

Establishment of Branch office (BO), Liaison office (LO) or Project office (PO) in India

1. Introduction on the Establishment of BO/LO/PO in India

- (i) Eligible Foreign entities are permitted to establish BO, LO (Commonly known as Representative office) and PO in India under general or specific 'approval' route
- (ii) **Eligible Foreign Entities Includes 5 followings entities**
 - (a) Foreign **Companies**
 - (b) Foreign Non Govt. Organizations (**NGOs**)
 - (c) Foreign Non Profit Organizations (**NPOs**)
 - (d) Foreign Govt. **Bodies**
 - (e) Foreign Govt. **Departments**

2. Permission for the Establishment of the BO/LO in India

- (i) **General Approval by the RBI** (Commonly known as the 'RBI' Route)
 - **Foreign** eligible entities are required to file an application with the RBI through designated AD Category-I bank for establishing BO/LO in India in Form FNC under **general** approval route if foreign entity is engaged in the sector where 100% FDIs are permitted in India
- (ii) **Specific Approval by the Govt. of India** (Commonly known as 'Govt.' Route)
 - **Foreign** entities are required to file an application with the RBI through designated AD Category-I bank for establishing BO/LO in India in Form FNC under **specific** approval route where the RBI is required specific approval from the concerned Ministry or deptt. of Govt. of India in the following circumstances.
 - (a) Establishment of BO/LO by the **foreign** NGOs, NPOs, Govt. bodies or Govt. deptt
 - (b) Applicant is registered/incorporated in **Pakistan** for establishing at 'any' place in India
 - (c) Applicant is registered/ unregistered entity in **7** Countries for establishing a BO/LO in J&K/ North East /Andaman and Nicobar Island
 - (ca) Bangladesh
 - (cb) Sri Lanka
 - (cc) Afghanistan
 - (cd) Iran
 - (ce) China
 - (cf) Hong Kong
 - (cg) Macau
 - (d) **Principal** business of the applicant is in **5** following Sectors
 - (da) Defense
 - (db) Telecom
 - (dc) Private Security
 - (dd) Information and Broadcasting
 - (de) Foreign entity is engaged in the sector where **100%** FDIs are 'not' permitted in India

(iii) **Establishment of the BO/LO by other Foreign Entities 'Not' Permitted in India**

(a) **Other** Foreign entities Include the followings

- (aa) Partnership firm
- (ab) Association of Individuals
- (ac) Proprietary Concern

(b) Hence 'other' **Foreign** entities are **not** permitted to establish a BO/LO in India

(iv) **Mandatory Conditions for Approval under the RBI Route**

(a) **The RBI** is required to consider **2** criteria's

- (aa) Track record
- (ab) Net worth

(b) **Track Record for established of BO/LO in India**

(ba) For **BO**

- Foreign entity should have **profit making track** record during immediate preceding **5** financial years in home country

(bb) For **LO**

- Foreign entity should have **profit making track** record during immediate preceding **3** financial years in home country

(c) **Net Worth for establishment of BO/LO in India**

- Net worth to includes total paid up capital+ Free Reserves - Intangible Assets as per latest audited balance sheet or account statement as certified by Certified Public Account (**CPA**) or any Registered Account Practitioner

(ca) For **BO**

- Minimum net worth should be **USD 1 Lac** in home country

(cb) For **LO**

- Minimum net worth should be **USD 50 thousands** in home country.

3. Application for Establishment of the BO/LO in India

(i) **Submission of Application for Establishment of BO/LO in India**

(a) (aa) Application for establishment of BO/LO should be forwarded by foreign entity to the RBI through designated AD Category-I bank for approval

(ab) Designated AD Category-I bank is required to obtain Unique Identification Number (**UIN**) from General Manager in charge, Foreign Exchange Department, Central office Cell, the RBI, New Delhi, Regional office, 6 Parliament Street, New Delhi- 110001 along with prescribed documents

(b) **List of the Documents**

- **English** version of

(ba) Certificate of incorporation or registration and Memorandum and Article of Association (M&A) and also

(bb) Audited Balance Sheet as attested by Indian Embassy or notary public in country of

registration **Outside** India

(c) **Letter of the Comfort**

- Letter of Comfort (**LOC**) from parent company is to be submitted where applicant **not** satisfying the eligibility criteria likes track record and/or net worth.

(d) **Due Diligence**

- Designated AD category-I bank is required to do due diligence relating to the followings
 - (da) Applicant background
 - (db) **Antecedents** of the promoter
 - (dc) Nature and location of activity
 - (dd) Source of fund
 - (de) Compliance with KYC norms **before** forwarding application along with comments or recommendations to the RBI for obtaining **UIN** number and approval.

(ii) **Allotment of the UIN**

- The **RBI** is required to allot a unique Identification Number (**UIN**) to the BO/LO

(iii) **Allotment of the PAN**

- BO/LO is required to obtain a **PAN** from the Income Tax Authorities in India

4. Permitted and Not Permitted (Prohibited) Activities for the LO in India

(i) **Permitted Activities for the LO in India**

- (a) **Representing** in India on behalf of parent company or the group companies
- (b) **Promoting** the export or import from India
- (c) **Promoting** technical or financial collaborations between parent or group companies and entity in India
- (d) **Acting** as communication channel between parent entity and entity in India

(ii) **Not Permitted (Prohibited) Activities for the LO in India**

- (a) **Not** permitted to undertake any **business** activity in India
- (b) **Not** permitted to earn any **income** in India
- (c) **Not** permitted to incur any **expenses** other than through direct inward **remittances** in foreign exchange from Head office as located outside India

5. Foreign Insurance Company, Foreign Bank or Foreign Law Firm for establishing LO

(i) **LO of the Foreign Insurance Company in India**

- Foreign Insurance company is permitted to establish a LO after obtaining of approval from Insurance Regulatory and Development Authority (**IRDA**) as set-up in India in addition to the RBI.

(ii) **LO of the Foreign Bank in India**

- Foreign bank is permitted to establish a LO after obtaining of approval from department of Banking Operations and Development (**DBOD**) of the RBI in India

(iii) **LO of the Foreign Law Firm in India**

- **Fresh** permission or **renewal** for LO of Foreign law firm is **not** permitted. However **already** approved are permitted to continue till date of its **expiry**.

6. Extension of Approval of a LO Permitted in India

(i) Designated AD Category - I bank is permitted to extend the validity of LO for maximum period of 3 years from the date of expiry of original or extension where applicant has also complied the following terms and conditions

- (a) LO should have submitted the Annual Activity Certificates (**AACs**) for 'all' previous year
- (b) LO should have maintained an account with designated AD Category -I bank in accordance to terms and conditions as stipulated in approval

(ii) Extension is to be granted by AD Category-I bank within **1** month from date of request under intimation to the RBI along with reference number of original approval letter and UIN

(iii) **Extension of Validity of the LO of Insurance entity and Bank in India**

- Application for extension of validity of period of LO of insurance entity and bank is to be submitted to **IRDA** and **DBOD** respectively

7. Permitted and Non-Permitted (Prohibited) Activities for the BO in India

(i) **Manufacturing or Trading Activities Permitted for the Parent Entity/Group Companies 'Outside' India**

- Companies incorporated **outside** India and also **engaged** in manufacturing or trading activities 'Outside' India are permitted to set up BO in India to **represent** the parent or group companies and also to undertake following 'business' activities in India. Hence BO is 'not' permitted for manufacturing or trading activity in India.

- (a) **Export** or Import of goods and procurement of goods for export and sale of goods after import is permitted on **wholesale** basis
- (b) **Rendering** of professional or consultancy services
- (c) **Carrying** out research work in which parent company is 'already' engaged
- (d) **Promoting** for technical or financial collaborations between Indian companies and parent company or group companies
- (e) **Representing** the parent company or group companies in India
- (f) **Rendering** of Services for information technology and development of software in India
- (g) **Rendering** of technical support to the products as supplied by parent company or group companies
- (h) **Operating** the foreign airline or shipping activities in India.

(ii) **Retail Trading Activities 'Not' Permitted in India**

- Retail trading activities are **not** permitted by a BO in India

(iii) **Manufacturing or Processing Activities 'Not' Permitted for the BO in India**

- (a) Manufacturing or processing activities are **not** permitted for BO in India
- (b) However **permitted** through incorporation of a **subsidiary** company in India

(iv) **Remittances against Profits by the BO**

- (a) BO is permitted to remit Outside India against profits 'after' payment of **taxes**
- (b) Following **documents** are to be submitted for the remittances
 - (ba) **Certified** copy of audited balance sheet and profit and loss account of the BO in India
 - (bb) **Certificate** from Chartered Accountant certifying the manner of arriving **remittable** profit and also entire remittable profit is earned from 'permitted' activities by BO and also profit **not** include a profit on **revaluation** of assets of the BO in India

8. Establishment of the Project Office (PO) Permitted in India

(i) **Project Office (PO) by the Foreign Entities**

- (a) The RBI has granted **general** or specific 'approval' route to the foreign companies to establish a PO in India
- (b) However PO should secure a contact from **Indian** entity to execute a project in India
- (c)(ca) Project should be funded by inward **remittance** from Outside India 'or'
 - (cb) Project should be funded by bilateral or multilateral **International** Financing Agency 'and' also
 - (cc) Project should be cleared by an **appropriate** authority in India 'and' also
 - (cd) The **Indian** Entity as awarding the contract should obtain a **term loan** from Public Financial Institution or bank for the project in India
- (d) In absence of the above mentioned, under the para (a) to (c) foreign entity is required to obtain a **specific** permission from the RBI through designated AD Category – I bank in India.

(ii) **Bank Account for the PO**

- Designated AD category I bank can open 'non' interest bearing foreign currency account for the PO in India 'after' **satisfaction** of the followings terms and conditions
 - (a) PO should be established with general or specific 'approval' route from the RBI 'and' also from appropriate project sanctioning Authority
 - (b) Contract should be specifically provides for the **payment** in foreign currency only.
 - (c) PO is permitted to open **2** foreign currency accounts only with the same designated AD category-I bank one in **USD** and other in **non** USD
 - (d) Permissible **debits** to the account are to be project related **expenditures** and permissible **credits** to the account are to be foreign **currency** receipts from foreign entity only.
 - (e) Designated AD Category-I bank is required to ensure that **permissible** debits and credits are allowed in the Foreign currency account and also account should be 100% **scrutinized** by Concurrent Auditor of bank
 - (f) Foreign currency account should be **closed** at time of completion of project

(iii) **Remittances by the PO**

- Designated AD Category-I bank is permitted to remit by the PO as **pending** winding up or completion of project after **satisfaction** of the followings terms and conditions
 - (a) PO should obtain an auditor **certificate** relating to payment of all liabilities including income tax etc.

- (b) PO should submit an **undertaking** as remittance will not affect the completion of project in India and also shortfall of fund to complete the project 'if any' will be received through inward **remittance** from outside India

(iv) **Inter Project Transfer of the Fund**

- Prior **Approval** from the RBI is required for inter project transfer of fund in India

(v) **Reporting to the RBI by PO in India**

- (a) Foreign entity is required to furnish the followings details within **2** months from the date of establishment of PO to the RBI through Designated AD Category -I bank in form **FNC**
- (aa) Name and address of the foreign entity
 - (ab) Reference number and date of letter against the contract awarded in accordance to Regulation No. 5(ii) of Notification No. FEMA 22/2000-RB, dated May 03, 2000
 - (ac) Particulars of **authority** as awarding the project or contract to the PO
 - (ad) Total **amount** of the contract
 - (ae) Address, e-mail and telephone number of the PO
 - (af) **Tenure** of the PO
 - (ag) Brief **detail** of the project undertaken
 - (ah) Name of designated AD Category - I bank for the **opening** of foreign currency account in USD and 'non' USD
 - (ai) **Undertaking** that the PO is eligible to avail **General** Permission in accordance to Regulation No. 5(ii) of Notification No. 22 dated May 03, 2000 read with Notification No. 95 dated July 02, 2003.
- (b) PO is required to submit a **certificate** from Chartered Accountant showing the status of the project and also confirming that the accounts of PO are audited and activities as undertaken are in accordance to general or **specific** permission by the RBI

9. Special Provisions for the BO/LO/PO in India

(i) **Purchase of the Immovable Property in India by BO/LO/PO**

- (a) BO or PO in India is permitted to purchase of immovable property if **necessary** or incidental to carry on the activities of the BO/PO as case may be
- (b) Payments for the purchase of immovable **property** are to be made out of the foreign inward **remittance** through normal banking channel only
- (c) **Declaration** is to be submitted to the RBI in Form IPI within **90** days from the date of acquisition of the immovable property
- (d) This property can be **mortgaged** with a bank as security for the borrowings.
- (e) Sale **proceeds** of the property on winding up are to be repatriated with **approval** from the RBI
- (f) However an **approval** from the RBI is also required for acquisition of immovable property by an entity incorporated in the **10** countries
 - (fa) Pakistan
 - (fb) Bangladesh
 - (fc) Sri Lanka
 - (fd) Afghanistan

- (fe) China
- (ff) Iran
- (fg) Nepal
- (fh) Bhutan
- (fi) Hong Kong
- (fj) Macau
- (g) (ga) **LO** from 'any' country is **not** permitted to acquire an immovable property in India
- (gb) However **LO** from 'any' country is permitted to an acquire immovable property **on lease** 'not' exceeding 5 years

(ii) General Conditions for the BO/LO

- (a) Entities from **Nepal** is permitted to establish a LO but not permitted to establish a BO in India
- (b) BO/LO is required to open **non**-interest bearing **INR** current account in India
- (c) **Approval** from the RBI is required to **transfer** of assets to subsidiaries or other BO
- (d) Term deposit exceeding **6** months are **not** permitted against **temporary** surplus funds of the BO/ LO
- (e) However term deposits are **not** permitted to a shipping or airline Company working in India
- (f) **Regularization** of BO/LO is required if established pre FEMA i.e **before** 1999

(iii) Additional Reporting to Police for New Setting up BO/LO

- Following 'additional' reporting's are required for setting up of BO/LO
 - (a) Submit a **report** containing certain information's within **5** working days of BO/LO become functional to the Director General of Police (**DGP**) of the State/Union Territory
 - (b) Same **report** is to be submitted on **annual** basis to DGP along with **AAC** in India

10. Miscellaneous Provisions for the BO/LO in India

(i) Establishment of a BO in SEZs

- (a) The RBI has granted **general** permission to the foreign companies for establishing of a BO or unit in SEZ area to undertake the manufacturing and service activities
- (b) General permission is available after satisfaction of the followings terms and conditions
 - (ba) Unit should be functioning in sector where **100%** FDIs are permitted
 - (bb) Unit should comply provisions under the Section 380 to 386 of the Companies Act, 2013
 - (bc) Unit should function on standalone basis only.

(ii) Winding up of a BO in India

- BO is required to approach AD Category -I bank along with documents mentioning under **closure** of the BO for remittance of winding up proceeds Outside India

(iii) Application for Additional establishment of BO/LO in India

- (a) Application for **additional** BO/LO is to be submitted to the **RBI** through designated AD Category -I Bank where **specific** approval is required for establishing of a BO/LO
- (b) Fresh **FNC** form is to be submitted for an additional BO/LO

- (c) However documents are **not** to be re-submitted where there is **no** change in 'already' submitted documents
- (d) **Justification** for the additional BO/LO is to be submitted where BOs/LOs are exceeding by **4** in number in India
- (e) Applicant is to be required to identify one office as **nodal** office to coordinate the activities of all offices in India

(iv) **Submission of Annual Activity Certificate (AAC) for BO/LO in India**

- (a) BO/LO is required to submit an AAC as on March 31 up to **September 30** of each year to the followings
 - (b) (ba) Designated AD Category-I bank in India
 - (bb) **DGIT** (International Taxation) New Delhi
 - (bc) **DGP** of the State/Union Territory
- (c) (ca) AAC is also to be submitted by the BO/LO or
 - (cb) By the **Nodal** office where multiple BO/LO are existed in India
- (d) Designated AD Category -I bank is required to **scrutinize** the AAC to ensure that activities undertaken by BO/LO are in accordance to terms and conditions of the RBI
- (e) Designated AD Category -I bank is required to report to the RBI where statutory auditors have given the **negative** comments / reports

(v) **Closure of the BO/LO**

- BO/LO is required to submit the followings **documents** at time of closure of the BO/LO
 - (a) Copy of **approval** for establishing of the BO/LO in India
 - (b) **Certificate** from the statutory auditors for computation of remittable amount
 - (c) **NOC** from the Income Tax authority for remittance
 - (d) **Undertaking** from the applicant that **no** legal proceeding is pending in any court in India
 - (e) **Report** from the ROC relating to compliance of provisions of the Companies Act, 2013
 - (f) Any **other** document as specified at time of granting an approval

(vi) **Role of Designated AD Category - I Bank at time of Closure of the BO/LO**

- (a) Designated AD Category- I bank is required to ensure that the BO/LO has submitted all the **AACs**
- (b) Also to **report** to the RBI along with a **declaration** stating that all necessary documents as submitted by the BO/LO are scrutinized and found in order.

(vii) **Approval by the RBI for establishment of a LO**

- (a) Generally the RBI is taking approximately **40** days in granting a permission for establishment of a LO in India
- (b) Generally the RBI is granting a permission for maximum period of **3** years
- (c) Generally the RBI is permitting an extension for maximum period of **3** years 'each' time
- (d) LO is required to close the establishment in India once original or extended approval is expired. However LO is permitted to convert the establishment into a Joint venture or wholly owned subsidiary company in India

(viii) **Registration and Annual filings for the BO/LO with the MCA**

- (a) BO/LO is required to register with the ROC within **30** days from the day of its establishment through filing of e-form **FC-1**
- (b) BO/LO is required to file e-form **FC-3** and **FC-4** for reporting the financial statement and annual return respectively.

11. Conclusion on Establishment of BO/LO/PO in India

(i) **Establishment of a BO/LO is permitted under the head**

- (a) **General** permission ('RBI' approval route) and **specific** permission ('Govt.' approval route)

(ii) **Hence certain restrictions are existed where specific permission is required like**

- (a) Parent entity is located in **8** countries i.e. Pakistan and China 'etc.'
- (b) **4** Sensitive sectors i.e. defense 'etc.'
- (c) NGOs and NPOs
- (d) Sector where **100%** FDIs are 'not' permitted in India

(iii) BOs/LOs are 'not' permitted for carrying 'many' activities in India. Hence establishment of **Domestic** (subsidiary) company in India is a solution for the 'not' permitted activities in India.

(iv) Establishment of a **PO** is permitted in India 'after' satisfaction certain terms and conditions

(v) BOs/POs are permitted to purchase the **immovable properties** for necessary purposes only. Hence LOs are 'not' permitted to purchase the immovable properties in India. However LO is permitted to take on lease for a maximum period of **5** years

(vi) BOs/LOs/POs are permitted to **close** their establishment 'after' satisfaction of the certain terms and conditions

(vii) BOs/LOs are required to submit **AAC** 'annually' to the following offices. Hence PO is not required to submit **AAC**

- (a) Designated AD Category- I Bank
- (b) **DGIT**
- (c) **DGP**

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