

# Article

## Business Strategies for Foreign Investor to start business in India

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## *Article*

### **Introduction**

Indian Government has always made initiatives to allow Foreign Direct Investment (FDI) in India. These initiatives are accompanied by various options given to the foreign investors along with the compliance to invest in India. India being a liberal country, here the option to invest is just not limited to one or two. There has been a series of activities through which a foreign investor can invest in India.

#### As an Indian Company

- Joint Ventures
- Wholly Owned Subsidiaries

#### As Foreign Company

Foreign Companies can set up their operations in India through:

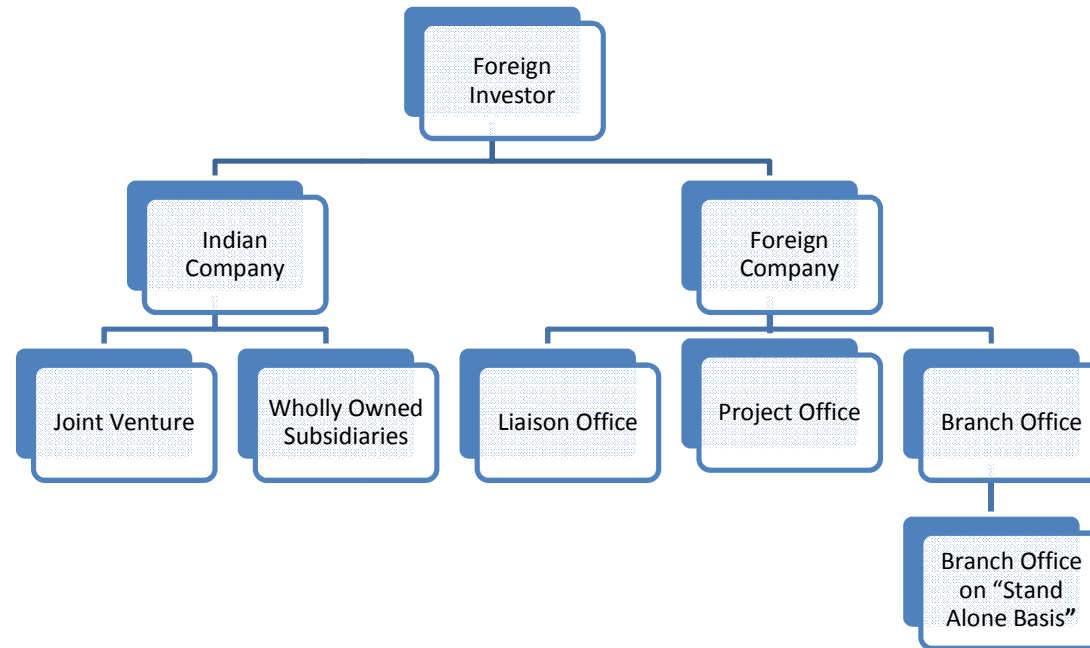
- Liaison Office/Representative Office
- Project Office
- Branch Office
  - Branch Office on “Stand Alone Basis”

All these four options are independent however to some extent they are interrelated as well. Having said this, the interrelation tends to confuse the investor. We shall therefore discuss about the difference between them.



## Article

**A FOREIGN COMPANY PLANNING TO SET UP BUSINESS OPERATIONS IN INDIA HAS THE FOLLOWING OPTIONS:**



Such offices BO/LO/PO can undertake any permitted activities. Companies have to register themselves with Registrar of Companies (ROC) within 30 days of setting up a place of business in India.



## Article

### Comparative Study of Wholly Owned Subsidiaries (WOS), Liaison Office (LO), Project Office (PO) & Branch Office (BO)

Features	WOS	LO	PO	BO
<b>Meaning</b>	<p>An incorporated entity formed and registered under the Companies Act, 1956. It is a distinct legal entity, apart from its shareholders. However the shareholder of such a company would be a non resident.</p> <p>Eg: ABC Pvt Ltd is 100% owned by XYZ Inc, registered in USA. Then ABC become the WOS of XYZ Inc</p>	<p>A LO can undertake only liaison activities. It can act as a channel of communication between Head Office abroad and parties in India. It is not allowed to undertake any business activity in India and cannot earn any income in India. The role of such offices is, therefore, limited to collecting information about possible market opportunities and providing information about the company and its products to the prospective Indian customers</p>	<p>Reserve Bank has granted general permission to foreign companies to establish Project Offices in India, provided they have secured a contract from an Indian company to execute a project in India</p>	<p>Companies incorporated outside India and engaged in manufacturing or trading activities are allowed to set up Branch Offices in India with specific approval of the Reserve Bank</p>
<b>Legal Status</b>	<ol style="list-style-type: none"> <li>Company form of organization.</li> <li>Separate legal entity.</li> </ol>	<ol style="list-style-type: none"> <li>An extension of the Head Office only for Liaison work.</li> <li>No separate legal status of its own.</li> </ol>	<ol style="list-style-type: none"> <li>An extension of the Head Office only for a particular project.</li> <li>No separate legal status of its own.</li> </ol>	<ol style="list-style-type: none"> <li>An extension of the Head Office with right to accrue income in India.</li> <li>No separate legal status of its own.</li> </ol>
<b>Approval Authorities</b>	Under Foreign Exchange Management Act, 1999 (FEMA) Guidelines subjected to the approval of RBI.	Under Foreign Exchange Management Act, 1999 (FEMA) Guidelines subjected to the approval of RBI	Under Foreign Exchange Management Act, 1999 (FEMA) Guidelines subjected to the approval of RBI	Under Foreign Exchange Management Act, 1999 (FEMA) Guidelines subjected to the approval of RBI
<b>Regulatory</b>	1. FEMA.	1. FEMA.	1. FEMA.	1. FEMA.



## Article

Features	WOS	LO	PO	BO
<b>Authorities</b>	2.Companies Act, 1956 3. Income Tax Act, 1961	2. Income Tax Act, 1961	2. Income Tax Act, 1961	2. Income Tax Act, 1961
<b>Criteria for set up</b>	1. A private company is required to be incorporated with a minimum Authorised & paid up capital of Rupees 100,000 and minimum two subscribers. 2. No requirement of track record of parent company as shareholder.	1. A profit making track record during the immediately preceding three financial years in the home country. 2. 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] is not less than USD 50,000 or its equivalent.	1. Opening of Foreign Currency Account, Each Project Office can open two Foreign Currency Accounts, usually one denominated in USD and other in home currency, provided both are maintained with the same AD category-I bank. 2. Apart from the opening of the Bank Account and below given permissible activities, for establishment of a PO there is no requirement of Track Record or Minimum Net worth	1. A profit making track record during the immediately preceding five financial years in the home country. 2. 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] is not less than USD 100,000 or its equivalent.
<b>Activities Permitted</b>	As per its 'main objects' stipulated in the Memorandum of Association subject to Indian regulations .	1. Representing in India the parent company / group companies. 2. Promoting export / import from / to India. 3. Promoting technical / financial collaborations between parent/group companies and companies in India. 4. Acting as a communication channel between the parent company and Indian	1. The project is funded directly by inward remittance from abroad; or 2. The project is funded by a bilateral or multilateral International Financing Agency; or 3. The project has been cleared by an appropriate authority; or 4. A company or entity in India awarding the contract has been granted Term Loan by a Public Financial	1. Export / Import of goods. 2. Rendering professional or consultancy services. 3. Carrying out research work, in areas in which the parent company is engaged. Promoting technical or financial collaborations between Indian companies and parent or overseas group company. 4. Representing the parent company in India and acting as buying / selling agent in



## Article

Features	WOS	LO	PO	BO
		companies.	Institution or a bank in India for the project. 5. However, if the above criteria are not met, the foreign entity has to approach the Reserve Bank of India, Central Office, for approval.	India. 5. Rendering services in information technology and development of software in India. 6. Rendering technical support to the products supplied by parent/group companies. 7. Foreign airline / shipping company
<b>Activities permitted</b>	<b>not</b>	1. Retail Trading (except single brand product retailing) 2. Lottery Business including Government /private lottery, online lotteries, etc. 3. Gambling and Betting including casinos etc. 4. Business of Chit funds 5. Nidhi company 6. Trading in Transferable Development Rights (TDRs) 7. Real Estate Business or Construction of Farm Houses 8. Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes 9. Activities / sectors not open to private sector	The Liaison Office cannot undertake any business activity in India nor can it generate any income in India without the approval of RBI.	The Project Office cannot undertake any business activity in India nor can it generate any income in India without the approval of RBI.
				1. Retail trading activities of any nature is not allowed for a Branch Office in India. 2. A Branch Office is not allowed to carry out manufacturing or processing activities in India, directly or indirectly.



## Article

Features	WOS	LO	PO	BO
	investment e.g. Atomic Energy 10. Railway Transport (other than Mass Rapid Transport Systems).			
<b>Time limit of Approval</b>	Until the company decides to close down	3 years		3 years
<b>Basic Registration</b>	The following registrations /approvals will be required: 1. PAN / TAN 2. Service Tax 3. Professional Tax 4. Shops and Establishment Act Registration 5. Importer Export Code 6. VAT	The following registrations/ approvals will be required: 1. Professional Tax 2. Shops and Establishment Act Registration 3. PAN / TAN 4. ROC Registration 5. Import Export Code		The following registrations/ approvals will be required: 1. PAN / TAN 2. Service Tax 3. Professional Tax 4. Shops and Establishment Act Registration 5. Importer Export Code 6. VAT 7. ROC Registration
<b>Liabilities of parent company/Head office</b>	The liability of the Parent company is limited to the extent of its shareholding in the WOS. The assets of the foreign company are not subject to any attachments	Parent company's liability is unlimited for all acts and omission of LO	Parent company's liability is unlimited for all acts and omission of PO	The liability of the Branch is unlimited. The assets of the parent company are at risk of attachment in case the liabilities of the branch exceeds its assets
<b>Expenses</b>	All income arising out of its business activities.	Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the Head Office outside India	The permissible debits to the account shall be payment of project related expenditure and credits shall be foreign currency receipts from the Project Sanctioning Authority, and remittances from parent /group company abroad or bilateral/ multilateral	The entire expenses of the BO in India will be met either out of the funds received from Head Office through normal banking channels or through income generated by it in India.



## Article

Features	WOS	LO	PO	BO
			international financing agency.	
<b>Management</b>	Directors of the Company	Authorised Representative, resident in India	Authorised Representative, resident in India	Authorised Representative, resident in India
<b>Statutory Audit</b>	Financials would be liable to Statutory Audit by a CA	Financials would be liable to Statutory Audit by a CA	Financials would be liable to Statutory Audit by a CA	Financials would be liable to Statutory Audit by a CA
<b>Internal Audit</b>	Applicable, subject to conditions Paid up capital + free reserves exceeding Rs.5 million or Average turnover during the past 3 years exceeding Rs. 5 million	Not Applicable	Not Applicable	Not Applicable
<b>Transfer Pricing</b>	Applicable	Not Applicable	Applicable	Applicable
<b>Meeting</b>	Board of Directors need to meet once in every 3 months and the gap between 2 meeting shouldn't be more than 4 months	Not Applicable	Not Applicable	Not Applicable
<b>Initial Reporting</b>	To RBI under FDI Regulation	Reporting within five working days of the LO becoming functional to the Director General of Police (DGP) in the prescribed form <sup>1</sup>	1. Same as LO 2. A Report shall be forwarded through the AD branch to the Regional Office concerned of the Reserve Bank of India within 2 months of establishment of the Project Office (with primary details of the Foreign entity)	Same as LO

<sup>1</sup> [http://rbidocs.rbi.org.in/rdocs/content/pdfs/ANX25092012\\_A.pdf](http://rbidocs.rbi.org.in/rdocs/content/pdfs/ANX25092012_A.pdf)





## Article

Features	WOS	LO	PO	BO
<b>Annual Filing</b>	<ol style="list-style-type: none"> <li>1. All the filing with ROC are required to be done as if it is an Indian company.</li> <li>2. Compliance Certificate.</li> <li>3. Annual Compliance with Reserve Bank of India in case share are allotted to foreign Individual (Form FC-GPR Part A &amp; Part B)</li> <li>4. Annual return with the Income Tax Department</li> <li>5. Filing of Quarterly TDS returns</li> <li>6. Filing of monthly Service Tax returns</li> <li>7. Filing of VAT Returns</li> </ol>	LO have to file Annual Activity Certificates (AAC) <sup>2</sup> from CA, at the end of March 31, along with the audited Balance Sheet on or before September 30 of that year, and a copy to the Directorate General of Income Tax (International Taxation), New Delhi along with the audited financial statements including receipt and payment account.	<ol style="list-style-type: none"> <li>1. The PO shall also submit to the AD branch on an annual basis, a Certificate from a CA showing the Project Status and certifying that the accounts of the PO has been audited and the activities undertaken are in conformity with the General / Specific permission given by the Reserve Bank.</li> <li>2. Same as LO</li> </ol>	Same as LO
<b>Borrowing</b>	<ol style="list-style-type: none"> <li>1. There is no restriction on local borrowing.</li> <li>2. External Commercial Borrowings are subject to guidelines issued by the RBI</li> </ol>	Not allowed	Not allowed	The BO is not allowed to borrow locally unless the prior approval of RBI is taken
<b>Remittance of Profit to Parent company</b>	Any Time	Only at the time of Winding up	Only at the time of Winding up	Any Time
<b>Compliance for Remittance</b>	<ol style="list-style-type: none"> <li>1. By way of Dividend subject to Dividend Distribution Tax</li> <li>2. By way of Royalty/ fees for technical services</li> <li>3. By way of Management Fees</li> <li>4. Related party</li> </ol>	After receiving the copy of the letter granting approval by the Reserve Bank	<ol style="list-style-type: none"> <li>1. AD bank can permit intermittent remittances by PO pending winding up / completion of the project provided they are satisfy the following:               <ol style="list-style-type: none"> <li>i) The PO submits an</li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>1. Profits can be freely repatriated to the Parent Company subject to payment of applicable taxes.</li> <li>2. in case of winding up after receiving the copy of the letter granting approval</li> </ol>

<sup>2</sup> [http://www.rbi.org.in/Scripts/bs\\_viewcontent.aspx?Id=1284#annex](http://www.rbi.org.in/Scripts/bs_viewcontent.aspx?Id=1284#annex)



## Article

Features	WOS	LO	PO	BO
	transactions are subject to Transfer pricing Regulations		Auditors/ CA' Certificate to the effect that sufficient provisions have been made to meet the liabilities in India including Income Tax, etc. ii) 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 liability in India will be met by inward remittance from abroad.	by the Reserve Bank
<b>Income Tax</b>	Any Indian company is taxed at 30.90% or 33.99% (if the income is above 1 cr) per annum as Corporate Tax	1. Only for income generated through Indian operations same taxation provision shall apply as in case of a BO. 2. in any other case no tax is applicable	1. Only for income generated through Indian operations same taxation provision shall apply as in case of a BO. 2. in any other case no tax is applicable	1. As per section 9(1)(i) of the Indian Income Tax Act, 1961 ("ITA"), the business profits of a foreign company could be subject to tax in India at the rate of 41.2% or 42.23%(if the income is above 1 cr) per annum, if there exists a "business connection" of the foreign company in India, to which such profits are attributable. 2. However, as per section 90(2), if there exists a double taxation avoidance agreement ("Treaty")



## Article

Features	WOS	LO	PO	BO
				between India and the country in which the foreign company is resident, the provisions of the ITA would only apply to the extent that they are more beneficial to the taxpayer.
<b>Payment of Dividend to Parent</b>	Dividend can be paid after payment of Dividend Distribution Tax @ 16.995%	Cannot pay Dividend	Cannot pay Dividend	Dividend paid to Parent is tax free
<b>Closure</b>	As per the Companies Act.	<p>At the time of winding up of LO/PO/BO the company has to approach the designated AD bank with the following documents:</p> <p>(a) Copy of the Reserve Bank's permission/ approval from the sectoral regulator(s) for establishing the BO / LO/PO</p> <p>(b) Auditor's certificate- i) indicating the manner in which the remittable amount has been arrived at and supported by a statement of assets and liabilities of the applicant, and indicating the manner of disposal of assets; ii) confirming that all liabilities in India including arrears of gratuity and other benefits to employees, etc., of the Office have been either fully met or adequately provided for; and iii) confirming that no income accruing from sources outside India (including proceeds of exports) has remained un-repatriated to India.</p> <p>(c) No-objection / Tax Clearance Certificate from Income-Tax authority for the remittance/s</p> <p>(d) Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending and there is no legal impediment to the remittance.</p> <p>(e) A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 1956, in case of winding up of the Office in India.</p> <p>(f) Any other document/s, specified by the Reserve Bank while granting approval.</p>		
Apart from the above mentioned compliance other general compliances also needs to be done under (H) Other General Conditions Applicable to Branch / Liaison / Project Offices of Foreign Entities in India <sup>3</sup> .				

<sup>3</sup> [http://www.rbi.org.in/scripts/BS\\_ViewMasCirculardetails.aspx?id=7312#G](http://www.rbi.org.in/scripts/BS_ViewMasCirculardetails.aspx?id=7312#G)



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### **Conclusion**

Having discussed about the pros and cons of a WOS, BO, LO, PO; it shows a clear picture to the investor that in order to start the business in India, with the help of any of the above 4 given strategies, the aim of that particular business should be clear.

### **For Long Term Investment**

If the company is planning to invest in India from a long term perspective he should be opting to form a WOS. Forming a WOS would have a lot of compliances to be done as mentioned above. However this shouldn't be pinching the investor, as a WOS would give them liberties incase of activities, public offering, reporting etc, which otherwise in case of a BO/LO/PO wouldn't have been possible.

### **For Short Term Investment**

In this case if the foreign company wants to invest in India and form a kind of organization which would solely to act as a helping hand to the company for its principle business in aboard, then the investor should go for setting a BO/LO/PO in India. BO/LO/PO would have many restrictions on the activities that they can carry on, however law related compliance would be much lesser than a WOS.

Thus keeping in mind the aim of the foreign company any of the above offices mentioned above can be set up in India