

Foreign companies planning to open a branch in India are required to seek approval from Reserve Bank of India "RBI" for setting up their Branch Office. Foreign company has to make application to RBI in Form FNC through the Authorized Dealer Bank. The applications for Branch Office approval are considered by the RBI under two routes- Automatic Route or Government Route considering the following

1. Track Record - a profit making track record during the immediately preceding five financial years in the home country
2. Net Worth - 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]

Permission to set up Branch Office is initially granted for a period of 3 years, which may be extended from time to time by the Authorized Dealer in whose jurisdiction the office is set up.

DOCUMENTS REQUIRED FOR BRANCH OFFICE APPROVAL

Following documents are required from the foreign company for obtaining approval from RBI.

1. 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].
2. 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]
3. 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.

PERMITTED ACTIVITIES OF BRANCH OFFICES IN INDIA

A branch office is not allowed to carry out manufacturing activities on its own but is permitted to subcontract these to an Indian manufacturer. The activities permitted for Branch Office as under:

- a) Export / Import of goods.
- b) Rendering professional or consultancy services
- c) Carrying out research work in which the parent company is engaged
- d) Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- e) Representing the parent company in India and acting as buying / selling agent in India
- f) Rendering services in IT & development of software in India
- g) Rendering technical support to the products supplied by parent company
- h) Foreign airline / shipping company.

The Branch Office should be engaged in the activity in which the parent company is engaged.

Note

- *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.*

GENERAL TERMS AND CONDITION

1. Partnership / Proprietary concerns set up abroad are not allowed to establish Branch Offices in India.
2. Branch Offices of a foreign entity, are permitted to acquire property for their own use and to carry out permitted / incidental activities but not for leasing or renting out the property.
3. Branch Offices are allowed to open non-interest bearing INR current accounts in India and keep funds as deposits for a maximum period of 6 months.

4. Transfer of assets of Branch Office to subsidiaries or other Branch Offices is allowed with specific approval of the Central Office of the Reserve Bank.

REMITTANCE OF PROFIT BY BRANCH OFFICE

Branch Offices established with the approval of RBI may remit outside India profit of the branch, net of applicable Indian taxes and on production of the following documents to the satisfaction of the Bank through whom the remittance is made.

1. A Certified copy of the audited Balance Sheet and Profit and Loss account for the relevant year;
2. A Chartered Accountant's certificate.

FILING WITH MINISTRY OF CORPORATE AFFAIRS

1. Immediate Filing

After the establishment of Branch office in India foreign companies shall within 30 days file following with MCA through Form FC-1

- a) a certified copy of the charter, statutes or memorandum & articles of the company or other instrument constituting the constitution of the company (in English language).
- b) the full address of the registered office of the company
- c) a list of the directors & secretary of the company (complete details)
- d) the name & address of one or more persons resident in India, authorized to accept on behalf of the company service of process and any notices or other documents for the company.
- e) the full address of the office of the company in India which is to be deemed to be the principal base in India.
- f) particulars of opening and closing of a place of business in India on earlier occasion(s).

- g) declaration that none of the directors of the company or the authorized representative in India has ever convicted or debarred from formation of companies and management in india or abroad.
- h) Reserve Bank of India Approval letter.
- i) Power of Attorney or Board Resolution in favor of the authorized representative(s)

2. Annual Filing

Foreign companies having branch office in India shall, in each calendar year are required to make certain filings with regard to accounts (including its subsidiaries) MCA as per company laws.

ESTIMATED TIME FOR RBI APPROVAL FOR SETTING UP BRANCH OFFICE

The indicative time line is 3 to 4 week. However, from case to case basis it may take more time as well.

TAX RATE

For Income tax purposes, a Branch Office is treated as an extension of the foreign company in India and is taxed at the rate applicable to foreign companies. The present tax rate for applicable on Branch Office is 41.20 % (including Education Cess and Secondary Higher Education Cess and excluding surcharge).

ASSISTANCE BY INDIA JURIS

India Juris is highly enriched in providing seamless end to end legal services in establishing Branch Office and obtaining all the statutory registrations required for operating in India.

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