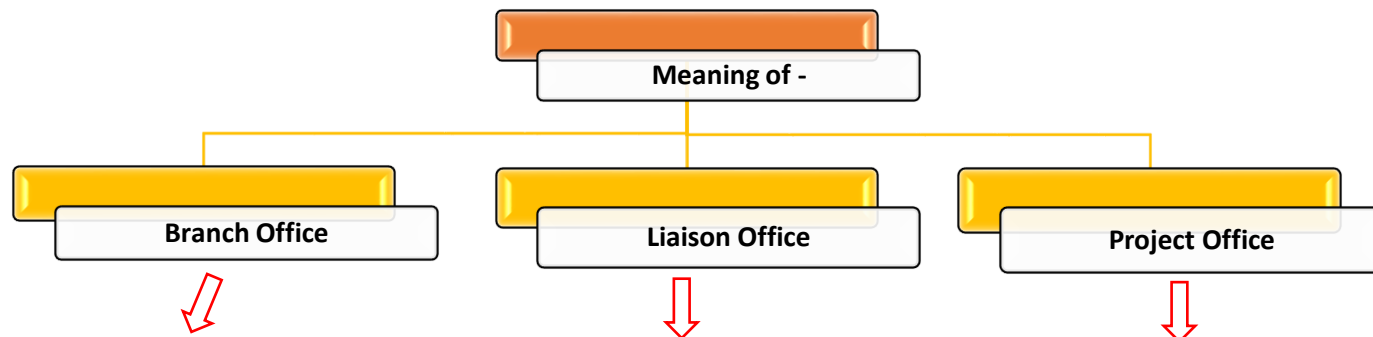


## Foreign Direct Investment – Regulation & Policy

### Establishment of Branch Office (Bo)/ Liaison Office (Lo)/ Project Office (Po) in India – Part 3



- 1) A **branch office** is a location, other than the main **office**, where a business is conducted.
- 2) Normally, the branch office should be engaged in the activity in which the parent company is engaged.
- 3) Permitted activities for a branch office in India of a person resident outside India –
  - Export/import of goods.
  - Rendering professional or consultancy services.
  - Carrying out research work 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.

- 1) Liaison office does not undertake any commercial /trading/ industrial activity.
- 2) It is a place of business to act as a channel of communication between the principal place of business or Head Office and entities in India.
- 3) **Permitted activities for a liaison office in India** of a person resident outside India –
  - Representing the parent company / group companies in India.
  - 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.

- 1) 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.
- 2) Following conditions (both condition 1 and 2) should be satisfied –
  - a) **Condition 1 –**  
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.
  - b) **Condition 2 –** Any one of the following conditions should be satisfied –
    - Project should be funded from abroad; or
    - Loan should be taken from PFI; or
    - the project has been cleared by an appropriate authority; or
    - the project is funded by a bilateral or multilateral International Financing Agency

- Representing a foreign airline/shipping company.

**Note –**

Establishment of branch office, liaison office or project office shall be governed by 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.

**Procedure for establishment of BO / LO / PO –**

- 1) The application may be submitted by the non-resident entity in **form FNC**.
- 2) Application should be made to AD Category - I bank.
- 3) Application should be accompanied by following documents –
  - Copy of the Certificate of Incorporation
  - Copy of MOA attested by the Notary Public in the country of registration
  - Copy of AOA attested by the Notary Public in the country of registration
  - Audited Balance sheet of the applicant company for the last 3 years in case of BO and 5 years in case of LO.

**Note –**

**If provisions of audit is not applicable in the applicant's home country then an Account Statement certified by a CPA or any Registered Accounts Practitioner shall be submitted.**

- Bankers' Report from the applicant's banker in the host country showing the number of years the applicant has had banking relations with that bank.
  - Application should be signed by Head of the overseas entity. If the Head of the overseas entity is not signing then any person may sign on his behalf if such person has Power of Attorney.
- 4) After receipt of application, AD Category-I bank shall forward a copy of the Form FNC with all the details to the General Manager, Reserve Bank of India, CO Cell, New Delhi, for allotment of Unique Identification Number (UIN) to each BO/LO.
  - 5) 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.
  - 6) Validity of approval granted by the AD Category I bank shall be maximum 6 months and after 6 months approval shall lapse. However, extension of 6 months may be granted on showing sufficient cause.
  - 7) Validity period of approval letter –
    - a) For LO –  
Generally, 3 years but for NBFCs and entities engaged in construction and development sectors, validity is 2 years.

**Note –**

- 1) The validity period of the project office is for the tenure of the project.
- 2) There is a general permission (no approval is required) to non-resident companies for establishing BO in the Special Economic Zones (SEZs) to undertake manufacturing and service activities but they should fulfill the following conditions –
  - a) such BOs are functioning in those sectors where 100% FDI is permitted;

- b) such BOs comply with Chapter XXII (relating to foreign companies) of the Companies Act, 2013; and
  - c) such BOs function on a stand-alone basis.
- 3) If BO/LO in India is set up by foreign banks and insurance companies then application will be directly received and examined by the Department of Banking Regulation (DBR), RBI, Central Office and the IRDA. **No UIN is required in such cases.**

#### Opening of bank account by BO/LO/PO –

##### A) In case of LO –

- 1) An LO may approach the designated AD Category I Bank in India to open an account.
- 2) LO shall not maintain more than one bank account at any given time without the prior permission of Reserve Bank of India

##### 3) Credits –

- a) Funds received from Head Office through normal banking channels for meeting the expenses of the office.
- b) Refund of security deposits paid from LO's account or directly by the Head Office through normal banking channels
- c) Refund of taxes, duties etc., received from tax authorities, paid from LO's bank account.
- d) Sale proceeds of assets of the LO.

##### 4) Debits –

Only for meeting the local expenses of the office.

##### B) In case of BO –

- 1) A BO may approach any AD Category-I Bank in India to open an account for its operations in India

##### 2) Credits –

- a) Funds received from Head Office through normal banking channels for meeting the expenses of the office
- b) Any legitimate receivables arising in the process of its business operations.

##### 3) Debits –

for the expenses incurred by the BO and towards remittance of profit/winding up proceeds.

##### C) In case of PO –

- a) Any foreign entity 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.
- b) However, an entity from Pakistan shall need prior approval of Reserve Bank of India to open a bank account for its project office in India.

D) AD Category – I banks can open non-interest-bearing foreign currency account for POs in India subject to the following conditions –

- a) The PO has been established in India
- b) The contract governing the project provides for payment in foreign currency.

- c) Each PO can open two foreign currency accounts – one in USA currency and other in home currency of the project awardee and both should be 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.
- e) 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.

#### **Application for additional offices and activities –**

- ✓ **Application shall be made to** 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.
- ✓ If the number of offices exceeds 4 in one zone then prior RBI approval is required.
- ✓ 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.
- ✓ Whenever the existing BO/LO is shifting to another city in India, prior approval from the AD Category-I bank is required.
- ✓ 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.

#### **Annual Activity Certificate by BO/LO/PO –**

- 1) The Annual Activity Certificate (AAC) as at the end of March 31 each year 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.
- 2) The LO/BO needs to submit the AAC to the designated AD Category -I bank as well as Director General of Income Tax whereas the PO needs to submit the AAC only to the designated AD Category -I bank.
- 3) 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.

#### **Transfer of assets of BO/LO/PO –**

Proposals for transfer of assets may be considered by the AD Category-I bank only from BOs/LOs/POs who are adhering to the operational guidelines such as submission of AACs (up to the current financial year) at regular annual intervals with copies endorsed to DGIT (International Taxation); have obtained PAN from IT Authorities and have got registered with ROC under the Companies Act 2013.

Conditions for transfer –

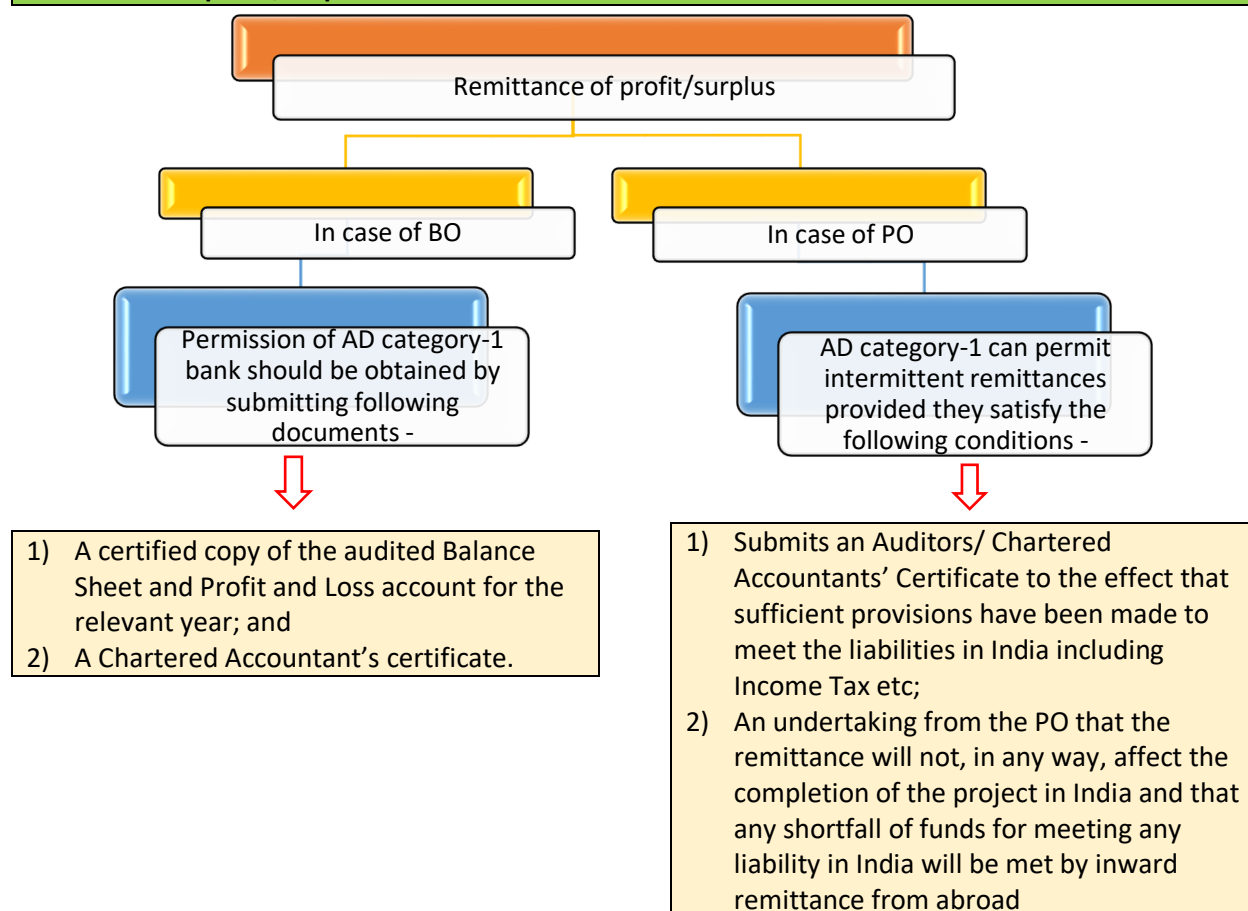
- a) Transfer of assets by way of sale to the JV/WoS be allowed by AD Category-I bank only when the non-resident entity intends to close their BO/LO/PO operations in India.
- b) A certificate is to be submitted from the Statutory Auditor furnishing details of assets to be transferred

- c) The assets should have been acquired by the BO/LO/PO from inward remittances and no intangible assets such as good will, pre-operative expenses should be included.
- d) AD Category-I bank must ensure payment of all applicable taxes while permitting transfer of assets.
- e) Credits to the bank accounts of BO/LO/PO on account of such transfer of assets will be treated as permissible credits.
- f) Donation by BO/LO/PO of old furniture, vehicles, computers and other office items etc. to NGOs or other not-for-profit organisations may be permitted by the AD category-I banks after satisfying itself about the bonafide of the transaction.

### 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.

### Remittance of profit/surplus –



### Closure of BO/LO/PO –

- 1) Requests for closure of the BO / LO/ PO may be submitted to the designated AD Category - I bank.
- 2) Application shall be accompanied by following documents –
  - Copy of the Reserve Bank's/AD Category-I bank's approval for establishing the BO/ LO/ PO.
  - Auditor's certificate –
    - a) 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;
    - b) 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
    - c) confirming that no income accruing from sources outside India (including proceeds of exports) has remained unrepatriated to India.
  - Confirmation from the applicant that no legal proceedings in any Court in India are pending against the BO / LO/ PO
  - A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013.
  - The designated AD Category - I banks has to ensure that the BO / LO/ PO had filed their respective AACs.
  - Any other document/s, specified by Reserve Bank of India/AD Category-I bank while granting approval.

#### Checklist for BO / LO / PO –

<b>1</b>	Register with the Registrar of Companies (ROC)	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.
<b>2</b>	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.
<b>3</b>	Profit Making Track Record	A branch office or a liaison office or a project office need to meet the profit making track record
<b>4</b>	Permissible Activities	A branch office or a liaison office or a project office shall undertake or carry on only permissible activities and shall not undertake or carry on any other activity unless otherwise specifically permitted by the Reserve Bank.
<b>5</b>	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
<b>6</b>	LO upgrade into a BO	The existing PAN and bank accounts can be continued when an LO is permitted to upgrade into a BO.
<b>7</b>	Transaction	Each BO/ LO/PO are required to transact through one designated AD Category-I bank only

<b>8</b>	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.
<b>9</b>	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.
<b>10</b>	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.
<b>11</b>	Carry out permitted/ incidental activities from leased property	BOs/LOs/POs have general permission to carry out permitted/ incidental activities from leased property subject to lease period not exceeding five years.
<b>13</b>	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.
<b>14</b>	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.
<b>15</b>	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.
<b>16</b>	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