

LO in India – An Overview

(I) Introduction

A LO is in the nature of a representative office set up primarily to explore and understand the business and investment climate. A Liaison Office (LO) is not permitted to undertake any commercial /trading /industrial activity, directly or indirectly, and is required to maintain itself out of inward remittances received from parent company through normal banking channels. The LO is permitted to undertake following activities only:



- Representing the parent Company in India
- Promoting export/ import from/ to India
- Promoting technical / financial collaborations between the parent companies and companies in India
- Acting as a communication channel between the parent company and Indian companies

Any foreign company intending to open a LO in India is required to obtain prior approval from the RBI, the apex bank in India. Approval is usually granted for one to three years and can be renewed on expiry thereof.

(II) Suitability of a LO

The LO generally acts as a communication channel between the parent company overseas and its present or prospective customers in India. The LO can also be set up to establish business contacts or gather market intelligence to promote the products or services of the overseas parent company.

The LO cannot undertake any business activity in India nor earn any income in India.

At the time of closure of the LO, RBI grants permission to repatriate the balance in the Indian bank account to the parent company subject to fulfillment of prescribed conditions.

Developed by : Kamdar Desai & Patel, Chartered Accountants, Mumbai, India.

Since the LO is not permitted to earn any income, it should not constitute a taxable entity in India. However, the LO would be required to withhold tax from certain payments and hence is expected to comply with the requisite "tax withholding" obligations under the domestic tax law.

To open a LO, the parent company has to apply to the Reserve Bank of India and is normally granted permission within 6 to 8 weeks.

LO is subjected to few restrictions; some of them that deserve to be well understood are reproduced here:

- It cannot carry out any commercial operations in India.
- It must maintain a QA22C account with the bank. This is a special account that only allows inflows from abroad.
- It can neither borrow, nor lend money
- All expenses of the office must be met through inward remittances to the office from abroad (parent company) through the bank. It is not subject to taxation in India
- However, the office must file regular returns to the RBI. Such returns must include Audited Annual accounts and an activity report for the year.

(III) Conditions to be fulfilled –

As per recent circulars of RBI, a Foreign company wishing to set up a LO needs to fulfill following requirements:

Eligibility Criteria for Establishment of LO in India

Reserve Bank Route — Principal business of the foreign entity falls under sectors where 100 per cent foreign direct investment (FDI) is permissible under the automatic route.

Government Route — Principal business of the foreign entity falls under the sectors where 100 per cent FDI is not permissible under the automatic route. Applications from entities falling under this category are considered by the Reserve Bank, in consultation with the Government of India, Ministry of Finance.

Kindly let us know the proposed activities of the LO to enable us to advise you further on the available route for you in India.

- **Track Record** — a profit making track record during the immediately preceding three financial years in the home country.
- **Net Worth** — not less than USD 50,000 or its equivalent. [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].

Applicants that do not satisfy the eligibility criteria and are subsidiaries of other companies may submit a **Letter of Comfort** from their parent company as per [Annexure](#), subject to the condition that the parent company satisfies the eligibility criteria as prescribed.

(IV) Documents Required –

Following documents are required for applying to RBI for setting up the LO in India:

- 1) You need to choose a banker in India with whom you would bank once the LO is formed. It may be noted that the application for setting up is to be forwarded to RBI through this bankers.
- 2) **Application in Relevant Forms**, duly completed in all respects and signed by the authorized signatory of the foreign entity in the home country may be submitted along with the Letter of Comfort, wherever applicable, to the designated AD Category - I bank for onward transmission to the Reserve Bank, along with their comments and recommendations and the prescribed documents.
- 3) **Copy of the Certificate of Incorporation / Registration attested by the Notary Public in the country of registration**
[If the original Certificate is in a language other than in English, the same may be translated into English and notarized as above and cross verified/attested by the Indian Embassy/ Consulate in the home country].
- 4) **Latest Audited Balance sheet of the applicant company.**
[If the applicants' home country laws/regulations do not insist on auditing of accounts, an Account Statement certified by a Certified Public Accountant (CPA) or any Registered Accounts Practitioner by any name, clearly showing the net worth may be submitted]
- 5) **KYC i.e. Bankers' Report** from the applicant's banker in the host country / country of registration showing the number of years the applicant has had banking relations with that bank.

The Process entails following steps:-

- a) An application will be submitted to your banker as mentioned at Pt 1 above. They will scrutinise the proposal and forward the same to RBI. In case they have any queries, the same will be sorted out in consultation with KDP.
- b) RBI will scrutinise the papers and issue a letter giving permission for the LO. This permission is typically valid for a period of three years.
- c) We need to approach the bankers with a copy of this letter and relevant documents or opening of Bank account and on scrutiny of documents, bank account is established.
- d) We are expected to obtain following registrations –
 - 1) Permanent Account Number (PAN)
 - 2) Tax Account Number (TAN)
 - 3) Registration with House of Companies (locally called Registrar of Companies- ROC)
 - 4) Obtain Import Export Code (IEC) – This is not mandatory
- e) We are now ready to start operations in India.

For any further Questions that you may have, please feel free to contact following –

Ms Aftab Amalani – aftab@kdpaccountants.com

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Format of the Comfort Letter

The Chief General Manager-in-Charge,
Reserve Bank of India,
Foreign Exchange Department,
Foreign Investment Division,
Central Office, Fort,
Mumbai- 400001.

Dear Sir,

Sub: Application for establishment of LO in India by our subsidiary / group company, M/s_____

You may kindly refer to the application made by our subsidiary / group company, M/s_____to your office for establishing LO in India.

2. In this connection, we, _____(the parent company) undertake to provide the necessary financial support for our subsidiary / group company's operations as a LO in India. Any liability that may arise due to the functioning of the LO in India will be met by us (the parent company), in case of inability on part of the LO to do so.

3. We are also enclosing the financial background of our company in the form of our latest Audited Balance Sheet / Account Statement certified by a Certified Public Accountant.

Yours faithfully,
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Authorised Representative of the parent company