

---

# *Guide*

*For*

## *Creating a Global Structure*

Focus – Indian Entrepreneurs

February 2025 Edition  
(Fifth Edition)

*Anil Chawla Law Associates LLP*  
*Business Lawyers, Strategic Advisors and Insolvency Professionals*

[www.indialegalhelp.com](http://www.indialegalhelp.com)

---

(This Guide is strictly for information only. While all efforts have been made to ensure accuracy and correctness of information provided, no warranties / assurances are provided or implied. Readers are advised to consult a Legal Professional / Company Secretary / Chartered Accountant before taking any business decisions. Anil Chawla Law Associates LLP does not accept any liability, either direct or indirect, with regard to any damages / consequences / results arising due to use of the information contained in this Guide.)

## *Table of Contents*

	<b>Description</b>	<b>Page No.</b>
	Preface	ii
	Glossary	iv
1.	Why Create a Global Structure?	1
2.	Key Considerations for Designing a Global Structure	6
3.	Following the Law	9
4.	Statutory Framework for Overseas Investment by Resident Indians	11
5.	Place of Effective Management Rules	18
6.	Sample Global Structure	20
7.	Integrating the Parts	23
8.	Cost of Global Structure	24
	About Us	25

Notes:

- (a) Anil Chawla Law Associates LLP is registered with limited liability in India and bears LLPIN AAA-8450.
- (b) This Guide is an academic exercise. It does not offer any advice or suggestion to any individual or firm or company.
- (c) This Guide is not an offer for providing legal services either in India or in any other country.
- (d) Global structures are useful for helping entrepreneurs who service markets across the globe. Anil Chawla Law Associates LLP does not advise or assist clients who wish to evade taxes or violate laws or indulge in any form of money laundering either directly or indirectly.

## *Preface*

The spirit of Indian entrepreneurs knows no bounds. Indian companies and entrepreneurs have always faced challenges with a smile. It is often said that someone who has done business in India can survive and prosper in any part of the world.

It has been almost two and a half decades since India liberalized and opened her doors. During these years, a new generation has grown up which has seen the world. This new generation of Indian business class is well educated and is keen to have a global footprint. They are appreciating the need to be global players while continuing to operate in India.

India is a huge market and also an excellent base for doing design, engineering, development and to some extent even manufacturing. However, India scores badly when it comes to being a base for global operations. Governments of the Union as well as states of India are too unpredictable. Indian tax rates are too high for efficient global operations. And to top it all, there are tax officials who treat every international transaction as money laundering. Getting funding for operations in other countries can also be a daunting task in India.

The good part of facing various difficulties of doing business in India is that an Indian entrepreneur is well equipped to work across religions, cultures and working patterns. Adjusting to different legal systems and work cultures comes easily to Indians. No wonder that Indians are extremely successful when they step out into the global arena.

Having said that, the world is not India and Indian entrepreneurs need to reinvent themselves in terms of their operating structures. Holding all shares of various entities in names of individual directors or promoters resident in India can work for Indian operations, but is not the best course for international operations. It is recommended that an entrepreneur applies some thought to various issues involved to design and create a suitable global structure.

While planning a global structure, an entrepreneur should be concerned with 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. It is also advisable to think of succession and wealth management over generations.

A global structure centered on a holding company or foundation based abroad can be a good solution addressing almost all such issues in an optimum manner. Notably, the world has been changing in the past decade. Tax havens like British Virgin Islands, Bermuda and the Cayman Islands are strongly on the radar of tax authorities. POEM (Place of Effective Management) Rules and GAAR (General Anti-avoidance Rules) are posing new challenges for global entrepreneurs.

It is not advisable to create a global structure for the sole purpose of tax benefit. There must be a strong business argument for choosing a country as the base for setting up company.

Merely stating that the country offered tax advantages is not sufficient. This makes the job of creating a global structure more complex.

As advisors to Indian entrepreneurs with global ambitions, our two key advices are (a) choose a country based on her reputation, overall business environment and opportunities and not only on the corporate income tax rate (b) never violate any law whether of India or of the foreign country where one has gone to set up operations. It is always recommended that one takes a 360-degree view of the host country, one's own business and the legal system.

We always advise our clients to choose countries that demand respect across the globe. We always recommend countries that are reputed and demand a high level of compliance. It is not recommended to look for a zero-tax location. Our belief is that one should look for tax advantages or low tax, not zero tax.

We are confident that irrespective of all global disturbances, Indian entrepreneurs with their grit, dynamism and visionary attitude will be able to emerge victorious.

This is a new version of our extremely popular booklet by the name, "*Guide for Creating a Global Structure using Holding Company Based in Switzerland / Liechtenstein / Singapore*", which was first published in 2015 and was revised multiple times thereafter. The new version takes changing realities of the world and is aimed at the new generation of entrepreneurs.

Earlier versions had Country Profiles as part of the Guide. We have now decided to publish Country Profiles as separate e-books. Over the next few weeks, we plan to publish profiles of seven countries – **Switzerland, Liechtenstein, Singapore, Luxembourg, Ireland, Estonia and Slovenia.**

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

Note: This Guide is in continuation of our popular [Guide for Indian Residents Wanting to Do Business Abroad](#) (available free at [www.indialegalhelp.com](http://www.indialegalhelp.com) ).

## *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 from European Union
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
GST	Goods and Services Tax
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

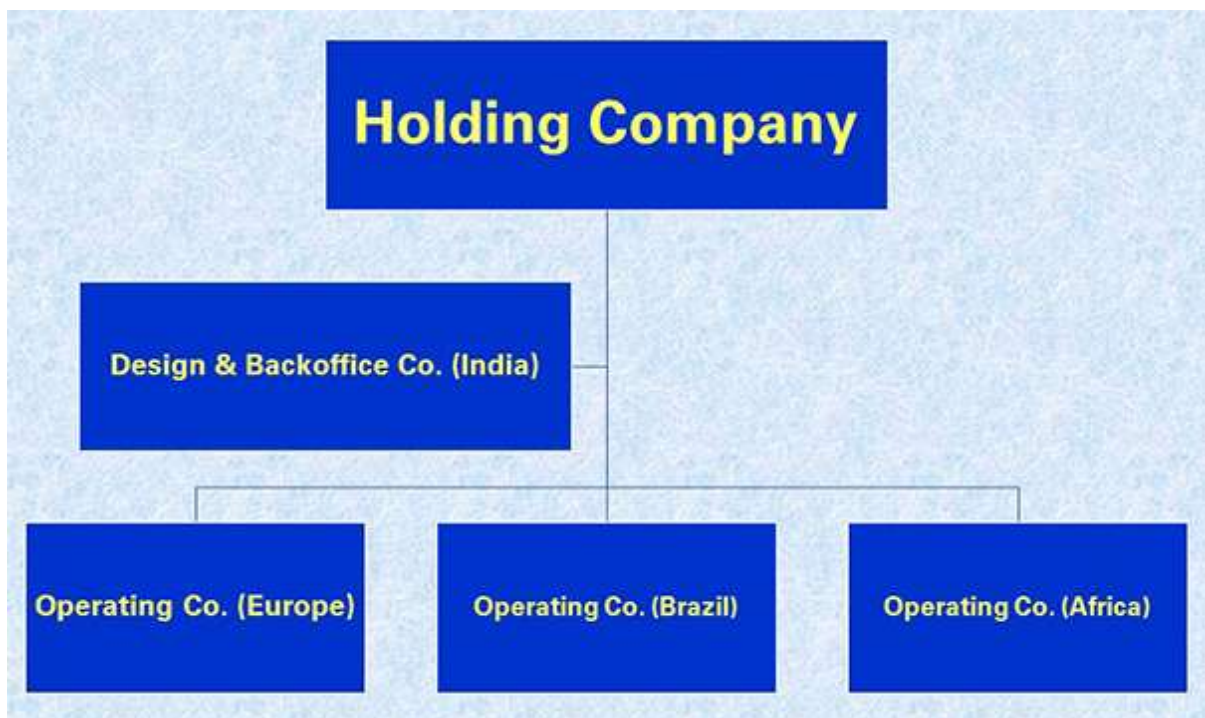
Pte Ltd.	Private Limited
SGD	Singapore Dollar
SME	Small and medium-sized enterprises
UK	United Kingdom
USD	United States Dollar
US	United States of America
VAT	Value Added Tax

## 1. Why Create a Global Structure?

During the past three decades, 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; Europeans feel comfortable only if they are dealing with a European 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.

Often Indian resident citizen entrepreneurs do not find it pragmatic to own all the different operating companies in his / her own personal name or in the name of a company in India. Some of the disadvantages of Indian personal / company ownership experienced by Indian entrepreneurs 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 12.5% (Twelve and a half per cent) capital gains tax in India on sale of listed securities held for more than twelve months; for listed shares held for less than twelve months rate of capital gains tax is 20%. For unlisted shares held for more than twenty-four months, capital gains tax is 12.5% and for unlisted shares held for less than 24 months the rate will depend on the slab of income tax that one is subject to.

- 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 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 center 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.

**Multilateral  
Convention  
to Implement Tax  
Treaty Related  
Measures to  
Prevent  
Base Erosion  
and  
Profit Shifting**

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 **Place of Effective Management (POEM) 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.

While the cost for a widespread global structure with multiple levels may appear prohibitively high, working with a modular approach and adding one part at a time is a workable solution. This approach ensures that costs are incurred as the business grows and funds become available. To follow this approach, one must not only have a vision and strategy to do; the vision and strategy must be articulated clearly and explicitly to ensure that everyone in the ownership group / family understands it and is convinced about it.

## **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 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

A global structure, whether single layer or multi-layer, must be transparent to the family members of the entrepreneur. Each key family member must understand not only the structure but also understand the rationale, vision and strategy for creating it.

While no one likes to admit it, death is a certainty. A well-designed structure must plan for death of everyone who is involved, especially the key entrepreneur. Succession planning must necessarily be built into the design of the global structure.

### **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.



**KNOW THE LAW  
AND FOLLOW IT**

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 (and fill up the required form(s)). Nevertheless, one must resist the temptation and take the trouble of banking transfer.
- Do not use your credit card for paying for setting up a company or such expenses. It is important that such expenses are routed through your bank after making necessary declarations. It might appear cumbersome, but it is absolutely worth it and will save you a lot of trouble later.
- 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, whether of India or of the host country, 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 that are not in line with legal provisions. **Be extremely cautious of such shortcuts!** Take good professional help to overcome the obstacles in the way provided by the relevant law!
- 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.



**No Shortcuts!**



---

## 4. Statutory Framework for Overseas Investment by Resident Indians

### A. **Applicable Laws, Rules, Regulations, Directions**

Overseas investment by Indian entities and individuals are regulated and governed by the following:

- a) Foreign Exchange Management Act, 1999 (No. 42 of 1999) (hereinafter referred to as **"FEMA Act"**)
- b) Foreign Exchange Management (Overseas Investment) Rules, 2022 dated 22<sup>nd</sup> August 2022 (hereinafter referred to as **"FEMA OI Rules"**)
- c) Foreign Exchange Management (Overseas Investment) Regulations, 2022 dated 22<sup>nd</sup> August 2022 (hereinafter referred to as **"FEMA OI Regulations"**)
- d) Master Direction – Overseas Investment issued by Reserve Bank of India FED Master Direction No. 15/2024-25 dated 24<sup>th</sup> July 2024 (hereinafter referred to as **"RBI OI Directions"**)
- e) Master Direction – Liberalised Remittance Scheme (LRS) issued by Reserve Bank of India FED Master Direction No. 7/2015-16 first issued on 1 January 2016 last updated on 6<sup>th</sup> September 2024 (hereinafter referred to as **"RBI LRS Directions"**).

#### MINISTRY OF FINANCE

(Department of Economic Affairs)

#### NOTIFICATION

New Delhi, the 22<sup>nd</sup> August, 2022

**G.S.R. 646(E).**—In exercise of the powers conferred by sub-section (1) and clauses (aa) and (ab) of sub-section (2) of section 46 and sub-section (3) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in supersession of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:

**1. Short title and commencement.**— (1) These rules may be called the Foreign Exchange Management (Overseas Investment) Rules, 2022.

It is important to note that India has current account convertibility but does not have capital account convertibility. In other words, while there are no restrictions on making payments for

imports or receiving payments for exports, investments by Indian residents (individuals as well as entities) are regulated and are subject to various restrictions.

## B. Exemption

In case an Indian resident has money that was earned / obtained by him / her while he / she was abroad, Indian authorities impose no restrictions on such funds. Sub-section 6(4) of FEMA Act reads as follows.

(4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

The above sub-section is also mentioned in Rule 4 of FEMA OI Rules as follows:

**4. Non-applicability of rules and regulations relating thereto in certain cases.**– Nothing in these rules or the Foreign Exchange Management (Overseas Investment) Regulations, 2022 shall apply to–

- (a) any investment made outside India by a financial institution in an IFSC;
- (b) acquisition or transfer of any investment outside India made,—
  - (i) out of Resident Foreign Currency Account; or
  - (ii) out of foreign currency resources held outside India by a person who is employed in India for a specific duration irrespective of length thereof or for a specific job or assignment, duration of which does not exceed three years; or
  - (iii) in accordance with sub-section (4) of section 6 of the Act.

*Explanation.*– For the purposes of this rule, the expression “financial institution” shall have the same meaning as assigned to it in the International Financial Services Centres Authority Act, 2019 (50 of 2019).

The above is also reaffirmed in the RBI OI Directions as follows:

### 2. Exemptions from applicability of OI Rules/Regulations/Directions

The provisions contained in the OI Rules/Regulations/Directions shall not apply, and general permission shall be available for acquisition or transfer of any investment outside India made as per rule 4 of the OI Rules.

In other words, if you have any income or funds which are legally acquired outside India, you do not need to bother about any laws or regulations of India for investing the same in an entity abroad.

The exemption mentioned here can be most useful for Indian citizens who have either stayed abroad for some time or have relatives abroad.

## **C. Rules for Entities**

“Indian entity” is defined under the FEMA OI Rules to include companies, LLP firms, partnership firms and corporate bodies incorporated by any law. The relevant Rule 2(j) reads as follows:

- (j) “Indian entity” means—
- (i) a company defined under the Companies Act, 2013 (18 of 2013);
  - (ii) a body corporate incorporated by any law for the time being in force;
  - (iii) a Limited Liability Partnership duly formed and incorporated under the Limited Liability Partnership Act, 2008 (6 of 2009); and
  - (iv) a partnership firm registered under the Indian Partnership Act, 1932 ( 9 of 1932).

For India-based entities, other than the ones mentioned above, any investment outside India is subject to Schedule IV of the FEMA Rules. This includes investments by trusts, mutual funds etc. We are not discussing the provisions of Schedule IV here.

Overseas investments by an Indian Entity are subject to Schedule I of the FEMA Rules. Key points from the Schedule are as follows:

### **Schedule I**

[See rule 11]

#### **Manner of making Overseas Direct Investment by Indian entity**

**1. Manner of making ODI.—** (1) An Indian entity may make ODI by way of investment in equity capital for the purpose of undertaking bonafide business activity in the manner and subject to the limits and conditions provided in this Schedule.

(2) The ODI may be made or held by way of,—

- (i) subscription as part of memorandum of association or purchase of equity capital, listed or unlisted;
- (ii) acquisition through bidding or tender procedure;
- (iii) acquisition of equity capital by way of rights issue or allotment of bonus shares;
- (iv) capitalisation, within the time period, if any, specified for realisation under the Act, of any amount due towards the Indian entity from the foreign entity, the remittance of which is permitted under the Act or does not require prior permission of the Central Government or the Reserve Bank under the Act or any rules or regulations made or directions issued thereunder;
- (v) the swap of securities;
- (vi) merger, demerger, amalgamation or any scheme of arrangement as per the applicable laws in India or laws of the host country or the host jurisdiction, as the case may be.

**3. Limit for financial commitment.**– (1) The total financial commitment made by an Indian entity in all the foreign entities taken together at the time of undertaking such commitment shall not exceed 400 percent

of its net worth as on the date of the last audited balance sheet or as directed by the Reserve Bank, in consultation with Central Government from time to time.

(2) The total financial commitment referred to in sub-paragraph (1) shall not include capitalisation of retained earnings for reckoning such limit but shall include–

- (i) utilisation of the amount raised by the issue of American Depository Receipts or Global Depository Receipts and stock-swap of such receipts; and
- (ii) utilisation of the proceeds from External Commercial Borrowings to the extent the corresponding pledge or creation of charge on assets to raise such borrowings has not already been reckoned towards the above limit:

An Indian entity can make investment in foreign entities under automatic route up to **400 per cent of its net worth** as certified by audited balance sheet. Kindly note that this upper limit of 400% is only applicable for Indian entities (company / LLP / registered partnership firm). The limit is not applicable to individuals or proprietary firms.

## D. Rules for Individuals

The best route for any individual resident in India to invest abroad is to take benefit of Liberalised Remittance Scheme (LRS).



भारतीय रिज़र्व बैंक  
RESERVE BANK OF INDIA  
www.rbi.org.in

RBI/FED/2017-18/3

FED Master Direction No. 7/2015-16

January 1, 2016

(Updated as on September 06, 2024)

(Updated as on December 22, 2023)

(Updated as on August 24, 2022)

(Updated as on August 23, 2022)

(Updated as on June 20, 2018)

(Updated as on August 02, 2017)

(Updated as on April 12, 2017)

(Updated as on February 11, 2016\*)

To,

All Authorised Persons in Foreign Exchange

Madam / Sir,

**Master Direction - Liberalised Remittance Scheme (LRS)**

Under this Scheme, Authorised Dealers (AD) (Banks dealing in foreign exchange) freely allow remittances by resident individuals up to USD 250,000 per financial year (April-March) for any

permitted current or capital account transactions or a combination of both. The facility is available to all resident individuals including minors. In case of remitter being a minor, the relevant form must be signed by both, the minor and the minor's natural guardian.

Resident individuals are also permitted to acquire and hold immovable property using this scheme. In addition, the scheme may be used to purchase shares (of listed companies or otherwise) or debt instruments or any other asset outside India without prior approval of the Reserve Bank.

6. The permissible capital account transactions by an individual under LRS are:

- (i) opening of foreign currency account abroad with a bank;
- (ii) <sup>8</sup>acquisition of immovable property abroad, Overseas Direct Investment (ODI) and Overseas Portfolio Investment (OPI), in accordance with the provisions contained in [Foreign Exchange Management \(Overseas Investment\) Rules, 2022](#), [Foreign Exchange Management \(Overseas Investment\) Regulations, 2022](#) and [Foreign Exchange Management \(Overseas Investment\) Directions, 2022](#);
- (iii) extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 2013<sup>9</sup>.

It is also important to comply with the requirements of Schedule III of FEMA OI Rules, 2022. Relevant and important portions of the schedule read as follows:

**Schedule III**

[See rule 13]

**Manner of making Overseas Investment by resident individual**

1. **Manner of making OI.**– (1) Any resident individual may make ODI by way of investment in equity capital or OPI in the manner provided in this Schedule and unless otherwise provided hereunder, shall be subject to the overall ceiling under the Liberalised Remittance Scheme of the Reserve Bank.

(2) A resident individual may make or hold Overseas Investment by way of,–

- (i) ODI in an operating foreign entity not engaged in financial services activity and which does not have subsidiary or step down subsidiary where the resident individual has control in the foreign entity;
- (ii) OPI, including by way of reinvestment;
- (iii) ODI or OPI, as the case may be, by way of–
  - (a) capitalisation, within the time period, if any, specified for realisation under the Act, of any amount due from the foreign entity the remittance of which is permitted under the Act or does not require prior permission of the Central Government or the Reserve Bank;

- (b) swap of securities on account of a merger, demerger, amalgamation or liquidation;
- (c) acquisition of equity capital through rights issue or allotment of bonus shares;
- (d) gift as per the conditions laid down under this Schedule;
- (e) inheritance;
- (f) acquisition of sweat equity shares;
- (g) acquisition of minimum qualification shares issued for holding a management post in a
  - a. foreign entity;
- (h) acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme:

Provided that ODI in respect of clauses (e), (f), (g) and (h) may be made in a foreign entity whether or not such foreign entity is engaged in financial services activity or has subsidiary or step down subsidiary where the resident individual has control:

Provided further that the acquisition of less than ten per cent. of the equity capital, whether listed or unlisted, of a foreign entity without control under clauses (f), (g) and (h), shall be treated as OPI.

*Explanation.*— For the purposes of this Schedule, a foreign entity will be considered to be engaged in the business of financial services activity if it undertakes an activity, which if carried out by an entity in India, requires registration with or is regulated by a financial sector regulator in India.

Of the above, the most important point is the restriction on investment in a foreign entity that has a subsidiary and in which the resident individual has control.

## **E. Prohibitions**

FEMA OI Rules, 2022 prohibit overseas direct investment in any entity engaged in the following activities:

- (a) Real estate activity
- (b) Gambling in any form
- (c) Dealing with financial products linked to the Indian Rupee without specific approval of Reserve Bank of India

“*Real estate activity*” means buying and selling of real estate or trading in Transferable Development Rights. If a foreign entity is engaged in building activity or construction activity or development of housing or commercial buildings / complexes, there is no prohibition regarding investment in such entities.

**19. Restrictions and prohibitions.**— (1) Unless otherwise provided in the Act or these rules, no person resident in India shall make ODI in a foreign entity engaged in—

- (a) real estate activity;
- (b) gambling in any form; and
- (c) dealing with financial products linked to the Indian rupee without specific approval of the Reserve Bank.

*Explanation.*— For the purposes of this sub-rule, the expression "real estate activity" means buying and selling of real estate or trading in Transferable Development Rights but does not include the development of townships, construction of residential or commercial premises, roads or bridges for selling or leasing.

(2) Any ODI in start-ups recognised under the laws of the host country or host jurisdiction as the case may be, shall be made by an Indian entity only from the internal accruals whether from the Indian entity or group or associate companies in India and in case of resident individuals, from own funds of such an individual.

(3) No person resident in India shall make financial commitment in a foreign entity that has invested or invests into India, at the time of making such financial commitment or at any time thereafter, either directly or indirectly, resulting in a structure with more than two layers of subsidiaries:

Provided that such restriction shall not apply to the following classes of companies mentioned in sub-rule (2) of rule 2 of the Companies (Restriction on Number of Layers) Rules, 2017 as may be amended from time to time, namely:-

- (a) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
- (b) a non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) which is registered with the Reserve Bank and considered as systematically important non-banking financial company by the Reserve Bank;
- (c) an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 (4 of 1938) and the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999); and
- (d) a Government company referred to in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013).

It is important to also pay attention to Rule 19(3) given above which prohibits investment in foreign entities that have invested in India resulting in more than two layers of subsidiaries.

## 5. Place of Effective Management Rules

Governments always believe in maximizing their revenues by all means. Government of India is no exception. 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: 24<sup>th</sup> 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.



POEM Guidelines classify companies as ABOI (Active Business Outside India) and Non-ABOI (Not having Active Business Outside India) depending on the share of passive income in the total income of the company.

Our **recommendations for Indian entrepreneurs regarding ABOI foreign companies are as follows:**

- 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. Please 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.

For a Non-ABOI company to have its place of effective management (POEM) outside India, it is necessary that the following criteria are fulfilled:

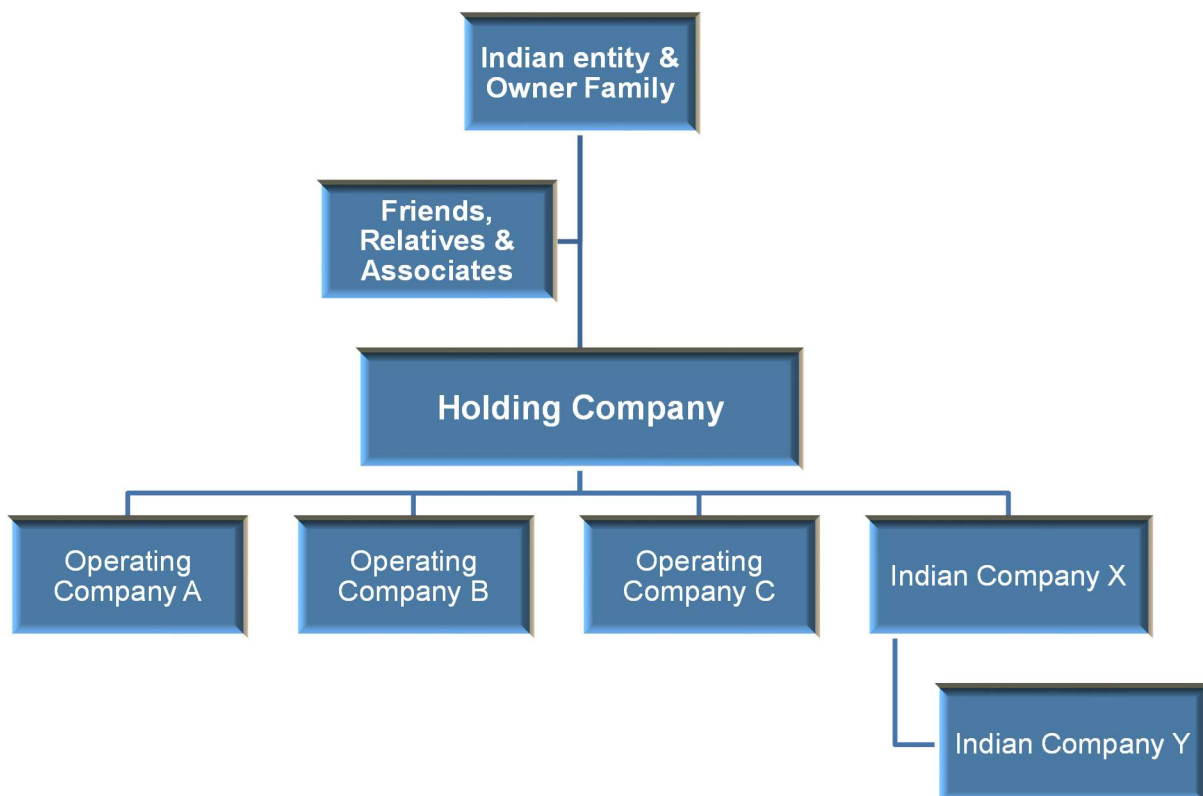
- a. Persons making the key management and commercial decisions for the company as a whole are NOT residents of India; AND
- b. Place where these decisions are made is outside India.

For a more detailed discussion on POEM Guidelines, please refer "**Guide to Place of Effective Management Rules for Foreign Companies Owned by Indian Entrepreneurs**" (available at <http://indialegalhelp.com/files/guidepoem.pdf> )

## 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 entity that serves customers in different countries where it operates taking into account local language, business, festivals, customs, culture, currency, banking regulations etc.



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 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 in India, Europe and the USA.

The Sample Structure shown above has been designed for this hypothetical entity and entrepreneur.

Some salient features of the Sample Structure are as follows:

1. There are four operating companies located at different locations including India. Indian company also has a subsidiary which takes care of a different vertical. Indian

company (not the subsidiary) serves as development centre for the global operations. More operating companies may be added as need arises from time to time.

2. The operating companies as well as Indian company are owned by a holding company based in a country which is advantageous from tax and other angles.
3. The holding company is owned by the entrepreneur's family, a legal entity owned by the family and also by some friends, relatives and associates.
4. All intellectual properties of the Group vest with the Holding Company and are licensed to the individual companies against payment of fees / royalty.
5. The Holding Company may also act as operating company in the region where it is located.
6. The Indian company works for the Holding 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.
7. 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.
8. 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.** However, as said earlier, one should not aim for zero taxation and should only try to minimize taxation to the extent permitted under law.

Proposed Sample Structure consists of various constituents. It is necessary to examine each constituent, the reason for choosing it and also location and other aspects associated with it. In addition, 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. 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, detailed consultations should place involving all concerned family members and other owners, if any. We recommend a long meeting involving all concerned to develop detailed understandings and design the right structure.

## **7. 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 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 is a complex affair involving significant costs while at an early stage the additional cost is nominal.

## 8. 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.

Let us take a quick look at the costs of setting up a private limited company and running it for first year in the seven countries whose Country Profiles are being published as separate booklets by Anil Chawla Law Associates LLP:

Country	Unit	Minimum Capital	Incorporation + First Year	Second Year Operations
Switzerland	CHF	20,000	6,000	4,500
Liechtenstein	CHF	10,000	20,000	10,000
Singapore	SGD	1	7,250	4,400
Luxembourg	EUR	12,500	16,500	7,000
Ireland	EUR	1	4,000	2,500
Estonia	EUR	2,500	7,000	5,000
Slovenia	EUR	7,500	11,000	7,000

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.

A company in one of the above countries can serve as a holding company and also as an operating company for the region. In addition, one will need to set up operating companies in different countries based on the needs of the business model.

Costs for setting up operating companies shall vary from country to country but are likely to be broadly in the range indicated above. In addition to the costs for setting up companies, one must budget for legal advice for designing the structure and guiding the process.

Travel costs are also likely to be significant since most countries need physical presence of authorized signatory for opening of bank account if not for company incorporation. One must plan to visit the country where one has a company at least twice a year to attend meetings of board of directors / management board.

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

*Anil Chawla Law Associates LLP*  
*Business Lawyers, Strategic Advisors and Insolvency Professionals*

Helps you with

Strategic Advice  
Global Business Structures  
Wealth Management and Succession Planning  
International Corporate Relationships  
Resolving Disputes without Litigation  
International Investment Arbitration  
International Commercial Arbitration  
Insolvency Assistance

We take an entrepreneur's perspective. We think the way you do.

We help business grow.



*Anil Chawla Law Associates LLP*

MF-104, Ajay Tower, E5/1 (Commercial), Arera Colony, Bhopal – 462 016 (MP) INDIA

Website – [www.indialegalhelp.com](http://www.indialegalhelp.com)

E-mail – [info@indialegalhelp.com](mailto:info@indialegalhelp.com)

WhatsApp: (+91) 94250 09280 (Anil Chawla)

**Note:** This Guide is Free. However, generally speaking, we do not provide free legal advice. Kindly consult your advocate for assistance / advice on any specific matters.

We follow a transparent system for fees. Please look at our [Indicative Rates](http://www.indialegalhelp.com/files/indicativerates.pdf) (<http://www.indialegalhelp.com/files/indicativerates.pdf>) before contacting us.