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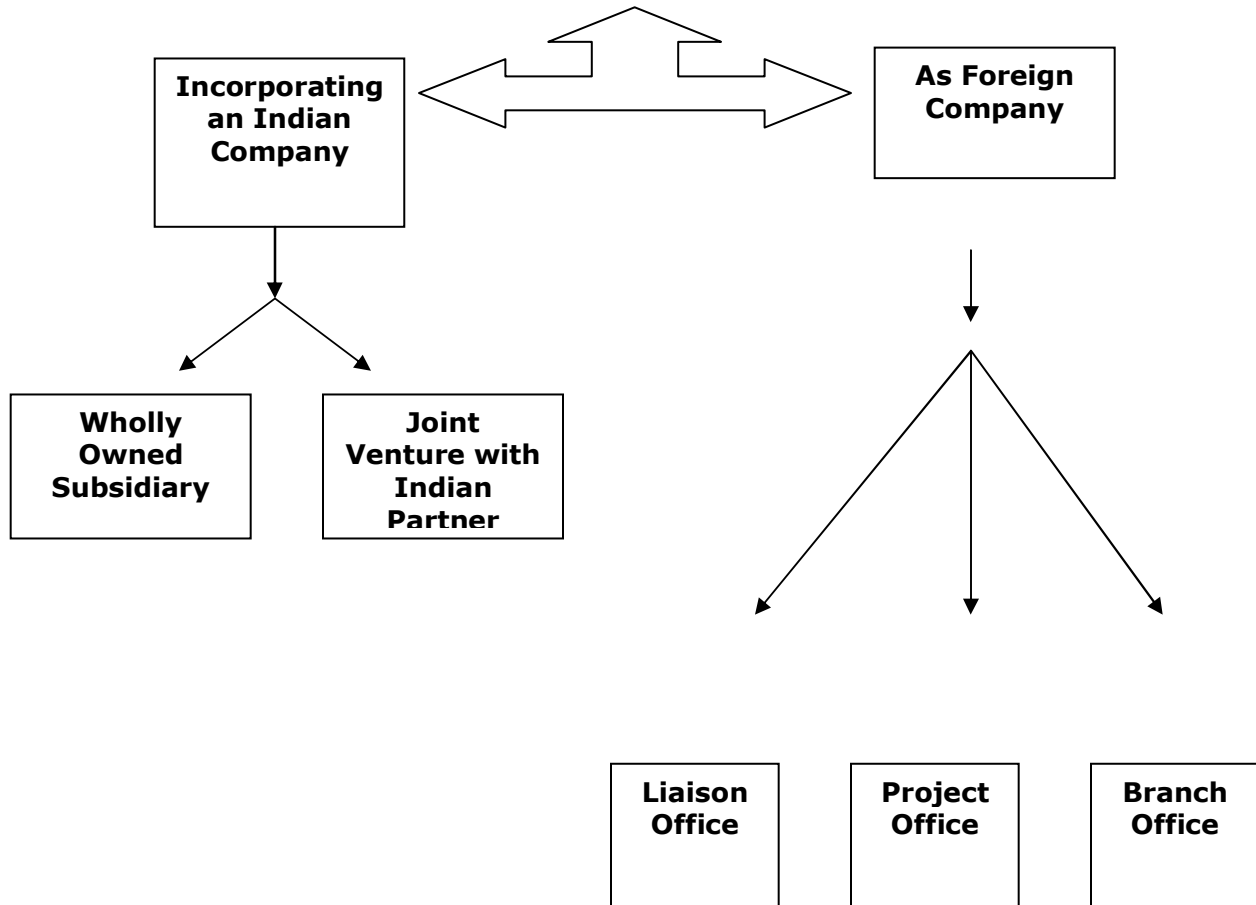
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ENTRY STRATEGY FOR FOREIGN INVESTORS



Business Setup in India:

A Foreign Company planning to set up business operation in India has the options to establish its both direct as well as indirect presence in India.



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Mode of Direct Presence – As an Incorporated Entity:

A Foreign Company establishes its direct presence in India by incorporating an Indian company under the Companies Act, 1956 which can be either of the following –

- **Joint Venture Company; or**
- **Wholly Owned Subsidiary Company**

The foreign equity participation in such Indian companies can be upto 100% in terms of both shareholding percentage and foreign capital investment; depending on the equity caps and sectoral limits as prescribed under the FDI Policy on the business activity to be carried out by such company in India and depending upon the requirements of the investor.

Mode of Indirect Presence – As an Unincorporated Entity:

A Foreign Company makes its indirect presence in India by establishing either of the following office(s):

- **Liaison Office;**
- **Project Office;**
- **Branch Office.**

Liaison Office: The basic role of liaison office is to promote the business of the foreign company in India and is allowed to carry on limited operations only. Setting up of a Liaison Office requires prior approval of the Reserve Bank of India.

A Liaison Office is not allowed to carry out any business activity and therefore would not be expected to earn any taxable profits. Thus, the activities of a foreign company through its liaison office in India does not become taxable in India, provided crucial board decisions are not made in India. However, if in contravention of approvals and



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rules, the taxable profits are earned by the liaison office, the rate of tax would be 40% (plus Surcharge and Education Cess) i.e. rate applicable to a foreign company.

Project Office: A Foreign company can set up temporary project/site offices in India to execute specific projects and for carrying out activities relating to that project only. The Government of India has granted general permission to foreign entities to establish project offices subject to specified conditions. On the completion of the Project, the Project office may remit outside India the surplus of the project, after meeting the tax liabilities.

Branch Office: The establishment of a branch office in India requires two fold approval cum registration requirement, first is the approval from the Foreign Exchange Department, Reserve Bank of India and thereafter registration of the approved branch office with Registrar of Companies, Ministry of Corporate Affairs as Foreign Company under Section 592 of the Companies Act, 1956. Branch office of a foreign company in India in comparison to a liaison office is allowed to carry out more activities and is subject to Transfer Pricing regulations with respect to transactions with the parent company and other associated enterprises outside India. Branch Offices established with the approval of RBI may remit outside India profit of the branch, net of applicable taxes and subject to the RBI guidelines.

Branch Office on "Stand Alone Basis" in SEZ: Such Branch Offices are restricted to Special Economic Zone (SEZ / Tax Heaven Zone) alone and are not allowed to undertake any business transaction outside the SEZs in India. No approval is required from RBI for a company to establish a branch/unit in SEZs to undertake manufacturing and service activities subject to the following conditions:

- ✓ Such activity falls in sectors where 100% FDI is permitted;
- ✓ Complied with the provisions of Section 592 to 602 of the Companies Act,1956;
- ✓ Functions on a stands alone basis;



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- ✓ In the event of winding up of business and for remittance of winding up proceeds, the branch shall approach an authorized dealer in foreign exchange with the documents required as per FEMA.

SET UP OF SPECIAL ECONOMIC ZONES (SEZs) AND EXPORT ORIENTED UNITS (EOUs)

SEZ is a specifically delineated Tax Heaven / Duty Free Enclave and is deemed to be foreign territory for purposes to trade operations, duties and tariffs. Goods and services going into the SEZ area from DTA are treated as exports and goods coming from the SEZ area to DTA are to be treated as if these are being imported.

100% FDI is permitted under automatic route for setting up SEZs and Free Trade Warehousing Zones (FTWZ) subject to the SEZ Act, 2005 and the Foreign Trade Policy. Press Note No. 2 (2005) does not restrict FDI in setting up of SEZ & units in SEZ.