TAXMANN®
Tax & Corporate Laws of INDIA

S N & Co.
CHARTERED ACCOUNTANTS

ENTRY STRATEGY IN INDIA

OCTOBER 22, 2024

Presented by
CA. Niki Darshak Shah
FEMA Advisor | Registered Valuer
Mobile No.- 9930547923

INDEX

Sr. No.	Agenda
1.	Statistics
2.	Market Penetration
3.	Entry routes for Foreign Entity in India
4.	Comparative Analysis
5.	Tax Implications
6.	Regulatory Compliance and Reporting's
7.	Case Studies

STATISTICS

Table 1: Coverage in FLA Census, 2023-24					
Category	Types of Entity	Number of Entities with Direct Investment			
		Both Inward and Outward	Only Inward	Only Outward	Total
1	2	3	4	5	6
Unlisted	Foreign Associate companies in India	505	5,382	-	5,887
	Foreign Subsidiary companies in India	401	23,941	-	24,342
	Alternative Investment Funds	98	434	31	563
	LLP[1] and Partnership Firms	7	1,018	715	1,740
	Other companies[2]	-	-	3,806	3,806
	Total	1,011	30,775	4,552	36,338
Listed	Foreign Associate companies in India	84	143	-	227
	Foreign Subsidiary companies in India	36	80	-	116
	Other companies	-	-	726	726
	Total	120	223	726	1,069
Grand Total		1,131	30,998	5,278	37,407
1 Limited Liabilities Partnership (LLP) 2 Includes entities who have only overseas direct investment					

** Source: RBI*

- ***Foreign Associate Companies-*** *if non-resident investor owns at least 10% and no more than 50% of the voting power/equity capital*

- ***Foreign Subsidiary Companies-*** *if a non-resident investor owns more than 50 per cent of the voting power / equity capital.*

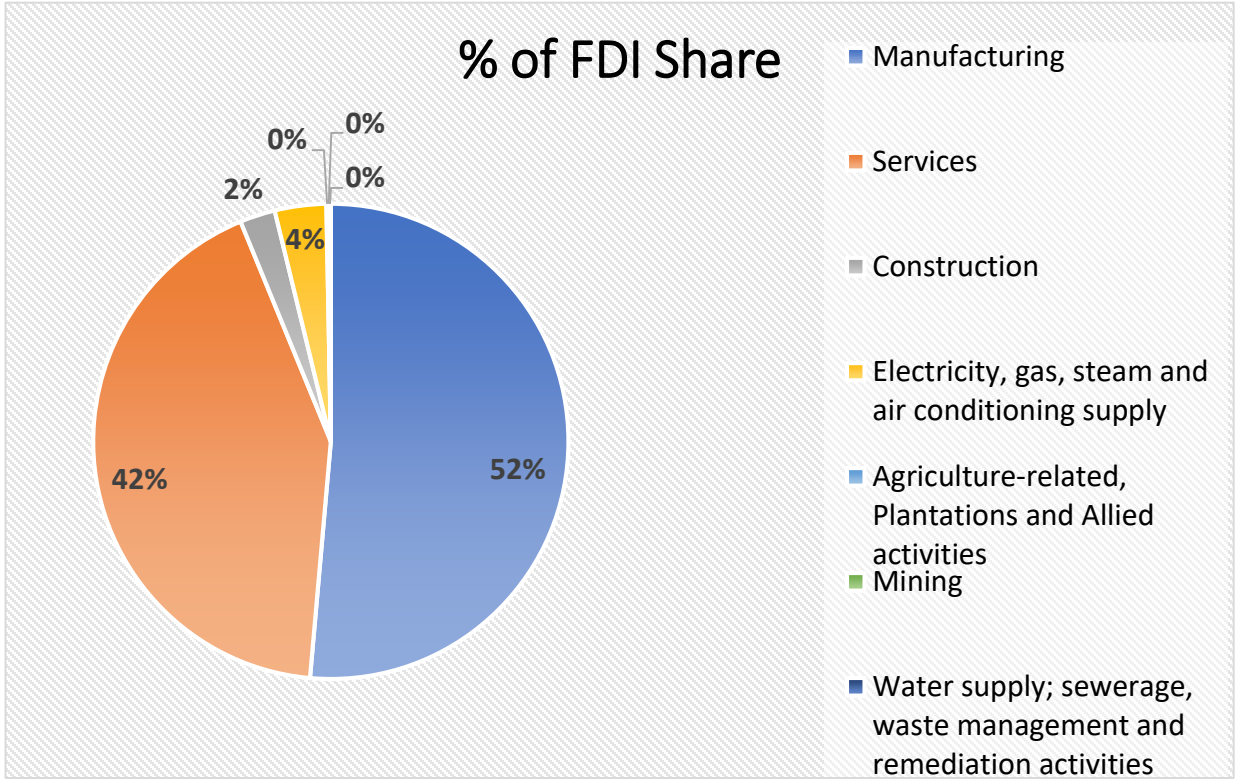
STATISTICS

FDI in India- Country Wise Distribution (2024)

Country	Amount (In Crore)	Percentage
USA	10,11,972	16.70%
Mauritius	9,09,403	15.00%
Singapore	8,40,685	13.90%
UK	7,24,958	12.00%
Netherlands	5,61,331	9.30%
Japan	5,42,522	9.00%
Switzerland	4,02,399	6.60%
Germany	2,20,356	3.60%
France	1,52,393	2.50%
South Korea	1,06,918	1.80%
Others Countries	5,84,662	9.60%

** Source: RBI*

Sectors Attracting Highest Inflow (2024)



INDIA ENTRY STRATEGY- MARKET PENETRATION

Market Analysis & Expansion

- Market Mapping, Market Sizing
- Competitive Analysis
- Regulatory Overview
- Feasibility Study of Setting up India Business
- Opportunity to increase sales or expand their business

JV & Partnership

- Strategic Investment and partnership.
- Identification of JV Partners and Strategic Alliances
- Identification of Acquisition Targets

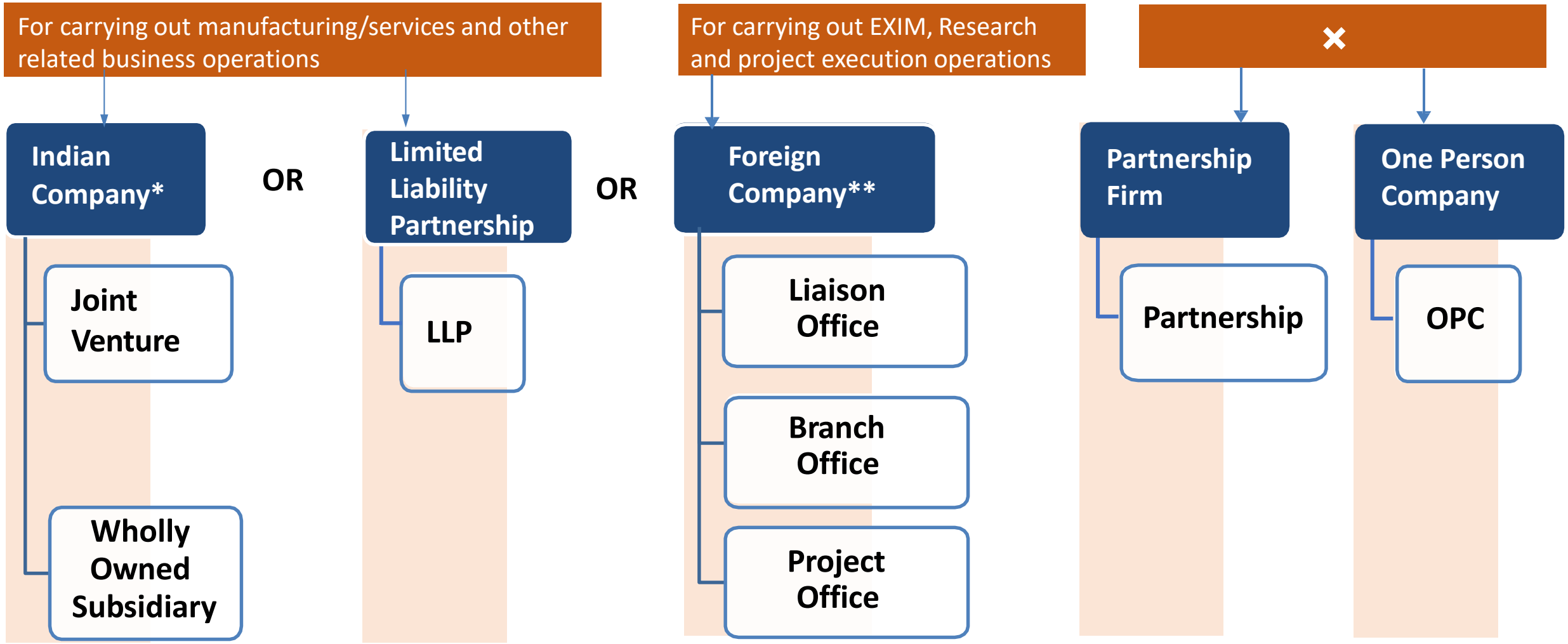
Channel Partners & Policy Reforms

- Identification of Potential Vendors
- Channel Study and Identification Channel partners
- Various government incentives to attract foreign Investment.

Site Analysis & Talent Pool

- Manufacturing Site Analysis
- Human Resource Study including Costs, Benchmarking, Availability, sourcing
- Talent Search and Team Building

ENTRY ROUTES FOR FOREIGN ENTITY IN INDIA



*Incorporate company in India s.t. sectoral caps and requisite approvals

**As per company law, a resident having PAN to be appointed for receiving notices in India for foreign company

COMPARATIVE ANALYSIS – TYPE OF BUSINESS IN INDIA

Private Company vis-à-vis Public Company vis-à-vis OPC vis-à-vis LLP				
Particulars	Private	Public	OPC	LLP
Min Members	2	7	1	2 partners
Max Members	200	Unlimited	1	No Limit
Min Directors	2	3	1	2 Designated Partners
Max Directors	15*	15*	15*	NA
Resident Director	1 Mandatory	1 Mandatory	1 Mandatory	1 Designated Partner
Transfer of ownership	Ownership can be Transferred	Ownership can be transferred	Ownership can be transferred to nominee in the event of death of owner	Ownership can be transferred
Subscription of shares	Public subscription not allowed	Public subscription allowed	Public subscription not allowed	Public subscription not allowed
Issue of Prospectus	Not Mandatory	Mandatory	Not Mandatory	Not Mandatory
Managerial Remuneration	No limit for managerial personnel	Shareholder approval is required, If remuneration payable is above limits	NA	Remuneration is based on LLP agreement

Note: *Resident Director : sec 149(3) – Every company should have at least one director who has stayed in India for a total period of not less than 182 days in the Financial Year.*

COMPARATIVE ANALYSIS – TYPE OF BUSINESS IN INDIA

Private Company vis-à-vis Public Company vis-à-vis OPC vis-à-vis LLP				
Particulars	**Private**	**Public**	**OPC**	**LLP**
Commencement of Business/ Operations	Declaration to be filed prior to commencement	Declaration to be filed prior to commencement	Declaration to be filed prior to commencement	Immediately after obtaining certificate of incorporation
Legal Status	Pvt Co is a separate legal entity registered under Companies Act, 2013. The Directors are liable for defaults made under the act	Public Co is a separate legal entity registered under Companies Act, 2013. The Directors are liable for defaults made under the act	OPC is a separate legal entity registered under Companies Act, 2013. The Directors are liable for defaults made under the act	LLP is a separate legal entity registered under LLP Act, 2008. The Designated partners of LLP are liable for contraventions under the act
Governing Act/ Law	Companies Act, 2013	Companies Act, 2013	Companies Act, 2013	LLP Act, 2008
Annual Statutory Filings	Annual statement of accounts & annual return with ROC	Annual statement of accounts & annual return with ROC	Annual statement of accounts & annual return with ROC	Annual statement of solvency & annual return with ROC
Annual Filings & Audit	IT return to be filed. Audit mandatory	IT return to be filed. Audit mandatory	IT return to be filed . Audit mandatory.	IT return to be filed. Audit mandatory in case turnover exceeds INR 40 lakhs or contribution exceeds INR 25 lakhs

LOBOPO – PURPOSE FOR SETTING UP IN INDIA

Liaison Office

- Act as **channel of communication** between the Parent and Indian Company
- **Promote** Business and Product awareness
- Facilitate technical or financial **collaboration**
- Conduct **Market research** and gather information on Indian Markets
- **Representing** Parent company in India to handle Public relations.

Branch Office

- **Conduct business operations** and generate Income within India.
- **Acts as extension of Parent company**, providing the same products and services as the Parent company.

Project Office

- **Execute and manage** specific projects in India
- Typically set up for a **limited period** and is linked to the completion of a particular project.
- Bring **expertise and skills** for project implementation.

DIFFERENT ENTITY INCORPORATION IN INDIA

	Liaison Office (LO)	Branch Office (BO)	Project Office (PO)	WOS/ JV	LLP
Permitted activities	**Represent** parent company in India Promote **export/import** from/to India **Facilitate** technical/financial collaboration between parent company and companies in India. It **cannot** earn any income in India	**Export/import** of goods Rendering **professional** or consultancy services Acting as **buying/selling** agents for the parent company in India Rendering **services in IT** and development of software in India Rendering **technical support** to the products supplied by the parent/ group companies Permission for **establishing BO** in the Special Economic Zones **(SEZs)**	PO can be set up to **execute specific projects** in India Render service during the **warranty period** and after sale service as per Contract terms. It can carry out commercial activities/ execute a contract **only to the extent required for the period.**	**All types of business** activities are permitted, such as in the manufacturing, marketing, services sectors.	The LLP's structure and objective are primarily suited for carrying out business activities **related to the services sector.**

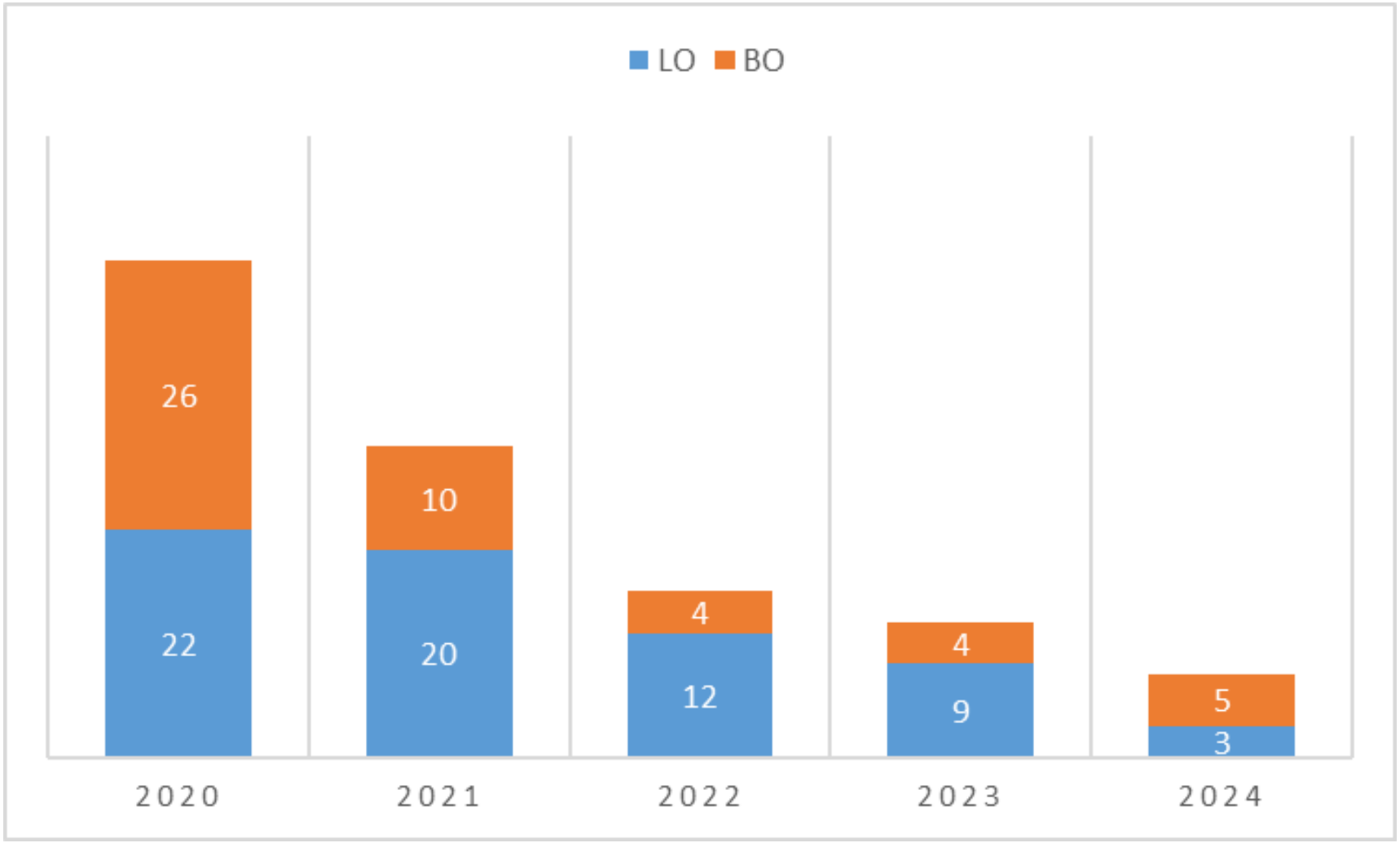
DIFFERENT ENTITY INCORPORATION IN INDIA

	Liaison Office (LO)	Branch Office (BO)	Project Office (PO)	WOS/ JV	LLP
Eligibility	• Profit making track record during the immediately preceding **3 F.Y** in the home country • **Net worth** of not less than **USD 50,000** or its equivalent.	• Profit making track record during the immediately preceding **5 F.Y** in the home country • **Net worth** of not less than **USD 100,000** or its equivalent	NA	There is **no minimum capital** required for incorporating a private limited company	**No minimum capital** requirement conditions
Validity	Generally for **3 years*** except in the case of NBFCs and those entities engaged in construction and development sectors, for whom the validity period is 2 years only	NA	As per the **tenure** of the project	A company, once incorporated, **will continue until its dissolution**	An LLP once incorporated continues till **it is dissolved** or as per terms stated in the LLP agreement

PROCESS OF ENTITY IN INDIA

Particulars	Liaison Office (LO)	Branch Office (BO)	Project Office (PO)	WOS/ JV	LLP
Prior Approval	RBI approval before commencement of any operations.	RBI approval before commencement of any operations.	RBI approval before commencement of any operations.	Automatic or Government route	FDI is permitted under the automatic route
Setup Timeline	6-8 weeks	6-8 weeks	4 weeks	4-8 weeks	4-6 weeks
Tax Rate	Not subject to taxation in India	40%	40%	25%	30%
Annual Filing	Annual Activity Certificates (AAC)	Annual Activity Certificates (AAC)	Annual Activity Certificates (AAC)	FCGPR, FLA, FCTRS AOC 4 and MGT 7	LLP 1, FLA Form 11 and Form 8
Winding Up	Application for closure to AD-I Bank	Application for closure to AD-I Bank	Application for closure to AD-I Bank	NCLT order-Companies Act	NCLT order-Companies Act

STATISTICS- LOPOBO



FOREIGN DIRECT INVESTMENT IN INDIA

Investment in India has improved considerably since the opening up of the economy in 1991.
This is largely attributed to ease in FDI norms across sectors of the economy. India, today is a part of top 100 club on Ease of Doing Business (EoDB) and globally ranks 1st in the greenfield FDI ranking. India received the record FDI of $ 60.1 bn in 2016-17.



100% FDI permitted through **Automatic route**

100% FDI permitted through **Government route**

Upto 100% FDI permitted through **Government + Automatic route**

Upto 51% FDI permitted through **Government/ Automatic route**

•***Note:***

i) In sectors/ activities not listed above, FDI is permitted up to 100% on the automatic route, subject to applicable laws/regulations; security and other conditions.

ENTRY ROUTES

Routing Investments in India

AUTOMATIC ROUTE

No prior approval from the Government of India is required.

- Available for most sectors, except those specifically restricted.
- Limits : Sectoral caps/ stipulated sector specific guidelines.
- Investors only need to inform the Reserve Bank of India (RBI) within 30 days of investment.
- Faster process since it bypasses government scrutiny.

GOVERNMENT ROUTE

Prior approval from the Government of India is mandatory.

- Only for cases other than Automatic Route and those mentioned in sectoral policy.
- Investors must obtain permission from the concerned ministry or department before investing.
- An entity of a country, sharing land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country (Pakistan)

SECTORAL CAPS

AUTOMATIC ROUTE (Illustrative)	GOVERNMENT ROUTE (Illustrative)		NEGATIVE LIST (Illustrative)
■ Mining	■ Titanium (Mining)	100%	■ Agriculture [b]
■ IT	■ Broadcasting (Content)	46%	■ Atomic energy
■ Financial services[a]	■ Banking for Public	20%	■ Lottery, betting and gambling
■ Construction Development	■ Print	26%	■ Chit fund, Nidhi company
■ Infrastructure	■ Insurance [a]	70%	■ Trading in Transferable Development Rights
■ Manufacturing sector			■ Cigars & Cigarettes







Note: (a) Sector specific guidelines
(b) Subject to certain exceptions

WHOLLY OWNED SUBSIDIARY OR JOINT VENTURE

Wholly Owned Subsidiary

- Wholly Owned Subsidiary (WOS) can be set up in sectors where **100% foreign direct investment is permitted** under the FDI policy. It can be set up by the Foreign Companies only.
- It operates as an independent legal entity whose 100 percent equity shares are owned by another company, **the parent company**.
- It can be in form of private company or public company
- It carries out the business activities as a separate legal entity however **controlling interest** vest with the foreign parent Company.
- **Profits** can be taken out of India, net of Indian taxes, in the form of dividend.
- The WOS will be subjected to **Indian taxes** and laws as applicable to other domestic companies

WHOLLY OWNED SUBSIDIARY OR JOINT VENTURE

Joint Venture

- A joint venture is a **partnership** between two or more companies or individuals who agree to pool capital or goods to run a business or to achieve a commercial objective
- It can be in the form of **companies, partnerships or joint working** agreements/ strategic alliances.
- Foreign Companies set up Joint ventures in India in sectors where 100 percent FDI is **not permitted**
- JV helps foreign companies to utilize the existing networks of their Indian partners, and once taxed, such companies **can remit** their Indian profits outside the country.
- Corporate JVs will also be subject to the country's tax laws, FEMA, labor laws, the Competition Act of 2002, and various industry-specific laws.

LIMITED LIABILITY PARTNERSHIP (LLP)

Limited Liability Partnership (LLP)

- LLP Firms are partnership firms with limited liability of partners. It is a **combination** of partnership and a Company

- 100% Foreign Direct Investment in LLP is allowed for the sectors/activities where 100% FDI is allowed under the automatic route and there are **no FDI- linked performance conditions**.

- LLPs can also make **downstream investment** in another company or LLP in sectors where 100% FDI is allowed under automatic route.

- FDI in an LLP under the automatic route is subject to the following conditions:

    - The LLP should come under a sector that has **no FDI-linked performance** conditions, which refers to sector specific conditions for companies receiving foreign investment;
    - The LLP should be in a sector that permits **100 percent FDI**; and
    - The conditions of the LLP Act of 2008 and rules thereunder are met

PROHIBITED SECTORS

Lottery Business including Government/private lottery, online lotteries , etc.*	Gambling and Betting including casinos*	Chit funds	Nidhi Company
Trading in Transferable Development Rights (TDR)	Real Estate Business or Construction of farm houses**	Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes	Sectors not open to private sector investment- atomic energy, railway operations (other than permitted activities mentioned under the Consolidated FDI policy)

Notes

*Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities

**Real estate business shall not include development of town shops, construction of residential/ commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014

TAXATION OVERVIEW IN INDIA

- **Key Features of India's taxation System:** Taxes in India are levied by the Central Government and the State Governments. Some minor taxes are also levied by the local authorities such as the Municipality and Local Government.

Major Central Taxes	Major State Taxes
▶ Income Tax	▶ State Goods & Services Tax (SGST)
▶ Central Goods & Services Tax (CGST)	▶ Stamp Duty & Registration
▶ Integrated GST (IGST)	
▶ Custom Duty	

A resident company is taxed on its worldwide income. A non-resident company is taxed only on income that is received in India, or that accrues or arises, or is deemed to accrue or arise, in India. Company whether Indian or foreign is liable to taxation, under the Income Tax Act,1961. Corporation tax is a tax which is levied on the incomes of registered companies and corporations.. Taxes In India are primarily into 2 categories- Direct and Indirect Tax.

CASE 1 Non- Resident to convert Partnership firm into WOS

Facts of the case:

- An Foreign Company “XYZ Ltd” into Pharma Industry wanted to acquire Delhi based Partnership firm via Equity Capital.
- Delhi based firm was into manufacturing of Daily Home care essentials.

Questions:

- Is this transaction allowed under FEMA?
- Can NR invest in Partnership firm?

The 'Trusted' Legal Repository of India on Tax | Corporate Laws | Accounting

What is Different **About Taxmann.com | Research?**

Largest Database Redefined

Case Laws
1,83,000+

- Legal digests with Headnotes as well as facts & held
- 15+ Parameters to Filter Your Search
- Viability tool to check Reliability of Case Laws

- Almost 100% Reporting of Judgments rendered
- Judicial Analysis in a New Avatar*

Acts
370+

Rules
1,300+

Circulars and Notifications
62,500+

Reports and Guidelines
900+

- Always Amended
- Always Updated
- Annotated
- Historical Database to Give You History of All Amendments

- All-About™ Tool that Integrates all Related Records to a Section

Commentaries
30+

Articles
20,000+

- Authored by Industry Experts
- Guidance on Complex, Controversial & Current Topics

Real Time News & Updates

- Reporting from 1,000+ Authentic Sources

- Customise What You Read & When You Read

taxmann.com Research

Prices Starting From

Individual Modules

₹ 18,500/-†

Combo Modules

₹ 25,900/-†

* Upcoming Feature
† Taxes Extra

SUBSCRIBE NOW

TAXMANN®
Tax & Corporate Laws of INDIA

Thank You!

For More Information, Visit: https://taxmann.com/

Follow us on Social Media

Download Taxmann App