



INCORPORATION OF FOREIGN COMPANIES IN INDIA

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Abstract

“There is nothing more powerful than an idea whose time has come.”

— *Victor Hugo*

In 1991, the concept of liberalization and industrialization came about in the Indian economy. Since then, the Indian government has focused on promoting foreign investment in the country. The Indian Government has been formulating and consolidating user friendly foreign direct investment policies, as well as other investment policies in the Indian market, in accordance with Indian laws. With the liberalized reformative approach, foreign investors have entrusted their faith in our growing economy. India’s huge pool of human resource, in diversified segments, with qualified, skilled and unskilled personnel, who have a good command of spoken English, is to India’s advantage. This research work will focus and highlight the manner in which a foreign business entity needs to make inroads into the Indian economy to kick start their Indian operations. It will also dwell upon necessary procedures and compliances a foreign business entity needs to undertake before commencing business in the Indian market.

Key Words:-

Foreign Direct Investment (FDI), Foreign Business Entity, Indian Economy, Compliances, Indian Operations, Commencing business, Incorporation of Business

I. Introduction

The Indian economy was a closed and socialistic economy till 1991. When our former Prime Minister Dr Manmohan Singh took charge as our Finance Minister at that time, he showed remarkable financial prudence as an economist by precluding a “financial emergency” in the country and thereby putting Indian economy on road to recovery. At that time, the Indian economy was suffering from a dark phase with a debt of over 88% of GDP. Sensing the criticality, the then govt realized that urgent reforms are needed to get the economy back on track. This proved to be the harbinger of “THE ERA OF LIBERALIZATION AND INDUSTRIALIZATION”. This new phase of Indian economy then opened its gates to welcome foreign investment in Indian business market in an unprecedented manner. Dr Manmohan Singh had then stated that it was an opportune time to welcome foreign investment into the Indian capital market. His remarkable economic policies resulted into infusion of foreign capital in a significant manner and thus provided a cogent and vital boost to industrialisation by creating a money cycle once again, into circulation. This boost in industrialisation in turn created employment, the gains of which infused financial stimulus back to the economy in a cyclic manner. Ever since then, our Indian economy has remained an open economy for foreign investment with certain attractive tax benefits as well. India is now a fast developing economy as in contrast from being an under developed economy. These lengthy economic strides by India prompted President Trump of United States to refer to India as a developed country, although India still has a long way to reach the status of a developed country. There has been a



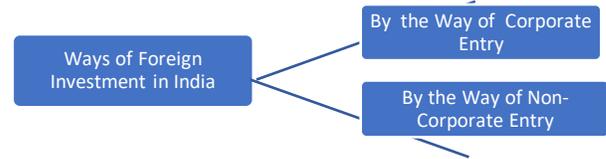
significant increase in Foreign Direct Investment (FDI) during the last few years. Status of FDI in Indian economy since 2014 is tabulated as under:-

Total Foreign Investment (FDI) (htt)¹

S. no	Year	Investment in USD (Million)
1.	2014-2015	24,748
2	2015-2016	36,068
3	2016-2017	36,317
4	2017-2018	37,366
5	2018-2019	38,744

This table has aptly indicated an increasing trend of foreign investment into India. Time has now come for the Indian Government to reframe new laws that protects and governs the crucial investments coming in our country. This precludes situations warranting a financial emergency and consequently led to an exponential and linear growth of Indian economy. As of today, the Indian market scenario has numerous foreign companies operating their businesses. However, experience has shown certain grey areas and as a matter of abundant caution, time has now come to make new laws, rules, regulations and single window clearances, which facilitate rather than impede inflows of FDI into India. The problems and impediments faced by foreign companies in the existing

framework of laws need to be analysed with a fine tooth comb and the same will be analysed further in this research paper. The study would be divided into two aim trail through which the investment can be done in Indian market:-



Foreign Investment to Infiltrate Indian Market a Corporate Manner

- Incorporation of the Indian Company :-
 - a. Wholly Owned Subsidiary
 - b. Joint Venture
- Incorporation of Limited Liability Partnership(LLP)
- Foreign Institutional Investment

Foreign Investment to Infiltrate Indian Market in a non-corporate Manner (Foreign Company)

- Incorporate Liaison Office
- Incorporate Branch Office
- Incorporate Project Office

II. Literature Review

Incorporation of foreign companies in India:
 - The investment which comes into our country comes from a legal channel as the Foreign Direct Investments also known as FDI's. Now the question arises is to how the companies investing in India can start their business in our country where they are



investing. Therefore the review is on the forms and procedure by which the foreign companies can enter into Indian market and know under which legal provisions do their solution lies. The review has the compliances and sections which are mandatory to be followed and will be part of my final research work.

- **Divesh Goval** (12 Apr 2020) (dinesh, 2020):- Process Incorporation of Foreign Subsidiary / WOS

The article gave a new view, when the company enters the Indian market it can be either a subsidiary or a wholly owned subsidiary “WOS” which they have to specify before they move further with the incorporation. The article includes the information, documents and the process required from foreign company for the incorporation in Indian market.

The process of incorporation involves

- Apply for Name Approval:** while selecting the name, creators of the company should focus on the documents and information required to file application for Name of the incorporated foreign Company. Followed by the process of Name Approval
- Login on Ministry of Corporate Affair Website:** Then the details like type of company, class of company, category of company, sub-category, main division of industrial activity, description of main division etc which have to be filled.
- Information/ Documents required from foreign Company**
- Preparation of Documents for Incorporation of Company,** etc are were also been discussed which helped me in further research.

- **Ankan Bose** (14th Nov 2016) (yourstory, 2016): - Procedure for Foreign companies to incorporate their business in India

“Indian market has immense human potential and huge market for investments comprising 1.2 billion people as its population and a target audience. This is due to the constant growing India. India has not only grown in population but in the customer pool to attract the foreign investors”

The article is an in-depth study about knowing that our motherland India has immense potential to attract huge investors to invest in the huge Indian market and as to how the foreign companies can invest in India and start the business has been well elaborated along with the concept of foreign direct investment also known as FDI. It has also been observed that each year our country have witnessed inflow FDI growth. The article has been helpful as it briefs about how foreign companies can setup a business in India and the strategies for business entry in Indian market. The mandatory documents and other requirement for company’s registry have been well explained with dwelling upon post registration formalities as well.

- **CA. Manan Agarwal** (December 2015) (Manan, 2015):- Setting up of Business by Foreign companies in Indian market **“Total inflow of Foreign Direct Investment in India’s business market from April 2000 till August 2014 had reached 341,357 million USD which grew in the Financial Year 2015 with addition of 17,445 million USD ”** (indian)



Article by CA Manan have thrown light to highlight the outcomes of liberalisation and globalisation in Indian business market which allowed foreign investments in the India market. The article also throws light on how the foreign direct investment impacted the economy as evident from the above quoted stats. Foreign investments have huge impact on boosting business markets in India. Legal compliances are discussed which helped me know better about the procedure to be followed for example: - Post registration compliance: - Foreign investing institutions must comply and at all times after registration with SEBI, to the guidelines, rules and regulations as prescribed by SEBI and the Reserve Bank of India (RBI) in this regard. The investor friendly regulatory systems which Indian market has and various routes and channels available for foreign investors to enter into Indian market and start the business have been mentioned, along with which I think it cannot be denied that India is today one of the most attractive destinations for business investment opportunities due to its immense potential to grow with huge human resource to cater to all sort of needs and functions. It's obvious that not only foreign entities earn a good return on their investment in India, but also Indian economy gets a boost along with the solution to generate more employment is also been provided to Indians.

III. Research Methodology:-

The research methodology which is been used in the research work is the content analysis of the secondary data available on the internet. It is been carried with the help of secondary data available on the internet such as research paper by research scholars and the articles.

IV. Objectives:

- i) To have a brief know-how about the foreign direct investment (FDI) in India.
- ii) To facilitate the foreign entities with in-depth study for their incorporation in Indian trade practices.
- iii) To know about the compliances, rules and regulations which foreign companies will have to abide before and after incorporation

V. Brief History

Former Prime Minister Dr. Manmohan Singh during his tenure as Finance Minister in 1991 ushered the concept of liberalization and industrialization in the Indian economy. The wave of liberalization in India after so many years has made the Indian government well poised to analyze and comprehend that foreign investment in Indian economy is a very crucial. Since then, the Indian government has focused on promoting foreign investment in country. The Indian Government has been formulating and consolidating strong foreign direct investment policies, as well other investment policies in the Indian market, through a medium of translucent and convenient regulatory channels, as per the Indian laws and regulations. Considering the Indian business ethics, liberalized reformative approach of Indian Government along with sturdy and robust business environment, the foreign investors are enthused satisfied and have entrusted their faith in our growing economy. The suitability of the Indian market is not just due to the fact that India is a democratic country with investor friendly policies, laws, rules and regulations. But it is also due to the fact that India is a country with population of 1.2 billion, which makes it a huge pool for human resource. India, over a period of time has improved its ranking to 63rd place in 2019 among 190 economies, as



per World Bank's Business Report, from the 77th place in 2018 report (PTI, 2019). Indian market receives its maximum Foreign Direct Investment in multifarious sectors which include services, computer hardware & software, construction development, trading, automobile, pharmaceuticals, chemicals, and power. But foreign investment is only considered as an actual investment when the percentage of investment is 10% and above. The term 'Foreign Companies' as per Companies Act, 2013 under Section 2(42) (Affair) states, any Company or Corporate Body which has its head office incorporated outside India and is having a subordinate office for business in India, whether by themselves or with the help of an agent, can be either physically or through electronic mode thereafter conducting business activity in India in the prescribed manner. The legislative acts dealing with foreign investments are Income Tax Act, Companies (registration of foreign companies) Rules 2014 Foreign Exchange Management Act, 1999 (FEMA) is the exchange manage, Companies Act 2013 dealing incorporation and other matters, Reserve Bank of India Act and Securities Exchange Board of India (SEBI ACT) it is for the stocks and share market, etc.

VI. Foreign Investment to Infiltrate Indian Market in a Non-Corporate Manner:-

The laws governing the incorporation of a foreign company in form of a branch office or a liaison or a project office are "The Companies Act 1956", "The Companies Act 2013", "Foreign Exchange Management Act 1999" and "Registration of Foreign Companies Rules 2014" under The Companies Act 2013.

A. Incorporation of Liaison office :-

Its means a business workplace which operates as a communication channel between the Head Office which is situated outside India with parties situated within the country, where the Liaison Office has been set up. It is also known as the Representative Office. A Liaison Office does not have the authority to start any form of commercial activities and is expressly prohibited to incur any sort of revenue arising out of the same in India. The running cost and needful expenses arising out of the liaison office is to be entirely fulfilled by the cost from the Liaison Office's parent company which is situated outside the Indian Territory. The modus operandi by way of inward remittances which are received in convertible foreign exchange in India. Such offices are set up with specified roles and responsibilities assigned to them. A Liaison Office's role is strictly limited to accumulation of data about potential scope of our domestic market, business opportunities, delivering desired data regarding a company's performance in the desired market and its products to the Indian market's consumers and endorsing import and export from, and to, the Indian market. A Liaison Office, before it commences operations has to seek a go ahead from the Reserve Bank of India under the provisions of Foreign exchange Management Act. The entire process of establishing of the Liaison Office has to be strictly under Reserve Bank of India jurisdiction. The foreign entities intending to establish their Liaison Office in India have been prohibited to purchase immovable property, but it have been allowed to obtain immovable property on the lease basis for the specified period, which should not exceed beyond a period of five years. The grant provided for establishing a Liaison Office is given for time



period of three years in initial stages and later with passage of time can be renewed after the said time period has lapsed. The Liaison Offices have been prohibited to be involved in activities such as entering into any kind contract with a resident of India, ask for any financial support or secure loan of funds, indulge in any trading activity etc.

Criteria for the eligibility to Incorporate Liaison Office:

- Indian government requires a report on parent company's track records of profit making for the time span of immediate three preceding Financial Years.
- Net Worth of the company should be equal to or more than 50,000 USD, which means that sum total of paid-up capital along with free reserves and in possession of minimum intangible assets, which have been mentioned in latest Balance Sheet duly audited by a Certified Public Accountant.

Legalities required to be done after Incorporation of Liaison Office:-

- 1) The Registrar of Companies (ROC) is required to be notified within the time span of 30 days of the establishment of the Liaison Office by means of form FC-1.
- 2) The Parent company of the Liaison Office which is situated overseas is under an obligation to present a detailed report enclosed with data in the format prescribed by the authorities as per to the Director General of Police of the state where Liaison Office has been incorporated, within a span of five working days from the date when Liaison Office commenced its working.
- 3) Annual Activity Certificates (AAC) from the company's Chartered Accountants (CA) by 31st March financial year ending, accompanied with audited Balance Sheet, on or before the prescribed date of 30th

September of that same financial year. Should there be an annual accounts of the Liaison office which have been finalized with reference to a date which is other than 31st March, the Annual Activity Certificates (AAC) accompanied with the audited Balance Sheets are required to be submitted within a time period of six months from the due date of the Balance Sheet *ibid*, to the designated AD Category 1 bank, with copy of the same endorsed to the Directorate General of Income Tax (International Taxation), New Delhi. The said document will be accompanied by the audited financial statement, enclosing documents like receipt and payment accounts. (india, 2020-2021)

- 4) In case foreign companies have multiple Liaison Offices, then mutually combined Annual Activity Certificates in respect of all offices situated in India by the respective Nodal Offices of the Liaison Offices are required to be presented. If the parent company desires to open another Liaison Office in India, but there are already four of them established earlier, then the foreign company will have to justify the need for additional office(s) to the authorities. Furthermore, the said applicant may then have to identify one of its offices in India as the Nodal Office for all other offices, which will be tasked to coordinate activities of all other Offices situated in India.

B. Incorporation of Branch Office :-

Multinational Companies (MNC) or the foreign company which desires to set up a Branch Office in India has been allowed certain Do's and Don'ts. The Foreign Company's Branch Office will have to obtain an approval from the Reserve Bank of India in this regard, to secure Branch License. The Branch Office on receiving the Branch License thereupon will give a green



signal to its parent company for commencement of operations. A Foreign Company involved in business activities such as manufacturing and trading can establish a Branch Office in India. The said Branch Office in India will then need to obtain prior approval from the Reserve Bank of India along with registration of the office with the Registrar of Companies (ROC), within 30 days of establishing the Indian office. A Branch Office in India is not permitted manufacturing and processing activities along with any sort of retail trading activities. The same have been expressly prohibited. However, branch office is legally authorized to entrust Indian manufacturer or trader to carry out activities on their behalf. Branch Offices incorporated in India are permitted to remit their profits arising out of the branch in India, to their parent companies overseas, consequent to tax deduction of applicable Indian taxes and subject to RBI guidelines by the Indian Govt.

Branch Office incorporated in Indian market on Stand Alone Basis will be confined and definite to a Special Economic Zones only as per the statute governing the incorporation of branch office. No business activities and transactions are being permitted beyond the designated Special Economic Zone. The Branch Office which has been incorporated in a Special Economic Zone will not require any prior approval from Reserve Bank of India for undertaking manufacturing and service activities, subject to their fulfilling the specified conditions. As per the Indian statutes the Reserve Bank of India has issued a general sanction to all the foreign entities willing to incorporate their Branch Offices in Indian market's Special Economic Zones for commencing manufacturing and service activities.

Branch Office Activities Permitted in India:-

- Export and Import of goods in which Parent Company is engaged.
- Providing consultancy or professional services to the consumers.
- For the purpose of doing research work, in areas involving the parent company's engagements.
- Endorsing and exploring possibilities of collaborations between Indian companies and parent companies which are overseas.
- Symbolizing the presence of parent company in India as an agent for the purpose of buying and selling in India.
- Providing services in the domain of Information Technology (IT) and for the purpose of software development.
- Providing technical support for the products supplied by parent companies to consumers.

Criteria for Eligibility to Incorporate a Branch Office in India :-

- The Indian government requires a profit making track record of the parent company for preceding last five financial years in the home country where they carried out their main business.
- The parent company's net worth should be equal to or more than 1,00,000 USD or equivalent of the same.

Legalities required to be Carried Out after Incorporation of a Branch Office:-

They are same as it was of the Liaison Office incorporating its business in India.

C. Incorporation of Project Office:-

A Foreign Enterprise is permitted to incorporate a temporary office to execute short-term, time bound projects in India. The temporary workplace would be called as a Project Office, which is mandated to execute the actions and activities for completion of



the project. The Parent company has to secure permission from the Reserve Bank of India for incorporating a Project Office in India. It is also obligatory for a foreign parent company to fulfill the condition that the foreign company has entered into or has obtained a Contract from an Indian company to carry out a project in India. A foreign company's Project Office is permitted to carry out activities mentioned in the Contract, and execute the project in India. The Project Office which has commenced operations will function in a manner which is akin to the way a Branch Office operates in India. The key difference being that a foreign company will establish the Project Office for a specific work to be executed in India. Project Offices incorporated in India will execute construction work or for any other ventures which are co-funded by Indian and international financial institutions together. Reserve Bank of India has notified that the incorporation of the Project office in India by a foreign company has to adhere to following points:-

1. A Foreign company is permitted to incorporate its Project Office without any prior authorization from Reserve Bank of India only under circumstances when it has made sure that the Contract with an Indian company is executed as a project in India, for any of the under mentioned reasons:-
 1. Project has been financed with the direct inward remittance from overseas.
 2. The project has been financed by a joint or a polygonal global Financing Agency.
 3. The project has received a clean-chit by an appropriate authority.
 4. A company or enterprise in India which is involved in a Contract has been granted a term loan by a Public Financial Institution or a bank in India for execution of the project.

In case the above notified conditions are not met, then the foreign entity has to notify the Reserve Bank of India about their incorporation plan and the same will be required to receive an approval before incorporating in India. A Project Office which falls under the government route and not the automated route is required to apply for prior permission of the Reserve Bank of India for incorporation into their Indian operations.

Project Offices situated in India have been allowed to get hold of any immovable property by mode of purchase for the company's own use and to execute activities permitted to the company. However, it may be noted that companies which are headquartered in countries such as Bhutan, China, Bangladesh, Sri Lanka, Afghanistan, Hong Kong, Iran, Macau, Nepal or Pakistan are not permitted to obtain any immovable property in India for the purpose of Project Office, without prior approval from the Reserve Bank of India.

VII. Foreign Investment to Infiltrate Indian Market in a Corporate Manner:-

1. Wholly owned subsidiary

When a foreign company, which has been established overseas outside India, and plans to invest in Indian market by making an investment of 100% Foreign Direct Investment (FDI), the Indian company which will be incorporated for executing the said investment is known as a Wholly Owned Subsidiary of the foreign company. A WOS Company in India can be incorporated in 2 ways, firstly, either through an automatic route or through a governmental route, where the parent company is required to obtain a prior approval from the Foreign Investment



Promotion Board (FIPB). Incorporation of a wholly owned subsidiary company is the easiest and the best method for foreign based company to enter the Indian market. In such an incorporation, the Foreign based company has a complete grip on the share capital of the Indian company. A WOS Company has been controlled under the Indian Companies Act, 2013. In a WOS Company, all corporate actions are permitted by the government, for the businesses operating in marketing, manufacturing, services providers and other sectors as well. But such corporate actions are also subjected to the Foreign Direct Investment Norms under which the company has been incorporated in India. The WOS Company is dealt with and governed as an Indian domestic company which implies that Indian taxation laws will be applied along with the eligibility for deduction and exemptions as provided to an Indian domestic Company.

A Wholly Owned Subsidiary Company is sub-divided as follows:-

As per Indian laws, incorporation of a company can be in 2 forms

1. Private Limited Company
2. Public Limited Company

Characteristics of Private Limited Company are as following:-

The company's shareholders rights to transfer their shares are limited and restricted. The number of shareholders for allotment is strictly restricted to 200 shares only, along with prohibition to invite the public to subscribe any of company's shares or debentures. The company incorporated should have a minimum of two Directors and two shareholders, out of whom it is mandatory to have one Indian Resident

Director (residence to be calculated as per Sec 6 of Income Tax Act, saying any person who stays in India for 182 days and more).

Characteristics of Public Limited Company are as following:-

A Public Limited Company must have minimum of seven shareholders in their company at the time of incorporation. The public company has to issue a prospectus prior to its commencing of any sort of business transactions. It is mandatory for a Public Limited Company to have at least three directors at the time of incorporation.

The under mentioned documents are required for the process of Registration for incorporating a WOS Company:-

1. The directors are to provide their three passport size photographs.
2. A copy of their Pan Card for as identity proof. The said provision is not mandatory for the Foreign Director. The Indian Resident Director has to abide by the said requirement.
3. The Non-Resident Director or Foreign Director is under the obligation to provide his Passport for the purpose of identity proof and also the Passport should be in English language and duly attested by the Director.
4. The Directors are under the obligation to provide their Driving License, Voter ID, Passport or Aadhar Card as an address proof.
5. Directors are to provide either of Bank Passbook/Credit Card Statement/Telephone Bill/ Electricity Bill, as per the requirements.
6. The authorities also demand the Proof of Registered office in India along with Electricity Bill and the Lease Deed or Rent Agreement, which are available with the Directors.
7. Should the Director be in a foreign country, then all the provided documents should be duly attested by the home country authorities



and should the said Director be present in India, then there is no need of any such attestation.

Process Required for Registration of WOS Company in India:-

Step1. The company's proposed Directors have to obtain (Director Identification Number) DIN.

Step2. The company's proposed Directors have to submit their Digital Signature for future activities.

Step3. The company has to fill an Application for reserving the name for the incorporated company.

Step4. The company has to submit the list to the Registrar of Companies of the company's drafted Memorandum of Association and Articles of Association at the time of incorporation.

Step5. Directors need to submit the list of subscriptions to the memorandum shareholders and appropriate persons in the company.

Step6. Directors are to submit all the above mentioned documents to the Concerned Registrar of companies (ROC).

Step7. The receipt of Certificate of Incorporation is received from the Registrar of Companies.

Step8. The Directors after completing the above said task have to apply for Pan Card and open a bank account in the name of the incorporated company.

Step9. The Directors are required to submit the documents for Foreign Direct Investment Compliance, once the subscription of share capital has been completed.

Formalities Done Post Incorporation of Company:-

After the foreign company has registered in India as a WOS company, the Indian Director

of the company will help to open a bank account for the purpose of company's transactions in India. After the said account is opened, the received Foreign Direct Investment to the company is to be reported to the Reserve Bank of India. The procedure laid down for reporting the inflow of the Foreign Direct Investment into the incorporated company has to be completed. Completing the reporting of the same would ensure that the incorporated company is in compliance with the rules and regulations of India and is completely ready to commence its Indian operations.

2. Joint Venture:

A joint venture is the incorporation of two or more corporate entities, wherein they enter into a contract for fulfilling a purpose of commercial nature or to carry out business jointly with a common consent and motive. A Joint venture can be classified into various types such as a incorporation of a public or private Company, partnership, or by the way of making investments in an Indian company already existing. By investment in a pre-existing Indian company, the investor company from overseas will subscribe influential percentage of shares in the target Indian company. This sort of joint venture is different from the normal form of joint ventures as this not exactly a kind of joint venture agreement but a alternative to the same since it helps in saving the incorporation amount and also the complication of entering into a contract or other legalities. This is way both foreign companies do not have to waste any time and the business between the parties is commenced immediately after the initial formalities have been completed. A foreign investor company's shares allotment details shall be intimated to the Reserve Bank of



India with help of the Form FC-GPR, by the Indian invested company within 30 days of allotment of shares. The same should be reported through the company's CA. whereas in case where the shares are transferred and not allotted from a pre-existing shareholder who is a transferor to the foreign company, then the procedure is to fill up form FC-TRS to the Reserve Bank of India, with the help of a CA. The said procedure should be completed within 60 days of the full and final consideration cost receipt, keeping mind that if existing shareholder who is a transferor is a resident in India, the filing of the form FC-TRS is his job.

Similarly, a joint venture can be time dependent as well where there can be a long term investment which it for endurance and pursuance or can be a short term investment based on a specific object to accomplish. Joint venture can be formed between any type of company depending upon on the need and requirement of for which the joint venture is setup. It could be recently or freshly incorporated company or an already standing business entering into a contract to form either or not a completely new legal entity which depends upon the parties. Therefore, investment in a joint venture can be a very simplified and flexible way to carry out required business in Indian market. In the case where the joint venture contract is done with a foreign national partner or a Non Resident Indian, there is a requirement of governmental approval. The governmental approval can either be obtained from the Reserve Bank of India where the route of investment is an automated route of investment or from the Foreign Investment Promotional Board (FIPB) route which falls under the governmental approval route. The approval from the FIPB is mandatory in the

case of the non automated route, where as in an automated route; permission from Reserve Bank of India can be obtained from the regional office as well. The foreign company investing in Indian company has to examine and then select local Indian associates who are willing to enter into a joint venture agreement with the foreign entity. After the company agrees upon a common consensus, there is a Memorandum of Understanding (MOU) or in other words we say a Letter of Intent which is duly signed by both the parties. The MOU is a document which classifies the condition, motive, object and goals upon which the joint venture is based. Both the parties entering into the contract should read the terms and conditions which then should be thoroughly discussed and negotiated before signing of the contract. The joint venture agreement must be consistent with Indian laws and should adhere to international laws as well, to avoid legal disputes in future. The joint venture agreement should comprise of the clause addressing very crucial subject matter of Dispute resolution agreements for any problem arises between the parties entering into a contract, law Applicable on the agreement should be discussed thoroughly, the subject matter related to transfer, distribution and holding of shares between the parties of the joint venture, the parties composition and their representative as Board of Directors Non-Compete in the joint venture and other sort of Confidentiality should thoroughly discussed.

Reasons why a foreign entity would want to have a joint venture operations Indian associate:-

- Entering into joint ventures is a low-risk alternative for the companies who are overseas investors and are intended to



incorporate their business operations in Indian market.

- The foreign company would get an already established channel for distribution/marketing, procurement of raw material and other essential objects by the Indian associates.
- With the entry into a new market for foreign company, joint venture is the best as it shares and divides the risks and liabilities with another party.
- Indian associates would be having their financial resource already intact which will be beneficial for the foreign company entering into the Indian market
- Foreign entity would be benefited with contacts of the Indian associates to help the whole process to be carried out in an ethical, legal and smooth manner.
- The competitive relationship in the market would not be affected as both companies would be functioning together as a joint venture arrangement with a common goal.
- The foreign investor company will more equipped with the existing research done by the Indian associates with regard to local demand, likes, customer base and other researches.
- A joint venture is an alternative route of company incorporation in the sectors where government doesn't approve 100 percentage foreign direct investment. The foreign company entering into the joint venture eventually, after paying the applicable taxes to the government foreign partner can transfer the profits earned by the joint venture in the India to their own country.

Control in joint venture:-

In a joint venture; there is limited control and on contrary the wholly owned subsidiary doesn't have the control issues. The formed joint venture company at the beginning only

proposed that both the parties' would be entitled to a restricted and limited amount of controls. The limited control to both parties is due to the fact that both the Indian as well as the foreign company has equal stakes in the joint venture company. Equal stake implies to, "equal rights and for the same the rights gets divided and limited for another party". Therefore, every coin has positive as well negative side similarly a joint venture has its pros and cons. If a foreign company wants to avail advantages of Indian company in the Indian markets, it should also be prepared to take some drawbacks, such as sharing of control and power, which means not having full exercising control of the new company.

Required documentation in a Joint Venture Agreement:-

To have a joint venture incorporated the parties need pay attention to the transactions taking place in a joint venture agreement between the foreign company and the Indian associates. The documents should be well organised, unambiguous, efficiently drafted depending upon the nature of the business structure of the joint venture. The definitive agreements and clauses should be well discussed and negotiated between the two parties and then drafted with detailed terms and conditions to avoid future ambiguity. The required documents as per the companies' act 2013 such as the memorandum of association, articles of association, shareholders distribution agreement, the joint venture agreement etc for the incorporation should be submitted to the registrar of company who is the approving authority for incorporating the joint venture. The procedure laid down for the joint venture to be incorporated is similar to the incorporation of a wholly owned subsidiary. The post incorporation formalities and statutory



compliances of the incorporated joint venture are similar to that of a wholly owned subsidiary. The only difference in that, “the shareholding pattern as joint venture would be based of sharing basis, where percentage is already decided; where as in a wholly owned subsidiary it is purely and solely independent”.

3. Foreign Institutional Investor

The basic meaning which could be understood from the term the “foreign institutional investor” is that, there is an investor who wishes to invest the funds into the market which is situated outside the investor’s own country. It even means, if a separate entity wishes to invest its funds in entity outside the investor company’s country where it’s registered. Similarly in India when we talk about the foreign institutional investor it means that, an entity or a company or individual who is intending on investing in India’s securities, who is a foreign body and is incorporated abroad and not in Indian boundaries. The portfolio investment scheme (PIS) is provided under the Indian statutory laws. The foreign institutional investor is a easement to the investors who are situated overseas and wishes to earn profit by investment and diversify their portfolio in the foreign markets, this sort of investment in the securities market is known as the foreign portfolio investors (FPIs). The statues under which foreign institutional investors has been defined is under section 2(f) of Securities Exchange Board of India (FOREIGN INSTITUTIONAL INVESTORS) Regulations 1995 (SECURITY EXCHANAGE BOARD OF INDIA, 2009). The security exchange board of India is the statute which is been protecting the financial market in India. The Indian financial has investment of almost 12.46 trillion rupees

which in USD is almost 178.28 billion from the Financial Year 2002 till March 25, 2020. The Indian financial market is divided into two parts: primary and secondary markets, which over the period of time have been highly developed to have attracted Foreign Institutional Investors to the country. The investor, who plans to invest in form of Foreign Institutional Investors in Indian market, is governed under the Securities and Exchange Board of India (SEBI). The investments made in the security markets in India have the concept of ceilings on any such type of investments. The limit defined by RBI is 24 percent of the total paid up capital of the Indian company in which investment is to take place by Foreign Institutional Investors. For the same there is a benefit given to non resident Indian, providing they have the ceiling percentage of 10 percent for the total paid up capital. The public sector banks including, the State Bank of India can also have the foreign investment through foreign institutional investor and the ceiling percentage is 20 per cent of the paid up capital to the banks. The Reserve Bank of India is the regulatory body maintaining the ceiling percentage for investments taking place in Indian companies on a day to day basis. The Reserve Bank of India to have efficient checks and balances of the ceiling limits in foreign investment, RBI has predetermined the cut-off points, which is two percent figure lesser than authentic ceilings or defined limit’s cut off, it’s decided by the statutory authorities. For eg, NRIs who are permitted to invest up to 10 percent of the total paid up capital of the company then for them ceiling is fixed at 8 percent.

For public sector banks (SBI as well) also the concept is same and the decided cut-off limit is 18 percent. (reserve bank of india). The



increasing Indian securities market is been remarkably doing well and the results are incredibly evident from the total market capitalisation of all the enlisted companies on the Bombay Stock Exchange. Bombay Stock Exchange showed the spike to set a new record of 151.08 trillion rupees which is 2.16 trillion USD in the financial year 2018- 2019 growing furthermore the subsequent year setting an all times record of reaching 1054.12 trillion rupees which is 2.20 trillion USD in the financial year 2019- till 25th march 2020. (indian brand equity foundation IBEF, 2020). Companies from overseas abroad planning and intending to invest in Indian securities market as Financial Institutional Investors have to comply with the Indian statutory laws and to begin, the interested investor first have to register the investing company with the Securities and Exchange Board of India. India provides and allows the provision for wide range of overseas situated foreign companies to register their companies to the SEBI as Foreign Institutional Investors. In lieu of the provision enacted by the Indian Govt, the asset management companies, investment managers, advisors or institutional portfolio managers which are owned by Non Resident Indians and have incorporated their offices overseas abroad also qualifies to register themselves with the SEBI as an eligible Foreign Institutional Investor. The reach of the Foreign Institutional Investors is not a closed circle radius reach but they are also permitted to invest in securities other than from the primary and secondary markets. The Foreign Institutional Investors are permitted to invest in the mutual funds, the dated government securities along with investments in derivatives traded on stock exchange in the Indian market.

Steps involved for the registration of the FII to Approving Authority (SEBI):

The foreign company intending to be a FII in Indian securities market have to fill an application to the approving authority Securities and Exchange Board of India. Application filled with SEBI should be made in Form A, along with the needful documents and requisite fee mentioned in the statutes. SEBI after receiving the application for registration can enquire and demand for some additional information and documents if they have doubt on credentials of the applicant indenting to invest in Indian market. SEBI also has the authority to call for the personal representation of the foreign applicant filling for the registration if he is unable to do so then his authorised representative has to be presented in front of the authorities if need be. SEBI before granting the certificate of registration to the applicant looks into certain points which are mentioned below:

1. The track records of the applicant are studied in details, it is seen if the applicant has professional competencies or not.
2. The financial soundness is mandatory as it defines the sustainability of the association for longer run.
3. The foreign investor's experience is checked along with his general reputation in the investing market to see his fairness and integrity.
4. SEBI has to ensure that the applicant is not a fraud and has been registered and controlled by a pertinent and reliable foreign regulatory authority.
5. SEBI has to ensure the certificate granted to the applicant promotes development and fairness in the Indian securities market as it is in the interest for the country as well as the investor.



SEBI, after looking into all the documents furnished to them and getting satisfied with the information and documents provided by the aspiring investor within the time period of 3 months from the date the required information and documents been furnished will grant the certificate of registration under the Form B. After the certificate of registration is obtained from the authorities it is mandatory for the investor at all times to abide by the guidelines, rules and regulations prescribed by the Reserve Bank of India SEBI and in their statutes and notifications.

4. Limited Liability Partnership Firm

A limited liability partnership firm is the 4th option available for the foreign investor. It is not covered under companies act 2013 rather has its own separate legislation governing its incorporation which is, limited liability partnership act 2008. The incorporated limited liability partnership firm is a perfect blend of a Partnership Company and a limited liability company together with perks of both. A limited liability partnership is stand alone individual legal entity from its associates. Limited liability partnership firm is a separate entity in itself, depicts the liability of the company's associates is limited and is restricted to their agreed contributions. Limited liability partnership establishment is permitted only in those sectors, where the Reserve Bank of India allows 100% inflow of the foreign direct investment. Under the surveillance of our Prime Minister Narendra Modi, Indian government has focused on easing the Foreign Direct Investment restrictions to promote more inflow of the foreign investment in the country. The growth in list consists of sectors under which the government allows 100% direct investment from overseas. with easy in doing business a registered limited liability

partnership firm can commence its operations immediately after receiving the certificate of incorporation from the registrar of company. The limited liability partnership firm unlike the liaison office is permitted to purchase property in the name of the firm and own it, produce revenue from their operations and business, and can also transfer their earnings along with the profit received overseas to their parent country. The firm is subjected to a taxable slab of 30% along with an extra surcharge of 12 % when their total incurred income crosses one crore. Income Tax return has to be filed the limited liability partnership firm after every financial year. The audit of the account books in the firm is mandatory when turnover of the firm is over 40 lakhs rupees or the contribution in the firm has crossed over 25 lakhs rupees (startupindia.gov, 2019). For the purpose of investment in Indian market the foreign investors need to do minimal documentation in case of limited liability partnership firm as compare to a Limited liability Company. When the Limited Liability Partnership firm is compared to a Partnership Firm it has more reputation due to the fact that there is an additional registration and documentation required for incorporation. Registration of a limited liability partnership firm is done under the Ministry of Corporate Affairs, which leaves credible proof of the existence and authentication of the incorporate company. Limited Liability Partnership modern concept introduced in India, therefore to promote there are additional benefits attached to companies incorporated under it. The important characteristic of a limited liability partnership firm is that its partners in the partnership are entitled to have limited liability not like partnership firms. LLP also has perpetual succession rights along with the title of been a separate legal



existence from its members associates. The limited liability partnership firm is under the mandate to have minimum of 2 directors and 1 of them have to be a resident of India. Limited liability partnership firms are well suited operating business which is a small or medium scale business entity mainly for the purpose of service sectors. Foreign company intending on making investments in the service sector business or incorporating business for limited operations in India then for such investments Limited Liability Partnership is the apt decision.

Compliances to be complied for incorporation:

Rules and regulations under the Financial Exchange Management Act, 1999 has to be paid attention along with limited liability partnership act 2008. The act as certain provision to which foreign investment is been permitted by the government in the Limited liability partnership firm. The Foreign Company who is investing in the Limited Liability Partnership is permitted to invest only after obtaining prior approval from the governmental route, that also only in the sectors where government have allowed 100% inflow of the foreign direct investment under the automatic route. The yearly statutory audits and filings of the books of the firm takes place by filling the yearly statement of solvency along with the yearly income tax return to the Registrar of the Companies for dual attestation. Therefore, an intending foreign investor must go through all the required terms and conditions required for and after forming a Limited Liability Partnership in India.

The proposed directors of the firm at first have to apply for digital signature certificate online after the successful commission of the

same and receiving the certificate the directors approach their second milestone which is to submit the Form 1, filled for the checking the availability of desired name for the new incorporated firm, the registrar of the companies in the state firm is registered, ROC has to give sanction to the permitted name of the partnership firm, the directors can also consult the ministry of corporate affairs' online portal where they help the companies to know if there is any familiar or resembling pre existing names and trademarks which prevents the incorporating partnership from any type of duplicity or faults, the validity of the permitted name by ROC is for a period of sixty days from the date of application filled. Proceeding further we have the Form 2 which is a declaration given by the firm after the incorporation of a Limited Liability Partnership firm which is supported with the documents like subscriber's sheet and consent of partners to authorities for Foreign Limited Liability Partnership firm. Then the established foreign Limited Liability Partnership firm have to inform the authorities about its commencing place of business in India with the help of filling Form 27 under registration done of particulars by Foreign Limited Liability Partnership it can be done by a online available e-Form, the electronic form has to be digitally signed by the directors of the firm. The Director Permanent Identification Number for the proposed directors is a mandate which is received through Form for incorporation of Limited Liability Partnership (FilliP). At last the directors have Form 3 which is the Approval of LLP Agreement and after the directors receive the Certificate of Incorporation they upload Form 3 along with limited liability Partnership Agreement for the approval from



Registrar of Companies of the state the firm is been registered in. (associates, 2020).

process of the routes foreign companies takes to enter Indian market.

VIII. Findings of the research work:-

- The foreign companies coming into Indian market have plethora of options but it depends upon what is the need of that company
- The foreign investment have always been the Indian government preference so legislators have laid down policies to govern and channelize there inflow.
- The process of incorporation of a foreign entity can be done easily with the help of lawyer or a legal and financial advisor who is well equipped with the recent developments.
- The ministry of corporate affairs have made things simpler by making the incorporation of companies electronically and internet basedl.

IX. Limitation of the study

The study is purely bases upon the research done with help of secondary data and official reports by the government of India. The study is limited to already existing date and study material on internet and books. The study is also limited to stats provided by government only. There couldn't be any survey or questionnaire conducted therefore it's the limitation of the report.

X. Further scope of the study

The study has further scope of penetrating deep into knowledge and working of Compliances, which has to be adhere by the foreign investors. Even financial sector is a prime focus when a foreign investing party invest in Indian market, as they have to comply with income tax and its provisions at the time of incorporation in India. The further study can also include the registration

XI. Conclusion

Indian market is expanding its boundaries and to attract foreign companies we require strong statute to protect registration of a Company, which has been a major hassle for entrepreneurs intending to incorporate their businesses in India. India has climbed 14 places this year from the previous year (2018) 77th position to 63rd position in the ranking list of "global ease of Doing Business" published by the World Bank in their study of doing business 2020 (world bank , 2019). India has made its way up to be placed in four new business reforms emerged during the past years. India is now place in world's top ten improvers in their business reforms category for the three year in a row. India has set best example depicting its changing dimensions with changing time. India has the facilities where intending investor can furnish his documents and information on the Ministry of Corporate Affair's online portal for registration of his company, this sort of provisions makes it so easy for investors sitting overseas and yet able to register their company. In 2015 the new government introduced INC-29 which have significantly reduces interaction of investor with the authorities by providing way of clubbing of forms for receiving the Directors Identification Number allotment, having name reservation done, incorporation of the company by receiving PAN & TAN for the company, as well as ESIC registration is also done online. Several reports highlighted that India is a premier choice for investors worldwide with majority ranking it the most attractive market therefore India is considered the most attractive market by international investors. India as an investing



market have improved and still focusing on improving the outlook of the investors. India has the golden chance to be one the top three economies by 2020 if they cash this chance when many countries are moving their base from china and looking for an alternative making India most apt alternative to switch. The pre existing investors in India have said they had encouraging experience. India is leading producer of ample of things and with the opportunity in hand is ready to take any challenge.

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