



# e-Newsletter

## Chartered Accountants

### June 2021 Edition

“Before you start some work always ask yourselves three questions why I am doing it, what the results might be and will I be successful. Only when you think deeply and find satisfactory answers to these questions, go ahead.”

~ Chanakya

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**CA. Nitin Kataria**

Chairman

**Dear Members and Students**

I hope you all are doing well. I wish for your good health in this difficult time.

Last month was one of the most difficult month of our lives ever. Most of us had lost our loved ones. We have never imagined in our wildest dreams about the sudden outbreak of this catastrophe. We were again limit ourselves in our houses but this the level of fear and anxiety was more.

We at the Gurugram branch did our part by providing some help to the members in the form of arranging plasma donation, providing oxygen concentrators, financial aid for the needy and providing the essential items and also arranging direct communication webinars with the top doctors. In this I would like to specially thanks to all the members who generously contributed to this wonderful cause.

On the professional front we held a number of programs for the members including a 5 days Advance excel program for the members. Now slowly and steadily the cases are coming down and the lockdown is opening gradually this is again the time to take utmost care without any negligence.

With this the Gurugram branch is also committed to serve the CA Members and CA Students with respect to their continued professional education and related matters. I would also request the readers of this article to come and participate by writing articles for our newsletter. Also, the whole team of Gurugram branch is committed to the betterment of the professional and encourage you to please take active participation in all the events, activities of the chapter.

Take care.

Best Wishes.



## Establishment of Branch Office of Foreign Company

### Legal forms in which a foreign Company can set up its establishment in India?

- Branch Office
- Liaison Office
- Project Office
- Corporate Entity which could be wholly or partly owned by the foreign Company (FIPB route).

Joint Venture/ Partnerships etc.

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

1. RBI Act
2. Companies Act, 2013

### RBI ACT:

### INTRODUCTION OF BRANCH OFFICE:

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 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:

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 –

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:

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

#### GENERAL FEATURES OF BRANCH OFFICE

- The NAME of Indian BRANCH office shall be same as parent Company.
- The GOVERNING BODY for the BRANCH office License is RESERVE BANK OF



INDIA.

- It is SUITABLE FOR FOREIGN COMPANIES looking to setup a temporary office in India and not interested or not planning to have long term plans for the Indian operations.
- All the expenses of the BRANCH office are met by the head office, if it does not have the revenue from Indian operations.
- Spreading its business to diverse locations and thus increasing the customer base.

#### **Pre-requisites for a foreign Company to have branch office in India –**

The following additional criteria are also 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

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

- ⇒ 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)
- ⇒ 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)
- ⇒ 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 Authorized Dealer bank.
- 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.

- 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.

#### Procedure for Approval from RBI:

- Currently as per the RBI Requirement the application for the branch office and BRANCH office is submitted through the Authorized dealer. The authorized dealer means the various institution having banking licenses.
- The application in the prescribed form (Form FNC) should be submitted to the RBI.

#### DOCUMENTS REQUIRED FOR BRANCH OFFICE SETUP:

- Form FNC – Three copies\*
- Letter from the principal officer of the Parent Company to RBI. \*
- Letter of authority from the parent Company in favor of Local Representative.
- Letter of authority/ Resolution from parent Company for setting up BRANCH

office in India.

- Comfort letter from the parent Company intending to support the operation in India.
- Two copies of the English version of the Certificate of Incorporation, Memorandum & Articles of association (Charter Document) of the parent Company duly attested by the Indian embassy or notary public in the country of registration.
- Certification of Incorporation - Translated & Duly Notarized and Certified by Indian Consulate
- The Latest audited Balance sheet and annual accounts of parent Company duly Translated notarized for past Three years. & Certified by Indian Consulate & Directors
- Name, Address, email ID and telephone number of the authorized person in Home Country.
- Details of Bankers of the Organization the Country of Origin along with the bank account number.
- Commitment from the Organization to the effect that it will be open to report / opinion sought from its banker by the Government of India / Reserve Bank of India
- Expected funding level for operations in India.
- Details Relating to address of the proposed local office, number of per-

sons likely to be employed, number of Foreigners among such employees and address of the head of the Local office, if decided

- Details of Activity carried out in Home Country by the applicant organization in brief about the product and services of Company in Brief.
- Bankers Certificate
- Latest Proof of identity of all the Directors - Certified by Consulate and Banker in Home Country
- Latest Proof of address all of Directors - Certified by Consulate and Banker in Home Country
- Details of the Individuals / Company holding more 10% of Equity
- Structure of the Organization w.r.t Shareholding pattern
- Complete KYC of Shareholders holding more than 10% Equity in the Applicant Company 1. 2. 3. 4. 5. 6.
- Resolution for Opening up Bank Account with the Banker
- Duly Signed Bank Account Opening Form for Indian Bank

**NOTE - THE ABOVE LIST IS NOT EXHAUSTIVE AND MAY DIFFER DEPENDING UPON THE REQUIREMENT FROM THE AUTHORISED DEALER.**

**THINGS REQUIRED TO BE DONE ALONG WITH APPROVAL FROM RBI:**

- **Acquiring property in India**
  - ⇒ Branch Offices of a foreign entity are permitted to acquire property for their own use and to carry out permitted/incidental activities but not allowed to buy for the purpose of renting it out
  - ⇒ Entities from Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, Bhutan or China are not allowed to acquire immovable property in India even for a Branch Office. These entities are allowed to lease such property for a period not exceeding five years
- **Annual Reporting by Branch Office TO VARIOUS DEPARMENTS:**
- File an Annual Activity Certificate (AACs) with RBI from the Auditors, as at end of March 31, along with the audited Balance Sheet on or before September 30TH of that year, stating that the Branch Office has undertaken only those activities permitted by Reserve Bank of India.
- (In case the annual accounts of the BO are finalized with reference to a date other than March 31, the AAC along with the audited Balance Sheet may be submitted within six months from the due date of the Balance Sheet.)
- Filling of accounts along with the list of all principal places of business in India established by foreign Company- In form FC-3
- File annual return with Registrar of



Companies (ROC) – In form FC-4- Normal ROC Fees Rs. 6,000/- (Rupees Six Thousand)

- Getting Annual Accounts audited.
- Maintenance of Books of Account
- File return and pay applicable taxes along with AAC with Income Tax department.
- A copy of the report as per the prescribed format to DGP of concerned state.

#### Periodic Reporting by Branch Office:

It will also need to inform ROC of certain changes as and when there is made.

In form FC-2

- Intimating any change in constitution of Foreign Company to RBI & ROC
- Intimating any change in Directors of Foreign Company to RBI & ROC
- Intimating each and every change in the BRANCH office to RBI & ROC
- No additional place of business can be started unless approval is taken from RBI.
- No addition activity can be started unless approval is taken from RBI.

#### Repatriation of funds

- Profits earned by the Branch Offices are freely remittable from India, subject to payment of applicable taxes

#### OTHER BUSINESS LICENSES APPLICABLE TO BRANCH OFFICE

- Permanent account number – pan number
- Tax deduction number – tan number Shop & establishment
- Registration Service Tax Registration – if the
- Branch provides any services in India
- VAT & CST Registration – If the Branch carries out trading activities in India

#### COMPANIES ACT:

#### PROCEDURE AFTER GETTING THE RBI APPROVAL

Every BRANCH office registered with RBI shall get itself registered with the Ministry of Corporate Affairs; it is a registration by the BRANCH office as an establishment of foreign Company in India. On such registration a CIN i.e. Corporate Identity Number is allotted by the Registrar of Companies.

The following documents shall be filled with the Registrar of Companies:-

- Form FC-1
- Charter, statutes or memorandum and articles of association or other Instrument constituting or defining the constitution of the Company
- If the above documents are not in English then the translated version of the documents.

- Director(s) details – individuals
- Director(s) details - bodies corporate
- Reserve bank of India approval letter
- Secretary(s) details
- Power of attorney or board resolution in favor of the authorized representative (s).
- Companies have to file annually and periodically documents as mention above.

### CLOSURE OF BRANCH OFFICE

Generally the BRANCH office licenses is given for three years, if at any time the Company plans to close the BRANCH office setup in India it shall file the necessary documents with the Authorized Dealer, and the application for the closure shall be forwarded by the Authorized Dealer.

Copy of the Reserve Bank's permission/ approval from the sectoral regulator(s) for establishing the BO / LO.

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.

No-objection / Tax Clearance Certificate

from Income-Tax authority for the remittance/s.

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.

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.

Any other document/s, specified by the Reserve Bank while granting approval.

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## FSSAI makes it obligatory for food businesses to communicate

FSSAI licence No. on invoice/bills from 1st October 2021

CS Priyanshi Goyal



The food business ecosystem is large and the 14-digit FSSAI number of any food business operator is not easily visible and available to consumer/service recipient.

If the FSSAI number is not available to consumer, expecting him to complain about complete coordinates is an uphill task.

Even regulators find it difficult to trace the origin of the complaint and attend to it promptly.

No database can be created without a unique locator code, which in the case of food safety is the FSSAI number.

Gripping in mind the various obstacles faced by different consumers, the modern amendment can be a life rescuer for many.

Presently, FSSAI number is mandatory to be presented on packaged food labels but the issue lies especially in the case of establishments such as restaurants, mithai shops, caterers, even retail stores.

After the approval of the Food Authority, it is now mandatory to declare the 14-digit FSSAI License or Registration No. on cash receipts, purchase invoice, cash memo, bills etc. by all food businesses.

The only exemption is the GST E-way bills and other Govt. documents which are system generated.

Non-mentioning of the 14-digit FSSAI License or Registration No. will be a non-compliance or non-registration/licensing by the food business.

Since complaints remain unresolved due to a lack of specific information, this move will assist consumers to;

Lodge an online complaint against a particular food business using the FSSAI number.

Consumers can have access to the particular food business which is publicly available at FSSAI's portals.

The consumer can visit the "FSSAI portal" or the "Food Safety Connect" app for accessing information about the FSSAI license or registration by inputting the 14 digit FSSAI License or Registration No.

Mentioning of FSSAI number shall also improve the overall awareness.

Given the above, the food businesses shall be required to mention the 14 digit FSSAI License or Registration No. on cash receipts, purchase invoice, cash memo, bills etc.

Licensing and registration authorities are directed to widely publicise the policy and shall ensure its implementation mandatorily with effect from October 2, 2021.



**Monday, 3rd May 2021**

**Virtual Program on Covid-19- Impact, Management & Safeguards**

**Speaker:** Dr. Sukhram Bishnoi Medanta - The Medicity, Gurugram

**Wednesday, 5th May 2021**

**Virtual Meeting on How to protect yourself from CORONA Virus**

**Guest of Honour :** CA. (Dr.) Girish Ahuja

**Chief Guest & Speaker :** Swami Ramdev

**Sunday, 9th May 2021**

**Virtual Meeting on COVID Impact on Heart Mind & Body**

**Speaker:** Dr. Bimal Chhajer, MBBS, MD (Ex Consultant AIIMS)

**Wednesday, 19th May 2021**

**VCM on Code of Ethics**

**Chief Guest:** CA. Amarjit Chopra, Past President, ICAI

**Tuesday, 25th May 2021**

**VCM On SEZs Regulations, Compliances & Opportunities For CAs**

**Guest Speaker :** CA. Hitender Mehta

**26th-30th May 2021**

**Series Of VCM On Advanced Excel**

**Guest Speaker :** CA. Vijay Agarwal

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