

Setting up of Branch Office/ Liaison Office/ Wholly Owned Subsidiary by Foreign Company

Lesson 10

KEY CONCEPTS

■ Foreign Company ■ Branch Office ■ Liaison Office ■ Project Office

Learning Objectives

To understand:

- How to establish branch and liaison office of Foreign Companies in India
- How to establish project office
- Procedure for establishment of Branch Office/Liaison Office/Project Office
- Procedure for closure of Branch Office/Liaison Office/Project Office

Lesson Outline

- Introduction
- Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) in India
- Eligibility, Registration, Permitted activities and Procedure of establishment of BO/ LO/ PO
- Closure of Branch Office/Liaison Office/Project Office
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- The Companies Act, 2013 and Rules made thereunder
- Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016

INTRODUCTION

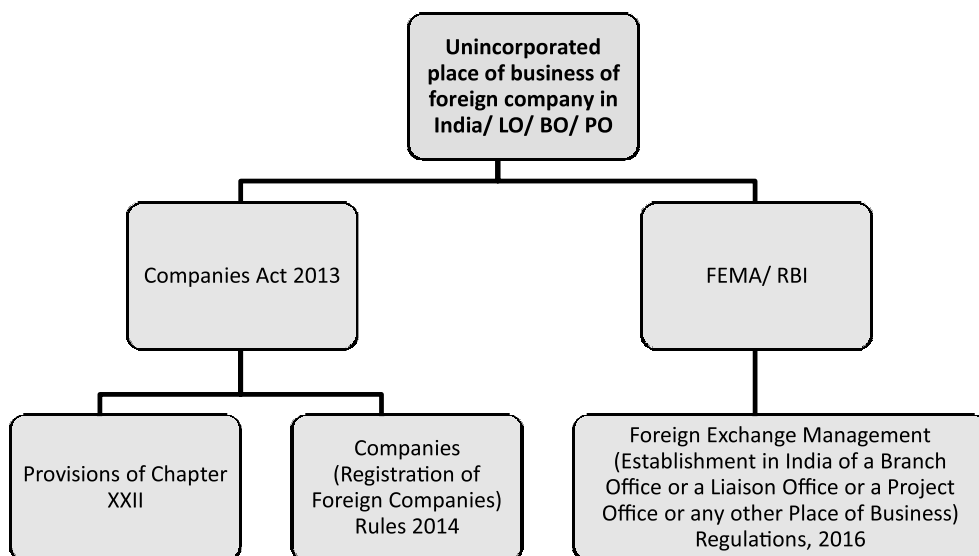
With India possessing vast natural and human resources and being among the fastest-growing economies in the world with a large market, it provides immense opportunities for foreign companies to grow and diversify their business. Therefore, there is a lot of interest among foreign companies and foreign nationals to open a wholly owned subsidiary, branch, liaison or project office in India or start a business in India.

Foreign company can also open an office in India without starting necessarily as a subsidiary company or associate company. There are basically three ways for a foreign company to conduct business/activities in India without starting a subsidiary company in India. Branch Office / Liaison Office allow for long-term functioning of a foreign company's office in India with approval from the Reserve Bank of India, while project offices can be started under General approval of the Reserve Bank of India if certain criteria are fulfilled.

There are mainly two types of entry strategy for foreign businesses in India, registration of a company or establishing a branch, liaison and project office:

- **Incorporation of a private limited company:** It is the easiest and fastest type of India entry strategy for foreign nationals and foreign companies. Foreign direct investment of upto 100% into a private limited company or limited company is under the automatic route, wherein no Central Government permission is required. Hence, incorporation of a private limited company as a wholly-owned subsidiary of a foreign company or joint venture is the cheapest, easiest and fastest entry strategy for foreign companies and foreign nationals into India.
- **Registration of Branch Office, Liaison Office or Project Office:** It requires RBI and/or Government approval. Therefore, the cost and time taken for registration of branch office, liaison office or project office for a foreign company are higher than the cost and time associated with incorporation of a private limited company. Further, foreign nationals cannot open a branch office, liaison office or project office. Hence, this option is limited to being an India entry strategy only for foreign companies.

Branch Office, Liaison Office or Project Office are unincorporated place of business of foreign company in India and are regulated by the Companies Act as well under FEMA.



Important Terms

As per Section 2(42) of the Companies Act, 2013, “Foreign Company” means any company or body corporate incorporated outside India which—

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner.

As per Section 2(87) of the Companies Act, 2013, Subsidiary Company or Subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company –

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the 19[total voting power] either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation. –For the purposes of this clause, –

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company’s Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (c) the expression “company” includes any body corporate;
- (d) “layer” in relation to a holding company means its subsidiary or subsidiaries.

Key Provisions

Further, as per the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016, Branch Office, Liaison Office or Project Office are defined as follows:

- ☞ ‘Branch Office’ in relation to a company, means any establishment described as such by the company.
- ☞ ‘Liaison Office’ means a place of business to act as a channel of communication between the principal place of business or Head Office or by whatever name called and entities in India but which does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel.
- ☞ ‘Project Office’ means a place of business in India to represent the interests of the foreign company executing a project in India but excludes a Liaison Office.

Sections 379 to 393A under Chapter XXII of the Companies Act, 2013 (‘Act’) deal with Companies Incorporated Outside India.

Section 379 of the Act provides that where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference of a foreign company is held by one or more citizens of India or by one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act, as may be prescribed by the Central Government with regard to the business carried on by it in India, as if it were a company incorporated in India.

Section 380 of the Act lays down that every foreign company which establishes a place of business in India must, within 30 days of the establishment of such place of business, file with the Registrar of Companies for registration:

- (a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;
- (b) the full address of the registered or principal office of the company;
- (c) a list of the directors and secretary of the company containing such particulars as prescribed;
- (d) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
- (e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
- (f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
- (g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
- (h) any other information as prescribed.

Every foreign company has to ensure that the name of the company, the country of incorporation, the fact of limited liability of members is exhibited in the specified places or documents as required under Section 382.

Section 381 of the Act requires a Foreign Company to maintain books of Account and file a copy of balance sheet and profit and loss account in prescribed form with ROC every calendar year. These accounts should be accompanied by list of place of business established by the foreign company in India.

Sections 380 to 386 (both inclusive) and sections 392 and 393 of the Act shall apply to all foreign companies.

As regards the applicability of the provisions of the Act to foreign companies, the following provisions of section 384 are to be noted:

Section 376 of the Act provides further that when a foreign company, which has been carrying on business in India, ceases to carry on such business in India, it may be wound up as an unregistered company under Sections 375 to 378 of the Act, even though the company has been dissolved or ceased to exist under the laws of the country in which it was incorporated.

- (i) The provisions of section 71 relating to Debentures shall apply *mutatis mutandis* to a foreign company.
- (ii) The provisions of Section 92 regarding (filing of annual returns) and Section 135 (Corporate Social Responsibility) shall, subject to such exceptions, modifications or adaptations as may be made therein by the rules made under the Act, apply to a foreign company as they apply to a company incorporated in India.
- (iii) The provisions of Section 128 relating to the (to the extent of requiring it to maintain at its principal place of business in India books of account with respect to moneys received and spent, sales and purchase made and assets and liabilities, in the course of or in relation to its business in India), Section 209A (inspection of accounts), Section 233A (Special audit), Section 233B (audit of cost accounts), Section 234-246 (investigations), so far as may be, apply only to the Indian business of a foreign company having an established place of business in India as they apply to a company incorporated in India.

- (iv) The provisions of Chapter VI (Registration of Charges) shall apply mutatis mutandis to charges on properties which are created or acquired by any foreign company.
- (v) The provisions of Chapter XIV (Inspection, Inquiry and Investigation) shall apply mutatis mutandis to the Indian business of a foreign company as they apply to a company incorporated in India.

As per Section 386(c) of the Act, having a share transfer office or registration office will constitute a place of business. In *Tovarishestvo Manufacture Liudvig Rabenek, Re* [1944] 2 All ER 556 it was held that where representatives of a company incorporated outside the country frequently stayed in a hotel in England for looking after matter of business, it was held that the company had a place of business in England.

In a certain case, it was held that mere holding of property cannot amount to having a place of business.

Provisions pertaining to name

As per Rule 8 of the Companies (Incorporation) Rules, 2014 (“hereinafter referred to as the Rules”) states that if a foreign company is incorporating its subsidiary company in India, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian State or city, if otherwise available.

Provided further that provisions of Rule 8 shall apply mutatis mutandis while determining whether a proposed name is too nearly resembling the name of a company or limited liability partnership incorporated outside India.

The name shall be considered undesirable, if-

- The proposed name implies association or connection with an embassy or consulate of a foreign government.
- The proposed name includes name of any foreign country or any city in a foreign country, the same shall be allowed if the applicant produces any proof of significance of business relations with such foreign country like memorandum of understanding with a company of such country.

Provided that the name combining the name of a foreign country with the use of India like India Japan or Japan India shall be allowed if, there is a government to government participation or patronage and no company shall be incorporated using the name of an enemy country.

ESTABLISHMENT OF BRANCH OFFICE (BO)/ LIAISON OFFICE (LO)/ PROJECT OFFICE (PO) IN INDIA

Establishment of branch office/ liaison office / project office or any other place of business in India by foreign entities is regulated in terms of Section 6(6) of Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016 as amended from time to time.

BRANCH OFFICE

A branch office is a suitable business model for foreign companies looking to establish a temporary presence in India. The branch office serves as an extension of the head office business and carries on the same business and activity as that of its parent company.

Branch office in relation to a company, means any establishment described as such by the company. These BOs represent the parent company and usually undertake the same activities as the latter. The profits from these are easily remittable from India, subject to the taxes applicable.

Eligibility for setting up a Branch Office

- ☞ The applicant company must be a body corporate incorporated outside India;
- ☞ The name of the Indian branch office must be the same as the parent company (if the branch office does not have revenue from India operations, its expenses must be met by the head office);
- ☞ The net worth of the branch office must not be less than US \$100,000; and
- ☞ The parent company should have a profit making record in the immediately preceding five financial years in the home country.

In cases where the applicant foreign entity does not meet the financial criteria, the parent company may issue a Letter of Comfort (LoC), given the company satisfies the prescribed criteria for net worth and profit.

Permitted Activities

In India, a branch office cannot directly carry out manufacturing activities unless such manufacturing activity is done in a special economic zone (SEZ) with the purpose of exporting products out of India. It may also sub-contract such activity to an Indian manufacturer.

Furthermore, following activities are permitted for a branch office in India of a person resident outside India:

- (i) Export/import of goods.
- (ii) Rendering professional or consultancy services.
- (iii) Carrying out research work in which the parent company is engaged.
- (iv) Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- (v) Representing the parent company in India and acting as buying/ selling agent in India.
- (vi) Rendering services in Information Technology and development of software in India.
- (vii) Rendering technical support to the products supplied by parent/group companies.
- (viii) Representing a foreign airline/shipping company.

A branch office is not allowed to undertake any Retail Trading Activities. Manufacturing or Processing activities, undertaken directly or indirectly, are also barred.

The RBI has given general permission to foreign companies to set up branch offices in Special Economic Zones (SEZs) subject to the following conditions:

1. such BOs are functioning in those sectors where 100 per cent FDI is permitted;
2. such BOs comply with Chapter XXII of the Companies Act, 2013;
3. such BOs function on a stand-alone basis.

Every Branch Office has to deliver documents as specified in Section 380 of the Companies Act, 2013 within thirty days of its establishment to the Registrar.

Registration of a Branch Office in India

Foreign company must apply for approval from the Reserve Bank of India (RBI) under provisions of the Foreign Exchange Management Act (FEMA), 1999 to open a branch office in India.

Foreign entities whose principal business falls under sectors where 100 per cent foreign direct investment (FDI) is permissible under the automatic route must complete the form FNC and submit it to the RBI, along with the associated documents.

For other sectors, the form must be submitted to the Ministry of Finance. In this case, the application for establishing branch office must be forwarded by the foreign entity through a designated AD Category – I bank to the RBI.

If the foreign entity wishes to establish a branch office in more than one location in India, it must register the branch, or seek approval from the RBI for each of the location separately. The RBI approval is also necessary for each activity the branch office intends to undertake in India.

The procedures for registration requires a foreign company to deposit the following set of forms:

- FNC form duly signed by AR;
- Information about the parent company along with its certificate of incorporation attested by a Notary Public or the Indian Embassy in the country of registration;
- The incorporation documents of the branch office to be established in India;
- Proof of registered office;
- Note on location or proposed activity;
- The latest audited balance sheet of the applicant entity;
- Board resolution to open a branch office;
- KYC of the authorized signatory; and
- Information about the local representatives of the parent company in the branch office.

Funding of the BO by the Foreign Company

- A. *Equity Share Capital:* in the usual way Indian companies are financed.
- B. *Preferred Share Capital:* such convertible preference shares, compulsorily convertible into equity shares are regarded as Foreign Direct Investment (FDI).
- C. *Debentures and Borrowings:* there can be redeemable, convertible or non-convertible. Companies can issue debentures, bonds and other debt securities. These also, when convertible into equity shares, are treated as FDI.

LIAISON OFFICE

Liaison Office means a place of business to act as a channel of communication between the principal place of business or Head Office or by whatever name called and entities in India but which does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel.

Eligibility for setting up a Liaison office

- ☞ The applicant company must be a body corporate incorporated outside India;
- ☞ The name of the Indian branch office must be the same as the parent company (if the branch office does not have revenue from India operations, its expenses must be met by the head office);
- ☞ The net worth of the liaison office must not be less than US \$ 50,000; and
- ☞ The parent company should have a profit making record in the immediately preceding three financial years in the home country.

In cases where the applicant foreign entity does not meet the financial criteria, the parent company may issue a Letter of Comfort (LoC), given the company satisfies the prescribed criteria for net worth and profit.

Permitted Activities

- (i) Representing the parent company / group companies in India.
- (ii) Promoting export / import from / to India.
- (iii) Promoting technical/ financial collaborations between parent / group companies and companies in India.
- (iv) Acting as a communication channel between the parent company and Indian companies.

The Hon'ble Supreme Court vide its interim orders dated July 4, 2012 and September 14, 2015, passed in the case of the Bar Council of India vs. A. K. Balaji & Ors., has directed RBI not to grant any permission to any foreign law firm, on or after the date of the said interim order, for opening of LO in India.

The Hon'ble Supreme Court has while disposing of the case, held that advocates enrolled under the Advocates Act, 1961 alone are entitled to practice law in India and that foreign law firms/companies or foreign lawyers cannot practice profession of law in India. As such, foreign law firms/companies or foreign lawyers or any other person resident outside India, are not permitted to establish any branch office, project office, liaison office or other place of business in India for the purpose of practicing legal profession. Accordingly, AD Category – I banks are directed not to grant any approval to any branch office, project office, liaison office or other place of business in India under FEMA for the purpose of practicing legal profession in India. Further, they shall bring to the notice of the Reserve Bank in case any such violation of the provisions of the Advocates Act comes to their notice

Extension of the validity period for Liaison Office

- 1) A person resident outside India may establish a liaison office for a period of three years.
- 2) The non-resident entity may apply to the Authorised Dealer Category-I bank concerned for extension of the validity period of approval, and upon receipt of such an application, the Authorised Dealer Category-I bank concerned may extend the validity period of approval for a period of three years from the date of expiry of the original approval / extension granted, subject to such directions issued by the Reserve Bank in this regard.
- 3) The application for extension of the validity period of the liaison office of banks and entities engaged in insurance business has to be directly submitted to the Department of Banking Regulation (DBR), Reserve Bank and the Insurance Regulatory and Development Authority (IRDA) respectively.
- 4) Entities engaged in construction and development sectors and which are Non-Banking Finance Companies are permitted to open a Liaison Office for two years only. No further extension would be considered for liaison offices of entities which are Non-Banking Finance Companies and those engaged in construction and development sectors (excluding infrastructure development companies). Upon expiry of the validity period, the offices shall have to either close down or be converted into a Joint Venture / Wholly Owned Subsidiary in conformity with the extant Foreign Direct Investment policy.

	Branch Office	Liaison Office
Track Record	A profit making track record during the immediately Five Financial years in the home country	A profit making track record during the immediately Three Financial years in the home country
Net Worth	Not less than USD 100,000 or its equivalent.	Not less than USD 50,000 or its equivalent.
Permissible Activities	<ul style="list-style-type: none"> ● Export & Import of goods – only on wholesale basis. ● Rendering professional or consultancy services. ● Carrying on research work, in areas in which the parent company is engaged. ● Promoting technical or financial collaborations between Indian companies and parent or overseas group company. ● Representing the parent company in India and acting as buying/ selling agent in India. ● Rendering services in information technology and development of software in India. ● Rendering technical support to the products supplied by parent/ group companies. ● Foreign airline/ shipping company. 	<ul style="list-style-type: none"> ● Representing in India the parent company / group companies. ● Promoting export / import from / to India. ● Promoting technical/financial collaborations between parent/group companies and companies in India. ● Acting as a communication channel between the parent company and Indian companies.

PROJECT OFFICE

Project office means a place of business in India to represent the interests of the foreign company executing a project in India but excludes a Liaison Office.

Parameters of project office

A foreign company may open project office/s in India provided it has secured from an Indian company, a contract to execute a project in India, and

- i. the project is funded directly by inward remittance from abroad; or
- ii. the project is funded by a bilateral or multilateral International Financing Agency; or
- iii. the project has been cleared by an appropriate authority; or
- iv. a company or entity in India awarding the contract has been granted term loan by a Public Financial Institution or a bank in India for the Project.

“a bilateral or multilateral International Financing Agency” means the World Bank or the International Monetary Fund or similar other body.

A person from any country other than Pakistan who has been awarded a contract for a project by a Government authority/ Public Sector Undertaking may open a bank account with an Authorised Dealer Category-I bank without any prior approval from the Reserve Bank.

Cases in which RBI Approval is required for Setting up BO, PO and LO in India

- ☞ The applicant is a citizen of or is registered/incorporated in Pakistan;
- ☞ The applicant is a 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, North East region and Andaman and Nicobar Islands;
- ☞ The principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting;
- ☞ The applicant is a Non-Government Organisation (NGO), Non-Profit Organisation, Body/ Agency/ Department of a foreign government.

Master Direction - Establishment of Branch Office (BO) / Liaison Office (LO) / Project Office (PO) in India by foreign entities

A Branch Office can be established by a body incorporated outside India, including a firm or association of persons, involved in manufacturing or trading activities. The process of setting up is an easy one with minimal compliance requirements. The permission to set-up a BO has to be obtained by the RBI under the FEMA, 1999 provisions. RBI provides guidelines to be followed for establishing a BO; the former also reserves the right to reject an application on the non-fulfilment of the same. The Applications are to be made in **form FNC** and are considered by the RBI under two routes determined by the degree of Foreign Direct Investment (FDI):

- **Automatic Route:** If the principal business of the foreign company falls under sectors where 100% FDI is permissible under the automatic route, applications will be processed by RBI.
- **The Government Route:** If the principal business of the foreign parent company does not fall under the 100 sectors where 100% FDI is permissible under the automatic route or the application is from companies that are Non- Profit Organisations/ Non – Government Organisations / Government Bodies/ Departments, such applications will be considered by the RBI in consultation with the Ministry of Finance, Government of India.

Additionally, the RBI will also consider the following criteria while sanctioning the Liaison office/ Branch office of a parent company. The RBI has a few other considerations:

- **Track Record:** For a BO a company will require a profit making track record in the in the immediately preceding five financial years in the home country.
- **Net Worth:** “a total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement Certified by a Certified Public Accountant or any Registered Accounts Practitioner”. The net worth has to be equal to or more than USD 100,000.

Applications from foreign companies (a body corporate incorporated outside India, including a firm or other association of individuals) for establishing BO/ LO/ PO in India shall be considered by the AD Category-I bank as per the guidelines given by Reserve Bank of India (RBI). If the principal business of the entity resident outside India falls under sectors where 100 percent Foreign Direct Investment (FDI) is allowed in terms Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 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.

An application from a foreign for opening of a BO/LO/PO in India shall require prior approval of Reserve Bank of India and shall be forwarded by the AD Category-I bank to the General Manager, Reserve Bank of India, Central Office Cell, Foreign Exchange Department, 6, Sansad Marg, New Delhi - 110 001 who shall process the applications in consultation with the Government of India, in the following cases:

- The applicant is a citizen of or is registered/incorporated in Pakistan;
- The applicant is a 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, North East region and Andaman and Nicobar Islands;
- The principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting. However, prior approval of Reserve Bank of India shall not be required in cases where Government approval or license/permission by the concerned Ministry/Regulator has already been granted. Further, in the case of proposal for opening a PO relating to defence sector, no separate reference or approval of Government of India shall be required if the said non-resident applicant has been awarded a contract by/ entered into an agreement with Ministry of Defence or Service Headquarters or Defence Public Sector Undertakings. The term “permission” used in the Government of India Notification dated January 21, 2019 does not include general permission, if any, available under Foreign Direct Investment in the automatic route, in respect of the above four sectors;
- The applicant is a Non-Government Organisation (NGO), Non-Profit Organisation, Body/ Agency/ Department of a foreign government. However, if such entity is engaged, partly or wholly, in any of the activities covered under Foreign Contribution (Regulation) Act, 2010 (FCRA), they shall obtain a certificate of registration under the said Act and shall not seek permission under FEMA 22(R).

The application by the foreign company has to be made through a designated AD Category-I bank to the General Manager of the Foreign Exchange Department of RBI. Some prescribed documents have to be attached with the application. The RBI Master Circular of 2016 provides two of the documents that have to be attached:

1. English version of the Certificate of Incorporation / Registration or Memorandum & Articles of Association attested by Indian Embassy / Notary Public in the Country of Registration.
2. Latest Audited Balance Sheet of the applicant entity.”

Even if applications do not satisfy the criteria if an agent files them on behalf of a parent company, that parent company ought to satisfy the criteria. The AD-I Category bank involved in the process will conduct due diligence on the Applicant in the following areas- “background, antecedents of the promoter, nature and location of activity, sources of funds, etc.”, along with compliance of the Know Your Customer (KYC) norms.

The BO hence, once approved by the RBI, will be allotted a Unique Identification Number (UIN). Once the offices have been set up, the BO must also obtain a Permanent Account Number (PAN) from the Income Tax Authorities. This should be reported in the Annual Activity Certificate (AAC) that the BO is required to present at the end of each year to show that the activities are undertaken in the permitted categories only.

Section 382 of the Companies Act, 2013, states that the company has to ‘conspicuously’ exhibit outside the office, the company’s name and the specify country it was incorporated in. The name must be in English Language and in the local language of the area where the office is set-up. If the members of the company have limited liability, then the same has to be specified with the name of the company outside the office and also mentioned in all the brochures, prospectus and any other circulars generated by the company. The Act also provides for the registration of the prospectus of the company with the registrar before it circulates and spreads any information about the issuance of securities by the company.

Procedure for Establishment of BO/LO/PO

Following steps are followed for establishing the Branch Office/ Liaison Office/ Project Office of Foreign Company:

1. **Submission of Form FNC:** The application for establishing BO / LO/ PO in India may be submitted by the non-resident entity in Form FNC to a designated AD Category - I bank (i.e. an AD Category – I bank identified by the applicant with whom they intend to pursue banking relations) along with the prescribed documents and the LOC, wherever applicable.

Following are the prescribed documents:

- (a) Copy of the Certificate of Incorporation / Registration; Memorandum of Association and Articles of Association attested by the Notary Public in the country of registration.

[If the original Certificate is in a language other than in English, the same may be translated into English and notarized as above and cross verified/attested by the Indian Embassy/ Consulate in the home country].

- (b) Audited Balance sheet of the applicant company for the last three/ five years in case of branch office/ liaison office respectively.

[If the applicants' home country laws/regulations do not insist on auditing of accounts, an Account Statement certified by a Certified Public Accountant (CPA) or any Registered Accounts Practitioner by any name, clearly showing the net worth may be submitted].

- (c) Bankers' Report from the applicant's banker in the host country / country of registration showing the number of years the applicant has had banking relations with that bank.

- (d) Power of Attorney in favour of signatory of Form FNC in case the Head of the overseas entity is not signing the Form FNC.

The AD Category-I bank shall after exercising due diligence in respect of the applicant's background, and satisfying itself as regards adherence to the eligibility criteria for establishing BO/LO/PO, antecedents of the promoter, nature and location of activity of the applicant, sources of funds, etc., and compliance with the extant KYC norms grant approval to the foreign entity for establishing BO/LO/PO in India.

2. **Allotment of Unique Identification Number (UIN):** However, before issuing the approval letter to the applicant, the AD Category-I bank shall forward a copy of the Form FNC along with the details of the approval proposed to be granted by it to the General Manager, Reserve Bank of India, CO Cell, New Delhi, for allotment of Unique Identification Number (UIN) to each BO/ LO.

3. **Issue of Approval letter:** After receipt of the UIN from the Reserve Bank, the AD Category-I bank shall issue the approval letter to the non-resident entity for establishing BO/LO in India. This is in order to enable the Reserve Bank to keep, maintain and upload up-to-date list of all foreign entities which have been granted permission for establishing BO/LO in India, on its website.

The validity period of an LO is generally for three years, except in the case of Non-Banking Finance Companies (NBFCs) and those entities engaged in construction and development sectors, for whom the validity period is two years only. The validity period of the project office is for the tenure of the project.

4. **Intimation to Designated AD Category I bank:** An applicant that has received permission for setting up of a BO/LO/PO shall inform the designated AD Category I bank as to the date on which the BO/LO/

PO has been set up. The AD Category I bank in turn shall inform Reserve Bank accordingly. In case an approval granted by the AD bank has either been surrendered by the applicant or has expired without any BO/LO/PO being set up, the AD Category I bank shall inform RBI accordingly.

5. **Extension for setting up office:** The approval granted by the AD Category I bank should include a proviso to the effect that in case the BO/LO/ PO for which approval has been granted is not opened within six months from the date of the approval letter, the approval shall lapse. In cases where the non-resident entity is not able to open the office within the stipulated time frame due to reasons beyond its control, the AD Category-I bank may consider granting extension of time for a further period of six months for setting up the office. Any further extension of time shall require the prior approval of Reserve Bank of India in this regard.
6. **BO/LO by foreign banks and insurance companies:** All applications for establishing a BO/LO in India by foreign banks and insurance companies will be directly received and examined by the Department of Banking Regulation (DBR), Reserve Bank of India, Central Office and the Insurance Regulatory and Development Authority (IRDA), respectively. No UIN for such representative offices is required from the Foreign Exchange Department, Reserve Bank of India.

Opening of bank account by BO/LO/PO

- I. An LO may approach the **designated AD Category I Bank** in India to open an account to receive remittances from its Head Office outside India. It may be noted that an LO shall not maintain more than one bank account at any given time without the prior permission of Reserve Bank of India. The permitted Credits and Debits to the account shall be:
 - (a) Credits
 1. Funds received from Head Office through normal banking channels for meeting the expenses of the office.
 2. Refund of security deposits paid from LO's account or directly by the Head Office through normal banking channels.
 3. Refund of taxes, duties etc., received from tax authorities, paid from LO's bank account.
 4. Sale proceeds of assets of the LO.
 - (b) Debits: Only for meeting the local expenses of the office.
- II. A BO may approach **any AD Category I Bank** in India to open an account for its operations in India. Credits to the account should represent the funds received from Head Office through normal banking channels for meeting the expenses of the office and any legitimate receivables arising in the process of its business operations. Debits to this account shall be for the expenses incurred by the BO and towards remittance of profit/ winding up proceeds.
- III. Any foreign entity except an entity from Pakistan who has been awarded a contract for a project by the Government authority/Public Sector Undertakings or are permitted by the AD to operate in India may open a bank account without any prior approval of the Reserve Bank. An entity from Pakistan shall need prior approval of Reserve Bank of India to open a bank account for its project office in India.
- IV. AD Category – I banks can open non-interest bearing foreign currency account for POs in India subject to the following:

- (a) The PO has been established in India, with the general / specific permission of Reserve Bank of India, having the requisite approval from the concerned Project Sanctioning Authority concerned as per FEM (Establishment in India of Branch Office or a Project Office or any other Place of Business Regulations, 2016).
- (b) The contract governing the project specifically provides for payment in foreign currency.
- (c) Each PO can open two foreign currency accounts, usually one denominated in USD and other in home currency of the project awardee, provided both are maintained with the same AD Category-I bank.
- (d) The permissible debits to the account shall be payment of project related expenditure and credits shall be foreign currency receipts from the Project Sanctioning Authority and remittances from parent/ Group Company abroad or bilateral / multilateral international financing agency.
- (e) The responsibility of ensuring that only the approved debits and credits are allowed in the foreign currency account shall rest solely with the AD Category I bank. Further, the accounts shall be subject to 100 per cent scrutiny by the Concurrent Auditor of the respective AD Category-I bank.
- (f) The foreign currency accounts have to be closed at the completion of the project.

Annual Activity Certificate by BO/LO/PO

- (i) The Annual Activity Certificate (AAC) as at the end of March 31 each year along with the required documents needs to be submitted by the following:
 - (a) In case of a sole BO/ LO/PO, by the BO/LO/PO concerned;
 - (b) In case of multiple BOs / LOs, a combined AAC in respect of all the offices in India by the nodal office of the BOs / LOs.

The LO/BO needs to submit the AAC to the designated AD Category -I bank as well as Director General of Income Tax (International Taxation), New Delhi whereas the PO needs to submit the AAC only to the designated AD Category -I bank.

- (ii) The designated AD Category - I bank shall scrutinize the AACs and ensure that the activities undertaken by the BO/LO are being carried out in accordance with the terms and conditions of the approval given.

In the event of any adverse findings reported by the auditor or noticed by the designated AD Category -I bank, the same should immediately be reported to the General Manager, Reserve Bank of India, CO Cell, New Delhi, along with the copy of the AAC and their comments thereon.

Extension of validity period of the approval of LO and PO

- (i) Requests for extension of time for LOs may be submitted before the expiry of the validity of the approval, to the AD Category-I bank concerned under whose jurisdiction the LO/nodal office is located. 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/ extension granted if the applicant has complied with the following conditions and the application is otherwise in order:
 - (a) The LO should have submitted the Annual Activity Certificates for the previous years; and
 - (b) The account of the LO maintained with the designated AD Category-I bank is being operated in accordance with the terms and conditions stipulated in the approval letter.

Such extension has to be granted, as expeditiously as possible as and in any case not later than one month from the receipt of the request under intimation to the General Manager, Reserve Bank of India, CO Cell, New Delhi quoting the reference number of the original approval letter and the UIN. Reserve Bank shall update the information on its website immediately.

- (ii) Further, entities engaged in construction and development sectors and Non- Banking Finance Companies are permitted to open a liaison office for two years only. No further extension would be considered for liaison offices of entities which are Non- Banking Finance Companies and those engaged in construction and development sectors (excluding infrastructure development companies). Upon expiry of the validity period, the offices shall have to either close down or be converted into a Joint Venture / Wholly Owned Subsidiary in conformity with the extant Foreign Direct Investment policy.

Registration with police authorities

Applicants from Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong, Macau or Pakistan desirous of opening BO/LO/PO in India shall have to register with the state police authorities. Copy of approval letter for 'persons' from these countries shall be marked by the AD Category-I bank to the Ministry of Home Affairs, Internal Security Division-I, Government of India, New Delhi for necessary action and record.

Application for additional offices and activities

- i. Requests for establishing additional BOs / LOs may be submitted to the AD Category-I bank in a fresh FNC form. However, the documents mentioned in form FNC need not be resubmitted, if there are no changes to the documents already submitted earlier.
 - (a) If the number of offices exceeds 4 (i.e. one BO / LO in each zone viz; East, West, North and South), the applicant has to justify the need for additional office/s and it shall require prior approval of RBI.
 - (b) The applicant may identify one of its offices in India as the Nodal Office, which will coordinate the activities of all of its offices in India.
 - (c) Whenever the existing BO/LO is shifting to another city in India, prior approval from the AD Category-I bank is required. However, no permission is required if the LO/BO is shifted to another place in the same city subject to the condition that the new address is intimated to the designated AD Category-I bank. Changes in the postal address may be intimated to the CO Cell, New Delhi by the AD Category-I bank at the earliest.
- ii. Requests for undertaking activities in addition to what has been permitted initially (Annex C) by Reserve Bank of India / AD Category-I bank may be submitted by the applicant to the Reserve Bank through the designated AD Category -I bank justifying the need.

Extension of Fund and Non-Fund Based Facilities

AD Category-I bank may be based on their business prudence, Board approved policy and compliance to extant rules/ regulations stipulated by DBR, RBI extend fund/non-fund based facilities to BOs/POs only.

Remittances of Profits/ Surplus

An overview of remittances of profits or surplus for branch and project offices is given below. As liaison office cannot undertake any business activities, the question of remittance of profits etc. by them does not arise.

<i>Branch Office</i>	<i>Project Office</i>
Permitted, net of taxes	Intermittent remittances permitted pending winding up or completion of the project
Following documents to be submitted with AD Bank: (i) Certified copy of audited balance sheet and profit and loss account for the relevant year. (ii) Chartered Accountant certificate certifying: <ul style="list-style-type: none"> ● the manner of arriving remittable profits 	Following documents to be submitted with AD Bank: (i) Auditors/ Chartered Accountant Certificate confirming that a sufficient provision has been made to meet the liabilities in India including income tax
<ul style="list-style-type: none"> ● that the remittable profit has been earned by undertaking permitted activities ● that the profits do not include any profit on revaluation of assets of the branch 	(ii) Undertaking from the project office that remittance will not affect the completion of the project in India and that any shortfall of funds for meeting any liability in India will be met by inward remittances from abroad.

Closure of BO/PO/LO

1. **Submission of request for closure:** 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, as the case may be. The application for winding up may be submitted along with the following documents:
 - a) Copy of the Reserve Bank's/AD Category-I bank's approval for establishing the BO/ LO/ PO.
 - b) Auditor's certificate:
 - (i) indicating the manner in which the remittable amount has been arrived at and supported by a statement of assets and liabilities of the applicant and indicating the manner of disposal of assets;
 - (ii) confirming that all liabilities in India including arrears of gratuity and other benefits to employees, etc. of the office have been either fully met or adequately provided for; and
 - (iii) confirming that no income accruing from sources outside India (including proceeds of exports) has remained unrepatriated to India.
 - c) Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending against the BO / LO/ PO and there is no legal impediment to the remittance.
 - d) A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013, in case of winding up of the BO /LO in India, wherever applicable.
 - e) The designated AD Category - I banks has to ensure that the BO / LO/ PO had filed their respective AACs.
 - f) Any other document/s, specified by Reserve Bank of India / AD Category- I bank while granting approval.
2. **Remittance of winding up proceeds:** Designated AD Category-I bank may allow remittance of winding up proceeds in respect of offices of banks and insurance companies, after obtaining copies of permission of closure from the sectoral regulators along with the documents mentioned above.

Checklist for BO/LO/PO

Sl. No.	Particulars	Details
1.	Register with the Registrar of Companies (ROC)	A BO/LO/PO or any other place of business to register with the Registrar of Companies (ROCs) once it establishes a place of business in India if such registration is required under the Companies Act, 2013.
2.	Application to an Authorised Dealer Category I bank (Form FNC)	A person resident outside India desiring to establish a branch office or a liaison office or a project office or any other place of business in India shall submit an application in Form FNC to an Authorised Dealer Category-I bank.
3.	Profit Making Track Record	A branch office or a liaison office or a project office need to meet the profit making track record.
4.	Permissible Activities	A branch office or a liaison office or a project office shall undertake or carry on permissible activities and shall not undertake or carry on any other activity unless otherwise specifically permitted by the Reserve Bank.
5.	Obtain Permanent Account Number (PAN)	The BOs / LOs shall obtain Permanent Account Number (PAN) from the Income Tax Authorities on setting up of their office in India and report the same in the AACs.
6.	LO upgrade into a BO	The existing PAN and bank accounts can be continued when an LO is permitted to upgrade into a BO.
7.	Transaction	Each BO/ LO/PO are required to transact through one designated AD Category-I bank only.
8.	Annual Activity Certificate (AAC)	The branch office/liaison office shall submit the Annual Activity Certificate as at the end of March 31 along with the audited financial statements including receipt and payment account on or before September 30 of that year.
9.	BO/LO/PO change their existing AD Category-I bank	BO/LO/PO can change their existing AD Category- I bank subject to both the AD banks giving consent in writing for the transfer and the transferring AD bank confirming submission of all AACs and absence of any adverse features in conducting the account by the BO/LO/PO.
10.	Acquisition of property by BO/ PO	Acquisition of property by BO/PO shall be governed by the guidelines issued under Foreign Exchange Management (Acquisition and transfer of immovable property outside India) Regulations.
11.	Carry out permitted/ incidental activities from leased property	As per section 6 (3) (h) of the Foreign Exchange Management Act, 1999, BOs/ LOs/POs have general permission to carry out permitted/ incidental activities from leased property subject to lease period not exceeding five years.

Sl. No.	Particulars	Details
12.	Term Deposit Account	AD Category- I bank can allow term deposit account for a period not exceeding 6 months in favour of a BO/LO/PO of a person resident outside India provided the bank is satisfied that the term deposit is out of temporary surplus funds and the BO/LO/PO furnishes an undertaking that the maturity proceeds of the term deposit will be utilised for their business in India within 3 months of maturity. However, such facility may not be extended to shipping/ airline companies.
13.	LO or BO established in the pre-FEMA period	In case a BO/LO has been established and continues to exist without approval of the Reserve Bank, such BO/LO may approach their AD Category-I bank to regularise their offices under FEMA 1999, even if permission of Reserve Bank was not required as per the regulations existing at the time of setting up of the office. Such cases may be brought to the notice of Reserve Bank immediately for allotment of UIN. The foreign entities who may have established LO or BO with the permission from the Government of India in the pre-FEMA period shall also approach their AD Category-I bank with a copy of the said approval for allotment of a UIN by the Reserve Bank.
14.	Change in the name of the existing LO/BO	Change in the name of the existing LO/BO may be permitted by the AD Category-I bank only if the non-resident entity changes its name without change in ownership and if the application to this effect is received with the Board resolution for change of name and documents/certificate from ROC India showing change of name. The change in name of the BO/LO should be reported to FED, CO Cell, New Delhi. Where change in name is requested on account of acquisitions or mergers of foreign entities involving change in ownership, the acquired entity or new entity is required to apply afresh by closing the existing entity. Foreign entities should note that the approvals are given by the Reserve Bank/AD Category-I bank after detailed scrutiny as per laid down guidelines and FDI policies and hence the approvals given to one foreign entity is not transferrable to another foreign entity.
15.	Change in the Top Management	Change in the Top Management or CEO/MD/CMD etc. of the BO/LO does not require prior approval from the Reserve Bank/AD Category-I bank. However, AD Category-I bank should be intimated about the same.
16.	Closure of the Branch office/ Liaison office	Requests for closure of the branch office/liaison office may be submitted to the Authorised Dealer Category - I bank along with the copy of the Reserve Bank's/ Authorised Dealer Category - I bank's approval for establishing the office; Auditor's certificate; Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending against the office and there is no legal impediment to the remittance; A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013, in case of winding up of the branch office/liaison in India and any other document/s specified by the Reserve Bank/ Authorised Dealer Category-I bank while granting approval.

Sl. No.	Particulars	Details
17.	Remittance of winding up proceeds	Remittance of winding up proceeds of branch or liaison office established in India shall be governed by the guidelines issued under Foreign Exchange Management (Remittance of Assets) Regulations.

LESSON ROUND-UP

- Foreign Company means any company or body corporate incorporated outside India which (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (b) conducts any business activity in India in any other manner.
- Project office means a place of business in India to represent the interests of the foreign company executing a project in India but excludes a Liaison Office.
- Liaison Office means a place of business to act as a channel of communication between the principal place of business or Head Office or by whatever name called and entities in India but which does not undertake any commercial/trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel.
- Branch office in relation to a company, means any establishment described as such by the company.
- A BO/LO/PO or any other place of business by whatever name called is required to register with the Registrar of Companies (ROCs) once it establishes a place of business in India if such registration is required under the Companies Act, 2013.
- The branch office/liaison office shall submit the Annual Activity Certificate as at the end of March 31 along with the audited financial statements including receipt and payment account on or before September 30 of that year.
- The BOs / LOs shall obtain Permanent Account Number (PAN) from the Income Tax Authorities on setting up of their office in India and report the same in the AACs.

GLOSSARY

AD Bank: Authorised Dealer (AD) Banks: Branches of banks authorised to deal in foreign exchange business.

Net Worth: A total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement Certified by a Certified Public Accountant or any Registered Accounts Practitioner

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. What are the permitted activities for a liaison office in India of a person resident outside India?
2. Discuss the procedure for establishment of branch office of foreign company in India?

