



***Establishment of Place of  
Business in India by Foreign  
Entities***

***Guidelines for setting up Branch Office/  
Liaison Office/ Project Office in India***

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## Regulations

- [Notification No. FEMA 22\(R\)/2016-RB](#) dated March 31, 2016
- [AP DIR Series Circular No.69](#) dated May 12, 2016



## General criteria

- i. 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).
- ii. An application from a person resident outside India for opening of a BO/LO/PO in India shall require **prior approval** of Reserve Bank of India in the 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 BO/LO/PO 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.

In the case of proposal for opening a PO relating to defense 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 Defense or Service Headquarters or Defense Public Sector Undertakings. No separate approval is required from Reserve Bank of India for such cases only.

d. The applicant is a Non-Government Organisation (NGO), Non-Profit Organisation, Body/ Agency/ Department of a foreign government.

Such applications may 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.

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

a. **For Branch Office** — a profit making track record during the immediately preceding five financial years in the home country and net worth of not less than USD 100,000 or its equivalent.

Net Worth [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].

b. **For Liaison Office** — a profit making track record during the immediately preceding three financial years in the home country and net worth of not less than USD 50,000 or its equivalent.

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

## Procedure for applying

i. The application for establishing BO / LO/ PO in India may be submitted by the non-resident entity in Form FNC (Annex B) 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 mentioned in the Form and the LOC, wherever applicable. 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. The AD Category-I banks may frame appropriate policy for dealing with these applications in conformity with the FEMA Regulations and Directions.

ii. 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. 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.

iii. 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.

iv. There is a general permission to non-resident companies to establish POs in India, provided they have secured a contract from an Indian company to execute a project in India. Also, the project must have secured the necessary regulatory clearances; and is funded directly by inward remittance from abroad; or the project is funded by a bilateral or multilateral International Financing Agency, or 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.

v. An applicant that has received a 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.

vi. 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.

vii. 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.

viii. There is a general permission to non-resident companies for establishing BO in the Special Economic Zones (SEZs) to undertake manufacturing and service activities subject to the conditions that:

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

In the event of winding-up of business and for remittance of winding-up proceeds, the branch shall approach an AD Category – I bank with the documents as mentioned in para 10 under "Closure of Liaison / Branch Office".

## 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

- Funds received from Head Office through normal banking channels for meeting the expenses of the office.
- Refund of security deposits paid from LO's account or directly by the Head Office through normal banking channels.
- Refund of taxes, duties etc., received from tax authorities, paid from LO's bank account.
- 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 these Regulations.

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:  
In case of a sole BO/ LO/PO, by the BO/LO/PO concerned;

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 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, 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.

## Remittance of profit/surplus

i. BOs 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 AD Category-I bank through whom the remittance is effected:

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; and
- III. that the profit does not include any profit on revaluation of the assets of the branch.

ii. AD Category – I bank can permit intermittent remittances by POs pending winding up / completion of the project provided they are satisfied with the bonafides of the transaction, subject to the following:

a. The PO 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 PO 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.

## Closure of BO/LO/PO

i. 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.
- ii. 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.

### 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, if necessary. Also,

- i. 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.
- ii. A certificate is to be submitted from the Statutory Auditor furnishing details of assets to be transferred indicating their date of acquisition, original price, depreciation till date, present book value or written down value (WDV) value and sale consideration to be obtained. Statutory Auditor should also confirm that the assets were not re-valued after their initial acquisition. The sale consideration should not be more than the book value in each case.

- iii. 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. No revenue expenses such as lease hold improvements incurred by the BO/LO can be capitalised and transferred to JV/WOS.
- iv. AD Category-I bank must ensure payment of all applicable taxes while permitting transfer of assets.
- v. Credits to the bank accounts of BO/LO/PO on account of such transfer of assets will be treated as permissible credits.
- vi. 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 bonafides of the transaction.



## Guidance note for the AD Category-I bank

- i. 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.
- ii. 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.
- iii. The existing PAN and bank accounts can be continued when an LO is permitted to upgrade into a BO.
- iv. 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.
- v. 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.
- vi. 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.
- vii. 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.
- viii. 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.



- ix. 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.
- x. 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
- 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.
- xi. 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.

### Permitted activities for a branch office in India of a person resident outside India

Normally, the branch office should be engaged in the activity in which the parent company is engaged.

- 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

### Permitted activities for a liaison office in India of a person resident outside India

- 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

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We are prominent Chartered Accountants in India. We offer services of accounts outsourcing, auditing, company formation in India, Business taxation, corporate compliance, starting business in India, registration of foreign companies, transfer pricing, tax due diligence, taxation of expatriates etc.

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