Closure of Foreign Company in India

Definition of Foreign Companies under the Act: The Act clearly defines a foreign company under Section 2(42). A foreign company is any company or body corporate incorporated outside India which—

1. has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
2. conducts any business activity in India in any other manner.

Hence, a foreign entity to be considered as a foreign company, has to fulfill both the criteria mentioned above, i.e., having a place of business in any manner specified above, and conducting any business activity in India.

Meaning of Liaison Office, Branch Office or Project Office:

A Liaison Office (LO) functions as a representative office set up primarily to explore and understand the business and investment climate. A Liaison Office (also known as Representative Office) can undertake only liaison activities. The role of such offices is, Therefore, Limited to collecting information about possible market opportunities, Source of supply, providing information about the parent company and its products to the prospective Indian customers or vise versa to its vendor.

LO / PO / BO can undertake the following activities in India

a) Representing parent company / group companies in India.
b) Promoting export/import from/to India.
c) Promoting technical/financial collaborations between parent/group companies and companies in India.
d) Acting as a communication channel between the parent company and Indian companies.

SILENT FEATURES OF LIAISON OFFICE

- The name of Indian liaison office shall be same as parent company.
- The governing body for the Liaison office is AD banker/ Reserve Bank of India.
- Suitable for foreign Companies looking to setup a temporary office in India to liaison its existing business with Indian clients.
- The Liaison office does not have any ownership; It is just extension of the existing foreign company.
- All the expenses of the Liaison office are met by the head office; hence the funds shall be received from head office account only.
- The liaison office is not subjected to taxation in India as there is no mechanism for the income tax department to examine and ascertain as to whether the activities under taken by it result in any taxable income in India
- The liaison office must maintain a account with the AD category banks in India. This is a special account that only allows inflows from abroad. However, At the time of closure of the Liaison Office, RBI grants permission to repatriate the balance in the Indian bank account to the parent company.

Once the purpose of setting up the Liaison / Branch / Project Office is completed in India, such offices have to be closed. And approval for closure has to be taken from Income Tax Department / RoC and AD / RBI.

Procedures for closure of such offices in India:

1. First such offices have to get NOC from MCA / RoC for closure of place of business in India
    a. For getting NOC all the required forms and details should have been provided to RoC. Forms like FC 2, FC-3 and FC-4 should have been filed on annual basis and as per the instructions mentioned.
    b. If all the Annual Returns are filed with the RoC. After filling Annual Activity Certificate, Undertaking from such Offices in India, Certificate from Auditors and also from the parent company has to be uploaded as an attachment to form FC-2 for closure of place of business in India.

2. Approval from AD / RBI for closure of Office and Remittance of Proceed

a. Every LO / BO / PO should have submitted its Annual Report, along with the AAC and other certificate from such Office and its Auditor to the AD / RBI on annual basis.
b. There should be a valid letter from AD / RBI for Opening such places of business in India. If the validity of such letter has expired, one has to approach the bank for extension of same.
c. Financial statement as on date along with the status of assets in India.
d. Details of all Annual Returns filed with the RoC, Annual Activity Certificate, Undertaking from such Offices in India, Certificate from Auditors and the parent company along with the details and acknowledgement has to be attached with form FC-2 for closure of place of business in India.
e. Amount of remittance and Procedure of calculation of such remittance.