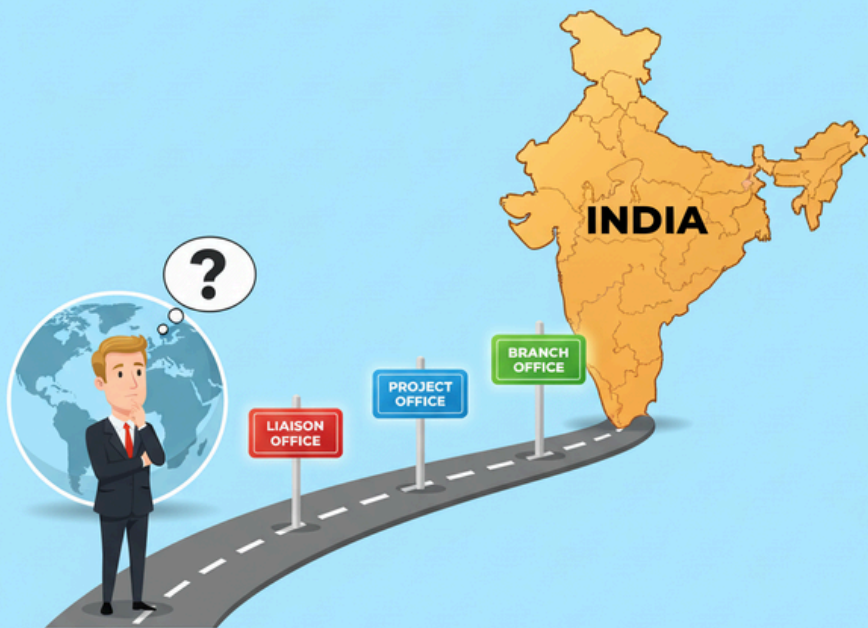


## OPTIONS TO FOREIGN INVESTORS FOR SETTING UP BUSINESS OPERATIONS:

LIAISON OFFICE, PROJECT OFFICE,  
BRANCH OFFICE



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Typically, any Country's economic growth is evaluated by several parameters. One of the Parameters is presence of Foreign Entities through Foreign Direct Investment. [1]

In India, apart from Foreign Direct Investments, the foreign investors i.e. foreign companies or an individual planning to set up business operations in India can do so by setting up the following:

1. Liaison Office (LO)
2. Project Office (PO)
3. Branch Office (BO)

This is subject to provisions of Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000 as amended from time to time.

### **Establishment of Branch / Liaison/ Project Offices in India**

- If the Principal business of the entity resident outside India falls under sectors where 100% Foreign Direct Investment is allowed in terms of FEMA notification no 20/2000- RB dated 3<sup>rd</sup> May 2000, as amended from time to time, and the entity seeks to open a BO/LO/ PO , the AD Category- I bank may consider such applications under the delegated powers.

[1] The article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.



- Such application requires prior approval of Reserve Bank of India, if
  - 1.The Applicant is a citizen of or is registered/incorporated in Pakistan.
  - 2.The Applicant is citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a BO/LO/PO in Jammu and Kashmir, Northeast Region and Andaman and Nicobar Islands.
  - 3.The Principal Business of the Applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting. However, if Applicant has been awarded a contract or has been entered into an agreement with Ministry of Defence or Service Headquarters or Defence Public Sector Undertaking, then Prior approval from RBI is not required.
  - 4.The Applicant is a Non – Government Organisation (NGO), Non-Profit Organisation, Body Agency/ Department of a Foreign Government. Such applications may be forwarded by AD Category – I Bank, to Reserve Bank of India, Central Office Cell.
  - 5.The Non-Resident applying for a BO/ LO in India should have a financially sound track record.
    - a.In case of BO – Profit Making track record during immediately preceding five financial years in the Home Country and net worth not less than USD 1,00,000 or its equivalent.
    - b.In case of LO – Profit Making track record during immediately preceding three financial years in the Home Country and net worth not less that USD 50,000 or its equivalent.
  - 6.An Applicant is not financially sound and is a Subsidiary of another Company may submit a Letter of Comfort (LOC) from its Parent Company / Group Company provided that Parent Company / Group Company satisfies the above prescribed criteria for Profit and net worth.

## **PROCEDURE FOR APPLYING**

1. The application for establishing BO/LO/PO in India may be submitted by the Non-Resident Entity in the Form FNC to a designated AD Category -I Bank. AD Category-I Bank after exercising due diligence in respect of the applicant's background, after satisfying itself as regards adherence to eligibility criteria for establishing BO/LO/PO, nature and location of activity of the applicant, sources of funds etc and compliance with extant KYC norms grant approval to the Foreign Entity for establishing LO/BO in India.
2. Reserve Bank of India allots Unique Identification Number (UIN) to each BO/ LO. After receipt of UIN from the Reserve Bank of India, AD- Category I bank allots the approval letter to Non-Resident entity for setting LO/ BO/ PO.
3. Validity period of an LO is generally three years. In case of Non-Banking Finance Companies and those engaged in construction and development sectors for whom validity period is two years only. Validity period of PO is for the tenure of the Project.
4. There is a general permission to Non-Resident Companies to establish POs in India provided they have secured contract from an Indian Company to execute the Project in India. Also, the Project must have secured the necessary regulatory clearances and is funded directly in inward remittance from abroad or the project is funded by a bilateral or multilateral International Financing Agency or Company or Entity in India awarding contract has been granted Term Loan by Public Financial Institution or a Bank in India for a Project.



5. An Applicant that has received a permission to non-resident companies to set up LO/BO/ PO shall inform the designated AD-Category I bank as to the date on which LO/BO/ PO has been set up.
6. An Approval granted by AD Category – I Bank is valid for period of 6 months from the date of approval. If Applicant fails to set up LO/BO/PO within six months from the date of approval letter, the approval shall lapse. In case, foreign entity fails to set up LO/BO/PO within time due to reasons beyond its control, the AD Category -I Bank may consider granting extension of time for a period of six months for setting up the office.
7. All applications for establishing BO/LO in India by Foreign Banks and Insurance Companies will be directly received and examined by the Department of Banking Regulation (DBR) and Insurance Regulatory and Development Authority (IRDA) respectively.
8. There is general permission to non-resident companies to establish BO in the Special Economic Zone to undertake manufacturing and service activities subject to conditions that:
  - Such BOs are functioning in those sectors where 100% FDI is permitted
  - Such BOs comply with Chapter XXII of the Companies Act 2013
  - Such BOs function on a standalone basis

## **CLOSURE OF BO/LO/PO**

Requests for closure of the BO/LO/PO and allowing the remittance of winding up proceeds of BO/LO/PO may be submitted to the designated AD Category -I Bank by the BO/LO/PO or their Nodal Office. Application for winding up may be submitted along with following documents:

1. Copy of the Reserve Bank 's/ AD Category -I Bank 's approval for establishing the BO/LO/PO
2. Auditors Certificate indicating the manner in which remittable amount has been arrived at and supported by a statement of assets and liabilities of the applicant and indicating disposal of assets.
3. Auditors certificate confirming that all liabilities in India including arrears of gratuity and other benefits to Employees etc. of the Office have been fully met or adequately provided for and
4. Auditors certificate confirming that no income accruing from sources outside India (including proceeds of exports) has been remained unrepatriated to India.
5. Confirmation from Applicant that no legal proceedings are pending in any Court in India.
6. A report from the Registrar of Companies regarding compliance with the Provisions of Companies Act 2013.
7. The designated AD Category -I banks have to ensure that the BO/LO/PO have filed their respective AACs.
8. Designated AD Category -I bank may allow remittance of winding up proceeds in respect of offices of Banks and insurance companies after obtaining permission for closure from the sectoral regulators.

## **COMPLIANCES**

- An Applicant that has received permission for setting up of a LO/BO/PO, after setting up of LO/BO/PO must inform Registrar of Companies, within a period of 30 days from the date of setting up of LO/BO/PO, about such establishment in Form FNC-1 along with supporting documents.
- Every Year LO/BO/POs shall submit Balance sheet and Annual Return with Registrar of Companies within a prescribed time and in prescribed manner.
- In case of Sole BO/LO/PO, Annual Activity Certificate as at the end of March 31, each year along with required documents needs to be submitted.
- In case of multiple BO/LOs, combined Annual Activity Certificate in respect to all offices in India, needs to be submitted by nodal office of BO/LO. This certificate needs to be submitted to concerned AD Category -I Bank.
- An application for extension of time for LOs may be submitted before the expiry of the validity of the approval, to the AD Category Bank -I. The designated AD Category -I Bank may extend the validity period of LO/s for a period of 3 years from the date of expiry of the original approval and if Applicant is complied with the terms and conditions stipulated in approval letter.
- Entities which are engaged in construction and development sectors and Non-Banking Finance Companies are permitted to open a liaison office for 2 years only.
- No further extension would be considered for liaison office of entities which are Non - Banking Finance Companies and those engaged in construction and development sectors. Upon expiry of the validity period, offices shall have to either close down or be converted into Joint Venture/ Wholly Owned Subsidiary in conformity with the extant Foreign Direct Investment Policy.

## **MONITORING ASPECTS**

- Compliances with respect to Companies Act 2013 are submission of Balance Sheet and Annual Return with Registrar of Companies. Balance Sheet must be submitted within a period of 180 days from the closure of Financial Year and Annual Return must be submitted within a period of 60 days from the closure of Financial Year.
- Request for establishing additional BOs/LOs may be submitted to the AD Category -I Bank in fresh form.
- AD Category -I Bank may, based upon their Business prudence Board approved policy and compliance to extant regulations stipulated by DBR, RBI extend fund/ non fund facilities to BO/POs only.
- The designated AD Category -I Bank shall scrutinize the Annual Activity Certificates and ensure that the activities undertaken by BO/LO are being carried out in accordance with the terms and conditions of the approval given.
- An application request for closure of the BO/PO/LO and allowing the remittance of winding up proceeds of BO/PO/LO may be submitted to the designated AD Category -I Bank.
- On winding up, if LO/BO/POs wants to transfer assets, shall make application to concerned AD Category -I Bank. AD-Category-I Bank shall consider such application only when:
  - concerned LO/BO/PO are adhering to the operational guidelines such as submission of AACs at regular intervals with copies endorsed to DGIT (International Taxation),
  - LO/BO/PO have obtained PAN from Income Tax Authority
  - LO/BO/PO also got Registered with Registrar of Companies.
  - Such Transfers be allowed only when non-resident entity intends to close their LO/BO/PO operations in India.

- LO/BO/PO have acquired such assets from Inward Remittances.
- LO/BO/PO have paid all applicable taxes.
- Each LO/BO/PO are required to transact through one designated AD Category – I Bank only.
- Acquisition of Property by BO/PO shall be governed by the guidelines issued under Foreign Exchange Management (Acquisition and Transfer of Immoveable Property Outside India) Regulations.
- BOs are permitted to remit, Net Profit of the Branch, outside India provided BO submitted following documents to the satisfaction of the AD Category -I Bank
  - Balance Sheet and Profit & Loss Account statement for the relevant year
  - A Chartered Accountant certificate certifying the manner in which remittable profits have arrived and that entire remittable profit has been earned by undertaking the permitted activities and the Profit & Loss does not include any profit on revaluation of the assets of the Branch.
- AD Category -I Bank can permit intermittent remittances by POs, though Project is not completely provided
  - The PO submits Auditors' certificate to the effect that the sufficient provisions have been made to meet the liabilities in India including Income Tax, etc.
  - An undertaking from the PO that remittance will not, in any way affect the completion of the Project in India and that the shortfall of funds for meeting any liability in India will be met by inward remittance from abroad.

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