ESTABLISHMENT OF LIAISON / BRANCH / PROJECT OFFICE IN INDIA BY FOREIGN ENTITIES

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1. Introduction

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 Notification No. FEMA 22(R)/2016-RB dated March 31, 2016 ("Ntf. FEMA 22").

Section 6(6) of FEMA provides that "Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business".

According to section 2(v)(iii) of FEMA, "Person resident in India means an office, branch or agency in India owned or controlled by a person resident outside India". This implies that Branch or Project Office in India owned or controlled by a person resident outside India shall become persons resident in India.

The said Ntf. FEMA 22(R) defines a 'Foreign company' as a body corporate incorporated outside India and includes a firm or other association of individuals. As the definition includes a firm, a foreign Limited Liability Partnership is also eligible to establish Branch office/ Liaison office / Project office in India. All the terms, conditions and procedures that are applicable to a foreign company as specified in Ntf. FEMA 22 are therefore applicable to a Foreign LLP, partnership firm and other association of individuals.

Branch Offices (referred to as **"BO")** in relation to a company means any establishment described as such by the company. A branch can be opened for specific purposes; it should be engaged in the same activities as the parent company. It can undertake activity like Export / Import of goods, rendering professional or consultancy services, rendering technical support to the products supplied by parent/group companies.

The Liaison Office (referred to as **"LO")** can undertake only liaison activities, i.e. it can act as a channel of communication between Head Office abroad and parties in India, which does not undertake any commercial/trading/industrial activity in India. Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the Head Office outside India.

Foreign Companies planning to execute EPC/turnkey projects in India can set up temporary project/site offices (referred to as **"PO")** in India. Project office is a place of business to represent the interest of the foreign company executing a project in India. Site office means a sub – office of the Project office established at the site of a project where major work like construction, installation, erection, supervision and commissioning is to be carried out.

2. Prior Approval of RBI / Regulators

2.1 Any person resident outside India, desirous of opening a Liaison Office (LO) / Branch Office (BO) / Project Offices (PO) in India shall require prior approval of RBI in following cases:

a. The applicant is a citizen of or is registered / incorporated in Pakistan;

b. 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 liaison, branch or project office in Jammu and Kashmir, North East region and Andaman and Nicobar Islands;

c. The principal business of the applicant falls in the four sectors namely Defense, Telecom, Private Security and Information and Broadcasting. However, as modified vide Notification No. FEMA 22(R)(2) dated January 21, 2019 and AP (DIR Series) Circular No. 27 dated March 28, 2019, 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.

d. The applicant is a Non-Government Organization, Non-Profit Organization, Body/ Agency/ Department of a foreign government. However, as modified vide Notification No. FEMA 22(R)(1)/2018-RB dated August 31, 2018 and AP (DIR Series) Circular No 20 dated February 27, 2019, 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).

2.2 Foreign Insurance companies do not require any approval under Ntf. FEMA 22 for establishing any office in India if such company has obtained approval from Insurance regulatory and development authority (IRDA).

2.3 Foreign banks do not require any approval under Ntf. FEMA 22 for establishing Branch/Liaison Offices in India if such company has obtained necessary approval under the provisions of the Banking Regulation Act, 1949.

2.4 A company resident outside India does not require any approval under Ntf. FEMA 22 to establish a branch office in the Special Economic Zones (SEZs) to undertake manufacturing and service activities, subject to the conditions that:

a. such branch offices are functioning in those sectors where 100% FDI is permitted;
b. such branch offices comply with Chapter XXII of the Companies Act, 2013; and
c. such branch offices function on a stand-alone basis.

3. Application Procedure

3.1 The application for establishing BO/LO/PO in India is to be submitted by the non-resident entity in **Form FNC** to a designated AD bank along with the prescribed documents. The AD 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 Branch/Liaison/Project Office and compliance with the extant KYC norms, grant approval to the foreign entity for establishing BO/LO/PO in India.

However, before issuing the approval letter to the applicant, the AD Category-I bank is required to 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. 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.

3.2 Summary of Documents to be submitted for Application:

Particulars	**LO**	**BO**	**PO**
Formation / Incorporation documents (notarized in home country)	✓	✓	✓
Financial Statements	✓	✓	×
Banker's Report	✓	✓	✓
Power of Attorney	✓	✓	✓

3.3 Registration with State Police Authorities:- Select Countries

Applicants from Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong, Macau or Pakistan opening a Branch / Liaison /Project office in India shall have to register with the concerned State Police Authorities. Copy of approval letter shall be marked by the AD bank to the Ministry of Home Affairs, Internal Security Division-I, Government of India, New Delhi.

4. Eligibility Criteria

4.1 Track record:

The non-resident entity applying for a BO/LO in India should have a financially sound track record viz:

a. Track Record of Profits
Branch Office should have a profit making track record during the immediately preceding five financial years in the home country. A Liaison office should have a profit making track record during the immediately preceding three financial years in the home country.

b. Track Record of Net Worth
For Branch Office Net worth should not be less than USD 100,000 or its equivalent.
For Liaison Office Net worth should not be less than USD 50,000 or its equivalent.

Net Worth is defined as 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 by whatever name called.

c. An applicant that is not financially sound and is a subsidiary of another company may submit a Letter of Comfort (LOC) from its parent/ group company, subject to the condition that the parent/ group company satisfies the prescribed criteria for net worth and profit.

4.2 For Project Office in India:

4.2.1 Regulation 4f(I) of Ntf. FEMA 22 grants General Permission to a foreign company to set up Project Office in India, subject to specified conditions.

4.2.2 If the specified conditions are not met, the foreign entity has to approach RBI for approval and these are:

a. PO has secured from Indian Company a contract to execute project in India, and
b. (i) Project is funded by inward remittances from abroad, or
   (ii) Project is funded by bilateral or multilateral International Finance Agency (i.e. World Bank, IMF or similar other body), or
   (iii) Project is cleared by appropriate authority, or
   (iv) Company / Entity in India awarding contract been granted Term Loan by Public Financial Institution or bank for the project

4.3 Thus, in any case, BO / LO / PO requires application to be made to AD Bank in Form FNC and same may be approved by the AD Bank under the delegated powers by RBI. This is known as Automatic Route.

If the eligibility criteria as described in this Paragraph are not satisfied, then in such case RBI approval route is applicable. Also in cases mentioned in Para 2.1 above, application for prior RBI approval would be required in Form FNC to RBI.

In case of PO, AD-Bank is not required to generate any UIN as referred in Paragraph 3.1 above

5. Other Conditions including related to approval

5.1 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.

5.2 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 prior approval of Reserve Bank of India.

5.3 All applications for establishing a BO/LO in India by foreign banks and insurance companies are to 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.

5.4 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.

5.5 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. The existing PAN and bank accounts can be continued when an LO is permitted to upgrade into a BO.

5.6 Each BO/ LO/PO are required to transact through one designated AD Category-I bank only who shall be responsible for the due diligence and KYC norms of the BO/LO/PO. BO /LO/PO, present in multiple locations, are required to transact through their designated AD. However, the AD of the nodal office is required to comply with all the reporting norms.

5.7 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.

6. <u>Permitted Activities</u>

6.1 <u>Liaison Offices can consider following activities</u>:

a. Representing in India the parent company / group companies.
b. Promoting export / import from / to India.
c. Promoting technical/financial collaborations between parent/group companies and companies in India.
d. Acting as a communication channel between the parent company and Indian companies.

6.2 <u>Branch Offices can consider following activities</u>:

a. Normally, the Branch Office should be engaged in the activity in which the parent company is engaged.
b. Export / Import of goods.

c. Rendering professional or consultancy services.
d. Carrying out research work, in areas in which the parent company is engaged.
e. Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
f. Representing the parent company in India and acting as buying / selling agent in India.
g. Rendering services in information technology and development of software in India.
h. Rendering technical support to the products supplied by parent/group companies.
i. Foreign airline / shipping company.

6.2.1 Activities not permitted for Branch office:

a. Retail trading activities of any nature is not allowed for a Branch Office in India.
b. A Branch Office is not allowed to carry out manufacturing or processing activities in India, directly or indirectly

6.3 Project Office can consider following activities:

a. To execute a contract/project in India secured from an Indian company and activities related to execution of the project.
b. To render service during the warranty period and after sales service as per the Contract terms.

7. Opening of Bank Account

7.1 Liaison offices:

LO may open an account with the designated AD category I Bank in India for receiving remittances from its Head Office outside India. It may be noted that 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 to the account shall be:

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 paid directly by the Head Office through normal banking channels.
c. Refund of taxes, duties etc., paid from LO's bank account.
d. Sale proceeds of assets of the LO.

The permitted Debits to the account shall only be for meeting the local expenses of the office.

7.2 Branch offices:

BO may open an account with the designated AD category I Bank in India for its business 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.

7.3 Project offices:

Any foreign entity except an entity from Pakistan who has been awarded a contract for a project by the Government authority/Public Sector Undertaking or is permitted by the AD bank to operate in India may open a bank account without any prior approval of the RBI.

AD bank can open non-interest bearing Foreign Currency Account for PO in India subject to the following:

a. The PO has been established in India, with General/Specific permission of RBI, having the requisite approval from the concerned Project Sanctioning Authority.

b. The contract governing the project specifically provides for payment in foreign currency.

c. Each PO can open 2 Foreign Currency Accounts – usually one denominated in USD and the other one in home currency provided both are maintained with the same AD 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 company/group Company abroad or bilateral/multilateral international financing agency.

e. AD bank shall ensure that only approved debits and credits are allowed in the foreign currency account. Further, the accounts shall be subject to 100 per cent scrutiny by the Concurrent Auditor of the respective Bank.

f. The foreign currency accounts have to be closed at the completion of the Project.

8. <u>Term deposit account by Branch/Liaison/Project Office</u>

AD Category-I bank can allow term deposit account for a period not exceeding 6 months in favour of a BO/LO /PO 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.

9. <u>Validity & extension of LO & PO</u>

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 validity 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 is two years only. LOs opened by such entities (excluding infrastructure development companies) shall not be allowed any extension of time. Upon expiry of the validity period, the LOs 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.

The validity period of the project office is for tenure of the project.

There is no such validity period for Branch offices.

10. Shifting of LO / BO

The shifting of existing BO/LO to another city in India shall require prior approval from the AD Category-I bank. 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.

11. Opening of Additional Offices

The Additional BO/LO may be permitted to be opened by tendering fresh Form FNC. However, the documents mentioned in form FNC need not be resubmitted, if there are no changes to the documents already submitted earlier. 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.

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 the Reserve Bank.

12. Intermittent Remittances by Project Office

12.1 AD bank can permit intermittent remittances by Project Offices pending winding up / completion of the project provided they are satisfied with the bonafides of the transaction, subject to the following:

a. The Project Office submits an Auditors' / Chartered Accountants' Certificate to the effect that sufficient provisions have been made to meet the liabilities in India including Income Tax, etc.

b. An undertaking from the Project Office that the remittance will not, in any way, 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 remittance from abroad.

12.2 Inter-Project transfer of funds requires prior permission of RBI under whose jurisdiction the PO is situated.

13. Reporting Requirements

13.1 Reporting to AD Category – I Bank:

13.1.1 The Annual Activity Certificate (AAC) as at the end of March 31 each year along with the documents laid down needs to be submitted by the following:

a. In case of a sole BO/ LO, by the BO/LO 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.
c. Project offices – Showing Project Status and certifying that the accounts of the Project Office have been audited and the activities undertaken are in conformity with the General/Specific permission by RBI

13.1.2 The BO/LO 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.

13.1.3 Summary of reporting Requirements as per FEMA:

Particulars	**LO**	**BO**	**PO**
AAC to AD	✓	✓	
Financial statements	✓	✓	
Receipt & Payment A/c	✓	✓	
AAC to show Project Status			✓

13.2 Annual Compliances under the Companies Act, 2013:

As per Companies Act, 2013, every foreign Company must file the following documents with ROC:

i. Balance sheet, P&L Account, Annual Return, Compliance certificate, statement of related party transactions, statement of repatriation of profits, statement of transfer of funds (including Dividend, if any) along with the e-form.

ii. Documents relating to latest consolidated financial statements of the parent foreign company, Where the Central Government has specified different documents for any foreign company or a class of foreign companies, then documents as specified shall be submitted

iii. A copy of a list in form FC.3 of all places of business established by the company in India as at the date of the Balance sheet.

iv. Receipt and Payments Account

13.3 Reporting requirements as per Income Tax Act, 1961:

i. As per Sec 139 of I.T Act, every company (including a foreign company) is required to file tax returns in India. This would be applicable to a Branch and Project office.

ii. AAC also needs to be filed with DGIT (Intl Tax), New Delhi

iii. As per Sec 285 read with rule 114DA, it is mandatory for the liaison office only to file an annual statement of their activities in India within 60 days from the end of the financial year. The Annual statement is required to be filed in form No 49C

iv. Above form shall be duly verified by the Chartered Accountant, and uploaded in e-form

14. Acquisition and Transfer of Immovable Property

14.1 As per FEMA Ntf. 21(R) dated March 26, 2018 which governs Acquisition and transfer of Immovable property in India under FEMA Act, 1999, a branch or office in India established by a person resident outside India, other than a liaison office, can acquire any immovable property in India for their own use only for permitted/incidental activities subject to filing of declaration in Form IPI within 90 days from the date of such acquisition.

14.2 It may be noted that as per Section 6(3)(i) of the FEMA Act, 1999, Persons resident outside India have general permission to acquire and transfer immovable property in India under lease subject to lease period not exceeding five years.

14.3 Such acquired property can be transferred by way of mortgage to an AD bank as a security for any borrowings.

14.4 However, acquisition of immovable property in India by persons of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Hong Kong or Macau or Nepal or Bhutan or Democratic People’s Republic of Korea (DPRK) origin/ nationality/ ownership, other than on lease not exceeding five years, requires the prior approval of the Reserve Bank.

14.5 Subject to certain other conditions, remittance of funds on sale/transfer of property is allowed after paying all applicable taxes in India.

15. Remittance of Profits / Surplus

Branch Offices are permitted to remit outside India profit of the branch net of applicable Indian taxes, on production of the following documents to the satisfaction of the Authorised Dealer through whom the remittance is affected -

a. A Certified copy of the audited Balance Sheet and Profit and Loss account for the relevant year
b. A Chartered Accountant’s certificate certifying:
    i. the manner of arriving at the remittable profit
    ii. that the entire remittable profit has been earned by undertaking the permitted activities

iii. that the profit does not include any profit on revaluation of the assets of the branch.

16. Winding up / Closure of Branch / Liaison / Project Offices

Requests for closure of the BO / LO/ PO and for remittance of winding-up proceeds may be submitted to the designated AD Category - I bank by the BO/ LO/PO or their nodal office, as the case may be along with the following documents:

a. Copy of the RBI 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 un-repatriated to India.

c. Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending 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 documents, specified by RBI/AD Category-I bank while granting approval.

17. Transfer of Asset / Conversion of BO into Company

A PROI who has been granted the permission to establish a BO/LO/PO may apply to the concerned AD bank for transfer of assets to JV or wholly owned subsidiary in India. Such transfer of assets may be permitted subject to following conditions:

i. Submission of AACs (up to the current financial year) at regular annual intervals;
ii. Obtained PAN from IT Authorities
iii. Registered with ROC under the Companies Act 2013, if necessary.
iv. Non-resident entity intends to close their BO/LO/PO operations in India.
v. Submission of statutory auditor certificate furnishing details of assets to be transferred with relevant particulars.
vi. The assets should have been acquired by the BO/LO/PO from inward remittances or profit/surplus generated in case of BO/PO and no intangible assets such as good will, pre-operative expenses should be included.

vii. Revenue expenses such as lease hold improvements incurred by the BO/LO cannot be capitalised and transferred to JV/WOS.

viii. Payment of applicable taxes

18. <u>Donation by LO / BO / PO</u>

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 themselves about the bonafides of the transaction.

19. <u>Summary - Comparison of LO / BO / PO</u>

	Liaison Office	**Branch Office**	**Project Office**
Eligibility	FDI sectors, Net-worth, Country of Incorporation / registration, NGO, Foreign Govt., etc.		
Documents	Charter documents, POA, Certificate of net-worth / Letter of Comfort (other than for PO)		
Activities/Purpose	Only liaison activities i.e. act as channel of communication between head office abroad and parties in India	▪ Export / Import ▪ Render professional / consulting services ▪ Conduct research ▪ Render technical support to products supplied by F.Co. ▪ Acting as buying/selling agent of parent Co. Can earn income in India	▪ Execution of project involving ▪ Onshore supply of goods and / or services ▪ Offshore supply of goods and / or services Can earn income in India
Bank accounts	Only one	Only one	Max. two
Prohibited Activities	▪ No Commercial Activities	Manufacturing & Processing except in	Can only engage in execution of Project

	▪ Meet Expenses through inward remittance	SEZ	
Acquire Immovable Property	Cannot acquire, hold, transfer any property in India without RBI prior approval	Yes for their own use and to carry out permitted / incidental activities	Yes for their own use and to carry out permitted / incidental activities
Track Record & Net worth	▪ 3 yrs ▪ US$ 50,000	▪ 5 yrs ▪ US$ 100,000	No stipulation
Taxability	Not Liable to Tax	▪ Taxable as Non-resident ▪ Can qualify as PE under tax treaties and claim treaty benefits	▪ Taxable as Non-resident ▪ Can qualify as PE under tax treaties and claim treaty benefits
Reporting for LO / BO	To AD Bank, Tax authorities, Registrar of Companies for AAC, additional places of Business, change of place of business within city		
Prior approval	Change of activity, more than 4 offices, more than specified Bank accounts, change of office outside the city, purchase of immovable properties by companies incorporated / registered in specified countries, Banking account of PO of company incorporated in Pakistan, establishment of BO/LO/Po by companies of specified countries, etc.		