

# India Subsidiary Setup Guide

*A practical guide for foreign founders  
setting up a company in India*

15-20

BUSINESS DAYS  
TO INCORPORATE

100%

REMOTE — NO  
INDIA TRAVEL  
NEEDED

225+

FOREIGN  
ENTITIES  
MANAGED  
MONTHLY

15+ yrs

CROSS-BORDER  
PRACTICE

# What this guide covers.

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- 01 **Why India — and why now**  
The commercial case for setting up an Indian subsidiary

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- 02 **Choosing the right entity type**  
Subsidiary vs. branch vs. LLP — what works for foreign companies

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- 03 **The incorporation process**  
Step-by-step — from documents to Certificate of Incorporation

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- 04 **Directors, shareholders and corporate control**  
Structure, resident director, managing director selection

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- 05 **FDI, FEMA and capital remittance**  
How to fund your India subsidiary correctly under RBI rules

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- 06 **Intercompany agreements and transfer pricing**  
The legal infrastructure between parent and subsidiary

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- 07 **Intellectual property protection**  
Ownership, assignment, moral rights and R&D agreements

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- 08 **Employment, payroll and ESOPs**  
Hiring, compensation structure, stock options for India employees

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- 09 **Monthly and annual compliance**  
What your India entity needs to do every month to stay compliant

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## India entry checklist

Everything you need before, during and after incorporation

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# Why India — *and why now.*

India is the world's fastest-growing market for engineering, SaaS, CRO, and back-office operations. Here is why foreign companies set up subsidiaries — and what they actually get.

## THE COMMERCIAL REASONS

- Build engineering or technology teams at significantly lower cost
- Support global clients from a local legal entity
- Expand delivery capability without proportional cost increase
- Establish long-term market presence in a growing economy
- Hire legally and compliantly — not through contractors
- Invoice Indian clients in INR through a local entity

## THE LEGAL REASONS

- Protect IP through employee invention assignment agreements
- Establish arm's-length intercompany pricing with full documentation
- Avoid permanent establishment risk from unstructured operations
- Access India's talent under compliant employment contracts
- Eligible for startup and R&D incentives under Indian law
- Cleanly repatriate profits under FDI and FEMA frameworks

**Where to locate?** Bangalore, Pune, Hyderabad, Chennai, and Delhi NCR are the most common. Bangalore has the deepest talent pool but highest costs and attrition. Pune offers lower costs, less competition for employees, and a less mobile workforce — which is why KRPR's office is there. Hyderabad is the centre of life sciences activity. Location should also reflect where your managing director lives — this is a practical reality that many founders underestimate.

## Choosing the *right entity type*.

For most foreign companies, the answer is straightforward. But understanding why helps you avoid the wrong structure.

FEATURE	WHOLLY OWNED PVT. LTD. ✓	BRANCH OFFICE	LLP
Foreign ownership	100% permitted (automatic route in most sectors)	100% but activity-restricted	Sector-specific caps may apply
Minimum capital	None required	None	None
Remote incorporation	Yes — fully online	No — requires RBI approval	Partially
Hire employees directly	Yes — full employment contracts	Limited	Yes
Invoice Indian clients	Yes — in INR	Restricted to specific activities	Yes
Mandatory audit	Yes — increases transparency	Yes	Only above threshold
Best suited for	Tech, CRO, engineering, back-office, SaaS	Liaison / representative offices only	Professional services partnerships

*"For the vast majority of foreign companies entering India to build operations or hire teams, a wholly owned private limited company is the only structure that makes practical sense."*

### What "automatic route" actually means

100% FDI under the automatic route means **no prior government approval is required**. You simply incorporate, remit capital, and file the required RBI reports after the fact. The automatic route applies to most service sectors — technology, engineering, consulting, CRO, back-

office, SaaS. Certain sectors (defence, media, telecoms, retail) have approval requirements or ownership caps — we will advise you on your specific sector.

## The *incorporation process* — step by step.

The entire process is managed by our team. You provide documents; we handle everything else. Most companies are incorporated within 15–20 business days.

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### 01 Documentation and pre-incorporation structuring

Before we file anything, we help you decide on shareholding structure, director appointments, and registered office. You receive a clear checklist of what we need from you.

Shareholding structure

Director appointments

Registered office

Parent company documents

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### 02 Digital Signatures (DSC) for all directors

Every director who will sign incorporation documents needs a Digital Signature Certificate. This is applied for individually and typically issued within 1–3 days. The entire process is remote.

1–3 days

Fully remote

All directors

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### 03 MCA filings — SPICe+, MOA, AOA

We file the full incorporation package with the Ministry of Corporate Affairs. This includes name approval (SPICe+ Part A) and the incorporation form (SPICe+ Part B) along with the Memorandum and Articles of Association, Director Identification Numbers, PAN and TAN applications.

SPICe+ Part A — name

SPICe+ Part B — incorporation

e-MOA & e-AOA

DIN, PAN, TAN

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## 04

### Bank account opening

Opening a corporate current account in India is more document-intensive than most founders expect. We handle all KYC documentation, board resolution preparation, and bank coordination. Remote opening is possible with most major Indian banks.

10–15 days typically

Remote possible

KYC + board resolution

## 05

### Capital remittance and FDI compliance

Once the bank account is active, your parent company wires the initial share capital to the Indian subsidiary. This triggers mandatory RBI reporting requirements — including the FC-GPR filing (within 30 days of share allotment) and a FIRS (Foreign Inward Remittance Statement) from the bank.

Purpose code required

FIRS from bank

FC-GPR within 30 days

FIRMS portal

## 06

### Post-incorporation operational setup

The company is incorporated — but not yet operational. We set up everything needed to hire employees and run compliantly from day one.

- GST registration (if required for your business)
- Payroll system setup with PF, ESIC, TDS structuring
- Accounting system — Zoho, QuickBooks, or Tally
- Statutory registers and minute book
- Intercompany service agreements
- HR policies, employment contracts, and offer letters
- Compliance calendar for all monthly and annual filings

## Typical timeline

DSC issuance for all directors

1–3 days

After document submission

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Name approval (SPICe+ Part A)

**2–5 days**

MCA processing time

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MCA incorporation approval

**4–10 days**

After SPICe+ filing

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Bank account activation

**10–15 days**

After incorporation

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FC-GPR filing (mandatory)

**Within 30 days**

Of share allotment

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Total — incorporation to operational

**15–20 business days**

Dependent on document readiness

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## Directors, shareholders *and corporate control.*

This is the section most guides skip. Getting the director and shareholder structure right from day one avoids serious corporate control problems later.

### The basic requirements

A private limited company in India requires a minimum of **two directors and two shareholders**. At least one director must be an Indian resident — someone who has stayed in India for at least 182 days in the previous calendar year. This is a legal requirement, not a recommendation.

**Practical reality:** If you don't have any existing relationships with India-based individuals, your service provider will often suggest nominees — either the provider itself or persons they refer. This is normal but creates corporate control issues. You must put written agreements in place to protect your interests. More on this below.

### The managing director — your most important hire

The Companies Act allows the Board to appoint one director as the Managing Director — essentially the President and CEO of the Indian subsidiary. This person runs day-to-day operations and can legally bind the subsidiary with third parties based on apparent authority, even if the board has restricted their powers internally.

**Choose carefully.** A managing director who makes expenditures inconsistent with parent company guidelines, or who builds relationships that compromise your control, is very difficult to manage from overseas. The best outcome is when the managing director is either a trusted current employee who wants to relocate to India, or someone whose interests are closely aligned with the parent company through equity participation.

### Corporate control — what to put in writing

Whether you use nominee directors/shareholders or not, you should have written agreements covering:

- **Budget guidelines:** Subsidiary must comply with written budgetary guidelines approved by the parent. No material expenditures without prior written approval.

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- **Authority limits:** Restrict the managing director's ability to enter contracts above a threshold without board approval. Define clearly what requires parent consent.

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- **Share purchase obligation:** If nominal Indian shareholders were used for administrative convenience, require purchase of those shares by the parent company as soon as practicable.

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- **No unauthorised issuance:** The service provider must agree not to issue shares or ownership rights without written parent approval.

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- **Reporting obligations:** Weekly or fortnightly financial updates to the parent's finance officer. Full transparency on expenses from day one.

#### FUNDING DISCIPLINE AS A CONTROL MECHANISM

One of the most effective ways to maintain financial oversight is to fund the subsidiary on a monthly or quarterly basis against written budgetary guidelines. This prevents the subsidiary from accumulating excess cash and eliminates the need for complex repatriation later. It also ensures the subsidiary stays within the parent's expectations as it builds out its infrastructure.

## FDI, FEMA and *capital remittance*.

India's foreign exchange regulations are among the most detailed in the world. Getting the FDI structure right from the first remittance protects you from penalties and regulatory scrutiny later.

### How FDI works for a new subsidiary

When your parent company sends money to your new Indian subsidiary as share capital, this is classified as Foreign Direct Investment under India's FEMA (Foreign Exchange Management Act) framework. The steps are:

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#### 01 Parent wires share capital to Indian bank account

The purpose code must be correctly identified in the bank's wire instructions. Your Indian bank will issue a FIRS — Foreign Inward Remittance Statement — confirming receipt of the foreign funds.

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#### 02 Shares are allotted to the parent company

Within a reasonable time after receiving the funds, the Indian subsidiary formally allots shares to the parent company at a price validated by a registered valuer report.

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#### 03 FC-GPR filing on the FIRMS portal

Within 30 days of share allotment, a mandatory Form FC-GPR must be filed on the RBI's FIRMS portal. This is the most time-sensitive compliance obligation — missing the deadline triggers penalties that compound over time.

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## 04

### FLA Return — annual reporting

Every year by July 15, the Indian subsidiary must file a Foreign Liabilities and Assets (FLA) Return with the RBI, reporting on all outstanding FDI positions. Failure to file is a FEMA violation.

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**Currency repatriation note:** India regulates the movement of funds out of the country. Approval may be required before cash can be transferred back to the parent. This is why monthly or quarterly funding (rather than lump-sum upfront capitalisation) is often the smarter approach — it avoids accumulating excess INR that is complicated to repatriate later.

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## Intercompany agreements *and transfer pricing.*

The India subsidiary is a separate legal entity. The commercial relationship between it and the parent must be documented in written agreements — and the pricing must be arm's-length.

### Why intercompany agreements matter

Without proper intercompany agreements, the Indian tax authorities can characterise payments between the parent and subsidiary however is most tax-advantageous to them — which is usually not advantageous to you. These agreements also establish the legal basis for the subsidiary's activities, protect IP ownership, and define the reimbursement structure.

### Common agreement types

#### RESEARCH & DEVELOPMENT AGREEMENT

- Subsidiary agrees to provide R&D or engineering services
- All IP developed is assigned to the parent
- Cost-plus pricing structure (typically cost + 8–15%)
- Confidentiality obligations on all parent IP
- No subcontracting without parent written consent

#### SHARED SERVICES AGREEMENT

- Used where subsidiary provides back-office or support services
- Arm's-length pricing based on benchmarking study
- Detailed reporting on costs and services delivered
- Both parties agree to comply with applicable law
- Currency exchange and export control compliance

### Transfer pricing — what it means in practice

Both the US IRS / HMRC / equivalent and the Indian Income Tax authorities scrutinise pricing between related parties. The agreements must be "arm's-length" — meaning the pricing must reflect what independent parties would agree to. Cost-plus arrangements (cost + 10% is

common) satisfy this requirement for most service models, but must be backed by proper benchmarking documentation.

**Annual TP documentation is mandatory** for Indian subsidiaries that transact with related foreign entities above the threshold. We prepare this as part of annual compliance. The documentation must be in place before you file your Indian income tax return — not after.

## Permanent Establishment (PE) risk

If your India subsidiary's activities go beyond what is described in the intercompany agreement — or if the managing director is seen as having authority to conclude contracts on behalf of the parent — the Indian tax authorities may argue that the parent has a Permanent Establishment in India. This subjects the parent's global profits to Indian taxation. The intercompany structure must be designed specifically to manage this risk.

## Intellectual property *protection in India.*

This is the section that catches foreign companies off-guard. Indian IP law is materially different from US and UK law in several important ways.

### The core principle: use employees, not contractors

Under both US and Indian copyright law, an employer owns work created by an employee without any further action. But work created by an independent contractor belongs to the contractor unless there is a written assignment of ownership. Using employees — not subcontractors — for development work is the most reliable way to keep IP ownership clear.

**Moral rights — a critical India-specific issue:** India's copyright law grants authors "moral rights" that belong to the individual author even if the employer owns the copyright. Moral rights include the right to claim authorship and to object to modifications that prejudice the author's reputation. Unlike in the US, these cannot be assigned — they can only be waived. Every employee invention assignment agreement must contain an irrevocable waiver of moral rights. Without this waiver, a former employee could potentially challenge modifications to work they contributed to.

### IP assignment requirements under Indian law

India's copyright assignment law is more specific than US law. To be fully effective, an IP assignment agreement must:

- Be made after completion of the work (not just prospectively)
- Specify the geographical scope as worldwide — otherwise it defaults to India only
- State that there is no obligation to exercise the rights assigned
- Specify perpetual duration — otherwise it defaults to 5 years

### R&D agreement — what must be included

- Subsidiary agrees to provide services as directed by the parent
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- Subsidiary agrees not to subcontract without parent's written consent

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- All information provided by parent is treated as confidential

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- All IP developed is assigned to the parent — with full Indian copyright law compliance

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- Irrevocable waiver of moral rights — must also appear in each employee's contract

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- Cost-plus pricing with detailed monthly cost reporting

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- Compliance with all applicable laws including FEMA and export controls

#### **PRACTICAL PROTECTION MEASURES**

Beyond legal agreements, practical IP protection includes appointing trusted management, keeping core technology components in the parent jurisdiction, careful management of the development environment, software watermarking and fingerprinting, and ensuring clean handovers when employees leave. Legal remedies in India are slow — practical prevention is far more valuable.

## Employment, payroll *and* ESOPs.

India's compensation and employment structure is different from the US and UK. Understanding it upfront prevents expensive restructuring later.

### Compensation structure in India

Indian compensation packages are typically divided into five components. The allocation between them significantly affects take-home pay and employer cost:

COMPONENT	TYPICAL RANGE	NOTES
Base salary	40–70% of CTC	Kept relatively low — both employer and employee pay 12% of basic salary into PF
Flexible Expense Plan (FEP)	5–15% of CTC	Reimbursement of allowable expenses — some taxable, some not. Receipts required
Variable pay	0–30% of CTC	Performance / incentive-based. Paid quarterly or annually
Provident Fund (PF)	12% of basic	Mandatory pension contribution — employer and employee each contribute 12%
Corporate benefits	Variable	Health insurance, gratuity, leave encashment. Must be budgeted from day one

**Benefits must be decided at setup — not later.** Employee benefits infrastructure established at incorporation is very difficult to change. If you start with generous benefits and later need to cut costs, Indian employment law makes this extremely difficult. Design the benefit structure carefully and with expert advice before your first hire.

### Probation and termination

Employees are typically on probation for 3–6 months after joining. During probation, termination can often be done at the company's discretion without severance. After probation,

employees are entitled to 30–90 days notice or pay in lieu, depending on seniority and length of service. This is significantly more employee-protective than at-will employment in the US.

## Stock options for India employees

US and UK parent companies commonly grant stock options to key India employees as an incentive. This is well understood at the senior level in India — particularly in tech companies. Junior employees may prefer cash.

**Tax treatment:** If the parent company's equity incentive plan is registered in India with the Chief Commissioner of Income-tax and complies with Indian government guidelines, the options receive beneficial tax treatment — taxation is deferred until sale of stock rather than on exercise. There is no minimum alternative tax for individuals in India. The plan must be reviewed to ensure compliance with Indian requirements before grants are made.

India's currency exchange controls applicable to stock option exercises have been liberalised — there is currently no limit on amounts employees can remit to exercise stock options. However, purchases of parent company shares by persons other than employees under an equity plan are subject to monetary limits under exchange control regulations.

## Monthly and annual *compliance obligations*.

A foreign-owned Indian company has ongoing statutory obligations from the moment it incorporates. Miss a deadline and penalties compound quickly. Here is what your India entity must do to stay fully compliant.

MONTHLY	ANNUAL
<ul style="list-style-type: none"><li>■ Bookkeeping and MIS reporting</li></ul>	<ul style="list-style-type: none"><li>■ Statutory audit by registered CA</li></ul>
<ul style="list-style-type: none"><li>■ GST return filing (GSTR-1, GSTR-3B)</li></ul>	<ul style="list-style-type: none"><li>■ Income tax return filing</li></ul>
<ul style="list-style-type: none"><li>■ TDS payment and return</li></ul>	<ul style="list-style-type: none"><li>■ Transfer pricing documentation and report</li></ul>
<ul style="list-style-type: none"><li>■ Payroll processing — PF, ESIC, PT deductions</li></ul>	<ul style="list-style-type: none"><li>■ ROC annual return and financial statements</li></ul>
<ul style="list-style-type: none"><li>■ Advance tax deposits (quarterly)</li></ul>	<ul style="list-style-type: none"><li>■ FLA Return — RBI (by July 15 each year)</li></ul>
<ul style="list-style-type: none"><li>■ Bank reconciliation</li></ul>	<ul style="list-style-type: none"><li>■ AGM and board meetings</li></ul>

**The India compliance calendar is non-negotiable.** Unlike some jurisdictions where late fees are modest, FEMA and MCA penalties in India are significant and cumulative. A single missed FC-GPR filing can result in penalties of USD 1,000–10,000+ per day of default. We manage the full compliance calendar for all 225 entities under our mandate — so nothing falls through.

## India entry *checklist*.

Use this checklist to track progress through your incorporation. Everything beyond "documents you provide" is handled by KRPR.

### PRE-INCORPORATION

- Directors identified and confirmed
- Shareholding structure finalised
- Registered office address confirmed
- Parent company documents collected
- Director passport copies obtained
- Indian resident director confirmed
- DSC applications submitted
- Name shortlist agreed with KRPR

### INCORPORATION

- SPICe+ Part A — name reserved
- SPICe+ Part B — filed with MCA
- MOA and AOA drafted and filed
- DIN issued for all directors
- Certificate of Incorporation received
- PAN and TAN issued
- Bank account opened
- Share capital remitted from parent

### POST-INCORPORATION

- FC-GPR filed within 30 days
- GST registration obtained
- Payroll system configured
- Accounting system live
- Intercompany agreements executed
- IP assignment agreements with employees
- Employee invention assignment + moral rights waiver
- Compliance calendar activated

## DOCUMENTS YOU NEED TO PROVIDE — THE COMPLETE LIST

### PARENT COMPANY

- Certificate of Incorporation
- Address proof
- Board resolution authorising India subsidiary
- Passport / KYC of authorised signatory

### FOR EACH DIRECTOR

- Passport copy
- PAN card (Indian resident director)
- Address proof (bank statement or utility)
- Recent passport photograph

### FOR REGISTERED OFFICE

- Recent utility bill for the premises
- No Objection Certificate (NOC) from property owner — we can assist if you need a registered office address

# Ready to incorporate your *India subsidiary*?

Our senior partners have managed 250+ foreign-owned incorporations.  
Schedule a no-obligation consultation — we will assess your structure,  
identify the risks, and give you a clear plan.

[SCHEDULE A CONSULTATION](#)

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