

# COMPARATIVE ANALYSIS

## LO-BO-PO-CO



**B D Jokhakar & Co.** Chartered Accountants  
*June 2020*

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**Comparative analysis of liaison, branch, project offices and companies:**

	<b>Liaison Office (LO)</b>	<b>Branch Office (BO)</b>	<b>Project Office (PO)</b>	<b>Company</b>
<b>Meaning</b>	'Liaison Office' means a place of business to act as a channel of communication between the Principal place of business or head office by whatever name called and entities in India but which does not undertake any commercial/ trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel.	Branch Office' in relation to a company means- a) any establishment described as a branch by the company, or b) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company, or c) any establishment engaged in any production, processing or manufacture, but does not include any establishment specified in any order made by the Central Government.	'Project Office' means a place of business to represent the interests of the foreign company executing a project in India but excludes a Liaison Office.	An incorporated entity formed and registered under the Companies Act, 2013. It is a distinct legal entity.

	Liaison Office (LO)	Branch Office (BO)	Project Office (PO)	Company
<b>Permitted Activities</b>	<p>i) Representing in India the parent company/group company.</p> <p>ii) Promoting export import from/to India.</p> <p>iii) Promoting technical/financial collaboration between parent/group companies and companies in India.</p> <p>iv) Acting as a communication channel between the parent company and Indian companies.</p>	<p>i) Export/Import of goods.</p> <p>ii) Rendering professional or consultancy services.</p> <p>iii) Carrying out research work, in which the parent company is engaged.</p> <p>iv) Promoting technical or financial collaborations between Indian companies and parent or overseas group company.</p> <p>v) Representing the parent company in India and acting as buying/selling agent in India.</p> <p>vi) Rendering services in Information Technology and development of software in India.</p> <p>vii) Rendering technical support to the products supplied by parent/group companies.</p> <p>viii) Representing foreign airline/shipping Company.</p>	<p>A foreign Company may be permitted to open a Project Office/s in India provided it has secured from an Indian company, a contract to execute a project in India. Project Office shall not undertake or carry on any other activity other than the activity relating and incidental to execution of the project.</p>	<p>As per its 'main objects' stipulated in the Memorandum &amp; Articles of Association. However, under the foreign direct investment ("FDI") policy of the Government of India foreign investment in the following industries are prohibited:</p> <ol style="list-style-type: none"> <li>1. Retail trading (except single brand product retailing)</li> <li>2. Atomic Energy</li> <li>3. Lottery business</li> <li>4. Gambling &amp; Betting</li> <li>5. Agriculture (excluding Floriculture, Horticulture, Development of seeds, Animal Husbandry, Pisciculture and Cultivation of vegetables, mushrooms etc. under controlled conditions and services related to agro and allied sectors) and Plantations (Other than Tea</li> </ol>

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<i>Permitted Activities</i>				<p>plantations).  However, in the following activities the foreign investor shall require prior government approval:</p> <p>Proposals in which the foreign collaborator has an existing financial/ technical/ trademark arrangement in the 'same field' as per Press Note 1 of 2005 Series read with Press Note 3 of 2005 Series.</p> <p>Proposals where more than 24% foreign equity is proposed to be inducted for manufacture of items reserve for the Small Scale Sector.</p>

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<b>Permitted Incomes</b>	Only receipt of inward remittance from the Principal / Head Office through normal banking channels.	The entire expenses of the Branch Office in India will be met either out of the funds received from abroad through normal banking channels or through income generated by it in India.	Only receipt of inward remittance from the Principal / Head Office through normal banking channels.	All income arising out of its business activities.
<b>Remittance of profit/surplus</b>	None, except upon closure of the liaison office.	ABO in India may remit outside India the profit of the branch net of applicable Indian taxes, on production of the following documents to the satisfaction of the AD Category-I Bank, and establishing the net profit or surplus, as the case may be, to the satisfaction of the authorized dealer through whom the remittance is affected. <ul style="list-style-type: none"> <li>a. certified copy of the audited balance sheet and</li> <li>b. profit and loss account for the relevant year;</li> <li>c. A Chartered Accountant's certificate certifying, - the manner of arriving at the remittable profit, that the entire remittable profit has been</li> </ul>	AD Category – I bank can permit intermittent remittances by POs pending winding up / completion of the project provided they are satisfied with the bonafides of the transaction, subject to the following: <ul style="list-style-type: none"> <li>1. Submits an Auditors / Chartered Accountants Certificate to the effect that sufficient provisions have been made to meet the liabilities in India including Income Tax, etc.</li> <li>2. An undertaking from the PO that the remittance will not, in any way, affect the completion of the project in India and that any shortfall of funds for meeting any</li> </ul>	<ul style="list-style-type: none"> <li>1. Dividends</li> <li>2. Royalties</li> <li>3. Fees towards technology knowhow</li> <li>4. Remittances under Supply Contracts (subject to limitation of matters of 'Related Party transactions')</li> </ul>

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		earned by undertaking the permitted activities, and that the profit does not include any profit on revaluation of the assets of the branch.	liability in India will be met by inward remittance from abroad.	
<i>Indian Income tax</i>	<p>Since a liaison office is not meant to earn any income in India, it is generally not liable to pay any Income tax.</p> <p>Where an LO becomes a Permanent Establishment in India, it will be taxed as a foreign entity at the rate of 40%. (Plus surcharge and health and education cess as applicable).</p>	Since a branch office of a foreign company is taxed as a foreign company in India @ 40%. It is required to file a tax return in India (Plus surcharge and health and education cess as applicable).		<p>Any Indian company is taxed @ 25 % for companies having a turnover less than 400 crores and 30% for companies having a turnover of over 400 crores (Plus surcharge and health and education cess as may be applicable)</p> <p>In addition to the above from FY 2019-20: -</p> <p>The tax rate under the new regime u/s 115BAB will be 15% available only for the new manufacturing companies that are incorporated in India on or after 1st October, 2019 but on or before 31st March, 2023.</p>
<i>Indian Income tax</i>				

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				<p>Whereas the tax rate u/s 115BAA will be 25.17% (inclusive of surcharge &amp; cess). But at the same time the company has to give up so many exemptions, incentives &amp; deductions which they are right now availing.</p> <p>Companies opting for Effective tax rate u/s 115BAA or 115BAB cannot opt for Minimum Alternate Tax, currently charged at 15% (plus surcharge and cess).</p> <p>It is required to file a tax return in India.</p>
<b>Required Track Record</b>	A profit-making track record during the immediately preceding three financial years in the home country and net worth* of not less than USD 50,000 or its equivalent.	A profit-making track record during the immediately preceding five financial years in the home country and net worth* of not less than USD 100,000 or its equivalent.	NA	No Such requirement

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<b>Opening a Bank Account</b>	An LO may approach the designated AD Category I Bank in India to open an account to receive remittances from its Head Office outside India. It may be noted that an LO shall not maintain more than one bank account at any given time without the prior permission of Reserve Bank of India.	A BO may approach any AD Category-I Bank in India to open an account for its operations in India. Credits to the account should represent the funds received from Head Office through normal banking channels for meeting the expenses of the office and any legitimate receivables arising in the process of its business operations. Debits to this account shall be for the expenses incurred by the BO and towards remittance of profit/winding up proceeds.	AD Category-I Bank account can open a non-interest bearing foreign currency account  Foreign currency account needs to be closed at the completion of the project.  Each PO can open accounts, one denominated by USD and other in the home currency.	
<b>Annual Activity Certificate (AAC)</b>	Submitted by the LO itself at the end of the year (as on 31 <sup>st</sup> March) bank; In case of a multiple LOs a combined AAC needs to be submitted to the designated AD Category-I and the director general of the Income Tax (International Taxation).	Submitted by the BO itself at the end of the year (as on 31 <sup>st</sup> March) bank; In case of a multiple BOs a combined AAC needs to be submitted to the designated AD Category-I and the director general of the Income Tax (International Taxation).	A PO needs to submit an AAC only to the designated AD Category-I bank.	The Company shall file their annual returns every year in form MGT-7.

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	<b>Liaison Office (LO)</b>	<b>Branch Office (BO)</b>	<b>Project Office (PO)</b>	<b>Company</b>
<i>Validity period</i>	The validity period of an LO is generally for three years, except in the case of Non-Banking Finance Companies (NBFCs) and those entities engaged in construction and development sectors, for whom the validity period is two years only.	No such validity.	The validity period of the project office is for the tenure of the project.	No such validity.
<i>Establishing companies in a SEZ</i>		There is a general permission to non-resident companies for establishing BO in the Special Economic Zones (SEZs) to undertake manufacturing and service activities subject to the conditions that: <ul style="list-style-type: none"> <li>a. Such BOs are functioning in those sectors where 100% FDI is permitted;</li> <li>b. Such BOs comply with Chapter XXII of the Companies Act, 2013 and</li> <li>c. Such BOs function on a stand-alone basis</li> </ul>		No restriction for starting a company in SEZ.

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<b>Additional Offices</b>	For establishing additional LOs a fresh FNC Form should be submitted; however, it need not be submitted if there are no changes at all (If the number of offices exceed 4, they need prior permission from RBI).	For establishing additional LOs a fresh FNC Form should be submitted; however, it need not be submitted if there are no changes at all (If the number of offices exceed 4, they need prior permission from RBI).		
<b>Acquisition of property</b>	No property can be purchased/acquired. If the foreign company has established a Liaison Office in India, it cannot acquire immovable property.	The BO 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.	The PO 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.	No Such restriction.
<b>Additional requirements / Restrictions</b>	<ul style="list-style-type: none"> <li>• LO can be upgraded to BO under AD approval if overseas entity is eligible to open the BO under the advice of Reserve Bank.</li> <li>• The existing PAN and bank accounts can be continued when an LO is permitted to upgrade into a BO provided the bank account is re-</li> </ul>	<ul style="list-style-type: none"> <li>• A subsidiary of Indian company abroad cannot open a BO in India</li> <li>• A BO cannot open a Foreign Currency account for doing normal business transactions.</li> <li>• Letter of Credit (LC) can be opened for BO in India for export/import of goods.</li> <li>• A BO is required to register with the Registrar of Companies (ROCs) once it establishes a place of business in India if such registration is required under the Companies Act, 2013.</li> </ul>	<ul style="list-style-type: none"> <li>• Local Letter of Credit (LC) can be opened by PO for purchase of goods locally in India (local purchase of goods to execute a project).</li> <li>• There is no specific requirement for AD Banks to obtain UIN from RBI for PO.</li> </ul>	No Such restriction.

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	<p>designated as a BO account.</p> <ul style="list-style-type: none"> <li>• Change in the Top Management or CEO/MD/CMD etc. of the LO does not require prior approval from the Reserve Bank/AD Category-I bank. However, AD Category-I bank should be intimated about the same.</li> </ul>			

\* Net Worth [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 called.

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