

Rules & Regulations on Foreigners: in Business & in Tourism

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Introduction

In the last few years India has been promoted as *that* county with the most promising business market and gorgeous future prospects. It looks like that would be the best conditions to start doing business in India – but all that glitters is not gold.

This paper seeks to examine the conditions and policies, the rules and regulations under which an individual foreigner has to establish and operate his own shop. Furthermore it shall be researched what it means being a foreign tourist in India.

To get an overview all kind of different forms of business possible to perform as an individual in India are studied. This straight leads to an analysis of preconditions and requirements for foreigners starting a business in India.

The search for possible differences in rules and regulations for foreigners compared to Indian citizens became especially important in the interviews lead with representatives of official institutions.

Finally it is challenged what it means being an individual foreigner who tries to find out how to set up a small business in India. Moreover it is tried to give an impression how it feels being a tourist in India.

Interviews with Representatives

At the first glance at diverse governmental and other institutions' homepages, there is plenty to find about setting up and doing business for Indians but nothing about the same for a foreigner, except concerning Foreign Direct Investment (FDI).

In the interview with Mrs. M. Roy, Deputy Director General of the Confederation of Indian Industry (CII) it appeared, that all rules and regulations compelling for Indians are the same for foreigners and she said that there were even no differences in the application. Doing so, India is just following the world trend. But this treatment of foreigners is not everywhere like this, she said and gave an example by quoting Malaysia. There, "inhabitants first" were promoted by only allowing a foreigner to do a business as long as there is no local person who wants to do that.

Being asked, whether there are special difficulties for foreigners to cope with in India or whether there is even a special support, she answers literally: "I think they are treated very well". So far so good by Mrs. M. Roy.

Mr. S.K. Mukherjee, Director of the Ministry of Small Scale Industries (SSI), has a different point of view concerning the lack of information about how an individual foreigner should run his business in India. According to S.K. Mukherjee, there are three main reasons for this:

- First, as mentioned before, in business rules and regulations are valid for everybody without regarding the nationality.
- Second, setting up a business with an investment below Rs 10 million, which is called small scale industry (SSI), is a too small investment to be of interest for foreigners as well as for the Indian government. Due to that, the Indian government promotes FDI more than ever and gives no encouragement for investing in the small scale business.

- Third, despite the fact that there is continuing criticism the Indian government still runs the reservation policy. Though, there is a slow opening to be recognised which means de-reservation of various items in a phase manner of about 5 years.

A common but big problem is that a huge number of entrepreneurs with a small scale (SS) unit in service or retail face is the fact, that they pay 15 - 16 per cent interest rate – instead of 9 – 10 per cent as their companions in SS manufacturing units do. Since the restructuring program 1991, the discussion has been going on that service is not regarded to be a SS unit and therefore has no access to concessional bank rate and rate of interest, says S.K. Mukherjee. Despite that, an “Illustrative List of Recognised Small Scale Service & Business (Industry-related) Enterprises (SSSBE)” can be found on page 22f in “Small Scale Industries In India, An Engine of Growth” published by the Development Commissioner (SSI).

That is also the reason why many foreigners willing to found a business in India do seldom apply for a bank credit at the national bank of India. They prefer foreign banks or at least private Indian banks. But the latter are also not much encouraged by the Indian government to serve loans, nor there are strict instructions for a better performance. If there exist official instructions e.g. to provide credits with moderate interest rates the banks simply do not follow and rise the interest rate as they like, justifying it with allegedly higher risk, knows Mr Mukherjee.

Despite these obstacles Mr. Mukherjee keeps hoping for a better future. Hence he quotes two programs like the set up of the Small Industries Development Bank of India (SIDBI) in April 1990. It is expected to “meet the requirements of setting up of new projects, expansion, diversification, modernisation and rehabilitation of existing units”¹ and the Credit Guarantee Fund Scheme for Small Industries for the “purpose of providing guarantees to a substantial extent in respect of credit facilities to borrowers in the small scale sector, without any collateral security and/ of third party guarantees.”²

S.K. Mukherjee also mentions, that there is a discussion going on to establish something similar like Basel II. This would mean strictly regulated assignment of bank loans, enforced transparency of general handling and finally more competition between banks and respectively lower interest rates.

As another positive point in the director’s list are the Indian industry associations that should give support to entrepreneurs. He mentions the Federation of Indian Chamber of Commerce and Industry (FICCI), which is concerned with the larger industries and the Confederation of Indian Industry (CII), which is now opened also for SS units. But considering that Mrs. M. Roy of CII did not see any problems in setting up a business, neither for the Indians nor for foreigners, how will the support of such an institution look like?

The next interview took place with Dr. C. S. Prasad, Additional Development Commissioner (DC) of the Ministry of Small Scale Industries. He too says there is no difference in setting up a SS unit between a local citizen and a foreigner. Out of 8000 items there are 675 reserved for the SS sector, which means the entrepreneur can deal with them under 2 conditions:

- Firstly, there is the export obligation, which says that 50 per cent of the production has to be exported.
- Secondly, the equity participation from outside is only allowed up to 24 per cent of the total equity capital.

In some cases (like for hand tools, knitwear, writing items etc.) this ceiling is enhanced to Rs 50 million instead of Rs 10 million.

Obviously, the second condition means a big hindrance for foreigners.

According to Dr. C. S. Prasad, the SSI is quite liberal because there is no regulation and no licence necessary. The registration at the Director of Industries of the concerned State Government (DIC) is only voluntarily but recommended. Costs of the form are between Rs 50 to 100.

¹ Small Scale Industries In India, An Engine of Growth, page 53

² Small Scale Industries In India, An Engine of Growth, page 71

The visa conditions can be a special obstacle to operate business in India as a foreigner. India has mutual agreements with other countries. This means depending on the agreement with the home country of the foreigner, he or she will get a 1 or 5 or even 10 year business visa.³

Dr. Prasad says, one should demonstrate that one is going to stay in India, which would finally result in a similar paper for India as the “green card” in the USA, the so called “Person of Indian Origin” (PIO) card. But as can be seen in the interview later in this paper, that is only said easily.

Being asked for the necessary time span to set up a business, Dr. Prasad answers that that depends on the preconditions. Generally everybody has to think about what kind of business he or she wants to do, what place etc. Important would be to study the market and to have a good business plan to be able to convince the bank to get a loan. To get the registration at DIC done takes about 30 days. Then one has to acquire power and water connections etc.

The tricky thing for outsiders would mainly be that the banks give them no money if they can not provide a security, which the banks regard as sufficient. When the going to be entrepreneur has its own money and does not need a loan, then he can start quite quickly.

- Question: So, provided the case that the entrepreneur buys everything he needs with his own money, gets the power and water connections and all other necessities (mind: these institutions will not urge on him to get registered as banks will do) and does not get registered since it is not mandatory – are these not the best preconditions to promote moonlighting?
- Answer: If you see it like that.
- Question: How does the finance ministry, the ministry or labour etc. get to know if ever that there exists a company?
- Answer: The ministries will find them.
- Question: How? Do the ministries send some people around to have a look, whether there is a new shop or not?
- Answer: Yes, they look for the output and they also have their sources.
- Question: And when the shopkeeper is found, will they not try to bribe the official person?
- Answer: Of course, some will try and sometimes bribing happens.
- Question: What about the inspections for checking whether the rules are kept or not, e.g. rules for labour or pollution etc.? Do the inspectors announce their coming?
- Answer: No, they do not announce. This is a major source of harassment, because if the inspector finds anything to complain of - he often expects or accepts a bribe.
- Question: How can this be avoided?
- Answer: In following the rules!
- Question: But I guess it is quite easy in most of the cases to find something which does not stick to the rules.
- Answer: Follow the rules.

Finally Mr. S.K. Mukherjee as well as Dr. C. S. Prasad kindly offer the extensive literature of “Small Scale Industries In India, An Engine of Growth by the ministry of SSI” but no single chapter focusing at foreigners willing to found a business can be found.

According to Mr. Rajpal Singh, Deputy Commissioner of MCD South Zone Office a person who wants to start a trade which is a general branch or who wants to open a barbershop has two possibilities.

First, one can open a shop in a commercial area, a so-called confirming area or to open it in a non-confirming area, which is a residential area. (look at Mr. S. N. Misra’s statement below) At the latter one has to be registered within the ad-hoc policy.

³ look at “Visa Obligations” later in this paper

Asked about the documents required for the application for setting up a shop in a MCD commercial area Mr. Rajpat Singh was quite insecure and answered very general. In contrast, the employees working for Mr. Singh know about the whole procedure in great detail.

Mr. Thapliar, Director of public relations at the Department of NDMC, does not know the rules and regulations as well as the process for setting up a business as an individual foreigner. He says that all rules and regulations are made for the purpose of business performing Indian citizens. As far as he knows the protocol division of the Ministry of External Affairs could have some files about individual foreigners running small shops in Delhi.

In general, the first step to found a tiny business, which requires little investment e.g. with a hairdresser shop, a trade with clothes or a trade with sweets, is to find a space for the shop. Concerning the NDMC area there are markets the NDMC assigns the space. But in the NDMC area are also private markets that have space for shops to allocate. The NDMC as well as the private property owner make announcements in newspapers to which the people interested in some space can make their offer for it.

Since the places for shops are very limited and the applicants for it are big in number the chance to get a suitable space are quite bad. According to Mr. Thapliar it is possible to set up the shop at home with a so-called "hawker" license one can apply for at NDMC as well.

The interview with Mr T. K. Sanyal. Financial Adviser at the Department of NDMC could not take place at the arranged date because he was so hoarse that he could not speak. In order to help, he organised Mr. S. N. Misra, former Enforcement Director of NDMC who was very helpful and nice.

Mr. S. N. Misra, former Enforcement Director at the Department of NDMC says that it is not allowed to operate a shop at residential areas except those established under the ad-hoc policy, which has been stopped. (look at Mr. Rajpal Singh' statement above) For the commercial areas there are two different ways to get a space for a shop. First, as mentioned above through newspaper announcements by private owners or by NDMC, or through an auction by DDA. To foreigners these auctions mean no possibility to acquire a space for a shop since they are not allowed to possess land and property says Mr. Misra. It could be that foreigners are allowed to rent a space for running a shop.

Similar Mr. Rajpat Singh, Deputy Commissioner of MCD South Zone Office says that foreigners are not allowed to own the property where a shop can be established. But it would be possible for them to rent a space for this reason.

Second step. If a space can be found actually, the going to be entrepreneur has to decide which type of shop will be possible to install. E.g. if the space for a trade shop for clothes is too small or in a hairdresser shop is no drainage for the bad water and no likelihood that one could be built, than one has to make up his mind and think about another kind of shop to establish.

Third step. If decided which shop could be run at the available place one has to see whether for the particular business a license is needed. Concerning the hairdresser shop and the trade with clothes in the NDMC area no licenses are required. For the trade with sweets a licence is needed at any rate since it belongs to the group of "eatables".

According to Mr. Thapliar this is not so at MCD where all three of the mentioned business types need a license.

Forth step. As mentioned for the trade with sweets a licence has to be obtained. This can be done at NDMC. In this case also the health department or Delhi government prevention of food is concerned. The documents required for the licence at NDMC are again the NOC from the landlord as well as the rent or lease or sell deed of the property.

Fifth step. As the copy given by Mr. Thapliar says, "Issue of challan for deposition of fee will be given when license has been granted/ renewal for the current year. License will be issued when the fee is deposited in the Municipal Treasury under intimation to the license section." This means the fee has to be paid if the license has been approved and this has to be done every year. The exact amount of the fee is depending on the business as Mr. Thapliar states.

Asked if there are any special requirements for non-Indian citizens, Mr. Thapliar says he thinks there has to be a special visa and also a clarification of the foreigners' embassy. In addition he believes that an Indian has to take responsibility for the foreigners' business activities, e.g. like an Indian manager.

Sixth step. The same goes for obtaining a bank loan. Here also an Indian citizen will be required to take over the risk. E.g. when the foreigner fails and leaves the country the Indian will be liable. So without such a security the foreigner will not be able to get a loan.

Seventh step. If the going to be entrepreneur decides to run a hairdresser shop or a trade with clothes in the NDMC area he needs to obtain all necessary instalments like water, electricity, drain. Therefore he has to show NDMC the NOC from the landlord as well as the rent or lease or sell deed of the property. For the hairdresser shop are additional requirements like the pollution certification for water and environment has to be shown.

Eighth step. The shopkeeper is allowed to employ as many people he likes. The amount of money to be paid depends on the employees' qualification. There is no minimum wage regulation, which means that this is completely left to the market forces.

Ninth step. Insurance for the entrepreneur itself, for the employees, the property etc. is voluntarily at all.

Tenth step. Taxes have to be paid according to the business. E.g. for trade the entrepreneur has to deliver the value-added tax on the sales which can be 8, 10, or 12 per cent. For service the value-added tax on service has to be paid. If the shopkeeper is the also the property owner he has to pay property tax. Finally income tax has to be paid.

Eleventh step. The shopkeeper has to expect 5 different inspectors, from the local police, from the health department, from the Delhi department, and from the sales tax as well as the income tax department. Says Mr. Thapliar.

Mr. Charanjit Singh, MCD South Zone Office is one the employees working for Mr. Singh, Deputy Commissioner MCD South Zone Office. In contrast to his superior Mr. Charanjit Singh is quite knowledgeable about the whole procedure in setting up a shop in the MCD area.

He states that for a foreigner it is impossible to establish a shop on his own. (look at Mr. Thapliar's and Mr. S. N. Misra' statement above) At any rate he would need an India partner to found a partnership. The license for the corporate shop would only be given to the Indian partner which means that the license would be made out in the name of the Indian partner only.

Finally, after trying more than several times Mr. T. S. Sharma could be reached at his office. Asked whether he would be ready to be interviewed he answered: " Sure, any time!" Actually an appointment for the next day at a certain time could be arranged. For this he was 25 minutes late, but apologised therefore.

To set up a business in India, first of all, the foreigner has to hand in an application to the Indian government Mr. T. S. Sharma says. The application form is called "Check list for FIPB Plain paper application" which states most important the amount of money invested in India. The approval is mainly for permitting investment in India. A copy of the application will be send to the foreigner's embassy to verify the approval.

The best way to found a business in India is to find an Indian partner, otherwise there are so many hassles, states Mr. Sharma. Even funding a business with a foreign partner is better as to do it alone.

After getting the approval, the foreigner should go to the property dealers. A foreigner is allowed to purchase property trough his company, which is a separate legal entity. He is not allowed to buy property as an individual person for private reasons e.g. a residential place. Thus purchasing property is but only allowed for business reasons, according to Mr. T. S. Sharma. (look at the statements above)

The money for purchasing property should come from the foreigner's foreign account. That implies that the money is not money lend in India.

To get a loan in India, either from a state or a private bank, the foreigner has to get an account first. For this he needs some securities, which most often have to be property. But if the foreigner needs the loan to purchase property the whole thing is a vicious circle.

This again can be burst by contracting a partnership with an Indian citizen, since he or she will serve the necessary property. To deliver a bank guaranty from a foreign bank should also be good enough, says Mr. Sharma.

After owning the property or having rent a space the foreigner can get all connections needed like water, electricity etc. When a license for the kind of items dealt with is required it can be made out in the name of the foreigner.

The foreigner simply has to comply with all rules and regulations as an Indian citizen has to. At this point of view there are no specific restrictions for foreigners.

So everything starts with the mentioned approval by the Indian Government. But here, at the very beginning, the seemingly equal treatment by the Indian government of Indian inhabitants and foreigners willing to run a small business shows its true face.

While every Indian can start running a business without any investment restrictions a foreigner has to invest Rs 1 million at least. In addition to this hindrance itself is the fact that the hindrance is not an obvious one but a hidden. Because the foreigner will learn this only by not getting the approval if the stated amount of money intended to invest is below Rs 1 million, says Mr. T. S. Sharma. "There is not chance to get the approval below the investment of 10 lakhs" he says.

Asked why the Indian government should indirectly refuse to get foreigners investment in small business (which actually can become big ones) Mr. Sharma says, "The Indian government is not interested in foreign investment of a few bucks".

Therefore the foreigner will also not get assistance like fiscal, credit, infrastructure, technological and marketing support etc. (as e.g. the Ministry of SSI it offers) as an Indian citizen gets it from the government.

When a foreigner insists on the idea to set up a little shop with small investment in India even under the existing Indian conditions he can do it like the people in Dharamshala says Mr. T. S. Sharma. Because there, many foreigners have set up little shops without any approval and license. They just rent a space and pay their taxes.

Asked if this is not a kind of mixture between illegality and legality, Mr. Sharma agrees and says: "That's just the Indian Way."

According to Mr. T. S. Sharma, the foreigner can try to get the approval with better chances after running the shop illegally for 2 or 3 years since he has proven to be capable of running the shop successfully. Then he also will get a loan more easily. But during the starting period the foreigner is constantly at the mercy of all the inspectors. They will have to be bribed in order to motivate and convince them not to shut down the shop.

The Getting - Information - Hassle

During this research it simply was an exhausting and demoralising process to get information and appointments for interviews.

Just a few examples:

When the Ministry of External Affairs was called in order to get the right person for an interview

- first, nobody who could name someone in charge was even there
- second, one was asked to call a certain person which then denied to be the right one
- third, one was recommended to call better other ministries, as e.g. the Ministry of Finance or the Ministry of Commerce.

Calling Mr. Prasad at the Ministry of Finance his secretary said

- one should call late in the morning since he usually comes late
- calling at 11:30 Mr. Prasad still was not there
- calling at 12:30 Mr. Prasad was already gone for lunch and would not come before 4 pm
- after 4 pm the line was always busy
- at 5 pm Mr. Prasad was never in the office

In a similar way Mr Ashok Kumar of the Central Licensing Enforcement Directorate was not available for almost a full week.

In innumerable cases the telephone was simply not picked up. In some cases the person who picked up spoke no English but Hindi only. In many cases the recommended person to call frankly said: "Why do you call me and not a person at this department or that ministry". So nobody felt responsible or was at least prepared to deal with the matter.

One gets the impression that these people working at an official institution get very much troubled just by calling them up. Confronted with a foreigner who simply wants to get information to be able to found a business in India makes them feel so uncomfortable or even afraid that almost everyone of them refuses any contact.

Practice

Case study: Start Up

Polifelt is an Indian liaison (SSI) of and Malaysian branch of an Austrian company. Liaison means Polifelt India is not a direct selling unit. The actual trade is done by an Indian buyer and Malaysian branch of the Austrian company. Polifelt India's objectives are to increase sales, to set up more offices and to go into production finally.

At the time of the interview, the liaison's set up has been in its final phase. William Manousis is Polifelt's Country Manager of India, Nepal and Bhutan.

Pre entry obligations

1. The registration of Polifelt in Malaysia as Polifelt Asia Sdn Bhd Malaysia is the first needed paper to legitimate the going to be liaison in India.
2. To set up the liaison, the representatives and their responsibilities have to be declared.
3. The Manager has to show the "General Power of Attorney"
4. The Manager has to prolong his business visa (valid 6 month) as long as possible
 - a. Firstly, the manager had to go back to his embassy in Malaysia
 - b. Secondly, he had to apply for a visa extension at the Foreigner's Regional Registration Offices (FRRO) in India
5. Application to the Reserve Bank of India
 - a. To borrow money at the Reserve Bank of India does not require a local partner but
 - b. the investment in properties require an exchange control authority
 - c. Also for borrowing money from abroad the approval is required
6. Approval of the Reserve Bank of India (takes circa 8 weeks) provides the permission to establish a liaison office in India under the Foreign Exchange Management Act (allows to establish a branch or office or other place of business in India)
7. Setting up a bank account
8. Hire employees
9. Get the location for the office; "Lease Deed" between the liaison and the landlord (The agent charged the amount of one month rent)

- a. If the office is located in a residential area it could be that an inspector shows up, then in most cases he will get a bribe or one has to pay a penalty.
 - b. The landlord is in charge of establishing and maintaining electricity, water etc.
10. "Certificate of Establishment of Place of Business in India"
11. Registration under the Companies Act, 1956
12. The time taken to set up the office: 5 month (March till August 2003)
13. Money: To fund the liaison office approximately \$ 3000 to 4000 are necessary. Continuing cost for lawyer, accountant etc. about \$ 7000 per year.
14. Special support:
 - a. The Austrian Trade Commission made available a lawyer and a consultant
15. Problems faced:
 - The Indian embassy refused to extend the manager's visa on basis of the documents described above. He had to show an additional letter from the commercial counsellor of the Austrian Embassy, which confirms the manager's position and the necessity of his stay in India. Then he got an employment visa which is a sort of business visa, only valid for a year.
 - Mr. Manousis had big difficulties when applying for a bank account. Although he had all necessary papers the bank employee refused to establish the account and said it would take 2 weeks, without giving any reason. No checking of all papers and questioning what should be wrong with helped. When Mr. Manousis started shouting at the man, threatening with that he would make him personally responsible for the circumvention in the liaison's set up, suddenly the bank employee installed the account immediately.
 - It took Mr. Manousis two month and an amazing effort to find an office. According to the "Lease Deed" he and not the landlord is expected to install water boiler, air-condition and fans; but the landlord is in charge of establishing and maintaining electricity, water etc. Nevertheless, the landlord is very reluctant to fulfil his obligations and has to be called constantly.
 - There also were lots of problems to get the proper craftsman like carpenter, electrician etc. But it was straightaway impossible to get the work done properly and in time as promised. The professionals used weak excuses for delays etc. and asked for even more money to do the work finally.
 - In general the Indians with whom he had to deal calculated 100 to 300 per cent of the normal price.
 - Theft. In the very first time when just hired, the housemaid took the water out of the mineral water bottle and replaced it with normal tap water, in order to sell the stolen water for 10 Rs.

Mr. Manousis, questioned about his impression of Indians:

"You can't believe anything"

"One has to threat the Indians constantly in order to be taken seriously and not to be cheated all the time."

Case study: New Business

Dr. Cosima Klinger-Paul is the Managing Director of M & V Market Development Services Pvt. Ltd. (short M & V), which is a company consulting foreign companies how to enter the Indian market. Dr. Cosima Klinger-Paul is a born Austrian and is married with an Indian. She lives in India for 4 years, loves the country and has no intention at all to go back to Austria.

M & V recommend two ways of establishing a business in India:

- First, a foreign company should get a representative in India. This person can rent or lease an office in M & V's business centre in Gurgaon. The representative can become an employee of M & V or not. In addition, M & V monitor the sales activities.
- Second, for foreign companies which have their head office abroad as well as for entrepreneurs starting business in India, M & V build clusters. This means they create pools of companies of certain industries like technique or pharmacy. In addition, M & V serves the accounting. M & V recommend creating the necessary network first and only when this works to set up an own office or a company like a private limited one.

Dr. Cosima Klinger-Paul distinguishes **three possibilities of setting up a business in India** as an Indian citizen and as a foreigner.

- First, being a freelancer, e.g. as a consultant. The person is able to work at his home office mainly and save costs therefore. As long as the occupation is not a trade and the item does not require industrial license, no registration or licence is necessary. As everywhere in the world freelancer are flexible to a big extent. On the other hand their market is also quite insecure and their living is often between feast and famine. Another set back is, that banks very seldom give loans to freelancer.
- Second, with the sole proprietorship the entrepreneur has an own shop. Here it is the same concerning licensing and registration as with freelancing. Maybe the sole proprietor has better chances to get money from a bank since he has some facilities or collateral as security.
- Third, founding a company, solely as one person or with one or more partners. In this case, Cosima recommends getting into a partnership with an Indian citizen. Especially for getting the required numbers like Permanent Account Number (PAN), Tax Deduction Account Number (TAN) or the Registrar of Companies (ROC). Also for setting up the bank account - it took her only 2 days for her private limited company.

In general, Mrs. Klinger-Paul **absolutely promotes setting up a business in India**. She says **foreigners are very welcome here**.⁴

According to Dr. Cosima Klinger-Paul, the process of hiring employees in India is quite the same as everywhere else in the so-called developed world. Mainly are newspapers used, but head-hunters are even more popular. They get the amount of 2 month earning calculated from the person they found plus at least Rs 10 000 for their expenses.

Concerning the high of wages and salaries were no rules in India says Mrs. Klinger-Paul, but the labour low in general would be quite strong because backed by the unions. Therefore personal leasing would become more and more common use as it in western countries already is.

To get a clear impression of the legal requirements Cosima draws a comparison between establishing freelance and a private limited company.

The freelancer should have a solicitor or a chartered accountant, whom will take between 2000.- to 5000.- Rs per month for the tax accounting. The lawyer should also get the PAN because it will take about him about 14 days. For the freelancer it will take longer since he is "not so familiar with the handling of such matters" than an Indian lawyer, Mrs. Klinger-Paul says.

It takes something more for **setting up a private limited company** tells Dr. Cosima Klinger-Paul.

1. The going to be Pvt. Ltd. entrepreneur has to apply in his home country for a permanent visa in India within the 6 month of his current visa.
2. One has to file with the Registrar of Companies (ROC)

⁴ Mind she makes her living out of consulting foreigners starting business here [note of the author].

3. One has to apply for the company name (Form No. 1A – Application for name availability) This form is to be filed along with the Fee of Rs 500.-.
4. The going to be Pvt. Ltd. entrepreneur has to state its “Memorandum of Association”⁵. After being accepted at ROC including the name and the memorandum the company legally exist with the “Certificate of Incorporation”.
5. Then one has to apply for the Permanent Account Number (PAN) with the Form No. 49A and also for the Tax Deduction Account Number (TAN) Form No. 49B
6. Setting up the bank account
7. Costs of founding: about 250 000.- Rs; costs connected with the ROC are according to the high of the capital stock and vary from 1 to 10 % (progressive)
8. Costs of running the business: Rs 20 000.- to 25 000.- including 5 employees
9. Time: About 6 weeks to 2 month to set up a private limited company
10. Special support: From the Austrian Trade Commission, which made available a lawyer
11. Problems faced:
 - As mentioned above, if a foreigner has no Indian partner and does all the ways to the official establishments itself (instead of ordering a chartered accountant to do this) he will face problems starting with simple neglecting or reluctance to pure refuse.
 - The average western foreigner will keep being friendly because of his upbringing. But then he will be treated even more badly since in such situations only a person who becomes very demanding and even rude (raj-like behaviour) will be taken seriously in India.
 - Most of all, the entrepreneur has to control every single small step of his employees because nothing works consistently out without being controlled. Profound intercultural differences concerning work ethic were the reason for this. She vehemently recommends the installation of control systems like an internal auditing.

Dr. Cosima Klinger-Paul states:

“There is no such a thing as an Indian economic culture”

“Friendliness is regarded as being weak!”

“India boom	→	<table style="border: none; width: 100%;"> <tr> <td style="width: 50%;">Hard facts</td> <td style="width: 50%; text-align: center;">→</td> <td style="width: 10%;">yes!</td> </tr> <tr> <td>Soft facts</td> <td style="text-align: center;">→</td> <td>no!</td> </tr> </table>	Hard facts	→	yes!	Soft facts	→	no!	
Hard facts	→	yes!							
Soft facts	→	no!							

Referring to the current widespread assumption that India would be *that* country where one *has to* do business.

Case study: Varied Experience

Dr. Sepp Dabringer is the he Commercial Counsellor at the Austrian Embassy in Delhi. He has been staying in India for a long time performing his profession. Due to that his knowledge about problems that foreigners face in funding and running a business in India is profound.

Pre Entry Problems

Two years ago the treatment foreigners experienced by official institutions was very different compared to that of the Indian citizens. To procure all licences required it took 1 week for an Indian and 6 month for a foreigner. Now the Indian government has established the so-called “automatic route” which makes it much more simple and equal to fulfil the obligations. The “automatic route” becomes updated every half a year. In general the requirements have been liberalised the last few years, says the high commissioner.

⁵ Look at Requirements and Restrictions of the limited company, point 5

Post Entry Problems

Discriminatory purchase price preference (PPP)

- If at an international bid invitation the public sector undertaking's bid (PSU) is not more than 10 per cent higher than that of the best bidder, the PSU gets the acceptance of the bid.
- If at a national bid invitation the public sector undertaking's bid (PSU) is not more than 15 per cent more higher than that of the best bidder, the PSU gets the acceptance of the bid.

Harassing Tax Officials

One of the main obstacles and even reason for not doing business in India for foreign companies is the auditing of annual returns and accounts of the company for public inspection and the disclosure of company-internal knowledge.

This is even more true for foreign companies performing transfer pricing. It is up to the tax official whether he thinks the documents are efficiently supplied or not. When he suspects black money to exist then he is allowed to impose a penalty of 100 to 300 per cent more than the stated value of transaction would justify.

Although object to OECD complains, companies and even more foreign companies are expected to describe production procedures, chemical compositions and components, additional developments etc. at a very detailed level. In addition certifications about that are required.

This requirement leaves no space for secrecy and for many companies it is just the same as industrial espionage. However, here again, it is up to the tax official to decide whether the documents are efficiently supplied or not. This often results in corrupt harassment - meaning nothing else than the tax official will harass in order to be able to get a bribe. Therefore many companies voluntarily pay 3 per cent related to the value of transaction.

This extortionate demanding of the Indian government is directly connected with an unreasonable bureaucracy says Dr. Sepp Dabringer.

General issues which have to be improved in India:

- Infrastructure
 - building generating plants to cover the power demand of the country
 - modernisation of communications facilities
 - building streets and bridges
- Market liberalisation
 - enlarging the private sector
 - employing foreign capital
- Education and further training

Theory

It was not possible to get any expedient and reliable information about rules and regulations under which an individual foreigner has to establish and maintain a small shop in India. Since the information that has been found is only related to bigger business, which has not been the centre of interest in this research paper, this information has been shifted into the appendix.

Tourism

India is different

In what ever regard, you can claim everything without hesitating. To the people who visit India it never means the same. Do you know the story of the five blind men describing an elephant? Well, each of them touched one part of an elephant and gave a description of what the elephant would look like. Just as in

this analogy, each visitor of India will inevitably draw a different picture what India is about. They are all right, since it is a land of great variety, impressing and unsettling, comforting and mysterious at the very same moment. All the contradictions seem to go along well with each other. The past of thousand of years as well as the present is inevitably lively. All the impressions draw one amazing picture. Maybe that makes the genuine fascination about India.

In this part of the paper it will be researched how it feels being a tourist in India.

Question to be answered

- What kind of attitude concerning tourists is predominant in India?
- What do the visa regulations look like?
- Does discrimination exist? What does it look like?
- What are the challenges for tourists in India?

Visa Regulations

Instructions for Visa Applicants ⁶

Passports valid for a minimum of six months beyond date of intended departure from India should accompany visa applications.

Paste one photo and staple the other one on the form at specified place.

Foreigners holding other nationalities (other than the country where applying for visa), should submit proof of long-term (at least three years)/ permanent residence in the country (where applying). For citizens of other countries, a reference has to be made to their country of residence for which an additional fee is applicable and will involve extra processing time. Please refrain from making inquiries about the status of application during this time.

Visas available

Tourist Visa

Is given for 6 months but it might be extended to e.g. 1 year for Austrian citizens, to e.g. 5 years for British citizens, to e.g. 10 years for US citizens. As Rajan Sehgal, CEO of Arrivals explains, the extension is reciprocal which means that e.g. all Schengen States (where Austria belongs to) admit Indian citizens a tourist visa of 1 year max., so India admits all Schengen States citizens a tourist visa of 1 year max.

Entry Visa

Valid for six months to five years stay with multiple entry. Five year long-term stay visas are available to persons of Indian origin only.

Business Visa

Valid for one or more year with multiple entries. A letter from sponsoring organisation indicating nature of applicant's business, probable duration of stay, places and organisations to be visited incorporating there in a guarantee to meet maintenance expenses, etc. should accompany the application. Business visa valid for ten years with multiple entries is available to foreign businessmen who have set up or intend to set up joint ventures in India.

⁶ Taken from the homepage of Ministry of External Affairs, Government of India, Consular, Passport and Visa Division, <http://passport.nic.in/visrules.htm>

Student Visa

Valid for six months to one year with multiple entries for bonafied students to pursue regular studies at recognised institutions in India. A letter confirming admission from such an institution along with evidence of financial arrangements for stay in India should accompany application. In case of admission in medical or para-medical courses in India, a letter of Approval or No Objection Certificate from Ministry of Health is also required. Likewise, for admission in graduate or post-graduate courses in Engineering or Technical institutions in India, a letter of approval or a No Objection Certificate from Ministry of Human Resources Development (Department of Education) should be submitted. For research purposes detail synopsis of the research project, countersigned by the sponsoring institution in India should be submitted. NOTE: Processing of applications for research may take about three months.

Transit Visa

Valid for single/double entry for maximum stay of 15 days for bonafied transit purposes only.

Missionaries

Valid for single entry and duration as permitted by Government of India. A letter, in triplicate, from sponsoring organisation indicating intended destination in India, probable length of stay, and nature of duties to be discharged should be submitted along with guarantee for applicant's maintenance while in India. NOTE: Processing of applications for missionaries may take up to three months.

Journalist Visa

Are issued to professional journalists and photographers for a six-month's stay in India. The applicants are required to contact on arrival in New Delhi, the External Publicity Division of the Ministry of External Affairs and in other places, the Office of the Government of India's Press Information Bureaus.

Conference Visa

Are issued for attending conferences/seminars/meetings in India. A letter of invitation from the organiser of the conference is to be submitted along with the visa application. Delegates coming to attend conferences may combine tourism with attending conferences. Special forms have to be filled by citizens of Pakistan (3 copies with 4 photos) and Bangladesh (2 copies with 3 photos).

Fees

The fee structure depends on the nationality of the passport holder and type/duration of visa applied. The existing fee structure is:

Type of Visa	Fees
Transit Visa	\$5
Six months tourist/entry visa	\$30
One year tourist/other visa	\$50
Business/student visa for one year	\$50
Beyond one year to Five year tourist/business visa	\$100

Processing Duration

Depends on the type of visa applied.

Visa Validity

Visa is given for a period for which passport is valid. For example, if a passport is valid until April 30, 2003 and an applicant is applying for 5 years visa on December 31, 1999, the applicant will not be issued a 5 years visa as the passport expires before the 5 year visa.

Validity of all visas is counted from the date of their issue.

Tourist visa up to 5 years may be granted if the foreigner is connected with the tourism trade.

If visa is for more than 180 days, registration is compulsory within 14 days of first arrival in India.

The duration of stay in India, for each visit on a tourist visa or business visa is only for a period of 6 months even though a valid visa may be for more than 6 months. This means that before the 6 month are over the foreigner has to go to the Foreigner's Regional Registration Offices (FRRO) to fill out a form for extension. He has to state a reason and to show a letter from the company or a certificate from a doctor for illness. The forms for this are available at the ministry of Home affairs and the conversion takes only 3 to 4 weeks, as Rajan Sehgal reliably says⁷.

Getting or not getting a PIO card - Case Study

Ana Daisy Gonzalez Rodriguez is a born Costa Rican who married an Indian in America. The couple got 2 children and decided to move to India.

Three month before they intended to leave America they applied for the "Person of Indian Origin" (PIO) cards. They applied for Ana and the two children at the Indian consulate in San Francisco where they lived at this time. The cost were Rs 15 000 per card which had to be paid instantly. For the children the card will be valid to their 18th birthday. PIO card for Ana will be valid 15 years. They will be treated like Indian citizens, e.g. they will be able to study, work or starting a business just as an Indian.

The Indian consulate had to verify Ana's data in Costa Rica. The family had been told that the whole procedure would take 3 weeks to 3 month maximum. There were no special requirements for the children and they got their cards within 2 weeks.

Ana did not get the PIO card within the promised 3 month. Therefore she had to take a visa to be able to travel to India. Since she expected to get the PIO card at least within the first 6 month of her stay in Indian she did not care which visa to take. So she took a business visa which unfortunately is not extendable. She also is not allowed to work in India because she does not actually operate a business and with a business visa no payment is possible.

The Indian consulate in San Francisco has been very reluctant to do its job. Since this moment it could not give any information about Ana's PIO card, neither what the problem with it in general is nor when she is expected to get it. Ana's cousin in San Francisco keeps calling them without any success till now.

The first 6 month in India went by without getting the PIO card. The current business visa will expire and Ana had to apply for a new visa.

- First. She had to go to the Ministry of Home Affairs. There she had submit copies of all her documents and to show her marry certificate from Costa Rica attested by the Ministry of External Affairs. For that reason the marriage had to be proven to be valid first.
- Second. For getting the document that her marriage is valid Ana had to go to the consulate of Costa Rica. There the consul - strangely enough - is an Indian. He decides whether a marry certificate is valid or not. Ana got the required document.
- Third. With the document from the consulate of Costa Rica in India Ana got her marry certificate attested at the Ministry of External Affairs. There the procedure was quite simple. She got a small chit and was told to come back after a certain time. So not much time for waiting was wasted.

⁷ Extension of visa in Delhi- MHA- Director (F), Lok Nayak Bhawan, Ist floor, Khan market, New Delhi-110003.

- Forth. Back at the Ministry of Home Affairs Ana took the attested marry certificate and a form and waited 3 hours.
- There was nobody to ask about the procedure. People were just sitting around waiting. When suddenly a counter was opened everyone tried to be the first. There was no queue or chit or something similar.
- Ana had to hand over the documents to one of three men who obviously deal with different regions. There was no possibility to ask something. Ana only got an envelope - 4 hours waiting later.
- Fifth. With this envelop Ana had to go to the Foreigner's Registration Office (FRRO). There she had to fill in another form and to submit again copies of all her documents.
- 2 hours later Ana got an entry visa valid for 3 month. The fee was Rs 1860.- After the 3 month – if not received the PIO card – Ana has to apply for another visa again.

Why is it not possible to get the PIO card in time? Why is it not possible to get information about it at least? Why are there so many different institutions involved? Why is there no common procedure? Why is it not possible to get a visa done at one ministry or office only? Why is customer service at a governmental institution the rare exemption? Who will answer these questions?

Attitude toward foreign Tourists in India

John Stanley Johnson, Director of Optional Tours & Travels Pvt. Ltd thinks that most Indians who deal with tourists have a certain attitude. Namely, that because of the exchange rate of the rupee e.g. towards the dollar or the euro the prices in India are anyway low for the tourists and it would not matter to them to pay more than an inhabitant. This argument also backs discriminatory pricing by the Indian government.

In general tourists are treated very well – they mean money for everybody in the country finally. At least the educated understand that they get their livelihood from the tourist says Rajan Sehgal, CEO of Arrivals. He says foreign tourists are treated better or at least the same as Indian tourists and he even dares an estimation which says that to an extent of 70 per cent foreign tourists are treated better and to an extent of 30 per cent foreign tourists are treated not better than Indian tourists. Good example would Rajasthan be. In Jaismir the people dealing with foreign tourists get a brochure which tells them how to tread well tourist.

Here to mention is that every tourist around the world gets told in every travel guide what kind of do's and don'ts one has to consider in India. At several places like institutes for vaccination Austrians who intent to visit India even get a booklet how to behave well in India.

There are groups of Indians like the shopkeeper at cheaper markets or the rickshaw driver tourists continuously have to cope with rather than these groups have to deal with the tourists. To be frankly most of them try to cheat all the time. E.g. if rickshaw drivers recognise that a foreigner stays in front of them they immediately claim that the meter were not working und rise the price to 100 to 300 per cent above the regular price. Here the generalization is used intentionally since there are regrettably only a few exceptions to find within this service group.

Impudent price demands happen to the Indian tourists also but surely not to such an extent. Unfortunately, it seems that the invention spirit of how to cheat tourists is inexhaustibly. E.g. one driver was so nice to agree to use the "meter". The tourist saw that the fare was RS 32.- finally but the driver suddenly switched of the meter and claimed the meter would have counted Rs 47.-The list of annoyances with this group is endless.

Rajan Sehgal says that these people are often uneducated and they mainly see their chance to get more money out of one guest in the very moment. Since then they do not bother about maybe hurting the country's image in general and contributing to the list of reasons why tourists should probably **not** visit

India. Not to forget, these groups of people in India is the main voting group and policy does not want to annoy them.

Discrimination of Foreign Tourists

There exists both, negative and positive discrimination of foreign tourists. Very obvious is the **negative discrimination** at monuments like the Taj Mahal where a foreigner pays Rs 750.- but an Indian Rs 20.-, or Rs 110.- before 7 am or after 5 pm (since sunrise and sunset is the best time to see it). In the year 2000 the fee was raised to a staggering Rs 960.- for foreigners but has been lowered to the current Rs 750.- after international protests. In this case the Indian Supreme Court had reviewed the price and the responsible ministry of tourism had to climb-down tells Rajan Sehgal.

The same goes for historical places like the Out a Minar complex where a foreigner pays Rs 250.- but an Indian Rs 10.- only. As mentioned before the ever lasting argument for this unjust treatment is the different exchange rate of the rupee to most foreign currencies. To be able to afford maintenance has to hold as an argument, too – as if other countries had no expenditures for maintenance. After all, some foreign tourists do not mind being discriminated like this claim Rajan Sehgal.

Location	Entry Fee for Indians	Entry Fee for Foreigners
Agra Fort, Agra	Rs 20	Rs 510
Elephanta Island, Mumbai	Rs 10	Rs 460
Humayun's Tomb, Delhi	Rs 5	Rs 250
Kailasa Temples, Ellora	Rs 10	\$ 10
Red Fort, Delhi	Rs 5	Rs 100

Another example for negative discrimination are different travel fares like the “Advance purchase ticket” which can be used by Indian only. It means the more in advance a ticket is bought the cheaper it is.⁸ This can only be used by foreigners who stay longer in India than 90 days. In this case the foreigner has apply for the resident permission. With the copy of the approved permission the foreigner can get the “Advance purchase ticket”, at least claims John Johnson.

Then there is the Indian “rupee tariff” which means when an Indian goes to Nepal he pays 40 per cent less than a foreigner. But the travel industry is fighting for an equal standard says Rajan Sehgal.

The “foreign tourist quota” could be taken as an example for **positive discrimination of foreigners**. Made for non residential Indians and foreigners one has the same fare as usual but gets priority in confirmation. This actually means that for an Indian there may be no place on a train etc. available anymore but for non-residential Indians and foreigners there are still places.

Also especially for non-residential Indians and foreigners is the ‘INDRAILPASS’. It is possible to book 7, 15 or 21 days first class to go to everywhere one likes. “Discover India” means air tickets which that one can go 15 days for \$ 500.- or 21 days for \$ 750.- (plus \$ 10.- per sector security tax) unlimited travel on roundtrips only. E.g. Delhi-Udaipur-Mumbai-Goa-Bangalore-Chennai-Cochin-Delhi for 15 days cost Rs 500.- plus Rs 70.- makes Rs 570.- instead of Rs 1100.- one has normally to pay tells Rajan Sehgal.

There is also a different handling of booking depending on the currency. If the fare is paid with dollar, the so called Dollar fare ticked, no cancelling charges will have to be paid, not so when paid with rupees. Foreigners only can use the Dollar fare ticked John Stanley Johnson mentions.

⁸ E.g. a ticket bought 3 weeks before the actual travel it will cost Rs 5000.- instead of Rs 8000.- at the actual day.

Challenges for the Tourist

- First of all, a tourist has to prepare himself mentally. The best way to do so successfully is to talk to people who have already been in India but literature, films etc. are also helpful.
- The tourist has to be aware that even after being informed one will be surprised or even shocked by several facts. As there are:
 - The climate
 - The poverty
 - The beggars
 - The pollution
 - The conditions of
 - streets
 - facilities like hospitals
 - hygiene
 - The different culture
 - how to behave generally
 - attitude towards tourists
 - attitude towards women
 - different meal, water
 - different time handling
 - different ethic concerning work
 - the religions
 - the cast system
 - and more

In India at any rate standards in tourism have to be increased. The rules and regulations concerning tourism in India should be liberalised. As John Stanley Johnson states, India is a free country. Why not behave like one?

Summary

Positives

- India is an amazing country worth to visit at any rate.
- In theory, business rules and regulations are valid for everybody without regarding the nationality.
- The Indian government promotes FDI to a great extent.

Negatives

- It seems there is no economic culture in India which could stand international comparison.
- Liberalisation takes place in little small steps only. The Indian government still runs the reservation policy.
- India's law referred to business is very often far away from real life demanding.
- At least concerning business India is overloaded with rules and regulations which are often neither to understand nor possible to be fulfilled by its inhabitants. So they go around them when ever possible. Due to that it is common practice to operate a business illegally and than just to pay fees without any other consequences. It is not necessary to emphasise that paying bribes belongs to this lifestyle.
- In practice, business rules and regulations are valid for everybody without regarding the nationality but there are often huge differences in the application.

- In general a foreigner willing to set up a small business just gathers suspicious reactions from people across all official institutions.
- Setting up a small scale unit or little shop is a too small investment to be of interest for most foreigners as well as for the Indian government.
- Due to that the Indian government gives no encouragement to foreigners to invest in the small scale business.
- This might be the reason why in all the official institutions is not a single official statement is to be found how to open a shop as an individual foreigner.
- If a foreigner wants to set up a small business in Indian despite all the refuse he faces, he is forced start his shop illegally since he will not get the required approval by the Indian Government; as long as he is not ready to invest at least Rs 1 million.
- If foreigners actually set up a business in India they borrow money form foreign sources as long and much as possible.
- Foreigners hardly apply for a bank credit at the national bank of India or at a private Indian bank because of the little chance to get a loan at acceptable conditions (discriminatory interest rates and bank fees)
- The Indian visa conditions can be a profound obstacle at setting up a business in India.
- Finding an appropriate location and residence is a hurdle for everybody trying to settle in India.
- There is a general exploitative attitude towards foreigners concerning entrepreneurs as well as towards foreign tourists.
- Foreigners get even more harassed by officials like ministry employees, bank employees, inspectors etc. in setting up and running a business than Indian citizens.
- Intercultural related problems are always present as:
 - the Indian's reluctant or refusing attitude to serve (officials, craftsmen)
 - the Indian work ethic in general (weak reliability, credibility)
 - the Indian time management (delays etc.)
- In tourism the Indian government runs a discriminatory policy.
- The underdeveloped standards in tourism are evident.
- There are rarely activities by the government to promote tourism effective and sustainable.
- Political measures against general harassing groups are missing.

Conclusion

The result of this research concerning establishing a small business in India is quite astonishing since the result is, that there is none.

After almost two month of intensive search for the rules and regulations under which an individual foreigner has to establish and maintain his own shop in India, no single official statement referring to this could be found. The carried out interviews brought partly completely contradictory statements.

The conclusion is that the Indian policy leaves foreigners no chance to start and operate a small business legally. It forces foreigners willing and able to invest only small amounts of money to operate illegally and to put up with all kind of threats and inconveniences because of this.

After all this exhausting fruitless search for information and the heard braking, demoralising responses - who will still be interested to start a small business in India?

India has a great appeal for foreign tourists. But since they are constantly confronted with an unpleasant and demanding surrounding they feel frustrated and demoralised very soon. Thus foreign tourists in India are in danger to lose their interest in further exploitation and spend their money somewhere else, where being a tourist feels better.

Nevertheless, concerning tourism the hope seems justified that things will turn for the better since market forces are already far more involved than in the business sector.

Appendix

Types of Business Organisations

As in most parts of the world there are three main types of legal forms which have been used to run small business organisations:

- **Sole proprietorship**
- **Partnerships**
- **Companies – private or public limited**

The co-operative is a possible but minority legal form in India, although popular in other countries.

Sole Proprietorship

It is the legal form of entrepreneurship the vast majority of new business set up every year in India. There are important reasons for this:

- Only declaration of profit at the tax return is obligatory
- There is no licence (except for some special units) required
- Registration is voluntarily
- There are no rules about the records to keep
- There is no requirement for auditing the accounts
- There is no requirement for financial information at the registrar of companies
- Profit or loss in one business can be set off against profit or loss in any other business run by the same person

Not to fail to remember is the fact that the business is one of one's assets, which means that creditors are entitled to seize and sell personal possessions as well as business. Furthermore, there is no access to risk free equity capital.

Partnerships

As it is the case with sole proprietors there are very few restrictions in setting up a business with one or more persons in a partnership. But it also faces the same problems like personal liability. E.g. if the partner makes a disastrous business mistake each member of the partnership is responsible. Since the partnership Act states only a few provisions a "partnership agreement" is widespread in use.

Companies

There are public and private companies which can have limited or unlimited liability, though the latter are relatively uncommon. Generally most companies start "private" and become "public" when they require more funds from shareholders.

The Companies Act, 1956 (the Act) regulates companies incorporated in India as well as branches of foreign corporations. They have to register themselves with the Registrar of Companies (ROC), New Delhi within 30 days of establishing a place of business in India.

All companies are required to maintain registers, records and books of account. The financial statements must be prepared in accordance with the Accounting Standards specified by the Institute of Chartered Accountants of India (ICAI). The accounts have to be audited by an auditor who is a member of the ICAI. The reporting requirements for public companies are greater than for private companies.

Special Focus: Limited Liability Companies

In the last few years setting up a private limited company has been the most popular choice among entrepreneurs in India. In this form of business liability is limited to the amount of contribution by way of share capital.

Advantages of the limited company

- The shareholders' as well as the directors' financial liability is limited to the amount of money they have paid for shares.
- The management structure is clearly defined, which makes it easy to appoint, retire or remove directors.
- Additional capital can be raised by selling more shares privately.
- It is simple to admit more members.
- Death, bankruptcy or withdrawal of capital by one member does not affect the company's ability to act.
- The business' disposal as a whole or partly is easily arranged.

Requirements and Restrictions of the limited company

1. *A registered business name:* It must be followed by the word Limited or Ltd. The Companies Registration Office has some control over the choice of name, e.g. it can't be identical (or very similar to) the name of an existing company. The name cannot be considered if it is illegal or offensive and the use of certain words in a company (for example, 'Institute', 'National') can be used in certain circumstances only. The company name must be displayed in a blazing place at every office, or other premises where the company carries out business.
2. *A registered office:* It has not necessarily to be the same address as the business is conducted from. Very often the address used for the registered office is that of the firm's solicitor or accountant. Then this is the address where all official correspondence will go to.
3. *Shareholders:* There has to be a minimum of two shareholders (also titled as 'members' or 'subscribers'). A private company can have up to fifty shareholders.
4. *Share capital:* The company must be formed with a stated, nominal share capital divided into shares of fixed amounts. Small companies are frequently formed with a nominal share capital of Rs 100.
5. *Memorandum of Association:* The memorandum is the company's charter. Most importantly it states the object for which the company has been formed but also the company's name; the situation of its registered office, its share capital, the fact that liability is limited. The memorandum must be signed by at least three shareholders.
6. *Articles of Association:* The document contains relationship of the company to its shareholders and the relationship between the individual shareholders. Many companies to draw up their own articles but also adopt sometimes with some modifications articles set out in the companies Act. The articles must be signed by the initial shareholders.
7. *Certificate of Incorporation:* With this document the company legally exists and is ready to trade. It is issued by the registrar of companies once he has approved the choice of name and the memorandum.
8. *Auditors:* Every company must appoint a qualified auditor at general meetings at which annual accounts are presented. They hold office from the conclusion of the meeting until the next general meeting. The auditor's duty is to report to the treasurer whether or not the books of the company have been properly kept. Also, that the balance sheet and profit and loss account presents or doesn't present a true and fair view of the company's affairs and complies with the companies Act.

9. *Accounts:* The companies Act lays down strict rules on accounting. Every company must maintain a set of records which show the financial position at any time with reasonable accuracy. The accounts contain a profit and loss account and balance sheet with the auditors' and directors' reports appended. In addition companies are required to have: a register of members and share ledger; a register of directors and secretaries; a register of share transfers; a register of charges; a register of debenture holders.
10. *Company Seal:* All companies must have an engraved seal. This must be impressed on share certificates and must be used whenever the company has to execute a deed.

The advantages of a limited liability company have noticeably been undermined by banks, finance houses, landlords and suppliers who require personal guarantees from the directors before they will agree to do business.

Some people may wish to go into businesses as quickly as possible and start earning at the earliest, without actually entering into manufacturing. For those, there are several

Easy-to-start methods

- Become a franchisee
- Start a Turn-key or Packaged Business
- Join Multi-level Marketing Schemes
- Buy an Existing Business

Become a franchisee

Franchising means a relationship in which the owner of a product, a process or a service allows a local operator for a special period of time to set up a business under that name. The local operator (the franchisee) pays the parent organisation (the franchiser) an opening fee and often also continuing royalties for the privilege. The franchiser sets a scheme how the business should be operated and provides the franchisee also with training, accounting etc. Franchising can be found in almost any type of business. They often succeed because the product is a known brand.

Turn-key or Packaged Businesses

Some companies offer to teach their going to be customers how to set-up a business using their equipment and ingredients. E.g. Kodak not only sells its machines but also trains the buyer how to operate the machine and set-up their business. There is no royalty payment involved.

Multi-level Marketing Schemes or network marketing method

In a multi level marketing scheme the company appoints agents, these agents recruit other agents and they in turn recruit their own agents and the chain continues. In India Amway cleaning products, Modicare soaps, Oriflame cosmetics or Tupperware plastic products are good examples. This facilitates a rather low-cost market entry for an individual.

Buying an Existing Business

Purchasing an existing business may save a considerable time and reduce risk, too. Some businesses are sold by the current owners, some businesses offer even a premium in addition. Before buying a business one has to check out the actual position of the business and problems he might face in future. There are various methods to examine the business up for sale and to reach a reasonable purchase price. Hence, quick-start methods offer a simple way to entrepreneurship but they surely require deep pockets and a good judgement.

Co-operatives

This is a form of enterprise which is owned and controlled by the people working in it. A registered co-operative has limited liability for its members and must file annual accounts but there is no charge for this. Franchising is one good example for this.

Distributorship

Is a relationship in which an agent acts on the behalf of a principal, e.g. for distributing cars. Both partners are legally independent as vendor and purchaser.

Licence to Manufacture

This is a co-operative that applies to a certain product within a certain territory and over a given period of time. Licenser and licensee are also independent of each other.

Legal Requirements

According to official statements as that from Dr. C. S. Prasad⁹ few simple steps have to be taken care of legal aspects in setting up business. E. g. to register (which is not compulsory) the company with the relevant organisation, check out the labour laws, pay commercial taxes and take care of environmental aspects.

Registering SSI Unit

Small Scale which is an undertaking with investment in plant and machinery of less than Rs 10 million and ancillary units (investment of less than Rs 7.5 million) should register with the Director of Industries of the concerned State Government. Since the registration scheme has no statutory basis the main purpose of registration quoted by government officials is to maintain statistics and for the purposes of providing incentives and support services either by the Central or State Govt. as there generally is:

- Credit prescription (Priority sector lending), differential rates of interest etc.
- Excise Exemption Scheme
- Exemption under Direct Tax Laws
- Statutory support such as reservation and the Interest on Delayed Payments Act

Features of the registrar scheme

- DIC is the primary registering centre
- Registration not compulsory but voluntary.
- There are two types of registration in all States. First, a provisional registration certificate (PRC) is given. for the pre-operative period. It enables the units to obtain
 - The term loans and working capital from financial institutions/banks under priority sector lending.
 - Facilities for accommodation, land, other approvals etc.
 - Various necessary NOCs and clearances from regulatory bodies
- PRC is normally valid for 5 years and permanent registration is given in perpetuity.
- After commencement of production, a permanent registration certificate is given

The permanent registration certificate

- Should enable the unit to get the following incentives/concessions:

⁹ Dr. C. S. Prasad, Additional Development Commissioner (DC), Ministry of Small Scale Industries (SSI)

- Excise exemptions
- Income-Tax exemption and Sales Tax exemption
- Incentives and concessions in power tariff etc.
- Price and purchase preference for goods produced
- Availability of raw material depending on existing policy

Procedure for Registration

- A company/ unit can apply for PRC for any item that does not require industrial license.
- For applying there is a prescribed application form but there is no field enquiry done.
- The PRC is valid for five years. If the entrepreneur is not able to set up the unit within this period, he can make a new apply.
- Once commencing production, the company has to apply for permanent registration on the prescribed form.

Necessities of Evaluation

The company/ unit has obtained all necessary clearances whether statutory or administrative.

- There is no violation of any locational restrictions in force.
- The value of plant and machinery is within prescribed limits.
- The company/ unit is not owned, controlled or a subsidiary of any other industrial undertaking as per notification.

De-Registration

There are certain cases in which a small scale unit can violate the regulations. They will make it liable for de-registration:

- It crosses the investment limits.
- It starts manufacturing any new item or items that require an industrial license or other kind of statutory license.
- It does not satisfy the condition of being owned, controlled or being a subsidiary of any other industrial undertaking.

Depending upon the nature of his unit and products manufactured an entrepreneur has to obtain several clearances and permissions.

Permission and Clearances required

Regulatory or Taxation Clearances

1. Registration under Sales Tax Act - Commercial Tax officer of area concerned
2. Registration under Central Excise Act - Collector of Central Excise or his nominee for area
3. Payment of Income Tax - ITO of the area concerned
4. Registration of Partnership deed - Inspector General of area concerned
5. Calibration of weights & measures - Weights and Measures Inspector of State
6. Power Connection - Designated Officer of State Electricity Board
7. Employee strength exceeding 10 with power connection or 20 without power - Chief Inspector of Factories

Environment and Pollution related Clearances

1. Pollution Control - State Pollution Control Board. A No Objection Certificate (NOC) should be obtained from the State Pollution Control Board before commencement of construction activity. In case the industry is of the highly polluting category, a full-fledged or rapid Environmental Impact Assessment (EIA) study has to be carried out and submitted to the State Pollution Control Board for approval, after which the construction can commence.
2. Industries Requiring Water and Affecting Effluent Disposal - State Pollution Control Board No Objection Certificate (NOC) should be obtained from the State Pollution Control Board before commencement of construction activity.
3. For units functioning outside Industrial Area - Permission from Municipal Corporation/ Municipality/ Panchayat is required. In case private agricultural land is purchased for the project, the land would have to be rezoned as industrial zone. Permission to convert such agricultural land to industrial area would have to be obtained before the actual start of the construction from the local office of the Directorate of Town & Country Planning.
4. Registration and Licensing of a Boiler - Chief Inspector of Boiler. The safety clearance of the Chief Electrical Inspector and the Chief Inspector of Boilers are required before commencing operations with electrical and pressure vessels(boilers) respectively.
5. For registration as a 100% export oriented unit (EOU) which can get many additional concessions, the clearance of the Development Commissioner of the Export Processing Zone (EPZ) would be required. If the company wishes to offer equity shares to the public, the clearance of the Stock Exchange Board of India (SEBI) has to be taken.

Product specific Clearances

1. Establishing a Printing Press - District Magistrate
2. License for Cold Storage Construction - Designated Official in State
3. Pesticides - Central/State Agricultural Department - Ministry of Agriculture
4. Drugs and Pharmaceuticals - Drug license from State Drug Controller
5. Safety Matches/ Fireworks - License under Explosives Act from Directorate of Explosives, Nagpur
6. Household Electrical Appliances - License from Bureau of Indian Standards
7. Wood Working Industry within 8 km from forest - District Forest Officer
8. Milk Processing & Milk products manufacturing units - Approval under Milk and Milk Products Order from State Agricultural/ Food Processing Industries Department above a designated capacity.

Labour Law

- The "Labour Laws (Exemption from furnishing returns and maintaining registers by certain establishments), Act, 1988" states:
- Establishments employing 10-19 persons require to maintain 3 registers and to submit an annual core return.
- Establishments employing less than 10 persons to maintain 1 register and submit only one annual core return.
- Small scale units employing up to 20 persons are inspected once in 2 years, whereas establishments employing more than 20 persons are inspected annually.

One inspector is responsible for various labour laws, except for those concerning Factory and Boiler Act.¹⁰

¹⁰ Taken from: Technology Innovation Management and Entrepreneurship Information Service (TIMEIS)
<http://www.techno-preneur.net/timeis/index.htm>

Economic Reforms - Examples

Small Scale Industry (SSI)

In India products have for a long time been reserved for exclusive manufacture in the Small Scale Industry (SSI) in order to promote this sector. After the launch of economic reforms with emphasis on liberalisation, de-licensing and de-regulation, also the necessity to review the reservation policy was realised by the Indian Government. Due to that, the de-reservation of 91 items out of 821 items presently reserved in the SSI Sector was decided. But the Advisory Committee on Reservation also constituted under the I (D & R) Act recommended (1997) to the Government that the complete de-reservation at this stage is not desirable and de-reservation should be done in a phased manner.

Currently the investment limit for items to be manufactured in SSI is Rs 10 million. The major relaxation can be found in the fact that no licensing or restriction in production in small scale sector exists.

But again, there are restrictions, e.g. no medium/large including multi-national companies are allowed to manufacture reserved items except under 50% export obligation. Any violation of the policy of reservation can be punished under Section 24 of I (D&R) Act.

Tiny Business

Tiny enterprises are defined as those having investment in plant and machinery up to Rs 2,5 million, which count for about 95% of the small scale sector. There are several attempts by the government to promote this sector. Excise exemption limit for SSI's including tiny units has been enhanced from Rs 3 million to Rs 5 million. This is expected to give motivation to the tiny units to increase their production.

Facilities have been appointed for Tiny Units under the Integrated Infrastructural Development (IID) Scheme. The NSIC would assign 40% of the assistance to the tiny units under various schemes which means supply of machinery on hire purchase, marketing support, technology assistance, training facilities etc. In addition the SIDBI will endeavour that up to 60% of its refinance flows to this sector.

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