HOW TO DO DIRECT SELLING BUSINESS IN INDIA

A foreign company planning to set up direct selling business operations in India can do so in the following ways:

As a foreign company through a

Liaison Office/Representative Office

Project Office

Branch Office

As an Indian company incorporated under the Indian Companies Act, 1956 through a

Joint Venture
Wholly Owned Subsidiary

AS A FOREIGN COMPANY

Foreign Company is one, which has been incorporated outside India and conducts business in India. Foreign Company can set up Liaison, Project and Branch Offices in India. Such offices can under take activities permitted under the Foreign Exchange Management (Establishment in India of branch office or other place of business) Regulations, 2000.

LIAISON OFFICE/REPRESENTATIVE OFFICE

One of the practices for foreign companies to enter the Indian markets is the setting up of a Liaison/Representative office. A Liaison office is not allowed to undertake any business activity in India and cannot therefore, earn any income in India. The role of such offices is, therefore, limited to collecting information about possible market opportunities and providing information about the company and its products to the prospective Indian Customers.
The opening and operation of such offices is regulated by the Foreign Exchange Management Act-1999 (FEMA). Approval from the Reserve Bank of India (RBI) is required for opening such offices. There are certain standard conditions imposed for operations of such offices:

Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the Head Office abroad.

Such offices should not undertake any trading or commercial activities and their activities should be limited to collecting and transmitting information between the overseas Head Office and potential Indian customers.

Such offices should not charge any commission or receive other income from Indian customers for providing liaison services.

Liaison/representative offices also have to file an annual activity certificate etc. from a Chartered Accountant to RBI.
Permission to set up such offices is initially granted for a period of 3 years and this may be extended from time to time.

PROJECT OFFICE

Foreign Companies planning to execute specific projects in India can set up temporary project/site offices in India. RBI has now granted general permission to foreign entities to establish project offices subject to specified conditions. Such offices can not undertake or carry on any activity other than the activity relating and incidental to the execution of the project. Project offices may remit outside India the surplus of the project, after meeting the tax liabilities, on its completion.

BRANCH OFFICE

Government has allowed foreign companies engaged in manufacturing and trading activities abroad to set up Branch Offices in India for the following purposes:

To represent the parent company/ other foreign companies in various matters in India e.g. acting as buying/selling agents in India.

To conduct research work in the area in which the parent company is engaged

To undertake export and import trading activities

To promote possible technical and financial collaborations between the Indian companies and parent or overseas group companies.

Rendering professional or consultancy services

Rendering services in Information technology and development of software in India.

Rendering technical support to the products supplied by the parent/ Group companies.

A branch office is not allowed to carry out manufacturing, processing activities directly/indirectly. Branch Office will have to submit activity certificate from a Chartered Accountant on an annual basis to Reserve Bank of India. Permission for setting up branch offices is granted by the Reserve Bank of India on a case-to-case basis. RBI normally, considers the operating history of the applicant company worldwide and its proposed activities in India for granting the approval. Branch offices established with the approval of RBI, may remit outside India profit of the branch, net of applicable Indian taxes and subject to RBI guidelines.

AS AN INDIAN COMPANY

A foreign company can commence operations in India through incorporation of a company under the provisions of the Indian companies Act, 1956. Foreign equity in such Indian companies can be up to 100% depending on the requirements of the foreign investor subject to any equity caps prescribed in respect of the areas of activities under the prevailing Foreign Direct Investment policy of the Government and receipt of requisite approvals. For registration as an Indian company and its incorporation, an application has to be filed with Registrar of Companies (ROC). Once a company has been duly registered and incorporated as an Indian company, it will be subject to same Indian laws and regulations as applicable to other domestic Indian companies.

JOINT VENTURE WITH AN INDIAN PARTNER/ESTABLISHMENT OF WOS

Foreign Companies can set up the operations in India by forging strategic alliances with Indian partners.

Setting up of operations through a joint venture may entail the following advantages for a foreign investor.

Established distribution/ marketing set up of the Indian partners.

Available financial resource of the Indian partner.

Established contacts of the Indian partner which help smoothen the process of setting up of operations.

FOREIGN INVESTMENTS are approved through two routes:

AUTOMATIC ROUTE

Indian companies can issue shares under the automatic route up to 100% of their paid capital except for those engaged in certain sectors. In certain other sector, the foreign investment is limited to a prescribed percentage ceiling. A company eligible to issue shares under the Automatic Route can receive foreign inward remittance and issue shares without obtaining any prior approval subject to certain reporting requirements.

GOVERNMENT APPROVAL

All other cases where the automatic route is not applicable require prior specific approval from the Foreign Investment Promotion Board.

Currently the FDI Policy in respect of trading is as follows:

a.	Wholesale / cash & carry trading	100%	Automatic route	Subject to guidelines for FDI in trading issued by Department of Industrial Policy & Promotion vide Press Note 3 (2006 Series).
b.	Trading for exports	100%	Automatic route	
c.	Trading of items sourced from small scale sector	100%	FIPB approval	
d.	Test marketing of such items for which a company has approval for manufacture	100%	FIPB approval	
e.	Single Brand product retailing	51%	FIPB approval	

USEFUL LINKS

Department of Industrial Policy and Promotion: www.dipp.gov.in
Reserve bank of India: www.rbi.org.in
Department of Economic Affairs: www.finmin.nic.in
Department of Company Affairs: www.dca.gov.in
Central Board of Direct Taxes: www.incometaxindia.gov.in
Central Board of Excise and Customs: www.cbec.gov.in