How to Establish a Liaison Office in India

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Prospective companies and investors looking to enter India must carefully consider their options for investment and available avenues for establishing a business presence.

Liaison offices (LOs) are a popular option for foreign investors exploring the Indian market for the first time, and unsure of how the country's liberalizing FDI caps will affect their business.

In contrast to other business structures, LOs allow foreign companies to establish a light footprint in India while keeping their financial, legal, and administrative commitments low.

Here, we outline the functions and requirements for liaison offices operating in India.

Setting up a liaison office in India

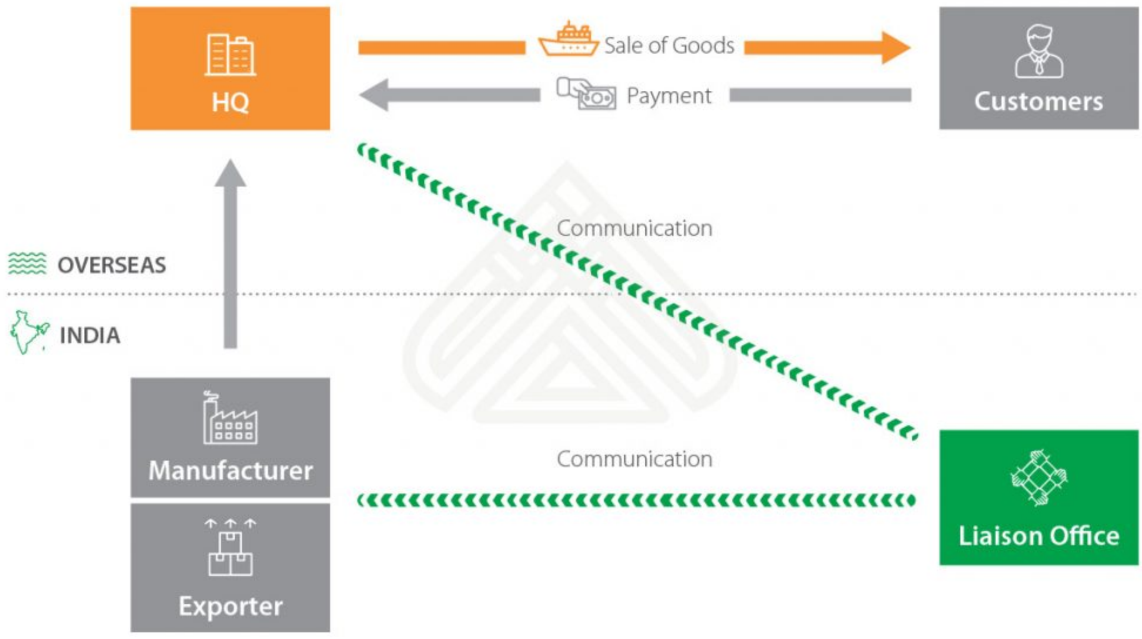
Foreign companies can open a liaison office in India to facilitate and promote the parent company's business activities, and act as a communications channel between the foreign parent company and Indian companies

Unable to engage in commercial, trading, or industrial activities, liaison offices must be sustained by private, inward remittances received from their foreign parent company.

A liaison office is permitted to engage in the following activities:

- Facilitate communication between the overseas head company and parties in India to establish market opportunities;
- Promote imports/exports between countries;
- Establish financial and technical cooperation between overseas and Indian companies; and
- Represent the overseas head company in India.

Liaison Office in India: Activities Allowed by RBI



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The Foreign Exchange Management Act (FEMA) governs the application and approval process for the establishment of a liaison or branch office in India.

Under the Act, foreign enterprises must receive specific approval from the Reserve Bank of India's (RBI) Foreign Exchange Department to operate a liaison office in the country.

Foreign insurance companies can establish LOs in India only after obtaining approval from the Insurance Regulatory and Development Authority (IRDA).

Foreign banks can establish LOs only after obtaining approval from the Department of Banking Regulation (DBR), RBI.

Applications are to be submitted through Form FNC Annex-1 (Application for Establishment of Branch/Liaison Office in India).

Identifying if the target sector is restrictive

The applications from these entities will be considered by the RBI under two approval routes:

- RBI route – Where principal business of the foreign entity falls under sectors where 100 percent FDI is permissible under the automatic route.
- Government route – Where principal business of the foreign entity falls under the sectors where 100 percent FDI is not permissible under the automatic route. Applications from entities falling under this category and those from non-government organizations are considered by the RBI in consultation with the Ministry of Finance, Government of India.

To clarify further – if the foreign entity is conducting business in the following sectors – defense, telecom, private security, and information and broadcasting – then no prior approval of the RBI is required if the government or concerned ministry has granted clearance.

If the LO applicant is a non-governmental/non-profit organization engaged in any of the activities under Foreign Contribution (Regulation) Act 2010 (FCRA), they will have to obtain a certificate of registration under the FCRA instead of seeking permission through FEMA.

Approval process

The approval process generally takes 40 days and permission to operate a liaison office is granted for a three-year period, which can be extended at a later date (maximum three year extension).

But, in the case of Non-Banking Finance Companies (NBFCs) and those entities engaged in construction and development sectors, the validity period is only two years, and no extension for these sectors (excluding infrastructure development companies) will be considered.

Once the validity period expires, the liaison office has to either close down or be converted into a joint venture/wholly owned subsidiary in conformity with the FDI policy.

An enterprise must also meet the following conditions before qualifying for the establishment of a liaison office:

- Must have a three-year record of profitable operations in the home country; and,
- Must have a minimum net worth of US$50,000 verified by the most recent audited balance sheet or account statement.

If a company does not meet these requirements, but is a subsidiary of a company that does, the parent company may submit a Letter of Comfort on the subsidiary's behalf, as per Annex-2.

To begin the process of setting up a liaison office, a company must submit a certificate of incorporation, Memorandum and Articles of Association (MOA and AOA), and a copy of the parent company's latest audited balance sheet

The liaison office must also obtain a Permanent Account Number (PAN) from the income tax department and a Unique Identification Number (UIN) from the RBI. The application for registration should be forwarded to the RBI by a designated AD Category – I Bank.

Within 30 days of establishment, the liaison office must register with the Registrar of Companies (RoC) by filing e-form FC-1 through the Ministry of Corporate Affair's online portal.

The following documents must also be provided:

- A notarized and apostilled copy of the liaison office charter or Memorandum and Articles of Association in English;
- Full address of the enterprise's principal place of operation outside of India;
- Name and address of the liaison office in India;
- List of directors; and
- Name and address of the company's official representative based in India (the person authorized to accept delivery of notices and documents served to the company).

Compliance requirements

Each year, the liaison office must file an Annual Activity Certificate (AAC), prepared by a chartered accountant, to the RBI verifying the office's activities are within its charter (Annex-3).

An AAC along with Form 49C should also be filed with the Directorate General of Income Tax within 60 days of the close of the financial year.

If an LO wants to open more than one bank account in India, it has to obtain prior permission of the RBI through its AD Category – I bank justifying the reason for the additional account.

An LO can also be upgraded into a branch office (BO) structure once its bank account is re-designated as a BO account. The entity will not require a new PAN.

Special approvals, registering with state police authorities

Prior approval of the RBI will be required only if applicants or companies from Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong, or Macau want to open a liaison office in Jammu and Kashmir, the North East region, and Andaman and Nicobar Islands.

Further, only applicants from Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong, Kong, Macau, and Pakistan have to register with the state police authorities.

A copy of the 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.

All other countries are exempted from registering with the state police authorities.

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This article was first published by India Briefing, which is produced by Dezan Shira & Associates. The firm assists foreign investors throughout Asia from offices across

the world, including in in China, Hong Kong, Vietnam, Singapore, India, and Russia. Readers may write info@dezshira.com for more support.