

ENTRY STRATEGY IN INDIA

FOR FOREIGN INVESTOR

Ways to Enter in India for Investment

There are following types of entry strategy in India for a foreign Investor:-

1. Holding/ Subsidiary
2. Joint Ventures
3. Branch Office
4. Technical Collaborations
5. Liaison Office
6. Project Office

Today, we will discuss only three aspects from the above mentioned aspects, i.e.,

- Branch Office
- Liaison Office
- Project Office

Today we would like to cover up the four aspects of the offices in the following manner:-

- I. Foreign Exchange Management Act
- II. Indian Income Tax Act, 1956
- III. Companies Act, 1956
- IV. Double Taxation Avoidance Agreement (for the sake of convenience we are taking Indo-UK Treaty Article-5)

Foreign Exchange Management Act

Prohibition against establishing Branch or Liaison Office in India

As per Provisions of FEMA,

“No person resident outside India shall, without prior approval of the Reserve Bank, establish in India a branch or a liaison office or any other place of business by whatever name called”.

“ No person, being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China, without prior permission of the Reserve Bank, shall establish in India, a branch or a liaison office or a project office or any other place of Business by whatever name called.

Branch or Liaison Office

(There are two ways to get a branch or liaison office setup in India)

Automatic Route

Approval Route

Automatic Route (Branch or liaison Office)

There is no need for any approval from RBI in following cases:

- Banking Company which has obtained necessary approval under the provisions of the Banking Regulation Act, 1949.
- Companies established in SEZs (Special Economic Zone).
- Insurance Companies.

Approval Route (Branch or liaison Office)

All other remaining investors has to follow the following way to get approval:-

◆ A person resident outside India desiring to establish in India, a branch office or a liaison office shall apply to the Reserve Bank, in Form FNC 1.

◆ This form is to be submitted with Chief General Manager, Exchange Control Department (Foreign Investment Division), RBI, Central Office, Mumbai 400001.

Documents Required to file FNC 1

Documents required to be submitted with
FNC 1:-

- English version of the certificate of Incorporation/ registration of Memorandum and articles of Association attested by Indian Embassy/ Notary Public in the country of registration.
- Latest Audited Balance Sheet of the applicant company/ firm.

Permitted Activities for a Branch 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 India and acting as buying/ selling agent in India.
- ❑ Rendering technical support to the products supplied by parent/ group companies.
- ❑ Foreign airline/ shipping company.

Remittance of Profit or Surplus of Branch

The remittance of profit of a branch to outside India, net of Indian taxes, is possible on production of following documents,-

☞ certified copy of the audited balance sheet and profit and loss account for the relevant year;

☞ 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

Permitted Activities for a Liaison Office in India of a Person resident Outside India

- ❑ Representing in India the parent company/ group companies.
- ❑ Promoting export/ import from/ to India.
- ❑ Promoting technical/ financial collaboration between parent/ group companies and companies in India.
- ❑ Acting as a communication channel between the parents company and Indian Companies.

Remittance at the Time of Winding Up

A person who desires to make a remittance of winding up proceeds of a Branch/ office (other than project office) in India of a person resident outside India:

Provided that the application is supported by the following documents, namely:

A. copy of the Reserve Bank's permission for establishing the branch/ office in India;

B. Auditor's certificate,-

- i. indicating the manner in which the remittable amount has been arrived 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 branch/office have been either fully met or adequately providing for;
- iii. confirmation that no income accruing from sources outside India (including proceeds of exports) has remained unrepatriated to India;

C. No-objection or tax clearance certificate from income-tax authority for the remittance; and

D. confirmation from the applicant that no legal proceedings in any court in India are pending and there is no legal impediment to the remittance.

Project Office

(There are two ways to get a Project office setup in India)

Automatic Route

Approval Route

Automatic Route (Project Office)

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

a. the project is funded directly by inward remittance from abroad; or

b. the project is funded by a bilateral or multilateral International Financing Agency; or

- c. the project has been cleared by an appropriate authority; or
- d. 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.

Approval Route (Project Office)

If a person resident outside India, does not falling in any of the category of automatic route, wants to setup a project office in India can apply to Chief General Manager, Exchange Control Department (Foreign Investment Division), Reserve Bank of India, Central Office, Mumbai-400001.

Furnish Report of Project Office

The Foreign Company shall furnish a report to the concerned Regional Office of Reserve Bank of India under whose jurisdiction the project office is set up, giving details as under:

- a) Name and address of the foreign company.
- b) Reference No. and date of letter awarding the contract referred to in clause (ii) of Regulation 5.

- c) Total amount of contract.
- d) Address and tenure of Project Office.
- e) Nature of Project undertaken.

Remittance of Profit or Surplus of the Project Office

The remittance of profit of a project office to outside India, net of Indian taxes, is possible on production of following documents,-

- ➡ certified copy of the final audited project accounts;
- ➡ a Chartered Accountant's certificate showing the manner of arriving at the remittable surplus;

☞ income-tax assessment order or either documentary evidence showing payment of income-tax and other applicable taxes, or a Chartered Accountant's certificate stating that sufficient funds have been set aside for meeting all Indian tax liabilities; and

☞ auditor's certificate stating that no statutory liabilities in respect of the Projects are outstanding.

