



FIND INSIDE

- Indian Market Entry Options
- Indian Corporate Taxation
- FAQs about Legal and Tax Aspects of Doing Business in India

Legal and Tax Aspects of Doing Business in India

With the aim of promoting foreign investments in India, the Indian economy was liberalized and an Industrial Policy Statement was issued in the year 1991. Ever since, the regulatory environment for foreign investments in India has undergone a constant change from being a closed economy to an open and investor friendly economy. This has substantially reduced the industrial licensing requirements, removed restrictions on expansion and facilitated easy access to foreign technology and Foreign Direct Investment (FDI).

One of the major and the recent reforms in this series has been the opening of Trading in the Single Brand Retail Sector (100 percent) and in the Multi Brand Retail Sector (50 percent) for FDIs.

The objective of this brochure is to equip the Austrian Nationals, who are interested in doing business in India, and is primarily based and prepared in view of most frequent queries, which are received by the Commercial Section of the Indian Embassy. The information provided hereunder is general in nature and meant for initial orientation purposes only.

Are Foreign Direct Investments open in all the sectors in India?

FDI is open in almost all the sectors except in the field of atomic energy, agriculture, gambling and betting and lottery business sectors, where FDI is prohibited.

In certain sectors FDI is allowed only to a certain percentage, for example - Banking-private sector (74 per cent), Telecom Services (74 per cent), Print Media (26 per cent) Insurance (26 per cent).

Do I need any approvals before entering into the Indian market?

For most of the sectors no prior approval is required. In certain sectors prior government approval is mandatory for entering the Indian market.

What is automatic route and government approval route?

When a foreign investor is not required to obtain any prior approval either from the Reserve Bank of India (RBI) or Government of India (GOI) it is known as entry via Automatic route.

When an investment proposal requires prior approval from GOI, Ministry of Finance, the Foreign Investment Board (FIPB) for investment, then this procedure is known as Government or FIPB approval route.

How can I know which sectors need approval. From where can I get the lists of sectors requiring approvals?

The Indian Government issues twice in a year a Consolidated FDI Policy, which includes the updated list of the sectors. The latest updated list of the sectors is available on this link <http://dipp.gov.in>

Is there any minimum amount of investment required from the foreign investors?

Generally no minimum amount of foreign investment is required for entering the Indian market. However in very specific sectors like Multi Brand Retail Trading a minimum foreign investment of US\$ 100 million is required.

How can I sell my products to India without any formal presence in India?

Products can be exported directly to the buyers in India as per the conditions agreed between buyer and the seller. Other options available are via:

- /// Distributors/Importers who buy products from the foreign Company and sell them to the consumers.
- /// Agents can be appointed who sell your products on commission basis.
- /// Franchisees are common in the field of food and beverages, education and professional services.

No matter which way you chose, a thorough check of your partner via references, reputation checks and proper due diligence on potential partners is a must. Therefore the need for exercising prudent procedures and practices in all international business transactions. An expert advice on legal and tax issues is always beneficial before entering into any formal arrangements.

Can I use our standard international commercial contract for transactions with India?

Indian and Austrian legal systems are based on different principles i.e. Common and Civil Law respectively. It is possible to use your international commercial contract but with a possible risk that certain provisions might not be recognized by the Indian courts and therefore may be not executable in India. Hence customize your contract to the Indian Laws. For instance India is not a signatory to the United Nations Convention on Contracts for the International Sale of Goods (CISG) as opposed to Austria. A provision for inclusion of CISG rules, if desired; should be expressly agreed in the contracts with India.

Can my Company hire local Indians without formal presence in India?

No. In order to hire locals in India, you need to establish a formal entity in India. Hiring of locals on the payrolls of foreign entity creates high risk of tax liability of the foreign company in India.

Can I open a bank account in India without formal presence?

No. Opening of a bank account without formal presence for foreign entities is not permitted in India.

What are the various entry options to enter the Indian market?

Depending on your business and strategy plans, there are various ways for entering in the Indian market. In case formal business presence is desired the foreign investors have following options:

Wholly Owned Subsidiary (WOS)

A wholly owned subsidiary can be set up as a Public Limited Company or a Private Limited Company ("Pvt. Ltd:"). A Pvt. Ltd, which is comparable to the Austrian Company form "GmbH" is the most common and preferred entry form used by foreign investors in India.

For setting up a Pvt. Ltd. , minimum 2 shareholders (can be both natural and legal persons), 2 Directors (only natural persons) and a minimum share capital of INR 100,000 are required. The Board of Directors is the decision making organ of the Pvt. Ltd. Main advantage of a Pvt. Ltd. is that on incorporation it is treated as a domestic Company and is less stringently regulated with more flexibility in conducting operations, including the management of the company, issuance of different types of securities and the payment of managerial remuneration.

Limited Liability Partnership (LLP)

LLP as a business entity was introduced in India in 2009 and since 2011 this entity form is also available for the foreign investors. Though the formation process is more cumbersome as compared to Pvt. Ltd., LLP combines the advantages of a limited liability Company and flexibility of a Partnership. LLP permits individual partners to be shielded from the liabilities created by another partner's business decision or misconduct. However foreign investors require a prior FIPB approval for this entity form. One of the partners or a representative of one if its partners must be a resident Indian (can also be a foreign citizen living in India)

Branch Office (BO)

A BO (Zweigniederlassung) of a foreign Company can be set up in India after prior approval of the Reserve Bank of India ("RBI"). A BO can undertake all the activities of the parent company apart from manufacturing of goods. The BO is a presence of the foreign company and is taxed accordingly.

Liaison Office (LO)

A LO also known as Representative Office of the foreign company can be opened on prior approval of RBI. The activities of a LO are limited mainly to promotion and representation of the parent company. No commercial, trading or industrial

activity is allowed. Keeping to these restrictions, a LO usually is not taxable in India (though a large sourcing office has recently been held taxable by the tax authorities).

Project Office (PO)

For undertaking a specific project work in India, a PO can be set up after the prior approval of the RBI. The activities of PO are limited to the activities related and incidental to the approved Project. No further activities may be undertaken by the PO. This form is suitable for companies engaged in turnkeys or installation projects. A PO is permitted to operate a bank account in India and may remit surplus revenue from the project to the foreign company. The PO is a presence of the foreign company in India and is taxed accordingly.

Is it mandatory to appoint Resident Indians as Directors in a wholly owned subsidiary (WOS)?

No, it is not mandatory to appoint resident Indian as Directors. Only natural persons can be Directors and they can be foreign citizens as well. However, for managing day to day affairs/business of the Company, in practice it's recommended to appoint a Director who is resident in India.

Which approvals and compliances are required on entering the Market?

The list of various approval clearances required for new projects in India can be found in the website of the Department of Industrial Policy and Promotion (DIPP) under <http://dipp.nic.in/>

What are the rates of corporate taxation in India?

Company Form	Rates in Percentage
Domestic Company	30*
Foreign Company	40**

* plus a surcharge of 5per cent applied on the tax paid by companies with gross turnover of INR 10 million and education cess at 3%, total tax rate = 32.445%

** plus a surcharge of 2per cent applied on the tax paid by companies with gross turnover of INR 10 million and education cess at 3%, total tax rate = 42.024%

In addition to the income tax paid by the domestic company, any dividend paid or distributed is charged with a Dividend Distribution Tax (DDT) at the effective rate of 16.22 percent. This tax is levied on the domestic company itself. It is not in the nature of a withholding tax and thus usually cannot be credited against the income tax payable by the shareholder in his country of residence.

The LLP is taxed (as an opaque entity) at a rate of 30% with no Dividend Distribution Tax applying under current law. Investors planning a major investment in India should review the option to found an LLP.

Which various indirect taxes are to be considered while planning entry into the Indian market?

Like Austria, India is a federal country. Various taxes are levied at the central ("Bund") and at the states ("Länder") level. Some of the most important indirect (simplified) taxes are;

Central Sales Tax (CST) and Value Added Tax (VAT) are levied on the sale of goods. CST is levied on

Entry Options - Overview

Form	Private Limited Company	Branch Office	Liaison office	Project office	Limited Liability Partnership
Approvals	FIPB/Automatic Route + Registration ROC	RBI Approval	RBI Approval	RBI Approval	RBI approval + ROLLP
Status	Indian Company	Foreign Company	Foreign Company	Foreign Company	Indian Partnership
Set up time	8 to 12 weeks	8 to 12 weeks	8 to 12 weeks	8 to 12 weeks	12 to 14 weeks
Features	All commercial activities as per the Company documents	Commercial activities allowed; No production	Commercial activities not allowed	Temporary site. Limited to project approved	Commercial activities allowed
Control	Board of directors	Parent Company	Parent Company	Parent Company	Partners
Tax rate	32,45%	42,02%	Not taxable	42,02%	30,90%
Closure /app. time	ROC 12 to 16 months	RBI 6 to 8 months	RBI 3 to 6 months	RBI 3 to 6 months	ROLLP 12 to 16 months

FIPB – Foreign Investment Promotion Board RBI – Reserve Bank of India ROC – Registrar of Companies ROLLP – Registrar of Limited Liability Partnership

inter-state sale of goods at the rate of 2% (if not sold to manufacturer or reseller 12.5%). VAT is levied on sale of goods within the state at the standard rate of 12,5%.

The manufacture of goods is subject to Central Excise Duty at the rate of 12,36% in India. With effect from 1.July 2012 all services provided in India except those expressly exempt are subject to Service Tax at the rate of 12,36%.

What is general rate of customs duty while importing goods to India and how is it calculated?

The import of goods is subject to Basic Customs Duty of 7.5% (machines) or 10% (most goods) plus further countervailing duties balancing the levy of Central Excise Duty and Sales Taxes on local manufacturing and sale. No entry-VAT is charged.

Sample Calculation for Basic Customs Duty rate of 10%*

Form	Rate of Duty	INR	INR
(B) Total Cost for Indian Partner incl. Customs Duty			128,85
(B1) SAD (Special Additional Duty balancing the levy of CST)	4%		4,96
(B2) Subtotal for calculating SAD (B3+B5+B7+A)		123,90	
(B3) Education Cess	3%		0,70
(B4) Subtotal for calculating Education Cess (B7+B5)		23,20	
(B5) AD (Additional Duty balancing the levy of Excise Duty)	12%		13,20
(B6) Subtotal for calculating AD & Cess of AD (A+B7)		110,00	
(B7) BCD (Basic Customs Duty)	10%		10,00
(A) Customs Value			100,00

* The Indian customer being a manufacturer can take credit of AD and SAD levied upon the import. An importing service provider can take credit of AD only.

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The Indian Embassy Commercial Wing

The website of the Embassy of India, Vienna, offers a wide variety of business related information carefully selected to meet India-Austria's business demands. In our online portal, companies not only have the opportunity to find relevant information on India-related trade matters, but can also interact with the commercial wing of the Embassy by submitting their trade inquiries online.

Additionally, the Embassy compiles a quarterly economic and commercial report for Austria, which is targeted at Indian business readers and trade corporates. The same can be downloaded directly from our Website or received via email by registering in our website.

Besides the online presence, the Embassy also has a Business Centre Facility, located on the first floor of the Main Chancery building. The space is ready to welcome businesspeople and parties interested in requesting, exchanging or providing information on India-related business matters. You can either schedule an appointment with a representative of our commercial wing at the contacts given below or simply visit us during our opening hours Mondays to Fridays from 11AM to 1PM.

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