

FOREIGN EXCHANGE MANAGEMENT ACT, 1999

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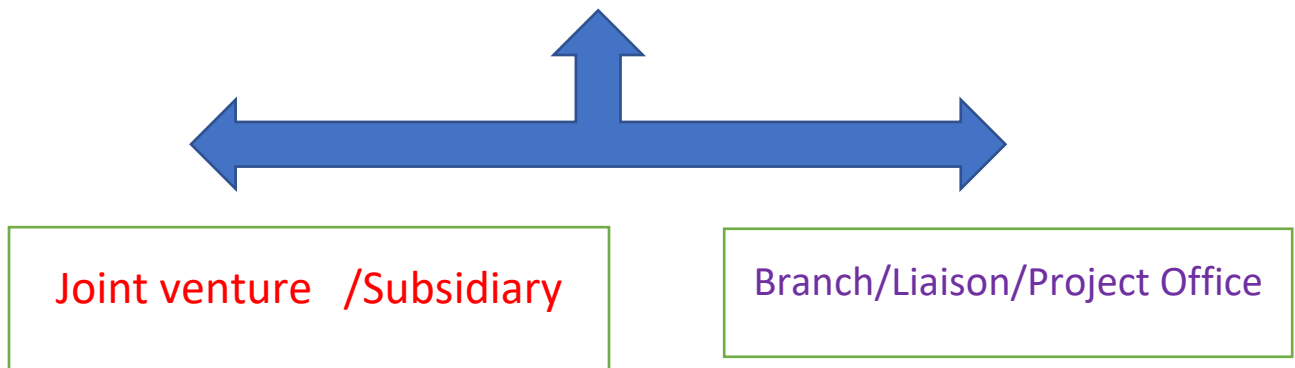
Establishment of Branch Office (BO) / Liaison Office (LO) / Project Office (PO)

or

any other place of business in India by foreign entities

FED Master Direction No.10/2015-16

Foreign entities' India entry



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

- 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 Island
- The applicant is a citizen of or is registered/incorporated in Pakistan

Exceptions

- In case of defense, Telecom, Private security and Information and Broadcasting permission from respective ministry
- Non-Government organization /Non-profit organization-FCRA

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Branch Office: Profit making track record immediately 5 years and net worth > \$100000

Liaison Office: Profit making track record immediately 3 years and net worth > \$50000

Other wise letter of comfort from parent entity

Project Office: General permission by RBI .Foreign entity should secured order from ICO , Project funding from inward remittance , bilateral or multilateral international funding , ICO's term loan / funding from PSU/Own PSU funding subject to RBI guidelines compliance by AD Category -I Banker

PROCEDURE, VALIDITY AND RENEWAL:

The nonresident applicant should apply to Authorised Dealer Category-1 Banker with all required documents in **form FNC**

Category	Validity	Renewal	Remark
Branch Office (BR)	unlimited	NA	AD should keep track
Liaison Office (LO)	3 years /for construction r NBFC 2 years	3 years and for NBFC etc. no renewal	For NBFC/ Construction more than 2 years convert in JV or subsidiary
Project Office (PO)	Tenure of project	NA	NA

- Validity of AD Bank approval 6 months +6months thereafter RBI permission if no set up made for BO/PO/LO

- Bank and Insurance co.'s branch set up permission of DOB and IRDA respectively required
- Branch office in SEZ can undertake manufacturing or services provided such sector is allowing 100% FDI, chapter XXII of companies Act, 2013 compliance i.e. foreign company's regulations and work on stand alone basis

- **Bank Operations:**

- LO only one bank, one account at a time
- LO credit in Bank account from Inward remittances only
- Annual Activity certificate to be submitted to AD banker and DGIT(International)
- Maximum 4 LO office (NSEW) permissible by AD, change in City address approval required, change within city only intimation

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- PO may have two accounts (1) in \$ denomination and, (2) Home currency
- Annual Activity certificate to be submitted to AD banker
- The bank accounts will not carry any interest at the most if temporary surplus amount available, can be put in FD for short term

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- Sole or multiple Branch office (BO) bank accounts can be maintained
- Annual Activity certificate to be submitted to AD banker and DGIT(International)
- Funding to BO can be possible subject to RBI regulation

- **Remittance of Profit /Surplus :**

In case of BO and PO profit /surplus can be remitted outside India by producing CA certificate and other documents at any stage with undertaking that the left out resources are sufficient to meet in future any tax or other liabilities

- **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.

The Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015

Branch or Representative office outside India by Resident in India

Regulation - 5, FEM (Foreign Currency Accounts By a Person Resident In India)

(B) Account by a company/firm in the name of its office/branch/representative outside India

A firm or a company or a body corporate registered or incorporated in India (hereinafter referred to as 'the Indian entity') may open, hold and maintain in the name of its office (trading or non-trading) or its branch set up outside India or its representative posted outside India, a foreign currency account with a bank outside India by making remittances from India for the purpose of normal business operations of the office/branch or representative;

Provided that—

- (a) the overseas branch/ office has been set up or representative is posted overseas for conducting normal business activities of the Indian entity;
- (b) the total remittances made under this sub-Regulation by the Indian entity, to all such accounts in an accounting year shall not exceed
 - (i) 15 per cent of the average annual sales/ income or turnover of the Indian entity during the last two financial years or up to 25 per cent of the net worth, whichever is higher, where the remittances are made to meet initial expenses of the branch or office or representative; and
 - (ii) 10 per cent of such average annual sales/ income or turnover during the last financial year where the remittances are made to meet recurring expenses of the branch or office or representative;

- (c) **the overseas branch/ office/ representative shall not enter in any contract or agreement in contravention of the Act, Rules or Regulations made thereunder;**
- (d) the account so opened, held or maintained shall be closed,
 - (i) if the overseas branch/ office is not set up within six months of opening the account, or
 - (ii) within one month of closure of the overseas branch/ office, or
 - (iii) where no representative is posted for six months,

and the balance held in the account shall be repatriated to India;

Provided further that the restriction contained in clause (b) of the first proviso shall not apply in a case where—

- (1) the remittances to the account maintained under this sub-Regulation are made out of funds held in EEFC account of the Indian entity, or
- (2) the overseas branch/office is set up or representative posted by a 100% Export Oriented Unit (EOU) or a unit in Export Processing Zone (EPZ) or in a Hardware Technology Park or in a Software Technology Park, within two years of establishment of the Unit.

Explanation: For the purpose of this sub-Regulation,

- (1) Purchase of acquisition of office equipment and other assets required for normal business operations of the overseas branch/ office/representative will not be deemed as a capital account transaction;
- (2) Transfer or acquisition of immovable property outside India, other than by way of lease not exceeding five years, by the overseas branch/office/representative will be subject to the Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015.

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