# Key Issues in Greenfield Setup

## 1. MODE OF ENTRY

It is not always necessary to incorporate a company to operate in India. One can also enter into a JV with an Indian partner, set up a Project Office, Branch Office or Liaison Office based on the scope of operations you intend to carry out. Each of these entities are subject to different laws,specifically tax laws.

**Tip:** As a general rule a project, branch or liaison office has limited capability and government agencies encourage capitalized entry modes. It is advisable to take legal and tax advice prior to finalizing the mode of entry.

## 2. LAND ACQUISITION

Land holdings in India are often fragmented, leading to multiple ownership claims. Manufacturing units require large parcels of land which may include procuring agricultural land that needs to be converted for non-agricultural use. This is a cumbersome and costly process. Further, companies with foreign investments cannot acquire agricultural land directly.

**Tip:** Possible delays in land conversion and acquisition should be factored into project timelines. One can procure long term leases from industrial development corporations, which is the preferred option. Using land aggregators can help in getting access to land banks. However, this relationship needs to be structured properly.

## 3. REGULATORY APPROVALS

India has a federal system of governance, with separate (but not contradictory) legislations at the central and state levels. This further complicates an already lengthy process. In the absence of a single window approval process, clearances are needed from multiple authorities to set up a manufacturing or industrial unit.

**Tip:** Meticulous planning and dedicated (in-house or third party) resources are needed to obtain regulatory approvals.

## 4. FINANCING


Setting up a manufacturing unit can be capital-intensive,requiring financing at different stages. The procedure for a foreign company to fund an Indian entity is complicated and can be slow. Outward remittances of profits, fees or royalty payments by the Indian company to the foreign parent also depend on the manner in which the initial funds were deployed into the Indian company.

**Tip:** Plan funding requirements at each stage of the lifecycle. Examine regulations relating to foreign equity financing and repatriation routes before finalizing the mode or channels of investment.

## 5. EXTERNAL COMMERCIAL BORROWINGS

Inter corporate deposits and lending of money by the parent foreign company to the Indian company are highly regulated. These are normally treated as external commercial borrowings which have restrictions with respect to end use, maturity period and interest rates.

**Tip:** ICDs and loans have to be carefully structured in compliance with regulations.

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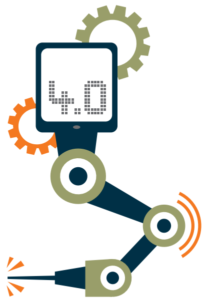


## 6. CULTURAL DIFFERENCES AND WORKING MODELS

India is multi-cultural and diverse in its language, customs and habits, confusing those who are not familiar with it. In small and mid-sized companies, corporate compliance, governance and transparency in decision making are yet to reach optimal levels. While checks and balances are always needed, the procedures that work in foreign companies may not always work in the Indian scenario.

**Tip:** The working model must, to the greatest extent possible, integrate the different working cultures to find a balance,and the foreign company should not seek to enforce its models blindly on the Indian operations.

## 7. IP RIGHTS

The IP rights must be adequately protected and licensed with clear and unambiguous terms of use for manufacturing and production purposes. Royalty payments for IP rights are regulated in India.

**Tip:** Formulate robust agreements and IP policies to prevent dilution in the IP value. It is advisable to take tax advice prior to finalizing the royalty payments.

## 8. LABOUR LAW COMPLIANCE

India has a number of labour and employment laws, navigating through which is often confusing and difficult. These laws vary depending on the state in which the entity is incorporated. These laws are generally pro-labour and strict compliance is expected.

**Tip:** Devise structured recruitment and management plans - separate for blue-collar and white collar employees. Identify a dedicated resource/team for labour law compliance. Managing employees and understanding local employment management techniques and recruitments is key.

## 9. TAX AND DUTIES

There are numerous laws in India for taxation and import/export of goods which are regularly re-assessed and amended, resulting in an uncertain tax regime. Furthermore, with the new GST bill, there is a lack of clarity on how manufacturing companies will be affected.

**Tip:** The investment structure and proposed operations must be carefully thought through, keeping in mind draft policies as well as ongoing discussions in the country.

## 10. DISPUTE RESOLUTION

In case of any conflict with partners, contractors or any other third parties, dispute resolution might become a long drawn-out and expensive process, thereby affecting the operation of the business and diluting the value of the Indian company.

**Tip:** Dispute resolution should preferably be through arbitration and where possible conducted in a neutral body/jurisdiction.



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