



Investing in Asia Pacific 2015: India

Australia | China | Hong Kong | India | Indonesia | Japan | Korea | Malaysia | Singapore | Taiwan | Thailand | Vietnam

TABLE OF CONTENTS

- 5 Introduction
- 7 About Crowe Horwath International
- 8 Establishing the business entity
- 10 Tax information
- 11 IPO quick facts
- 12 Human resource requirements
- 13 Withdrawal procedures

INTRODUCTION

Welcome to the Crowe Horwath International “Investing in Asia Pacific 2015: India” guidebook.

This guide forms a part of the “Investing in Asia Pacific 2015” series and provides a quick reference for those interested in investing in India.

While it is not exhaustive, this guide aims to answer some of the key questions that may arise. When specific issues arise in practice, it will often be necessary to consider the relevant laws and regulations and to obtain appropriate professional advice.

The guidebook will cover five main topics as follows:

- Establishing the business entity
- Tax information
- IPO quick facts
- Human resource requirements
- Withdrawal procedures

ABOUT CROWE HORWATH INTERNATIONAL

The Crowe Horwath network consists of more than 200 independent accounting and advisory services firms and in over 120 countries around the world.

Crowe Horwath International member firms are known for their local knowledge, expertise, and experience balanced by an international reputation for the highest quality in audit, tax, advisory and risk services. They are unified through a shared commitment for impeccable quality service, highly integrated service delivery processes and a common set of core values and management philosophies that guide their decisions daily.

This unique combination of talent provides Crowe Horwath International the worldwide capabilities of a highly integrated network to deliver value to multinational clients doing business across borders.



INDIA

Establishing the business entity

Contact

Vijay P. Thacker
MANAGING PARTNER
vijay.thacker@
crowehorwath.in

+91 22 6631 1480

1105 Embassy Centre
207 Nariman Point
Mumbai 400 021

1. Formation and costs

Company

- Requires approval of Registrar of Companies (ROC), Director Identification Number and Digital Signature pre-requisites.
- FDI under automatic route requires reporting to Reserve Bank of India (RBI) through an Indian commercial bank which acts as the Authorised Dealer (AD), within stipulated timelines; this is important to ensure ability to remit dividends and sale proceeds.
- FDI under restricted route requires Foreign Investment Promotion Board (FIPB) prior permission. Company formation can take up to six (6) weeks, particularly if foreign directors are involved. FIPB approval may take two (2) - three (3) months.
- Audited statements are to be reported annually with ROC, RBI and the tax authorities. Cost of registration (US\$ 1,000 - US\$ 2,000 with minimum authorized share capital) and annual cost (approx. US\$ 500 - US\$ 1,000 statutory filing fee) and professional fees.

Branch

- Requires RBI approval for each branch and registration with ROC. Branch can operate from the approved branch office.
- Approval can take up to six (6) weeks.

Branch approval typically requires:

- a. profit making track record for immediately preceding five (5) financial years and
- b. US\$ 100,000 net worth, both, in home country.
 - Application to include latest audited financial statements and Certificate of Incorporation issued in home country.
 - Annual audit, tax filings and reporting are required.

Representative office

- a. profit making track record for three (3) immediately preceding financial years and
- b. US\$ 50,000 net worth, in home country.
 - Only liaison activities permitted.
 - Cannot undertake income earning activity in India.
 - Expenses are to be met out of head office.
 - Certified Annual Activity Certificate (in Form 49C) to be filed with RBI.
 - Required to register with ROC and file annual audited accounts.
 - Cost of registration and annual cost payable to government are nominal (approx. US\$ 1,000-US\$ 2,000 annually).

2. Investment incentives

Company

Tax holidays, investment allowances, export benefits, subsidy in certain industrial areas. Various central and state government departments implement various schemes. Limited direct tax benefits available for future years.

Branch

Same as for company.

Representative office

Not applicable as revenue earning activities are not permitted.

3. Foreign ownership restrictions

Company

100% foreign ownership under automatic route permitted for sectors other than defence production, air transport, banking, broadcasting, commodity markets, insurance, petroleum refining, print media, telecommunications, single brand trading & multi brand trading investment; subject to specific compliance procedures 26% to 74% for sectors listed above; shareholding exceeding specific cap needs special approval.

4. Work permits and visas

Company

- Similar to procedures followed internationally.
- Minimum annual salary of US\$ 25,000.
- Process may take up to 15 - 30 days.
- Contribution to Provident Fund requirement might arise.

Branch

Same as for company.

Representative office

Same as for company.

5. Accounting standards and audit requirements

- Accounting standards are in process of convergence to IFRS. However, largely similar to IAS.
- Financial year for tax purposes is 1st April to 31st March. Company can have different financial year under the Companies Act requirements.
- Compulsory annual audit for shareholder reporting and ROC filing. Tax audit required if revenue threshold exceeded (INR 10 millions for business; INR 2.5 million for professionals). Transfer pricing and other audit reports may be required for tax purposes.

Branch

Same as for company.

Representative office

Same as for company.

6. Residential directors / promoters requirements

Company

Can be Indian or foreign residents. Must obtain Digital Signature Certificate and Director Identification Number. As per the Companies Act 2013 one Director must be a resident Director. (Resident director means that the person should have been in India for 182 days or more in the previous year.)

Branch

Same as for company.

Representative Office

Not required. Changes in directorship of parent company must be reported to ROC and RBI.

7. Foreign ownership over tangible assets

Company

Acquisition of tangible assets by a domestic company is permissible.

Branch

Branch can acquire immovable property which is necessary for or incidental to carrying on branch activity. The payment for acquisition should be made from foreign inward remittance through proper banking channels. A declaration in form IPI is to be filed with RBI within 90 days from acquisition date. The property can be mortgaged with a bank as security for borrowings. On sale or closure of branch, the sale proceeds from property can be repatriated only with the prior approval of RBI.

Representative Office

RO can acquire property by way of lease not exceeding five (5) years.

8. Other information

www.mca.gov.in

www.rbi.org.in

Tax information

1. Tax rates on corporate income

Income tax Rate

- Domestic Companies – 33.063%, Foreign Companies - 42.024%; if the taxable income exceed INR 10 million. 30.9% and 41.2% respectively if taxable income does not exceed INR 10 million.
- Domestic Companies – 34.608%, Foreign Companies - 43.26%; if the taxable income exceed INR 100 million.

Tax rate on Book Profit (Minimum Alternate Tax):

- Domestic Companies - 19.055% , Foreign Companies - 19.055 %if the taxable income does not exceed INR 10 million.
- Domestic Companies - 20.39% Foreign Companies - 19.436% if the taxable income exceeds INR 10 million but does not exceed INR 100 million.
- Domestic Companies – 21.34% Foreign Companies - 20.00775% if the taxable income exceeds INR 100 million.

Tax payable for a year will be higher of tax on profit per normal tax calculations or tax on book profit. Tax paid on book profit is eligible for future credits up to ten (10) years from the end of the assessment year during which the credit was eligible to be carried forward.

Service Tax 14.00% Inclusive of Education cess for most of the services. Abatement for certain services.

Dividend Distribution Tax - 20.36 % including surcharge and cess as per the present budget w.e.f 01/04/2015

2. Other taxes

Good and Services Tax (GST)	GST is in the process of implementation, moving the present multi disciplinary indirect taxes of transferring current indirect tax laws to GST.
Value Added Tax (VAT)	Ranging from 5.5% to 14.5%, based on classification of goods under the provision of respective state VAT Act. Some basic commodities are exempted.
Other taxes	Certain states levy special taxes on manufacture and sale. Custom duty is levied on import of goods.
Central Excise Duty (ED)	12.5% for most of the manufactured goods. Some of the basic commodities are exempted. Tax is applicable on goods manufactured.
Service Tax	14% for most of the services. Abatement for certain services. Tax exemption is available for goods / services exported and realized in foreign currency

3. Branch income

Branch income is taxable at income tax rates applicable to foreign company viz, 42.024%. Profits can be repatriated to home country.

4. Income determination

- Inventory valuation at lower of cost or NRV. (FIFO and Weighted Avg only).
- Long Term Capital Gains Tax at 10 % without indexation; 20% with indexation.
- Short term Capital Gains Tax at 15% / 30% in different cases.
- Foreign Income = Included in Total Income, tax credits under DTAA permissible.
- Intercompany Dividends = Dividend Distribution tax applicable on distribution of dividend. Dividends are exempted in the hands of the recipient.
- Stock Dividends = Dividend Distribution tax applicable on distribution of dividend. Dividends are exempted in the hands of the recipient.
- Buy Back of stock taxable as distributed income and the company needs to pay tax at the rate of 23.072% w.e.f 01/04/2015 and the same is exempt in the hands of the shareholder.

5. Deductions

- Depreciation: Depreciation under WDV method at rates stipulated for various blocks of assets.
- Depletion: No deduction allowed other than depreciation on block of assets basis.
- Net Operating Losses: Business Loss that can be carried forward and set off within eight (8) years.
- The Depreciation loss carried has no time limit.

6. Group taxation policies

Entities are taxed individually; the concept of group taxation is not recognized in India.

7. Tax incentives

- Most tax incentives have withdrawn, including a major incentive for exemption of export profits.
- The limited remaining incentives are for companies located in Special Economic Zone and deriving its income from manufacture and export of goods / export of services.
- Enterprises engaged in providing certain infrastructure facilities.
- Enterprises engaged in providing telecommunication services.
- Enterprises engaged in developing industrial parks.
- Enterprises engaged in hotel industry operating hotels at specified locations.
- Certain states are promoting industries by providing indirect tax incentives for setting up industries in the respective states.

8. Withholding tax

■ Dividend*	Nil. Dividend Distribution Tax alternatively applicable at rate of 20.36 %)
■ Interest*	Lower of 31.518% or DTAA rate, Includes surcharge @ 2% and cess @ 3%
■ Royalties*	Lower of 10.506% (Includes surcharge @ 2% and cess @ 3%) or DTAA rate,
■ Technical fee*	Lower of 10.506% (Includes surcharge @ 2% and cess @ 3%) or DTAA rate
■ Branch profit*	Nil. (Income tax at rate of 42.024% is payable on income earned in India)

* The above concessional can be availed only if the receiver has PAN in India.

9. Tax administration

Returns for each tax year (1 April to 31 March) to be filed by September or within 30th November if the Transfer pricing is applicable.

Payment of tax - Advance tax to be paid in instalments:

- 15% of tax (as estimated) by June 15
- 45% of tax by Sep 15
- 75% of tax by Dec 15
- 100% of tax by Mar 15

Interest levied on shortfall of taxes is at 1% per month.

10. Taxable incomes for non-residential companies and individuals

Incomes received or deemed to be received or accrued or deemed to be accrued in India are taxed at rates applicable to foreign company. However, benefits under DTAA and other special rates of Income Tax for certain heads of income may be available.

IPO quick facts

1. Bourses in the country

- a. National Stock Exchange of India (NSE).
- b. Bombay Stock Exchange of India (SENSEX).

2. Admission requirements

National Stock Exchange of India (NSE)

a. Company size

Issue size of INR10 Crores and minimum post issue market capitalization of INR 25 Crores.

b. Trading record

Three (3) years.

c. Public shareholding requirement

Not applicable.

Bombay Stock Exchange of India (SENSEX)

a. Company size

Issue size of INR 10 Crores and minimum post issue market capitalization of INR 25 Crores.

b. Trading record

Three (3) years.

c. Public shareholding requirement

Not applicable.

3. Typical issuance size

National Stock Exchange of India (NSE): INR10 Crores

Bombay Stock Exchange of India (SENSEX): INR10 Crores for Large Caps and INR 3.00 Crores for Small Caps

4. Securities quoted allowed in foreign currency

No.

5. Requirements for the appointment of a resident / local director and board composition

Minimum three (3) directors. One third of the board shall be independent directors, Chairman of the audit committee and two-thirds of its members to be independent directors.

6. Methods of offer and restrictions

Book building process followed in BSE.

7. Approving authorities

Securities and Exchange Board of India.

8. Estimated cost involved

Listing fee of INR 20,000 in BSE and Listing fee of INR 50,000 NSE. Other costs depend on the size of the issue.

9. Restriction on secondary listing or dual listing

Follow on public offering and rights issue permitted.

10. Language required for:

- a. Prospectus: English
- b. Annual reports: English
- c. Audit reports: English

11. Audit opinion required for:

- a. IPO
- b. After IPO

12. Requirements of accounting auditors to be appointed

Foreign auditors are not allowed to sign the reports. Indian audit firms to be appointed.

13. Other information

www.bseindia.com

www.nseindia.com

www.investor.sebi.gov.in

Human resource requirements

1. Special labor standards to take heed of

Labor regulations are governed by several central government and state government regulations.

2. Social welfare: insurance, pension, etc

Provident Fund Act - Employer is required to make a contribution of 13.61% of employee' basic salary component to the credit PF Organisation. Provident Fund provisions mandatory to international workers.

Employee State Insurance Act (ESI) - Employer to contribute 4.75% of gross salary to credit of ESI regulator. Employees drawing less than INR 15,000 of gross salary covered.

3. Requirements for retirement benefits

Gratuity - 15 days of basic salary for every year of completed service, subject to employee completing five (5) years of service with the company. Maximum tax-free contribution of US\$ 16,130 (Calculated at exchange rate of Rs. 62 per US\$ 1).

4. Legal annual leave and public holidays

One (1) day of privilege leave for every 25 days worked.

5. Brief information on labor unions

Labour unions are generally found in companies engaged in manufacturing of goods and having strength greater than 500.

6. Other information

www.epfindia.com
www.esic.nic.in
www.labour.nic.in

Withdrawal procedures

1. Company: legal procedures required for liquidation

- For closely controlled companies - Application for striking off company name can be to ROC if certain conditions are satisfied.
- Voluntary Liquidation by Shareholders and Liquidation by Creditors. Liquidation procedures can take anywhere between three (3) months to a couple of years.

2. Company: tax requirements

- All pending tax assessments must be completed.
- Registrations are to be surrendered.

3. Branch: legal procedures required for closing branch

- Annual Activity Certificate.
- Auditor's Report to be filed with RBI.
- Tax Clearance Certificate from Income
- Tax Authority. Report from ROC.
- Confirmation from parent company on no existing legal proceedings.

4. Branch: tax requirements

- Tax Clearance Certificate from Income Tax Authority.

5. Representative office: legal procedures required for closing office

Same as for branch.

6. Representative office: any tax requirements

Same as for branch.

7. Other information

www.incometaxindia.gov.in



www.crowehorwath.net

Crowe Horwath International is a leading international network of separate and independent accounting and consulting firms that may be licensed to use "Crowe Horwath" or "Horwath" in connection with the provision of accounting, auditing, tax, consulting or other professional services to their clients. Crowe Horwath International itself is a nonpracticing entity and does not provide professional services in its own right. Neither Crowe Horwath International nor any member is liable or responsible for the professional services performed by any other member.