provisions of Section 448 of the Act which provide for punishment for false statement and certification.**

**For office use only:**

eForm Service request number (SRN)  eForm filing date  (DD/MM/YYYY)

This e-Form is hereby registered

Digital signature of the authorising officer

Date of signing  (DD/MM/YYYY)

Once the form has been completely filled, the user has to click on 'check form'. If the check form is successfully done, then DSC has to be affixed and the form has to be pre-scrutinised.

### 3. Upload the form with applicable fees.

Once all the procedure as mentioned above is completed, the user has to upload the form on the MCA website with the applicable fees.

mca.gov.in/mcafoportal/showEformUpload.do

MCA Services  
Home > MCA Services > E-Filing > Upload E-Form

**Upload E-Form**  
To View The Step-By-Step Video Of Filing Linked Eform, [Click Here](#).

Forms versions are undergoing changes. Stakeholders are requested to check the latest version before filing  
<http://www.mca.gov.in/MinistryV2/companyformsdownload.html>.

Please [click here](#) for useful instructions to optimize the PDF file size while affixing the Digital Signature Certificate(DSC).

Normal Forms  Resubmission SRN: SRN

Linked Forms

\* You could observe issues with Adobe Reader DC version released recently, So we advise you to use Adobe acrobat 11 or above version for eform upload. [Click here to get Adobe 11 version](#)

\* If you are getting '\ Need to attach mandatory DSC\ ' error during form upload then you need to check adobe versions used while affixing DSC. Please make sure to use adobe acrobat version 11 or above while affixing DSC. If problem still persists then please clear all DSCs and try affixing DSCs again before uploading eform.

**\*Please note that your IP is being tracked for security reasons**

While uploading the form, the screen, as shown above, will appear. The form has to be filed under Normal forms (it has to be ensured that the linked formed check box is not clicked). Thereafter, SRN will be generated and applicable fees have to be paid.

## Chapter 5

# Post-Incorporation Compliances for Foreign Company (relating to Company Law only)

---

Once a foreign company has established its business in India, a set of compliance-related formalities, even post its incorporation, has to be adhered to. Apart from these compliances, there are certain annual-based and event-based compliances also which have to be followed. In this chapter, only the compliances prescribed under the Companies Act have been referred to.

### 5.1 For Commercial Operations

There are various compliances under the Companies Act, 2013 which a subsidiary company/ wholly-owned subsidiary company/Joint Venture Company of a foreign incorporated company has to adhere to once it incorporates its company in India.

Few of the important compliances<sup>2</sup> that are to be met by the foreign subsidiary company under the Companies Act, 2013 are as follows:

- **Receipt of Subscription Money from Foreign Subscriber**

Under the Companies Act, 2013 a declaration is to be filed by a director within a period of 180 days from the date of incorporation of the company, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making such declaration.
- **Filing of e-form 20A i.e. Declaration of Commencement of Business**

The declaration of commencement of business under section 10A by a director shall be in Form No- INC-20A and shall be filed as provided in the Companies (Registration Offices and Fees) Rules, 2014 and the

---

<sup>2</sup> This is only an illustrative list of few of the important compliances, there could be other compliances also that needs to be adhered to.

## **Post-Incorporation Compliances for Foreign Company...**

---

contents of the said form shall be verified by a Company Secretary or a Chartered Accountant or a Cost Accountant in practice.

However, in case of a company pursuing objects requiring registration or approval from any sectoral regulators such as the RBI, SEBI, etc., the registration or approval, as the case may be, from such regulator shall also be obtained and attached with the declaration.

- **Allotment of Shares**

As per the provision of the Companies Act, 2013 the Company must allot shares to its subscribers within 60 days from the date of incorporation of the company whose name is mentioned in the articles of association and memorandum of association of the company.

- **Issue Share Certificate to the subscribers**

As per section 56(4) of the Companies Act, 2013, the share certificate shall be issued to the subscribers of the memorandum within 2 months from the date of incorporation.

- **Appointment of First Statutory Auditor within 30 days of incorporation**

Every Company other than Government Company is required to appoint the first auditor within 30 days of Incorporation of Company. As per Section 139 the first auditor of the Company shall hold office till the conclusion of the first Annual General Meeting of the company. The first auditor can be an Individual or a Firm, qualified to be appointed as an Auditor of the company.

- **Conduct meeting of directors and disclosure of director's interest, if any**

First Board Meeting is required to be held within 30 days after Incorporation.

As per section 184 of the Companies Act, 2013 the first directors of the company have to disclose their interest in other entities to the company in the meeting of board of directors (MBP-1) To disclose their interest in any other company, all the directors must fill the form MBP-1. Such disclosure is to be made every year in the first Board Meeting or whenever there is a change in disclosures of the Company in Form MBP-1.

## Technical Guide on Incorporation of Foreign Companies in India

---

- **Printing of Corporate Stationery**

Letterheads and other stationery have to be kept by the Company in accordance with the requirements prescribed under the Act.

- **Conducting subsequent Board Meetings and Annual General Meeting**

Every company shall hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.<sup>3</sup>

- **Annual Filing to ROC**

Every company<sup>4</sup> is required to file its Financial Statements in form AOC-4 and the consolidated financial statements if any in form AOC-4 CFS within 30 days of holding of AGM and Annual Return in form MGT-7 within 60 days from the date of holding of AGM.

Further, there are certain classes of companies which are prescribed under the Act, which have to file AOC-4 XBRL.

## 5.2 For Non-Commercial Operations

### Under The Companies Act, 2013

The important compliances that are to be met by the foreign company as per Section 380 and 381 of the Companies Act, 2013 are as follows:

- **Form FC-2 under Section 380 read with Rule 3(4):** In case, any alteration is made or occurs in the documents delivered to the Registrar, the foreign company shall, within thirty days of such alteration, file a return in form FC-2 along with applicable fees containing the particulars of alteration.

---

<sup>3</sup> The Ministry of Corporate Affairs vide its circular dated 03rd May 2021 has relaxed the requirement of holding Board Meetings of the companies within the interval of 120 days as provided in section 173(1) of the Act by granting extension of 60 days for the first two quarters of the Financial Year 2021-22.

Ministry's Circular is available at :  
[http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo8\\_03052021.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo8_03052021.pdf)

<sup>4</sup> OPC and Small Company are required to file form MGT-7A instead of MGT-7 from the financial year 2020-21 onwards.

## Post-Incorporation Compliances for Foreign Company...

### List of possible Changes

- Alteration in charter, statute or memorandum of association or articles of association
- Alteration in the place of business in India of the company
- Alteration in the particulars of the directors or secretaries
- Alteration in particulars of company authorized representative

### Attachments to be made in Form FC-2

- Certified true copy of the Board resolution, if any
  - Copy of the general meeting resolution
  - Copy of approval letter (it is mandatory if any approval is required for such alteration).
  - Translated version of the documents in English (in case documents attached are not in English).
  - Particulars of alterations in the place of business in India of the company
  - Particulars of alteration in details of the directors or secretaries
  - Particulars of alterations in details of the company authorized representative
  - Any other information can be provided as an optional attachment(s)
- **Form FC-3 under Section 380:** A Foreign Company in each calendar year is required to prepare a balance sheet and profit & loss account along with the documents as prescribed under Rule 4. All these documents shall be filed with the Registrar of Companies along with a copy of a list of all the places where the business has been established in India as on the date of the balance sheet in Form FC-3 within a period of six months of the close of the financial year of the foreign company to which the documents relate.

If any of such documents is not in the English Language, a certified translation of these documents in the English Language shall also be attached.

## Technical Guide on Incorporation of Foreign Companies in India

---

It needs to be submitted to the Registrar of Companies (ROC) having jurisdiction over New Delhi.

### Attachments to be made in Form FC-3

- Copy of latest consolidated financial statement of the parent company (mandatory)
  - Copy of balance sheet and profit and loss account duly authenticated under section 381(1) (mandatory)
  - Statement of transfer of funds
  - Statement of repatriation of profits
  - Statement of related party transactions
  - Approval letter obtained for every establishment in India by a foreign company
  - In case the document is in any other language other than English, a certified translation in English language is mandatory.
  - Any other information can be provided as an optional attachment(s)
- **Form FC-4 under Section 381:** This form is concerned with the annual return of the company. It has to be filed within sixty days from the last days of its financial year to which it relates.

### Attachments to be made in Form FC-4

- Details of Promoters, Directors and Key managerial personnel and changes therein since the close of previous financial year. (Mandatory)
- Details of directors and key managerial personnel and their remuneration. (Mandatory)
- Details of the meeting of the members or class thereof, board and its various committees along with attendance details. (Mandatory)
- Particulars of members and debenture holders along with changes therein since the close of previous financial year. (Mandatory)

### **Post-Incorporation Compliances for Foreign Company...**

---

- Particulars of Holding, subsidiary and associate companies and firms. (Mandatory in case number of entities prescribed at serial no 6 is more than seven)
- Details of Penalties/punishment/ Compounding of offences, if any. (optional)
- Any other information can be provided as an optional attachment(s).
- **Preparation of Financial statements:** The Foreign Company has to prepare financial statements of its Indian business operations in accordance with Schedule III or as near thereto as may be possible which must be submitted within six months from the end of the financial year. It must contain the following documents also:
  - a. Statement of transfer of funds (including dividend if any)
  - b. Statement of repatriation of profit
  - c. Statement of related party transactions such as statements on sales, transfer of property, purchases, etc.
  - d. documents required to be annexed thereto in accordance with the provisions of Chapter IX of the Act i.e. Accounts of Companies
- **Audit of accounts:** Accounts of the foreign company in respect of its Indian business operation must be audited by a Practising Chartered Accountant in India or a firm or limited liability partnership of practicing chartered accountants. These accounts should be properly arranged and made available by the company for the audit.
- **Authentication and translation of documents:** All the documents that are submitted by the company to the ROC must be in English language and wherever it is not in English, a certified translation thereof has to be made in accordance with Rule 10 of the Companies (Registration of Foreign Companies) Rules, 2014.

## Chapter 6

# Provisions under the Companies Act, 2013 governing Foreign Companies in India

---

### 6.1 Specific Provisions under the Companies Act, 2013 read with Rules thereunder governing the Foreign Companies in India

The foreign companies incorporated in India has to adhere to the additional requirements prescribed under the Companies Act, 2013 in addition to the compliances applicable on Indian Companies and thus for the sake of brevity, the focus has been made on the special provisions only.

As per the Companies Act, 2013 provisions governing the companies that are incorporated outside India are prescribed under Chapter XXII of the Act. The same has been referred below along with relevant rules.

- **Section 380- Documents, etc., to be delivered to the Registrar by Foreign Companies, read with Rule- 3**

Section 380 states that every foreign company shall, within thirty days of the establishment of its place of business in India, deliver to the Registrar for registration—

- a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;
- the full address of the registered or principal office of the company;
- a list of the directors and secretary of the company containing such particulars as prescribed under Rule 3;
- the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

### **Provisions under the Companies Act, 2013 governing Foreign Companies...**

- the full address of the office of the company in India which is deemed to be its principal place of business in India;
- particulars of opening and closing of a place of business in India on earlier occasion or occasions;
- declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
- any other information as may be prescribed.

Further, every foreign company existing at the commencement of this Act shall, if it has not delivered to the Registrar before such commencement, the documents and particulars specified in sub-section (1) of section 592 of the Companies Act, 1956, continue to be subject to the obligation to deliver those documents and particulars in accordance with that Act.

Moreover, where any alteration is made or occurs in the documents delivered to the Registrar under this section, the foreign company shall, within thirty days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form (refer rule-3).

#### **Rule 3- Particulars Relating to Directors and Secretary to be furnished to the Registrar by Foreign Companies**

Every foreign company shall, within thirty days of the establishment of its place of business in India, in addition to the particulars specified in section 380(1) of the Act, also deliver to the Registrar for registration, a list of directors and Secretary of such company.

The list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:-

- personal name and surname in full;
- any former name or names and surname or surnames in full;
- father's name or mother's name and spouse's name;
- date of birth;
- residential address;

## Technical Guide on Incorporation of Foreign Companies in India

---

- nationality;
- if the present nationality is not the nationality of origin, his nationality of origin;
- Passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)
- income-tax permanent account number (PAN) , if applicable;
- occupation, if any ;
- whether directorship in any other Indian company, (Director Identification Number (DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);
- other directorship or directorships held by him;
- Membership Number (for Secretary only); and
- e-mail ID.

It is also required that a foreign company shall, within a period of thirty days of the establishment of its place of business in India, file with the registrar Form FC-1 with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and with the documents required to be delivered for registration by a foreign company in accordance with the provisions of section 380(1) and the application shall also be supported with an attested copy of approval from the Reserve Bank of India under Foreign Exchange Management Act or Regulations, and also from other regulators, if any, approval is required by such foreign company to establish a place of business in India or a declaration from the authorised representative of such foreign company that no such approval is required.

And in case any alteration is made or occurs in the document delivered to the Registrar for registration under section 380(1), the foreign company shall file with the Registrar, a return in Form FC-2 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 containing the particulars of the alteration, within a period of thirty days from the date on which the alteration was made or occurred.

- **Section 381- Accounts of Foreign Company, read with Rule-4, 5 and 6**

Every foreign company shall, in every calendar year,—

### **Provisions under the Companies Act, 2013 governing Foreign Companies...**

- make out a balance sheet and profit and loss account in such form, containing such particulars and including or having annexed or attached thereto such documents as may be prescribed;
- and deliver a copy of those documents to the Registrar:

However, the Central Government may, by notification, direct that, in the case of any foreign company or class of foreign companies, the requirements as stated above shall not apply, or shall apply subject to such exceptions and modifications as may be specified in that notification.

If any of the above document is not in the English language, there shall be annexed to it a certified translation thereof in the English language. (refer Rule 10)

Every foreign company shall send to the Registrar along with the documents stated above, a copy of a list in the prescribed form of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in above is made out.

#### **Rule 4- Financial Statement of Foreign Company**

Every foreign company shall prepare a financial statement of its Indian business operations in accordance with Schedule III or as near thereto as may be possible for each financial year including-

- documents required to be annexed thereto in accordance with the provisions of Chapter IX of the Act i.e. Accounts of Companies ;
- documents relating to copies of the latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the provisions of the law for the time being in force in that country:

However, where such documents are not in English language, there shall be annexed to it a certified translation thereof in the English language:

Further, where the Central Government has exempted or specified different documents for any foreign company or a class of foreign companies, then documents, as specified, shall be submitted;

Every foreign company shall, along with the financial statement required to be filed with the Registrar, attach thereto the following documents; namely:-

- Statement of related party transaction, which shall include-

## Technical Guide on Incorporation of Foreign Companies in India

---

- name of the person in India which shall be deemed to be the related party within the meaning of section 2(76) of the Act of the foreign company or of any subsidiary or holding company of such foreign company or of any firm in which such foreign company or its subsidiary or holding company is a partner;
- nature of such relationship;
- description and nature of transaction;
- amount of such transaction during the year with opening, closing, highest and lowest balance during the year and provisions made (if any) in respect of such transactions;
- reason of such transaction;
- material effect of such transaction on both the parties;
- amount written off or written back in respect of dues from or to the related parties;
- a declaration that such transactions were carried out at arms-length basis; and
- any other details of the transaction necessary to understand the financial impact;
- Statement of repatriation of profits which shall include-
  - amount of profits repatriated during the year;
  - recipients of the repatriation;
  - form of repatriation;
  - dates of repatriation;
  - details if repatriation made to a jurisdiction other than the residence of the beneficiary;
  - mode of repatriation; and
  - approval of the Reserve Bank of India or any other authority, if any.
- Statement of transfer of funds (including dividends if any) which shall, in relation of any fund transfer between place of business of foreign company in India and any other related party of the foreign company

## **Provisions under the Companies Act, 2013 governing Foreign Companies...**

outside India including its holding, subsidiary and associate company, include-

- date of such transfer;
- amount of fund transferred or received;
- mode of receipt or transfer of fund;
- purpose of such receipt or transfer; and
- approval of the Reserve Bank of India or any other authority, if any.

All the documents referred to in this rule shall be delivered to the Registrar within a period of six months of the close of the financial year of the foreign company to which the documents relate:

However, the Registrar may, for any special reason, and on an application made in writing by the foreign company concerned, extend the said period by a period not exceeding three months.

### **Rule 5- Audit of Accounts of Foreign Company**

Every foreign company shall get its accounts, pertaining to the Indian business operations prepared in accordance with the requirements of section 381(1)(a) and Rule 4, audited by a practicing Chartered Accountant in India or a firm or limited liability partnership of practicing chartered accountants.

The expressions "Chartered Accountant", "Firm" and limited liability partnership shall have the meanings respectively assigned to them under the Act and Limited Liability Partnership Act, 2008 (6 of 2009) respectively.

Further, the provisions of Chapter X i.e. Audit and Auditors and rules made thereunder, as far as applicable, shall apply, mutatis mutandis, to the foreign company.

### **Rule 6- List of Places of Business of Foreign Company**

Every foreign company shall file with the Registrar, along with the financial statement, in Form FC-3 with such fee as provided under Companies (Registration Offices and Fees) Rules, 2014 a list of all the places of business established by the foreign company in India as on the date of balance sheet.

- **Section 382- Display of Name etc of Foreign Company**

## Technical Guide on Incorporation of Foreign Companies in India

---

Every foreign company shall—

- conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situated;
- cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, billheads and letter paper, and in all notices, and other official publications of the company; and
- if the liability of the members of the company is limited, cause notice of that fact—
  - to be stated in every such prospectus issued and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and
  - to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situated.

- **Section 383- Service on Foreign Company**

Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

- **Section 384- Debentures, Annual Return, Registration of Charges, Books of Account and their Inspection, read with Rule 7**

- The provisions of section 71 shall apply mutatis mutandis to a foreign company.
- The provisions of section 92 and section 135 shall, subject to such exceptions, modifications and adaptations as may be made therein by

## **Provisions under the Companies Act, 2013 governing Foreign Companies...**

rules made under this Act, apply to a foreign company as they apply to a company incorporated in India.

- The provisions of section 128 shall apply to a foreign company to the extent of requiring it to keep at its principal place of business in India, the books of account referred to in that section, with respect to monies received and spent, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India.
- The provisions of Chapter VI shall apply mutatis mutandis to charges on properties which are created or acquired by any foreign company.
- The provisions of Chapter XIV shall apply mutatis mutandis to the Indian business of a foreign company as they apply to a company incorporated in India.

### **Rule 7- Annual Return**

Every foreign company shall prepare and file, within a period of sixty days from the last day of its financial year, to the Registrar annual return in Form FC-4 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 containing the particulars as they stood on the close of the financial year.

- **Section 385- Fee for Registration of Documents, read with Rule 8**

There shall be paid to the Registrar, such fee, as may be prescribed, for registering any document required by the provisions of Chapter XXII.

### **Rule 8- Office Where Documents to be Delivered and Fee for Registration of Documents**

Any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi, and references to the Registrar in Chapter XXII of the Act i.e. Companies Incorporated Outside India and these rules shall be construed accordingly.

Further, the fee to be paid to the Registrar for registering any document relating to a foreign company shall be such as provided in the Companies (Registration Offices and Fees) Rules, 2014.

Moreover, if any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the

## **Technical Guide on Incorporation of Foreign Companies in India**

---

date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India.

- **Section 387-Dating of Prospectus and Particulars to be Contained Therein**

No person shall issue, circulate or distribute in India any prospectus offering to subscribe for securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless the prospectus is dated and signed, and states the matters specified under section 26 and contains particulars with respect to the following matters, namely:

- \*the instrument constituting or defining the constitution of the company;
- \*the enactments or provisions by or under which the incorporation of the company was effected;
- \*address in India where the said instrument, enactments or provisions, or copies thereof, and if the same are not in the English language, a certified translation thereof in the English language can be inspected;
- the date on which and the country in which the company would be or was incorporated; and
- whether the company has established a place of business in India and, if so, the address of its principal office in India; and

\*However, the above referred provision shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

Any condition requiring or binding an applicant for securities to waive compliance with any requirement imposed by virtue of sub-section (1) referred to in above, or purporting to impute him with notice of any contract, documents or matter not specifically referred to in the prospectus shall be void.

Further, no person shall issue to any person in India a form of application for securities of such a company or intended company as is mentioned in sub-

## **Provisions under the Companies Act, 2013 governing Foreign Companies...**

---

section (1), unless the form is issued with a prospectus which complies with the provisions of Chapter XXII and such issue does not contravene the provisions of section 388. However, this requirement shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to securities.

It is to be noted that Section 387

- shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to securities of the company, whether an applicant for securities will or will not have the right to renounce in favour of other persons; and
- except in so far as it requires a prospectus to be dated, to the issue of a prospectus relating to securities which are or are to be in all respects uniform with securities previously issued and for the time being dealt in or quoted on a recognised stock exchange, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

Nonetheless, nothing in this section shall limit or diminish any liability which any person may incur under any law for the time being in force in India or under this Act apart from this section.

- **Section 388- Provision as to Expert's Consent and Allotment**

No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not been established, or when formed will or will not establish, a place of business in India:

- if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or

## **Technical Guide on Incorporation of Foreign Companies in India**

---

- if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions of sections 33 and 40, so far as applicable.

However, a statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

- **Section 389- Registration of Prospectus read with Rule 11**

No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed.

### **Rule 11- Documents to be annexed to Prospectus**

The following documents shall be annexed to the prospectus, namely:-

- any consent to the issue of the prospectus required from any person as an expert;
- a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding two years;
- a copy of underwriting agreement; and
- a copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

- **Section 390-Offer of Indian Depository Receipts read with Rule 13**

Keeping aside anything contained in any other law for the time being in force, the Central Government may make rules applicable for—

### **Provisions under the Companies Act, 2013 governing Foreign Companies...**

---

- the offer of Indian Depository Receipts (IDRs);
- the requirement of disclosures in prospectus or letter of offer issued in connection with IDRs;
- the manner in which the IDRs shall be dealt with in a depository mode and by custodian and underwriters; and
- the manner of sale, transfer or transmission of IDRs, by a company incorporated or to be incorporated outside India, whether the company has or has not established, or will or will not establish, any place of business in India.

#### **Rule 13- Issue of Indian Depository Receipts (IDRs)**

No company incorporated or to be incorporated outside India, whether the company has or has not established, or may or may not establish, any place of business in India (hereinafter called 'issuing company') shall make an issue of Indian Depository Receipts (IDRs) unless such company complies with the conditions mentioned under this rule, in addition to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and any directions issued by the Reserve Bank of India.

The term "Indian Depository Receipt" means any instrument in the form of a depository receipt created by a Domestic Depository in India and authorized by a company incorporated outside India making an issue of such depository receipts.

The issuing company shall not issue IDRs unless-

- (a) its pre-issue paid-up capital and free reserves are at least US\$ 50 million and it has a minimum average market capitalization (during the last three years) in its parent country of at least US\$ 100 million;
- (b) it has been continuously trading on a stock exchange in its parent or home country (the country of incorporation of such company) for at least three immediately preceding years;
- (c) it has a track record of distributable profits in terms of section 123 of the Act, for at least three out of immediately preceding five years;
- (d) It fulfills such other eligibility criteria as may be laid down by the SEBI from time to time in this behalf.

## **Technical Guide on Incorporation of Foreign Companies in India**

---

The issuing company shall follow the following procedure for making an issue of IDRs:

- the issuing company shall, where required, obtain the necessary approvals or exemptions from the appropriate authorities from the country of its incorporation under the relevant laws relating to issue of capital and IDRs.
- issuing company shall obtain prior written approval from the SEBI on an application made in this behalf for issue of IDRs along with the issue size.
- an application as aforesaid shall be made to the SEBI (along with draft prospectus) at least ninety days prior to the opening date of the IDRs issue, in such form, along with such fee and furnishing such information as may be specified by SEBI from time to time:

However, the issuing company shall also file with the SEBI, through a Merchant Banker, a due diligence report along with the application under clause (b) in the form specified by the SEBI.

- the SEBI may, within a period of thirty days of receipt of an application under clause (c), call for such further information, and explanations, as it may deem necessary, for disposal of such application and shall dispose the application within a period of thirty days of receipt of further information or explanation:

However, if within a period of sixty days from the date of submission of application or draft prospectus, the SEBI specifies any changes to be made in the draft prospectus, the prospectus shall not be filed with the Securities and Exchange Board of India or ROC unless such changes have been incorporated therein.

- the issuing company shall on approval being granted by the SEBI to an application under clause (b), pay to the Securities and Exchange Board of India an issue fee as may be prescribed from time to time by the SEBI.
- the issuing company shall file a prospectus, certified by two authorized signatories of the issuing company, one of whom shall be a whole-time director and other the Chief Financial Officer, stating the particulars of the resolution of the Board by which it was approved with the SEBI and Registrar of Companies, New Delhi before such issue:

### **Provisions under the Companies Act, 2013 governing Foreign Companies...**

---

However, at the time of filing of the said prospectus with the Registrar of Companies, New Delhi, a copy of approval granted by the SEBI and the statement of fees paid by the Issuing Company to the SEBI shall also be attached.

- the prospectus to be filed with the SEBI and the ROC, New Delhi shall contain the particulars as prescribed in sub-rule (8) and shall be signed by all the whole-time directors of the issuing company, and the Chief Financial Officer.
- the issuing company shall appoint an overseas custodian bank, a Domestic Depository and a Merchant Banker for the purpose of issue of IDRs.
- the issuing company may appoint underwriters registered with the SEBI to underwrite the issue of IDRs.
- the issuing company shall deliver the underlying equity shares or cause them to be delivered to an Overseas Custodian Bank and the said bank shall authorize the domestic depository to issue IDRs.
- the issuing company shall obtain in-principle listing permission from one or more stock exchanges having nationwide trading terminals in India.

"Domestic Depository" means custodian of securities registered with the SEBI and authorized by the issuing company to issue IDRs.

"Merchant Banker" means a Merchant Banker as defined in sub-regulation (cb) of regulation 2 of the Securities and Exchange Board (Merchant Bankers) Regulations, 1992.

"Overseas Custodian Bank" means a banking company which is established in a country outside India and which acts as custodian for the equity shares of Issuing Company, against which IDRs are proposed to be issued by having a custodial arrangement or agreement with the Domestic Depository or by establishing a place of business in India.

The Merchant Banker to the issue of IDRs shall deliver for registration the following documents or information to the SEBI and ROC at New Delhi, namely:-

- instrument constituting or defining the constitution of the issuing company;

## **Technical Guide on Incorporation of Foreign Companies in India**

---

- the enactments or provisions having the force of law by or under which the incorporation of the Issuing company was effected, a copy of such provisions attested by an officer of the company be annexed;
- if the issuing company has established place of business in India, address of its principal office in India;
- if the issuing company does not establish a principal place of business in India, an address in India where the said instrument, enactments or provision or copies thereof are available for public inspection, and if these are not in English, a translation thereof certified by a key managerial personnel of the Issuing company shall be kept for public inspection;
- a certified copy of the certificate of incorporation of the issuing company in the country in which it is incorporated;
- the copies of the agreements entered into between the issuing company, the overseas custodian bank, the Domestic Depository, which shall inter alia specify the rights to be passed on to the IDR holders;
- if any document or any portion thereof required to be filed with the SEBI or the Registrar of Companies is not in English language, a translation of that document or portion thereof in English, certified by a key managerial personnel of the company to be correct and attested by an authorized officer of the Embassy or Consulate of that country in India, shall be attached to each copy of the document.

No application form for the securities of the issuing company shall be issued unless the form is accompanied by a memorandum containing the salient features of prospectus in the specified form. However, it can be issued without the memorandum, if it is issued in connection with an invitation to enter into an underwriting agreement with respect to the IDRs.

The prospectus for subscription of IDRs of the Issuing company which includes a statement purporting to be made by an expert shall not be circulated, issued or distributed in India or abroad unless a statement that the expert has given his written consent to the issue thereof and has not withdrawn such consent before the delivery of a copy of the prospectus to the SEBI and the ROC, New Delhi, appears on the prospectus.

### **Provisions under the Companies Act, 2013 governing Foreign Companies...**

---

The provisions of the Act shall apply for all liabilities for mis-statements in prospectus or punishment for fraudulently inducing persons to invest money in IDRs.

The person(s) responsible for the issue of the prospectus shall not incur any liability by reason of any non-compliance with or contravention of any provision of this rule, if-

- as regards any matter not disclosed, he proves that he had no knowledge thereof; or
- the contravention arose in respect of such matters which in the opinion of the Central Government or the SEBI were not material.

A holder of IDRs may transfer the IDRs, may ask the Domestic Depository to redeem them or any person may seek reissuance of IDRs by conversion of underlying equity shares, subject to the provisions of the Foreign Exchange Management Act, 1999, the Securities and Exchange Board of India Act, 1992, or the rules, regulations or guidelines issued under these Acts, or any other law for the time being in force;

- In case of redemption, Domestic Depository shall request the Overseas Custodian Bank to get the corresponding underlying equity shares released in favour of the holder of IDRs for being sold directly on behalf of holder of IDRs, or being transferred in the books of Issuing company in the name of holder of IDRs and a copy of such request shall be sent to the issuing company for information.
- A holder of IDRs may, at any time, nominate a person to whom his IDRs shall vest in the event of his death and Form FC-5 may be used for this purpose.

The repatriation of the proceeds of issue of IDRs shall be subject to laws for the time being in force relating to export of foreign exchange.

- The number of underlying equity shares offered in a financial year through IDR offerings shall not exceed twenty-five percent of the post issue number of equity shares of the company.
- Notwithstanding the denomination of securities of an Issuing company, the IDRs issued by it shall be denominated in Indian Rupees.
- The IDRs issued under this Rule shall be listed on the recognized Stock Exchange(s) in India as specified in clause (k) of sub-rule (3)

## Technical Guide on Incorporation of Foreign Companies in India

---

and such IDRs may be purchased, possessed and freely transferred by a person resident in India as defined in section 2(v) of the Foreign Exchange Management Act, 1999, subject to the provisions of the said Act:

However, the IDRs issued by an Issuing company may be purchased, possessed and transferred by a person other than a person resident in India if such Issuing company obtains specific approval from the Reserve Bank of India in this regard or complies with any policy or guidelines that may be issued by Reserve Bank of India on the subject matter;

- Every issuing company shall comply with such continuous disclosure requirements as may be specified by the SEBI in this regard.
- On the receipt of dividend or other corporate action on the IDRs as specified in the agreements between the Issuing company and the Domestic Depository, the Domestic Depository shall distribute them to the IDR holders in proportion to their holdings of IDRs.

The prospectus or letter of offer shall, inter alia, contain the following particulars, namely:-

- General information-
  - Name and address of the registered office of the company;
  - name and address of the Domestic Depository, the Overseas Custodian Bank with the address of its office in India, the Merchant Banker, the underwriter to the issue and any other intermediary which may be appointed in connection with the issue of IDRs;
  - names and addresses of Stock Exchanges where applications are made or proposed to be made for listing of the IDRs;
  - the provisions relating to punishment for fictitious applications;
  - statement or declaration for refund of excess subscription;
  - declaration about issue of allotment letters or certificates or IDRs within the stipulated period;
  - date of opening of issue;

### **Provisions under the Companies Act, 2013 governing Foreign Companies...**

---

- date of closing of issue;
- date of earliest closing of the issue;
- declaration by the Merchant Banker with regard to adequacy of resources of underwriters to discharge their respective obligations, in case of being required to do so;
- a statement by the Issuing company that all moneys received out of issue of IDRs shall be transferred to a separate domestic bank account, name and address of the bank and the nature and number of the account to which the amount shall be credited;
- the details of proposed utilisation of the proceeds of the IDR issue.
- Capital Structure of the Company- The authorized, issued, subscribed and paid-up capital of the issuing company;
- Terms of the issue-
  - rights of the IDR holders against the underlying securities;
  - details of availability of prospectus and forms, i.e., date, time, place etc;
  - amount and mode of payment seeking issue of IDRs; and
  - any special tax benefits for the Issuing company and holders of IDRs in India.
- Particulars of Issue-
  - the objects of the issue;
  - the cost of the Project, if any; and
  - the means of financing the projects, if any including contribution by promoters.
- Company, Management and Project-
  - the main objects, history and present business of the company;
  - the Promoters or parent group or owner group and their background:

## **Technical Guide on Incorporation of Foreign Companies in India**

---

- In case there are no identifiable promoters, the names, addresses and other particulars as may be specified by the SEBI of all the persons who hold five percent. or more equity share capital of the company shall be disclosed;
- the subsidiaries of the company, if any;
- the particulars of the Management or Board (i.e. Name and complete address(es) of Directors, Manager, Managing Director or other principal officers of the company);
- the location of the project, if any;
- the details of plant and machinery, infrastructure facilities, technology etc., where applicable;
- the schedule of implementation of project and progress made so far, if applicable;
- nature of product(s), consumer(s), industrial users;
- the particulars of legal, financial and other defaults, if any;
- the risk factors to the issue as perceived; and
- consent of the Merchant Bankers, Overseas Custodian Bank, the Domestic Depository and all other intermediaries associated with the issue of IDRs.
- the information, as may be specified by the SEBI, in respect of listing, trading record or history of the Issuing company on all the stock exchanges, whether situated in its parent country or elsewhere.

## Provisions under the Companies Act, 2013 governing Foreign Companies...

- Report-
  - Where the law of a country, in which the Issuing company is incorporated, requires an annual statutory audit of the accounts of the Issuing company, a report by the statutory auditor of the Issuing company, in such form as may be specified by the SEBI on -

- the audited financial statements of the Issuing company in respect of three financial years immediately preceding the date of prospectus;
- the interim audited financial statements in respect of the period ending on a date which is less than 180 days prior to the date of opening of the issue, if the gap between the ending date of the latest audited financial statements disclosed under clause (A) and the date of the opening of the issue is more than 180 days:

If the gap between such date of the latest audited financial statements and the date of opening of issue is 180 days or less, the requirement under item (B) shall be deemed to be complied with, if a statement, as may be specified by the SEBI, in respect of material changes in the financial position of Issuing company for such gap is disclosed in the Prospectus:

And in case of an Issuing company which is a foreign bank incorporated outside India and which is regulated by a member of the Bank for International Settlements or a member of the International Organization of Securities Commissions which is a signatory to a Multilateral Memorandum of Understanding, the requirement under this paragraph, in respect of period beginning with last date of period for which the latest audited financial statements are made and the date of opening of the issue shall be satisfied, if the relevant financial statements are based on limited review report of such statutory auditor;

## Technical Guide on Incorporation of Foreign Companies in India

---

- Where the law of the country, in which the Issuing company is incorporated, does not require annual statutory audit of the accounts of the Issuing company, a report, in such form as may be specified by the SEBI, certified by a Chartered Accountant in practice within the terms and meaning of the Chartered Accountants Act, 1949 on -
  - the financial statements of the Issuing company, in particular on the profits and losses for each of the three financial years immediately preceding the date of prospectus and upon the assets and liabilities of the Issuing company; and
  - the interim financial statements in respect of the period ending on a date which is less than one hundred and eighty days prior to the date of opening of the issue have to be included in the report, if the gap between the ending date of the latest financial statements disclosed under item (A) and the date of the opening of the issue is more than one hundred and eighty days:

If the gap between such date of latest audited financial statements and the date of opening of issue is one hundred and eighty days or less, the requirement under item (B) shall be deemed to be complied with if a statement, as may be specified by the SEBI, in respect of changes in the financial position of Issuing company for such gap is disclosed in the Prospectus.
- the gap between date of opening of issue and date of reports specified under sub-clauses (i) and (ii) shall not exceed one hundred and twenty days;
- If the proceeds of the IDR issue are used for investing in other body(ies) corporate, then following details of such body(ies) corporate shall be given-
  - the Name and address(es) of the bodies corporate;
  - the reports stated in sub-clauses (i) and (ii), as the case may be, in respect of such body (ies) corporate also."

## **Provisions under the Companies Act, 2013 governing Foreign Companies...**

---

- Other Information-
  - the Minimum subscription for the issue;
  - the fees and expenses payable to the intermediaries involved in the issue of IDRs;
  - the declaration with regard to compliance with the Foreign Exchange Management Act, 1999.
- Inspection of Documents-
  - The Place at which inspection of the offer documents, the financial statements and auditor's report thereof shall be allowed during the normal business hours; and
  - any other information as specified by the SEBI or the Income-tax Authorities or the Reserve Bank of India or other regulatory authorities from time to time.

- **Section 391- Application of section 34 to 36 and Chapter XX**

The provisions of sections 34 to 36 (both inclusive) shall apply to the issue of a prospectus by a company incorporated outside India under section 389 as they apply to prospectus issued by an Indian company and to the issue of Indian Depository Receipts by a foreign company.

Bearing the provisions of section 376 in mind, the provisions of Chapter XX shall apply mutatis mutandis for closure of the place of business of a foreign company in India as if it were a company incorporated in India in case such foreign company has raised monies through offer or issue of securities under Chapter-XXII which have not been repaid or redeemed.

- **Section 392- Punishment for Contravention**

Keeping the provisions of section 391 in mind, if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.

## Technical Guide on Incorporation of Foreign Companies in India

---

- **Section 393- Company's Failure to comply with provisions of Chapter XXII not to affect validity of contracts etc.**

Any failure by a company to comply with the provisions of Chapter XXII shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof, but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of this Act applicable to it.

- **Rule 9- Certification**

A copy of any charter, statutes, memorandum and articles, or other instrument constituting or defining the constitution of a Foreign company shall be duly certified to be a true copy in the manner given below –

- If the company is incorporated in a country outside the Commonwealth, the copy aforesaid shall be certified as a true copy by-

- an official of the Government to whose custody the original is situated; or
- a Notary (Public) of such Country; or

The signature or seal of the official referred to in above or the certificate of the Notary (Public) referred above shall be authenticated by a diplomatic or consular officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (XL of 1948), or where there is no such officer, by any of the officials mentioned in section 6 of the Commissioners of Oath Act, 1889 (52 and 53 Vic. C. 10), or in any relevant Act for the said purpose.

- an officer of the company.

The certificate of the officer of the company referred above shall be signed before a person having authority to administer an oath as provided under section 3 of the Diplomatic and Consular Officers (Oath and Fees) Act, 1948 (XL of 1948), or as the case may be, by section 3 of the Commissioners of Oath Act, 1889 (52 and 53 Vic, C. 10) and the status of the person

### **Provisions under the Companies Act, 2013 governing Foreign Companies...**

---

administering the oath in the latter case being authenticated by any official specified in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic. C. 10) or in any relevant Act for the said purpose.

- If the company is incorporated in any part of the Commonwealth, the copy of the document shall be certified as a true copy by-
  - an official of the Government to whose custody the original of the document is committed; or
  - a Notary (Public) in that part of the Commonwealth; or
  - an officer of the company, on oath before a person having authority to administer an oath in that part of the Commonwealth.

It is to be noted that any altered document delivered to the Registrar should also be duly certified in the manner mentioned above.

- If the Company is incorporated in a country falling outside the Commonwealth, but a party to the Hague Apostille Convention, 1961-
  - the copy of the documents shall be certified as a true copy by an official of the Government to whose custody the original is committed and be duly apostilled in accordance with Hague Convention;
  - a list of the directors and the secretary of the Company, if any, the name and address of persons resident in India, authorized to accept notice on behalf of the Company shall be duly notarized and be apostilled in the Country of their origin in accordance with Hague Convention;
  - the signatures and address on the Memorandum of Association and proof of identity, where required, of foreign nationals seeking to register a company in India shall be notarized before the notary of the country of their origin and be duly apostilled in accordance with the said Hague Convention.

- **Rule 10- Authentication of Translated Documents**

All the documents required to be filed with the Registrar by the foreign companies shall be in English language and where any such document is not

## **Technical Guide on Incorporation of Foreign Companies in India**

---

in English language, there shall be attached a translation thereof in English language duly certified to be correct in the manner given in these rules.

Where any such translation is made outside India, it shall be authenticated by the signature and the seal, if any, of-

- the official having custody of the original; or
- a Notary (Public) of the country (or part of the country) where the company is incorporated:

However, where the company is incorporated in a country outside the Commonwealth, the signature or seal of the person so certifying shall be authenticated by a diplomatic or consular officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, or, where there is no such officer, by any of the officials mentioned in section 6, of the Commissioners of Oaths Act, 1889 (52 and 53 Vic C 10), or in any relevant Act for the said purpose.

And where such translation is made within India, it shall be authenticated by-

- an advocate, attorney or pleader entitled to appear before any High Court; or
- an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

- **Rule 12- Action for improper use or description as Foreign Company**

If any person or persons trade or carry on business in any manner under any name or title or description as a foreign company registered under the Act or the rules made thereunder, that person or each of those persons shall, unless duly registered as foreign company under the Act and rules made thereunder, shall be liable for investigation under section 210 of the Act and action consequent upon that investigation shall be taken against that person.

## Chapter 7

# Other Laws governing Foreign Company

---

### 7.1 Laws other than Companies Act governing Foreign Company in India

A foreign company as defined under the Companies Act, 2013 must comply with regulations and rules established under multiple legislations and order(s) such as mentioned below. A foreign company whether established for commercial or non-commercial operations has to adhere to various Indian Acts, Rules and Regulations. It is pertinent to note that the compliances differ on the type of legal structure of the entity.

- The Companies Act, 2013
- The Income Tax Act, 1961
- GST, 2017
- SEBI Rules and Regulations<sup>5</sup>
- FEMA (Foreign Exchange Management Act), 1999
- RBI compliances etc.

Compliances under the other acts are given below

#### A. Income Tax Act, 1961 and Goods & Service Tax Act, 2017

There are three types of compliances based on the intermittency of these compliances:

- **Periodic Compliances:** Periodic compliances are compliances that have to be met by the company on a periodic basis. Unlike annual compliances, this type of compliance happens in regular intervals multiple times a year. These compliances may need to be met on a quarterly or a half-yearly basis such as TDS filings under Income Tax Act etc.

---

<sup>5</sup> SEBI rules and regulations may be applicable in case of foreign subsidiary company incorporated in India

## Technical Guide on Incorporation of Foreign Companies in India

---

- **Annual Compliances:** Annual compliances are compliance that needs to be met once every year. Every year the company has to meet these compliances mandatorily. For example, the company has to do the following every year:
  - a. GST filings
  - b. furnishing of various audit reports including tax audit report and report in respect of international/specified domestic transaction
  - c. Compliances under RBI
  - d. Compliances under SEBI's rules and regulations
  - e. Annual Financial Statements
- B. Compliance under Foreign Exchange Management Act (FEMA), 1999:**
  - An offshore business which has direct Indian operations in India (and is not operating through an agent) will be treated as one of the following:
    - ✓ Liaison Office (LO),
    - ✓ Branch Office (BO) or
    - ✓ Project Office (PO),
  - After establishment, all the new entities which have been set up as LO/BO/PO shall submit a report within five working days of the LO/BO becoming functional to the Director General of Police (DGP) of the state concerned in which LO/BO has established its office.
  - Branch Offices / Liaison Offices have to file Annual Activity Certificates (AAC) from Chartered Accountants, at the end of March 31, along with the audited Balance Sheet on or before September 30 of that year. AAC certifies that the company is undertaking only those activities which are permitted by the Reserve Bank of India. The LO/BO needs to submit the AAC to the designated AD Category -I bank as well as Director General of Income Tax (International Taxation), New Delhi whereas the PO needs to submit the AAC only to the designated AD Category -I bank.

## **Other Laws governing Foreign Company**

---

- At the time of winding up of Branch/Liaison/ Project Office, the company has to approach the designated AD Category – I bank with the documents prescribed.
- Annual return on Foreign Liabilities and Assets has been notified under FEMA 1999 and it is required to be submitted by all the Indian resident companies which have received FDI and/ or made overseas investment in any of the previous year(s), including current year by July 15 every year. Non-filing of the return before the due date will be treated as a violation of FEMA and penalty clause may be invoked for violation of FEMA.

### **C. Event-based Compliances under RBI and FEMA Regulations:**

As mentioned earlier, there are three types of compliances; one of them is event-based. This means that these compliances are only mandatory in case of a certain event or action of the company.

There are two event-based compliances under the RBI regulations and FEMA guidelines, they are:

- (a) **FC-TRS:** This concerns the transfer of a foreign subsidiary company's shares between an Indian resident to a non-resident investor or vice-versa. Such a transfer may be done by way of a sale or gift. The Foreign Direct Investment policies require that such a transaction should be reported within sixty days from the date of the transfer. The obligation of filing this form rests upon the Indian resident, or the investee company as the case may be. This is regardless of whether the Indian resident is the transferor or the transferee.
- (b) **FC-GPR:** This is concerning the remittance received by the shareholders of a foreign subsidiary company. The form specifies the mode of transfer of the remittance by the company to its shareholders.

### **D. Penalty**

If a foreign company contravenes the provisions of this Chapter XXII (Companies Incorporated outside India), the foreign company shall be punishable with fine

- which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an

## **Technical Guide on Incorporation of Foreign Companies in India**

---

additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and

- every officer of the foreign company who is in default shall be punishable with a fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

## Chapter 8

# Overview of Some Important Sections at a glance which are applicable to a Foreign Company under the Companies Act, 2013

---

### 8.1 Some Important Sections<sup>6</sup> at a glance which are applicable to a Foreign Company<sup>7</sup> under the Companies Act, 2013

S. No	Provision(s)	Particulars of the Provision(s)
1.	Section 2(42)	Definition of Foreign Company
2.	Section 33	Issue of Application Forms for Securities
3.	Section 34	Criminal Liability for Mis-statements in Prospectus
4.	Section 35	Civil Liability for Mis-statements in Prospectus
5.	Section 36	Punishment for Fraudulently Inducing Persons to Invest Money
6.	Section 40	Securities to be Dealt with in Stock Exchanges
7.	Section 41	Global Depository Receipt
8.	Section 71	Debentures
9.	Section 88	Register of Members, etc.
10.	Section 92	Annual Return
11.	Section 128	Books of Account, etc., to be kept by Company
12.	Section 134 <sup>8</sup>	Financial Statement, Board's Report, etc

<sup>6</sup> Some of these sections referred here in turn refer to other sections of the 2013 Act. For e.g. Section 381 referred below refers to Chapter X of the 2013 Act– Audit and Auditors

<sup>7</sup> Foreign Companies whether entering in India by incorporation subsidiary or JV or setting up LO/PO/BO in India

## Technical Guide on Incorporation of Foreign Companies in India

---

13.	Section 135	Corporate Social Responsibility
14.	Section 228	Investigation, etc., of Foreign Companies
15.	Section 234	Merger or Amalgamation of Company with Foreign Company
16.	Section 376	Power to Wind Up Foreign Companies, Although Dissolved
17.	Section 379	Application of Act to Foreign Companies.
18.	Section 380	Documents, etc., to be Delivered to Registrar by Foreign Companies
19.	Section 381	Accounts of Foreign Company
20.	Section 382	Display of Name, etc., of Foreign Company.
21.	Section 383	Service on Foreign Company
22.	Section 384	Debentures, Annual Return, Registration of Charges, Books of Account and Their Inspection
23.	Section 385	Fee for Registration of Documents
24.	Section 386	Interpretation (Certified, Director and place of business)
25.	Section 387	Dating of Prospectus and Particulars to be Contained Therein
26.	Section 388	Provisions as to Expert's Consent and Allotment
27.	Section 389	Registration of Prospectus
28.	Section 390	Offer of Indian Depository Receipts
29.	Section 391	Application of Sections 34 to 36 and Chapter XX
30.	Section 392	Punishment for Contravention
31.	Section 393	Company's Failure to Comply with Provisions of This Chapter Not to Affect Validity of

---

<sup>8</sup> There are certain sections which are applicable for subsidiaries of foreign company incorporated in India

**Overview of Some Important Sections at a glance which are applicable...**

		Contracts, etc.
32.	Section 405	Power of Central Government to Direct Companies to Furnish Information or Statistics.
33.	Section 447	CHAPTER XXIX MISCELLANEOUS Punishment for Fraud.
34.	Section 592	Documents, Etc., To Be Delivered To Registrar By Foreign Companies Carrying On Business In India
35.	Chapter VI	Registration of Charges
36.	Chapter XIV	Inspection Inquiry and Investigations
37.	Section 196 & 197 Schedule V	Conditions to be fulfilled for the appointment of a Managing or Whole-Time Director or a Manager without the approval of the Central Government.

## Chapter 9

# Frequently Asked Questions (FAQs)

---

**Q 1. What is a Foreign Company as per Companies Act, 2013?**

**A 1.** A “Foreign Company” means any company or body corporate incorporated outside India which

- a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- b) conducts any business activity in India in any other manner.

**Q 2. What is meant by the term “electronic mode” in relation to a foreign company?**

**A 2.** The term “electronic mode” means carrying out electronically based, whether main server is installed in India or not, including, but not limited to -

- i. business to business and business to consumer transactions, data interchange and other digital supply transactions;
- ii. offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
- iii. financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;
- iv. online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- v. all related data communication services,

whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

**Q 3. What is meant by the term “director” in relation to a foreign company?**

## Frequently Asked Questions (FAQs)

---

- A 3.** The expression “director”, in relation to a foreign company, includes any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act.
- Q 4. Whether setting up of share transfer office will also be considered as a place of business in India?**
- A 4.** Yes, the expression “place of business” includes a share transfer or registration office.
- Q 5. What are the types of companies in which a foreign company can be incorporated in India?**
- A 5.** The Foreign Company can be incorporated in India in either of the ways:
- a) Incorporating in India as “Subsidiary” or “Wholly-owned Subsidiary” or
  - b) Register a foreign incorporated company as a Liaison Office/Branch Office/Project Office in India
- Q 6. Where a company which is incorporated outside India and paid-up share capital is held by more than 50% of the Indian Nationals, would it still be called a Foreign Company?**
- A 6.** In such a situation where not less than fifty per cent. of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, then such company has to comply with the provisions of chapter XXII along with such other provisions of the Companies Act, 2013 as are applicable to a Company which is incorporated in India.
- Q 7. What are the statutory requirements of a foreign company upon establishment of its place of business in India relating to the delivery of any documents/information to the Registrar of Companies?**
- A 7.** The Foreign Company within 30 days of the establishment of its place of business in India has to submit e-form FC-1 which is available at MCA's official website i.e. [www.mca.gov.in](http://www.mca.gov.in)

## **Technical Guide on Incorporation of Foreign Companies in India**

---

### **Q 8. What are the various information/documents that are required to be submitted while filing e-form FC-1?**

**A 8.** The list of documents and information that are required while submitting the e-form FC-1 is as listed below:

- a) Certified copy of the charter, statutes, or memorandum and articles of the company or other instrument constituting or defining the constitution of the company (Mandatory).
- b) List of directors and secretary of the foreign company (Mandatory).
- c) Power of attorney or board resolution in favor of the authorized representative(s) (Mandatory).
- d) Reserve bank of India approval letter (It is mandatory to attach an attested copy of such approval).
- e) Copy of permission letter of other Authority(s)/Regulator(s), if any is required to be attached.
- f) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad;
- g) the full address of the registered or principal office of the company;
- h) the full address of the office of the company in India which is deemed to be its principal place of business in India;
- i) particulars of opening and closing of a place of business in India on earlier occasion or occasions;

### **Q 9. What are the details of the Directors/Secretary that are required to be furnished in e-form FC-1?**

**A 9.** The following details of each person who has been listed as Director or Secretary or Equivalent (by whatever name called) of the Foreign Company are required:

- a) personal name and surname in full;
- b) any former name or names and surname or surnames in full;

## Frequently Asked Questions (FAQs)

---

- c) father's name or mother's name and spouse's name;
- d) date of birth;
- e) residential address;
- f) nationality;
- g) if the present nationality is not the nationality of origin, his nationality of origin;
- h) passport number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)
- i) income-tax permanent account number (PAN, if applicable)
- j) occupation, if any
- k) whether directorship in any other Indian company, (Director Identification Number (DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);
- l) other directorship or directorships held by him;
- m) Membership Number (for Secretary only); and
- n) e-mail ID.

**Q 10. What if there is any change in the particulars filed under FC-1?**

**A 10.** Where any alteration is made or occurs in the documents or particulars filed under FC-1, the foreign company shall within 30 days of such alteration file an e-form FC-2 which is available at MCA's official website.

**Q 11. What are the provisions governing the maintenance of books of accounts/records in India by a Foreign Company, if any?**

**A 11.** Every foreign company has to mandatorily prepare a financial statement of its Indian business operations in accordance with Schedule III or as near thereto as may be possible for each financial year including:

- Documents as per provisions of chapter IX "Accounts of Companies"

## **Technical Guide on Incorporation of Foreign Companies in India**

---

- Copies of Consolidated Financial Statement of the parent foreign Co. (In English language/if not in English then its certified translation in English)
- Statement of Related Party Transaction
- Statement of Repatriation of Profit
- Statement of Transfer of Funds
- E-form FC-3 containing a list of all the places of business established by the foreign company in India as on the date of balance sheet.

(all the above docs need to be filed to ROC within a period of six months of the close of the financial year of the foreign company to which the documents relate)

**Q 12. Who will be considered as a related party for the purpose of preparing Statement of related party transactions related to Foreign Companies in India?**

**A 12.** All such person shall be deemed to be the related party which are covered within the ambit of clause 76 of section 2 of the Act in relation to the foreign company or of any subsidiary or holding company of such foreign company or of any firm in which such foreign company or its subsidiary or holding company is a partner

**Q 13. What is to be included in the Statement of Related Party Transaction?**

**A 13.** Statement of related party transaction shall include-

- i. name of the person in India which shall be deemed to be the related party within the meaning of clause (76) of section 2 of the Act of the foreign company or of any subsidiary or holding company of such foreign company or of any firm in which such foreign company or its subsidiary or holding company is a partner;
- ii. nature of such relationship;
- iii. description and nature of transaction;

## Frequently Asked Questions (FAQs)

---

- iv. amount of such transaction during the year with opening, closing, highest and lowest balance during the year and provisions made (if any) in respect of such transactions;
- v. reason of such transaction;
- vi. material effect of such transaction on both the parties;
- vii. amount written off or written back in respect of dues from or to the related parties;
- viii. a declaration that such transactions were carried out at arms length basis; and
- ix. any other details of the transaction necessary to understand the financial impact;

**Q 14. What are the contents that need to form part of the Statement of Repatriation of Profit?**

**A 14.** The contents that need to form part of the Statement of repatriation of profits are as follows-

- i. amount of profits repatriated during the year;
- ii. recipients of the repatriation;
- iii. form of repatriation;
- iv. dates of repatriation;
- v. details if repatriation made to a jurisdiction other than the residence of the beneficiary;
- vi. mode of repatriation; and
- vii. approval of the Reserve Bank of India or any other authority, if any.

**Q 15. What is “Statement of Transfer of Funds” and what does it include?**

**A 15.** Statement of Transfer of Funds is a statement in which any fund transfer between the place of business of foreign company in India and any other related party of the foreign company outside India including its holding, subsidiary and associate company is stated (including dividends if any). It shall include:

## Technical Guide on Incorporation of Foreign Companies in India

---

- i. date of such transfer;
- ii. amount of fund transferred or received;
- iii. mode of receipt or transfer of fund;
- iv. purpose of such receipt or transfer; and
- v. approval of Reserve Bank of India or any other authority, if any.

**Q 16. When is the audit of the financial statement of Indian business operation of the foreign company mandatory under the law and who is eligible to audit the same?**

**A 16.** It is mandatory for Every Foreign Company to get its accounts pertaining to the Indian business operations, audited by practicing Chartered Accountant in India or a firm or limited liability partnership of practicing chartered accountants.

Explanation- the expressions "Chartered Accountant", "Firm" and limited liability partnership shall have the meanings respectively assigned to them under the Act and Limited Liability Partnership Act, 2008 (6 of 2009) respectively.

Further, the provisions of Chapter X i.e. Audit and Auditors and rules made thereunder, as far as applicable, shall apply, mutatis mutandis, to the foreign company.

**Q 17. Whether the audit report of a Foreign Company should include the matters stated under Companies (Auditor's Report) Order, 2020?**

**A 17.** MCA has notified Companies (Auditor's Report) Order, 2020 which is applicable for every report made by the auditor for financial years commencing on or after 1st April 2021<sup>9</sup>. The Order applies to every company including a foreign company as defined in clause (42) of section 2 of the Companies Act, 2013 subject to exceptions as prescribed.

**Q 18. Whether the auditor of a Foreign Company is required to report on:**

---

<sup>9</sup> The Ministry of Corporate Affairs vide its order dated 17.12.2020 has extended the applicability of CARO, 2020 by one more year. Link for the same is: <https://egazette.nic.in/WriteReadData/2020/223784.pdf>

## Frequently Asked Questions (FAQs)

---

- **Internal Financial Controls with reference to financial statements as prescribed under section 143(3)(i) of the Companies Act, 2013**
- **Matters stated under Rule 11 of the Companies (Audit and Auditors) Rules, 2014 e.g. funds advanced or loaned or invested to Intermediaries?**

**A 18.** As stated in FAQ 16 the provisions of Chapter X i.e. Audit and Auditors and Rules made thereunder, as far as applicable, apply, mutatis mutandis, to the foreign company. The Chapter X includes Section 143 and the Companies (Audit and Auditors) Rules, 2014. Thus, auditor of a foreign company is required to comply with the report on the matters as stated therein. Accordingly, auditors of a foreign company would be required to opine on:

- Internal Financial Controls with reference to financial statements as prescribed under section 143(3)(i) of the Companies Act, 2013
- Matters stated under Rule 11 of the Companies (Audit and Auditors) Rules, 2014.

Where a particular reporting matter is not applicable to the foreign company, then such fact should be stated in the audit report.

**Q 19. What is FC-4 and when is it to be filed?**

**A 19.** FC-4 is an e-form which is available at the MCA official website. It is a web-based form for filing Annual Return. Every foreign company has to prepare and file this form to the Registrar along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 containing the particulars as they stood on the close of the financial year. This form has to be filed within a period of sixty days from the last day of its financial year.

**Q 20. In case any documents are physically required to be submitted to Registrar, then under whose jurisdiction, it has to be submitted?**

**A 20.** Any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

**Q 21. When will the translated documents be considered as authentic?**

## Technical Guide on Incorporation of Foreign Companies in India

---

**A 21.** All the documents that are required to be submitted to ROC shall be in English Language and if not in English then its translation thereof is required. It is considered as duly authentic if:

- Where such translation is made within India, it shall be authenticated by-
  - a) an advocate, attorney or pleader entitled to appear before any High Court; or
  - b) an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.
- Where any such translation is made outside India, it shall be authenticated by the signature and the seal, if any, of-
  - a) the official having custody of the original; or
  - b) a Notary (Public) of the country (or part of the country) where the company is incorporated:

However, where the company is incorporated in a country outside the Commonwealth, the signature or seal of the person so certifying shall be authenticated by a diplomatic or consular officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, or, where there is no such officer, by any of the officials mentioned in section 6, of the Commissioners of Oaths Act, 1889 (52 and 53 Vic C 10), or in any relevant Act for the said purpose

### **Q 22. What are the provisions in respect of Certification of Documents?**

**A 22.** Any document which needs to be certified shall be done in the manner given below:

- If the company is incorporated in a country outside the Commonwealth and which is not a party to the Hague Apostille Convention, 1961, shall be notarized
  - a) before the Notary (Public) of such country or
  - b) an official of the Government to whose custody the original is situated or
  - c) an officer of the company.

## Frequently Asked Questions (FAQs)

---

and in case a and b, shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (40 of 1948) or, where there is no such officer by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic.C.10), or in any Act amending the same

Whereas, the certificate of the officer of the company referred to in 'c' above shall be signed before a person having authority to administer an oath as provided under section 3 of the Diplomatic and Consular Officers (Oath and Fees) Act, 1948 (XL of 1948), or as the case may be, by section 3 of the Commissioners of Oath Act, 1889 (52 and 53 Vic, C. 10) and the status of the person administering the oath in the latter case being authenticated by any official specified in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic. C. 10) or in any relevant Act for the said purpose.

- If the company is incorporated in any part of the Commonwealth, the copy of the document shall be certified as a true copy by
  - a) an official of the Government to whose custody the original of the document is committed;
  - b) or a Notary (Public) in that part of the Commonwealth; or
  - c) an officer of the company on oath before a person having authority to administer an oath in that part of the Commonwealth.
  
- If the Company is incorporated in a country falling outside the Commonwealth, but a party to the Hague Apostille Convention, 1961-
  - a) the copy of the documents shall be certified as a true copy by an official of the Government to whose custody the original is committed and be duly apostilled in accordance with Hague Convention;
  - b) a list of the directors and the secretary of the Company, if any, the name and address of persons resident in India,

## Technical Guide on Incorporation of Foreign Companies in India

---

authorized to accept notice on behalf of the Company shall be duly notarized and be apostilled in the Country of their origin in accordance with Hague Convention;

- c) the signatures and address on the Memorandum of Association and proof of identity, where required, of foreign nationals seeking to register a company in India, shall be notarized before the notary of the country of their origin and be duly apostilled in accordance with the said Hague Convention.

### **Q 23. What does the provision of Display of Name, etc of a foreign company indicates?**

- A 23.** As per the provision of the Companies Act, 2013, every foreign company shall on the outside of every office or place where it carries on business in India shall display the name of the company, the country in which it is incorporate and if the liability of the members of the company is limited, cause notice of that fact in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situated;

The same shall be displayed in all business letters, billheads and letter paper, in all notices, and other official publications of the company in legible English characters.

### **Q 24. What are the other statutory provisions that are applicable to Foreign Companies which has established its place of business in India?**

- A 24.** The foreign company shall along with the specific provisions as stated in Chapter XXII of the Companies Act, shall adhere to the following provisions
- a) Provisions of Section 71 relating to Debenture Issue
  - b) Provisions of Section 92 and 135 relating to Annual Return and CSR respectively (subject to such modifications as may be prescribed)
  - c) Provisions of Section 128 to the extent of requiring it to keep at its principal place of business in India, the books of account

## Frequently Asked Questions (FAQs)

---

referred to in that section, with respect to monies received and spent, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India.

- d) Provisions of Chapter VI relating to charges on properties which are created or acquired by any foreign company
- e) Provisions of Chapter XIV relating to Inspection, Inquiry and Investigation of the Indian Business of a Foreign Company

### **Q 25. Whether CSR spent is mandatory for a foreign company?**

**A 25.** As per the Companies (Corporate Social Responsibility Policy) Rules, 2014 every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Companies Act, 2013 having its branch office or project office in India, which fulfills the criteria specified in sub-section (1) of section 135 should comply with the provisions of section 135 of the Act and Companies (Corporate Social Responsibility Policy) Rules, 2014. Section 135(5) inter alia prescribes the time period for spending on CSR projects (including ongoing projects) and Section 135(6) prescribes the time limit for transfer of unspent amount to a Fund prescribed under Schedule VII. Accordingly, a foreign company would need to comply with the requirements relating to CSR spent as stated above.

### **Q 26. Can a Foreign Company which has established its place of business in India, raise money through the Indian Market, if yes, what are the legal requirements?**

**A 26.** Yes, the Foreign Company (FC) can raise money through the Indian Market through the issue of debentures or Indian Depository Receipts.

If the FC is raising money through the issue of debentures then it has to follow the requirement of section 71 of the Companies Act 2013 and if the FC is raising money through the issue of IDRs, then provision of Sec 390 of the Companies Act 2013 shall be followed.

### **Q 27. What are the legal requirements in case the foreign company ceases to have a place of business in India?**

**A 27.** If any foreign company ceases to have a place of business in India, it shall give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any

## **Technical Guide on Incorporation of Foreign Companies in India**

---

document to the Registrar shall cease, provided it has no other place of business in India.

### **Q 28. What is the punishment for contravention by Foreign Companies?**

**A 28.** If a foreign company contravenes any provisions of the Chapter under the Companies Act, 2013 which is applicable on it, the foreign company shall be punishable with a fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

### **Q 29. What is the effect on the legal validity of the Contract, in case of failure by Foreign Company to comply with the provision?**

**A 29.** Any failure by a company to comply with the provisions of the Chapter applicable to Foreign Company (Chapter XXII of the Companies Act) shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof, but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of this Act applicable to it.

## **To Form Wholly Owned Subsidiary/Subsidiary**

### **Q 30. What is meant by “Subsidiary Company”?**

**A 30.** Section 2(87) of the Companies Act defines "subsidiary company" as a company in which the holding company—

- i. controls the composition of the Board of Directors; or
- ii. exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

Further, such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

## Frequently Asked Questions (FAQs)

---

Explanation—For the purpose of this clause—

- a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- c) the expression "company" includes any body corporate;

**Q 31. What is meant by “Wholly-owned Subsidiary Company” (WOS)?**

**A 31.** The term “Wholly owned subsidiary company” in general is defined as the company whose parent company/holding company has 100% stake in that subsidiary company.

**Q 32. What are the minimum numbers of members that are required to form a company?**

**A 32.** A company may be formed for any lawful purpose by having minimum number of persons as under:

- a) seven persons to form a public company; -
- b) two persons, to form a private company; or
- c) one person, to form a One Person Company (OPC) i.e. a private company by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

**Q 33. Whether Non-Individual can also become a subscriber to MOA?**

**A 33.** Yes, both Individual and Non-Individual can be the subscriber to the memorandum.

**Q 34. Whether foreign subscriber is required to visit India for incorporation of a subsidiary company?**

**A 34.** The Foreign subscriber is required to visit India and should possess a valid Business Visa for incorporation of a company. However, in case,

## Technical Guide on Incorporation of Foreign Companies in India

---

Person is of Indian Origin or Overseas Citizen of India, the requirement of a Business Visa shall not be applicable.

**Q 35. Can the entire Board of Directors of a subsidiary company be comprised of foreign national director?**

**A 35.** No, the Companies Act, 2013 requires that every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year. However, in case of a newly incorporated company, this requirement shall apply proportionately at the end of the financial year in which it is incorporated.

**Q 36. What are the provisions relating to attendance in the Board Meeting for Directors who are resident outside India?**

**A 36.** In case of a Director who is not a resident of India, can attend meetings through Video Conferencing by complying with the rules stated in Chapter VII.

**Q 37. What is the procedure for applying the name of the company?**

**A 37.** The first step which is to be considered while applying the name of a company is to check the availability of the name with the MCA.

It should not infringe upon any trademark or copyrights or similar to any existing Company & it should not be prohibited. Thereafter, an application for reservation of name of the company shall be made through the web service available at [www.mca.gov.in](http://www.mca.gov.in) by filling e-form SPICE+ Part A.

**Q 38. What is the procedure for incorporating a subsidiary company of a foreign holding company in India?**

**A 38.** The procedure to incorporate a subsidiary company of a foreign-based holding company in India is as under:

- a) Login to the MCA portal and check the name availability and apply for the name. (FAQ-37 may be referred). Alternatively, the name can be applied simultaneously with SPICE+ Part B
- b) Once the name has been approved, Part B of e-form SPICE+ has to be filled with all the requisite details along with the attachments as required therein. (Please refer FAQ- for details)

## Frequently Asked Questions (FAQs)

---

- c) Thereafter, checkboxes have to be clicked to confirm the declaration
- d) Then Submit button has to be clicked if pre-scrutiny is successful.
- e) On Successful submission, applicant will get the Confirmation Message and an automated pdf of SPICE+ along with other linked forms will be generated.
- f) All these PDF files need to be downloaded for affixing the DSC.
- g) After Affixing DSC in SPICE+ Part B and all the linked forms as applicable, the applicant should click on the upload e-form option and upload SPICE+ Part B along with all the linked forms and pay the requisite fees as prescribed.
- h) Upon successful submission, ROC will process the application and, if satisfied, a certificate of incorporation will be issued along with CIN, PAN, TAN, details etc.

**Q 39. Whether the subsidiary company can apply for the same name as its foreign holding company?**

**A 39.** Yes, if a foreign company is incorporating its subsidiary company in India, then the original name of the holding company as it is may be allowed with the addition of the word "India" or name of any "Indian State or City", if otherwise available. The guidelines for the desirable names are given at [http://www.mca.gov.in/Ministry/pdf/AmendmentRules\\_08052019.pdf](http://www.mca.gov.in/Ministry/pdf/AmendmentRules_08052019.pdf)

**Q 40. What are the various information and documents that are required to incorporate a company in India?**

**A 40.** The following information cum documents are required to be furnished while incorporating a company in India through e-form SPICE+

- a) Memorandum of Association – eMOA<sup>10</sup>

---

<sup>10</sup> The e-MOA and e-AOA is not required to be filed in the following exceptional situation

- all or any of the non-individual first subscribers are based outside India
- Total number of first subscribers (non-individual + individual) are more than seven
- Section 8 company

## Technical Guide on Incorporation of Foreign Companies in India

---

- b) Articles of Association – eAOA\*
- c) Declaration by first subscribers and Directors
- d) Proof of office address
- e) Copy of utility bills as permitted by MCA
- f) Copy of the certificate of incorporation and resolution passed by the company
- g) Resolution passed by Promoter Company
- h) Proof of identity and residential address of subscribers, nominee and applicants
- i) Resolution of unregistered companies in case of chapter XXI (Part 1) companies
- j) Where the subscriber to the memorandum is a body corporate, the memorandum and articles of association shall be signed by a director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors and where the subscriber is a LLP, it shall be signed by a partner of the LLP duly authorized by a resolution approved by all the partners of the LLP:
- k) a declaration in the prescribed form by a chartered accountant (or an advocate, cost accountant or company secretary) in practice, who is engaged in the formation of the company,
- l) a declaration by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the Rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;
- m) a declaration from each of the subscribers to the memorandum and from all the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion,

- 
- Individual foreign subscribers do not possess a valid business visa And in these situations, MoA and AoA shall always be attached under the Attachments section of SPICe+ form (INC-32).

## Frequently Asked Questions (FAQs)

---

formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief; —

- n) the address for correspondence till its registered office is established;
- o) name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed;
- p) the particulars of the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed;
- q) and the particulars of the interests of the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

**Q 41. Is it mandatory to have a Registered Office at the time of Incorporation?**

**A 41.** No, it is not mandatory to have a registered office at the time of incorporation since the Companies Act, 2013 provision states that a Company shall have its registered office within 30 days of its incorporation.

**Q 42. What are the various compliances which a subsidiary company of a foreign holding company has to adhere to, under any Act other than Companies Act 2013 for its incorporation?**

**A 42.** Any company while pursuing any of the objects of a company requires registration or approval from sectoral regulators such as the Reserve Bank of India, the Securities and Exchange Board of India, registration or approval, as the case may be, from such regulator shall be obtained

## **Technical Guide on Incorporation of Foreign Companies in India**

---

by the proposed company before pursuing such objects and a declaration in this behalf shall be submitted at the stage of incorporation of the company.

**Q 43. What are the compliances under the FEMA Act for an Indian Subsidiary company of a foreign holding company during allotment of shares?**

**A 43.** Upon allotment of shares, the Indian Subsidiary company through its Authorised Dealer Category – I bank (with the Regional Office of the RBI under whose jurisdiction the Registered Office of the company making the declaration is situated) has to intimate RBI in form FCGPR within 30 days of allotment of shares.

Also, within 30 days from the receipt of the amount of consideration as specified in para 9 (I) (A) of Schedule I to Notification No. FEMA 20/2000- RB dated May 3, 2000, the Indian Company has to submit a report in the form ARF i.e. Advance Remittance Form through Authorised Dealer Category-1 Bank.

## Chapter 10

# Points to be taken care of by Foreign Companies

---

### 10.1 Points to be taken care of by Foreign Companies

- Before investing, the foreign company shall be well versed with the FDI guidelines and other requirements under the various Indian Acts, Rules and Regulations, etc.
- While filing an application through SPICe+, all the documents need to be self-attested by the applicant.
- All the documents should be notarized/apostilled in case of a foreign applicant as per the requirements under the Companies Act, 2013
- All documents annexed to the forms filed with ROC should be clear and legible.
- The maximum upload size of SPICe+ forms is 6 MB for each of the PDF forms.
- For name reservation, it is recommended that the Reservation of Name is done before proceeding for incorporation as it will save time and effort of doing the entire submission process again in case the preferred name is not available for registration at the time of submission of the Form. It also gives you the option to give two names for registration and after due verification done by the designated Authority, the preferred name is made available for registration.
- In case of part-A filled in separately; the applicant has to complete the process of filing SPICe+ Part-B within the period of 20 days from the date of approval of name or such other period as may be prescribed, otherwise, the name so approved will be rejected and the applicant will have to apply for approval for the name once again.
- Changes/modifications to SPICe+ (even after generating pdf and affixing DSCs), can also be done by editing the same web form application which has been saved, only till FIVE attempts, after that whole process to be restarted.

## Technical Guide on Incorporation of Foreign Companies in India

---

- Registration for Profession Tax shall be mandatory through SPICe+ only in respect of new companies incorporated in the State of Maharashtra
- Subscribers' photo is not required in SPICe+ forms
- Resubmissions for SPICe+ forms are permitted TWO times
- A consolidated challan gets generated at the time of filing SPICe+(INC-32) which shall contain applicable fee towards
  - Form Fee
  - Memorandum of Association (MOA)
  - Article of Association (AOA)
  - Permanent Account Number (PAN)
  - Tax Deduction Account Number (TAN).
- Companies getting incorporated through SPICe+ with an Authorized Capital up to INR 15,00,000 would continue to enjoy 'Zero Filing Fee' concession. However, Stamp Duty payable as applicable in the State in which Company is registered has to be paid
- While filling up the SPICe+ form, one can save the details entered in the form periodically and retrieve it any time later to complete the same hence the process can be done in piecemeal.
- In case of technical problems i.e., form upload, pre-scrutiny errors, DSC related, payment related queries, please raise a ticket on [www.mca.gov.in/myservices](http://www.mca.gov.in/myservices) and await a resolution. If the ticket is not resolved, one may also call up Corporate Seva Kendra at 0120-4832500 after 48 hours. In case of resubmission/rejection remarks, please contact 0120- 4832500 and select option 1 for CRC. For escalation, mail can be sent to [crc.escalation@mca.gov.in](mailto:crc.escalation@mca.gov.in)
- Even after the establishment of business in India in any of the legal form of structure, post-incorporation compliances relating to filing of forms or otherwise shall be done timely as per the requirements of various Indian Acts, Rules, and Regulations, otherwise, heavy penalties may be imposed.

# Annexures

---

## **Anx I. Format of the Letter of Comfort**

The Authorised Signatory,  
(Address of the Authorised Dealer Category-I bank)

Dear Sir,

**Sub: Application for establishment of branch/liaison Office in India by our subsidiary/group company, M/s.....**

You may kindly refer to the application made by our subsidiary/group company, M/s.....to your office for establishing branch/liaison office in India.

In this connection, we, ..... (The parent company/group company) undertake to provide the necessary financial support for our subsidiary/group company's operations as a branch/liaison office in India. Any liability that may arise due to the functioning of the branch/liaison office in India will be met by us (the parent company/group company), in case of inability on part of the branch/ liaison office to do so.

We are also enclosing the financial background of our company in the form of our latest Audited Balance Sheet / Account Statement certified by a Certified Public Accountant.

Yours faithfully,

( )

Authorised Representative of the parent company

**Anx II. Form FNC : Application for establishment of branch office/liaison office/project office in India**

[This application form shall be completed and submitted to the AD Category-I bank designated by the applicant along with the documents mentioned in item (viii) of the Declaration.]

**Part I**

No.	Details	Particulars
1.	i. Full name and address of the applicant ii. Date and Place of incorporation/ registration iii. Telephone Number(s) iv. Fax Number(s) v. E-mail ID	
2.	i. Details of capital ii. Paid-up capital iii. Free Reserves/Retained earnings as per last audited Balance Sheet/Financial Statement iv. Intangible assets, if any	
3.	Brief description of the activities of the applicant	
4.	i. Value of goods imported from and/or exported to India by the applicant during each of the last three years: a. Imports from India b. Exports to India ii. Particulars of existing arrangements if any, for representing the company in India iii. Particulars of the proposed liaison/ branch office: a. Details of the activities/ services proposed to be undertaken/ rendered by the office	

**Annexures**

	<ul style="list-style-type: none"> <li>b. Place where the office will be located</li> <li>c. Phone number</li> <li>d. E-mail ID</li> <li>e. Expected number of employees (with number of foreigners)</li> </ul>	
5.	<ul style="list-style-type: none"> <li>i. Name and address of the banker of the applicant in the home country</li> <li>ii. Telephone &amp; Fax Number</li> <li>iii. E-mail ID</li> </ul>	
6.	<p>For Non-profit / Non-Government Organisations (NGOs):</p> <ul style="list-style-type: none"> <li>i. Details of activities carried out in the host country and other countries by the applicant organisation.</li> <li>ii. Expected level of funding for operations in India.</li> <li>iii. Copies of the bye-laws, Articles of Association of the organisation.</li> </ul>	
7.	<p>For project offices:</p> <ul style="list-style-type: none"> <li>i. Reference no. and date of letter awarding the contract</li> <li>ii. Particulars of authority awarding the project/contract</li> <li>iii. Total amount of contract</li> <li>iv. Address/e-mail/telephone number/fax number of the project office</li> <li>v. Tenure of project office</li> <li>vi. Nature of project undertaken</li> </ul>	
8.	Any other information which the applicant company wishes to furnish in support of this application.	

**Technical Guide on Incorporation of Foreign Companies in India**

**Part II- Additional information to be submitted by applicants where Reserve Bank's approval is necessary under Regulation 5 of Notification No. FEMA 22 (R)/2016-RB dated March 31, 2016**

**I. Details in respect of Company/ Firm**

Sr. No.	Full name of the company	Date of registration of the company	Address of Head Office, Regional Office and Registered Office	Previous name of the company, if any	Details of earlier approvals or rejections, if any, (ref. no. and date)	Enclosed application for branch office/liaison office/project office prescribed by DEA
---------	--------------------------	-------------------------------------	---	--------------------------------------	---	--

**II. Details in respect of Directors/Key Executives**

Sr. No.	Full name of Board of Directors and Key Executives (wherever applicable)	Present position held with date (since when)	Date of Birth	Parentage	Present and permanent address	Nationality	Passport Nos. and issue date	Contact address and telephone number
---------	--	--	---------------	-----------	-------------------------------	-------------	------------------------------	--------------------------------------

**III. Details of shareholders of applicant company (All firms/companies/entities/individuals having shareholding more than 10 %)**

Sr. No.	Full name	Parentage Father/Mother	Date of birth	Permanent address	Present address	Present position held	Nationality (if holding dual nationality, both must be clearly mentioned)	% of shares held in the company
---------	-----------	-------------------------	---------------	-------------------	-----------------	-----------------------	---	---------------------------------

**IV. Details of criminal cases, if any, against the company / Director (s):**

- a) Name; address and registration number of the company:
- b) Name and address of owners, promoters and directors of the company:
- c) Is the company owners, promoters or directors listed above, the subject of any
  - 1. Preventive detention proceedings : Yes/No
  - 2. Criminal proceedings : Yes/No
- d) If, Yes, please provide the following details
  - 1. Detention/case/FIR/warrant number
  - 2. Police station/District/Agency
  - 3. Section of law
  - 4. Name and place of the court
  - 5. The above mentioned details are in respect of both India and any other foreign country

**DECLARATION**

We hereby declare that:

- i. The particulars given above are true and correct to the best of our knowledge and belief.
- ii. Our activities in India would be confined to the activities indicated in column 4(iii) (a)/7 (vi) above. We will not undertake either partly or fully, any activity that is covered under Foreign Contribution Regulation Act, 2010 (FCRA) and we understand that any misrepresentation made or false information furnished by us in this behalf would render the approval granted under the Foreign Exchange Management (Establishment in India of a branch office or liaison office or a project office or any other place of business) Regulations, 2016, automatically as void ab initio and such approval by the Reserve Bank shall stand withdrawn without any further notice.
- iii. If we shift the office to another place within the city, we shall intimate the designated AD Category - I bank. In the event of shifting the office

## Technical Guide on Incorporation of Foreign Companies in India

---

to any other city in India, prior approval of the AD Category-I bank will be obtained.

- iv. We will abide by the terms and conditions that may be stipulated by the Government of India / Reserve Bank of India/ designated AD Category - I bank, from time to time.
- v. We hereby commit that we are agreeable to a report / opinion sought from our bankers abroad by the Government of India /Reserve Bank.
- vi. We understand that the approval, if granted, is from FEMA angle only. Any other approvals / clearances, statutory or otherwise, required from any other Government Authority/ Department/ Ministry will be obtained before commencement of operations in India.
- vii. We have no objection to the Reserve Bank placing the details of approval in public domain.
- viii. We enclose the following documents:
  - a. Copy of the Certificate of Incorporation / Registration; Memorandum of Association and Articles of Association attested by the Notary Public in the country of registration.

[If the original Certificate is in a language other than in English, the same may be translated into English and notarized as above and cross verified/attested by the Indian Embassy/ Consulate in the home country].
  - b. Audited Balance sheet of the applicant company for the last three/ five years in case of branch office/liaison office respectively.

[If the applicants' home country laws/regulations do not insist on auditing of accounts, an Account Statement certified by a Certified Public Accountant (CPA) or any Registered Accounts Practitioner by any name, clearly showing the net worth may be submitted]
  - c. Bankers' Report from the applicant's banker in the host country/country of registration showing the number of years the applicant has had banking relations with that bank.

- d. Power of Attorney in favour of signatory of Form FNC in case the Head of the overseas entity is not signing the Form FNC.

(Signature of Authorised Official of the Applicant Company)

Name :

Designation :

Place :

Date :

ISBN : 978-81-0000-000-0



[www.icai.org](http://www.icai.org)



July | 2021 | P0000 (New)