


Legal Framework in India


A handbook for Swiss startups



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This report is created and published by:

swissnex India | Consulate General of Switzerland in Bangalore

#26 Rest House Crescent Road, Bangalore, India 560001

Tel.: +91 80 4941 2000

info@swissnexindia.org

To download this report, visit: www.swissnexindia.org

To order copies of this report, send an email to: innovation@swissnexindia.org

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EXECUTIVE SUMMARY

India, being a stable democracy with a strong judiciary and a free press is one of the fastest growing economies in the world. Consumer spending in India has increased from US\$ 549 billion to US\$ 1.06 trillion between 2006 and 2011, placing India on the path to becoming one of the world's largest consumer markets by 2025. In addition, 65% of Indians belong to the age group of 15 to 64 years which provides the country a significant edge when it comes to cost competitiveness and low labour costs¹.

Post 1991, with liberalization, it has grown by leaps and bounds and has been a major destination for foreign capital and investment. The Government of India has formulated a policy framework which regulates the inflow of foreign investment into India and offers compelling opportunities to the global investment community. The regulations have been progressively liberalized to make the process transparent and easy to comprehend.

With this background, tremendous investment opportunities exist for Swiss entrepreneurs and SMEs to offer products and services in multiple areas including telecommunications, information technology, auto components, chemicals, apparels, pharmaceuticals, multi-brand retail, civil aviation etc.

This note seeks to give a brief primer to a potential Swiss investor on the basic legal framework in India in areas such as immigration, FDI, employment, capital markets, mergers & acquisitions and other regulatory compliances.

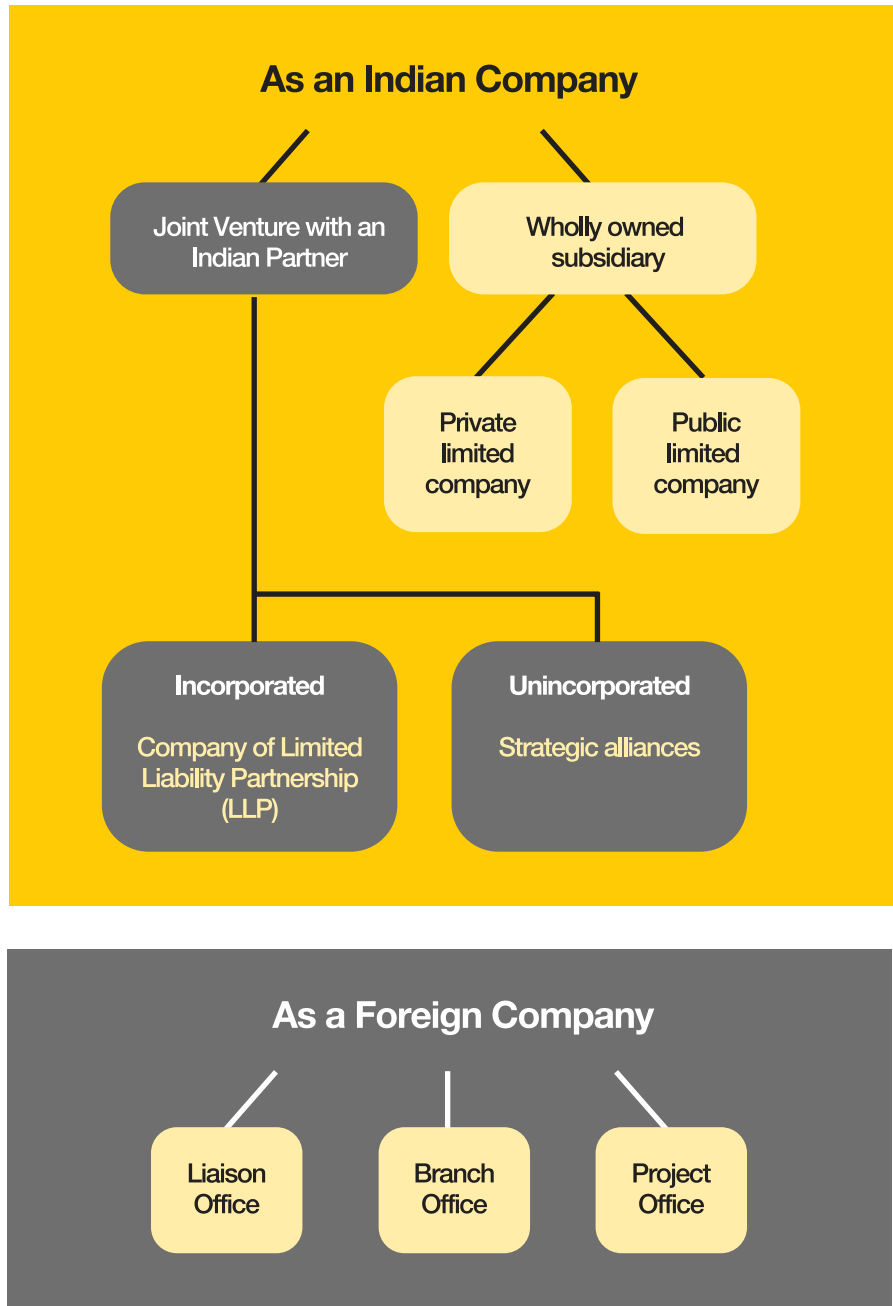
¹ <http://www.investindia.gov.in/advantage-india/>

1.

Different entry options for Swiss start-ups in India

The first step which an investor must take is to identify a suitable business model from the various options that are available to an investor for setting up business in India.

A foreign company planning to set up business operations in India has the following options:



2.

Characteristics of each type of entity

Types of Structures	What does it mean?
Joint Venture	A foreign investor may partner with an Indian Company to form a joint venture, to collectively pursue a business common or incidental to the business activities of both entities. A joint venture can be either incorporated (Company or LLP) or unincorporated (Partnership or Strategic Alliances).
Partnership	Persons who agree to share the profits of a business carried on by all of them, or any of them (acting for all of them) is known as a partnership. A partnership is not a legal entity and is not independent of its partners. All the partners together shall be personally liable for business debts and taxes. However, this route is not open to foreigners, unless they are persons of Indian origin.
Limited Liability Partnership (LLP)	This is a hybrid model between a company and a partnership. An LLP is constituted under the Limited Liability Partnership Act, 2008. In an LLP, some or all of the partners have limited liability corresponding to their agreed contribution to the business and no partner shall be liable for another partner's misconduct or negligence. Foreign Direct Investment (FDI) in LLP is allowed only with prior approval of the Government approval route and only where such LLP operates in sectors where 100% FDI is allowed by the Government of India.
Wholly owned Subsidiary	When a foreign company makes 100 per cent FDI (Foreign Direct Investment) in India, the Indian company becomes the Wholly Owned Subsidiary Company of that Foreign Company. Let's say ABC Inc. USA owns 100 per cent shares in XYZ Pvt. Ltd., then, XYZ Pvt. Ltd. becomes the Subsidiary Company of ABC Inc.
Private Company	A private company is an incorporated entity governed by the provisions of the Companies Act, 2013. In its articles of association, the following must be maintained: <ol style="list-style-type: none">1. the right to transfer shares must be restricted;2. the number of members is a minimum of 2 (two) and a maximum of 200 (two hundred) (excluding any present or past employees of the company);3. any invitation to the public to subscribe to the securities of the company must be prohibited.
Public Company	A public limited company is also an incorporated legal entity governed by the provisions of the Companies Act, 2013, and it shall have a minimum of 7 (seven) members. A public company may invite public to subscribe to its securities and also list its shares on a recognized stock exchange by way of an Initial Public Offering.
Project Office	A project office may be setup by a person or a foreign company if there is a contract with an Indian company or an Indian Government authority to execute a project in India.
Liaison Office	A liaison office may be set up where a person or foreign company intends to explore the Indian market and procure relevant information prior to initiating a business. However, a liaison office cannot carry out any commercial/business activity.
Branch Office	Prior approval is required to set up a branch office, and under Indian Law, a branch office is considered as a foreign company. It can act as the foreign (parent) company's buying or selling agent in India.

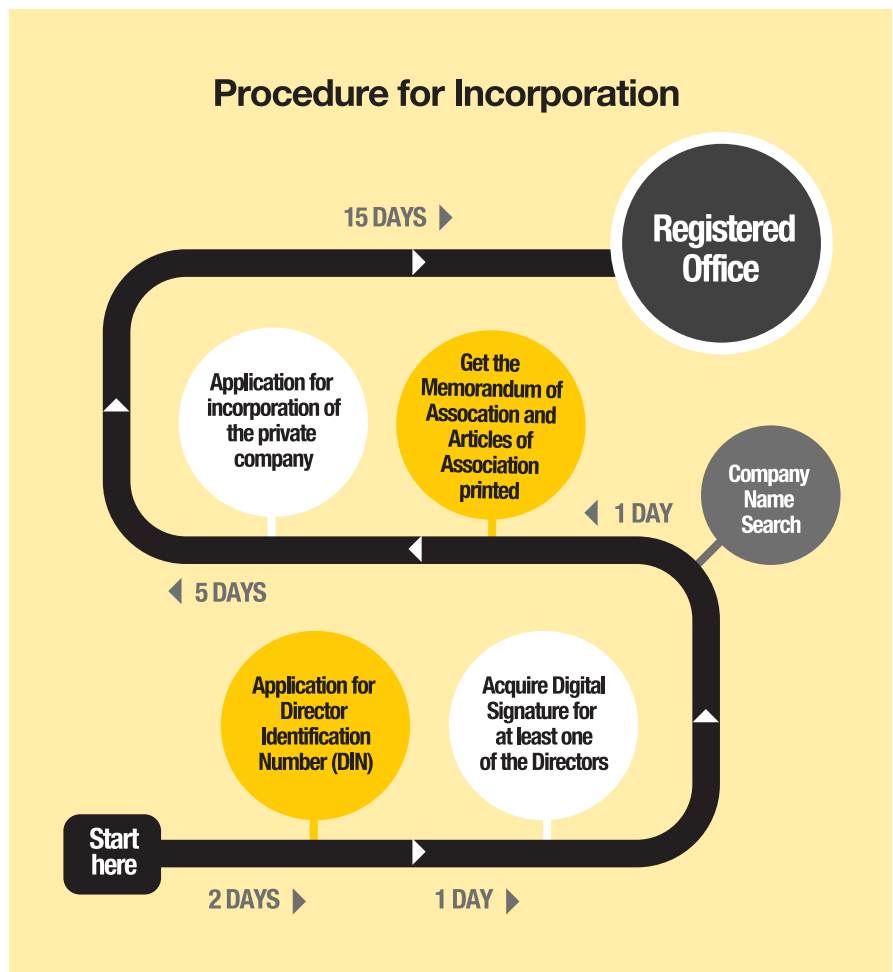
3.

Most suitable entity

The choice of entity would depend entirely on the sector, sectoral caps, investment perspective, joint venture partners, if any, etc. However, a private limited company is the most preferred structure/route for the purpose of foreign investment in India, by Swiss investors or otherwise since this has all the attributes and advantages of a corporate structure as is normally understood around the world. It is less cumbersome in terms of incorporation as well as regulatory filing and compliance.

4.

Procedure for registering a new company



The overall process to register a company will take approximately 3 weeks.

Step 1: Application for Director Identification Number (DIN)	Timeline: 2 working days
---	---

Director Identification Number can be obtained by any individual intending to be appointed as a Director of the Company. The application has to be made in Form No. DIR-3 available on the Ministry of Corporate Affairs website <http://www.mca.gov.in/MCA21/RegisterNewComp.html>

If the person applying for DIN is an Indian citizen, the documents required are:

1. Passport Copies, if available;
2. In case of unavailability of Passport, the following documents shall be filed:
 - 2.1 Details of the Applicant,
 - 2.2 DIN Declaration Signed by the applicant;
 - 2.3 Draft Verifying Affidavit;
 - 2.4 Driving License/Voter ID/Utility Bill- along with an Affidavit;
 - 2.5 Permanent Account Number (PAN) card copy; and
3. Applicant's passport size Photographs (scanned copies).

If the person applying for DIN is a foreign national, the documents required are:

1. Passport Mandatory- Apostilled or Consularised;
2. Driving License/Address proof- Apostilled or Consularised;
3. DIN Declaration; and
4. Draft Verifying Affidavit.

Scanned copies of the same are required to be filed.

Payment of fee of Rs.100 shall be made towards the application for allotment of Director Identification Number.

The Director Identification number is normally allotted immediately after the submission of the Form No.DIR-3.

Step 2: Acquire Digital Signature for atleast one of the Directors.	Timeline: 1 working day
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For incorporation of a Company, digital signature of one of the Directors is required. A Digital Signature Certificate (DSC) establishes the identity of the sender filing the documents through Internet, which the sender cannot revoke or deny. A Digital Signature Certificate is not only a digital equivalent of a hand written signature; it is used to make the document authentic and secured. Digital Signature ensures that no tampering of data is done once the document has been digitally signed. A DSC is normally valid for 1 or 2 years, after which renewal is required.

There are basically 3 types of Digital Signature Certificates Class-1, Class-2 & Class-3, each having different levels of security. The Ministry of Corporate Affairs, Government of India has stipulated a Class-2 or above category certificate for e-filings. A person who already has specified DSC for any other application can use the same filings and need not obtain a fresh DSC.

Digital Signatures of Class-2 (individual) are issued by the certifying authorities specified in the MCA website (www.mca.gov.in). There are a total of seven Certification Agencies authorised by the Controller of Certification Agencies (CCA) to issue the Digital Certificates. DSC can be obtained from any one of the seven certifying agencies.

Registration of Digital Signature: Digital Signature of a Director should be registered with the website:

<http://goo.gl/5l2Hx3>

Documents required for obtaining DSC:

1. Self-Attested copy of PAN card;
2. Self-Attested copy of the latest bill (any one): Water/Electricity/Power/Telephone/Credit card or voter's ID card/ Driving License/Passport.

Step 3: Company Name Search	Timeline: 1 working day
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A search should be made on the MCA site, to confirm if the name of the Company as preferred by the applicant has already been obtained prior to the applicant. This is available on the website below:

<http://goo.gl/0AFPb>

STEP 4:

Get the Memorandum of Association and Articles of Association prepared by a qualified company secretary, chartered accountant, or attorney.

This step occurs subsequently to the availability of name made by the registrar. These two documents are basically the charter and the internal rules and regulations of the company.

Step 5: Application for incorporation of the private company.	Timeline: 5 working days
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As per Companies (Incorporation) Rules 2014, application for incorporation of a Private and Public Company shall be filed with the Registrar of Companies within whose jurisdiction the registered office of the company is proposed to be situated, in Form No. INC-7, along with Form No. INC-22, for situation of the registered office of the company, and Form No. DIR-12, for appointment of directors of the company.

Step 6: Registered Office [S.12]	Timeline: A company shall have a registered office within 15 days of Incorporation and it shall file Form No.INC-22 to verify the same.
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* All the forms can be downloaded here along with online filing of all the necessary documents: <http://www.mca.gov.in/MCA21/RegisterNewComp.html>

⁴As on November 2015

5.

Documents required for registration

1. Memorandum of Association;
2. Articles of Association;
3. A declaration in the prescribed form by an advocate of the Supreme Court or High Court, or by an attorney entitled to appear before the High Court, or by a chartered accountant, certified management accountant or company secretary practicing in India stating that all the requirements of the Companies Act 2013 and the applicable rules with respect to the registration and other matters have been complied with;
4. An affidavit in the prescribed form, from each subscriber and from each person named as first director in the articles that; he is not convicted of any offence in connection with promotion, formation or management of any company, he is not been found guilty of any fraud or misfeasance or of any breach of duty to any company during preceding five years, and all the documents filed with the Registrar contain correct, complete and true information to the best of his knowledge and belief;
5. A list of persons who have consented to act as directors of the company.
6. If the proposed company is a public company, consent of very person prepared to act as a director must be submitted in a prescribed form;
7. Information about directors, managing directors and managers and secretary and each subscriber must be submitted in a prescribed form;
8. Information about the registered office in a prescribed form;
9. Power of attorney in favor of one of the promoters or any other person, authorizing him/her to make corrections in the documents submitted to the registrar of the companies, if it becomes necessary; and
10. Applicable registration fee payable to the registrar of the companies.

6.

Foreign Direct Investment [FDI]

In India, foreign investment is guided by the Foreign Direct Investment (FDI) Policy which comprises of rules and regulations pertaining to:

- i. Purchase and sale of shares of Indian companies.
- ii. Investment by investors or foreign companies into various sectors of the Indian market.

The Swiss entity can invest in India by opting for one of the permitted structures.

7.

Different routes for FDI

a) Automatic route – FDI is allowed in specific sectors without prior approval of the Reserve Bank of India (RBI) or the Central Government.

- i. Certain sectors wherein 100% FDI is allowed.
- ii. Others where only a stipulated amount of FDI is allowed (Insurance, Commodity exchange, Credit Information Companies).

b) Government Approval Route – Certain sectors which do not come under the automatic route, FDI is allowed only with the approval of the Government of India (Defence, Tea, Airport Services, Teleports, Print media).

8.

Prohibited FDI Sectors

- Gambling and Betting, including Casinos.
- Lottery Business including Government, private and online lotteries.
- Business of Chit Funds.
- Real Estate Business or construction of farmhouses.
- Trading in Transferable Development Rights.
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes and certain agricultural and plantation.
- Activities and activities/sectors not opened to private sector including Atomic Energy and Railway Transport (other than permitted activities) and
- Nidhi company.

9.

Applicable Taxes in India

Direct Taxes

a) Corporate Tax –

- i. Resident companies are taxed at 32.445%, where net income is in the range of INR 1 Crore (CHF 145'420) - 10 Crores (CHF 1'454'200) and around 34% where net income exceeds INR 10 crores.
- ii. Non-resident companies are taxed at the rate of 42.024% (if net income is in the range of INR 1 crore – 10 crores) and 43.26% (if net income exceeds INR 10 crores).
- iii. Residents are taxed on their worldwide income, while non-residents are only taxed on income arising from sources in India.
- iv. A company is said to be resident in India if it is incorporated in India or is wholly controlled and managed in India.

b) Tax on Dividends – Dividends payable to shareholders are subject to a dividend distribution tax (DDT) at the rate of 15% (exclusive of surcharge and cess) payable by the company on a gross basis. However, no further tax requires to be paid other than the DDT.

c) Capital Gains – Tax on capital gains depend upon the period of holding of a capital asset. Gains from listed shares which are held for a period of more than 12 months are categorized as long term. Unlisted shares are treated as long term only when they are held for more than 36 months.

d) Withholding Tax – Tax would have to be withheld at the applicable rate on all payments made to a non-resident, which are taxable in India. The obligation to withhold tax applies to both residents and non-residents. Withholding tax obligations also arise with respect to specific payments made to residents. Failure to withhold tax could result in tax, interest and penal consequences.

e) Double Tax Avoidance – India has entered into more than 80 treaties for avoidance of double taxation. A taxpayer may be taxed either under domestic law provisions or the tax treaty to the extent it is more beneficial. A non-resident claiming treaty relief would be required to file tax returns and furnish a tax residency certificate issued by the tax authority in its home country.

India and Switzerland have signed the Double Taxation Agreement in 1995.

Indirect Taxes

a) Service Tax – Tax levied by the Central Government on services and is generally required to be paid by the service provider. Currently the rate of service tax is 14.5%. Post finance budget 2013, service tax is charged even on services received (as opposed to only “delivered”) by reverse charge mechanism.

b) Value Added Tax (VAT) – Tax levied on the purchase of movable assets or goods. VAT is a state level legislation and is payable by the seller of goods.

c) Central Sales Tax – Tax levied on sale of goods from one state to another. Registration becomes compulsory on sale.

d) Central Excise Tax – Tax levied on the “act” or “manufacture” on all excisable goods which are manufactured or produced in India.

e) Customs Act – Tax levied on imports and exports at the rates prescribed under the Customs Tariff Act, 1975.

f) Stamp Duty – Stamp duty is a duty payable on specified instruments/documents. The amount of the stamp duty payable would depend on the state specific stamp laws/legislation. An insufficiently stamped document shall not be admissible as evidence in a Court of law in India.

10.

Visa Categories

Government of India issues the following categories of visas:

Sl. No.	Type of Visa	Period for which granted	Entry – Single (S), Multiple (M), Double	Documents required with application	Extendable in India
1	Tourist	180 days	M	-	No
2	Tourist	15 days	S/Double	Return/onward journey ticket	No
3	Business	5 years	M	Documents to prove bonafide purpose (Company's letter etc.)	Yes
4	Employment	1 year/ period of contract	M	Proof of employment (appointment document), terms and conditions	Yes
5	Student	Period of course/5 years	M	Proof of admission in Indian Institution	Yes
6	Foreigners of Indian Origin	5 years	M	Proof of being of Indian Origin	Yes

Apart from these, Conference Visa, Diplomatic Visa, Emergency Visa, Entry Visa, Journalist Visa, Medical Visa, Research Visa etc. are also issued.

Where can I apply for a Visa?

The official website is: <https://indianvisaonline.gov.in>.

The individuals may also approach the local Indian embassies in the country of origin.

11.

Other immigration requirements

- **Registration on arrival:** All foreigners (including foreigners of Indian origin) visiting India on long term (more than 180 days), Student Visa, Medical Visa, Research Visa and Employment Visa are required to get themselves registered with the Foreigners Regional Registration Officer (FRRO)/Foreigners Registration Officer (FRO) concerned having jurisdiction over the place where the foreigner intends to stay, within 14 days of arrival.
- **Registration officers:** The authorities concerned with registration etc. of a foreigner in India are the Foreigners Regional Registration Officers (FRROs) at New Delhi, Mumbai, Chennai, Kolkata, Amritsar, Lucknow, Bangalore, Hyderabad, Trivandrum, Calicut, Cochin, Goa and the District Superintendents of Police in all other districts.
- **Residential Permit:** Residential permit is issued at the time of registration, its validity being the period of stay specified in the visa. Application for extension of the Residential Permit should be made at least 2 (TWO) months before its expiry to the nearest Registration Officer in the prescribed form.
- **Extension of Visas:** Extensions are granted on different categories of visas as per requirements on case-to-case basis. The foreigner seeking extension must ensure that he/she submits application and the required supporting documents for extension well before date of expiry of visa.

Further information on registration and immigration issues is available here:
<http://boi.gov.in/content/general-instructions-registration-foreigners>.

12.

Acquisition of Real Estate

Acquisition of immovable property in India by a foreign national is regulated by FEMA [Foreign Exchange Management Act]. Under this Act, a “person resident outside India” includes a foreign national of non-Indian origin.

A foreign national of non-Indian origin, resident outside India cannot purchase any immovable property in India unless such property is acquired by way of inheritance from a person who was resident in India.

However, he/she can acquire or transfer immovable property in India, on lease, not exceeding five years. In such cases, there is no requirement of taking any permission of /or reporting to the Reserve Bank.

A person who has in accordance with the FEMA Regulations, 2000 established a branch, office or other place of business (excluding a liaison office) for carrying on any activity in India, may acquire any immovable property in India, which is necessary for or incidental to carrying on such activity; Provided that all applicable laws, rules, regulations or directions for the time being in force are duly complied with; and the person files with the Reserve Bank a declaration in a form (Form IPI annexed to FEMA regulations), not later than ninety days from the date of such acquisition.

13.

Miscellaneous Regulations

Contract Law

The Indian Contract Act, 1872 lays down provisions related to contracts in India, including but not limited to essentials of a valid contract, damages, liquidated damages, limitation of liability, indemnity, guarantee, specific performance, etc.

Given the extremely aggressive market strategies employed by businesses to protect their interests, it is imperative for an investor, to be aware of the nitty-gritties of non-disclosure, non-solicitation and non-compete agreements. It is important to note that Indian Contract Laws are primarily based on English Laws of Contract, and the Courts in India have relied on judgements of the House of Lords, UK and other trend setting judgements on Contract Laws from around the world in developing Indian Contract Laws.

Data Protection

Although India does not have a dedicated statute solely for the protection of personal data or privacy yet, the Indian Contract Act, the Information Technology Act, 2000 and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 provide some amount of comfort in this regard.

Typically, in business, parties sign a detailed confidentiality agreement protecting each other's information which include personal data. Further, it is common practice for such parties to incorporate exhaustive indemnity clauses in the confidentiality agreements to provide an added layer of protection for their information.

Capital Markets

Public issues in India can be classified into two types: an IPO [Initial Public Offer] and a Further Public Offer (FPO).

- i. An IPO is the process through which an issuer company allots fresh securities or offers for sale securities held by its existing shareholders or both types of securities to the public for the first time. The issuer company is required to offer at least 25% of each class or kind of securities to the public, in an IPO.
- ii. In the case of an FPO, an existing publicly listed company makes an additional issuance of its securities to the public or offer for sale of its existing securities to the public, through an offer document.

Further information is available at:

http://www.nseindia.com/corporates/content/capital_market.htm

Mergers & Acquisitions

As with any business, the need to takeover or merge or restructure with other entities is a necessity for the growth, development and diversification of one's business interests.

a) Mergers/Demergers – The Companies Act, 2013 governs a merger of two or more companies.

- i. Companies which intend to merge must apply to the National Company Law Tribunal (NCLT) having jurisdiction over such company. The NCLT may then order a meeting of the creditors/shareholders of the company. If the majority in number representing 3/4th in value of the creditors and shareholders present and voting at such meeting agree to the merger, and if sanctioned by the NCLT, such merger shall be binding on all creditors and shareholders of the company.
- ii. However, private companies having a paid up capital of less than INR 5 million or turnover of less than INR 20 million as per last audited financial statements can apply for a fast track merger. Under this process, no approval from the NCLT will be required.

b) Acquisitions – Acquisition of shares of a private company is governed by procedures and rules laid down under the Companies Act, 2013, FEMA/FDI policy, SEBI Act and the Takeover Code. In case of acquisition of a public company, it would be necessary for the shareholders of the company to pass a special resolution (a resolution passed by at least 3/4th of the shareholders present and voting at a meeting of the shareholders). In the case of a private company, a simple resolution passed by the board of directors would suffice.

Venture Capital Funds

The three most common types of venture capital funds are as follows:

Domestic Funds:

The funds are to be raised in India. The structure most commonly used involves the establishment of a domestic investment vehicle which pools funds from the investors, and also a separate investment advisor for carrying on asset management activities and identifying possible investee companies. The domestic investment vehicle is either a trust or company. Due to operational flexibility, trusts have been the most favoured option for domestic Venture Capital Funds (VCFs). However, with the recognition of limited partnerships under the Limited Liability Partnership Act, 2008, limited partnerships are slowly gaining traction as an alternative option for domestic VCFs.

Offshore Funds:

The investment is structured in the form of a limited liability company or limited liability partnership organized in an offshore tax favorable jurisdiction that makes portfolio investments into Indian companies.

For instance, Mauritius, has a favorable tax treaty with India. Usually, there is an offshore manager to administer the assets of the fund, and an investment advisor in India for identifying deals and prospective investment opportunities.

It would be pertinent to note that the relationship between the Indian advisor, the overseas manager and the offshore fund must be structured very carefully. This is important so as to avoid a situation where the offshore fund is deemed to have a permanent establishment (PE) in India, which can have adverse tax implications.

Unified Funds:

As the name suggests, this is a fund wherein domestic and foreign investment vehicles participate together. In this structure, a domestic investment vehicle is established in India preferably as a trust (alternatively, as a company) in addition to the offshore fund. This domestic trust is registered with the Securities Exchange Board of India ("SEBI") as a venture capital fund.

The domestic investors directly contribute to the domestic trust, whereas overseas investors pool their investments into the offshore fund, which, in turn, invests in the domestic trust. The portfolio investments are made by the trust, which will generally have a domestic manager or advisor.

Employment/Labour Laws

In India a multitude of laws govern conditions of employment, social security, health, safety, welfare, trade unions, industrial and labour disputes, etc. Some of these Laws are highlighted below:

- a. Industrial Disputes Act, 1947 (ID Act) – ID Act, prescribes and governs the mechanism of collective bargaining and dispute resolution between employers and employees. The statute contains provisions with respect to unfair labour practices, strikes, lock-outs, lay-offs, retrenchment, transfer of undertaking, and closure of business.
- b. Maternity Benefit Act, 1961, provides for conditions of employment for women employees, before and after childbirth and also provides for maternity benefits and other benefits.
- c. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, aims at providing women, protection against sexual harassment at the workplace and prescribes detailed guidelines to be followed by employers and employees for the

-
- prevention and redressal of complaints of sexual harassment.
- d. Child Labour (Prohibition and Regulation) Act, 1986 prohibits the engagement of children (below the age of 14) in certain employments and regulates the conditions of work of children in certain other employments where they are not prohibited from working.
 - e. Trade Unions Act, 1926 (Trade Unions Act) – Trade Unions Act provides for the registration of trade unions and lays down the law relating to registered trade unions.
 - f. Employment of Foreigners – A foreigner coming into the country must register himself with the Foreign Regional Registration Office (FRRO) of the Ministry of Home Affairs under the Foreigners Registration Act, 1939.

A foreigner is issued a “permit” indicating the date of his arrival and the period during which he is permitted to stay in the country. He is required to visit the FRRO personally along with the prescribed documentation. He is required to surrender his permit immediately before his departure from India and obtain an endorsement to that effect.

Environmental Laws

The right to enjoyment of pollution free air and water is a fundamental right protected by Article 21 of the Constitution of India. It guarantees to every citizen of Indian, the protection of life and personal liberty.

The Central and the State governments have both enacted statutes for the protection of the environment. Some of the prominent Central laws are:

- i. The Environment (Protection) Act, 1986
- ii. The Forest (Conservation) Act, 1980
- iii. The Wildlife Protection Act, 1972
- iv. The Air (Prevention and Control of Pollution) Act, 1981
- v. The Water (Prevention and Control of Pollution) Act, 1974
- vi. Hazardous Wastes (Management and Handling) Rules, 1989

Consumer Protection Laws

The Consumer Protection Act 1986, among others, is one of the primary legislations which protect the rights of a consumer. Under this Act, a consumer is classified into two categories, namely, one who buys goods and one who buys a service.

The rights conferred on a consumer under this Act, to name a few, are:

- i. Protection against marketing of goods and services which are hazardous to life and property;
- ii. Protection against unfair trade practices by vesting upon a consumer the right to information about the quality, potency, purity, standard and price of goods or services;
- iii. Access to a variety of goods and services at competitive prices;
- iv. To be heard and be assured that a consumer's interest will receive due consideration; and,
- v. To seek redressal against unfair trade practices, restrictive trade practices and exploitation.

Dispute Resolution

a) Courts – The Supreme Court of India (SC) is the apex judicial authority in India. A decision of the SC is binding on all Courts within India except on itself. Most States have a High Court which has jurisdiction in the State in which it is situated. A rung below the High Courts are the subordinate civil and criminal courts that are classified according to the State, union territory or metropolitan city they are located and by the value of disputes such courts have jurisdiction to adjudicate upon.

b) Alternative Dispute Resolution – Disputes in India are settled by way of litigation in a court of law. However, with the ever-evolving legal system and the realities of business, alternate modes of dispute resolution have gained prominence, especially matters of commercial disputes. Indian law recognizes arbitration, conciliation and mediation as valid and effective means of dispute resolution.

- i. **Arbitration** – The Arbitration & Conciliation Act, 1996 (the A&C Act) was enacted to make both, domestic and international arbitration, more effective in India. The A&C Act is based on the UNCITRAL Model Law (as recommended by the U.N. General Assembly) and facilitates International Commercial Arbitration as well as domestic arbitration and conciliation. Further, the London Council for International Arbitration India (launched in 2009) is the first independent subsidiary of the London Court of International Arbitration.
- i. **Mediation** – is an informal, non-binding, negotiation process which aims to assist two or more parties in reaching an agreement. The parties themselves determine the conditions of any settlements reached, rather than relying on the judgment of a third party.
- i. **Conciliation** – there is no claimant or plaintiff in conciliation proceedings and any party can commence and discontinue the proceedings. The conciliator has the discretion to adopt any procedural law to ensure speedy and inexpensive conduct of proceedings, and decisions are recommendatory. Similar to mediation disputes are settled by mutual agreement and not by imposed decisions.

Conclusion

With unique business ideas and plans, the Indian economy is steadily rising. Further, as India is a rich ground for art and culture, new innovations and ideas are easily adapted and implemented. Thus, a Swiss entrepreneur willing to set up a business in India, has to consider a few vital steps. Foremost is the choice of entity – it depends on the concept and requirements of the entrepreneur.

The stakeholders shall have the right as the parent company to monitor the inflow and outflow and goodwill of the business. The procedure of incorporation of a company is hassle-free. One does not even have to be present in person to set up such entities. Ease of fund transfer or investment from foreign accounts has its own regulation, making it less complicated. Since the laws of India are mostly codified, Foreign Direct Investment makes it clear to transfer funds without much trouble. The need to focus on the type of business that is desired to be set up is recommended, so that proper channelization of tax framework could be done, whether direct taxes shall be applicable or indirect taxes shall be added.

Recently there has been an approval of FDI up to 49% in the Defence sector under the approval route and subject to certain conditions. One of the conditions to be fulfilled to avail such approval is for the management of the investee company, including majority on the Board as well as chief executives to be resident Indians. Approval for FDI up to 100% is permitted in construction, operation, maintenance of Railway infrastructure projects subject to certain conditions. FDI beyond 49% in sensitive areas from security point of view would need approval of the Cabinet Committee. An increase in the FDI cap in the insurance sector to 49% under the approval route has been approved too. However, the increase of investment limit is still pending for the approval of the Indian Parliament and has not yet come into force.

Other issues which need attention are recruitment of employees. Labour is easily available and cheaper in India. The country producing highly educated citizens with English speaking candidates dominating the territory is a booming platform for recruitment.

It can be thus concluded that to set up a company, one must follow the procedures, and with a blink of an eye, a Swiss startup company is ready to explore the booming markets in India.

