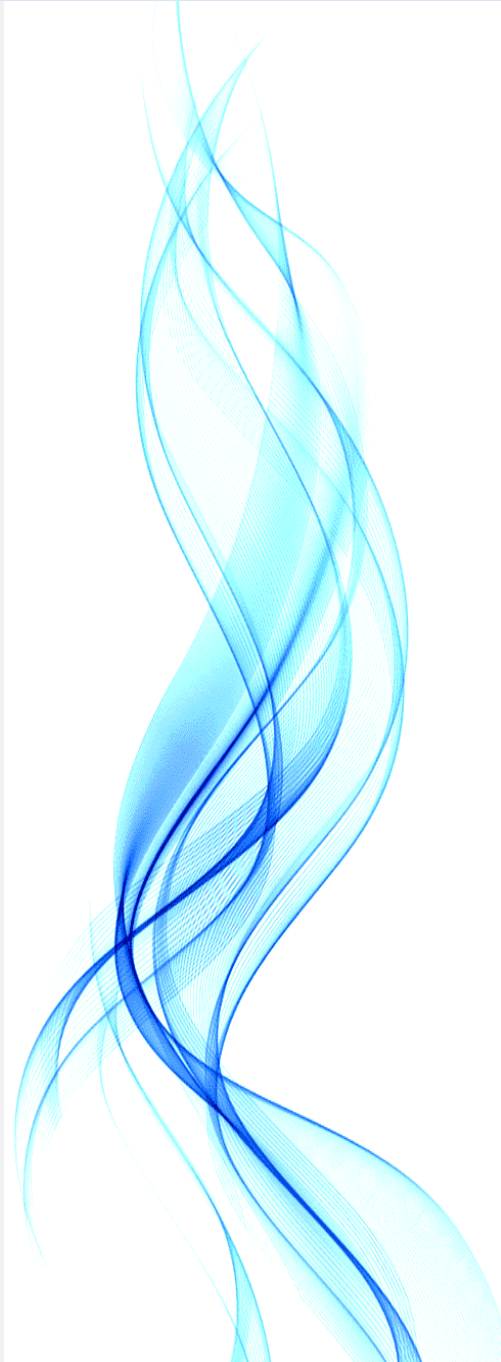




# DSN LEGAL



## **FOREIGN COMPANIES, WHOLLY OWNED SUBSIDIARIES & JOINT VENTURES – WAYS OF DOING BUSINESS IN INDIA**

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**VOL-I/DSN/CL/01; 3<sup>rd</sup> May, 2020**

Under prevailing legal framework, Foreign Companies, have three options of corporate frameworks, to carry on their business activities in India. These are: (a) By establishing a place of its business in India and registration of Foreign company in terms of the Companies (Registration of Foreign Company) Rules, 2014; 2); (b) By incorporating a wholly owned subsidiary (WOS); (c) By Joint Venture (JV).

### **MODEL-I**

#### **REGISTRATION OF A FOREIGN COMPANY IN INDIA ON ESTABLISHMENT OF ITS PLACE OF BUSINESS IN INDIA**

- A foreign company can carry on its business in India, on its own, by establishing its place of business in India. However, within 30 days of establishment of its place of business in India, a foreign company shall comply with the provisions of the Companies (Registration of Foreign Company) Rules, 2014 which provides the regulatory framework for registration of foreign companies in India and other related compliances. The required documents for registration of a foreign company in India are enlisted under section 380 of the Companies Act, 2013 and the Companies (Registration of Foreign Company) Rules, 2014. Some of the important compliances are listed below:

<b>Rule 3</b>	Every foreign company shall file form FC-1 with the RoC with required documents (Sec. 380 compliance) and shall also provide a list of directors and secretary of such company.
<b>Rule 7</b>	Every Foreign company shall file annual return with the RoC in form FC-4 within 2 months from the last day of its financial year
<i>Fee to be paid for complying with above rules is prescribed under the Companies (Registration Offices and Fees) Rules, 2014</i>	

### **MODEL – II**

#### **FOREIGN COMPANY INCORPORATING A ‘WOS’**

- A wholly owned subsidiary (WOS) is a company whose 100% of the stock is controlled by another company. Foreign companies can form a WOS in sectors where 100% FDI is allowed under the automatic route as per the FDI regulations. A foreign company can incorporate a WOS under the Companies Act, 2013 and Companies (Incorporation) Rules, 2014 shall apply. There shall be a minimum of 2 directors and atleast one resident director. A foreign company can also form WOS by acquiring shares of Indian company in accordance with the SEBI (Substantial Acquisition of shares and Takeover) Regulations, 2018.
- Process of Incorporation of WOS

<b>1. Name Approval:</b> - SPICe+ Form (Part-A); alongwith TM registrations
<b>2. Incorporation:</b> - SPICe Form (INC-32) + eMOA (INC-33) + eAOA (INC-34) - AGILE Form for Professional Tax, ESIC, etc.

**3. Documents/informations required:**

- Apostille/Notarized Copy of Foreign Co.'s resolution mentioning the name of ARs and the no. of subscription of shares
- Apostille/Notarized Copy of ID Proof of ARs
- Apostille/Notarized Copy of the Charter of Foreign Co.
- Name/Details of one mandatory resident Director
- Name of Nominee

**4. Some important post-incorporation compliances:**

- FIRC Certificate from the bank as per the FDI guidelines
- FCGPR with RBI as per the FDI guidelines

**MODEL – III****FOREIGN COMPANY ENTERING INTO A 'JV'**

- Joint venture (JV) is a concept describing an arrangement between two or more business entities whereby they do business together in furtherance of a common business goal or objective. A JV can be an Equity/Corporate Joint Venture, where a foreign business entity holds stake in a domestic company (JV Co.) or a Limited Liability Partnership (JV LLP). A JV can be a Contractual JV/Strategic Alliance, which is purely a relationship in terms of JV Contract. A Contractual JV is governed by terms of the contract which sets out the rights, obligations, terms related to profit sharing, etc. of parties under such contractual JV. JV Co. and JV LLP are separate legal entities; whereas a JV partnership and Contractual JV are purely legal relationship. A JV company is not defined under the Act though its provisions apply to JV companies incorporated in India. Foreign companies can be party to a JV Co. in India. A JV Co. is governed by the JV Agreement, the MOA & AOA of such JV Co. and therefore these documents are required to be drafted with utmost care, and to be precise. FEMA Act and Regulations do apply. Procedure for incorporation of JV Co. and statutory/regulatory compliances are similar to those of a domestic company. Following are some important rules:

<b>Rule 9</b>	<b>Reservation of Name</b> For reservation and change of name file form SPICe+ (substituted by Amendment, 2020)
<b>Rule 13</b>	<b>Signing of MOA</b>
<b>Rule 14</b>	<b>Declaration by professionals</b> Sec. 7(1)(b) compliance; in form INC-8
<b>Rule 17</b>	<b>Particulars of 1<sup>st</sup> Directors and written consent</b> In Form DIR-12
<b>Rule 18</b>	<b>Certificate of Incorporation</b> RoC issues in Form INC-11
<b>Rule 25</b>	<b>Verification of Registered Address</b> File form INC-22
<b>Rule 33</b>	<b>Alteration of AOA</b>
<b>Rule 38</b>	<b>Simplified Performa for Incorporating Company electronically</b> (inserted by 4 <sup>th</sup> Amendment 2016) SPICe (INC 32) + eMOA (INC-33) + eAOA (INC-34) Accompanied with Form AGILE (INC-35) (inserted by 3 <sup>rd</sup> Amendment, 2019)

## Steps for setting up (Incorporation) a JV Co.

### Step 1

#### **Drafting Governing Documents**

- Term Sheet/Letter of Intent
- Memorandum of Association
- Articles of Association
- Joint Venture Agreement/Shareholder Agreement

### Step 2

#### **Incorporation Compliances**

- Reserve Name: RUN (MCA portal) [*or in SPICe+ INC-32*]
- Application for Incorporation: SPICe (INC-32) + eMOA (INC-33) + eAOA (INC-33) alongwith Form AGILE (for GST, ESIC, etc)

### Step 3

#### **Post Incorporation Compliances**

- First Board Meeting within 30 days [Section 173(1)]
- Appointment of Auditor within 30 days at 1<sup>st</sup> Board Meeting; if Board of Directors fail to appoint director, shareholders will have to appoint an auditor within 90 days from incorporation by calling an EOGM [Section 139(1)]
- JV Co. shall have a Registered Office within 15 days and verify in form INC-22 within 30 days from incorporation
- Introduction of Share Capital by all shareholders through cheque or online transfer within 60 days from incorporation
- Issue share certificates and pay stamp duty upon issuance of share certificate within 60 days from incorporation [Section 56]
- Private companies shall obtain certificate of Commencement of Business within 180 days by filing e-Form 20A [Companies (Amendment) Ordinance, 2018];
- Open Bank Account
- Professional Tax
- Compliances related to Stationary