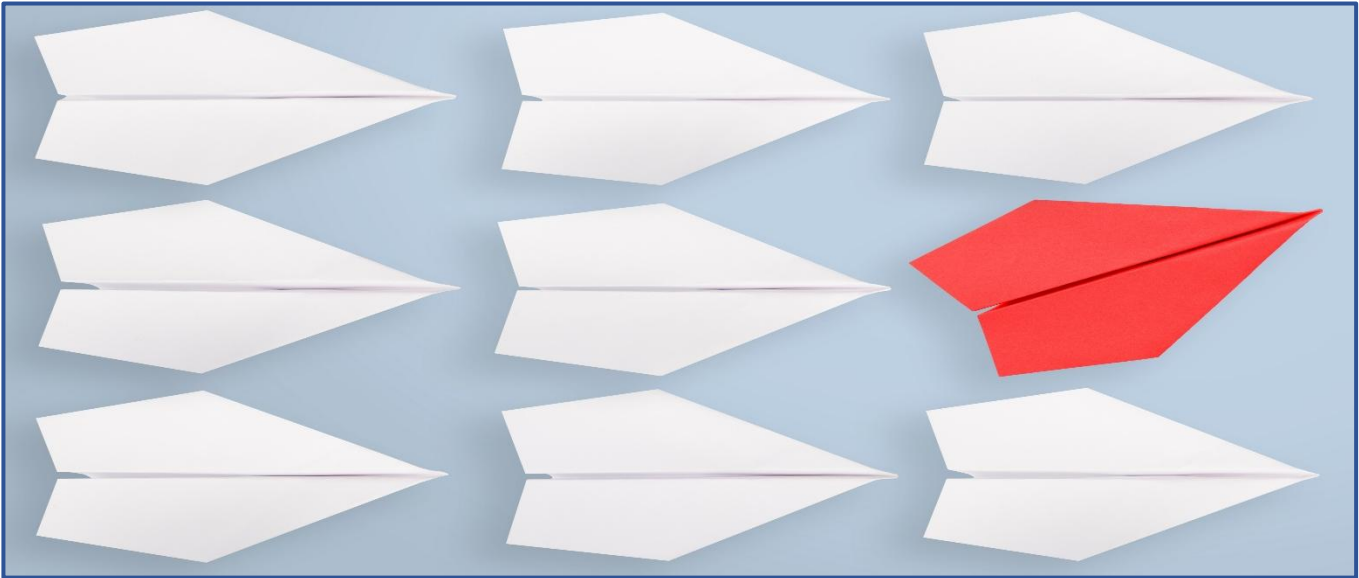


NEWS ALERT

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MCA releases FAQs for Registration of Foreign Companies and Subsidiaries of Foreign Body Corporates

The Ministry of Corporate Affairs ('MCA') has released a comprehensive set of Frequently Asked Questions ('FAQs') on the registration and compliance framework applicable to foreign companies operating in India and Indian subsidiaries of foreign body corporates. The FAQs provide important clarifications regarding registration requirements, filing obligations, name reservation, documentation standards, regulatory approvals and operational aspects relating to branch offices, liaison offices, project offices and Indian subsidiaries.

Some of the key clarifications issued by MCA are summarized below:

1. Registration and Ongoing Compliance for Foreign Companies

- Foreign companies operating in India must comply with prescribed MCA filing

requirements, including Form FC-1 for initial registration, Form FC-2 for subsequent changes and approvals and annual filings through Forms FC-3 and FC-4.

- MCA has also clarified that foreign entities seeking to establish a branch office in GIFT IFSC should obtain the necessary IFSCA approval before undertaking filings with the Registrar of Companies.

2. Permissible Activities and Validity of Various Establishments

- The FAQs reiterate the activities permissible for liaison offices, branch offices and project offices in India. Liaison offices may undertake representative and

promotional activities but cannot carry on commercial operations. Branch offices may engage in activities such as export-import facilitation, consultancy services, research, IT services and technical support activities, subject to applicable restrictions. Retail trading and manufacturing activities continue to remain prohibited for branch offices. Project offices may carry out only activities mentioned in the approval letter.

- The FAQ also clarifies that liaison office approvals are generally granted for an initial period of up to three years, project offices remain valid for the duration of the approved project, while branch offices generally do not have a prescribed validity period.

3. Name Reservation for Indian Subsidiaries

- MCA has clarified that the mere addition of the word 'India' or the name of an Indian State or city may not necessarily render a proposed company name distinguishable from an existing company name. The proposed name must satisfy both availability requirements and the similarity tests prescribed under Rules 8 and 8A of the Companies (Incorporation) Rules, 2014.
- Even where the foreign parent owns the relevant trademark or authorizes use of its name, the proposed subsidiary name must remain distinguishable from existing company names registered in India.

4. Documentation Standards, Authentication Requirements and Operational Aspects

- The FAQs provide comprehensive guidance on the documentation and certification framework applicable to foreign companies establishing a presence in India. MCA has clarified the requirements relating to authentication of overseas documents, notarization and apostille procedures, translation requirements and disclosures, thereby addressing several practical issues commonly faced by foreign entities during the registration process.
- Further, where notarization or standard authentication procedures are not feasible, MCA may examine such cases based on the specific facts and circumstances.
- MCA has clarified that the Companies Act, 2013 does not provide any specific validity period for notarised or apostilled documents. The validity, if any, is generally governed by the terms specified by the authority issuing the notarisation or apostille certificate.
- The FAQs reiterate that a branch office does not constitute a separate legal entity from the foreign company. Accordingly, contracts, obligations and employment arrangements entered by the branch office are effectively undertaken by the foreign company itself.

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Should you wish to discuss any of the above issues in detail or understand the applicability to your specific situation, please feel free to reach out to us on coe@jmpadvisors.in.

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