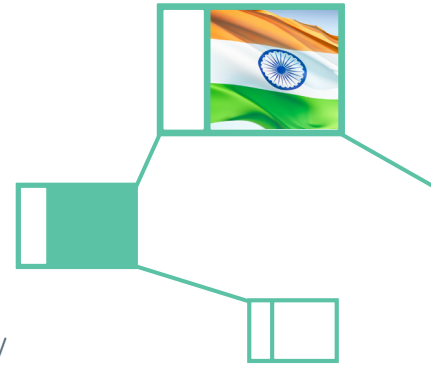


Indian companies doing business in the UK



The purpose of this short guide is to set out for consideration some of the key issues for Indian corporations wanting to do business in the UK. Each case will involve specific issues so we would advise that legal advice be taken on each set of facts. The key issues to consider are:

Choice of entity

- > The Indian company can choose between either incorporating a UK limited company, a subsidiary, or registering a UK “establishment” (essentially, a trading or non-trading office in the UK).
- > The difference between the two is, commercially, that UK / European customers / clients may often prefer to deal with a UK incorporated company (i.e. a subsidiary) rather than the Indian company directly, which they would often do if the Indian company merely sets up an establishment in the UK.

Method of trading

- > As well as deciding its choice of entity, the Indian company must also decide how it wants to trade in the UK. For example, will the Indian parent entity sign contracts or will they be signed in the UK?
- > International tax planning should be undertaken prior to doing any business, as large tax liabilities may be incurred if business profits from the contracts are incurred in a tax-inefficient way.

Employment law

- > The Indian company must comply with substantial UK laws and European regulations which protect an employee’s rights. Under UK law, an employee is entitled to receive a specific form of an offer letter, a contract of employment setting out the terms and conditions of employment, a statutory minimum period of notice and the right not to be unfairly dismissed after the end of one year’s continuous employment.
- > If an Indian company grants stock options (one of several forms of employee incentives available) to its employees, there will be considerable tax implications for the UK operation. Therefore, consideration should be given to the alternative methods available and specific tax advice will be needed in order to avoid substantial tax consequences.

Commercial terms

- > When trading with UK distributors or customers, the Indian company should be aware that UK commercial terms and conditions might conflict with standard Indian commercial terms in agreements.

- > There are several important distinctions between Indian laws and UK / European laws regarding contractual terms and conditions. These include termination provisions, the restrictions on certain exclusions and the limitations of implied warranties and liability. The Indian company should therefore obtain a UK legal review of standard form agreements before entering into a contract with UK distributors or customers.

Website reviews

- > If the UK operation has a company website it must comply with UK and European regulations governing procurement and advertising and the sale of goods and services over the internet or by email. Specific corporate details must also be disclosed on the company website regardless of whether the operation is trading over the internet or not.
- > The Indian company should also obtain advice on regulations in respect of consumer protection, distance selling and e-commerce, intellectual property, defamation and user-generated content.

Privacy / data protection

- > The Indian company should obtain advice on having a privacy policy in place and ensure it is advised on the data protection rights and duties applicable when personal data is collected, or processed, by the UK operation.

Real estate

- > The process of acquiring real estate in the UK can be different to that in India. Real estate can be acquired by a number of methods, most commonly as a freehold estate, a lease or a licence.
- > It is important that the form of transfer document is legally reviewed and that all necessary searches are carried out. Stamp duty land tax will be payable, in the UK, on the acquisition of most land interests, based on the value of the interest.

Insurance

- > In the UK, employer’s liability insurance is compulsory. This means that the Indian company must ensure that appropriate insurance policies are in place to cover any liabilities, for example insurance covering occupier’s liability, directors’ indemnity and employee insurance.

Three areas of risk for Indian companies doing business in the UK:

1 Is a consultant really an employee?

Comment

> A “consultant” is someone that often applies his services through a company. Therefore, the consultant hopes to be treated as self-employed rather than employed by the Indian company. However, depending on the facts, in certain circumstances the consultant will instead be deemed to be an employee of the Indian company. It is important that the Indian company obtains specific employment law advice on the following risk areas:

Risks

- > Under UK employment law, a consultant, if treated as an employee, will be entitled to rights and damages on the termination of a contract if not properly terminated.
- > Employee payroll taxes and social security contributions will be payable by the UK operation together with any penalties and interest incurred. This can quickly become a large amount owed to the UK tax authorities.
- > If “consultants” create any intellectual property (“IP”) during the course of their employment, they may own it unless it is specifically assigned to the Indian company. It is very common for companies to have problems with their IP ownership as a result.

2 Will any Indian nationals be coming to the UK to work?

Comment

- > It is important that the Indian company obtains immigration advice before commencing the UK set-up process to take into account the lengthy immigration procedures. The Indian company must ensure that any Indian nationals that it wants to send to the UK to work have appropriate immigration permission.
- > There are several methods of bringing an Indian employee into the UK. Each involves different complex procedures and timings. The methods each have advantages and disadvantages – we will be happy to provide specific advice on the facts of each case.

Risks

- > The company structure can affect the immigration options available. Initial staff transfers process can take as long as four to six months and because there are strict and inflexible immigration rules any errors in the application paperwork can lead to visa refusals.
- > The penalties for non-compliance include fines for the company and for individuals, bans on individuals coming to the UK and a ban on the Indian company from bringing people to the UK.
- > Immigration problems can lead to delays and reputational risk for the Indian company.

3 Is there valuable IP (registered or unregistered)?

Comment

- > Most Indian companies, whether considered as IP-rich or not, will have IP of value which should be protected, whether a trade mark (name or logo), know-how, copyright (e.g. in software) or patents.
- > It is important that the Indian company obtains advice on the options available in order to manage, protect and commercialise its IP in the UK and Europe and in case of an infringement, how to defend its IP assets.

Risks

- > The Indian company may not be able to stop other parties from using its IP if it has not protected its IP assets adequately.

Taylor Wessing is the leading law firm in the UK advising emerging growth companies setting-up in the UK. Our inward investment group advises many new overseas companies each month. We have an unrivalled track record of guiding non-UK technology companies, particularly those from India and the US, through the steps outlined above (it is estimated that we advise around one-sixth of all US companies looking to do business in the UK). Companies are set up in one day and UK establishments in five days. We quote very reasonable fixed fees for this service.

Our team



Omleen Ajmal
Head of India Group (UK)
+44 (0)20 7300 4091
o.ajmal@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



Mark Barron
Inward Investment
+44 (0)20 7300 4241
m.barron@taylorwessing.com