

ALMT Legal

ADVOCATES AND SOLICITORS



INDIAN EXPERTISE
INTERNATIONAL CAPABILITY

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Qualifications

- Bachelor of Commerce
- L.L.B., University of Bombay
- Solicitor, Bombay Incorporated Law Society
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Professional Appointments

- Bar Council of Maharashtra & Goa, India
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Foreign investment conditions

- ❑ 100% Automatic route (no approval from Government/Ministry)
- ❑ Sectoral cap on foreign investments
- ❑ Approval route (investment with Ministry approval)
- ❑ Prohibited sectors- lottery business, gambling, chit funds, nidhi company, trading in transferable development rights, manufacturing of cigars, cigarettes, tobacco & its substitutes.



Entry route: Company/ Limited Liability Partnership

Company/LLP

Minimum capital- None (in case of private co.)

Minimum number of Directors- 2 (private co.); 3 (public co.)

Partners LLP- 2 Designated Partners

Maximum number of Directors- 15

Director Identification Number (DIN)

Digital Signature Certificate (DSC)

Certificate of Incorporation (Col)

Permanent Account Number (PAN)

Tax Deduction Account Number (TAN)

Goods and Service Tax (GST) Registration

Entry routes: Liaison Office

❑ **Liaison Office-** A place of business to act as a channel of communication between the principal place of business or Head Office and entities in India but, which does not undertake any commercial/ trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel.

A. Permissible activities:

- Representing the parent company/group companies in India;
- Promoting export/import from/ to India;
- Promoting technical/ financial collaborations between parent/group companies and companies in India;
- Acting as a communication channel between the parent company and Indian companies.

Any other activities apart from the above, shall not be undertaken or carried on by the LO unless such activity has been specifically permitted by RBI.

Entry routes: Liaison Office

□ Eligibility criteria:

- A person residing outside India can establish an office in India if it has a profit-making track record during the immediately preceding 3 financial years in the home country and net worth of not less than USD 50,000 or its equivalent.
- In the event the person resident outside India is not financially sound and are subsidiaries of other companies, they may submit a Letter of Comfort from their parent company, subject to the condition that the parent company satisfies the prescribed criterion for net worth and profit stated above.

Entry routes: Branch Office

❑ **Branch Office** - Foreign companies engaged in manufacturing and trading activities abroad are allowed to set up Branch Offices in India.

A. Permissible activities:

- Export/import of goods.
- Rendering professional or consultancy services.
- Carrying out research work in which the parent company is engaged.
- Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- Representing the parent company in India and acting as buying/ selling agent in India.
- Rendering services in Information Technology and development of software in India.
- Rendering technical support to the products supplied by parent/group companies.
- Representing a foreign airline/shipping company.

Entry routes: Branch Office

B. Eligibility criteria:

- A person residing outside India can establish a branch office in India if it has a profit-making track record during the immediately preceding 5 financial years in the home country and net worth of not less than USD 100,000 or its equivalent.
- In the event the person resident outside India is not financially sound and are subsidiaries of other companies, they may submit a Letter of Comfort from their parent company, subject to the condition that the parent company satisfies the prescribed criterion for net worth and profit stated above.

Entry routes: Project Office

❑ **Project Office** - A place of business to represent the interests of the foreign company executing a project in India but excludes a Liaison Office.

A. Permitted activity:

A foreign company may open a Project Office in India provided it has secured from an Indian company, a contract to execute a project in India and:

- The project is funded directly by inward remittance from abroad; or
- The project has been cleared by an appropriate authority; or
- The project is funded by a bilateral or multilateral international financing agency; or
- A company/entity in India awarding the contract, has been granted term loan by a Public Financial Institution or a bank in India for the project.

B. Eligibility criteria: NIL

Risks of Exporting to India

- Exporting an item which is banned in India.
- Entering the wrong Indian Trade Classification (Harmonised System).
- Not obtaining correct and completed Bill of Lading from the shipping line/freight forwarder.
- Not carrying a copy of Bill of Lading/Lorry receipt or commercial invoice cum packing list.
- Should be diligent when entering into the sales contract called Incoterms, which sets the responsibilities of both buyer and seller.

Things to keep in mind

- ❑ Before exporting, ensure the following mandatory documents are ready:
 - Bill of lading/airway bill;
 - Commercial invoice cum Packing List;
 - Bill of Entry.
- ❑ India maintains national harmonized system of goods (8-digit level) for import & export of goods.
- ❑ Shareholders' / joint venture agreement in case of partnership with Indian partner
- ❑ Trademark/ IP licensing agreement
- ❑ Trademark application for IP protection in India
- ❑ Non-disclosure agreement while sharing technology.
- ❑ Contract manufacturing to make sure that the payment and quality of the product is clearly set-out.
- ❑ Franchise agreement/ Exclusive Distributor with Indian entity if the Indian party is engaged to run the business in India

Payment methods

- **Clean Payments:** Bank's role is limited to clearing the payment only.
 - Advance Payment : Exporter will ship the goods after receiving payment from the importer.
 - Open Account: Importer will pay the exporter after receipt of goods

- **Payment Collection of Bills:** The exporter entrusts banks with handling of commercial and often financial documents and gives the banks necessary instructions concerning the release of these documents to the Importer.
 - Documents Against Payment - Documents are released to the importer only when the payment has been done.
 - Documents Against Acceptance - Documents are released to the importer only against acceptance of a draft.

Payment methods

- **Letter of Credit L/c:** Letter of Credit (i.e., Documentary Credit) is a written undertaking by the importers bank known as the issuing bank on behalf of its customer, the importer (applicant), promising to effect payment in favour of the exporter (beneficiary) up to a stated sum of money, within a prescribed time limit and against stipulated documents.

Various types of L/c :

- Revocable & Irrevocable L/c: Revocable Letter of Credit can be cancelled without exporter's consent. Irrevocable L/c can not be cancelled/ amended without the consent of all parties including the exporter.
- Sight & Time L/c: If payment is to be made at the time of presenting the document then it is referred as the Sight Letter of Credit. Banks are allowed to take the necessary time required to check the documents. If payment is to be made after the lapse of a particular time period as stated in the draft then it is referred as the Term Letter of Credit.
- Confirmed L/c: The Confirming Bank, adds its commitment to that of the issuing bank. By adding its commitment, the Confirming Bank takes the responsibility of claim under the letter of credit, assuming all terms and conditions of the letter of credit are met.

Legal changes to exporting to India 2020

- ❑ 24X7 Custom clearance at all custom formations to avoid any supply chain disruption was extended till end of 30th June 2020. Designated sea-ports/ airports already under 24X7 operations will continue to function even after 30th June 2020.
- ❑ Dedicated single window COVID-19 helpdesk for EXIM trade has been created on the website of Central Board of Indirect Taxes and Customs (“CBIC”) to facilitate quick resolution of issue(s) faced by importer/exporter.
- ❑ A nodal officer is designated in each customs zone of India who can be approached for any issue pertaining to clearance of cargo.
- ❑ Waiver of late fee for delays in filing Bills of Entry.
- ❑ To make import clearance process more contact less, CBIC has launched e-delivery of PDF based gatepass and Out of Charge copy of Bill of Entry to custom brokers/importers across India from 15.04.2020.
- ❑ Foreign Trade Policy 2015-20, extended up to March 2021.

EXPERIENCE
EXPERTISE
EXCELLENCE



PRACTICE AREAS (LEGAL)

- Aviation & Shipping
- Banking and Finance
- Capital Markets
- Corporate and Commercial
- Employment and Labour
- FEMA
- Investment Funds
- Intellectual Property
- Litigation, Arbitration and Alternate Dispute Resolution
- Mergers & Acquisitions
- Private Equity & Venture Capital
- Property and Real Estate
- Wills, Trust and Succession Planning
- Tax (Direct and Indirect)
- Telecom, Media and Technology

OUR
EXPERIENCE
SPEAKS
FOR
US

Chambers & Partners (Asia Pacific 2020)

- Recommended for corporate M&A, employment and private equity

Asialaw Profiles (2021 Edition)

- Recommended for energy, infrastructure, real estate, capital markets, construction, corporate and M&A, labour and employment, private equity, and taxation

Legal 500 (Asia Pacific 2020)

- Recommends ALMT Legal for banking & finance, capital markets, corporate and M&A, dispute resolution, intellectual property, investment funds, labour & employment, real estate and construction, shipping, TMT, taxation law and aviation

India Business Law Journal

- Awarded ALMT Legal for its shipping (2020) and employment and shipping practice (2019)
- Highly recommends ALMT Legal for corporate/M&A, construction & real estate, private equity, shipping, maritime and aviation - 2019

IFLR 1000 (Asia Pacific 2021 Edition)

- Ranked for banking, private equity, project finance, M&A and project development (power)

