



# Presentation on

100 % Subsidiaries of Foreign Companies

## SET UP ISSUES

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# Entry Strategy - Overview

- ▲ Market Understanding
- ▲ Regulatory Environment
  - ▶ Policy Matters
  - ▶ Setting Up
  - ▶ Other Issues
- ▲ Investment Routing
- ▲ Identifying Potential Partner
- ▲ Exit Options

## ▲ Understanding Policy of Indian Government

- ▶ Licensing
- ▶ Incentives Offered by State & Centre Government
- ▶ Location Analysis
- ▶ Understanding of Applicable Taxes
- ▶ Impact of Regional Trade Agreements viz. WTO. For instance, under WTO regime, quota system has been abolished and Patents/Trademarks have achieved significance

# Market Understanding (Cont..)



## ▲ Demand Supply Scenario

- ▶ Market Potential
- ▶ Existing and Emerging Products
- ▶ Disposable Income
- ▶ Customs and Traditions

## ▲ Market Study

- ▶ Analysis of Major Players – Production Capacity, Financials, Supply Chain Management, Strengths and Weakness

# Regulatory Environment– Policy Matters



- ▲ **Analysis of Sectoral Caps** - Investment Allowed Under Automatic or Approval Route
- ▲ **Negative List** - Gambling & Betting, Retail Trading, Atomic Energy, Agriculture / Plantation (except tea plantations)
- ▲ **Press Note 1 of 2005** - Special Approval in case foreign investor has existing joint venture / technical / trademark agreement with existing Indian company in '**same field**'

# Regulatory Environment – Investment Caps

S No	Industry Sector	Limit of FI *# (%)	
		Automatic	Approval
1.	Airports	74	100
2.	Domestic Airlines	49	100
3.	Drugs & Pharmaceuticals	100	NA
4.	Construction Devp Sector	100	NA
5.	Power	100	NA
6.	Manufacturing	100	NA
7.	Telecommunication	74	100
8.	Trading (excl retail trade)	51	100

\* subject to sectoral policies

# source: FDI-Policy & Procedures, November 2005 issued by Secreteriat for Industrial Assistance

# Regulatory Environment - Setting up

- ▲ Representative Offices
- ▲ Project Offices
- ▲ Branch Offices
- ▲ Subsidiaries
- ▲ Joint Ventures
- ▲ Technical Collaboration
- ▲ Buying Agent/ Contract Manufacture

# Representative Offices

- ▲ Normally first point of entry into India
- ▲ Simple setting up and winding procedure
- ▲ Primarily for exploring business opportunities in India
- ▲ Can post expatriate representative
- ▲ CANNOT carry out or enter into any business transaction

# Project Offices

- ▲ For foreign companies executing projects
- ▲ Simple set up and winding process
- ▲ Office can be used only for the specific project
- ▲ Remittance from HO or rupee revenues from customer
- ▲ CANNOT repatriate surplus funds during life of project – approval required

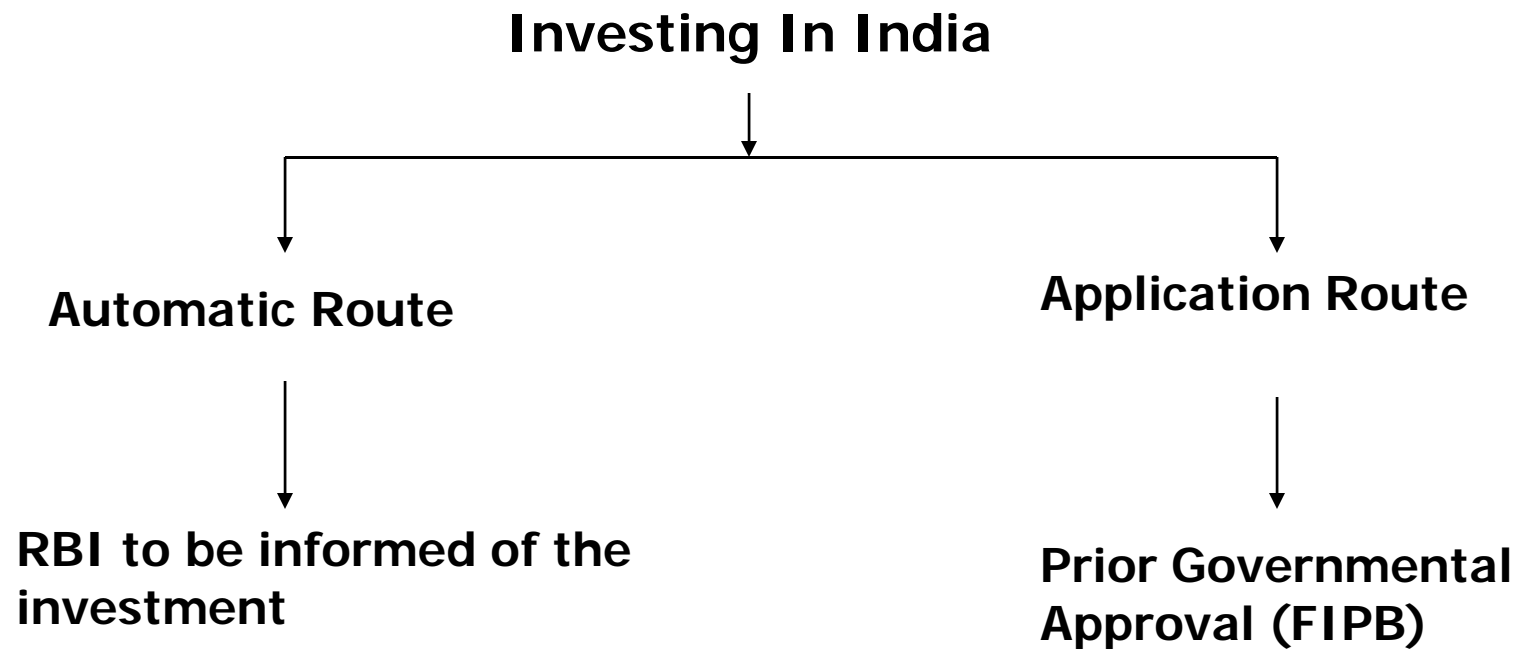
# Branch Offices

- ▲ Foreign companies to carry out exports/ imports, research work, technical support etc.
- ▲ Simple set up and winding up process
- ▲ Considered an extension of the Parent company
- ▲ High tax incidence – Permanent Establishment issue

# Subsidiaries

- ▲ Wholly owned subsidiaries permitted
- ▲ Restrictions Industries – Foreign Investment not permissible
- ▲ Specific industries – Foreign Investment Caps
- ▲ Retail trading not permissible

# Investment Entry Routes



# Set up steps for an Indian subsidiary

- ▲ Market Feasibility
- ▲ Location Study
- ▲ Financial Feasibility
- ▲ Government Approvals - Application to Foreign Investment Promotion Board- takes 4-6 weeks
- ▲ Incorporation of Indian company – 2 steps
  - ▶ Name application and approval
  - ▶ Finalising Memorandum & Articles of Association  
Takes in all 4 weeks

# Set up steps for an Indian subsidiary (Cont..)

- ▲ Reporting to Reserve Bank of India for
  - ▶ Fund remittance representing investments
  - ▶ Allotment of shares issued to shareholders

Takes about 7 working days

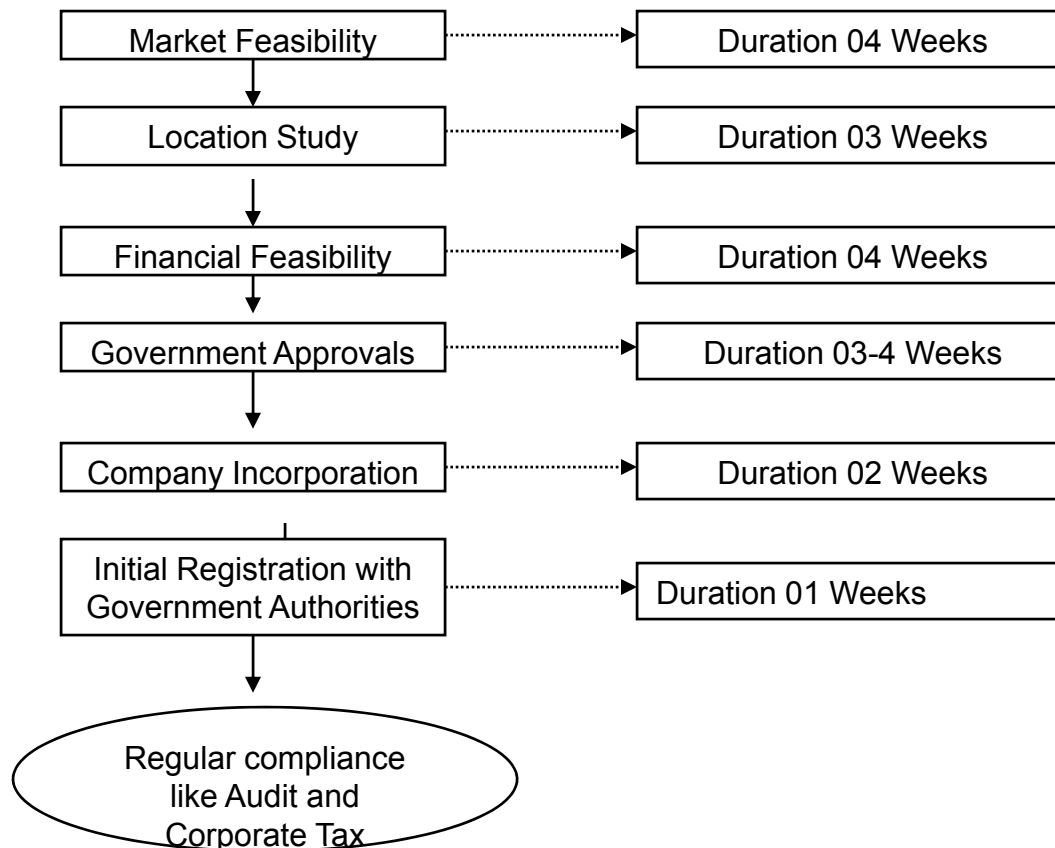
# Set up steps for an Indian subsidiary

- ▲ Initial registrations
  - ▶ With Income tax authorities
  - ▶ With Foreign trade authorities for Import/ Export code
- ▲ Land Acquisition
  - ▶ Industrial land/Private land
- ▲ Recruitment of key personnel
- ▲ Other Registrations
  - ▶ Sales tax, Service tax, Excise, Local taxes, etc.
  - ▶ Environment approval (if required)

# Set up steps for an Indian subsidiary (Cont..)

- ▲ Compliance with Statutory Authorities
  - ▶ Tax like income tax, customs, excise, sales, etc
  - ▶ Regulatory with FIPB, RBI, SEBI, etc.
  - ▶ Audit under Indian Companies Act

# Business Setup In India



# Some Specific Issues – Case Study

- ▲ Company Incorporation
- ▲ Press Note 18 vs Press Note 1
- ▲ Understanding the tax structure
- ▲ Expatriate Issues
- ▲ Mergers and Acquisitions
- ▲ Human Resources – Regulations
- ▲ Closure

# Company Incorporation



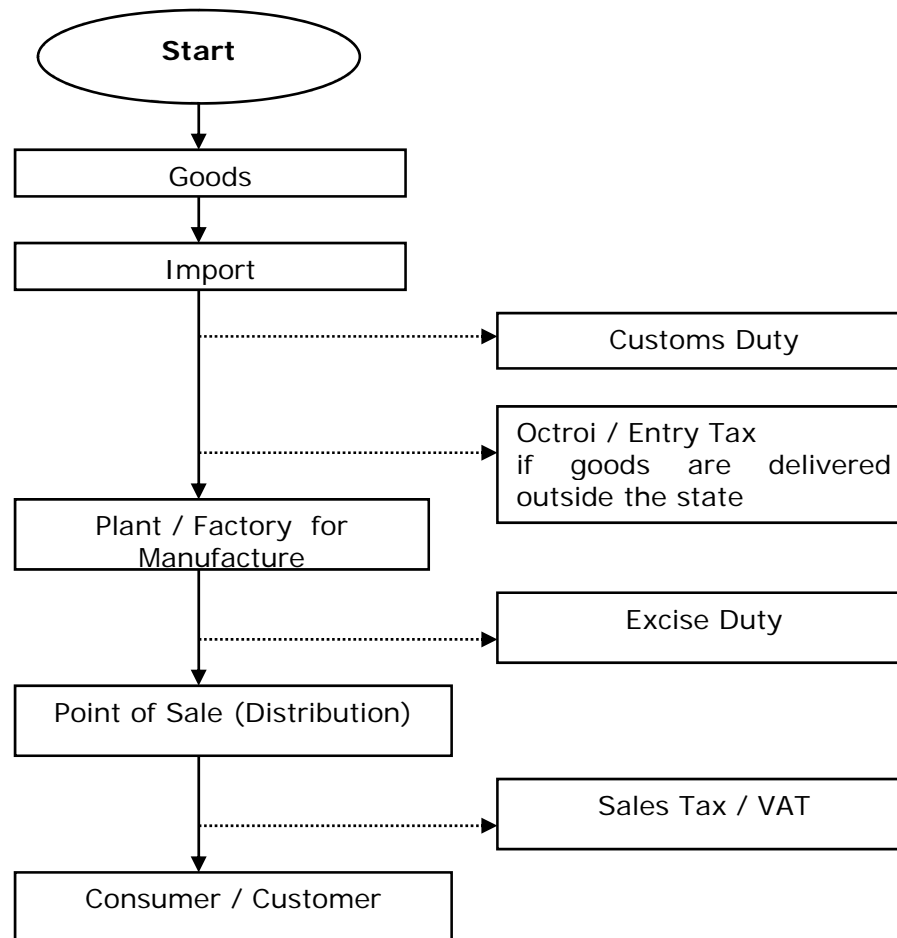
- ▲ Name Approval
- ▲ Requirement of Two Corporate Shareholders
- ▲ Attestation of Documents from the Embassy
- ▲ Foreign Directors
- ▲ Other Registrations

# Press Note 18 vs Press Note 1



- ▲ Press Note 18
- ▲ Applicable only in case of existing Joint Ventures, Technical Collaborations
- ▲ Provisions now relaxed
- ▲ Investment in Allied Industries fully permissible

# Understanding the Tax Structure



# Expatriate Issues

- ▲ Requirement for a Valid Visa
- ▲ Registration of Expatriates with FRRO
- ▲ Critical Tax Issues
- ▲ Dual Employment
- ▲ Repatriation of Salaries
- ▲ Tax Clearance on Exit

# Mergers & Acquisitions

- ▲ Preliminary investigation of the target company and the industry
- ▲ Conducting valuation of target company using different approaches
- ▲ Conducting financial and legal due diligence
- ▲ Assistance in negotiations with promoters of target company
- ▲ Advice on Transaction Structuring
- ▲ Preparing Share Purchase Agreement

# Thank You