Guide

For

Creating a Global Structure using

Holding Company

Based in

Switzerland / Liechtenstein / Singapore

Focus – Indian Entrepreneurs

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Anil Chawla Law Associates LLP

Business Lawyers, Strategic Advisors and Insolvency Professionals

www.indialegalhelp.com

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Preface

Indian companies and entrepreneurs are now reaching a phase when they are ready for the global arena. While during the past three decades, Indian companies and entrepreneurs were happy to provide services, now they are launching products and are aiming to stand tall in the international market on their own legs.

As Indian companies and entrepreneurs go global, they are realizing that they need to reinvent themselves in terms of their operating structures. The issues that they are concerned with include the following: corporate tax, capital gains tax, appropriate centralized location for holding intellectual properties, international image of flagship company location, global brand identity, business friendly regime etc. A global structure centered on a holding company based abroad can be a good solution addressing almost all such issues in an optimum manner.

This Guide is in continuation of our popular **Guide for Indian Residents Wanting to Do Business Abroad** (available free at www.indialegalhelp.com).

While the earlier guide gives the essentials of Indian regulations for doing business abroad, this one is more advanced and is truly global in approach and perspective. It is likely to be most useful for businesses looking to service markets across the globe overcoming national and language barriers.

As more and more Indian entrepreneurs have been going global, Government of India has become aware of the move and has started looking at global companies of Indian entrepreneurs with an eye for taxing them. This has created new difficulties for Indian entrepreneurs. Of course, no obstacle is too big for an Indian entrepreneur. We are confident that with the grit, dynamism and visionary attitude of Indian entrepreneurs the day is not far when more and more Indian entrepreneurs will own and control global corporations.

We, Anil Chawla Law Associates LLP, share the Indian entrepreneur's love for challenges. We are an entrepreneur-driven law firm. We take a hardcore pragmatic perspective on every matter and aim to resolve problems for our clients. This Guide is part of our continuing passion to help Indian businesses grow and prosper.

Anil Chawla
Senior Partner, Anil Chawla Law Associates LLP

Glossary

ABOI	Active Business Outside India
ACRA	Accounting and Corporate Regulatory Authority
AEC	ASEAN Economic Community
ASEAN	Association of Southeast Asian Nations
BREXIT	British Exit
CEPA	Comprehensive Economic Partnership Agreement
CHF	Swiss Franc
Corp.	Corporation
DCP	Detailed Concept Paper
DTA	Double Taxation Agreement
EEA	European Economic Area
EFTA	European Free Trade Association
EU	European Union
EUR	Euro
GDP	Gross Domestic Product
HKD	Hong Kong Dollar
IMF	International Monetary Fund
IP	Intellectual Property
IPO	Initial Public Offering
IRAS	Inland Revenue Authority of Singapore
KYC	Know Your Customer
LLC	Limited Liability Company
LLP	Limited Liability Partnership
MD	Managing Director
NRIC	National Registration Identity Card
OECD	Organization for Economic Co-operation and Development
PLC	Public Limited Company
POEM	Place of Effective Management Rules
PRSI	Pay Related Social Insurance
Pte Ltd.	Private Limited

RMB	Renminbi or Chinese Yuan; also referred to as CNY; currency of People's Republic of China
SGD	Singapore Dollar
SME	Small and medium-sized enterprises
UK	United Kingdom
USD	United States Dollar
US	United States of America
VAT	Value Added Tax

1. Why Create a Global Structure?

During the past two and a half decades of liberalization, Indian entrepreneurs have slowly transformed themselves. In the past few years, the process of Indian entrepreneurs looking abroad for opportunities has gained strength. Indian businessmen are no longer content on only servicing the domestic market. They see the global arena as their sky and are eager to fly.

As Indian businesses move in different countries they realize that they need to turn local in each country where they wish to operate. Customers in USA want to buy from an American company; British clients trust only British companies; Chinese feel comfortable only if they are dealing with a Chinese company. This is to some extent a psychological and emotional issue, but it is also a practical issue involving language, currency, difficulties of cross-border banking transactions and understandings of local customs and culture. Indians with their history of tolerance, exposure to multiple cultures, religions and languages are best equipped to deal with these challenges.

The adage of "**Think Global Act Local**" is best suited for businessmen looking at global markets. An Indian entrepreneur seeking to target markets of many countries must present a local face in each country that he / she is operating in. So, there should preferably be a European company to sell to Europeans; a Chinese / Hong Kong company to sell in China; an American company selling in North America, and so on.

While putting forth such different local faces, often it makes no sense to continue to wear the Indian identity on the sleeve. Let us face it – India is not yet a strong positive brand in the globe. So, the local company, whether in China or Europe or USA or Brazil, should as far as possible not flaunt its Indian roots. The logic of this becomes more forceful when one realizes that venture capitalists are likely to give a higher valuation to a truly international DNA company compared to one that sounds distinctly Indian.

Having decided to create distinctly different identities of local operating companies in different countries, the next step is to create a common binder which will own and support the different operating companies. The common binder is in the form of a holding company, which owns all the operating companies.

It may be worthwhile to clarify here that it is not advisable for the entrepreneur (supposedly Indian citizen resident in India) to own all the different operating companies in his own personal name or in the name of a company in India. Some of the disadvantages of Indian personal / company ownership are as follows:

- Indian ownership (shareholders) can be a disadvantage due to open bias against Indians in some countries (like Pakistan and China) and due to hidden racism and subtle biases in other countries.

- Surpluses generated in one country will have to necessarily be routed through India before investing in any other country. This may often either be problematic due to Reserve Bank of India restrictions or due to high rate of taxation in India. India does not have capital account convertibility and managers of Indian banks mostly gape when faced with complex international money transfer transactions.

- In case of corporate veil being lifted in any country, the Indian entrepreneur will get exposed personally. To put it simply, suppose a criminal case is filed against your company in Brazil, you do not want to be facing the music personally. It is much better to let local Brazilian managers face the local law.

- Whole is greater than sum of parts. A holding company with operating subsidiaries in different countries will be an attractive proposition to investors / lenders. So, it may be possible to sell a part of the shares of the holding company to some investor without sacrificing control in either the holding company or in any of the subsidiaries. In case the shares of all operating companies are owned by an Indian individual it is unlikely that he / she can get a buyer for all the operating companies as a consolidated unit.

While the above disadvantages of ownership of operating companies through Indian individual or company are well known, the following advantages of a holding company global structure are less known.

- One may decide to at some stage sell off part or whole of the shares of one or more operative companies. In case the seller of shares is an Indian individual or company, the **capital gains tax** on such transactions will act as a dampener. A holding company located in an advantageous location can eliminate the need for paying capital gains tax and make higher funds available for growth. It may be mentioned here that **there is 10% (Ten per cent) capital gains tax in India on sale of listed securities held for more than twelve months and the capital gains tax is fifteen / twenty per cent on sale of share of unlisted companies** depending on whether the shares were held for short term or long term.

- Some intellectual properties (like brands, proprietary software, technology, know-how etc.) may be common goods among all operating companies spread across the globe. It is worthwhile to have the holding company own such **intellectual properties (IPs)** and then license them to individual operating companies at a fee / royalty. If the IPs are owned by an Indian person, all fees / royalties will attract stiff income tax rates applicable in India thereby reducing the funds available for growth. On the other hand if IPs are owned at a low or no tax location, the sums accumulated by way of fees / royalties can act as engine of growth for the group.

- Some common functions may be performed for all operating companies at a single location. For example, all operating companies across the world may use the services of Indian company for software development and engineering design may

be looked after by the operating company in Sweden. Such multi-location functions can help the group take advantage of strengths available in different countries. The pricing of **intra-group services** will be subject to relevant transfer pricing regulations. On the other hand, the group may follow the **IP licensing model**, wherein instead of sale of services from one operating company to another, all IPs (created by any operating company) are transferred to the holding company and the IPs are subsequently licensed to individual operating companies.

- A holding company located in a financial centre with full currency convertibility may have access to **cheaper funds** without the hassles of long-drawn sanctioning processes in most of Indian banks.

- State governments in India have been increasing **stamp duties** almost mindlessly over the past few years. In some large-ticket transactions, stamp duty can be a big irritant if not a real obstacle. Having ownership vested in a holding company based at a low/zero-stamp-duty location can be advantageous in some cases.

The above listing of advantages of holding company based global structure is indicative. Actual advantages that may be gained will depend on nature of business and design of the structure in each case. Surely, the advantages are strategic as well as from the point of view of taxation.

The advantages of holding company structure may well be nullified if the foreign holding company becomes liable for income tax in India. It is important to take due precautions and ensure that the foreign holding company does not fall foul of the new **Place of Effective Management Rules** issued by income tax authorities of India. It is important to also put a word of caution here. It is not advisable to create a global holding company structure purely as a tax benefit scheme. The holding company structure must make business sense in terms other than pure taxation. Governments across the world are not inclined to look too kindly at structures that are created purely for avoiding taxes. We need to always keep in view **Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting**.

In addition to above precautions that an entrepreneur needs to take, the entrepreneur needs to be mindful of initial cost as well as operating costs. It takes money to create and manage a global structure. Hence, one needs to be above a certain size to be able to take advantage of global structure. We shall discuss later about the costs of setting up and operating a sample global structure.

2. Key Considerations for Designing a Global Structure

Every business is unique. Hence, there cannot be one global structure that fits all. The structure for each business and entrepreneur must be custom designed keeping in view all its peculiarities and characteristics. The following are some of the key considerations from a business perspective for designing a global structure for any business / entrepreneur.

- **Markets** – The most important part of any business is its customers. Most companies make efforts to get as close to their customers as possible. So, if you have customers in East coast of USA, it often makes sense to have a company on the East coast to attend to customers there. This has emotive importance but it also has other more practical considerations. For example, transferring small sums, say less than USD 25, across borders may entail banking charges that may make the whole operation non-viable. So, one must get a **profile of present as well as potential customers**. The profile must be geographic as well as give an indication of other indicators like language, banking etc. In some cases, a market may be completely closed unless a local presence is created. For example, if your company does not have a local presence in China / Hong Kong and a bank account there, it may not be possible to do any business in China.

- **Availability of Key Resources** –Sometimes a global corporation will like to benefit from local resources available in some country or region. For example, many software companies choose Bengaluru because of the vast pool of software manpower available there. Finance is also a key resource for most businesses and, even though money flows across borders, finance is available more easily and cheaper in some locations.

- **Operating Costs** – Some locations have clear cost advantages and a global business must take advantage of lower costs to become more competitive and increase profits.

- **Travel Costs** – It is no longer possible to own a company in a country without ever visiting there. One has to visit the country for holding board meetings and in some cases shareholders' meetings. Some countries are difficult and expensive to travel to while some others are easy and economical. It is advisable to take the travel costs into consideration before deciding on any location.

In addition to the above business considerations, there are tax, legal and financial considerations which can be briefly summed up as follows:

- ❖ Local laws relating to foreign investment and repatriation of capital and profits

- ❖ Cost of setting up and operating a company / business entity

- ❖ Need for a resident director / local partner
- ❖ Corporate income tax
- ❖ Capital gains tax
- ❖ Tax on dividends
- ❖ Tax on capital
- ❖ Double Taxation Avoidance Treaties
- ❖ Other taxes such as VAT, withholding tax, stamp duty etc.
- ❖ Intellectual Property Laws
- ❖ Banking systems available in the country
- ❖ Corruption levels in the country
- ❖ Country's investment protection treaties
- ❖ Any other relevant laws, rules and regulations related to foreign / foreign owned companies

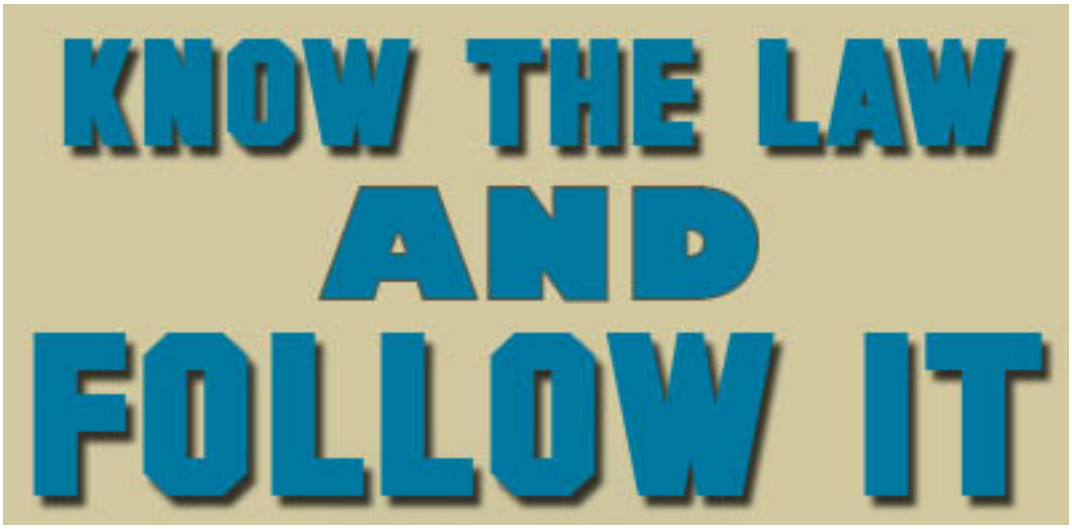
The entrepreneur is central to any business. Any planning of global structure must keep the entrepreneur and his / her future vision in mind. It may often be required to ask questions related to some or all of the following:

- ➢ Growth plans / ambitions
- ➢ Family situation
- ➢ Control and management style
- ➢ Succession / wealth distribution / exit plans

3. Following the Law

Before we proceed further, it is necessary to mention that everyone must comply strictly with all applicable laws. Citizens and residents of India must comply with the laws of India as well as with laws of all the countries where they incorporate, own and manage companies.

We, Anil Chawla Law Associates LLP, help our clients find creative and innovative solutions within the boundaries of relevant laws. The client must be committed to respecting the boundaries and limits set up by laws of the land, as applicable in various jurisdictions. We neither encourage nor hint about any crossing of the lines of law.



Some precautions that we often suggest to our clients are as follows:

- All transactions must be strictly **through normal banking channels** (No Hawala or informal channels).
- Funds for setting up a company or for legal fees associated with incorporation must be transferred through banking channels. Sometimes, when travelling to the country concerned one has the necessary cash in one's wallet and it seems such a bother to go for electronic transfer of small amounts. Nevertheless, one must resist the temptation and take the trouble of banking transfer.
- There should never be any wrong declaration of the purpose of transfer of funds. If funds are being transferred for one purpose, the same must be declared most truthfully and sincerely.
- All laws must be strictly followed to the letter.

- If any taxes are required to be paid in a country, one must pay the due amount without delay.
- Often, misinformed lawyers / bankers / chartered accountants suggest shortcuts or create obstacles that are not in line with legal provisions. **Be extremely cautious of such shortcuts**! Take good professional help to overcome the obstacles!
- Truthfulness and transparency combined with good legal guidance should be the guiding principles.
- Even though one takes all care as mentioned above, one must be discrete. No one should know more than one need know. And disclosures to statutory authorities must be exactly as required by law – neither more nor less.

4. RBI Regulations for Setting up a Holding Company

Reserve Bank of India does not permit Indian resident individuals to set up or acquire a holding company abroad. Relevant regulation reads as follows:

> 6. The JV or WOS, to be acquired / set up by a resident individual under this Schedule, shall be an operating entity only and no step down subsidiary is allowed to be acquired or set up by the JV or WOS.

The above is from the following regulation:

Reserve Bank of India
Foreign Exchange Department
Central Office,
Mumbai-400 001

Notification No. FEMA.263/RB-2013 dated March 05, 2013

Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2013

Key points about the above archaic regulation are as follows:

a) Restriction applies only to individuals resident in India. It does not apply to Indian companies. So, if an Indian company is setting up a holding company or is acquiring a company which will act as a holding company, the restriction does not apply.

b) The restriction is applicable only for setting up or acquiring a JV or WOS. In other words, the restriction does not apply to purchasing some shares of a foreign company which is acting as a holding company. A holding company may be set up by an Indian company and subsequently Indian resident individuals may buy equity shares of the said holding company.

c) There is no restriction to extending loans to a holding company abroad. A holding company may be set up by either an Indian company or by non-resident persons. Subsequently, the funds required by the holding company for investing in subsidiaries may come as loans from Indian resident shareholders.

It can be said that the above regulation poses a hurdle in the path of Indian resident individuals to set up a holding company abroad. The hurdle is not insurmountable.

5. Place of Effective Management Rules

Government of India believes in maximizing its revenue by all means. Before 1 April 2017, foreign companies were not subject to Indian income tax. However, the position has now changed. There are situations when a foreign company may be subject to Indian income tax.

Section 6(3) of Income Tax Act, 1961 was modified by Finance Act, 2016 (effective from 1 April 2017) to bring under Indian tax net all foreign companies whose "place of effective management" (POEM) is in India. Section 6(3) of Income Tax Act reads as follows:

[(3) A company is said to be resident in India in any previous year, if--

(i) it is an Indian company; or

(ii) its place of effective management, in that year, is in India.

Explanation.--For the purposes of this clause "place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole, are in substance made.]

Subsequently, Central Board of Direct Taxes (**CBDT**) has issued Guiding Principles for Determination of Place of Effective Management.

Circular No. 06 of 2017

F. No. 142/11/2015-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
******

Dated: 24th January, 2017

Subject: Guiding Principles for determination of Place of Effective Management (POEM) of a Company.

POEM Guidelines read with section 6(3) of Income Tax Act have made all foreign companies set up by Indian entrepreneurs subject to the risk of being taxed under Indian income tax law. Surely, no entrepreneur will like his / her company in a foreign country being made to pay steep rates of Indian income tax (in addition to local taxes of the host country).

This is a challenging situation, which makes life difficult for Indian entrepreneurs and increases costs of operating a company outside India. But, with the right legal support, the challenge can be met and is certainly not impossible.

Before taking up POEM guidelines, let us look at the following clarification issued by Ministry of Finance, Government of India.

Dated 23rd February, 2017

Subject: Clarification for determination of Place of Effective Management (POEM) of a company, other than an Indian company-reg.

The concept of POEM for deciding the residential status of a company, other than an Indian company, was introduced by the Finance Act, 2015. The existing provision of clause (ii) of sub section (3) of section 6 of the Income-tax Act, 1961 (the Act) shall come into effect from 1st April, 2017 and accordingly, applies to Assessment Year 2017-18 and subsequent years. Guiding Principles for determining POEM of a company were issued by Circular No. 6 of 2017 on 24th January, 2017. Press Release on POEM guidelines dated 24th January, 2017 has, *inter alia*, stated that the POEM guidelines shall not apply to a company having turnover or gross receipts of Rs. 50 crores or less in a financial year.

2. In view of above, it is clarified that existing provision of clause (ii) of sub section (3) of section 6 of the Act, shall not apply to a company having turnover or gross receipts of Rs. 50 crores or less in a financial year.

As per the above clarification, **a foreign company with a turnover less than Rs. 500 million in a financial year (April to March) will not be covered by POEM Guidelines**.

POEM Guidelines have introduced a new concept in the already complex scheme of Indian income tax. The concept is called "**Active Business Outside India**" (ABOI). ABOI is defined as follows:

(a) A company shall be said to be engaged in "active business outside India" if the passive income is not more than 50% of its total income; and

(i) less than 50% of its total assets are situated in India; and

(ii) less than 50% of total number of employees are situated in India or are resident in India; and

(iii) the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

Explanation: For the aforesaid purpose, -

(A) the income shall be, -

(a) as computed for tax purpose in accordance with the laws of the country of incorporation; or

(b) as per books of account, where the laws of the country of incorporation does not require such a computation.

(B) the value of assets, -

(a) In case of an individually depreciable asset, shall be the average of its value for tax purposes in the country of incorporation of the company at the beginning and at end of the previous year; and

(b) In case of pool of a fixed assets being treated as a block for depreciation, shall be the average of its value for tax purposes in the country of incorporation of the company at the beginning and at end of the year;

(c) In case of any other asset, shall be its value as per books of account;

(C) the number of employees shall be the average of the number of employees as at the beginning and at the end of the year and shall include persons, who though not employed directly by the company, perform tasks similar to those performed by the employees;

(D) the term "pay roll" shall include the cost of salaries, wages, bonus and all other employee compensation including related pension and social costs borne by the employer.

In the above definition, a new term "**passive income**" is introduced. In fact, the evaluation of passive income is central to determining whether a foreign company is ABOI or Non-ABOI. Passive Income is defined as follows:

(c) "Passive income" of a company shall be aggregate of, -

(i) income from the transactions where both the purchase and sale of goods is from / to its associated enterprises; and

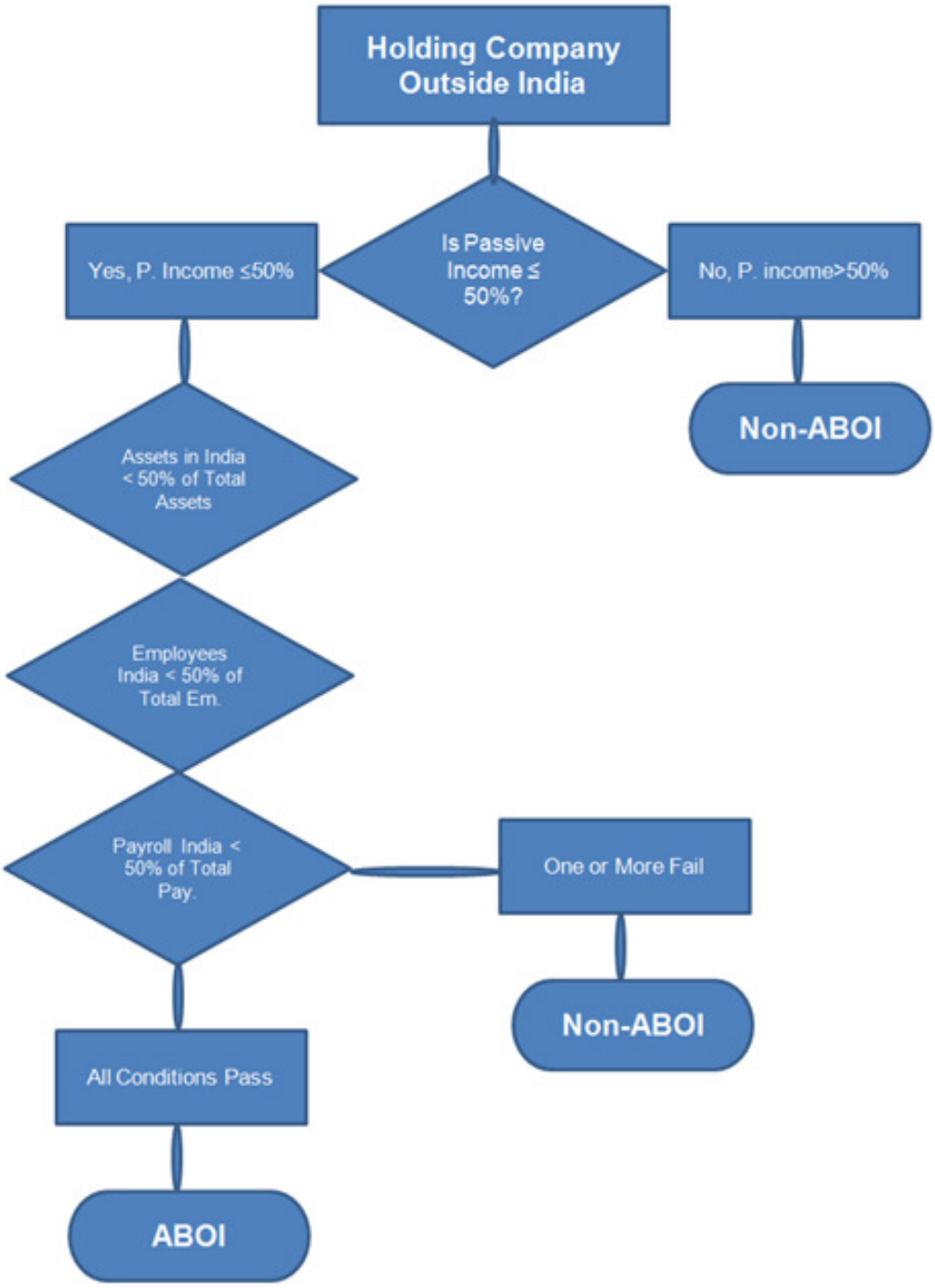
(ii) income by way of royalty, dividend, capital gains, interest or rental income;

However, any income by way of interest shall not be considered to be passive income in case of a company which is engaged in the business of banking or is a public financial institution, and its activities are regulated as such under the applicable laws of the country of incorporation.

For a foreign company to be categorized as ABOI it must first meet the criterion of its passive income not being more than 50% of its total income. A foreign holding company deriving all its income from dividend and royalties will always fail this test and will always be Non-ABOI company even though the company has no connection with India. This seems

ridiculous on the face of it. Central Board of Direct Taxes in its great wisdom has made **almost all holding companies across the world fail the test of ABOI**. But it is not for us to question the wisdom of the lawmakers.

Let us consider the case of a Holding Company based in a country other than India. The flowchart below gives the algorithm for determining whether the company is ABOI or Non-ABOI.



In simple terms, the first test is to determine whether Passive Income is less than 50% of the total income during previous year and two years prior to that. **Passive Income includes**

(a) income from transactions where both purchase and sale is to associated enterprises and (b) income by way of royalty, dividend, capital gains, interest or rental income. If Passive Income is equal to or more than 50% of a company's total income, the company will be classified as Non-ABOI even though the company may have no connection whatsoever with India.

If Passive Income is less than 50% of total income of the concerned foreign company, three tests have to be applied. The three tests are as follows:

- Are the total assets situated in India less than 50% of total worldwide assets?
- Is the number of employees in India less than 50% of total employees of the company?
- Are payroll expenses in India less than 50% of the company's payroll expenses?

Answers to each of the three questions must be a clear YES for a company to be classified as ABOI. In case, answer to any of the three questions is in the negative, the company will be classified as Non-ABOI.

Classification as ABOI or Non-ABOI is only the first step towards determining the Place of Effective Management (POEM) of the company.

Example 1 – ABOI Determination

A company, say XYZ, is a Swiss based Company. XYZ has an Indian subsidiary named PQR that owns a factory in India. XYZ and PQR collectively have 55 employees. PQR employs 50 employees at the factory in India. XYZ has 5 employees, all in Switzerland. The monthly payroll of Indian employees is about Rs.1.5 Million. Monthly payroll of XYZ in Switzerland is CHF 50,000. Profit before tax of XYZ in a financial year was CHF 200,000 out of which CHF 50,000- comes from dividend from its Indian subsidiary. Value of shares of PQR held by XYZ is estimated as Rs. 1 million. Total assets of XYZ estimated at CHF 1 million. Whether XYZ is a ABOI or a Non-ABOI company?

On applying the ABOI algorithm, we see that

- The Passive Income of XYZ is Dividend Income (CHF 50,000). This is less than 50% of total Income of XYZ (CHF 200,000).
- The value of assets held by XYZ in India is the value of shares of PQR which amounts to Rs. 1 million (CHF 15,000 approx) which is less than half of total assets of XYZ (CHF 1 million).
- Also, XYZ has no employees and no payroll expenses in India.

Based on the algorithm given earlier, it can be concluded that XYZ is a ABOI Company.

Example 2 – ABOI Determination

Mr. Parag Ahuja, a citizen and resident of India, forms a private company (say, PAL) in Singapore. PAL is wholly owned by Mr. Parag. PAL is involved in future trading and dealing in commodity derivatives. The Company has no associated enterprises. He and one Mr. Sheron Wang, a citizen of Singapore are directors of the company. Mr. Parag has been designated as Managing Director of PAL. As MD, Mr. Parag draws a salary from PAL. The company owns no assets in India. Whether PAL is a ABOI or a Non-ABOI company?

On applying the ABOI algorithm, we see that -

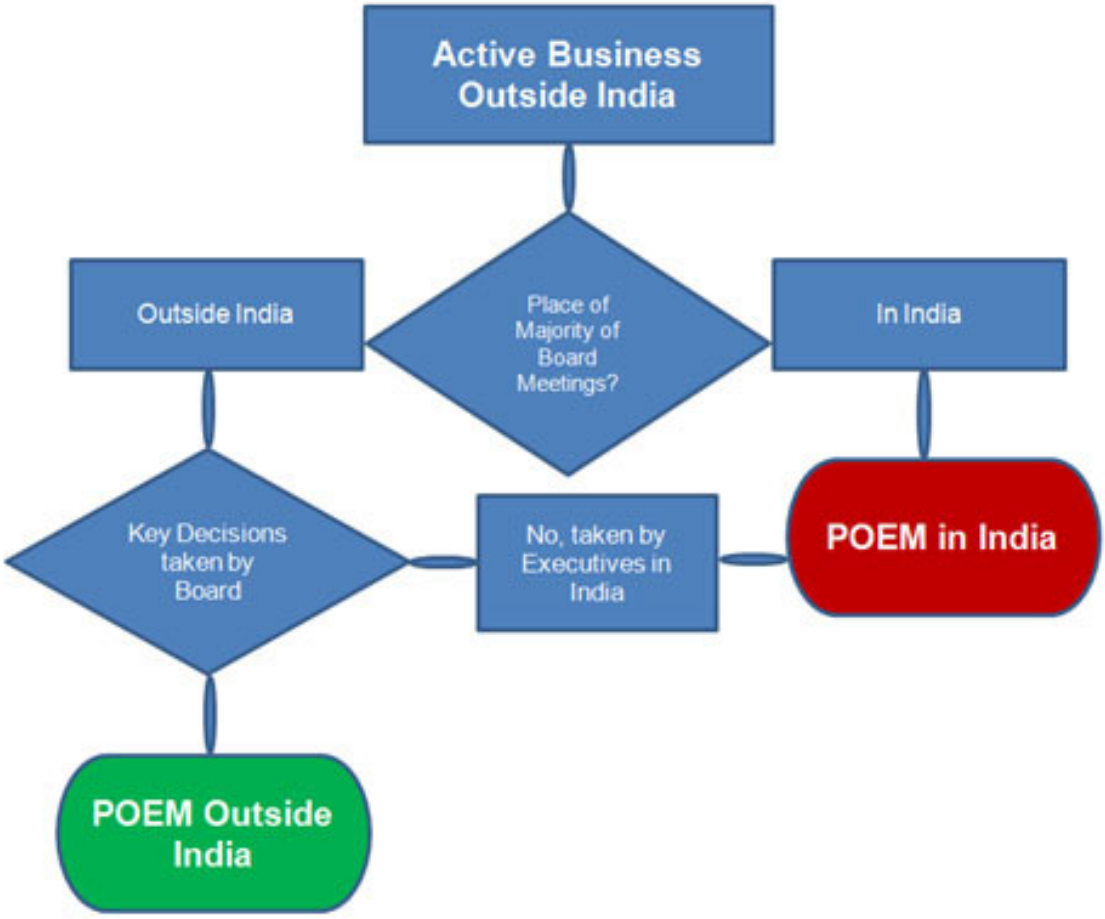
- PAL does not have any passive income.
- PAL has no assets in India.
- It may be argued that MD is not an employee. If this view is taken the company has no employees.
- PAL's only payroll is salary paid to MD. So 100% of PAL's payroll is in India.

PAL fulfils 3 out of 4 tests. However, it fails the payroll test and hence, PAL will be classified as Non-ABOI. It may be recommended to Mr. Parag Ahuja to stop drawing salary from PAL and instead take the profit as dividend from the company. **If Mr. Parag does not does draw any salary, PAL will be classified as ABOI**.

Having determined whether a foreign company is ABOI or Non-ABOI, the next step is to determine whether POEM of the foreign company is in India or outside India.

If the foreign company is ABOI company, the next issue is whether majority of board meetings are held in India. Let us take the example of a European company with headquarter in Frankfurt having all European directors. In a particular financial year, the directors of the European company took fancy to Indian Ocean beaches and decided to hold one meeting in Goa, the other in Kerala and one more in Port Blair. The company held only one meeting in Frankfurt. The company has no other connection whatsoever with India. It has no assets in India. It derives no business from India. It has no employees in India. The company is clearly an ABOI company. The European company will be considered to be having POEM in India since it has held majority of board meetings in India. Due to the POEM being in India, Indian tax authorities will claim to have a right to tax the company's global income as per Indian income tax law.

The algorithm for deciding POEM for an ABOI company can be summed up as follows:



In case of an ABOI, if majority of board meetings are held outside India, the next issue that will be examined by Indian tax officials is whether the key decisions are taken by the Board or are they taken by some person sitting in India. Let us consider the example of one Mr. Patel (resident of Mumbai) who has set up a holding company in Switzerland with three Swiss resident citizens as directors. Mr. Patel is not a Director of the company. However, all decisions are taken by Mr. Patel in Mumbai and sent by email to the Swiss Directors who dutifully sign on all documents received from Mr. Patel. The Swiss company is an ABOI. Indian tax officials are likely to conclude that key decisions are not taken by the Board but are taken by Mr. Patel in India. If the Indian tax officials so conclude, POEM of the Swiss company will be considered to be in India and the Swiss company will be subject to Indian taxes.

Before we start to examine the rules regarding Non-ABOI companies, let us at this point sum up our **recommendations for Indian entrepreneurs as regards ABOI foreign companies**.

A. Check whether the foreign company is likely to have **turnover or gross receipts more than Rs. 500 million**. In case the turnover or gross receipts are likely to be lower than the above limit, there is no need to worry about POEM Guidelines.

B. If the turnover of foreign company is likely to exceed the limit mentioned above, **try to ensure that the foreign company being set up is ABOI.** In case Passive Income of the foreign company is more than 50% of the company it will be impossible to get the foreign company classified as ABOI.

C. **In case of an ABOI, make sure that majority of board meetings are held outside India.**

D. **Also make sure that key decisions are taken by the Board of Directors in the meetings of the Board. There should be no emails or other correspondence from the main shareholder to the members of the Board conveying the decisions to be taken.**

Decision about POEM in case of Non-ABOI is a bit more complex than in case of ABOI. The process is two step process as summed up in the following paragraph of POEM Guidelines:

(i) First stage would be identification or ascertaining the person or persons who actually make the key management and commercial decision for conduct of the company's business as a whole.
(ii) Second stage would be determination of place where these decisions are in fact being made.

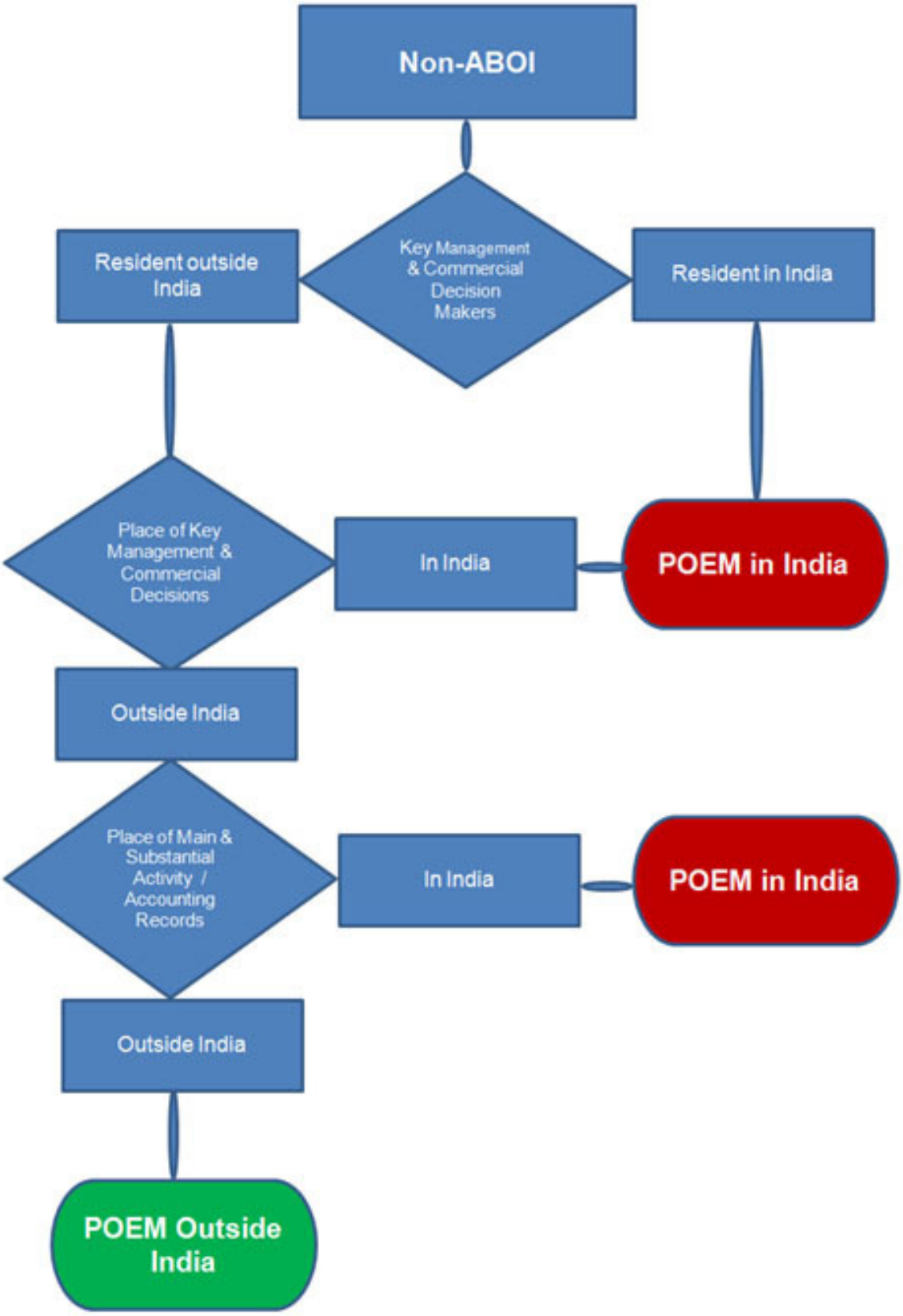
8.1 The place where these management decisions are taken would be more important than the place where such decisions are implemented. For the purpose of determination of POEM it is the substance which would be conclusive rather than the form.

It may be said that for a Non-ABOI company to have its POEM outside India, both the following criteria ought to be fulfilled:

a. Persons making the key management and commercial decisions for the company as a whole are NOT residents of India; AND

b. Place where these decisions are made is outside India.

The algorithm for deciding POEM for Non-ABOI can be summed up as follows:



Before we move further, we shall like to add a word of caution here. CBDT Guidelines do not clearly specify whether both the conditions (place of residence of senior management and place of decision making) ought to be satisfied or only one of the conditions need be

satisfied. The Guidelines have created a grey area and have left it to the discretion of the assessing tax officer of India to take the decision based on "substance and not form". Our experience suggests that Indian tax officers are always inclined to take decisions which favor their revenue maximization. Hence, we have as a matter of abundant caution assumed that both considerations need to be fulfilled for a Non-ABOI company to be classified as POEM outside India.

It may also be pointed out that a **Non-ABOI foreign company need not have any business in India**. A holding company that derives most of its income from dividend and royalty is a Non-ABOI. So, almost all holding companies (with gross receipts > Rs. 500 million) set up by Indian entrepreneurs as part of creating a global structure will fall under the category of Non-ABOI. For example, let us consider the case of an Indian entrepreneur who has set up a holding company in Mauritius. The holding company has three subsidiaries – one each in Brazil, Germany and USA. The holding company has no subsidiaries or business in India. The only income that the holding company derives is by way of dividends from its three subsidiaries. It will be considered that the passive income of the holding company is 100% of its total income. Hence, the Mauritius based holding company will be classified as Non-ABOI. The challenge to have such a Non-ABOI classified as POEM outside India is indeed a difficult one.

Before proceeding to deal with the challenge, it may be worthwhile to clarify that the key consideration for defining POEM is decision maker and place of decision making. **Ownership and place of residence of owner(s) are not relevant at all**. A company may be wholly owned by Indian residents and yet have its POEM outside India. On the other hand, a company wholly owned by foreign residents may have its POEM in India. Law envisages a **divorcing of ownership and decision-making function**. The key is to understand this and build a structure under which for all practical purposes the beneficial owner (Indian entrepreneur) is not central to the decision making.

Let us consider the case of an entrepreneur based in India who sets up a holding company in Switzerland for managing operations across the globe. The holding company derives only passive income and is hence classified as Non-ABOI. Key considerations that are relevant for determining POEM of the Swiss Holding Company (say, called ABC) and suggestions for meeting the challenge related to the consideration are as follows:

a. **Decision Makers** – It is important that majority of the decision makers of ABC are not based in India. Indian entrepreneur will surely like to be a member of the Board of Directors of ABC. However, it is advisable that majority of the members of Board of Directors of ABC are based outside India. Moreover, it is also necessary that the Directors are persons who are capable of taking decisions. If the entrepreneur nominates his twenty year old son studying in a university in Australia as one of the directors, Indian tax officials are likely to treat the young man as a dummy and assume that all decisions are taken by the Indian resident entrepreneur. So, we recommend a Board with majority of members being professionals of some standing

and based outside India. It may be mentioned here that citizenship of Directors is not relevant. An Indian or person of Indian origin who is resident abroad will be as suitable as a foreign citizen.

b. **Board as Decision Maker** – All matters that relate to the company as a whole (excluding day to day operational matters) must be brought to the Board of Directors and there must be application of mind by the Board of Directors. It is recommended that decision making process is duly documented in terms of agenda and minutes for every meeting. It is also recommended that minutes show participation by different members of the Board of Directors to avoid giving the impression of Board acting as a rubber stamp for the entrepreneur's wishes. Board should not only take all decisions related to governing of the company, it should appear visibly to be retaining and exercising the authority to govern the company. Records of the Board should clearly indicate that the Board has been taking all key management and commercial decisions necessary for conduct of company's business.

c. **Board Meetings**–The entrepreneur should decide the place which will be the POEM of the company. Majority of the meetings of Board of Directors as well as of all committees (if there are any committees) of Board must be held in the place which is intended to be POEM of the company. It may be clarified that POEM relates to a particular place and not just inside or outside India. Let us hypothetically consider that in a particular year Board of Directors of ABC have two meetings in Mumbai, one in Zurich, one in Sydney and one in New York. Indian tax officials may take the view that maximum meetings of ABC are held in Mumbai and hence POEM for ABC is Mumbai and not Zurich where the company is incorporated. It is recommended that if it is intended to designate Zurich as POEM, majority of meetings of the Board should be held in Zurich even though Swiss law might permit holding of meetings anywhere in the world.

d. **Head Office**– POEM Guidelines specify three key criteria for a place to be head office of a company – (a) Senior Management of the company is based there (b) Support staff of the Senior Management is based there and (c) the place is held out to be head office of the company. It is advised that all three key criteria are duly complied with. In case of ABC, we have mentioned above that majority of Decision Makers ought to be based out of India. This may be further restricted to say that Senior Management of ABC ought to be based at the place which is designated to be the head office of ABC. Senior Management does not mean majority of Board of Directors, but it does certainly include key persons like Managing Director and Finance Director. For example, the Indian entrepreneur nominates his uncle based in USA and his aunt based in UK as Directors of ABC while a professional based in Switzerland is serving as Resident Director to comply with the Switzerland's requirement of having a local director. The Resident Director is serving on part time basis at a nominal fee while the US based Director plays a more active role and is

also receiving a handsome salary. It will be difficult for ABC to claim that head office is located in Switzerland.

e. **Accounts**– It is advisable that accounts of the company be kept at the place which is intended to be POEM of the company.

Relevant key extracts from CBDT Guidelines about POEM for a Non-ABOI company are as follows:

(a) The location where a company's Board regularly meets and makes decisions may be the company's place of effective management provided, the Board-

(i) retains and exercises its authority to govern the company; and

(ii) does, in substance, make the key management and commercial decisions necessary for the conduct of the company's business as a whole.

(b) A company's board may delegate some or all of its authority to one or more committees such as an executive committee consisting of key members of senior management. In these situations, the location where the members of the executive committee are based and where that committee develops and formulates the key strategies and policies for mere formal approval by the full board will often be considered to be the company's place of effective management.

(c) The location of a company's head office will be a very important factor in the determination of the company's place of effective management because it often represents the place where key company decisions are made. The following points need to be considered for determining the location of the head office of the company:-

- If the company's senior management and their support staff are based in a single location and that location is held out to the public as the company's principal place of business or headquarters then that location is the place where head office is located.

8.3 If the above factors do not lead to clear identification of POEM then the following secondary factors can be considered :-

(i) Place where main and substantial activity of the company is carried out; or
(ii) Place where the accounting records of the company are kept.

We must add here that the algorithms presented above have been worked out on the basis of CBDT Circular. The algorithm is not contained in this form in the said circular. CBDT Circular is full of usual confusion and discretionary powers that are the hallmark of bureaucratic maze of Government of India. Authorities drafting the circular have almost accepted that their draft of the relevant guidelines is neither perfect nor complete. They have left the field wide open for the Assessing Officer to take a decision. Please see the following extract from the circular:

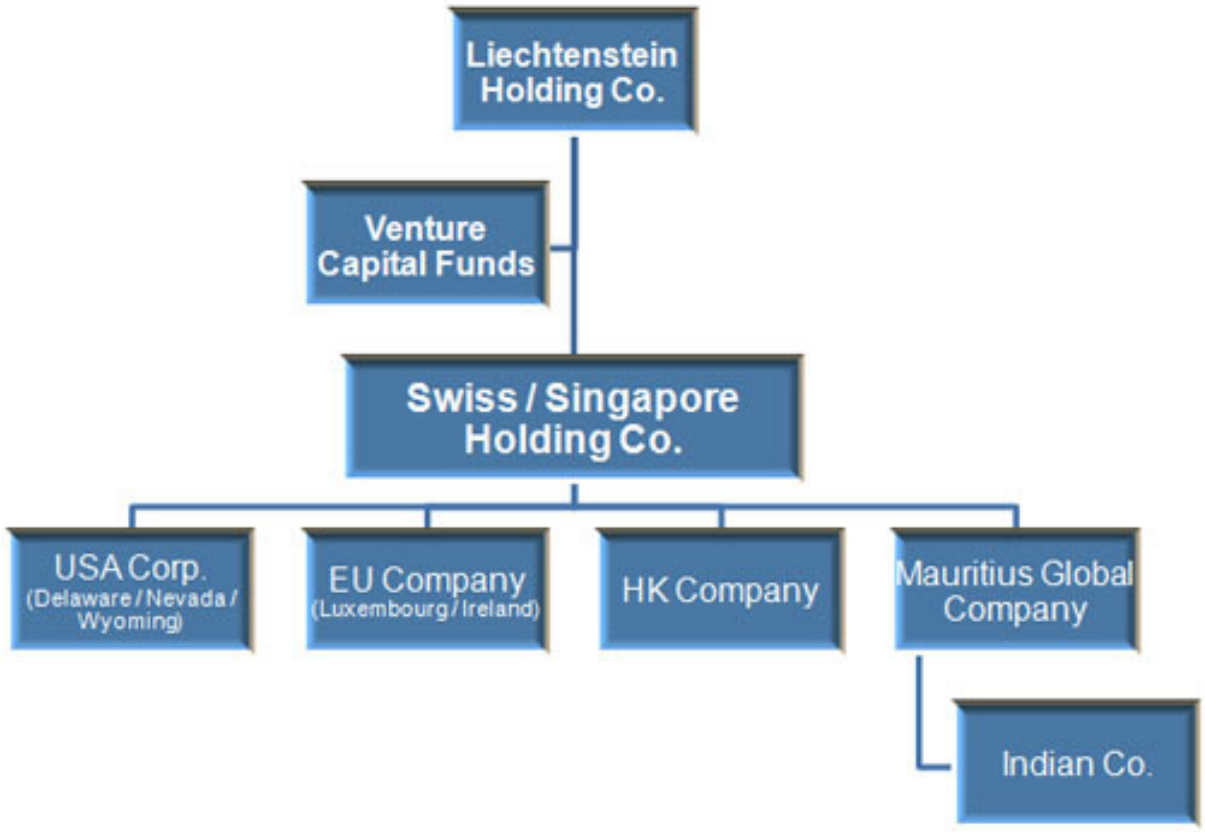
> 10. It is reiterated that the above principles for determining the POEM are for guidance only. No single principle will be decisive in itself. The above principles are not to be seen with reference to any particular moment in time rather activities performed over a period of time, during the previous year, need to be considered. In other words a "snapshot" approach is not to be adopted. Further, based on the facts and circumstances if it is determined that during the previous year the POEM is in India and also outside India then POEM shall be presumed to be in India if it has been mainly /predominantly in India

The only saving grace is that the Assessing Officer is required to take approval of at least three senior officers before proceeding to take action against any foreign company. Time alone will say whether that is sufficient protection for Indian entrepreneurs or whether POEM will open up a new avenue of corruption for income tax officers of India. As it appears, section 6(3) of Income Tax Act and POEM Guidelines are regressive steps that will act as dampers for the dynamic spirit of Indian entrepreneurs. We sincerely hope that Indian authorities will modify the law sometime soon.

6. Sample Global Structure

As mentioned earlier, there cannot be one structure that will satisfy the needs of all types of businesses. Nevertheless, we present here a sample structure to give an idea of the principles involved.

The sample structure is designed keeping in mind an e-commerce entity that helps its customers transact business using its website(s). The entity has different versions of its website for each country that it operates in taking into account local language, business, festivals, customs, culture, currency, banking regulations etc.



More than half of the entity's business is from USA, about 25% comes from EU and balance from rest of the world. India contributes less than 2% of the entity's business. However, India plays an important part in the schema of the entity with Indian team taking care of technical support function and development work for its global operations. The management sees significant potential in China and wishes to build volumes from China.

The entrepreneur is a first generation technically qualified visionary. He is an Indian citizen but has a global perspective. He is technically resident of India but is often travelling across the world. His family is spread between India and the USA.

The Sample Structure shown above has been designed for this hypothetical entity and entrepreneur. The ownership pattern linking the entrepreneur with the proposed global structure has not been shown above and is not discussed in this Guide.

Some salient features of the Sample Structure are as follows:

1. There are four operating companies located at USA (Delaware / Nevada / Wyoming), EU (Luxembourg / Ireland), Hong Kong and India. More operating companies may be added as need arises from time to time.

2. Indian company is owned by a Mauritius based company to take advantage of the favourable Double Taxation Avoidance Agreement between India and Mauritius. However, the Mauritius company may be dispensed with.

3. The companies at USA, Luxembourg, Hong Kong and Mauritius are owned by a holding company based in Switzerland / Singapore.

4. The US corporation based at Delaware / Nevada / Wyoming is specifically for transacting US-related business. The states mentioned here have low or zero state income tax.

5. The Luxembourg / Ireland company may, in due course, set up subsidiary companies in different countries of European Union as the business grows.

6. Swiss / Singapore Holding Company is owned partly by a Liechtenstein based company and partly by Venture Capital / PE funds.

7. The Liechtenstein company is wholly owned by the entrepreneur and his family.

8. All intellectual properties of the Group vest with the Swiss / Singapore holding company and are licensed to the individual companies against payment of fees / royalty.

9. The Swiss / Singapore Holding Company (as well as the Liechtenstein company) does no business, except holding shares in the operating companies, developing and licensing intellectual properties.

10. The Indian company works for the Swiss / Singapore company creating intellectual property and receiving charges for services rendered on a cost-plus basis. Valuation of services rendered is on cost-plus basis to ensure that the Transfer Pricing Norms under Indian Income Tax Act are duly complied with.

11. The Indian company will not do any work except act as a Technology Development and Support Centre. In case at a future date it is felt that there may be a significant potential for Indian business, a separate subsidiary of Mauritius Company will be created.

12. The entrepreneur receives salary from the Indian company. The salary is sufficient for his and his family's personal needs. Profits of the group are invested for further growth.

13. Dividends, fees and royalties flow upwards in the structure. Investments flow downwards. **A key objective of the structure is to minimize taxation on all intra-group flows thereby maximizing wealth over time**.

Proposed Sample Structure consists of various constituents. We discuss the different constituents and the reasons for choosing them in later chapters of this Guide. However, there are two extremely important issues that need to be decided simultaneously with the structure. The issues are as follows:

a. Ownership / shareholding of the top-level holding company – This essentially defines the relationship of the entrepreneur in financial terms with the structure. The entrepreneur may hold the shares of the top-level company in his own name or in the name of his family members or may even create a family trust structure based at some other country naming his family members as beneficiaries. Often decision in respect of this will involve wealth planning for the entrepreneur and his / her family.

b. Decision Making Patterns at the level of each company – This has become important in view of section 6(3) of Indian Income Tax Act and POEM Guidelines (discussed in previous chapter). It is important to create independent decision making structures for each company located in the respective country where the company is located. Ground rules for decision making for each company should be defined clearly and shared among the members of Board of Directors of all companies to avoid inadvertent mistakes.

We, Anil Chawla Law Associates LLP, recommend to our clients that before taking up the exercise of creating a Global Structure, a **Detailed Concept Paper (DCP)** is created outlining the Structure, Ownership Patterns, Decision Making Rules and Budget for setting up and operating the structure. The entrepreneur, his / her family and key persons should study and discuss the DCP before implementing and creating the global structure. Understanding an entrepreneur's requirements and preparing a DCP is a complex process that may well cost upwards of USD 25,000-.

In the subsequent chapters we look at the different countries. Before we do that, it is interesting to look at rankings of some countries in terms of ease of doing business.

TABLE 1.1 Ease of doing business ranking

Rank	Economy	EODB score	EODB score change	Rank	Economy	EODB score	EODB score change	Rank	Economy	EODB score	EODB score change
1	New Zealand	86.59	0.00	65	Colombia	69.24	+0.20	129	Barbados	56.78	0.00
2	Singapore	85.24	+0.27	66	Luxembourg	69.01	0.00	130	St. Vircent and the Grenadines	56.35	+0.01
3	Denmark	84.64	+0.59	67	Costa Rica	68.89	-0.47	131	Cabo Verde	55.95	+0.02
4	Hong Kong SAR, China	84.22	+0.04	68	Peru	68.83	+0.56	132	Nicaragua	55.64	+0.37
5	Korea, Rep.	84.14	-0.01	69	Vietnam	68.36	+1.59	133	Palau	55.59	+0.01
6	Georgia	83.28	+0.48	70	Kyrgyz Republic	68.33	+2.57	134	Guyana	55.57	-1.21
7	Norway	82.95	+0.25	71	Ukraine	68.25	+0.94	135	Mozambique	55.53	+1.78
8	United States	82.75	-0.01	72	Greece	68.08	-0.12	136	Pakistan	55.31	+2.53
9	United Kingdom	82.65	+0.33	73	Indonesia	67.96	+1.42	137	Togo	55.20	+6.32
10	Macedonia, FYR	81.55	+0.32	74	Mongolia	67.74	+0.27	138	Cambodia	54.80	+0.41
11	United Arab Emirates	81.28	+2.37	75	Jamaica	67.47	+0.55	139	Maldives	54.43	+0.10
12	Sweden	81.27	0.00	76	Uzbekistan	67.40	+1.08	140	St. Kitts and Nevis	54.36	+0.01
13	Taiwan, China	80.90	+0.24	77	India	67.23	+6.63	141	Senegal	54.15	+0.37
14	Lithuania	80.83	+0.29	78	Oman	67.19	-0.02	142	Lebanon	54.04	+0.07
15	Malaysia	80.60	+2.57	79	Panama	66.12	+0.41	143	Niger	53.72	+1.24
16	Estonia	80.50	+0.01	80	Tunisia	66.11	+1.51	144	Tanzania	53.63	+0.34
17	Finland	80.35	+0.05	81	Bhutan	66.08	+0.20	145	Mali	53.50	+0.23
18	Australia	80.13	-0.01	82	South Africa	66.03	+1.37	146	Nigeria	52.89	+1.37
19	Latvia	79.59	+0.33	83	Qatar	65.89	+0.64	147	Grenada	52.71	+0.07
20	Mauritius	79.58	+1.29	84	Malta	65.43	+0.28	148	Mauritania	51.99	+0.92
21	Iceland	79.35	+0.05	85	El Salvador	65.41	+0.21	149	Gambia, The	51.72	+0.23
22	Canada	79.26	+0.38	86	Botswana	65.40	+0.46	150	Marshall Islands	51.62	+0.01
23	Ireland	78.91	-0.51	87	Zambia	65.08	+1.48	151	Burkina Faso	51.57	+0.12
24	Germany	78.90	0.00	88	San Marino	64.74	+2.27	152	Guinea	51.51	+2.02
25	Azerbaijan	78.64	+7.10	89	Bosnia and Herzegovina	63.82	+0.27	153	Benin	51.42	+0.13
26	Austria	78.57	+0.03	90	Samoa	63.77	+0.01	154	Lao PDR	51.26	+0.11
27	Thailand	78.45	+1.06	91	Tonga	63.59	+0.03	155	Zimbabwe	50.44	+1.92
28	Kazakhstan	77.89	+0.73	92	Saudi Arabia	63.50	+1.62	156	Bolivia	50.32	+0.15
29	Rwanda	77.88	+4.15	93	St. Lucia	63.02	+0.06	157	Algeria	49.65	+2.06
30	Spain	77.68	+0.07	94	Vanuatu	62.87	-0.21	158	Kiribati	49.07	+0.33
31	Russian Federation	77.37	+0.61	95	Uruguay	62.60	+0.34	159	Ethiopia	49.06	+0.91
32	France	77.29	+0.99	96	Seychelles	62.41	-0.01	160	Micronesia, Fed. Sts.	48.99	0.00
33	Poland	76.95	-0.36	97	Kuwait	62.20	+0.75	161	Madagascar	48.89	+0.71
34	Portugal	76.55	-0.07	98	Guatemala	62.17	+1.01	162	Sudan	48.84	+3.75
35	Czech Republic	76.10	+0.05	99	Djibouti	62.02	+8.87	163	Sierra Leone	48.74	+0.15
36	Netherlands	76.04	+0.01	100	Sri Lanka	61.22	+1.80	164	Comoros	48.66	+0.14
37	Belarus	75.77	+0.72	101	Fiji	61.15	+0.04	165	Suriname	48.05	-0.05
38	Switzerland	75.69	+0.01	102	Dominican Republic	61.12	+0.55	166	Cameroon	47.78	+0.83
39	Japan	75.65	+0.05	103	Dominica	61.07	+0.04	167	Afghanistan	47.77	+10.64
40	Slovenia	75.61	+0.02	104	Jordan	60.98	+1.42	168	Burundi	47.41	+0.73
41	Armenia	75.37	+2.06	105	Trinidad and Tobago	60.81	-0.12	169	Gabon	45.58	-0.23
42	Slovak Republic	75.17	+0.29	106	Lesotho	60.60	+0.19	170	São Tomé and Príncipe	45.14	+0.30
43	Turkey	74.33	+4.34	107	Namibia	60.53	+0.24	171	Iraq	44.72	+0.04
44	Kosovo	74.15	+0.44	108	Papua New Guinea	60.12	+1.19	171	Myanmar	44.72	+0.51
45	Belgium	73.95	+2.24	109	Brazil	60.01	+2.96	173	Angola	43.86	+2.16
46	China	73.64	+8.64	110	Nepal	59.63	-0.32	174	Liberia	43.51	-0.04
47	Moldova	73.54	+0.38	111	Malawi	59.59	+0.84	175	Guinea-Bissau	42.85	+0.27
48	Serbia	73.49	+0.17	112	Antigua and Barbuda	59.48	+0.06	176	Bangladesh	41.97	+0.91
49	Israel	73.23	+0.64	113	Paraguay	59.40	+0.41	177	Equatorial Guinea	41.94	+0.28
50	Montenegro	72.73	+0.20	114	Ghana	59.22	+2.06	178	Timor-Leste	41.60	+1.71
51	Italy	72.56	-0.15	115	Solomon Islands	59.17	+0.33	179	Syrian Arab Republic	41.57	+0.02
52	Romania	72.30	-0.53	116	West Bank and Gaza	59.11	+0.39	180	Congo, Rep.	39.83	+0.36
53	Hungary	72.28	+0.34	117	Eswatini	58.95	+0.13	181	Chad	39.36	+1.15
54	Mexico	72.09	-0.18	118	Bahamas, The	58.90	+0.77	182	Haiti	38.52	+0.11
55	Brunei Darussalam	72.03	+1.85	119	Argentina	58.80	+0.87	183	Central African Republic	36.90	+2.67
56	Chile	71.81	+0.37	120	Egypt, Arab Rep.	58.56	+2.74	184	Congo, Dem. Rep.	36.85	+0.67
57	Cyprus	71.71	+0.44	121	Honduras	58.22	+0.09	185	South Sudan	35.34	+2.04
58	Croatia	71.40	+0.34	122	Côte d'Ivoire	58.00	+4.94	186	Libya	33.44	+0.23
59	Bulgaria	71.24	+0.11	123	Ecuador	57.94	+0.12	187	Yemen, Rep.	32.41	-0.59
60	Morocco	71.02	+2.46	124	Philippines	57.68	+1.36	188	Venezuela, RB	30.61	-0.24
61	Kenya	70.31	+5.25	125	Belize	57.13	+0.02	189	Eritrea	23.07	+0.13
62	Bahrain	69.85	+1.82	126	Tajikistan	57.11	+0.08	190	Somalia	20.04	+0.06
63	Albania	69.51	+0.50	127	Uganda	57.06	+0.65				
64	Puerto Rico (U.S.)	69.46	+0.20	128	Iran, Islamic Rep.	56.98	+2.34				

Source: Doing Business database.

Note: The ease of doing business rankings are benchmarked to May 1, 2018, and based on the average of each economy's ease of doing business scores for the 10 topics included in the aggregate ranking. For the economies for which the data cover two cities, scores are a population-weighted average for the two cities. A positive change indicates an improvement in the score between 2016/17 and 2017/18 (and therefore an improvement in the overall business environment as measured by *Doing Business*), while a negative change indicates a deterioration and a 0.00 indicates no change in the score.

Source: Doing Business 2019 – Training for Reform, The World Bank; © 2019

While the above table gives the overall rank of all major countries of ease of doing business, in terms of specific parameters rankings of some key countries are as follows:

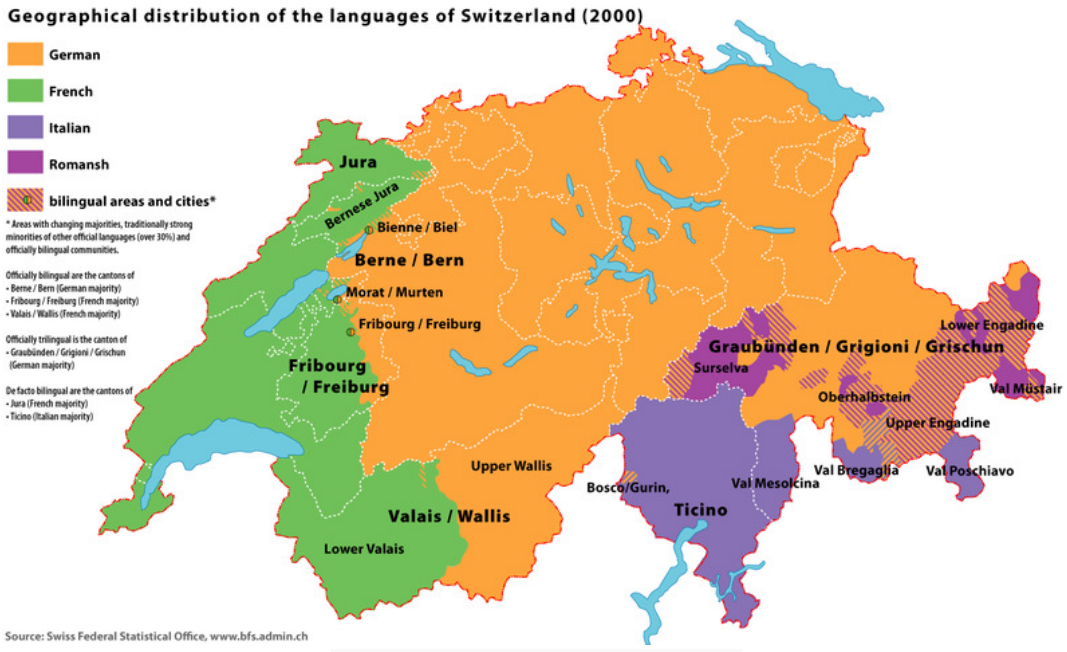
Economy	Ease of Doing Business Rank	Starting a Business	Dealing with Construction Permits	Getting Electricity	Registering Property	Getting Credit	Protecting Minority Investors	Paying Taxes	Trading Across Borders	Enforcing Contracts	Resolving Insolvency
New Zealand	1	1	6	45	1	1	2	10	60	21	31
Singapore	2	3	8	16	21	32	7	8	45	1	27
Hong Kong	4	5	1	3	53	32	11	1	27	30	44
United States	8	53	26	54	38	3	50	37	36	16	3
Mauritius	20	21	15	34	35	60	15	6	69	27	35
Ireland	23	10	28	43	64	44	15	4	52	102	18
Switzerland	38	77	69	11	16	73	110	20	39	55	46
China	46	28	121	14	27	73	64	114	65	6	61
Luxembourg	66	73	12	41	92	175	122	22	1	15	90
India	77	137	52	24	166	22	7	121	80	163	108

Source: World Bank Group, Doing Business - Measuring Business Regulations; As on May 2018

7. Swiss Holding Company

7A Switzerland General Information

Switzerland has for long enjoyed the reputation as banker of Europe. The country is stable and politically neutral. The financial services industry is protected by a strong consensus against any political changes that might affect the all-important offshore sector. As a result, Swiss banks offer a reliable, secure offshore banking environment. Because of these benefits, banking assets held in Switzerland were estimated in 2015 to be 467 percent of the country's GDP. Switzerland has also been a leader in technology, with secure encryption, internet banking, electronic funds transfers, and electronic signatures.



Map of languages spoken in Switzerland

German is spoken by maximum number (63.3%) of persons; French by 22.7%; Italian by 8.1% and Romansh by 0.5%
Map by wikipedia, Marco Zanoli, CC BY-SA 3.0, http://en.wikipedia.org/wiki/File:Map_Languages_CH.png

Switzerland is the intersection point of different cultures joining the north and south of Europe. The coexistence of different cultures and the large proportion of foreign residents result in a high degree of openness and tolerance.

There are close economic relations between Switzerland and Europe. The European Union is Switzerland's most important trade partner: almost half of all Swiss exports go to EU countries, and two thirds of all imports come from the EU. A comprehensive free trade agreement and bilateral agreements enable the free movement of goods and services even without EU membership. Through this agreement, Switzerland is fully integrated in the EU

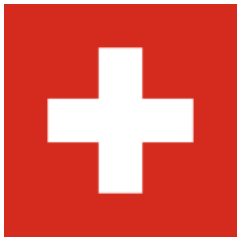
market, while remaining politically independent. More than 28 free trade agreements with 38 partners compliment the EFTA Convention and the Free Trade Agreement with the EU.

Switzerland has a federal system with three levels: the federal government, 26 sovereign cantons and about 2,300 independent municipalities. The 26 cantons have a high degree of decision making authority compared with the states in other countries. There is a great deal of grassroots engagement with politics.

Political stability is very strong, in spite of the diversity of language groups and cultures. Switzerland has four official languages: German, French, Italian and Romansh. English is also widely used, especially in business.

Switzerland's per capita gross domestic product is the fourth largest in the world. Switzerland outranks France by 121% and Germany and UK by 95% and 83% respectively. The service sector generates some 70% of the gross domestic product. Comprising 25% of GDP, the industrial sector is also an important mainstay of the economy.

Switzerland abides by the principle of neutrality and has done so for centuries, unlike any other country in Europe. Due to Switzerland's political neutrality, its humanitarian tradition and its commitment to international understanding, numerous international organizations such as the United Nations and the International Committee of the Red Cross are headquartered here.



By UnknownVector graphics: *Flag_of_Switzerland.svg: User:Marc MongenetCredits:User:-xfi-User:Zscout370derivative work: User:Zscout370 (Return fire) - PDF Colors Construction sheet, Public Domain, https://commons.wikimedia.org/w/index.php?curid=9553304

Switzerland is one of the world's key financial centers. Its main areas of expertise are private banking, asset management and insurance. Around 270 banks, 200 insurance companies and 2,000 pension funds are based in Switzerland. A wide range of financial and insurance products and services are available to private and business customers. The financial sector is very important economically, as its value creation totals about 10% of GDP.

Switzerland's long-term economic and monetary stability also manifests itself in low inflation, low interest rates and the important role of the Swiss franc internationally. Its stability has made the franc an attractive reserve and diversification currency.

Switzerland is perceived to be the original and prestigious tax haven and, indeed, this offshore financial centre began its banking efforts early on. With the economic and political upheaval in its neighboring countries, Switzerland welcomed investment from Russia and Germany in particular throughout the early part of the 21st Century.

Switzerland enjoys excellent reputation with governments across the world. When one chooses Switzerland as a base for one's Group Holding Company, it is a long-term decision and one must take all factors into account. Switzerland's disadvantage is its relatively high cost as compared to various island financial centers. But the cost disadvantage is more than offset by other long-term benefits that the country offers.

7B Company Structure and Incorporation in Switzerland

Economic freedom, which is guaranteed under the Swiss Constitution, allows anyone, including foreign nationals, to operate a business in Switzerland, to form a company or to hold an interest in one. No approval by the authorities, no membership of chambers of commerce or professional associations, and no annual reporting of operating figures are required to establish a business.

Foreigners can set up any form of business entity that a Swiss citizen can set up. However, joint stock companies or corporations (SA in French, AG in German) and limited liability companies (Sàrl in French, GmbH in German) are the legal forms most commonly adopted by foreign investors. In both cases, the company's liability extends only to corporate assets. In broad terms, **GmbH corresponds to a private limited company and AG is similar to a limited company of India**.

The following table illustrates the differences between the two.

	AG / SA / Ltd.	GmbH / Sàrl / Pvt. Ltd.
Minimum capital	CHF 100,000; Minimum partial payment CHF 50,000	CHF 20,000; Fully Paid; Partial payment not allowed
Shareholders	Anonymous, e.g. bearer shares	Partners registered, less discretion
Assembly	General Assembly	Partners' meeting
Credibility	Possibly higher	Possibly lower
Auditing	Assets > CHF 20 million, Sales > CHF 40 million, Employees > 250. Mandatory if 2 of 3 parameters present for 2 successive years	
Managing Director	At least one director with single signature authority or two directors with joint signature authority must have domicile in Switzerland.	
Initial costs	Approx. CHF 5000	Approx. CHF 5000
Running costs	Probably higher, e.g. CHF 10'000	Probably lower, e.g. CHF 8'000
Advantages	Anonymity of shareholders	Smaller capital requirement

Source: Different websites

The corporation (AG / SA) has its own legal status. Its obligations are guaranteed only by its corporate assets. Its share capital, determined in advance, is divided into shares. This type of company is suitable not only for large, but also for small and medium-sized businesses. **It is the most common business status for holding and financial companies.**

The limited liability company (GmbH / Sàrl) is a corporation of a personal nature formed by one or more persons or commercial companies with capital determined in advance (share capital). Each partner acquires a stake in the share capital by contributing the maximum amount of the registered share capital. The name of the partners is entered in the Commercial Registry.

There are only a few differences between the two main legal forms of company in Switzerland. A limited liability company (GmbH / Sàrl) offers a solution with a relatively minimal capital investment and limited corporate liability; the joint stock company (AG / SA) preserves the **anonymity of silent partners** and has simple procedures for share transfers. Companies planning an initial public offering (IPO) usually start directly with establishing a joint stock company.

The **minimum capital for a limited liability company (GmbH / Sàrl) is CHF 20,000**, which must be deposited in full into a Swiss bank. **For a stock company (AG / SA) the sum is CHF 100,000**, and at least 50% of the capital must be deposited in a bank account in

Switzerland. After entry into the commercial registry, the money is released and can be used in the company.

The name under which a company plans to do business can be chosen freely. The name must indicate clearly what legal form a company has; that is, whether it is AG or GmbH. The chosen name must be clearly distinguishable from existing company names. Potential business names may be reviewed for their availability in the Central Business Names Index (www.zefix.ch) provided by the Federal Commercial Registry Office.

A domicile address for the new company must exist before the company is created. Foreign investors often register a company at a lawyer's or notary's address.

Incorporating in Switzerland usually takes two to six weeks.

Step	Weeks					
	1	2	3	4	5	6
Preliminary examination, registration, and approval of company name	▲					
Preparation of necessary documents : corporate charter or articles of incorporation, statutes, application, etc.		▲				
Payment of the company capital into a specified bank. The payer must prove their identity. Compliance with KYC norms of bank.			▲	▲		
Establishment and preparation of corporate charter or articles of association; Confirmation of a recognized bank that the share capital has been paid in; If the company does not have its own offices after being formed: declaration of adoption of domicile			▲	▲		
Publication in official journal of the canton					▲	
Entry of responsible person(s) / entities in the appropriate registers (commercial register, land register)						▲
Registration as company liable to tax						▲

Source : Swiss Global Enterprise

Fees and expenses for setting up a **corporation (AG / SA)** are broadly estimated to be as follows:

Costs	Traditional	Electronic
	CHF	
Share Capital	100,000	100,000
Consulting Services	5,000 - 7,000	300 - 850
Commercial Register Fee	600	600
Certification Fees	1,000	600
Securities Issue Tax	-	-
Total Costs	**7,000 - 9,000**	**7,000 - 9,000**

Source: Swiss Global Enterprise

Fees and expenses for setting up a **limited liability company (GmbH / Sàrl)** are broadly estimated to be as follows:

Costs	Traditional	Electronic
	CHF	
Nominal Capital	20,000	20,000
Consulting Services	4,000 - 6,000	200 - 550
Commercial Register Fee	600	600
Certification Fees	1,000	600
Stamp Duty	-	-
Total Costs	**6,000 - 8,000**	**1,800 - 2,150**

Source: Swiss Global Enterprise

In addition to notarial and commercial registry costs, a corporate capital tax or stamp duty amounting to 1% of the corporate capital is applicable if the capital exceeds CHF 1 million.

In 2006, Switzerland introduced the limited partnership for collective investment (abbreviated as KkK in German), which corresponds to the limited liability partnership (LLP) firm of India. As an instrument for risk capital investment, this form of company is reserved exclusively for qualified investors. The liable partner in a limited partnership for collective investment must be a corporation. We are not discussing it in detail here.

For more details about the process of company incorporation in Switzerland, the following websites may be referred to:

www.EasyGov.swiss

www.startups.ch

www.kmu.admin.ch> Practical knowledge > Creation of SMEs

7C Corporate Tax – Ordinary Companies

In Switzerland, tax on profits is levied at all three levels: federal, cantonal and municipal; while only cantons and municipalities levy a tax on paid-in capital (registered capital or share capital) and reserves.

The tax rate imposed on companies in Switzerland depends on the type of legal entity and the company's purpose and activity. There is much more variation in the tax treatment of Swiss companies, which are most often either corporations or limited liability companies.

In contrast with the Indian system of income tax, tax paid in Switzerland is a deductible expenditure. Hence, even though the federal income tax rate is 8.5%, the effective rate is

7.83%. While looking at Swiss tax rates, it is **necessary to differentiate between nominal rate of tax and effective rate of tax**.

The following table compares corporate tax in Switzerland with other major European countries.

Corporate Tax on Earnings in Europe	
Country	**In %**
Ireland	12.50
Switzerland	17.74
United Kingdom	19.00
Sweden	22.00
Netherlands	25.00
Luxembourg	29.22
Germany	30.20
France	33.33

Source: Switzerland Global Enterprise

The Swiss tax system outlines various types of entities for tax purposes. The main fiscal regimes are:

- Ordinary company
- Holding company
- Mixed holding company
- Auxiliary (base) company
- Principal company
- Service company (cost-plus company)
- Finance branch

This Guide is focused on holding companies which use most of their capital for holding shares of other companies.

7D Corporate Tax – Holding Companies

This Guide is focused on creating a global structure on the lines of the Sample Structure discussed in Chapter 5. At the heart of the proposed structure is a holding company based in Switzerland. **We assume that the holding company does no other business except (a) invest in operating companies across the world and (b) receive royalties and fees for intellectual properties (also pay for development of intellectual properties). We also assume that any company in which the Swiss holding company invests, the level of participation is at least 25% of the equity capital of the investee company.**

The holding company tax status is available to Swiss companies whose primary purpose according to the by-laws is to hold and manage long-term equity investments in affiliated companies. Furthermore, either the participations or participation income (dividends or capital gains) must represent at least two thirds of the company's total assets or income over the long term. A holding company which meets one of these requirements is exempt from all cantonal/communal income taxes, with the exception of income from Swiss real estate. As a rule, the effective tax rate of a holding company is 7.83% (i.e., federal income tax rate) prior to participation relief for qualifying dividends and capital gains. After taking into account participation relief, the **effective tax on dividend and capital gains income turns out to be NIL**. Participation relief can be understood as tax exemption for dividends and capital gains.

Holding companies continue to be subject to capital tax, which is only levied at cantonal/communal level. A reduced capital tax on cantonal/communal tax level applies to holding companies. The basis for the calculation of capital tax is in principle the company's net equity (i.e. share capital, paid-in surplus, legal reserves, other reserves, retained earnings). The taxable base of companies also includes any provisions disallowed as deductions for tax purposes, any other undisclosed reserves, as well as debt that has the character of equity under the Swiss thin capitalization rules. Some cantons even provide for crediting the cantonal corporate income tax against capital tax.

The tax rates vary from canton to canton and depend on the tax status of the company. In 2016, this ranged from 0.0010% to 0.5250% for companies subject to ordinary taxation, and from 0.0010% to 0.4007% for companies eligible for a special tax regime.

To sum up, a holding company pays a nominal rate of tax on the capital employed and pays no tax on the income received by way of dividends or capital gains. However, the holding company will pay federal income tax at the rate of 7.83% on profits from interest, commission, fees and royalty incomes. Such other incomes are completely exempt from tax on profits at cantonal / communal level.

Caution – Switzerland is under tremendous pressure from European Union to change its holding company tax regime. In December 2017, European Union prepared a blacklist of 17 countries for refusing to co-operate with its crackdown on tax havens. Switzerland was not on the blacklist, but was on the grey-list of countries that have said they will make reforms. It is expected that the provisions related to taxation will undergo drastic change sometime before 2020. However, most observers are of the opinion that Switzerland will only make changes in a manner that the country's attraction as a location for holding companies is not affected.

7E Withholding Tax and Double Taxation Treaties

A federal withholding tax is levied at source on the gross amount of dividend distributions by Swiss companies. The withholding tax is levied at 35%. This is similar to the Tax Deduction at Source under Indian Income Tax Act.

For non-resident taxpayers, the withholding tax generally represents a final tax burden. However, a partial or total refund may be granted based on an international double tax treaty or a bilateral agreement concluded by Switzerland with the country in which the recipient of the earnings is residing.

In the Sample Structure discussed in Chapter 5, dividends flow from Holding company in Switzerland to the company based in Liechtenstein. So, it will be relevant to study the status of Switzerland-Liechtenstein Double Taxation Avoidance Treaty.

On 2 February 2015, after long and intensive negotiations, representatives of Switzerland and Liechtenstein initialed a comprehensive double tax treaty. The double taxation agreement (DTA) between Switzerland and Liechtenstein entered into force on 22 December 2016. The provisions of the agreement became applicable from 1 January 2017. Under the Switzerland-Liechtenstein Double Tax Treaty, the maximum tax that may be levied on dividends in the country where the paying company is located is fifteen (15) per cent.

The other key issue is withholding taxes on dividends from operating companies in Luxembourg, Mauritius, Hong Kong and USA paid to the holding company in Switzerland.

Switzerland has Double Taxation Avoidance Agreements with all the above countries except Mauritius. Let us examine the withholding tax applicable on dividends and royalties received from the above countries and India. We assume that in all cases the holding company owns 25% or more of the operating company.

Country	Dividends	Royalty / Fees	Notes
	percent		
Hong Kong	0	3	
Luxembourg	0 / 5	0	Shares should be held for two years to be eligible for 0% tax. If held for less than 2 years, 5% tax.
USA	5	0	Benefits Limited by Ultimate Beneficiary Condition discussed below.
Leichtenstein	15	0	
India	10	10	

Source: Double Taxation Avoidance Agreements

Withholding tax applicable on dividends under Double Taxation Agreements with some countries is as follows:

Country	Dividends
	percent
Austria	0
Belgium	10
Denmark	0
Finland	0
France	0
Germany	0
Ireland	0
Italy	15
Netherlands	0
Norway	0
Portugal	10 / 0
Spain	0
Sweden	0
United Kingdom	0
USA	5

Source: Swiss Federal Tax Administration and IRS, USA

The above table clearly shows that the Swiss holding company will be able to receive dividends from many countries with almost no deduction of withholding tax. However, some problem areas remain. The biggest problem comes from the dividends received from the operating company in USA.

Double Taxation Avoidance Agreement between Switzerland and the USA has a provision under Article 22 titled "Limitation on Benefits". The said article is likely to stop the Swiss holding company of the proposed structure as discussed in this Guide from receiving benefits of the Switzerland-USA Double Taxation Treaty. In other words, **the Corporation based in USA will have to deduct 30% of the gross dividend or royalty amount paid to the Swiss holding company**.

Switzerland does not have a tax treaty with Mauritius. But India has an extremely favourable treaty with Mauritius. Under the treaty, dividends paid by Indian company to the parent company in Mauritius will be subject to withholding tax of only 5%. However, currently there is no withholding tax on dividends paid by an Indian company. The Indian company is liable to pay a Dividend Distribution Tax of 15%, which is not a withholding tax and is not subject to the regime of any double-tax-treaty.

A Mauritius Global Business Category 1 (GBC 1) Company is subject to income tax at the rate of only 3%. However, dividends received by the Mauritius company are treated as exempt from tax. Mauritius does not impose any withholding tax on dividend payments by Mauritius companies to foreign companies. So, the absence of a treaty between Mauritius

and Switzerland does not affect the dividends routed from India to Switzerland via Mauritius. Effectively, **dividends received from Indian company are routed through the Mauritius company to Switzerland without any deduction. In case the Indian company pays dividend directly to the Switzerland company, the situation will be no different – dividend distribution tax of 15% paid and no withholding tax.**

The advantage of creating a buffer company in Mauritius is only strategic and long term. In case the long-term and strategic advantages are not significant, one may dispense with the Mauritius company.

7F Assistance for Switzerland

Switzerland has many agencies to help prospective investors and entrepreneurs to set up businesses in Switzerland.

SWITZERLAND GLOBAL ENTERPRISE

Switzerland Global Enterprise is the federal agency responsible for the whole of the country. In addition, Greater Zurich Area AG markets for cantons of Glarus, Grisons, Schaffhausen, Schwyz, Solothurn, Zug and Zurich as well as the city of Zurich and the region of Winterthur. Greater Geneva Berne Area (GGBa) helps out with the cantons of Berne, Fribourg, Vaud, Neuchâtel, Geneva and Valais. Cantons of Basel Stadt and Basel Landschaft have joined hands to form a promotion agency called Basel Area.

BASEL AREA. SWISS

Aside from the promotional agencies, each canton has a website (often in English too) giving all the information that an entrepreneur might need. In general, while Swiss promotion agencies are courteous and helpful, our experience has been mixed.

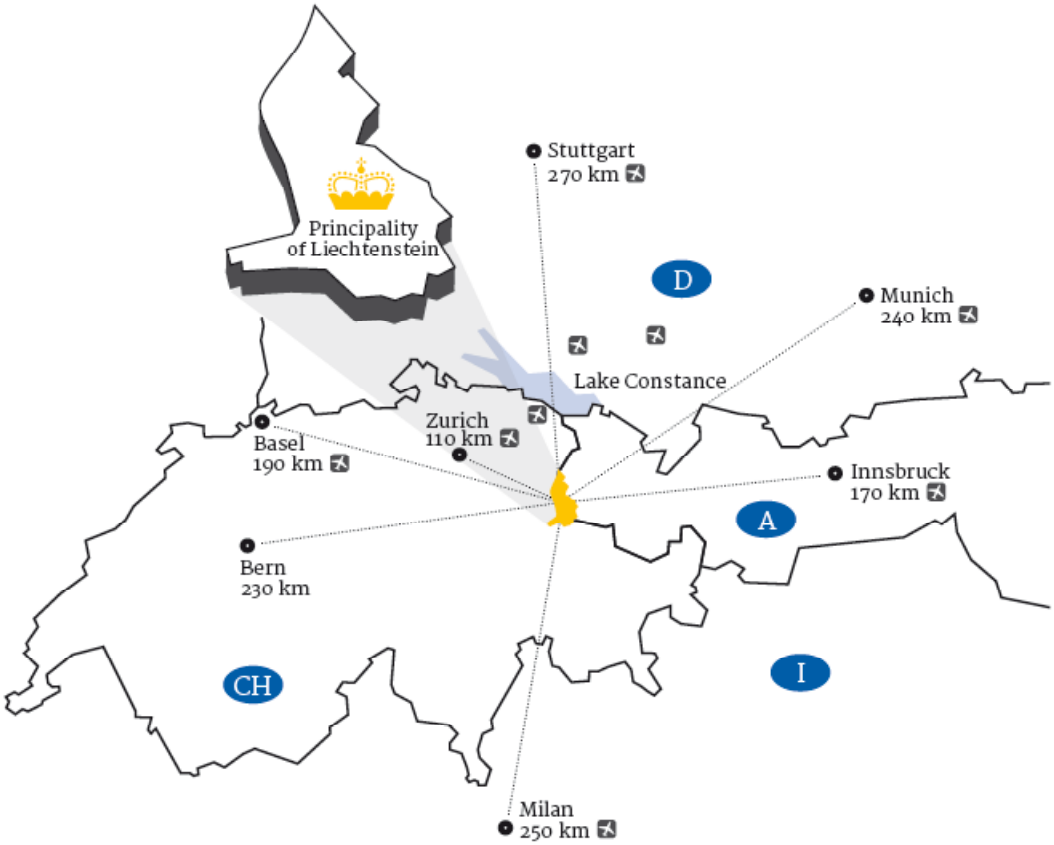
A list of various websites that may be referred to is given below:

Aargau	AG	www.aargauservices.ch
Appenzell A. Rh.	AR	www.ar.ch/wirtschaft
Appenzell I. Rh.	AI	www.ai.ch
Basel-Landschaft	BL	www.baselarea.swiss
Basel-Stadt	BS	
Bern	BE	www.berneinvest.be.ch
Fribourg	FR	www.promfr.ch
Geneva	GE	www.whygeneva.ch
Glarus	GL	www.glarus.ch
Graubünden	GR	www.gr.ch
Jura	JU	eco.jura.ch/
Lucerne	LU	www.lucerne-business.ch
Neuchâtel	NE	www.e-den.ch
Nidwalden	NW	www.nw.ch
Obwalden	OW	www.iow.ch
Schaffhausen	SH	www.sh.ch
Schwyz	SZ	www.schwyz-wirtschaft.ch
Solothurn	SO	www.standortsolothurn.ch
St. Gallen	SG	www.awa.sg.ch
Thurgau	TG	www.tg.ch/
Ticino	TI	www4.ti.ch
Uri	UR	www.ur.ch
Valais	VS	www.vs.ch
Vaud	VD	www.dev.ch
Zug	ZG	www.zg.ch
Zurich	ZH	www.zh.ch
Basel Area		www.baselarea.swiss
Greater Geneva Berne Area		www.ggba-switzerland.org
Greater Zurich Area		www.greaterzuricharea.com
Switzerland Global Enterprise		www.s-ge.com

8. Liechtenstein Company

Tucked away neatly in the mountain valley between the Swiss canton of St. Gallen on the south and west, Austria on the east and north is tiny Liechtenstein (official name: Principality of Liechtenstein).

The Principality measures just 160 km^2 and is home of a mere 38,000 inhabitants, but has employees from over 100 countries working towards its economic success in almost the same amount of job positions in financial industry as well as manufacturing and industrial sectors. As a result, local residents are joined every day by large numbers of commuters travelling over the border from southern Germany, Vorarlberg (Austria) and Switzerland. Despite measuring just 160 km^2 Liechtenstein is traditional and modern and has everything you might find in a larger country and maybe more.



D – Germany; CH – Switzerland; A – Austria; I - Italy

Liechtenstein has an extremely diverse national economy with a large number of small and medium-sized enterprises. The high value-added generated can mainly be attributed to a strong industrial sector and to financial service providers. At the same time, the contribution of the public sector to the national economy is comparatively small.

Liechtenstein's economy is still heavily shaped by its manufacturing. In 2016, the goods-producing sector provided 37% of total employment. This represents a remarkably high proportion, compared to other European countries.

Around three-fifths of all persons employed work in the services sector. In this sector, the most important branches of the economy include financial and insurance services, legal and tax consultancy as well as trade.

These days there are very few countries that can claim to be debt-free. Liechtenstein is one of them. The country has no debts; instead, it has large financial reserves that have been accumulated thanks to the state's budgetary discipline. In July 2017 Standard & Poor's confirmed Liechtenstein's rating as 'AAA/A-1+' and underlined the country's stable outlook. Liechtenstein is a constitutional hereditary monarchy on a parliamentary and democratic basis with the Prince of Liechtenstein being the Head of State. This system of government, coupled with the country's social, legal and economic conditions, a liberal economic policy and the Swiss franc as legal tender, guarantees Liechtenstein's stability and continuity.

Indicator	Unit	2015	2016	2017	2018	2019	2020
GDP per capita	000 USD	165.4	165.3	166.8	174.2	176.9	180.4
Real GDP Growth	%	1.2	1.5	1.7	1.7	1.6	1.6
Real GDP per capita growth	%	0.5	1.0	1.2	1.2	1.0	1.1
Exports / GDP	%	53.7	54.5	52.8	51.1	49.5	47.9
Debt / GDP	%	0.5	0.5	0.5	0.5	0.5	0.4

Source: Standard & Poor's, RatingsDirect 28 July 2017

Liechtenstein has been a member of the European Economic Area (EEA) since 1995. Companies based in the Principality benefit from the advantages of free movement of goods, persons, services and capital within the EU/EEA single market. In 2011, Liechtenstein joined the Schengen area, which allows passport-free travel across 26 European countries. Due to Liechtenstein's exceptional geographic situation there are special provisions in place on free movement of persons and freedom of establishment, limiting residence permits for foreigners. As a result of its accession to the EEA, corresponding European directives have been continuously implemented in legal system of Liechtenstein. This means that the current national legal system, notwithstanding certain unique features, is broadly comparable with those of the surrounding states and the European Union, providing a high degree of legal certainty and full compatibility to the EU, contrary to the separate legal system of neighboring Switzerland which is neither a member of the EU nor of the EEA.

Liechtenstein is also a member of the European Free Trade Association (EFTA) and profits from one of the biggest networks of free trade agreements worldwide. Negotiations about a free trade agreement between ETFA and India are ongoing. Back in 1923, Liechtenstein signed a treaty with Switzerland that extended the Swiss customs area to include Liechtenstein. Via this agreement, the bilateral free trade agreements concluded by

Switzerland also apply to Liechtenstein in terms of the movement of goods. Liechtenstein uses the Swiss franc as its currency.

For several years, the Principality of Liechtenstein has adopted a clear strategy focusing on declared assets only. The acceptance of the OECD standards and the signing of withholding tax agreements with Great Britain and Austria emphasize this effort. The International Monetary Fund and the OECD acknowledge current efforts of Liechtenstein by declaring a high level of compliance.

In Liechtenstein, companies are only taxed on income and real estate gains. **Commercially active companies are subject to a uniform profit tax rate of 12.5%, the lowest rate in Western Europe. Minimum tax of CHF 1800 is payable by companies. A deduction for the adjusted equity of a company leads to an even further reduction of the tax rate. Income from intangible property rights are tax exempt up to 80%, which results in an effective tax burden of 2.5%. This measure applies to intellectual property which has been registered after 1 January 2011. Investment income such as dividends as well as capital and liquidation gains with regard to participations is tax exempt. Companies which only manage assets and are not commercially active receive the private asset structure (PAS) tax status, limiting the annual tax rate to CHF 1,800.**

The tax return must be filed by 30th June of the year following the tax year. For example, the return for year 2018 must be filed by 30th June of year 2019. An extension from the tax authorities is possible on request. Entities will receive a provisional tax bill in August, which must be paid by 30th September of that year.

Besides offering clear advantages as a location for corporate structures, Liechtenstein enjoys a long standing tradition of wealth structures since implementing the protection of privacy and private assets in the country's constitution in 1921, laying the foundation for a long tradition of asset protection solutions for international clients. The country's liberal and flexible legal system provides numerous legal structures such as the foundation or the establishment which are ideal for wealth planning and asset protection purposes. As a unique feature of a Civil Law country, Liechtenstein has adopted Anglo-American trust law as early as in the 1920s allowing for an adequate configuration of legal relationships.

We have proposed Liechtenstein as the base for the entrepreneur's holding company in the Global Structure proposed by us in Chapter 5 above.

Liechtenstein offers many advantages for companies based in the country. Some advantages are as follows:

- Corporate income tax flat rate of 12.5%
- Reduced corporate income tax of 2.5% on revenue from intangible property rights
- Taxation of interest income above 4% only

- General exemption of dividend income
- General exemption of capital gains derived from disposal of participations
- Total absence of holding period or participation requirements for capital gains
- Exemption of profits from permanent establishments abroad
- Exemption of profits on the disposal of real estate abroad
- Exemption of lease & rental income from real estate abroad
- No withholding tax on dividend, interest, and royalty payments
- Notional interest deduction on equity capital (2017: 4%)
- No time limit on the use of losses carried forward
- Group taxation for associated companies allowing world-wide set-off of intra-group losses & profits
- High level of political continuity and stability

The entrepreneur's holding company proposed by us can be organized in any of the following three forms:

Public Limited Company (PLC., Corp.)

PLC is equivalent to limited liability company of India. Formation Deed (like Memorandum of Association in India) and Articles of Association are required to be filed. Two natural or juridical persons are required for the founding, which is usually done on a fiduciary basis. Immediately after the founding, however, all shares may be combined in the hand of one person (single-person PLC., Corp.). A minimum of CHF 50,000 must be contributed to the capital at the time of formation. The process of company foundation is swift and non-bureaucratic.

At least one member of the board of directors must have his office address in Liechtenstein and be in possession of certain professional qualifications. A stamp duty of 1% of the capital has to be paid at the time of founding of PLC or in the case of a capital increase. A general exemption limit of CHF 1 million applies.

Alongside the issuance of nominal shares, **the PLC can issue bearer shares**; a minimum nominal value is not prescribed. The transfer of bearer shares is made without a form requirement. Liechtenstein law does not prescribe qualifying shares for the management.

Limited Liability Company (LLC., Ltd.)

LLC is similar to PLC except that it cannot issue bearer shares and the names of shareholders have to be disclosed. So, if anonymity of ownership is required LLC is not a suitable vehicle. A minimum capital of CHF 10,000 is required for the formation.

Trust Enterprise (Trust reg.)

The Liechtenstein Trust enterprise, frequently referred to as Trust reg., is similar to the concept of private trust in India. Assets separated under a separate name constitute the Trust enterprise with legal personality. Only the trust fund is liable for the liabilities of the Trust enterprise.

A Trust enterprise is set up by a written agreement (Trust Deed) between the settlor and the trustee(s). **The Trust Deed does not have to contain the names of beneficiaries**. If the Trust Deed is deposited with the Registrar of Trusts, it will not be publicly available, and later instruments (e.g. naming beneficiaries) will not have to be revealed. If the Trust Deed is not deposited within 12 months, the following details of the trust must be placed on the public register:

- A description of the trust
- The date of formation
- The duration of the trust
- The name (or trade name) and address of the trustee

The settlor can make such provision as he wishes for the beneficiaries and include such other trusts and powers as he thinks desirable. The Deed, however, must not bind the trustee to the settlor's continuing directions, or the trust will be treated as an ordinary contract. The trustee must keep the trust property separate from his other assets. The trustee is regulated and supervised by the local financial market regulations, allowing for a high level of certainty and security.

The purpose of a Trust enterprise may provide for pursuit of commercial or non-commercial activities as long as it is not illegal or immoral. The purpose of a Trust enterprise may consist of arrangement for planning of an estate or trade with assets. What is mandatory, however, is that the intended purpose of the Trust enterprise has to make clear whether it engages in commercial activities or not.

The formation of the Trust enterprise is effected by means of submission of written articles of association (Trust Deed) that have been signed by the settlor and the trustee(s). A natural or juridical person suffices for the formation of a Trust enterprise.

The minimum capital of a Trust enterprise (trust fund) should be CHF 30,000. It is mandatory that it be contributed with the formation in cash or as contribution in kind. The trust fund can be segmented into shares, with or without securities character, as well as gradually increased or decreased. The supreme authority of the Trust enterprise is the settlor, i.e. the person who supplies the trust fund with assets or warrants them.

The trustees appointed in accordance with the articles of association constitute the board of trustees that is the administrative body of the Trust enterprise. Both the management and the outward representation of the Trust enterprise are dependent on the board of trustees. A protector can be appointed with the respective dispositive or administrative powers.

Some of the characteristics of Trust Enterprise are as follows:

- A trustee can be an individual or a corporation.
- One trustee must be a Liechtenstein-resident individual with appropriate professional qualifications.
- Trustees have a duty of care towards the settlor and the trust property. They are regulated and supervised by the local financial market authority.
- Trustees who carry on business must keep an inventory of their trusteeships and must keep each trust's assets separate from other assets.
- If trust assets are deposited with banks they must again be kept in separate designated accounts.
- Trustees are liable for breach of trust to the full extent of their assets
- Joint trustees must normally act jointly and are jointly liable.
- The trustee must keep proper accounting records.
- The trustee's creditors have no access to trust assets. The settlor’s creditors have access to trust property only under certain defined circumstances, one of which is under law of succession.
- Trust documents, including the Trust Deed, can be in any language.
- A protector can be appointed with the respective dispositive or administrative powers.

A brief comparison of PLC, LLC and Trust reg. is as follows:

Details	PLC / Corp.	LLC / Ltd.	Trust reg.
Minimum Capital CHF	50,000	10,000	30,000 / 50,000*
Non-cash Contribution	Possible	Possible	Possible
Resident Director / Trustee	One	One	One
Minimum Shareholder(s)	Two	One	One
Minimum Director(s) / Trustee	One	One	One
Auditing	Yes	Yes	Optional**
Time Required for Formation	One Week	One Week	One Week
Disclosure of Beneficial Owner / Beneficiary	No	No	No
Disclosure of Shareholder	No	Yes	No
Disclosure of Director	Yes	Yes	Yes
Taxation***	12.5%	12.5%	12.5%
Minimum Income Tax CHF	1,800	1,800	1,800
Balance Sheet	Yes	Yes	Yes***
Tax Returns	Yes	Yes	Yes
Formation Costs CHF	3,000 - 6,000	3,000 - 6,000	3,000 - 6,000
Annual Running Costs CHF	6,000 - 8,000	6,000 - 8,000	6,000 - 8,000

Notes : * CHF 50,000 if capital is segmented into shares; **Mandatory in case of commercial activity; ***in case of commercial activity

Source: ACLA compilation based on various websites. Costs mentioned are approximate and indicative.

All companies must have a managing director. The managing director must be present in Liechtenstein and have the qualifications required for managing a company operating in the respective field of business.

Key disadvantage of Liechtenstein as a location stems from extremely limited Double Taxation Treaties that the country has. A global structure must take this disadvantage into account and plan accordingly.

Liechtenstein's Double Taxation Avoidance Treaty with Switzerland became effective from 1st January 2017. This treaty replaces the 22nd June 1995 tax treaty between the two countries. The taxation of dividends, interest royalty payments is now governed by the double taxation agreement. One of the key changes in the treaty is, the tax rate for dividends has been reduced from 35% to 15%. Further interest and royalty payment will now be subject to 0% tax.

For assistance and information about Liechtenstein, please refer to http://www.liechtenstein.li/en/

9. Singapore Company

9A Singapore General

Singapore, officially the **Republic of Singapore**, is a modern city-state and island country in Southeast Asia. It lies off the southern tip of the Malay Peninsula. The country's territory consists of the diamond-shaped main island, commonly referred to as *Singapore Island* in English and *Pulau Ujong* in Malay, and more than 60 significantly smaller islets. The country is highly urbanized.

Modern Singapore was founded in 1819 as a trading post of the East India Company with permission from the Johor Sultanate. The British obtained sovereignty over the island in 1824, and Singapore became one of the British Straits Settlements in 1826. Occupied by the Japanese during World War II, Singapore became independent from the United Kingdom in 1963 and united with other former British territories to form Malaysia, from which it was expelled two years later through a unanimous act of parliament. Singapore has subsequently become one of the world's most prosperous countries.

Singapore is one of twelve countries with the top AAA rating from all credit rating agencies. It is one of the world's major commercial hubs, the fourth largest financial center and one of the five busiest ports in the world.

9B Singapore Business Environment

Singapore has carved out its competitive niche as a destination for regional headquarters, branch offices and holding companies. The country has been featured as one of the most

stable and business-friendly legal and tax regimes in the world. Singapore has been ranked at no. 2 in terms of Ease of Doing Business as per the 2018 World Bank rankings. Singapore ranks 4th globally for institutional protection of intellectual property, according to The World Economic Forum's Global Competitiveness Report. Singapore is the most favored destination for investments from China. China's Belt and Road Initiative has provided additional incentives for Chinese firms to invest in Singapore.

Singapore is the preferred location for foreign investors seeking to establish a holding company to pursue investments through the ASEAN region, China and India.

Singapore was one of the founding members of ASEAN when it was formed on 8 August 1967, along with Indonesia, Malaysia, the Philippines and Thailand. The creation of the Asean Economic Community (AEC) in 2015 has potentially significant consequences for the Singapore economy. As the integration process is completed, Singapore's imperative role as the de facto financial and commercial capital of Southeast Asia will be unassailable.

Singapore has four official languages: English, Mandarin, Malay and Tamil. For business and politics, English is the language of choice. Most persons in business circles are bilingual and speak English fluently. This is of great advantage to Indian entrepreneurs.

Singapore has Double Taxation Avoidance Agreements with the following countries.

Albania, Australia, Austria, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Brunei, Bulgaria, Cambodia, Canada, China, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Fiji, Finland, France, Georgia, Germany, Guernsey, Hungary, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Kazakhstan, Republic of Korea, Kuwait, Laos, Latvia, Libya, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Mongolia, Morocco, Myanmar, Netherlands, New Zealand, Norway, Oman, Pakistan, Panama, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Rwanda, San Marino, Saudi Arabia, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Taiwan, Thailand, Turkey, Ukraine, United Arab Emirates, United Kingdom, Uruguay, Uzbekistan, Vietnam.

There are also certain countries with whom Singapore has limited treaties. Some of such countries are: Bahrain, Brazil, Chile, Hong Kong, Oman, Saudi Arabia, United Arab Emirates and the United States of America.

9C Type of Entity and Setting up a Company

Legal system of Singapore related to companies is similar to the Indian one due to common background of British law. A company in Singapore is almost like a company in India.

A Singapore company is a business entity registered under the Singapore Companies Act and is a separate legal entity from its shareholders. A Singapore company can be either a private limited company or a public limited company.

A private limited company is a company in which the shares are held by less than 50 persons and are not available to the general public. Most privately incorporated businesses in Singapore are registered as private limited companies. A private limited company's name in Singapore usually ends with Private Limited or Pte Ltd. The shareholders of a private limited company can either be individuals or corporate entities or both.

A public limited company is a company that may offer its shares to general public. **A public limited company must have at least 50 shareholders** and is subject to significantly more stringent rules and regulations since they have the power to raise funds from the public. Public limited companies are outside the scope of this Guide.

Criteria	Private Limited Company
Minimum Share Capital	SGD 1
Recommended Share Capital for Entre Pass / Employment Pass	SGD 50,000
Minimum No. of Shareholders	1
Maximum No. of Shareholders	50
Minimum No. of Directors	1
Incorporation Time	2-4 days
Resident Director Requirement	Yes
Personal Visit Required for Incorporation	No
Disclosure of Directors & Shareholders name	Yes
CorporateTax Rate	Less than 17%
Capital Gains Tax	Nil
Distribution of Dividends to Shareholders	Tax free
Tax on Foreign Sourced Income	Nil

Source : Various websites

Every Singapore company must have a director who is a resident of Singapore. In order to qualify as locally resident, the person must be:

- Singapore citizen; or
- Singapore permanent resident; or

- Employment Pass holder (the Employment Pass should be from the same company for which he/she wants to act as a director); or

- Entrepreneur Pass holder (the Entrepreneur Pass must be from the same company for which he/she wants to act as a director).

A director must be a natural person and above 18 years of age. Corporate directors are not permitted.

There are a number of different ways one can satisfy the local resident director requirement:

1. If one plans to relocate to Singapore to run one's company, one will need to apply for a work visa of type (employment pass or entre pass) under the new entity. Once the work visa is approved, one can act as the local resident director.

2. If one has a local partner or knows a trustworthy person in Singapore who is willing to act as the local director, the problem is solved.

3. Alternatively, most foreigner entrepreneurs and businesses that setup a Singapore company without relocating to Singapore, use a professional nominee local director service. The nominee director does not hold any shares in the company and does not get involved in the company operations or banking matters.

Company incorporation is a very quick process and can sometimes be completed in a few minutes if one is present there. However, one need not be present in Singapore (or even visit once) to set up a company in Singapore. In such a case time is taken up in sending documents by courier. After the incorporation process is complete, the next step is to open a bank account. Generally speaking, the signatory (who will operate the bank account) needs to visit Singapore to sign the documents related to opening of bank account in Singapore.

While navigating business establishment procedures in Singapore is relatively simple, entrepreneurs should seek the advice of a professional services firm to consider the legal and tax implications that inevitably accompany the establishment of a local business presence.

Self-incorporation without the assistance of a professional services firm is only permitted if all directors, the company secretary, and initial shareholders are Singapore National Registration Identity Card (NRIC) holders, Employment Pass, or Dependent Pass holders. Otherwise, **a professional services firm must be engaged to register on the company's behalf**.

Compared to Switzerland, incorporating and running a company in Singapore is much cheaper. The following table gives an indication of the costs that one should expect.

Cost Head	SGD	USD
Company Incorporation	850	638
Company Secretary for 1 year	700	525
Co. Registered office for 1 year	500	375
Resident Local Director for 1 yr.	2,500	1,875
Sub-Total	**4,550**	**3,413**
Employment Pass	1,750	1,313
Entre Pass	4,500	3,375
Dependent Pass	1,000	750

All costs / fees mentioned above are approximate and indicative. Actual costs may vary. Most agencies providing Resident Director services ask for a refundable deposit of SGD 2,000.

I SGD = 0.75 USD

Source : Different websites

Costs indicated above for Employment Pass, Entre Pass and Dependent Pass are applicable only if one intends to move to Singapore. Most foreign entrepreneurs do not move to Singapore to set up and operate a company in Singapore.

9D Income Tax for Holding Company

Singapore is a leading example of a country that continues to reduce corporate income tax rates and introduce various tax incentives to attract and keep global investments. Singapore has a single-tier flat-rate corporate income tax system, which means there is no double-taxation for stakeholders. Tax paid by a company on its chargeable income is the final tax and all **dividends paid by a company to its shareholders are exempt from further taxation**.

There is **no tax on capital gains** in Singapore.

Corporate tax is imposed on Singapore resident companies on the income that is (a) earned from Singapore; or (b) received in Singapore from outside Singapore (subject to certain exemptions). The first part deals with the income that has a source in Singapore. The second part is the income with a source outside Singapore but received or deemed received in Singapore.

Among other things, the following broad principles play important role in determining the locality of source of income:

- One looks to see what the taxpayer has done to earn the profits in question and where he has done it. Attempt is to identify the operations which produced the relevant profits and ascertain where those operations took place.

- Often where the principal place of business is located in Singapore and there is no business presence overseas, profits earned by that business are likely to be treated as sourced in Singapore.

- One of the factors to determine the locality of profits from trading in goods and commodities is the place where the contracts for purchase and sale are effected. "Effected" does not only mean the place of legal execution of contracts. It also covers the negotiation, conclusion and execution of the terms of the contracts.

Singapore permits different accounting years (unlike India where Apr-Mar is compulsory for tax purposes). A company can select an accounting year based on its business cycle. The country has a system of YA or year of assessment just as Indian income tax law follows the concept of assessment year.

Financial Year End	Basis Period	Year of Assessment (YA)
31 Mar of each year	1 Apr 2017 - 31 Mar 2018	2019
30 Jun of each year	1 Jul 2017 - 30 Jun 2018	2019
31 Dec of each year	1 Jan 2018 - 31 Dec 2018	2019

The same rule appplies to new companies.

Source: Inland Revenue Authority of Singapore

The corporate income tax rate since YA 2010 has been fixed at 17%. The said marginal rate is subject to a number of exemptions, incentives and rebate. So, the effective rate is always lower than 17%. In some cases it may be practically zero.

Singapore's marginal rate is the third lowest in the world. However, the effective tax payable comes out to be even lower if one takes advantage of all the government incentives, subsidies and schemes.

The deadline for filing corporate income tax every year in Singapore is 30th November, every year and the recommended date for e-filing is 15th December, every year.

Effective Corporate Tax Rates

Singapore start-up companies get the benefit of various general tax exemptions / incentives. Various exemptions and incentives lower the effective tax rates for companies and start-ups.

The following effective tax rates are applicable to Singapore companies (other than start-up companies).

Taxable Income	Tax Rate %	
SGD	YA 2010 to 2019	From YA 2020
0 - 10,000	4.25%	4.25%
10,000 - 200,000	8.5%	8.5%
200,000-300,000	8.5%	17.0%
Above 300,000	17.0%	17.0%

Source : IRAS

The following effective tax rates are applicable to start-up companies in Singapore for first three years of existence.

Taxable Income	Tax Rate %	
SGD	First YA falls in YA 2010 to 2019	First YA falls in YA 2020 or later
0 - 100,000	0.0%	4.25%
100,000 - 200,000	8.5%	8.5%
200,000-300,000	8.5%	17.0%
Above 300,000	17.0%	17.0%

Source : IRAS

In addition to the above, corporate income tax rebate is provided to all companies. **For YA 2019, the rebate is 20% capped at SGD 10,000-**. For YA 2018, the rebate was 40% capped at SGD 15,000-. For YA 2017, the rebate was 50% capped at SGD 25,000-.

Qualifying Conditions for Start-Up Companies

Investment companies and real estate development companies do not qualify as start-up companies. The other conditions applicable for a start-up company are as follows:

- Incorporated in Singapore
- Tax resident in Singapore
- Twenty or less shareholders subject to one of the following:
    - All shareholders are individuals “beneficially and directly” holding the shares.
    - At least one shareholder is an individual "beneficially and directly" holding at least 10% of the issued ordinary shares of the company.

It is worthwhile to mention that a holding company, being an investment company, will not be eligible to be classified as a start-up company.

Foreign sourced income exemption scheme (FSIE)

Singapore exempts specified foreign income from tax in the country. Any of the following incomes received by a Singapore company are eligible for exemption:

a. foreign-sourced dividends;

b. foreign branch profits;

c. foreign-sourced service income.

The above incomes are fully exempt from tax if they meet these qualifying conditions:

i. Subject to tax in the country where the income arose;

ii. The highest corporate tax rate (headline tax rate) of the foreign jurisdiction from which the income is received is at least 15%; and

iii. The tax exemption should be beneficial to a person resident in Singapore.

For the purposes of the tax exemption, a dividend is a foreign-sourced dividend if it is paid by a non-Singapore tax resident company. There is no minimum shareholding requirement to enjoy the tax exemption.

A foreign branch is a business operation of a Singapore company registered as a branch in a foreign country. Foreign branch profits are profits from a trade or business carried on outside Singapore by the foreign branch. It excludes non-trade or non-business income of the foreign branch.

To meet the "Subject to tax" condition, the specified foreign income must have been subject to tax in the foreign country from which the income is received. This is illustrated in the following table:

Scenario	Is the "subject to tax" condition met?
The specified foreign income is taxed in country A The income is remitted back to Singapore from Country A	Condition is met
The specified foreign income is exempt from tax in Country A The income is remitted back to Singapore from Country A	Condition is not met because no tax is suffered in country A. However, if the tax exemption is given due to substantive business activities carried out in Country A, as a concession, the condition will be met
The specified foreign income is taxed in country A The income is moved or reinvested in country B Country B does not levy any income tax on the income The income is remitted back to Singapore from country B	Condition is not met because no tax is suffered in country B

Source: IRAS

To further illustrate the above condition, let us consider two cases:

Case A: A Singapore holding company has invested in an Indian company. Dividends are paid by Indian company directly to Singapore holding company.

Case B: A Singapore holding company has invested in a Mauritius company that has invested in an Indian company. Dividend is paid by Indian company to Mauritius company. Singapore company receives dividend from the company in Mauritius.

Of the above two cases, in Case A the dividend received by Singapore company will be exempt from tax in Singapore; while in Case B the dividend received by Singapore company will be subject to tax in Singapore. Clearly, **"subject to tax" condition makes it mandatory that the Singapore holding company makes investments directly instead of using buffers like a company in Mauritius**.

The foreign headline tax rate refers to the highest corporate tax rate of the foreign country in the year the specified foreign income is received in Singapore. It must be at least 15%. The headline tax rate need not be the actual tax rate imposed on the specified foreign income in that country. For example, some Indian companies may be paying less than 10% tax due to availing various exemptions. Nevertheless, dividends paid by such Indian companies to a shareholder in Singapore will be subject to tax exemption in Singapore since the headline corporate income tax rate in India is more than 15%.

For more information on Income Tax in Singapore, please consult

INLAND REVENUE AUTHORITY OF SINGAPORE

https://www.iras.gov.sg

For any matter related to company law in Singapore, please contact

ACRA
ACCOUNTING AND CORPORATE REGULATORY AUTHORITY

https://www.acra.gov.sg/home/

10. Luxembourg Company

Luxembourg is a popular location on mainland of Europe for locating a company to serve the European market and also as a base for holding companies.

10A. Luxembourg General

Luxembourg (official name: Grand Duchy of Luxembourg) is a gateway to the European market. Luxembourg scores due to its political and social stability, skilled and multilingual workforce, state-of-the-art infrastructure, excellent connectivity to foreign markets, favorable legal environment and an attractive tax climate.

Luxembourg has an area of 2,586 sq km and population of 590,667 (47.7% foreigners). Luxembourgish, French and German are official languages while English is widely spoken especially in business circles. Currency is Euro.

Luxembourg is a founder member of the European Union. Besides European Union, Luxembourg is the founding member of NATA, OECD, United Nations and WTO.

Nestled among Europe's most highly developed and affluent markets, Luxembourg is an **ideal logistics hub** for expanding businesses.

Thanks to its central position and quick access to neighboring markets, Luxembourg has successfully established itself as a strategic centre for businesses looking to expand in Europe. The central airport is the seventh-largest air cargo hub in Europe and home to some of the biggest freight carriers. Efficient railway connections give good access to the ports of the North Sea, making Luxembourg a hinterland port of Antwerp, Zeebrugge, Amsterdam, Rotterdam and Hamburg.

For more than two decades, Luxembourg's economy has consistently punched above its weight, with strong growth and trade surpluses, low unemployment and inflation in a stable, innovative environment for business and consumers alike, repeatedly out-performing neighboring countries.

The country boasts the highest per capita income in the OECD, growth in employment in the financial sector and a domestic banking system that remains well capitalized by international standards. Luxembourg, is one of the few European countries to receive a maximum score (triple A) simultaneously from the three rating agencies (Moody's, Standard & Poor's and

Fitch). DBRS (a credit rating agency) has confirmed Luxembourg's AAA rating with a stable outlook on 22 September 2017.

ECONOMIC HIGHLIGHTS

- An open, diversified, stable economy
- Top GDP performance
- Sound macroeconomic fundamentals
- State-of-the-art infrastructure
- Excellent connectivity to markets in the EU and worldwide
- Central location within reach of 60 % of total EU market in less than a day

DISTANCE FROM CAPITAL TO

- France: 10 km (Paris 380 km)
- Germany: 20 km (Frankfurt 250 km)
- Belgium: 15 km (Brussels 200 km)
- About one hour by plane to: London, Zurich, Munich, Amsterdam, Paris, Frankfurt

10B. Company Structure and Incorporation in Luxembourg

Six types of commercial corporations are formed under the Companies Law of Luxembourg:

- *Société Anonyme*or S.A. (equivalent to a public limited liability company)
- *Société à Responsabilité Limitée*or S.àr.l. (equivalent to a limited liability company)
- *Sociétéen Nom Collectif*or S.e.N.C. (equivalent to a general corporate partnership)
- *Sociétéen Commandite Simple* or S.e.C.S. (equivalent to a limited corporate partnership)
- *Société en Commandite par Actions* or S.e.C.A. (equivalent to a corporate partnership limited by shares)
- *Société Coopérative* or S.C. (equivalent to a co-operative company)
- *'S.à.r.l. - S' company* (simplified limited liability company).

The S.à.r.l.-S company was introduced in January 2017. It enables entrepreneurs wanting to set up a business in Luxembourg to do so with company capital of as little as one Euro, up to a maximum of 12,000 Euros. It differs from the conventional S.à.r.l. company in several ways, including for example the fact that it may be set up by private deed, without the need of a notary. It also differs from self-employment, previously the only scheme available for start-up capital of less than 12,000 Euros, since it dissociates business assets from the entrepreneur's own assets. The wording "société à responsabilité limitée simplifiée" or "SARL-S" must be clearly indicated after the company name.

For the purpose of our discussions, only the first two of the above – S.A. or Sàrl are relevant.

Generally the incorporation papers, including its articles of association must be submitted to a notary who ensures that all legal requirements are met. Such deed and articles of association may be drafted in Luxembourgish, French, German or in English versions. In case the documents are in English, a Luxembourgish, French or German translation needs to be enclosed. A certificate stating the names of the ultimate beneficial owner(s) of the corporation is also required by the notary.

The paid-up capital has to be deposited and blocked in a Luxembourg bank account opened under the name of the company to be formed. This provides confirmation to the notary that the funds have been received, when the shares are subscribed in cash. The setting up of such bank account (including the KYC procedure for the banks) is often the key element in the timing required for the formation of a company.

The share capital may be expressed in any foreign currency, provided that the amount converted in Euros meets the minimum amounts required by the companies law.

A company must have a registered office in Luxembourg either through renting or purchase of premises or by entering into a domiciliation agreement with a fiduciary company. Such fiduciary may also provide other services (administration, accounting, fiduciary mandates, etc.) related to the company's activities. The domiciliation activity is regulated in Luxembourg.

Luxembourg law sets out conditions for entry into certain professions and for the carrying out of certain trading activity, which are subject to the granting of a **business license**.

The granting of a business license is not required for corporations, which have as their principal object, the taking of shareholdings in Luxembourg or foreign companies.

A business license is personal and granted to individuals after considering the applicant's professional qualifications and respectability. For companies, the conditions relating to professional qualifications and respectability need to be fulfilled by an individual in charge of the direction or management of the company.

The application procedure, generally takes two months, whereby in addition to other documents, for non-Luxembourg applicants a certificate is required. The certificate relates to the activity of the applicant in his country of origin issued by a chamber of commerce or by appropriate Ministry. All documents for a business license must be translated into French or German by a certified translator (if they are in English).

The characteristics of *a Société anonyme (S.A.)* - Public limited company are as follows:

- Securities representing the share capital can be bearer shares and therefore disposable by simple transfer.
- Share capital can be denominated in any currency.
- Shares can be listed on a stock market.
- There are no restrictions as to the nationality and residence of the directors.
- **Minimum share capital is EUR 30,000**. One-quarter of the capital must be paid-up and this relates both to contributions in cash and kind. Contributions in kind must be covered by an assessment report drawn up by a statutory auditor.
- The person who starts such a company or its shareholders or directors are not required to be residents of Luxembourg.

The characteristics of a limited liability company *(S.àr.l.)* are as follows:

- Simpler and less expensive legal structure.
- **Minimum share capital is EUR 12,000**. This should be subscribed and fully paid up on formation. It can be paid either in cash or kind.

- Contributions in kind to share capital of a SARL do not need to be valued by an independent auditor (remain the responsibility of the managers).
- It must be noted that insurance, savings and investment companies cannot take the form of SARL.
- Shares are not freely transferable.

A comparison of the two is as follows:

Criteria	S.A. (Public Limited Company)	S.à.r.L. (Private Limited Company)
Minimum subscribed capital	EUR 30,000	EUR 12,000
Minimum paid-up capital	25%	100%
Currency of the share capital	Any	Any
Number of shareholders	1	1 or 2 to 100*
Type of shareholders	Registered or bearer	Registered
Management / Directors (Minimum)	1 / 3**	1
Residence requirement for managers	None	None
Annual shareholder's meeting per year	1	1***
Accounts per year	Once and submitted to Registrar	Once and submitted to Registrar
Auditor requirement	Yes	Yes***
Audit****	Yes	Yes
Report required	Yes	Yes

Notes : * 1 if single member SARL, 2-100 otherwise; **1 if 1 shareholder, 3 otherwise; ***If more than 60 partners; ****If size of the company requires it.

Source : Different websites

Indicative costs for setting up a company in Luxembourg are as follows:

Head	Fees EUR
Incorporation Fees (One-time)	
Processing and Registration	4,200
Notary	1,500
Taxes and Capital Duty	550
Other expenses	2,000
Total One-time expenses	**8,250**
Annual Fees	
Registered Office	2,000
Annual Maintenance	1,500
Nominee Shareholder (if required)	1,000
Nominee Director	1,500
Other Miscelllaneous expenses	1,000
Total Annual expenses	**7,000**

All costs / fees mentioned above are approximate and indicative. Actual costs may vary.

Source : Different websites

It is worthwhile at this stage to mention about SOPARFI. A Luxembourg SOPARFI is a non-regulated trading company. The SOPARFI stands for (Société de participations financières) which is French for Society of Financial Participants. Basically, this type of company acts a holding company for various financial activities. Luxembourg allows their "holding" companies to take several forms: Management Holding; Operational Holding; Finance Holding and Organizational Holding.

The main purpose for a SOPARFI is to acquire, manage, and realize investment profits in or outside of Luxembourg. This type of holding company can engage in many types of commercial enterprises as defined in its Articles of Association and Luxembourg's laws.

A SOPARFI is a corporation such as a Limited Liability Company (S.àr.l.), or a Public Limited Company (S.A.), or a Partnership Limited by Shares (S.e.C.S.). Most foreigners set up a S.A. to be registered as a SOPARFI. One advantage of this type of legal entity is the ability to issue bearer shares for privacy.

A Luxembourg SOPARFI can enjoy these benefits:

- **Foreign Owners:** Foreigners can own 100% of the shares.
- **Privacy:** Shareholders' names are not in any public records for privacy.
- **One Shareholder:** Only a minimum of one shareholder is required.
- **One Director:** Only one director is required who can be the sole shareholder.
- **No Audits:** There is no requirement for audits.
- **Low Taxation:** Companies not conducting business in Luxembourg only pay Net Wealth Tax and do not pay any income tax.

10C. Taxation in Luxembourg

Luxembourg corporate income tax includes two taxes applicable to the profits of a company:

- Corporate income tax at the rate of 18% (with effect from 1 January 2018) for companies whose taxable income exceeds EUR 30,000, or 15% for companies whose taxable income does not exceed EUR 25,000 for financial year 2018. For companies with taxable income between EUR 25,000 to EUR 30,000 Corporate Income Tax is computed as EUR 3,750 plus 33% of the tax base above EUR 25,000. In addition to the tax, there is a surtax of 7% on the tax amount.
- Municipal business tax rates range from 6% to 12% depending on the location. The rate in Luxembourg City is 6.75%.

The corporate income tax in Luxembourg is hence, about 26.01%.

Foreign tax credit – Foreign tax paid may be credited against Luxembourg tax if the foreign tax is comparable to Luxembourg corporate income tax. The credit is limited to the amount of Luxembourg income tax payable on the foreign income.

Participation exemption – Dividends and capital gains derived by a qualifying entity from a qualifying shareholding may be exempt from Luxembourg corporate income tax and municipal business tax if the entity deriving the income holds or commits to hold the participation, directly or indirectly, for an uninterrupted period of at least 12 months and the participation does not fall below 10% or below an acquisition price of EUR 1.2 million (EUR 6 million for capital gains) throughout that period.

Incentives – A global investment tax credit is available for 8% of the acquisition value of the first EUR 150,000 of investments made during the year, and 2% of the excess over EUR

150,000. A supplementary investment tax credit of 13% of the acquisition value of qualifying investments made during the tax year also is available.

Intellectual Property Tax Regime – Under the new IP Regime announced on 4 August 2017, eligible net income from qualifying IP rights will benefit from 80% tax exemption. The qualifying IP rights will also enjoy full net wealth tax exemption. Under the nexus approach in the new IP Regime, there is focus on establishing a direct connection between expenditures, the IP assets and the income that can benefit from the beneficial regime. Two main group of assets can benefit from the new regime – (i) Inventions protected under patents, utility models and other IP rights that are fundamentally equivalent to patents; and (ii) software protected by copyright under national or international norms. Marketing-related IP such as trademarks are not eligible assets.

The above exemptions and incentives often make a holding company in Luxembourg almost tax free.

A **withholding tax** of 15% is levied on dividend payments, unless the double tax treaties provide for lower rates or the Luxembourg participation exemption is applicable. Interest, royalties and liquidation proceeds are not subject to withholding tax.

Net wealth tax of 0.5% is levied annually on total net assets. It may be reduced if the company maintains for five years a specific reserve amounting to five times the amount of corporate income tax. A minimum net wealth tax of EUR 4,815 is applicable to all financial companies from 2017. This minimum tax applies to companies whose financial fixed assets, intercompany receivables and cash at bank exceed 90% of the total balance sheet and EUR 350,000.

Luxembourg does not levy capital duty.

There are four different VAT rates in Luxembourg: 3%, 8%, 14% and 17%. The 3% rate applies to services such as author rights and the supply of radio and television services, right of access to concerts, cultural activities, educational panels, etc. and to certain supplies of goods (books, children shoes), but also currently to e-books.

Luxembourg's standard VAT rate is 17%, the lowest in Europe. The standard rate also applies to supplies of electronic services and telecom services via the internet.

11. Ireland Company

11A. Ireland General

Ireland (official name: Republic of Ireland) is an island located north-west of continental Europe. Ireland is the third largest island in Europe and the 20th largest island on planet earth. Ireland is separated from Great Britain by the Irish Sea. The country has an area of 70,280 sq. km. Total population of the country is 4.8 million (April 2017). Ireland is a small, modern, trade-dependent economy. Ireland was among the initial group of 12 EU nations that began circulating the euro on 1 January 2002.

Politically, the island is divided between the Republic of Ireland, an independent state, and Northern Ireland (a constituent country of the United Kingdom). Both the Republic of Ireland and the United Kingdom are members of the European Union (as in 2018; future is likely to see United Kingdom moving out of EU), and as a consequence there is free movement of people, goods, services and capital across the border.

The Republic of Ireland is a parliamentary democracy based on the British model, with a written constitution and a popularly elected president who has mostly ceremonial powers.

The Republic today ranks amongst the wealthiest countries in the world in terms of GDP per capita and in 2016 was ranked the eighth most developed nation in the world by the United Nations' Human Development Index. A period of rapid economic expansion from 1995 onwards became known as the Celtic Tiger period, was brought to an end in 2008 with an unprecedented financial crisis and an economic depression in 2009.

Ireland's economy went through a period of boom during the mid-2000s and a bust during 2008-2013. After 2013, the economy has been performing well.

Presently Irish economy is performing strongly. Central Bank of Ireland has revised GDP projection to 4.4% for 2018, moderating GDP growth to 3.9% in 2019.

From 2015 onwards, Ireland's national accounts are distorted by the reclassification of multinational companies or their assets as being resident in Ireland. Given the presence of such large distortions, GDP and GNP have little information content in regards to Ireland's economic activity. Ireland authorities have released a metric called GNI (an augmented Gross National Income) which excludes the impact of multinational companies' distortions. GNI grew 9.4% in nominal terms in 2016.

Ireland's ongoing economic recovery is generally attributed to its educated and flexible workforce; government measures to ensure macroeconomic stability and to attract foreign investment; and membership of the European Union, which now provides a market of almost 500 million people. Ireland continues to be one of the most open economies in the OECD, and exports are now showing strong growth.

Ireland is uniquely exposed to Brexit due to high trade intensity with the UK. Approximately 15% of Irish goods and services exports are destined to the UK. In certain sectors, the UK is an especially important market, such as the agri-food sector where around 40% of exports are destined for the UK. In addition, two-thirds of Irish exporters make use of the UK land-bridge to access continental markets. Hence, Brexit will have negative impacts on the Irish economy. Level of impact will depend on the post-Brexit relationship of the UK with European Union.

Ireland is the most attractive country for FDI in the world and among top 10 countries in the euro zone for ease of doing business and availability of skilled labour. In the **World Bank Ease of Doing Business Rankings (2018), Ireland ranks at 17 as compared to 63 for Luxembourg**.

There are now more than 1000 overseas companies with a presence in Ireland. Ireland is home to many of the world's leading high-performance companies including Intel, Apple, Twitter, Microsoft, Google, Facebook, Pfizer, Citi, Huawei, Takeda, Fujitsu, Novartis and Trend Micro thanks to favourable corporate taxes, and a healthy business environment. The country is also positioning itself to become a world leader in the Internet of Things, Big Data, ICT Skills, Energy Efficiency, Health Innovation and Cloud Computing.

Nine out of top ten global software companies, thirteen out of top fifteen medical technology companies, more than 50% of the top financial services companies, nine out of top fifteen internet companies, top ten pharmaceutical companies and eight out of top ten industrial automation companies are based in Ireland.

11B. Company Structure and Incorporation in Ireland

The greatest advantage of Ireland for Indian entrepreneurs is that its company law is largely similar to Indian company law. Combined with this is the fact that Ireland is an English-speaking country. This makes it extremely easy for Indians to set up and manage a company in Ireland.

Compared to Luxembourg, setting up a company in Ireland is faster, easier and cheaper. Unless one is looking for geographical location within the mainland of Europe due to logistic considerations, Ireland scores over Luxembourg in all respects.

Probably, the only aspect where Luxembourg has an advantage over Ireland is lower VAT rates. However, the advantage is not significant since the local market of Luxembourg is very small and, as per the new EU regulations, in e-commerce transactions applicable tax is determined by the residence of the customer (for companies having yearly cross-border online sales of more than EUR 10,000).

Ireland, like India, has two main types of companies – public limited and private limited. Key details for the two types are as follows:

Criteria	Private Limited Company	Public Limited Company
Minimum Authorized Share Capital - EUR	1	25,000
Minimum Paid-up Capital	Full	25%
Number of Shareholders	1 - 91	1 - no limit
Company Secretary	Yes	
Time required	2-5 days	
Personal visit required	No	
Directors required	2	
EU Director*	Yes	
Bearer shares	No	Yes
Corporate tax	12.5%	
Incorporation Cost - EUR	400-600	600-900
Annual Costs - EUR	2,000 - 2,500	

Notes : *Any EU nationality. In absence of EU Director, bond needs to be given

All costs / fees mentioned above are approximate and indicative. Actual costs may vary.

Source : Different websites

11C. Taxation in Ireland

In Ireland, companies are liable to pay Corporation Tax on all profits (income and gains), wherever arising. This tax is charged on the company's profits, which include both income and chargeable gains. A company's income for tax purposes is calculated in accordance with Income Tax rules. Chargeable gains are calculated in accordance with Capital Gains Tax rules.

There are two rates of Corporation Tax:

- 12.5% for trading income unless the income is from an excepted trade* in which case the rate is 25%
- 25% for non-trading income (e.g. investment income, rental income)

* Excepted trades include certain land dealing activities, income from working minerals and petroleum activities

The tax system in Ireland is said to be one of the most efficient in terms of bureaucracy and administration. A survey showed that Irish companies on average spend 82 hours a year complying with the tax regime compared to 218 hours in Germany. Ireland scores with a transparent and efficient system which has relatively much less scope for discretionary arrangements as in the case of other low tax countries.

A start-up trading company can get a three year exemption which reduces its corporation tax charge (up to EUR 40,000 per annum) to nil. There is marginal relief if the charge is between EUR 40,000 and EUR 60,000. In theory, this means a start-up company can earn annual net profits of EUR 320,000 and pay no tax. However, the relief is linked to the amount of employer's Pay Related Social Insurance (PRSI) paid by the claimant company, subject to a maximum of EUR 5,000 per employee, and an overall limit of EUR 40,000. The relief does not apply to trades carried on by associated companies. Start-up companies which commence trading between 2009 and 2018 may be eligible for relief.

VAT at the standard rate of 23% applies to all goods and services other than the following:

- Exempt goods and services consisting principally of financial, medical and educational activities; admissions to, and promotion of, theatrical and musical performances.
- Zero rate goods and services include exports, intra-Community supplies of goods to VAT-registered persons in other EU Member States, certain food and drink, oral medicine, certain books and booklets, certain animal feeding stuffs, certain fertilizers, seeds and plants used to produce food, clothing and footwear appropriate to children.
- Reduced rate (13.5%) goods and services include certain fuels, building services, repair, cleaning and maintenance services generally, and certain photographic supplies.
- Super-reduced rate (9%) for tourism related activities including restaurants, hotels, cinemas, hairdressing and newspapers.
- Livestock, including horses, greyhounds and the hire of horses are liable at 4.8%

For any clarifications related to Ireland, please contact

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12. USA Company

Setting up a company in the US is often very simple and cheap. Non- residents have to go through the same steps as a resident. However, they have to additionally deal with issues such as international tax law, getting visas and opening a bank account. USA does not score well in terms of tax benefits. Therefore starting a company in the US is only prudent if there is a sufficient client base present in the country.

12A. Types of Entities

The common forms of business entities in the USA are:

- Sole Proprietor
- Partnership (General or Limited Partnerships)
- Corporations ("C" Corporations and "S" Corporations)
- Limited Liability Company (LLC)

We shall only examine Corporations and LLCs.

A corporation is identical to a company in India. It is limited by shares, therefore carries protection for its stockholders and the corporation pays taxes. The corporation pays taxes on its earnings and the owners pay taxes on the distribution of profits, after tax (dividends), which makes it a double taxation entity. A corporation is formed by filing Articles of incorporation with the Secretary-of-State and control of the corporation is the responsibility of its Board of Directors.

- The subchapter "S" Corporation is a variation of the "C" Corporation and under a different IRS Tax Code. The "S" Corporation is allowed the flow-through taxation treatment similar to that of a partnership and sole proprietorship. Double taxation is avoided by its owners/shareholders. The limitations however are that:
    - Ownership is limited to 100 shareholders.
    - Owners cannot be corporations, partnerships, pension plans, charitable organizations, certain trusts.
    - Non-resident aliens cannot be shareholders.

To maintain subchapter "S" Corporation status and therefore flow-through taxation status, there is a requirement for strict compliance with stringent rules.

LIMITED LIABILITY COMPANY (LLC)

The Limited Liability Company (LLC) is a hybrid with similarities and differences with the other business forms:

- It is a separate legal entity like a corporation
- It does not have shareholders, but rather it has members.
- Its members are protected with limited liability. Their personal liability is limited to the amount invested in the LLC
- For USA incorporation the members can be physical persons or entities, including corporations, partnerships, trusts etc.
- Non-residents can be a member of the LLC. ("Offshore LLC's")
- It is taxed like a partnership, which has the benefit of flow-through taxation.
- Can be formed with any number of members.
- An LLC does not pay taxes; its resident members are tax liable as personal income similar to a partnership. Non-resident members are liable for taxes on income derived from the US.
- Foreign members are not liable to tax and don't have to file tax forms if the income derived is not from the United States.
- The only document required to register the LLC with the local Secretary-of-State is the Articles of Organization.
- An LLC has a limited life span.

The US Limited Liability Company allows Non-US resident full ownership and these members are not required to file any tax returns once the income of their LLC is not derived from the United States and it is not effectively connected with trade or business within the United States nor do they employ US residents or rely on a dedicated place of business within the United States. This does not apply to an office which is infrequently used.

A US LLC can be used in the same way as an offshore business company registered in a tax haven if one does not plan to trade with the United States.

12B. Choice of Entity

A foreign company / individual looking to set up a business in the US can either set up a corporation or a LLC. The choice of entity can be based on two simple guidelines:

- If the proposed company is planning to do business in the US, then a corporation is the better choice.

- If the proposed company will be used strictly outside the US, and there will be no US resident owners, then a limited liability company is much better.

In case of a US company (LLC) carrying on business outside the US, and having no US-resident owners, the LLC is not subject to US income tax or reporting. In case it is a single-member LLC, it is automatically considered to be a "disregarded entity," meaning that it does not exist for income tax purposes. If the owner is not subject to US tax, and the LLC is not doing anything that would trigger US tax obligations, then it does not have a US tax or reporting obligation.

A US corporation, no matter which state it is incorporated in, is taxable on its worldwide income, and must file a corporation tax return each year. If the proposed company is likely to be doing business in the US, by leasing office space, hiring employees, or otherwise setting up a "permanent establishment," then a corporation is the sensible choice.

While a corporation pays ordinary income rates whether owned by a resident or non-resident, an LLC's situation is more complicated. The default tax status is flow-through, either as a disregarded entity or a partnership. Flow-through tax is a mixed blessing for a non-resident, since it means that the non-resident must obtain a US tax number and file a non-resident US income tax return. Any dividend or other payout from the LLC to the owner(s) must first be reduced by 30% as a withholding tax. Although, a reduced rate or an exemption may apply if stipulated in the applicable tax treaty. For example under India USA Double Taxation Avoidance Treaty, if an Indian company owns more than 10% of a US LLC the maximum withholding tax is 15% of the amount being paid as dividend; and in all other cases, the withholding tax is 25% of dividends.

A foreign-controlled LLC is also subject to the Branch Profits Tax, an onerous tax and accounting procedure meant to prevent foreign-owned companies from circumventing capital gains taxes. US corporations are not subject to the Branch Profits Tax.

The only benefit that an LLC has is that non-US source income is not taxed. Hence, using **a corporation to transact only US business (and using a different, non-US entity for non-US business) is considered the best practice**.

12C. Income Tax in USA

There are two types of income tax in USA. Federal income tax remains unchanged irrespective of the location. State income tax varies from state to state. Rates of federal income tax for corporations are as follows:

Taxable Income (USD)	Tax Rate
0 to 50,000	15%
50,000 to 75,000	USD 7,500 + 25% of the amount over 50,000
75,000 to 100,000	USD 13,750 + 34% of the amount over 75,000
100,000 to 335,000	USD 22,250 + 39% of the amount over 100,000
335,000 to 10,000,000	USD 113,900 + 34% of the amount over 335,000
10,000,000 to 15,000,000	USD 3,400,000 + 35% of the amount over 10,000,000
15,000,000 to 18,333,333	USD 5,150,000 + 38% of the amount over 15,000,000
18,333,333 and up	35%

As given in Instructions for Form 1120 dated 25 January 2018

Source : United States Internal Revenue Service

USA federal income tax rates are clearly high in comparison to most other countries. Hence, a US corporation must be used strictly for US business only.

In addition to the federal income tax, most states impose their own state income tax. States of **Nevada, Washington, South Dakota and Wyoming impose no state income tax**. Ohio does not impose income tax but instead imposes a Commercial Activity Tax. Texas has replaced state income tax with franchise tax which is also known as margin tax.

It may be mentioned here that since the US corporation is proposed to be set up for catering to US-based customers, local considerations other than state income tax may have to be kept in mind before deciding the location of the proposed company.

Rates for state income tax in different states are as follows:

State	Tax Rate (percent)	Tax Brackets Lowest		Highest	No. of Brackets
Alabama	6.5		----Flat Rate----		1
Alaska	0 - 9.4	25,000		222,000	10
Arizona	4.900		----Flat Rate----		1
Arkansas	1.0 - 6.5	3,000		100,001	6
California	8.84		----Flat Rate----		1
Colorado	4.63		----Flat Rate----		1
Connecticut	7.5		----Flat Rate----		1
Delaware	8.7		----Flat Rate----		1
Florida	5.5		----Flat Rate----		1
Georgia	6.0		----Flat Rate----		1
Hawaii	4.4 - 6.4	25,000		100,001	3
Idaho	7.4		----Flat Rate----		1
Illinois	9.50		----Flat Rate----		1
Indiana	6.0		----Flat Rate----		1
Iowa	6.0 - 12.0	25,000		250,001	4
Kansas	4.0		----Flat Rate----		1
Kentucky	4.0 - 6.0	50,000		100,001	3
Louisiana	4.0 - 8.0	25,000		200,001	5
Maine	3.5 - 8.93	25,000		250,000	4
Maryland	8.25		----Flat Rate----		1
Massachusetts	8.0		----Flat Rate----		1
Michigan	6.0		----Flat Rate----		1
Minnesota	9.8		----Flat Rate----		1
Mississippi	3.0 - 5.0	5,000		10,001	3
Missouri	6.25		----Flat Rate----		1
Montana	6.75		----Flat Rate----		1
Nebraska	5.58 - 7.81		100,000		2
Nevada	--		No corporate income tax		
New Hampshire	8.2		----Flat Rate----		1
New Jersey	9.0		----Flat Rate----		1
New Mexico	4.8 - 5.9		500,000		2
New York	6.5		----Flat Rate----		1
North Carolina	3.0		----Flat Rate----		1
North Dakota	1.41 - 4.31	25,000		50,001	3
Ohio	*				
Oklahoma	6.0		----Flat Rate----		1
Oregon	6.6 - 7.6		1 million		2
Pennsylvania	9.99		----Flat Rate----		1
Rhode Island	7.0		----Flat Rate----		1
South Carolina	5.0		----Flat Rate----		1
South Dakota	--		No corporate income tax		
Tennessee	6.5		----Flat Rate----		1
Texas	**				
Utah	5.0		----Flat Rate----		
Vermont	6.0 - 8.5	10,000		25,000	3
Virginia	6.0		----Flat Rate----		1
Washington	--		No corporate income tax		
West Virginia	6.5		----Flat Rate----		1
Wisconsin	7.9		----Flat Rate----		1
Wyoming	--		No corporate income tax		
Dist. of Columbia	8.25		----Flat Rate----		1

Source : Federation of Tax Administrators Rates are for Tax Year 2018 - as of 1 January 2018

Notes : * Ohio no longer levies a tax based on income (except for a particular subset of corporations), but instead imposes a Commercial Activity Tax (CAT) equal to $150 for gross receipts situsedto Ohio of between $150,000 and $1 million, plus 0.26% of gross receipts over $1 million. Banks continue to pay a franchise tax of 1.3% of net worth. For those few corporations for whom the franchise tax on net worth or net income still applies, a litter tax also applies.

** Texas imposes a Franchise Tax, otherwise known as margin tax, imposed on entities with more than $1,110,000 total revenues at rate of 0.75%, or 0.375% for entities primarily engaged in retail or wholesale trade, on lesser of 70% of total revenues or 100% of gross receipts after deductions for either compensation or cost of goods sold.

12D. Choice of State

If a company is incorporated in one state but conducts business primarily in another state, it may need to "foreign qualify". Foreign qualification registers a corporation or LLC to transact business in a state other than the state of incorporation.

Let us consider a LLC or Corporation registered in one state and doing significant portion of business online covering many states. To decide whether such a corporation or LLC needs to register in any particular state, the following questions need to be asked:

- Does the LLC or corporation have a physical presence in the state (i.e. office, restaurant, or retail store)?
- Do the director(s) / officer(s) of the LLC or corporation often conduct in-person meetings with clients in the state?
- Does a significant portion of revenue of the LLC or corporation come from the state?
- Do any of the employees of the LLC or corporation work in the state? Does the LLC or corporation pay state payroll taxes?
- Did the LLC or corporation apply for a business license in the state?

If the answer to any of the above questions is yes, the concerned LLC or corporation may need to file for foreign qualification in the state.

To foreign qualify, the proper paperwork, called a Certificate of Authority or Certificate of Registration (in some states), must be completed and filed and additional state filing fees paid. Foreign qualified businesses are subject to ongoing requirements and fees both in the state of incorporation and also the state(s) of qualification.

The Foreign Qualification process differs state to state; however, states typically require one to file:

- An application of Certificate of Registration or Certificate of Authority to foreign qualify your company
- A fee to file your application
- A copy of your company's Certificate of Formation or Incorporation
- A Certificate of Good Standing or Certified Copy from the state of formation

Delaware is a very popular choice for many large corporations. It was America's first corporate haven, and its laws are intentionally pro-business. More than 66% of all U.S. publicly-traded companies and 66% of Fortune 500 companies call Delaware home. But

these same advantages may not always apply to smaller businesses. Some advantages of Delaware are as follows:

- The cost to form a corporation or LLC is among the lowest in the country.
- Delaware's corporate law is one of the most flexible in the country.
- The taxation requirements are often favorable to companies with complex capitalization structures and/or a large number of authorized shares of stock.
- There is no personal income tax for non-residents.
- There is no state corporate income tax for corporations and LLCs that are formed in Delaware but do not transact business there (there is a franchise tax, however).
- There is no combined state and local sales tax.
- One person can hold all officer positions and serve as the sole director of the corporation or sole member/ manager of the LLC.
- No director, member, manager or officer names need be listed in the formation documents, providing a level of anonymity.
- Shareholders, directors and officers of a corporation and members or managers of an LLC need not be residents of Delaware.
- Shares owned by persons outside of Delaware are not subject to Delaware taxes.

Nevada has become an extremely popular state in recent times. Nevada does not impose franchise taxes or corporate income tax. Moreover, the state has strong liability and asset protection. There is no personal income tax, enhanced privacy of ownership, the speed at which a corporation can be formed, tax savings, and low startup cost. Commerce tax is imposed on businesses with a Nevada gross revenue exceeding USD 4,000,000 in the taxable year. Rates of commerce tax vary from about 0.05% to 0.3% of turnover. All businesses are required to file a Commerce Tax return, regardless of liability. Some of the advantages offered by Nevada are:

- Strong liability protection for directors and officers acting on behalf of the corporation.
- Low startup and annual costs
- Tax savings: A Nevada corporation conducting business in Nevada is state income tax free.
- Privacy: Nevada corporation stockholders are not on public record.
- The state of Nevada did not sign an information sharing agreement with the IRS.

- Nevada is the only state that allows for "**Bearer Shares**" to be issued. These shares are owned by whoever has them at the moment, thus allowing a trusted friend or family member to hold the shares in times of peril.
- Minimal reporting and disclosure requirements.
- The directors don't need to be stockholders.
- Nevada corporations have the ability to issue stock to raise capital, for services rendered, personal property, and real estate. The directors have the ability to determine the value in these instances, and their decision is binding.

12E. VAT / Sales Tax

USA does not have a federal VAT or sales tax. Most states impose sales tax. In addition there is local sales tax. Combined state and local sales tax may amount to about 5% to 10%. Please check with a local expert the rate of tax applicable for the item proposed to be sold.

12F. Cost of Incorporation and Operation of a Corporation

Incorporating a company in most states of USA can be really fast and cheap. **Costs for incorporating a corporation (including opening bank account) range from a low of about USD 600 and can go up to about USD 2000**. These are package rates offered by incorporation companies on their websites. The rates can increase substantially if some out-of-the-run documents are needed and legal fees have to be paid.

13. Hong Kong Company

Hong Kong is a former British colony that was handed over to China in 1997. Being a former British colony, legal systems of Hong Kong are similar to India. Indian businessmen are hence likely to feel at home in Hong Kong.

The Hong Kong Government is promoting the Special Administrative Region (SAR) as the site for Chinese renminbi (RMB) internationalization. Hong Kong residents are allowed to establish RMB-denominated savings accounts; RMB-denominated corporate and Chinese government bonds have been issued in Hong Kong; and RMB trade settlement is allowed. Hong Kong's special status in China makes it an ideal location to set up a company for serving the huge market of China.

Some advantages of Hong Kong for Indian businessmen are as follows:

- Level playing field for all – no foreign ownership restrictions
- No requirement of resident director or resident shareholder
- Low, simple and predictable tax regime
- No tax on off-shore income
- No tax on capital gains and dividends
- Lowest tax rate in Asia Pacific, though in terms of effective rate Singapore is often lower.
- Maximum profits tax rate for profits above HKD 2 million is 16.5% for corporations and 15% for unincorporated businesses. For lower profits, the tax rate is half.

Assessable profits	Tax rate	
	Corporations	Unincorporated businesses
First HKD 2 million	8.25%	7.50%
Over HKD 2 million	16.50%	15%

Applicable from Assessment Year 2018-19.

Source: Hong Kong's Information Services Department

- No goods and services tax

- Free movement of capital, talent and goods
- Proven gateway to China's high-growth markets
- CEPA, a China-Hong Kong free trade agreement, allows local companies preferential access to the China market
- All goods qualified as Hong Kong origin may be exported to China tariff free.
- Asia's leading aviation and shipping hub
- Adjacent to China's fast-growing Pearl River Delta region
- Multi-lingual workforce – English is the language of business

Hong Kong is a leading international finance and business center. It has well-developed infrastructure, ever-growing capital market, highly educated working professionals, and an attractive tax regime. Considered as one of the most dynamic economic regions in the world, Hong Kong offers a supreme location for entrepreneurs and firms to participate in the Asian economies. Most importantly, Hong Kong serves as doorway to the Chinese market.

A company in Hong Kong is similar to a company in India. Key points of difference that Indian entrepreneurs need to note are as follows:

- **Directors** – There is no need for a resident director. A director can be national / resident of any country. A company may have only one director.
- **Nominee Director** – It is possible to nominate someone to be a Director on one's behalf.
- **Nominee Shareholder** – It is possible to nominate someone to act as a shareholder on behalf of oneself.

- **Registered Office** – The registered office of the company must be in Hong Kong.

- **Company Secretar**y – Every company must have a company secretary who has to be necessarily a resident of Hong Kong. A sole shareholder / director cannot act as company secretary.

A company must apply for a business registration certificate within 1 month from incorporation and display it at the place of business.

Setting up a company in Hong Kong is fast and efficient. Costs can be in the range of about USD 3000 for incorporation and first year operations. Typical costs in Hong Kong are as follows:

Criteria	Approx. Cost	
	HKD	USD
Company registration fee	1,720	224
Business registration fee	2,000	260
Protection of Wages on Insolvency Fund	250	33
Company Secretary & Registered off.	6,000	780
Miscellaneous Expenses	12,000	1,560
One-time costs at setup	**21,970**	**2,856**
Annual expenses	**20,250**	**2,633**

Notes : All costs except Company Registration Fee are annual. All costs are indicative. Actual costs may vary. Assumed 1 HKD = 0.13 USD

Source : Various websites

Company incorporation in Hong Kong may be completed within 24 hours (at the e-registry) or may take a week.

More information about doing business in Hong Kong may be obtained from http://www.investhk.gov.hk/index.html

14. Integrating the Parts

A good structure is like a living being. It is much more than sum of its parts. Creating a good structure is not simply incorporating companies in different locations, though undoubtedly that is a necessary part of the job.

The constituent companies that form a global structure have to be linked together and integrated seamlessly within the boundaries of law. Documents defining and detailing the relationships between different constituent companies must be drafted meticulously. Typically, all or some of the following documents may need to be prepared:

- Joint Venture Agreement
- Shareholders' Agreement
- Technology Transfer and Licensing Agreement
- Confidentiality and Non-Disclosure Agreement
- Brand Licensing Agreement
- Services Agreement

Since each of the above will be a cross-border agreement, it will need to comply with and take into account the laws of both countries where the concerned companies are based. Often, governments insist on filing of the concerned agreements with regulatory / tax authorities.

Moreover, in case at any later date any individual company is proposed to be sold off as a stand-alone entity to a third party, a clear documentation of the entity's relationships with other companies is necessary.

In addition to the above, it is generally advisable to get Confidentiality and Non-Disclosure Agreement executed from all professionals who may be involved as company secretary / incorporation agent / nominee director / nominee shareholder at any location across the globe.

The agreements mentioned above will surely be stored in the respective countries where the concerned companies are located. However, we recommend that, in addition, an authorized / notarized copy of all documents related to relationships between different constituents of the global structure be stored at a safe location in the country serving as location for holding company.

A key question that we are often asked – when is the right time to create a global structure? The answer depends on each individual case. But, in general earlier is better. Often when businesses have grown in size, restructuring involves significant costs while at an early stage the additional cost is nominal.

15. Consolidated Cost of Global Structure

Every entrepreneur / business is different and hence, a different global structure needs to be designed and developed for each one. In Chapter 6, we had presented a sample global structure. In other chapters above, we have discussed about various constituents of the sample structure. The following table gives an approximate indication of the consolidated cost of setting up and operating the sample global structure.

Cost Head	Startup + 1st Year	Annual Operation	Remarks
	USD		
Liechtenstein Holding LLC	11,500	7,000	
Switzerland Holding Co. AG	17,600	10,000	
Singapore Holding Co.	3,413	2,775	
Ireland Company	3,438	2,813	
USA C Corporation	1,000	500	
Hong Kong Company	2,856	2,633	
Mauritius GBC I	5,000	3,000	Optional for the sample structure, as discussed; Not included in total cost given below.
Indian Company	1,000	500	Depends on location and authorized capital.
Fees for designing the structure, overseeing the incorporation of all companies and drafting of all necessary documents	40,000	10,000	May vary greatly depending on the quantum of work.
Travel Expenses	20,000	6,000	May vary greatly.
TOTAL using Singapore Holding Co.	**83,207**	**32,220**	Excluding Mauritius.
TOTAL using Swiss Holding Co.	**97,394**	**39,445**	Excluding Mauritius.

Note: Above costs are for budgetary purpose only. Incorporation and company operation costs will be as actually paid to concerned agency / professional. The above should not be construed as an offer.

Whether the above costs are high or low will depend on the scale of business operations.

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