De Jure

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One Two Sky Blue – all out but you

Rajani Associates
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ONE TWO SKY BLUE - all out but you

Do we still toss a coin when we have to make a choice? We guess not! The right choice depends on the objective, advantages and drawbacks, costs and consequences, compliances and penalties of that choice.

In this Article, we will discuss the initial options available to an overseas company to test waters in India, without the need to adhere to substantial compliances.

As individuals leave their nest when they hear the knock on their doors and the world shrinks into one common platform, a company's appetite to expand its operations takes it to jurisdictions outside their country to promote their products and services and earn better revenue.

Most countries in the world have established policies and procedures to attract foreign investment into its countries. Foreign investment supplements domestic capital, technology and skills and accelerates economic growth.

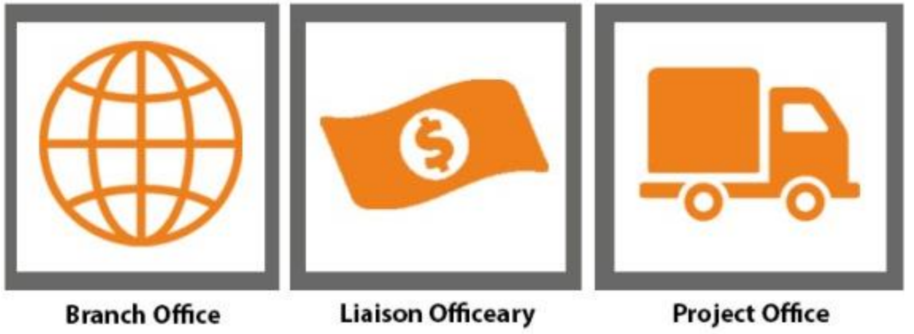
In the midst of the pandemic, India has managed to attract and receive USD 30,000,000,000 (thirty billion) Foreign Direct Investment ("**FDI**") from April 2020 to September 2020 translating to a 15% increase in FDI, thus exuberating confidence amongst overseas investors.

India has emerged as an exemplary substitute for several global enterprises searching for an alternative to the existing manufacturing base and supply chains, and for expanding their operations in India. There is a manifestation of change in the outlook of global investors towards India.

In 1991, India announced its first Industrial Policy, welcoming foreign investment into India. No doubt, the 1991 Policy contained many restrictions and investments were subject to approvals. Compared to the 1991 Policy, the recent Consolidated Foreign Direct Investment Policy ("**FDI Policy**") announced by Department for Promotion of Industry and Internal Trade permits almost all investments under the automatic route and has eased the compliance and filing process.

An overseas company (foreign company) is welcome to invest in India under various routes. The overseas company may establish its own company or unite with an Indian individual or company. At times, the overseas company just wants to either test market its products, understand the Indian market or only execute a particular project in India, without the need to establish a permanent establishment in India. The FDI Policy has a simple solution for such needs.

Overseas companies have been permitted to set up miniature offices in India before they decide to make the choice to make India as one of their hubs for manufacture or launch of their products. These offices may be set up under the aegis of the relevant Foreign Exchange Management Regulations (the "**FEMA Regulations**").



India offers three (3) choices to overseas investors to set up their miniature offices in India; a liaison office ("**Liaison Office**") or a branch office ("**Branch Office**") or a project office ("**Project Office**"). The activities of these offices are no different than their names. For example, a Liaison Office can only liaise, a Project Office can only do a project but a branch office does more than just branch!

A Liaison Office is a place of business, which acts as a channel of communication between the parent office and entities in India. A Project Office is a place of business in India to execute a project for the overseas company. A Branch Office is simply another location of the company and an extension of the main office, as if one were adding another room to the current building.

Most overseas companies prefer to establish a Liaison Office to gather information about prospective opportunities in India, promote their business and build network with Indian clients. A Liaison Office cannot, however, undertake any business activities or execute any contract on behalf of the overseas company.

On the other hand, a Branch Office may undertake business activities in India. A Branch Office is nothing but a shadow of the overseas company in India. Overseas companies may consider setting up a Branch Office to expand their operations in India without being subject to compliances as that of an Indian company.

A Project Office is essentially set-up to undertake specific assignments or projects, as the name suggests. Overseas companies which must execute a project in India or undertake turnkey projects or perform contracts awarded by government authorities prefer to establish a Project Office.

To determine which office to set up in India, the overseas company must ascertain the purpose and objective for setting up the office.

A Branch office can potentially uncover the feasibility of undertaking businesses in India, without being overwhelmed by the exhaustive compliances and funds required for incorporating and operating an Indian entity.

Once it is decided to open a Branch Office in India, the overseas company must meet certain eligibility criteria and make the application to its authorised dealer ("**AD Bank**"). A Branch Office may acquire property in India in order to establish its operations and undertake permitted activities.

Companies from certain overseas jurisdictions, as well as companies engaged in certain sectors must obtain RBI approval to establish a Branch Office in India.

From the three (3) options available to an overseas company, a Branch Office may be an ideal choice. A Branch Office does not demand onerous compliance and may be considered as an alternative business vehicle by those overseas companies with limited funds that wish to first test the Indian market and then make a conclusive decision to expand their business operations in India.

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