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Growing Business In India: Taking Things Beyond Liaison Office

Time is ripe for them to enter one of the largest economies in the world where making it first makes all the difference. write authors Mr. Krrishan Singhania, Managing Partner and Founder of K. Singhania & Co and Mr. Rohan Tyagi, Associate K. Singhania & Co. Advocates & Legal Advisors

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Growing Business In India: Taking Things Beyond Liaison Office

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A Liaison Office ("LO"), also known as a representative office, can only carry out liaison activities, i.e., it can serve as a communication link between parties in India and the head office located abroad. It is not permitted to conduct any business activities or generate any income in India.

All costs for these offices must be covered by remittances of foreign currency sent in from the Head Office outside of India. The functions of such offices are restricted to gathering data on potential market prospects and informing potential Indian clients about the business and its products. However, the validity period of an LO is generally for three years and in the case of Non-Banking Finance Companies (NBFCs) and those entities engaged in construction and development sectors, the validity period is two years. Although, this enables the Head Office abroad to get a flavour of the Indian market, it is too short of a time period to actually lay the foundation for your long term business plans. Off late, India has been recognised as one of the most rewarding business destinations around the world. In these times, a LO holder may consider changing its approach towards the high-demand Indian market by evolving into a corporate entity that can engage in doing business and thereby generate income.

Even though a Branch Office (BO) can mirror the function of a foreign parent company in India, its scope of activities is far too limited, as most activities would require you to take prior approval of the Reserve Bank of India (RBI). The major restriction include carrying out manufacturing activities although one may argue that the same can be subcontracted to Indian Manufacturers. However, this would reduce the prospects of significant growth that can be achieved by a traditional corporate structure, such as a Wholly-Owned Subsidiary (WoS) Company. A typical Parent-Wholly-Owned Subsidiary Company structure provides enormous potential for expanding your business in India.

From LO to a Wholly Owned Subsidiary

The RBI Master Direction on Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) or any other place of business in India by foreign entities ("RBI Master Direction") under clause 11 chisels out ways through which you can transfer the assets of the LO to a Wholly Owned Subsidiary or a Joint Venture Company on the closure of the

former. The said transfer of assets will only take effect to the extent of assets acquired through foreign inward remittance and intangible assets such as good will shall not form part of such a transaction. Therefore, foreign companies having LO in India can survey the needs and scope of growth in the Indian market and thereby consider setting up a Wholly Owned Subsidiary in India after the end of the validity period of the LO which would be able to absorb all of its assets as well.

Not only does the RBI Master Direction provide for a way to transfer the assets of the LO but in case the LO is involved in construction and development sectors or is a LO of a Non-Banking Finance Company, they may choose to convert into a JV or a Wholly Owned Subsidiary in conformity with the extant Foreign Direct Investment ("FDI") policy.

A Wholly Owned Subsidiary offers numerous advantages for your business in India and setting up the same has never been easier which the advent of Ease of Doing Business Policy. A Wholly Owned Subsidiary is recognised as a separate legal entity, thereby shielding the Parent company based in abroad from any harm or liabilities. Besides, in accordance with the FDI Policy and the eligibility criteria laid therein, a Parent company may choose to fund the Wholly Owned Subsidiary with no cap on the amount without any prior approval from the Government of India. Additionally, this arrangement gives the parent business complete control over all management-related matters in the wholly-owned subsidiary.

Conclusion

In today's time where the world is looking towards India as the go-to destination for business, a LO, already established in India, may choose to work towards evolving itself into a Wholly Owned Subsidiary as they already understand the demands of the Indian market better than the outsiders.

Time is ripe for them to enter one of the largest economies in the world where making it first makes all the difference.

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