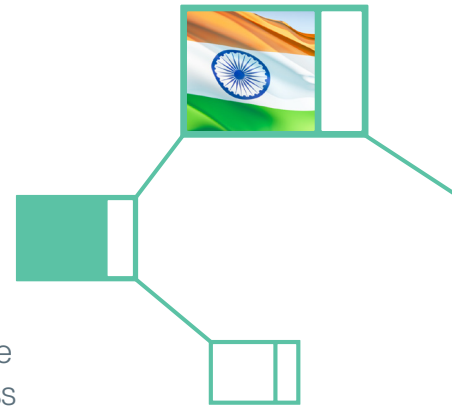


Doing business in India



India is increasingly being recognised as a significant market by companies, across all business sectors, all over the world. The purpose of this short guide is to provide a road map to assist overseas companies wanting to do business in India in understanding the key issues that will be involved. Each case will involve specific issues, so we would advise that specific legal advice be taken on each set of facts.

The starting point: Can I operate in India?

India has very detailed rules on Foreign Direct Investment (“FDI”). The FDI rules govern whether FDI is allowed into each business and industry sector in India and to what extent. In very general terms, if FDI is allowed to 100%, this means that an overseas company will usually be able to operate in that sector without the need for an Indian partner. If FDI is allowed, for example, to 49%, this means that the overseas company will usually be able to invest up to 49% in the operation in India and will need an Indian partner to invest the remaining 51%. If FDI is completely prohibited, the overseas company will usually not be allowed to operate in that sector directly (though may be able to do so indirectly).

The details must be examined in each specific case, as the rules are very intricate, but by way of some very general examples:

- **The power sector** – FDI up to 100% is generally permitted for the generation, transmission and distribution of power – except nuclear power, in relation to which FDI is not permitted at all.
- **The telecoms sector** – investment into the provision of cellular or internet services is permitted up to a certain extent (depending on the exact sub-sector), but an Indian partner will be needed to invest the balance.
- **The real estate sector** – foreign investors are not permitted to buy land in India. There are very limited exceptions (for example, if an overseas business needs to purchase land purely in order to carry on a permitted business in India). Foreign investment is also prohibited in “real estate businesses”, unless those businesses carry out certain limited projects (for example, developing townships, residential / commercial premises or building roads or bridges).

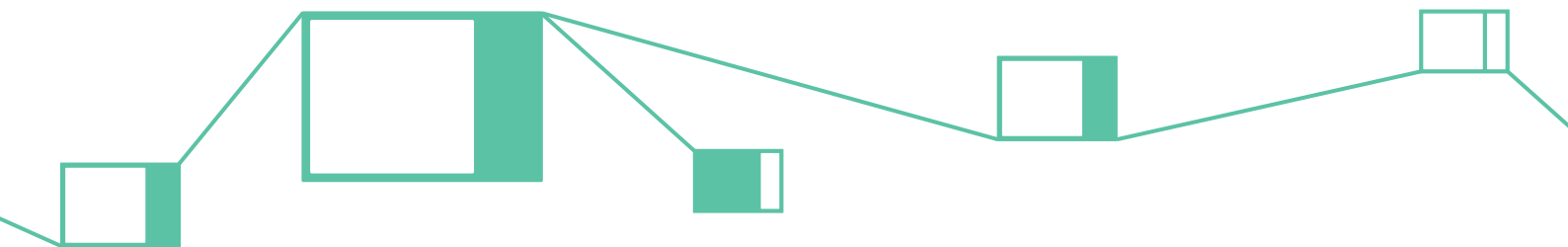
- **The retail sector** – foreign investors are permitted to invest in single-brand retail, up to 51%; the balance needs to be invested by an Indian partner. FDI is presently completely prohibited in multi-brand retail, unless the overseas investor is carrying out wholesale trading. A number of structures (including franchising, test marketing, local source manufacturing) have developed to allow overseas investors to participate in the market indirectly. Many significant brands have entered India using such structures.

Crucially, in addition to stipulating whether or not investment is permitted into any particular sector, the rules also stipulate whether prior approval will be required, from the Foreign Investment Promotion Board. In some cases, approval will be necessary from, or notification will need to be provided to, other bodies too (such as the Reserve Bank of India) depending on the form of investment.

The next stage: How do I do it?

Having established that investment is possible into a particular sector and therefore that the overseas company can enter the marketplace, the next question is: how to do it? (If the company simply wants to market its products / services in India without establishing operations there, then the usual methods are to establish distribution arrangements or agency arrangements with Indian companies to sell / market the products or services of the overseas company.) The following options are available to companies actually wanting to establish operations in India:

- **A liaison office** – essentially, this is just a liaison / communication office, that refers business back to the overseas company; it is not allowed to undertake any commercial or business activity in India.



- **A branch office** – a branch can carry out activities stipulated by the Reserve Bank of India (not including, for example, local manufacturing).
- **A project office** – this is an office that is established purely to carry out a project for which a contract is secured from an Indian company.
- **A subsidiary company** – this has the most freedom to carry out activities. It can be wholly owned by the overseas company (where, for example, 100% FDI is permitted) or jointly owned by the overseas company and an Indian company (where FDI is only permitted to a certain extent and an Indian company needs to invest the balance).
- **A limited liability partnership (“LLP”)** – recent rules have allowed for FDI into LLPs. The rules are very detailed – we will be happy to provide advice on any specific facts.

Which route will be the right one for each overseas company will depend on commercial considerations as well as legal considerations. From a commercial perspective, the overseas company will need to be clear on the exact nature of the activities to be undertaken in India. For example, will any manufacturing be undertaken in India? Will staff be employed there? Will contracts be entered into there, or will the Indian entity merely introduce customers to the overseas company for contracts to be entered into with the overseas company directly?

Tax issues will also be relevant – a liaison office, for example, should generally not be subject to Indian tax if it is not carrying out any sort of commercial or business activity in India. A branch office will usually be subject to Indian tax on Indian profits it generates; a subsidiary can be subject to tax in India on its worldwide profits (in each case, depending on the application of the relevant Double Tax Treaty between India and the jurisdiction of the overseas company).

Legal issues may override commercial considerations. For example, certain professional services firms (e.g. accountants, architects), may only be able to operate in India in accordance with the rules outlined by the Indian institution that regulates that profession in India.

A question often overlooked: Where should I start in India?

Again, this is partly a commercial question. A particular fact of India that is often overlooked by overseas companies is that it is an enormous country that is immensely culturally diverse – it has countless languages and dialects and varying cultural traditions, norms and ambitions. Each major city has its own style, popular culture, consumer appetite and consumer purchasing power. To be successful in India, the overseas company will need to carry out detailed market research to understand where its products / services / brand will be most highly valued.

Legal issues will also, of course, be relevant. India is a collection of States and State legislation may provide incentives for an overseas company to establish operations in that State, or may otherwise impose prohibitive tariffs, taxes or other legislative provisions.

Moving to the next stage: Getting the details right

Having established that the overseas company can operate in India and having chosen how and where to do it, the overseas company will then need to consider a range of issues, including:

- **The need for licences / consents / clearances** – depending on the sector involved, the overseas company may need various permissions from a vast range of Central and Local governmental bodies (from relevant Ministries, to power, utility and planning boards, to professional services bodies). We can provide advice on these issues on a case by case basis. Clearly, proceeding without examining the need for these permissions can be extremely costly.
- **Employing staff** – the overseas company may wish to employ staff in India, in which case it will need to enter into employment contracts in India. It may also wish to export its own staff, so it will also need to consider immigration / visa issues.

- 
- **Intellectual property** – the overseas company will need to be sure that its brand is protected in India and/or properly licensed to any relevant Indian party.
 - **Documenting any joint-venture** – where FDI prohibits 100% investment by the overseas company, or where, for other commercial reasons, an Indian company is co-investing, the overseas company will need to be very clear about the terms of the joint-investment. In particular, profit-sharing provisions, termination provisions and dispute resolution provisions must be carefully and precisely documented.

Last but not least – the bigger picture: Getting money in and out

Obviously, the ultimate commercial aim of entering any new market is that of making money. If the overseas company's investment into India is not well-structured, money could be wasted, in the form of, for example, high tariffs or double taxation.

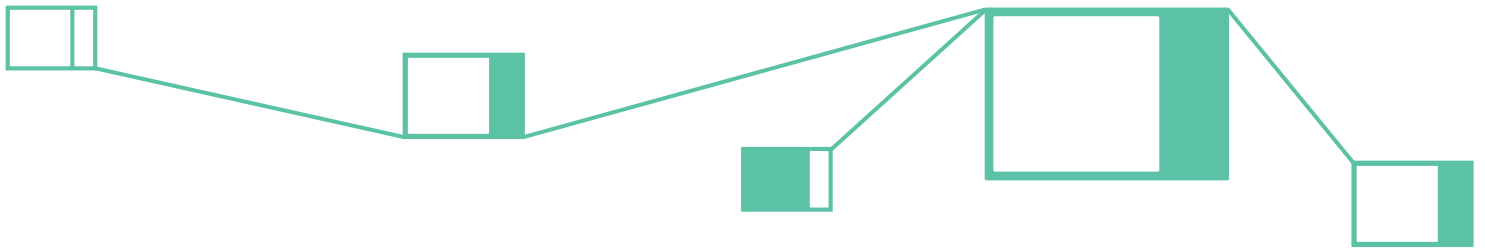
We are very experienced in structuring the investment of overseas companies into India, to ensure that the investment is cost and tax-efficient. We are familiar with the jurisdictions through which investment is often made into India, for tax purposes, and can advise on which structure will work for any particular company.

We also advise on how best to extract profits from the Indian operation and submit them to the overseas company. It may be in the form of dividends, or interest payments, or returns of capital (unless the FDI rules provide for a capital lock-in for a number of years).

Taylor Wessing regularly advises very senior international groups on entering the Indian marketplace. We work closely with Indian lawyers to ensure that all the legal issues are correctly addressed so that the international groups can enter India in a cost and tax-efficient manner. We are also very well-connected with senior Indian businesses across India and so regularly assist with introducing international groups to customers / clients / contacts in India to further facilitate the success of the international groups in India.

“This practice has gone from strength to strength over recent years. It has been involved in an increasing number of outbound transactions as businesses in India have looked to expand abroad.”

Chambers Asia Pacific



About Us

Taylor Wessing is a leading International law firm with a single-minded approach: to help our clients succeed.

What makes us different is our forward thinking approach to serving clients. We think creatively about business issues and are constantly looking for new and better ways to add value with truly innovative solutions that help to grow our clients' businesses.

By keeping close to our clients we can proactively identify better ways to help them achieve their ambitions.

Today's world is undergoing fundamental change and that creates the need for intelligent solutions.

Our aim is to be at the forefront of developing those solutions by serving clients in the sectors that we believe are the industries of tomorrow:

- Technology, Communications and Brands;
- Life Sciences and Healthcare;
- Real Estate and Infrastructure;
- Energy and Environment;
- Financial Institutions and Services.

With over 750 lawyers in the UK, Germany, France and Belgium, we are able to provide unrivalled support for commercial organisations doing business in Europe across a full range of legal practice areas. We are also strong in the Middle East, India, China and North America. We are driven by where the industries of tomorrow are growing the fastest.

Key Contacts



Omleen Ajimal
Head of India Group (UK)
+44 (0)20 7300 4091
o.ajimal@taylorwessing.com



James Robertson
Corporate
+44 (0)20 7300 4989
j.robertson@taylorwessing.com



Tom Cartwright
Corporate
+44 (0)20 7300 4969
t.cartwright@taylorwessing.com



Dr. Christian Frank
Partner, Munich
+49 (0)89 2 10 38 197
c.frank@taylorwessing.com



Peter Bert
Partner, Frankfurt
+49 (0)69 9 71 30 275
p.bert@taylorwessing.com



Dr. Philipp Behrendt
Partner, Hamburg
+49 (0)40 3 68 03 141
p.behrendt@taylorwessing.com

www.taylorwessing.com

[Berlin](#) [Brussels](#) [Cambridge](#) [Dubai](#) [Düsseldorf](#) [Frankfurt](#) [Hamburg](#) [London](#) [Munich](#) [Paris](#) [Beijing^Q](#) [Shanghai^Q](#) [Warsaw^A](#)