

# BRANCH OFFICE IN INDIA OF A FOREIGN ENTITY



PRE-REQUISITES FOR A FOREIGN  
COMPANY TO HAVE BRANCH OFFICE IN  
INDIA

LEGALLANDS LLP | OCTOBER 2020



# BRANCH OFFICE IN INDIA FORMALITIES

CRITERIA

TYPES OF BRANCH OFFICES

LEGAL FORMALITIES

PROCEDURE







# CRITERIA

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The following criteria are considered by the Reserve Bank while sanctioning Branch Offices of foreign entities :

- Profit making track record during the immediately preceding five financial years in the home country.
- Net Worth of not less than USD 100,000 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.

#Proprietary concerns set up abroad are not allowed to establish Branch Offices in India.





Legal forms in which a foreign company can set up its establishment in India are–

- Ø Branch Office
- Ø Liaison Office
- Ø Project Office
- Ø Corporate Entity which could be wholly or partly owned by the foreign company (FIPB route).
- Ø Joint Venture/Partnerships etc.







For Establishment of Branch office of foreign Company in India, we have to follow provisions of two Act:

1. Reserve Bank of India Act, 1934

2. Companies Act, 2013

# LEGAL FORMALITIES







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# PROCEDURE UNDER RBI

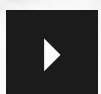
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# INTRODUCTION OF BRANCH OFFICE

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BRANCH office is setup by a foreign company in India to carry out the BRANCH activity for its business. The foreign company can have any revenue from the Indian Branch office only from the activity allowed by the Reserve Bank of India; It has to meet all its expenses of Indian office through remittances from the Head office or through the revenue generated from the Indian operation permitted by the Reserve Bank of India.

Foreign companies are allowed to set up a branch office in India. But unlike the case of setting up a company, a branch office requires an approval from the Reserve Bank of India (RBI). Only upon getting the branch license from RBI, the foreign company is allowed to commence the operations.

BRANCH office is suitable for a foreign company to test and understand the Indian market with a very strict control by the Reserve Bank of India, as it does allow the companies to do business but just to do the activity which are mentioned in the application of Branch office, Any additional activity to be carried by the Branch office shall be illegal.

Branch office can carry additional business activities only with the prior approval from the Reserve Bank of India (Procedure given below).



## PERMITTED ACTIVITY OF BRANCH OFFICE IN INDIA

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Companies incorporated outside India and engaged in manufacturing or trading activities are allowed to set up Branch Offices in India and undertake the following activities in 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 Information Technology and development of software in India.
- Rendering technical support to the products supplied by parent/group companies.
- Foreign Airline/shipping Company.

## PROHIBITED ACTIVITIES BY THE BRANCH

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Companies incorporated outside India prohibited doing following activities through branch office in India:

- Retail trading activities of any nature is not allowed for a branch Office in India
- A Branch Office is not allowed to carry out manufacturing or processing activities in India, directly or indirectly.
- Profits earned by the Branch Offices are freely remittable from India subject to payment of applicable taxes.





# PROCEDURE BY WHICH BRANCH OFFICES ARE PERMITTED TO REMIT PROFIT OUTSIDE INDIA

BRANCH OFFICES 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 AUTHORIZED DEALER THROUGH WHOM THE REMITTANCE IS AFFECTED:

1. Certified copy of the audited Balance Sheet and Profit and Loss account for the Relevant year;
2. A Chartered Accountant's certificate certifying–
  - a) The manner of arriving at the remittable profit
  - b) That the entire remittable profit has been earned by undertaking the permitted activities
  - c) That the profit does not include any profit on revaluation of the assets of the branch
  - undertaking the permitted activities
  - the permitted activities





# PROCEDURES FOR SETTING UP A BRANCH OFFICE IN INDIA BY A FOREIGN COMPANY



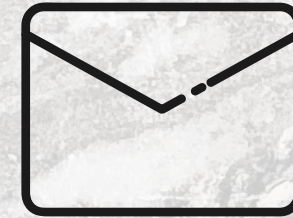
- the permitted activities
- 1. **Approval from RBI**– Permission for setting up branch offices is granted by the Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai (note – Not by the RBI offices in respective state capitals);
- 2. **Track Record of the company** –Reserve Bank of India considers the track record of the applicant company, the activity of the company proposing to set up office in India as well as the financial position of the company while scrutinizing the application. (note – for setting up a company, there is no criteria of checking the track record or financial position of the parent company).
- 3. The applications from such entities in Form FNC (Annex-1) will be considered by Reserve Bank under two routes: The application in the prescribed form (Form FNC) should be submitted to the RBI through the :–
  - a) Reserve Bank Route– where principal business of the foreign entity falls under sectors where 100 per cent Foreign Direct Investment (FDI) is permissible under the automatic route
  - b) Government Route– where 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 and those from Non – Government Organizations / Non – Profit Organizations / Government Bodies / Departments are considered by the Reserve Bank in consultation with the Ministry of Finance, Government of India.







**For inquiries and  
concerns**



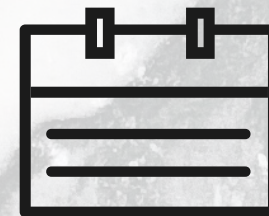
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